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Promoting Equality and Access in Higher Education: A Comparative Study of State Sponsored Preferential Policies in Great Britain, India and South Africa

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Promoting Equality And Access In Higher Education: A Comparative Study Of
Sponsored Preferential Policies In Great Britain, India and South Africa

**Promoting Equality And Access In Higher Education: A Comparative Study Of State
Sponsored Preferential Policies In Great Britain, India and South Africa**

by **Lanaia C. DuBose**

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**A thesis submitted in partial fulfillment of the
requirements for the degree of**

Master of International Relations and Diplomacy

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If we meet someone who owes us thanks, we right away remember that. But how often do we meet someone to whom we owe thanks without remembering that?

—Johann Wolfgang Von Goethe

Now is the time to remember and say thanks to everyone who provided support and inspiration on this journey of learning, exploration and self discovery. It is impossible to list in this small space the gratitude I have for those persons who believed in me and my project. However, I will try.

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ABSTRACT

Recent U.S. court decisions striking down affirmative action policies in college admissions have caused universities to seek diversity programs that can hold up to public and legal scrutiny while maintaining diversity on campus. The purpose of this thesis is to study the preference programs of other countries and determine if successful elements could be duplicated here in the United States. Specifically, the study looks at whether countries who use equality of opportunity programs (which focus on training initiatives) are more successful in increasing enrollment and hiring numbers of minorities than equality of outcome measures (which focus on quotas). The study also asked the larger theoretical question of whether preference programs are successful in distributing valuable higher education resources to minorities?

TABLE OF CONTENTS

Acknowledgements	iii
Abstract	iv
Table of Contents	v
Chapter 1: Introduction	7
Introduction and Statement of Problem	7
Purpose of Study	9
Summary of Findings	10
Operational Definitions	12
Study Rationale	13
Theoretical Considerations	14
Chapter 2: Literature Review	17
Introduction	17
Review of Literature by Academics, Sociologists, and Political Scientists	17
Chapter 3: Methodology	22
Introduction	22
Discussion of Objectives and Research Questions	22
Objectives	22
Research Question	23
Research Criteria	23
Measurement Guidelines	25
Operational Questions	25
Methods to be Used	26
Countries Studied	26
Data Collection	27
Data Analysis	27
Data Evaluation	28
Limitations	28
Chapter 4: The U.S. Experience with Affirmative Action	31
Introduction	31
Development of Affirmative Action Policies in the U.S.	31
Rationale for the Policy	34
The Structure of U.S. Affirmative Action Laws	35
Enforceability of Affirmative Action Laws	37
Implementation of Affirmative Action Programs by Universities	39
Public Opinion of the Policy in the U.S.	43

Chapter 5: Great Britain	44
Introduction	44
Race Relations Act	44
Findings By Research Criteria	47
Research Criteria (a): Rationale for the Policy	47
Research Criteria (b): Structure of the Policy	48
Research Criteria (c): Implementation of the Policy...	50
Employment in Higher Education	55
Research Criteria (d): Perception of the Policy by the Public	57
Conclusion	58
Chapter 6: India	60
Introduction	60
Reservations and the Indian Constitution	61
Findings By Research Criteria	64
Research Criteria (a): Rationale for the Policy	64
Research Criteria (b): Structure of the Policy	69
Research Criteria (c): Implementation of the Policy	71
Reservations Policies and Faculty	74
Research Criteria (d): Perception of the Policy by the Public	75
Conclusion	76
Chapter 7: South Africa	79
Introduction	79
South African Legislation	79
Findings By Research Criteria	83
Research Criteria (a): Rationale for the Policy	83
Research Criteria (b): Structure of the Policy	84
Research Criteria (c): Implementation of the Policy	86
Research Criteria (d): Perception of the Policy by the Public	91
Conclusion	93
Chapter 8: Findings	95
Introduction	95
Introductory Statement	95
Findings Research Criteria	98
Lessons for the US	103
Conclusion	108
References	110

CHAPTER 1

Introduction

Introduction and Statement of Problem

America's preferential policies in higher education are in crisis. The laws, which were enacted through presidential executive orders, as well as through court decisions like Regents of the University of California v. Bakke (1978), have come under fire in recent decades. Battered by weakening public opinion and legal battles, the current retrenchment in affirmative action has led many opponents to try to end not mend affirmative action in the United States.

This crisis has stemmed from the idea that preferential policies like affirmative action in the U.S. have lost their impact. Three reasons are given for this decline. First, affirmative action has been marred by a rationale which sees the policy as a payment to African Americans for slavery. Today many whites in America feel this debt has been paid over the years and as such, preferential policies are no longer needed. Second, the enrollment numbers of African American college students began to reach parity with their percentage of the population in the 1990s (AUAA, 1997). Third, the concepts of preferential treatment for minorities runs against the American ideals of equality and all men being created equal.

As such, affirmative action has legally come under fire in the U.S., making the use of quotas for minorities in higher education illegal and unenforceable. This began

with the case of Regents of the University of California v. Bakke (1978) which stated that the university's preference policy of setting aside a fixed number of seats for minorities violated Title VI of the 1964 Civil Rights Act. Despite this ruling, the Bakke decision did state that using diversity as a rationale for preference programs was admissible. However, this idea was challenged in the case of Hopwood v. the University of Texas Law School (1996). In this case a Fifth Circuit Court ruled that using different test scores for minorities in admissions were illegal in Texas, Louisiana and Mississippi. It also ruled that using the idea of increasing diversity as a basis for preference policies was weak. After rulings like these, minority enrollments in higher education dropped sharply for minority students at the University of Texas and the University of California system (Gray, 1996). Currently, a lawsuit aimed at ending the University of Michigan's preference policies could go to the Supreme Court, possibly overturning affirmative action in the United States (Gratz v. Bollinger, 2002).

These events have caused university admissions officers, scholars, policymakers and defenders of the program to look for other solutions for increasing diversity on campus. Universities are focusing on solutions that do not use quotas, do not focus on race and can held up to public and legal scrutiny. These new policies focus heavily on recruiting qualified minorities from other states, and competing with private colleges and universities by offering more financial aid.

Universities are also looking to use equality of opportunity programs, which lay out equal rules for admissions and do not allow quotas. When preference policies are enacted under equality of opportunity programs they are mostly training initiatives to

help the beneficiary group compete equally with non-beneficiary group members in jobs and education. Equality of outcome measures by contrast focus more on quotas, reservations and set-asides to redress past discrimination.

While affirmative action literature in the U.S. is full of preference policy options for universities, which range from class-based initiatives to percentage plans, few authors have attempted to look overseas in order to gain solutions from our international neighbors. This is especially true when it comes to investigating the types of equality of opportunity policies enacted overseas. This study intends to fill that gap by looking to see if solutions for the United States' beleaguered affirmative action policies can be found by investigating the preference policies of Great Britain, India and South Africa.

Purpose of this Study

The purpose of this thesis is to study the preference programs of other countries in regards to higher education and determine if successful elements there could be duplicated by policy makers and universities here in the United States. The study theorizes that there are two types of programs when it comes to dealing with preference policies, equality of opportunity measures and equality of outcome programs. The study looks at whether countries use equality of opportunity or equality of outcome measures when it comes to increasing diversity in higher education.

In preparing this thesis, the author asked the following research question to guide the study. Can equality of opportunity programs be successful in increasing enrollment and hiring numbers of minorities in the United States? The study also asked the larger

theoretical question of whether preference programs are successful in distributing valuable higher education resources to minorities? Throughout the investigation of these research questions, certain research criteria were studied including: what rationale is used to create these policies, how the laws are structured, enforced, implemented and what backlash such policies trigger by non-beneficiaries. As part of these investigations, case studies were created to provide lessons for U. S. universities and policymakers to duplicate. Finally, the success of the preference policies studied were measured by looking to see if the percentage of minorities enrolled in higher education institutions are at least in proportion with their overall percentage to the population.

Summary of Findings from the Study

The study found that equality of opportunity programs that focus on training, like those in Great Britain, and equality of outcome programs that did not hinge on quotas, like those in South Africa, were more effective at increasing minority enrollments than the reservations (quota) system India employed. However, preference were not successful in increasing the number of minority faculty in all the countries studied.

It was also found that rationales other than redress were successful for preference programs including avoidance of present day discrimination and using preference policies as a way to help minorities overcome economic and educational disparities so they can compete equally with the majority group. This is important from the U.S. perspective because there is backlash among whites against the idea of redress as a rationale for affirmative action in this country. Some whites feel they should not be held liable today

for the actions of their ancestors. Because rationales other than redress were feasible for preference policies, it is recommended that U.S. affirmative action proponents shift focus from redress as a rationale and focus on using the program for avoidance of present day discrimination. This could also coincide with a shift from equality of outcome programs that use quotas to equality of opportunity programs.

As there was a correlation between rationale and backlash, this tactic might reduce negative public opinion of the policy in the United States. While shifting focus in this manner is difficult, it could be done with a well-targeted television and print media public relations campaign. Studies of South Africa showed that using a public relations campaign helped ease opposition against preference policies by hard liner English and Afrikaans speaking whites.

It was found that preference policies were often structured as one law within the constitution, with provisions that allowed for both equality clauses and preference policies. The structure of equality of opportunity programs showed they were more successful when universities were given more autonomy in their design. This was especially true in South Africa where autonomy helped lessen tensions about meritocracy in preference programs in regards to student admissions.

Studies of implementation showed that despite a country's commitment to increasing diversity on campus, discrimination was still rampant at the universities. This discrimination on campus sometimes hindered the implementation of preference programs. This was especially true when it comes to hiring minority faculty.

The countries also provided interesting and innovative programs for the U.S. to investigate and duplicate. These include pre-exam training for improving standardized test scores, university created testing measures to see if low scoring students can do college level work and summer classes for admissions and/or standardized testing credit. Another interesting idea is a class based or historical disadvantage system where extra admissions points could be given for bright students whose family have no history of going to college or who attend schools in low test scoring areas of the United States regardless of race.

As for affirmative action being a viable way of redistributing resources, it was found that such programs do not reach the poorest of the beneficiary group. In this way, the programs are not ideal at redistributing resources. However, the removal of such programs is much more detrimental than keeping them in place. Instead, efforts must be made to insure the poorest beneficiary groups feel the positive effect of such programs.

Operational Definitions

In reading this document, there should be some clarification of the terminology used in order to avoid confusion. The meaning of a term in the U.S. may have a different connotation in one of the countries' studied. To clarify these meanings, a list of operational definitions are listed below.

Preference Policy: This is a blanket term for any active pursuit to promote the interests of and improve the employment and educational opportunities of minorities, the disabled

and women. In Great Britain this term would be “positive action”, in the U.S. this term is called “affirmative action,” and in India it would be termed “reservations”.

Minority: This term refers to a group or population of a country who differ from others in some characteristics and who are therefore often subjected to differential treatment. So in this thesis, even though the Scheduled Castes/ Scheduled Tribes of India and blacks in South Africa make up the demographic majority of their countries they are considered minorities in this thesis because they have been subjected to differential treatment that lead to economic and educational disparities. In Great Britain, the term minority takes on a more demographic quality, for those in the country who are not white.

Study Rationale: Why This Topic Should Be Studied

There are many reasons to study countries overseas for possible preference policy solutions in higher education. One reason is that it is timely. The retrenchment of thinking on affirmative action has caused there to be a lively debate on the topic both by policy makers and scholars. Various solutions, such as class-based affirmative action and percentage plans are already being discussed as ways of keeping diversity in the classroom on college campuses.

Second, affirmative action’s place in the U.S. policy framework is fast losing its footing. In the U.S., equality of outcome measures voluntarily used by universities to increase minorities at their institutions has come under extreme fire. This backlash stems from the fact that many whites feel such preference policies are in fact reverse

discrimination. Therefore, the United States needs to find a new rationale for affirmative action. Perhaps countries facing similar situations have used rationales other than redress in their policies?

Third, while many scholars debate the merits and detractions of these solutions, few scholars have investigated how other countries deal with this issue of race and education. In the growing field of affirmative action literature, only author, Steven Teles has offered possible solutions for the U.S. using the British system of positive action as a model (Teles, 1998). However, Teles' work only focuses on one country. Other countries have established preferential policies and we can learn a lot from both the successes and failures of these programs. Finally, in performing a multi-country research study, we will not only provide policy makers with ideas on affirmative action solutions, but also add to the literature on affirmative action as well.

Theoretical Considerations

While this research study does not engage one particular theoretical framework as a device to shape the form of this work, it does call upon the input of some theoretical concepts in order to put preference programs in context. These theories provide an interesting background on the reasons for and problems with preference policies.

One theory worth reviewing regards the idea of a cultural division of labor. A UNESCO discussion paper entitled, "Some Thematic and Strategic Priorities for Developing Research" (Medrano, n.d.) looks at this idea. The paper claims, "a cultural division of labour exists when one dominant ethnic group monopolizes the good positions

and a subordinate ethnic group is relegated to the bad positions (Medrano, n.d.).” In many countries this can lead to ethnic conflict and the creation of preferential policies. In fact, though it may be hard to see at first, this is what has happened in the United States. While there was not an ethnic uprising such as that of Rwanda or Yugoslavia, the urban race riots of the 1960s in the U.S. were borne out of the frustration of subjugated minorities in the labor market. This is relevant because it can be argued that the creation of preference policies in all the countries studied for this thesis rose out of the disparities experienced by minorities in regards to a cultural division of labor, in addition to other disparities specific to each individual culture.

In addition, author Gaby Weiner weighs in on affirmative action with theories regarding “quality” and “equality” developed by researcher K. Riley. Weiner writes that Riley felt the concepts of “quality” and “equality” were related but in conflict. Quality refers to the “identification of levels and standards, and equality to the distribution of power and resources (Weiner, 1998).” She adds that a new definition of quality regards maintaining and ensuring performance standards as important elements of equality policies (Weiner, 1998). Riley expounds on the concepts of “equality” and “quality” by adding that, “a tension exists between the two [ideals] which is based on values and ideology so that key actors in the system can influence quality and equality outcomes in favor of different groups in the system (Weiner, 1998).” Riley goes further to add that most strategies for pursuing change (whether this means in general or in affirmative action is not clear) are based on ideas of “equality of opportunity” or “equality of outcome (Weiner, 1998).” Equality of opportunity is concerned with making sure that

the rules of the game, which Riley describes as employment or access to courses and examinations, are fairly laid out for use by all citizens (Weiner, 1998). Conversely, equality of outcome relates to widening access to employment, education and examinations through "action designed to redress past imbalances. It has been an essentially interventionist strategy aimed at redistributing resources and opportunities to disadvantaged groups (Weiner, 1998)."

From the U.S. perspective there is friction between the idea of "quality" in higher education and "equality," the idea of everyone being able to experience and benefit from higher education. There is also extreme friction between the idea of pursuing equality of opportunity over equality of outcome programs. To be successful in its own programs, the U.S. needs to ease the tension between these two concepts and find balance between the idea of offering equality for all and education for all.

The ideas of equality of outcome and equality of opportunity also provide a nice theoretical basis in which to investigate the preference policies of other countries. Which policy is ore successful, equality of opportunity or equality of outcome? Or does a policy fall somewhere in the middle?

Finally, it is interesting that despite the conflicts affirmative action creates, countries still seek these programs as a solution for redistributing resources. Maybe this is because the alternative of no programs presents an ever-bleaker problem. This is what makes studying other countries in this research intriguing. Certainly these countries have met with opposition to their programs. How they deal with this opposition and more importantly, how can we learn from it?

CHAPTER 2

Literature Review

Introduction**Introduction**

The concept of affirmative action in higher education draws strong emotions and this is reflected in the literature currently available on the topic. As a result, works on the subject are mired in personal emotion and empirical data is sometimes twisted. Unfortunately, this only convolutes discussions of affirmative action and its value to those it is meant to help. Few works have taken on affirmative action at face value, and fewer still have studied higher education affirmative action programs overseas in order to improve our understanding of the policy here in the United States.

Review of Literature by Academics, Sociologists, and Political Scientists**Review of Literature by Academics, Sociologists, and Political Scientists**

The 1990s saw an explosion of literature regarding affirmative action. Both proponents and opponents of affirmative action put forth works which espoused both the necessity and unconstitutional nature of the program. Yet some works stand out and should be noted in a discussion of affirmative action here in this thesis.

First there is William G. Bowen and Derek Bok's much-celebrated book, *The Shape of the River: Long Term Consequences of Considering Race in College and University Admissions* (Bowen, W.G. and Bok, D., 2000). This volume takes a look at the issue of affirmative action in higher education by using hard evidence and not just ideology to make its arguments. The former university administrators use empirical data

to justify their point of maintaining preference policies in higher education. In their study, the authors examined the admissions policies and admissions records of 18 U.S. universities and tracked 4,500 minority graduates who benefited from affirmative action policies (Harling, 2000). The evidence provided a good look at how policies have benefited minorities in the long term.

Other authors have weighed in on the affirmative action debate as well with empirical data to offer solutions to mend the program in regards to higher education. One such book is Princeton University professor, Dalton Conley's *Being Black, Living in the Red* (1998). In the book, Conley investigates how well class-based policies would benefit university admissions. First, Conley bases his methodology around the concept of wealth held by whites and blacks instead of socio-economic background, which is normally measured by income and occupational prestige. What he finds is startling. He writes that while poorer whites may benefit from class-based affirmative action, it would be a disaster for lower and middle-class blacks (Boyd, 2000). This is because on paper while the income of some poorer whites would be lower than middle class blacks, when income and net worth are tallied the wealth of even poorer whites are higher than that of middle class blacks (Conley, 1998). As only income and not net-worth would be counted as part of class based affirmative action program, many blacks would be shut out of positions at universities even though their "income" on the surface would appear higher than poorer white students.

Studies of affirmative action programs abroad usually focus on one or two countries or multi-country studies in specific circumstances. Before the end of apartheid,

a wave of studies compared affirmative action programs internationally in order to aid South African lawmakers. A notable one is, South African doctoral candidate Moltin Paseka Ncholo's (1994) dissertation entitled, *The Ideas of Equality and Affirmative Action in the Context of Bills of Rights with Special Reference to a Post-Apartheid South Africa*. The work does an impressive job of comparing the benefits and detriments of overall affirmative action programs in numerous African countries as well as the United States and India in order to provide a blueprint for South African lawmakers.

Beverly Lindsey's (1997) article, Toward Conceptual, Policy, and Programmatic Frameworks of Affirmative Action in South African Universities examines and compares the concepts and goals of affirmative action in the U.S. and South Africa. However, the work is more slanted towards the South African interpretation of the law, as it examines the positions of the government through government documents and policy papers. Finally, it also presents a case study of affirmative action policies by investigating its use at four South African universities. In doing so Lindsey looks for institutional changes at these universities because of the law.

Other works focus on one country specifically such as the informative essay, Why There is No Affirmative Action in Great Britain (1998) by American Steven M. Teles of Brandeis University. This article discusses Britain's concept of positive action, which does not call for quotas or set asides to promote equity in employment and education, but promotes the concept of employment training and targeted job advertising in highly concentrated minority areas. Teles argues that Britain developed this rather colorblind policy for cultural and institutional factors. He further points out that modeling Britain's

programs in the U.S. is a possible solution for American policymakers. Teles expands his work on this subject in the upcoming compilation of essays called Color Lines:

Affirmative Action, Immigration, and Civil Rights Options for America (Skretny, 2001).

Another work studying affirmative action in Britain is Leone Burton's (1993) Management, "Race" and Gender: An Unlikely Alliance. This study looks at the occupational and educational achievement of 39 women and minority females in British educational institutions. These women have all achieved senior management positions. The study investigates their journey to this level of management and also concludes that many British institutions have failed to implement policies and strategies that address underrepresented groups.

Studies of India's affirmative action programmes have also cropped up recently. These focus mostly on how affirmative action policies have affected the so called backwards classes. One interesting essay is Sujit Raman's (1999) Caste in Stone, in which the author labels affirmative action programs in India as a colossal failure for minorities.

One article comparing both India and the United State's affirmative action programs is Sunifa Parikh's (1996) The Supreme Court, Civil Rights, and Preference Policies: Judicial Decision Making Processes in the United States and India. This essay does a comparative analysis of both the U.S. and the Indian Supreme Courts' roles in affirmative action policies. It claims that there are many similarities in the development of these policies in the two countries.

As the reader can see, none of these documents attack the concept of affirmative action solutions for the U.S. from the perspective of a multinational comparative study. Only Teles takes a practical look at international equality of opportunity programs for use by the United States. One wonders what kind of picture we can gain through case studies of numerous countries in regards to affirmative action in higher education. We could learn the best conditions for setting up and maintaining affirmative action programs. Or at worst, the experiences of these countries can provide a blueprint of how to avoid the failure of these programs. That is the purpose of this study, to not only draw on the works mentioned above but to add to the body of literature on affirmative action in regards to higher education. Observing our neighbors and how they deal with distribution of resources can be a huge benefit to policymakers in the United States.

CHAPTER 3

Methodology

Introduction

The following section outlines the methodology to be used to conduct the study. First, there is a brief discussion of the research questions involved, the research question and the small operational questions that arise from it. Then the methodology of the study will be discussed, which includes a justification for its choice. Also discussed is how and why the countries being studied were chosen as well as information on data collection and analysis.

Discussion of the Study Objective and Research Questions

Although a discussion of the purpose of this study and its theoretical framework was related to the reader in Chapter 1, it is necessary to take a more in-depth view of the methodology here.

Objectives of the Study

The objectives of the study are:

- To study preferential policies abroad in order to provide policy and implementation options for the United States' ailing affirmative action programs.
- To study the success of these affirmative action programs in distributing resources to minorities.
- To discover what factors determine the success and failure of these programs by investigating the roles of research criteria, such as the rationale for creating the

policy, the structure and implementation of the policy and its perception by the public.

Research Question
The research question guiding the study asks if equality of opportunity measures can be successful in increasing enrollment and hiring numbers of minorities?

The research question guiding the study asks if equality of opportunity measures can be successful in increasing enrollment and hiring numbers of minorities?

Research Criteria

Within this study the following research criteria will be investigated in order to help answer the central research question guiding this thesis. These research criteria were chosen to determine what role they play in the success or failure of preference policies.

- (a.) The reason for the initiation of the policy
- (b.) The policy's structure
- (c.) Implementation of the policy
- (d.) The perception of the policy by the public

Studying the reason for the initiation of the policy is important since using redress as a rationale for affirmative action in the U.S. is so volatile. How have other countries dealt with such a delicate topic in their policies? This is especially poignant since time diminishes the strength of arguments like redress for preference policies.

Investigating the policy's structure will help determine what types of language are needed to make a legally compelling document and whether policies are better enforceable when structured as one law. Examining implementation of preference policies will show how universities actually fulfill their obligation to enact state created policies.

Public opinion is important to get a feel for how the general public respond to the preference programs created in their countries. Negative public opinion can break even the most successful preference program. In examining public opinion, it is possible to investigate how countries respond to negative public opinion that threatens the life of their preference programs.

The author also proposes that while these research criteria can play a significant role regarding the success of preference policies on their own, sometimes the research criteria work in combination with each other to create varying results. For example, the rationale for the policy is directly linked to the public's perception of the policy. In the U.S., redress for slavery remains the primary rationale for preference policies in the country. However, it is a rationale mired in conflict and controversy. The negative public opinions of whites regarding affirmative action directly correlates to the idea of the policy providing redress for slavery. Of course, this sets up the idea that if the rationale for preference policies is not redress perhaps there will also be a correlating decline in backlash by the public against the policy. This could be very intriguing from the U.S. perspective. One could also argue that the structure of the law and its enforceability play a role in how well it can be implemented. So while the research criteria are being investigated separately, they do play on each other from time to time.

The thesis also looks at the larger theoretical question of whether preferential policies are a viable solution to distribute resources in multi-cultural societies. By looking at the success and or failure of these programs to distribute resources (in this case higher education and higher education jobs) to minorities, we can look at the policy's viability.

Measurement Guidelines

The measuring guideline chosen to guide this thesis will be done by comparing if the percentage of minorities enrolled in and employed in higher education is at least at parity to their percentage of their country's population. Success was measured as those programs where the percentage of minority students enrolled in higher education were *over represented* or greater than their percentage to the population. Preference policies were deemed unsuccessful if the percentage of the country's minority student population were *under represented* or less than their percentage to the general population. The importance of this measuring tool is to see if parity by minorities in education was achieved in these countries. It also provides a way to determine if the policies have truly benefited minorities in gaining higher education opportunities.

Operational Questions

Operational Questions

The objectives and research question also provide a smaller set of operational questions that can be used to produce findings for the study and answer the larger theoretical question. These smaller operational questions are what were actually researched and measured in order to determine what policies, or elements of policies should be duplicated in the United States.

1. *Have the preferential policies being used by the countries studied put more minorities in universities as students and faculty?* This can be studied by looking at the enrollment numbers of minorities in universities after the inception of the affirmative action program. Has the number of students and minority faculty increased?

3. *What factors help determine the success or failure of preferential policy programs?* This can be studied by examining the research criteria and any unintended results which may be discovered during the research process.
2. *What factors help determine the success or failure of preferential policy programs?* This can be studied by examining the research criteria and any unintended results which may be discovered during the research process.

The rationale for initiation of a preferential policy: This will be studied by doing a historical and cultural analysis of the country's relationship with minorities, leading up to the policy's inception.

The policy's structure: This will be researched by doing a textual analysis of the country's affirmative action policies and legislation.

Implementation of the policy: This will be researched by looking at the methods universities and policy makers use to increase diversity on campus and attract minority students and faculty.

Perception by the public: This will be researched by reviewing the dissenting literature on affirmative action policies in the country as well as news reports and public opinion polls.

Methods To Be Used

This thesis is a multi-country comparative research study. It will create case studies of preferential policies in the countries of Great Britain, India, South Africa and the United States from bibliographic material already in existence. It will incorporate a mix of both quantitative and qualitative data in order to achieve its results. The types of operational research questions being analyzed justify this mix of research materials.

Qualitative methods will be engaged to analyze historical, legal and academic documents in order to analyze the research criteria.

Countries Studied

The three countries to be studied for this research, Great Britain, India and South Africa were chosen for three reasons. First, they are all English-speaking countries,

which makes finding and interpreting the research data easier. Second, the countries come from both the developed and developing world. This allows us to look at solutions from different points of views. Also, it facilitates the idea that solutions for problems are not just to be found in the developed world. We can learn a lot from our developing neighbors. Third, the countries have all enacted preferential policies that are in different stages of development. India, like the U.S. has one of the oldest policies and Great Britain and South Africa are among the youngest of the countries studied. By studying countries at different stages of implementation, we can see if there are perhaps growing pains problems associated with these policies.

Data Collection

Data for both the quantitative and qualitative aspects will be collected from a variety of sources. Quantitative statistics on education enrollment and hiring will be collected from the national departments of education of each country studied and journal articles. Qualitative data, such as texts of affirmative action laws and legislation, texts from international education conferences, journals, books, university and government documents will also be collected from library and Internet searches.

Data Analysis

Once the data is collected, textual analysis of preference policy legislation, university documents and journal articles will be engaged in order to determine what has taken place in the countries studied. Once data is analyzed individually by country, we

will see how experiences compare for all three countries studied to see if patterns arise in how they deal with affirmative action. Once the research criteria are analyzed for meaning they will also be evaluated using the measurement guidelines.

Data Evaluation

We will evaluate the data collected by looking to see how well the preference policies increased the number of minorities on campus. This will be done by using the measurement guidelines discussed earlier. We will also look to see how well the policies stood up to legal challenges. By evaluating the data collected in this way, we can create case studies for the countries and discern best practices for the United States.

Limitations

It must be recognized that there are some limitations when doing a study of this nature. One limitation is that the study was not created in an epistemological framework where a hypothesis and variables were tested to create first hand data. Even though the study does not create primary data, it does use quantitative resources such as enrollment statistics.

Indeed, the relevant importance of the research study for the author is in investigating and reporting on different preference programs internationally. Despite the research design, this study is still a valuable proposition since U.S. universities are looking for preference programs which promote diversity and are legally sound.

Therefore, the purpose of the study is still important even if it cannot be tested through a hypothesis and variables as a quantitative study.

Also, since the social-historical backgrounds of the countries are not the same, the situations of each country are not truly comparable. However, since the study is looking at the different ways in which countries create, enact and implement preference policies, it is still possible to find relevance in the findings for U.S. policy makers and universities. For example, Great Britain does not have the history of slavery with minorities in its country. Therefore, the impetus for its preference policies are different and cannot be readily compared with the situation in the United States. However, this makes studying the two different styles of preference policies interesting since Great Britain does not focus on race in the same manner that the U.S. does. Instead, Great Britain is more focused on class issues, which means that the U.S. may be able to duplicate their programs at home.

Finally, another limitation of the study is that the educational systems of the countries studied are different and this poses a problem in comparing the preference programs universities create. While it's true that the educational systems are different, the focus of research in the study is on the diversity programs themselves and whether they can be duplicated by U.S. universities, not the education system of the country. When differences in the educational system make duplication of successful preference programs difficult, this will be noted along with examples of how the programs can be tailored to the U.S. educational experience.

Language also creates a problem since one can argue the meaning of terms used in the thesis and because different countries use varying terms for their preference policies. There is also trouble in determining what under or over representation of minorities is meant to entail regarding admissions in higher education. It is not the author's wish to determine what percentage of the student population minorities should occupy above their general percentage in the population. Instead, it is the author's interest to establish if preference policies help minorities to at least achieve parity between their representation in the general population and higher education.

Finally, it can be argued that equality of opportunity style measures like training programs could also be listed as equality of outcome programs. This is especially true when they are used to increase the number of minorities in employment and education as a remedy to past discrimination. Therefore, it should be noted that at times there is an overlap between the two types of preference programs.

CHAPTER 4

The U.S. Experience with Affirmative Action

Introduction

So how did U.S. affirmative action policies in higher education deteriorate into such a state of crisis? Its not as if the entire country woke up one morning and decided to abolish these policies. Their lack in popularity or demise is not the act of a single presidential administration. The symptoms of retrenchment concerning affirmative action in higher education were slow in coming, the result of the progress of minorities in attaining higher education and cries of reverse discrimination by whites. This chapter tries to give a historical overview of affirmative action and its turbulent history in the United States. Having such knowledge of the U.S. experience will help the reader to understand the situation here in regards to affirmative action and why investigating the preference policies of our overseas neighbors is so necessary.

The Beginnings of Affirmative Action Policies and Legislation in the U.S.

Since affirmative action in the United States was not borne out of the Constitution or one specific, all inclusive law, it is necessary to study the environment in which it was created and the legislative documents leading up to its birth. From an education perspective, it was not until the 1950s with the case of Brown v. Board of Education (1954) that the concept of segregation and in some ways affirmative action was dealt with in the United States. With this case, segregation of public schools ended, setting the stage

for the formation of desegregation policies in other areas. At the time of the ruling, Chief Justice Earl Warren wrote in the opinion of the Court that, "the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal (AUAA, 1997)." As a result of this legislation, enrollment of blacks in U.S. colleges rose to over 49% a year later in 1955. (ACLU, 2000)

Brown v. Board of Education (1954) was the legal momentum needed to fuel an overhaul of current government policies, which barred the door to progress for blacks in the United States. As a result, the 1960s saw the birth of the Civil Rights movement in this country and the call for equality in jobs, housing and education. At this time affirmative action was a fuzzy concept. President John F. Kennedy, who was the first president to use the term 'affirmative action', pictured this preference policy as a way to provide special apprenticeships and training programs for blacks (AUAA, 1997). Kennedy justified this type of action by saying that, "even the complete elimination of racial discrimination in employment - a goal toward which this nation must strive - will not put a single unemployed Negro to work unless he has the skills required (AUAA, 1997)."

While he did not live to see this type of affirmative action legislation passed, Kennedy did enact Executive Order 10952 (AUAA, 1997). This would be the first in a string of executive orders making up affirmative action law in the United States. This particular executive order called for the creation of the Equal Employment Opportunity Commission (EEOC). It mandated that government contractors financed with federal funds, "take affirmative action to ensure that applicants are employed, and employees are

treated during their employment, without regard to race, creed, color or national origin (AUSA, 1997)."

It was up to Lyndon B. Johnson to take up the mantle of Kennedy's Civil Rights vision, which included affirmative action. In a speech to Howard University he stated:

You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, "you are free to compete with all the others," and still justly believe you have been completely fair.

(AUSA, 1997)

Here, Johnson feels it is necessary to make up for the disparities suffered by blacks so they can compete equally with whites. Johnson added on to affirmative action legislation in the U.S. by issuing Executive Order 11246. This order placed responsibility for affirmative action programs with the Department of Labor (AUSA, 1997). However, Johnson's administration is best known for passing the Civil Rights Act of 1964, which ended discrimination and segregation in various public and private settings. These included:

- Title II of the Act which prohibited discrimination in privately-owned facilities open to the public
 - Title VI which outlawed discrimination in federally-funded programs
 - Title VII which prohibited discrimination by both private and public employers
- (AUSA, 1997)

This was a major victory for proponents of affirmative action, and led the way for equal access to employment for blacks and minorities in the United States.

President Nixon also added on to the now lengthening string of affirmative action laws with his Philadelphia Order, which presented 'goals and timetables,' for the construction industry to initiate equal employment opportunities for minorities. This is important to note in regards to current arguments on affirmative action, since the 1978 Bakke decision deemed the use of quotas in admissions illegal. In regards to higher education it is also important to state that by 1969, the number of blacks enrolled in higher education was about 7.8% (ACLU, 2000).

Rationale for the Policy

In looking at the rationale for affirmative action in the U.S., one is left with a long list of reasons for initiating the policy. The first and most dominant is that affirmative action serves as redress for the effects of slavery and the Jim Crow laws that lasted through the middle of the 20th century. Another dominant rationale is that affirmative action is meant to discourage and eliminate discrimination so that minorities could take their rightful places in society. By giving minorities more opportunities in the workplace and on campus, change can occur. Another reason evident in the thinking of Presidents Kennedy and Johnson is in allowing minorities to reach their full potential. They both realized that in order to compete fully with whites, minorities would need special training, not because they were inferior but because they were not exposed to the same advantages economically and educationally that whites enjoyed.

Today in the U.S., the first rationale for affirmative action is reviled as reverse discrimination. The second rationale does not seem to merit much action either, as many

Americans feel discrimination is a thing of the past. However, that is erroneous since discrimination still exists, just in a much subtler form. Discrimination is institutionalized in employment and education in such a way that it is present but not always readily visible. It can be argued that special training is needed for minorities to compete equally with whites due to the economic and educational disparities experienced by minorities in the country. Here, training not only refers to specific job training, but also includes the attainment of higher education in order to land a better job.

Having redress form the main rationale for affirmative action in the U.S. is extremely dangerous to the health of the policy. This rationale has had a negative impact on public opinion of the policy and mired it in such vitriolic attacks by opponents that it is necessary to determine if it is possible to shift focus to another rationale which is more appropriate to the goals and needs of minorities today. Such a rationale would have to be one that does not carry the stigma of being a punishment to whites today. This is something that the experience of other countries can teach us, since they may use other rationales that are still relevant to the U.S. situation. More on this topic is discussed from the public opinion side of the argument later in the chapter.

The Structure of U.S. Affirmative Action Laws

When it comes to policy structure, a major problem with U.S. affirmative action policies are that they are the result of a long string of presidential executive orders, the Civil Rights Act of 1964 and court decisions. There has never been “one” affirmative action law. Why this is may forever be a mystery, but it is clear from the outset that when

Presidents Kennedy and Johnson spoke of affirmative action in the 1960s they did not have a clear understanding themselves of what the policy would entail. It was never clearly defined in the context of what exactly affirmative action is and what it is supposed to do. This is why as J. D. Skretny points out, "in the context of civil rights enforcement [affirmative action] can be characterized as lacking in clarity, careful planning and analysis (Skretny, 1998)."

So while employers were encouraged not to discriminate and to take affirmative action, in hiring and training minorities (in the 1960s namely blacks), there was not a clear understanding of how to achieve this. When examples of affirmative action were listed, they were mostly as a response to the restrictive Jim Crow laws of the South. These examples of affirmative action included the elimination of colored washrooms, cafeterias etc (Skretny, 1998). However, Skretny points out that:

Some of the stronger recommendations reveal both surprising differences with later beliefs about the nature of discrimination and awareness of the taboo nature of race consciousness and preferences. For example [one recommendation] allowed non-minority inclusion: 'Seek, employ and develop minority group personnel as well as others, in white collar classifications to insure the best talents and abilities of the nation's manpower resources are utilized most advantageously.'

(1998)

The structure of affirmative action in the U.S. means that it is confusing not only to observers and citizens, but to employers and universities enacting admissions policies. What is needed here is a clear direction and structure for affirmative action policy, especially in regards to higher education. Clearer structure and understanding of the law will make it stronger and more enforceable. Studying the structure of policies overseas

therefore offer U.S. universities and policymakers the opportunities to duplicate and model policy after other successful programs.

Enforceability of Affirmative Action Legislation in Regards to Higher Education

As mentioned earlier, 1978 saw the case of the Regents of the University of California v. Bakke in the Supreme Court. This pivotal case set the tone for future affirmative action policies regarding higher education admissions and enrollment. In this case, Bakke argued that he was denied entrance into the medical school at the University of California in favor of minority students with lower scores than his (University of California v. Bakke 1978; Ncholo, 1994). The court ruled that the use of quotas to admit minorities were unconstitutional. They stated further that, remedying social injustice and discrimination, “does not justify the use of classifications, which impose disadvantages upon other persons who bear no responsibility for the harm (Ncholo, 1994).”

However, in a rather contradictory fashion, the ruling also stated that race could be used as a factor when considering students for admission (ACLU, 2000). As stated earlier Justice Powell when writing his opinion also stated, “the attainment of a diverse student body... clearly is a constitutionally permissible goal for an institution of higher education (Jacobs, 1998).” This means that while universities cannot use redress for discrimination as rationale for their preference policies in admissions, seeking a more diverse student body is permissible and constitutional. This case is important to the literature on affirmative action because it also puts forth the idea that, “there must be proof of constitutional or statutory violations for affirmative action to stand (Ncholo,

1994).” It is also important because it shows the narrow margin universities have to work with in creating affirmative action policy. Universities can consider race in admissions but not use quotas. Their rationale can include diversity as based on the First Amendment but cannot be redress for slavery. However, a university can justify their use of affirmative action in order, “to compensate for its own prior discrimination against the minority group to which the applicant belonged (Gray III, 1999).”

The 1980s and 1990s saw the greatest movement and backlash towards higher education affirmative action programs. In the past two years, at least 13 state legislatures have proposed legislation rescinding affirmative action measures (Gray III, 1999). The state of Washington passed a law barring public colleges and universities from using racial preferences in admissions, hiring and the awarding of contracts in 1998 (Gray III, 1999). In May of that same year, Congress rejected an amendment to the Higher Education Act, which would have prohibited public colleges and universities from considering race, gender, color and national origin in admissions (Gray III, 1999).

In 1995 the Hopwood v. University of Texas Law School (1995) case overturned the idea of diversity being a compelling reason for race based preference policies. The case also outlawed using different test scores and criteria for admitting White, African American and Hispanic students at the University of Texas. After the ruling, minority enrollments in the school decreased by 88% for blacks and 64% for Latinos (ACLU, 2000). Other states followed suit, and California soon saw Proposition 209 pass, which abolished affirmative action programs at its state university, the largest in the country. In fact, California is now seeking other ways to bring minorities to its state universities. It is

no surprise that recent considerations by the University of California to drop the use of SAT scores in admissions is a way to go around Proposition 209.

This backlash against affirmative action in the U.S. coincided with the highest enrollment rates by blacks in higher education. Blacks enrolled in universities reached 11% in 1990, which was in proportion to the percentage of blacks in the United States at that time (ACLU, 2000). Minority faculty numbers only stand at 9.2% on U.S. campuses (California Newsreel, 2002). Because of these enrollment numbers, some opponents of affirmative action fed that preference policies at universities have done their job and now need to end. Unfortunately, the reality of what happens when these policies are rescinded is evidenced by the drop in minority enrollment at California's public universities. After Proposition 209 only 2% of all applicants admitted to the University of California at Berkley were African American (Gray III, 1999). At UCLA, admission of African Americans dropped 43% between the fall of 1997 and 1998 (Gray III, 1999). At the graduate level, the numbers are even worse. After the Hopwood decision, the University of Texas' Law School admitted only 7 African American students (Gray III, 1999). Only 4 enrolled out of a body of 502 accepted students (Gray III, 1999). Such drops nationwide would be detrimental not only minority students but to the university system as a whole.

Implementation of Affirmative Action Programs by Universities

This thesis has looked at the development and history of affirmative action programs enacted by Presidents Kennedy, Johnson and Nixon. However, these Executive

Orders and laws only apply to the hiring and promotion of minorities by the federal government. When it comes to higher education, U.S. colleges and universities have enacted such policies voluntarily (Gray III, 1999). In extending affirmative action principles to their own admissions standards, colleges and universities began to use race and gender as admissions criteria. This was in addition to other admissions criteria like test scores, grades, special talent, geographic origin, and alumni legacy (Gray III, 1999). Alumni legacy presents an interesting criteria as proponents of affirmative action feel this admissions criteria has always favored whites and in particular white men in gaining admissions over other qualified students whose family did not attend that particular university. Before the Bakke and Hopwood rulings respectively, universities sometimes used quotas, two track admissions as well as different admissions scoring systems for minorities students.

Universities using these measures did see increased numbers of minorities enrolling as freshmen and graduate students. The measures were even more successful when used in combination with financial aid and heavy minority recruitment efforts. For example, the number of African-American students enrolled as first time freshmen increased from 10.2% in 1976 to 11.3% in 1996 (Gray III, 1999). Such increases were also seen at traditionally white universities where African-American enrollments increased by 36% in the same time period. Even at prestigious universities affirmative action programs helped raise African-American enrollments by 24% at Harvard, 68% at the University of California at Berkley and 50% at the University of Texas at Austin

(Gray III, 1999). Of course the unsure future of affirmative action will see these numbers unravel unless alternative preference policies can be implemented.

After the hostile legal atmosphere surrounding preference policies, universities are now looking for ways to create and implement programs which are constitutional, equitable and still provide for increased access and diversity of minorities. Some universities, like the University of Wisconsin, are dismantling preference policies that use quotas before they can be challenged in court (Selingo, 1999). These universities are investigating the use of what could be called equality of opportunity programs.

In the case of the University of Wisconsin, such efforts include recruiting qualified minority students through models comparable to how they recruit student athletes and raising money from private sources to provide increased financial aid to students (Selingo, 1999). This is important since not using public money will allow a university to award race based scholarships without having them be challenged legally.

The University of Wisconsin is also expanding pre-college programs as far back as elementary school (Selingo, 1999). The trend of partnering with schools and low income communities is also on the rise. In many programs, colleges work with low income communities to improve curriculum in grades K-12 with the intention of preparing students so they can better compete for admissions slots. For example, the educational program When Gown Meets Town is a collaboration between the Worcester School District in Massachusetts and Clark University. The school district sets up a school running the When Gown Meets Town project and for every student who enters the

school, completes the educational program and passes Clark University's admissions requirements, they can receive free tuition at Clark (DiversityWeb, n.d.).

Other initiatives include efforts to put less emphasis on standardized test scores and more focus on non-cognitive admissions criteria. These non-cognitive indicators were developed to help admit more minority law school students. Students get points for having an idea of self concept, realistic self appraisal, long range goals, availability of a strong support system, leadership, community service, and a demonstrated legal interest (Brown, S.E. and Marengo, E., Jr., 1980).

Universities have also enacted initiatives to replace quotas in hiring faculty as well. These efforts also embrace the idea of equality of opportunity measures. Georgetown University uses a variety of equality of opportunity ideas to hire more minority faculty, including targeted job placements in publications like *Black Issues in Higher Education* and asking for nominations from senior minority faculty, area organizations and professional associations (Georgetown University, n.d.).

Other initiatives include The Future Black Faculty Database which was created by the Black Graduate Engineering and Science Department of UC Berkley. This database contains information on black educational professionals, doctoral candidates and graduate students who are seeking careers in higher education (DiversityWeb, n.d.). An independent organization, the Compact for Faculty Diversity is a partnership between three different higher educational regional boards. Universities belonging to the Compact have developed financial aid, mentoring programs, and training for effective teaching.

These initiatives are all aimed at increasing minority faculty at universities supporting the program (DiversityWeb, n.d.).

Public Opinion of the Policy in the U.S.

There are two reasons why public opinion of affirmative action in the U.S. is so low. First, as discussed earlier, many whites do not see discrimination as a barrier to the education and employment of minorities in this country (Skretny, 2001). The other reason is that many people see affirmative action as the payment to blacks for slavery. These arguments have been used repeatedly in the literature of affirmative action opponents, especially those who claim that white men have been the unintended victims of affirmative action in the United States.

Opinion polls show that the perception of whites as the unintended victims of affirmative action is a very real threat to the policy. 70% of whites felt affirmative action laws were hurting them (Jacobs, 1998). However, putting this statistic into perspective is the revelation that only 7% reported to have specifically been hurt by the law and only 16% stated that they knew another white person who had been hurt by it (Jacobs, 1998).

This shows that while only 7% of whites polled felt that the law had hurt them, over 70% perceived the law was hurting them. This is most likely due to the negative attacks against the policy. Reducing the fear whites feel about affirmative action is essential if the policy is going to survive in the United States.

CHAPTER 5

Introduction

Great Britain

Introduction

The inclusion of Great Britain in this study may seem puzzling at first to the casual observer. After all, as many would point out, Great Britain does not have any affirmative action policies. While it might be true that Great Britain does not have U.S. style affirmative action programs with its set asides and quotas for employment, they have created a preference policy called positive action. Positive action is a program that allows employers to provide training programs for minorities that are under-represented in their organization so they may compete equally with whites for jobs. Completing the training is no guarantee of a job. Positive action also does not allow hiring qualified minorities over other able candidates in the name of diversity. Provisions for positive action are contained in the Race Relations Act which is described in depth below.

The Race Relations Act of 1976**The Race Relations Act of 1976**

The Race Relations Act of 1976 came into effect on June 13, 1977. In addition to making discrimination illegal, it also called for the establishment of the Commission for Racial Equality (CRE) "to help enforce legislation and to promote equality of opportunity and good relations between peoples of different racial groups generally" (Guide to the Race Relations Act). The Race Relations Act of 1976 states that it is illegal if a person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if:

A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act if-

- (a) on racial grounds he treats that other less favourably than he treats or would treat other persons; or
- (b) he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group

(Race Relations Act, 1977)

This type of provision is enacted not only to end past and present discrimination, but also to ensure that reverse discrimination is not enacted either. This sentiment is carried further in the education section of the Race Relations Act in which Part III, Article 17 states:

It is unlawful, in relation to an educational establishment for a person indicated in relation to the establishment to discriminate against a person-

- (i) (a) in the terms on which it offers to admit him to the establishment as a pupil

Therefore, according to the Race Relations Act, it is unlawful to discriminate against someone in terms of admission to an educational establishment. This means it is also unlawful to admit a student over another student because of his or her race.

So, how does Great Britain engage in allowing disenfranchised minorities access to jobs and education when the Race Relations Act makes such preferential treatment illegal? One way is through "positive action." In Part VI, Article 35, the Act states that

Nothing in Parts II to Parts IV shall render unlawful any act done in affording persons of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefit.

(Race Relations Act, 1977)

This section of the law would legally allow for some special treatment by employers or educators. Unfortunately, the Act does not state what constitutes a “special need”, but it is clear that positive action is not meant to be outright reverse discrimination. According to the Guide to the Race Relations Act (n.d.):

“The Act does not permit ‘reverse discrimination’: for example, it is unlawful to discriminate in favour of a person of a particular racial group in recruitment or promotion on the grounds that members of that group have in the past suffered from adverse discrimination and should be given the chance to ‘catch up’.

There are also guidelines within the Race Relations Act for using positive action, helping to curb its abuse. For example, employers can engage in positive action, but only if:

At any time within the previous 12 months there were no person of a particular racial group doing particular work at a particular establishment, or the proportion of persons of that racial group among those doing that work at that establishment was small in comparison with the proportion of that group among either:

- (a) all those employed at the establishment; or
- (c) the population of the area from which the employer normally recruits for work at the establishment.

(Race Relations Act, 1977, Part VI, Article 37)

These guidelines set out the fair rules of play (equality of opportunity) when engaging in positive action and this helps give it a strong structure.

Members of a certain racial group can be hired legitimately over another group under the “Genuine Occupational Qualification” (GOQ) provision. This means that under certain circumstances, it is not unlawful to hire minorities over whites as long as it provides a sense of authenticity to a dramatic performance, or the job involves work as a

artist's or photographer's model or at a restaurant where the ethnicity of the person also lends an air of authenticity to the place (Race Relations Act, Part II, Article 2). However, the law only applies to the above-mentioned areas. It is not meant to be an across the board exemption for the hiring of one racial group over another.

Findings by Research Criteria

Research Criteria (a): Rationale for the Initiation of the Policy

Great Britain's laws are based on equality of opportunity, where the emphasis is on making sure access to education and employment are "fairly laid out for use by all citizens (Weiner, 1998)." Positive action is an equality of opportunity measure even though it gives preference to minorities by training them for employment. While many could say the line here is blurry, one could argue that positive action still qualifies as an equality of opportunity measure because it helps minorities get the training they need to compete fairly with whites. It is not a quota system and even upon successful completion of training programs, minorities are not necessarily hired over whites. They must still earn their position through merit.

The rationale for Great Britain using equality of opportunity measures is based on the desire to end past discrimination and as a way to avoid present day discrimination against all Britons regardless of race, color or creed. Great Britain does not use redress as a rationale for its policies because its minorities came willingly to the country as immigrants. As a result, the British feel they do not need preference policies to redress

past injustices. Steven Teles (1998) writes that the British feel they were nice enough to let these people into their country. "To organize for rights that would be distributed on a racial basis would be to open oneself up to the claim of holding a group membership above British citizenship (Teles, 1998)." Therefore, immigrants are fighting for acceptance. They are forced to argue for the maintenance of their status as British citizens rather than the extension of preference policies.

Even though Great Britain does not have the social history of the United States when it comes to redress of past grievances, it does not mean that their equality of opportunity measures are applicable solely to that country. The fact that the country's preference policies do not use redress as a rationale may cut down on negative public opinion. This is something the U.S. can learn from when constructing their own affirmative action policies and guidelines.

Research Criteria (b): Structure of the Policy

In Great Britain, the Race Relations Act is one all-encompassing law regarding discrimination and positive action. The language of the Act outlawing discrimination is very clear. The guidelines for when an employer can engage in positive action is also helpful in making sure the law is implemented correctly. However, the language regarding positive action is open to interpretation. The Act does not define what the "special needs" of minorities are. Nor does the law give specific examples of positive action and how it is supposed to be implemented within the law.

Because of these features and because the law is voluntary, it means that different interpretations of the law can be enacted. This can cause either high levels of creativity or abuse. Still, studies of implementation show that even though the structure and language of positive action may be vague, employers do not extend the law to cover positive discrimination (reverse discrimination in the U S). British researcher Jonathan Edward found that “most employers who had some form of positive action policy understood the difference between positive action and positive discrimination (Teles, 1998).” In fact, “only three of the one-hundred-one organizations surveyed wrongly used the term positive action to cover taking on more minority workers because of racial origin (Teles, 1998).” For British employers, positive action meant little more than effectively administering a policy of non-discrimination (Teles, 1998).” Examples of positive action programs initiated from these studies included targeted job advertisements, outreach to schools, and setting internal targets.

In regards to enforceability, the limits of positive action have been tested in the law courts of Great Britain. The recent London Borough of Lambeth v. Commission for Racial Equality case tested the limits of the GOQ portion of the Race Relations Act in regards to positive action. In this lawsuit the CRE sued Lambeth because job advertisements in the mostly black borough advertised that “in view of the personal services the post holder will provide the members of the black community” they considered race to be a genuine occupational qualification (Teles, 1998). The CRE felt that if Lambeth wanted a more racially diverse staff “they should make sure they were recruited through mainstream schemes, not by labeling them as “special needs” recruits,

which would restrict their subsequent careers and trap them in race specific work (Teles, 1998).” This concept that affirmative action will limit the job prospects of minorities is a strong one in Great Britain.

In the end, the court ruled that Lambeth violated the Race Relations Act with their advertisement. Furthermore the court ruled that, “promoting positive action is not one of the main purposes of the Act. The substance of the Act is to render acts of racial discrimination unlawful.” The statement put people on notice that the vague nature of the language in the Race Relations Act regarding positive action would not be flaunted or stretched to accommodate positive discrimination in the name of group rights.

Research Criteria (c): Implementation of the Policy

The voluntary nature of positive action and equal opportunity programs in Great Britain makes its implementation sometimes uneven and in some places non-existent. Implementation has been characterized as being the victim of weak policy framing and weak direction from central government. This has caused what Gaby Weiner calls a policy implementation gap. This gap or absence of strong framing at the central government level has caused employers, universities and individuals to form their own equal opportunities programs (Weiner, 1998). Weiner states that, “the law is too weak and difficult to use. Organizations taking positive action are too few and their goals and methods too limited... Policies adopted are seldom implemented (Weiner, 1998).” In higher education, it was found that younger universities were more committed to

improving diversity on campus while, “older institutions play lip service to equality issues only (Weiner, 1998).”

Despite these problems lobbed at implementation, statistics show that minorities are over represented at British universities. Research from the Policy Studies Institute of the University of Westminster reported, “non-white students account for 15% of those enrolled in British higher education in comparison to the fact that minorities make up 8% of the country’s population (Walker, 1999).” Unfortunately, minorities only held “5.5% of all academic posts in Great Britain (Walker, 1999).”

One reason for the high number of minorities in higher education stems from the high concentration of minorities located in Great Britain’s major cities, whose local universities are attended by the minorities living in that area. So, while local universities have excessively high percentages, universities in outlying areas of the suburbs or the country see a lower percentage of minorities. Therefore, many of the country’s prestige schools like Oxford and Cambridge do not see high numbers of minority students and faculty on campus.

Swedish university professor Gaby Weiner also states that the overrepresentation of minorities can be explained because, “the expansion of higher education has resulted in higher numbers of previously excluded groups, both as students and staff. This has been noticeable of new universities, which tend to attract a higher proportion of local students and to provide a broader range of academic and vocational courses and programs (Weiner, 1998).” The abolishment of division between universities and polytechnics also caused a higher influx of minorities as students, faculty and administrators in the early

1990s (Weiner, 1998). These numbers may level out in coming years. The actual representation may also be difficult to track since studies in this area are few and far between.

Despite the high number of minorities enrolled in higher education, statistics show that many students from ethnic groups are discriminated against during the admissions process. Recently, a higher education group in Great Britain "released statistics showing that black applicants were less likely than white applicants to be accepted by British universities (Walker, 1999)." The numbers showed that only 65% of black applicants were successful when they applied at universities while 78% of white applicants were admitted (Walker, 1999).

These findings in 1999 led to students and teachers calling for a change in the admissions process. However, the structure of the British higher education system and lack of political will have not caused much change in the area of improving minority admissions. As Steven Teles explains, this is because:

The institutional structure of British higher education acts as a brake against granting admissions on a racial basis. British universities admit students to specific programs, such as medicine, politics, and literature, rather than the university as a whole, and the critical admissions decisions are made at the department level, not by a university wide admissions department. As a result, admissions decisions are highly decentralized and difficult to influence from the top.

(Teles, 1998)

On top of this structure, when applicants apply for university admissions they are tracked by race on the applicants form. However, "this part of the form is torn off and used for

monitoring purposes but is never seen by the admissions tutors who make the relevant decisions (Teles, 1998).” These two color blind admissions processes put more focus on the students’ ability in their own area of study. Students are therefore competing against a smaller applicant pool and more individual attention can be given to applicant essays, and past schoolwork than just looking at test scores. However, since race is not considered in the admissions process one has to wonder if the low number of minorities stem from their inability to compete with white applicants, because they most likely come from state schools (What the U.S. would call public schools) or because of some form of institutional racism?

In addition to the problems minorities face in admissions, a new class based debate regarding university admissions is surfacing in Great Britain. This began when it was alleged that prestige schools like Oxford and Cambridge routinely denied bright students admission to their schools simply because they did not come from privileged backgrounds and public schools (private schools in the U.S.). This double standard was made public when a state school student named Laura Spence was denied entry into Oxford but went on to receive a full scholarship to study medicine at Harvard University (BBC News “Leg Up,” 2000). Now elite schools are scrambling to find ways to bring low-income students on campus with the help of financial backing from government as an incentive. One way to increase the number of state school students is to give preference to students whose families have little to no history of going to college.

Two ideas initiated by the Newcastle University and Dundee University are worth a closer look. Newcastle University used government funds to create the Partners

Programme, which develops “specially created university places to pupils with no tradition of going to university (BBC News “Leg Up,” 2000). The university works with state schools to identify bright students who because of their backgrounds may lack the test scores or background to apply to universities. Then over a period of two years, during what the U.S. would call their junior and senior year they do extra academic work and attend two, two-week summer schools. At these summer schools they do work in math and the subject area they are interested in applying to university for. During the last summer session the students must create a subject-based project, which is then graded by faculty in that department. If they pass, they are given points to supplement their A-Level scores and GNVQ (BBC News “Leg Up,” 2000). In this way, the student is tested not only on their testing ability but also on their ability to actually do college level work.

Because the students are graded for their skill in doing college level work in their subject it adds a level of meritocracy to the admissions process, which can not truly be gained by test scores alone. The other brilliant point is that it is a colorblind system, one that would benefit both able white and minority students. Because the issue here is one of class and not race it allows for a wider variety of equitable solutions that can be replicated elsewhere.

At Dundee University they have projected their own quota system for getting lower income students on campus. This quota is in addition to its 13,000 core places (BBC News Leg Up,” 2000). This was one of the few equality of outcome measures using quotas in the country. In all, even though institutions in Great Britain are looking to increase the number of state school students, they are looking more towards equality of

opportunity style measures in line with the Race Relations Act. The university also runs a access session in the summer. Dr. John Blicharski of Dundee University states that, "The students that get these offers do extra work and are rigorously assessed for it, and the departments decide whether or not to make offers to these students in the full knowledge of all other students who have applied (BBC News "Leg Up," 2000). So like positive action in employment, attending the university's summer session programs before the application process does not mean you are guaranteed acceptance. Dundee has run this program for eight years now and has found that at the end of the 11-week summer course and final examination, usually 96% are offered a place at the faculty of their choice (BBC News "Leg Up," 2000).

These initiatives show that even though the Race Relations Act doesn't necessarily call for positive action in admissions, universities are finding unique ways to bring diversity on campus. The great benefit is that ethnicity is not a factor as to who can attend these special programs and apply for places, making them highly attractive as solutions for affirmative action elsewhere.

Employment in Higher Education

While students appear to be over represented in Great Britain's higher education system according to the author's measurement guidelines, the same cannot be said for minority faculty. As noted earlier, only 5.5% of all academic posts were held by minorities (Walker, 1999). On top of this, "one out of five non-white academics who responded to a survey said they had experienced discrimination in the job-application or

promotion process (Walker, 1999).” While one in four black academics claimed they faced harassment and were relegated to the bottom of the academic scale (Walker, 1999).

The reasons for such low numbers of minority faculty are that the high numbers of minority students do not move onto faculty positions. This is because further education and jobs in medicine are more lucrative financially and because of a lack of minority faculty role models (Prickett, 1998). Gaby Weiner writes that “it has also been argued however, that the racism of the labour market rather than the impact of equal opportunities policies is responsible for keeping black and minority ethnic students in higher education (Weiner, 1998).” Therefore, these students do not go on to faculty work.

Minority academics have found more positions in smaller, lower status educational institutions such as adult education colleges and local universities because they are moving faster on equality issues (Weiner, 1998). When minorities do achieve senior status at universities they “reported feelings of high visibility and isolation, for instance, by the way they are ‘watched’ by immediate colleagues and by continual requests to be the token {minority} presence on senior committees (Weiner, 1998).” Another hazard for both women and minority faculty is that the occupational status of senior positions diminishes as they fill these posts (Weiner, 1998).

So have there been many positive action programs to assist deserving minority faculty in moving up the academic ladder? In researching this area, it is disappointing to realize that while there are numerous articles detailing the discrimination minority faculty experience, few reports mention implementation of positive action programs to remedy these situations. In many cases, few statistics on minority faculty even exist. Oddly

enough, when positive action programs were implemented on campuses they were to remedy the lack of women chancellors. In this case, The Commission on University Career Opportunity (CUCO) decided to pick up the slack of universities by "running a professional development program for eighteen women who hope to become vice-chancellors in the next five years. . . . The course was so oversubscribed that a second one is planned (Prickett, 1998)." However, no training programs have been created or offered for minority faculty seeking vice-chancellor positions.

Research Criteria (d): Perception of the Policy by the Public

Because minority issues are so invisible in Great Britain it is difficult to get an idea of public perceptions regarding positive action. Perhaps that tells a story itself, that the British public are satisfied with positive action and do not wish to have the law expanded. It is fair to state the lack of backlash against positive action policies stem from the fact that they are not equality of outcome measures and that they are not based on concepts of redress.

When there is backlash against British positive action, it is by minorities who want the policies expanded to include U.S. style measures. Their voices are not likely to be heard unless minorities can gain greater political power. The state did respond to cries that discrimination still lingered on college campuses by students and faculty there. The CRE has taken up their challenge by distributing a new guide to universities on how to develop equal opportunities programs to not only stop discrimination but also seek more diversity on campus (Weiner, 1998).

Some opinion polls regarding the public v. state school preference system debate has generated some interesting insight by the British on preference policies. A recent opinion poll conducted for the British newspaper the *Mail on Sunday* shows that a majority of Britons feel Oxbridge institutions do favor public school students but 86% also felt that students should only be admitted due to candidates qualifications (MORI, 2000). 57% support penalizing universities that do not offer enough places to state school pupils (MORI, 2000). So the British do feel that merit should top redress of past discrimination when it comes to preference policies.

Finally, the initiatives mentioned earlier by the University of Newcastle and Dundee University have also come under fire for creating a two tier track systems of admissions, arguing that by creating spaces specially reserved for state students, they are “dumbing down” their universities. So it is probable to see the affirmative action debate expand in Great Britain as groups begin to take sides and solutions are created.

Conclusion

Great Britain has enacted equality of opportunity legislation in the form of positive action to provide training for minorities so they may compete equally with whites. Their rationale for such programs is to end past and present discrimination. The voluntary nature of the programs means that university commitment to increasing diversity is spotty at some schools, especially prestige schools like Oxford and Cambridge. Still minorities were over represented as students at British universities, while numbers of minority faculty fell short of their percentage to the general population.

It was unclear whether the high numbers of minority students enrolled in higher education were due to equality of opportunity programs or to other factors like the expansion of the higher education system and high enrollment of minorities in local urban colleges. Because programs were not equality of outcome measures or used redress as its rationale, there seemed to be little backlash against positive action programs by whites in the country.

There were also innovative admissions programs enacted by schools and the CRE which could prove successful to the United States. First, is the guide created by the CRE which was distributed to colleges to help them illuminate institutional discrimination and with ideas on how to increase diversity on campus. It is also interesting that schools created their own summer training programs where the emphasis was on discovering if a student could do college level work instead of relying solely on exam scores. Summer school programs where students receive extra admissions or entrance exam points for successful completion of research could also be duplicated in the United States. These programs could be operated by the schools or through an independent operator like Kaplan or the Princeton Review.

The British also engaged in programs adopted by the U.S. such as training programs aimed at women to help them achieve vice-chancellor status and targeted job advertisements. Even though the U.S. has also engaged in these programs, it might be worthwhile to investigate further British efforts to learn best practices. Perhaps a clearing house of information on international preference programs could be adopted. Information could be shared over the Internet for colleges and universities to consult.

CHAPTER 6**India****Introduction**

India's preference policy of reservations was created to undo the damage of a four centuries old caste system in Hindu society. Here, caste can be defined as a refined form of apartheid in Hinduism, where hereditary social divisions were created based on factors such as wealth, occupation, and geographic location. The caste system divided Indian society into Brahmins (scholars-priests), Kshatriyas (warriors-landowners), Vaishyas (businessmen), Sudras (laborers) and untouchables and backwoods tribes who are outside of the caste system (Anonymous, 1994).

When India gained independence from British colonial rule, the framers of the Indian Constitution set out to create a system whereby over time members of the Scheduled Castes and Scheduled Tribes (SC/STs) and later the Other Backward Classes (OBCs) would be given the opportunity to compete fairly with the forward classes and take their rightful places in government, business and education. The SC/STs and OBCs are members of the lower castes or those groups outside the caste system who have been relegated to specific parts of India and low paying occupations. It was hoped that as the SC/STs made progress, caste would diminish and disappear. Reservations in Parliament, public sector jobs and in higher education for the SC/STs and OBCs were created to this end. In higher education this means that members of the forward castes are only allowed to compete for 50% of all university slots.

Reservations and the Indian Constitution

Through its Fundamental Rights, the Indian Constitution “provides for the equality of status and opportunity based on the belief that all men are equal without distinction of religion, race, caste, colour or creed. (Ncholo, 1994).” Article 14 of the Constitution declares, “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. (Government of India, 1950).” As M.P. Ncholo states, “Article 14 prohibits discrimination in a general way and guarantees equality before the law for all persons (Ncholo, 1994).”

Article 15 of the Constitution (Government of India, 1950) provides a more specific view in prohibiting discrimination as it states:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Ncholo (1994) posits that Article 15 is really “a particularized application of Article 14.” So while the government states that discrimination is illegal in Article 15(2). In Article 15(4) the Constitution states that nothing can preclude the government from providing preferential treatment for the SC/STs. One would think this creates a constitutional conflict since the Indian Constitution seeks to give equality to all persons and allows for preferential treatment in the same breath.

Article 16 is important because it looks at equality of outcome in matters of public employment. Specifically, Article 16(4) states that:

Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, which, in the opinion of the State, are not adequately represented in the services under the State.

(Government of India, 1950)

However, this article was also amended twice. Once in 1995 and again 2000, to extend reservations and to preserve reserved vacancies that are not filled for scheduled castes and tribes

Article 29 of the Constitution (Government of India, 1950) deals with Cultural and Educational Rights. Specifically, it calls for the protection of interests for minorities.

Article 29(2) states that:

No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the grounds only of religion, race, caste, language or any of them.

The problem is that this runs contrary to the government's commitment to preferential policies, where lower caste members would be promoted above students from the forward castes.

In addition to the Fundamental Rights discussed above, the Indian Constitution also sets out Directive Principles of State Policy. These principles set out the goals of government policies. For our purposes we will focus on Article 46 under the Directive Principles, which looks at the promotion of educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections. This article states that:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

(Government of India Constitution, 1950)

Here the government lays out quite clearly, as it does in the Fundamental Rights, its goal to provide preferential treatment for lower castes. Unfortunately there is only one problem with this sentiment. Under Article 37 of the Directive Principles, Article 46 is not justiciable. Article 37 states that the application of principles contained in this part:

Shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

(Government of India Constitution, 1950)

Thus the Directive Principles were a way to keep the government honest with the people. Dr. B.R. Ambedkar, one of the founding fathers of the Indian Constitution and an untouchable, felt the Directive Principles would make sure that, "whoever captures power will not be free to do what he likes with it (Pylee, 1960)."

So which takes precedence under the law, the Fundamental Rights or the Directive Principles? This was answered in a Supreme Court Ruling in which Justice S.R. Das writes that:

The Directive Principles of State Policy which by Article 37 are expressly made unenforceable by a court cannot override the provisions found in Part III (The Fundamental Rights) The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or executive act.

(Pylee, 1960)

The idea of the Directive Principles being made enforceable will be a bone of contention as far as cementing India's affirmative action laws. In fact, some have tried to create laws and amendments that would make the Directive Principles justiciable without success.

Findings by Research Criteria

Research Criteria (a): Reason for the Initiation of the Policy

India's Constitution deliberately allows for both equality of opportunity and equality of outcome programs within its framework. Equality of opportunity measures are needed to put an end to the discrimination SC/STs and OBCs experience even today. However, the reservations system in India is clearly an equality of outcome program, one that relies on quotas and set-asides. The rationale behind India's affirmative action policies originates from two ideas. First, there is the idea of diminishing caste and giving those suffering under that system a chance to participate fully in Indian society. Perhaps this came out of the Indian struggle for equality and independence from British colonial rule. Second, bringing equality to the lower castes could also be seen as a way to bring the Indian people together as a form of nation building. That's why it's the framers of the Indian Constitution and not that the SC/STs themselves who rose up to demand preferential policies and reservations (Tummala, 1999).¹ Oddly enough, it was the

¹ Reservations were a part of Indian government even before independence. The British introduced quotas for both lower castes and classes in the hope that the rise of a lower caste elite would serve the principle of 'divide and rule' and help to solidify British control in India (Kahane, 1995)."

leaders of the lower castes who opposed the idea of reservations for their own people. Kansas State University professor, Krishna K. Tummala (1999) writes that this opposition occurred, “partly due to their commitment to democracy and its equality principle and partly due to some fear that caste and religious divisions would worsen the existing social divide.”

For the small minority who protested preferences, Dr. Ambedkar felt that if the lower castes “accepted majority rule, minorities deserved some safeguards (Tummala, 1999).” He also added that, ‘minorities are an explosive force’ with the potential to “blow up the whole fabric of the state (Tummala, 1999).” Ambedkar seems to suggest here that minorities are needed from the nation building perspective to participate because if their needs are ignored they could push for more extreme preferential policies or cripple the government with division during the fragile first years of independence.

With these ideals in mind, the framers of the Indian Constitution made a provision to reserve 22.5% of all jobs and admissions slots for members of the SC/STs (Raman, 1999). The percentage used in the reservations was created by determining the proportion of the SC/STs to the general population (Raman, 1999). It should also be noted that reservations for scheduled castes were only supposed to be a short-term measure lasting ten years. This has not been the case as evidenced by the numerous amendments extending the policy.²

² Since 1950 there has been seventy-six amendments to the Constitution of India. Amendments regarding the extension of reservations include the 8th (1960), the 23rd (1969) the 45th (1980) and the 62nd (1989) (Vepachedu, n.d.).

Deciding what specific groups will be included in the reservations among the Scheduled Castes and Scheduled Tribes met with little resistance. It was felt that places should be reserved in Parliament and higher education for members of the Other Backward Classes (OBCs) who were not included in the original SC/ST list. These groups were considered to be socially and ritualistically inferior even though some were quite well off financially (Tummala, 1999).

In 1978 the President of India initiated the Mandal Commission to look into the inclusion of OBCs in the reservations policy. When the Commission finished its work in 1980 a change in government caused the report to be ignored (Tummala, 1999). However, when the government of V.P. Singh came to power in 1990 it was announced that the government would enact the Mandal Commission's recommendation to provide the OBCs with an additional 27% reservation of jobs and admissions slots. This would bring the total reservations up to around 50% in total. The agreed number of 27% was not based upon the OBCs percentage of the population. The Commission found that the OBCs made up 52% of the population. Instead reservations were limited to 27% because of a Supreme Court ruling stating that reservations only total 50% of all available positions (Tummala, 1999).

The inclusion of the OBCs brings up two interesting points. One was that the government of V.P. Singh used the inclusion of reservations for OBCs as a political ploy to gain their favor and 52% of the vote. This would be enacted over and over again as national and local politicians look to extend the reservation policy to include not only hiring but also promotion within jobs. Politicians realize the importance of extending

such policies. Inclusion on reservations lists by lower castes and backward classes is so fierce that a riot broke out killing 100 people when a grammatical error excluded one caste group in the city of Nagpur in 1994 (Tummala, 1999).

Politicians who are members of the SC/STs and OBCs also use the policy to hire exclusively from their own castes and classes. This has caused an abuse of the system not seen elsewhere. It has also caused an odd irony, in that the SC/STs and OBCs did achieve political power to change their lot and have used that power to extend preferences instead of ending reservations. It is no surprise that the number of SC/STs to be included in reservations were increased in 1976 and 1987 for political reasons (Ncholo, 1994). Therefore it could be reasoned that when the beneficiary group for a preference policy makes up the majority of the population, their political power can cause the creation or expansion of preference policies.

The second question concerns how does one determine who should be included in reservations when more than half the population is poor or have been historically and socially repressed? In 1953 the Backward Classes Commission "came to the conclusion that seventy one percent of the population of India was socially and educationally backward (Ncholo, 1994)." The Indian Constitution does little to help on this matter since it uses various terms to determine who should be considered in the Scheduled Castes and Scheduled Tribes lists. The Indian Constitution uses the terms educationally, and socially backward, backward classes, weaker sections of the people, among others, to describe whom preferences should aid.

Indeed, the high courts in India have found that caste alone should not be the only criteria when determining who should get reservations. This has caused some creative benchmarks such as considering income and occupation in order to make sure the so-called “creamy layer” of the lower castes do not derive all the benefits of preference policies. This problem has created the idea of filling reservation slots with the truly poor first, then the more economically well off members of the lower castes. Finally some states, like Uttar Pradesh have decided to divide quotas and reservations into subsets especially for the poor (BBC News “UP to Reform,” 2000).

This is interesting from an international perspective because it means that caste is not the sole determinant of affirmative action in India. A delicate balance of mathematics, income, occupation and educational achievement are all included, making India’s affirmative action programs class based as well as caste based. The idea that the African-American middle class enjoys the benefits of affirmative action in the U.S. over poorer members of that minority clearly echoes the situation in India.

Perhaps what is needed in the U.S. is a formula that would take into account not race as much as historical disadvantage. This could open up affirmative action not just to Blacks, Hispanics and Asians but poor and/or rural white students who have endured the same economic and educational hardships as minorities, but who are shut out of preference programs. This would make U.S. preference policies in higher education harder to criticize. Here, the determination for who gets preference is based on class distinction and the degree of educational and social “backwardness” to borrow a term from India, more so than race.

Research Criteria (b): Structure of the Policy

The structure of India's affirmative action law tells a lot about how well it serves its people. The law is enhanced because it is enshrined in the Indian Constitution and is thus constructed as one law. However, frequent amendments in the face of political goals and in response to litigation gives India's reservations policies a patchwork feel as well as problems with enforceability.

Thus it is also not surprising that Article 15(4) of the constitution was changed by the First Amendment when the idea of preferential treatment for SC/STs was challenged in litigation. This occurred when a Brahmin student sued that he was denied university admission in favor of lower caste members in the case of the State of Madras v. Champakam Dorairajan (Ncholo, 1994; Pylee, 1960). The student argued that his denial of admission violated Article 29(2) of the Constitution which stated that, "no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds of religion, race, caste, language or any of them" (Government of India Constitution, 1950)." The court agreed, ruling that the individual rights guaranteed in Article 14 and 15 in the Fundamental Rights took precedence over any preferential treatment the government wanted to provide under the Directive Principles. This caused the government to amend the constitution, adding to Article 15(4) the disclaimer that nothing in Article 29(2) would preclude the preferential treatment of the SC/STs (Ncholo, 1994).

This shows that where preferential treatment laws are not enforceable, the law itself is changed to accommodate the government's reservation policy. It is also evidence of the government's motivation to stick to the Directive Principles. However, such a disclaimer is slightly dangerous. On one hand, the disclaimer is a good example to other countries of how to accommodate equality principles while serving the needs of minorities. On the other hand, changing the law frequently weakens it in the eyes of the people, showing that when it is not enforceable it will simply be changed. Such action also gives a powerful tool to corrupt politicians who change the law to suit their needs.³

The language of India's preferential policies also plays a part in their success or failure. One criticism is that the constitution uses varying terms in discussing whom reservations should cover. As was noted earlier in this chapter, the terms backward classes, weaker sections of people, Scheduled Castes and Scheduled Tribes all have been used in legislation. Another problem is that "the constitution, in introducing the notion of 'socially and educationally backward class', does not define it, or try to define or set out the guidelines for defining it and this has posed problems for the courts. (Ncholo, 1994)." However, the exclusion of a definition was seen by the Drafting Committee of the constitution as a way to keep the document flexible. Pratap Kumar Ohosh (1966) writes in, *The Constitution of India: How It Has Been Framed* that "the expression 'backward class of citizens' is vague... thus it is within the power of the State to declare from time to

³For example, the 86th Amendment to the Constitution, expanded reservation to promotion of SC/STs in promotion as well as in hiring even though the Supreme Court ordered such reservations end in 1997. It is no surprise either that the Amendment came about in 1995 before the general election in 1996. Other battles were fought on overriding Supreme Court decisions to stop the V.P. Singh and Narasimha Rao governments of increasing reservations above 50% in education and jobs (Tummala, 1999).

time who are the 'backward class of citizens'." Dr. Ambedkar, despite criticism that not defining the terms would cause undue litigation, decided that it would be better for local government to decide such matters (Ghosh, 1966). Today, local governments can determine who is covered in their own states and the President of India can also determine who should be covered by reservations.

While a constitution needs to be a living document, one that can be applicable throughout the years, defining backward classes would go along way to making the structure of the law clearer. This is something to consider for the U.S. as well. Since people see affirmative action in the U.S. as a "black and white" issue, one that predominately benefits African Americans, having a loose definition of who is eligible for affirmative action in education, whether it be based on race, ethnicity or economic background could help show that many different groups benefit from such policies.

Research Criteria (c): Implementation of the Policy

So how has India implemented its affirmative action programs? Have reserved seats in higher education been helpful for members of the SC/STs and OBCs? Currently, 22.5% of all higher education admissions slots are reserved for the SC/STs. They also make up 24.56% of the population, which makes the reservations almost proportional to their numbers in society (Census of India, 1991). Members of the OBCs have 27% of all reservations, however they make up over 50% of the population as discussed earlier.

Unfortunately, despite reservations, these numbers don't always translate into actual enrollments. Although current statistics were unattainable, research from the 1970s

shows that more SC/ST students were enrolled in primary school than higher education (Karlekar, 1983; Kahane, 1995). Still there was evidence of a “gradual but still disproportionate growth in disadvantaged students enrolled in higher education (Kehane, 1995).” In fact, SC/ST students were found to be underrepresented in 21 Indian states. Only in the state of Kerala were SC/ST students over-represented by our measurement guidelines. SC/ST students made up 30% of enrollments in this state and also enjoyed great academic success as well (Kehane, 1995).

In order to make sure that SC/ST students take advantage of the reservations offered to them, the government of India through the University Grants Commission and the Ministry of Education have initiated numerous programs to assist students. Some of these programs have an equality of opportunity structure in addition to the quotas of the reservation system. Perhaps this is an indication that quotas are not enough when it comes to increasing diversity. Equality of opportunity programs are necessary to train and prepare students to take advantage of the reservation system.

Equality of opportunity and equality of outcome programs that do not use quotas in India include awarding post-matric scholarships, fellowships, the provision of hostels, pre-examination training centers and remedial coaching centers to assist students with their academic work after enrolling in school. The necessity for remedial coaching centers may be the result of the relaxed entrance exam requirements by the government. SC/ST students are also provided relaxation for up to 10% of cut off marks for fellowships and scholarships (Ministry of Education-Higher Education, 2001). In addition to these provisions, the government has set up 103 SC/ST Cells in universities.

These cells monitor implementation of the reservation policy "to ensure effective implementation of various schemes like appointment, recruitment, (and) accommodation," for SC/ST students and faculty (University Grants Commission, 2002).

Author and scholar Reuven Kahane also notes that India has provided access to its growing student body by increasing the number of colleges and universities in the country (1995). Contributing to this idea is the fact that India has seen its higher education system increase twenty-five fold since independence in 1947 (Ministry of Education-Higher Education, 2001). Of course there is a similarity here between the British and Indian experience in that a large number of the minorities attending schools are attending local colleges and universities. Keeping minorities in local schools means they are not likely to bring much diversity to those prestige schools.

This idea was corroborated in a research study by Suma Chitna. The study revealed that on an A to D scale of higher education institutions, ('A' representing prestigious schools and 'D' representing lower level schools) that 76% of SC/ST students were enrolled in 'D' schools (Kartekar, 1983). Only 5% of students were enrolled in 'A' level schools (Kartekar, 1983). Chitna also found that despite reservation policies SC/ST students were also underrepresented in graduate and post-graduate schools as well as in medical engineering colleges. Data on 57 medical and engineering colleges and universities showed that not one single SC/ST student was enrolled (Kartekar, 1983). Research also showed caste students were "more likely to be trained for inferior technical jobs than the higher professions like medicine and engineering (Kartekar, 1983)."

Reservations Policies and Faculty

Over 76, 587 teachers were listed as part of India's university system in 2000. However a small percentage belonged to SC/ST members (Ministry of Education-Higher Education, 2001). Although specific numbers were not given by the Ministry of Education they have put forth their commitment to "remedy the non-fulfillment of the prescribed quota for SC/ST in teaching positions (Ministry of Education-Higher Education, 2001)." Perhaps the reasons for the non-fulfillment of quotas can be traced back to the low retention of students at the university level and their difficulty in attaining entrance into graduate schools.

The Ministry of Education has initiated a number of programs to help remedy the situation. They have created a central pool database of eligible SC/ST candidates in order to recommend them for teaching positions in universities and colleges. The information has been made available to four universities and six colleges in 1999 and 2000 (Ministry of Education-Higher Education, 2001). It is hoped that such a list may be made available over the Internet. This is an idea that has also been developed in the United States as well. Another Indian initiative used in the U.S. is through offering fellowships to SC/ST teaching candidates, 20 for Ph.D. work and 30 for M. Phil (Ministry of Education-Higher Education, 2001). This is done to help provide "research opportunities to teachers of affiliated colleges (Ministry of Education-Higher Education, 2001)."

SC/ST teaching candidates are also offered coaching classes to prepare them for the National Eligibility Test or NET. In addition to coaching classes, teaching candidates are also offered a relaxation of qualifying marks on the NET. Such programs for faculty

and growing disenchantment with reservations for both faculty and students have caused widespread backlash and problems, as we will investigate further in the next section.

Research Criteria (d): Perception of the Policy by the Public

India's system of reservations has seen much backlash in recent years by members of the forward classes and especially by members of the Brahmin caste. When the Mandal Commission's recommendations were enacted giving OBCs 27% reservations, there were widespread protests. Another protest recently occurred when the University of Delhi announced its intention to hire 22.5% faculty who belonged to the SC/STs to keep in line with the Indian Constitution. Out of the 7,000 faculty working at the university, only 150 are lower caste members (Overland, 2001).

In order to fulfill this commitment, the university will need to hire 1,400 lower caste faculty. The announcement was immediately fought by the University of Delhi's Teacher's Union who feel that reserving so many jobs will act as a deterrent for higher caste students to seek graduate school, since they will fear no jobs will be available to them upon graduation. President of the Teacher's Union, Shyam S. Rathi states that it could take up to seven to ten years for the 22.5% goal to be reached (Overland, 2001). Brahmin students have also protested reservations in general by engaging in self-mutilating violence. Numerous lawsuits have been brought forward to test the constitutionality of such laws. Besides protests and lawsuits, reservations have also given members of the SC/STs and OBCs new political power while Brahmins seek better representation from political parties to balance out reservations.

Another backlash in India is that reservations have also created a brain drain in the country. Brahmin students, frustrated that they must compete for only 50% of available university seats are going abroad to study (Mitra, 1999). For example, more than 10% of the top ranked students at the Delhi School of Economics leave India to do their graduate work (Mitra, 1999). The statistics are even worse at the Indian Institutes of Technology where “roughly 20% of graduates go abroad to continue their studies (Mitra, 1999).” It is no surprise that the majority do not return. This is a shame as India is losing some of its brightest stars who could contribute to improving its economy. The government’s response to backlash against reservations and their reform has basically fallen on deaf ears. Because the issue is such a political trump card for politicians courting the lower caste vote, it looks like backlash against the issue will never be dealt with properly.

Conclusion

India has chosen to focus on equality of outcome measures as a way of increasing the number of minorities in their higher education system. However, it does have equality of opportunity measures to help SC/ST and OBC students and potential faculty take advantage of the reservation system. The rationale for equality of outcome measures for SC/STs and OBCs came out of the need to redress the injustices of the caste system, nation building, and as a way to help lower and backward castes and classes to compete with forward castes. India’s preference policies are guaranteed under one law, namely the Constitution. Regarding structure, problems with language and enforceability are curbed

by amending the constitution. Despite the reservation of admission slots, the number of SC/STs attending higher education institutions is low. This trend was also continued in regards to SC/ST and OBC faculty. Public opinion showed that protests by forward castes were often ignored by government because of the voting power of the beneficiary group. This case study also saw that when the beneficiary group makes up the majority of the population, their political influence in the country can be used to create and expand preference programs. It is also a seductive lure for politicians to abuse the policy in favor of getting votes. In fact, now there is pressure for the government to extend reservations to the private sector as globalization shrinks public sectors across the world (Devraj, 2000).

In India, equality of outcome policies have not been successful in putting SC/ST and OBCs in higher education as students and faculty. In fact, it has also lowered the number of forward caste students enrolled in Indian universities. This causes a brain drain in the country as these students seek education and employment abroad.

Lessons for the U.S. include the creation of pre-examination training centers, and the creation of affirmative action cells at universities to make sure affirmative action policies are implemented correctly. From India also comes the idea of a class based admission system since caste is not the only determining factor for whom among the SC/STs and OBCs. Here criteria include income, occupation, and educational achievement. This would have to be adjusted to fit the U.S. situation with wealth replacing income to avoid the problems Dalton Conley addresses in his work on class based admissions. Also, occupation does not have the same relevance in India where

lower castes are often subjugated to certain specific lowly occupations. Because of this, occupation is a good indicator of who can qualify as a beneficiary group in India. This may not be so in the United States.

As a final thought, in some way the old British idea of divide and rule has occurred in India. The lower castes dominate government offices, and elections. However, they use this power to make caste more permanent while widening the rift between forward and backward castes and classes

CHAPTER 7

South Africa

Introduction

South Africa is rising out of the shadows of apartheid. So how does the country move forward, heal old wounds and redistribute resources? South Africa has decided to pursue preference policies to ensure that Africans are able to take their rightful places in the labor market and on university campuses.⁴ Being the new kid on the block when it comes to designing and implementing preference policies, what has South Africa learned from the experiences of other countries? How have they applied these lessons to their own experience and what can we learn from it? Even though South Africa's affirmative action programs are in their infancy, it is still possible for the U.S. to learn from their programs in higher education.

South African Legislation

The 1996 Constitution of the Republic of South Africa is one of the most progressive constitutions ever. The document includes a Bill of Rights, whose Equality section in Article 9 Section 1 states that:

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour,

⁴ Those considered African in South Africa include blacks, coloureds and Asians respectively.

sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(Republic of South Africa, 1996)

Here the Bill of Rights gives notice that all people are equal before the law. Because of apartheid, the article makes sure that the state cannot discriminate against citizens.

However, the government does leave the door open for affirmative action in Article 9 Section 1 (2) which states, "to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken (Republic of South Africa, 1996)." The

Constitution of the Republic of South Africa also speaks to equality in education in the Constitution when it states in Article 29 (1) that:

Everyone has the right

(1) b.) to further education, which the state, through reasonable measures, must make progressively available and accessible.

(2) ... In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account

a.) equity, b.) practicability; c.) and the need to redress the results of past racially discriminatory laws and practices.

(Republic of South Africa, 1996)

The education section of the South African Constitution does not lay out plans for affirmative action in education. Instead, it insures that everyone is entitled to an equal and fair education in response to the separate education systems for blacks, coloureds and Indians created under apartheid through the Bantu Education act of 1953. (Mabokela,

2000; Tummala, 1999). This was also true in higher education. There were the Historically White Universities (HWUs), Afrikaans and English language universities for whites, and the Historically Black Universities (HBUs) or bush universities set in the homelands for blacks and other separate universities for coloureds and Indians. Institutions for whites, coloureds and Indians were well funded. However, the same could not be said for the HBUs which lacked funds, equipment and buildings.⁵

In addition to the South African Constitution, the ANC (African National Congress) created policies to create more access for black students in higher education through the government's Green Paper on Higher Education, then its White Paper and finally through legislation itself. These documents show the government's strategy for redressing past inequalities and providing better access to universities for black students and staff. Rajani Naidoo (1998) of Cambridge University writes that the government's plans deal directly with equity and redress issues.

Equity and redress deal with increasing access for black students and faculty. The White Paper and subsequent Higher Education Act realize that access needs to be increased through more adult education programs, credit for other educational and life experience in regards to higher education, more focus on technical schooling and through better recruitment of black students and faculty (Department of Education, 1997). The plans also call for the expansion of higher education institutions, including the merger of some institutions and the closing of others that duplicate programmes better employed

⁵ 1983, the University Amendment Act legalized admission of black, coloured and Indian students into formerly white universities (Mabokela, 2000). After this time the number of blacks at historically white institutions began to rise slowly.

elsewhere (Department of Education, 1997). With black students leaving the under-funded HBUs for Afrikaans and English speaking white institutions (Vergnani, 2001), the former black institutions are the ones facing closure and mergers.

Neither the White Paper nor the Higher Education Act calls for quotas as a way to increase access. Instead, the design and implementation of access programs are left to individual institutions. The White Paper states that, "the Ministry will require institutions to develop their own race and gender equity goals and plans for achieving them, using indicative targets for distributing publicly subsidized places rather than firm quotas (Department of Education, 1997)." How well an institution achieves these goals is tied directly to the types of funding they will receive from the Department of Education. In a recent report, the National Committee on Higher Education (NCHE) set the benchmark for enrollment of African students, and hiring of African faculty as 40% of student enrollment and staff on campus (NCHE, 2002). This is below the percentage of Africans in the general population which stands at 75%. Perhaps this was done to ease tensions regarding affirmative action and higher education. It is also interesting that the guidelines for hiring faculty fall under the education policies and not the Employment Equity Act which would call for a much higher percentage of black faculty.

Finally, South Africa has enacted the Employment Equity Act in 1998. It states that " 'pronounced disadvantages' created by past policies cannot be redressed by a simple repeal of past discriminatory laws (Tummala, 1999)." It calls for employment equity and a diverse workforce, which is representative of society. To this end, the Act calls for jobs in companies with more than 50 employees to make sure their workforce is

representative of the population. This means hiring 75% Africans, 50% women and 5% disabled persons within a five-year timeframe (Tummala, 1999, Mutumi, 1998). Fines include \$100,000 U.S. dollars for the first year of non-compliance, \$120,000 for the second year which will increase up to \$185,000 until the fifth year of non-compliance (Mutumi, 1998). Finally, a Commission for Employment Equity was also set up to see that the law is enforced.

There are various affirmative action measures companies must make, writes Kansas State University professor Krishna K. Tummala (1999), including “the identification and removal of barriers which hinder diversity... [and] efforts at training to retain and develop” equitable representation (Tummala, 1999). Here the government is careful to say that these measures were to be done through “preferential treatment and numerical goals but not with quotas (Tummala, 1999). In South Africa, quotas seem to be a dirty word.

Findings by Research Criteria

Research Criteria (a): Reason for the Initiation of the Policy

Like India, South Africa incorporates both equality of outcome and equality of opportunity provisions in its constitutional framework. The rationale for this is clear. South Africa needs equality of opportunity measures to undo apartheid and end discrimination. They also provide redress to Africans who suffered educational, vocational and economic inequalities under apartheid. Finally, in order for Africans to be full participants in South African society, they create equality of outcome programs. This

has another rationale, since putting more Africans in the workforce and in education will help to end discrimination which is institutionalized in these areas

The country's Employment Equity Act is clearly an equality of outcome policy. However, its higher education goals at achieving equity on campus try to marry the concepts of equality of outcome and equality of opportunity. While its focus is on putting more blacks in higher education, it shies away from equality of outcome measures like the reservation of admissions slots and quotas even though it could initiate them under the rationale of redress. Instead, the government lets the colleges and universities choose their own ways of admitting and hiring more blacks.

South Africa's laws could have been much stronger and with more emphasis on redress. The ANC draft Bill of Rights included an article on Positive Action which, "not only permits but actually requires positive action by the state to pursue 'policies and programmes aimed at redressing the consequences of past discrimination' (Sachs, 1992)." How the changes were made or why could not be determined within the timeframe for this research project, but it is possible that the changes were made by the ANC to accommodate the views of those opposed to a hard stance on preference policies.

Research Criteria (b): Structure of the Policy

The government seems to create specific affirmative action laws and policies in a piecemeal fashion instead of having one all-encompassing law. In higher education, affirmative action is not a law but a guideline or benchmark tied to university funding. As noted earlier, even if South Africa does not adopt a specific law for higher education

regarding affirmative action, it could create one down the road, especially as the beneficiary group is the majority population of the country. Separating the laws seems to work for South Africa, providing an interesting balance in dealing with preference.

Language does present a problem in the structure of South Africa's Constitution since the framers did not define what constitutes "unfair discrimination." Perhaps this was done so as to avoid a laundry list of unfair discrimination that might not cover all the bases. Fair discrimination is interpreted as affirmative action policies, but one person's view of fair discrimination may be considered unfair to another person. This will give the courts a field day determining what exactly the state means by unfair discrimination.

The other problem with language regards who is considered to be African or black in South Africa. Under the old apartheid system, Africans were divided into the categories blacks, coloureds and Indians. Although preference policy laws like the Employment Equity Act call for representation of Africans in the workplace, most employers have taken this to mean hiring more blacks, leaving coloureds and Indian South Africans out of the process. Employment agencies report that companies pressure them into sending black clients for jobs as they want black faces to show they are not discriminatory ("Affirmative Action," 1995). Employment agencies say that coloureds do get jobs, "but only if African applicants do not have the required skills, or the potential to learn them ("Affirmative Action," 1995)." This has caused a strain of relations between coloureds and blacks, as people fight over who is truly included in preference policies. Being covered by a preference policy is so important in South Africa that coloureds who

passed for white under apartheid, are using their mixed heritage to claim employment as blacks in South Africa today (Tummala, 1999).

One area where South Africa is very specific is within the Employment Equity Act. It names specific provisions to be taken, sets time limits, introduces fines for non-compliance and sets up a commission to oversee that the law is enforceable. However, enforcing the higher education access policies of individual universities can be difficult. It is hard to know exactly what universities are doing, especially in hiring more black faculty. However, the Department of Education has a unique way of enforcing the law, by restricting financial contributions to universities that don't enact such policies.

Research Criteria (c): Implementation at South African Universities

With South Africa in the early stages of its preferential policies, it is hard to make a final determination on whether programs are working. However, there are statistics reflecting higher enrollment numbers for black students on campus. Linda Vergnani (2001) of the *Chronicle of Higher Education* reports that, "since the end of apartheid, the proportion of black students has increased by 18 percentage points—to 71 percent of the nation's student population." This still falls short of blacks representation in the population, which stands at 75% to 77%. This rise in 18 percentage points is up from the period of 1986 to 1993 when the percentage of black or African students rose 14% (Department of Education, 1997). Despite the high percentage of Africans at universities, including the former HWUs, the stark reality is that the 71% of higher education students are drawn from a smaller pool of 15% of college aged black South Africans. Education

Minister for South Africa, Kader Asmal has a new plan which it is hoped will raise the participation rate from 15% to 20% over the next ten to fifteen years (Vergnani, 2001).

Another interesting point is that the participation rates for whites in South African higher education has decreased from 70% to 47% in the same time frame. White students are instead, attending private universities and education overseas (Vergnani, 2001). It should also be noted that enrollment rates of Africans at the former HBUs also decreased sharply, as much as 22% in the last two years (Vergnani, 2001).

Colleges and universities, under the Department of Education's guidelines are producing various ways of increasing the number of African students on campus. Some of these initiatives include recognizing during the admissions process that lower test scores by African candidates may be the result of poor schooling. Universities then offer remedial classes to overcome these disadvantages (Vergnani, 2001; Ramphela, 1995). Another approach developed by the University of the Western Cape offers admissions to students with top scores first, basically an A or B aggregate. Then it offers "80% of the places on a random basis, drawing from a pool of applicants with the basic minimum pass (Lolwana, Gamble, and Krafchik, 1995)."

South African institutions all try to shy away from the use of quotas. Instead, institutions like the University of Natal use outreach programs to improve math and science education for black students. It has created outreach programs to also help train teachers. Ms. Brenda Gourley, a Vice Chancellor at the University of Natal, a former HWU, states that "management tries not to use racial quotas. But does take race into account in admissions (Vergnani, 2001)."

The English speaking University of Cape Town has seen an increase in African students from 19% in 1984 to 43% in 1995. The university also steers away from quotas. The success for the change in student profiles is discussed by former Vice Chancellor of the university, Mamphela Ramphela (1995). She writes that the university employs three different policy interventions to bring more African students to campus. These include their admissions policy, the extension of financial aid, and more student housing (Ramphela, 1995). Through the admissions policy, the university looks to identify and attract the best students “irrespective of color, gender, or educational background as measured by their previous educational performance at school or another tertiary institution (Ramphela, 1995).” The university also seeks students who have the potential to succeed but who may not have “had the educational experience to provide them with opportunities to demonstrate their abilities (Ramphela, 1995).” To help bring these students up to speed and protect academic standards, the university developed an Alternative Admissions Research Project. The project has developed tools to test a applicant’s ability in math, and English, two areas which correlate how well a student will succeed at the university.

The university has also created the Academic Development Program, which looks to ensure students accepted to the university graduate. This is done by creating a supportive environment at the university for African students. Second, there is curriculum reform and restructuring to “ensure differently prepared students enter courses at the right level (Ramphela, 1995).” Third, within this framework, foundation courses are created for students who need extra learning before they take core classes. “In some cases core

classes are extended by six months to a year to allow time for the consolidation of a more solid foundation (Ramphela, 1995).” Finally, the university helps support the development and mastering of writing skills by having students attend the Writing Center on campus and the Professional Communications unit (Ramphela, 1995). While some of these initiatives are enacted by the United States as well, these programs provide the impetus for creativity in the design of access programs.

Staff Profiles in South African Universities

Unfortunately, the rising statistics in student enrollment do not reflect the employment of black academic staff in South Africa. Currently, statistics show that the number of black academic staff members in South African universities has increased from 13% in 1993 to 20% in 1998 (Vergnani, 2001). To be representative, this falls short by more than 50%. For some perspective on these statistics, one can look at the faculty composition of the former HWUs. At the University of Natal, whites still make up as much as 92% of the faculty (Vergnani, 2001). Brenda Gourley of the university says that, “We are battling to get senior black staff...[but] it’s so difficult. First of all, the salaries in academia don’t begin to match those in government and industry (Vergnani, 2001).” This is a familiar complaint among the former HWUs, who state they cannot compete with industry for talented black academic staff where signing bonuses include BMWs (Thompson, 1999). There is also the complaint that there are simply just low numbers of black academics period. This is despite the fact that many high level academics at the former HBUs migrated to higher paying white universities after apartheid. Citing the low

numbers of black student enrollment in masters and doctoral degree programs, many former HWUs still hire whites.

Researcher Reirumerse Obakeng Mabokela (2000) takes a look at this phenomena by studying the faculty diversification programmes at former HWUs', the University of Cape Town and the University of Stellenbosch. Mabokela found that despite these initiatives, selection committees were dominated by white males who continued to recruit staff through the same methods. When black staff were on committees, they tended to be tokens and since there were so few black academics on campus, the same professors are often overused. Another trend at the University of Cape Town was that the selection committees felt all they needed to do was to make an effort to search for black faculty. "Basically all they have to do is to report that they have tried very hard to look for one, and one was not found, and we therefore have to employ a white candidate. It is a difficult situation because until we have evidence to refute the results of the search, we have to take their word for it (Mabokela, 2000)."

Retention is also a problem. This is due to the culture of the institution, especially if it is reluctant to change and to provide a supportive environment for black staff. A black academic at the University of Cape Town noted, "one of my colleagues said to me, 'if you don't like it here, why don't you go into the private sector or government, they have lots of opportunities for blacks' (Mabokela, 2000)."

At the University of Stellenbosch, the situation was worse, as the University did not even have an equal opportunity office. The university spent more time in nurturing

students within their own university for teaching positions. This stemmed from a fear that hiring outside faculty would lower the standards of the university (Mabokela, 2000).

Perhaps South Africa could borrow some practices from Great Britain with their targeted job announcements. Former HWUs looking to increase access could place announcements with a South African Teachers Union, black professional organizations, and graduate student associations in various universities to attract bright black faculty. Other opportunities in effect at South African Universities such as sponsoring and funding research and sabbatical projects by black academic staff should also continue and be developed further. Changing the cultural environment of a university will also be necessary even though it is the most difficult thing to achieve.

Research Criteria (d): Perception of the Policy by the Public

Now that apartheid has ended and South Africa looks towards reconciling the violent divisions of the past, how do its citizens feel about preference policies? It is to be expected that some whites in South Africa, feeling threatened by the new order, would be displeased with preference policies, especially as the Constitution embraces ideas of equality. However, opinion polls performed by the MarkData Omnibus group in 1994, 1996 and 2000 on affirmative action (this is the term used in the poll) showed intriguing results. In a post election survey in 1994, the survey found that 61% of voters, including 52% of Africans, felt that appointments should be made using merit only, "even if some people do not make progress as a result (MarkOmnibus Survey, 2000)."

The survey was given again in 1996 and 2000. Results showed that ethnicity, language and income had a great influence on respondents feelings. In 1996, white Afrikaner opinion was "massively hostile to affirmative action (MarkOmnibus Survey, 2000)." However, after a affirmative action public relations campaign, the 2000 survey found that 11% of White English speaking South Africans supported strong affirmative action measures and only 38% strongly opposed the policy (MarkOmnibus Survey, 2000). That is just half the number who opposed the policy in 1996. This is a "considerable victory for the government" and shows that "in practice whites have learnt to live with a degree of affirmative action (MarkData Omnibus Survey, 2000)." The Asian or Indian population also remained hostile to affirmative action while number of Coloureds favoring extreme affirmative action measures were halved from 14% in 1996 to 7% in 2000 (MarkOmnibus Survey, 2000).

Perhaps the biggest surprise in the survey came from African respondents. It was found that those in favor of extreme affirmative action policies declined from 30% to 28% (Mark Omnibus Survey, 2000). Surprisingly, the number of Africans who oppose affirmative action grew from 41% to 51% (MarkOmnibus Survey, 2000). It was found that Africans in opposition to affirmative action were also those who reported low or no income at all. While those Africans most in favor of affirmative action were the black middle class (MarkOmnibus Survey, 2000). The survey also reports that those who favored the most extreme forms of affirmative action also came from the top two income groups.

So even though preference policies in South Africa assist the minority group, they are most likely going to help the privileged among that minority who have the skills and education necessary to take over positions that were held by whites (MarkOmnibus Survey, 2000). Therefore, poor Africans are not likely to support legislation in which the country's black middle class becomes more powerful while they are left behind. Another reason for this data is that during apartheid, blacks were taught that appointments should only be made on merit not race, when white Afrikaners filled the civil service and government with their own racial group (MarkOmnibus Survey, 2000).

After the 2000 survey, it was found that while more Africans opposed affirmative action, the subgroup most hostile to the policy were now those in the upper income levels (MarkOmnibus Survey, 2000). Only the middle income group favored affirmative action for blacks. This shift in thinking among the black upper classes may stem from their desire to prove that their success was gained by their own merit and not by affirmative action.

Conclusion

South Africa is a land of change, innovation and paradox when it comes to affirmative action policies. Their Constitution upholds equality of opportunity and preference policies. However, the country has engaged in equality of outcome measures based on the ideas of redress, discouraging present day discrimination, and reversing the educational and employment inequalities of Africans. The structure of the country's employment affirmative action laws are well structured and enforceable. However, the

higher education policies are loosely structured and autonomy is given to institutions to create their own access programs. Policies were enforced through tying the universities efforts to funding. All programs implemented took race into account, but many universities only admitted blacks with lower test scores after top students (regardless of color) had been admitted. The numbers of blacks enrolled in higher education is almost representative to their percentage of the population. This is correlated to the former HWUs' access programs, and the influx of black students from HBUs after apartheid. Due to institutional discrimination and in some ways a tight labor market, the number of African faculty still remains low. Public opinion showed that after a public relations campaign, Afrikaner and English speaking whites are slowly coming around to preference policies while poor and middle class blacks are now against these measures.

Lessons for the U.S. include universities creating their own testing measures for students with low test scores to assess if they can do college level work, offering foundation courses and creating a supportive university environment. South Africa engaged programs similar to ones used in the states to hire more minority faculty. These ideas included having more diverse selection committees, strengthening the number of minority students in graduate programs, and recruiting faculty from existing graduate students.

CHAPTER 8

Findings

Introduction

Introduction

Now that we have sketched a picture of preference policies and higher education in Great Britain, India and South Africa, how do these findings compare or contrast with each other? Can equality of opportunity programs be successful in increasing access to higher education for minorities? This chapter looks at all these questions, as a way to provide ideas to policymakers and universities for ways to increase diversity at U.S. universities.

Introductory Summary

Introductory Summary

This study asked what types of preference policies countries implemented to redistribute educational resources, equality of opportunity or equality of outcome measures? Great Britain with its positive action policies held fast to equality of opportunity programs (training and development initiatives) which were voluntary for employers. It had no formal higher education preference program, although universities have been playing with diversity programs to get more lower income and state school students on campus. These initiatives focused on equality of opportunity measures.

India adopted extreme equality of outcome measures (quotas, reservations, relaxation of testing marks etc) where 50% of admissions slots were reserved for SC/STs and OBCs. South Africa fell in the middle. It has strong equality of outcome provisions for employment that use quotas but their education policies gave universities autonomy to

create their own access policies. The policies tended to use more equality of opportunity and equality of outcome measures that used benchmarks instead of quotas.

The research question asked if equality of opportunity programs would be better at enrolling and hiring minorities in higher education than equality of outcome measures with its quotas and extreme backlash? In some ways this idea held true, as it was Great Britain with its equality of opportunity programs that reached the goal of putting more minorities into higher education than their percentage of the population. In this way, equality of opportunity programs were more successful than the equality of outcome programs of say India, which had low SC/ST and OBC numbers for both students and faculty.

South Africa also had a high percentage of minorities enrolled in higher education. Its affirmative action policies in higher education seem to be a mix of both equality of opportunity and equality of outcome measures. South Africa has benchmarks for the percentage of minorities they want to see in higher education, which borrows from equality of outcome, but it lets the universities choose their own diversity programs, which tend to favor more equality of opportunity measures. Both South Africa and Great Britain's programs provide good lessons for the U.S., which will be discussed below.

However, it is difficult to say if this success can be attributable solely to equality of opportunity programs in Great Britain. Other factors such as the higher concentration of minorities at local universities and the expansion of the higher education system all played a role in increasing the number of minorities enrolled at university. Also, in Great

Britain as in all the countries studied, minorities were not as visible at the countries' prestige schools.

In general, the percentage of minority students enrolled in higher education was much higher than the number of minority faculty hired in all the countries studied. Reasons for this trend included institutional discrimination and the fear that hiring minority faculty would bring down the reputation of the university. It was found that efforts to hire more minority faculty matched efforts by the United States.

It was also found that rationales for affirmative action programs other than redress could be successful and cut down on backlash. These included avoidance of present day discrimination and overcoming the economic and educational disparities of minorities so they could compete equally with the majority group. This type of rationale was most successful in Great Britain when it was combined with equality of opportunity programs.

Investigating the structure of laws found that South Africa and India had equality measures in their constitutions, which still allowed for preference policies. Great Britain does so in the Race Relations Act. Looking at the structure of preference policies also answered another study question, namely, if one affirmative action law was more successful than a string of executive orders and court decisions. Great Britain created one law in the Race Relations Act which was successful. However, South Africa created affirmative action laws in a piecemeal fashion which also showed success.

At the beginning of this project one of the big questions to be answered concerned whether affirmative action policies were a viable way to distribute resources to minorities. The answer is mixed. The poor of many beneficiary groups lose out, never

seeing the direct benefit of preference programs. In this way the laws fail to help the very groups they are meant to assist. This is why affirmative action is such a catch-22. Without it, minorities would be much worse off, however, it does not help all the intended beneficiaries. Solutions to this problem include structuring laws so that the poorest among the beneficiary groups experience the benefit of affirmative action programs.

Findings by Research Criteria

This study also investigated what roles the rationale for a preference policy plays in its success. Rationales included redress for past injustices, using preference policies as a way to deal with the economic and educational inequalities created by past injustices, ending past discrimination, and eradicating present day discrimination. In all the countries studied, a combination of rationales were used for preference policies.

Not surprisingly, it was discovered that when redress was the primary rationale, there was a connection to extreme backlash by non-beneficiaries. In Great Britain, the primary rationale was the avoidance of present day discrimination. Here, backlash was minimal and complaints against the policy were by minorities who wanted it extended to include equality of outcome measures. So it is possible to have a different rationale than redress and still have a successful preference policy. Perhaps the U.S. needs to put more focus on avoidance of present day discrimination for its policies and couple this with a shift from equality of outcome measures that use quotas to equality of opportunity programs.

Investigating the structure of preference policies found that equality of opportunity programs focused on training minorities to attain the skills they would need to compete equally with whites. Equality of outcome provisions were structured to include everything from quotas in admissions and hiring, relaxation of passing marks for entrance exams and coaching programs. Great Britain's equality of opportunity measures were structured under one law, the Race Relations Act. It could only be enacted under specific conditions, namely the absence of new minority hires within a certain time frame. The law was voluntary. It also proved to be enforceable, despite some weak language in the law. Political will by whites in Great Britain keep the policy from being expanded and works as way of enforcing and not expanding the law.

In India, the preference policies are structured through one law, the Indian Constitution. Policies are involuntary. Weak language and its juxtaposition with the constitution's equality clauses mirrors the U.S. experience. In order to make their preference policies enforceable, the government has amended the Indian Constitution after controversial lawsuits.

South Africa has a strongly structured employment preference policy, which states that employers with over 50 employees must have a workforce representative of the population. The law is also enforceable through its fines structure for non-compliance and the creation of a commission to oversee the correct implementation of the law. The structure of the education provisions were looser and allowed for creativity by universities. South Africa shied away from quotas when constructing their access policies in higher education. By giving autonomy to the universities in implementing the

programs, the government is trying to steer away from some of the backlash that accompanies equality of outcome measures by putting some control of the policies in the hands of the universities themselves.

Even though the countries studied take diverse approaches towards implementation, some similar trends develop within this research criteria. One is that the countries looked at implementing expansion of their higher education system as a way of increasing access to minority students. In India, increasing lower caste access meant more of these students attending what would be junior or community colleges. In South Africa, the situation is a little different. The number of institutions were increased because blacks were allowed greater access into former predominantly white institutions. Increasing the size of the education system was very successful in increasing the number of minorities in the countries studied, although not a viable option for the U.S.

Unfortunately, it was found that even when preference policies were implemented, few minorities attend prestige universities in the countries studied. In all three countries there was a finding that there is sometimes a disconnect between the policy enacted and the policies implemented by universities. Even though universities committed themselves to diversity on paper they shied away from implementing policies out of fear that admitting and hiring minorities would lower their academic standards. Discrimination on campus was also a deterrent to implementing preference policies. It was also found that discrimination still remained a subtle part of campus life for minority students and faculty, even after preference policies were implemented.

These cases suggest that the implementation of preference policies are more effective by universities when they include a merit component, protect their standards, and gives them autonomy in choosing how students are coached, trained and selected at a institution. In this way, South Africa is a country to watch, since universities develop innovative implementation policies to achieve diversity on campus. South Africa and Great Britain have also developed programs taking merit into consideration that are worth duplication. They are described fully in the "Lessons for the U.S." section.

When it comes to faculty development, a fear that hiring minorities would lower academic standards was also seen. In all three countries, the numbers of minority faculty were extremely low and below their representation to the general population. In Great Britain, the universities with the largest number of minority faculty were local colleges and technical schools in urban areas like London. It was found that the institutional culture at institutions also made hiring and retaining minority faculty difficult. A culture of discrimination still existed on campus for both faculty and students in all three countries even with anti-discrimination policies, especially in prestige universities. In order to diminish discrimination on campus, universities must create a nurturing environment for minority students and faculty, one that does not tolerate discrimination in any form.

In South Africa, prestige universities often use the excuse there are too few minorities available. Then they go on to hire white faculty for positions. In order to overcome a fear of hiring "outsiders" who may bring down standards, many South

African universities choose to cultivate their own black graduate students for lower level teaching positions.

It was found that public opinion was firmly tied to the rationale of the policy, showing that there is a connection between the individual research criteria. Countries that used redress as its primary rationale, like India did see a backlash in public opinion. However, because the beneficiary group is the majority of the population and has great voting influence, the concerns of the forward castes were basically ignored. Instead, the forward castes protest with their feet, seeking education and employment outside India.

This same phenomenon occurred in South Africa as well. However, the backlash against South Africa's preference policies was diminished somewhat by the public relations campaign massed there. After the campaign, the number of Afrikaner and English speaking Whites opposing affirmative action declined slightly. There was more backlash against the employment law with its equality of outcome measures than with the education provisions, which more resemble equality of opportunity concepts in design.

In Great Britain, backlash by the majority group was extremely low and this can be attributable to the fact that their equality of opportunity policies are based on avoiding present day discrimination. Therefore, it can be said that the success of affirmative action policies are firmly connected to the public goodwill of the majority group. In Great Britain, the goodwill of the majority allows for some positive action. In South Africa, whites are coming around to the policy albeit slowly. In India, this idea is turned on its head since the policy is kept in place by a majority that is also the beneficiary group.

Lessons for the U.S.

Shifting the Rationale for Preference Policies

In looking at a rationale for the policy, the U.S. needs to shift focus from redress to avoidance of present day discrimination. The success of Great Britain being able to have high numbers of minority students in higher education, shows that you don't need to base equality of outcome policies on redress. You can base preference policies on avoiding present day discrimination and as a way of achieving equity in the way minorities and majority citizens of a country compete with each other for valuable resources. While it is difficult to change a rationale, shifting focus from redress to avoiding discrimination could be done through a well planned public relations program.

Shift From Using Equality of Outcome to Equality of Opportunity Programs

A shift in focus regarding the rationale for preference policies should also be coupled with a shift from equality of outcome measures with quotas to equality of opportunity measures. Equality of opportunity measures were used in all countries and were very successful when used by universities seeking state school students in Great Britain. Measures such as pre-college training programs, standardized test coaching centers for low income students, summer courses for admissions and standardized testing credit and admissions points for students who have little college experience in their family can all be utilized to increase access to higher education for minorities. Using equality of opportunity programs will also cut down on legal proceedings that equality of

outcome policies entail and if structured properly could include lower income whites who suffer the same educational and employment disparities as minorities.

Using Class Based or Historical Disadvantage Plans Instead of Quotas

Using ideas from India and Great Britain, U.S. universities could create a class based preference policy based on historical disadvantage. In India, a mix of factors were considered in determining who should benefit from reservations including income, occupation and family educational experience. In Great Britain, universities are looking at giving preferences to students whose families have little or no history of higher education. Structuring a preference program in this way would shift the focus away from race and allow disadvantaged whites to take advantage of preference policies. This would in turn cut down on backlash of preference policies on racial grounds.

Universities could create a list of historical disadvantages which could include factors like: attending school in a poverty stricken area, or one that has historically low standardized testing scores, level of family wealth, and little or no family history of attending institutes of higher education. This list of historical disadvantages could serve as a system to select students to participate in equality of opportunity programs like pre-college training initiatives or summer courses for standardized testing and admissions credit. Alternatively it could also flag students who should be given preference in admissions, although this would be less stable legally.

University Created Testing Methods

Universities can also adopt their own testing methods to determine if promising candidates who do not have high SAT scores, can do college level work, like those performed by the University of Cape Town with their Alternative Admissions Research Project. The program has been packaged for duplication elsewhere. This could work as a system in addition to accepting SAT scores. Here, universities would develop tests in math and English that compliment the academic level of their own unique universities to determine if the students can do college level work.

Summer Training Courses for Admissions and Standardized Test Credit

Alternatively, the U.S. could adopt some of Great Britain's summer coaching classes where students do college level work and are graded on their projects by professors from the university, especially in subjects they are interested in. This could be difficult given the liberal arts nature of U.S. universities and the fact that in Great Britain students are accepted to a department first before being accepted to the university. However, it could be tailored to U.S. needs. Upon completion of the summer courses, which could be done the summer of the students' junior year, successful students could then earn points towards admissions or gain points added onto their SAT score. Alternatively, because students in the U.S. apply to a great number of colleges and universities, it might be a good idea to even have an independent organization administer the class similar to a Kaplan or Princeton Review type group for a small fee. Then certain colleges and universities accepting points from these programs could be chosen by

students. In reality such programs could be the same as Advanced Placement programs in which students earn credit in high school towards college work. Instead, the points are awarded for admissions or SAT test scores. The same could work with graduate students in specific programs.

Transparency Between U.S. and International Universities on Preference Policies

There were areas where international universities were enacting equality of opportunity programs that were also used by the United States. Programs such as targeted advertising for minority faculty, pre-college training, mentoring, and nurturing minority graduate students into teaching positions were enacted in the U.S. as well as in the countries studied. Even though the same programs are being used, perhaps some transparency is necessary so that the U.S. and other countries can learn best practices from each other. This could be done on a website that could be maintained inexpensively by all concerned. Such an effort was made by the University of Maryland in the U.S., who serves as a clearing house on preference policies by U.S. universities. This program could be enlarged to showcase the experiences of various international universities as well.

Developing A National Consensus on Preference Policies

In order to improve public opinion on affirmative action, the U.S. needs to develop a national consensus on the subject. This idea of developing a national consensus comes from Krishna Tummala (1999) and is integral to success. Although

painful, the U.S. needs to stop shirking away from affirmative action but discuss it openly. Of course having meaningful dialogue is difficult when both sides are reluctant to listen to anything but their own arguments. However, embracing myths about the policy and not squarely facing concerns can be disastrous for the success of the policy. For example, even though South Africa mandates more hiring of faculty, some universities there still do not implement state policy because they don't believe it will serve them well. To get over this disconnect between state and implementer we must have dialogue.

Public Relations and Marketing Campaign for Preference Policies

The U.S. should also consider a public relations campaign for unveiling affirmative action legislation and policy. It should focus on the rationale for the policy, namely avoiding present day discrimination and explain the constitutional nature of programs being enacted. To be successful, the campaign should also look to break apart myths about preference policies in the United States. It should also give examples of how affirmative action works and who it benefits.

This public relations campaign should not only be limited to the general public. In order to create change and diminish discrimination on college campuses, higher education institutions must also be targeted. This could be done through workshops on diversity and discrimination. Such workshops would also work well to explain the nature of preference policies to admissions officers so they understand the law and implement it correctly when creating preference programs of their own.

CONCLUSION

For years, universities depended on equality of outcome style preference programs that used quotas. The programs served the universities well, providing access to higher education for minority students. Now U.S. universities are being forced to find other programs to keep their classrooms and campuses diverse.

Our international neighbors offer many solutions to U.S. policymakers and universities. Equality of opportunity programs that focus on pre-exam training, and summer programs that offer bright students the opportunity to show they can do college level work can be translated into higher standardized testing and admissions points. Class based initiatives focusing on historical disadvantage can help identify students in need of training programs.

When it comes to faculty recruitment, the countries studied and the U.S. engage similar methods. However, all the countries can still engage in discussing best practices when it comes to faculty recruitment and admissions programs. In fact, the countries studied could even benefit from each others initiatives. South Africa, who is struggling to find and hire black faculty can engage in the targeted advertising practices of the U.S. and Great Britain. Or they could create a database of qualified black faculty looking for careers in academia like India did for prospective lower caste faculty.

Creativity is vital here to translate concepts and ideas into successful programs for U.S. universities. Let the ideas presented in this thesis be a starting point for discussion on how equality of opportunity programs can work to create a diverse campus. What is

needed is discourse, patience and the ability to look beyond the vitriolic nature of debate on affirmative action in the United States.

Change occurs whether one likes it or not. U.S. universities must not see the legal changes in affirmative action as simply a negative prospect that leaves them chained to narrow legal interpretations of the law. Instead, universities must look at this period in U.S. affirmative action as an opportunity to start fresh, and create preference policies that have the potential to be legally sound and more successful than quotas.

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