



Affirmative action: Is South Africa heading down a route which many African Americans are rethinking?

CDE held its 10th debate on 19 May 1998. The speakers were Dr Guy Mhone, Chief Director of Labour Policy in the Department of Labour; Jeffrey L Humber, Jr, Co-CEO, Merrill Lynch Smith Borkum Hare and Ronald T. Gault, Managing Director of J P Morgan. Dawn Mokhobo, Managing Director of MBM Change Agents, chaired the debate.

Introducing the debate, chair Dawn Mokhobo said in the United States affirmative action has been the chief, often exclusive, strategy for including and assimilating minorities and women into the mainstream of the economy. Sometimes companies were spurred by legal requirements, moral beliefs, or a sense of social responsibility - or all three.

Affirmative action programmes grew out of a series of assumptions:

- that the US corporate sector is made up of white males
- that women and minorities were excluded from the mainstream because of widespread racial, ethnic and sexual prejudices, and
- that the exclusion was unnecessary given the strength of the US economy, and contrary to both good public policy and common decency.

Thomas Roosevelt, Jr, points out that historically affirmative action programmes have taken one of three approaches:

- passive (where the corporate sector merely takes the necessary steps to ensure compliance with the law of the land)
- pipeline (which goes beyond legal obligations and the 'pipeline' is grown by encouraging minorities and women to enter occupations key to the organisation; and by developmental programmes)
- upward mobility (where an organisation is motivated by moral considerations. 'Qualified' minorities are attracted and nurtured but are not

truly considered capable of breaking 'through the glass ceiling'. More affirmative action interventions are put in place and more special training is undertaken with the necessary perceived mentoring and fast-tracking systems. In most cases, this too does not break through the ceiling. It simply generates temporary opening through which a limited number of women and minorities can advance.)

Central to the problems associated with affirmative action is that it was never intended to be a permanent tool. Its intent was to fulfil a legal, moral and social responsibility by initiating 'special efforts' to ensure the creation of a diverse workforce and encourage upward mobility for minorities and women.

In South Africa, given our apartheid past, affirmative action has become a central driver of change and equity creation. As in the US, our constitution enshrined equality for all, and corrective measures through affirmative action are to be policed by the Employment Equity Bill.

Interestingly, the affirmative action applied in 1948 to create equity for white Afrikaans-speaking South Africans achieved unbeatable success. Today, the results speak for themselves.

Given that the black disadvantaged are in the majority and this country's economy desperately requires the creation and development of adequate skills and resources, what choices does South Africa have other than to actively pursue effective affirmative action policies driven and policed by the State?

WHAT ARE THE CDE DEBATES?

In 1996 CDE initiated a series of debates on topics of crucial importance to current national policy issues. These constitute a continuous programme. The intention is to air issues underlying the topic and to raise the challenges that must be met by the players and the policy makers. CDE views these debates as a contribution to the formation of an informed public opinion. In this sense they are an educational activity and a service to the community. Following each debate, CDE publishes a pamphlet summarising the event. These are widely distributed and publicised as CDE's contribution to keeping the debate alive.

What the speakers had to say...

Ronald Gault said the title of the debate could be asked of all people looking at how best to redress discrimination based on race, national origin, ethnicity, religion, sex, disability or life style. However, in the US the question has come to focus on race.

America has not achieved perfection in its quest for a solution to the poisonous legacy of slavery and racial discrimination. Judicial and legislative changes have improved the lot of African Americans since 1865. During the civil rights era, significant gains were made to promote racial justice and parity for all, but by the late 1960s, it became clear that anti-discrimination statutes alone were not enough to break long-standing patterns of discrimination and institutional racism.

Affirmative action was devised as an instrument, a process, to address directly the need to correct past injustices and assure black Americans of a fair chance in employment, education and business. The Civil Rights Act of 1964 was intended to end discrimination by large private employers and government. Lyndon Johnson saw the enactment of this bill as one of his most significant accomplishments in a long political life.

As programmes took shape, a national debate started almost immediately about what some considered a flawed concept and its inept implementation. It appears that there is a consensus today among Americans - black and white - that there are flaws in the existing framework of affirmative action that need to be fixed.

Three milestones in the history of affirmative action provide a backdrop for much of today's thinking in the US on the topic.

- the Bakke case of 1978 in which the Supreme Court, in a splintered decision, declared illegal the University of California at Davis medical school's decision to reserve 16 places for qualified minority candidates in the absence of proof of past discrimination. The University of California's system once stood as a prototype for its inclusion of minorities and in particular black Americans. Today, minority enrollment in the most competitive public universities has declined sharply rolling back the gains made in the past. This legal decision raised the decibel level of the affirmative action debate.
- almost a decade later, a second area of focus emerged when the Supreme Court ruled for J A Croson Company in its legal battle against a Richmond, Virginia, ordinance which required prime contractors which received city contracts to subcontract at least 30% of the dollar amount to businesses owned and controlled by specified racial and ethnic minority groups. The court said affirmative action was a 'highly suspect tool' but justified its use for pursuing certain important goals under 'strict judicial scrutiny'. The court ruled that the legacy of past discrimination 'cannot justify a rigid racial quota in the awarding of public contracts in Richmond'.
- in the mid 1990s, one of the most visible campaigns of the decade was launched in California. Ward Connerly, a University of California Regent and an African American, led a state-wide effort to eliminate affirmative action laws governing the admission practices of public colleges and universities. This led the UC Board of Regents to ban affirmative action in 1995 and ultimately to the passage of Proposition 209 which eliminated all affirmative action programmes in the state of California in November 1996.

All efforts - court cases, university admissions programmes, government set asides - have had their proponents and opponents. There is no monolithic black community in the US. There are many black Americans who feel that affirmative action in all of its facets is not the way to improve the lot of disadvantaged black Americans.

Affirmative action, as we have come to know it in the last 30 years, has had a series of peaks and valleys. A lot of serious thought is being directed at how to strengthen affirmative action and build on the gains that have been so important to many black Americans.

President Clinton, months before his re-election campaign for a second term, withstood an onslaught from foes arguing that he dismantle the affirmative action machinery of the US government. Instead, and rightly so, he called for a thorough review of government practices on an agency by agency basis. Following the submission of a lengthy and thoughtful review by senior staff, President Clinton concluded that aspects of affirmative action were flawed and needed fixing. If the system is broken, he said to those arguing that affirmative action be totally discarded, we should mend it, not throw it away.

Obviously these developments have relevance to me as a black American. But as the Managing Director of J P Morgan in South Africa, they also have relevance to what we are attempting to do as a firm. At J P Morgan we have taken the good intentions of affirmative action and crafted a diversity initiative in which targets and goals are established on a business to business basis where managers are held accountable. We see this effort as a business imperative here and elsewhere throughout the world in our global business. Promoting diversity makes good business sense.

Is this an answer for everyone? Each person must answer that question for himself. For now, it is a broad blanket of diversity which focuses on the development of people and on the core values of respect and professional integrity that will serve as a J P Morgan prescription for doing the right thing for all who are part of the Morgan family and its clients.

How does all of this square up against affirmative action? In the end, both represent pro-active measures along a continuum to remove the harmful effects of racial discrimination and promote parity for all people.

Jeff Humber posed the question: is affirmative action necessary for the US and South Africa? In America it absolutely was and continues to be. While there is a healthy debate in the US at present on how much is enough, no reasonable person will argue that a government which imposed a limitation on its people then has a responsibility for both lifting and correcting those limitations.

After 15 months in South Africa, one can see that this country needs something to bridge the gap. There are couple of dangers, given the title of this debate. First, are America and South Africa comparable? Yes and no. Both countries suffered statutory racial discrimination. The disparity and the inequity of treatment ended at different points in each country's history. In the US there was a fairly stable and sound black middle class and a relatively comparable education system in schools and universities.

There is a difference in the magnitude of the problem. In the US, black Americans are in the minority - 30 million amongst 300 million - in a very prosperous country. Even given the income disparity, America's poor and middle class are better off than those of many developing countries. The laws of limitation in the US in the 1950s and 1960s were not as strict as those of apartheid, and so progress in the US has taken substantively greater corrective action. The sheer numbers in South Africa are amazing. The problems of making equity work are far more difficult when the disadvantaged are in the majority.

Why did the US need affirmative action? To close the gap in culture, education and acceptance between blacks and whites. The goals for South Africa will be similar. Affirmative action has worked substantially well in the US over its 30 year history, but it has not worked well enough. Equity has not been reached, but the general acceptance of African Americans in the social and economic fabrics of US society is substantially higher today than it was in the 1960s. However, the disparity within the black American sector - between its middle class and poor - has grown in the past 10 to 15 years.

Affirmative action can only exist with the support of the majority in our country. Without that it is not going to

“Affirmative action distracts attention from more important programmes that will benefit more than a small black elite”



work. It has worked reasonably well with individual and institutional support in government and education, but less well in the corporate sector above the blue collar level.

Must South Africa follow suit? This is similar to the question about democracy being a good system. The answer given is that affirmative action is the worst system of all except all others.

The one criticism of affirmative action that is valid is that it continues the focus on the issue of race. There is a general perception when a black American is given the job that this is because of the affirmative action programme. Would I trade that off for my job? No. I am where I am because of the development programmes afforded me. I would not trade one item on my long resume for a country that does not think about race. Affirmative action is the worst of all systems except for all others.

Dr Guy Mhone explained some of the points made by the Department of Labour as the proponent of the Employment Equity Bill. Affirmative action, he said, is seen as a means of achieving employment equity. It is a process whereby disadvantages, and particular situations where individuals have been compromised, can be addressed.

There exist in South Africa two negative perceptions of the proposed Bill. The first is where any audience is divided into one group which views the proposals as beneficiaries of past discrimination, and a second which sees them as bearing the burden of the actions of their forefathers. These perceptions lead to immediate polarisation and a degeneration of the affirmative action debate - men against women, blacks against whites.

The second perception is of zero sum gain. During a time of economic growth, affirmative action can be pursued at no specific cost to the advantaged group. However, if an economy is static and if job creation is stagnant, the issue becomes a zero sum gain. This, too, raises emotions

and again it becomes difficult to debate the issue of affirmative action rationally.

The Employment Equity Bill addresses discrimination only within employment and not within the labour market as a whole. It does not resolve discrimination elsewhere. The Bill is not a policy for structural transformation nor for economic empowerment. The affirmative action being proposed within its confines is not sufficient to deal with the national issues at stake.

There are basically two types of discrimination in our country - pre-labour market and formal labour market. Pre-labour market discrimination covers historical factors which have underpinned 'disadvantagedness' - unequal access to assets, financial credit, economic opportunity and human resource development, dispossession of land and solid social capital (family structure, human relations and community life which were devastated by racial discrimination). This pre-labour market discrimination continues to produce unequal outcomes in the labour market. These basic human rights and needs are not being addressed through affirmative action. Opponents of affirmative action who support employment equity must demonstrate how to resolve pre-labour market discrimination.

Within the internal labour market, there are several forms of discrimination. Labour force participation induced by the structural features of pre-labour market discrimination remains, so does central and occupational allocation of labour in terms of recruitment, promotion and training. This internal discrimination coupled to the pre-labour market discrimination produces a vicious cycle regardless of the wishes of any individual. Affirmative action addresses only one small element of this: discrimination in the internal labour market.

If the current proposals on affirmative action are not acceptable, what is? What South Africa really needs is affirmative action on structural transformation; empowerment and upliftment for the majority of its people who have been dispossessed and disadvantaged.

Points raised during open discussion...

- In South Africa, affirmative action is, and must be, a politically driven necessity. Placing a few blacks in boardrooms will never alter the fundamentally iniquitous power relations, ownership or control. It is necessary in the short term to create many change agents, allowing the disadvantaged the opportunity to catch up. The political environment has changed, and those who believed that blacks do not have the capacity to govern have been shocked by both the levels of competence and tolerance shown by the new political masters. This realisation is not happening in the business sector. There the snail's pace of change is exemplified by the inability of the Black Management Forum to award any company with a Best Employer Practices award in 1997. Let us hope that it will not be necessary to apply quotas in South Africa, that Africans in particular will be accepted as meaningful business participants and that one of the most unequal societies in the world will change without coercion.
- Are there alternatives to the present system of affirmative action in the US? Who were the presiding judges in the cases cited by Mr Gault?
- The progress of Afrikaans-speaking whites after World War II should not be cited as an example of affirmative action; it was blatant racism. And racism is what today's affirmative action programmes are moving away from. Competence is part and parcel of affirmative action. Obviously, a growing economy would be a huge boost.
- It is crucial that affirmative action focuses on race. It has to. If it does not, South Africa will not have equity. We must concentrate on race until we reach a critical mass at various levels in various occupations. The question is when will we reach this critical mass?
- Affirmative action is a recognition of potential. In the past it was not potential that was recognised, but race. As a result, South Africa began to breed a culture of mediocrity. If affirmative action is to be the enabling process envisaged by the speakers, it is the institutions and the structures that will have to be addressed. Remember, too, the allusion to imposing affirmative action in a stagnant economy. History has shown that

the elite seldom give up privileges.

Mr Humber reiterated that whatever the negative results of affirmative action, few would trade off its positives in return. Probably the greatest movement in the civil rights campaign has come through a combination of legislation and very aggressive enforcement by judges, both black and white. Without the federal judiciary, affirmative action as we know it would not exist. However, federal judges are appointed by the President. If a president is pro-affirmative action, so too will the judges be. Affirmative action ought to focus on the disadvantaged, not on race. In reality they are about the same thing. In a growing, expanding economy, you may be able to construct a win-win reality, Whether you can construct it psychologically is another matter. In a stagnant economy, someone will lose.

Mr Gault said a lightning rod for critical discussion in the US is quotas. When affirmative action was initially mooted in the US, proponents talked of goals and timetables. Critics, however, quickly focused on goals as quotas and many of those implementing affirmative action programmes were unable to fend off this criticism. This created an unwelcome stigma. Parity has unfortunately broken down into racial terms; the emphasis should have remained on economic parity.

Dr Mhone said South Africans tended to exaggerate the notion of affirmative action; it is not the key solution to the fundamental problems facing the country. Training and human resource development is of utmost importance yet South Africa does not have an affirmative action programme in this area. Nor is there any affirmative intervention in the social spheres of education and family life. The present affirmative action programme will benefit only a small group of people. The real affirmative action we need has to do with the vast numbers of unemployed.

- There are unintended consequences to the proposed Employment Equity Bill: it is going to affect overseas investment in this country. As a potential investor, would you consider coming to a country which demands an annual progress report on bringing the demographics of your company in line with those laid down in the new Bill?



- There seems to be a trend among big business to employ foreign blacks rather than to train and develop local people.
- Is there to be a trade off between efficiency and economic growth on the one hand and affirmative action on the other? Perhaps South Africa is implementing its affirmative action programme too quickly.

Mr Humber said that the Bill was going to make his management task more difficult. South Africa is to be admired for what it is trying to do, but the country has reentered the global economy at a time when there is incredible competition for the same off-shore dollars. Dollars are looking for the cheapest and least difficult places in which to operate. South Africa's chief competitors are China, Korea and India. The good news for South Africa is that many of those places are falling apart politically. The bad news is that many are willing to operate in a way that South Africa is not. This may be admirable, but money will chase the easiest course.

Mr Humber said his company's policy is to employ black South Africans above importing African Americans. South Africa, he said, had a huge task trying to balance the interests of its various groupings. In governmental and corporate policy, a way has to be found to advance the disadvantaged seemingly at no cost to the advantaged in a time period during which the disadvantaged will not become impatient and at a rate that will not scare off the advantaged. This balancing act may determine South Africa's future. It is essential that white talent remain in South Africa. At the same time it is essential that those disadvantaged by past government legislation be advanced as quickly as possible.

Mr Gault said labour market flexibility, along with safety and security, available amenities, and so on, are issues considered by foreign investors. The Bill is a hurdle. How will it be weighed against other issues? If investors come up with a collective negative, then this will have an impact on foreign investment.

Dr Mahone said the efficiency/equity trade-off is important for two

reasons: South Africans cannot assume that employees already in place are efficient nor can they assume that blacks being promoted are inefficient. The country had to consider proactive measures to make affirmative action work. One element is to ensure that people being considered are given every opportunity and facility to realise their potential.

- One of the most powerful arguments against affirmative action is that too much time and effort is spent on the upper echelons of previously disadvantaged groups. These are people that will progress anyway once the society changes. What is needed is to deal with the majority of the disadvantaged population and make sure, for instance, that the schooling system works. South Africa needs to establish priorities. Affirmative action distracts attention from more important programmes that will benefit more than a small black elite.
- There is no infrastructure to accommodate a true affirmative action programme in South Africa. What legislation is being put in place to sort this out?
- South Africa needs a comprehensive approach which will include the disabled.
- If proposed legislation on affirmative action is in any way seen as racist, it will lead to a flood of legal challenges, some of which may end up in the constitutional court.

Dr Mahone said there is no Green Paper on affirmative action alone. Rather, discussion papers have informed the current Bill which also addresses the employment of disabled people. However, an affirmative action document has been issued by the public service.

Mr Humber said huge resources are required to deal with all issues related to affirmative action. Government alone should not set the priorities. Sectors such as business must be included. Yes, this issue will be fought in the courts and the success of affirmative action will depend on what is won or lost in the courtroom.

Concluding remarks by chair Dawn Mokhobo

The debate has stressed the point that South Africa needs to look for specific solutions to its particular problem. Too much time is spent comparing our situation with that in the US. While there are lessons to be learned from the rest of the world, South Africa's energies and resources have to be spent

creating resources for this country. We need to prioritise what discussions should be taking place between the public and private sectors. If affirmative action is a route to developing resources, then all debate in this direction is to be encouraged.



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