Words that carry meaning: issue definition and affirmative action

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Abstract

This paper presents a comparative study of affirmative action policies in effect in seven countries: Australia, Canada, India, the Netherlands, South Africa, United Kingdom, and the United States. Drawing on a wide range of literature, the paper discusses several analytical frameworks that help in describing and accounting for differences between the policies, including the distinction between soft and hard affirmative action, ideological differences, and the social actors expected to adapt to affirmative action legislation. Ultimately, however, it is argued that the greatest insights can be gained by applying the issue definition perspective into the study of affirmative action, in particular by examining the language associated with these policies. Based on the analysis, a typology of affirmative action policies is developed, bringing together the findings of the different analytical perspectives presented in the paper.

Abrégé

Le présent mémoire est une étude comparée de politiques d'action positive en vigueur dans sept pays : l'Australie, le Canada, l'Inde, les Pays-Bas, l'Afrique du Sud, le Royaume-Uni, et les États-Unis. Se basant sur une variété d'études universitaires, le mémoire aborde trois approches analytiques qui ajoutent à notre compréhension des différences entre les politiques : la distinction entre les mesures antidiscriminatoires dites douces et dures, les différences idéologiques, et les acteurs sociaux dont le comportement est visé par la législation. L'argument principal s'appuie sur la perspective théorique de définition de problèmes et soutient que la langue associée avec les politiques d'action positive nous aide à comprendre les différences observées entre ces politiques. Enfin, une typologie de programmes d'action positive est développée à partir des cadres analytiques présentés tout au long de l'étude.
Acknowledgements

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Numerous friends provided much needed encouragement, and I wish to thank Shaha especially for always finding the right thing to say. My two families never stopped believing in what I was doing, and that meant and still means a lot to me. My parents have been so supportive throughout my studies that I don't even know where to start to express my gratitude. All I can say is that I would not be where I am today had it not been for them. My brothers and my sister remembered how to make me laugh, and I am grateful they didn't let me forget, either. Last, but certainly not the least, my special thanks go to Maxime without whom none of this would have been possible. Merci.
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Introduction

The story has been told countless times. On June 4, 1965, in a commencement address given at Howard University, President Lyndon B. Johnson declared,

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates... We seek not just freedom but opportunity... not just equality as a right and a theory but equality as a fact and equality as a result. (Johnson 1965, 635-636; quoted in Fisher and Devins 2001, 279)

This was the first official recognition by an American president that remedial action was necessary to bring about true equality between the disadvantaged black minority and the advantaged white majority. President Johnson's speech therefore marked the beginning of race-conscious affirmative action in the United States.

Still today, affirmative action is often associated with proactive policies aimed at improving employment opportunities of the black population in the United States. In reality, however, affirmative action covers a range of antidiscrimination policies in effect in most contemporary democracies. In India, for instance, special measures are reserved for "the weaker sections of the people," deemed by the state to be in need of protection (Constitution of India, Art. 46). In Australia, women have been identified as the group suffering from disadvantage in the labour market, and the government has enacted legislation to improve their employment opportunities. In each case, however, the policy has suffered serious backlash from opponents who claim these programmes amount to nothing more than 'reverse discrimination' against other groups in the society and as such are contrary to the noble pursuit of equality.

Given the political salience of affirmative action, the relative neglect of the subject in policy studies is a startling omission. In fact, crossnational comparison of affirmative
action policies has been quite limited. Current literature tends to be focused on the United States and to take one of three approaches: sociological (e.g. Skrentny 1996), philosophical (e.g. Cahn 1995), or constitutional (e.g. Moen 2001). The few studies that have tried to expand the scope beyond the American context have only paved the way for more elaborate work. The analysis by Faundez (1994) is a comprehensive survey of affirmative action in the United States, Canada, Australia, and India but does not dig deep enough in accounting for differences in the policies. Bacchi’s (1996) work covers several countries but only focuses on affirmative action policies aimed at women. A good reflection of the American model and of its applicability to the European context is provided in a volume edited by Appelt and Jarosch (2000), but the chapters remain very descriptive. Skrentny (2001) has edited a collection of articles on affirmative action policies in various countries, but the individual chapters remain country-specific in focus and therefore fail to link the different examples into one coherent analysis. On this point, Jain et al. (2003) present the advantage of bringing several cases together. However, being economists and human resource specialists, the authors focus their analysis on the reality of affirmative action at the organizational level. Edwards (1995a; 1995b) has published comparative studies on affirmative action practices in the United States and Great Britain/Northern Ireland, while Parikh (1997) has compared the American and the Indian practices. These works, however, remain an exception in the field.

This paper represents one of the first attempts to provide a systematic crossnational comparison of affirmative action policies. The seven countries under scrutiny – Australia, Canada, India, the Netherlands, South Africa, United Kingdom, and the United States – have been chosen for the variety of affirmative action practices and experiences they
represent. While an exhaustive examination of the policies is well beyond the scope of this study, we will nevertheless outline the main characteristics of the policy provisions in each country that will prove useful for subsequent analyses. The principal contribution of the paper, however, will be the application of the emerging issue definition perspective to the study of affirmative action policies.

As public policy, affirmative action is a governmental response to the problem of discrimination and is therefore closely linked with the political process. Politics is reflected in the way policies are presented to the public: issues are framed and defined so as to lend legitimacy to particular policy positions, presented and justified with implicit or explicit references to the dominant ideology of the polity. Thus, there is a “connection between the socially dominant understanding of a problem and the sorts of programmatic interventions deemed to be appropriate and reasonable” (Rochefort and Cobb 1994, 6).

Given the limited scope of our research, we will focus on comparing the terminology used in connection with affirmative action policies in the seven countries across time. The analysis is based on a wide review of existing studies, as well as an evaluation of policy documents, and will allow us to evaluate whether a correlation exists between issue (re)definition and the form affirmative action policies take in each case. Assessing causality between issue definition and the evolution of affirmative action policies, however, will not be possible within the framework of this study.

Although we really are interested in what the issue definition perspective can tell us about affirmative action, it will be important first to determine what the policies do and do not cover. Thus, Chapter 1 will present the scope of affirmative action legislation in the various countries under scrutiny and outline the policy instruments permitted under the
legislation in each case. This rather traditional policy discussion, using an institutional perspective, is followed in Chapter 2 by a more theoretical look at affirmative action policymaking. Three analytical frameworks will be introduced to compare and contrast the different policy practices identified in the preceding chapter. Chapter 3 proposes a completely new approach to analyzing affirmative action policies. It consists of an exploratory study of the link between issue definition and affirmative action and focuses on the relationship between language and politics. It will be shown that although affirmative action can be defined as measures undertaken to address inequalities in access to employment, conceptual differences exist between the policies in different countries.

Concluding Chapter 4 will draw together the findings of the three preceding chapters by proposing a new typology of affirmative action policies. Based on this classification, an agenda for future research will be presented.
Chapter 1. Institutional setting and policy instruments

A comparative study of affirmative action policies must start with a few definitions. However, it is difficult to find one all-encompassing definition of affirmative action that would capture all the possible nuances (Skrentny 2001, 4). We have opted for the following definition which, while being fairly general, covers the most important aspects of any affirmative action policy: “Affirmative action is a generic term for programmes which take some kind of initiative, either voluntarily or under the compulsion of law, to increase, maintain or rearrange the number or status of certain group members usually defined by race or gender, within a larger group” (Johnson 1990, 77).

In employment, affirmative action refers to proactive measures undertaken to create a nondiscriminatory work environment (Bacchi 1996, 17). These policies originate in anti-discrimination legislation and are by definition group-based practices, adopted with the objective of bringing about greater equality between the advantaged and the disadvantaged in the society. Affirmative action policies are justified not only by the need to bring about equality, but also by the failure of conventional social policies – policies that take no account of race or gender – to effectively reduce inequalities between minority and majority groups (Edwards 1995b, 2).

The need for affirmative action stems from the perceived underrepresentation or underutilization of certain groups (usually, racial minorities and women) in certain occupational categories and their over-representation among the unemployed and the socially and economically disadvantaged (Edwards 1995b, 7). Formal affirmative action policies as they are known today originated in the United States when President Kennedy’s Executive Order 10925 of March 6, 1961 “required government contractors to
take ‘affirmative action’ to ensure equal employment opportunity in their operations” (Graham 2002, 28). At this point affirmative action was still equated with a formal policy of nondiscrimination, also known as ‘equal employment opportunity.’ Affirmative action quickly developed into a more ‘colour-conscious’ practice when the government realized that the effects of past discrimination would not be easily overcome without a more proactive approach. Executive Order 11246 issued by President Johnson in 1965 therefore took a result-oriented approach to affirmative action by calling for the recruitment, hiring and promotion of more minorities. It wasn’t until a revised Order No. 4 was issued by President Nixon in 1970, however, that affirmative action came to be defined as a plan leading to proportional representation of minorities in the workforce (Elliott and Ewoh 2000, 216).

The American experience has served as an example to many other contexts where affirmative action has come to be seen as a necessary practice in the fight against discrimination. On a global scale, however, the extent of legal provisions for affirmative action varies greatly. Furthermore, despite the widespread use of the term ‘affirmative action’ in the academic literature, in fact only four countries or regions in our sample (the United States, Australia, South Africa, and Northern Ireland) have used that specific term in their legislation. The United Kingdom (with the exception of Northern Ireland) and the Netherlands have preferred ‘positive action’, although ‘positive discrimination’ has also been used in the Dutch context. Canada has an ‘employment equity’ policy, while India calls its measures ‘reservations’. In some contexts, the negative connotations attached to the term ‘affirmative action’ have been avoided by opting for the more neutral term of equal (employment) opportunity, as recently happened in Australia. While we do
recognize the differences in the official terminology, the term affirmative action will be used to designate these policies throughout this text for the sake of consistency.

Affirmative action policies

A proper analysis of affirmative action requires an understanding of the scope of the different policies. Perhaps not surprisingly, "(d)ifferent countries take markedly different approaches to the design and implementation of affirmative action policies," and there are also clear differences in the scope of the different programmes (Faundez 1994, 27). This chapter constitutes a first effort at outlining the main differences among various kinds of affirmative action. It will present six important aspects of any affirmative action policy: (1) legislative texts and the purpose of affirmative action, (2) target groups, (3) implementation, (4) coverage, (5) enforcement mechanisms in place, as well as (6) penalties for noncompliance. The discussion will be highlighted with examples from seven countries chosen for the variety of affirmative action practices they represent: Australia, Canada, India, the Netherlands, South Africa, the United Kingdom (with examples from both Great Britain and Northern Ireland), and the United States. Country profiles, summarizing the main characteristics of affirmative action policy in each of the seven countries, are provided at the end of the chapter (see Tables 1 to 7).

Affirmative action legislation

Affirmative action legislation ranges from strictly enforced constitutional provisions to exceptions allowed under anti-discrimination law. A glance at Tables 1 to 7 shows that affirmative action policies share a common purpose: to eliminate discrimination and
promote equal employment opportunity. However, precisely because “most of these objectives have a bearing on the issues of equality, it is not surprising that affirmative action is controversial, as it raises sensitive moral, economic and political questions” (Faundez 1994, 55). Special measures to correct the conditions of disadvantage experienced by the target groups may be the source of heated debate if they are perceived as reverse discrimination against nontargeted groups. Given this potential for political controversy, an affirmative action policy adopted by the state may help reduce the tensions. After all, governmental initiative is one way of legitimating the policy and making it a priority in the public mind (Cunningham 2000, 46).

Formal legislation rendering affirmative action compulsory suggests a top-down approach whereby specific practices are imposed by the government on the designated employers. In India, for example, reservations are guaranteed in the Constitution, and therefore public sector employers there must respect the quotas set for the target groups. The most comprehensive affirmative action in the United States – contract compliance – is embodied in an executive order (Faundez 1994, 28). As administrative law, however, it lacks the force of a legislative statute and in any case only applies to federal contractors (Graham 2002, 29). Canada, South Africa, and Australia have adopted Acts which require designated employers to devise affirmative action plans in order to achieve the purpose of the legislation. The Netherlands and the United Kingdom (with the exception of Northern Ireland) only allow for affirmative action but do not require it. In fact, positive action in these cases is “subject to strict legal guidelines” and therefore constitutes an exception rather than the rule (Gonçalves-Ho Kang You and Mulder 2000, 177). In short, affirmative action programmes that are required by law force the employer to comply with
the programme requirements and thus implement change, whereas voluntary programmes depend solely on the goodwill of the employer and provide the employee or the applicant with no guarantee of accommodating measures.

Legislation also determines the goals the policy is set out to achieve, and the stated objectives are related to the perception of discrimination as a problem by public authorities. Here one can distinguish between forward- and backward-looking goals, although one does not necessarily exclude the other. Forward-looking goals focus on “the promotion of equality of opportunity by relief from discrimination and meeting of needs, whilst (the backward-looking approach) emphasizes the remedial nature of the practices as means of compensating for past harm and injustice resulting from negative discrimination” (Edwards 1995b, 23). Many affirmative action policies are forward-looking: the legislation circumscribes affirmative action exclusively to the promotion of equal opportunity and to treating all persons in the same way. However, “an affirmative action programme cannot make a radical distinction between prevention and remedy, since prevention always involves some form of remedy” (Faundez 1994, 30). In Canada and India, for instance, the legal and constitutional provisions adopted to fight discrimination and to provide for equality between groups make reference to unacceptable past practices. The provisions further present special measures as acceptable and even necessary to correct the conditions of disadvantage experienced by the target groups. This is seen as the only way of guaranteeing them full equality in the present and in the future. Thus, in practice affirmative action policies cover a range of forward- and backward-looking goals.
Target groups

Despite the varieties in the affirmative action policies adopted in different countries, their purpose is universally common—"to shift the balance of burdens and benefits between morally arbitrarily defined groups in society" (Edwards 1995b, 154). However, the target groups vary from one context to another. The beneficiaries are usually members of ethnic minorities, aboriginal persons, women, people with disabilities, and war veterans. Some countries, such as South Africa, implement affirmative action programmes for the majority, but even in this case the majority is identified along racial lines. Generally speaking, target groups are selected "because in the past they have suffered severe social, economic, political or educational disadvantages" (Faundez 1994, 34). The most obvious cases are the black population in the United States and South Africa and the scheduled castes and scheduled tribes in India. In most cases, women are also singled out as a target group.

The most needy and deprived tend to be defined on the basis of their group characteristics, although there may be individual differences in the economic status between the members of the groups. The identification of target groups easily leads to a categorization of people, which in turn determines how the groups are perceived in the society. The sometimes stigmatizing effect of affirmative action on certain groups has been an especially important feature of debates on affirmative action. We will return to the question of policy beneficiaries in Chapter 3. For now, suffice it to say that the naming of target groups in the legislation tends to legitimize such categorizations in the public mind. Portrayed as the beneficiaries of 'special measures,' these groups come to be seen as
needing assistance, thus enforcing stereotypes about the disadvantaged in the society in general and perpetuating the conditions of inequality (Bacchi 1996, 83).

**Implementation of affirmative action legislation**

As mentioned above, affirmative action is generally “sanctioned and prescribed as a remedy for minority under-representation” (Edwards 1995a, 21). The variety of mechanisms employed to implement the legislation is related to the coverage and nature of the different programmes (Faundez 1994, 29). Most policies described in Tables 1 to 7 permit and even encourage the use of goals and timetables in the fight against discrimination. These are part of affirmative action plans employers are required to adopt under affirmative action legislation. The main components of such a plan are workforce analysis, availability analysis, utilization analysis, establishment of goals and timetables, and activities to eliminate discrimination and correct imbalances (Edwards 1995a, 18).

Workforce analysis consists of establishing a breakdown of the current workforce by job title or type and in identifying the number of affirmative action beneficiaries for each title and type. Availability analysis means determining the number and percentage of available and qualified (or qualifiable) target group members in the relevant labor force. Based on these figures, a utilization analysis is conducted. Underutilization exists if there is a discrepancy between availability and current utilization as determined by the workforce analysis. Goals and timetables are then set to correct identified underutilization of members of the target groups or other barriers to their employment. It should be stressed that goals and timetables are not rigid quotas; instead, they are understood as “a flexible and reasonable commitment to specific outcomes” (Faundez 1994, 43).
The measures adopted under an affirmative action plan depend in part on the results of the utilization analysis. However, affirmative action legislation also sets limits to permissible forms of action. At a very basic level, affirmative action consists of outreach measures such as targeted recruitment and training of target group members. Employers may also be required to change current employment practices in cases where these practices cause disadvantage to members of the target groups. These measures can range from revised interviewing practices to dress codes which accommodate women and cultural minorities. The range of such measures allowed in the legislation depends in great part on how serious a problem minority underrepresentation is thought to be. In extreme cases, where a pervasive underutilization of target groups characterizes the society as a whole, quotas may be imposed. For example, reservations were adopted in India to end the “barbaric practices” of untouchability regarding the scheduled castes and “exploitative slavery” of both the scheduled castes and the scheduled tribes (Jain and Venkata Ratnam 1994, 22).

Demographics is another important factor in the choice of policy tools. In the United States, for example, a quarter of the population can be classified as minorities, and thus minority politics, and by extension affirmative action, have become a permanent issue in American politics. In contrast, the absence of a sizable minority population in Britain, and the diversity of economic circumstances among the various ethnic groups, do not make the minorities a strong and unified political force there (Teles 1998, 1012). In fact, “(a)ffirmative action finds its way onto the political agenda...in Britain only very infrequently” (Edwards 1995b, 163). Thus, there has been no need – or no demand – for harder affirmative action policies in Britain. The example of Northern Ireland, however,
demonstrates that “when a condition is considered severe enough, the United Kingdom is capable of responding with affirmative action” (Teles 1998, 1012). In India, affirmative action has endured partly due to the large size of the target group. And despite great variation within the groups that are eligible for reservation benefits, “differences are frequently subsumed to create a politically salient coalition termed ‘backwards’ that sees itself in unified opposition to nontargeted groups, who call themselves ‘forwards’” (Parikh 2001, 297-298). Thus, they have been able to form a cohesive political force that cannot be ignored by the political parties.

Coverage of the legislation

The coverage of affirmative action legislation refers to the sectors (public and/or private) it applies to, as well as to its compulsory or voluntary enforcement. The wider the sector coverage, the more likely the policy is to produce results on a societal scale. In most cases, the government sets the example. In Northern Ireland, for example, the Civil Service took the lead in the late 1980s “on the grounds that if it or its agents were seen to be imposing regulatory procedures on the private sector (and other parts of the public sector), it must be seen to put its own house in order” (Edwards 1995a, 11-12). Likewise in Canada, three federal departments undertook pilot affirmative action projects in the early 1980s (Winn 1985, 27). However, it wasn’t until the revised 1995 Employment Equity Act that coverage was officially extended from the private sector to the federal public service (Hucker 1997, 137). In many countries today, compulsory affirmative action policies cover the private sector, as well. This is the case in Australia, Canada, Northern Ireland, South Africa, and the United States. In India, however, where
discrimination against the scheduled castes and the scheduled tribes has been widespread, the rigid affirmative action legislation only applies to the organized public sector, meaning “the affirmative action programmes cover only a fringe of the total economic activity in the country” (Jain and Venkata Ratnam 1994, 23).

Legislation sets the boundaries for permissible affirmative action, be it based on voluntary action or compulsory enforcement. In Great Britain, where the entire affirmative action process is undertaken voluntarily, lawful measures have been clearly spelled out in the legislation. Voluntary programmes tend to be based on outreach measures, such as targeted recruitment and training, while compulsory programmes usually go further. India’s quota system is of course the most extreme example of a compulsory affirmative action programme. But even in countries where at least some kind of affirmative action is required by law, voluntary measures often exist for employers not covered by the affirmative action legislation: “In the United States, such programmes are encouraged by the Equal Employment Opportunities Commission (EEOC) as a means to overcome indirect as well as direct discrimination. (These programmes must be) consistent with the equal opportunity objectives of Title VII of the 1964 Civil Rights Act” (Faundez 1994, 30). Employers having adopted such voluntary measures approved by the EEOC enjoy protection from liability based on an unlawful practice allegation. Similarly in Canada, employers may seek advice from the Human Rights Commission on the design and implementation of their affirmative action programmes. “Plans duly approved by the Commission provide protection from liability regarding complaints of discrimination based on any disability in respect of which the plan was approved” (Faundez 1994, 31). In South Africa, affirmative action legislation defines a group of employers who must adopt
Enforcement mechanisms and penalties for noncompliance

Anti-discrimination laws, such as affirmative action legislation, aim at modifying an unequal division of power in society. However, "it has to be taken into account that those who have to adapt their behaviour to the law are not very willing to do that" (Goldschmidt and Goncalves Ho Kang You 1997, 142). The effectiveness of affirmative action legislation and affirmative action measures adopted by employers therefore depends on regular monitoring by public authorities (Anwar 1990, 57). Annual progress reports are the most common way of monitoring adherence to the law, as is clear from the country profiles presented in Tables 1 to 7. But enforcement agencies also have a role to play in making sure employers not only adhere to the letter of affirmative action legislation but adopt the spirit of the law in their employment practices (McCrudden 1990, 129). As a result, they perform advisory, promotional and educational functions, as well (Faundez 1994, 32).

Ultimately, the enforcement mechanisms and reporting requirements depend in a large measure on whether the affirmative action programmes are voluntary or compulsory. In the latter case, a strong enforcement mechanism requires the employers to take the policy seriously and comply with its provisions. In the United States, for instance, the Office of Federal Contract Compliance Programs (OFCCP) is entrusted with comprehensive enforcement powers through the compliance review procedure. These periodical reviews involve "a detailed analysis of a contractor's hiring and employment
practices and the adequacy and outcome of his/her affirmative action plans" (Faundez 1994, 39). If an employer is found in violation of his/her affirmative action obligations, the OFCCP may impose a variety of sanctions: canceling, terminating or suspending a contract or debarring the contractor from future government contracts; publishing the names of noncompliant contractors; or recommending action by the Justice Department or the Equal Employment Opportunity Commission (EEOC). In Australia, a noncompliant organization may be publicly named in Parliament. Such penalties provide incentives for the employers to comply with the legislation and to adopt affirmative action programmes.

Conclusion

This chapter has analyzed the scope of affirmative action legislation in seven countries, focusing on the institutions and policy instruments in place. It should be clear from Tables 1 to 7 and the discussion above that no two affirmative action policies are exactly alike. Although analyzed under a single heading here, several kinds of affirmative action can in fact be distinguished, ranging from strictly enforced workplace programmes to training initiatives undertaken voluntarily by employers. This will be our focus in Chapter 2 which will focus on affirmative action policymaking by presenting three analytical frameworks that help in examining the differences identified in the policies.

1 Although most affirmative action laws stress the importance of merit, it may be interpreted broadly to accommodate members of target groups. The South African Employment Equity Act, for instance, refers to the notion of a 'suitably qualified person': "In this regard, an applicant's lack of the necessary qualifications is not a sufficient reason for hiring a non-designated group member applicant instead. The employer must prove that the designated group member applicant could not have acquired the relevant skills in a reasonable time" (Jain et al. 2003, 74; emphasis added). With this requirement in mind, the pool of applicants from the target groups can be expanded to cover those who may not have the formal qualifications required but who would be able to develop the required skills if given a chance. In this way, the lack of opportunities for skills development in the past is not considered a barrier for professional advancement in the present.
Table 1: Country profile: Australia

<table>
<thead>
<tr>
<th>Affirmative action legislation</th>
<th>Implementation of affirmative action legislation</th>
<th>Enforcement mechanism and reporting requirements</th>
</tr>
</thead>
</table>
| - Equal Opportunity for Women in the Workplace Act 1999; renamed and updated the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 | Employers must prepare a workplace profile, setting out the composition of their workforce, and an analysis of the issues that need to be addressed. A new programme must be prepared each year and provide for actions to be taken in relation to priority issues and for evaluation of the effectiveness of the policy. Employers must set forward estimates quantifying, in numerical terms, progress made toward achieving equal opportunity for women. Before developing a workplace programme, the employer must consult with employees or their representatives (in particular women) and allocate a manager with the responsibility for the program, including its continuous review. | Equal Opportunity for Women in the Workplace Agency:  
-    administers the Act  
-    educates and assists organizations to achieve equal opportunity for women  
-    reviews the annual reports submitted by employers and will provide assistance to those not complying |
| - The Act aims to:  
  - Promote merit in employment  
  - Promote equal employment opportunity and eliminate discrimination  
  - Encourage consultation between employers and employees on these issues  
- Section 3(4): “Nothing in this Act shall be taken to require a relevant employer to take any action incompatible with the principle that employment matters should be dealt with on the basis of merit.” |                                                                                                                  | Employers are required to file public reports providing statistical information on the workforce and outlining affirmative action measures undertaken. Employers are also required to evaluate in their reports the effectiveness of the measures undertaken; however, this evaluation may be kept confidential if the employer so wishes. |

<table>
<thead>
<tr>
<th>Target groups</th>
<th>Coverage of affirmative action legislation</th>
<th>Penalties for noncompliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>Private sector companies, community organizations, non-government schools, unions, group training companies and higher education institutions with 100 or more employees</td>
<td></td>
</tr>
</tbody>
</table>
- Naming of the organization in Parliament (list publicly available)  
- Contract compliance policy, which renders organizations ineligible to tender for government contracts and industry assistance |
### Table 2: Country profile: Canada

<table>
<thead>
<tr>
<th>Affirmative action legislation</th>
<th>Implementation of affirmative action legislation</th>
<th>Enforcement mechanism and reporting requirements</th>
</tr>
</thead>
</table>
| - Employment Equity Act (1996), which revised and replaced the 1986 Employment Equity Act  
- The purpose of the Act is “to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and...to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of difference.”  
- The purpose of the obligations under the Act is to ensure accurate representation of the designated groups based on their presence in the relevant workforce. | Employment equity is implemented by:  
- identifying and eliminating barriers to employment that affect persons in designated groups; and  
- instituting positive policies and practices, and ensuring reasonable accommodations for persons in the designated groups to achieve accurate representation.  
Employers are required to:  
- conduct an analysis of the workforce to ascertain representation;  
- review current practices to identify and eliminate barriers against target groups;  
- prepare a plan with qualitative and numerical goals, as well as activities and timetables for achieving them;  
- inform employees of the purpose, measures and progress; and  
- consult with employees' representatives. | - The Canadian Human Rights Commission has an audit and enforcement mandate, including power to investigate and redress complaints of discrimination.  
- Private sector employers file their progress reports with the Department of Human Resources and Skills Development Canada (HRSDC).  
- The public sector report is tabled by the Treasury Board.  
- A copy of every employer's report is filed with the Canadian Human Rights Commission, and each employer is required to provide a copy to its employees' representatives. |

<table>
<thead>
<tr>
<th>Target groups</th>
<th>Coverage of affirmative action legislation</th>
<th>Penalties for noncompliance</th>
</tr>
</thead>
</table>
| Designated groups:  
- Women  
- Visible minorities  
- Aboriginal persons  
- Persons with disabilities | Private and public sector employers under federal jurisdiction that employ 100 or more employees. | - Human Rights Commission negotiates a written undertaking from the employer to take specific measures to remedy  
- If this fails, the Commission can issue a direction to take action as specified  
- Tribunal rulings as final step – no appeal |
Table 3: Country profile: India

<table>
<thead>
<tr>
<th>Affirmative action legislation</th>
<th>Implementation of affirmative action legislation</th>
<th>Enforcement mechanism and reporting requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Reservation policies codified in the Constitution</td>
<td>- Quotas are reserved for target groups in government jobs and in public enterprises, as well as in parliament and state legislatures.</td>
<td>- The National Commission for Scheduled Castes and the National Commission for the Scheduled Tribes investigate and monitor all matters related to the constitutional safeguards provided for the scheduled castes and for the scheduled tribes, respectively.</td>
</tr>
<tr>
<td>- Art. 15(4): &quot;Nothing...shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.&quot;</td>
<td>- The total number of vacancies to be filled up on the basis of reservations in a year is not to exceed the limit of fifty percent (scheduled castes 15%, scheduled tribes 7.5%, other backward classes 27%).</td>
<td>- The Commissions have a vigorous statutory mandate and the powers of a civil court.</td>
</tr>
<tr>
<td>- Art. 16(4): &quot;Nothing...shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.&quot;</td>
<td>-</td>
<td>- The Department of Public Enterprises is responsible for the effective implementation of constitutional reservation provisions for public enterprises.</td>
</tr>
<tr>
<td>- Art. 46: &quot;The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation.&quot;</td>
<td>-</td>
<td>- At the level of the individual enterprise, a liaison officer, and an SC and ST unit with appropriate staff, are assigned the responsibility to review, report and follow up on the implementation of various measures.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Target groups</th>
<th>Coverage of affirmative action legislation</th>
<th>Penalties for noncompliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Scheduled castes (SCs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Scheduled tribes (STs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- &quot;Other backward classes&quot;</td>
<td>- Public sector</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Voluntary programs in some states</td>
<td>The Commissions present annual reports to the President in which they issue recommendations on government action to be taken for an effective implementation of the constitutional safeguards in the public sector.</td>
</tr>
</tbody>
</table>
Table 4: Country profile: Netherlands

<table>
<thead>
<tr>
<th>Affirmative action legislation</th>
<th>Implementation of affirmative action legislation</th>
<th>Enforcement mechanism and reporting requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal Treatment Act 1994</td>
<td>The legislation allows for targets, not quotas.</td>
<td>The Equal Treatment Commission conducts investigations on complaints but also on its own initiative.</td>
</tr>
<tr>
<td>Positive action is permitted as an exception under articles 2(2) – (5) of the Act.</td>
<td>Positive action is not limited to recruitment and selection procedures or to promotion – it can also apply to conditions of employment.</td>
<td>After a public hearing, the Commission gives a semi-judicial opinion.</td>
</tr>
<tr>
<td>Positive action should not constitute discrimination.</td>
<td>The SAMEN legislation incorporates ethnic monitoring, provides for publication of numbers of ethnic minority employees, an annual report with a plan of action and monitoring by job inspectors.</td>
<td>The Commission may give recommendations and provide advice to both the government and other organizations on how to comply with the Equal Treatment Act.</td>
</tr>
<tr>
<td>Positive action is allowed only on behalf of women and minorities and is restricted to cases where underrepresentation can be established.</td>
<td>Positive action is only allowed on a temporary basis and must be stopped as soon as the disadvantage has ended.</td>
<td>The Commission is empowered to take legal action to obtain a court order.</td>
</tr>
<tr>
<td>Positive action measures used must be proportionate to the aim of eliminating or reducing de facto inequalities.</td>
<td>Stimulering Arbeidsdeelname Minderheden, SAMEN (Act to stimulate minority labor participation) of 1998 promotes proportional employment for minorities.</td>
<td>The rulings of the Commission are not legally binding, but the courts tend to take its opinions seriously.</td>
</tr>
<tr>
<td>Target groups</td>
<td>Coverage of affirmative action legislation</td>
<td>Penalties for noncompliance</td>
</tr>
<tr>
<td>- Women</td>
<td>All employment relationships are covered by the Equal Treatment Act.</td>
<td>The opinions of the Commission have no sanctions, although a published opinion may in fact be an effective sanction.</td>
</tr>
<tr>
<td>- Ethnic minorities</td>
<td>- The SAMEN legislation covers employers with a workforce of 35 or more.</td>
<td></td>
</tr>
</tbody>
</table>
Table 5: Country profile: South Africa

<table>
<thead>
<tr>
<th>Affirmative action legislation</th>
<th>Implementation of affirmative action legislation</th>
<th>Enforcement mechanism and reporting requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Employment Equity Act 1998</td>
<td>In order to implement affirmative action measures to achieve employment equity for designated groups, a designated employer must:</td>
<td>- Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court</td>
</tr>
<tr>
<td>- The purpose of the Act is to achieve equity in the workplace, by</td>
<td>- consult with employees;</td>
<td>- Employers with less than 150 employees must submit a report every 2 years</td>
</tr>
<tr>
<td>- a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and</td>
<td>- conduct an analysis;</td>
<td>- Employers with more than 150 employees must submit a report every year</td>
</tr>
<tr>
<td>- b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce.</td>
<td>- prepare an employment equity plan; and</td>
<td>- Labour inspectors are authorized to conduct an inspection and to obtain a written undertaking to comply within a specified period.</td>
</tr>
<tr>
<td>- It is not unfair discrimination to promote affirmative action consistent with the Act or to prefer or exclude any person on the basis of an inherent job requirement.</td>
<td>- report to the Director-General of the Department of Labour on the progress made in the implementation of the plan.</td>
<td>- Review by Director-General leading to recommendations for compliance within a specified timeframe.</td>
</tr>
<tr>
<td>- Affirmative action measures are measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunity and are equitably represented in all occupational categories and levels of the workforce.</td>
<td>Affirmative action measures must include:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- identification and elimination of barriers;</td>
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<tr>
<td></td>
<td>- measures promoting diversity;</td>
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<tr>
<td></td>
<td>- reasonable accommodation of designated groups;</td>
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</tr>
<tr>
<td></td>
<td>- retention, development and training of designated groups; and</td>
<td></td>
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<tr>
<td></td>
<td>- preferential treatment and numerical goals to ensure equitable representation. This excludes quotas.</td>
<td></td>
</tr>
</tbody>
</table>

Target groups

<table>
<thead>
<tr>
<th>Coverage of affirmative action legislation</th>
<th>Penalties for noncompliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designated groups:</td>
<td>Order to comply issued by the labour inspector.</td>
</tr>
<tr>
<td>- black people</td>
<td>The Labour Court has the powers to make appropriate orders, award compensation, or impose fines.</td>
</tr>
<tr>
<td>- women</td>
<td></td>
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<tr>
<td>- people with disabilities</td>
<td></td>
</tr>
</tbody>
</table>

Penalties for noncompliance
### Table 6: Country profile: United Kingdom

<table>
<thead>
<tr>
<th>Affirmative action legislation</th>
<th>Implementation of affirmative action legislation</th>
<th>Enforcement mechanism and reporting requirements</th>
</tr>
</thead>
</table>
| - Sex Discrimination Act (SDA) 1975  
- Race Relations Act (RRA) 1976  
- Fair Employment and Treatment (Northern Ireland) Order 1998; replaced the Fair Employment (Northern Ireland) Act of 1989  
- SDA & RRA permit positive action in connection with training for particular work where women/men or people of a particular racial group are not represented or are underrepresented in relation to their numbers in the workforce or the relevant population.  
- Positive discrimination, however, is unlawful.  
- In Northern Ireland, affirmative action means “action designed to secure fair participation in employment” to Protestants and Catholics. | - Positive action includes training and encouragement, and must be undertaken within the framework of an equal opportunities policy.  
- There is no “hard” affirmative action (goals and timetables) in Britain.  
- Affirmative action is required in Northern Ireland, but only permitted in Britain.  
- Northern Ireland: goals and timetables, use of government contracts, administrative supervision of the balance of a firm’s employees.  
- Northern Ireland: Employers are required to collect information on the religion of their workforce and even applicants (large employers only).  
- Northern Ireland: every registered employer must review the recruitment, training and promotion practices at least every three years to estimate under-representation. | - The Equal Opportunities Commission, established by the Sex Discrimination Act, conducts investigations and provides advice on how to take a discrimination case to an employment tribunal or a court.  
- The Commission for Racial Equality is empowered to investigate and sanction employers who engage in collective discriminatory practices.  
- There is no mechanism to force employers to adopt positive action programmes.  
- The Equality Commission for Northern Ireland is responsible for promoting equality of opportunity and affirmative action. It has the powers to conduct investigations to ensure compliance with the legislation.  
- The Fair Employment Tribunal for Northern Ireland has the power to enforce the undertaking or directions given by the Commission. |

<table>
<thead>
<tr>
<th>Target groups</th>
<th>Coverage of affirmative action legislation</th>
<th>Penalties for noncompliance</th>
</tr>
</thead>
</table>
| - Women and men  
- Racial minorities  
- Religious groups in Northern Ireland | - Voluntary in Britain  
- Northern Ireland: public sector; private sector employers with more than 10 employees | In Northern Ireland, an employer may be required to implement an affirmative action programme when it is not undertaken voluntarily. Failing this, the Tribunal may impose a monetary sanction not exceeding £40,000. |
Table 7: Country profile: United States

<table>
<thead>
<tr>
<th>Affirmative action legislation</th>
<th>Implementation of affirmative action legislation</th>
<th>Enforcement mechanism and reporting requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Executive Order 10925 of 1961</td>
<td>- According to the EEOC Guidelines, Title VII establishes &quot;a national policy against discrimination&quot; whereby employers are encouraged to engage in voluntary affirmative action.</td>
<td>- Equal Employment Opportunity Commission (EEOC):</td>
</tr>
<tr>
<td>- Title VII of the Civil Rights Act 1964</td>
<td>- Code of Federal Regulations Pertaining to the Department of Labor: &quot;An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor’s good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of its work force where deficiencies exist.”</td>
<td>- Charged with enforcing Title VII</td>
</tr>
<tr>
<td>- Executive Order 11246 (Revised Order No. 4) of 1965 imposes nondiscrimination and affirmative action as a condition for doing business with the federal government</td>
<td>- The main components of an affirmative action plan, as per OFCCP Revised Order No. 4, are workforce analysis, utilization analysis, and goals and timetables.</td>
<td>- Annual review</td>
</tr>
<tr>
<td>- Title VII, as interpreted by the Equal Employment Opportunity Commission (EEOC), encourages voluntary affirmative action, taken to mean “those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.”</td>
<td></td>
<td>- Developed legal interpretation of Title VII (“Guidelines”)</td>
</tr>
<tr>
<td>- Code of Federal Regulations Pertaining to the Department of Labor: “An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity.”</td>
<td></td>
<td>- Litigation authority</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Target groups</th>
<th>Coverage of affirmative action legislation</th>
<th>Penalties for noncompliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Minorities</td>
<td>- Title VII (as amended) applies to private employers, labor unions, employment agencies, state and local governments, and the federal government, including educational institutions.</td>
<td>The OFCCP may impose a variety of sanctions: canceling, terminating or suspending a contract or debarring the contractor from future government contracts; publishing the names of noncompliant contractors; recommending action by the Justice Department or the EEOC.</td>
</tr>
<tr>
<td>- Women</td>
<td>- Executive Order 11246: all federal contractors with over $50,000 in government contracts and over 50 employees</td>
<td></td>
</tr>
<tr>
<td>- Vietnam War veterans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Persons with disabilities</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Chapter 2. Approaches to affirmative action policymaking

As we saw in Chapter 1, affirmative action policies refer to measures undertaken to address inequalities in access to employment. There is no single model framework for these measures (Faundez 1994, 55), and different countries have different kinds of affirmative action policies. For analytical purposes, one could distinguish between affirmative – or positive – action, on the one hand, and preferential treatment – or positive discrimination – on the other (Edwards 1995b, 7). Of course, in practice the theoretical dividing line is rather blurred. Thus, "(p)olicies aimed at combating the exclusion of disadvantaged groups from full social participation (can be placed) on a continuum from formal policies of non-discrimination to preferential treatment" (Williams 2000, 70; emphasis added). We can, for instance, distinguish between positive and affirmative action (which Edwards treats as the same), the former generally referring to the European models based on voluntary outreach measures, and the latter designating American-style practice aimed at overcoming underrepresentation and achieving diversity. This type of affirmative action, although often labeled preferential treatment in everyday discourse, nevertheless forbids quotas, while encouraging numerical goals. The strongest form of preferential treatment is a system like India’s, where ‘reservations’ refer to quotas set for target groups in access to employment in the public sector.

These distinctions, however, are only one possibility for situating various affirmative action policies on a continuum. For the purposes of our study, we have identified three lenses through which to analyze these practices: (1) the distinction between soft and hard affirmative action measures, (2) the distinction between liberal and
radical conceptions of equal opportunity, and finally, (3) the distinction between assimilationist and accommodating policies where the onus of correcting the conditions of disadvantage is, respectively, on the employee or the employer. Each framework provides a continuum along one dimension.

From an analytical perspective, it makes sense to focus on a single dimension at a time because this allows for a separate focus on each set of factors that likely play a role in the outcome of the policies. Furthermore, given our interest in crossnational comparison, considering the three dimensions separately is likely to highlight the differences in the policy practices. Soft and hard affirmative action, for instance, refer to the policy instruments adopted to achieve the policy goals. The distinction between liberal and radical conceptions refers to the ideological basis of the affirmative action policy, which has an impact on the form the policy will take. And finally, the third framework focuses on the social actors the policy targets as responsible for bringing about change to current conditions. Each framework is further elaborated below.

**Approach 1: Soft v. hard affirmative action**

The most prevalent distinction in the literature on affirmative action is the contrast between soft and hard affirmative action. In general, soft affirmative action refers to various outreach measures designed to encourage and increase the pool of applicants from the target groups (most often, women and minorities). In this sense, soft affirmative action is forward-looking: it focuses on the promotion of formal equality of opportunity by relief from discrimination (Edwards 1995b, 23). Hard affirmative action, in contrast, is more backward-looking, as it seeks to provide compensation for past discrimination (Dworkin...
2000, 424). Hard affirmative action may also involve quotas (Chateauvert 2000, 113). In most cases, however, hard affirmative action measures are simply numerical goals that encourage employers to consider applicants from the designated groups.

The focus in soft affirmative action is on removing barriers and thus putting an end to discrimination or at least circumventing the discriminatory effect of current practices by offering increased opportunities to members of designated groups. Examples of soft measures include special recruitment to attract applicants, targeted pre-entry training to increase the pool of potential (and qualified) candidates, in-service training to increase the potential for career advancement, and targeted job advertisements (Teles 1998). These affirmative action measures are usually referred to as ‘positive action’, as is the case in Great Britain. British positive action covers measures aimed at helping members of underrepresented groups overcome disadvantages in competing with other applicants. However, the selection and appointment process itself is based on merit (Taylor 2000, 159-161).

The emphasis placed on merit is also apparent in the Australian case. Lawful affirmative action measures in Australia fall under two categories, both of which constitute soft measures. At the most basic level, ‘passive non-discrimination’ refers to “a willingness in all decisions regarding appointing, promoting and pay to treat all employees alike, irrespective of sex, race, or any other irrelevant personal characteristics” (Gray 2003). However, “(a)lthough the individual from a disadvantaged group has the right to be free from discrimination, this may not be enough to address the variety of barriers, exclusions or impediments that prevent that individual from learning about the job opening or obtaining the training to qualify” (Ventura 2000, 130). Thus, the Australian
legislation also allows for ‘pure affirmative action’, which involves “a concerted effort to expand the pool of job applicants so that no one is excluded because of past or present discrimination” (Gray 2003). Overall, soft measures may be referred to as equal opportunity measures based on fair competition (Chateauvert 2000, 113; Jacobs 2004, 13). They respect the liberal principle of meritocracy while being committed to combating discrimination (Teles 2001, 265).

Hard affirmative action, in contrast, includes proactive measures designed to overcome the effects of past and present discrimination by imposing targeted practices to employers (Glazer 2000, 141). Whereas soft affirmative action usually is voluntary, hard affirmative action tends to be required by law. It ranges, however, from stated goals and timetables (“good faith efforts,” as stated by the United States Department of Labor – see United States 1978) to rigid quotas contained in the legislation. Other examples of hard affirmative action measures include required collection of data on employees and sometimes even on applicants to establish numerical goals, deliberate adjustment of standards of qualification, and the use of government contracts (Teles 1998, 1004-1011). Hard affirmative action measures go beyond simple nondiscrimination and imply preferential treatment, which is sometimes called positive discrimination.

Overall, two levels of hard affirmative action measures can be identified. ‘Preferential hiring’ “results in the organization systematically favouring women or members of other groups underrepresented in order to alter an existing imbalance” (Gray 2003). In South Africa, for instance, preferential treatment in favour of the designated groups means that the criteria of ‘suitable qualifications’ can be broadly interpreted. Therefore, an applicant from a designated group who does not yet possess the necessary
skills but who would be able to acquire these skills within a reasonable amount of time may lawfully be hired over a ‘qualified’ applicant from a nondesignated group (Jain et al. 2003, 74). ‘Hard quotas’ go further than preferential treatment and indicate that “a specific number or percentage of minority group members must be hired” (Gray 2003; emphasis added). While quotas for designated groups in India are guaranteed in the Constitution, in the United States they are illegal unless imposed by a court. In the latter case, quotas may be used for remedial purposes once a court has found an employer guilty of discrimination and of insufficient efforts to remedy it (Edwards 1995a, 106-107). But even without quotas, the affirmative action practices in the United States fall under hard measures. They go beyond neutrality or color-blindness by calling for some degree of special concern or preference to members of groups formerly targeted for discrimination (Glazer 2000, 139).

The soft-hard spectrum is depicted in Figure 1 with a listing of the main characteristics for each kind of measures. The two extremes represent ideal-types that may not exist as such in the real world. They do, however, provide a continuum against which to measure the various affirmative action policies in effect in different countries. Seven countries are included in the analysis: Australia, Canada, India, the Netherlands, South Africa, the United Kingdom (with Great Britain and Northern Ireland treated separately due to their separate legislations), and the United States. The countries under scrutiny have been placed on the scale according to the extent of soft or hard measures used as part of their affirmative action policies. It may also be useful to refer back to Tables 1 to 7 in Chapter 1 for a description of lawful affirmative action measures in each country.

In addition to specific measures allowed or required under affirmative action legislation, soft and hard affirmative action can be distinguished on the scope of
**Figure 1:** Soft-hard spectrum

<table>
<thead>
<tr>
<th>Soft</th>
<th>Hard</th>
</tr>
</thead>
<tbody>
<tr>
<td>- outreach and encouragement</td>
<td>- goals and timetables based on workforce analysis;</td>
</tr>
<tr>
<td>- measures to attract and increase the pool of potential applicants</td>
<td>- may involve quotas</td>
</tr>
<tr>
<td>- effective policy of nondiscrimination</td>
<td>- preferential treatment beyond simple nondiscrimination</td>
</tr>
<tr>
<td>- emphasis on merit and competition</td>
<td>- deliberate adjustment of standards of qualification</td>
</tr>
<tr>
<td>- mainly voluntary</td>
<td>- required by law</td>
</tr>
<tr>
<td>- legislation determines the extent of permissible action; no</td>
<td>- government monitoring to ensure compliance with legislative</td>
</tr>
<tr>
<td>enforcement</td>
<td>requirements</td>
</tr>
</tbody>
</table>

*GB = Great Britain, NL = Netherlands, AU = Australia, US = United States, CA = Canada, SA = South Africa, NI = Northern Ireland, IN = India

administrative supervision. Thus, at the soft end of the spectrum we find Great Britain with its voluntary positive action programme which is subject to strict legal guidelines and which cannot be imposed on an employer. A little further but still on the soft side of spectrum we have the Netherlands where positive action is also allowed but must be strictly proportionate to the aim of eliminating inequalities. Given the recent move by the Dutch government to encourage proportional minority representation in employment, the ranking of the Netherlands on the 'harder' side of Great Britain seems sensible.

As mentioned in the analysis above, lawful affirmative action measures in Australia fall under soft affirmative action. However, the Australian legislation has also rendered this kind of affirmative action compulsory, with obligatory workforce analysis and government monitoring. Therefore, Australia has been placed in the middle of the scale as its policy covers both soft and hard measures. Moving towards the hard end of the
spectrum we find a group of similarly situated countries. The United States, Canada, South Africa, and Northern Ireland do in fact have very comparable policies on this dimension. They all allow some sort of special measures to accommodate differences and to increase representation of target groups in the workforce. Furthermore, all have an enforcement mechanism codified in the legislation to ensure compliance. Some differences can be distinguished, however. The Canadian legislation, for instance, still stresses merit, while in South Africa an applicant from a target group should be qualifiable and not necessarily already qualified. India clearly distinguishes itself from the others with its quota system codified in the Constitution. It is therefore placed at the extreme hard end of the spectrum.

Having seen how the various affirmative action policies can be differentiated on the soft-hard dimension, we will now move to the second framework which makes a distinction between the liberal and the radical bases of affirmative action policies.

**Approach 2: Liberal v. radical approaches**

The liberal-radical framework proves useful for detecting the ideological bases of the various affirmative action policies. The liberal approach, with its emphasis on securing free competition, draws on theories of classical liberalism (Taylor 2000, 162), while the radical-collectivist view advocates a more redistributive approach (Gibbon 1992, 239). Applied to affirmative action policies specifically, the liberal-radical spectrum distinguishes between, on the one hand, policies that only provide for opportunities for fair and equal competition and, on the other hand, polices that attack the structural sources of inequality by promoting a profound societal change.
The liberal approach sees “equal opportunity as a matter of justice, or the right balance between equal treatment and individual liberty” (Forbes 1991, 23). This conception of equal opportunities is based on the principle of fair procedures: “the aim of liberal equal opportunities policies is the removal of unfair distortions to the operation of labour market by means of institutionalizing fair procedures in every aspect of work and employment” (Jewson and Mason 1992, 222). Thus, the focus is on providing opportunities for the individual through codified and bureaucratized practices. Liberals “place great faith in training” (Jewson and Mason 1992, 224) and thus allow for (soft) positive action measures. They are mainly concerned with the fairness of the procedures, which provides a perception of justice. In sum, then, for liberals, “equal opportunity is procedural equality, dictating uniformity in procedures across all persons, and guaranteeing nothing about the outcomes across individual or ascriptively differentiated groups” (Darity 1987, 178; quoted in Forbes 1991, 26).

The radical approach to equal employment opportunity and affirmative action, in contrast, is methodologically collectivist and sees individuals as social beings, determined by their group origin and characteristics: “Equal opportunity, on this view, may be a necessary but it is certainly not a sufficient condition for equality in society” (Forbes 1991, 21). The radicals point to “the structural sources of social capabilities and skills – and, hence, the structural sources of social inequality” (Jewson and Mason 1992, 221). They are concerned with the fair distribution of rewards and seek to intervene directly in workplace practices. This perspective also entails “a, more or less explicit, attack upon the concept of ability or talent that is embraced by the liberal view (of a) meritocratic rise of the talented” (Jewson and Mason 1992, 222-223).
The radicals advocate a "politicization of all aspects of work life," which involves "a struggle for power and influence on the part of specific subordinate groups... interpreted as an opportunity to advance the sectional interests of the oppressed" (Jewson and Mason 1992, 225). In order to achieve equality, radicals propose the practice of positive discrimination, which "seeks to promote the achievement of disadvantaged groups by directly intervening in the assessment or evaluation of individuals" (Jewson and Mason 1992, 227). Finally, radical equal opportunities policies are seen as an opportunity for consciousness raising and imply "a determination to bring about change in the face of an adverse social and political context" (Forbes 1991, 31).

The liberal-radical distinction draws attention to an important debate in the literature on affirmative action: the tension between individual and group rights. The question is whether individuals, as individuals, rather than as members of disadvantaged groups, should claim damages and be entitled to compensatory treatment. In the Anglo-American moral and legal tradition, for example, "there is a deep reluctance...to accept the principle of group rights and claims" (Patterson 1997, chapter 5). There is generally a strong commitment to the principle of individual rights, i.e. "the right of individuals to advance as far as their talents, their demonstrated abilities, their experience and their application permit without undue restrictions imposed on them by the government or by an oppressive majority" (Raza et al. 1999, 1). This liberal conception tends to dominate the public opinion in the United States that has been widely opposed to affirmative action policies (Herring and Collins 1995, 163). From the perspective of group rights, in contrast, since the practice of negative discrimination has been aimed at specific groups, the remedial strategy should also be targeted at the affected groups and at practices which discriminate
Figure 2: Liberal-radical spectrum

<table>
<thead>
<tr>
<th>GB*</th>
<th>NL</th>
<th>AU</th>
<th>CA</th>
<th>SA</th>
<th>US</th>
<th>NI</th>
<th>IN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liberal</td>
<td></td>
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<tr>
<td>- the individual</td>
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<td>- focus on procedures</td>
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<tr>
<td>- bureaucratization: formal rules and procedures</td>
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<tr>
<td>- positive action: removing obstacles to the free operation of the labour market</td>
<td></td>
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<tr>
<td>- perception of justice (fair procedures)</td>
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<td></td>
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<tr>
<td>- emphasis on merit and competition</td>
<td></td>
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<tr>
<td>Radical</td>
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</tr>
<tr>
<td>- groups</td>
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<tr>
<td>- focus on outcomes (distribution of rewards)</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>- politicization: representation of the disadvantaged</td>
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<td>- awareness of the structural determinants of social inequality; consciousness-raising</td>
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<td>- positive discrimination to obtain a fair distribution of the workforce</td>
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<td>- gaining access for the disadvantaged</td>
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*GB = Great Britain, NL = Netherlands, AU = Australia, CA = Canada, SA = South Africa, US = United States, NI = Northern Ireland, IN = India

against the group (Edwards 1995b, 20).

The liberal-radical spectrum is summarized in Figure 2. At the liberal end of the scale, we find Great Britain where positive action is allowed but not required by law. A prime example of the liberal approach, the British policy also stresses the importance of competition and standards (Anwar 1990, 57). In the Netherlands, positive action is allowed as a temporary measure under special circumstances. However, the policy is more comprehensive than in Britain by allowing the establishment of goals for minority employment and special representation in certain cases. In Australia, "(d)espite the claim that affirmative action goes beyond the antidiscrimination approach because affirmative action is proactive, the focus remains on 'removing barriers’’" (Bacchi 1996, 84). Furthermore, the legislation in Australia stresses the importance of merit. Thus, the Australian approach is closer to the liberal end of the spectrum. In Canada, employment
equity was designed "to provide (a) supportive organizational culture" for the accommodation of designated groups within the workforce and "to head off potential social conflict that might result from inaction" (Jain et al. 2003, 21; emphasis added). This results-oriented approach therefore implies that the Canadian policy has a somewhat radical ideological basis. And yet, the legislation clearly states that those appointed should be qualified. Thus, the Canadian policy is better situated towards the middle of the liberal-radical spectrum.

Similarly to the Canadian policy, the stated purpose of the South African Employment Equity Act is to redress the disadvantages in employment experienced by the designated groups. However, the issue is more politicized in South Africa (Adam 1997, 248). In the American practice of affirmative action, there is a radical recognition of the existence of a disadvantaged group that requires assistance "to gain entry to existing positions and to promotions once in those positions" (Bacchi 1996, 63). Northern Ireland is the exception within the United Kingdom because affirmative action is required by law there. The policy model adopted in Northern Ireland was derived from practice in the United States, but its coverage in Northern Ireland is more comprehensive (Edwards 1995a, 37) and thus involves a more profound structural change on the societal level. Finally, in the Indian case, constitutional provisions to protect target groups from social injustice and all forms of exploitation can be seen as a form of consciousness raising and thus as an example of radical equal opportunities practice.
Approach 3: Employee v. employer

A third approach presented here to analyze affirmative action policymaking focuses on the burden of responsibility placed on the employee or the employer in the application of these programs. As we move from one end of the spectrum to the other (from soft to hard measures or from a liberal to a radical perspective), the onus of eliminating discrimination shifts from the employee to the employer (Ventura 2000, 130). This approach has not been fully developed elsewhere in the literature, although many authors discuss some aspects of it.

At one end of the scale, the onus is on the employee. These types of policies create opportunities for potential candidates to improve their current standing on the job market. Special (pre-entry or in-house) training, for example, is designed to allow minority candidates to develop their qualifications in order to be better able to face the challenges of the labour market or to increase their chances of being promoted (Teles 1998, 1005). However, the effectiveness of these policies depends on the use the members of designated groups make of them. Another example would be targeted recruitment efforts which will not mean much, either, unless the target groups actually respond to them.

The variety of possible practices at this end of the spectrum easily leads to a situation whereby an organization can declare to be an equal opportunity employer without actually developing a clear equal opportunities policy (Gibbon 1992, 236). By adopting certain practices which do not require a clear commitment from the employer to hire more candidates from disadvantaged groups, while giving an impression of a minority-friendly approach, the employers are able to minimize the possible restructuring of the company hiring practices. The candidates who do decide to apply for a job as a
result of training or targeted recruitment must still confront the same application process and meet the same standards as everyone else (Taylor 2000, 161).

These policies could also be labeled assimilationist. Instead of providing special measures to accommodate the needs of the disadvantaged groups, assimilationist policies only provide tools for the target groups to better fit the prevailing system. In fact, the basic assumption is that the goal is assimilation into existing work structures (Bacchi 1996, 64). Thus, the pre-entry and in-house training aims at providing these individuals with the skills and knowledge required to succeed in the current system. The radical critique presented earlier would stress that this is inherently wrong because it perpetuates the values and practices of an elitist system, developed by a (mainly white and male) elite: “A policy of formal equality of opportunity does not by itself increase the representation of women and minorities in areas where they have traditionally been excluded. Employers’ recruitment devices may be unconsciously biased against female and minority candidates” (Williams 2000, 71).

Lesley A. Jacobs refers to such assimilationist practices as acculturation, because the minority group must adapt and change in response to the dominant or majority group. The capacity of the dominant group (i.e. the employer) to be “inclusive and accommodate minorities in its associations and institutions” is referred to as structural integration (Jacobs 2004, 134-135). The important point to note here is that “whereas failure to acculturate is the responsibility of the minority group, the lack of structural integration is the responsibility of the dominant group in society” (Jacobs 2004, 135). In this latter case, it is not the employee but rather the employer who adapts by adopting policies aimed at accommodating the special needs of the designated groups: “The employers are asked to
shoulder this responsibility (of eliminating discrimination) because ultimately only they can remedy the problem by undertaking special measures, by accommodating differences, and by eliminating barriers” (Ventura 2000, 133). In an extreme case, quotas are set for hiring from the designated group. If an employer is unable to attract enough qualified minority applicants, he may have to relax some of the requirements and hire “less qualified” minority candidates to meet the quota requirement. This has happened in India, where members of the scheduled castes and scheduled tribes have been allowed more flexible requirements in cases where not enough qualified candidates have been available to fill the vacancies reserved for them (Jain and Venkata Ratnam 1994, 10).

Critics might say that these policies do not help improve the situation of the disadvantaged groups. On the contrary, they would likely say that such policies have a stigmatizing effect on the target groups and don’t help them because they are not really being offered opportunities to improve their standing, as measured by skills and qualifications (see Herrings and Collins 1995, 169). Proponents of the structural integration model would respond by pointing to the presence of systemic discrimination which does not take account of the disadvantaged position these groups have in the society as a whole. Indirect discrimination and poverty are too widespread to be erased just by offering pre-entry training. For instance, Bacchi (1996, 137) claims that there is “unfairness that hides behind (simple) commitments to ‘equal opportunity’.” Thus, this analysis is similar to the radical approach presented earlier.

Assimilationist responses to discrimination focus on equal treatment instead of accommodation of differences. The equal treatment approach suggests that “since discrimination is due to a mistaken belief that people are ‘different’, ‘differences’ do not
exist, making it difficult to address the ‘differences’ which result from social and
economic causes, and biological and cultural ‘differences’” (Bacchi 1996, 19). In Canada,
one problem related to the recognition of differences has been the principle of self-
identification. The current affirmative action practice requires the eligible employees to
identify themselves as members of one of the designated groups. However, some
individuals fear the stigmatizing effects of such identification and fail to categorize
themselves. On the other hand, employers are “in a situation where they wish to make
‘visible’ every member of these groups in order to meet their targets – hence, they have
attempted to argue that employers should be able to identify members of the designated
categories” (Bacchi 1996, 71). This points to the possible inadequacies of the policy to
properly address the problem of minority under-representation. Are the employers more
interested in meeting certain criteria on paper instead of reviewing current employment
practices and aiming at a profound change which could make formal targets unnecessary?

The employee-employer spectrum is depicted in Figure 3. The British positive
action policy is placed at the employee’s end because the training provided under the
positive action programmes aims at providing opportunities to integrate the existing
labour market and to compete on equal terms with majority group candidates. Since the
positive action programmes are purely voluntary, these measures do not exist everywhere
and thus the employee or applicant is left with little outside support to penetrate the job
market (Teles 1998, 1008). Similarly in the Netherlands, “integration into existing
structures” is the goal of the Dutch affirmative action policy, and the training provided to
target groups aims at helping them become more competitive (Bacchi 1996, 136). The
Australian affirmative action policy, although required by law, also puts emphasis on
Employee-employer spectrum

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<tr>
<th>GB*</th>
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<th>NI</th>
<th>CA</th>
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<tr>
<td>Employee</td>
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<td>- assimilation (acculturation)</td>
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<td>- emphasis on merit and competition on equal terms</td>
<td>- changing current practices and qualification requirements</td>
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<td>- opportunities made available for the individuals</td>
<td>- organizational change (adoption of proactive policies)</td>
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<td>- equal treatment</td>
<td>- recognizing differences</td>
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<td>- integrating the existing system</td>
<td>- structural integration</td>
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*GB = Great Britain, NL = Netherlands, AU = Australia, NI = Northern Ireland, CA = Canada, US = United States, SA = South Africa, IN = India

merit and fairness of the procedures. However, the legislation also calls for consultations between employers and employees, which is an indication of a recognition of the employer’s responsibility in creating a nondiscriminatory work environment.

The last group of countries focuses on the responsibilities of the employer. In Northern Ireland, “(w)hen an employer’s workforce is unbalanced, it is under an obligation to implement a program of affirmative action” to secure fair participation to both Catholics and Protestants (Teles 1998, 1011). The policy is also strictly enforced and thus places constraints on the employer to modify current organizational practices which may not be compatible with the legislation. However, the employers are not required to review their practices every year. In both Canada and the United States, “federal policy assumes that employers and the criteria which they select are responsible for the under-achievement of certain groups” (Winn 1985, 31). Thus, both approaches place the burden of responsibility on the employer to correct the conditions of disadvantage. The South African policy is based on similar premises. Employers are required to adopt several
affirmative action measures, ranging from elimination of barriers to preferential treatment, and to consult with their employees on the issue. Finally, in India, the Constitution places strict requirements on the employers to meet their quotas, and it is therefore situated at the very end of the spectrum.

Conclusion

Overall, the three approaches presented here offer useful frameworks for analyzing affirmative action policies. They point to the wide range of affirmative action practices currently in effect and hint at different policy solutions to similar social problems. True, some of these approaches are quite similar. But there are subtle differences that might have gone unnoticed had we not treated each spectrum separately. Summary Figure 4 brings together the different dimensions we studied to accompany the discussion of the results of our analysis in this final section.

While Great Britain and India consistently ranked at one extreme on each dimension, there was some movement among the rest of the countries as we moved from one framework to another. Australia provides the most interesting example. Already in the first scale (soft-hard), its equal opportunity policy made it clear that distinctions between policy types in real life are never black and white. Indeed, the implementation of manifestly soft measures in Australia is undertaken within a strictly enforced (i.e. hard) administrative framework! The distinction between soft and hard measures could not be more blurred. On the two other dimensions, Australia moves toward a more liberal and individualist approach, which further stresses the strange convergence of soft and hard measures on the first scale.
It is interesting to note the continuous stress on merit in Australia, all the while the employers are being asked to be more accommodating to women’s needs. It is as if the political discourse surrounding affirmative action was designed to please all parties on both sides of any spectrum. David Mason has noted that confusions over competing conceptions of affirmative action can be exploited and manipulated for political advantage. Thus, “(p)roponents of the liberal version may seek to argue or imply that such polices are capable of delivering radical policy outcomes (while the proponents of) radical policy may seek to legitimate their proposals in terms of the rhetoric of the liberal view in order to gain acceptance or minimize opposition” (Mason 1990, 58). In the United States, given the public opposition to radical policies, affirmative action has been framed by supportive policymakers with references to the liberal tradition of the country precisely to contain this resistance. In a speech given in 1995, for instance, President Clinton repeated that “affirmative action has to be made consistent with our highest ideals of personal
responsibility and merit... (and should always correspond to) the four standards of fairness: No quotas in theory or practice; no illegal discrimination of any kind, including reverse discrimination; no preference for people who are not qualified...; and as soon as a program has succeeded, it must be retired” (Clinton 1995, 1112-1113; quoted in Fisher and Devins 2001, 283). We will be able to discuss this point further in Chapter 3 when analyzing the use of language in politics, specifically as it pertains to affirmative action.

The ranking of the group of four – the United States, Canada, South Africa, and Northern Ireland – along the different scales also points to the complexity of affirmative action policies. Although the approach to affirmative action is fairly similar in these countries, on no dimension do they rank in exactly the same order. Granted, the differences are quite small. But still, it is interesting to note that although Northern Ireland ranks high on the hard and radical dimensions, the specific requirements imposed on the employers do not seem to be more severe than in the three other countries. This has partly to do with the fact that annual reports are not required in Northern Ireland; instead, employers have up to three years to conduct a review of their current employment and hiring practices. The wordings of the Canadian and South African policies are quite similar, which explains why they move in the same direction when going from one dimension to another.

Despite the variety in the starting points for analysis, a careful examination of a certain number of countries shows that the order of the countries on the three scales remains more or less the same. Thus, a liberal ideology tends to support soft affirmative action measures that only provide opportunities for minority applicants to compete on equal terms with majority candidates on the labour market. A radical approach to
affirmative action, in contrast, calls for hard measures that will force the employers to review their employment practices and thus attack the sources of structural discrimination. Exceptions to the rule do exist, as in the Australian case. In most countries in our analysis, however, the rule does seem to hold.

While there is merit to treating the three scales separately, it would seem that the ideological spectrum proves the most useful of the three. As explained in the analysis above, the soft-hard distinction points to the differences in the policy instruments used under affirmative action legislation, while the employee-employer spectrum focuses on the emphasis put on different social actors expected to adapt their behaviour to the legislation. Ideology can be understood as encompassing a general worldview that also incorporates a particular approach to social policies, including affirmative action. As such, it is likely to influence the choice of policy instruments and the policy targets. Therefore, ideology is likely to play an important role in determining the form the policies eventually take. This point will be further discussed in the concluding chapter. For now, we will turn our attention to a new analytical perspective that will help us in gaining a better understanding of the observed differences in affirmative action policies: issue definition.

\[\text{In some countries, such as the United States and India, this also applies to university admissions. Our focus here, however, is on employment.}\]
Chapter 3. Issue definition and affirmative action: an exploratory analysis

Previous chapters have defined affirmative action programmes and suggested a variety of institutional (Chapter 1) and theoretical (Chapter 2) means by which to compare these programmes across countries. The current chapter introduces another quite different perspective with which to identify differences in affirmative action policies. More precisely, this chapter argues that exploring the way in which affirmative action policies are ‘defined’ or ‘framed’ can be beneficial to our understanding of policymaking in this domain. In short, a country’s ‘approach’ to affirmative action policymaking, along with the specific policy institutions and instruments involved, are heavily implicated in the language and framing of the affirmative action debate.

The chapter begins with a general discussion of issue definition, a growing paradigm in policy studies, drawing on a wide range of empirical and constructivist scholarship. We then return to affirmative action policies in particular, with discussions of the significance of (1) language and (2) ‘target populations’ in affirmative action policymaking.

Issue definition: a literature review

The issue definition perspective is a growing paradigm in policy studies and draws on a wide range of existing scholarship. The basic argument about the link between issue definition and public policy can be stated as follows: “Since a single issue may be associated with many different, and often conflicting, implications, the definition of the set of issues that come to be associated with a given public policy is probably the most
important element in determining its outcome” (Baumgartner and Jones 1994, 50). In this context, issues refer to conflicts over opposing views about the appropriate distribution of positions or resources (Cobb and Elder 1972, 82). When policymakers decide to tackle an issue, their preferred policy instruments will influence the way they define the problem in question (Soroka and Lim 2003, 583). It is therefore crucial to understand the processes that lead to a particular definition of the issue, as the defining processes will also frame the terms of the public debate.

From early on, issue definitions have been linked to political conflict: “How an issue is defined, explicitly or implicitly, will have important bearing on the nature and eventual outcome of a conflict” (Cobb and Elder 1972, 96). Similarly, Rochefort and Cobb’s (1994) account of problem definition draws on Schattschneider’s (1960) theorizing about the importance of social conflict in political life where competing interests are strategically defined and redefined by opposing sides to gain advantage. Even when a proposed policy solution is carried out, “it creates a whole new set of issues, ensuring that no public problem ever really dies” (Rochefort and Cobb 1994, 24). Conflict over problem definition therefore remains a permanent feature of politics and policy development.

Issues are reflections of social problems, defined by Hilgartner and Bosk (1988) as projections of collective sentiments towards a common concern in the society. At any given time, there exists a wide range of “potential” problems, only few of which make it to the fore of public attention. The problems that do get presented to the public tend to be framed in particular ways. In fact, each statement about a social problem presents a specific interpretation of reality, and those who are the first to identify a problem in the public arena tend to shape how others will perceive it (Nelson 1984, 13). Issue definition
is therefore played out long before the public may even become aware of the existence of a problem.

The framing of social problems bears importance on the policy process as a whole and has critical policy consequences because “different topics of attention generally carry different implications for what government policies, if any, should be adopted” (Baumgartner and Jones 1994, 51). At the same time, policymakers can make use of political rhetoric to attract the public’s attention to particular features of the problem. Indeed, the role of political discourse is at once to explain and describe the problem at hand, to recommend specific forms of government action (if any), and above all, to persuade the public that this is the right way of managing the problem (Rochefort and Cobb 1994, 15). In this way, issue definition determines the nature and scope of political debate. While prevailing issue definitions are reflected and legitimized in the official policy choices, the government also stays alert to changes in public perceptions. When social understandings of the issue change, government policies also change (Baumgartner and Jones 1994, 58).

Baumgartner and Jones discuss public policy in terms of punctuated equilibria characterized by periodic issue redefinitions. Problem definition is presented as a central feature of the political processes in disequilibrium: “a change in issue definition can lead to destabilization and rapid change away from the old point of stability” (Baumgartner and Jones 1993, 16). Redefinitions of old issues therefore challenge the consensus about appropriate government action. Issue definition, and by extension issue redefinition, is a purposive process “accomplished by political leaders who want to achieve something”
Politically relevant issues should therefore be seen as constructs of political actors motivated by political objectives.

To become politically relevant, however, issues "must be perceived by a large number of people as both being subject to remedial action and requiring such action" (Cobb and Elder 1972, 86). While issue definition helps in attracting public attention to a problem, it also sets the boundaries for acceptable action. But competing definitions ensure no issue is permanently solved when an action is undertaken to remedy it. In effect, regardless of the solution applied to the problem, and no matter how successful it may turn out to be, "there is continuous debate over how the program is going to be administered, who is going to be serviced, etc." (Cobb and Elder 1972, 58).

A central feature of issue definition is the use of language and symbols. In an early work on the importance of communication in politics, Harold D. Lasswell (1949a; 1949b) described how policymakers choose their communication style according to the expectations they have of the reaction of the audience. They look for the most effective way of conveying their message, and the use of key symbols is a popular way of bringing meaning to the discourse. In the American context, for instance, the use of terms such as 'freedom' or 'equality' in a speech appeals to the common understanding of what it means to live in America and helps the audience feel closer to the speaker.

Following on Lasswell's footsteps nearly four decades later, Murray Edelman (1985, 10) also portrayed language as "the key creator of the social worlds people experience." The language used to describe political events and problems brings meaning to them, and the actors involved in a political debate must choose their communication style so that they are able to construct beliefs about the significance of events, problems, and policy
choices and thus legitimize their policy positions. But while language creates meaning, it also generates ambiguous associations about the causes of problems and the consequences of action. As language itself is a construct, there is ample space for interpretation and manipulation of images associated with any given issue. As a result, conflicts over the meaning of an issue are inherent to politics and the political debate.

Overall, issue definition should be seen as an inherently political process. There are many difficult conditions in the society, but they don’t become social problems until they come to be seen as “caused by human actions and amenable to human intervention” (Stone 1989, 281). A key concept in this type of analysis is ‘causal ideas.’ In effect, Stone (1989, 282) describes problem definition as “a process of image making, where the images have to do fundamentally with attributing cause, blame, and responsibility.” Policymakers are seen as storytellers who use language and symbols to manipulate issue characteristics to their advantage. In this way, identifying an origin “reduces the issue to a particular perspective and minimizes or eliminates others” (Edelman 1988, 17). Causal stories are important because they can either challenge or protect an existing social order, assign responsibility for problems, legitimate and empower particular actors as problem solvers, or create new political alliances among the victims identified by the causal theory (Stone 1989, 295).

Causal stories also point to the constructivist bases of issue definition. Indeed, social problems and the causal theories attached to them are best understood as social constructs of an aspect of reality (Nelson 1984, 5). Here, Edelman’s analysis of socially structured and constructed propositions about politics may be extended to the study of target populations. In general terms, target populations are “persons or groups whose behaviour
and well-being are affected by public policy” (Schneider and Ingram 1993, 334). The target population typically is identified by its connection to the problem, either as the source or the sufferer, and its treatment also depends on the definition and characteristics of the policy problem (Donovan 2001). Policy tools are then chosen “to motivate the target populations to comply with the policy or to utilize policy opportunities” (Schneider and Ingram 1993, 338). Furthermore, the claims made by certain groups can be legitimized when the government selects these groups for benefits. In this way, policy sends a message about which citizens are deserving of government intervention and which are not (Schneider and Ingram 1993, 334).

Target populations are socially constructed through cultural characterizations and popular images, which constitute stereotypes, both positive and negative, about the groups assigned as the beneficiary of the policy. Most importantly, however, these social constructions are really political because they are related to public discourse and manipulated through the use of symbolic language in that discourse (Schneider and Ingram 1993, 346). The selection of target populations is important to policymaking because the “population characteristics help determine the types of rationales available to support policy proposals” (Donovan 2001, 9).

The struggle over problem definition and the selection of target populations centers on the categories that will be used and the ways they will be used (Kingdon 1995, 111). Categories are an easy way of making sense of reality and of structuring debate. However, they are artificial constructs and therefore can be manipulated for political purposes. In fact, since categories can be used to structure people’s perceptions, it is in the interest of the policymaker to frame the categories in a way that will support his or her favoured
course of action. For instance, groups categorized as 'dependent' will be perceived as needing assistance and will therefore be treated differently from the 'advantaged' or 'deviant' groups (Schneider and Ingram 1993).

Overall, then, the issue definition literature points to two important aspects of policy studies that will be our focus in the remainder of the chapter. First, Lasswell and Edelman have made clear that language matters; it is therefore surprising how few studies have actually applied this framework to policy analysis. This chapter will present affirmative action as a prime example of the dynamics of language at work. Second, given the controversial nature of affirmative action policies, it will be interesting to analyze the causal stories attached to the target populations of these programmes and examine how the stories have helped – or hindered – affirmative action beneficiaries in their quest for equality. It is to this analysis we now turn.

The language of affirmative action: official terminology

The issue definition literature cited above points to the importance of language in public policymaking. The choice of language attached to a given policy gives meaning to it while at the same time defining boundaries for acceptable policy practice. In Great Britain, for instance, antidiscrimination legislation allows for 'positive action,' while prohibiting 'positive discrimination.' They are considered to be two quite different things, the former referring to special recruitment efforts and targeted training for underrepresented groups and the latter signifying the use of "differential standards to benefit minority groups" (Teles 1998, 1004). Discrimination of any kind, even if it is meant to benefit minority groups, is therefore prohibited.
The choice of terminology seems crucial for understanding the differences between affirmative action policies. Table 8 outlines the official terms currently in use in our sample of seven countries and provides fascinating insights into the use of language in affirmative action policies. First, there seems to be a tendency either to refer to equality/equity or to some kind of 'action' in these policies. Australia and Canada, for instance, refer to affirmative action as 'equal employment opportunity' and 'employment equity,' respectively. It is therefore clear that the policies only apply in the field of employment. However, it is the use of the words 'equal' and 'equity' that is really interesting given the distributive (and even redistributive) nature of affirmative action policies. In fact, equality is one of the core values of democracy and thus serves to legitimize the policy. Just as the word 'equity,' the word 'equality' gives an idea of fairness and justice. In this sense, the name of the policy itself both describes the intent and justifies the actions undertaken within the policy framework.

India clearly stands out from the other countries in our sample. The word 'reservations' seems to imply there exists a special category of people different from others and therefore deserving of special treatment, understood as employment opportunities reserved specifically for them. Such categorization lends legitimacy to the choice of the target population. The most interesting feature of the table, however, is the use of the terms 'positive action' and 'affirmative action.' Both have the word 'action' in them, which implies 'doing something.' These policies therefore take on the meaning of proactive measures intended to achieve a purpose by initiating change.

Earlier analysis of the different policies, however, has shown that 'positive' action and 'affirmative' action refer to quite different types of policy practices. And yet, taken
<table>
<thead>
<tr>
<th>Country</th>
<th>Australia</th>
<th>Canada</th>
<th>India</th>
<th>Netherlands</th>
<th>South Africa</th>
<th>United Kingdom</th>
<th>United States</th>
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<tbody>
<tr>
<td><strong>Title of legislation</strong></td>
<td>Equal Opportunity for Women in the Workplace Act</td>
<td>Employment Equity Act</td>
<td>Constitution</td>
<td>Equal Treatment Act</td>
<td>Employment Equity Act</td>
<td>Sex Discrimination Act (Great Britain)</td>
<td>Executive Order 10925 / 11246</td>
</tr>
<tr>
<td><strong>Terms used in legislation</strong></td>
<td>Equal employment opportunity</td>
<td>Employment equity</td>
<td>Reservations</td>
<td>Positive action</td>
<td>Affirmative action</td>
<td>Positive action (Northern Ireland)</td>
<td>Affirmative action</td>
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aside and put in a neutral context, 'positive' and 'affirmative' mean more or less the same thing. Any thesaurus would consider them synonyms. These are words that express approval, and they could also be considered as meaning 'correct' and even 'good' – and thus words that can easily be used to justify a policy position. Therefore, it is rather surprising how the two terms have taken on so different meanings.

As mentioned earlier, the term 'affirmative action' originated in the United States in President Kennedy’s Executive Order 10925. One of the authors of the order has explained that he was in fact "torn between the words 'positive action' and 'affirmative action,'" and that he finally chose ‘affirmative’ “because it was alliterative” (Lemann 1999, 162). Given the nearly accidental origin of the concept, it is quite intriguing how significant the term has become, structuring overall debates on antidiscrimination policies.

The meaning of affirmative action was not explicitly defined in Kennedy’s executive order, but over time it came to mean “actions taken to identify and replace discriminatory employment practices, and to develop practices which result in the greater inclusion and participation in the work force of women and minorities” (McCrudden 1990, 127; emphasis added). The three countries or regions that today use the term ‘affirmative action’ in their legislation (the United States, South Africa, and Northern Ireland) have quite similar policy practices. In fact, the legislation in Northern Ireland was consciously modeled on the American practice (Edwards 1995a), and many of the arguments for affirmative action in South Africa were also transplanted from the United States (Adam 1997, 232). We could generalize, then, to say that ‘affirmative action’ at the origin refers to policies offering compensation to groups formerly targeted for discrimination and
aside and put in a neutral context, 'positive' and 'affirmative' mean more or less the same thing. Any thesaurus would consider them synonyms. These are words that express approval, and they could also be considered as meaning 'correct' and even 'good' – and thus words that can easily be used to justify a policy position. Therefore, it is rather surprising how the two terms have taken on so different meanings.

As mentioned earlier, the term 'affirmative action' originated in the United States in President Kennedy’s Executive Order 10925. One of the authors of the order has explained that he was in fact “torn between the words ‘positive action’ and ‘affirmative action,’” and that he finally chose ‘affirmative’ “because it was alliterative” (Lemann 1999, 162). Given the nearly accidental origin of the concept, it is quite intriguing how significant the term has become, structuring overall debates on antidiscrimination policies.

The meaning of affirmative action was not explicitly defined in Kennedy’s executive order, but over time it came to mean “actions taken to identify and replace discriminatory employment practices, and to develop practices which result in the greater inclusion and participation in the work force of women and minorities” (McCrudden 1990, 127; emphasis added). The three countries or regions that today use the term ‘affirmative action’ in their legislation (the United States, South Africa, and Northern Ireland) have quite similar policy practices. In fact, the legislation in Northern Ireland was consciously modeled on the American practice (Edwards 1995a), and many of the arguments for affirmative action in South Africa were also transplanted from the United States (Adam 1997, 232). We could generalize, then, to say that ‘affirmative action’ at the origin refers to policies offering compensation to groups formerly targeted for discrimination and
identified along social cleavages – racial groups in the United States and South Africa, and religious groups in Northern Ireland.

Positive action, in contrast, has been used to describe softer forms of affirmative action. It has come to mean actions undertaken to remedy underrepresentation of women and minorities in certain job categories. The term was adopted in Great Britain in the mid-1970s “to distance the Government’s proposals from the controversy surrounding the use of affirmative action in the United States” (McCrudden 1990, 127; emphasis added). McCrudden further argues that ‘positive action’ was an attractive option because it still had not been ‘captured’ by one side or the other. The choice of terminology therefore seems to have partisan roots as policymakers try to attach specific forms of language to their preferred courses of action. Today, ‘positive action’ is associated with the European model based on voluntary outreach and encouragement measures.

The countries in our sample have taken different routes to choose their affirmative action terminology. But given the American origins of the term, the American practice has also given meaning to it. The United States has provided a model for similar policies elsewhere, although the negative connotations associated with the term ‘affirmative action’ in the United States, in particular its association with quotas, have led many countries to opt for a different terminology. This has been especially true in Canada and Australia (Bacchi 1996, 16). In the latter case, although the term ‘affirmative action’ was originally adopted in 1986, the title of the legislation also referred to ‘equal employment opportunity for women’ in order to clearly define what was meant by ‘affirmative action’ in the Australian context (Bacchi 1996, 82). However, despite this attempt to distance the Australian model from the American practice, controversies persisted over the
interpretation of affirmative action, which had taken on connotations of quota based systems and reverse discrimination. A legislative review was therefore undertaken, which resulted in the abandoning of the term 'affirmative action.' In fact, despite a recognition by the Sex Discrimination Commissioner that “a reference to ‘affirmative action’ might serve to challenge the community’s understanding and encourage an awareness that social inequality can flow from membership of a group, or that the existence of systematic discrimination should be addressed,” it became clear that “a move away from the term would be generally favoured” (Magarey and Ohlin 1999).

Similarly in Northern Ireland, despite the American influence on the formulation of the policy, attempts were made “to find an uncontaminated alternative to the term ‘affirmative action’” (Edwards 1995a, 28). These attempts failed, however, and ‘affirmative action’ remained in the legislation to refer to “action designed to secure fair participation in employment.” In the Netherlands, while the feminists of the 1960s took the idea of affirmative action from the United States and pressed for targeted hiring and quotas, the government chose initially to call it ‘positive discrimination’ in favour of women (Bacchi 1996, 123). This policy was “formulated in terms of ‘temporary preferential hiring,’ the temporary making it sound less threatening” (Outshoorn 1991, 111). But just as in Australia, the idea of quotas soon became a topic of public debate, and the issue was redefined as ‘positive action’ (Outshoorn 1991, 115).

In fact, issue redefinition in the Dutch context was accompanied by issue modification. While the idea of quotas and preferential hiring for women had fitted well with the ideology of the welfare state in the 1970s, the political climate had changed by the early 1980s with a turn to the right. Positive action came to be presented as a broader
(and less specific) policy aimed at achieving equality of opportunity by various means (e.g. reviewed criteria for selection, training, etc.) and as such fitted better with the new political discourse on less state intervention. Furthermore, positive action had the advantage of avoiding the stigma of the politicized concept of positive discrimination. The change in terminology therefore helped reduce political tension with the introduction of a new concept, positive action, which fitted better with the new consensus on appropriate government action.

The language of affirmative action: policy instruments

The language of affirmative action is not just about the terms used to name the policies. It also refers to the policy instruments adopted to reach the goal the policy is set out to achieve. The most important debates have occurred over the use of 'goals' versus 'quotas' and the meaning attached to these concepts. We saw in Chapter 1 that most countries accept the use of goals and targets in the pursuit of equality. In many cases, however, the opponents of affirmative action have taken numerical goals to mean rigid quotas, thus sparking heated debate over the meaning of the terms. In general, "'goal' has a positive connotation – it reflects honest effort; 'quota' has a negative connotation – it suggests tough requirements and tough penalties" (Glazer 2000, 143). If an employer can be sanctioned for not reaching a goal, claim the opponents, then we are really dealing with a quota. In the United States, the term 'quota' has also carried an important negative connotation because of the limits imposed in the past to restrict Jewish admissions to colleges and universities. By the time affirmative action policies were adopted, then, 'quotas' had already been attached to discriminatory practices limiting the opportunities of
assigned groups. Accusing affirmative action goals of being quotas amounted to saying that the government was forcing requirements on the employers that in reality were arbitrary and discriminatory, just as the ceilings limiting the opportunities of Jews had been in the past (Glazer 2000, 143-144).

In affirmative action policymaking, legislators and programme administrators have taken care to distinguish between 'goals' and 'quotas,' which are seen as distinct practices. The United States Department of Labor defines goals as 'good faith efforts' aimed at ensuring equal employment opportunity (United States 1978). In South Africa, numerical goals are expressly said to exclude quotas. Interestingly, in the only country in our sample where quotas are included in the legislation they are not called quotas. Instead, the Indian constitution refers to reservations. The term has historical origins in the British colonial era, and the concept originally referred to a policy of separate electorates. Only later was it extended to public employment and higher education (Parikh 1997, 9). Quotas in the Indian context have therefore been associated with protected political representation ('reservations') instead of being presented as limited access to positions of power.

The analysis above shows there clearly is ambiguity attached to the terms used in connection with affirmative action policies. It should be no wonder, then, that 'positive discrimination' sparked controversy in the Netherlands. Such a term sends an ambiguous message about the legitimacy of the policy and the instruments chosen. Indeed, if discrimination is the social problem to be solved, then how can the proposed solution be labeled 'discrimination,' no matter how 'positive' it may be? Originally, positive discrimination in the Netherlands was part of an 'emancipation' policy aimed at improving women's employment opportunities, and as such was well received. It could be
seen as a serious measure to fight a serious problem. But when positive discrimination came to be associated with quotas, it became tainted and the government opted for the more neutral term ‘positive action’ (Outshoorn 1991).

It seems clear, then, that the words associated with affirmative action policies are used to win over support to one’s position on the issue, as suggested by the issue definition literature. Key political symbols especially are used to give meaning to the debate. Affirmative action is framed as a fight for ‘equality’ and for ‘rights,’ and thus as a socially acceptable practice (Lemann 1999, 163). References to such dominant values do indeed help legitimize the policy. In the Anglo-Saxon world where a rather liberal ideology tends to characterize the society, policymakers have included references to equality of opportunity perhaps as a way of gaining acceptance for group-based affirmative action policies. In Australia, the current legislation uses ‘equal opportunity’ in the title of both the legislation and the enforcement agency, while both the United States and Great Britain have an Equal (Employment) Opportunity Commission to oversee compliance with the policy. Similarly in the Netherlands, the introduction of positive action as a form of symbolic intervention (but non-committal for the government) fitted well with the neo-liberal equal opportunities discourse of the 1980s (Outshoorn 1991, 119). Interestingly enough, in the Canadian context the question of employment equity has been framed in terms of human rights, the agency in charge of enforcing the policy being the Canadian Human Rights Commission. This may explain the lack of political challenges to the policy – who would dare oppose a policy aimed at protecting human rights?
Issue definition and issue evolution – a case study

Changes in terminology may occur as a response to changes in public perceptions about the issue. However, the official terms do not have to change for the definitions to change. In the United States, for instance, ‘affirmative action’ has been in use for four decades, while the official meaning attached to it has changed. Some would go as far as claiming that President Kennedy’s initial call for affirmative action is “virtually the antithesis of what affirmative action has come to mean today” (Sowell 1990, 126). As the issue has evolved, so have the definitions changed, as well.

The first reference to affirmative action in the context of racial discrimination in the United States was made in Executive Order 10925 of 1961, but the term was never explicitly defined. In this order, federal government contractors were required to “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.” No specific examples of affirmative action were given, however, and so the federal agencies interpreted the affirmative action obligations “to mean extra recruiting efforts to boost the employment of underrepresented groups” (Graham 2002, 30).

Despite the colour-blind language of Kennedy’s executive order, then, the actual practice of affirmative action from early on included proactive measures to recruit minority applicants. Executive Order 11246 issued by President Johnson in 1965 further specified that government contractors were required to develop written affirmative action plans to identify and analyze potential problems in the participation and utilization of targeted groups in their workforce. The executive orders only applied to government
contractors, however. The Civil Rights Act of 1964, in contrast, contained antidiscrimination guidelines for all employers. 

In fact, Title VII of the Civil Rights Act became the cornerstone of antidiscrimination law in the United States. Its wording did not encourage preferential treatment, however: “Nothing contained in this title shall be interpreted to require any employer...to grant preferential treatment to any individual or to any group...on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by an employer” (Graham 2002, 27; emphasis added). Given the ambiguity of what might constitute lawful affirmative action measures and the perceived need to improve employment opportunities for women and minorities, the newly created Equal Employment Opportunity Commission (EEOC) developed guidelines “to clarify and harmonize the principles of title VII” (United States 2004). Title VII was described as a national policy against discrimination in employment which encouraged affirmative action on a voluntary basis by employers not subject to the executive orders. Affirmative action came to be defined as “those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity” (United States 2004). However, this wording still leaves room for interpretation and thus supports Edelman’s analysis about the ambiguity of political language.

In sum, early efforts to eradicate discrimination were strictly colorblind in focus, drawing legitimacy from the value of equality of opportunity. As these policies proved insufficient, however, affirmative action evolved to a color-conscious practice aiming at equality of results (Skrentny 1996). At the same time, the legislation was extended to
cover more groups. "The founding rationale of affirmative action was to remedy the ill effects of past discrimination against blacks, but this rationale did not easily fit the other groups. So affirmative action was redefined and rejustified in terms of overcoming 'underrepresentation' and achieving 'diversity'" (Eastland 1996, 199). The discourse of diversity that currently surrounds public statements on affirmative action in the United States (and many other countries) is a prime example of policymakers' tactical use of language to lend legitimacy to their policies (Bacchi 1996, 60). In this way, official definitions help justify the scope of the policy and the selection of beneficiaries. It is to this question we now turn.

Causal stories and target populations

Affirmative action is about re-defining the basis for the allocation of employment opportunities. As such, it can be understood as an issue at the origin of potential and often real social and political conflict. Affirmative action policies were created as a response to growing concerns about the consequences of discrimination in employment. The problem of discrimination was strategically portrayed by policymakers in a way that made their favoured course of action appear to be in the public interest. This corresponds to Stone’s (1997) analysis of problem definition. Affirmative action policies have been presented as a morally correct response to unjust and wrongful subordination (Radin 1991, 130). The national moral consensus of the 1960s around the question of civil rights, for instance, allowed for race-conscious affirmative action to develop in the United States (Lemann 1999, 163). Similarly in post-apartheid South Africa, affirmative action was accepted by employers as "an opportunity for social equalization" (Adam 1997, 234).
These two examples point to the importance of social awareness about the existence of a serious societal problem. As Deborah Stone said, difficult conditions become social problems once the society realizes that the condition exists because of human action and that the condition can be changed by attacking the human behaviour at its origin. The perceived gravity of the problem also helps legitimize government intervention. Some sort of societal consensus is therefore needed for affirmative action to become a reality. Indeed, history shows that minority preferences tend to originate outside the beneficiary groups (Sowell 1990, 90). The reservation policy that has been codified in the Indian constitution, for example, was initiated by the British colonial rule, and despite episodes of violent conflict, "reservations continue to be institutionalized and supported by the courts, the major parties, and the public" (Parikh 2001, 297).

At the heart of issue definition is a quest for the causes of the problem. Causal stories assign blame and responsibility by placing the burden of reform on some people rather than others (Stone 1989, 297). The specific solutions that are advocated also depend on the identified origins of the problem. A distinction made between individual and impersonal causes (Rochefort and Cobb 1994) is especially important in the case of affirmative action. The ‘hard’ measures identified in Chapter 2, for instance, attack the institutionalized practices of discrimination. In this case, the whole system is seen as the problem and not the individual practices of employers. Edwards (1995a) describes the situation in Northern Ireland, where societal sectarianism has played an important role even in employment, effectively creating Protestant and Catholic work environments. Affirmative action legislation therefore requires all private sector employers with more than 10 employees to register with the Equality Commission, while the public sector is
automatically registered. Not to register is considered a criminal offence, which testifies to the degree of seriousness of discriminatory employment practices in Northern Ireland. Individual causes can be identified through compliance reviews whose results will help in targeting those who, despite the legislation in place, keep engaging in discriminatory (even if unintentionally so) practices. However, group-based discrimination tends to be a widespread phenomenon in any society, and therefore affirmative action policies are more likely to attack the societal (impersonal) causes behind it by imposing new practices on all relevant actors.

In addition to identifying the origins of the problem, issue definition also determines the beneficiaries of the policy. The rhetoric used to justify a particular policy action thus sends a message about the groups the policy is targeting. In the case of affirmative action, we can identify two different target populations: the beneficiaries, but also the employers who are expected to comply with the legislation. Affirmative action can therefore be seen both as a compensatory and as a somewhat punitive policy practice. It means benefits for some and burdens for others as it aims at changing the current situation of the target groups by changing employment practices. Hard affirmative action measures especially aim at changing the behaviour of employers while providing benefits for the designated groups. Soft affirmative action, which tends to be voluntary, may not have such far-reaching consequences as it is up to the employee to take advantage of the opportunities provided by the policy.

The specific criteria for the selection of affirmative action beneficiaries vary from one context to another, but the objective is always to achieve equality. In most cases, affirmative action policies target groups who have been victims of past discrimination, but
sometimes other groups are selected "in order to accelerate their integration in society and thus avoid present or future discrimination" (Faundez 1994, 34). Affirmative action in the United States quickly spread from the black population to cover other minorities, which has been the object of heated political debate. La Noue and Sullivan (2001) argue that affirmative action categories are often more bureaucratic conveniences than demographic realities and may create misleading conclusions about the causes of social and economic disadvantage. Nathan Glazer (2000), one of the most well-known opponents of affirmative action, has also argued that many beneficiary categories in the United States are simply irrational. Japanese and Chinese minorities, for instance, are generally economically well-off, and therefore not that different from the European white population. He asks, do they really need affirmative action?

The question of need and public perceptions of who is deserving are important to any analysis of policy beneficiaries. Causal stories tend to label target populations in particular ways, thus refuting or lending legitimacy to their claims. While categorizing people in this way may provide useful reference points for policy targeting, it can also have counterproductive effects. Indeed, affirmative action tends to "legitimize formal categorizations of the population" (Adam 1997, 246), which can make achieving the objective of equality more difficult. In the United States, affirmative action has been resisted because African-Americans have been defined as undeserving of preference (Skrentny 1996, 145). In Canada, on the other hand, employment equity has met with little resistance. While women constituted a major part of the beneficiary group, it was the inclusion of Aboriginals, visible minorities, and persons with disabilities that provided the target group "sympathy value" (Bacchi 1996, 71). In fact, the Canadian population has
professed a public acknowledgment of the long-standing and intractable disadvantage that has touched women and minorities, and preferential treatment has therefore been accepted as a means of correcting that disadvantage (Agocs 1986).

Affirmative action legislation may also lead to the creation of identity categories defined as “lesser than the unstated norm,” which in turn may contribute “to a low sense of self-worth in victims of discrimination and to the public impression of them as inferior” (Edelman 1988, 26). Affirmative action, it is said, stigmatizes minorities “by implying that they simply cannot compete on an equal basis with dominant groups” (Adam 2000, 48). At the same time, this could become a self-fulfilling prophecy as “legally preferred groups realize that less is expected of them and, therefore, perform at a lower standard” (Herring and Collins 1995, 169). Such lower accomplishment at work may in turn contribute to the stereotypes that were held of these groups initially.

Another problematic consequence of affirmative action is that it may fail to reach the “truly disadvantaged” by identifying “the wrong victims and the wrong beneficiaries” (Herring and Collins 1995, 168). In fact, basing the eligibility criteria for affirmative action on group membership may lead to a situation where “affirmative action programmes fail to reach the worst-off members of a group, while providing benefits to members who do not need help from the programme” (Faundez 1994, 35). If the relatively well-off members of the groups identified as disadvantaged reap all the benefits of affirmative action programmes, the situation of the “truly disadvantaged” may never be improved as social and economic hardship remains concentrated among the poor. It is in the interest of the policymakers, then, to frame not only the policy but also the target groups in a way that is conducive to public acceptance of the measures adopted. As noted
earlier, the characteristics of the target population determine the rationale that can be presented to support policy proposals.

Concluding remarks: narratives surrounding affirmative action policies

Overall, we can identify two types of stories related specifically to affirmative action target populations. The first, and in one sense the original model, portrays the beneficiaries as the disadvantaged in the society, as victims of past and present discrimination. The Indian constitution, for instance, presents the target groups as “the weaker sections of the people.” This causal story portrays the target groups as victims in need of assistance. In the Netherlands, quotas for women were advocated in the 1970s because women were seen to be in an inferior and less privileged position and therefore in need of assistance (Outshoorn 1991). Similarly in South Africa, the black population was described as disadvantaged due to the legacy of apartheid (Adam 1997, 240). In each case, historical reasons have been identified to justify preferential treatment in the present.

At the same time, another discourse has gained in prominence – that of affirmative action as good business practice. Diversity as an objective of affirmative action, for instance, has been defined as the way to success in a competing market – a diverse workforce and especially a representative management structure give the organization credibility in increasingly diverse consumer markets (Adam 1997, 236). Such appeals to business sense assign a burden of responsibility to the employer while making it seem affirmative action really is in the interest of the company. In Australia and the Netherlands, women have been presented as an “untapped resource,” which has helped legitimize government policy in favour of women (Bacchi 1996, 126-127). The Australian Equal
Opportunity for Women in the Workplace Agency also describes the policy as ‘making business sense,’ arguing it helps to attract and retain the best talent, to boost a company’s productivity and innovation, and to attract more female customers. In the United States, where affirmative action has faced growing opposition, the policy has also been presented as good business practice “because it makes the best use of human resources” (Stone 1997, 398). Thus, the discourse on the policy beneficiaries not only focuses on the disadvantaged position of minorities in the labour market; it also presents them as a valuable resource to the employers and as such appeals to proponents of both radical and liberal approaches.

However, diversity management in itself should be understood as “a voluntary corporate response and an extension, not substitution, of proactive policies to ensure fair treatment of all employees” (Jain et al. 2003, 2; emphasis added). Therefore, enforcement agencies are needed to initiate wider change in the organizational culture of the workplace. McCrudden (1990, 129) noted how enforcement agencies have a role to play in making sure employers adopt the spirit of the law. This could explain why the Australian approach to affirmative action incorporates soft measures with hard enforcement. By overseeing compliance with the policy, the Equal Opportunity for Women in the Workplace Agency creates incentives to ensure affirmative action becomes a part of the organizational culture in Australia. Enforcement agencies seem also to have been successful in the United States where most employers today would likely maintain an affirmative action programme even if the legislation rendering it compulsory were abolished (Lustgarten and Edwards 1992, 282-283). Affirmative action legislation therefore plays a role in changing mentalities over time and appears to be an important
policy tool for improving the employment opportunities of previously disadvantaged groups.

The two narratives outlined above once again point to the interplay of the various aspects of affirmative action policies studied in this paper. Portraying the beneficiaries as victims in need of assistance entails a radical approach to affirmative action which calls for hard measures. Presenting affirmative action as a profitable business practice, in contrast, is likely to appeal to the proponents of a liberal approach, since diversity management remains a voluntary response left to the discretion of the employer. These are the narratives, or ‘causal stories’ (Stone 1989; 1997), that guide affirmative action policymaking; stories that are quite clearly related to the approaches and policy instruments described in Chapters 1 and 2. We discuss this further in the subsequent chapter, which draws together findings from this and previous chapters.
Chapter 4. Conclusion

We began this paper by noting that there is great variety in affirmative action policies and by suggesting that examining the language attached to them would likely provide insights into the development and evolution of these policies and thus could help in accounting for the observed differences. Through an examination of different policy documents and an analysis of the policy practices, we have been able to construct various typologies of affirmative action policies. Indeed, these programmes can be distinguished along several dimensions: the kinds of policy instruments adopted, the ideological underpinnings of the policies, and the groups expected to adapt their behaviour to the policy provisions. The most interesting findings, however, result from an examination of the language of affirmative action and the stories attached to it.

It is clear from the analysis in Chapter 3 that the two main types of affirmative action policies, positive action and affirmative action, rely on distinct stories to legitimize these policy options. Specific narratives have been based on social constructions of target populations, portrayed as victims in need of assistance or as an economic resource to be tapped. This final chapter will bring the findings together and present a more elaborate typology of affirmative action policies based on the results of our study.

Summary Table 9 presents the various aspects of affirmative action policy for each polity we have studied in this paper. On the policy side, the ideology reflects the driving force behind policymakers' preferences, which in turn influences the choice of policy instruments. In this way, the ideology defines boundaries for legitimate government action (see Skrentny 1996). In the political process, the ideology is reflected in the choice of
Table 9: Summary of findings

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<td>Ideology</td>
<td>Instruments</td>
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<td>AUSTRALIA</td>
<td>Liberal</td>
<td>Soft measures Hard enforcement</td>
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<td>GREAT BRITAIN</td>
<td>Liberal</td>
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<td>NETHERLANDS</td>
<td>Liberal</td>
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<td>CANADA</td>
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<td>INDIA</td>
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<td>NORTHERN IRELAND</td>
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<td>SOUTH AFRICA</td>
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<td>UNITED STATES</td>
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language attached to the policy. Language is important because it gives meaning both to the policy and the policy instrument, but it also forms the basis of the causal story that is presented to legitimize the policy solution. This narrative identifies the condition that needs to be addressed and the groups attached to that condition. The remedial action is justified in terms of socially acceptable and morally bearable action. The target groups are presented in a way that fits the dominant understanding of the issue and that is in conformity with the ideological basis of the policy.

Overall, we see that a radical ideology (as defined in Chapter 2) dominates the politics of affirmative action. Out of the eight polities in Table 9 (Great Britain and Northern Ireland are treated separately here for the sake of clarity), only three represent a liberal approach to affirmative action: Australia, Great Britain, and the Netherlands. The remaining five can be identified as radical. Furthermore, we see that the ideology is clearly linked to the policy instruments – a liberal ideology tends to be associated with soft measures, while the radical approach accompanies harder tools. There is one exception, however. As we noted in Chapter 2, Australia has a surprisingly hard enforcement system for the soft measures that are required under the legislation. Even the fact that these measures are required as opposed to simply permitted (as in Great Britain and the Netherlands) already sets it apart from the other liberal countries. But the Australian enforcement measures identified in Table 1 (compulsory workplace programmes, strict reporting requirements, penalties for noncompliance) are associated with a more radical approach in other contexts. In the two other liberal countries (Great Britain and the Netherlands), the agencies only have an advisory role with no enforcement power regarding affirmative action policies.
In terms of language, Table 9 summarizes the official terms used for affirmative action policies. The choice of the terms tends to be reflected in the way the policies are presented in official discourse. Positive action, for instance, is defined both in Great Britain and in the Netherlands as an exception to law, as a permissible action intended to correct underrepresentation. Affirmative action, in contrast, is a policy designed to achieve diversity and ensure equitable representation of the target groups in the workforce. Such rhetoric is discernible in policy documents in Canada, South Africa, and the United States. Similarly in Northern Ireland, affirmative action refers to fair participation in employment, which is “presumed to mean a representation in the workforce of each community that reflects their representation in the relevant labour draw area” (Edwards 1995a, 32). While the Australian policy for equal employment opportunity aims at eliminating discrimination, it also stresses the promotion of merit as an important purpose of the legislation. The policy encourages consultation between employers and employees on equal opportunity for women, but as such women are not accorded preferential treatment in hiring decisions.

The causal stories attached to affirmative action policies can also be identified by examining the policy documents in question. Overall, Table 9 identifies two main types of narratives: a social story about group relations, and a liberal story of limited state intervention. The social story, embedded in a radical ideology, focuses on observed disparities between the advantaged and the disadvantaged and advocates the use of hard measures to eradicate discrimination and to achieve equality. The liberal story, in contrast, does not recognize a societal responsibility beyond prohibiting discrimination. The role of the state is limited to providing a clear legal framework for any proactive measures.
employers would wish to adopt. As such, the narrative focuses on the importance of providing equal opportunities for everyone but does not dictate how to achieve equality.

Social stories on group relations tend to be based on a presentation of the target groups as the disadvantaged in the society, having suffered due to past discrimination. They are portrayed as victims of intolerable employment practices. While not necessarily naming employers as those responsible for this condition, the social stories do identify discriminatory employment practices as the source of suffering for these groups, and therefore employers are required to adopt affirmative action programmes to eradicate these unacceptable practices.

The social stories also stress the need to accommodate difference and value diversity in the society. The Canadian Employment Equity Act, for instance, presents the accommodation of difference as a requirement for achieving equality, which could be seen as a reflection of the country's commitment to multiculturalism. This point is further stressed by the fact that it is the Canadian Human Rights Commission that is charged with enforcing the legislation. Equating the accommodation of difference with human rights in political discourse leaves little space for opponents to voice their concerns, thus lending the policy the legitimacy it requires. As noted earlier, employment equity in Canada has faced with little public opposition compared to other countries.

The liberal story of limited state intervention is associated with positive action policies. They are based on liberal values of equal opportunity and fair competition. In Great Britain, for instance, the legislation allowing for positive action presents the policy as an opportunity to help the target groups "fit...for that work" via training (United Kingdom 1975; 1976). However, there is no guarantee the participants to the training
programmes will in fact receive a job offer or a promotion. They will simply be based on an equal footing with other applicants, thus giving them an equal opportunity to get a job. In this framework, the state has no role in telling employers what to do with minority underrepresentation, except for allowing for certain measures that the employers themselves can decide to adopt or not. This kind of approach is limited to prohibiting discrimination, but it does not take explicit account of the effect of past practices on current employment opportunities of the target groups. In some cases, as in the Netherlands, the target groups can be portrayed as an “untapped resource,” thus making them seem like an attractive pool of applicants for the employer (see Bacchi 1996). But lawful action in favour of these groups is limited to soft measures such as training and outreach.

The findings above suggest a final typology of affirmative action policies, which is presented in Table 10. There we distinguish between two approaches to affirmative action. The first approach is based on a radical ideology and uses a narrative based on disadvantaged groups who need to be given a real chance to succeed. This approach stems from a perception of an undesirable condition in the society that must be remedied through the use of affirmative action measures. The second approach is based on a liberal ideology of limited state intervention. The issue is framed in terms of fair procedures (i.e. equal opportunities for all) and fair competition. According to this approach, all individuals should be treated alike, although some groups may need additional support to help them compete. Positive action measures are therefore permitted to place members of target groups on an equal footing with other applicants.
Table 10: A typology of affirmative action models

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<td>Ideology</td>
<td>Language</td>
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<tr>
<td>Northern Ireland</td>
<td>Radical ideology, based on the recognition of a societal responsibility in eradicating discrimination and bringing about equality. As such, the target groups are offered compensation for their disadvantaged position.</td>
<td>Affirmative action</td>
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<td>South Africa</td>
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<td>United States</td>
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<td>(Canada, India)</td>
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<tr>
<td>Great Britain</td>
<td>Liberal ideology, based on equality of opportunity and fair competition. As such, the employees/applicants are provided with opportunities to fit in but no guarantee of the outcome.</td>
<td>Positive action</td>
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<td>Netherlands</td>
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Affirmative action policies are predominantly driven by a radical ideology, while positive action is based on a liberal approach. These two policy types can also be distinguished by comparing the policy practice. For instance, "what distinguishes American practice from British is that the former threatens legal sanctions if certain positive things are not done to promote equality (and hence legally required affirmative action) while the latter by and large only requires desistance from negative practices" (Lustgarten and Edwards 1992, 282). Positive action, therefore, is limited to prohibiting discrimination and only allows special measures to the extent that they can help ensure equal treatment for all. While positive action aims at correcting underrepresentation, the accommodation of difference is not a stated goal. Rather, the training of target groups aims at providing them with the skills required to succeed in the labour market and thus expects the members of these groups to conform and adapt to the requirements of the market.

Looking at Tables 9 and 10 together, we see that three countries do not perfectly fit in this typology. Despite the differences in the terminology used in Canada and India, however, they can be situated within the affirmative action model presented because they are both based on a radical ideology. Australia is nevertheless an outlier. From the beginning, its policy of equal employment opportunity has presented women as an ‘untapped resource’ (see Bacchi 1996), thus effectively framing the policy in economic terms and presenting it as a sound business practice. Current policy documents also present the Equal Opportunity for Women in the Workplace Act as a policy that “boosts a company’s profitability and makes incredibly savvy business sense” (Australia 2004). Contrary to the British and Dutch equality commissions that focus on cases of
discrimination and advise employers on what does and does not constitute discrimination, the Australian Equal Opportunity for Women in the Workplace Agency (EOWA) proactively encourages employers to accommodate women who can help enhance a company’s productivity and innovation and attract more female customers. EOWA even goes so far as to say to employers, “avoid (women) at your peril” (Australia 2004).

However, the framing of the Australian policy easily leads to confusion. As Mason (1990, 58) has noted, principles of policy are often “systematically promoted and manipulated as part of a struggle for power in the process of policy formation.” The Australian discourse, which revolves around arguments for efficiency and sound business practice, makes government intervention in the process seem counter to such a liberal approach. Indeed, soft positive action measures in Europe imply no sanctions and no obligations, while in Australia the policy is strictly enforced. Lustgarten and Edwards (1992, 282) have noted that in the pursuit of equal employment opportunity, “the threat of legal sanctions appears to work.” It is beyond the scope of this study to consider the effectiveness of the Australian policy compared to others. However, for our purposes it is worth noting that distinctions between positive action and affirmative action need not be black and white. The two approaches can be combined, as has been done in Australia. But keeping our typology in mind helps in accounting for differences observed in policy practice in different countries and hopefully sheds some light on comparative studies of affirmative action.
Postscript: an agenda for future research

Our study has compared and contrasted affirmative action policies in effect in seven different countries. Through an examination of the different policy provisions, we have been able to develop several classifications for affirmative action policies, including the soft-hard, the liberal-radical, and the employee-employer (assimilatonist-accommodating) spectra. We have also seen how language has been used to portray affirmative action policies in particular ways. However, the links identified in the paper still leave several questions unanswered. For instance, what is the causal relationship between ideology and affirmative action language? We saw in the case of the Netherlands that a change in the ideology was accompanied by a change in the language used in connection with the affirmative action policies. In fact, the policy measures themselves changed when the policy language changed, to reflect the change in ideology. It would therefore be worth examining further the linkage between ideology and language. It would be especially interesting to try to determine whether a causal link exists between the two. It may well turn out that the ideology determines the policy frame used, which in turn defines the legitimate scope of affirmative action measures.

On the other hand, it could be that the policy measures determine how the policy is framed. In this case, the policymakers choose to frame the policy in a way that makes the chosen measures seem legitimate, and thus choose the language accordingly. We have argued that policy development starts when a problem is identified and the government decides to do something about it. The problem is usually associated with a target group, so the policy and the policy measures are developed to address the needs of that group. These measures must be legitimized, however, so the policymakers choose to present them in a
way that will incite the public to accept them. In Australia, for instance, affirmative action on behalf of women was framed in economic terms to attenuate the reaction of the business community, and eventually the terminology was changed (without an accompanying change in the policy instruments) to further legitimize the policy that had become controversial due to its association in the public mind with the American practice.

In sum, our examination of issue definition and issue evolution seems to suggest that the two are intimately linked. As political circumstances change, so do issue definitions change, which in turn is likely to lead to a change in the policy. Thus, the evolution of affirmative action policies could be better understood by studying the processes of issue (re)definition in order to identify recurring patterns over time. Our study has made a first attempt at assessing the relationship between issue definition and the various forms of affirmative action, but this is only the beginning. Current scholarship would benefit greatly from a more detailed analysis of the interplay between issue definition and affirmative action.
Bibliography


