Equality in Higher Education: Experts' Perspectives

While the guarantee of access to and enjoyment of education on an equal basis with others and without discrimination is protected under various international human rights treaties, the relevant obligations assumed by states are often restricted to primary and secondary education. Therefore the sphere of higher education remains one in which efforts to achieve equality in access, results, onward opportunities, research parameters and staff promotions have lagged behind similar efforts in the spheres of primary and secondary education. The role which higher education plays, both in the lives of individual students and in society as a whole, means that the impact of any inequalities within this sector can be wide-reaching. That is not, however, to suggest that action is not being taken in order to remove such inequalities. Different approaches to the promotion of equality in higher education, including positive action, have been adopted in different jurisdictions with varying success. ERT therefore chose to interview two experts on this issue in order to explore some of the challenges and successes which they have encountered through their own work.

ERT spoke with David Ruebain, Chief Executive of Equality Challenge Unit, UK, and Marcelo Paixão, Professor of Federal University of Rio de Janeiro, regarding their perspectives on the issue of equality in higher education, based particularly on their own research in the UK and Brazil respectively.

ERT: You are widely recognised as an expert on issues related to inequality and discrimination in higher education. Can you tell us about what led you to get involved in this area?

David Ruebain: It is a mixture of things really. I am disabled, and when I was a child, most disabled children were sent to "special schools" – then, effectively a euphemism for schools for children considered not to belong in regular schools. There wasn't any particu-

lar pedagogic approach to teaching disabled children. They were just sent there because they didn't belong in the regular school. It was not a great experience for me at all, but for complicated reasons, I also went to mainstream schools and then to university. These experiences informed my ethical and political interests. Then I decided to train as a lawyer. I was very interested in mixing my legal background with my interest in education. Before becoming a lawyer I did research in education for a while and I then qualified

as a solicitor at a time when education law was just beginning as a specialism. I was able to latch on to that development. I joined the Inner London Education Authority as a solicitor, and then eventually set up my own department in education law in a law firm, which I ran for about 13 years. So I suppose the background was a mixture of my interest in policy and practice in education as an environment which impacts on all young people in different ways.

Marcelo Paixão: My approach to equality in higher education comes from my special interest in race relations in Brazil. I will point at two factors. The first is the fact that I have a degree in economics with a doctorate in sociology, and I have specialised in inequality, poverty, social rights and other related issues. Naturally, the topic of race relations is a subject of particular interest within each of those matters. Currently, most of the social problems experienced in Brazil have blacks as their main victims. This is partly the prod-

uct of the model of race relations operating in the country, in which the physical appearance of each person is embedded and classified within a hierarchical system where those with lighter skin have greater access to opportunities and rights when compared to those with darker skin. This occurs within a society which is strongly unequal and asymmetric, as is the Brazilian society. Therefore, the matter of race relations is theoretically very significant, and this attracted me as a researcher and university professor.

There is also a second motivating factor that led me into this area of studies – the fact that I am also black. Naturally, I do not think that only people of darker skin can analyse this kind of topic. All who engage in the study of race relations, whatever their ethnic origin or physical appearance, are, of course, welcome to do so. But one must take into account that all analysts of racial inequality will be influenced by their own experiences of integration into society. I

do not consider myself a positivist. Thus, I believe that for science as a whole, and for social sciences in particular, it is impossible to fully dissociate the process of production of knowledge from the different interests shaped within the society.

ERT: Please could you briefly describe the legislative framework (both international and domestic) in your countries, the UK and Brazil, which seeks to protect the rights to equality and non-discrimination in higher education? How effective do you consider this framework to be, both in relation to monitoring and protection? In your opinion, how could it be improved?

David Ruebain: The legislative framework which protects the rights to equality and non-discrimination in higher education in the UK is broadly the same as that which protects those rights in other areas of public life. This is principally the Equality Act 2010[1] (though the legislation is different in Northern Ireland) and, to an extent, human rights legislation – particularly Article 2 to the First Protocol to the European Convention on Human Rights and Fundamental Freedoms which guarantees the right not to be denied education. However, as this is drafted as a negative right, it sets only a very low floor which offers little more than minimalist protection.

Many of the UN instruments – for example, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women – have provisions within them which impact on education. However, these are more concerned with compulsory school-based rather than tertiary education. So in terms of higher education, protection in the UK derives primarily from the Equality Act 2010, as underpinned by European legislation.

As for whether this legal framework is effective, I think the answer is different for each of the countries of the UK. The monitoring and protection provisions mainly relate to the "public sector duty" established under the Equality Act 2010,[2] and the specific duties for England are *de minimis* compared to Wales and Scotland. It is hard to tell because the specific duties for England are only a few months old, but I suppose as a driver for change, I regard the "public sector duty" as very important. As the new specific duties are much less onerous than they were previously in England, my fear is that they will be less transformative in their approach. However, we just don't know yet what the impact will be, and will have to wait and see. Equally, we will have to see whether the more thoroughgoing specific duties in Wales, and those proposed for Scotland, are in fact more effective.

As for how the framework could be improved, I was very disappointed that the government has chosen not to bring into force the socio-economic duty set out in the Equality Act 2010.[3] This had the potential to be a tremendous agent of change. That apart, the most important thing for driving equality forward is political will and leadership from the top. You cannot overestimate how important it is for a leader to decide that this is a key issue – it can have significant consequences for particular organisations or indeed for the whole country. When I refer to a strong commitment to transformative change, I do not only mean "not discriminating", but more looking at historic and systemic examples of exclusion and committing to change this. I therefore think that improvement in the legal protection of the right to equality in education will require political leadership from the top

and preferably implementation of socio-economic duties. Finally, it will require a decision not to resile from existing legislation, as is threatened by the government's response to the "red tape challenge" consultation.[4]

Marcelo Paixão: In terms of its legal history, since the commencement of its Republican period (which began in 1889), according to Brazil's legal system, in theory, all are equal before the law. At least since 1891 when our first Republican Constitution entered into force – which no longer embraced the slave system which had been abolished a year earlier – people of different skin colour and origin should be treated equally before the authorities. This idea did not change throughout the twentieth century. The importance of this is reinforced if we consider the experience of countries like the U.S.A with its outdated legal formula "separate but equal," or South Africa during the Apartheid.

When referring to the lack of segregationist laws throughout the legal history of the country, I must point out that this concerns the fact of being black. Thus, officially, ever since the commencement of the Republican period, there have been no laws against blacks based solely on the colour of their skin. This does not mean, however, that the cultural events related to Afro-descendants have not been severely and repeatedly repressive.

The Criminal Code considered "samba", for example, which today is the national music of Brazil and is known throughout the world, a crime until the early 1940s. The same applied to "capoeira" (a martial art developed by Brazilian former slaves) and spiritualism, among other cultural or religious expressions related to the African traditions in the country. After the 1940s, the legal framework evolved and these kinds of cultural manifes-

tations ceased to be considered illegal, and in some cases (such as "samba" and "capoeira") they even started to be considered as defining elements of the cultural identity of the country. However, until at least the late 1980s, certain religious expressions such as "Candomblé"[5] were controlled by the state. Events could only take place in locations that had been registered with the police. In essence, such legislation repressed the cultural and religious expression of those of African descent, as well as their supporters, who were not only blacks.

In relation to access to higher education, the absence of segregationist legislation meant that blacks have never been legally prohibited from going to university or attending classes. In fact, Article 206 of the Federal Constitution of 1988 guarantees equality in the conditions of access in the educational system. Our problem lies not in the impeditive or segregationist legislation, as occurred in the two countries mentioned above. Rather, the presence of black students in classrooms and universities has been undermined by racist social practices, rather than by specific laws. This is one of the secrets of the Brazilian model of race relations: to segregate without segregationist laws.

In the 1950s, more than sixty years after the end of the slave system, about 70% of black people aged over 15 were illiterate. It is also notable that among the white population, the rate was also high, at around 40%. In the 1980s, when Brazil was the fastest growing capitalist economy in the world, the illiteracy rate among blacks was 40%, practically the same as the white population 30 years before!

In 1988, one hundred years after the end of the slave system, the rate of young black men between 18 and 24 who attended institu-

tions of higher education was 1.8%. Today it is near 8%. Among whites this percentage is still about three times higher.[6]

Therefore, this data only reveals that in Brazil it was not specific segregationist legislation that prevented blacks from attending the schools and universities. This is rather the product of a pattern of poor race relations, which has been very efficient in causing asymmetries. Segregation takes place without resort to the law, but through a continuous process of convincing those with darker skin that the most prestigious, cultural, better-paid or empowered activities are not meant for them. In fact, this is a process of persuasion by the Brazilian society for the Brazilian society. It is a model that is shared by the higher and lower classes. Therefore, according to the American sociologist Michael Hanchard, who, inspired by the conceptualisation of Antonio Gramsci, classified the current Brazilian model of race relations as forming a symbolic and ideological hegemony of whites over blacks, persuading the latter of their natural place within our social pyramid.[7]

That is why the Brazilian legislation concerning the universal principle of equality of all before the law – which includes access to university – fails by its formalism. Thus, if the legal principle of equality is an important value, for it to become effective, those who are different must be treated differently, otherwise the asymmetries will be perpetuated forever.

In theory, within the Brazilian legal system, everyone is equal before the law. But in practice, the mechanisms of racial discrimination continue to operate, and the legislation, or the legislator, has not been concerned with the protection of those who are historically discriminated against. Consequently, racial inequalities have been extended indefinitely, including in relation to access to university.

ERT: In the UK and Brazil, what are the key challenges in ensuring *equal access to* higher education? Are there any groups which are particularly disadvantaged in this regard? Do these reflect the patterns of discrimination witnessed in secondary education? What challenges, if any, are faced in effectively monitoring discrimination and inequality, and the factors which cause such discrimination and inequality, in access to higher education?

David Ruebain: I think the key challenges to ensuring equal access to higher education may be about to change. We are in a period of transformation where students starting undergraduate courses in the autumn of 2012 in England will be paying significantly higher fees than their predecessors, albeit with the support of government loans. The position in Scotland, Wales and Northern Ireland is different and complicated. At this stage, we can only speculate as to what impact this will have on certain equality groups. If you are looking at socio-economic disadvantage, it can impact on anyone regardless of gender, race, age, *et cetera*, but it does disproportionately affect some groups. For example, disproportionate numbers of British Bangladeshi students are from poor backgrounds, and the same applies to disabled students as well. UK universities do broadly reflect the demographics of the population, including in relation to black and minority ethnic students, but they are not evenly represented across the different types of university (for example as between the older "Russell" group as against the newer ones). There are however disproportionately fewer men going to university; this is a relatively recent development.

The patterns of inequality in higher education are similar to those in secondary education, but not the same. There are very particular patterns of discrimination in compulsory education, for example in relation to levels of exclusion. Black British boys are more likely to be excluded from compulsory education than white boys or girls. Disabled students are also more likely to be excluded as well. Attainment is not equal in schools – people don't proportionately attain according to their representation in school. But those issues are not the same as in higher education, partly because higher education is more voluntary. If you look at attainment in compulsory education, the group that does the best is middle class Chinese heritage women, but in university, those that do best are middle class white students.

UK universities are relatively well-organised in terms of monitoring, particularly when compared to the US. In part, this is because there are fewer universities in the UK, and not as many private institutions. A lot of universities use evidence and data collection, and the Higher Education Statistics Agency – which is responsible for collecting data around a range of domains, including equality – plays an important role. For this reason, I would not say that monitoring is where the problem lies.

The factors which cause discrimination and inequality in access to higher education are multiple and complex, and many universities will say it is difficult for them to resolve issues which have arisen way earlier than the time when it comes for an individual to apply to university. This is true to a certain extent, but it does not tell the whole story. This is actually a difficult question to answer, as it really relates to discrimination and inequality in society at large. Further, higher education institutions are not homogenous. Some universities reach out to underrepresented groups more than others, and not all make the same efforts.

Marcelo Paixão: The answer is far from simple. This is because, as I said before in answering your previous question, it is not just a change in the law that is needed, as there was never a legal ban on blacks attending Brazilian universities. For that reason, the right to equal access to higher education presupposes a series of measures that include the improvement of the basic education system (elementary and secondary), financial support for students from lower income backgrounds as well as specific strategies for increasing the proficiency of students of African descent in the three levels of education. In Brazil the best universities are those that are public, which are supported financially by the government and therefore provide free access to education to those who attend. Private universities, with some exceptions (especially those of religious nature), are the worst in terms of quality of education. But the irony is that within the basic education system, the reverse occurs, with the poorest and the blacks attending public schools, of a lower quality, and those with a higher income (blacks being a minority) attending private schools. This means that the state withholds the possibility of a better future life for some of the youth, but on the other hand guarantees this opportunity to the richest, when they attend its public universities.

In elementary and secondary public education, people of African descent (blacks and browns in our usual way of classification of colour or race for statistics) make up the majority of students: about 61%. In public higher education the rate drops to 38.4%. This data is in the 2009-2010 Annual Report on Racial Inequality in Brazil, edited by the Laboratory of Economic, Historical,

Social and Statistical Analysis of Race Relations (LAESER) and coordinated by myself.[8] I am particularly in favour of preserving the principle of free public education, including in higher education, and am frankly opposed to any proposals of privatisation. But the picture painted above is disappointing.

According to the 2009-2010 Annual Report on Racial Inequality in Brazil, about 90% of students of African descent are studying in public elementary and secondary schools. Among whites, this percentage is 80%, which means that, whereas 10% of the basic education of students of African descent are studying in a private school, the figure for whites doubles: 20%. Public schools have worse infrastructure and security standards than private schools. For example, 35% of public basic education students attended schools with weak infrastructures.[9] Among students attending private schools, this percentage was 3%. When analysing the safety conditions, 37% of public school students were studying in schools with little or no safety measures, whereas within those studying in private school this percentage drops to about 13%.

The problems affecting people of African descent in the education system comprise (i) worse conditions of study, (ii) socioeconomic difficulties, but also (iii) a pattern of race relations that eliminates the incentive for good performance in school. The average academic performance of blacks, when measured by tests carried out at the national level, is about 10% lower when compared to whites, and the difference is practically the same when one takes into account similar types of institutions.

This happens because teachers and other education professionals believe that those with darker skin will have less chance of success in their professional life. As a result,

these students receive lower educational investment, either financially (including state support), symbolically, or in terms of psychological and moral support, building up a social reality that Professor Eliane dos Santos Cavalleiro described as "mathematics of affection".[10]

In a country like Brazil where there are so many social inequalities, many other groups beside blacks face chronic problems in terms of their access to basic or higher education. By way of example, (i) students studying in schools located in slum areas and suburbs, (ii) the descendants or children of descendants of people from the Northeast or North (when living in the richest states located in the Southeast, South or Brasilia), (iii) students of different sexual orientation from the majority, and (iv) the poor in general, also face serious problems to succeed in their studies, including in terms of access to university.

It is also notable that the sum of different variables can aggravate these conditions. Accordingly, for example, a black student who is studying in a public school located in the suburb, the poorest area of the city, will be less likely to succeed in school than a white student who faces the same conditions, even if this poor white student also has to face several obstacles due to his own socio-economic status. That is why the current affirmative action policies for the admission of black students into universities, especially the public ones, are so important.

Secondary school, on the other hand, is a separate issue. Since the 1960s, in line with the interests of the middle and upper sectors of our society, this stage of education has been shaped to prepare students for admission to university; an opportunity historically seen in our country as a privilege

of the few. In other words, secondary school offered a very good training for the university admission exams, creating huge gaps between those who could or could not pay for such preparation.

To make matters worse, Brazilian secondary schools began to suffer the consequences of events taking place at the elementary schools, where the late entry into school, the repetition of grades and school dropouts combine to ensure that only a tiny minority of students actually attend secondary school at the expected age. Not even one third of young Brazilians between 15 and 17 years are within the academic year at secondary school which is appropriate for their age. Among young black males, this percentage is just slightly more than 16%.[11]

On the other hand, in today's Brazil, there is a curious problem since some of the youngsters who drop out of secondary school return to school later in life. This happens because of the demands of the labour market, which offers more opportunities and better salaries to those with a certificate of secondary school completion. Therefore, in Brazil, the gross rate of schooling in secondary school (85%) ends up being far greater than the net rate. In elementary school the same occurs, however I consider this gap especially regrettable in secondary school.

The return to the education system by an older student partially mitigates the problems of dropouts in the basic education system. But the problem is that part of what should be the role of the school – training of citizens during their adolescence – loses its potential within the training scheme.

Youngsters between 15 and 17 live different life experiences that are extremely important, not only intellectually (for example, through a curiosity for things of the world),

but also affectively (in terms of moral, psychological support etc.), personally, etc. At this stage of life, there should be a special concern with the formation of one's character, the relationship with the political system, with the society, etc. Our secondary school model, in view of the above-mentioned aims, fails to fulfil this function.

Thus, as there are no effective mechanisms that allow access to university for the majority of young people, the effort to join or continue in school has ceased to make sense. This problem is bigger among young males, especially blacks.

As to the monitoring of this reality, the number of statistical tools of analysis has been growing considerably in recent years. Some of the examples given above illustrate this fact. Our problem lays not so much in the difficulty of evaluating quantitatively the obstacles of access to university for youngsters, including the issues of racial inequalities. The problem is rather how to effectively address the issues revealed by the available data. In reality, there is a lack of political will by the state, the elites and the middle classes in Brazil to face the facts. And this unwillingness stems from the fact that inequality in access to the education system is consistent with our extremely unequal society.

The fact that the educational problem is not a national issue of absolute priority in our country is explained by the same reasons which cause our social structure to continue to be so rigid in terms of the abyss that separates the living conditions of the different social classes and races. The privileged classes within society are satisfied with the way things are.

ERT: How far does positive (or affirmative) action play a role in ensuring equality and

diversity in higher education in your countries? What guidelines should be in place to ensure that any such positive action policies are implemented appropriately? In particular, should admission requirements aimed at achieving equality for members of disadvantaged groups include lowering of academic criteria?

David Ruebain: We do not have positive discrimination in the UK as it is unlawful save in limited circumstances. Positive action, however, is lawful. A number of universities undertake initiatives to encourage and support individuals from disadvantaged communities. There is also a degree of encouragement from government, through the work of the Office for Fair Access (OFFA). For an institution in England which wants to charge more than £6,000 per year in tuition fees, they must enter into an agreement with OFFA setting out what they will do to encourage what is known as "widening participation", so every such university has some initiatives in this regard. Also, the higher education funding councils have money which they distribute to universities in order to support the admission and retention of students from under-represented groups. I do not however know how effective all of these provisions actually are.

In terms of lowering academic criteria, some universities use "contextual data" to inform their decisions regarding what offer to make to a student. They may, for example, factor in the nature of the school which the student has attended, or the postcode of the area in which they live. The offer may then be one grade or so lower as a result. So instead of being required to obtain the grades AAA in their A-level examinations, they may be required to obtain AAB, or ABB. The change in the offer is usually quite small. Some universities have adopted this approach, but not

all. I think this is a helpful tool to have along with others, and there is quite a lot of research around this. There is something quite evident that someone from one background who has attended one kind of school is going to have had a much stronger advantage/disadvantage than someone else. To treat all as identical is too simplistic. The problem is that deciding on the "right" offer or grades required is an art not a science. This is a controversial tool, because someone who has the higher grades but has not gained a place at university because the place has been given to someone with lower grades or via a lower offer may be aggrieved by that. But I do think that these are the tools which need to be looked at if one is serious about tackling underrepresentation. It is, however, a political hot potato.

Marcelo Paixão: Affirmative action to ensure access to university for blacks and people of lower income began to be adopted in the late 1990s, firstly by the State of Rio de Janeiro, on the initiative of the state government and its two public universities: State University of Rio de Janeiro and State University of Norte Fluminense. Afterwards, many institutions followed this example, always through internal decisions of the different universities involved. It is important for the reader to know that affirmative action for access to higher education in Brazil, with the exception of those implemented in the universities in the State of Rio de Janeiro, was not initiated by the Federal government or the different States' authorities.

In 2008, the last year available when our research group conducted this research, 124 public institutions of higher education offered places for new students through quota systems implemented as part of affirmative action policies. This amounted to around 36,000 higher education places. There were

about 15 public universities that adopted an alternative system of affirmative action quotas which consisted of giving a different score for certain groups such as public school students, blacks, etc. Finally it is important to mention the University for All Program (PROUNI), a federal government program that gives scholarships for disadvantaged students in private universities. In this context, affirmative action for blacks was also implemented.

During the last two decades, there has been an increase in the number of students in the higher education system. Thus, the percentage of youngsters between 18 and 24 who attended university increased from 8.6% in 1988 to 25.5% in 2008. At first this increase in the places available was due to the growth of the private university network, but since the beginning of the Lula government, there was also a rise in the percentage of places in the public university system. Although in a proportion certainly lower than what was necessary, this natural expansion of university places contributed to the process of bringing more blacks and people of lower income to higher education institutions.

Further, affirmative action helped to increase the presence of students of African descent in public universities. In that same year, 2008, about 14,000 students of African descent enrolled in higher education public institutions through quotas. If we make a simple (and certainly inaccurate) projection, we could estimate that between 2008 and 2011, over 28,000 people of African descent have joined public institutions through the same system. And these figures do not include those who entered through a "bonus system".[12] As it is in the public universities that the political, economic and cultural elite is shaped, in addition to the rise in the numbers of students of African

descent in such universities, there is reason to hope that the opportunities created will sooner or later end up being reflected in other parts of social life. However, it is still too soon to analyse the effects of these policies in view of this wider picture.

Besides the issue of admission into universities, affirmative action measures highlight a well-known problem, which becomes more striking in the light of affirmative action policies. The way in which the public university system in Brazil is run tends to disadvantage the poorest students. Class schedules are often full-time, making it impossible for those who need to work to support themselves to actually attend classes. The dormitories are usually poor and insufficient in number for the level of demand. Libraries suffer from a chronic lack of resources, requiring students to spend large sums of their income on textbooks. The transport system servicing many universities is also inefficient. These problems are not new. But in the context of affirmative action, they become even more critical, since now there is an increase in people of low socio-economic status present on university campuses.

Unfortunately, the initiatives adopted to improve the system of aid for students admitted through quotas are being introduced by the universities themselves. Even today, there is no system of financial aid for poor students that is consistent and coordinated at the national level. Some initiatives have occasionally been adopted by the Federal government as well as by some state governments, however they cannot be considered as part of any policy. The problem of the poor quality of the system of financial aid for poor students can certainly be considered today the biggest obstacle in our country to the success of affirmative action policies in improving access to public universities.

ERT: Does an analysis of the *results attained* by students in higher education institutions demonstrate any inequality in achievement levels? If so, which groups fare better and worse, and what are the key factors which you consider to impact on achievement?

David Ruebain: There is evidence of inequality in the results attained by students in higher education. The Equality Challenge Unit produces annual statistical analysis for staff and students. The last set of data shows that white students generally perform better than other heritages, and that does not reflect what happens at school-leaving stage. The nature of the inequality is not the same – it changes.

Decisions regarding what to do about this are not straightforward. This is not usually about someone like a tutor or academic deliberately disadvantaging someone. It is much more subtle than that. It is not really about being marked unfairly, but tends to be more about the individual's experience of higher education. But then, of course, people come to university with a whole history of experiences, so it is not just the university experience that is relevant either. We have done some work on improving student experience and have produced a report on attainment issues for black and minority students.[13] But more needs to be done and it is something that we at the Equality Challenge Unit will be concentrating on.

Black Caribbean British students generally do relatively poorly, and they do worse than black African British students. But it gets more complicated than that. Bangladeshi British students do worse than Bangladeshi international students. This is in part a class issue. Bangladeshi international students will often be from middle class families, whereas Bangladeshi British students tend to be from poor backgrounds. Chinese and Asian students quite often do well, but on average not as well as white students.

Marcelo Paixão: Unfortunately, in Brazil the universities that have been applying affirmative action measures have not yet adopted a policy for the dissemination of attainment indicators for students admitted through the different systems. Consequently, an analysis of this matter is hampered by a lack of standard methodology in publishing results, not to mention the cases where there is an absolute refusal to publicise this information.

Overall, studies on the performance of quota students and non-quota students show that there is not a fundamental difference between the results of the former and the latter. This suggests that those students who entered universities through affirmative action programmes are eventually managing to overcome the negative legacy of a worse basic education, and/or the perverse practice of inter-racial relationships.[14]

On the other hand, given that the issue of affirmative action to increase the access of blacks to universities is currently one of the most controversial points in Brazilian society, it might be the case that a significant number of the students benefiting from the quota system is aware of the challenges presented, particularly in terms of good performance in university. This may cause these students to be more engaged in their studies, demonstrating that most of the arguments against such measures were unfounded. Of course the latter reflection is a mere possibility since there is no data to support such an idea. Notwithstanding this, this hypothesis seems quite plausible.

ERT: Given the current global economic climate, and rising unemployment

levels in many countries, is there any evidence that certain groups are more likely to face challenges in gaining employment on leaving higher education than others? What steps can be taken to ensure greater equality for leavers, and is this the responsibility of the higher education sector?

David Ruebain: The 2011 statistical report published by The Equality Challenge Unit shows levels of unemployment after university according to each of the protected groups.[15] By way of example, it concluded that (i) unemployment rates were higher for male leavers (9.1%) than for female leavers (6.1%); and (ii) for UK-domicile leavers, BME leavers (12.6%), particularly Chinese (14.7%) and black (14.3%) leavers, were more likely to be assumed to be unemployed than white leavers (6.2%).

In terms of whether it is the responsibility of the higher education sector to ensure greater equality for leavers, my view is that it is in part. Many universities consider that they need to be responsible and think about the employability of their students. Many universities, for example, will build and maintain links with employers to give students opportunities. They also do this so that they can revise their curricula and develop courses which are attuned to the needs of employers. So there is, and should be, a direct relationship between universities and employers, but I do not think that they are ultimately completely responsible for employment.

Marcelo Paixão: Surprising as it may seem, the Brazilian economy is not following the same path as the world economy, which has been heading towards recession and unemployment. Rather, the opposite is true. The Brazilian economy has been able to maintain reasonable standards of economic growth

(projections of 3% to 4% for 2012), low levels of unemployment (around 4%, almost the natural rate), as well as the growth of the population with regular jobs (i.e. legal employment which gives the worker a series of social rights) or working as civil servants. Racial inequalities in terms of pay differentials have equally decreased in recent years. Thus, if in 1990 a white worker received about 120% more than a black worker; today this difference is about 85%.

In a few words, this phenomenon results from the new insertion of Brazil into the world economy. Our exports began to include both primary and semi-manufactured products intended for the Chinese market, which is currently our largest partner in trade terms. The policy of transferring income to the poorest segments of society (i.e. the *Bolsa Familia* programme which reaches about 13 million households), the policy to increase the minimum wage, the expansion of rural credit to household farmers through the National Program for Strengthening Household Farming (PRONAF) and the policy of expansion of the credit available to the middle and medium-low segments of society, have all helped the Brazilian economy to go in the opposite direction compared to the developed economies. The fact that we have a population of about 190 million people means that we have a huge internal market – proportionally young and with high propensity to consume – which maintains a special dynamic to our economy, even during the darkest moments of the global economic crisis that began in 2008. Finally, the financial recovery of the Brazilian state, the normalisation of the country's relationship with the international financial system, the macroeconomic stability, the investments in the expansion and modernisation of national infrastructure, and the future hosting of the Football World Cup (2014) and Olympics (2016)

have brought investment from all around the world and have helped to maintain reasonable levels of growth in our economy.

On the other hand, one should refrain from too much optimism as there are some risks for the Brazilian economy that cannot be concealed. The facilitation of credit, especially for real estate, always carries the risk of creating a financial bubble. The Brazilian economy is growing, driven by its new insertion in the global economy, which leaves it vulnerable to possible future crises that may arise in other nations, particularly China. The fact that our exports now include a high percentage of natural resources means that we are unable to keep up with the most dynamic sectors of the world economy today, which are increasingly associated with creativity, high technology, computing systems, etc.

Returning to the core of the question, the current economic crisis is not affecting the Brazilian economy to a great extent, which at the moment has succeeded in ensuring economic growth, distribution of income and reduction of racial disparities in terms of labour income. Considering that we now live in a democratic system, it can be said that these present socioeconomic conditions are almost unprecedented in our country.

ERT: In UK and Brazil, to what extent are commitments to equality and diversity taken into consideration when designing higher education curricula and research projects?

David Ruebain: The answer is a bit different for undergraduate and postgraduate courses. Postgraduate courses give the student much more of a say in what they do. With taught degrees, whether undergraduate or postgraduate, it is more difficult. There is an agency called the Higher Education Academy

(HEA) which is responsible for improving teaching and learning but it is not a regulator. There is also another agency – the Quality Assurance Agency – which oversees the quality of work in higher education institutions. The HEA improves teaching and learning in a variety of ways. For example, it runs programmes to give lecturers skills in teaching. It thinks about equality considerations as well. I suspect that the answer would be mixed. Some universities, and particular departments within universities, will take equality and diversity into consideration, whilst others will think that it is not relevant.

Marcelo Paixão: The commitment to equality and diversity in the Brazilian higher education system appeared together with the affirmative action policies for the admission of both black and poor students through the system of quotas, as they came to be adopted in late 1990. Generally speaking, and taking into account the model of governance of our universities, it was the personal involvement of the university deans that led these measures to be approved by the governing bodies of the relevant universities. University deans have great influence over everything around the university and when they put their efforts into the adoption of these measures, they are generally successful.

On the other hand, when we analyse the content of the research and teaching at universities, we can say that, with few exceptions, there is no commitment to diversity and equality, especially ethnic or racial equality. In our curriculum, there is not a great deal of space for issues such as racial inequality. Even when we are speaking of gender equality, a topic where the adoption of positive action measures is not so controversial, we cannot say that there is a widespread concern amongst our academics to include such matters in the curriculum.

Therefore, in the law faculties, there are no courses on ethnic and racial discrimination, even if the Constitution and the Penal Code typify the crime of racism as inalienable and not subject to bail. In the faculties of social work, the topic is absent, even though those of African descent are about 65% to 70% of the population below the poverty line. In history faculties, studies on the black presence in Brazilian society are almost always limited to the period of slavery. In sociology faculties, the picture is not very different, not to mention the economics degree in which there is no tradition of studies on inequalities and discrimination. Thus, institutions such as LAESER are rare. We are today the only research department in the country, which is part of an economy faculty and is dedicated to the topic of the effects of racial discrimination on the Brazilian social structure.

In terms of research projects the scenario is not very different. Professor Carlos Hasenbalg, once commenting on the status of race relations researchers in the Brazilian academic environment, stated that they lived in a kind of "minority ghetto within the social sciences."[16] And indeed, those who dare to venture into this type of research are often doomed to face "topic isolation", not to mention personal isolation. Our system, which favours the promotion of science and technology, particularly through the National Council for Scientific and Technological Development and the Coordination for the Improvement of Higher Education Personnel, still lacks a budget line for research in the field of ethnic-racial disparities in the country. Therefore, the commitment of the national educational and higher level research institutions to racial equality and diversity is still extremely inadequate, ad hoc and fragmented.

ERT: What benefits or challenges does the increasing number of privately run education institutions present for those interested in ensuring equality and non-discrimination for students and staff?

David Ruebain: This is complicated. At the moment, there are only five private British universities with degree-awarding powers. Other private institutions may teach degrees which are accredited by public institutions, so there is no straightforward answer to this question.

It is the case that the government wants to encourage the growth of private institutions, but there is a huge debate about how successful that is likely to be. A growth of private institutions will present challenges. For example, such institutions may not be subject to the public sector equality duty under the Equality Act 2010. If they are not, this would be a step back in relation to the protection of the right to equality. Also, such institutions might not be subject to other arrangements, such as data collection obligations set out by HEA. At this stage, no-one really knows how this will play out.

A good example is the proposed New College of the Humanities. This college is not going to award its own degrees, but will teach University of London degrees. The headline fees will be £18000 per year which will almost certainly have equality implications.

From my perspective, the main issue is that, for better or worse, not-for-profit institutions can make widening participation, equality and diversity part of their mission. Examples of such not-for-profit institutions in the UK are Regent's College in London and the British School of Osteopathy. But if an institution's prime motivator is profit, it provides a very different context. That is not to say however that such institutions will not take such issues into consideration,

because they may be persuaded by the business case for diversity.

There has been quite a lot of reporting about private higher education institutions in the United States. It seems that US private universities are often quite good at reaching out to underrepresented communities. They want to find new markets in order to exploit them, and reach out to those who might not otherwise think about attending university. Their attainment and participation rates, however, are relatively poor. More students leave part-way through the course, and are then saddled with debt without the benefit of a qualification. Similarly, in the US, there is a difference between private universities for profit, and private universities which are not for profit.

Marcelo Paixão: As I have mentioned above, the private system of education in our country has universities of poorer quality. This is expressed in the number of teachers with a masters or doctoral degree that work exclusively for the university, the number of scientific publications, the investment made in libraries and laboratories, among other problems. The dark side of this is that it is precisely in this kind of institution that the majority of the poor students that need to work carry out their studies. These students make a huge effort to pay their tuition fees, study, and succeed in professional life, even though they have an academic and financial disadvantage that makes the cost of this investment extremely high.

Of course, there are exceptions to this. There are some good universities in the private sector, especially those of a religious nature. But in general, the system of private higher education in Brazil has demonstrated itself to be inefficient both regarding the education of its students and its contribution to the scientific and technological development of the country.

With systems like PROUNI and the Student Financing Fund, promoted by the Federal government, the life of the poorer students who attend private schools became a little less arduous. This is because, depending on the income of the student, the government may finance up to 100% of tuition fees. However, the downside of this measure is that this is funded through a tax exemption that the government grants to the universities that adopt this scheme. Yet it seems that these resources could certainly be better used in strengthening the public system of education.

The problem of the private education system is that, at least in Brazil, it has been very difficult to reconcile the economic interests for profit and the quality of higher education. This implies higher investment in education, lower financial return and longer maturity. These are parameters that the private sector hardly ever takes an interest in.

ERT: To what extent do staff in higher education institutions face discrimination, for example in relation to recruitment, pay and promotion opportunities, as a result of their membership of certain groups? Please give examples.

David Ruebain: If you mean by discrimination, that someone has been directly or indirectly discriminated against, there are not many reported cases. There is however research evidence on discrimination. For example, our research into the experience of lesbian, gay, bisexual and trans staff and students found that 33.8% of LGB staff reported negative treatment from other colleagues on the grounds of their sexual orientation. 49.5% of LGB students reported

negative treatment from fellow students. Our recent report into the experiences of black and minority ethnic (BME) staff evidenced experiences of BME staff being marginalised and isolated – being an "outsider" in higher education. Issues of promotions and career opportunities also come into question, such as fewer opportunities to develop research capacity and enhance promotion prospects (e.g. 40% of eligible black staff were selected for RAE 2008, as compared to 61% of all eligible staff).[17]

There are also certainly issues of underrepresentation in the higher education sector. The detail of that is spelt out in the Equality Challenge Unit's statistical report for 2011.[18] Equal pay is an issue in higher education as it is elsewhere. By way of example, in 2011, a woman professor successfully brought an equal pay case against Royal Holloway College.[19] There is notable underrepresentation of women at professorial level, especially in the fields of science and technology. Similarly, there is a huge underrepresentation of black professors. A growing aspect of our work at Equality Challenge Unit is about addressing this.

Marcelo Paixão: The public system of higher education in Brazil is based on the principle of admission through public tender. Afterwards, the promotions are directly related to the academic qualifications (eg. Master, PhD) achieved by each member of staff. Normally, the directors of academic units are elected by a vote of teachers, students and technical and administrative staff. Thus, in every university there is little room for specific policies in terms of recruitment, pay and promotion.

When we analyse the effect of these rules on the historically discriminated groups, we are confronted with a paradox. On the one hand,

this system should be an obstacle to discriminatory practices, since it is based on merit. But on the other hand, it ends up benefitting not only those with the best academic background, but also those who have easier access to social networks.

The Brazilian higher education system has a Eurocentric perspective. The overwhelming majority of the teaching staff is made up of white people. It is rare to find people with dark skin who are working in universities and research centres as teachers and researchers. And this is not just a problem of a socio-economic nature, resulting from the fact that blacks have less education. The fact that there are relatively few people of African descent with higher education qualifications does not mean they do not exist at all or are numerically insignificant in absolute terms. The reality is that Brazilian society and its operating mode of race relations do not ensure that blacks, even those with an obvious aptitude for academic life, are stimulated to develop their talents within the higher education system.

In the world of Brazilian academia, episodes of racial discrimination against black teachers and researchers are not that rare. This discrimination can occur through conflicts with students, counsellors, committees to evaluate applications for scholarship funds for development or research, etc. Another way in which discrimination occurs is the so-called "misunderstanding", in which a black teacher or researcher (this can also involve the students) is systematically identified as a member of the administrative or auxiliary staff by the other people.

In short, and going back to the question, I cannot recognise any action taken within the higher education system in Brazil that has sought to overcome the picture drawn above.

ERT: How far do higher education institutions in your countries succeed in accommodating the needs of staff and students with disabilities? What impact does such success or failure have on the number of staff and students with disabilities engaged in the higher education system?

David Ruebain: The answer is that the levels of success are as varied as you would expect. There are 165 universities in the UK and some do better than others. There can therefore be no single answer to this question. Part of the difficulty in understanding the picture in this regard is that, almost more than any other characteristic, disability is heterogeneous. Someone with a physical disability will have very different requirements, and is therefore likely to have a very different experience, from someone with a cognitive disability. It is necessary to break down the protected characteristic of "disability" in order to understand it fully.

There has been a massive rise in reporting of disabled students. This is overwhelmingly because of the increased identification of learning difficulties, such as dyslexia or dyspraxia. There is also a pragmatic reason for reporting disabilities of this nature, because reporting may result in specific assistance.

I suppose that there is anecdotal evidence that some universities get a reputation for doing well, and if they do badly, through word of mouth the reputation will spread. There is, however, no public table saying how well universities do in terms of accommodating students with disabilities. Some universities are physically laid out in ways which are more difficult and that might be a determinant for a mobility-impaired prospective student.

Marcelo Paixão: The subject of the population with "special needs" is very significant.

However, I must confess that it is not part of my studies. Therefore, in addition to recognising the validity of their demands, I can only share some thoughts that came to me throughout my life as a student and teacher. In general, there is little or no attention at all within the public school system in Brazil to the mobility of persons with physical disabilities, both in access to the classroom and to the academic space as a whole. This problem is in part related to the fact that a lot of public institutions of higher education in our country are housed in old buildings with high steps, with poor service of elevators, etc. But even the institutions housed in newer buildings rarely show concern for mobility problems.

Thus, in relation to the question about the presence of people with special needs within our higher education system, I do not know any source or database that can give me some response, which to some extent reflects how this topic is dealt with in our country.

ERT: Have you come across examples of good practice in preventing discrimination in higher education, either in your own jurisdiction or another? What were the key features which gave rise to such good practice? How important was international and/or domestic law in promoting this practice?

David Ruebain: I have many examples of good practice in the UK. A lot of the work which the Equality Challenge Unit does focuses on disseminating examples of good practice in respect of all protected characteristics. We have many examples of this, and it is part of our purpose.

One example of this is a programme which we run to advance women in senior academic positions in science, engineering and technology. The only gold award holder is The

University of York Chemistry department. They are evangelical about how they have transformed their culture and improved representation of women as a result. It is important for us to show how you can do things. The programme we run – Athena SWAN – is a culture change programme which encourages institutions to examine how and what they do, for example, in relation to maternity provision, how decisions are taken, the physical environment, everything! This is not something which you can write down on one sheet of paper in the form of guidelines.

We do not rely on international or domestic law in this programme, because in essence it is a "beyond compliance" programme. This is not so much about avoiding discrimination or harassment, *et cetera*. This is about what you can do about underrepresentation, in this case, of women. It looks at how institutions can make a difference to representation by changing their cultural, historic arrangements. The Equality Act 2010 does touch on this through the public sector duty and positive action provisions, which should serve to illuminate where the problems are. So the law can underpin such processes. But the purpose of the Athena SWAN programme is not to look at how universities and/or particular departments comply with the public sector duty, as that is only a starting point. It looks at taking this forward much further. A combination of the public sector duty and positive action is key to tackling underrepresentation.

I tend to think that Britain is a leader in the area of equality and diversity generally as well as in higher education. We certainly don't get it right all the time, but partly because of our history of colonialism, we've had to think about this for a long time. There are examples of good practice in other jurisdictions, but I am not aware of a similar agency to the Equality Challenge Unit in other countries.

Marcelo Paixão: In order to give an appropriate answer to your question, I need to return to something that I have been saying throughout the interview. The current model of race relations in Brazil does not expressly or explicitly discriminate against black people. Rather, this occurs through more subtle mechanisms, which are nevertheless very efficient in achieving the objective, that is, to avoid the presence of students of African descent in the higher education system.

The subtle mechanisms of discrimination operating in Brazil are stimulated by the association of each skin colour with a corresponding social position. This mechanism is present in the media, in advertising, in different social spaces (schools, universities, prisons, asylums, etc.), and also in the daily life of people who are constantly training their eyes so as to perceive and legitimise the convergence between social class and colour. Moreover, this model sanctions more open and aggressive forms of racial discrimination, which end up being experienced as normal. That is, racial inequalities are identified as something embedded in the nature of things, and it is not considered reasonable to question more open forms of racism, or why blacks have living conditions so much worse than whites.

Nowadays when one speaks about good practice in terms of an anti-discrimination legislation in Brazil, one is referring to actions which aim to increase ethnic and racial diversity in all areas of social life with special emphasis on what occurs within the university system of education. As the Brazilian racism that operates by persuasion and education of the look (a skin colour consistent with a social class), the deconstruction of racial inequalities must also operate via the alternate persuasion and education of the look. Today our society is surprised when there

are blacks in social positions of higher prestige or when they are better paid. In fact, one must criticise the historical process that was responsible for producing classes and more classes of graduates from universities consisting of predominantly male, white people. This social pathology cannot be perceived as natural and must be criticised.

From this perspective, affirmative action policies for Afro-descendants, apart from their practical results, have the merit of favouring a new pact within the Brazilian society. This pact must be based, among other parameters, on the importance of ethnic-racial diversity.

With regard to Brazilian law there is already a comprehensive legal framework to punish racist practices. Today the primary issue is how to implement the penalties. The Supreme Court is currently examining the constitutionality of affirmative actions in general, and particularly of those that are specifically directed at blacks, but there is still no final decision. This judgement is being awaited with great anxiety by the Brazilian society due to the obvious impact that the decision, whatever it is, will have.

With respect to international law, the Third World Conference Against Racism held in Durban in 2001 had a reasonable impact on Brazilian society. It was the first time that Brazilian diplomatic representatives admitted before the international community that the country harboured severe social injustices against the Brazilians of African descent. Throughout this century, new institutional spaces have been created. In 2003, the Special Secretariat for Policies to Promote Racial Equality (SEPPIR) was created. That same year, Law 10,639 was passed, establishing the compulsory status of studies on Africa and African descent within our education system. Currently, almost all demographic databases incorporate the variable of colour or race, an instrument of black empowerment, since it allows more accurate understanding about their standard of living and the socio-racial gaps existing in our country.

However, despite recent advances, we are still far from a framework of full recognition of the social demands of African descendants, both within the state and in many segments of the Brazilian society. The budget of SEPPIR, besides being proportionately small, is boycotted by the Ministry of Finance and Planning. Thus, on average, just over 30% of the estimated budget is effectively applied. In fact, the issue of racial equality is almost never accepted as a priority for the current government, which sees it as a cultural, human rights, or compensatory topic; one that can be solved by government programmes to combat poverty. While acknowledging the relevance of these issues, the reality is that when they become the guiding principle of public policy, a major contribution to the struggle of the black movement is lost – one that lies in the critical perspective of the model of development of the country, which has been historically founded on Eurocentric, wealthy, politically powerful and socially prestigious elites.

As such, when critically analysing the Brazilian society in the light of the dynamics of race relations, basically what is sought is the construction of alternative models, not only of development but also for the society itself.

Interviewer on behalf of ERT:
Libby Clarke

1   Equality Act 2010, sections 90-94.

2   Equality Act 2010, section 149: "A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

3   Equality Act 2010, section 1(1): "An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

4   A public consultation run by the UK government in 2011 on all regulation relating to the conduct of business in order to remove "red tape" perceived to restrict efficiency.

5   Candomblé is an Afro-Brazilian religion. It was developed as a consequence of establishing the African Diaspora in Brazil during the slave period. It is a syncretic religion, mixing African animism and Catholic elements. For further information, see "Candomblé at a glance", *BBC News*, 15 September 2009.

6   Paixão, M., Rossetto, I., Montovanele, F. and Carvano, L. M. (org), *Relatório Anual das Desigualdades Raciais no Brasil: 2009-2010*, Garamond, 2010, pp. 227-231.

7   Hanchard, M., *Orfeu e Poder: Movimento Negro no Rio e São Paulo*, EdUERJ/UCAM-Centro de Estudos Afro-Asiáticos, 2001, p. 243.

8   See above, note 6.

9   *Ibid.* In this report, the authors generated an index of conditions in schools from information collected by the interviewers during visits to schools. Nine variables were considered —roofs, walls, floors, doors, windows, bathrooms, kitchens, plumbing, and electrical installations—and one composite scale was created which graded school infrastructure. To measure school safety, 16 safety variables included in the 2005 SAEB survey were selected. Among the questions asked about safety were: i) are there walls and fences surrounding the school areas? ii) Are there controls for entry and exit of students? iii) Do gates remain locked during school hours? and iv) Is there policing within the school? (Cf. Paixão, M., Carvano, L.M. and Rossetto, I., "Race and Educational Performance in Brazil", *Americas Quarterly,* Vol. 4, 2010, pp. 100-106.)

10   Cavalleiro, E.d.S., *Do silêncio do lar ao silêncio escolar*, Humanitas-FFLCH-USP, Contexto, 2000.

11   See above, note 6.

12   This selection system for university does not depend on quotas, but rather the grant of a bonus in the final score to candidates belonging to disadvantaged groups.

13   Berry, J. and Loke, G., *Improving the degree attainment of Black and minority ethnic students*, The Equality Challenge Unit and The Higher Education Academy, 2011, available at: http://www.ecu.ac.uk/publications/files/improving-degree-attainment-bme.pdf/view.

14   Further information on the impact of the quota system can be found at the following website, available at: http://revistapesquisa.fapesp.br/?art=3502&bd=1&pg=3&lg=. This demonstrates that there is no visible difference between the proficiency of quota and non-quota students.

15   Blandford, E., Brill, C., Neave, S. and Roberts Allison, A., *Equality in higher education: statistical report 2011, Part 2: students*, The Equality Challenge Unit, 2011, pp. 16-17, 44-45, 64-67 and 82-83, available at: http://www.ecu.ac.uk/publications/files/equality-in-he-stats-11-part-2-students.pdf/view.

16   Hasenbalg, C., *O negro na indústria: proletarização tardia e desigual*, Rio Fundo Editora / ANPOCS, 1992.

17   See Higher Education Funding Council for England, *Selection of staff for inclusion in RAE2008*, 2009, p. 22, available at: http://www.hefce.ac.uk/pubs/hefce/2009/09_34/09_34.pdf. RAE stands for "Research Assessment Exercise".

18   Blandford, E., Brill, C., Neave, S. and Roberts Allison, A., *Equality in higher education: statistical report 2011, Part 1: Staff*, The Equality Challenge Unit, 2011, available at: http://www.ecu.ac.uk/publications/files/equality-in-he-stats-11-part-1-staff.pdf/view.

19   *Schafer v Royal Holloway and Bedford New College* (ET/2702474/09, 27 Jan 2011).