

Affirmative Action Around the World
An Empirical Study

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THOMAS SOWELL

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*Facts are stubborn things, and whatever may be our wishes,
our inclinations, or the dictates of our passions,
they cannot alter the state of facts and evidence.*

—JOHN ADAMS

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Preface

Many — if not most — people who are for or against affirmative action are for or against the *theory* of affirmative action. The factual question of what actually happens as a result of affirmative action policies receives remarkably little attention. Assumptions, beliefs and rationales dominate controversies on this issue in countries around the world. This book addresses the empirical question of just what does and does not happen under affirmative action — and to whose benefit and whose detriment.

Even an observer highly sympathetic to affirmative action in Malaysia noted in passing, “new policies were often put forth without considering what the success or failure of past policies boded for their own prospects.”¹ This was not unique to Malaysia. It has been the rule, rather than the exception, in many countries with affirmative action policies, as well as with other policies. The purpose of this book is to consider the actual consequences of affirmative action.

The experience of more than 30 years of researching and analyzing affirmative action policies in the United States has gone into this book. A considerable part of that period has also included the study of similar policies in other countries. An international perspective on group preferences and quotas en-

ables us to examine the arguments on both sides of this issue with a much larger and more varied sample of evidence.

There are few policies more in need of evidence with which to weigh the heated assertions and counter-assertions of advocates and critics. Merely cutting through the jungle of semantics which surrounds controversies over preferential policies in many countries is a formidable challenge. If this book can contribute to clarity on that issue alone, it will have achieved one of its main goals.

In the course of gathering material for the study of affirmative action policies, under the many different names that these policies have in different countries, I have incurred many debts to scholars, officials, librarians and others in many lands — too many people to mention here by name. But I am grateful to them all. My greatest debt, however, is to the Hoover Institution at Stanford University, which paid for lengthy and costly international trips to gather the information presented here. As with my other writings over the past 15 years, my research assistant Na Liu has contributed not only dedicated efforts but also many insights.

THOMAS SOWELL

The Hoover Institution

Stanford University

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An International Perspective

While controversies rage over “affirmative action” policies in the United States, few Americans seem to notice the existence or relevance of similar policies in other countries around the world. Instead, the arguments pro and con both tend to invoke history and traditions that are distinctively American. Yet group preferences and quotas have existed in other countries with wholly different histories and traditions—and, in some countries, such policies have existed much longer than in the United States.

What can the experiences of these other countries tell us? Are there common patterns, common rationales, common results? Or is the American situation unique?

Ironically, a claim or assumption of national uniqueness is one of the most common patterns found in numerous countries where group preferences and quotas have existed under a variety of names. The special situation of the Maoris in New Zealand, based on the 1840 treaty of Waitangi, is invoked as passionately in defense of preferential treatment there as the unique position of untouchables in India or of blacks in the United States.

Highly disparate rationales have been used in different societies for programs which share very similar features and often

lead to very similar results. Some group preferences have existed for minorities, some for majorities, some for the less fortunate and some for the more fortunate who feel entitled to maintain their existing advantages over other members of the same society. Today, it is programs for the less fortunate which are called affirmative action in the United States or by such other names as “positive discrimination” in Britain and in India, “standardization” in Sri Lanka, “reflecting the federal character of the country” in Nigeria, and “sons of the soil” preferences in Malaysia and Indonesia, as well as in some states in India. Group preferences and quotas have also existed in Israel, China, Australia, Brazil, Fiji, Canada, Pakistan, New Zealand and the Soviet Union and its successor states.¹

Despite how widespread affirmative action programs have become, even the promoters of such programs have seldom been bold enough to proclaim preferences and quotas to be desirable on principle or as permanent features of society. On the contrary, considerable effort has been made to depict such policies as “temporary,” even when in fact these preferences turn out not only to persist but to grow.

Official affirmative action or group preference policies must be distinguished from whatever purely subjective preferences or prejudices may exist among individuals and groups. These subjective feelings may of course influence policies, but the primary focus here is on concrete government policies and their empirical consequences — not on their rationales, hopes, or promises, though these latter considerations will not be wholly ignored. Fundamentally, however, this is a study of what actually happens, rather than a philosophical exploration of issues that have been amply — if not more than amply — explored elsewhere.

LIMITED AND TRANSIENT PREFERENCES

The resurgence of group preferences in societies committed to the equality of individuals before the law has been accompanied by claims not only that these preferences would be temporary, but also that they would be limited, rather than pervasive. That is, these programs would supposedly be limited not only in time but also in scope, with equal treatment policies prevailing outside the limited domain where members of particular groups would be given special help.

In India, for example, a government minister urging lower university admissions standards for untouchables and members of disadvantaged tribes included the proviso that he was recommending “relaxation for admissions and not for passing or grading.”² Just as he was for limiting the scope of preferential treatment, so others were for limiting its duration. As an advocate of reserving certain numbers of jobs for members of specified groups in India said: “Even the staunchest supporters of reservation acceded that it is a transitory provision.”³ It was the leaders of the untouchables themselves who proposed a ten-year cutoff for reservations, in order to forestall political opposition and social conflict.⁴ That was in 1949—and the reservations are still in place today.

Similar reasoning was applied in the United States to both employment and admissions to colleges and universities. Initially, it was proposed that there would be special “outreach” efforts to contact minority individuals with information and encouragement to apply for jobs or college admissions in places where they might not have felt welcome before, but with the proviso that they would not be given special preferences throughout the whole subsequent processes of acceptance and advancement. Much the same rationale appeared in Malaysia—and so did the further extension of preferential treatment which developed despite this rationale:

Although grading is supposed to be without reference to ethnicity, all grades must be submitted to an evaluation review committee having heavy Malay representation. Individual faculty members report various instances when grades were unilaterally raised, apparently for purposes of "ethnic balance."⁵

Similar policies and results have also been achieved in less blatant ways. During the era of the Soviet Union, professors were pressured to give preferential grading to Central Asian students⁶ and what has been called "affirmative grading" has also occurred in the United States, in order to prevent excessive failure rates among minority students admitted under lower academic standards.⁷ In India, such practices have been referred to as "grace marks."⁸ Similar results can be achieved indirectly by providing ethnic studies courses that give easy grades and attract disproportionately the members of one ethnic group. This too is not peculiar to the United States. There are Maori studies programs in New Zealand and special studies for Malays in Singapore.

In the job market as well, the belief that special concerns for particular groups could be confined to an initial stage proved untenable in practice. Initially, the term "affirmative action" arose in the United States from an executive order by President John F. Kennedy, who called for "affirmative action to ensure that the applicants are employed, and that employees are treated during employment without regard to race, color, creed, or national origin."⁹ In short, there were to be no preferences or quotas at all, just a special concern to make sure that those who had been discriminated against in the past would no longer be discriminated against in the future—and that concrete steps should be taken so that all and sundry would be made aware of this.

However, just as academic preferences initially limited in scope continued to expand, so did the concept of affirmative action in the job market. A later executive order by President

Lyndon Johnson in 1968 contained the fateful expressions “goals and timetables” and “representation.” These were not yet full-blown quotas, for the 1968 guidelines referred to “goals and timetables for the prompt achievement of full and equal employment opportunity.” Still later, another executive order in 1970, by President Richard Nixon, spoke of “results-oriented procedures” and, finally, in December 1971, yet another Nixon executive order specified that “goals and timetables” were meant to “increase materially the utilization of minorities and women,” with “underutilization” being spelled out as “having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.” Affirmative action was now a numerical concept, whether called “goals” or “quotas.”

In a very different society and governmental system halfway around the world—in Pakistan—attempts to confine affirmative action policies within their initial limits proved equally futile. Here preferential policies began in 1949 as an explicitly “temporary” measure, to be phased out in five to ten years.¹⁰ The principal beneficiaries were to be the very poor Bengalis of East Pakistan who were “under-represented” in business, the professions and the military, while even the administration of East Pakistan was largely in the hands of West Pakistanis.¹¹ However, the preferential policies continued decades past the initially specified cut-off time by repeated extensions.¹² Even after East Pakistan seceded to become the independent nation of Bangladesh in 1971, the preferential policies in Pakistan had sufficient other political constituencies to continue on after their principal initial intended beneficiaries were gone.

Britain’s Lord Scarman expressed a view widely held by those initiating affirmative action in many countries when he said:

We can and for the present must accept the loading of the law in favour of one group at the expense of others, defending it as

a temporary expedient in the balancing process which has to be undertaken when and where there is social and economic inequality.¹³

This confident pronouncement, however, presupposed a degree of control which has proved illusory in country after country. Moreover, “when and where there is economic inequality” encompasses virtually the entire world and virtually the entire history of the human race. A “temporary” program to eliminate a centuries-old condition is almost a contradiction in terms. Equality of opportunity might be achieved within some feasible span of time, but that is wholly different from eliminating inequalities of results.

Even an approximate equality of “representation” of different groups in different occupations, institutions or income levels has been a very rare — or non-existent — phenomenon, except where such numerical results have been imposed artificially by quotas. As a massive scholarly study of ethnic groups around the world put it, when discussing “proportional representation” of ethnic groups, “few, if any societies have ever approximated this description.”¹⁴ Another international study of multi-ethnic societies referred to “the universality of ethnic inequality” and pointed out that these inequalities are multi-dimensional:

All multi-ethnic societies exhibit a tendency for ethnic groups to engage in different occupations, have different levels (and, often, types) of education, receive different incomes, and occupy a different place in the social hierarchy.”¹⁵

A worldwide study of military forces likewise concluded that “militaries fall far short of mirroring, even roughly, the multi-ethnic societies” from which they come.¹⁶ At one time, nearly half the pilots in the Malaysian air force came from the Chinese minority.¹⁷ In Czarist Russia, 40 percent of the army’s high command came from the German ethnic minority that was

only 1 percent of the country's population.¹⁸ Similar gross disparities in ethnic representation in occupations, industries and institutions can be found in country after country around the world and in century after century.¹⁹ Often those over-represented in high-level occupations have been minorities with no power to exclude others, but simply possessing particular skills. Germans, for example, have predominated among those who created the leading beer companies in the United States, as they created China's famous Tsingtao beer and established breweries in Argentina, Australia, Brazil and other countries. Similarly, Jews have predominated in the manufacturing of clothing in medieval Spain, the Ottoman Empire, Argentina, the United States, and other countries.

In short, the even representation of groups that is taken as a norm is difficult or impossible to find anywhere, while the uneven representation that is regarded as a special deviation to be corrected is pervasive across the most disparate societies. People differ—and have for centuries. It is hard to imagine how they could not differ, given the enormous range of differing historical, cultural, geographic, demographic and other factors shaping the particular skills, habits, and attitudes of different groups. Any “temporary” policy whose duration is defined by the goal of achieving something that has never been achieved before, anywhere in the world, could more fittingly be characterized as eternal.

PREFERRED AND NON-PREFERRED GROUPS

Just as we cannot presuppose continuing control over the scope and duration of preferential policies, so we cannot simply assume what will actually happen to those designated as the preferred group or groups. Neither they nor the non-preferred groups are inert blocks of wood to be moved here and there according to someone else's grand design. Both confront laws and policies as incentives and constraints, not as predestination,

and react in their own ways. These reactions include redesignating themselves, altering their own efforts and attitudes toward achievement, and altering their attitudes toward members of other groups.

Designation and Redesignation

One of the reactions of members of non-preferred groups has been to get themselves redesignated as members of the preferred group. This can be done either individually or collectively.

Some individuals of mixed ancestry who have been regarded and self-identified as members of group *A* may choose to redesignate themselves as members of group *B*, when group *B* is entitled to preferential treatment and members of group *A* are not. In the United States, during the Jim Crow era, some light-skinned blacks simply “passed” as white, in order to escape the legal and social disadvantages that went with being designated black. Later, during the era of affirmative action, whites with traces of American Indian or other minority ancestry likewise redesignated themselves, in order to take advantage of preferential policies for disadvantaged groups. These have included blond-haired and blue-eyed individuals with official papers showing some distant ancestor of another race.

The number of individuals identifying themselves as American Indians in the U.S. Census during the affirmative action era rose at a rate exceeding anyone’s estimates of the biological growth of this population. Moreover, a breakdown of Census data by age cohort shows that the number of American Indians increased over time *in the same age cohort*—a biological impossibility made possible on paper by redesignations of the same individuals. For example, the number of American Indians who were aged 15–19 in 1960 was just under 50,000. But, twenty years later, when these same individuals would be in the age bracket 35–39 years old, there were more than 80,000

American Indians in that cohort.²⁰ In other words, more than 30,000 people in the same cohort who had not designated themselves as American Indians in 1960 now did so in 1980, causing more than a 60 percent increase in the number of American Indians in that cohort.

A similar pattern emerged among the aborigines in Australia. A study in that country found that there was “a 42 percent increase in the size of the Aboriginal population between the 1981 and the 1986 censuses”²¹—virtually a demographic impossibility in five years, except by redesignation of the same individuals with different ethnic labels. As an Australian scholar has noted:

The dramatic increase in numbers has much to do with record keeping, increasing intermarriage and the growing availability of substantial subsidies to people of Aboriginal descent. . . . The definition of ‘Aboriginal’ includes many persons of predominantly non-Aboriginal descent, who might with equal or greater genetic justification designate themselves as non-Aborigines.²²

It was much the same story in China, where, in the 1990s, more than 10 million Chinese proclaimed their ethnic minority status, in order to gain preferential treatment, such as college admissions. Even China’s draconian restrictions on having more than one child did not apply to ethnic minorities as they did to the majority Han Chinese:

Article 44 states that, “in accordance with legal stipulations,” autonomous areas can work out their own family planning measures. As a result, urban minority couples generally may have two children, while urban Han are restricted to one. Rural minorities may have two, three, four or even more children, depending on their ethnicity and location.²³

An official of China’s State Nationality Affairs Committee commented: “Some people would try all means to change their nationality because they wanted to make themselves eligible to

enter a university with lower scores or to stand a better chance than their colleagues when it comes to promotion.” As in other countries, people with mixed ancestry had the option of choosing how to designate themselves. Some “traced their ancestry back hundreds of years to prove minority blood” and claim the benefits.²⁴

Another individual response to preferential policies has been to use someone genuinely of the qualifying ancestry as a “front” for businesses seeking preferential treatment in the awarding of government contracts or other desired benefits. This practice has been so widespread in both Indonesia and Malaysia that it has acquired a name — “Ali-Baba enterprises,” where Ali is the indigenous individual who ostensibly owns the business and is legally entitled to government benefits, while Baba is the non-indigenous person (usually Chinese in these countries) who actually controls the enterprise and essentially pays Ali for the use of his name and ancestry.²⁵ Similar arrangements have been uncovered in the United States and elsewhere. Anti-Semitic policies in Poland during the years between the two World Wars likewise led some Jewish businesses there to operate behind Gentile front men.²⁶ Decades later, under preferential policies in Kenya, Africans served as fronts for Asian-owned businesses, as they likewise served as fronts for Lebanese-owned businesses in Sierra Leone.²⁷

Members of some non-preferred groups can also get themselves redesignated collectively. The Fourteenth Amendment to India’s Constitution, like the Fourteenth Amendment to the Constitution of the United States, provides for equal treatment of individuals but India’s Constitution provides explicit exceptions for benefits to the untouchables, disadvantaged tribal groups outside the Hindu caste system and “other backward classes.” This last proviso, especially, has created opportunities for many other groups to get themselves collectively designated as being among the “other backward classes.” Eventually, this miscellaneous classification provided more individuals with the

coveted rights to preferential treatment than were provided to the members of the untouchable and tribal groups for whom the preferences were created. In 1997, organized efforts were also begun to seek preferential treatment for India's 15 million eunuchs,²⁸ though obviously they were not the descendants of other eunuchs, and so could not inherit historic group disadvantages.

Redesignations of individuals and groups, like the spread of preferences from given groups to other groups, take preferential policies further and further away from the initial rationales on which they were based. No historic sufferings of blacks in the United States can justify preferential benefits to white women or to recently arrived immigrants from Asia or Latin America who happen to be non-white, but whose ancestors obviously never suffered any discrimination in the United States. Similarly, the painful history and continuing oppression of untouchables in India can hardly justify preferential benefits to local majorities in particular states, such as Assam, Maharashtra, and Andhra Pradesh. Yet these local majorities and members of "other backward classes" outnumber the untouchables and are often in a better position to take advantage of the preferences. Thus quotas for government jobs or university admissions have often remained unfilled by untouchables, while this has seldom been the case for members of the "other backward classes."²⁹

The spread of benefits from group to group not only dilutes those benefits—especially when more than half the population of the country becomes entitled to them, as in both India and the United States—it can also make the initial beneficiaries worse off after the terms of the competition are altered. For example, in the United States, where hiring and promotions decisions are subject to review by government agencies investigating discrimination, objective criteria may be used increasingly by employers for legal self-protection, even if the relevance of these criteria to the job is questionable. If these

criteria are met more often by one of the preferred groups than by another — if white women have college degrees more often than black men, for example — then one preferred group may be no better off, on net balance, than if the preferences did not exist. It is conceivable that they can be worse off.

Such a situation is not peculiar to the United States. An official report in India in 1980 noted that the advancement of one preferred group tended to “push back” another, creating “greater tension between structural neighbors in this hierarchy than between the top level and the bottom level.” That continued to be so in the 1990s, with violent clashes in several Indian states being found to be more common among competing poorer groups than between these groups and the more elite castes.³⁰ In 2001, a rally was held in the state of Rajasthan, protesting the inclusion of new groups among the backward classes and demanding “separate fixed quotas for original backwards” so that “new entrants” would not be able to reduce the existing benefits enjoyed by those for whom the preferences were created.³¹ Calls have been made for a “quota within quota” to deal with such situations.³²

Insofar as affirmative action policies are aimed particularly at offsetting existing economic disadvantages, their rationale is undermined when the benefits of these policies go disproportionately to those individuals within the designated groups who are the least disadvantaged — or perhaps are in more favorable positions than members of the country’s general population.

In India’s state of Tamil Nadu, for example, the highest of the so-called “backward classes” legally entitled to preferences, constituting 11 percent of the total “backward classes” population in that state, received almost half of all jobs and university admissions set aside for these classes.³³ In Malaysia, where there are preferences for the indigenous “sons of the soil” majority, Malay students whose families were in the top 17 percent of the income distribution received just over half of all scholarships

awarded to Malays.³⁴ In Sri Lanka, preferential university admissions for people from backward regions of the country appear likewise to have benefited primarily students from affluent families in those regions.³⁵

This should hardly be surprising, nor is it necessarily a matter of corruption. Preferential access to education or jobs is just one factor in getting the education or the job. Obviously, those people who have more of the other factors required are better able to turn preferential access into actual success. Pre-existing prosperity provides more of those other factors.

Those American minority business owners who participate in the preferential program called business "set-asides" under Section 8(a) of the Small Business Act average a personal net worth that is not only higher than the average net worth of the groups they come from, but also higher than the average personal net worth of Americans in general.³⁶ A scholarly study of group preferences in India pointed out that preferences that benefit more fortunate members of less fortunate groups "borrow legitimacy from the national commitment to ameliorate the condition of the lowest," while at the same time "they undermine that commitment by broadcasting a picture of unrestrained preference for those who are not distinctly worse off than non-beneficiaries."³⁷

Just as specifying the scope and duration of affirmative action policies has proven illusory, so has the designation of the beneficiaries in accordance with the rationales of these policies. Both attempts suffer from assuming far more comprehensive knowledge and control than anyone has been able to exercise, in any of the countries in which preferential programs have been instituted. What has also been over-estimated is the extent to which the attitudes resulting from such programs can be assumed to be beneficial to the groups concerned or to the country at large. These attitudes tend to respond to incentives, rather than to rationales.

Incentives

Both preferred and non-preferred groups have modified their own behavior and attitudes in response to preferential policies and the rationales for such policies. While members of the officially preferred groups who already have the complementary factors needed to take the fullest advantage of preferences can do so, those who lack these factors often feel less incentive to acquire them, now that entitlements are available as substitutes for achievements. The development of job skills, for example, may be de-emphasized. As a leader in a campaign for preferential policies in India's state of Hyderabad put it: "Are we not entitled to jobs just because we are not as qualified?"³⁸ A Nigerian likewise wrote of "the tyranny of skills."³⁹ In Malaysia, where group preferences exist for the majority population, "Malay students, who sense that their future is assured, feel less pressure to perform."⁴⁰ In the United States, a study of black colleges found that even those of their students who were planning to continue on to postgraduate study showed little concern about needing to be prepared "because they believe that certain rules would simply be set aside for them."⁴¹

Both preferred and non-preferred groups can slacken their efforts — the former because working to their fullest capacity is unnecessary and the latter because working to their fullest capacity can prove to be futile. After Jamaica gained its independence from British rule, many whites living there no longer bothered to compete for public office because they "felt that the day of the black man had come and questioned why they had to make the effort if the coveted job or the national honor would go to the blacks, despite their qualifications."⁴² While affirmative action policies are often thought of, by advocates and critics alike, as a transfer of benefits from one group to another, there can also be net losses of benefits when both groups do less than their best. What might otherwise be a zero-sum game can thus become a negative-sum game.