

Race and the law in Brazil

The race docket

Should Brazil use discrimination against deprivation?

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BRAZIL'S Supreme Court is wrestling with one of the toughest dilemmas in politics: which is preferable, absolute equality before the law or discrimination in favour of disadvantaged races? This is a surprise, for until recently Brazil liked to see itself as a true melting pot.

Like America, it has significant minorities of blacks, indigenous peoples and European immigrants; it even has the world's biggest populations of Japanese outside Japan and Lebanese anywhere. Unlike Americans, Brazilians rarely classify themselves by race. One survey listed 136 sample skin colours. At the last census, 38% simply said they were mixed.

Although Brazil's races are not separate, they are not equal, either. Blacks earn about half as much as whites, and have five years of education, compared with whites' eight. In June Congress passed a "statute of racial equality"; but it steered clear of positive discrimination.

The trouble is that such policies conflict with Brazil's tradition of legal race-blindness. Since the country abolished slavery in 1888 its laws have been racially neutral. It has had no Jim Crow laws. But nor does it have a legal basis for positive discrimination. Three cases involving such action are before the highest court.

One concerns Rio de Janeiro State University (UERJ), the first big public institution to use racial quotas. In 2002 it began reserving half its places for state-school graduates, and 40% of those were for blacks and Indians. The second involves ProUni, a federal programme set up in 2004 to give poor children scholarships to private universities. The aid is tied to the share of blacks and others, making it the first federal programme with a racial component.

The third case, dealing with federal universities, is probably the most important. About 70 universities have introduced schemes to broaden their student intake, from simple quotas to points-based systems that count race as one factor. The court is hearing a case against the University of Brasília, one of the most prestigious, as a test for the others. This, says Oscar Vilhena Vieira, a lawyer arguing for the quotas, has the widest application and most directly examines whether positive discrimination is constitutional.

The problem facing those in favour of quotas is not only Brazil's preference for racially blind laws, but also the practicalities. In a melting pot, who is black? The problems facing their opponents are that blacks are clearly disadvantaged; that the programmes seem to work (black enrolment shot up at UERJ after quotas came in) and that the constitution does permit positive discrimination for some, like the disabled. Why not blacks? That is for the court to answer.

The Americas

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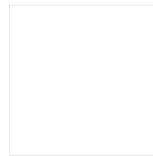
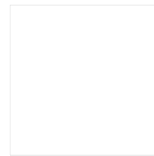
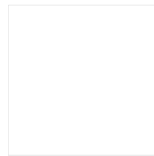
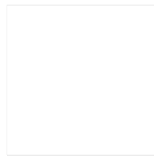
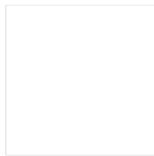
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