



Affirmative Action in Mexico

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This article has the aim of evaluating affirmative action in the Mexican political, institutional and legal context. It is, of course, a simple sketch that can shed some light on this strategy to fight discrimination, which has been intensely discussed in U.S. society in recent decades but in our country has received little or no attention. The important thing about this issue is that Mexican law and some of its most outstanding institutional directives obligate the state to act with affirmative actions, but there is enormous ignorance about the nature of this compensatory strategy, leading to frequent misunderstandings and even obvious errors about the role it plays in the construction of an egalitarian society.

Affirmative action has been almost invisible for jurists, social scientists and political philosophers in Mexico. It seems that many consider it something exclusive to U.S. society and meaningless for our country. However, today it would be difficult to conceive of a project of a society capable of offering its citizens real —not just formal— equal opportunities without reference to some type of preferential treatment for groups traditionally excluded and discriminated against.

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But we should begin by defining the meaning of this much-debated notion. Perhaps we can find the clearest political meaning of affirmative action in President Lyndon B. Johnson's famous speech, "To Fulfill These Rights." There, President Johnson said,

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

Thus, it is not enough to just open the gates of opportunity. All of our citizens must have the ability to walk through those gates.

This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result.¹

Affirmative action, in this sense, presupposes preferential treatment in favor of a specific social group that has suffered discrimination and limitations of its fundamental rights and opportunities. The argument for affirmative action maintains that given the real social conditions in which discriminated persons live, they bear the weight of a series of undeserved disadvantages that regularly lead to the blockage of their access to fundamental rights and a limitation on their taking advantage of opportunities usually available to the rest of the population. Equality can only be reached if it includes the idea of special "compensatory measures" aimed at these groups and promoted and/or supervised and stimulated by the state.

Equality as a social goal demands, then, that in some cases society apply positive, differentiated treatment that promotes the social integration of persons who have been discriminated against and that allows them to take advantage of those rights and opportunities that those who do not suffer from discrimination regularly use.

We should take into account that the ability to exercise rights and take advantage of opportunities offered by a society is not the same for all. For certain groups, prejudices and stigmas cultivated for many years against them make for a real disadvantage. This means

Article 2 of the Constitution
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equal opportunities for indigenous people and to eliminate
any discriminatory practices against them.

that members of those groups experience *de facto* inequality of origin which they are not morally responsible for and which they cannot overcome by a mere act of will. This is because it is rooted in the customs, laws, institutions, culture, models for success, standards of beauty and other aspects of collective life that define the relationships among social groups.

Taking the world as it is and not as an ideal model in which everyone has equal opportunities, what the historic disadvantage of these groups demands is a "compensation" that allows them to balance a situation of competitive weakness that they have suffered from through time. This compensation has to consist of a strategy to favor equality in its constituent sense, which would imply accepting preferential treatment to temporarily favor those who belong to

the historically discriminated against groups.

Affirmative action has at least two definitions: a very broad one and another, more concrete, limited one. In its broadest sense, affirmative action consists of "the fundamental idea of taking the proactive steps necessary to dismantle prejudice."² Although the term "affirmative action" only began to be used in 1961 in President John F. Kennedy's Executive Order 10925, the idea of acting pro-actively in favor of the social integration of the black population can be traced back to 1953, when President Harry S. Truman's Committee

on Contract Compliance urged, "to act positively and affirmatively to implement the policy of nondiscrimination in its functions of placement counseling, occupational analysis and industrial services, labor market information, and community participation in employment services."³

In this broad sense, affirmative action can be understood as government and even private sector promotion of social inclusion of a group (in the U.S. case, the black population, traditionally discriminated against and excluded). This social inclusion can be achieved through different kinds of measures whose ultimate aim is real equal opportunities.

The other meaning of affirmative action is more restricted, although very important, and is linked to specific measures so groups like women and ethnic

minorities can be represented in a given society's higher, better paid positions in education and employment. Although with this specific form of affirmative action, a direct relationship cannot be established between the benefit to some individuals who are members of the discriminated group and the real compensation experienced by the group as a whole, the goal is to create social leaders among the persons benefited, capable of functioning as examples of social achievement for the rest of the members of their group.

Affirmative action can be differentiated from equal opportunities by the

work as a mechanism that “reserves” a pre-established percentage of slots in jobs or enrollment to be assigned to members of gender or racial minorities. Thus, for example, in the 1970s many U.S. universities opened up dual admissions processes with admissions standards of one kind for white students and another for minority students like blacks or Latinos. Similarly, German legislation establishes job quotas for women in order to give them more representation in decision-making positions.

Perhaps the newest kind of affirmative action is the introduction of obli-

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meaning the latter has taken on in the traditional discourse of the welfare state; that is, equal opportunities is not defined by belonging to a group that has been discriminated against, while in affirmative action, it is essential.

“Equal opportunity” laws and policies require that individuals be judged on their qualifications as individuals, *without regard* to race, sex, age, etc. “Affirmative action” requires that they be judged *with regard* to such group membership, receiving preferential or compensatory treatment in some cases to achieve a more proportional “representation” in various institutions and occupations.⁴

In its restricted meaning, affirmative action is expressed through a policy of educational or job “quotas” that

gatory quotas in the area of political representation. Having recognized the under-representation of women in the political structure, some European nations have established gender quotas that guarantee a minimum of representation of women in important political positions.

Whether the general conception of affirmative action or its concrete expression identified with quotas is used, it is certainly always put forward as a temporary strategy that should disappear as soon as the disadvantageous conditions that gave rise to it have disappeared. The temporary nature of affirmative action reaffirms its link to the concept of equality, since this compensatory strategy is not seen as an end in itself, but as a means to achieve the desirable objective of equal treatment and opportunities for all members of society.

In the Mexican case, affirmative action measures based on its general meaning are the most common. On the highest legal level, they can be found in Article 2 of the Constitution, which guarantees the fundamental rights, the preservation of the identity and the possibilities for development of indigenous communities. This article establishes compensatory measures to promote equal opportunities for indigenous people and to eliminate any discriminatory practice against them. It points to the obligation of the federal government, the states and the municipalities of establishing institutions and the necessary policies to guarantee the exercise of indigenous rights and the overall development of their towns and communities with the aim of fostering regional development in indigenous areas, strengthening local economies and improving living conditions of their peoples. It seeks to guarantee and increase educational levels, favoring bilingual and intercultural education, literacy, lowering the drop-out rate in basic education, improving training for production and fostering high school and higher education. It also mandates establishing a scholarship system for indigenous students on all levels, ensuring effective access to health care through broadening out national health system coverage; improving conditions in indigenous communities and in their spaces for community activities and recreation through actions that facilitate access to public and private funding for building and improving housing; broadening out the communications network that allows for the integration of communities into society through building more roads, highways and telecommunications facilities; supporting productive activities and sustainable development of indige-

nous communities through actions that make it possible to ensure sufficient income. Finally, Article 2 establishes affirmative actions in their general sense to favor indigenous women, boys and girls, students and migrants.

The National Commission for the Development of Indigenous Peoples Law translates a large part of this mandate into institutional criteria and public policy actions; it can be said, then, that it is the legislation that tries to implement the affirmative actions set out in the Constitution. Similar actions, but in favor of the preservation of indigenous culture and languages can be found in the General Law on Indigenous Peoples' Linguistic Rights.

General affirmative action stipulations can also be found in the Federal Law to Prevent and Eliminate Discrimination. It establishes a series of "positive, compensatory measures to favor equal opportunities," seeking to promote real equal opportunities for women, indigenous, senior citizens, little boys and little girls and the differently abled. In this case, the measures attempt to make the principle of non-discrimination lasting on the basis of stimulating and compensating these groups due to the historic discrimination they have suffered. Something similar can be found in the National Women's Institute Law, which promotes a gender focus for development, the design of public policies and the development of government programs with the aim of achieving "gender equality."

Other general measures of affirmative action favoring groups like women, indigenous or the differently abled can be found in the General Law on Health, the General Law on Social Development and the General Law on Education. More specifically, the Federal Crimi-

nal Code explicitly stipulates that indigenous who do not speak Spanish at all or do not speak it well must have translators during their trials or that their system of usage and customs must be taken into account when trying their cases and sentencing.

Measures of affirmative action in its second meaning, however, obligating the authorities to respect group quotas for important positions, are much less prevalent. In this case, the National Women's Institute Law stipulates that its Board of Governors can only have women members. Perhaps the most important legislative provision is found in the Federal Code of Elector-

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al Institutions and Procedures, which obligates political parties running in federal elections to ensure that no more than 70 percent of their candidates for full (not alternate) membership in the Chamber of Deputies be of the same gender. Under today's conditions, this means that 30 percent of the each party's candidates for deputy must be women.

All these legal norms, the institutional actions that stem from them and the advantages and conflicts that their enforcement may cause have been studied very little. For example, the way in which the legal framing of general affirmative actions is frequently ignored

by the government offices mandated to implement them remains to be analyzed, specifically whether it is due to scarce resources, because they are too general and how to implement them is not clear, or because there are no clear penalties for not implementing them.

By contrast, affirmative actions such as quotas, although they bring with them other kinds of problems, like the accusation of fostering reverse discrimination, have the advantage of being both obligatory and clear and concise. They are obligations that are difficult to avoid and express a model of preferential treatment that could be useful for making the general affirmative actions more precise and for fostering new measures of the same kind.

In any case, the debate about affirmative action has barely begun in Mexico. We would be doing very little toward its felicitous conclusion if we judged it as an issue of minorities and privileges, when actually it involves the access to fundamental rights for the citizenry and, as President Johnson said, equality as a fact and a result. **MM**

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¹ President Johnson delivered this speech at Howard University on June 4, 1965.

² Manning Marable, "Staying on the Path to Racial Equality," George E. Curry, ed., *The Affirmative Action Debate* (Cambridge, Mass.: Perseus Publishing, 1996), p. 5.

³ *Ibid.*, p. 5.

⁴ Thomas Sowell, "From Equal Opportunity to Affirmative Action," Francis J. Beckwith and Todd E. Jones, eds., *Affirmative Action: Social Justice or Reverse Discrimination?* (Amherst, New York: Prometheus Books, 1997), p. 100.