

# Racial quotas in university vis-à-vis the state of exception\*

## Cuotas raciales en la universidad frente al estado de excepción

### As cotas raciais do vestibular como manifestação do Estado de Exceção

Fecha de recepción: 25 de mayo de 2016  
Fecha de evaluación: 16 de agosto de 2016  
Fecha de aceptación: 15 de noviembre de 2016

Publicación en línea: 16 de noviembre de 2016

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DOI: <http://dx.doi.org/10.18359/rlbi.1897>.

#### Cómo citar:

Palhares, D., dos Santos, Í. A. y Rodrigues da Cunha, A. C.. (2016). Racial quotas in university vis-à-vis the state of exception. *Revista Latinoamericana de Bioética*, 17(1),150-167. DOI: <http://dx.doi.org/10.18359/rlbi.1897>

\* Artículo de reflexión.

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## Abstract

There is a close interconnection between Education and Bioethics, as explicitly stated by the Universal Declaration of Bioethics and Human Rights and by the Universal Declaration of Human Rights. The University of Brasilia has started a program of affirmative action by reserving seats in undergraduate programs for black people. First, an investigative research was carried out to analyze data and contradictions in these quotas. After, the reflection addresses this issue from the perspective of the State of Exception. It may be mentioned that Brazilians are a highly blended population. The admission scores of shareholders and non-shareholders or the racial quotas tend to overlap. Reservation on the basis of race is a reflection of heredity of advantages and privileges over generations, which is against the Democratic State. The implementation of quotas in the vestibular required the creation of racial banking, which presents typical structures of a court of exception. The experience at the university is the basis for the proposal of other laws with racial bias.

*Keywords:* education, human rights, equality, discrimination, racism.

## Resumo

Existe uma inter-relação entre Bioética e Educação, conforme explicitado na Declaração Universal de Bioética e Direitos Humanos e na Declaração Universal dos Direitos Humanos. A Universidade de Brasília iniciou um programa de ação afirmativa pela reserva de vagas nos cursos de graduação para pessoas negras. Em primeiro lugar, foi feita uma análise investigativa dos dados e contradições resultantes dessas quotas. Em seguida, a reflexão aborda essa questão sob a ótica do Estado de Exceção. A população brasileira é altamente miscigenada. As pontuações dos potenciais beneficiários das cotas e os outros candidatos se sobrepõem. A questão racial envolve uma herança biológica, a qual se transpõe como uma herança de vantagens e privilégios ao longo de gerações, o que é contra o Estado Democrático de Direito. A implantação das quotas por raça no vestibular à universidade exigiu a criação de um júri racial, o qual apresenta estruturas típicas de um tribunal de exceção. A experiência na universidade serviu como base para a proposta de outras leis com viés racial.

*Palavras-chave:* educação, direitos humanos, a igualdade, a discriminação, racismo.

## Resumen

Existe una interrelación entre Bioética y Educación, como se indica en la Declaración Universal sobre Bioética y Derechos Humanos y en la Declaración Universal de Derechos Humanos. La Universidad de Brasilia comenzó un programa de acción afirmativa mediante la reserva de cupos para negros en los programas de pregrado. En primer lugar, se realizó un análisis investigativo de los datos resultantes y contradicciones de estos cupos. A continuación, la reflexión aborda esta cuestión desde la perspectiva del Estado de Excepción. La población brasileña es altamente mestiza. Las puntuaciones de los potenciales beneficiarios de los cupos y de los demás candidatos se sobreponen. La cuestión racial involucra una herencia biológica, que se transpone como una herencia de ventajas y privilegios a través de generaciones, lo cual está en contra del Estado Democrático de Derecho. La implantación de los cupos por raza en la prueba de admisión a la universidad requirió la creación de un jurado racial, que presenta estructuras típicas de un tribunal de excepción. La experiencia en la universidad sirvió como base para la propuesta de otras leyes con sesgo racial.

*Palabras clave:* educación, derechos humanos, la igualdad., la discriminación, racismo.

## Introduction

According to Garrafa *et al.* (2006), the Latin-American Bioethics goes beyond biomedical and scientific questions, reaching the search for comprehension and reflection about social vulnerabilities. This way, there is a close interconnection between Education and Bioethics, as explicitly stated by the Universal Declaration of Bioethics and Human Rights of Unesco that recognizes, in the 14<sup>th</sup> article, that reduction of illiteracy is one of the principles of social responsibility and health, placing the question of schooling and education in the conceptual scope of Bioethics. Also, the Universal Declaration of Human Rights states in the xxvi article about obligatory basic schooling and access to superior education based on merit. That is, these international documents bring the compromise of creating bioethical references regarding the educational context. According to Sanches y Souza (2008), Education broadcasts, replies and improves the ethical values of a society, such a way it is totally important for Bioethics to dialogue and be present in the educational environment. Also, Llamas (2013) has brought to the field of Bioethics reflections about ethical and moral values underlying the public policies of access to superior education.

In the last decade, Brazil showed the rise of institutional policies that created racial quotas for the access to superior education in the public universities, whose programs are free of charge hence very disputed. Up to now, Brazil had no

laws that distinguished people regarding race, even during the historic period of African and native Indian slavery.

The University of Brasilia was the first federal university that adopted racial quotas for the access to its programs. So, first, an investigative research was carried out to analyze data and contradictions in these quotas. Then, a reflective procedure was done under the lights of the ideas regarding the State of Exception for a better understanding of such policy.

## Context

The deep social inequality of Brazil is clearly reflected in the educational context. According to the national census of 2010 (Brazilian Institute of Geography and Statistics [IBGE], 2010), while 50 percent of the adults older than 25 years have not completed the Fundamental Level of education, which is of nine years duration (i.e. from 6 to 14 years), the public universities and the research centers put Brazil at roughly 15<sup>th</sup> worldwide position in the volume of production of scientific articles. From the total number of young people who finish Medium Level (high school), there are seats in the superior level to about 13%. The public universities, whose quality of undergraduate programs is disputed because they are free, cater to only 2 percent of the demand of superior schooling.

Laws 5.540/68 and 12.711/12 regulate the selection of candidates to a superior level in Brazil. First, the candidate must

have completed the Medium Level or equivalent, which together with the Fundamental Level sums 12 years of schooling. The institution of superior education must conduct an examination to test the theory and writing, named vestibular. The students are allowed to try as many vestibulars as they want. The institutions of superior schooling must publish a legal notice informing the total number of seats available in each program, the date of the tests, the criteria of punctuation, and so on. To post-graduation programs, the curriculum vitae of the candidate may be taken into account, while to an undergraduate program the only criterion is to have finished the Medium Level. Thus, everybody starts from the same baseline to compete for a seat. The University of Brasilia selects students through eight different modalities. From these, the vestibular and the Program of Seriate Evaluation offer the majority of seats and mobilize the largest number of candidates. The vestibular is conducted twice a year; each time between 20,000 and 30,000 candidates compete for roughly 3,000 seats. In 2004, the University of Brasilia started an affirmative action by which 20 percent of the seats in each program would be reserved for candidates classified as pertaining to the black race.

According to the Legal Notes (in Portuguese, Edital) of the vestibulars ([www.cespe.unb.br/vestibular](http://www.cespe.unb.br/vestibular)), the system of quotas for blacks is preferential, that is, first the black candidates compete for the seats reserved for them. If they are

not selected, they compete for seats in the universal system. The shareholder candidate must attend an interview on the designated date, and bring his/her identity card. The interviewing jury, according to item 4.3 of the Legal Note of the First Vestibular of 2013, considers two criteria:

- a) Self-declaration;
- b) *Phenotypic* traces that characterize the candidate as black.

If the candidate is considered black, he/she enters the cadastre of blacks and can be a shareholder candidate for as many vestibulars as he/she wants. If the candidate is considered as not being black, it is possible to ask for an administrative appeal, whose decision is irrevocable and if the candidate is declared as non-black, he/she can never apply to seats reserved for blacks and is automatically enrolled in the universal system. The Legal Note does not inform who composes the jury; neither does it describe the criteria for selection to be a member of the jury and also does not list the phenotypic aspects that would classify a candidate as black.

### Analysis of vestibular

Velloso and Cardoso (2011) evaluated the vestibular of University of Brasilia in the period between 2004 and 2008. Through simulations, they were able to conclude that even without the quotas, between 5 to 15 percent of the selected students would be considered as black

by the classification method adopted by the authors. Thus, even without this affirmative action, and only based on academic merit, students of all ethnic origins had always been selected via vestibular.

As the authors did not show the raw data on which they were based to the simulation presented, the present paper analyzes the data obtained from the Informative Bulletins of each vestibular, as found on [www.cespe.unb.br/vestibular](http://www.cespe.unb.br/vestibular) that also publishes the Legal Notes, the exams, the correct answers and some statistical data of the selected candidates. We compare the notes of the selected candidates and the concurrence of the programs of Law and Medicine from the second vestibular of 2006 to the second vestibular of 2012, totaling 12 vestibulars. The Informative Bulletin of the first vestibular of 2007 was not found. The year 2013 was excluded from the analysis because there was the novelty of adoption of quotas to graduates of public schools and from 2014 the University of Brasilia started to adopt the notes of the National Exam of Medium Level as criteria of selection. The data of the Program of Seriate Evaluation were not analyzed because this is a different mode of selection. The choice of the programs of Law and Medicine is because they are concurred programs, but present different criteria of punctuation. To the program of Law, the scores in Foreign Language, Portuguese, History and Geography present a higher

weight than Math, Physics, Chemistry and Biology, while to Medicine is the other way around. Details of these rules can be found in item 7.2.19 of the Legal Note of the Second Vestibular of 2012.

In the studied period, there was growth in the total offer of seats to the program of Law that jumped from 20 in 2008 to 120 in 2012; from these, the seats reserved for blacks varied from 4 to 24. The program of Medicine kept the same number of seats, offering 18 seats in the vestibulars of January and 36 in July. Thus, the quota seats varied from 4 to 8. Table 1 shows the mean of the number of candidates, the competition for places and of the scores (minimal and maximal) of the selected candidates in the first call. In all the vestibulars, the competition for the quota seats was lesser than to the universal system, and the number of enrolled candidates to the quota seats was approximately 10 percent of the number enrolled to the universal system. The scores of the shareholders candidates tended to be smaller than the notes of the universal system. In the program of Law, there was an overlap of notes of shareholders and of universal systems in all vestibulars, except the first vestibular of 2008, that is, there were candidates classified as black who would be selected to the program of Law independently of the system of quotas. To the program of Medicine, only in four vestibulars was there an overlap of notes of shareholders and universal system.

Table 1. Performances of the candidates of the Universal System and the System of Quotas do Vestibular da Universidade de Brasília, de 2006 a 2012.

	Law	Medicine
Mean of the number of candidates on each vestibular at Universal System	1913	2287
Mean of candidates per seat at Universal System	52,3	109,8
Mean of the number of candidates on each vestibular at System of Quotas	215	196
Mean of candidates per seat at System of Quotas	21,4	36,0
Mean of the scores of the selected candidates of Universal System (lowest scores – highest scores)	244,27 – 374,39	382,50 – 469,20
Mean of the scores of the selected candidates of System of Quotas (lowest scores – highest scores)	169,33 – 281,21	314,55 – 373,00

Source: [www.cespe.unb.br/vestibular](http://www.cespe.unb.br/vestibular)

## Discussion

### The biological basis of racial classification

Taxonomy is a field of Biology that classifies life beings as not merely a group with similar aspects; rather it constructs a phylogenetic model, that is, a model where the life beings are grouped according to an evolutionary proximity to common ancestors (Papavero, 1994; Joly, 2002). The basal level of the taxonomic classification is species, so, at least formally, there are not infraspecific categories. However, Darwin (1872) had observed that the broader the geographical distribution of a species, the higher is the variability among distant populations. This way, there are several nomenclatural studies that use categories inferior to species, such as sub-species, race, and variety. This infraspecific categorization may be of particular interest to agriculture

and livestock – races of cattle, dogs, varieties of vegetables, etc. When there is a crossing of races, the nomenclature describes the offspring based on the race of the parental types. The mixed types can be crossed among themselves, keeping a nomenclatural stability, or they can be crossed to the parental types or even with other races. To these procedures, the terminology adopted is one of 'hybrid' or even the appearance of a new race or variety (Papavero, 1994; Joly, 2002).

Regarding human beings, humanity has inhabited almost all the Earth, except Antarctica. With such a large geographical distribution, it would be expected that distant human populations would have developed certain peculiar aspects. For example, the populations of the tropical regions developed a darker skin for protection against the excess of sunlight, while the people inhabiting colder regions tended to develop a clearer

skin so that that they could take in the weak sunlight to produce more vitamin D (Guerreiro Júnior *et al.*, 2009). Also, considering that wars and genocides were always present throughout human history, it is possible that many of the physical differences among human populations are derived mostly from survival during bloody wars than from a specific factor that would lead to better adaptation facing a harsh environment.

The knowledge about the uniformity of humans as a species was built from the first hypothesis that there would be many significant biological differences among human populations. The first publications that classified mankind into races come from the end of the seventeenth century. Linnaeus, the pioneer of modern Taxonomy, described four human races. Other scientists created other lists, varying from only three to more than one hundred racial groups (Magnoli, 2009). Such discrepancy can be understood based on the fact that any aspect – height, body hair, type of hair, among many others – that presents a statistical difference among two or more populations can be used to define race (Carvalho-Silva *et al.*, 2001). Even so, taking these aspects into account, it can be verified that there is a gradation of distribution among populations. For example, it is not dark skin or white skin, but several tonalities that are strongly influenced by exposure or not to sunlight.

Nowadays, it is possible to track the origin of human populations based on

evolutionarily conserved DNA sequences. Sequences of mitochondrial DNA reveal motherhood ancestry and sequences of Y-chromosome reveal fatherhood ancestry (Hunemeier *et al.*, 2007). However, such tools do not present enough accuracy to tell if a given person comes from a specific population group. The genetic studies of populations can point out, over a sample of individuals, if the occurrence of some genetic sequences is significantly different or not among populations, thereby characterizing if they are close populations or not. Even so, these differences regarding genetic markers do not predict any other biological or phenotypic difference, serving only as a model to track the history of the dynamics of human populations (Pena and Bortolini, 2004).

### The historical concept of racial classification

The existence of races, as subtle differences among populations of a given species (in this case, human species) is a biological fact that constitutes the field of taxonomy. However, racism, as defined by Kaufmann (2011), is a political construction that classifies the human races as superiors and inferiors. In fact, according to Magnoli (2009), the science of human races appeared at the end of the seventeenth century. It was contemporary to French Revolution, to the consolidation of the concept of citizenship, and of natural equality among people. But at the same time, it occurred during the European colonial expansionism, based on the slavery



of Africans and native Indians of the Americas. So, the first theories of the division of humanity in races were not restricted to the comprehension of a biological fact but presented very deep economic implications. The concept of intrinsic equality of human beings could be broken by the ideology of the existence of naturally inferior races (Magnoli, 2009). The sociopolitical movement of natural equality among humans, one of the fundamentals of the Democratic State of Law was in this way, challenged by the prevailing ideology of this period that the white race was superior to the others and that the white man's burden was to civilize the world. If the European ideologists of that period lived today and saw the geopolitical, economic and military ascent of Asia on the world stage, would they still insist that the 'white' race was superior to the 'yellow' (Asiatic) race? This situation illustrates how some paradigms of the Absolutist State resist from disappearing under the Democratic State: once there was a pro-equality movement; then an opposite movement arose, in this case, one of racism.

Although the Europeans started their maritime and business expansion at the end of the fifteenth century, the first human zoos date from the nineteenth century. In 1810 a South African slave, Saartjie Baartman, was presented in London and Paris under the nickname of Hottentot Venus. Throughout the 1870s, human slaves from so-called 'wild' races were exposed in London, Paris, New York,

Amsterdam, Antwerp, Hamburg, Milan and Barcelona. African and New Zealand pygmies, Apache, Nubian, Inuits and natives of Surinam and Samoa islands attracted about 200,000 to 300,000 visitors in those meetings. In 1889, a century after the French Revolution, Paris saw in its Universal Exposition the presence of 400 Indians and a 'black village' as part of the attractions. At the same time many editors published books and encyclopedias that illustrated the diversity of human types; they created and described intellectual and cultural hierarchies based solely on prejudice and speculation, to generate an exciting atmosphere to make them more saleable (Magnoli, 2009).

States has carried out demographic census since the period of Ancient Egypt. However, around the nineteenth century, when the European States were obtaining data from the colonies for their demographic census, the question of race/ethnicity appeared to differentiate the settlers and their descendants from the natives of the invaded regions. Although Boaz Boas(1911) demonstrated that humans presented the same intellectual abilities under the many cultures of the world, the ethnic and racial question as a demographic element is a modern identity, raised under the colonial States to reinforce the domination process. It cannot forget the biological basis that the European phenotype proved to be recessive under all the other phenotypes. So, the ideology of 'white pure race' and the apartheid laws present in



several countries can also be interpreted as a reaction against such fact, that is, the military and economic conquerors were, as a *para dox*, biologically 'weak'.

According to Segato (2006), race/ethnicity is fruit of a social construction that is transcendent to biology, where it is not necessary to present marked morphological differences to describe ethnic differences and also where even while facing racial miscegenation it is possible to classify the person as pertaining to only one of the parental types. In other words, the racial classification for social and demographic goal does not necessarily follow the rules of biological nomenclature. Furthermore, History shows that the creation of races as a demographic data can sometimes reveal no apparent biological difference. For instance, a simple mythical narrative was enough, in Rwanda, Kenya and Nigeria, to spare Tutsi from Hutu. More than simple narratives, the description and acceptance of the existence of distinct races and ethnicities served, in those countries, to put race for purposes of legal privileges and was also the motive for genocidal wars. In the words of Magnoli (2009), race, as demographic data, is the fruit of a State power that rejects the principle of social equality among the citizens, creating and elaborating identities according to the interests of the governor elites.

### **The question of race in the Brazilian society**

According to Moura (1988), the racial question in Brazil presents an epistemic

inconsistency between miscegenation, which is a biological issue, and democracy, which is a sociopolitical issue. This inconsistency is somehow present in the racial quotas of the vestibular when the questions of racism and education are grouped together in the same policy.

From the purely biological and population points of view, the Brazilian society is markedly mixed, in all the regions, social levels and skin tonalities. The ethnographic studies of Freyre (1933) about the formation of the Brazilian people have been broadly confirmed by the studies of genetic markers (Carvalho-Silva *et al.*, 2001, Pena and Bortolini, 2004; Hunemeier *et al.*, 2007; Guerreiro-Júnior *et al.*, 2009). Until the eighteenth century the Brazilian population was essentially mixed among the Iberian settlers, the native Indians and the Africans brought as slaves. After the second half of the nineteenth century up until the first half of the twentieth century, a migratory wave of Europeans came to the South and Southeast regions and at the beginning of the twentieth century; Brazil received a considerable population from Asia (Japanese) and the Middle East (Syrian-Lebanese) (Bletz, 2002).

In the census carried out between 1890 and 1940, the racial criteria had been absent. Since 1940, the Brazilian Institute of Geography and Statistics (IBGE), the agency that conducts the census, returned to classify the persons according to race. The criteria were inconsistent since then; sometimes it highlighted skin color; sometimes, ancestry (Magnoli,

2009). Regardless, in the nomenclature of IBGE, an individual can be classified as white, black, brown, yellow, Indian or 'not declared'. Bletz (2002) criticizes that this census criterion does not take into consideration the recent migration, creating an ideology strongly based in the historic period before the twentieth century. Also, IBGE does not describe the methodology why Asians were given the name of 'yellow color' since the yellow color of skin indicates jaundice. Moreover, during the National Survey by Sample of Dwellings carried out in 1976, researchers were free to make their classifications of color, and as a result, 136 different colors were recorded. Magnoli (2009) interprets this as an emblem that Brazilians see themselves as mixed, while Moura (1988) considers that this results from the denial of people of darker skin to identify themselves as blacks.

Racial thinking in Brazil offers a unique ambiguity: on the one hand, even the population that considers itself as 'white' is, in reality, mixed and should be, under the strict sight of the biological taxonomy, classified as 'brown' (Pena and Bortolini 2004). But at the same time, in spite of miscegenation, Moura (1988), Carvalho (2005) and Segato (2006) point to the existence of a diffused and foggy prejudice against blacks that not only acquires aesthetic aspects but is also related to worse socioeconomic indicators. According to these authors, the socioeconomic question brings more and more ambiguities: if the black people are stigmatized and

discriminated against by skin color, then the ones who ascend socially undergo a symbolic process of bleaching, in which the skin color is summarily ignored and forgotten (Moura, 1988; Carvalho, 2005; Segato, 2006).

Those ambiguities are related to the cultural and historical formation of the Brazilian people. Portugal and Spain started their colonial expansion at the end of the fifteenth century when the science of races had not yet been developed. The enslavement of such large amount of Africans was possible because the African continent was witness to wars among the peoples so that the European settlers could simply buy slaves from local suppliers (Magnoli, 2009). At the same time, the empirical observation of mixed children pointed to the dominance of black phenotype; the slaves were slaves because they had been bought, not necessarily because they were black. If the Portuguese settler hunted throughout the sixteenth century, enslaved and mixed with Amerindians, the following centuries saw the systematic acquisition of African slaves. But in Brazil, there were never laws of racial apartheid (Kaufmann, 2011; Schulz and Wienke, 2012). Slaves could either buy their freedom or be freed voluntarily by the master. Once freed, the slave was equal, at least in legal terms, to the other citizens in the colony. In 1731, in full imperial and slavery era, when the notion of Democratic State of Law was still under construction, D. João V emitted the Order of 1731, naming the black Duarte Pereira as Governor of the Captaincy of

Pernambuco, emphasizing that skin color was no impediment for the post.

Silva (2006) and Munanga (2001) used the nomenclature of race –black and white– to compare the socioeconomic conditions of the Brazilian black population to the black population of other countries, such as the United States and South Africa. However, although the names ‘black’ and ‘white’ are easily translated into Portuguese – ‘negro’ and ‘branco’, there are specific cultural details that cannot be reproduced: both what is called as black and white in Brazil, are in reality mixed persons who could be classified in other census categories of other countries. That is, in the absence of a unified taxonomic system, the racial categories, especially after mixing, cannot be internationally compared.

In other words, the census of IBGE, when seen in a historical perspective, can lead to the wrong conclusion that in Brazil the categories of skin color are constant throughout generations as if the great-grandson necessarily presented the same skin color as his great-grandfather. According to a person who makes a family with a black, brown or white person, the children born can perfectly change the census category. This generates an insoluble paradox in racial classification regarding mixed populations such as the Brazilian one: if the criteria is ascendance, it is possible that people with clear skin are classified as blacks; if the criteria is appearance (or phenotype), siblings from mixed parents can be classified into distinct

racial categories, breaking any sense of correlation between racial classification and social conditions and creating a biological absurd, since siblings must pertain to the same category.

### The State of Exception

The notion and the existence of Democratic States of Law are very recent in human history, barely 200 or 300 years old (Agamben, 2004). Up to then, the Emperor, the King, the Governor, had absolute power over the vassals. He had the power of life and death, of judging a person guilty or innocent, of collecting taxes, of payment of loans, of declaring war and so on (Agamben, 2004; 2007). The concept of Democratic States of Law occurred in a new historical context, based on the scientific-technological development, the industrial and commercial expansion and the appearance of complex economic relationships between State and society (Foucault, 1975; Schramm, 2010). Now the State started to take (as it still does nowadays) loans from the private initiative under the promise of payment of future interest (Agamben, 2004, 2007). So, the appearance of laws that stipulate obligations of the State and restrict the arbitrariness of the Governor was not simply a question of social mobilization, but a situation coming from the evolution of the economic structures of the society.

Even if the historical process of social struggle for expansion of right of voting in the Democratic States of Law illustrates that there was more demand on the

State to create mechanisms of income distribution, public systems of education, healthcare, transport, etc., Franca (1955) and Schmitt (2007) already pointed out the tendency of the States in being more totalitarian and intrusive in the life of the citizens. In this sense, Foucault (1975), while studying the structures of public health, noticed that the State does not restrict itself to simply administrate the communities, but slowly tries to influence and dominate the individuals regarding personal habits and attitudes.

From the legal point of view, the word 'person' is referred to as somebody who has rights in the State. However, Agamben (2004, 2007) noticed that in a given society it is possible that, in spite of the conviviality and the daily grind, there are people who do not come under the law category of 'person'. These people are presented only with the so called 'naked life', that is, human life reduced to the biological fact, without any social guarantees or political participation: in more extreme cases, this situation means that a person can even be killed without it being configured as a crime. Moreover, history shows that totalitarian States reduce a great portion of the population to the condition of 'naked life' (Zizek, 2003).

According to Agamben (2004), the legal norm previews the possibility of an implosion of the Democratic State of Law, and he illustrates this with a historical fact. In 1791, the French Constitutional Assembly standardized the State of Peace, when the structures of the State would act normally; the State of War and finally the State of

Siege, a critical and emergency situation of war when the civil rights would not be guaranteed by the State and also laws of every kind could be summarily enacted by the military-in-chief. This process when by normal legal ways a Democratic State of Law is suspended was named by Schmitt as State of Exception. So, the Democratic State of Law is very fragile and, in reality; wars are not necessary to the existence of structures of Exception. By means of sanitarium, Foucault (1975) noticed that the same structures of public healthcare that protect the life of the citizens can be used – and are used periodically – in police-mode and are offensive to individual guarantees and freedom. As a simple example, the police may not have detailed information about some persons, but the clinics have their complete data, with personal details. To Foucault (1975), there is no distinction if the state structure is police or health assistance: both represent the power of the State and are capable of swapping information. As described by Agamben (2007) and Zizek (2003), the Democratic State of Law continuously suffers from erosive pressures: the change from a massive democracy to a totalitarian State rarely occurs as an improvised revolt; it is rather a long process of construction of political basis before the final implantation of the State of Exception and the return to a condition of absolutist government.

The circumstances that support the appearance of the State of Exception are complex, but among many columns,

one element always present is the classification and distinction of individuals inside society (Zizek, 2003; Agamben, 2007). Santos and Nascimento (2014) state that experiences of Exception has currently been carried out such a way to work the machinery of power; in the same way that an engine stopped for a long time gets rusty, if the structures of power are no longer used they can fail, so that simulations of Exception are necessary to keep them able to work in case of a 'real' conflict.

Obviously, the Democratic State of Law upholds the diversity of social groups, but, at least legally, all people are born equal. The State of Exception, however, brings back social distinctions of hereditary aspects present in the Absolutist States. In those States, some social classes receive privileges and handouts from the States while other classes can be reduced to the mere condition of naked life (Agamben, 2007). As examples, in the Second World War, the Germans made a distinct category of Jews and Gypsies. In Rwanda and Kenya, Tutsis formed a distinct category from Hutus (Magnoli, 2009). Mostly, such distinctions were presented as something inherited, that is, the condition in the social classification was inherent to the persons and their descendants.

### Final considerations

The problem of racial quotas on vestibular covers two different questions under the same approach: the problem of racism and the problem of education.

The debate on the adoption of racial quotas presents two opposite positions: briefly, according to Silva (2006), the defenders of the racial quotas say that:

- 1) This policy applies to students of different origins, enriching the university and fighting racism as it promotes familiarity of people from different races in a place of high intellectual level;
- 2) It is a model of social inclusion and redistribution of opportunities, and  
c) It is a way of historical compensation to people that were enslaved in the past.
  - a) The opposite arguments, according to Schulz and Wienke (2012) can be grouped into a) breakage of equality, since it creates a legal privilege;
  - b) Attack to academic meritocracy;
  - c) Inefficiency of the policy, since the problem to be faced is the educational exclusion previous to university and the system of vestibular, based on merit, has always allowed the 'black' students access to public universities, and
- 3) Impossibility in practice to define the target people of this affirmative action, considering the high degree of miscegenation of the Brazilian population.

Kaufmann (2011) highlights the consensus among the antagonistic groups. So, it is a consensus that there is a social discrimination towards people

with darker skins; that the process of socio-educational exclusion starts from basic schooling; that it is not the skin color that is the real barrier to access to superior education, but the bad quality of the schools. Thus, in Brazil, the simple fact of concluding the Medium Level, which is an essential step towards getting a seat in superior education, puts the citizen in a state of high probability of enjoying an elevated social status, independent of skin tonality (Maggie and Fry, 2004; Fry and Maggie, 2004).

In this sense, regarding superior education, Llamas (2013) calls attention to the fact that there are not enough seats for everybody. Thus, there is an elitist paradigm based on the value of the personal merit that not all citizens will get a place in the superior education. At the same time the author affirms that meritocracy does not reduce social inequalities, but rather deepens it since the candidates do not have equality of opportunities or equality of competition. Meritocracy, to be fair, needs equality of opportunities and initial conditions to all citizens, which in practice is not seen, especially in unequal societies such as the ones in Latin America. But Llamas (2013) also denounces that affirmative action towards access to superior education has worked in an underhand way to preserve marginalization and social segregation, since it supposedly offers gifts and facilities to some persons considered to belong to vulnerable groups. It has not sought to create structural and effective solutions in basic schooling to

reduce social inequality and concretize equal chances of competition.

The main discussion regarding the racial quotas on the vestibular is the implementation of a racial State, of institutionalized racism, even if under the flag of an affirmative action, of social justice (Azevedo, 2004; Maggie, 2005; Sales, 2006). Tavolaro (2010) points out the contradiction of a policy that is theoretically anti-racism, but in practice, it reinforces the concepts of race and social differences among them, as it is first needed to classify people regarding race. That is, is it possible to fight against racism, starting from a racist order, without using and reinforcing the notion of race? Perias (2004) studied the political process of adoption of racial quotas in the University of the State of Rio de Janeiro, which was the first Brazilian university to adopt this quota system. According to Perias (2004), the rapporteur of the project of law

[...] did not have any intention of debating the project of quotas with anyone [...] When I knew that the project had been approved with unanimity by the deputies of Alerj (legislative assembly of the State of Rio de Janeiro), I didn't understand how could that be possible [...] The utilization of the regimen of urgency, the efforts to prevent the realization of any debate with the rest of the society about the project [...] in order to legislate about the hot subject of quotas demonstrate to everyone the



indifference of this field regarding the rest of the society. It is a field that, in fact, does not have any ethical basis, but it works, exclusively, according to the logic of the most pure opportunism. (pp. 72 and 73)

This way, watching the operation of racial quotas in the vestibular of the University of Brasília, structural problems are evidenced (Maio and Santos, 2005). While Segato (2006) and Carvalho (2005) emphasize that racial construction is a social process distinct from biology, regarding the reservation of seats for superior education, it is not selected social groups, but isolated individuals. And the Legal Norm brings forward a biological concept – the one of phenotype – to the classification of what would be a black or brown person. However, since in Brazil, there is a complex gradation and a factorial mix of skin tonalities, shape and color of eyes, of noses, of curly or straight hair, etc.; what device measures the skin tonality, the melanin amount above which it will be said that the candidate is black or brown? And, except for the skin color, the only biological element that is present in the Legal Note, what are the other aspects used to define the black race and who is a black person with brown skin?

The theory of the State of Exception explains the speed with which racial quotas were implanted in the vestibular. The juridical debate provoked by the racial quotas at the University of Brasilia reached the Supreme Federal Tribunal. In the public audiences of *Arguição de*

*Descumprimento de Preceito Fundamental* 186 carried out by Supremo Tribunal Federal, most of the positions pro and against the racial quotas can be found. However, it is noticeable that all the representatives of the federal government supported the initiative of the University of Brasilia. That is, the University of Brasilia was not exactly *avant-garde*, but in fact represented the spearhead of an initiative from the Executive Power.

In general, the distinction, even with an apparently positive meaning between individuals belonging to one or other race with distinct social treatments hits one of the pillars of the Democratic State of Law: the legal equality of citizens. Evidently, the Democratic State of Law present different legal outlines to different social groups, especially regarding the fair distribution of goods and socioeconomic conditions, but, at least at birth, all persons are born equal (Kroth and Neto, 2006; Santana, 2010). When any racial classification is adopted, there is a biological heredity that pervades generations from which the individual cannot go out. That is, in a speech of peace and social justice, it has created a mechanism of hereditary privileges, structures that were present in the Absolutist States where, for example, the great-grandson of the king would be king and never would the great-grandson of a peasant be a noble. This idea comes to truth when, as said in the Public Audience of the Supreme Federal Tribunal, the ‘black people’ would be devoted to historical



compensations, as if something that happened in the past could generate social rights and debts that had passed throughout generations and was finally inherited to nowadays living persons.

Furthermore and most importantly, the classification of the candidate as pertaining or not to the black race is done via administrative structures typical of a tribunal of exception. If the tribunals of the Democratic State of Law are based on legal codes carried out by judges, publically known and selected, the racial jury of University of Brasília is not based on a detailed legal code, since the Legal Note is too vague in this aspect; the jury is not known, and neither are the criteria and the merits of choosing the members. Moreover, Magnoli (2009) denounces that there are ideological procedures in the classification of a person as black or not, such as personal questions if the candidate is a militant of the black cause among others. Also, the reserve of seats based on race is against the II article of Universal Declaration of Human Rights (that prohibits distinctions based on color/race) and the XXVI article (that states access to superior education due to merit).

In conclusion, the intrinsic dynamics of the State of Exception can be found in the University, a place where the contradictions and the processes of the implantation of the Exception can be exercised and improved. The public university represents only a small portion of the Brazilian population. So, the quotas are a topic of debate in the academy, but it is not something that mobilizes the major-

ity of the Brazilians, who have not even concluded the Fundamental Level. It is corroborated by the fact that after the experience in the academy and also after the jurisprudence created, there are trials of creating racial quotas (hence hereditary) to the National Congress (O Globo, 2013). That is, the election of parliamentarians would not be based on the free, secret and universal vote anymore, but would be segmented according to races. Under the right of equality of opportunities and social justice, the University is, in fact, the stepping-stone for the creation of other racist laws in Brazil. It is of interest to the University that access to superior education is democratized. The fairest and important method will be if the young people finish basic schooling with high quality. This is the action that should guide the actions of the universities, not the mere creation of hereditary quotas. Regardless, the experiences occurred at a public university sponsored by public money show that the State of Exception will use all opportunities to exercise itself.

## Acknowledgements

We thank the Indian company Content Concepts for English review.

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