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Is it cricket? An ethical evaluation of race quotas in sport

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**A minor dissertation submitted in partial fulfillment of the requirements for the award of the
degree of Master of Arts in Philosophy**

Faculty of the Humanities

University of Cape Town

2008

COMPULSORY DECLARATION

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

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The following paper examines the issues surrounding the use of race quotas - as a form of affirmative action - in sport in South Africa. The paper begins by distinguishing the most common justifications for affirmative action and situating the use of quotas within that framework. It is suggested that the arguments evaluated in the paper are useful in attempting to justify not only the quota system, but also other policies which make use of racial preference. Both justice-based and consequentialist arguments to defend the quota system are discussed at length, with both being found to be unsatisfactory in their attempts to justify the "reverse discrimination" found in the quota system and other policies which make use of racial preference. Three arguments against racial preference (and by extension the quota system) are also presented, and finally a suggestion is made as to the form of a policy which could be said to both compensate those most affected by previous discrimination and not to discriminate unfairly against others while doing so.

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Introduction

Apartheid and Sport

From 1948 to very nearly the turn of the century, South Africa was subject to legislation which relied on racial classification and segregation, and which led to the disenfranchisement and oppression of non-white people. This system was known as *apartheid* and although the creation of apartheid is usually attributed to the Afrikaner-dominated government of 1948–1994, it is also partially a legacy of British colonialism which introduced a system of pass laws during the nineteenth century.

In the run-up to the 1948 elections, the main Afrikaner nationalist party, the Herenigde Nasionale Party (Reunited National Party) under the leadership of Daniel Francois Malan, campaigned on its policy of apartheid. The HNP narrowly defeated Jan Smuts's United Party and formed a coalition government with another Afrikaner nationalist party, the Afrikaner Party. Malan became the first apartheid prime minister, and the two parties later merged to form the National Party (NP). The coalition government immediately began implementing apartheid policies and classifying individuals by race. The Group Areas Act, designed to separate racial groups geographically, was passed in 1950, along with the Population Registration Act which stipulated that people be classified and registered according to their racial characteristics. This was closely followed by the Separate Amenities Act in 1953. Under this Act, municipal grounds could be reserved for a particular race. It created, among other things, separate beaches, buses, hospitals, schools and universities. Signboards such as "whites only" were applied to public areas,

including even park benches.¹ Whites and non-whites were legally separated in all areas of their lives except one: sport.

Interracial contact in sport was frowned upon, but there were no actual laws which segregated sport. However, the government was able to keep sport segregated using other legislation, such as the Group Areas Act. This meant that, effectively, whites played with whites on the best fields and pitches, while the rest of South Africa's citizens were left to make do as best they could, as long as they did not interfere with the white people.

South Africa's isolation in sport began in the mid-1950s and increased throughout the 1960s. Apartheid forbade South African representative teams from playing against non-white opposition, which meant that overseas teams, by virtue of their having players of diverse races, could not play in South Africa. This meant that various sporting bodies in South Africa were divided, reformed or newly established to incorporate the different races of South Africa. Some sporting associations were even subjected to government sanctions because of their refusal to follow the dictates of apartheid: In 1956, the International Table Tennis Federation severed its ties with the all-white South African Table Tennis Union, preferring the non-racial South African Table Tennis Board. The apartheid government responded by confiscating the passports of the Board's players so that they were unable to attend international games.²

In 1959, the non-racial South African Sports Association (SASA) was formed to secure the rights of all players on the global field. After meeting with no success in its endeavours to attain credit by collaborating with white establishments, SASA approached the International Olympic Committee in 1962, calling for South Africa's expulsion from

¹ <http://en.wikipedia.org/wiki/Apartheid>

² Ibid

the Olympic Games. Despite the fact that in January 1963, the South African Non-Racial Olympic Committee (SANROC) was set up, the Anti-Apartheid Movement persisted in its campaign for South Africa's exclusion, and the IOC barred South Africa from the 1964 Olympic Games in Tokyo.

B. J. Vorster became Prime Minister in 1966 and declared that South Africa would no longer dictate to other countries what their teams should look like. Although this reopened the gate for sporting meets, it did not signal the end of South Africa's racist sporting policies. Protests against certain tours brought about the cancellation of a number of other visits, like that of an England rugby team in 1969, and the various sporting bans against South African teams abroad were only fully revoked in 1993, after the release of Nelson Mandela, and when conciliations for a democratic South Africa were well under way.³

During apartheid there were heroic men and women, both white and non-white, who refused to accept the artificial distinctions created by the National Party government. Very often, they were to be found playing sport against each other on municipal sports grounds under threat of violence from police and security forces. One example of this is Daniel "Cheeky" Watson. Watson, a white player, was selected as a wing for the Junior Springboks in 1976. Declining to participate in the 1976 trials for the senior Springbok team, he instead joined the Spring Rose Rugby Football Club in the black township of New Brighton, Port Elizabeth. In 1976, Watson played with 13 black players against the South Eastern Districts Rugby Union in the Dan Qeqe stadium in KwaZakhele township. Non-racial meetings such as this were proscribed in terms of The Group Areas and the Separate Amenities Acts already mentioned. Armored vehicles circled the stadium, and

³Ibid

Watson “had to lie flat on the floor of a taxi that transported black Africans.”⁴ The Watsons were subsequently threatened, ostracized, and shot at.⁵

The role of sport in the abolition of apartheid must not be underestimated. The political repercussions of the actions of players like Cheeky Watson and Basil D’Oliviera (whose exploits will be referred to later on) were noticeable because of the visibility and permeability of sporting events; the effects of their actions were felt by far more than those that saw them play. The power of sport to draw people together is well noted, and during apartheid, a time of enforced separation, sport provided a means for people to collectively vent their indignation at the political situation. It might also be suggested that the sporting isolation South Africa endured worked on the psyche of a sports-mad country. Perhaps South Africa’s lack of international sporting participation made otherwise content people uneasy; perhaps people considered changing their political views if it meant a chance to see the Springboks play the All Blacks at Ellis Park. Whatever the case, it cannot be said that sport was not a major contributor to the eventual democratization of South Africa.

Affirmative Action

When racial segregation (but not classification) became a thing of the past with the democratization of South Africa, non-white people justifiably claimed compensation for the political policies which had put them at such a disadvantage. Black people in the United States had suffered through similar abuse up until the heroic stand of Dr Martin Luther King Jr. and the Civil Rights movement. Claims for rectification, redress and

⁴Ibid

⁵Ibid

more equal and just social policies were in both cases answered with differing forms of those two words under which a variety of policies claim shelter: *affirmative action*.

Affirmative action has come to mean a lot of things, depending on who one is speaking to. To some people it might mean economic empowerment and the triumph of justice; to others it might mean a devaluation of their ability to compete in a meritocratic system or an unfair infringement on their right to be treated equally along with everyone else. The fact is that affirmative action, whether conceived as a means to remedy past and present injustices or as beneficial to society in the long-run, most often incorporates some form of racial preference - that is, it makes being a member of a certain race count more than membership of another race, and it is here, I will argue, that the harm is done. For the purposes of this paper, I am going to borrow from a notable defender of affirmative action policies, James Sterba, and divide affirmative action into two types: remedial (or rectificatory) affirmative action and diversity affirmative action.⁶ I will admit from the outset that the other type of affirmative action conceived by Sterba, outreach affirmative action, is just and necessary; it is the former two which I hope to show as being problematic. Let us first consider outreach affirmative action before taking a closer look at the other two.

Briefly, outreach affirmative action seeks to ensure that all positions are open to all those who would wish to apply, regardless of morally irrelevant characteristics such as skin colour, religion, ethnicity, sex, eye colour etc. Furthermore, advertisements for positions should reach the largest possible audience and those in particular who have been disadvantaged in such process because of previously discriminatory policies. In

⁶Cohen, C & Sterba, J. *Affirmative Action and Racial Preference*. New York: Oxford University Press, 2003, pg. 203

short, the application and selection process should be as visible, open and accessible as possible. Sterba sums up outreach affirmative action (albeit in an American context) as such: “All reasonable steps must be taken to ensure that qualified minority and women candidates have available to them the same educational and job opportunities that are available to non-minority or male candidates.”⁷ Outreach affirmative action then, seeks to establish and protect our inalienable right to equality of opportunity. I see nothing wrong with affirmative action thus conceived. The main difference between outreach and rectificatory and diversity affirmative action is the need in the vast majority of the latter cases for racial preference.

Remedial or rectificatory affirmative action policies further divide into two subgroups: those policies which are justified by recourse to rectification for past injustices, and those policies which are justified because they seek to eradicate any still-existing biases and ensure a completely level playing field now. One is using this type of justification when one argues that the quota system “pays black people back” for the harms of apartheid, or that it “fixes the problem we still have with racist sports selectors”.

“Diversity” on the other hand is a blanket term for a large range of consequentialist justifications for affirmative action, as increased diversity via affirmative action could possibly have many different desirable consequences. For example, a more diverse workforce or team might be more effective at its tasks, while certain members thereof, included under the banner of affirmative action, might also become role-models for children from with the same backgrounds as themselves. Further, a more diverse workforce or team might function to promote equality both within their own environment and society as a whole.

⁷Ibid, pg. 205

Because both these types of arguments for affirmative action tend to make it the case that an applicant or sportsperson's race can determine her success, I am necessarily going to have to divide people into racial categories for the purposes of this paper. Even though I find this abhorrent, it might actually serve to continually highlight the ridiculousness of this practice – at least, I hope that it will. I will use the term “non-white” to denote any person of “Black”, “Indian” or “Coloured” (mixed) ancestry. As crude as it sounds, when I refer to a “player of colour” I will also be referring to a non-white player.

Affirmative action concerns us in this paper in the form of a “quota” selection system for sports teams in South Africa, which has been the form of affirmative action most present in South African sport. What this means is that a certain number of players in a team, or a certain number in a group of athletes representing South Africa at a particular sporting event, must be non-white.

Although this paper is concerned primarily with the quota selection system in South African sport, it is also concerned with those other selection systems that rely, like the quota system, on racial preference, and that have been used in the selection of sports teams in South Africa. It is notoriously difficult to pin down exactly what selection policy is used in any particular instance, as very often, government, sports administrations, teams, coaches and players all hold different opinions not only on what is actually going on, but what *should be* going on in the selection of South Africa's sports teams. So while it is the aim of this paper to evaluate the quota selection system, many of the justifications most often given in support of it are also given in support of other types of selection policies which use racial preference, and indeed, even affirmative action more generally.

For example, one repeatedly hears calls from both the public and the government for the South African national cricket and rugby teams to be more “representative”. Although I discuss the idea of “representivity” later on, it can be understood here to mean that South Africa’s cricket and rugby teams should include more non-white players, even if a specific quota or goal is not specified. If these calls are to be heeded, it might mean simply preferring a black player over a white player if the two are roughly an even match in terms of their skills or record, or it might mean consistently preferring a non-white player over other, perhaps better white players. Sometimes, the perceived need for more “representivity” leads to selections that are difficult to justify in any way. A brief illustration of this would be the on and off selection of Justin Ontong in the South African one-day cricket side. In 23 one-day internationals over an eight-year period, Ontong has made 121 runs at an average of 10.08 and taken 9 wickets at an average of 44.00.⁸ Even granting the necessary period of adjustment when a player moves into the international arena, Ontong’s returns have been below-par. Despite his record, Ontong was again selected for the latest one-day series against England.⁹ It may be argued that Ontong has never had a consistent run in the team, and that he requires the selectors’ faith over a longer period of time in order to perform. This may be the case, but Ontong’s lack of performance means that he must be “carried” by his team mates, and in an environment such as international cricket, where the nature of the competition dictates that all players must do their part for their team to win, “passengers” are unlikely to be tolerated for long. Furthermore, it could be argued that the inconsistency of Ontong’s selection is helping to reduce the confidence of an undoubtedly talented cricketer to the point where he will

⁸<http://content-www.cricinfo.com/engvrsa/content/player/46681.html#Profile>

⁹August/September, 2008

never be an international success. Ontong has a first-class batting average of 37.85, including a highest score of 166 and 13 centuries¹⁰ - impressive stats by any standards. Why then is his selection so inconsistent? Could it be that Ontong's haphazard selection is sometimes based on merit - when he is "in form" and scoring runs - and sometimes because the selectors need to "make up the numbers" of non-white players? Ontong is not an isolated example; one could ask the same questions about the selection of Solly Tyibilika, Kabamba Floors, Hanyani Shimange and others in the Springbok rugby squad, or of numerous non-white players selected in provincial cricket teams. Contrast this inconsistency in selection with the phenomenal successes of cricketers like Ashwell Prince and Makhaya Ntini, who both had inauspicious starts to their international careers but who were consistently selected nonetheless and have become integral players for South Africa because of it, and the question becomes more puzzling.

It is not just in South Africa's "major sports" that disagreement over "transformation" policy can be found. Prior to departing for the Olympic Games in Beijing, and after the tournament squad had been finalized, the South African Hockey Association (SAHA) came under fire from Sports Portfolio Committee chairperson Butana Komphela. Despite an agreement between SAHA and the South African Sports Confederation and Olympic Committee (SASCOC) that at least six players of the men's and women's squads would be players of colour, the Citizen newspaper reported that "...the sports portfolio committee, chaired by Butana Komphela, are insisting that there be a 50-50 representation. Ironically, Komphela's committee are satisfied with the six players of colour representing the SA women's team but are insisting that the men have eight.

¹⁰http://www.cricknet-online.org/player.php?player_id=2292

Furthermore, the committee would like to see more Africans in that figure as opposed to coloureds and Indians.”¹¹

Typically, it is this lack of clarity and transparency in the selection processes - not to mention in the motives of those behind the scenes - present in most codes and at most levels of South African sport, that allows criticism of a (very necessary) transformation process to creep in. Even if exact selection policies are not known, what is clear is that very often one player is selected over another because of the colour of his skin.

In sum then, I do not want to restrict the scope of the arguments in this paper to only the quota system (even though it is the most prevalent), as many are applicable to selection policies that simply incorporate racial preference.

The “Quota” Selection System

Just because all citizens are now equal in South Africa does not mean that the effects of apartheid have been suddenly erased. Far from it. The fact that I use terms such as “non-white”, “black” and “coloured” in this paper is testament to this. The sad truth is that even after fourteen years of official democracy and equality, South Africa still has use for the horrific racial classification system that was the cornerstone of apartheid. Ironically however, it is now used not to exclude, but to forcefully *include* and ensure the participation of non-white South African athletes in sporting competition. There has been, and continues to be, much controversy since 1994 about the number of non-white players in sports teams in South Africa, with some politicians and commentators defending quotas, and others condemning them. Also, there has been much support for

¹¹ <http://www.thecitizen.co.za/index/article.aspx?pDesc=66177,1,22>

quotas from the public, amidst concern from athletes themselves over the implications of such a system. Consider the following excerpts from articles in the online media:

Ahead of a big year for their cricket side, South Africa's quota system is threatening to undermine morale.

- Dileep Premachandran, The Guardian¹²

Between 2003 and 2004, levels of support for racial quotas dropped, after which it seems to have fluctuated within a narrow band. "We can only speculate at this stage about possible explanations for the decline in support between 2003 and 2004. It may have had something to do with the relatively poor performance of our national teams in the 2003 cricket and rugby world cups," Roberts and Struwig say. They also find it quite likely that this reflects the public debate on quotas that ensued for most of 2004. Highlights of this debate included SA Rugby Football Union (SARFU) president Brian van Rooyen's campaign for scrapping the quota system in rugby, as well as ANC Secretary General Kgalema Motlanthe's firm defense of race quotas in sport in contrast to Sports Minister Makhenkesi Stofile's announcement that they were no longer required.

- Human Sciences Research Council media release¹³

In a dramatic political U-turn, South African sports minister Makhenkesi Stofile has ruled out any further use of racial quotas in South African sport.¹⁴

- Brendan Gallagher, The Telegraph¹⁵

Despite the [2007 World Cup] victory however, it is evident that there is discontent with the process of transformation in sport, but also much division on the desirability of sports quotas as a means to fast-tracking transformation... Turning attention to population group differences, it is

¹² http://blogs.guardian.co.uk/sport/2008/03/19/south_africas_insistence_on_qu.html

¹³ http://www.hsrc.ac.za/Media_Release-337.phtml

¹⁴ Stofile later had to retract that statement.

¹⁵ <http://www.telegraph.co.uk/sport/rugbyunion/international/southafrica/2325175/South-Africa-to-scrap-all-racial-quotas.html>

clear that support for sports quotas has consistently been the highest among the black African population group and the lowest among the white population. In late 2006, the gap between the groups could not have been starker, with 63% of black African people voicing support for the quota system, compared to the rather dismal 14% among the white population.

- Human Sciences Research Council media release¹⁶

The players feel that as soon as a racial number is set for selection of the team (whether or not one calls this a quota or a target) it leads to a divisive dynamic within the team, and it is also degrading to the players of colour who should be there on merit yet are labelled a quota/target player.

- Tony Irish, South African Cricket Association Chief Executive¹⁷

The change in policy appears to have been triggered by South Africa's success in the rugby World Cup last month. There were claims that a strict implementation of quotas would weaken the side in the future and make another such success unlikely.

- Cricinfo Website¹⁸

Pump cash into sport for poor blacks, but don't consider racial quotas for the top teams.

- The Economist¹⁹

At a National Development Conference held in May 1999, a broad target of 50/50 representation at all levels of cricket by the World Cup in 2003 was set...When targets of 2 black players per province were set in 1999 there was alarm in certain quarters, but more than double this target has been reached with no less than 49 black players playing first-class cricket in 2001.

- Cricket South Africa website²⁰

¹⁶http://www.hsrb.ac.za/Media_Release-337.phtml

¹⁷<http://www-uk8.cricknet.org/magazine/content/story/319274.html>

¹⁸<http://content-uk.cricinfo.com/ci/content/story/318764.html>

¹⁹http://www.economist.com/displayStory.cfm?story_id=10024554

²⁰<http://www.cricknet.co.za/default.asp?cId=3252&cl=yes>

Official documentation and press releases often stay away from harsh-sounding words like “quota” in favour of words such as “target” or “goal”. This may be because a word like “quota” implies some sort of reverse discrimination, and this is a phrase that many people would prefer not to hear – no-one likes to admit tit-for-tat reasoning in the solving of problems. Alan H Goldman makes this point when he argues that a semantic distinction between “goals” and “quotas” cannot be maintained.

Firstly, Goldman argues that calling a “goal” a positive, inclusory aim, and a “quota” a negative, exclusory aim is merely sophistry. What counts as a positive “goal” for one group will necessarily be a negative “quota” for another. This is akin to arguing that “our side fights for peace, while theirs wages war.”²¹ He also considers the case for “goals” being guidelines as opposed to the strict numerical cutoffs implied by “quotas”. Perhaps the consequences of the fact that “goals” are not met can be sidestepped by showing that “good faith measures” have been taken. But then, why do we need goals? “As long as there is some proportion of a total reserved for some participant, it seems we have a quota, whatever the justifications accepted for lack of fulfillment.”²² One might want to argue here that having a goal in mind might simply speed up the transformation process – we are more likely to see more non-white players if we are continually aiming at bringing certain numbers into a team. This may be so, but it still might mean a commitment (albeit less of a commitment than in the case of quotas) to racial preference, and that may be problematic.

Whatever one’s initial feeling about affirmative action, its costs, who it benefits etc, it is important for the purposes of this paper that one accepts that South Africa’s sporting

²¹ Goldman, H “Affirmative Action”, in Cohen, M. Nagel, T. & Scanlon, T. (Eds.), Equality and Preferential Treatment. Princeton: Princeton University Press, 1977, pg. 196-197

²² Ibid, pg. 197

bodies - whether implicitly, or, as is more often the case, explicitly – most often subscribe to affirmative action in the form of a quota system when selecting representative sports teams. Although the relevant numbers and the intensity of their application vary from sport to sport, this fact is generally accepted, and is evidenced by the excerpts quoted above. Even if strict quotas are avoided, there still remain questions over preferential selection based on skin colour. If one softens “there must be x number of non-white players in a team” to “there must be *some* non-white players in a team”, one is still reserving positions only to fill them on the basis of skin colour. This is Goldman’s point.

The quota selection policy is often justified on the grounds that it serves to rectify or redress the wrongs of the past: affirmative action in the guise of the quota system is necessary to ensure that justice is done. I address arguments to this effect in the next chapter. It is my feeling that there is indeed something to the claim that some sort of reparation is due non-white sportspeople; however, the possible truth of this claim does not serve, I think, as adequate justification for the quota system, and I hope that this becomes evident as the reader progresses. Another type of argument for the quota system stresses its positive effects on society in the future; the quota system is justified, this argument says, because the future consequences of the greater diversity ensured by affirmative action are desirable. These future consequences have much to do with both social utility and equality, and these types of argument are addressed in Chapter Three. Chapter Four advances the three arguments that I feel give us the best reasons not to consider racial preference and by extension the quota system at all. Also in Chapter Four I outline some general points for a program which seeks to address the wrongs of the past in a manner which does not unfairly disadvantage anyone else and does not rely on racial

preference (or even racial classification), but rather which stresses the need to see amends-making as a societal problem, and a problem which it is very much within the South African public's power to fix.

My hope is that after finishing reading this paper the reader is inclined to agree that when someone does wrong, that wrong must be fixed in the best possible way. Likewise, the wrongs of apartheid, which stem directly from the idea that racial classification is necessary, need redress. I think it is the case, and I hope the reader will agree, that the knee-jerk reaction of affirmative action via the quota system or any policy that incorporates racial preference is not the right way to do it, for reasons which will soon become clear.

Chapter Two

Justifying racial preference in sports selection in terms of social justice: Remedial

Affirmative Action in Sport

Gertrude Ezorsky claims that, “from a backward-looking perspective, blacks have a moral claim to compensation for past injury.”²³ Ezorsky is talking about the moral claims of the African-American people, who suffered from enforced slavery and the effects of the Jim Crow laws. Although black (and other non-white) people in South Africa were not slaves in the same way as their American counterparts were, they too suffered from segregation and unequal treatment under the apartheid regime, on a scale not dissimilar to that of the African-American people in the post-slavery era. As such, black people in South Africa face many of the same problems that African-American people do, although South African blacks now have the benefit of a black majority government, something the African-American people do not have.

It is an uncontested fact that non-white sportspeople also suffered discrimination under the apartheid government. The cases of Basil D’Oliveira and Errol Tobias testify to this. D’Oliveira was a prodigiously talented coloured cricketer from the Cape, and was considered one of the best batsmen of his time. Denied the chance to play for his country due to the colour of his skin, D’Oliveira made his home in England, and played for the English national cricket team. After scoring a brilliant 158 in the final test against Australia in 1968, D’Oliveira was excluded from the touring party to South Africa, due to the apartheid policies of the time. It was this exclusion which was one of the catalysts for

²³Ezorsky, G. Racism and Justice: The Case for Affirmative Action, Ithaca: Cornell University Press, 1991, pg. 73

South Africa's sporting isolation and in no small way contributed to the eventual downfall of the apartheid system.

Tobias, a coloured rugby union player, was slightly luckier, in that he did represent South Africa a total of 15 times, six of which were in test matches. Although he only played a handful of internationals due to South Africa's sporting isolation during apartheid, Tobias was an outstanding player, and it is testament to his talent that the South African selectors picked him even though racial segregation was still a national norm. Tobias made his debut for South Africa in 1981 at age 31. A running flyhalf with an eye for the gap, Tobias excelled at bringing his backline team-mates into the game. In the four matches that he played at flyhalf, South Africa scored 122 points, running in 18 tries, 12 of them by backline players. One can't help but think that if Tobias had been white, he might well have made his debut much earlier, and would now be one of South Africa's most capped and celebrated players.

It was not only coloured and black players who were discriminated against. Sewsunker "Papwa" Sewgolum was an Indian golfer who won the Natal Open Golf Championship in 1963. After he won the Dutch Open Golf Championship in 1959 and 1960 the white powers-that-be in South African golf had been pressed to allow him to compete in Natal. After winning the championship, he had to receive the trophy standing in heavy rain, because under apartheid law he was not allowed to enter the exclusively white clubhouse. Papwa subsequently finished runner-up in the South African Open Championship later on in 1963. From then on however, he was banned successively from every major tournament in South Africa.²⁴ Effectively, his golf career was ended by apartheid.

²⁴ <http://www.anc.org.za/ancdocs/history/boycotts/indsport.html>

Once we admit that players of colour suffered severe discrimination and are due some form of rectificatory and compensatory action, some pertinent questions arise. First, is the quota system or any other selection policy based on racial preference the best way to rectify the wrongs of the past? Second, do preferential selection policies offer any form of just compensation to those previously wronged?

Broadly speaking then, the arguments for affirmative action I will address in this chapter are of two types: those seeking to justify affirmative action because it rectifies past injustices and compensates those who have suffered previously, and those seeking to justify affirmative action because it rectifies any present injustices stemming from past wrongs.

Affirmative Action as Rectification of Past Injustices

According to Sterba, “it is permissible to adopt remedial affirmative action in an institution as compensation for identifiable acts of purposeful discrimination committed by that very institution.”²⁵ In defense of this claim, Sterba cites the case of Local 28 of the Sheetmetal Workers Union in New York City. In 1986, the US Supreme Court judged that Local 28 was required to increase minority membership by admitting one minority apprentice for every non-minority apprentice until the union reached a 29 percent minority membership. The goal of 29 percent was based on the number of minorities in the relevant labour pool in New York at the time. From 1966 to 1986, the union had been discriminating against minorities by not admitting any. So the beneficiaries of the courts decision, while possibly not being those who had been previously discriminated against

²⁵Cohen, C & Sterba, J. Affirmative Action and Racial Preference, New York: Oxford University Press, 2003, pg. 206

by the union, perhaps would have been discriminated against in the absence of a legislative change. In light of this, I think it is fair to say that the court's decision was an acknowledgement that previous injustice had occurred, and that it rectified an unfair apprentice selection procedure. Also, absent any way of directly compensating those who were previously discriminated against, the court's decision might justifiably be viewed as compensation to the *group* which was previously discriminated against.

Presumably the white minority government in South Africa however, would not have permitted such action to be taken against its sports' governing bodies. Even so, the treatment of minorities by Local 28 above has some important similarities to the treatment of sportspeople of colour in South Africa during apartheid. Players of colour were consistently overlooked for selection purely because of the colour of their skin, in much the same way as minority apprentices were overlooked by Local 28. Also, it is fair to assume that the policies of racial segregation and discrimination in both cases led to negative social consequences for people of colour: members of minority groups found it hard to find meaningful employment because of the employment policies of organizations like Local 28, and players of colour found it hard to compete with white players who had access to better coaching and facilities, and who gained more exposure playing at the highest competitive levels. Furthermore, such exclusions, based as they were solely on the morally irrelevant characteristic of skin colour, are simply wrong.

Therefore, we want to say that the action taken by the Supreme Court is justified, and that the new system imposed on Local 28 fixed, through remedial affirmative action (i.e. it remedied) a racially discriminatory selection system. Local 28 was forced to employ a percentage of non-white apprentices until its workforce represented the ethnic

demographics of the New York City area; this is tantamount to saying: “This is (roughly) what your workforce would have looked like absent your previous discriminatory policies.” What we shall see later on, however, is that such ethnic proportionality is largely irrelevant - and impossible to implement alongside a merit-based selection policy - in a sporting context; it is also extremely difficult to claim that a particular sports team would look a certain way if selection policy had been different.

We have already seen that sportspeople of colour were placed at a significant disadvantage during apartheid, and, 14 years into South Africa’s fledgling democracy, the effects of this discrimination are still widely felt. It would seem patently obvious then, that sportspeople of colour too deserve some form of remedial action (and compensation) for the wrongs done to them under the apartheid regime, in the same way that minority apprentices were due some sort of remedial action or compensation by Local 28. The following question, then, still remains to be answered: Is a quota system or preferential selection policy, similar to that used by Local 28, the best way to offer restitution for these wrongs? If we are going to endorse the quota system because we see it as a form of rectificatory²⁶ affirmative action, we first have look at exactly what is implied by such policies of affirmative action, and whether the quota system meets the requirements of such labels.

Mosely states that restitution via remedial affirmative action has two simultaneous aims: to put the injured party in the position he or she would have attained had the injury not occurred and to provide appropriate substitutes so that the disadvantages suffered by an

²⁶I use the terms “remedial” affirmative action and “rectificatory” affirmative action interchangeably. This type of affirmative action seeks to remove the effects of an unjust policy on society; the difference between this and compensatory affirmative action will become clearer as the reader progresses, if it is not so already.

injured party are minimized. Furthermore, taking race into account when providing such restitution is a practical acknowledgement that prejudices and historical practices have unjustly limited the opportunities of people of colour.²⁷

What Mosely means by “putting the injured party in the position he or she would have attained” is difficult to determine precisely. Firstly, and with respect to the “injured party”, he could be talking about compensating only those *directly* injured by previous discriminatory policies. As we shall see however, this is not what most defenders of remedial affirmative action mean. Rather, they mean compensating those who belong to the group which was previously injured, or those who perhaps have suffered indirectly from these policies. More about the distinction between compensating groups as opposed to individuals will be said later. With respect to “the position he or she would have attained”, he could mean that qualified people of colour who were previously denied opportunities on racial grounds should now be given these opportunities. I do not think that anyone would contend the fairness of this interpretation, in either a sporting or industrial²⁸ context, although there could perhaps be practical concerns with distributing positions in such a way. But what exactly do we mean by “opportunities”? If we mean the opportunity to compete on a fair and equal playing field with all the other applicants, then there would seem to be nothing wrong with his statement. After all, everyone who is eligible for a certain position should be able to compete fairly for that position. However, if what we mean by “opportunities” is jobs, or positions on a sports team, which is what

²⁷Mosely, A. “A Defense of Affirmative Action”, in Cohen, A. & Wellman, C. Contemporary Debates in Applied Ethics, Malden MA: Blackwell, 2005, pg. 47-48

²⁸I use the term “industrial” to denote all selection processes which have nothing to do with sport, such as job interviews and university admissions.

Mosely seems to be suggesting, the issue becomes more complex. To see why let me make the issue clearer by borrowing an appropriate analogy from Sterba.

People who benefit from remedial affirmative action policies are like runners in a race with weights tied to their legs; these runners compete for a time at a disadvantage, but then the weights are removed and these runners are, for a period of time, given assistance so that the outcome of the race could be said to be fair.²⁹ At face value, there seems to be little wrong with this analogy. However, there are three vital questions that need to be asked if one is going to see affirmative action, or South Africa's sporting quota system in this way. The following three questions can be seen as the most important of this chapter, and I will work through them consecutively further on.

- What type of "assistance" is Sterba talking about?
- Will Sterba's analogy still be relevant when one considers that remedial affirmative action policies such as a quota systems are often claimed to compensate *groups* (and very often, members of the group who were not directly disadvantaged by previous discriminatory policies) and not individuals?
- Did these disadvantaged runners start the race in place of runners who did not suffer these disadvantages? In other words, were some athletes deprived of their position in the race to accommodate these disadvantaged runners? If so, on what grounds were they denied their position in the race? In other words,

²⁹Cohen, C & Sterba, J. Affirmative Action and Racial Preference, New York: Oxford University Press, 2003, pg. 232-233

why was it those particular runners, and not others in the race, who were replaced by the disadvantaged runners? Are these reasons fair ones?

Before answering these questions, let us return briefly to the question of whether or not the South African sport quota system, or any other selection policy incorporating racial preference, could be seen as a type of remedial affirmative action. Does this system fulfill the first of Mosely's criteria? Does it seek to give individuals those positions they would have received if it was not for previous discrimination? If we define "position" as the opportunity to compete fairly for places on one of our national teams, the answer would seem to be yes. In fact, it does more than this. South Africa has been democratic for 14 years already – the door has been open for all sportspeople to compete fairly for national places in a manner which players of the apartheid era, such as Errol Tobias, only dreamed about. The quota system now stipulates that a minimum of x number of players on a team must be non-white.³⁰ Thus even if no non-white players would have made the side on merit³¹ x number of players will still be selected. Even though simply having to pick x number of players itself does not, in a purely logical sense, entail that all players can or did compete fairly for these places, it is reasonable to assume that because of the awareness of previous discrimination and the emphasis placed on equality, equal opportunity and the transformation of sport, that there are no barriers to fair and equal

³⁰This number varies across sporting codes and can also depend on the nature of the sporting event a particular team is attending, such as the Olympics or a World Championship as opposed to a once-off international competition.

³¹ I cannot however think of one instance where this has in fact happened – players of colour regularly make South African national sides purely on merit. For example, Makhaya Ntini is regularly rated inside the top 10 bowlers in world cricket. There are numerous other examples throughout South African sport.

competition for places on national sports teams. And if there are such barriers, they are almost certainly going to be economic or even geographical, rather than racial in nature.

If we define “position” as the places on the national teams themselves (or the jobs in the workplace in an industrial sense), the answer would seem to be a very definite yes; it would seem that the quota system seeks to *ensure* that we could be said to be doing something to make amends for our previous discriminatory policies. By giving a player of colour a place on a national team, we are *admitting* the faults in our previous policies; faults which unfairly disadvantaged players of colour. We are saying, in effect, “Our previous policies stopped players of colour from reaching their full potential. If they had been given access to the best coaching and facilities, and an unbiased selection process, they would now be making the team on merit.” Furthermore, what is implicit in such reasoning, and made clear by Sterba’s analogy above, is that such players will be given all the necessary extra help to perform to their potential *now*. It would seem clear then that the quota system is indeed a form of remedial affirmative action as defined by Mosely.

It must be noted at this stage that it is extremely hard to judge whether an individual would have achieved a position on a sports team in the absence of past racial discrimination. How are we to know that a talented non-white sportsman in today’s South Africa would be of international standard but for the apartheid policies of yesteryear? Sporting achievement is a combination of more than just raw talent, good facilities and an unbiased coaching and selection system. The sportsperson concerned also has to have determination, commitment and passion, as well as mental strength and stamina. Simply

saying that talented non-white sportspeople would have achieved national representation but for racial discrimination is expressing a hope more than it is a definite fact.

We can now address (i) above. To minimize the disadvantages suffered because of racially discriminatory policies, Mosely wants “appropriate substitutes” provided to the injured party³². These appropriate substitutes are analogous to the “assistance” that Sterba would give his handicapped runners in the above example. In an industrial context, this may take the form of intensive “cram” courses, skills workshops or extra-mural training which functions to lessen the gap between the employee hired under remedial affirmative action policies and her co-workers. Even if we grant that these types of substitutes are effective in industry, and the evidence for this is far from conclusive, one has to ask how they will be affected in a sporting context.

It is a professional sportsperson’s job to keep fit, to “keep her eye in” and to make sure she is doing her utmost to perform at her peak at all times. One cannot develop an effective sporting “cram” course or skills workshop for a professional sportsperson outside of her training regime; when not training or playing, just like her team-mates do, she must rest and recuperate. Also, it is not just the raw skills which are needed by a potentially successful sportsperson; she also needs experience of competition at the highest levels as she progresses. The experience gained while playing at the highest junior representative levels is extremely hard to pick up overnight; if a player has not had this type of experience she is at a disadvantage which is impossible to overcome in the manner of similar disadvantages in an industrial context (through “cram” courses etc).

This is not to say that such disadvantages cannot be overcome. They can, but this takes

³²Recall that exactly who the injured party is must still be decided. For now, it would be sufficient to consider the injured party as those people - or athletes of colour - who were, or are now, disadvantaged by previous discriminatory policies.

time, and continual exposure to the competition at the highest level. One has to ask then, at what price such a commitment comes, especially in the professional era? It may take years for a previously disadvantaged player to be comfortable and a valuable team-member at the highest level, and until such time, and because we would assume that at international level, winning is the ultimate goal, she may cost her team more than she contributes.

The Problem of Group Compensation

So far I have been taking it for granted that some types of grievous injury deserve some form of compensation. Celia Wolf-Devine thinks otherwise, stating that “The law does not allow people to collect for wrongs done their parents or grandparents...History is full of injustices of every kind (not just racial ones), so it would appear unfair to compensate some but not others.”³³ Despite this, in certain circumstances I don’t think that the idea of compensation for past injury is a debatable one. If someone wrecks your car, you are entitled to seek compensation. In some cases, large numbers of people have been treated despicably, such as the Jews in Nazi Germany. Sometimes, large groups of people, such as Angolan War veterans, have put themselves in great danger for their country’s sake. We want to say that due to their treatment and sacrifices, both groups, holocaust survivors and war veterans, are due some form of compensation. But in the quote which begins this paper, Gertrude Ezorsky is talking about people who weren’t actually around at the time of the discrimination claiming compensation for past evils; rather than being directly injured by past policies of discrimination, their claims rest on being part of a

³³Wolf-Devine, C. “Preferential Policies Have Become Toxic” in Contemporary Debates in Applied Ethics, Cohen A. & Wellman C. (eds), Malden MA: Blackwell, 2005, pg. 62

group which was previously injured. If we are willing to grant from the outset that some form of compensation is due to non-white sportspeople after the horrors of apartheid, what must be proved is whether a quota or preferential selection system is the best form of such compensation. What must be kept in mind when considering this question is the possibility that those who were directly injured by the discriminatory selection policies of the past are not those who are going to benefit directly from the preferential selection policies based on the quota system here in the present. This then is the question raised in (ii).

Robert Simon argues that veterans are given preference because of the service they have performed for society, and therefore that anyone who has performed a similar service ought to receive the same preference. Likewise, if the reason preference is given to non-white sportspeople is that they have been treated unjustly, then preference must be given to others who have been similarly injured. "So, it appears, there can be no relevant group to which compensation ought to be made, other than that made up of and only of those who have been injured or victimized."³⁴

What Simon is pointing to here is a distinction between compensating individuals for harm done to them previously, and compensating groups, or at least certain members of groups, for harm done previously to *other members* of those groups. Simon is arguing that merely belonging to a group, some (or even most) of whose members were previously unjustly discriminated against, does not entitle one to compensation for the harms done previously to those members of that group. The only group that is entitled to

³⁴Simon, R. "Preferential Hiring: A Reply to Judith Jarvis Thomson" in Cohen, M. Nagel, T. & Scanlon, T (Eds.), Equality and Preferential Treatment, Princeton: Princeton University Press, 1977, pg. 41

compensation is that group made up of people who were previously discriminated against. Wolf-Devine puts it another way:

They must establish a strong connection between a current black candidate [or sportsperson] and harms inflicted on the black community...so as to justify what at least *looks like* an unfair employment [or selection] practice – namely disfavours the other candidate because he or she is white. And it is not enough to show that the black candidate deserves compensation; it must also be shown that this particular way of compensating him is just.³⁵

Note how these problems raised by Simon and Wolf-Devine also point to a difficulty in the way in which Mosely would have affirmative action implemented. His argument is that taking race into account when providing restitution is a practical acknowledgement that prejudices and historical practices have unjustly limited the opportunities of people of colour. It seems both Simon and Wolf-Devine would find this problematic.

So if we give a position on a sports team to a non-white sportsperson, does this count as restitution for the group containing all non-white sportspeople, whether they were previously discriminated against or not? Simon again: “So what is required, where preferential hiring [or selection] is concerned, are plausible premises showing how the preferential award of jobs [or positions on a team] to group members counts as collective compensation for the group.”³⁶ We must ask at this point what types of individuals are being compensated (or benefited) by remedial affirmative action policies. For Simon, “preferential hiring [or selection] policies award compensation to an arbitrarily selected segment of the group; namely, those who have the ability and qualifications to be

³⁵Wolf-Devine, C. in Contemporary Debates in Applied Ethics, 2005, pg. 63

³⁶Simon, R. in Equality and Preferential Treatment 1977, pg. 42

seriously considered for the job available. Surely, it is far more plausible to think that collective compensation should be available to all group members, or at least to all kinds of group members.”³⁷

Let us frame all of this by using a recent example from South African sport. Bryan Habana, a coloured rugby player, scored eight tries in the 2007 Rugby World Cup, equaling the record for the most tries scored in one tournament. His tries were a significant factor in South Africa eventually winning the World Cup, and he was rewarded for an exceptional year by being named IRB rugby player of the year for 2007. Habana was born in Benoni, in the Gauteng province of South Africa, and was educated at the prestigious King Edward VII School (KES). He continued his education at Rand Afrikaans University (RAU, now part of the University of Johannesburg), while being developed on the rugby front first by the Golden Lions and later the Blue Bulls rugby teams. Even without the quota system, it is fair to say that Habana’s name would be amongst the first on any national coach’s team sheet.

How does the case of Bryan Habana relate to the above concerning the quota system, remedial affirmative action and group restitution? The example of Habana is a good one, as he would, as a matter of fact, make any rugby team purely on merit. Obviously, if a non-white player is selected purely on merit, any argument concerning the quota system is moot. So let us for argument’s sake assume that he did not turn out as good a player as he did. Now, firstly one has to ask whether Habana could be said to have been disadvantaged by the apartheid sports selection policies. Habana attended first-rate schools, and the education and access he would have received to excellent coaching and facilities while at KES and RAU suggests that he at least was not underprivileged

³⁷Ibid

because of apartheid. Assuming again for the sake of argument that Habana did not become the outstanding player he is today, if he were selected for the Springbok side it would not be because he merited it or because he was in any way underprivileged due to previous discrimination, but rather, his selection would be based on the colour of his skin. So the question becomes, in what sense could the hypothetical Habana's selection be justified as compensation to the group of previously disadvantaged athletes?

Here is Simon's concern articulated: the hypothetical Habana is a decent (but not outstanding) rugby player. Although he does not belong to the group "non-white athletes previously disadvantaged by apartheid", he does belong to the group "non-white athletes", along with those who were unfairly disadvantaged. If the hypothetical Habana is selected for the Springbok side, it is by virtue of belonging to an arbitrarily selected segment of the group "non-white athletes". One way this worry could be sidestepped is by arguing that the selection of any non-white athlete is compensation for the group "previously disadvantaged non-white athletes". I would argue that this in no way equates to just compensation for that group. How can the selection of players of colour now, whether these selections are merited or not, count as compensation for those evils inflicted on players of colour during apartheid? Cohen argues that race, as a standard, is crude and morally blind. The injustices of the past were a product of moral stupidity; they were inflicted because desert was awarded on grounds entirely irrelevant to what was deserved. "Blacks and minorities [or sportspeople of colour in apartheid South Africa] were not injured by *being* black or brown. They were injured by treatment unfairly *based* on their being black and brown...those ancient injuries are not remedied by bestowing

benefits now upon other persons who happen to belong to the ethnic group of those injured.”³⁸

Another way of getting around this problem is by simply enlarging the group which deserves some form of compensation from “previously disadvantaged non-white athletes” to “non-white athletes”. But then one risks preferring non-white athletes who were *in no way disadvantaged* by apartheid, such as the hypothetical Habana, over white athletes simply on the basis of skin colour. To what extent could such athletes be said to deserve compensation? And compensation for what? Furthermore, one must then also consider the claims of the white athlete who is to lose his place under such a system.

Consider the following. Two athletes, one white, one non-white, grow up being educated in similar private schools, and attend the same prestigious university, where they play together in the university cricket team. Both are good cricketers, and find themselves in contention for provincial selection. Is it not simply (reverse) racial discrimination to select the non-white athlete simply because x number of non-white players *must be* selected? Surely, a coach wants the right balance in his side, and wants to select those players he thinks he can work with. It might be the case that even without the quota system, the non-white player would be selected; the point is that because of the quota system, he *has to be* selected. Has this policy not taken away from the white athlete his right to fair and equal competition for selection? Here then is the problem articulated in (iii) above.

Imagine now that the non-white athlete above was in fact disadvantaged by apartheid’s racially discriminatory policies. He did not go to a private school, and could not afford to

³⁸Cohen, C & Sterba, J. Affirmative Action and Racial Preference, New York: Oxford University Press, 2003, pg 27

go to university. Nonetheless, he demonstrates some remarkable, although raw, untrained and unproven talent. He is selected ahead of a proven and established white player. He can play decently, but essentially, he is chosen because he is non-white. In other words, the white athlete is discriminated against on the basis of a morally irrelevant characteristic – the colour of his skin. It was this same morally irrelevant characteristic (only it was the skin colour of non-white athletes) which was the basis of apartheid and apartheid sports policy to begin with. As Cohen puts it: “Is turnabout not fair play? No it is not – not when the instrument turned about is essentially unjust.”³⁹ But is it unjust? Just as non-white players were not injured by being non-white, but rather by treatment based on their being non-white, could it not be said that white players are not injured by being white, but because they have inadvertently benefited from being white?

The crucial fact about these individuals is not that they are more *responsible* for past discriminations than others with relevantly similar histories...but rather that unless reverse discrimination is practiced, they will *benefit* more than the others from its effects on their competitors... Thus, it is only because they stand to *gain* the most from the relevant effects of the *original* discrimination, that the bypassed individuals stand to *lose* the most from the *reverse* discrimination.⁴⁰

Simon’s reply to this is to point to the symmetry in the arbitrariness of compensatory selection based on skin-colour and the arbitrariness in the assessment of the costs of preferential selection. He quotes Paul Taylor: “The obligation to offer such benefits to

³⁹Cohen, C & Sterba, J. Affirmative Action and Racial Preference, 2003, pg. 26

⁴⁰Sher, G. “Justifying Reverse Discrimination in Employment”, in Cohen, M. Nagel, T. & Scanlon, T (Eds.), Equality and Preferential Treatment, Princeton: Princeton University Press, 1977, pg. 54

(the previously victimized) group...is an obligation that falls on society in general, not on any particular person. For it is the society in general that, through its established (discriminatory) social practice, brought upon itself the obligation.”⁴¹ So it would seem unfair to point simply to the fact that a white athlete benefited from apartheid policies to defend reverse discrimination; it was society as a whole which allowed the original discriminatory policies to be implemented, it is society as a whole which must make reparations. The white athlete herself did not engineer her advantage, why should she bear the costs of previous selection policies on behalf of society while others do nothing? One can acknowledge the responsibilities that middle- to upper-class white (and quite possibly some non-white) sectors of society (including sportspeople) must assume with respect to “leveling the playing field” in South Africa without endorsing the unfair and discriminatory treatment of white sportspeople. I will raise the question of the costs to white athletes again in the final chapter.

Affirmative Action as Rectification of Present Injustices

At this point, the defender of remedial affirmative action may want to argue that it is not a fact that simply because policies of racial discrimination have been removed, coaching and selection policies are free from its (admittedly far-reaching) influence. This is the distinction Ezorsky draws between overt and institutional racism.⁴² Just because we have managed to eradicate the overt racism of apartheid segregation policies, does not mean that there is not a lingering institutional racism in South Africa; there could well be systems and institutions which remain racist in their selection or employment policies,

⁴¹Simon, R. in Equality and Preferential Treatment 1977, pg. 45

⁴²Ezorsky, G. Racism and Justice: The Case for Affirmative Action, Ithaca: Cornell University Press, 1991, pg. 10

despite the democratic nature of the South African government. For instance, one might want to question whether, after 14 years of democracy and purported equality of opportunity within sports systems in South Africa (or longer, if one considers the case of Errol Tobias mentioned earlier), the fact that our national rugby union team is still dominated by white Afrikaners points to an embedded racist element in our rugby selection structures. The proponent of remedial affirmative action may want to point out that the use of such policies may be seen as a corrective measure, to counteract any *existing* bias remaining in the selection process. As Wolf-Devine puts it, "...the bias...is located either in the prejudices of those making hiring [or selection] decisions, or in the standards by which candidates [or players] are evaluated."⁴³ Furthermore, it could be argued that preferential selection policies simply make any advantages to white athletes brought about by apartheid null and void. This is the argument put forward by Luke Charles Harris and Uma Narayan in their paper "Affirmative Action as Equalizing Opportunity". Their argument is that preferential policies do not bestow preferences at all; such policies simply remove any advantages brought about by previous inequalities. First, they are clear that not every instance of affirmative action should consider each category of class, race and gender. "Which factors should be considered depends on the patterns of exclusion within a particular occupation and institution...When only one aspect of a person's identity affects his or her opportunities in a given setting...then only that factor should be taken into account."⁴⁴ Applying this to a South African sporting context, it was clearly skin-colour or race membership that counted against non-white

⁴³Wolf-Devine, C. in *Contemporary Debates in Applied Ethics* 2005, pg. 65

⁴⁴Harris, L. C. & Narayan, U. "Affirmative Action as Equalizing Opportunity" in LaFollette, H. (Ed.), *Ethics in Practice*, Cambridge MA: Blackwell, 1997, pg. 2-3

sportspeople. Therefore, it is this characteristic that should be taken into account when considering affirmative action in this context.

Second, Harris and Narayan argue that the purpose of affirmative action policies such as the quota system “is a limited though important one – to partially counter the ways in which factors such as race, class, gender and disabilities function in our society to impede equal access and opportunity...”⁴⁵ It is important to note that they are not arguing that belonging to a certain race, class, etc is in and of itself an impediment to equal opportunity; rather, they are suggesting that because certain categories of people were unfairly treated in the past, people belonging to these categories now face problems which spring directly from this past injustice. As such, their justification for affirmative action policies is that these policies “do not “bestow preferences” on their beneficiaries; rather, they attempt to undo the effects of institutional practices and criteria that, however unintentionally, amount in effect to “preferential treatment” for whites.”⁴⁶

They are quick to point out that those who see affirmative action as bestowing “preferential treatment” generally assume that the procedures used (for employment or selection) are neutral indicators of merit, and that these are unaffected by factors such as class, race or gender. Also, there is the assumption that such criteria are fairly and impartially applied to all individuals at each of the stages of the selection process.⁴⁷ Harris and Narayan dispute these assumptions by claiming that there are structures, practices and institutional criteria which still function to impede the progress of previously disadvantaged people. Perhaps some selection criteria are race- or gender-

⁴⁵Ibid, pg. 4

⁴⁶ Ibid, pg. 4

⁴⁷Ibid, pg. 4

biased; perhaps the decision makers are less likely to employ or select a previously disadvantaged candidate, for whatever reasons.

The justification for affirmative action policies, following Harris and Narayan, is not to be found in claims for compensation or for a greater social utility. Borrowing from Dworkin, they argue that:

[Affirmative action policies] are justified because *they are necessary to ensure the right to treatment as an equal for the members of marginalized groups*, in a social context where a variety of social structures and institutional practices conspire to deny their interests equal consideration and respect.⁴⁸

So the quota selection system, according to this argument, does not “take away” from the white athlete and “give” to his non-white competitor, nor does it seek to modify the “social structures and institutional practices which conspire to deny” the non-white athlete equality of opportunity and treatment as an equal. Rather, this argument seeks to justify rendering any privileges the white athlete may have enjoyed as irrelevant to the selection process. These privileges might be explained as access to the best facilities, the best coaching, exposure to the best levels of competition, etc. Following this argument, white athletes benefit indirectly from apartheid selection policies via these privileges, and selection has quite possibly always and by its nature been biased in their favour.

Affirmative action policies such as the quota system then simply ensure that the playing field is very definitely level, by ensuring that non-white sportspeople are treated in exactly the same way – equally – as their white counterparts, regardless of whether they

⁴⁸ Ibid, pg. 8

have enjoyed these same privileges or not. What must count in a player's favour the most, goes this argument, is talent and potential. "...the only costs to non-beneficiaries that result from affirmative action policies are the loss of these privileges, privileges that are the results of a lack of fairness to and opportunity for others."⁴⁹

But this seems strange indeed. How can one insist that all players are treated equally even if some are quite obviously not equal, and by this I mean that they are, at face value, of a much lower standard? Remember that in a sporting context one cannot insist on the right to "treatment as an equal" like one can in the more generalized context of basic human rights. This is because all that matters in sport is one's sporting prowess, one's merit. Thus one cannot demand that an inferior player's interests be weighed on the same scale as a superior player, regardless of their races. In any event, surely the harm done to the national team by the selection of inferior players - not to mention the possible harm to the players themselves and to the "transformation" process - would outweigh the benefits of this enforced "equality"? I will not say any more on the harms of selecting inferior players in the interests of investigating whether in fact the claim articulated by both Wolf-Devine and Harris and Narayan above - that racist structures still impede previously discriminated against groups - might actually apply to South African sport and its selection policies.

Could there still be such a racist element in South African sports structures, after 14 years of democracy? Who exactly makes the executive decisions regarding selection policies in South African sport? The main sports in South Africa in terms of participation, supporter interest and media coverage are rugby, cricket and football. It is these three

⁴⁹Ibid, pg. 10

sports that I will focus on while discussing the possibility of institutional racism in sports selection structures.

Oregon Hoskins, a non-white sports administrator, is President of the South African Rugby Union (SARU). Until the SARU elections in 2008 when he was replaced by Mark Alexander, Hoskins' deputy was Mike Stofile, a black man. Stofile was often heard criticizing SARU for not having enough black representatives, even going so far as to suggest that Hoskins was not "black enough" to be President of SARU. Hoskins' reply was that he has on numerous occasions stated that he is "fully committed to transformation"; he also pointed out that he considers himself black, as under apartheid he had also been a second class citizen and had suffered because of it.⁵⁰

The current South African national rugby team is coached by Pieter de Villiers, who is coloured. At the time of writing, the Springboks have just won their first test under de Villiers, a 43-17 rout of the Welsh in Bloemfontein. It is noteworthy that South Africa's starting lineup in the match included 7 non-white players.

Cricket South Africa's Director is "Stormin" Norman Arendse, a coloured Advocate who is also Chair of the General Council of the Bar in South Africa. His deputy is Dr Logan Naidoo, an Indian man. The CEO of Cricket South Africa is the non-white Mongezi Gerald Majola. Cricket South Africa's General Council includes three members with the simple title Black African Representative. In terms of national selection, two non-white selectors, Mustapha Khan and former national player Shafiek Abrahams assist the convenor of selectors, the national coach and the national captain in selecting the

⁵⁰http://www.news24.com/News24/Sport/Rugby/0,,2-9-838_2289347,00.html

Proteas national cricket team. At under-19 level, Abrahams himself convenes the selection panel, with three of the other four selectors also being non-white.⁵¹

The situation in South African football makes for even better reading from a “transformation” perspective. The President and three Vice-Presidents of the South African Football Association (SAFA) and the CEO of the 2010 World Cup bid are all non-white. In fact, Raymond Hack, the CEO, is the only white member of the 24-strong SAFA executive panel.⁵² Interestingly enough, SAFA have consistently opted for a non-South African coach, having first contracted Carlos Quieroz (a Portuguese), and then Carlos Alberto Perreira and Joel Santana (both Brazilians) to manage the national team.

One would expect that with these top positions in the hierarchies of the different sporting codes filled with non-whites, there would be a commensurate eradication of the previously racist selection policies. Of course, someone may argue that these structures could still be deemed racist if these administrators have internalized a “whites are better” and therefore pro-white selection mentality. This somewhat implausible argument is easily thwarted however by a glance at the transformation charters of which each of the major sports are signatories. If more tangible numbers are required, one need only look at that supposed bastion of white Afrikanerdom, rugby union, to see how much things have changed, and continue to change. What follows is a comparison of how much game time black players were given by the five South African teams competing in the 2008 Super 14 rugby union competition against those figures from the previous season. Independent Online Media (IOL) reports that the Natal Sharks (even though they had played one less match at the time these stats were compiled) played black players for a total of 1 371

⁵¹ <http://www.cricknet.co.za/default.asp?cId=6670>

⁵² <http://www.safa.net/index.php?page=committee>

where performance evaluation or critiques may be limited to an employees' boss or department. Even if the entire company is privy to information regarding an employee's lower standard of work, the bosses of the company are answerable only to themselves for the makeup and performance of their workforce.

Furthermore, sporting statistics are more comprehensive today than ever before. For cricket batsmen, the average number of runs scored in all forms of the game, and the rate at which runs are accumulated are measured precisely. For bowlers, the average number of runs per wicket and runs scored per over bowled are calculated to two decimal places. In most sports, players are subject to regular fitness tests which tell a coach or selector where the player is at, in terms of personal fitness and with respect to the standards of other professionals. Similar statistics can be found throughout the world of professional sport. With such objective criteria for performance, it is extremely hard to claim that some players are favoured over others in any ways other than those dictated by merit. Again, this may not be the case in industry, where statistics can be made to look a certain way and there is limited access to certain performance statistics; it might even be the case that such performance statistics do not apply or are not relevant.

Is there any other way in which South African sports selection could be said to be racist, biased or unrepresentative? What if the public demands that our national teams must, quite simply, reflect the demography of our country to be deemed fully representative? Farland and Jennings argue that simply expecting a national team to reflect the demography of its country is unrealistic. There are plenty of sports teams which do not reflect the ethnic makeup of their countries. Furthermore, expecting or advocating a national team to be selected on such a basis could lead to a debasement of the

international sporting currency; in other words, it could lead to situation where a national team is so below-strength that the “competition” is not a competition at all. They cite the current Zimbabwean national cricket team as an example of this. Also, they argue, the public cannot just expect its national team to be representative of the country in the same way that a democratically elected government is representative: “Unlike political representatives, sporting representatives are selected for a purpose which trumps that of satisfying the general public – namely, winning sports matches.”⁵⁴ Instead, Farland and Jennings argue that “genuinely representative national sports teams are the strongest possible combination of players from the pool of those who are qualified to represent that particular nation, regardless of their ethnicity.”⁵⁵ However, there could still be a way in which the national cricket team in particular could be said to be unrepresentative. That is if the structures surrounding the nurturing, coaching and selection of players could be said to be tarnished by the effects of white racism.

It is obvious enough that most black people have found it easier to develop their enthusiasm for football, athletics and boxing, as opposed to cricket, given the fact that performing well at cricket usually requires access to adequate surfaces and competent coaching from an early age, in addition to the early acquisition of expensive equipment. These conditions, which are prerequisites for the development of genuine enthusiasm for cricket, have largely been unavailable to South Africans of colour as a direct result that they have been, speaking generally, excluded from the sources wealth, and, more specifically, from the middle-class schools and well-funded clubs which foster the sport.⁵⁶

⁵⁴ Farland, D. and Jennings, I. “Cricket and Representivity: The case of race quotas in team selection”, in *Sport in Society*, Vol. 10, No. 5, September 2007, pg. 831

⁵⁵ Ibid, pg. 832

⁵⁶ Ibid, pg. 834

So even if it can be shown that the current hierarchies of the three main sports in South Africa are for all intents and purposes non-racist, there still exists the problem of the effect that apartheid had on the development of non-white sporting talent (and in particular, cricketing talent) in South Africa. Farland and Jennings again:

We would argue, then, that even if it can be shown that the national cricket and rugby selectors are honourable non-racists whose selections are simply responses to the pool of talent available to them at provincial level, there remains good reason to suspect that white racism is ultimately responsible for the fact that the national cricket side is white dominated. And if this is the case, the national side can indeed be thought of as unrepresentative, and we still have a moral problem.⁵⁷

Some commentators are apt to blame any perceived lack of development of non-white cricketing talent in South Africa on an internalization by black followers of cricket of a “cricket is for whites” attitude, of the kind expressed above, as well as on anything from a cabal of white ex-players who “dominate” media coverage and apparently influence selections, to a lack of confidence in non-white players in general.⁵⁸ Absent any hard evidence for these claims and with obvious examples to the contrary⁵⁹, surely it is far more plausible to think that a combination of both the long-lasting effects of apartheid *and* the nature of the game of cricket itself is responsible for any lack of comprehensive cricket development and transformation. How then do we compensate for the type of long-lasting effects which concern Farland and Jennings? We have seen from the above

⁵⁷Ibid, pg. 834

⁵⁸ <http://www.thoughtleader.co.za/stevenfriedman/2007/09/20/anyone-hear-white-and-play-cricket/>

⁵⁹Think of non-white national players like Ashwell Prince, Makhaya Ntini, Vernon Philander, Robin Petersen, JP Duminy, Herschelle Gibbs and Charl Langeveldt, and non-white commentators and media personnel like Omar Henry, Jeremy Fredericks, Craig Marais, Shafiek Abrahams, Mpumulelo “Pommie” Mbangwa, Cass Naidoo and Peter Babela.

considerations concerning remedial affirmative action that the argument for the quota system being a good rectificatory and compensatory tool is not sound. Although the quota system could be said to be a form of remedial affirmative action, the fact that it reverses an unjust practice (incurring unacceptable costs while doing so) and makes essential reference to compensating groups is problematic. Also, there are the claims of white athletes to consider – these are elucidated more fully in the final chapter. Moreover, defending the quota system on the grounds that it corrects for an existing bias in the structures of South African sport means that the proponent of such an argument must show this supposed bias exists at all. As we have seen, this might prove hard to do. The solution to the problem of how to adequately compensate non-white sportspeople for the unjust treatment they received in the past, then, is a difficult one, and Farland and Jennings gesture at a direction such a policy would have to take. It is one of the tasks of the final chapter of this paper to examine this more fully, and to make some suggestions for the resolution of this problem.

Chapter Three

Justifying racial preference in sports selection with consequentialist arguments: Diversity,

Social Utility and Equality

As we have seen, it is difficult to defend a preferential system in sports selection on the grounds that it rectifies past and present injustices done to non-white sportspeople because of apartheid. Is there perhaps any other way to justify such preferential selection policies? Instead of talking of past and present injustices, a defender of preferential affirmative action may want to stress that from this point onwards (or a “forward-looking” perspective) preferential selection policies are a good thing because they bring about future aims that are themselves desirable - that is, they have desirable *consequences*. George Sher:

“Any forward-looking defense of preferential treatment that stresses its effects on the disadvantaged groups is apt to be grounded either in the principle of utility or in some variant of the principle of equality. [Also] one or the other of these principles may appear to undergird each sort of argument from diversity; for any appeal to the generalized benefits of diversity is really an appeal to utility, while one ideal that diversity might satisfy is that of equality.”⁶⁰

⁶⁰ Sher, G. Approximate Justice, Studies in non-ideal theory, Lanham MD: Rowman & Littlefield, 1997, pg. 81

Diversity and Social Utility

One possible argument is that a form of affirmative action such as a quota system is a good thing because it creates general diversity within the group on which it is imposed. We often hear the expression “the whole is more than the sum of its parts”, and this argument assumes that having a more diverse group, by virtue of the more diverse experiences, backgrounds and knowledge being added to the group, might mean a greater whole in the final reckoning. What we shall see however is that even if “traditional” diversity arguments support affirmative action in industry, for example, they do not work within a sporting context. The reason is simple: the only way an individual contributes more to a sports team is by being better at that sport than anyone else vying for a spot on the team. Diverse backgrounds or diverse life experiences count for nothing in sport, even if they might in other contexts. But let’s consider some of the traditional arguments for diversity affirmative action; by also considering the responses to these arguments, their irrelevance in a sporting context is made even clearer.

Defenders of diversity affirmative action in this guise argue that people who have vastly different backgrounds and experiences working together are capable of a wider-range of tasks and more efficient work; the sum of their respective parts adds up to a more valuable or better whole than it would have if they had all been the same. Different types of people bring different opinions and different types of knowledge and experience to the table. It is, following this argument, simply a prima facie good to have as many different types of people as possible in a particular group. Sterba cites the possible educational benefits of a diverse student body, or the possibility of a more effective work force in

areas such as policing and community relations to defend this view.⁶¹ However, in response to this Cohen points out that the term “diversity”, when used in the context of preferential policies, almost exclusively denotes ethnic diversity. He argues that intellectual diversity and diversity of religion and life-styles might genuinely provide much more enrichment but are commonly ignored. “‘Diversity’, as everyone well understands, is today no more than a euphemism for race proportionality.”⁶² This is an important point, and the problems of race proportionality are discussed in more depth later. Wolf-Devine is even more scathing in her criticism of arguments for affirmative action based on diversity. Diversity, she claims, is not a single argument for preferential policies. Rather, advocates of these policies tend to justify affirmative action by generalized appeal to diversity, “And all too often what is going on under the surface of demands for greater diversity is either sheer politics – “more of us, less [*sic*] of you” – or else an attempt to further some ideological agenda such as feminism or multiculturalism.”⁶³ She also takes issue with the use of aesthetic metaphors such as rainbows or stews. It does no good to say that the best rainbows have the greatest array of bright colours, or that the best-tasting stews are made up of the greatest variety of ingredients. These metaphors are subjective – some like brighter rainbows or chunkier stews. These metaphors, she points out, also treat members of the group as interchangeable – the attitude seems to be that one non-white person is a good as the next. Lastly, she argues that “the idea that we should simply ‘celebrate diversity’ is silly”,

⁶¹Cohen, C & Sterba, J. Affirmative Action and Racial Preference, 2003, pg. 241

⁶²Ibid, pg.37-38

⁶³Wolf-Devine, C. in Contemporary Debates in Applied Ethics, 2005, pg. 66

as there are plenty of people (e.g. paedophiles, rapists etc) whom none of us would want to be forced to include in our society.⁶⁴

So if one could perhaps justify preferential employment policies by an appeal to the benefits of diversity (and considering the arguments above, this is not an easy task), this paper is concerned with preferential sporting selection, and in this context, the only way in which one will make a more effective “worker” is to be better at one’s sport; in other words, to have greater sporting merit. The only sport-relevant diversity claim to be made is that diverse *styles* of player might be a good thing; one might want both an unorthodox, hard-hitting, quick scoring batsman as well as a more demure and reticent classical stroke-maker in one’s cricket side. This however will depend on factors such as what the team needs at that specific time in order to further its aim to win, and such factors are completely unrelated to race or the ethnic makeup of a team.

Other diversity-related arguments which could be made by the defenders of the quota system are those that pertain, broadly speaking, to what I am going to term “representivity”⁶⁵ and “nation-building”. Because people of colour are represented by players of colour, the South African nation could be said to be better represented because of preferential policies; the team could be said to have a greater degree of “representivity”. Greater representivity could be a good thing in two ways.

First, having a national sports team which was less representative of South Africa than it might be could threaten the validity and integrity of a truly international competition.

Imagine a scenario where the only players considered for selection to a national side are those who have blonde hair. How could one say that a group of these players constitutes a

⁶⁴ Ibid, pg. 66

⁶⁵I borrow the term from Douglas Farland and Ian Jennings, “Cricket and Representivity: The case of race quotas in team selection”, in Sport in Society, Vol. 10, No. 5, September 2007

national sports team, when players with brown, red or black hair have not even been considered? Consequently, how could one call a match in which the blonde-haired team is involved an *international* competition if one hasn't chosen from all those available for selection in that country? Second, a national team with a demonstrably diverse and representative makeup could be instrumental in forging a proud, new, collective national identity; people rally around those representatives they identify with, and a team which everyone could identify with could properly said to be building a nation of "Proudly South African" South Africans.

Cohen's point above concerning ethnic diversity is borne out by Farland and Jennings dividing the general term "representivity" into two types: representivity in the political sense, and representivity in the sporting sense.⁶⁶ Considering this distinction will help in examining the claim that a more representative national team protects the integrity of international competition. Representivity in the political sense refers to the ethnic makeup of a national team roughly reflecting the ethnic diversity and demographics of a country. Representivity in the sporting sense requires a (South African) national side to be picked on the twin bases of merit and eligibility; in other words the team must be the strongest possible team of (South African) citizens. They contend that political representivity *is not* necessary for a national team to properly and fairly be termed representative, as there are plenty of national teams which do not reflect the ethnic diversity of their countries, and are still considered by their country's sporting administrations to be properly representative. The West Indian national cricket team, for example, is restricted to players from the English-speaking islands of the Caribbean; European football and track and field teams often contain a proportion of first- or second-generation immigrants

⁶⁶Farland, D. and Jennings, I. in Sport in Society, 2007

which is much higher than it is in the population as a whole.⁶⁷ Interestingly, they note that although these teams are constituted the way they are, they do not receive less support from those following the sport in their country.

What matters in a sporting context, unsurprisingly, is that a national team can be said to be fully representative in the sporting sense of the term. For this to be the case the team must be selected, as already mentioned, on the twin bases of merit and eligibility. Their aim, after all, is to win an *international* competition. The concept of representivity, then, is important to Farland and Jennings because it is integral to maintaining the distinctive practice of international sport because this practice entails the strongest teams from two or more countries competing against each other. To return to our example of the blonde-haired team mentioned above, this team could properly be termed representative if the players selected were all citizens of that country and the best players the country could offer. The ethnic demographics of the country or its national team have nothing to do (necessarily) with the sporting merit of that team. If a team cannot be said to be representative of its country in a way which matters *to the sport*, then where is the value in playing international sport?⁶⁸ In other words, and as we saw in the previous chapter, insisting that a national team be first and foremost politically (i.e. ethnically) representative could lead to the team being of an inferior standard – this would mock rather than preserve the idea of a truly international contest. To illustrate this, imagine if the French Football Federation insisted that its national team be representative of the ethnic makeup of France. Seeing as though the descendants of immigrants from former French colonies are disproportionately represented (on merit!) in the French national

⁶⁷Ibid, pg. 826

⁶⁸Farland, D. and Jennings, I. in Sport in Society, 2007, pg. 820-822

team, such a ruling would necessarily mean leaving out some of the best players in the world, such as Patrick Vieira or Claude Makelele, simply because they are the descendants of immigrants rather than “indigenous” white Frenchmen. So calling a national team *the* South African team must imply that it is the best team South Africa has to offer. If selecting the strongest South African team meant including non-white players, there might well be supplementary benefits - perhaps more non-white viewers would be attracted to the sport, widening its appeal across racial lines. However, in the context of international sport, it seems that one cannot insist that a national team must be politically representative before it can be termed properly representative of its country, even if political representivity might carry some benefits. Of course, if a national team was representative in both a sporting and political sense, this would be the greatest possible degree of representivity; however in a sporting context, it is representivity in the sporting sense which matters.

So, arguments for a quota or preferential selection policy because this promotes diversity within our national sports sides are not justified as they are not based on those criteria which make a sports team representative in the way that matters most. As Cohen puts it,

A candid demand for proportionality would require highly objectionable (and probably unlawful) racial quotas...And so institutions wanting to be politically correct hide behind a superficially race neutral term such as “diversity”.⁶⁹

While quotas are not illegal in South Africa, Cohen’s point about them being objectionable stands. They are objectionable because in a sporting sense, they do not

⁶⁹Cohen, C & Sterba, J. Affirmative Action and Racial Preference, 2003, pg.38

contribute to making a team more diversely representative in the way which matters most. And as we shall see, it is also quite possible that they are objectionable on other grounds too. However, there might well be other supplementary benefits to a more ethnically diverse national sports team.

This leads us to a more promising outcome of preferential policies when defended by an appeal to representivity, namely the ability of a more ethnically representative team to build a new and collective sense of national pride and national identity. To use the colloquialism, one might say that an ethnically diverse national team is good for “nation-building”. This might be so. If black, coloured and Indian players are playing alongside their white counterparts, it is fair to assume that the sporting contest would have a wider audience and that more people would be “getting behind” the national team. Furthermore, the diverse nature of the team might promote the development of the sport in areas where it did not previously have a wide appeal. An example of this would be Michael Mbanjwa, a black paddler from Natal. Mbanjwa became the first black paddler to win a race on the world-famous Dusi river, when he partnered Martin Dreyer in the Stihl Non-Stop Dusi in 2007. Mbanjwa is also a member of the South African K2 sprint canoeing team which has competed successfully in international competition. Mbanjwa is a product of Canoeing South Africa’s development program, and is a protégé of the late Robert Lembethe. Lembethe was a veteran of 17 Dusi canoe marathons and “a top coach skilled in the art of technical coaching, and a mentor to up-and-coming young black paddlers.”⁷⁰ He died just before the 2006 Dusi, and the race was dedicated to his memory. Lembethe formed clubs at both the Nagle and Midmar Dams and aimed to teach young black

⁷⁰ <http://www.southafrica.info/about/sport/features/sa-canoeing-060207.htm>

who are accepted, successful, professionals.”⁷² Makhaya Ntini, one of South Africa’s all-time leading wicket takers in international cricket, is often held up as an example of the type of role model being discussed here. A product of the United Cricket Board’s development program, Ntini was born in Mdingi, a rural area in the Eastern Cape Province. He made his South African one-day debut in Perth in early 1998, and his Test debut came against Sri Lanka in the same year. Ntini became the first South African to take ten wickets at Lord’s in 2003 before devastating the West Indies in Trinidad in 2005 with 13 for 132, the best-ever test-match figures by a South African bowler.⁷³ As Journalist Brad Morgan states: “Once a “quota selection” for South Africa, Makhaya Ntini has gone on to become a team leader and one of the world’s top cricketers.”⁷⁴

So having non-white sportspeople of colour, such as Makhaya Ntini representing South Africa sends the message to young non-white sportspeople that they too can achieve—they too can break the shackles imposed on them by years of unjust treatment to perform for their country at the highest level. However, this argument is not without its critics. Wolf-Devine contends that there is actually very little empirical evidence to support the claim that previously disadvantaged groups see the success of people of their own race as opening the doors for others like them; in any event she argues, employing preferences in order to provide role models sends mixed signals.⁷⁵ In effect, what we are saying to the young non-white sportspeople is that if they make a provincial or national team, it is not going to be based (at first, anyway) purely on merit. Their skin-colour is going to help them get to places others have had to work that much harder for. Furthermore, we must

⁷²Thomson, J. J. “Preferential Hiring”, in Cohen, M. Nagel, T. & Scanlon, T. (Eds.), Equality and Preferential Treatment, Princeton: Princeton University Press, 1977, pg. 22

⁷³<http://content-usa.cricinfo.com/southafrica/content/player/46592.html>

⁷⁴http://www.southafrica.info/ess_info/sa_glance/sports/makhaya_ntini.htm

⁷⁵Wolf-Devine, C. in Contemporary Debates in Applied Ethics 2005, pg. 65

ask whether we want our sportspeople of the future to have done without all the experiences associated with climbing the selection ladder; do we mind that they lack the mental strength, stamina and fighting spirit associated with hard work, experience at all levels and a struggle to get to the top?

Louis Pojman also argues that it is not clear that role models of one's own racial type are necessary for success. "Far more important than having role models of "one's own type" is having genuinely good people of whatever race or gender, to emulate...what good is a role model who is inferior to other professors or physicians or business personnel"⁷⁶ or in the context of this paper, sportspeople? Pojman's point is that we should be encouraging our children to look up to and to emulate good people or good athletes, not because they are black, white or coloured but because they are *good*. Seen from the other side, the athlete might want to ask exactly why children are looking up to her; surely it should be about more than just her skin colour? Surely she would want to be respected and looked-up to because she is good at what she does, has earned her place and its associated rewards and is the type of person children *should* be looking up to? "To yield to the demand...for "role-models-just-like-us" is to treat people like means not ends. It is a policy of disrespect for the individual as a person. It elevates morally irrelevant particularity over relevant traits..."⁷⁷ It may be argued here that this point stands for role models simpliciter, not just role-models-just-like-us. However, employing or selecting people simply to give others role models to look up to ignores the reason people are, or should be considered role models in the first place. It was Cathy Freeman's achievements on the athletics track which led to her being acknowledged as a role model

⁷⁶Pojman, L, "The Case Against Affirmative Action", in LaFollette, H. (Ed), Ethics in Practice Oxford: Blackwell, 2007, pg. 475

⁷⁷ Ibid, pg. 475

for the aboriginal people; they did not decide beforehand that they needed a role model, and then randomly select a promising athlete to fulfill the role.

I am willing to grant, for the sake of argument, that sportspeople of colour need role-models of their own race to look up to and to emulate, though I would suggest that a shared socio-economic background plays at least as much of a role as a shared skin colour. Very often being of the same class, the same neighbourhood or the same community will mean just as much as looking the same, if not more so. Be that as it may, it is hard not to grant that the success of a sportsman like Makhaya Ntini has done at least *some* positive things for children who were in his situation. Furthermore, Ntini's performances have very possibly made more non-white sportspeople consider cricket as a sport worth trying. They might also be happier about the state of sport in South Africa, and have a greater sense of equality as non-white sportspeople. If this is disputable, it will not be disputed here.

Finally, are there any other desirable consequences to do with ethnic representivity that a preferential selection policy could have? Gertrude Ezorsky claims that the aim of preferential treatment is the accomplishment of "compensation to blacks for past wrongs against them and achieving...occupational integration."⁷⁸ We have already looked at affirmative action as compensation, but what of occupational integration? In an industrial sense, this might mean people working together in an office; in a sporting sense, this would mean practicing and playing together on a daily basis, touring and living together, socializing, and generally spending time with each other. It might be argued that this forces people to break down any barriers which may stand in the way of full racial integration – it may even be said that this type of "forced" mixing is the first step toward

⁷⁸Ezorsky, G. Racism and Justice: The Case for Affirmative Action 1991, pg. 93

achieving a properly colourblind society. People's (mis)conceptions about each other are bound to be challenged in this environment, and furthermore, the visibility of sports professionals means that their integration might have a similar positive impact on society as a whole.

I cannot argue convincingly that these types of outcomes would not be achieved; however, as George Sher notes, this argument is vulnerable to what he terms the "reversal" objection: "If we are able to discriminate in favour of women and minorities [or non-white sportspeople] when doing so would maximize utility, then it should also be acceptable to discriminate against them when doing so would maximize utility."⁷⁹ Harris and Narayan also note that the argument for affirmative action creating greater overall social utility is a consequentialist argument about the long-term effects of affirmative action. The problem with these types of arguments is that they are vulnerable to a counter-argument which projects a set of more negative consequences as the long-term result.⁸⁰ It might be just as easy then, for someone to argue that affirmative action *decreases* overall social utility, for whatever reasons; perhaps a perceived unfairness in the reverse discrimination of preferential policies would create unwanted animosity in a team, and therefore widen any divide between white and non-white athletes. Likewise, disagreements over the selection of a player could cause widespread resentment within the general public: "*Your* man was picked over *our* man because he was black!" Think too of the non-white sportsperson. She has just been selected on the basis of the morally irrelevant characteristic of race membership and so might think, rightly or wrongly, that others begrudge her this. Is this the type of situation that breeds a healthy workforce or

⁷⁹Sher, G. *Approximate Justice: Studies in Non-Ideal Theory*, 1997, pg. 82-85

⁸⁰Harris, L. C. & Narayan, in *Ethics in Practice*, 1997, pg. 8

co-operative and successful sports team? It might be then that a quota system divides people for the same reasons that it could be said to unite them.

Diversity and Equality

A word which one often hears in conversations regarding affirmative action is “equality”. Previous policies of racial discrimination in employment and selection have meant that non-white people in general have not been equal in economic status to the white minority in South Africa; black, coloured and Indian people had been regarded as second-class citizens for the greater part of the 20th century. One argument put forward to defend preferential selection policies is that when non-white athletes are selected for a national team, they have become equal in economic status to their white counterparts; this in turn is seen as evidence for an equality of citizenship and status by the non-white masses. They might say something like “Makhaya Ntini is just as good as and makes just as much money as those white cricketers. He does not feel inferior to them at all. Therefore, I do not have to feel inferior to white people in general.” This is what George Sher is referring to when he states that the proponent of the equality argument for affirmative action must be committed to saying that affirmative action closes the economic gap between individuals, and that this in turn reduces some collateral inequalities. These collateral inequalities arise because of the way a person regards herself and the way other people regard her are closely bound up with the fortunes of people *like* her.⁸¹ Sher’s example is of the preferential hiring of a black doctor – this might reduce the economic inequality between him and his white peers, but it also serves

⁸¹Sher, G. Approximate Justice: Studies in Non-Ideal Theory, 1997, pg. 86-87

to lessen collateral inequalities of self-respect and status between blacks and whites more generally. The same could be said in the case of Makhaya Ntini above.

The immediate reply from those opposing preferential selection is that even if the quota system does in whatever way remove some inequalities, it does so at the expense of one of the most fundamental rights human beings could be said to possess: namely, the right to equal treatment. “Equal treatment” or equality of opportunity could be defined in the case of sporting selection as being the right to be considered, on sporting merit, for a place on a national sports team. In other words, the criteria for selecting one individual for the team must be the same as the criteria for selecting his teammates. One cannot select the country’s best batsman, judged to be so on the strength of his record - and chosen because of it - and then pick another batsman because he is a decent player *and* happens to be black. This is what Thomas Nagel sees as the most important argument against preferential policies – they “subordinate the individual’s right to equal treatment to broader social aims.”⁸²

Ronald Dworkin however, denies this. Through an analysis of the case of DeFunis and his denial of a place in the Washington Law School, Dworkin provides an argument for racial preference in academic admissions based on its ability to reduce social and economic inequality in a manner similar to that described above.⁸³ Dworkin simply denies that DeFunis’ right to equal treatment is violated by an affirmative action admissions policy which uses race as a plus factor in deciding who gets accepted.

⁸²Nagel, T. in Cohen, M. Nagel, T. & Scanlon, T. (Eds.), Equality and Preferential Treatment 1977, Introduction

⁸³Dworkin, R. “DeFunis vs. Sweatt” in Cohen, M. Nagel, T. & Scanlon, T. (Eds.), Equality and Preferential Treatment, Princeton: Princeton University Press, 1977

Dworkin's argument begins by concluding that intellectual admissions standards are justified, not because they reward the clever, but because having clever lawyers serves a useful social policy. In other words, the community is better off with intelligent lawyers. Dworkin's next step is to differentiate between "equal treatment" and "treatment as an equal", and to show that whereas the latter is fundamental, the former is derivative. Equal treatment is "the right to an equal distribution of some opportunity or resource or burden", while treatment as an equal is the right "not to receive the same distribution of some burden or benefit, but to be treated with the same concern and respect as anyone else."⁸⁴ Following Dworkin, DeFunis does not have the right to equal treatment in the assignment of law school places – he does not have the right to a place just because other people are given places. What he does have, is the right to have his interests considered with the same respect and concern as everybody else, or, in other words, just as everybody else's interests are considered. Dworkin's point though, is that in every type of selection process, everybody else's interests are considered with reference to their alignment with a useful social policy – this is why those discounted because of inferior intellectual capabilities cannot claim to be discriminated against. Thus DeFunis cannot claim to be discriminated against because an affirmative action admissions policy serves a useful social purpose in a manner similar to that which is described in the preceding section. Thus "an individual's right to be treated as an equal means that his potential loss must be treated as a matter of concern, but that loss may nevertheless be outweighed by the gain to the community as a whole."⁸⁵

⁸⁴Ibid, pg. 67-68

⁸⁵Ibid, pg. 68

If we grant Dworkin this, one should immediately ask whether *any* racially discriminatory admissions policy could then be justified by an appeal to useful social policy. Dworkin's answer is no. He draws a distinction between the case of DeFunis and that of Sweatt, a black man denied a place in the University of Texas Law School in 1945 because of a state law which denied blacks admission. In Sweatt's case, the admissions policy was motivated by an overt prejudice against black people, and even if this prejudice could be shown to serve a useful social policy, there is still something fundamentally wrong with it. The reason, Dworkin thinks, can be found in the difference between external and personal preferences.

Whenever an institution is going to decide on a policy, the members of the community are going to prefer the consequences of one policy to the consequences of another policy. "If it can be discovered what each person prefers, and how intensely, then it might be shown that a particular policy would satisfy on balance more preferences, taking into account their intensity, than alternative policies."⁸⁶ But any given individual's preferences for a particular policy "may be seen to reflect, on further analysis, either a *personal* preference for his own enjoyment of some goods or opportunities, or an *external* preference for the assignment of goods and opportunities to others, or both."⁸⁷ External preferences, following Dworkin, corrupt the utilitarian nature of a policy so designed.

Dworkin uses the example of a group of people who hold racist political theories preferring that medicine be given to a white man rather than a black man who needs it more. This, he says, shows that any supposed utilitarianism is defeated, and that under such a system, or one like that which denied Sweatt a place in the Law School, "Blacks

⁸⁶Ibid, pg. 75

⁸⁷Ibid, pg. 77

will suffer, to a degree that depends upon the strength of the racist preference, from the fact that others think them less worthy of respect and concern.”⁸⁸ Dworkin’s argument is an ingenious one. However, if the distinction between external and personal preferences and their use in a utilitarian or “majority vote” scenario can be shown to be problematic, Dworkin’s argument is in trouble.

H.L.A Hart points out that on Dworkin’s view, what moral rights we have will “depend on what external preferences or prejudices are current and likely at any given time in any given society to dominate in a utilitarian decision procedure or majority vote.”⁸⁹ This means that Dworkin’s argument cannot help to establish individual rights in either an extremely tolerant democracy or an extremely repressive tyranny. This is because as prejudice against, say, homosexual behaviour progressively fades in the tolerant democracy, so fades the right to this type of liberty. While, on the other hand in an extremely repressive tyranny, coercive legislation is not based on considerations of general welfare or a majority vote.⁹⁰

Hart notes that Dworkin might reply that the reach of his argument extends only to typical Western democracies where legislation is indeed based on considerations of general welfare or a majority vote scenario, and where the type of external preference or prejudice he is talking about might be expected to hold some influence. However, Hart points to another failing of Dworkin’s argument, and it is this that I believe makes Dworkin’s defense of affirmative action ultimately untenable.

⁸⁸ Ibid, pg. 77

⁸⁹Hart, HLA. “Between Utility and Rights” in Ryan, A. (ed) The Idea of Freedom, Oxford: Oxford University Press, 1979, pg. 90

⁹⁰Ibid, pg. 90-91

Recall that Dworkin argues that the counting of external preferences corrupts any supposedly proper utilitarian evaluation of a particular policy. Dworkin's example is that of a society's choice between a swimming pool and a theatre. Here, the external preferences of the disinterested non-swimmers support the personal preferences of the swimmers in tipping the scales in favour of the pool. This, Dworkin thinks, shows that counting external preferences is a form of "double counting."⁹¹ However, as Hart points out, surely not to count the preferences of the non-swimmers is a form of *undercounting*, which is presumably as bad as double counting. Hart uses the case of the reformation of the Sexual Offences Act in England in 1967 to illustrate his point. In this case,

"...it was the disinterested external preferences of liberal heterosexual persons that homosexual persons should have this freedom that tipped the balance against the external preferences of other heterosexuals who would deny this freedom. How in this situation could the defeated opponents of freedom or any one else complain that the procedure, through counting external preferences (both those supporting the freedom for others and those denying it) as well as the personal preferences of homosexuals wanting it for themselves, had failed to treat persons as equals?"⁹²

Hart is pointing out that one person's personal preferences can be supported by the external preferences of another if this is in support of the assignment of some liberty which is opposed by the hostile external preferences of someone else. So it seems that Dworkin's concern is not that a preference utilitarianism or majority vote scenario is unfair, like a double counting, because it counts external preferences, "but that a particular *upshot* of the procedure where the balance is tipped by a *particular kind* of

⁹¹Dworkin, R. in Equality and Preferential Treatment 1977, pg. 78

⁹²Hart, HLA. in The Idea of Freedom, 1979, pg 92-93

external preference, one which denies liberty and is assumed to express contempt, fails to treat persons as equals.”⁹³ Therefore it is not the externality of the preferences, but rather their content which tips the balance unfavourably. Seen in this light, the way Dworkin divided the cases of Defunis and Sweatt is in trouble.

I think that Hart has a very good point, but even if we grant that Dworkin is correct and his distinction between external and personal preferences unproblematic, it seems that there are two assumptions built into his argument. The first is that all admission, selection, employment etc policies must serve some kind of useful social policy. The second assumption depends on the first, and assumes that at any time there can be a reasonable consensus about what constitutes a useful social policy. While the first assumption calls into question the rights of institutions and employers to admit and employ whom they choose to, or in a sporting context to select those who would most likely help the team to win, it is the second assumption which is most troubling. Assuming the positive effects of a policy of preferential selection based on race is problematic, and one must necessarily weigh up as far as possible the positives and negatives of such a policy. In the next chapter, some of these negatives are discussed, and when one understands them, the decision to institute such a policy or not becomes much more difficult.

With reference to Sher above, it may well be that preferential selection policies do in fact reduce economic inequalities and collateral inequalities of self-respect and status. But one must ask, at what cost to our idea of what our equality as human beings necessarily entails? If one disagrees with Dworkin and considers both the Defunis and Sweatt cases to be examples of the violation of an individual’s right to equality of

⁹³Ibid, pg. 93

opportunity or equal treatment, one might also believe, as Nagel puts it, that “it would certainly be preferable to find a more direct method of rectification than to balance inequality in one part of the social system by introducing a reverse inequality at a different point.”⁹⁴ One might even believe that an appeal to “useful social policies” or “broader social aims” is moot in a sporting context. As I have already argued, one selects a team to win, not to serve the broader interests of the community, and it might well be the case that an argument could be made to distinguish the two, or at least, to point to the possibility that a winning national sports team is always in the best interests of the community.

The basis of such beliefs is that racial preference is wrong (as is racial classification more generally, although that will be argued for later) because it denies the right to equality of opportunity and the right to treatment as an equal (divorced from social policy) rightly due to all. In other words, for any society to be truthfully termed a just society, to truly see justice done, we must all be treated the same, regardless of broader social aims.

This is Newton’s argument, that the ideas of justice and equality are necessarily dependant on each other.⁹⁵ In a political context, the notion of equality is specified by equal rights, which is equal access to public goods and offices and equal treatment under the law. In short, this is the right to the equality of citizenship. When one considers that justice is found in and therefore necessarily requires equal treatment under the law, then injustice must be the violation of that equality. Therefore,

⁹⁴Nagel, T. “Equal Treatment and Compensatory Discrimination” in Cohen, M. Nagel, T. & Scanlon, T. (Eds.), Equality and Preferential Treatment, Princeton: Princeton University Press, 1977, pg. 5

⁹⁵ Newton, L. H. “Reverse Discrimination as Unjustified”, in Cahn, S. M. The Affirmative Action Debate, New York: Routledge, 1995, pg. 117

...all discrimination is wrong prima facie because it violates justice, and that goes for reverse discrimination too. No violation of justice among the citizens may be justified (may overcome the prima facie objection) by appeal to the ideal of equality, for that ideal is logically dependant on the notion of justice. Reverse discrimination, then, which attempts no other justification than an appeal to equality, is wrong.⁹⁶

Suppose however that we accept Dworkin's argument and hold on top of this, for whatever reasons, the belief that preferential selection policies do make society more equal. George Sher offers us an insight which examines the link between justifying preferential selection in this way and the idea of equality as an ideal. Sher's argument is interesting because, while it offers us an examination of egalitarian justifications, the same rationale could also be applied to those arguments, similar to Dworkin's, which seek to defend preferential policies by way of appeal to social utility or a useful social policy.

As already mentioned, anybody wishing to defend the quota system on egalitarian grounds would seem committed to saying that it is acceptable because it narrows the gaps between individual sportspeople, and by doing so also reduces certain collateral inequalities within the community. So the selection of Makhaya Ntini served to lessen the gap between him and other cricketers or sportsmen on a sporting (and possibly economic) front, and it also served to make people and players of colour more equal to their peers in terms of self-respect and status.

⁹⁶Ibid, pg. 117-118

But, if an egalitarian opposes the above inequalities of self-respect and status which are sustained by sporting inequalities based on race, must he not also condemn the inequalities of self-respect and status that are sustained by other forms of inequality, such as income-based or class-based inequality? Also, why take these more seriously than the self-respect and status of, say, the blind, the crippled or the uneducated? Sher, in asking these questions, is pointing to the fact that preferential treatment is very seldom suggested as part of a comprehensive egalitarian package. Instead, it "...is usually proffered as a free-standing remedy for a single, well-defined set of social evils – a stance that implies that the condition to be remedied is objectionable for reasons independent of the demands of equality."⁹⁷ Thus:

It is not that no egalitarian principle could be paired with defensible supplementary premises to yield a plausible defense of preferential treatment, but that no such combination underlies the arguments of most supporters of preferential treatment.⁹⁸

Bringing all of this together: if we are going to argue for the quota system on the grounds that it makes, in its own way, our society more equal, we are going to have to try to ensure that other types of unfair inequalities are remedied, not just those which are the most visible and which window-dress the greater problem of societal (in)equality. Sher concludes that for diversity, utility and equality, the central question must become: Why focus on just those groups of people who were unfairly discriminated against in the past? In each case, he thinks, there is no forward-looking answer that is consistent with the

⁹⁷Sher, G. Approximate Justice: Studies in Non-Ideal Theory, Lanham MD: Rowman & Littlefield, 1997, pg. 88

⁹⁸ Ibid, pg. 88

other commitments of most who propose the argument.⁹⁹ The application to Dworkin's argument is clear: if admissions and selection policies must serve some useful social purpose, then other policies which deal with the distribution of good and opportunities in society must do so too.

Furthermore, Sher argues that the suppressed reason for focusing on these groups and not others is that they were most often subject to discrimination, and therefore, unlike the others, *have some claims to compensation*. Imagine if it was the case that blue-eyed people in South Africa, through no wrong-doing by any party, just happened to be socially and economically better-off than green-eyed people. Obviously, there might be some green-eyes who were on a par with or better-off than some blue-eyes, but on the whole, the green-eyes were in an inferior position. Would there be grounds for instituting preferential policies of employment and selection for green-eyes because this would make society more equal? I do not think so. One cannot really justify preferential policies which subordinate individual rights to equality of opportunity by appeals to greater social or economic equality in this way unless one does this for all inequalities in society *or unless one has some other reason* for wanting these policies in the first place. This is Sher's point. So unless one thinks that the green-eyes deserve these policies for some reason, what possible justification could one have for arbitrarily instituting a policy of discrimination against the blue-eyes? Thus, argues Sher, some "forward-looking" arguments actually extend the crucial question of who should be compensated for past wrongs.¹⁰⁰ Here then is the rub: if these equality-based consequentialist arguments for affirmative action still implicitly require the community to admit that it must make

⁹⁹Ibid, pg. 93

¹⁰⁰Ibid, pg. 93

amends in some way for the evils of the past, we are back to the arguments for and against rectificatory and compensatory affirmative action raised in the previous chapter.

Chapter Four

The Harms of Racial Preference and a Possible Solution

The previous two chapters have looked at the most common justifications for affirmative action and their application in a sporting context, and there would seem to be significant problems with both justice-based and consequentialist arguments for affirmative action in the form of the quota system. This chapter will deal with the negative aspects of the mechanism underlying most types of affirmative action and very definitely the quota system: racial preference. I will put forward what I consider to be the three main arguments against policies of racial preference. First, they entrench racial categorization, which in itself is a massive harm. Second, sports selection policies based on racial preference cost South Africa as a whole. Third, these policies are harmful to those who benefit from them, both directly and in that racial preference reinforces negative stereotypes of the group that individual belongs to. Finally, I will suggest a route which while admitting previous injustice and seeking to provide compensation, stays clear of the problems associated with affirmative action raised in this and previous chapters.

The Entrenchment of Racial Categories

Carl Cohen: "Using race to award benefits now does injustice in precisely the same way injustice was done originally, by giving moral weight to skin colour in itself...A wrong is not redressed by inflicting that same wrong on others."¹⁰¹ Clearly though, before one can

¹⁰¹ Cohen, C. and Sterba, J. Affirmative Action and Racial Preference, New York: Oxford University Press, 2003, pg. 24

even discriminate on the basis of race membership, and to begin to do the wrongs mentioned by Cohen, one first has to divide a given population into racial categories. It is this racial classification - the idea that certain people are defined or can be defined in terms of their race, ethnicity or culture - that lies at the root of some of the biggest atrocities in history.

Cohen gestures at what history makes abundantly clear: when we begin to sort people on the basis of race membership, we begin the process which culminates in the death of six million Jews, the massacre of the Tutsis, the Serbian genocide, and apartheid. “The most gruesome chapters in human history...remind us that *racial* categories must never be allowed to serve as the foundation for official differentiation...The lesson is this: Never again. Never, *ever* again.”¹⁰²

If this is indeed the lesson that history teaches us, we are not learning. Consider the Population Registration Act of 1950, which required that each inhabitant of South Africa be classified and registered in terms of their racial characteristics as part of the broader policy of apartheid. Social rights, political rights, educational opportunities, and economic status were largely determined by the group to which an individual belonged. “There were three basic racial classifications under the law: Black, White and Coloured (Mixed). Indian (that is, South Asians from the former British India) was later added as a separate classification as they were seen as having ‘no historical right to the country’.”¹⁰³ This division of the population enabled the National Party to bestow second-class status on its non-white citizens.

¹⁰²Ibid pg. 25

¹⁰³http://en.wikipedia.org/wiki/Population_Registration_Act

Sadly, not much has changed today. Citizens in the United States (as in many countries in the world, including South Africa) are forced to categorize themselves according to race, although they have a few more options than did South Africans in 1950. The following excerpt from the 2000 US Population Census is worth quoting in its entirety:

White. A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. It includes people who indicate their race as "White" or report entries such as Irish, German, Italian, Near Easterner, Arab, or Polish.

Black or African American. A person having origins in any of the Black racial groups of Africa. It includes people who indicate their race as "Black, African Am., or Negro," or provide written entries such as African American, Afro American, Kenyan, Nigerian, or Haitian.

Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. It includes "Asian Indian," "Chinese," "Filipino," "Korean," "Japanese," "Vietnamese," and "Other Asian."

Some other race. Includes all other responses not included in the "White", "Black or African American", "American Indian and Alaska Native", "Asian" and "Native Hawaiian and Other Pacific Islander" race categories described above. Respondents providing write-in entries such as multiracial, mixed, interracial, Wesort, or a Hispanic/Latino group (for example, Mexican, Puerto Rican, or Cuban) in the "Some other race" category are included here.¹⁰⁴

¹⁰⁴2000 Census of Population, Public Law 94-171 Redistricting Data File: Race quoted in [http://en.wikipedia.org/wiki/Asian_\(U.S._Census\)](http://en.wikipedia.org/wiki/Asian_(U.S._Census))

If the utter idiocy of racial categorization has not been made apparent by apartheid with its pencil-in-the-hair tests¹⁰⁵, then the above, supposedly benign US Census provides ample evidence for its ridiculousness, if not it's subversive and divisive potential. Leaving aside the obvious problems associated with grouping people as diverse as Arabs and Germans into one "race", and the questions surrounding the logic of "Some other race", to mention but two of the perplexities of the document, a deeper problem with this type of racial categorization can be found in the explanation of the differences between the results of the 2000 Census and those conducted previously. "Most significantly," reports Wikipedia, "respondents were given the option of selecting one or more race categories to indicate their racial identities. Data show that nearly seven million Americans identified themselves as members of two or more races. Because of these changes, the Census 2000 data on race are not directly comparable with data from the 1990 census or earlier censuses."¹⁰⁶ Finally, there is a warning attached to the article: "Caution must be used when interpreting changes in the racial composition of the US population over time."¹⁰⁷ After reading the above, it would seem that the task of categorizing otherwise autonomous and individual human beings in this way is extremely difficult, if not impossible. Not only that, but it seems that one's race is subject to change depending on how groups of people are divided. At this point, people of mixed heritage must be asking just how much blood it takes to be a member of one race as opposed to another, or if one can belong to one or two races, why not three? Perhaps the logical extension of this irrationality is desirable after all - perhaps the potential to belong to so

¹⁰⁵The reasoning was that black and coloured people's hair was curlier than white peoples. Ergo, if a pencil was slid into a person's hair and it did not fall out, that person was non-white.

¹⁰⁶Ibid

¹⁰⁷Ibid

many races only shows us that we in fact belong to one: the human race. I am not optimistic that it shall, however.

Affirmative action policies that utilize racial preference depend on this type of racial categorization. This is the worry expressed by Cohen and by Wolf-Devine: Affirmative action policies “are divisive at a time when we desperately need programs that can bring people together. And they entrench racial categories just when it is beginning to seem possible that they may really begin to fade in importance.”¹⁰⁸ As one can see, it is not only policies of racial preference that entrench racial categories - a government census does the same thing. It’s simply the case however that racially preferential affirmative action makes racial categorization more of an issue, *forcing* people to see each other in “black and white”, obscuring shared humanity in favour of yet another reason to separate individuals from one another, while doing other types of harm along the way. This is not to say that dividing people is always wrong; there are many practical reasons why people from South Africa are known as such and not as New Zealanders. It is when these divisions are based on what are essentially irrelevant characteristics that problems arise.

The institutionalization and internalization of racial categories, through education and socialization, produce racialized identities – ‘black people’, ‘white people’, ‘Asians’, ‘Latinos’, ‘Native Americans’, and so on. These identities are the basis of in and out-group formations as well as various forms of discrimination for members of one’s group. Discrimination, then, derives from classification practices that categorize persons as blacks, whites, browns, reds, and yellows, or African Americans, Euro-Americans, Hispanics, Native Americans, and Asian Americans,

¹⁰⁸Wolf-Devine, C. in Contemporary Debates in Applied Ethics 2005, pg. 69

respectively. It follows that the eradication of discrimination must begin with the termination of the institutionalized racial classification of persons.¹⁰⁹

At this point the defenders of racial categorization might argue that race membership is important to some people because it is a vital part of who they are; some people want to celebrate their heritage and be proud of their culture. Furthermore, they argue, racial statistics give us a good idea of how the present population came to be the way it is; this type of data is anthropologically important.

First, there is nothing wrong with being proud of one's heritage or celebrating one's culture. But surely the fact that people are drawn together by shared beliefs, experiences and traditions points to a problem with categorizing people purely by skin colour? In South Africa, we have the Xhosa, Zulu and Sotho tribes, to mention but three. Under the sort of classificatory systems mentioned above, the members of these three tribes, despite differences in beliefs and traditions, would all be "black". And what if we were to divide people along tribal lines? Where then would Johnny Clegg, a celebrated white South African musician, and a member of both the Xhosa and Zulu tribes, fit in?

People have always been brought together by their beliefs, experiences and traditions. But there is no necessary connection between this and the type of racial classification which has served as the basis for discrimination in the past. If it is an unavoidable aspect of human nature that we categorize ourselves and other people, and if there are indeed any unobjectionable ways of doing this - perhaps on the basis of nationality or religion, even though it seems that such divisions might be just as problematic in certain

¹⁰⁹Dr Yehudi Webster at <http://www.angelfire.com/pop/race/>

circumstances – it seems that these are different, at least in some ways, to essentially irrelevant markers such as hair, eye or skin colour.

Second, we might ask about the actual value of such “anthropologically important” data. If someone with one black parent and one white parent categorizes themselves as black in one census, and then changes their mind the following year, it seems we have untrustworthy data. On a much larger scale, and with many more options, such as those presented by the census quoted above, it might be difficult to consider any of the results as objectively true or valuable. Even if all the census data could be viewed as truly reflective of a population’s racial demographics, one should ask what this type of knowledge actually empowers us to do. The philosopher Stephen Vizinczey makes this point somewhat poetically:

Even if we had recourse to an infinity of data, it wouldn't help us...The scientist cannot comprehend that the only thing about the moon that can possibly matter to men is moonlight.¹¹⁰

What Vizinczey is doing is questioning the usefulness of the data given to us by the artificial designators used in a census. His reference to the moon and moonlight is a reference to the fact that those things which we find useful and pertinent in our everyday interactions with other people are going to stem from what we know about their personalities, interests, beliefs, experiences and histories, not from what we or the government consider the colour of their skin to be, and what this colour supposedly denotes. In other words, the things that matter to us (should) have nothing to do with characteristics such as skin colour.

¹¹⁰Vizinczey, S. The Rules of Chaos, London: McMillan, 1969, pg. 109

Not only do our racial lines not measure something substantial, they are also hopelessly arbitrary. Our society has given the genetic trait of skin colour the special privilege of being the dividing line between human races. But fingerprint types, blood types, or any one of the other 25 per cent of genes that vary among humans could just as logically be used. Any other choice of genetic trait would produce a racial map completely different from our "black" and "white" world. A racial world based on fingerprint types, for example, would place most Europeans and Africans in the "Loops" race; Mongolians and Australian aborigines would be proud members of the "Whorls".¹¹¹

Affirmative action, then, gives arbitrary racial categorization credence, which is something we should be trying to move away from. "By devising new varieties of race preference, moreover, we give legitimacy to the consideration of race, reinforcing the very injustice we seek to eradicate. We compound injustice with injustice, further embedding racial categories in public policy and in law."¹¹²

The defender of racial classification or race preference could respond to this by saying that we need racial categorization in order to determine to what extent racial discrimination has been overcome, and also to actively counter prejudice as it occurs. If our society has previously discriminated against blacks, we might want to know how many blacks now hold positions previously denied to them because of their skin colour; likewise, if someone is denied an opportunity, we want to know whether skin colour had anything to do with it. This may be the case, but if it is, it might also be the case that whenever we think we are taking a step forward in this way, we are stepping further away from a more desirable goal. So before we deem racial categorization necessary on these

¹¹¹ http://www.sinc.sunysb.edu/Stu/lmarfogl/project/race_gerdner.html

¹¹² Cohen, C & Sterba, J. Affirmative Action and Racial Preference, 2003, pg. 27

grounds, we must ask what our most desirable goal should be. If our ultimate goal is a race-blind society, where people are judged on their talents and on merit, defending racial classification on any grounds is going to be counter-productive. As Heribert Adam, a sociology professor at Simon Fraser University argues, it is impossible to have a race-blind society where race is used in policy formation. "If we entrench racial categories in government policy, we can expect never to have a race-blind society. If we had effective legislation outlawing racial discrimination, and we were sensitive to multiculturalism in hiring procedures, we could achieve the same goal as racial social policies without racializing the society any more."¹¹³

Racial Preference costs South Africa as a whole

In chapters two and three I have touched briefly on issues regarding the rights of white athletes under a selection system based on racial preference. Below is a brief review of this problem, which leads to an articulation of its logical extension - the cost such a system imposes, via the white athlete, on the country as a whole.

When we ask exactly who is being made to pay the cost of a preferential selection policy directly, the answer, as stated before, is a minority of qualified white athletes who, quite conceivably, had nothing to do with apartheid or apartheid sports policy. So, argues the white athlete with reference to Newton's argument (articulated in chapter three) concerning justice and the equality of citizens, not only are you perpetrating an injustice by discriminating against me on the basis of my skin colour, but you are only imposing the cost of this type of amends-making on a small and arbitrarily selected segment of the

¹¹³ http://www.sinc.sunysb.edu/Stu/lmarfogl/project/race_gerdner.html

population. What did I and my fellow white sportsmen do to deserve this type of treatment?

This is a problem for Ezorsky, who, while championing the cause of affirmative action, admits that “preferential treatment does seem to distribute that burden unfairly.”¹¹⁴

Thomson, also a proponent of preferential hiring policies (albeit it when those policies are employed with a narrower scope) thinks it obvious that the white sportsman is asked to give up his equal chance at fair selection. However, she doesn’t see it as payment from the white sportsman to the non-white sportsman; rather, the equal chance at fair selection is something the community takes away from the white sportsman in order that *it* might make amends. Still, she says “the community does impose a burden on him: it is able to make amends for its wrongs only by taking something away from him, something which, after all, we are supposing he has a right to. And why should he pay the cost of the community’s amends making?”¹¹⁵ Why indeed? As pertinent as these questions are, a more pressing concern is the cost of a selection policy based on racial preference to the country as a whole.

An excellent illustration of this is the story of South African cricketer Kevin Pietersen. Pietersen, an extremely talented white cricketer from Natal, was a South African schools representative in his matric year at Maritzburg College. Denied the opportunity to play under contract in South Africa at provincial “A” level, and with national selection opportunities looking bleak, Pietersen instead opted to ply his trade in England. The rest, as they say, is history, and at the time of writing, Pietersen has just won his first one-day international series as England captain, against, ironically enough, South Africa.

¹¹⁴Ezorsky, G. Racism and Justice: The Case for Affirmative Action, Ithaca: Cornell University Press, 1991, pg. 85

¹¹⁵Thomson, J. J. in Equality and Preferential Treatment, 1977, pg. 38

Many commentators spoke of Pietersen “taking the easy way out” and being a “traitor” to his native land. Whatever you believe about him, the fact remains that South Africa lost one of its most talented cricketers in no small part because of the selection policies of the time. And it’s not just Pietersen. Other top South African sportspeople, such as cricketers Jonathan Trott and Craig Kieswetter, Australian rugby international Clyde Rathbone and Dutch Olympic hockey gold medalist Marilyn Agliotti have done the same thing, citing similar reasons to those of Pietersen. Professional sport is the same as any other profession; why should sportsmen be expected to stay in one place if the prospects are better somewhere else? Thousands upon thousands of South African professionals seek greener pastures in other countries for a variety of reasons, but our sporting émigrés are the most visible, and take the most criticism because of it.

It is true that sportspeople get paid very well in England, Europe and America. The massive pulling power of the pound, the euro and the dollar must not be underestimated. As the above examples show though, it is a fact that South Africa has lost, and continues to lose sporting talent at least in part because of its selection policies. The attitude of these sportspeople is clear: South Africa should be treating its elite athletes better than this, and if our own country isn’t going to try and hold on to us, we will go elsewhere.

Racial Preference is harmful to those who benefit from it

A lot of arguments against affirmative action based on racial preference, such as the quota system, focus on the harms done to those who bear its cost – those people who are denied opportunities which are then given to others because of their race. While there might well be inexcusable harms of this nature, there are also harms which are done to

those who *benefit* from policies of racial preference. But how could this be, asks the defender of racial preference, when those who benefit clearly receive favours which improve them? Some people are clearly benefited by policies of racial preference and are vigorous supports of it; this will not be disputed. However, as Carl Cohen argues, it is the group which receives such preferential treatment that is undermined. Preferential policies create widespread resentment, reinforce negative stereotypes, and humiliate their purported beneficiaries in the eyes of their colleagues or teammates – and even in their own eyes. They are all, as Justice Clarence Thomas puts it, “stamped with the badge of inferiority.”¹¹⁶

To demonstrate the effects of affirmative action on those it prefers, consider the case of the affirmative action policies instituted by the Michigan Law Review. The prestigious legal journal adopted a policy designed to ensure the same percentage of minorities on its staff as there are minorities in the law school. One black editor, identified only as MKF and appointed on merit before this policy was adopted, argued that the policy undermined all black students who made the law review and made them subject to explicit doubt and even resentment in the eyes of all non-review students. This is the crux of Wolf-Devine’s argument that racial preference confirms negative racial stereotypes. Most people, she argues, form their opinions concerning members of other groups on the basis of their own experience.¹¹⁷ So, it stands to reason that if one’s experience of other groups is of them getting preference where it is not deserved, one will form negative impressions - based on resentment relating to unfair treatment - of that group.

¹¹⁶Cohen, C & Sterba, J. Affirmative Action and Racial Preference, 2003 pg. 110-113

¹¹⁷Wolf-Devine, C. in Contemporary Debates in Applied Ethics, 2005, pg. 67

Further, racial preference makes these students doubt themselves. MKF again: “How much more difficult is it for minority students who have reason to believe that they wouldn’t have qualified but for their race? How scary is it for one who can think, as many review members have thought, ‘I’m not good enough for this’.”¹¹⁸

Moreover, one might consider the lesson, gestured at in chapter two, that affirmative action teaches those who “benefit” from it. Why be excellent, or as good as you can, when your skin colour gets you things others have to work extremely hard for? It may be argued that black Law Review hopefuls still had to work hard because if they didn’t, some other black student would get in ahead of them. Unfortunately, even if this is true, it has two unsatisfactory implications. The first is that a black student need only be the best black student – he needn’t worry about being the best student. The second is that any black student who made the Law Review could never be sure if he was actually up to standard if his place was going to a black student regardless.

Minority students in general are considered to be less qualified than the white applicants. And to the extent that we are, we are told by the *Law Review* that we need not work hard to develop ourselves as other *Law Review* hopefuls do; the *Law Review* will take us for less. Instead of expecting excellence from minority students, and in turn minority students expecting excellence from ourselves, we need only to expect to be average...Unfortunately my membership is tainted...Sometimes I wonder whether I deserve to be on the editorial board or whether I stand as a token for our progressive *Law Review*.¹¹⁹

¹¹⁸Ibid, pg. 115

¹¹⁹Ibid

If this is what those benefited by affirmative action in the academic environment have to endure, imagine the trials of a sportsman selected for a national team because of affirmative action policies. He is playing in front of a capacity crowd, and thanks to satellite television, the rest of the world as well. While the Michigan Law Review is read by many respectable academics and legal professionals, I don't think their number would constitute a whole percentage of the number who watched the Rugby World Cup final.

Carl Cohen introduces a fascinating thought experiment, to do with affirmative action in the National Basketball Association in the USA. It is a particularly effective example as basketball just happens to be one sport in which black players are almost completely dominant.

Suppose it were decided that basketball teams must exhibit racial proportionality. Suppose a system had been devised to ensure that, in every college and professional basketball game, the percentage of whites on court must reflect the approximate racial proportionality in the population at large. Substantial preference would have to be given to inferior white players, of course. Picture the scene as the white players take the floor: three or four whites are in the starting lineup of each team of five; black players known by all to be superior to them remain on the bench. The relative mediocrity of the white players preferred is there for every eye to see. Put aside the unfairness to blacks, whose earned places are taken by preferred whites. What must the fans, the coaches, the players of all colours be thinking *about the whites* who play in the corrupted system? What will be assumed about the abilities of *every new white player* who enters the game? If that white player is highly skilled and yet errs, as every player will on occasion, *to what will his error be attributed?* If that white player is relatively unskilled, what will everyone in the audience suppose to be the real reason that duffer is out there playing?¹²⁰

¹²⁰Ibid, pg. 123-124

In a South African context, imagine that a quota system were introduced to ensure that whites were proportionately represented when selecting the national soccer team.

Cohen's point could not be made any better.

The above argument is vindicated by the controversy surrounding the selection of Charl Langeveldt, a coloured cricketer, for South Africa's recent test-match series in India. Langeveldt was selected ahead of Andre Nel, a white player with demonstrably better test-match averages. Nel's reaction to the selection was an understandably angry one, and he threatened to quit international cricket, saying: "I'm as upset for Langes as I am for myself. We are both passionate about playing for South Africa and neither of us deserves to feel like this."¹²¹ It is Langeveldt's reaction however that points at the harms of a preferential selection policy. Citing the fact that he thought Nel deserved selection ahead of him and that he would not be selected on the basis of his skin colour, Langeveldt withdrew from the squad. Explaining Langeveldt's decision, Tony Irish, chief executive of the South African Cricketers' Association, was quoted as saying that "The players believe in the goals of transformation. But all of them, black and white, are adamant that this should not be achieved by interfering in the selection of the national team."¹²²

In the wake of the controversy, both Langeveldt and Nel asked for time to consider their international futures. Those who think that racial preference could not possibly be harmful need only consider the possible consequence of this type of policy in this instance: South Africa could have lost two of its best cricketers – because of nothing more than a decision relating to the colour of their skin. It is perhaps the words of Langeveldt himself which best sum up the problems of racial preference and the harms it

¹²¹ http://news.bbc.co.uk/sport1/hi/cricket/other_international/south_africa/7303542.stm

¹²² Ibid

does to those it purports to help. “I have always fought for a place in the team, but I don’t want to be put there because of my colour.”¹²³

It would seem then that racial preference has a negative impact on those individuals it is supposed to help. But there are far more dire consequences for the group to which those individuals belong. Non-white sportspeople have suffered enough because of apartheid. Now racial preference in selection policies threatens to restate the apartheid maxim that non-whites are inferior by displaying to the world that the deciding factor in a player’s selection is not that she is good enough to make the team, but rather that she isn’t white! Any negative stereotype surrounding non-white sportspeople that remains after apartheid is reinforced: they weren’t good enough then, and they’re not good enough now.

A Way Forward

I have argued in the preceding parts of this paper that one cannot justify racial preference in sporting selection on grounds that it seeks to rectify past or present injustices, or on the grounds that it has positive consequences either for the athletes concerned or for society as a whole. But I have also said that I feel that some sort of compensation or attempt at rectification is due to those non-white sportspeople who were directly or indirectly disadvantaged by apartheid. It is simply that these compensatory efforts must not come via the same principles which got us into the mess of apartheid in the first place. And, contrary to received political rhetoric and what passes as public opinion, I don’t think that this is as complex or difficult a problem as it is made out to be. Below I present three guiding principles by which I think an effective policy aimed at rectification and restitution could be implemented. After, I look at some examples of

¹²³Ibid

policies which might serve as some sort of indicator as to the effectiveness of these principles and which might also show us the way we ought to be going about fixing the damage done by apartheid.

- The aim of the policy

It must be recognized that we are beyond the need to point fingers and make accusations. Even if we could hold all those responsible for apartheid accountable, I don't think this would help in solving the problems that South Africa faces today. Everyone (that is, everyone with common sense) admits that apartheid was horrific. What counts now is the eradication, as far as possible, of the effects of apartheid, particularly in those places where those effects are most strongly felt. I submit that the upper echelon of professional sport, then, is not the best place to begin any policy of reparation, rectification or compensation, preferential or otherwise. The athletes that have suffered and are underprivileged because of apartheid must therefore be the focus. And if we are to help them without denying the fundamental rights of others, this is most likely going to happen at a grassroots level in severely underprivileged areas.

- Responsibility for the policy

Apartheid was not just a problem for non-whites. Apartheid was a problem, and continues to be a problem, for the whole of South Africa. As such, it is the whole of South Africa which must make the effort to eradicate its effects. This means that both government and businesses, both black- and white-owned, must recognize their responsibility in this regard, as must every individual capable of making a difference. It is

no good for blacks to turn around and say that they are victims, and should not be required to help the country move forward, just as there is no excuse for whites who claim that they had nothing to do with the formulation of apartheid. This is *our* problem, and refusing to acknowledge this just means that real progress is made even slower. It might well be the case that those people and athletes who have benefited from apartheid should do more than those who suffered under it; however, this remains a problem for all South Africans to deal with.

- The form of the policy

I have been arguing that equality of opportunity in sporting selection should be fundamental and should not be allowed to be overridden under any circumstances. To ensure that this is possible, we have to get to underprivileged athletes as early as possible. This might take the form of developmental clinics run in conjunction with privileged schools, for example. In any form, such a policy is going to require not only the spending of money, building of facilities and donation of equipment by those who can afford it, but the donation of time by those with the knowledge to improve talented athletes. When looked at in this way, one sees why South Africa truly needs a collective community effort to fix this problem.

It may be argued that the above principles are too simplistic and general to have any lasting effect. What however, needs to be more complicated? Athletes need to get to the final stages of provincial and national selection on even footing if a meritocratic selection policy is to be successful. For this to happen, one needs to close the gaps (like those

mentioned by Farland and Jennings previously, and those alluded to in my discussion of Harris and Narayan's concept of affirmative action) between all sportspeople until they get to this stage. The cost for the support of disadvantaged athletes must be borne by society, as this is society's problem. Furthermore, this is the fairest possible way to all of fixing these problems. As I will show below, there are, as a matter of fact, policies that subscribe broadly to these principles and aimed at social development already being implemented in South Africa.

For example, the Cadbury Youth Games, sponsored by chocolate manufacturer Cadbury, is a social development initiative aimed at giving children in disadvantaged areas access to sports facilities and equipment in an effort to decrease inactivity and its associated medical problems, such as teenage obesity. "After a successful pilot in February 2007, there was nationwide excitement and anticipation of the potential that the Cadbury Youth Games could offer to disadvantaged communities."¹²⁴

Even more visible and successful so far is the SuperSport Let's Play initiative. This program is "a corporate social responsibility initiative developed by SuperSport and partners in response to a national need."¹²⁵ The focus of this initiative is getting children who might otherwise be susceptible to drugs, gang violence or other negative pursuits, interested in playing sport. The primary focus of Let's Play is getting children off the streets and participating in sport where they can develop in a healthy manner. One of the organizations under the Let's Play umbrella is the Active Education Foundation:

¹²⁴ <http://www.fastmoving.co.za/fmcg-suppliers/food-beverage/cadbury/cadbury-brand-activity/live-life-at-an-active-pace/live-life-at-an-active-pace-2013-join-the-cadbury-youth-games>

¹²⁵ <http://www.letsplay.org/default.asp?cid=13291&des=content>

We deal with the future of our society, the children. They form central to all our programs. The future is on our hands, the virtues, advice, values and support that we pass onto our children are absorbed, challenged, tested, and eventually surface as part of an individuals make up. Our job is to ensure that children experience sport in a fun, creative manner; this ensures a long-term acceptance. The program is about maximum participation, education, self worth and ultimately confidence. By ensuring that by elementary school a child is competent in a number of different sports we have achieved a level of confidence where an individual can experience a team sport with absolute assurance.¹²⁶

The Active Education Foundation a non-profit organization. Its main aim is to provide children with a passion for sport and physical education at no cost to the child or to her school. Active Education employs its own coaches. An appropriate person from the community surrounding the targeted schools is selected by the foundation. He or she is then trained and employed by the Foundation on a full-time basis. The schools where the coaching takes place are generally within walking distance from the coach's house, so transport is not an issue. The coach then works for one day a week at each of the schools in her area, organizing matches, taking physical education classes, and ensuring holiday participation. The foundation's website notes that they are reaching between 5000 and 10,000 previously disadvantaged children a week in this manner, at underprivileged schools such as Crossroads, Ikwezi Primary, and the Sunshine Centres in Soweto, Craighall and Eldorado Park.¹²⁷ With increased corporate awareness and "branding", the Foundation hopes that lessons could be designed around a particular sports product, and this coupled with more television support would mean more of an incentive for companies to get involved. This in turn creates a knock-on effect with more money being

¹²⁶ <http://www.activeeducation.co.za/about-us.php>

¹²⁷ Ibid

available to train and employ more coaches on a full time basis, something which the Foundation sees as a key to the sustainability of the project. The website also notes that at this stage the Foundation is entirely dependant on generous donations of time and money in order to continue functioning. Apart from it's commitment to sport, the Foundation also hopes to increase awareness of other problems the community faces:

...from next year we plan to expand and try and reach twenty previously disadvantaged schools. This means that 15 000-20 000 children will receive physical education at school at no cost to themselves every week. Coupled with this, our partnership with organizations like Virgin Unite and Supersport's Lets Play allows us to focus on topical issues like AIDS and diabetes.¹²⁸

Let's Play and the Active Education Foundation focus on both corporate and community responsibility. As one can see, both these initiatives consider the problem of social and economic development to be a collective problem, faced by all South Africans. The programs are aimed at the development of underprivileged and disadvantaged children, and as such, rely on donations of time and money to continue functioning. Yet despite all the challenges they face, these programs have been extremely successful. I believe that any just sporting transformation policy must follow the lead of programs aimed at social development like Let's Play and Active Education. These initiatives came about because people realized the necessity of development in South Africa. They present a model for social development through sport, but they could also show us the way towards sporting development on a much larger scale. This type of policy helps level the playing field far more than preferential selection, and recognizes implicitly that preferential selection does

¹²⁸Ibid

not fix the problem of the disadvantages suffered by underprivileged athletes at its source. There are many other benefits, some of which I will list here:

- The burden of compensation is distributed evenly throughout the community and the nation.
- The right of every athlete to equal opportunity with regards to selection at a higher level is preserved, not overlooked.
- Such policies do not rely on the abomination of racial classification.
- Such policies can truly be said to be good for those that benefit from them.
- The groups which need help and development the most actually get it.
- The benefits to the community are incalculable: more children off the streets, development of coaches, community togetherness through support and participation, a healthier population etc.
- Role-models produced through such programs are not subject to the concerns expressed about role-models developed through racial preference.
- These programs give the entire nation a chance to help with the eradication of the effects of a heinous system, and any residual "white guilt", if such a thing exists, can be effectively assuaged.

Conclusion

As we have seen, one cannot justify a policy of racial preference by claiming that it compensates groups for previous wrongs done to them. And claiming that a preferential selection policy fixes current injustices and ensures that these injustices do not happen in the future means that one must show that these current injustices actually exist, and in the context of South African sport, this might be hard to do. We have also seen that defending a preferential selection policy on the grounds that it ensures “representivity” is misleading, as there is only one type of representivity which matters in a sporting context. All this is not to say that a policy of preferential selection does not have any positive features. There will be some, such as the development of role-models for young people. But then one has to ask whether any future positive effects of a preferential selection policy are great enough to offset its costs. I don’t think they are, but the reader will have their own opinion on the matter. As we have seen, the real reason we risk the negative effects mentioned above is that we feel that *something* ought to be done; we need to make amends somehow. This feeling I think is right, and relatively uncontroversial. I hope that this paper has shown that the “quick-fix” of the quota system or any other selection policy based on racial preference is not the best way to go about fixing the ills of the past. Rather, we should all realize that our society has a problem, and that we must all work to fix it. Otherwise, we risk making the same types of mistakes, and encountering the same types of difficulties all over again.

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