

**CRITICAL PERSPECTIVES ON JUSTICE AND AFFIRMATIVE ACTION: THE
CASE FOR TRANSFORMATION OF SOUTH AFRICA'S PUBLIC SERVICE**

**A DISSERTATION PRESENTED TO THE HIGHER DEGREES BOARD
OF THE UNIVERSITY OF CAPE TOWN IN PARTIAL FULFILMENT
OF THE REQUIREMENTS FOR THE DEGREE OF:**

**MASTERS IN DEMOCRATIC GOVERNANCE
(M.SocSc in Democratic Governance)**

BY

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ACKNOWLEDGEMENTS

I wish to express my indebtedness to the following persons and institutions:

Dr. Jerry O. Kuye of the Department of Political Studies at the University of Cape Town for his keen interest, encouragement and able supervision of the research;

Prof. Andre du Toit of the Department of Political Studies and Convenor of the Democratic Governance Programme at the University of Cape Town for his confidence in the ability of students in the Programme;

Prof. Robert Schrire, Head of the Department of Political Studies for his support for students in the Programme;

The Ford Foundation Scholarship Office for the financial support which covered a large part of the expenditure;

The Library Staff at the University of Cape Town for assisting in securing inter-library loans and in locating other research material;

The Library Staff at the University of Witwatersrand for their readiness, assistance and upholding the spirit of inter-University co-operation in availing resources to students from other Universities;

The UCT Writing Centre for meticulously checking the language and sharing their knowledge for research writing;

My brothers for their patience, understanding and support throughout my studies;

Most of all, my son who was a great source of support and encouragement during the many months of this research;

DISCLAIMER STATEMENT

It is hereby declared that this is my own work both in conception and execution and that the opinions expressed or conclusions reached are not to be regarded as reflecting the views of the above mentioned persons or institutions.

SELBY MASHILE

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To the

Memory of my beloved father

May his soul rest in peace.

**Thank you to my caring mother for her unwavering support
and belief in education despite great odds.**

ABSTRACT

South Africa has embarked upon a major transformation process and this implies fundamental alterations in the social structure. Of course, the transformation process in South Africa cannot be described as a mechanical change intended to introduce inconsequential cosmetic changes because it entails fundamental alterations of the interaction between the state and its citizens. Beyond this, the transformation process in South Africa is not confined to the alteration of the various institutions of the state, it implies as well, fundamental alterations in culture, the manner in which different groups perceive and interact with each other and a complete eradication of supremacy mentality of one racial group over others.

The magnitude with which these changes take place is bound to produce tensions and social problems in any country engaged in the democratisation agenda of its society. However, the moral precision of these social changes needs to be questioned and investigated on a continuous basis. It would be naive and dangerous for social engineers to assume that all changes brought by the transformation process are morally unobjectionable.

This study explores, therefore, South Africa's past discrimination and investigates the arguments for and against affirmative action within the libertarian and contractarian frameworks. Through literature survey, the study investigates whether the application of these philosophical models can be appropriate for the South African situation. Moreover, although this study has established that both the libertarian and contractarian models offer a room for the justification of affirmative action in a

situation such as South Africa's it is concluded that the scope within which these models justify affirmative action is too narrow to undo the harm created by South Africa's past injustices.

Beyond this, the study explores a link between the transformation process and the restructuring of the Public Service and argues that the two should not be viewed in isolation from each other given their interdependent relationship. Equally important, the need and rationale behind instituting new management styles in the Public Service and the possible impact this would have on the overall transformation project is investigated. The entrance of South Africa into the global economic market entails serious implications on the formulation and implementation of its local programmes and other transformation initiatives and thus, the study explores this area to establish South Africa's response to global demands and expectations. Finally, it is recommended in this study that South Africa should continue with the transformation process and application of affirmative action not only because of its history but largely because of its moral correctness.

CHAPTER ONE

DEFINITION OF TERMS

Affirmative Action: Taking positive steps to achieve equal employment opportunity. In the South African civil service affirmative action is a systematic approach to the identification and elimination of barriers encountered by people from three target groups, namely, blacks women and people with disabilities.

Brain Drain: The massive flight of skilled and more experienced employees from public service to other sectors of the economy or other countries.

Compensatory Principle: Compensation of those who have been unjustly discriminated against and were barred from occupying certain positions in the job market. The application of the compensatory principle, therefore, creates conditions for them to contest and occupy those positions that were formerly barred to them by giving them preference over the formerly advantaged groups.

Discrimination: The conscious act of dealing with a person or persons on the basis of prejudicial attitudes and beliefs rather than on the basis of individual merit. Thus, prejudice is a state of mind, while discrimination is an action.

Dominant Society: That group of people who has the most control and influence within a larger society. This group has more power and wealth than any other group in that society.

Equal Access: Absence of barriers to admittance such as those motivated by cultural or racial discrimination, to the institutions of a society. This includes access to services, programmes, and employment, among others. To facilitate equal access, an outreach programme is often needed to let people know what is available.

Equality of Opportunity: The notion that each and every person should have equal opportunities for participation in the economic sector of a society and /or equal opportunities for receiving training and education that will prepare him/her for employment. Equality of opportunity is of little consequence if it not accompanied by equality of results.

Equality of Results: Equality of opportunity in acquiring an education or training or in securing employment is not sufficient. Equality and affirmative measures are required through all stages of employment which includes the hiring as well as the advancement to senior positions of those peoples hampered by barriers. Equality of results therefore refers to the concrete outcomes of the application of affirmative measures. Affirmative measures which do not make provision for results and therefore, accountability, usually produce little or no effect in eliminating barriers.

Ethnocentrism: The tendency of an individual or group to judge outsiders according to the values and standards of their own ethnic group. All evaluation of other cultures are made by unfavourable comparison with their own culture.

economic, social and cultural life of the society without being totally absorbed into the dominant society as in assimilation.

Prejudice: A set of ideas, beliefs or attitudes that negatively prejudge groups or individuals on the basis of real or alleged characteristics or traits.

Racism: Discrimination on the basis of racial, national, ethnic origin or colour.

Systemic Barriers: Institutional barriers, for example, hiring procedures or entrance requirements may have the unintentional effect of excluding disadvantaged groups.

Targeted Groups: Communities that were formerly disadvantaged and discriminated against; blacks, women and people with disabilities, who are now the beneficiaries of affirmative action measures.

Institutional Culture: Refers to attitudes, mindset and stereotypes dominant and infused by the environment with the potential to absorb and assimilate even the new recruits into the dominant culture.

Sources: 1. A Report of the Manitoba Task Force on Multiculturalism (1988)
2. White Paper on the Transformation of the Public Service (1996)
(South Africa)

INTRODUCTION AND BACKGROUND OF THE STUDY

The Concept of Equal Opportunity and Affirmative Action

Prolonged institutional racism has, by and large, deprived the underprivileged (blacks, women and disabled) access to basic education and the opportunity to ascend to positions of power and influence in the society. This situation has translated into severe lack of motivation among the victims in South Africa. On the whole, apartheid managed to relegate these people into the status of third class citizens unworthy of opportunities and positions afforded by society in their country of birth. In this way, the quest of blacks to acquire the necessary skills and express their potential and talent at different levels of society was rendered sterile and unattainable. As a result, many blacks remain inadequate or under-qualified to fill crucial positions of responsibility made possible by the new democratic dispensation. Under these circumstances, it stands to reason that the unfolding transformation process in South Africa would be far from complete without the institution of drastic measures designed to upgrade and empower the victims of discrimination to occupy the desired influential positions in society. Affirmative action appears to be the most appropriate strategy with all the necessary ingredients required to undo the harm created by institutional racism and discrimination.

It is important to recall that our not distant past was not only racist but also sexist. Furthermore, while South Africa's corporate and public sector was and continues to be white male dominated, is also insensitive to the needs and interests of the disabled people. Therefore, any attempt to correct past injustices without the inclusion of all the victims of past injustices will fail to eliminate other levels of past discrimination.

This is because like racism, sexism and discrimination against the disabled, systematically deprived these groups, material asserts and led to a reduction in motivation. Furthermore, it led to destructive negative distortions of their self-image. Flowing from this, it can be seen that racism and insensitivity to the disabled eroded the success prospects of blacks, women and the disabled. The inclusion of all these groups in affirmative action is thus morally unobjectionable and not over-inclusive. Indeed these groups were discriminated against and this resulted in the violation of their right to equal opportunity. Therefore, the establishment of compensatory measures to right the wrongs the victims might have suffered is justifiable. But all other things being equal, the identical kind of remedy programme for all victims is prone to objection since the victims of discrimination sustained different kinds of injuries. For instance, the injuries inflicted by racism on blacks differs from injuries caused by sexism on women. To illustrate this point further, the history of discrimination tells us that both blacks and women were deprived admission to certain professions and positions in society. However, in the case of white women, their situation was not further exacerbated by racially segregated inferior education. Moreover, while both racism and sexism may have had adverse effects on their victims' motivation, the motivation of blacks to acquire high education and scarce positions in society may have been more severely affected by racism than that of women by sexism. It would be unacceptable, therefore, for gender-based affirmative action to advance the success prospects of women well beyond the point they would have actually been, absent all gender-based discrimination. (Rosenfeld: 1991).

As it can be seen, South Africans' quest to correct past injustices and ensure social justice has to be attained within clearly defined moral boundaries. Since affirmative action is mainly designed to undo the harm caused by the historical imbalances, it necessarily entails the notion of compensatory justice, which in its application requires that a victim of discrimination be recruited or promoted ahead of the beneficiary of past discrimination. In practice, this means a person of lesser ability would be selected ahead of a person of greater ability. Viewed exclusively and uncritically within the confines of merit requirements, the application of affirmative action appears to neglect the merit principle, which precludes arbitrary distinctions based on irrelevant characteristics such as race, gender and disability. (Greenwalt:1983).

For this reason, the opponents of affirmative action question its moral premises as they argue that it overrides the merit principle and classifies people on the basis of morally irrelevant characteristics. This argument is superficial and forward looking because it disregards the historical reasons that necessitated the current duty of correcting the wrongs that were caused by racism and discrimination to take precedence over any right of the best qualified to benefit. Beyond this, it fails to engage history and establish the logic and motive of affirmative action and realise that in order to deal with the injuries created by our past history the society has an obligation to restore justice and compensate the victims for the harm they might have suffered as a result of discrimination.

Moreover, imbalances in representation disempower members of the under-represented groups. They undermine the democratic process and distort the proper distribution of knowledge power and influence in the society. (Edwards: 1995). He further argues that the imposition of affirmative action is an attempt to promote equality and not denigrate it. (Edwards:1995). Of course, South Africa embraces the principle of equal opportunity and this is a fundamental anti-discrimination notion which is embedded in the constitution and which requires that in terms of all the basic entitlements of citizenship all South Africans are equal, entitled to be treated in identical fashion, irrespective of race, colour, gender or creed. Therefore, part of the right of equal opportunity demands that for a person to be chosen for a desirable position, that person should be the best-qualified candidate for it. This means that any criteria other than the merit principle will constitute violation of the right to equal opportunity. As it has been argued in the preceding paragraphs, South Africa has the duty to correct the harm caused by prolonged discrimination, and the fulfilment of this duty requires the halting of certain rights, such as the right of the best qualified to be chosen for the desirable position.

Edwards (1995) argues that after all, “ merit turns out to be a rather less pristine principle than is often thought.” (Edwards: 1995: 2). However, the complete eradication of the merit principle will be suicidal for South Africa, and emphasis on a pure affirmative action divorced from skill development and training of the victims of discrimination will have adverse economic effects.

Affirmative Action and the History of Discrimination in South Africa

Apartheid and Past Discrimination

The apartheid state in South Africa institutionalised racism to make it look like it is a normal way of life. Many different views have been expressed on the concept of racism from various schools of thought. However, the scope and purpose of this study does not give room for engaging extensively with the different positions on the concept of racism, suffice it to say however, some racists have tried to justify racism on the basis of physiological differences between various groups of people and others on the basis of cultural differences between blacks and whites. In the final analysis, however, racism was largely created for the economic benefit of whites at the expense and exclusion of blacks in South Africa. This is reflected by the socio-economic policy arrangements of the 1930's, which were mainly designed to protect white interests and improve their welfare. These initiatives were taken in an endeavour to resolve the so-called poor white problem in South Africa.

To illustrate this point further, the then government created the labour policy, which introduced job reservation that preserved certain skilled occupations to whites and excluded blacks from the provision of the Industrial Conciliation Act of 1924. During this period, blacks were confined to unskilled occupations, and unlike their white counterparts, they were not allowed to organise themselves in trade unions, as they were not even classified as employees. It should be mentioned that these socio-economic factors became determinant in the current unequal distribution of resources, status and power relations between blacks and whites in South Africa. The economic policies of the

1930s initiated measures which ensured industrial expansion and tariff protection. This resulted in economic prosperity, the benefit of which was distributed among whites to the exclusion of blacks. The black people continued to be marginalised and earned lower wages despite their contribution to country's economic success. Blacks were also continually excluded from all levels of power in society and that is, political, economic and trade union power. Under these circumstances, it is less surprising that "...in 1970, the average black mineworker's wage was no greater in terms of purchasing power than that of his grandfather in 1890". (Van der Berg: 1986:149).

The architecture of apartheid wanted to ensure active suppression of the development of potential among blacks. These attempts are reflected on the introduction of racially segregated and inferior Bantu education in the early 1950s. As an ideological institution, one of the aims of Bantu education was to inculcate inferiority mentality among blacks by projecting whites as inherently superior to them. Furthermore, Bantu education trivialised and distorted the history of Africa and its people and their achievements by projecting Africans as mere savages that needed redemption from their white colonisers. This distorted projection and subsequent transmission of social and historical factors became attached to certain racial traits and gave rise to distorted opinions, sentiments and beliefs about the victims of racism and further defined the boundaries of social interaction and behaviour in society. As it can be seen, the Apartheid State used a systematic ideological degradation of the victims. Education and other ideological institutions such as state media played a major role in developing and shaping the negative stereotypes against blacks. In many situations, the victim ended up incorporating these negative

stereotypes into his/her stereotypes given the vicious nature of the State campaign to degrade the victim's image. Rosenfeld (1991) argues that it seems obvious that the use and the ideological reinforcement of negative stereotypes should serve the racists' and the sexists' aim to perpetuate their domination over their respective victims. "The more one is convinced that blacks are lazy and irresponsible or that women are emotionally unstable and weak, the more one may feel confident in asserting that it is justified for white males to occupy positions of power and to play dominant roles in society." (Rosenfeld: 1991: 361).

The apartheid education system never had the inclination or desire to develop black potential and elevate them to positions of responsibility in society. This is further reflected by the state's budget allocations to racially segregated education. Educational provision for blacks was inferior to that of whites. The state allocated far less resources to black education than to white education. The unequal distribution of educational resources resulted in a situation in which black pupils were forced to learn in overcrowded classrooms and taught, in most cases, by inadequately qualified teachers. More generally, the environment in black schools was not conducive to effective learning. As observed by Hugo (1990), South Africa has a backlog that is racially defined and strategies have to be devised to redress the disadvantages suffered as a result of systematic discrimination. It is important to note that all the issues raised in the preceding paragraphs cannot be divorced from the explanation of racism and its impact on the victims. Moreover, resolutions of these issues depend, by and large, on understanding the perspective of the victim and the forces shaping it.

Material Inequality and Social Injustice

Social justice is viewed in two perspectives, namely, distributive and compensatory justice. It would be necessary, however, to set aside the complicating aspects of this subject before we actually begin to examine the notions of distributive and compensatory justice and their relevance and application to the task at hand, and the situation in South Africa. It would be useful to begin by drawing a distinction between formal equality of opportunity and fair equality of opportunity. The examination of this distinction is crucial because these principles constitute a central part in the examination of social justice and affirmative action.

Rosenfeld (1991) argues that formal equality of opportunity implies that equals be treated equally. It requires equally deserving individuals to be treated in an identical fashion when competing for material rewards. To illustrate this point, let us suppose that two individuals, one black and one white are competing for certain employment opportunities in a corporate or public service, suppose further however, that a law prohibiting blacks from occupying such positions has been instituted and as a result, the black candidate fails to get the desired position. This would translate into violation of formal equality of opportunity. This is because the law would be depriving blacks their right to equally contest for a good for which they have equal claim. In order to satisfy the requirements of formal equality of opportunity, therefore, legal or quasi-legal obstacles, which benefit some people at the expense of others in their endeavour to achieve their aspirations in society, would have to be removed so as to satisfy the requirements of formal equality.

Fair equality of opportunity on the other hand, requires that people with the same skills and abilities be afforded similar starting conditions in life, irrespective of their class or cultural backgrounds. These requires the social system to assume responsibility in eliminating and equalising socially generated differences, such as class status and differences in educationally acquired skills and abilities between different groups of people in society. (Rosenfeld 1991). For example, the apartheid system has for many generations, provided whites with outstanding education comparable to effective quality education in the first world countries, while blacks were subjected to less rewarding inferior education mainly designed to prepare them for manual labour and not intellectual prowess. As a result of the unequal distribution of resources, therefore, the preceding and current generations of the economically active whites are better educated, better qualified, better skilled and capacitated than their black counter-parts. The eradication of these socially relative differences between blacks and whites would require and justify unequal allocations of remedial education for the victims to make up for their loss of educational asserts in order to enable them to compete with whites on an equal footing. This is because the mere removal of obstacles, which forbade blacks from acquiring educational capabilities, would not suffice in terms of competition with their white counterparts.

Having outlined so far the main features of these notions, it is expedient at this stage to return to distributive and compensatory justice. According to Rosenfeld (1991), the relationship between distributive and compensatory justice may either be one of harmony and complimentarity or conflict and contradiction. Depending, however, on the scope one adopts in defining distributive justice. For instance, the application of the traditional

meaning of the term distributive justice which dates back to the days of Aristotle is less problematic because it confines the duty of distribution of goods to the state and excludes transactions between private citizens. (Rosenfeld 1991) In recent literature, however, distributive justice has been extended to include distribution of non-political goods to other private citizens. Nevertheless, the disagreements amongst philosophers such as Rawls (1971) and Nozick (1971) about the proper scope of distributive justice will be left unattended and unchallenged in this study. Suffice it to indicate that this study will adopt a broader definition of distributive justice, given the complexities of the modern economic system and the significance of the contribution of the corporate sector in the economy.

Accordingly, distributive justice requires that goods and burdens be distributed equitably among members of the society. Rawls (1971) asserts that “all social primary goods—liberty and opportunity, income and wealth, and the bases of self respect—are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured.” (Rawls: 1971: 303). He further argues that to treat all people as equals does not entail elimination of all inequalities but only those which are to the disadvantage of someone. Therefore, inequalities in areas such as wages are justifiable because they draw distinctions between socially useful talents in society and they need not be removed as they are acceptable to everyone as they do not intrude others’ fair share. The case of South Africa shows, however, that the Apartheid State intruded blacks fair share in the allocation of goods and the burdens of society. The state used morally unjustifiable criteria to deprive blacks and the underprivileged of their

morally unjustifiable criteria to deprive blacks and the underprivileged of their legitimate distributive claims. These inequalities emerged through market processes and unequal access to state resources.

The examples of inequality in the market processes are captured by things such as wage gaps that existed between whites and blacks, discriminatory labour practices, unequal opportunity in the market economy, job reservations and inadequate training facilities for blacks. Unequal distribution of state resources, on the other hand, is reflected by racially based expenditure in urban infrastructure, education, health and housing. These inequalities created severe harm to blacks as they deprived them of their human dignity and halted their progress in life as a group. And thus, the society has to assume the responsibility of correcting the harm inflicted by apartheid on its victims. The responsibility to perform this duty cannot be assigned to one individual or a group of individuals, but to a system which must be applied to the society as a whole. It stands to reason, therefore, that in our case, society is the perpetrator and thus, it has the duty to institute corrective measures and compensate for the harm it caused to the victims. Basically, "the paradigm case to which the principle of compensation applies involves an intention of injury in violation of right, resulting in a specifiable loss to the victim and benefit to the specifiable perpetrator. In this case, it is clear that the guilty party ought to restore his ill-gotten benefit to the victim." (Goldman:1979:67- 68). This position emasculate the opponents of affirmative action to impute it with injustice as it strives for equilibrium in society and resolved in eliminating past injustices and harm caused by the perpetrator to the victim.

As it has already been indicated, South Africa has acknowledged responsibility for past discrimination, and this goes with the restoration of equality of the victim. This does not mean that society benefited per se from past discrimination, in fact, apartheid left South Africa more impoverished, morally debilitated and socially disintegrated and benefited a particular section of society economically, socially and politically. The resolution of past violation of the principle of distribution requires, therefore, compensatory justice to take precedence over distributive considerations. Thus, in the domain of job allocation, the application of the distributive principle that requires that the job be allocated to the best qualified might have to be suspended in order to give room for compensation of the victim who might be less qualified for the job for historical reasons. (Goldman: 1979). This is because the best-qualified white males benefited in the past from the harm of the victim. The rationale behind this argument is that had discrimination not occurred, the presently contested job would not have been available and would have been occupied by the victim but because of discrimination, she was denied access to it. (Rosenfeld: 1991). Therefore, much as the best-qualified male may perceive himself to be entitled to the desired position, the victim has a legitimate claim to the same position as well, and to be appointed ahead of him because of the history of discrimination and the societal agenda and responsibility to address past injustices.

CHAPTER TWO

STATEMENT OF THE PROBLEM

It is correctly acknowledged that the systematic exclusion of the historically marginalised groups from the positions of power and influence in the apartheid South Africa was based on morally irrelevant characteristics such as race, gender and disability. This arrangement negated the merit principle, which has no room for any characteristic other than merit. As envisaged long time before its formulation by scholars such as Maphai (1989), Cloete (1996), and Fitzgerald (1997). The introduction of affirmative action has triggered emotive responses from across the colour divide in South Africa. It has generated serious concerns about its legitimacy and moral precision. For example, some people argue that affirmative action is illogical and immoral because if race, gender and disability have been recognised and condemned as irrelevant characteristics which translate into nothing but injustices, it is incorrect to institute the same morally unjustifiable criterion in righting the wrong of the past.

Furthermore, the logic of affirmative action presupposes that race; gender and disability take precedence over merit. Put in a different way, the lesser qualified blacks, women and disabled people will be appointed ahead of the better qualified white males. Applied without caution, this arrangement may result into devastating economic consequences because the success of affirmative action has never been tested in a country such as South Africa in which the minority is tasked to affirm the majority. This is completely different from other situations in which affirmative action was applied in countries such as the United States, Britain and Canada wherein the majority affirmed the minority. Equally important, while South Africa is striving to claim its position in the international arena,

there is a real danger of brain drain in the public service which cannot be divorced from the overall transformation and restructuring process of the public service, and the potential of South Africa to compete on the global economy. The realisation of international competitiveness requires, and is partly dependent on the skills and expertise of this shrinking pool of experienced white male bureaucrats and others of competent skills.

The slow pace towards the fulfilment of the objectives of the transformation agenda and affirmative action in South Africa is frequently attributed to the reluctance of the “old guard” to take the transformation process forward. This view depicts the “old guard” as intransigent and adamant to retain the status quo. However, is this the true reflection of the situation in the public service? Are these attitudes not better linked to the assumption that affirmative is a bad policy initiative intended to maximise social good? To this end, the research question, which shapes this study, becomes apparent: **“ Is it proper to use irrelevant characteristics as relevant considerations to correct past imbalances?”**

SIGNIFICANCE OF THE STUDY

Many studies have been conducted around the question of affirmative action since from the early 1960's and they have explored different angles of this important subject as it has abundant dimensions and complexities. These varied dimensions and complexities of affirmative action entail moral, political, social, economic and legal implications and administrative efficiency. A large volume of these studies has been conducted in countries such as U.S.A, Britain and Canada. Of course, affirmative action is not a foreign concept to South Africa as it was first instituted to benefit the Afrikaner community in the 1960s and from the mid-1970's numerous local and international companies initiated funding for the under-privileged sectors of the South African society. (Maphai:1989). All other things being equal, these arrangements represented affirmative action in its lenient form because it had no moral or legal obligation from the government. In recent years, however, South Africa has undergone and is arguably still undergoing a profound transition from an authoritarian apartheid regime to a democratic dispensation. And despite the burgeoning interest in affirmative action, it is a relatively new and thus untested programme in South Africa. Most of the research in South Africa around this subject began in the late 1980s. There is a need, therefore, to assess the merit and demerits of the transformation process on a continuous basis so as to comprehend its shape and direction, and contribute towards enriching the already existing wealth of knowledge around this subject.

Most of the studies conducted around this area in South Africa examines almost all other aspects of affirmative action but neglect the moral dimension of this important subject as

though it is not the central pillar of its very existence. Furthermore, it has been observed through this study that most of these studies tend to treat affirmative action as though it is divorced from the overall transformation and restructuring of the public service. They fail to link the issue of affirmative action to other transformation issues such as efficiency and effectiveness in the public service. However, it is beyond the ambit of this study to examine every aspect and implication of the affirmative action debate exhaustively, but it does suffice to examine the somewhat neglected areas of this important subject

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METHODOLOGY

Theoretical framework

By and large, the resolution of the affirmative action question is dependent on moral considerations. This is true to the fact that affirmative action is a response to past discrimination and injustices. Discrimination is basically a moral problem. The debate between the advocates and detractors of affirmative action mainly centres on the notion of equality. As Rosenfeld (1991) observed, the affirmative action debate is unique because unlike abortion and other debates appealing to moral considerations, affirmative action is not between persons who are pro-equality and others who are anti-equality but both the proponents and opponents of affirmative action loudly proclaim their allegiance to the principle of equality. Rosenfeld (1991).

Therefore, this study will assess the philosophical and public policy implications of affirmative action by examining the relationship between affirmative action, justice and equality. As it has been indicated, this philosophical and public policy assessment will be based on two liberal conceptions of justice, namely libertarian and contractarian conceptions. The main philosophical arguments for and against affirmative action will be extrapolated and postulated upon from within these moral frameworks. Furthermore, this theoretical examination will largely draw from the work of Michel Rosenfeld (1991) ie. Affirmative Action and Justice. The main reason for using Rosenfeld (1991) for this study is that, his work in this book, integrates different aspects of affirmative and thoroughly analyses different philosophical notions of affirmative action. Affirmative Action and Justice examines the philosophical and constitutional aspects of affirmative

action, however, this study will omit the constitutional aspects of Rosenfeld's (1991) work, and focus exclusively on the philosophical aspects as they impact on the public policy debate. This is because the constitutional aspects of Rosenfeld's (1991) work has no relevance and parallel to the South African situation, not as yet at least, it would be remembered that the legitimacy and constitutionality of affirmative action has not been challenged in a formal manner in a court of law until very recently in a case which involved an allegation of discrimination against a white woman who was perceived to be better qualified and more deserving for promotion but was not appointed to the desired position. In an attempt to redress past imbalances the company in question appointed a lesser qualified black ahead of a better qualified white woman, but all the same, the court ruled in favour of a white woman and against the electricity supplying company Eskom, which is the company implicated in this case. (Sunday Times: 1999: 08). It is important to note, however, that the Eskom case cannot be generalised and used as a platform or standard against affirmative action and effort to correct past imbalances. Affirmative action remains protected by the constitution and it is the responsibility of the South African society to correct the harm created by past injustices. (Bardill:1997).

Furthermore, this study engages theorists of justice such as Goldman (1979) Huntington (1989) and the currently leading theorists of social justice, namely John Rawls (1971) and Robert Nozick (1974). Rawls (1971) represents the contemporary political arguments for the welfare state and Nozick (1974) represents the contemporary libertarian framework. The reason for choosing and employing these scholars is based on the observation that they represent the current leading theories of justice in the general context. It is hoped,

therefore, that through their contribution, the broad requirements for justice will be established. The study further examines the work of many other scholars such as Livingstone (1979) who confine their focus to the specific problem of justice and in the continent.

A critical assessment of the transformation of the South African Public Service will be based on government documents. As it has been indicated, this study will integrate transformation with the restructuring of the public service and show the contradictory relationship between the government's mission and goals. The rationale behind this endeavour is that the restructuring process cannot be treated in isolation from other salient issues because it entails serious implications for the overall transformation process. This study argues, therefore, that any attempt to assess the transformation process of the public service will be futile and incomplete without a thorough simultaneous assessment of the restructuring process. This will be attained by examining the impact of the traditional inefficient, hierarchical, bureaucratic and rule-driven arrangements of the public service on the implementation of the transformation goals. Therefore, it is important to assess the interplay between the transformation and the restructuring process. But this study will also show why organisational culture and the restructuring process should not be divorced from the overall transformation project of the public service of South Africa.

CHAPTER THREE

REVIEW OF SELECTED LITERATURE

Overview of Important Selected Theories

It is as fallacious as it is dangerous to assume that the dismantling of apartheid and the subsequent installation of the democratically elected government in South Africa will by itself eradicate poverty and redress the historical imbalances created by apartheid. Of course, South Africa has entered a new era and its readmission into the international arena signals desirable prospects towards economic growth and prosperity. But all the same, South Africa has to implement other mechanisms in order for it to eliminate past injustices and ensure political and socio-economic stability. It is important to mention that although South Africa has some serious problems in uplifting the standard of living of its people, the majority of which are poor, neither a revolutionary path nor a minimal intervention of the government in the economy is the reality in the current politics of South Africa.

With the dismantling of apartheid and the introduction of a new democracy, and also judging from both the local and international balance of forces, the prospects for a revolution are almost non-existent. The big question so far is whether South Africa will be able to improve the living conditions of the historically marginalised communities. Many scholars have come up with various positions on this subject. One of them, Huntington (1989) who argues that "democracies do not provide for more rapid expansion of economic wealth and do not necessarily ensure an equitable distribution of material resources among their citizens". (Huntington: 1989:25).

capitalism to fulfil the overall objectives of equality. The current political situation in South Africa is different because the "touchstone of socialism in South Africa- nationalisation of banks, mines and factories: nationalisation and redistribution of the land, universal health care and the universal equal education have effectively been abandoned" (Harris: 1993:98).

Nevertheless, the inception of a democratic government in South Africa in 1994, triggered major socio-political changes in South Africa's society. The historical imbalances created by many decades of apartheid required employment of focused and specific programmes in order to undo the past injustices. The period witnessed major policy transformation, largely intended to improve the conditions of the previously marginalised communities- blacks, women and the disabled people. These changes marked the birth of affirmative action in South Africa. It is argued that one of the main aims of affirmative action is to redress the imbalances in representation by awarding the targeted groups positions they would have obtained had discrimination not occurred. To be sure, these imbalances are social construction of discrimination and the apartheid system, which derailed the process of equality in the South African society.

As it has already been indicated in the preceding paragraphs, imbalances in representation have negative spin-offs because they disempower members of the disadvantaged groups. Moreover, they undermine the process of democracy and distort the power relations within the society. The proponents of affirmative action argue therefore that affirmative action is meant among other things, to compensate for the past wrongs and injustices and

to produce a more even distribution of power, influence and other resources. (Edwards:1995).

A serious counter-argument to this proposition is that an emphasis on race, gender and disability exposes affirmative action to moral wrongness because it overrides the merit principle that must be the foundation for all good employment practices. It also classifies people on the basis of morally irrelevant criteria such as race and gender thereby generating tension in the the society. However, deeper analysis suggests that "... merit turns out to be a rather less pristine principle than is often thought". (Edwards: 1995: 02).

The main argument is that the society unjustly placed discrimination barriers which denied the victims their legitimate right to equal opportunity. Therefore, their relative deprivation is understood to be the result of society's unequal distribution of burden and opportunity to its people. Therefore, it is the responsibility of the involved parties to ensure that the victim of discrimination of the past is compensated because "an individual harmed in violation of his rights should be restored by the perpetrator of the injury to the position he would have occupied had the injury not occurred" (Goldman: 1979: 67).

Accordingly, affirmative action entails the notion of compensatory justice, which in its application requires a victim of past injustices to be recruited or promoted ahead of a person who benefited from the injustices inflicted on the victim. This is because in the past, the society or employer has discriminated against that person. And the government

violation of moral rights constitutes forms of injustice that need to be compensated by the society. (Greenwalt: 1983).

Pursuing this line of argument, does it not follow then that affirmative action violates the principle of distributive justice by denying white males benefit on the basis of morally irrelevant criteria? The notion of distributive justice requires that equals be treated equally and unequals unequally. "This principle precludes arbitrary distinctions based on irrelevant characteristics" (Greenwalt: 1983: 20).

Operating within this framework, the opponents of compensatory justice impute affirmative action with reverse discrimination. (Rosenfeld:1991). All other things being equal, their narrow analysis of the past and present fails to locate moral questions in their proper context. This charge of reverse discrimination is premised on the misplaced assumption that white males are denied access to benefit to which they are entitled and which they would have achieved had it not been because of preference given to the targeted groups.

As it has already been indicated, this argument and its accusations are misplaced because instead of realising "...that injustices done to young white males does not result from the preference given to targeted groups. It results from accumulated historical preference enjoyed by older white males." (Livingstone:1979:51). This position is consistent with the assertion that the white male's entitlement claims to the current available desired position in the society would not have been possible had discrimination not occurred. Put

targeted group and, therefore, there would have been no claim to it in the current situation. (Rosenfeld: 1991)

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Justifications for Affirmative Action:

Libertarian Framework and Nozick's Rectification Approach

The Libertarian position is distinguished by its strong philosophical stand on individual autonomy, extensive property rights and a minimal "night watchman" state, which is mainly confined to providing its citizens with police protection for their lives, property and enforcing contracts. This position further adheres rigidly to the notion that the freedom of choice takes precedence over welfare considerations. The libertarian position is thus, underpinned by the principle of overall maximisation of freedom. According to this position, the individuals' rights to property and free association are more paramount and should not be overridden by social interests on maximisation of social goods and services. Consistent with this position, Libertarians demand limitations on the use of the state for social policy and advocate for market freedom characterised by free transactions between individuals. (Rosenfeld: 1991).

Robert Nozick (1974) operates within this philosophical framework and he developed a theory known as entitlement theory in which he asserts that a just distribution is whatever distribution that results from people's free exchanges. According to this theory any distribution that arises by free transfer from a just situation is itself just. Nozick's (1974) entitlement theory is characterised by three main principles, namely, the principle of justice in transfer, which states that whatever is justly acquired can be freely transferred; The principle of justice in acquisition, according to which an account of how people came initially to own the things which can be transferred in accordance with the principle of transfer; and the principle of rectification of injustice, which focuses on how to deal with

holdings if they were unjustly acquired or transferred Nozick (1974). These principles will now be examined individually with focus on the South African situation.

The Principle of Justice in Transfer

This principle asserts that if a person acquires property or something legitimately, that is, without force, fraud or unjust original acquisition, then that person has absolute property rights over it. Flowing from this, the legitimate property owner has a right to keep everything he or she has, and has a right to dispose of it as he or she sees fit. (Nozick: 1974). According to Nozick's (1974) conception of justice, voluntary exchange of gifts from one person to another constitutes a just transfer. The case of South Africa shows that the transfers from blacks to whites since from 1652 until the demise of apartheid in 1994 were neither voluntary nor freely entered into. Blacks were forcefully dispossessed of their rightfully owned properties. Their labour, land and its riches were plundered by the metropolitan states and by the whites who claimed the "discovery" of South Africa and property rights over the illegitimately acquired land and riches belonging to the indigenous people. The Land Act of 1913 completed the process of dispossession by allocating more than eighty percent of the black population less than thirteen percent of unproductive land. The government confiscated any property claim blacks had and redistributed part of it to whites while retaining a lion's share. This continues to show that, by and large, the transfers that were entered into between blacks, whites and the governments in the stipulated period were accomplished through force and for this reason, they are unjust as they negate the requirements of the libertarian position. These

injustices need to be attended to with caution and sensitivity because they may have negative impact on South Africa's reconciliatory agenda.

The Principle of Justice in Acquisition

According to this principle, transfer of a holding cannot be initiated until historical titles are ascertained or rectified. (Nozick: 1974). If the present holding, land for instance, came to be someone's property by force, then Nozick's (1974) theory renders the initial acquisition illegitimate, in which case the current title becomes illegitimate as well. On the other hand, if the previous title was legitimate, this means free from physical aggression or fraud, then any new distribution that results from market exchanges is just. Nozick's (1974) argument is premised on the assumption that acquisition of a holding can be made without worsening the situation of others. He argues that this can be accomplished by using the Lockean proviso, which states that people are entitled to appropriation if they leave enough and as good for others. According to Locke, these criteria will be consistent with equality of other individuals since they are not disadvantaged by that appropriation. (Nozick: 1974). The Lockean proviso shows that the selfish and individualistic interests of the few cannot trample upon the rights and interests of others. Its primary aim is to create a just and harmonious environment within which appropriations can be conducted without inconveniencing and intruding the rights of others.

The application of the Lockean proviso in the case under scrutiny shows that black communities in South Africa had previously held land in common for general use. This

means that land was not owned by individuals but by a community as a whole. These communities used land for farming, grazing of animals and shelter. This arrangement was interrupted and destroyed by racist policies, which displaced black communities and reduced blacks into non-citizens in their country of birth with no property-rights and claims. And this came in the form of forced removals, Group Areas Act of 1950 and the Land Act of 1913. This set up concentrated wealth in the hands of whites and left blacks economically destitute with very little means of survival. Given this scenario, it stands to reason that enough and as good was not left for blacks. Their needs and interests were not taken into consideration when these initiatives were formulated and implemented and appropriations made. As a result, the rights of blacks were violated and thus, all appropriations, which resulted from this situation, are unjust because they were to the detriment of the victim and worsened their situation.

The Principle of Rectification

In an attempt to find solution to the complex problem of past injustices, Nozick (1974) developed the principle of rectification in entitlement theory. He argues that the principle of rectification requires historical information about the past situations. This information should be consistent with the first two principles of justice, that is, justice in transfer and justice in acquisition. Applying the principle of rectification, "it would be possible to locate the injustice in the past, to measure their effects on the configuration of present holdings, to determine what that configuration would have in the absence of any past injustices, and then to compare the actual configuration of holdings with what would have been but for the former and latter were found. Moreover, justice would require a

rectification in the form of a reallocation of holdings to the extent necessary to eliminate such a difference.” (Rosenfeld: 1991).

The historical information about the past situation in South African bears testimony to the fact that the apartheid regime violated the first two principles of Nozick’s (1974) entitlement theory. And for this reason, rectification measures have to be instituted in order to compensate for the harm suffered by the victims of past discrimination. The state-imposed affirmative action appears to be the most viable option for South Africa’s endeavours to confront its unjust discriminatory past. It should be recalled that the victims were not discriminated against as individuals but as a group and for this reason, compensatory measures need to be targeted to blacks as a group. In the domain of job allocation, for instance, “a survey of 455 companies last year revealed that 89 percent of senior management is still white, six percent African of which one percent is female, two percent is Coloured, three percent Indian and eight percent of white senior management is female. (City Press: 1999: 02: May 2). The Presidential Review Commission also revealed that senior management positions in the public service are still white male dominated. A survey of all departments and provinces revealed that white males occupy 61,8 percent of the management positions 23,4 is African of which 9,2 percent is female 4,0 percent of white management is female, Coloured occupy 2.8 percent and another 2.8 percent is Asian. (South Africa: Presidential Review Commission Report: 1998: 12).

The preceding statistics indicate the disparities that exist both in the public service and the corporate sector. They show that white males constitute an artificial majority in South

Africa's management positions both in the public and private sector and this is not a true reflection of the country's population demography, which is black, and female dominated. The state intervention is thus, required to redress these imbalances. Dullar Omar, the former Minister of Justice and the current Minister of Transport argues that "...to create real equality, the notion of a minimalist state is totally inappropriate. We need a government that is interventionist and which has real power to address the massive inequalities." (Financial Mail: 1998: 40: July 10). As it can be seen, this position is contrary to the libertarian position, which agitates for a minimal state. It is important, therefore, to note that although a libertarian would acknowledge and justify rectification for past injustices, he or she will still resist the state-imposed affirmative action. And this is because a libertarian believes that the imposition of affirmative action will violate the right of employer to hire whomever he or she pleases. This means, therefore, that the scope within which a libertarian would justify affirmative action is very limited and incapacitated to resolve the massive social and economic problems confronting countries such as South Africa today. The next section deals with the limitations of the libertarian position to correct the harm causes by the apartheid system, which permeated South Africa.

Limitations of the Libertarian Framework

The libertarian framework rejects the welfare state and maintains that distribution should be pursued within the scope of a minimalist state. This position assumes that the state should not invade the space of a corporation to run its business and hire whomever it sees fit. According to this position, therefore, a corporation has a right to prohibit either discrimination or affirmative action. Rosenfeld (1991) argues that in terms of "...the libertarian conception of justice, therefore, a corporation is as entitled to refuse flatly to hire blacks and women as it is entitled to grant them systematic preferential treatment." (Rosenfeld:1991:53). This means that according to a libertarian framework, a corporation is as entitled to perpetuate discrimination as it is entitled to institute affirmative action in allocation of jobs. Nevertheless, the failure of a libertarian to prohibit discrimination should not be viewed as a racist or sexist attitude towards blacks and women respectively, but as an adherence to the notion that a person has absolute property rights over a legitimately acquired property. And that not even the state has a right to temper with the property rights of the holder, regardless of the social conditions and needs of the community. Goldman (1979) objects to this Libertarian position and argues that even if one accepts the libertarian's belief that rights cannot be overridden by considerations of social welfare, there is no need to recognise a right prospectively when it is plain that such a right would have significantly worse consequences than non-recognition. (Goldman: 1979).

Moreover, Nozick's position misrepresents the way in which rights are ordered. Rights vary in importance and some are not absolute even in the state of nature and "the only

way to make progress in understanding the nature of individual rights is to investigate their sources and their relations to each other and to the value on whose pursuit they set limits.” (Nagel: 1983: 196). Nozick (1974) appears to assume that individual rights and property rights function or operate outside social rule and laws. These rights require morally defensible institutions for them to be morally defensible. Thus, a distinction has to be drawn between morally defensible property rights within a given social system, the justification of which is relative to social circumstances and moral rights to property that are not relative to social rules or circumstances. To illustrate this point, “ An heir can morally defend his claim to some (conventionally) inherited thing only by appealing to the rules of such an institution. His claim is morally successful, so to speak, only if the institution itself is morally defensible. Nozick does not seem to look at inheritance in this way. He seems to assume that an heir could defend his claim to some inherited thing without making any reference to laws and other social rules. He seems to generally assume that the morally supportable property rights that we have correspond precisely to moral rights that do not pressure any laws or other social rules”. (Lyons: 1975: 259).

The relationship between past discrimination and property rights in the South African context today is unique and very different from many other situations in the world. This is because South Africa imposed constraints on itself and made a commitment not to temper with the legitimacy of the previously acquired property rights no matter how they came to be acquired. This resolution is a result of negotiations that preceded the election of South Africa’s first democratic government in 1994. It is worth noting that all sectors of the society were represented in these negotiations and that included political parties,

liberation movements, civic organisations, trade union movements and business organisations. The property rights clause is entrenched in the constitution, which is the supreme law of the country and reflects the spirit with which the issue of property rights was resolved. Property rights are guaranteed under the new constitution and only allow the agreed upon or court ordered compensation. This scope is limited and makes it difficult to apply justice even within a historical theory like Nozick's (1974), with respect to unjust and illegitimately acquired property rights under the apartheid regime. This happened amidst the availability of substantial historical evidence showing that many transfers in the old order between whites and blacks were either involuntary or violated the Lockean Proviso and in other situations victims were cheated and exploited because of their poor bargaining position and lack of social power.

The preceding examination of the South African situation shows that the allergic nature of the libertarian position to state intervention in the rectification of past injustices makes it inappropriate for the current socio-economic reality of South Africa. It should be recalled that Nozick's (1974) rectification principle requires these transfers to be carried out voluntarily by individuals. Furthermore, the preceding examination shows that redistribution cannot be stretched to its fullest potential in the current political situation of South Africa given the narrow scope provided by the constitution. South Africa is a constitutional state and thus, it is expected of the government to perform its duties within the constitutional boundaries and requirements. Furthermore, to rearrange the present property rights situation, which concentrates power in the hands of the historically privileged groups, the law requires any government to attain at least a two-thirds majority

in order to amend the constitution. Some individuals within the present government have expressed the need and willingness to amend certain aspects of the constitution including the property rights clauses. But all the same, this is not an officially adopted and homogeneous position within the ruling party and beyond this, the figure is difficult to attain given the general apathy of the potential voters and the vigilance and active role played by the opposition parties in South African politics. Moreover, most of the meaningful opposition parties are comfortable with the present constitutional arrangements. Particularly in relation to the property rights clause. For this reason, they would do everything in their power to ensure that the constitution is not altered and interfered with.

Be that as it may, in the domain of the job allocation and work environment the government has adopted an interventionist stance in its attempt to eliminate discrimination and redress past injustices. The overt intention of the government to accelerate change and compensate for past discrimination is unequivocally pronounced by the Employment Equity Act of 1998. The Act is a drastic measure, which shows the government's seriousness in fulfilling the objectives of the transformation process, and it entails punitive measures for employers who fail to state and attain racial quotas in the workforce. This includes of course, top management positions. The key objective of the Employment Equity Act of 1998 is to prohibit discrimination in the workplace and ensure employment with respect to blacks, women and the disabled in the management positions. As it has been argued in this study, the libertarian framework detests the state imposed affirmative action and perceives it, as a violation of a corporate's right to hire

whomever it pleases. This shows once more that the libertarian model subordinates welfare considerations to individuals' interests, which might have little significance in the development of a society. Equally important, this model disregards the harm that might result from prioritising individualist considerations at the expense of community needs. Its adoption and application in the South African situation would have adverse effects on the country's fragile socio-political stability. This is because it would retain the status quo and perpetuate negative stereotypes about the victims' inability to occupy positions of responsibility and perform certain tasks. And this will translate into specious assumptions that such positions are the preserve of the white males. In this way, the newly acquired democracy would be worthless to the victims, as it will emasculate and incapacitate the process to better their situation. The state cannot, therefore, be expected to allow every individual to pursue everything that he or she chooses to pursue. The central problem of Nozick (1974) is "...his persistent failure to take account of the nature of social reality. Nozick's models, methods and arguments all treat social relationships as transparent rather than as opaque. He portrays social interactions as marginal to the existence, integrity, and coherent identity of the individuals who participate in them, rather than as central and constitutive." (Wolff: 1978: 25).

Without state intervention, many companies in the private sector will have no inherent obligation to contribute to the general transformation project of the South African society. The society in which they operate and accumulate wealth. The Employment Equity Act of 1998 is, therefore, a gallant effort to redress past imbalances because it puts the plight of the victims at the centre of the corporate's deliberations about job allocations and

internal transformation of a corporation. Without being apologetic about redressing past imbalances, caution has to be applied in appointing members of the historically marginalised groups into positions of responsibility. This is primarily because failure to exercise caution may translate into devastating economic consequences for South Africa. This suggests that in conforming to the requirements of the Act, the corporate sector should not abandon the merit principle in recruiting and appointing candidates from the identified categories. They should scout for the best-qualified and best talented individuals within the targeted groups. The danger of opting for arbitrary appointments and promotions of the victims who are in no possession of merit will not be in line with the spirit and objectives of the Employment Equity Act of 1998, moreover, such a move will be irresponsible because it will unnecessarily jeopardise South Africa's economic performance.

South Africa has entered an international arena and one of its main objectives is to attain international competitiveness. This is a major challenge, which requires the country to play by the rules set by the international community. Moreover, the attainment of this objective requires an urgent development and training of the skilled workforce and a diversified management with the ability to meet the real challenges posed by globalisation and liberalisation. The success of any country on the international market, particularly the still developing and new entrants like South Africa is mainly dependent on the highly skilled workforce and adaptable management. This means that despite the pressing issue of redressing past imbalances, South Africa cannot afford to sacrifice the merit principle in the targeted groups. In order to achieve the goals it has set for itself,

South Africa is thus, required to pursue compensatory measures in job allocation within the boundaries of the merit principle. People should not be appointed to positions merely because they are black, women or disabled, but because they are the most qualified candidates within these categories.

In this way, the private sector will fulfil its social duty and contribute to the transformation of the South African society without sacrificing the standards of excellence and the potential of competing on equal par with their counterparts elsewhere in the world. In this way, the imposition of affirmative action will not have adverse effects on the competitiveness and economic performance of the corporate sector. As has been demonstrated, Nozick's (1974) rectification principle is inadequate and incapable to resolve South Africa's past injustices largely because it does not entail an inherent obligation to adhere to the principle of equality. More important, however, the preceding examination of the libertarian position has shown that even a libertarian does acknowledge the legitimacy of affirmative action, even though its legitimacy is acknowledged in a narrow scope.

Goldman and Social Justice

It is important to note from the outset that Goldman's (1979) considerations of justice and affirmative action has its foundation in the Rawlsian contractarian framework. The central idea of Rawl's (1971) theory of justice is captured in the original position which is a hypothetical situation in which rational mutually disinterested individuals choose the

principles of distribution which will then govern all members of society. Rawls (1971:136-137) asserts the following position:

I assume that the parties are situated behind a veil of ignorance. They do not know how various alternatives will affect their own particular case. And, they are obliged to evaluate principles solely on the basis of general considerations. First of all no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence, strengths and the like. Nor, again does anyone know his conception of the good, the particulars of his regional plan and the like. Even special features of psychology such as his aversion to risk or liability, to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society ... it is taken for granted, that they know general facts about human society. They understand political affairs and the principles of economic theory. They know the basis of social organisation and the laws of human psychology. Indeed, the parties are presumed to know whatever general fact that affects the choices of the principles of justice.

In applying this strategy, Rawls (1971) assumes that his contractors, situated behind the veil of ignorance, would choose the most desirable alternative arrangements in relation to justice. He argues that it is reasonable for them to be risk averse and to follow the maximin rule through which alternatives are ranked by their worst possible outcome, and the contractors are to adopt the alternative the worst outcome of others (Rosenfeld: 1991). Goldman (1979) adopts the contractarian strategy, but unlike Rawls, he does not put his contractors behind a full veil of ignorance but behind a partial veil. He refuses to deny his contractors their natural endowments such as intelligence and physical ability. His reason for not denying contractors their natural assets stems from his uncertainty as to whether society is entitled to render all natural differences invalid. More especially differences

which are naturally useful to individuals who possess them to perform certain tasks. (Goldman: 1979).

Rawls' (1971) main argument is that no individual deserves his or her natural abilities because the more gifted did not labour for the talents they possess but such talents came as a result of nature favouring them. He argues that the untalented and unintelligent are to be somehow compensated for inequalities in natural abilities. Rawls (1971) believes that all asserts are distributable over individuals and insists that in compensating for these deficiencies, the least advantaged are to be preferred. Accordingly, Rawls (1971) argues that even within a group of victims preference and affirmative action should be focused on the least advantaged and that is the uneducated. According to his argument it would be unfair to affirm the already affirmed sections of victims' category which is in possession of talent and superior natural endowments. Therefore, argues Rawls (1971), affirmative action becomes justifiable only if it compensate and benefit the untalented and unintelligent members of the harmed group. He calls this the difference principle. Through which he argues that the gifted is the common assert of a community from which these individuals are drawn. Indeed, the talents of the more gifted become the common assert of a community in a situation in which society gives the gifted preferential treatment in cultivating their talents. A community becomes a beneficiary because through its investment in the more gifted it will manage to improve over its intellectual and cultural asserts, in which even the least advantaged would benefit. But all the same, Rawls' (1971) position is challenged and ultimately refuted as it transgresses

and denies individuals rights over their talents. A society has to treat natural asserts of individuals as the private possessions of individuals. (Rao: 1998).

Goldman (1979) argues that it is not even permissible that society nullifies the distributive effects of natural differences and consistent with this position, he lifts the veil of ignorance with respect to natural asserts. It is important to examine, therefore, the implications of making social contractors aware of their natural asserts and the impact such action is likely to have on their deliberations concerning affirmative action. It is reasonable and permissible to assume that a person who is not aware of her own natural talents will adopt a very different position to a person who is aware of her natural asserts. In a situation of this nature, differences in talents may lead to conflicting and divergent interests between the talented and untalented deliberators. Under these conditions, social contractors might find it difficult to reach any unanimous agreement about affirmative action. Furthermore, even if the social contractors reached unanimous agreement concerning affirmative action, it would be incorrect to conclude that such agreement would be similar to that which they would reach without information about their individual talents. Therefore, social contractors would be better off without such information as the most disadvantaged under affirmative action plan or as the most disadvantaged in the absence of affirmative action. Rosenfeld (1991) argues that "...a contractarian who would not lift the veil of ignorance with respect to natural endowments might well find a significantly different scope of justification for affirmative action than does Goldman. (Rosenfeld: 1991:70).

Rosenfeld's (1991) objection to Goldman's (1979) partial lifting of the veil of ignorance is premised on the assumption that natural inequalities would give rise to egocentric considerations and disregard the situation of the other. It follows, therefore, that under these conditions the just principles of distributions will not be easily attained because everyone will be trying to maximise the benefits of the situation to which nature and society constructed for him or her. For example, conscious of her potential and ability, the more gifted is likely to advocate for the situation in which distribution is based on talent and not on need because she is likely to benefit more in the former scenario than in the latter. While on the other hand, the least advantaged would be propagating for distribution based on need because the adoption of talent based distribution will greatly minimise her distribution benefits.

Goldman (1979) provides an alternative method, however, in determining the justification of affirmative action within a contractarian framework. He calls this alternative method the reversal test for which he states "the basic idea is to imagine role switches among the individuals in the situation. For our issue, these role switches involve race or sex. Applied as a test of whether discrimination is occurring, the test calls upon us to judge whether a white male with similar qualifications would have been given a position refused to a woman or black. To identify reverse discrimination, we ask whether a white male with similar qualifications would have been given the position granted to a minority group member. As a method for rooting out biases in intuitive reactions towards instances of reverse discrimination, it calls upon us to judge whether a white male in

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similar circumstances ... would deserve preferential treatment in the context in question.”

(Goldman: 1979: 16-17).

Prior application of the reversal test, argues Goldman (1979), shows that neither race nor sex should be counted as qualifications for positions except under narrow circumstances. Consistent with this argument, hiring a lesser-qualified woman over a more qualified white male would constitute reverse discrimination. It would be acceptable, however, to count race or sex as a qualification if individuals of such characteristics are viewed as role models and contributing to enhancing the capacity of others, to illustrate this point, Goldman (1979) makes an example of a situation in which gender can be counted as a qualification. This can happen when it has been established, for instance, that women students learn better from women teachers than from male teachers. However, the same reasoning should be extended to white male students learning from white male teachers and on the basis of such reasoning, hiring teachers on the basis of race or gender can be counted as a qualification. (Goldman: 1979).

As adduced so far, the scope within which Goldman (1979) applies role switch is limited. It is flawed and fails, therefore, to address itself to crucial aspects of the problem, which demand attention in the process of considering race and sex as a genuine qualification. Rosenfeld (1991) argues that Goldman's (1979) limited role switch falls short of addressing important aspects of affirmative action because it only offers a partial insight into the situation of the other, that is, blacks or women. The main point of his argument is that assuming the role of the other will not in itself translate into the understanding and

adoption of what shapes the perspective of the other. Furthermore, the failure to give a participant access to the perspective of the victim has the potential of leading a participant into wrong conclusions about the situation of the other. (Rosenfeld: 1991).

To illustrate Rosenfeld's (1991) position, the prolonged institutional racism and discrimination has, by and large, inculcated the mentality that white males are superior to blacks and women. While at the same time distorting and shaping the perspective of the victims into believing that they are inferior and incapable of competing with white males. Moreover, racism deprived blacks basic education and as a result, many blacks lack the necessary motivation to compete with their white counterparts. Given this background, suppose a white person is operating within a limited role switch, suppose further that he assumes the role of a black person without relinquishing his own perspective with regard to his high motivation and sense of competence acquired through the discrimination of blacks and women. A white person in question might conclude that all he needs as a black is an educational opportunity to make-up for early deprivation in order to compete with white males on an equal footing for jobs. As observed by Rosenfeld (1991), the process of arriving at this conclusion did not take into consideration the role that the lack of motivation is likely to play in shaping the perspective of blacks and the underprivileged. The implementation of his suggestion and its subsequent failure to motivate blacks despite the availability of educational resources for them is likely to frustrate the individual as he imagined himself as a black and is convinced that all that is needed for blacks is an access to educational opportunity. Flowing from this, our white male might wrongly conclude that the failure of blacks to take advantage of the

opportunity made possible by his suggestion and improve their socio-economic position is linked to their culture or genetic make up. (Rosenfeld:1991). An issue that has been linked to racist connotations.

This shows, therefore, that the contractarian conception of justice has shortcomings and limitations that render it incapable to provide a comprehensive assessment of the justice of affirmative action. In many regards, Goldman's (1979) principle of compensation is similar to Nozick's (1971) principle of rectification. For example, they both use history to determine what would have been the situation had the victims not been harmed by the discrimination. As Rosenfeld (1991) argues, certain aspects of Goldman's (1979) justifications of affirmative action under compensatory justice are very similar to those that can be legitimated under Nozick's (1974) principle of rectification. More important, however, the major limitation of Goldman's (1979) theory of partial veil of ignorance is that while it enables the hypothetical contractor not to know if he or she is black or white, or a man or woman, the contractor cannot eliminate or escape having an antagonistic perspective. This means that even if a contractor can eliminate race or gender consciousness, he or she will still be having a white or non-white perspective informing and determining his or her deliberations. Therefore, the partial veil of ignorance deals only with the superficial aspects of the problem and that is the removal of race and gender identity and fails to deal with the perspectives governing the hypothetical contractors-cultural biases, system of beliefs, masculine and feminine perspectives. Flowing from this, it is clear that Goldman's (1979) partial veil of ignorance has the potential of giving one perspective a privilege over other perspectives.

Habermas (1979) offers an important analytical tool in dealing with and understanding the problem of conflicting and antagonistic perspectives. Through his theory of communicative ethics, Habermas (1979) argues that power; ideology, deceptions and self-deceptions have caused communicative distortions. And that all of these aspects have played an important role in shaping the perspectives and communication between race and gender relations. Consistent with Habermas' (1979) conception of communicative theory, Rosenfeld (1991) gives an example of two mothers with sick children and argues that it would be easier for the mothers involved to feel and understand the situation of the other since they are both in the same situation. And it would be difficult for any other person who has never been in the same situation to understand how it feels like to have a sick child. This example is employed to demonstrate the complex scenario surrounding white people to fully comprehend the situation and feelings of blacks because they have never experienced institutional racism and, therefore, it is impossible for them to put themselves in that situation and fully understand what shapes the perspective of the black people. To put it in his own words, "...a white person who has never experienced racial discrimination, and who does not know how it feels to the member of a readily identified minority group, may not understand what systematic racial discrimination means from the perspective of a black victim." (Rosenfeld: 1991: 258). He further argues that it is important to identify and expose the elements of self-deception in dialogical exchange for social justice. It should be acknowledged that the distortion-free dialogue is an ideal speech situation, which is difficult to attain, but all the same, effort should be made to at least eliminate the conspicuous features of distortion.

Self-deception can be detected and exposed for instance, in a situation in which a member of a discriminated group embraces discriminatory attitudes of racists towards the group to which he/she belongs and thus, dissociating himself/herself from that particular group because of the negative stigma attached to it. This usually comes as a response of the victim to discrimination and prejudice. (Rosenfeld: 1991). In conclusion, as it has been discussed in this section, Rawls (1971) and Goldman (1979) offers important tools in understanding and resolving the issue of social justice in a country with the history of discrimination like South Africa, as it has been shown, however, some of their strategies have serious limitations which renders their theory inappropriate and inapplicable in South Africa's socio-political situation.

CHAPTER FOUR

AN ANALYSIS AND AUDIT OF THE TRANSFORMATION PROCESS IN THE PUBLIC SERVICE

It is worth-noting that the vision and mission for the Public Service have been tailored in such a way that it becomes consistent with the relevant sections of the constitution of the country. The adopted vision for the Public Service reads: “The government of national unity is committed to continually improve the lives of the people of South Africa through a transformed Public Service which is representative, coherent, transparent, efficient, effective, accountable and responsive to the needs of all.” (South Africa: 1995:White Paper on Transformation in the Public Service).

It is also important to note that the mission of the public service is the “creation of people centred and people driven Public Service which is characterised by equity, quality, timeousness and strong code of ethics”. (South Africa:1995: White Paper: Transformation in The Public Sevice). It is not hard to establish the connection between the vision and mission of the public service, which is basically meant to abandon the unnecessary bureaucratic chains of command and improve the efficiency and effectiveness standards within the government. Equally important, the vision and mission of the public service also reflects the principle of consultation and participative style of governance.

Genuine representation of the victims of past discrimination in the public service demands more than mere statements of intent. As a result, the government realised that in

addition to these declarations, institutional mechanisms were required in order to ensure the implementation of its policies. Furthermore, it was realised that appropriate structures and agencies within the public service needed to be empowered. For an example, the white paper on transformation in the public service identified an enabling legislation, as the appropriate and necessary instrument required to trigger, advance and guide the transformation process.

More importantly, for the process to be consistent with the vision and mission of the public service and to enjoy mass support and legitimacy at the grass-roots level, it required transparency and adherence to the principle of inclusivity of all sectors of the society. Therefore, a platform had to be created for the contribution of the trade union movement, civic organisations and employer organisations in the formulation and implementation of affirmative action policy. However, these policy instruments and enabling legislation had to be in line with the labour relations act particularly on the areas of equity and non-discrimination.

The significance of increased representativity of the victims of discrimination in the public service transcends the numbers game. It entails central transformation issues such as institutional culture and improved service delivery. It is important to mention that without transforming the past apartheid institutional culture the transformation process will be far from complete. This is because the new entrants in the public service will be assimilated into the apartheid institutional culture and perpetuate all that past system represented. This includes of course, the apartheid victims for whom the transformation

process is supposed to benefit. Therefore, the psychological effect of the institutional culture cannot be undermined and left to transform itself as it has the potential of making the new entrants into the system behave in the same way the apartheid bureaucrats behaved and conceptualised issues. Beyond this, statistics indicates that “As of September 1996 White people continued to fill 64% of the management posts in the Public Service, Africans filled 28% of the posts, Coloureds 3%, Asians 5% and Women 11% of the management posts.” (Skweyiya: 1997:8). Nevertheless, efforts have been made since then to improve representation of the victims in the public service. To show the urgency and importance of correcting past injustices, the Ministry of public service and administration established a research arm to investigate the representation of women and the disabled people in all department of the public service. These further shows therefore that since the inception of the democratic government in 1994 the issue of representation has been treated with the seriousness and sensitivity it deserves and concrete efforts have been taken by the government to ensure the logical conclusion of the transformation process in addressing the plight of the victims of past injustices.

Weaknesses and Limitations

It should be acknowledged, however, that to a considerable extent, the public service has failed to translate public demands into tangible policies. The general public feeling is that the motion of transformation process appears to be small and slow. The major contributory factor to this situation is that the government has, by and large, failed to communicate the aims and objectives of affirmative action effectively to the bureaucrats particularly to the “old guard”. As a consequence, the reluctance of the old bureaucrats to

implement government policies impacts negatively on the process. Arguably, this is because the bureaucratic arrangements and their strategic location within it allows them to master the system and thus accumulate more power, technical knowledge and influence than the elected officials. Beyond this, bureaucrats have the capacity to sabotage the transformation process if it turns out to threaten their position in the system hence the government adopted the sunset clause in 1994 to avoid the costly repercussions of undermining the interests of bureaucrats. The sunset clause was mainly developed as the government commitment to retain the bureaucrats who served the apartheid system. Realising the influence and strategic location occupied by the bureaucrats and their potential to destabilise the system and undermine the transformation process, the African National Congress led government committed itself to retaining the old bureaucrats despite their role in the apartheid regime. All other things being equal, although the government managed to pre-empt and contain the significant potential danger of the “old guard”, it all the same, failed to transmit the benefits and positive aspects of affirmative action to the bureaucrats and more important, its benefits to the transformation and reconciliation process. Therefore, the government’s failure to institute effective communication mechanisms is largely responsible for the slow paced transformation processes in the public service as these complications frustrate the process towards the attainment of the anticipated transformation goals.

Furthermore, while the policy recommendations made in the White Paper on the Transformation of the Public Service (1995) were considered necessary and attainable, little effort was made to convert most of them into workable policies. For instance, as far

back as 1995 the White Paper identified and recommended enabling legislation as the crucial and necessary instrument for accelerating the process towards the speedy delivery and attainment of greater representativity in the public service but still, the process towards instituting these legislative mechanism was characterised by lack of political decisiveness and reluctance on the part of bureaucrats. It was only in 1998 that the Ministry of labour took the initiative and tabled the legislation before parliament that resulted into Employment Equity Legislation. There is a reason, therefore, to suspect that these delays are somehow deliberate as they reflect some degree of unwillingness or unpreparedness to introduce policy instruments required to shape and facilitate the process. But all the same, it should be mentioned that scarcity of skills among the targeted groups is another major impediment, which contribute to the overall problem of slow paced transformation process. Thus, the effects of inferior apartheid education cannot be divorced from the pace with which the transformation process is unfolding.

Weaknesses of Policy

In addition to the preceding limitations, policy formulation in the public service has been characterised by divergent and sometimes conflicting goals. These lack of coherence and consistency in policy is demonstrated by the government's intention to increase representativity of the under-represented groups and simultaneously attempt to trim and downsize the public service. To illustrate this point further, the government's objective to undo injustices of the past require large intake of the victims of discrimination in the public service and the government has expressly committed itself to this process through the constitution and legislative agencies. This commitment is in conflict with the

government's intention to achieve a lean but efficient and effective public service. The fulfilment of this intention requires the government to substantially reduce the number of its labour force and not to create a large room for new entrants into the system. The effects of these contradictory policy arrangements have negative spin-off on the process because they create confusion and despair at the implementation stages of a policy, as the priorities of the government are not clear on what takes precedence over what.

A further, limitation of the transformation process has been poor anticipation of problems. As it has been argued in the preceding paragraphs, the current bureaucratic set-up enables the appointed officials in the public service to cultivate considerable power and influence in the system. And since the system allows them to use their discretion in the policy execution phase, they have a large scope within which to change and rearrange the original policy formulated by the elected officials. The gist of the matter is that it was assumed that the change of government in 1994 would automatically change the attitudes and perspective of the "old guard" in the public service. As a result, little effort was made to communicate the vision, goals and policies of the new government effectively. This misplaced assumption has had adverse repercussions for the implementation of government policies. It created inadequate understanding of key government goals and objectives. The situation was further complicated by the over-ambitious time frames that the government set for the achievement of its goals. According to the initial time frames, it anticipated to achieve greater representation of the victims within the first four years of governance. The perception was that within this period, 50% of managerial positions in the public service would be filled by blacks and 30% of the middle and senior

management positions will be occupied by women. This further shows government's inability to anticipate problems. (Burdill: 1997).

In addition to the lack of skills and capacity among the victims, the transformation process in the public service has been characterised by intellectual exodus and brain drain of the most gifted officials. These desperately needed talent of the officials in possession of capacity, skills and expertise to perform efficiently in the system was untimely lost to the corporate sector and the developed countries. Furthermore, the government failed to exploit other avenues such as recruiting people who have shown talent and excellence in areas such as the trade union civic organisations in order to counter-act brain drain and make-up for the loss of talented officials. To some extent, the manner in which the government handled the issue of voluntary retrenchment was irresponsible because it encouraged exodus of the most experienced officials in the public service through lucrative packages which were difficult to resist for their departure and uncertainty of their future in the new democratic system given their association with the dismantled apartheid regime. This further reflects limitations of lack of effective communication of government goals and weaknesses of execution of government policies.

While it is important to reflect on the weaknesses of the government in handling the costly exodus of the experienced officials in the public service, it is equally important not to exaggerate the significance of these officials in the current democratic dispensation. It is important note that the lack of legitimacy of the transformation process at the top structures of the public service is also attributable to the training and orientation of the

old guard. It should be recalled that the apartheid system trained and oriented the “old guard” to serve the interests of the privileged minority and this means, despite their technical expertise in many other areas they are not equipped with the skills of serving the needs and interests of all people in a democratic and equitable fashion and thus, they still have to be retrained and reoriented in order for them to be able to serve the needs of all South Africans.

As it has been argued in this study, the transformation process appears to be stagnant with regard to the implementation of some the government policies. Only until recently, the establishment of policy instruments was almost sterile, this state of affairs required decisive leadership intervention to revitalise and accelerate the transformation process and it was demonstrated by the former Minister of Labour Tito Mboweni and the current Governor General of the Reserve Bank. The intervention of the Ministry of Labour in resuscitating the process demonstrated political decisiveness and was guided by clear vision of goals and demand of the transformation process.

Domestic and Global Economic Challenges

It is as fallacious as it is dangerous to assume that the dismantling of apartheid and the subsequent installation of the democratic regime in South Africa will by itself eradicate poverty and redress the historical imbalances created by apartheid. South Africa has entered a new era and its readmission in the international arena signals desirable prospects for growth and prosperity. But all the same, South Africa has to institute other mechanisms in order for it to eliminate poverty and ensure social development.

Although South Africa is currently experiencing serious problems in uplifting the standard of living of its people, the majority of whom are poor and unemployed, neither revolutionary path nor minimal intervention of the government in the economy is the reality in the politics of South Africa. Equally important, the mere presence of a constitution will not translate into stability and social development by itself. Of course, constitution cannot be divorced from development but still, additional mechanisms are required to ensure progress towards substantive social development.

It should be acknowledged that the democratisation process of South Africa and its readmission in the international arena coincided with the major restructuring of the global economy. South Africa was, therefore, required not only to undo the harm created by apartheid on the victims but also to restructure the public service and prepare it for the challenges and opportunities posed by globalisation and liberalisation. And despite all the hurdles and difficulties encountered so far, the commitment of the government to the transformation process and nation building is unwavering. More important, there is a fertile ground for diverse groupings in South Africa to unite in pursuit of a commonly envisaged goal. The Redistribution and Development Programme is a reciprocal endeavour in which the mutual trust is developed between sectors of diverse socio-economic and political backgrounds. As it should be expected, the Redistribution and Development Programme is contested and its ultimate outcome is dependent on the dominant social and economic forces in it. The government's economic strategy, Growth Economic and Redistribution strategy bears testimony to the assertion that Redistribution and Development Programme is the site of contestation.

However, despite arguments on the contrary, Growth Economic and Redistribution strategy is not a substitution of the Redistribution and Development Programme and should be viewed as having a complimentary relationship with the programme. The heart of Growth Economic and Redistribution strategy emphasises economic growth and job creation, and contains the redistributive elements of the Redistribution and Development Programme. Through the Growth Economic and Redistribution strategy, the government is intending to win the confidence of the international community and attract foreign investment by playing the economic game according to the international rules because South Africa cannot afford the costs of isolating itself from the international community. This means, therefore, that the conception and articulation of the local programmes are to some extent, correctly informed by the demands and expectations of the global economy on South Africa. This is because all these issues and considerations of the economy have a significant bearing on the final product of the local programmes and a crucial relationship with the transformation of the society in general and thus, cannot be divorced or eliminated from the transformation agenda. It is important, therefore, to locate affirmative action within the broader transformation framework. The restructuring process has been accompanied, among other things, by the introduction of new management style in the public service and the implications of these developments and their possible impact on the transformation process are dealt with in the next section

Restructuring of the Management Styles in the Public Service

The inception of the democratically elected government in 1994 triggered new challenges for the South African Public Service. In the interests of peaceful transition and administrative stability, the current government inherited a public sector that is classically bureaucratic. Characterised by a strong hierarchical tradition and religious adherence to bureaucratic chains of command, the public service could not provide equitable, efficient and effective service delivery to all South Africans.

This centralist arrangement displaced and monopolised the decision making power in the hands of the few top officials. The strategically located front line managers were rendered sterile and incapable of taking decisions by the rule-driven bureaucratic arrangements. In this way, the well placed and best qualified public servants were, on the whole, marginalised in the decision making process. Flowing from this, it follows that the in addition to state expenditure, optimal size and role of the public service the restructuring process has to encapsulate redefinition and rearrangement of power relations within the public service in order to achieve the desired benefits of efficiency and effectiveness. Decentralisation of the public service will not only improve efficiency but will also ensure that the public service is accessible and accountable to the electorate. Furthermore, the rules governing the public servants derive from a constitution that contains universal principles of democracy and human rights and makes progressive reference to the issues of accountability and social rights. And the framework within which the public servant is required to perform her duties find formal expression in the constitution and the new legal framework. This means that the legal and constitutional mechanisms have been

instituted to ensure efficient, good and clean governance. From this background, it follows that this type of bureaupathology is not immune from the transformation of the public service. It constitutes a central part of the overall focus of the transformation agenda.

It should be mentioned, however, that the transformation and restructuring of the public service is not only a response to the domestic demands and internal malfunctioning of the system. It is also a response to the external forces that placed insurmountable pressure on South Africa to conform to the international norms and standards of running a government, but on the whole the process has been guided by the reality of the South African situation.

It is important to recall at this stage that in the past apartheid dispensation the South African Public Service was operating in isolation to international thinking. It employed outdated management techniques that harboured authoritarian management style, concentrating information in the hands of the few senior public servants. The high degree of secrecy denied the lower levels of management access to information. (Fitzgerald: 1997). To perpetuate itself, the Apartheid State had to rely on suppression of information and clandestine activities on a massive scale within the public service and outside. To show the extent to which the apartheid state subverted democratic principles, in 1982 the regime curtailed access to information by passing the Protection of Information Act which effectively increased the range of classified information in the public service. As it has been noted, all these efforts were mainly designed to perpetuate the Apartheid State

and the desire to eliminate the threat of the African National Congress and its allies. (Cameron: 1995).

These conditions made the actions of the government more inscrutable and unaccountable, inevitably leading to increased gap between the government and the public. This shows the extent to which the right of the public to know was suppressed. It should be acknowledged, however, that the present government has created structures and agencies within the public service to ensure that the government is accessible and responsive to the needs of the people. As it has been argued, accessibility is viewed in the context of service delivery and the right to public service information. Section 23 of the constitution deals with access to freedom of information. It states that each person shall have the right of access to all information held by the state or any of its organs at any level of government. (South Africa: Constitution: 1995).

This means, therefore, that the government's information is no longer the preserve of the politicians and senior public servants as it was the case in the past. These developments put South Africa on the same par with the developed countries such as Sweden that has a freedom of information clause in its constitution (Cameron: 1995). It should be recalled that in the area of service delivery the draconian laws of the apartheid regime denied millions of black South Africans access to basic services like clean water, sanitation and health care services. It is against this background that there are unlimited demands for service delivery in the historically disadvantaged communities. (Fitzgerald: 1997).

The white paper on public service transformation outlines a framework within which action should be taken in order to address the problem of service delivery. This is captured in its mission statement that commits the public service to the creation of people centred and people driven public service that is characterised by equity, quality timeousness and a strong code of ethics. (South Africa: White Paper on Transformation of in the Public Service: 1995).

This is a radical shift from the old way of service delivery in government. The crucial element of this declaration is that it puts people first and adheres to the principle of consultation and participative style of governance. Therefore this framework is central in that it recognises the role of the public in service delivery. In this way, a service delivery management function is incorporated into the process of administrative transformation. (Fitzgerald: 1997).

As it has been clearly shown in this study that the constitution outlines the framework within which the public servant is required to perform his \her responsibilities to the public. It further stipulates that services must be provided impartially, fairly, equitably and without bias. (South Africa: Constitution: 1995). It should be mentioned, however, that while South Africa aspire to a society in which people are treated equally, the disparities of the past cannot be left unattended. This means that while the government is not neglecting the historically advantaged communities, concerted efforts are made to improve and uplift the lives of the previously marginalised communities. These communities are viewed, therefore, as the main focus and priority of the government in

its endeavours to redress past imbalances. This further demonstrates government commitment and the public service responsibility to distribute and allocate benefits and services according to the needs of the people until equilibrium is reached and past disparities eliminated.

It is within this context that the constitution preserves from attack “measures designed to achieve the adequate protection and advancement of persons or group or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedom”. (South Africa: Constitution: 1995). This means therefore that programmes such as affirmative action are protected by the constitution and are not regarded as unfair. This is because programmes of this nature are located within the reality of the South African situation. Moreover, they aspire to enable all members of the society to equally benefit from the opportunities afforded by the society.

Over the years, efficiency has been exclusively associated with the corporate sector. It was considered, by and large, to be inappropriate and inapplicable to the public service. However, the degeneration of governance performance all over the world compelled the governments particularly, in the developed countries to revisit their traditional position and institute innovative strategies in order to improve performance and levels of efficiency. (Fitzgerald: 1997).

As a result of these initiatives, efficiency was modified, adjusted and incorporated to suit the conditions of the public service. These international trends did not impact

significantly on South Africa because its past isolated it from the international community and experience. However, the current transformation and restructuring of the public service takes efficiency into the fold, and efforts are made to improve government performance to international standards. It is important to note that efficiency in the public sector is defined as “satisfying the most essential needs of the community to the greatest possible extent in qualitative and terms using the limited resources that are available for this purpose, also involves upholding public accountability, democratic requirements, fairness and reasonableness and supremacy of the legislature”. (Cloete: 1996:81).

It should be mentioned that the mission and vision of the public service have been tailored in such a way that it becomes consistent with the South African constitution. The adopted vision for the public service states that “the government of national unity is committed to continually improve the lives of the people of South Africa through a transformed public service which is representative, coherent, transparent, efficient, effective, accountable and responsive to the needs of all (South Africa White Paper: 1995).

The relationship between the mission and vision of the public service is located within the government’s broader objective of relinquishing the unnecessary bureaucratic chains of command which serves no significant benefit but act as a hindrance to efficient and effective implementation government policies. The essence of the mission and vision of the public service is to put South Africa in line with the tried and tested international norms and standards of governance by improving efficiency and competence in the

public service. The domestic and international experience has shown that “the rule driven culture makes for long drawn out progress, which hamstring officials never to take action, without referring to a rule that says it cannot be done.”(Skweyiya: 1997:08).

The adherents of authoritarian management style have constantly defended the rule driven culture in the public service by pointing out that its strength lies in its capacity to narrow the discretionary scope of the public servants on the implementation of government policies. (Hanekom: 1996). These authoritarian management style fails to recognise, however, that the rigid adherence to the rules perpetuates the inherent weaknesses of bureaucracy like public apathy, red tape, administrative secrecy and compliance that may lead to dysfunctionality and inefficiency. It should be noted that bureaupathology is a universal phenomenon but its impact lies in the extent to which respective governments have established structures and institutions to counter act it. (Hanekom: 1996). Administrative secrecy is largely associated with the authoritarian management style, which the apartheid government employed in its endeavours to emasculate its opponents. The problematic area and weakness of the administrative secrecy is that it alienates the public and prevents it from scrutinising the actions of the government because the decisions are made in a secretive and clandestine fashion. Moreover, “administrative secrecy is incompatible with democracy because it leads to uncertainty and fear on the part of the public.” (Cameron; 1995; 13).

It is also important to note that corruption is not peculiar to administrative secrecy arrangements as officials are not accountable to the public and everything is done behind

closed doors. In this way, administrative secrecy exacerbates the occurrence of corruption in the public service and thus, translates itself into another form of bureaupathology. This means therefore that, more often than not, administrative secrecy creates an iron wall between the government and the public. The gap of which manifest into general public apathy and lack of public interest in the activities of the government. And this lack of public interest in what is happening inside the corridors of parliament provides room for corrupt officials in the system to misuse and plunder public resources for their narrow selfish interests. (Hanekom: 1996).

It should be acknowledged that corruption in the public service is encouraged, among other things, by the unlimited scope of discretion within which the public servant is normally allowed to fulfil her duties and responsibilities coupled by the lack of structures and decisive action to deal with it effectively. The big and unlimited scope of discretion opens a public servant to many forms of mismanagement that cannot be divorced from bureaupathology, such as bribery and nepotism. Therefore, although there is a genuine need for discretionary scope to devolve to lower management levels in the public service in order to improve the standard of efficiency, there has to be limits and proper management structures to constantly guard and monitor this process.

Mechanisms have been introduced to combat and minimise bureaupathology in the system, positive measures have been taken to ensure that the state has control over the public servants in fulfilment of their responsibilities. These measures will hopefully go a long way in ensuring that the public servants realises that his principal duty and

responsibility is to render services to the community he serves equitably and without favouritism. An important development towards the realisation of this goal is the establishment of the Public Protector office with the powers to investigate public complaints and possible misappropriation of state funds and possible misappropriation of state funds and other forms of corrupt practices like bribery, nepotism etc. Furthermore, the office of Auditor-General has been established to ensure that both politicians and the public servants properly account for all the state money in the public service. (Cameron: 1995). Moreover, the government has discarded administrative secrecy and has embraced and adopted the principle of accountability and transparency. These efforts are mainly intended to eliminate public suspicion and encourage accountability and public interest in government activities. Through efforts of this kind, the government is brought closer to public scrutiny and thus, could be made to account for whatever action it takes. (Cameron: 1995).

It is clear that South Africa is determined to secure its place in the increasingly competitive global environment through the restructuring and transformation of the public service. The experience of the past five years tells us that it has resolved to attain this goal through a lean, focused and well managed structure of professional public servants who are committed and capacitated to drive the process of change. The government has correctly diagnosed centralisation of the decision making and administrative arrangements as an impediment to the attainment of the desired levels of efficiency, accessibility and equitable distribution of resources to the public. This is because more often than not, the centralist style perpetuates inflexibility; non-

accountability and rule bound style of management. The white paper on the transformation of the public service further states that "...many managers in the public service feel that their powers to lead and direct the change process in a creative and visionary way are constrained by the rule bound and procedure-laden culture inherited in the past." (South Africa: White Paper on the Transformation in the Public Service: 1995: 45).

As it has been demonstrated, several measures have been taken to correct this situation and ensure the creation of a more transparent, flexible and participative management system. The White Paper sets the framework towards a decentralised managerial responsibility in the public service. This will lead to the increased scope of responsible managerial discretion. As it should be expected, mechanisms have been instituted to ensure that the discretionary powers are not misused by the public servants and achieved at the expense of accountability and demise of public scrutiny. It is important to acknowledge, therefore, that one of the central aims of this new arrangement is to create a bigger room for accountability through a decentralised managerial style. (South Africa: White Paper on Transformation in the Public Service: 1995).

It is important at this stage to demonstrate the manner in which accountability has been infused in the system and the extent to which functions have been tailored and targeted in the public service. Directors-General both in the national and provincial governments have been assigned the responsibility of translating broad policy objectives of the government into achievable strategies. To realise this goal, the focus of the public

servants is being shifted from rigid application of rules to achievement of the set targets. This development will, by and large, accelerate the transformation process in the public service. Because at the end of the day, the Director-General is expected to give full account of the progress made in relation to the set targets and goals for her department or province. In this way, a sense of urgency and responsibility is injected in the senior public servants. This is in line with the assertion that "...the contracts of the Directors- General be tied to the achievement of specific programmes and objectives and targets." (South Africa: White Paper on the Transformation in the Public Service: 1995: 48).

The central objectives of decentralisation and devolution is to improve efficiency and accessibility of the public service as it has been argued so far in this study, as a result, measures ensuring that these developments permeates provinces and reach people on the ground are taken. Directors-General at the provincial governments does not manage individual departments, as it is the case with their counterparts at the national level but run the entire province. The main reason for this arrangement is linked to the territorial scope within which they have to operate and the need to avoid the duplication of tasks. Furthermore, Directors-General at the provincial governments shares their responsibilities with the Premiers, Members of Executive Council and the Provincial Service Commissions. The aim of this is to facilitate Co-operation and ensure accountability. It follows, therefore, that accountability in the public service has not been sacrificed for the autonomy and flexibility of the public servants, on the contrary, the new arrangements have strengthened the relationship and Co-operation between the politicians and public servants at the provincial governments. Equally important, these developments constitute

a crucial part of ensuring that continuity of improved service delivery is sustained at all tiers of government. As a result, governments at the national and provincial levels are required to provide annual and five yearly targets for the delivery of specific services. (Draft White Paper on Public Service Delivery; 1997).

The past political and socio-economic disparities necessitated the democratic government to develop and institute innovative strategies in order to advance and fulfil the needs of the transformation agenda. One of the salient innovative strategies that were developed to correct the past injustices and increase representivity of the historically discriminated groups is affirmative action. The need for affirmative action in the Public Service arise from the fact that for many decades the disabled people women and the blacks were denied access and the opportunity to express their potential in the public service and all other areas of the society. As a it has been shown, these designated groups are under-represented in the positions of power and influence both in the public service and society in general.

All other things being equal, it should be mentioned that although the need for affirmative action has been identified and adopted as a policy instrument to redress past imbalances, the move towards translating this theory into action appears to be disturbingly slow as it has been alluded to in the preceding sections of this study. One of the main reasons for this situation is attributable to the legacy of apartheid and skill deficiency among the victims, which incapacitate the majority of them to assume the strategic positions in the public service. The process is further derailed by the failure of the government to

communicate the objectives of affirmative action effectively in the public service. As a result of this failure, a section of the “old guard” feels threatened by the government’s endeavours to increase representivity. The high levels of fear and uncertainty generate despondency within the public service and encourage some sections to deliberately derail the transformation process. (Dexter: 1996).

It was generally assumed that the change of government in 1994 would automatically change the mindset and attitudes of the old guard. As a result little effort was made to communicate the policy objectives of the new government effectively. This lack of effective communication in the public service creates inadequate understanding of key government goals and objectives and may sometimes even lead to resistance on the part of those who feel threatened. Therefore, there is a need for the government to communicate its policies in an effective fashion to the bureaucrats. This is more important for South Africa given its divided history and the reality that its democracy and administrative structures are not as yet, matured enough to transcend the politics of racial tensions.

It is equally important to mention that policy formulation and implementation in the public service has been characterised by conflicting and sometimes divergent goals. This policy weakness is demonstrated by the government’s attempt to dispel inequity in the public service by increasing representivity of the designated groups while at the same time committed to chopping the public service. This weakness could have a negative bearing on the process because it shifts the priorities of the Public Service from one

direction to another opposing angle. Of course, the process has the potential of achieving efficiency and equity simultaneously but all the same, these goals cannot be fulfilled through contradictory endeavours.

The potential improvement of efficiency and effectiveness in the Public Service is further threatened by the brain drain of the people (particularly white bureaucrats) who know the nuts and bolts of the system. Besides ineffective communication, this brain drain is generated, among other things, by the attractive packages that the government is willing to pay for voluntary retirement in the public service. Although this arrangement is in line with the government's attempts to trim the public service and attain efficiency, the lucrative retirement packages could have been prioritised and confined to the posts that the government intended to freeze so that skills could be transferred and retained in the public service. (Burdill: 1997). Therefore, although affirmative action is a necessary policy tool for achieving equality and equitable distribution of resources made possible by the society, caution has to be employed at all times because it may impact negatively on attaining the same benefits it is striving for. That is, if massive skills are unnecessarily lost to other sectors of the economy or countries before they are transferred and absorbed by the members of the targeted groups.

CHAPTER FIVE

CONCLUSION

The reality of the unique nature of the South African politics demands that caution and sensitivity be applied when instituting programmes such as affirmative action. This means, therefore, that affirmative action has to be applied in a manner that would not lead to massive loss of skills and talent of the experienced public servants. There is a need to relinquish all the punitive and negative elements of affirmative action, which generate the alienation, uncertainty and anguish among the historically privileged groups. This does not suggest, however, that the government has to be apologetic in the institution and application of affirmative action. The main point is that the government should not send wrong and unintended message through programmes such as affirmative action. It should be recalled that, affirmative action is neither intended nor designed to punish young white males for the harm created by past discrimination and apartheid. It is the responsibility of the government and other sectors, therefore, to ensure that the meaning and purpose of affirmative action is not lost to reactionary forces. It is important for the government to conduct workshops within the public service and show the need, significance and objective of affirmative action to the employees.

Of course, the transformation process has been characterised by major hurdles and unanticipated setbacks, but all the same, this is not an unusual phenomenon of a country in transition. A transition from an authoritarian system to a democratic order is usually coupled by a plethora of problems and complications. Comparatively, the overall management of the democratisation and transformation process in South Africa has been handled with caution and sensitivity it deserves. Unlike many countries which had to go

through the same process but were later engulfed into endless internal conflicts, wars against their own people and complete collapse of the public service. To a significant extent, South Africa has managed to contain these problems and has put in place well established institutional mechanisms to ensure non-reversibility of the democratic gains. Moreover, South Africa has managed to instil a sense of optimism about the future of this country among its people through the democratisation and transformation process.

While it is acknowledged that the public service is bloated and the restructuring of the public service has been identified as one of the crucial aspects of the process, the government has realised that the issue is not simply about reducing numbers of the public servants but terminating services which are costly and beneficial to the country such as a large army when the threat of a war against South Africa is almost non-existent. This shows, therefore, that although some people view the restructuring of the public service as South Africa's response to external pressure, the government has managed to use it to the benefit of local programmes and initiatives.

It should be mentioned, however, that time and space has shown that the speculation about the perfect society after Apartheid was not only spacious but also fallacious and dangerous as all other utopian writings have been. The transitional phase which South Africa is still embarking upon has undoubtedly shown that, in the final analyses, only actual historical experience and power politics can provide specific answers to the problems faced by policy makers, strategists and social engineers such as Political Scientists in a given historical situation. This, by any rate, is the conclusion which one comes after many months of pre-occupation with and research on the affirmative action

question in a unique South African situation. Wherein the minority is assigned to affirm the majority.

In actual practice, a silent but conspicuous tension is set up between that which is objectively possible at a given historical moment on the one hand, and the relevant principles which are taken as points of departure by policy makers on the other hand. Put differently, policy makers are not free agents operating in a vacuum, they are constrained by factors such as socio-economic, political or geographic factors. Their own perspectives are often determined by some of these factors. The question of affirmative action continues to be a necessary imperative for South Africa's socio-political situation. But all the same, it will remain to be one of its most controversial issues for many years to come. It has been clearly shown in this study, that some controversial elements of affirmative action are spurious and yet cannot be ignored. For example, the forces within and without the state apparatus, which are keen to stall the transformation process and perpetuate white supremacy mentality.

Furthermore, some of these controversial issues are technical and depicts negligence on the part of the government, such as its failure to institute effective communication mechanisms for the new vision and objectives of the Public Service. This study has shown, however, that the central dimension of affirmative action worthy of the attention of the philosophers, political scientists and other scholars is the implication it entails on different moral approaches. Moreover, the manner in which the tension between affirmative action and the principle of equality of opportunities is viewed and explained by these approaches. More importantly, this study has shown that the institution of

affirmative action in South Africa is morally justifiable and that the society has a moral obligation to undo the harm and redress past imbalances created by immoral discrimination on the victim. The examination of the libertarian and contractarian frameworks shows that the legitimacy of affirmative action in South Africa's current socio-political scenario is morally unobjectionable. However, the deeper scrutiny of these models suggests that the scope within which libertarianism and contractarianism justifies affirmative action is limited and narrow to address the problems created by apartheid and past discrimination in South Africa. As it has been argued, this is largely because the libertarian model does not entail an inherent principle on the employer to institute affirmative action for past injustices. While the contractarian framework attempts to exclude some sections of the previously harmed communities from benefiting in the affirmative action programme such as the well educated. (Rosenfeld: 1999).

The study and investigation of affirmative action in South Africa's public service shows that the pace towards fulfilling the goals of the transformation agenda is disturbingly slow and lacks political decisiveness. This study has shown that the main reason for this perpetual state of affairs is the divergent and sometimes contradictory relationship between the mission of the government to restructure the public service, and its desire to increase representation of the previously marginalised communities in the public sector. This study has further shown that the drastic changes necessitated by the inception of the democratic government in 1994 posed new challenges for the South Africa's public service. All these problems and limitations demanded the restructuring of the public service for the objectives of the transformation agenda to be realised.

Finally, as it has been argued throughout this study, that the transformation and restructuring of the public service is not only a response to the domestic demands and internal malfunctioning of the system. It is also a response to the external forces that placed insurmountable pressure on South Africa to conform to the international norms and standards of running a government, but on the whole, the process has been guided by the reality of the South African situation.

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RECOMMENDATIONS

- The Public Service should retain the broad vision and objective of affirmative action because it is a genuine attempt to correct past injustices and promote equality in South Africa, and is morally unobjectionable.
- The Public Service should reflect the demography of South Africa's population by focusing affirmative action on the training and skilling of the historically disadvantaged groups.
- The recruitment of the new entrants into the Public Service should be made on the basis of merit scouting within the target groups and not solely on the basis of their skin pigmentation, disability and/or gender.
- The contradictory mission of the government to increase representativity of the target groups on the one hand, and downsize the Public Service on the other, should promptly be resolved through the participation of all role players.
- There is an urgent need for the government to institute effective communication mechanisms through which the new vision and goals of the Public Service should be reaffirmed and transmitted.

- South Africa should continue with the restructuring process and employment of the new efficient and effective management styles and abandon the top down and rule driven management style.
- South Africa stands to learn valuable lessons from countries such as the United States, Britain and Canada despite differences between itself and these countries.

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