QUOTAS FROM THE PERSPECTIVE OF EQUALITY, EQUITY AND JURIDICAL PLURALISM

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Abstract

This work aims to conceptualize formal equality and substantial (material) equality as the guiding principles for the formulation of affirmative action policies -- Quota Law (n. 12.711/2012). It differentiates between two types of equalities: formal and substantial, taking into account that the differences serve to the understanding of Quota Law's matter, allowing to assert that substantial equality is the one that best assures equity, the strengthening of human rights and the admission of a population historically excluded from public higher education in Brazil. In what concerns affirmative action, its political disposition and temporary character expose the foundations of Compensatory and Distributive Theories and the Principles of Legal Pluralism and Human Dignity. Accordingly, from an interdisciplinary perspective, the text points that today's quotas, despite a series of criticisms and oppositions, have mainly allowed the admission of black and indigenous students in federal institutions of higher education.

Keywords: Substantial equality. Equity. Juridical pluralism. Quota Law. Higher education.

1. Introduction

In 2012 there were major changes in the admission process for candidates in the 296 federal public institutions of higher education (IFES in the acronym in Portuguese) in Brazil. Since August 2012, all institutions must reserve spaces to public school students, in accordance with income and ethnical-racial criteria, due to the Law n. 12.711/2012 (Quota Law). Right after that law, the Decree n. 7.824/2012 and the Inter-ministerial Administrative Rule n. 18/2012 set the rules for the application of the Quota Law and the documents used to prove the criteria. The main objective of those rules is to ensure equality in accordance with the 5th article of the Federative Republic of Brazil 1988 Constitution (CF/1988).

This study is, therefore, about that affirmative action policy - the Quota Law. In view of the comprehensiveness and results of its implementation in Brazilian IFES, the study starts presenting, conceptualizing and differentiating formal and substantial (or material) equality, indicating that it is by means of substantial (material) equality that one can estimate the scope of the article 205 (education, which is the right of all and a duty of the State and of the family, shall be promoted and fostered with the cooperation of society) and of the 5th article of the CF/1988. In the reflection on substantial equality, it was also necessary to examine its conceptual relationship with another guiding principle of affirmative actions -- equity --, in order to discuss the right to public higher education, because the equity principle goes beyond

making justice and amending historical inequalities. In the second part, the study situates the affirmative action policy in the Compensatory and Distributive Theories, as well as in the Theory of the Principles of Juridical Pluralism and Human Dignity.

The final part of the text explains how the Quota Law operates, and the legislations related to that policy; it also brings some data from the Summary of Social Indicators by IBGE, from the Ministries of Education and Justice, and from the Secretariat for the Promotion of Racial Equality Policies about the admission of black and indigenous students in IFES that adhered to the Quota Law. Those data, which were used in the investigative method of qualitative approach, helped to produce the research results. The final numbers corroborate that the Law n. 12.711/2012, in spite of being controversial and drawing various criticisms due to the misunderstanding of its provisions and/or contents or due to opposite ideological issues, has been ensuring the admission of biracial, low-income and, mainly, black and indigenous students in Brazilian IFES.

2. Formal and Substantial (Material) Equalities in the Formulation of the Affirmative Action Policy -- Quota Law

The concept of equality, as a fundamental juridical category, emerged with the American and French Revolutions. The Virginia Declaration of Rights of 1776 mentions in Section 1 that "all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

The Virginia Declaration of Rights influenced the elaboration in 1789 of the Declaration of Rights of Man and of the Citizen in France. The French Revolution, based on liberty, equality and fraternity, would pave the way for the assurance and maintenance of individual and social rights. The 1st article of the French declaration also stresses that men are born and remain free and equal in rights. Social distinctions can be founded only on the common good.

According to Gomes (2005, p. 46), the specific objective of that juridical formulation was "to extinguish the privileges of the *ancien régime*, putting an end to distinctions and discriminations based on ancestry, on rank and on the strict and immutable social hierarchism per classes *(classement par ordre)*"; that classic conception of juridical equality, which is merely formal, became a key idea of the constitutionalism that flourished in the 19th century and kept a successful trajectory for most of the 20th century.

The ideals of the French Revolution, after it broke away from the old monarchic regime led to the formulation of rights on the basis of constitutionalism. Gomes (2005, p. 47) stresses that, although this is an important fact in history, "that equality referred to in the Declaration of Rights of Man and of the Citizen (1789) is only a formal juridical equality."

Formal equality is the one previously established in law and assured in the legal system, as in the case of the Constitution. That is the sort of equality that gives the right to life, freedom, property, and safety -- examples of individual and collective rights that are assured to all men and women by the law (5th article,

CF/88). If men and women are equal and have the same rights and duties in accordance with the legal system, they should not suffer distinctions of rights in terms of religion, race, color, gender, or of other nature. Thus, the formalist equality that guarantees, in accordance with the rigor of the law, what is set in the law is not the same that guarantees a concrete real equality.

One can say that, once this is pure and simple juridical formalism, it does not have the same meaning of the praxis that assure the right. So it is not enough to declare that all people are equal by nature. That statement can only have practical results if society organizes in a way so that no one is treated as superior or inferior since birth. "It is necessary to assure to all people, in an equal way, the opportunity to live with the family, to attend school, to have adequate food and health care, to choose a worthy work, to have access to goods and services, to participate in public life, and to be respected by fellow men" (DALLARI, 2001, p. 35).

The mechanism called substantial or material equality is used to make that equality extrapolate formalism. It means that, although the equality concept has emerged from French and American Revolutions, nowadays there are attempts to consolidate the substantial or material equality because it is far from that formal equality based on the liberal thought from the 19th century. In other words, "material equality is a way of thinking and assessing concrete inequalities in society, in order to give equal treatment to the peers and unequal to non peers" (GOMES, 2005, p. 47).

Although it seems complex, treating the peers and non peers in unequal ways is what explains the immanent contents in substantial or material equality. From the treatment given to peers with inequality or to non peers with equality, with such semantic operation of mere contrariety it is hard to obtain a real equality among parties. According to Gomes (2005, p. 47), what we have here is the product of the social rule of law because "the substantial or material equality requires redoubled attention on the part of the legislator and those who apply the law to a wide range of individual and collective situations", in order to prevent that the liberal dogma of formal equality impedes or hinders the protection and defense of the interests of people who are socially frail and destitute. Therefore, equality, when seen as an unreal, inaccessible or incomprehensible premise, can reinforce the idea that, in the letter of the law (formal equality), the equality principle is only a symbolic narrative. Its symbolic character, when reinforced by society, makes it even harder to understand why peers are treated equally, and non peers in an unequal way; which does not grant its rightful character to have rights, but only juridical formality.

Boaventura de Souza Santos (2003, p. 56) makes an analysis that complements the idea of equality constitutionally defined as a right to have rights. For the sociologist, "we have the right to be equal when our difference makes us inferior; and we have the right to be different when our equality makes us lose our characteristics". So there is a need for an equality that recognizes the differences and for a difference that does not produce, foster or reproduce inequalities. Consequently, fighting differences is not an easy task, but a daily toil, because it goes beyond the pure and simple enforcement of the law, once the law must be applied with justice aiming at equity as a fundamental principle of the right to have rights.

The term "equity" is derived from "aequitas" or "aequus" in Latin, which mean equal, equitable. There are various definitions for the word "equity", but in the legal context it is related to juridical-philosophical conceptions. For Lopes (1959, p. 62), equity has three functions in the juridical field: elaboration of laws;

application of law; and interpretation of rules.

In the Brazilian legal system there are two lines of interpretation of the concept of equity: the first one, with a meaning corresponding to that of justice; the second, as a natural intrinsic right that is already born with the individuals.

Equity, with a meaning corresponding to that of justice, refers to absolute or ideal justice, while with a meaning of *ius naturale* it refers to the fair way to apply or interpret the law. But equity and justice do not have the same meaning because equity is the road, the instrument, the way to apply or make that justice takes place.

According to Mario de la Cueva (1954, p. 10) "justice is seen as formalized written law, while equity would be the real practical application of that justice. In a general sense, perhaps the rule is neither adequate nor fair in certain cases". It is exactly in this point that equity is necessary to ratify what is amalgamated in the specific form of the law which, due to its generalist character, cannot be applied in the practice for the effectuation of justice. Thus, equity is the justice far from the written law. Cueva (1975, p. 12) defines equity as *"la justicia para el hombre real"* [justice for the real man], as if the written rules were for human subjectivity, and equity for the transition of those subjective rules, in order to reach the reality of man and a concrete justice.

In this context, when the Brazilian Constitution (article 205, 1988) sets that all people have the right to education, for example, the text intends to promote justice in the form of a written law, but it does not guarantee the concrete effectuation of that rule for all Brazilian citizens. If education is a human right, it is certainly a right concerning the existential minimum, core of the human dignity principle, but to consummate as a right the equality provided by the law and the equity principle must be materialized. So, as an affirmative action policy, the Quota Law has become a strong mechanism of social inclusiveness adopted by federal public institutions, "aiming at the achievement of a universally recognized constitutional objective -- the effective equality of opportunities to which all human beings have the right" (GOMES, 2001, p. 41). Consequently, an affirmative action guided by substantive equality and equity.

3 Affirmative Action, the Compensatory and Distributive Theories and the Theory of the Principles of Juridical Pluralism and Human Dignity

As for the access to free higher education and the Brazilian legislation, it is worthy remembering the premise in the article 13 of the Decree n. 591/1992 of the International Covenant on Economic, Social and Cultural Rights. It mentions that the States parties of that covenant "recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to effectively participate in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace". At last, this text stands out: "c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education".

This means that since 1988 with the federal Constitution, confirmed by means of the Decree nº 591/1992 and other documents not mentioned here, higher education in Brazil should be accessible to everyone and gradually offered for free. Idealistically, that decree would achieve the substantial equality principle, but there is a part that instigates reflection: "on the basis of capacity". It seems the legislator made a mistake in the jurisdictional text or linked higher education purposely with the meritocratic admission system, taking into account only the individual capacity. As a result, such public policy could not amend the enduring inequalities related to the admission in higher education in Brazil due to social injustices, mainly those against black, indigenous, biracial and low-income segments of the population. Thus, formal equality did not follow its own principles and the country is still out of phase with the ideal level of completion of higher education on the part of those segments of the population.

In Gomes' conception (2005, p. 48), affirmative actions are "social policies that represent mere attempts to achieve substantial or material equality; they are called "affirmative action" or, in the European law terminology, "positive discrimination" or "positive action".

Some authors reject the term "positive discrimination" because the word "discrimination" has a negative connotation and can create misunderstanding. Brito Filho (2016, p. 63) defends the use of the term "affirmative action" "for the wide possibility to be differentiated from the negative action that is discrimination".

The terms "positive discrimination" and "inverse discrimination" used by some authors cause an additional tension, mainly within the legal scope, because of many claims about the unconstitutionality of laws and rules that promote any sort of differentiation or benefits for a particular group. To Piovesan (2005, p. 43), "the difference used in the past to exterminate and destroy various groups annihilated rights" but, today, that difference is used to promote rights, protecting the most vulnerable groups.

According to Gabi Wucher (2000, p. 54), affirmative actions are mechanisms to "ensure to people belonging to vulnerable groups an identical position to that of other members of society, thus providing a certain equality in the exercise of rights". Flávia Piovesan (2005, p. 44) defends that "the affirmative actions constitute special temporary measures to amend a discriminating past and accelerating the equality process, with the achievement of substantive equality on the part of socially vulnerable groups", such as ethnical and racial minorities, among others.

In Villas-Bôas' conception (2003, p. 58), affirmative actions are "a set of special temporary measures taken or determined by the State with the specific objective to eliminate inequalities accumulated in the course of history". On the other hand, Bergmann (1996, p. 7) stresses in a more incisive way that affirmative action is a planning and actions "to promote the representation of certain kinds of people -- those who belong to groups which have been subordinated or excluded -- in certain jobs or schools".

Differently from other authors, Bergmann (1996, p. 7) directly approaches the critical point of affirmative actions -- the opportunities, the representativeness of those "subordinated or excluded". He also remembers a reality known by all, that is, the main executive positions are occupied by white people, and whites make up the great majority in universities.

According to Joaquim B. Barbosa Gomes (2001, p. 22), affirmative actions are "a set of public and private policies of compulsory, facultative or voluntary character conceived to fight discrimination against certain

races, genders and nationalities". They can be useful to amend current effects of discrimination occurred in the past, aiming at the achievement of the ideal of effective equality in the access to fundamental goods, such as education and jobs.

Rocha (1996, p. 289) emphasizes that affirmative action requires transformative actions on the part of the State, leading to "the truth of the equality principle, so that equality, which is ensured by the Brazilian Constitution as a fundamental right of all people, prevails". From that perspective, affirmative actions are public policies promoted by the State to eradicate the existing differences among the members of society, in order to provide an isonomic treatment in accordance with what is set in the Brazilian Constitution. Affirmative actions apply to several segments, in the protection of minorities' rights, in the fight against discrimination, to groups under social risk or in a vulnerable state, and in the search for equity. Once its objective is met, affirmative action policy ceases to be applied. Piovesan (2005, p. 53) mentions that, as a mechanism to amend damages suffered by certain groups, affirmative actions should have a specific term. Incongruities in issues as legality, foundations and justifications are pointed out even by those who support the use of that political measure. Today, various theoretical lines defend or criticize the application of affirmative actions as social policies. The main theories about affirmative actions are the Compensatory Theory, the Distributive Theory and the Theory of the Principles of Juridical Pluralism and Human Dignity.

The Compensatory Theory discusses the damages and hardships imposed to certain groups in the course of their history, for example, black and indigenous peoples in Brazil. From that perspective, Cruz (2003, p. 178) says that "the affirmative actions would be indemnifications paid to the current descendants of countless generations of victims of racism and discrimination, who suffered under all forms of their rights' violations". Here, the affirmative action policy is the measure used to compensate damages caused in the course of history to a group that suffered violations of their rights.

A point that draws many criticisms and debates in the line of the Compensatory Theory is identifying who are exactly those who deserve amends or those who have the right to that historical compensation. Other criticism of affirmative action policies of compensatory nature refers to those who believe that only public policies would be enough to solve education inequality problems in Brazil.

Another argumentative line about affirmative action is the Distributive Theory. According to it, the most vulnerable parties in the system have the right to vindicate. Rodrigues (2010, p. 210) states that "certain advantages, benefits or even the access to particular positions, to which they would naturally have access if the existing social conditions were ruled by effective justice".

According to Cruz (2003, p. 175-177), the Distributive Theory has an utilitarian focus, so it proposes to discuss a new social model whose ideal would increase the number of individuals of certain races or groups in some positions and professions. Montoro (2000, p. 92) mentions that "the distributive justice imposes to authorities a strict duty, *debitum legale*, to give all members of the community an equal participation in the common good, granting them the right to demand that participation".

There are also criticisms of the Distributive Theory, which, according to many authors, creates legal and illegal discriminations. For Cruz (2003, p. 137), "discrimination with implements of political, mainly subjective judgments". Another point criticized is the position of the State as guarantor of the distributive policy.

Arroyo (2010, p. 1387) defends that the affirmative distributive actions "intend to compensate needs and inequalities by means of the distribution of public services". However, he stresses that this kind of affirmative action considers the needy as a problem and presents the policies as a solution.

Although he is not in favor of affirmative action and distributive policies, Kaufmann (2007, p. 268) says that a redistributive policy of the riches is necessary "to mitigate inequalities between classes and to extend the access to public health and education systems".

It is incontrovertible that Brazil urgently needs a fair and equitable distributive policy of its riches. So Kaufmann, in discussing about that kind of policy, emphasizes that redistributing means to distribute something again, which raises the following question: has that richness ever been distributed in Brazil? After all, redistribution implies a previous distribution. For some authors, that richness, although in a poor, unequal or unfair way, was somehow "distributed" in the country. However, since distributing means allotting, dividing, sharing, apportioning, it is clear that such distribution has never occurred in Brazil. Due to that conflict, the Distributive Theory passed by various ramifications, and the term "distributive", by several interpretations and understandings like those by American philosophers Ronald Dworkin (1995), founder of the Theory of Resources Equality, and John Rawls, author of the Theory of Distributive Justice (2000).

Philosopher John Rawls formulates four different sorts of distributive justice in his theory. The first one is the Feudal or Castes System, which consists in a hierarchy already established before people are born, which exclusively depends on what kind of family -- rich and successful or poor, servile and of an inferior caste – a person belongs to. The second is the Libertarian, which is ruled by the free market of global and capitalist character, and whose division of resources and opportunities is merely based on formal right. The third one, the Meritocratic, is also based on free market principles, with fair equalities according to individual merit; the fourth, the Equalitarian, is guided by the difference principle, but also based on liberal equalitarianism.

For Rawl's distributive justice, society needs a social contract celebrated under the veil of ignorance, in which fair principles for all would be established as a hypothetical agreement in an original position of equity. Thus, for Rawls (2000), people should accept their condition from birth and share their fate with their fellow men, only taking advantage of chances and social circumstances when it leads to the common good. It is hard to imagine that justice put into practice in a State forged under the liberal basis of a capitalist economy, where, as Sandel (1999, p. 194) interprets Rawls, "the most benefited by nature, no matter who they are, shall enjoy their good luck only in ways that improve the situation of the least favored".

Contemporary ideas of distributive justice lead to the understanding that the State is the body in charge of providing a minimum material welfare to all its citizens. In fact, the main influences and thinkers of the Distributive Theory, which defends the distribution of goods and opportunities to people, do not conform to the isonomic equitable model.

Finally, the last line of thinking chosen for the approach to the affirmative action is the Theory of the Principles of Juridical Pluralism and Human Dignity. That theory proposes a reflection on the other theories previously presented, but having social justice as a fundamental element for the legitimacy of human rights in the discussions and pointing out that the compensatory and distributive theories do not comprehend the

essential human rights, so they cannot achieve the basic foundations in the purpose of affirmative actions: substantial equality and social equity.

According to Cruz (2003, p. 182-183), "the need for recognition of a pluralistic and democratic society requires a formal, material and, mainly, procedurally equalitarian participation concerning the state treatment and its social division of opportunities". The contents of this state treatment in force have the characteristics of a social rule of law aimed at the defense of human dignity. The welfare state should ideally require the recognition of identities, differences and plurality. According to Flávia Piovesan (2005, p. 43), that recognition allows "to achieve the material equality, corresponding to the ideal of justice related to the recognition of identities (equality guided by criteria such as gender, sexual orientation, age, ethnicity, and others)".

That positive state intervention "aims at ensuring concrete actions, measures and public policies to recognize, protect and formally guarantee the instruments instituted by the legal system" (TABORDA, 2018, p. 257).

The most important principle established in the Brazilian legal system is that of human dignity, which obliges the State to respect, protect, guarantee and make it feasible that all people can live with dignity. Human dignity is an intrinsic characteristic to all people, that is, it belongs to them even before birth. According to Sarlet (2004), the human dignity principle involves a series of fundamental rights and duties, and the set of those rights is designated to ensure that a person is not subject to any kind of atrocious or degrading act, as well as to guarantee to all people who are naturally endowed with that dignity the minimum conditions for a worthy life.

Gustavo Tepedino (1999) adds that human dignity as a foundation of the Federative Republic of Brazil must be associated to the fundamental objective of eradicating poverty and marginalization, thus reducing the existing social inequalities and fostering the unrestricted respect to all men and women, in accordance with the terms of the Constitution (1988).

In this field is the principle of juridical pluralism, another controversial issue, mainly within the ambit of law.

For René Dellagnezze (2015), juridical pluralism is a phenomenon derived from human complexity. He affirms that pluralism has origins in the old unitary and centralist conception of law. Therefore, it comes to interpret the law mainly based on social realities, with the huge complexity and peculiar characteristics that make up the juridical universe where it immerses. Various authors characterize the juridical pluralism according to the guiding principle of law by means of the minorities; others see pluralism as a way of participation of society in juridical issues; some consider it an alternative to material isonomy.

To understand juridical pluralism in depth is necessary to correlate the idea to the Declaration of the Rights of Man and of the Citizen, which is the origin of the pluralistic logic. Thus, as a foundation for the affirmative actions reinforced by the Universal Declaration of Human Rights (1948), ratified by the Convention n. 111 of the International Labor Organization (ILO, 1958) and the Durban Declaration in 2001, those documents would change the law, universalizing various issues that would come to be ruled by a global ideal of fundamental human rights aimed at human dignity.

In this context, affirmative action policies emerge in Brazil after a series of demands from social

movements, mainly those regarding education or led by blacks, indigenous, women, and landless rural workers, among others. However, after the promulgation of the 1988 Constitution it was possible to take the first steps to elaborate affirmative action policies in the country, although some of them took long to be put into practice. Only in 2009, when Brazil and other 187 nations participated in the Durban Review Conference, it officially committed itself to implement policies to fight racism and promote racial equality. Thus, the implementation of affirmative action policies related to the access of black, indigenous and poor segments was also widely debated, generating a lot of conflict and polemics. For many years, various draft laws concerning this topic were presented at the House of Representatives and at the Senate, but were rejected, deferred or caught in a bureaucratic ritual, so that they could not be properly analyzed by the commissions. A clear example of those cases is the Quota Law, which took over a decade since the initial draft law n. 73 of 1999 until its approval as the law n. 12.711 in 2012.

3.1 The application and social indicators of racial quotas in Brazil

The law n. 12.711, also known as Quota Law, which was approved and put into practice in August 29, 2012 and has legal effect until 2022, aimed to facilitate the access of black, indigenous, biracial, disabled or low-income students to public higher education. That law guarantees the reservation of 50% of the enrollments per course of study and shift in federal universities and federal institutes of Education, Science and Technology, linked to the Ministry of Education, for students coming from regular courses in public high school or youth and adult education. The sole paragraph of the law also sets that half (or 50%) of that minimum percentage of spaces is for students from households with income equal or inferior to 1.5 minimum wage per capita. The law also determines that part of the spaces must be occupied by a proportion at least equal to the respective proportion of black, biracial and indigenous students in the population in the unit of the Federation where the institution is, according to the most recent census of the Brazilian Institute of Geography and Statistics - IBGE. It's worth noting that the law establishes solely the self-declaration method to discern who is biracial, black or indigenous. If the spaces are not occupied in accordance with the defined criteria, the law establishes that the remaining spaces are occupied by students who have graduated in public high schools. The 4th and 5th articles are on the same topic, but refer to federal institutions that offer associate degrees at high school level. The follow-up and evaluation of the program specified in the law must be in charge of the Ministry of Education and the Special Secretariat for the Promotion of Racial Equality Policies, of the Presidency of the Republic, although the National Indian Foundation (Funai) must also be heard. The remaining spaces (50%) are open for competition by means of entry exams or the National High School Exam (Enem).

Racial quotas are affirmative policies of social inclusiveness for groups of a certain origin in an environment where, for different historical issues, they are generally excluded. The proposal of racial quotas in universities, for example, intends to give historically neglected groups, such as blacks and indigenous peoples, more chances of access, so that they have future conditions of equality.

According to data of the National Secretariat for the Promotion of Racial Equality Policies (SEPPIR, 2016) of the Human Rights Ministry, between 2013 and 2015, the affirmative quota policy ensured the access of

approximately 150,000 black students to institutions of higher education throughout the country. For the Secretariat, the goal was to achieve that percentage of 50% gradually, reaching half of the spaces reserved until the end of 2016 (SEPPIR, 2016). However, numbers released show that the objectives were met before it was expected, and in 2013 the percentage of spaces for racial quota beneficiaries was 33%, a rate that increased 40% in 2014 (MEC, 2017).

According to the Ministry of Education (MEC), in 1997 the percentage of black youth, aged between 18 and 24, who were attending or have completed higher education was 1.8%, while for biracial people the percentage was 2.2%. In 2013 those percentages had already rose to 8.8% and 11%, respectively. The quantity of black youth who have entered higher education has also increased in a similar proportion: in 2013 blacks occupied 50,937 spaces, and in 2014, 60,731. The percentage of blacks in 2013 was 17.25%. The number rose to 21.51% in 2014. According to the Higher Education Census, elaborated by the National Institute of Educational Studies and Research Anísio Teixeira (Inep, 2011), "11% out of the total of 8 million enrollments were made by black or biracial students. In 2016, the percentage of blacks enrolled had already risen to 30%".

Due to that affirmative action policy, the Quota Law, the chance to get a graduation certificate has almost quadruplicated for the black population in recent decades in Brazil. According to Inocêncio (2018), who is a member of the Afro-Brazilian Studies Nucleus at the University of Brasília (UnB), a pioneer in the adoption of racial quotas, that growth is significant, but he ponders that it is necessary to think of other policies to ensure less disparity in education for blacks and whites. For the researcher,

> "Before talking about racial equality, we must think of racial equity, which requires specific policies. If the quota policy is not enough, although it reduces the gap between whites and blacks, we must have other policies. It is unbelievable that this country persists, 130 years after the abolition of slavery, with such a huge gap between blacks and whites" (INOCÊNCIO, 2018).

The Summary of Social Indicators by IBGE (2016) shows that, in spite of the growing proportion of black and biracial students in higher education due to the application of quotas, whites are still the majority. The difficult access of black and indigenous students to higher education reflects the hindrances they have always met in education and school inclusiveness, compared with the group of whites that presents much higher rates. According to the IBGE (2016), at the age when blacks should be attending higher education, 53.2% of them are still in the elementary or high school, while for whites that number is 29.1%.

In the National Household Sample Survey (PNAD, 2016), the numbers of whites and blacks/biracial evidence the disparities between them when it comes to completion of higher education.

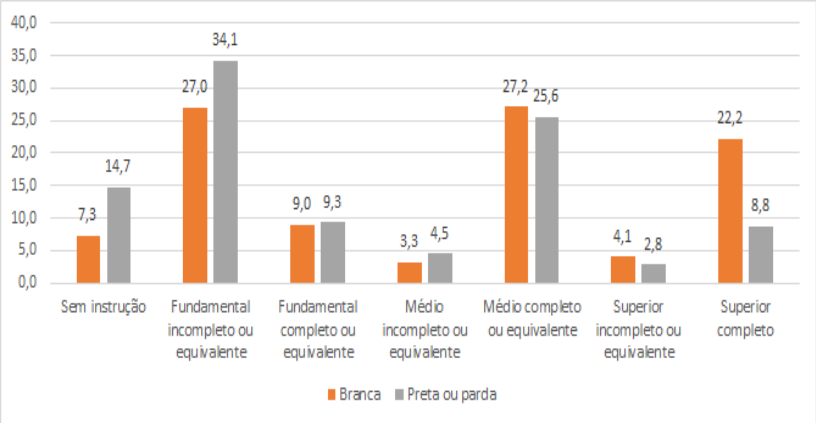

Figure 1 -- National Household Sample Survey. Continuous PNAD of Brazilian Education, 2016.

Source: IBGE News Agency (2016).

As for indigenous peoples, the same research showed that their literacy rate in 2016 was higher than in 2000, but it is still much lower than that of the non indigenous population. In the age brackets above 50 years, the illiteracy rate is higher then that of literacy. However, data about male and female indigenous people in higher education do not even appear in the sample. The 2010 Census by IBGE presents several charts and graphs with indicators of indigenous peoples but, when it comes to indigenous education, data are scarce or even nonexistent in the context of higher education.

Thus, although benefited by quotas, indigenous peoples make up the movement that has been putting more pressure on the State for affirmative action policies, in order to fight the historical exclusion and social, economic and political inequality. For Baniwa (2013), the access of indigenous peoples to higher education is not only a right: "It is also their need and a desire of Brazilian society, once today indigenous peoples manage over 13% of the national territory, a percentage that rises to 23% in the Brazilian Legal Amazon".

> In addition of ensuring the internal capacity of indigenous communities to manage their territories, their ethnical groups and their basic demands for health, education, self-sustainability, transport and communication policies, the State must also give them conditions of full and particular citizenship to dialogue with it and Brazilian society about common and domestic interests, such as, for example, the economic contribution of indigenous territories, the relevance of the indigenous cultural, ethnical, linguistic richness and sociobiodiversity, which are also a material and immaterial heritage of Brazilian society (BANIWA, 2013, p. 2).

Data from the Ministry of Justice (BRASIL, 2018) point out that in less than seven years the number of indigenous people enrolled in universities was more than fivefold. The increase in the demand of indigenous peoples for academic education "is due to the need of high quality professionals inserted into political and sociocultural contexts and who collaborate in their fight for autonomy and sustainability" (BRASIL, 2018). Quotas and other mechanisms of indigenous inclusiveness in higher education have changed the social scenario in Brazilian universities; reports from the most recent Higher Education Census diffused by the Ministry of Education (BRASIL, 2017) show that the "number of indigenous people enrolled in public and private institutions rose 52.5% from 2015 to 2016, going from 32,147 to 49,026" (BRASIL, MJ, 2018). This piece of data is even more significant when one considers that only in 2009 the

Census started to register the presence of students per race/color. In less than seven years, the number of indigenous people enrolled per year in universities increased more than fivefold. At the beginning of the registers there were only 7,960 individuals in that segment. It is worthy emphasizing that only from 2015 on it became obligatory to declare one's race, which led to a more accurate register of the indigenous presence in Brazilian public universities.

According to the National Institute of Educational Studies and Research Anísio Teixeira (Inep), the number of indigenous people enrolled in higher education rose 255% between 2010 and 2016. In this context, a good example is the Federal University of Rondônia (UNIR, 2018) because it is an IFES in the Northern region, more specifically in the Western Amazon. The Federal University of Rondônia (UNIR) presents growing positive data about the admission of indigenous people in the institution. Since 2013, when the university applied the first quota policy, several indigenous peoples could have access to public higher education. In 2013, the UNIR had one indigenous student who was admitted due to the Quota Law; in 2014 there were two students; in 2015, 20; in 2016, 40; in 2017, 45; and in 2018 43 indigenous students were admitted. It means that, from one student in 2013 until 2018 (five years after the adherence to the quota policy), the institution has reached a total of 151 indigenous students and, more important, in all the different courses of study offered by the institution.

The first step to start a discussion about affirmative action policies in Brazil is to think what kind of policy shall be applied to whom and how to implement it. Nothing is elaborated or applied at random. The process is based on accurate research conducted by bodies committed with reality and corroborated by important theoretical foundations and relevant social studies, in order to fight the existing inequalities. The importance of those policies is clearly demonstrated by social indicators that point out the huge gap between the ones who have a good living standard and those who are deprived from the basic dignity for living.

The Quota Law for the admission of low-income, black, biracial, disabled and indigenous students in higher education was one of the most important affirmative action policies applied over the recent years in Brazil. Although that law does not solve all domestic problems related to social and educational inequalities when it comes to the admission, adherence and completion of public higher education, it may be considered as a major gain in the profile of students who enter higher education federal institutions in the complex socioeconomic conjuncture of Brazilian society.

5. Conclusion

Although this is a brief panorama of the indicators related to the affirmative action of the Quota Law, it allows to recognize the effectuation of the right to higher education, as well as that a substantive equality lies in the fundamental guarantee of the human being, independently of race, color, ethnicity, gender or social class.

In view of the arguments presented, it is clear that there are positive and critical aspects in the three theories -- Compensatory, Distributive, and of Juridical Pluralism and Human Dignity. The compensatory measures, for example, cannot be totally denied because there is much in history to be amended. Once the due corrections are made, those measures cease to be necessary. This is the right moment to implement a second stage, that is, equity and distributive justice, far from utilitarian or equalitarian ideals, for equity goes

beyond the idea of "making justice". But this step requires the use of juridical pluralism, whose purposes are to protect human rights and extend dignity to all human beings.

In this context, it is evident that juridical pluralism has gained momentum because it no longer admits the inaction of the State as the agent in charge of protecting basic rights and providing measures that ensure people's minimum welfare. A State that does not care for its minorities nor respect diversities is discredited and fated to interventions. Juridical pluralism is a sort of intervention that occurs when society, tired of awaiting for the transition from formal right to material right, seeks ways to be heard, like the case of black and indigenous movements for admission in public higher education. Wolkmer (2001, p. 203) stresses that "the State is neither the sole source of production nor the only place of political power". For the author, "the juridical pluralism expresses a shock of normativities, being up to the poor, as the new historical subjects, to fight for the prevalence of their rights" (WOLKMER, 2001, p. 204).

Thus, by means of the expression of substantial equality aimed at equity, in 2012, the Brazilian State, aiming for the full development of the individual, his preparation for exerting citizenship and his qualification for work (article 205, CF/1988), correlate with the 5th article in the terms of equality of all before the law, without any form of discrimination (EC n. 45/2004), approved the law n. 12.711/2012, providing opportunities for the access of low-income, disabled, biracial and mainly black and indigenous students to their public universities and federal institutes.

6. Acknowledgement

This research is financed by the Court of Justice of the State of Rondônia (TJ-RO), by means of the Interdisciplinary Professional Mastering in Human Rights and Development of Justice (DHJUS/UNIR/Emeron).

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