RETHINKING THE ULTIMATE GOAL OF AFFIRMATIVE ACTION: WHO AND WHAT IS IT FOR?
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Introduction

The discussions that take place around Affirmative Action (AA) in South Africa are bedevilled, as they are elsewhere, by the inherently subjective nature of the politics of identity. AA as a policy and concept is not original to this country – it is an import from the USA, where the context in which they have been applied is vastly different. However AA, entwined as it is with the politics of identity – importantly *national* identity – can be better understood when it is understood in a comparative perspective.

Despite its inherent subjectivity, the philosophy underlying AA is an objective one, rooted in a notion of justice. Justice after all, is about restoration in the present when harm has been committed in the past. However there are different visions at work as to what it means to treat people justly, and it is argued that there are two distinct visions playing out in South Africa that stand in contrast to one another.

Very few people seriously argue that there is a need for some kind of redress for the harm done by apartheid to all South Africans, but in particular Black South Africans. What is quite genuinely open to dispute is the form that that redress should take. Given the highly emotive nature of the rhetoric surrounding AA in South Africa, and in particular the defensive stance taken by the state, the impression is created that to question the redress policies is to question the project in its entirety. The implications of this are clear – denialist, racist, and unpatriotic. However the justice account of redress permits many different alternatives,[1] and just two are presented here.

The prevailing account – and this appears to be the one actually at play in South African legislation and policy – is that racially-based[2] AA measures need to be pushed ahead, because they are good (morally good) in and of themselves, and the point here is not the consequences, which are not uniformly successful. This approach seems to be what underlies the recent statement of the Minister of Labour that AA policies are here to stay. How else is one to explain why racial classification in perpetuity is necessary in order to

redress past injustices that consisted of exactly the same thing? And if these policies actually work – and thereby reduce racial inequality – then why would they need to be continued in perpetuity? Philosophers call an approach that focuses on processes that are deemed to be fair and just even if their consequences are questionable, a deontological approach. For the purposes of this paper, I will call this the process approach, but I will also argue that even on a moral deontological account this approach fails.

However there is another approach to justice and therefore AA that could better serve the goals embedded in the South African Constitution. Justice, in this case and as the Constitution acknowledges, is about redressing harm done to people in the past. An alternative to the approach that emphasises the processes of AA, is one that seeks to assess the outcomes. Philosophers call this a teleological approach, and in this paper it will be referred to as the outcomes approach An example of this is the approach adopted by the Truth and Reconciliation Commission (TRC), whereby those who had committed atrocities were given amnesty in exchange for information about the crimes they had committed. On an account of justice that emphasises processes rather than outcomes, this may not have been the best approach, as it does not punish those who have done wrong. But an account of justice that emphasises outcomes rather than processes could feasibly regard this as fair. This is because on the balance it is judged that the TRC's approach was in then end best for the families' of the victims as well as the country as a whole. Of course not everyone agrees that this was the best approach, and the merits of it are not at issue here. However the outcomes approach makes an appeal to objective standards by which the impact on those affected can be assessed. So those who call for class-based policies of AA, for example, are making an appeal to this approach.

The following section of the paper argues that even on a process (deontological) approach, AA as it is being implemented in South Africa fails. This is then followed by some suggestions as to how a more objective, outcomes-based approach could be sculpted to distance policy from the distasteful language of race while at the same time making a serious attempt to mete out justice in the form of more substantive equality for all South Africans.

Why AA in South Africa fails as a process

The reason why AA policies in South Africa don't meet the test of deontological legitimacy (i.e. that they are not morally or practically right) is that the use of race-based categories is an anachronism. They are an anachronism because there is no constitutional basis for racial labelling and privileging. The drafters of the Constitution, while they certainly envisaged robust redress measures, also envisaged a society in which the colour of one's skin did not determine one's fate. How is one to explain why racial classification in perpetuity is necessary in order to redress past injustices that consisted of exactly the same thing? Another reason why race-based laws and policies are anachronistic is the simple practical problem that, unlike

under apartheid, it is not so easy to allocate people into racial boxes, because there is no longer a law like the 1951 *Population Registration Act* that allocates people to different groups. At some point, if the post-apartheid project is successful, and segregation between the races fades (or even disappears altogether), it will become impossible to enforce policies and laws that rely on racial classification, because the hard and fast racial segregation that apartheid relied upon is supposed to disappear. And if, as the Labour Minister insists, these policies are here to stay, then they will entail an entire population buying into (in their actions at least) an external fiction.

Furthermore it is important to remind ourselves as South Africans that race itself is not a biological fact and is therefore not scientifically verifiable.[3] Race is, as we know, a sociological construct and we can therefore make it what we will. Quite bluntly then, to continue to talk in the language of 1984 (both in the literary and the historical sense) is simply to recreate the very policies that our post-apartheid society is supposed to be dispensing with.

This raises the question of how redress could be undertaken without undermining the development of a single national identity. Perhaps the answer lies in considering what concept of a *national identity*, if any, people hold. Bryan Barry, in considering the problem of ethnic divisions and discrimination, argues that a formal (legal) conception of nationality is insufficient to generate 'equal concern and respect' for other citizens with whom one does not identify in any other way.[4] Yet Barry is not arguing that homogeneity, or attempts to create a homogeneous national identity, is the solution. On the contrary, what is required is a more *inclusive* notion of national identity, which would entail empathy for the fate of others and an ability to identify with them. And the way to achieve this and realise a sense of solidarity, is by the sharing of institutions and a reduction of material inequalities. He makes the point that what is frequently seen as a cultural difference is in fact one of material circumstance. While it is true that the very rich and the very poor may have difficulty in empathising and identifying with one another, this is not a matter of cultural diversity and nor ought it to be treated as congruent with racial identity.[5]

So the success of a liberal democracy, Barry argues, depends on citizens having certain attitudes towards one another, most importantly that they regard everyone's interests as counting equally, and that they are able to identify a common good and are prepared to make certain sacrifices for that common good. Barry labels this *civic nationality*, in contrast to *formal nationality* (as embodied in a passport) and *ethnic nationality* that can prove so divisive, because of it's demonising of 'the other.'[6] Race and culture on this account of nationality are facets among many that make up the complex identities of every individual. The idea here is that identity is not a 'constant sum game' that requires one identity be supplanted by another. Rather identity has an 'additive' quality to it, which is analogous to the ability to learn to speak more than one language.[7] So while there must be a certain degree of overlap in people's identities in order for the required level of 'mutual recognition' and empathy with one another to exist, this does not entail expunging differences. The important point to note is that what democracy

requires in order for it to succeed, is for this mutual recognition to exist. So to paraphrase Barry, 'being an Indian-South African or a Jewish-South African is a way of being a South African, not an alternative to it.'[8] And this kind of mutual recognition will be difficult to attain in an environment that legally entrenches racial classification.

There are number of case studies exhibiting the competing forms of nationality – civic and ethnic – identified by Barry. In all of these cases, the challenge being addressed was how to facilitate historical social justice while building a single national identity. Two models of redress, compatible with the different forms of nationality, can be identified. The first known as the nativist model, identifies a category of disadvantaged citizens and affirms them through political and socio-economic concessions legitimated on the basis of membership to a group defined on the basis of ethnic, racial or cultural principles.

The most notable case of this model of redress is Malaysia where the population is 65% indigenous Malay (*Bumiputra*), 26% Chinese, nearly 8% Indian and about 1% Other[9] (Lam and Yeoh, 2004: 145). The official language is Malay (*Bahasa Melayu*), but English is widely spoken. Under British rule, Malays enjoyed special political privileges and the British brought migrant labourers from China and India, whose descendants subsequently became dominant within the economy. In 1957 citizenship was extended to the Chinese and Indians although the Bumiputra still continued to retain their political privileges. In any case, this political bargain fell apart in 1969 with the riots fuelled largely by the levels of poverty and inequality in the society.

The riots prompted the adoption of new redress strategy, the 'New Economic Policy (NEP), which was implemented in 1971 to promote *Bumiputra* rights, eliminate poverty and lessen economic and social inequalities among ethnic groups. Lam and Yeoh[10] report that a New Development Plan replaced the NEP in 1991, but it persisted in favouring the *Bumiputra* in terms of education, employment, political power and wealth. The NEP was hugely successful in reducing unemployment rates overall. Nevertheless, it is worth noting that its beneficiaries were mainly the indigenous Malays. Indeed, for the Chinese and Indian Malays, unemployment actually increased. Lam and Yeoh[11] also argue that the NEP dichotomised Malaysia into *Bumiputra* and *non-Bumiputra* resulting in a massive emigration of, in particular, the Malaysian Chinese population, with 150 000 estimated to be living in Singapore, and 40 000 others in the USA, Australia and New Zealand. Most of these emigrants are highly skilled professionals who are prompted to seek employment in a meritocratic environment.

The competing civic model of redress also focuses on the affirmation of the disadvantaged category of citizens although it does so through a series of political and socio-economic concessions legitimised on the basis not of membership to a racial, ethnic, or cultural group, but rather on more objective criteria such as the full realization of citizenship. The most well known African exemplar for the implementation of this redress model is Tanzania. Miguel,[12] in a comparative study of public policy in Tanzania and Kenya, identifies a

number of key policy interventions undertaken by the Tanzanian government which defined its redress strategy. First, in the mid-1960s English was replaced with Kiswahili as its official language unlike other countries like Kenya, which adopted a multilingual approach with English being used as the language of secondary and tertiary education.[13] The Tanzanian government argued that by encouraging citizens to speak in many tongues and jealously preserve their languages, the state was actually creating ethnic (and racial) division and enmity, rather than inculcating equal respect for all languages and cultures.

Second, public officials used the school to focus on common elements in Tanzanian history and culture, thereby conscientising students as Tanzanians and as Africans. Political education is included in primary and secondary syllabi and is tested in national exams. Third, post-independence Tanzania set about reforming local government institutions and strengthening democratic ones. Furthermore, '[t]raditional rural authorities and customary tribal law inherited from the colonial period were completely dismantled in Tanzania upon independence, and this may have played a role in further diminishing the place of ethnicity in Tanzanian public life.'[14] Finally, state resources were distributed equitably in Tanzania in so far as investment in education, health and infrastructure in different regions was concerned. By focusing on need as an objective criterion, rather than favouring one's 'own', Tanzania has successfully managed to downplay the potentially explosive element of identity. Miguel concludes that as a result,

> individuals increasingly identify with all citizens as fellow Tanzanians rather than just with their own tribe. They are thus willing to fund public goods that benefit 'other' groups. Second, to the extent that the reforms also increase interethnic social interactions … they also increase the likelihood of stronger 'social sanctions' across ethnic groups, thereby reducing free riding and improving local collective action.[15]

These legislative and public interventions by the Tanzanian state, which have a redress character, have had the effect of promoting a civic nationality. Citizens, whatever their ethnic, linguistic, or religious backgrounds, are prompted to engage each other, thereby establishing strong social bonds. Inter-ethnic relations do not take an acrimonious form, and according to the Afro-Barometer survey, Tanzanians have the highest measurable levels of national identity, support for democracy, confidence in government institutions, and trust in fellow citizens.[16]

The Malaysian and Tanzanian examples described above demonstrate two very distinct ways that redress can be approached, with very different consequences for the construction of national identity. The Malaysian case is an example of the divisiveness of ethnic nationality (through the deployment of racial identity), while Tanzania represents a contrasting case of civic nationality. Of course, both Malaysia and Tanzania are vastly different societies from South Africa, and as a result their cases must not be interpreted as completely instructive parallels for South Africa. Rather these cases should be treated as differing examples of redress on a continuum of possibilities. Which of these is and which should be implemented in South

Africa requires a specific analysis of the concrete set of circumstances prevailing in contemporary South Africa.

The point however for this paper is that the racial redress project, and therefore the AA policies that are the instruments of that project, need to be focused on an outcome that takes equality seriously. And equality is not served by a racial inventory in the workplace, the economy and the classroom. So objective criteria are necessary, but this raises difficult questions about how such criteria are to be determined, and having done that, how to implement them.

Outcomes based alternatives

One strategy that has been suggested by, among others, Seekings and Natrass, is to use class as the criterion upon which the beneficiaries of AA policies should be identified. While this approach is useful in the sense that it is objective and measurable, it may not however in all instances serve the demands of justice, as it fails to take account of individual merit and abilities, in the same way that race-based policies also fail to do. Is it possible to devise a more nuanced approach? Such an approach would need to assess each situation in terms of the root cause of inequality and seek to address that cause with a view to changing the outcome.

An example of this approach is outlined in a 2006 paper by Neville Alexander entitled *Affirmative Action and the Perpetuation of Racial Identities in South Africa*.[17] Alexander's paper outlines the limitations of AA policies in terms of their reach, and also refers to some of the more prominent critics of these policies, both from within and outside the government. However the main point of his paper that has relevance is Alexander's contention that 'I want to state unequivocally that the policy of affirmative action and black economic empowerment is a disastrous mistake and that we will rue the day that the people of South Africa were brought to accept it.'[18]

It is important to note here that it is not AA measures as a response to the demand for redress as a matter of justice, but rather the way in which these are being implemented that Alexander is worried about. And it is precisely because of the divisive and potentially explosive nature of racial rhetoric (noted above) and the consequent undermining of a unified national identity that Alexander is particularly concerned about them. A second important point is that given their incoherence, these policies require significant action on the part of the state in order 'bring people to accept them' which has potentially sinister implications.

So what does Alexander propose? He makes three cogent points. Firstly, that the use of racial categories and quotas are unnecessary. There are numerous other objective criteria, such as class or language, which are congruent with race in many instances, but which would allow for those who genuinely need AA policies to be benefited, rather than just a successful few.

His second point is that such an approach would allow us to distance ourselves from the distasteful racial labelling and self-labelling that we ought to be trying to escape as a matter of constitutional priority. It would also presumably be better suited to overcoming the incongruities that will inevitably arise in an increasingly integrated society. As Alexander puts it:

> We need to examine each domain in which corrective action is to be undertaken in detail, so that we can identify the real sources of disadvantage suffered by the relevant individuals and group. By using the shorthand of 'race', we not only give advantage to middle class Black people as against working class people, we also entrench – avoidably – the very racial categories that undermine the possibility of attaining a truly non-racial democratic South Africa. [19]

And, as Alexander argues, in each and every case, if we think hard enough about what drives inequality, a solution will present itself without our having to fall back on race as a convenient shorthand. So for example, university admission policies could be based on an assessment of which schools are disadvantaged, and lowering entrance requirements for learners from those schools, and vice versa.

And this raises Alexander's third point, which is that those with the power to do so, such as state officials, should use every opportunity to distance themselves from racial categorisation in keeping with the spirit of the Constitution, and specifically the non-racial vision spelled out in section 16(1). Already some officials, such as the Minister of Defence (in a 2004 statement) are beginning to do this. But far more prevalent is the drowning out of critics of AA on the part of the state and the adoption of a defensive stance whenever critics of the regime raise their voices, which will be considered in the last section.

However Alexander's suggestions allow us to seek to realise the outcome of a more equal, and more fair society, without having to fall back on the inflammatory language of race. No South African should have to suffer the indignity of being racially labelled in a democracy, but injustices of the past also need to be realistically – and appropriately - confronted.

Conclusion

In reflecting on the discourse around AA in South Africa, I am often reminded of the passage in George Orwell's *Nineteen Eighty-Four*, where the central character, Winston Smith, reflects that "in the end the Party would announce that two and two made five … It was inevitable that they would make that claim sooner or later: the logic of their position demanded it." Winston of course, as we know, ends up in the infamous Room 101 being tortured for his inability to admit to this claim.

Why this relevant to our current situation is that it mirrors unreflective, dogmatic and frequently contradictory statements on AA and its attendant policies and laws on the part of the state, many of which require either a

denial or distortion of what is really happening. To complete the quote above, "not merely the validity of experience, but the very existence of external reality, [is] tacitly denied by [the Party's] philosophy. The heresy of heresies [is] common sense … If both the past and the external world exist only in the mind, and if the mind itself is controllable – what then?"

What, other than an Orwellian world of double-think and –speak, could help citizens to make sense of one Minister of the state (in this case the Defence Minister) suggesting that it is perhaps time to begin to dispense with these policies; and another, not long after (in this case the Labour Minister) indignantly insisting that these policies are here to stay. Bearing in mind that these two individuals represent not only the same government, but the same party – a very powerful party at that – how are we as citizens of our non-fictional state supposed to interpret these things?

There are two problems that emerge in attempting to reflect on these matters in South Africa today. The first is that, like in Orwell's fictional Oceania, in South Africa, the messenger always gets shot (fortunately only figuratively!) if they begin to question what is received doctrine and policy. To question the state (and by implication the ruling party) is to be accused of indulging in a nostalgic racist hankering after the past, and to consciously or unconsciously side with the insidious policies of neo-colonialist market driven interests. Not unlike the "thoughtcrime" of "Goldsteinism" it matters not whether the criticism is rational or emotional, based on fact or fiction. To question is to taint oneself as a heretic. And what this does is to shut down effective debate about alternative ways to bring about justice and redress. The second problem, as has been discussed above, is that the use of race-based AA policies is actually itself an anachronism. And as such it requires a great deal of contortion to make contemporary sense of it.

This paper has sought to think through the claim that AA policies are supposed to be about justice. Justice, in this case and as the Constitution acknowledges, is about redressing harm done to people in the past. And there is more than one way to do this.

The point is that the current *method* by which redress is being practised in South Africa is not the only one, and is quite possibly not the best either. Currently, AA policies emphasise a particular *process* rather than measuring the *outcomes* (except for outcomes in the crudest of racial statistics). All the evidence suggests that the blind application of race-based policies not only compromises the state's ability to deliver on basic rights to services, such as health care, but it also perpetuates racial identities, and therefore rather than meeting the aim of overcoming apartheid racism, it reinforces it. So what is at issue here is not a question of whether redress mechanisms for apartheid discrimination are necessary, as they undoubtedly are, as a matter of justice. But in order to escape the Orwellian nightmare of trying to justify catastrophic policy failures, widening inequality and spiralling poverty, a crude racial inventory as policy needs to be tempered with more objective criteria for the beneficiaries of AA. There are a number of alternatives that could meet this

demand, including calls for class-based assessments of those to be advanced.

However by moving on from the inflammatory and anachronistic language of race, and moving towards a more mature and responsible consideration of what justice demands for all South Africans (and not just what is in the interest of those at the apex of the pyramid, whatever their race), redress policies that genuinely respond to the needs of those who continue to be marginalised may come about. And in this way – perhaps only this way – the one-time miracle baby of South African democracy can overcome its transition to a problem child, and currently a sulky adolescent, and grow into the mature adult democracy that treats all its children equally.

Notes and References

[1] For a comprehensive account of how the concept of justice has been understood historically and its current manifestations, see Raphael, D.D. 2001. *Concepts of Justice.* Oxford: Clarendon Press.

[2] Of course AA as it is conceived in the Constitution and the relevant legislation relates to gender inequality, and discrimination against those with disabilities. However the heated rhetoric surrounding this topic almost always focuses on the racial aspect, and certainly these have proven to be the most problematic. This paper therefore focuses on the racial dynamics of AA in South Africa.

[3] Indeed, as Richard Dawkins notes in *The Ancestor's Tale* (2004 New York: Houghton Mifflin Company: 414) 'if you take the totality of genes into account, we are a very uniform species'. Kwame Anthony Appiah makes a similar point to Dawkins about racial uniformity–'Race' he states 'as a biological concept, picks out, at best, among humans, classes of people who share certain easily observable characteristics' but these differences are of no more significance and no greater than any other genetic differences between two randomly selected people. Appiah cites Paul Hoffman who points out that while there is on average a 0.2% genetic difference between any two given people on earth, race (that is the features that we have construed to constitute race) accounts for an almost impossibly tiny 0.012% difference in our genetic makeup (Appiah, A.K. and Gutman, A. 1996. C*olour Conscious: The Political Morality of Race* Princeton, N.J.: Princeton University Press).

[4] Barry, B. 2001. *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Polity Press

[5] Barry, 2001: 79

[6] A notion of ethnic nationality is what was mobilised with such tragic results in Rwanda the former Yugoslavia

[7] Barry, 2001: 81

[8] Barry, 2001: 82. Barry makes this comment with reference to Irish- and Italian- Americans

[9] Lam, T. and Yeoh, B. 2004. 'Negotiating "Home" and "National Identity": Chinese Malaysian transmigrants in Singapore' in *Asia Pacific Viewpoint,* 5(2) August 2004: 141-164

[10] 2004: 146

[11] 2004: 146

[12] Miguel, E. 2004. 'Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania' in *World Politics.* 56 (3), 2004: 327-362

[13] Miguel, 2004: 335

[14] Miguel, 2004: 337

[15] Miguel, 2004: 339

[16] Miguel, 2004: 338

[17] The paper is based on a lecture originally delivered at the University of Fort Hare on 25 March 2006.

[18] Alexander, 2006: 10

[19] Alexander, 2006: 11