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ASSESSMENT OF THE MORAL PERMISSIBILITY OF THE RACIAL QUOTA SYSTEM IN SOUTH AFRICAN SPORT

by

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A Research Report submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Arts

Applied Ethics for Professionals

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ABSTRACT

In many countries competitive, professional and international sport selection is based primarily on athletic merit and ability. In South Africa, this is not always the case. This paper delves into the practice of the racial quota system as used in South African sport and attempts to clear the morally muddy water and answer the question: is the use of the quota system as a means to racially transform competitive sport in South Africa morally permissible? I do this by taking a look at four widely used arguments that are in favour of the racial quota system to determine if any of these arguments defeat my initial premise which is that competitive, professional and international sport selection should be based on merit-only.

DECLARATION

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts, Applied Ethics for Professionals, in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.



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983763

14th day of March, 2018

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1. INTRODUCTION

The implementation or suggested use of racial quotas in South African sport has been at the vanguard of many a moral and political debate over the last 20 odd years of democracy in South Africa. The subject seems a highly emotional one that creates significant volumes of debate and discussion in the public domain. One only has to look in the comment section of any local newspaper or online news portal when an article has been written on the quota system to see the conflicting emotions, feelings and opinions expressed towards the practice. Just recently, an article on a South African cricketer who has gone on to ply his professional trade overseas since 'an uncertain future in South Africa and Cricket South Africa's quota system'[1] has forced him to reconsider his international career back home, garnered over 1900 comments alone. Most of these comments are responses from people who either ethically agree or disagree with the quota system. This paper will delve into the practice of the racial quota system and attempt to clear this morally muddy water and answer the question: is the use of the quota system as a means to racially transform competitive sport in South Africa morally permissible?

In what follows I will make a case for merit-only based selection in competitive sport in general including both professional and international sport. These arguments will revolve around the ideas that a merit-only selection system is the only selection process that firstly, reflects the nature of competitive sport. Secondly, such a system respects individual sportspersons 'personhood' and allows them to flourish as people. Moreover, thirdly, the system upholds the premise of both professional sport, as a competitive game played for commercial value and international sport, as a game played between the 'best' of one nation versus the 'best' of another.

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[1] Anonymous, 2015. 'Roelof: Quotas played role in leaving SA', *Sports24,* 6 July, http://www.sport24.co.za/Cricket/Roelof-Quotas-played-role-in-leaving-SA-20150706, (accessed: 29 July 2015).

Next, I take a historical look at how sport was affected in apartheid South Africa, and the ongoing legacy apartheid has left behind. The paper then delves further into what racial quotas are and what they are meant to achieve. This will furthermore include a look at how the quota system is used and how South African sports bodies apply them. By this time I hope to have convinced the reader that there is indeed a moral need to transform professional and international sport, and the question then at hand is, are there any good arguments for the use of the quota system that trump the need for a merit-only based selection process in competitive sport.

To do this, I will look at four arguments for the quota system, namely quota selections as compensation, quota selections for role models, quota selections as representivity and quota selections for overcoming prejudice and bias. In the end, I hope to convince the reader that none of these four arguments used in favour of the racial quota system defeats the presumption in favour of competitive, professional and international sports teams and individuals being selected on merit-only.

2. A CASE FOR MERIT-ONLY SELECTION

Simon argues that sport and 'competition in sports is supposed to be a test of the athletic ability of persons'.[2] If it is not a test of athletic ability, then it is a social game without competition. Competitive sport in its premise sets out to find a winner; it is a competition and therefore at its core it is a test of athletic ability. This competitive nature would automatically mean that selection has to reflect this.

I am of the opinion that selectors or selection panels in competitive sport have a moral duty then 'to, first and foremost, treat individuals based on their merits',[3] to preserve the

[2] R. Simon, 'Deserving to be Lucky: Reflections on the role of luck and desert in Sports', *Journal of the Philosophy of Sport*, vol. 34, no. 1, 2007, pp. 13-24, p. 13.
[3] A. Altman, 'Discrimination', *The Stanford Encyclopedia of Philosophy*, Winter 2016, pp. 1-29, p. 14, E. Zalta (ed.), https://plato.stanford.edu/archives/win2016/entries/discrimination/, (accessed 20 August 2017).

competitive nature of the sport. If we are not selecting athletes on their athletic ability, then we are disregarding the very nature of the competition.

Besides the fact that selection on something other than merit would go against the nature of competitive sport, it also begins to treat sportspersons as less than autonomous persons who have the right to fairness and flourishing. This is a common idea argued by many, not only in sport selection but in hiring in general. S Hook, for example, argues that all hiring should first be based on who is best qualified for the post[4] as this is fair to all who apply. Goldman agrees, asserting that 'the most competent individuals have prima facie rights to positions'.[5] The basic idea is that the racial quota system could be seen as unfair because it does not use merit and sporting competence only in selection and thus does not treat people as individuals based on their sporting skill. It fails to treat individuals with 'equal moral status as persons'[6] and is, therefore, unfair discrimination. The essential wrong of discrimination, some believe, is that it seems to 'violate the equal moral status of persons by treating a victim in ways that would be appropriate only for individuals having a diminished or degraded moral status or personhood.'[7]

The relation then to sport is that it could be argued that sport can be seen as a fulfilment of one's personhood. Sport, according to Simon, expresses the core qualities of personhood and helps persons find fulfilment in participation in sport.[8] Moreover, if it is the case that it is morally correct for:

> individuals to be treated as persons such that it is appropriate for them to find fulfilment and satisfaction through their actions, characteristics we regard as central to their personhoods, such as character and choices, must be

[4] S. Hook, 'Reverse Discrimination', in A. Altman, 'Discrimination', *The Stanford Encyclopedia of Philosophy*, Winter 2016, pp. 1-29, p. 14, E. Zalta (ed.), (accessed 20 August 2017).
[5] A. Goldman, 'Justice and reverse Discrimination', in A. Altman, 'Discrimination', *The Stanford Encyclopedia of Philosophy*, Winter 2016, pp. 1-19, p. 15, E. Zalta (ed.), available from: https://plato.stanford.edu/archives/win2016/entries/discrimination/, (accessed 20 August 2017).
[6] Altman, 'Discrimination'. p.17.
[7] Ibi, p.17.
[8] Simon, 'Deserving to be Lucky', p. 22.

> attributed to the person. Thus, our voluntary actions reflect our status as persons and are not events that merely happen to us. The practice of assigning deserts according to merit is an important way of assigning weight to those central characteristics of personhood and so is justifiable by reference to the ethical importance of that assignment.[9]

So, Simon is saying that sport has a value of its own. Through sport we 'express our nature as persons when we freely attempt to meet challenges for their own sake and exercise deep human capacities in doing so.'[10] If we do not allow persons to do this, we treat that person as having a diminished moral status.

When we select players not on merit but race, we neglect to select them on the fair basis that allows them 'self-respect, fulfilment and mutual acknowledgement of our status as persons'.[11]

What attracts me to this argument is that there is moral strength in thinking that if a player has worked many years on defining her or himself as an athlete, they have worked to use their natural athletic talent and honed it into a skill that can help them compete at a competitive level. The quota system would then at the moment of selection convey to that individual that they cannot fulfil these skills they have worked so hard to acquire and they are not allowed to participate in competitive sport because they are the 'wrong' race. This then seems unfair to the person who has worked hard at self-fulfillment. They do not get to fulfil their potential and reap the benefit of their hard work. They do not get to fulfil their 'nature as a person', and it fails to allow them the capacity to do so. Their human capacity and flourishing are taken away from them on the grounds of their race, not by something measurable like merit.

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[9] Ibid, p. 22.
[10] Ibid, p. 24.
[11] Ibid, p. 22.

This denial of one's personhood I believe is unfair discrimination and can only be done in cases where the individual deserves the removal of such personhood. This should only apply in cases, for example, where a person is punished for unethical behaviour or unethical conduct. In the South African context, I will argue that almost all sports people affected by the quota system of selection did not participate in unethical behaviour or conduct and therefore should not be punished by having their personhood denied; they should instead be selected on merit as a central characteristic of personhood as a sports person.

So for competitive sport selection to remain fair to the individuals that participate in it, it has to select players on their abilities and reward those that fare better and are best qualified at the game or sport with positions in sports teams. However, could it not be the case that this type of selection could be very challenging? Is it not challenging to decide who is best qualified and who, based on merit, deserves to be in specific positions? In cases like law and the hiring of lawyers, this could be vague, and it could be a very complicated process attempting to attach weight and merit to specific criteria. Who is the 'best or most deserving' in situations like this could be challenging?[12] Sport, however, I believe is a lot simpler. In many sports one can simply search for the top athletes in a particular field and based on achievement, you will be able to identify who these athletes are. In other sports where criteria is a little more complicated, I still guarantee that you would get far more consensus among coaches and selectors when you determining, for example, who the best 50 cricket players in the world are, than you would when asking industry professionals to rate lawyers or accountants. So deciding who is the best and most deserving of a place in a team based on merit in sport is a far easier exercise than in many other cases.

[12] Altman, 'Discrimination'.p.15.

Selection on merit in professional sport is not only a case of fairness as discussed above, it is also a case of utility and a core tenant of professional sport. The outcome in professional sport is primarily that of entertainment. The economic success and value lie in its ability to entertain spectators and fans. Louw calls this type of entertainment the 'interest in uncertain outcomes of the sporting event'.[13] He says 'this uncertainty revolves around the competitive nature of the sport, and the spectator is interested in seeing not only how the game is played, but also who will win'[14]. Professional sport is then a performance-based industry where winning for the sake of entertainment, which in turn generates revenue, is the professional sports scenes central premise. Without this factor, professional sport will not be professional, it is professional because it generates revenue. Moreover, revenue generation is based on performance. One has to ask the question, what would happen to professional sport if merit was not a factor in selection? In principle, this could occur in a quota-based system of selection. The entertainment level would drop because the teams would not be as competitive as they could have been.

An example of where performance affected revenue is, in 2007, when the Blue Bulls rugby team won the Super Rugby competition, they had just over a million people come through the gates at their stadium in Pretoria for that Super Rugby season. In 2013 when the Blue Bulls rugby team ended up second on the log, losing four home games, the attendance dropped to 485,154 people through the gates. In the next year when they came ninth overall in Super Rugby, attendance had fallen to a further 427, 026 people through the gates. These attendance figures were a 13-year low for the union. When asked of how to rectify the problem, Wynand Claassen, a former Springbok captain and chairman of the Bulls' ex-players' union, said that 'the only way to bring back the

[13] A. Louw, 'The return of racial quotas in South African Sport', *World Sports Law Report*, vol. 12, no. 2, 2014, p.5.
[14] Ibid, p.5.

supporters is to start winning matches'.[15] These attendance figures show that the business of professional sport is linked directly to performance. So with winning or competitiveness as a chosen outcome, the selection criteria need to be based on sporting merit and performance, skills, ability and form. 'Sporting merit is therefore central to the competitive value of the match' says Louw 'and thus the resultant financial success or failure of the business involved'[16]. Merit determines the outcome and entertainment value of the professional game and is the cornerstone of the business. So teams must look for the best players to continue to entertain at the highest possible standard. That means the best player has the right to a position in a team where you are looking for the best players. Selection linked to something else, for example where race is used over merit, would go against the very tenant of professional sport and devalue its essence.

Finally and because the quota system is used in the selection of South African national sports sides, I want to discuss merit-only selection in terms of international sport as a basic tenant of these types of sporting interactions.

To do this, I have used Farland and Jennings'[17] advice who started by looking at the history of international sport. In particular, they looked at the history of international cricket.

> Nationalism intersected with the cricketing world rather late, in that it only became clear towards the end of the nineteenth century that a non-English nation – in this case, Australia – might be able to field a cricket side strong enough to defeat the best that England had to offer. The new dimension that clashes between the best. Englishmen and the best Australians brought to

[15] Anonymous, 'Loftus attendance hits record low', *Rugga World*, 13 January 2015, http://www.ruggaworld.com/2015/01/13/loftus-attendance-hits-record-lows/, (accessed 15 August 2017).
[16] Louw, 'The return of racial quotas in South African Sport', p.5.
[17] D. Farland and I. Jennings, 'Cricket and Representivity. The case of race quotas in Team Selection', *Sport in Society: Cultures, Commerce, Media, Politics,* vol. 10, no. 5, 2007, pp. 818-839, p.836.

> cricket generated an enormous amount of interest and enthusiasm, and, naturally, this enthusiasm took a good deal of its strength from patriotic or nationalist sentiment.[18]

The reason for this enormous interest and enthusiasm was mainly two-fold; one that players who took the field were a result of 'a winnowing process which had gone through a number of stages and which therefore represented the cream of the crop of players'.[19] Secondly, that 'an enormous pride was at stake. 'Our' team took the field, on an emotionally charged occasion to show what 'we' as a nation could do'[20]. So Farland and Jennings stated that 'under these circumstances, putting anything less than the strongest possible side onto the field would have been unthinkable. It would have constituted a show of disrespect to the opponents, not to mention the fact that it would have run the risk of national humiliation'[21].

I believe this is still true for modern-day international sport, which is also now mainly played by professional sportspeople. So if we couple national pride with the ideas expressed above regarding professional sport and its commercial viability, we get a sport that thrives on its competitive nature. A sport that thrives on putting the best up against the best in a bid to test the athletic ability of a 'nation'.

If selection for international sports teams is not based on merit-only criteria, it can end up being uncompetitive and lose its appeal to professionalism and nationalism (national pride). Farland and Jennings believe that 'if they put players on the field in virtue of their having the right skin colour as opposed to displaying the requisite sporting abilities, this will lead to unrepresentative sides, in that they do not consist of the strongest available

[18] Ibid, p. 821.
[19] Ibid, p. 822.
[20] Ibid, p. 822.
[21] Ibid, p. 822.

combination of players of a particular nationality, and thus damage the sporting contest.'[22] Moreover, this then corrupts the nature of international sport.

So, in summary, I believe a merit-only based selection is the only selection process that first reflects the nature of competitive sport; secondly, that respects individual sportspersons' 'personhood' and allows them to flourish as people; and thirdly, that upholds the premise of both professional sports, as a competitive game played for commercial value and international sport as a game played between the 'best' of one nation versus the 'best' of another.

The reality is, however, that merit is not the only selection criteria used in South Africa to select professional and international teams. The sordid history of radicalised sport has given rise to a racial quota-based selection criteria that considers race. So let us look at why the South African government wants to, and in my opinion, needs to transform sport in the first place.

3. OUR HISTORY

In his historical account of South African sport, Nauright[23] in *Sport, Cultures and Identities in South Africa* states that to begin to understand the history of South African sport, we have to start at the imperial era and in this particular example, he looks at Imperial cricket. Cricket was founded on and 'developed into a complex system of selection based on bodily presence and deportment that defined civilised behaviour', a civilised behaviour it seemed that only the British could master.[24] Will Whittam articulates well this strange British notion in *Modern Cricket and Other Sports*; he says 'No German, Frenchman, or Fijee can ever master cricket, sir because they have not got the pluck to stand before the

[22] Ibid, p. 823.
[23] J. Nauright, *Sport, Culture and Identities in South Africa*, London, Leister University Press, 1998.
[24] Ibid, p. 28.

wicket, sir'.[25] It was upon this background that Africans educated on British mission stations quickly adopted the game to prove respectability and status to the British. In the late nineteenth century, however, the idea of racial equality began to wane among British imperialists[26], so they invented a host of new signifiers for black bodies:

> 'child', 'native', 'bare-footed non-Europeans' – these were used to justify the exclusion of Africans from gentlemanly British playing fields. The only exceptions were ' ground boys', the 'Sixpences' and 'Jim Fishes', who rolled up the mats.[27]

The Afrikaners, as Booth explains, during this time challenged the British notion of sport, mainly through rugby. 'Afrikaners seised on rugby to demonstrate their ruggedness, endurance, forcefulness and determination'.[28]

Afrikaner nationalists:

> demanded discipline; they wanted men willing to subordinate their bodies to the demands of coaches, to control…urges that might lead to racial mixing or sexual activity outside marriage, and to display a public air of superiority in bodily relations with blacks.[29]

In these two examples, we can see how imperialists used sport in South Africa, attempting to show that different racial groups were physically and mentally inferior to themselves. White imperialists believed they were superior to black people and sport (mainly cricket and rugby) was used as one of the ways to attempt to justify this sort of thinking.

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[25] J. Nauright, *Sport, Culture and Identities in South Africa*, London, Leister University Press, 1998, p.28.
[26] D. Booth, 'Reviewed work: Sport, Cultures and identities in South Africa by John Nauright', *The Journal of Modern African Studies,* vol. 38, no.1, 2000, p. 145.
[27] Nauright, *Sport, Culture and Identities in South Africa*, p.35.
[28] Ibid, p.87.
[29] Ibid, p.87.

Later on, the apartheid regime furthermore embellished and elaborated racial segregation in sport. Prime Minister Vorster decreed that 'non-white'[30] sports people could not represent 'white' South Africa in international sport.[31] Many sporting codes became a symbol of supposed white superiority. 'The rest of the population was deprived of access to suitable sports facilities. South African sport or at least competitive sports reflected the power and privilege of the white population, as well as the inequalities that existed between males and females in all racial groups.'[32] These are the words of S Ndlovu, Olympic gold medallist, after being asked about the state of South African sport when he was growing up. His reflections are an accurate account of the unhealthy state sport was in during the apartheid years. Multiracial sport was outlawed[33] in South Africa, not only in participation but also in the opportunity for different races to come together and support and watch sports. This legal clampdown was instructed by the government as detailed in *The Group Areas Act* of 1950.[34]

Sport in the white communities was a symbol of white, male superiority. In Indian and coloured areas, there were fewer resources for sports, most of which were used by men. For black South Africans, facilities in the townships were impoverished and generally only catered for soccer.[35]

An example of how this segregation affected competitive sport can be seen in the racial makeup of the 1995 IRB Rugby World Cup-winning South African side. It is important to note that at the time legislation allowed for this team to be chosen from all racial groups

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[30] I understand that the term 'non-white' is possibly vexed and problematic. And can be seen to reinforce the superiority of 'whiteness'. My intention in using the term is purely as a means to help define racial categories as used by the Apartheid government. In its use I recognize that all other groups than white people were discriminated against in apartheid South Africa.
[31] Booth, 'Reviewed work', p.145.
[32] S. Ndlovu, 'Transformation in Sport – The Debate rows on', *Think Sport* 2, 2013, pp. 101-103, p.101.
[33] De Facto through different pieces of legislation, but not De Jure.
[34] K. Buchanan, 'Rugby, Apartheid, and the Law', *Library of Congress*, 8 January 2015, pp. 1-3, p.3, http://blogs.loc.gov/law/2014/01/rugby-apartheid-and-the-law/, (accessed 21 July 2015).
[35] S. Robert, 'Race, Gender and Sport in Post-Apartheid South Africa', *The Sport Journal*, 8 September 2005, http://thesportjournal.org/article/race-gender-and-sport-in-post-apartheid-south-africa/, (accessed: 21 July 2015).

within South Africa. This side only had one ‘non-white’ player in its entire squad of 22 players. In a country of 40 odd million black people, this rugby team is a perfect example of the privileged white exclusivity that sport ‘enjoyed' during apartheid.

So in short, black, coloured and Indian sports people, like all individuals in these racial groups, were unfairly discriminated against under the apartheid regime in South Africa. They were prejudiced and not given the same fundamental human rights to participate and earn a living in South African sport as white people were. It was a tremendous human injustice that stole opportunity away from those who could have benefitted with high reward from participating in sport.

It is against this backdrop that we can understand why the post-apartheid government has endeavoured to transform competitive professional and international sport: to make it equal, inclusive and representative of a new democratic society. There is no doubt that coming from this background of systemic and deliberate wrongful discrimination against specific racial groups in South Africa, means that it is not only morally permissible but also morally obligatory for us as a South African society to want to create an equal, inclusive and new representative democratic society. This means an equal society that is reflected in equality and fairness in its professional and amateur sporting bodies both on and off the sports fields. I also believe that this means trying to rectify and compensate for some of the wrongs of yesteryear. It is not my interest, however, to argue or delve into how this is possible. Instead, I am interested in looking at the moral permissibility of the particular ‘tool' that has been used to create this transformation.

We begin, for contextual ease, by defining what the racial quota system is.

4. DEFINITION OF THE QUOTA SYSTEM

The South African government has set about deliberately trying to transform sport in South Africa racially. How and why they plan to do this can be seen in *The Transformation*

Charter as presented to Parliament in 2004 and later on in 2012 by The Sports and Recreation Committee. The object of this transformation is to :

> engage South African society on the broadest possible basis in such a way that it impacts the quality of life within communities through the fun, entertainment and competitive characteristics of sport. This will expose the nation on a broader basis to the full extent of the socially based benefits of sport. At the same time, the skill base required to breed supremacy over sporting rivals will be developed.[36]

To achieve this, the Government proposed a process of:

> guided benchmarks, aimed at achieving and maintaining equitable access to facilities, competition opportunities and high-performance training through the dual application of the principles of universality and merit with a deliberate bias towards previously disadvantaged groups such as blacks, women and the disabled so as to put South African sport on a sustainable growth path.[37]

The specific process or tool we are concentrating on in this paper, the quota system, falls under the umbrella term in the above definition as 'universality' and 'deliberate bias'.

The racial quota system can be crudely defined as a system which sets fixed benchmarks of the number of players from a particular ethnic group that needs to be included in a team at any one time. So plainly put, in South African terms, 'it is a policy which requires a certain number of players of colour to be fielded on specified occasions and at specified levels, whether or not there are better white players available'.[38]

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[36] Department of Sport and Recreation, *Transformation Charter for South African Sport*, 2012, pp. 1-52, p. 6.
[37] Department of Sport and Recreation, *Transformation Charter for South African Sport*, 2012, cited in A. Louw, 'Transforming South African professional sport: Some observations on recent developments', *Law, Democracy & Development Law Journal*, vol. 14, 2004, pp. 193-218, p.197.
[38] Farland and Jennings, 'Cricket and Representivity', p.819.

Racial quotas are also defined as the ‘strong approach to Affirmative Action’; this is seen in the writings of Louis Pojman. In his paper ‘The Case against Affirmative Action,' he identifies two approaches to affirmative action, a weak approach and a strong approach. The strong approach he defines as a system in ‘which preferential treatment is given, in favour of members of under-represented groups'. The quota system could be seen as this system and includes numerical set-asides, and a pre-defined number of players of a particular group has to be involved in a team. The strong approach also exists in some cases without exact numerical set-asides but instead a system wherein a black player who is above a certain threshold of ability, yet is not the ‘best’ on merit must be chosen over the ‘better’ white player. This implementation of strong affirmative action is in line with the transformation charter that suggests a balance between merit and universality and in the employment equities act where it ‘provides for preferential treatment of certain designated groups who are ‘suitably qualified’.[39] This approach can be contrasted with a softer approach to affirmative action, which Pojman refers to as the weak affirmative action, whereby ‘policies that will increase the opportunities for disadvantaged people to attain social goods and offices are used.'[40] Pojman expands on this weaker affirmative action approach by explaining that it:

> includes the dismantling of segregated institutions, widespread advertisement to groups not previously represented in certain privileged positions, special scholarships for the disadvantaged classes (e.g. the poor, regardless of race or gender), and even using diversity or under-representation of groups or history of past discrimination as a tiebreaker when candidates for these goods and offices are relatively equal.[41]

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[39] O. Dupper, ‘In Defence of Affirmative Action in South Africa’, *South African Law Journal,* vol. 12, no. 1, 2004, pp. 187-215, p. 196.
[40] L. Pojman, ‘The Case against Affirmative Action’, *International Journal of Applied Philosophy*, vol. 12, no. 1, 1998, pp. 97-115, p.98.
[41] Ibid.

What is interesting is that the definition used above, for processes the government envisages using to transform sport in South Africa as laid out in *the Transformation Charter,* includes both the *weaker* and *stronger* version of affirmative action as defined by Pojman.

The reality, however, regardless of the charter, is that the South African Government has no direct legislated policy to implement the 'deliberate bias' or racial quota system in sport. Instead, many sporting codes are required to set themselves 'equity' numerical targets of 'non-white' players in their squads and playing teams. These are then evaluated by what is called an eminent persons group to see if these targets have been met. Evidence of how the system works was seen explicitly in 2016 when the government 'announced its decision to withdraw its support for the rugby, cricket, netball and athletics federations bidding to host international events. The announcement was made after the publication of the 2014/15 report of the Eminent Persons Group who conceded that they failed to meet their own transformation targets.'[42] An example of how these targets can affect selection was seen in April 2015, when Cricket South Africa's chief executive, Haroon Lorgat, was accused of selecting an injured black player, Vernon Philander, over the in-form white player, Kyle Abbott, in a critical semi-final match because he insisted on at least four 'non-white' players being in the South African Cricket team.[43] Lorgat later denied this claim but did say that:

> the convener of selectors and the coaches, Hudson and Domingo, confirmed on behalf of the selection panel, that they are all aware and follow the protocols and guidelines established for the selectors as reconfirmed by the Board in 2013. These protocols include transformation guidelines, which

[42] R. Candy, 'South Africa's grapple with transformation in sport', Weber Wentzel articles, 19 July 2017, http://www.webberwentzel.com/wwb/content/en/ww-press-releases?oid=58864&sn=Detail-2011&pid=32711, (accessed: 25 January 2018).
[43] V. Surujpal, 'Race quotas stump SA sport hopes', *The Times,* 1 April 2015, http://www.timeslive.co.za/thetimes/2015/04/01/race-quotas-stump-sa-sport-hopes, (accessed: 18 August 2015).

require the panel to consider, on merit, the selection of at least four players of colour in the starting XI.[44]

However, in September 2016, these transformational guidelines became far more transparent when Cricket South Africa announced the beginning of a set transformation target for the national side. 'The targets require the national team to play an average minimum of 54% non-white players and an average minimum of 18% black African players in all formats over the course of the season.'[45] Furthermore, all the professional quota goals set up by Cricket South Africa's Transformation Plan are as follows: for professional senior provincial cricket and professional franchise cricket the targets for 2019 are that 55% of the team must be made up of non-white players. The percentage of non-white players within the national academy by 2019 should be 70%. That percentage is 60% for the SA 'A' programme.[46]

In rugby, the targets are as follows: 'The Department of Sport and Recreation has in place a target of at least 50% generic non-white representation for a team or dimension to be regarded as having been transformed.'[47]

Additionally, this Strategic Transformation Plan for rugby shows the targets from 2015 to 2019, where each tier of professional rugby has to adhere to these racial objectives tied to specific completion or adherence dates.

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[44] Anonymous, 'CSA: Philander was passed fit to play', *Sports24*, 18 April 2015, http://www.sport24.co.za/Cricket/Proteas/CSA-Philander-was-fit-20150418, (accessed: 17 August 2015).
[45] L. Burnard, 'CSA: Philander was passed fit to play', *Sports24*, 18 April 2016, http://www.sport24.co.za/Cricket/Proteas/CSA-Philander-was-fit-20150418, (accessed 17 August 2015).
[46] Cricket South Africa, 'Transformation philosophy and plan', p. 8, http://cricket.co.za/csa_transformation_plan/, (accessed: 19 December 2016)
[47] SARU, *Strategic Transformation Plan*, p. 2, http://www.sarugby.net/wp-content/uploads/2016/04/SARUSTP.pdf, (accessed: 19 December 2016).

In the case of professional netball, The Women's Netball League has racial quotas of five black players and two white players on the court at any one time. Louw explains the quota, stating that on the:

> 6th August 2007, Netball South Africa announced an incentive program to get member clubs to comply with racial quota requirements. Netball South Africa president, Mimi Mthethwa, was quoted as saying, it had been decided that instead of docking points from teams that do not meet the quota, any team that had the required five-two ratio on the court at all times would receive an additional six goals.[48]

From the examples above, we can see the 'deliberate bias' seems to be an official unofficial one, and its implementation is both confusing and at times frustrating to understand how it all works. In some sports, there seems to be no direct equity goal or numerical quota system per se, but instead, a softer version of the 'targets' are used. In other sport, as explained above, there are hardline numerical goals that seem to have been set and the government is adamant that these goals need to be achieved, or they will punish the sporting bodies as they did in 2016 when they announced that they would withdraw support from federations who wish to bid to host international events. As one writer online in SA Schools once said, 'out of the blue questions surface as soon as a national team is selected or fails. Who ultimately gave the green light to the team being selected? How is selection made and what role does the quota system play in professional sport?'[49]

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[48] A. Louw, 'Sports Law in South Africa', The Netherlands, Kluwer Law International, 2010, p. 86.
[49] Anonymous, 'Quotas in School Sport', *SA School Sport,* 26 March 2015, http://www.saschoolsports.co.za/national/quotas-in-school-sport-a-chameleon-on-a-smarties-box.html, (accessed: 27 July 2015).

To demonstrate this further, we can look at Louw, who in the article 'The return of racial quotas in South African Sport', demonstrates just how confusing the system can be According to him:

> in 2013 both Cricket South Africa and the South African Rugby Union announced that they would re-introduce quotas in their respective sporting codes. The quotas require that a certain number of black players be included in the team selected for various competitions, such as the second tier professional rugby competition, the Vodacom Cup.[50]

These quotas were then discarded and never legislated, and instead, equity targets, as previously discussed, were given to the respective unions instead. The latest of these we discussed earlier, as per Cricket South Africa's Transformation Plan.

Regardless of the lack of clear legislation on the topic, it is evident that the government has from time to time chosen to influence national team selection and that the racial quota system or ethnic targets have been set at particular levels of sport structures in South Africa as a tool to achieve the values of an equal and representative new democratic society and to be in service of these ideals. The Transformation Charter says that:

> from an ethical and moral perspective the transformation road embarked on by South Africa represents an exercise in restorative justice and reconciliation. The process involves the restoration of destroyed trust and the removal of conditions undermining relationships of trust, whether of a socioeconomic, political or structural nature.[51]

In a sports context, this equity and inclusiveness can be defined as being about :

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[50] Louw, 'The return of racial quotas in South African Sport', p.5.
[51] Department of Sport and Recreation, *Transformation Charter for South African Sport*, 2012, pp. 1-52, p. 6.

> fairness in sport, equality of access, recognising inequalities and taking steps to address them. It is about changing the culture and structure of sport to ensure that it becomes equally accessible to all members of society, whatever their age, ability, gender, race, ethnicity, sexuality or socioeconomic status.''[52]

5. ARGUMENTS FOR THE RACIAL QUOTA SYSTEM

In a country where almost everything, including sport, was divided and unequal, where opportunities, access to sports facilities, to coaches and viewing live sport was only given to a distinct few, I do believe it is of moral significance and a case of fairness and utility (in the case of using role models) that the goal to create an equal, representative sports fraternity across the board needs to be accomplished. These goals, some argue, can be reached through using quotas as compensation, quotas as placing role models in sport to achieve transformation, quotas as achieving representivity and quotas to overcome inherent prejudice and bias to transform sport in South Africa. These are the goals or targets of the quota system that uses race as a classification in the selection process to transform sport. My goal is to examine each of these cases and see if they provide enough substance and provide grounds for the use of quotas that defeat the presumption, as set up earlier, that competitive, professional and international sport should use merit as the first metric for selection.

5.1 The quota system used as compensation

We start by asking the question – is it morally appropriate to reserve positions and places in a competitive, international or professional sports team to players of colour, regardless of whether there are better white players (on merit) that can be chosen for that team, as compensation for the wrongs of the past?

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[52] *Transformation Charter for South African Sport*, 2012, cited in A. Louw, 'Should the playing fields be leveled', p. 229.

Let us use a simple analogy to explain the compensation argument. Say person X comes into person Y's business and steals it from him. Person X begins to trade and make money from this stolen business. Later on the person Y is given back his business. Person Y is not only entitled to his stolen business back but also entitled to proportional compensation and reparation for the money that was gained (or lost) during his absence. Let us imagine that persons X and Y die before the business is returned to the original rightful owner and that the business X stole is given to his son Xx. When the argument is that it would be morally correct to state that, the Xx business is deemed immorally gained, Yy (Y's child) is morally (and lawfully) entitled to the firm and proportional reparation and compensation for the loss his family incurred.

So the compensations argument is plainly saying that present injustices, stemming from past injustices, need to be compensated for, to rectify these injustices.

Gertrude Ezorsky says that 'from a backwards-looking perspective, non-whites have a moral claim to compensation for past injury'[53] just as the above analogy explains. Ezorsky is explicitly referring to claims of compensation made by certain natural rights not being afforded to black people in a time of oppression and slavery in the United States around the early 1860s.

John Locke in *Two Treatises of Government* provides us with another definition of reparation and compensation similar to Ezorsky's, stating that 'people have natural rights; they get them directly from natural law, and rights they have acquired by natural law.'[54] 'To

[53] G. Ezorsky, *Racism and Justice: The case for Affirmative Action*, Ithaca, Cornell University Press, 1991, p.73.
[54] B. Boxill, 'Black Reparations', *The Stanford Encyclopedia of Philosophy,* Summer Edition, 2016, E. Zalta (ed.),pp. 1-23, p.3, https://plato.stanford.edu/entries/black-reparations/, (accessed 25 August 2017).

repair the damage that crime or crimes ‘commonly' cause by taking away these rights by ‘some person or other' reparation is proposed.’[55]

Going one step further, Taylor states that ‘to restore the balance of justice when an injustice has been committed to a group of persons, some form of compensation or reparation must be made to that group’.[56] This compensation would take the form of ‘extending special benefits, opportunities or advantages to the class of people’[57] that were discriminated against.

Another example of what this compensation could look like can be seen in James Foreman's ‘black manifesto'. ‘In this manifesto, Forman demanded $500,000,000 in reparation from white Christian churches and Jewish Synagogues’.[58] This requirement for redress and compensation:

> was justified because, over three and a half centuries, whites with the assistance and collaboration of their churches and synagogues had unjustly, through slavery and discrimination, wrested enormous economic advantages from blacks.[59]

As stated earlier, I do not doubt that coming from the background of systemic and deliberate discrimination against specific racial groups in South Africa means that it is not only morally permissible but also morally obligatory for us as a South African society to want to reparate for the wrongs of yesteryear. This includes our sporting codes at all levels. Sports can provide a context for athletic flourishing for all individual athletes, and the apartheid system’s way of treating athletes was morally indefensible in that it did not

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[55] J. Locke, ‘Two Treatises of Government’, in P. Laslett (ed.), *Locke’s Two Treatise of Government*, Cambridge, Cambridge University Press, 1960.
[56] P. Taylor, ‘Reverse discrimination and Compensatory Justice’, *Analysis,* vol. 33, no .6, 1973, pp. 177-182, p. 179.
[57] Ibid, p. 179.
[58] Boxill, ‘Black Reparations’, p.3.
[59] B. Boxill, ‘The Morality of Reparation’, *Social Theory and Practice,* vol. 2, no. 1, 1972, pp. 23-27, p 23.

allow certain individuals this natural right. The compensation argument is based off these injustices and a way of looking back and restoring the wrongs of yesteryear and compensating for these wrongs.

In the sporting context then, the compensation argument says that opportunities for athletic flourishing were reserved for a particular group of people in South Africa. Past injustices where players were deliberately overlooked for selection because they were not white has led to current injustices where 'non-white' players find it difficult to be considered for selection into professional teams. It is, therefore, incumbent on the next generation to compensate for the 'stolen' opportunities as a matter of justice and fairness. As is the case in the example of the stolen business, it is incumbent on those who stole or who benefitted from the stolen business to compensate the victims. This would then be the same in the case of competitive, professional and international sport.

Let us place the compensation argument into context based on our discussion thus far. It could be the case that an athletics team does not select all the top white runners in the team because, in the case of a quota system set up as numerical set asides, it only has a certain number of places available in the team and some of these places have to be reserved for 'non-white' athletes as compensation for injustices to 'non-white' athletes of the past or in the case of a system wherein a black player who is above a certain threshold of ability yet is not the 'best' on merit must be chosen over the 'better' white player, the 'best' white runner is still not chosen because of the quota criteria. The quota system as compensation states that because of the past and current injustices, 'non-white' athletes are identified and disaggregated from all athletes as a means of determining a set of sports people who had previously been discriminated against by their race and therefore deserve these places in the team as compensation or are classified as member of a group of athletes who were in the past, as a group, discriminated against and therefore now deserve a place in the team as compensation as a member of that group.

There are three main concerns I have with the compensation argument as a means to justify the racial quota system. One is that using quota places in sports teams seems disproportionate or at least 'proportionality' is almost impossible to uphold, identifying issues with the appropriateness of the tool to reach the target of transformation. Two is that a group instead of an individual is benefitting from the compensation making the redress overly inclusive; this would be a concern of overreach. Three, the burden of compensation seems to lie on a small group of individual white athletes only, making the system unfair to these individuals. These concerns begin to call into question if the quota system used for compensation is a reasonable, appropriate or fair tool to use.

Herewith an extrapolation of these reasons mentioned above. The compensation argument requires that redress be done proportionately, for individuals or their direct families who have been treated unjustly by those that have benefitted unjustly. As Pojman points out, we 'have no way of knowing how many people of any given group would have achieved some given level of competence had the world been different.'[60] In sporting terms, we simply do not know how many, for example, 'non-white' tennis players there would have been in the national Davis Cup team if the playing fields were equal. This then means we do not know what a proportionate compensation would be. The compensation argument states explicitly that fair compensation would be proportional to the past wrongdoing. So in the business example, one would compensate the business owner for their loss and the profit that could have been gained financially. This proportionality clause would be complicated to quantify in sporting terms. If places in teams are the currency of proportional compensation in the racial quota system how do regulators or policymakers get to these numbers? If it is near impossible to quantify a proportional number of players that would sufficiently compensate for the ills inflicted on sports people in apartheid South Africa.

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[60] Pojman, 'The Case against Affirmative Action', p. 100.

Although this does seem only like a practical difficulty, and that a practical difficulty does not serve to qualify an action immoral, I do believe it shows the weakness of the argument and its ability to successfully reach the target of compensation fairly and reasonably.

One might argue then that it is not positions or places in a team that are doing the work as compensation but the remuneration that comes with these places or positions. With regards to professional sport, however, it is the case that most sporting codes in the apartheid era were not professional, but amateur. In particular, Rugby Union was only professionalised in 1995. So the injustice of the past was not preventing people from earning money for playing sport, but instead not allowing individuals an opportunity to play sport in formal competitive settings. So how does one go about proportional compensation if it was not remuneration that was 'stolen' but an opportunity to participate? As discussed above, it cannot be positions in a team because one would have no way of knowing how many positions to give back or what places or positions would be equitable. There might be other ways of compensating an individual and their families for the sporting crimes against them during apartheid, but proportionally the racial quota system does not seem to be a fair and equitable way of doing this.

The next concern I have with quotas as compensation is that they seem to attest benefit to an entire group of people, some of which do not 'deserve' the benefit and that benefitting these individuals takes away from those that 'need' or deserve the benefit of compensation.

Some argue that compensation requires that the redress be done proportionately, for both the individuals or their direct families who have been treated unjustly by those who have benefitted unjustly. So, in the example of the business, it is the family from whom the business was stolen who need to be compensated from the family that benefitted. Moreover, if there were no direct families left, then any peoples who were affected or benefitted would be involved in the compensation process.

The racial quota system does not seem to do this. Quota positions are not reserved only for those athletes who come from families who were directly affected by sport inequalities and injustices. Additionally, it is not always the case that those who benefitted from these injustices, i.e. sports people who were given positions in teams that should have gone to 'better' qualified 'non-white' sports people, that now give up their places in the teams as compensation. Instead, the racial quota system simply states that in the case of numerical quotas any 'non-white' sports person can now be advantaged over a white player, or in the case of a system wherein a 'non-white' player who is above a certain threshold of ability yet not necessarily the 'best' on merit can be chosen over a better white player, not only those individuals or their direct families who have been treated unjustly. It could be the case for example that an athlete who comes from parents who lived in exile and who was given all the sporting facilities, correct upbringing, coaching and nutrition from the new exiled country, could now qualify for a quota place in the team although they were not sportingly disadvantaged. A good example of an 'advantaged' black professional cricketer is Kagiso Rabada. In an interview with ex-England captain, Nasser Hussain, he was asked about his privileged background and how it contributed to his success as a cricketer – 'your dad's a doctor, your mum is in asset management, and you went to a good school in Johannesburg. How important was that to your cricketing upbringing?[61] To which he replied 'Very important. My private school had all the facilities, which makes it easier. If I'd been to another school, I might have had to go through a few more ranks'.[62] Although Kagiso Rabada would make the South African national cricket team on merit-only, it could have been the case that he could have benefitted from the quota system regardless of his privileged past. This would then mean compensating an individual who was not prejudiced sportingly by the past.

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[61] N, Hussain, 'Kagiso Rabada talks race, quotas and becoming a role model', *IOL Sport,* 5 July 2017, https://www.iol.co.za/sport/cricket/proteas/kagiso-rabada-talks-race-quotas-and-becoming-a-role-model-10137260, (accessed: 28 January 2018).
[62] Ibid.

It could then also be the case that those that were severely affected by sporting injustices in the past do not, for example, have children, and so the quota positions in a team have no real compensatory benefit for those individuals at all. We should, however, be compensating them, but the quota system does not do that.

Goldman[63] also argues that in any injustice there will be those that deserve more compensation than others, those who were affected more severely than others in degrees of injustice. This is relevant for when the quota system is being used not as numerical set-asides but instead for when the quota system has a certain threshold of merit attached to it, and only players above that threshold will be considered. So hiring, even within the compensation programme, in this case within the quota system, still depends:

> upon relative qualifications and hence upon past opportunities for acquiring qualifications, there is, in fact, an inverse ratio established between past discrimination and present benefit, so that those who benefit most from the programme, those who actually obtain jobs, are those who least deserve to.[64]

For a professional athlete to reach the stage of competency required to take up a quota position in the team, they would had to have had some level of opportunity. Goldman is saying then that those players who do make it into a professional team now, are probably those who have suffered the least from prior discrimination. This seems plausible in the sense that those children whom many years after apartheid ended are now playing professional sport might not be those that deserve the most compensation, yet they are the only ones being compensated. Those that have no opportunities and are still suffering from the injustices are probably not being compensated at all.

On the line of reasoning above, the quota system can be overly inclusive, including individuals who did not directly suffer from past injustices and who are included in teams

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[63] A. Goldman, 'Reparations to individuals or groups?, *Analysis,* vol. 35, no. 5, 1975, pp. 168-170.
[64] Ibid, p. 169.

only because they belong to a group of people who were discriminated against. Moreover, in some cases the system can be not inclusive enough, as in the case of those missing out on being in the team because they suffered a lot under the previous discrimination, and therefore the quota system seems to be an inadequate means of achieving compensatory redress.

'Supporters of the racial quota system could point out that if a person's parents and grandparents had suffered from unjust racial discrimination, then the person too had probably suffered from such discrimination, even if indirectly'.[65] Thomson agrees with this as he states that affirmative action 'often targets individuals from groups that have been discriminated against in the past but who may, not themselves have been wronged and places the burden on the current members of the community to repair that wrong even though many of them may have played no part in causing the wrong'. [66] The idea, then, is that because under apartheid almost all 'non-white' people suffered, then 'non-white' people of this generation should be compensated. From a sporting perspective, then, to compensate by giving a position in a team would mean to compensate for their parents or grandparents not getting into the team or compensating for the fact that they were never given the right opportunities to flourish on the sports field. For this to be justifiable, each athlete's parents and grandparents would have to prove that they suffered from unjust racial discrimination with particular reference to sport for this compensation to be legitimate. I say this because, yes, there can be no argument that South Africa's past has had a devastating effect on communities with many consequences, but would all these consequences have had a negative effect on athletes' abilities to flourish in the sporting context? If the answer is ever no, then as compensation goes it would be wrong to compensate an entire group of people instead of the individual members of a group who suffered the injustices.

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[65] Boxill, 'The Morality of Reparation', p.23.
[66] J.J. Thomson, 'Preferential hiring', *Philosophy & Public Affairs,* vol. 2, no.4, 1973, pp. 364-384, p. 364.

The final argument against using racial quotas as a means of compensating for past injustices states it is unfair that the burden of compensation, or the price to be paid, falls on a small group of individuals. Even if one argues that an entire group of people suffered because of lack of opportunities and even lack of belief or self-confidence and self-respect[67], thus the entire group deserves compensation; this does not give sufficient answer to why the burden of compensation, in the case of professional sport, is now squarely placed on white professional athletes. There is an argument that says that for this burden to be placed on this small group of athletes, these athletes would have to have either have been directly involved in the perpetrating of the wrongs of yesteryear or directly benefitted from this unjust system. Their place in a team would now be given up as compensation for these wrongs of the past. This burden could, however, be unfair to these white players individually as they could have, in reality, not been involved directly in the injustice of the past or would have benefitted very little from the apartheid system. An example of this type of athlete could have been one who grew up outside of the Republic, but is still a South African citizen and now returns to play professional sport. That person might not have benefitted at all from past injustices, and their family might not have been involved at all in these injustices (they might even have left South Africa because they thought these injustices were abhorrent and were fighting against these injustices then being forced into exile). This athlete in this compensation model is then asked to pay compensation and give up their place in the team because of the colour of their skin. This would be unfair to such an individual.

Taylor however, in ‘Reverse Discrimination and Compensatory Justice’, argues against this by saying that the individuals that are ‘paying’ for the past do not have had to be directly involved in the past discrimination or have benefitted from the past discrimination. Instead, because the social policies of the past were ’carried out by organised agencies of

[67] Dupper, ‘In Defence of Affirmative Action in South Africa’, p. 198.

a central government representing the whole people'[68], the 'whole people' would now have to be involved in the compensation. Moreover, in the same breath then 'the obligation to offer such benefit to the group as a whole is an obligation that falls on society in general, not on any particular people.'[69] Taylor is simply saying that discrimination in its nature creates groups of people, who are then discriminated against, socially by other groups of people. Therefore, in compensation for this discrimination, it would be logical to allow the same socially constructed groups to now benefit and pay compensation for the past. This argument does not, however, make room for a single much smaller group, than that of the societal whole, who now might have to pay the price on behalf of all their peers. So why do a handful of white athletes have to pay the ultimate sporting price of not being selected on merit-only? And therefore, why should other white people, some who might themselves have benefitted from the past discriminations against sport in particular, not get to pay for their role in the injustice? Instead, I believe the burden should lie on an entire society or social group. At the end of this section of the paper, I offer up a solution that might better involve a system where more in society contribute their 'fair share to the total cost of that policy'.[70]

Another argument against only white athletes paying the price can be seen in 'Woodruff on Reverse Discrimination' where Robertson[71] states that he agrees that one small group of individuals cannot morally carry the burden of past injustices. Moreover, to explain why he believes this, he refers to an example of a corporation. Robertson says that 'if a corporation has to pay for the injustices of the past, it has the right to reduce the benefits of those that work there now, to compensate for the loss of its bottom line, in any way that it deems fit'.[72] If the employees then deem this reduction as unfair, they can 'organise to fight the reduction in benefits and to force a fairer distribution of the

[68] Taylor, 'Reverse Discrimination and Compensatory Justice', p. 180.
[69] Ibid, p. 180.
[70] Ibid, p. 181.
[71] J. Robertson, 'Woodruff on Reverse Discrimination', *Analysis*, vol. 39, no. 1, 1979, pp. 54-75.
[72] Ibid, p.54.

burden'.[73]Alternatively, Robertson argues 'they can quit and look for employment elsewhere'[74], or if these options are not available,

> it would be incumbent on the government to compensate for this weakness by ensuring restitution between corporations so that the benefits and burdens were spread around in an equal manner as not to punish only one small group of people in the corporation unfairly. [75]

In the case of white South African professional athletes, none of these moral rights enjoyed by an employee in the above example is given to them. Within the racial quota system of reparation, athletes cannot 'organise to force a fair distribution of the burdens'[76], nor can they withdraw from being white. Because the quota system does not give individuals these moral rights, it seems unfair to the individuals, and therefore makes the quota system an unfair tool for compensation.

There is no doubt that not only in apartheid South Africa but afterwards that many white athletes have inherited better sporting systems, better sporting facilities, better sports grounds and better coaching than all other people. An entire sporting system was set up for white athletes to succeed and flourish. Therefore, I believe that compensation could, instead of being positions in a team, be similar to the 'advantage' white athletes have gained. Resources could be ploughed back into 'non-white' athletes to help them succeed. Tax-supported programmes could be designed to raise the level of sports amongst the group that has been discriminated against. These programmes would be paid for by the general white athletes and all those white people involved in sports past and present who, in reality, make up the bulk of those who perpetrated and benefitted from past injustices. I am suggesting then that it would not be incorrect to favour the

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[73] Ibid, p. 56.
[74] Ibid, p. 56.
[75] Ibid, p. 56.
[76] Ibid, p. 56.

development of young ‘non-white’ athletes in aspects of systems, facilities, grounds and coaching over white athletes. The cost would also then be shared and not placed squarely on the shoulders of a few professional white athletes.

5.2 Placing role models in sport to achieve transformation

The role model argument is made up of two main arguments. One that Dr Jeremy Pierce, an Adjunct Professor of philosophy at LeMoyne College, describes in ‘Affirmative Action, part III: Role models’[77]as:

> Affirmative action provides role models for people in underrepresented groups. If young black students see a black physics professor, they will more likely see that physics is "for black people" instead of just thinking of it as white, and the racial disparity among physics professors will decrease.

This argument supposes that one of the problems the quota system is trying to rectify is that ‘non-white’ South Africans do not entirely have equality of opportunity for the subtle reason (over and above the other reasons) that the idea of playing professional rugby or cricket, for example, seems so far beyond the range of available options that no effort is made to excel in those sports. Having ‘non-white’ players in the side could put that possibility on the radar, thus enhancing in one respect, greater equality or opportunity than would otherwise be present. The quota system then provides role models for young black, Indian athletes. If for example, young ‘non-white’ rugby or cricket players see other ‘non-white’ players, they will more likely want to emulate this player and see that these professional sports are also for ‘non-white’ people, instead of just thinking that they are white sports, as they traditionally have been. This possibility also leads to a rational motivation to want to develop the skills necessary to want to play the sport. Sher, in ‘Justifying Reverse discrimination in Employment’, thinks that certain ‘privations’ of past

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[77] J. Pierce, ‘Affirmative Action, Part III: Role Models’, *Parableman*, 24 September 2004, http://parablemania.ektopos.com/archives/2004/09/affirmative_act_6.html, (accessed: 03 October 2016).

discrimination give white people an unfair competitive advantage in the workplace.[78] So past privation could affect a person's ability to compete in the workplace, with one of the privations possibly being where 'some aspects of a person's childhood environment renders an individual incapable of putting forth the sustained effort needed to improve his skills.'[79] So because there are no role models of 'non-white' players, young 'non-white' players never put forth any sustained effort to want to succeed in a particular sport. Placing role models in that sport would mean a shift in perception, which could potentially lead to more 'non-white' people being interested and motivated to make a success of themselves in that sport. Without this consideration, 'non-white' people might see the sport as white, and those that have the athletic potential will never participate and reach their full athletic potential because of this. So without role models, it would hinder many people's potential for human flourishing in the sports context. Therefore the argument states that role models encourage those individuals, who in the past thought it improbable that a sport was for them, to now realise that the sport is indeed for all and they are now motivated to realise their particular talent and abilities.

I have personally heard this argument used in the professional sporting context. In 2016, during the Rio Olympic Games, the commentator of the 42.2km men's marathon kept on using this argument when lauding the 'white' American marathon runner who was holding his own with the Kenyan and Ethiopian black runners who were dominating and had been dominating the sport for years. The commentator kept on saying that this is an excellent example for young white people to see that they too can become marathon runners and compete with the best in the world.

The second argument is explained by Pamela Hall, in a specific context to preferential hiring of female philosophers in universities in the early 1990s. Role models can be taken

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[78] G. Sher, 'Justifying Reverse Discrimination in Employment', in G.P. Wasson, *The Affirmative Action Debate*, New York, Routledge, 1996, p. 72.
[79] Ibid, p.75.

to mean not just a person whom a student can emulate or from whom they find motivation and willingness to want to succeed in, but instead, a person experienced with and sympathetic to many of the kinds of challenges that a student will be faced with in their academic

> efforts, and a person whose on the job performance gives living testimony to the promise that women can and do have fulfilling careers in philosophy[80]

Hall further argues that not only were female philosophers discriminated against in the past but also that current domination of men in the classroom leads to certain 'gender-based'[81] limitations and conditioning. These gender-based limitations alienate females in the classroom and limit their ability to succeed. Having role models in the classroom allows these gender-based constraints and conditioning to decrease and allows for equal classroom environments.

In a South African sporting context, just after apartheid, professional sporting environments were predominantly white. That means that white people dominated the culture, the staff, the selectors, the administrators, the players and the set up around the sport. The past influenced the sport and how it is now conducted, as it was biased towards white people and their culture. So when a 'non-white' person comes into the set-up of a professional team, they feel alienated. The set-up is biased against them, and they struggle to flourish in a set-up suited to others. Role models within the set-up now help from a place of understanding to facilitate, counsel and inspire these athletes. The individuals who are best suited to do this mentoring and to facilitate this are other 'non-white' people who understand the culture, background and environment from which the 'non-white' athletes come. Geoff Toyana, a very successful current black coach of the Lions professional cricket team, is quoted by Firdose Moonda as saying 'I know what it

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[80] P. Hall, 'From Justified discrimination to responsive hiring: The Role Model Argument and Female Equity hiring in Philosophy', *Journal of Social Philosophy,* vol. 24, no. 1, 1993, pp 23-45.
[81] Ibid, p.31.

was like to have to take three or four taxis from the township to the stadium for practice, not having a job but having pressure to earn a salary for a family.'[82] Toyana can relate to many of his 'non-white' players' socio-economic difficulties in a way that white coaches could probably not.

This role model argument is saying that it is probable that only when certain role models are present, role models that help us personally navigate the rocky world of professional sport, can we probably reach our true athletic potential. Without these role models, those who would like to become professional athletes could struggle to reach their full potential and hinder their potential flourishing. For sport to be equal, it must consider including these role models and the only way to do this is to provide a quota that needs to be filled by these specific role models.

So, in summary, the role model argument is two-fold, stating firstly, that within the context of the quota system we justly discriminate against white players because we could need 'non-white' players to inspire other 'non-white' players and without them, we could have fewer 'non-white' players wanting to play a sport or be motivated to try to thrive in a sport that is seen as predominantly white. Moreover, because the environment and culture of professional sport are dominated by white people, it is incumbent on regulators to change this by placing 'non-white' individuals in the teams as staff and players to create an environment, which could help 'non-white' players thrive.

The first difficulty I have with the role model argument is that in some sense being a 'non-white' person is neither a necessity nor a sufficient condition for being a role model to other 'non-white' people; instead, it can be helpful or contribute to 'non-white' players' success, but it is not essential. An example of this is the fact that role models do not have to be from the same racial group as young players to inspire these players. This can be

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[82] F. Moonda, 'CSA Going the right Way on Transformation', *ESPNCricinfo,* 26 April 2016, *http://www.espncricinfo.com/southafrica/content/story/1003991.html,* (accessed: 27 January 2018).

seen with Aaron Phangiso, a black professional South African cricketer who is quoted as saying 'former players like Makhaya Ntini and Mark Boucher were players I looked up to as they came to my township back in the day'.[83] Mark Boucher, a white cricketer, is a role model to emulate and motivate Aaron Phangiso and for reasons other than his race. Another example is that of my role model who is an elderly Tibetan man, the Dalai Lama. I am inspired by him and want to emulate many of his traits and have never considered that this cannot be the case simply because we are not of the same race. Another actual performance-based example to clarify this point further is that there was a time in the not so distant past where no white man had ever run under 10 seconds in an officially timed 100-meter track event.[84] So when Christophe Lemaitre ran the 100 meters in less than 10 seconds back in 2010, he did this without ever having a white man do this before him. He had no one to emulate. He was the first. He believed he could do it without a role model of the same race or colour. It is, therefore, safe to say that athletic flourishing can happen without a role model of one's own race. So if it is the case that role models are not essential, but probably helpful, that would weaken the argument somewhat. For if it is the case, as I have argued, that a merit-only approach to selection in competitive sport is essential in upholding the very nature of competitive, professional and international sport, than selection based on something other than this that could merely be helpful to transformation but not essential for justifying the use of such a system.

Another reason I believe that the role model argument, the first kind I mentioned that uses numerical set-asides, does not, in my opinion, override the need for merit-only based selection in competitive sport, is because in sport successful players serve as useful role models because they are successful and comparable, and in some cases are even better than other players on merit. One only has to look at some of the black cricketers in the

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[83] E. Mahlase, 'Meet Soshanguve sensation Aaron Phangiso', *Die Rekord East*, 14 September 2015, http://rekordeast.co.za/64196/meet-soshanguve-sensation-aaron-phangiso/, (accessed: 3 October 2016).
[84] Christophe Lemaitre was the first white man to run 9.98 seconds on 9 July 2010.

current South African national cricket team, such as Temba Bavuma and Kagiso Rabade, to see two world-class players, who are selectable on merit and inspire and motivate because of their excellence. Given that quotas, as numerical set-asides, could in principle allow weaker players on merit into relevant teams, this would then allow players who are not 'up to the task at hand' into competitive teams and this has the potential to undermine and be positively harmful to the role model process. For example, a scenario in quotas as numerical set-asides could play itself out where 99 of the best 100 runners could be white and one 'non-white'. That 'non-white' runner could get their spot in the relay team of four runners being chosen above 97 other better runners. The 'non-white' runner could then perform below the competitive standard of play and could cost the relay team an opportunity to succeed. The runner could, in essence, be a terrible role model because they are not on the athletic level needed to compete professionally in this sport. This is one of the reasons why in the second kind of quota system a 'non-white' quota player requires to be at a minimum level of performance before they can be considered in the team. The issue with this, of course, could be that this minimum standard might still not be on a competitive level of international or professional play, meaning again the role models could be counterproductive to being a 'good' role model if they do not succeed against others professionally. In reality, a poor role model is not a role model at all. The inclusion of 'non-white' player in competitive sports teams to provide a role model to emulate and inspire can only work factually and sufficiently if the player is good enough to be a role model.

Finally, the criticism I have against the idea that it is useful to have 'non-white' persons in a team to change the culture of that team, is that I believe this could encourage white members who are already in the professional sporting systems, to not concern themselves with the task of contributing to changing cultures and focusing on transformation through their coaching methods and modalities. If it is the case that we should introduce quota players and coaches into teams because they are 'non-white', on

the grounds that they can be helpful in integrating and understanding other 'non-white' players and coaches, then white players and coaches might feel they do not have to change their sporting environments into more equal and inclusive ones because that is the role of 'non-white' people in sport. The practice seems to reinforce the idea that only those that look similar to us can inspire change in these sporting systems. Allen calls this idea letting the 'white man off the hook'[85], allowing 'cultural' transformation to be the work of 'non-white' persons in sport primarily, while the white persons in sport do not have to be part of this. For example, one could see how a white coach who works with Geoff Toyana could be sidelined into learning to deal with social-economic difficulties of many 'non-white' players, because Toyana is good at understanding people and working with people in these spaces so 'I do not have to'. Instead, I believe it should be a prerequisite for all players, coaches and administrators to change the culture of prejudice and oppression that could exist in any sport that was run as a white only sport for many years.

This argument also goes both ways, is this 'work' to understand and change the culture within competitive sport teams, which at times is now placed squarely on the shoulders of the 'non-white' players or coaches, fair to these 'non-white' persons? Anita Allen in the context of academic role models states that it could be the case that:

> some woman 'symbols' do not give a 'nurturer's' priority to the advancement of the interest of black students and wider black communities. Moreover, a few non-symbol white males do. In arguments for academic role models for black women, the task one expects the role model to perform must be clearly specified. Not every black woman will be willing or able to perform every task.[86]

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[85] Allen, 'On Being a Role model', *Berkeley Women's Law Journal*, vol. 22, no. 6, 1990, pp. 22-42, p.41.
[86] Ibid, p. 37.

We can say the same in the sporting context. In a quota system that uses a minimum level of ability as a threshold for selecting quota players, these players have to be at a professional level to be considered to make the team (although they could still be selected above a 'better' white player). In this system, there is a performance-related criterion in picking a competitive, professional or international player for a team to try to fulfil the outcome of trying to win a game. However, nowhere in this criterion of merit for selection does someone have to be a role model to other athletes to be a good enough on merit to pass the threshold and make the team. This is not a consideration we need to make in selection. This 'new criteria' would posit a different practical value specifically onto 'non-white' players. The expectation when an athlete is chosen to play professional sport should be based on their performance, and an athlete should be set up to perform at their highest level for as long a time as possible. Nowhere is it asserted that the expectation is for one to be a good role model.

Sumner points out that introducing this idea 'introduces what may seem to then be a non-performance related criterion into the job description'[87] and onto a job that in this case is always high-performance related. Competitive sport for 'non-white' athletes then, in this case, seems to 'test' something else, namely an athlete's ability to be a good role model. White players do not have to be good role models, only the 'non-white' players. This appears to place an unfair expectation on the 'non-white' quota player, an expectation the white players do not have to bear. Regarding this, Allen also makes a compelling point by saying:

> thus trying to hire black females solely as role models looks disturbingly close to something privileged Americans have always done: hire black women to

[87] L. Sumner, 'Positive Sexism', *Social Philosophy and Policy,* vol. 5, no. 1, 1987, pp. 204-222, pp.218-219.

> perform the tiresome, unappealing task.[88]

Yes, it might be the case that the player can do both, but adding this as a prerequisite only provides 'non-white' athletes with a new burden to prove themselves not only as great athletes but great mentors and role models and those that are tasked with changing the culture of oppression they did not even create. This is not fair on the 'non-white player' and adds a new inequality that needs to be eliminated if sport is to be equal and impartial. If anything, such a task and burden should lie on the shoulders of those that created the inequality and discriminatory culture, not those it oppressed.

So I believe that the role model approach to transformation, although it could be helpful to transformation, shifts the responsibility onto the shoulders of 'non-white' athletes. This then could allow white players to take less responsibility in transforming sport and its sordid culture in South Africa and could place an unnecessary and unfair burden of transformation on 'non-white' athletes' shoulders.

Herewith another three considerations and concerns I have with the role model argument.

Firstly the role model argument could continue to 'whisper' the ideals perpetuated that certain sports are only for white people and only white people can succeed in a particular sport. As Allen says,

> unlike arguments that aggressively contest mainstream motions of merit, qualification and competence, the role model argument gives white males a reason for hiring minority women that are perfectly consistent with traditional assumptions of white male intellectual superiority.[89]

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[88] Allen, 'On Being a Role Model', p. 41.

[89] Ibid, p. 37.

Unassisted by other arguments the role model arguments could leave intact the idea that 'non-white' players' can be more competent than white (players) only as they are better role models'.[90] 'Non-white' players can then be chosen, in the quota system as numerical set-asides, not because of their athletic ability but because they are useful to help transform the sport. Alternatively, as in the case of merit being a threshold, they could still be selected in a team as less competent but good role models none the less. This then could perpetuate, when a 'non-white' athlete is selected over a better white player, the racist stereotype that 'non-white' athletes are not as good as white athletes', they are only better at being role models, not competent in their own athletic right. Moreover, even if the 'non-white' player is better, it seems to say he or she is not better and is only in the team because of their race. Perpetuating stereotypes that got us into racial segregation in the first place are not going to help solve the endemic issue of racism in sport and will hamper in the transformation of professional sport.

The second consideration is that the role model argument could also find itself on a slippery slope. Where would one end up drawing the line at who could be a role model and who could not be one? Additionally, who deserves role models and who does not? What about gender, age, or culture? Do other marginalised groups, for example, homosexual sports people, lay claim to needing role models in a sport and are these claims justification enough to now deliberately take away one person's place in the team and replace it with a role model of this new particular kind? This argument seems to leave the door open to many possibilities that all seem impractical and at best improbable in implementation.

Finally, I believe the role model argument has to overcome a hidden premise in its conclusion. Pierce says '…the racial disparity among physics professors will decrease'[91] when discussing why it is important to have role models as physics professors. Here

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[90] Ibid, p. 38.
[91] Pierce, 'Affirmative Action'.

Pierce seems to be resting the importance of role models on the fact that racial disparity in professional sport will decrease because more minority players will now play the game, because of the role models in the game. The reality of sport is that professional athletes need certain physical attributes, talents and abilities that are extraordinary compared to most ordinary humans. This can be seen in the fact that there has only been one white man in the history of the timed 100-meter event ever to run under 10 seconds in this event. The reality is that no matter how much hard work, motivation, dedication, discipline, proper nutrition, complete regeneration, and great coaching a white athlete gets, they will probably never run the 100 meters as fast or faster than their 'non-white' counterparts. Moreover, as J Adrian in an online article, entitled 'Lists of the fastest white men in history, non-African descent' states:

> Among the keys to success in sports, when it comes to sprinting (100 metres), you may need a 'special gene' as this will be one of the key determinants of success. Black or African descent (more correctly west African) sprinters may hold a superior advantage in sprints as they tend to have more or larger proportional of fast twitch fibres within their muscles. Scientific studies have shown that fast twitch fibres contract two to three times faster than slow twitch fibres. Good genes coupled with keys as mentioned above will give an added advantage over the others.[92]

The reality is then that no matter how many white men run under 10 seconds it does not change the fact that black people could be genetically more suited to sprinting than white people. So forcing athletics teams to have more white athletes in the sprint teams is not going to change this.

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[92] J. Adrian, 'Lists of The Fastest White Men in History, Non-African Descent', *Adriansprints*, 21 July 2011, http://www.adriansprints.com/2011/07/lists-of-fastest-white-men-in-history.html, (accessed: 3 October 2016).

Based on all the reasons above, I do not believe that the role model argument makes a strong enough case to overrule the idea that competitive, professional and international sport selection needs first to be about merit. Role models once selected on merit could be far more effective at encouraging, motivating and changing sports culture from the inside out.

5.3 Quotas to achieve representivity

Penrose, in 'The right thing to do? Transformation in South African Sport', reports that in 2016 when the South African Government announced that they had effectively banned certain sports federations from bidding on international sporting events, they did so because these federations did not reach their agreed upon transformation targets.[93] These targets, he says, define:

> a certain racially demographic way the different aspects of each sporting code should be. And since the demographic profile of national sides is one of those aspects, or "areas", there is a certain racial demographic profile, which they should possess.[94]

This necessary 'demographic profile' is reiterated in the *Transformation Charter* on many occasions. Penrose explains that:

> the "Demographic Profile Dimension" of the transformation process involves "[e]nsuring the establishment of a sustainable pipeline of sport participants and supporters by changing sport's demographic profile on and off the field of play so that it reflects regional and local population demographics".[95]

In 2018, the Minister of Sport and Recreation, Thulas Nxesi, when speaking to an Olympic delegation about transformation in sport, said:

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[93] B. Penrose, 'The right thing to do?', Transformation in South African sport', *South African Journal of Philosophy,* vol. 36, no. 3, 2017, pp. 377-392, p. 379.
[94] Ibid, p. 380.
[95] Ibid, p. 380.

> This is about the national image of the country and the credibility of Team South Africa. It is about the political impact of the optics: people see an overwhelmingly white delegation to an international event, and questions are asked in Parliament – and we have to explain why development and transformation is so slow.

So, in essence, the representivity argument is used within the transformation debate as saying that for a national team to be transformed it needs to represent the country's racial demographic profile. Once a national team selection is made up of this racial demographic profile, this team is then considered representative of that nation.

As this argument is put forward here, it concerns as a matter of fact, in the South African context, mainly professional sport because most of our national sides in South Africa are professional or at least semi-professional. However, this argument only involves professional teams' or athletes' qua national representivity rather than professional teams' or athletes' qua profession. There is nothing inherent about professional sport involved in this argument. However, as it stands, national sides in South Africa are mostly professional or at least semi-professional, and therefore this argument in South Africa's case deals mainly with the professional game.

So to reiterate the representivity argument as it relates to the South African national cricket team would be that the teams':

> ethnic profile must mirror that of the population as a whole, and that its failure to demonstrate this racial profile is racist, to the conclusion that affirmative selection policies must be put in place so as to render the sides fully representative and non-racist.[96]

[96] Farland and Jennings, 'Cricket and Representivity', p. 836.

Louw, when using the legal framework of the *Employment Equity Act*, 1998 (or EEA), explains that this legal framework explicitly states that the government has chosen to 'pursue an agenda whereby equality is measured using representivity'[97]. So 'only if a sports team is demographically representative of all groups in the population and the proportion of such representation within the population is such representation deemed to be equitable'[98]. Of course, equitability is not in question in this paper, but it is still important to see that even in this bill, representivity is used as a measurement tool for success when measuring transformation.

We can see that the representivity argument is not a backwards-looking argument either; it is not concerned with the injustices of the past. Instead, it makes an argument for the current racial makeup of a sports team, specifically a national sports team and states that this sports team should be made up of a specific racial demographic profile that reflects the racial demographic profile of that country if it is to be genuinely representative of that country.

It is important to remember that it is not always the case that the representivity argument insists on demographic representivity. It could be that the threshold of people of a particular sort must be met, for example in principle, on provincial, religious, or linguistic demographics for it to be representative. The demographic representivity argument as I have presented it, however, is the standard way this argument is put forward for quotas in national sporting teams. This is, however, puzzling to me, and my position is that in international sport the only criterion regarding representivity that should be used as a barrier to entry into a national team should be one's nationality and not one's race as the argument currently states.

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[97] Louw,'The return of racial quotas in South African Sport', p. 4.
[98] Ibid, p. 4.

Let me explain why. It was a reality that the South African national teams during apartheid did not and were not representative of the South African people. Instead, the teams represented the small ruling minority. Other racial groups, for example black people, were excluded from being selected for the national team. Therefore, as Farland and Jennings state, when players of colour such as Basil D'Oliveria[99] 'were not allowed to be chosen for the national cricket team it renders the team unrepresentative and international sport was undermined'[100].

Earlier on in this paper, I spoke about the undermining of international sport in the case I made for merit-only selection in international sport.[101] In summary, the idea is that international sport comes from a place of national pride where the best players of one nation compete against the best players of another nation, in a duel to see which nation is superior in a particular sport at any one time. Historically, and as it still stands today, the best players were chosen from provincial or regional sides to represent the best of a country. Then these sides compete against each other in a pride-filled battle to see who can succeed. Today, international sport is filled with this national pride and the added pressure of it being professional. This added pressure means that international sport now has to be commercially viable too. So for the premise of international sport to be upheld, the team should be represented by the best players a country has to offer to fulfil its mandate as the pride of a nation against another and should be represented by those players that would uphold the premise of professional sport. During apartheid in South Africa, this was not the case. The apartheid system allowed black, coloured or Indian athletes to play sport within an amateur context, for example running, but it never allowed them to compete for remuneration, recognition or internationally as a representative of

[99] D'Oliveria was of Indian descent born in South Africa, who could not play for the South African national cricket side because he was not white. In 1960 he immigrated to England and in 1966 was selected to play for England in their national side. In 1968 the South African government refused to allow the English team to tour with D'Oliveria. The tour was cancelled and this many claim was a turning point of international opinion against Apartheid South Africa.
[100] Farland and Jennings, 'Cricket and Representivity', p. 825.
[101] Page 9.

South Africa. That meant that runners, for example, from these demographic backgrounds could not reach their full potential and had to settle for competing for fun and amateur offerings. This would then mean when a country competed against a South African team they were, in reality, competing against a particular racial demographic within South Africa and not a genuinely representative team of the best athletes South Africa had to offer, who would have then upheld the premise of international and professional sport.

Things are, however, different now in democratic South Africa where these systemic, lawful barriers are removed, and all are equal (lawfully) to be selected for the country's sports teams. I believe it can be said that once the best players are selected from the entire pool of possible candidates, this team is then truly representative of the country because they are the best possible players representing the country and therefore this is the nation's team.

This idea of reflecting the moral acceptability of a representative team is reiterated by Farland and Jennings who state:

> We argue rather that genuine representivity can be guaranteed only by a process whereby national teams are selected, according to the traditional practice of international sport, with a view to choosing the strongest possible combination of South Africans, and, in accordance with the rights of all citizens of a democratic republic, by means of a process whereby one's race is no barrier to the likelihood of one's talent being recognized and encouraged.[102]

Furthermore, the representivity argument states that for a team to be 'representative, its ethnic profile must mirror that of the population as a whole.'[103] That would mean that every South African sports team should roughly be made up of 80% black, 9% coloured, 9% white and 2% Asian/other players for it to represent the country. That would be the case

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[102] Farland and Jennings, 'Cricket and Representivity', p. 836.
[103] Ibid, p. 825.

for example if South Africa was sending ten marathon runners to the Olympics. For this running team to be representative of the country, roughly seven or eight runners would have to be black, one coloured, one white and possibly one Asian or other. Moreover, let us suppose that the top 20 marathon runners in the country were all black, with the twenty-first, twenty-second and twenty-third being coloured, white and Asian respectively, then it would mean that many of the best marathon runners would not go to the Olympics if it were the case that this team had to mirror the racial demographics of the country. It would seem illogical and unreasonable to select a team that mirrors these racial demographics if the teams' objectives, as is the case in international competitions, are to entertain and compete at the highest level of athletics. Fairness would involve allowing all who have the potential to compete at the highest level of sport the opportunity to do so. Creating a barrier of representivity that does not allow for this flourishing of all potential athletes goes against the premise of international sport as a whole. Instead, a barrier to selection based first on nationality, then on sporting merit, that allows all possible athletes in that country to flourish if they want to, seems more just and fair and in line with modern-day international sports practices. This unfair practice was the case (only the reverse was true) in unjust apartheid South Africa, but in a country where morally all have the right to participate in professional sport, this scenario cannot be morally justified.

Another question that has to be considered regarding this argument is based on those individuals that are naturalised and not born in a particular geographic area. Are such persons morally entitled to play sport for that country? Can they genuinely represent this geographic area? Do the citizens of a country feel that a team that is made up of many naturalised players represents them as a country? In the late 2000s, the hugely successful English Cricket team consisted of a myriad of foreign-born players. At any one time, you could have Eoin Morgan and Body Rankin from Ireland, Kevin Pieterson, Jonathan Trott and Matt Prior from South Africa or Ben Stokes from New Zealand all representing their new home, England, in a national cricket match. Was it the case that

English fans rejected these years of Cricket as not being a representative English team? I can find no evidence of this dissent in any literature..

Anecdotally, I have never heard of South African rugby fans begrudge Tendai Mtawarira, a Springbok forward, for being born in Zimbabwe and therefore not representing the country. Alternatively, Imran Tahir one, of South African crickets' best bowlers, being rejected by fans because he was born in Pakistan. That could mean that fans feel represented by these players. I am not insinuating that popular opinion means sound moral reasoning, but it does show an inclination of fans accepting the fact that once an athlete is a citizen of a country, he or she is legible to represent that country. The argument is, after all, based on people being or feeling represented by their national side. Letting naturalised players represent their new countries seems to legitimise national sport in the sense that players who want to flourish in a sport, and want to do so in a different country to the country of their birth, can do so.

Lastly, and as mentioned earlier, I also believe the 'racial' nature of the representivity argument is a puzzling one. Why would race be the only metric used to define a representative national team? As Penrose points out, what about the representation of provinces, of official languages, or cultural background, or religion or even class?[104] 'Why' Penrose asks, 'should race be privileged in this way when we aspire to have our national sides be representative of the country?'[105] The answer could simply be that it is because race was used to separate the country in apartheid South Africa. Race was used to discriminate against people. Provinces, language, culture or religion were not used to oppress in the past. Therefore, there would be no cause to want to rectify along these particular lines.[106] But as I pointed out earlier and as Penrose states, we are now asking

[104] Penrose, 'The right thing to do? Transformation in South African sport', p. 385.
[105] Ibid, p. 385.
[106] Ibid, p. 385.

the question what 'constitutes a representative team for a country?'[107] South Africa's history of racial discrimination can explain why our national sides are filled with mainly white professional players, but it does not explain what a representative national team looks like. This is not an argument for reparation or compensation. Representivity is not meant as a backwards-looking argument, one that looks into the past for remedies to the current situation. Instead, it is about making sure that the current national teams are made up of a reflective racial demographic. So using the past to explain why we only use one metric, that of race, is an explanation but it does not explain what a representative team honestly looks like. The representivity argument as put forward, drawing from race-only then seems irrationally selective. That is why I believe a team selected on nationality and merit will be a better representation of a country.

Based on all of these arguments, I believe the moral imperative for representivity in the national and in South Africa's case is that professional sport should fall on nationality and merit-only and that anything else seems unfair, irrational and to go against the very nature of international sport.

5.4 Quotas to help overcome inherent prejudice and bias

This argument can be broken up into three different versions. The first version is a forward-looking argument that states that the quota system is used to change people's racist attitudes. The second, that white people are all racist, even if implicitly, and that without the quota system these, sometimes unconscious, biases will not be corrected. The third version is that of racial 'inertia' where old 'habits die hard' and if something is not explicitly done to transform sport radically, the status quo of white dominance will continue to exist.

Dupper in *In Defence of Affirmative Action in South Africa* says that we can make a plausible assumption that 'people's views of the abilities of others are often shaped by

[107] Ibid, p. 385

what they have seen such people do in the past.'[108] So in South Africa where competitive, national and professional sport was the dominion of white people, they would have been exposed to mainly white excellence in sport, and even if internationally 'non-white' people were succeeding, these were not South African 'non-white' people. A young white person growing up in apartheid South Africa would most likely think that the sport he watched, which had only white athletes participating, was only for white people, or only white people could succeed in that particular sport. Sport is already a very aspirational occupation that very few people will ever truly succeed in it. So coupled with the very small number of people already participating and all of them being white, it is perfectly reasonable to think that a white person's attitude could reflect the idea that white people were or are best suited physically and emotionally to fulfil the role of a professional sportsperson in South Africa. This would then lead to the modern and current 'dominant perception of many South Africans of what black people [athletes] are capable of.'[109] 'Non-white' South African athletes are not capable of participating at the highest level of sport, because frankly, people have never seen them do it. So coaches, selectors, supporters will all continue to perpetuate this attitude and continue to select, employ and support only white people in the various roles of professional sport.

Arguably then, 'the best way to change such attitudes is to make sure that black people are placed in positions requiring higher levels of ability and skills, in which they can be seen to perform as well as others do'.[110] The quota system does exactly this. It puts 'non-white' sportspeople at the highest level to show off their abilities in skills, which will help towards changing the 'prejudicial attitudes of privileged groups towards traditionally disadvantaged groups'.[111]

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[108] Dupper, 'In Defence of Affirmative Action in South Africa', p. 206.
[109] Ibid, p. 206.
[110] Ibid, p. 206.
[111] Ibid, p. 207.

This is different from the role model argument in the sense that the role model argument focuses on the attitudes of those in the previously disadvantaged group. So the 'non-white' players, their perceptions, beliefs and attitudes are the focus of the role model argument. In this argument, however, we are focused on changing the attitudes of the privileged group, the people that are still making decisions and that still have the biases and prejudice that will keep the sport predominantly white and prejudiced if these attitudes are not changed.

I have a few concerns with this argument. In the beginning of this paper, I spoke about the two different approaches to strong affirmative action or two different approaches to the quota system. The first is when numerical set-asides are created and a certain number of players in a team have to be 'non-white' regardless of merit. The second is when a merit-based threshold system is in play where a certain number of 'non-white' players have to be selected in a team, but these players have to surpass or match the threshold set on merit. They can be selected ahead of other white players, who might be better on merit, but only if they reach the minimum requirements set by the threshold. I believe this racial quota system to change prejudicial attitudes, can only work in the second implementation, the threshold system, but even then I am sceptical. I say this because let us imagine a scenario where a 'non-white' player is selected in the team because of the quota system used as numerical set-asides. This player could be far below the standard of professional or international play. They underperform at this level simply because they do not have the necessary skills to compete. Would this scenario not entrench and reinforce the very attitudes the quota system is trying to disrupt and change? The moment the 'quota' player underperforms, they will be judged as a yardstick of all 'non-white' athletes in that sport and the same prejudices and biases that came from not seeing 'non-white' people succeed in that sport will now be more deeply-rooted because those who have the bias will think they are justified in believing it as true.

The second type of quota system where a threshold of merit is upheld for selection will be better suited to deal with this issue. The *Employment Equities Act* calls a person who meets the threshold a 'suitably qualified person'.[112] They are described in the Act as a person who has 'the abilities, formal qualifications or relevant experience necessary to perform a particular job'.[113] The thinking is that if a player meets this criterion and is then selected, they will not entrench the systemic prejudicial attitude of 'non-white' player not being good enough to play the sport at the highest level because they can and do have the skill set and ability to match their opponents.

The primary concern I have with this argument is that sport at the competitive, and especially professional and international level, is highly competitive. There are very thin margins between success and failure. In a free and fair system of sport, a professional sportsperson who has the 'abilities, formal qualifications or relevant experience'[114] will probably nine out of ten times make the professional team anyway without the 'help' of the quota system. There are very few elite athletes in a country at any one time that can compete at the highest level of sporting excellence, more so athletes that would perform at such a level that they would 'change attitudes' with their performances. These 'non-white' athletes would have to be elite sportspersons and at the top of their game not to fail. Most sportspeople would in their career fail more times than they would succeed, but there would be added pressure on the 'non-white' athlete to succeed. That means the level at which they would change perceptions would be the level at which they would probably be selected in the team without the need for a quota system. An example of this would be the South African cricketer Kagiso Rabada who on the 13th of January 2018 was ranked the number one test bowler in the world.[115] He is a perfect example of a player that

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[112] *Employment Equities Act*, clause 61, as found in Dupper, 'In Defence of Affirmative Action in South Africa', p. 208.
[113] Ibid, p. 208.
[114] Ibid, p. 208.
[115] P. Sixaba, 'SA's Rabada is world's number 1 test bowler', *Eyewitness News*, 9 January 2018, http://ewn.co.za/2018/01/09/sa-s-rabada-is-world-s-number-1-test-bowler, (accessed: 28 January 2017)

has proven unequivocally that ‘non-white’ South Africans can not only compete but can flourish and become one of the best bowlers in the world. Other excellent fast bowlers surround him in the current national cricket team and if it is the case that he was not as good as them and underperformed he would be doing the opposite job of changing attitudes, and this quota system would be self-defeating. Kagiso Rabada selects himself in the cricket team; his performances mean he deserves his place in the team on merit.

One question that we can contemplate is would Rabada have been given the earlier opportunities he was given if it was not for the quota system? There is no way of telling, but his abilities and performances would definitely have gained him a place in the professional and international teams he now plays for. So it is at this highest level of achievement of success that ‘non-white’ players have to play to change attitudes. They need to at a minimum be competitive in the professional sport they are competing in, and to be that they probably need the abilities that would get them selected for a team based on merit-only anyway.

When one applies the above thinking to racial transformation, the system looks more like the weaker version of affirmative action, and not the strict quota system we are discussing. In the weaker version of affirmative action, a ‘non-white’ player can be chosen above other players of similar or equal abilities as a sort of tiebreaker to distinguish the two players. The player then does the ‘job’ of changing prejudicial attitudes through their excellence. So in defence of the use of the quota system, I do not think the quota system to change prejudicial attitudes in competitive sport is that convincing.

Another argument that is used to justify the use of the quota system is that the quota system is a tool that must be implemented to break down inherent prejudice and racial bias in South African sport.

According to Lawrence,

> Americans share a common historical and cultural heritage in which racism has played and still plays a dominant role. Because of this shared experience, we also inevitably share many ideas, attitudes, and beliefs that attach significance to an individual's race and induce negative feelings and opinions about non-whites. To the extent that this cultural belief system has influenced all of us, we are all racists.[116]

Although I believe Lawrence's argument that 'all of us are racist' could be argued against, there is no doubt that the sordid past of apartheid South Africa has left an indelible racist mark on the culture, views and beliefs of many South Africans. This can be argued to be specifically strong in the sporting fraternities that were areas of Afrikaner domination and an apparent sign of their strength, as in the case of rugby. Even if we are not explicitly told that non-white players are inferior, the behaviour of not allowing non-whites to participate in rugby teams entrenched the idea of their inferiority, as a group of people and in sporting ability. This means that there is a continued and real prejudice against non-white athletes and an inherent bias towards white athletes, that stems from a racist belief system and these affect actions performed by coaches, selectors and players. Brian Penrose quoted Quentin Williams who said that Chester Williams, the only 'non-white' player in the 1995 World Cup winning side, said he was 'subjected to systematic racial abuse from South Africa's rugby authorities and his fellow Springboks'[117] and there was a 'belief that the game belongs to whites and that the black community has no right to show an interest in the game, let alone play it'.[118] This is a tangible example of the racism that existed (and plausibly still exists) in South African rugby, and this racism would undoubtedly filter down to selectors and coaches. And if these selectors and coaches are

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[116] *Stanford Law Review,* vol 39, no. 2, p. 322, cited in W. Banks and R Smolla, 'Constitutional Law: Structure and Rights in Our Federal System', *New Providence*, Mathew Bender, 2010.
[117] Q. Williams, 'South Africa and the 2003 Cricket World Cup: A Nationalist Perspective', in M Majumadar and J.A. Mangam (eds.), *Cricketing Cultures in conflict: World cup 2003*, London, Routledge, 2004, pp. 147-167, p. 151 as quoted in B. Penrose, 'The Ethics of Selection Quotas in South African Sport',*unpublished,* 2017, pp.1-37, p. 14.
[118] B. Penrose, 'The Ethics of Selection Quotas in South African Sport', p. 15.

racist it will be almost impossible to get them to change and see black players as worthy of being selected or coached. The quota system is then here to change these inherent biases and prejudices. Without the quota system, these prejudices could continue to play a part in the selection, coaching and then obviously the racial makeup of South African sports teams.

My concern with this is similar to one of the concerns I have with both the role model argument and the argument laid out above against quotas to change prejudice attitudes, where I state that the role model argument continues to whisper the ideals perpetuated that certain sports are only for white people and only white people are good enough to play this sport – racist whisperings. In reality, I think the quota system could do the opposite, it is intended for but is not an appropriate way to reach the goal of eliminating prejudice and biases, as instead it can entrench these ideas and not eliminate them.

Let us say for example the quota system is implemented, as either the numerical set aside with a minimum threshold, and six out of 11 cricketers in the national side have to be 'non-white' players. Everyone watching the sport knows this is the case. Now suppose that one of the quota players is the wicket keeper and he is, on merit, not as good as his white counterpart that is left out of the side because of the quota system. Then someone watching and who sees this wicket keeper play and sometimes fail, as one does in cricket, could blame it on his supposed inferiority or incompetence as a non-white person and a player. The truth is that even if the white player is playing he too could have failed, but because of the prejudice and racism of the supporter, this could continue to perpetuate the idea that this player, a 'non-white' player, and by association his entire race, is not good enough to play at the professional level of the game. The idea perpetuated could be that he is inferior, and all 'non-white' players need the quota system to help them to play the game at this competitive level. Without the implementation of the quota system, some could still erroneously believe that 'non-white' players would never be good enough to

play at a professional level. This then echoes the same thinking the quota system is trying to repel.

Added to the above is also the reality that these 'non-white' players being selected with the quota system might not be able to perform as well as their 'white' counterparts and thus will be set up to fail and this will do no good in trying to rectify racist attitudes. I say this because as Dupper explains, 'In the first place, the black person or woman [athlete] selected for a job in a setting where this policy is being pursued, may feel that his or her success is not genuine, which in turn could undermine his or her self-confidence and self-esteem'.[119] This could even affect those players that did not get their place in the team through the quota system but exclusively on merit as they may suffer a 'loss of self-respect because of the widespread misperception that they are in fact the beneficiary of the quota system'[120]and this could affect their confidence as a player. And, as Dr Jim Taylor, a leading sports psychologist, notes – 'confidence is the single most important mental factor in sport'.[121] He says that 'Confidence is so important because you may have all of the ability in the world to perform well, but if you don't believe you have that ability, then you won't perform up to that ability.'[122] So in reality, if the confidence of players who are in the team as 'quota players' is shattered because of the system that selected them, then they are at a disadvantage to perform. They might not have the confidence to perform at the high level needed in competitive, professional and international sport. And as I have explained, if they do not perform then the 'reason' for them being in the team is moot.

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[119] Dupper, 'In Defence of Affirmative Action in South Africa', p. 211.
[120] Ibid, p. 211.
[121] J. Taylor, 'Confidence matters for athletes', *Huffington Post online,* 24 February 2011*,* Available from: https://www.huffingtonpost.com/dr-jim-taylor/confidence-matters-for-at_b_827666.html (accessed: 2 February 2018).
[122] Taylor, 'Confidence matters for athletes'.

So not only can the quota system to change racist prejudices and biases continue to whisper racism, it can also set a 'non-white' athlete up to fail as it might shatter their confidence from the outset.

Finally, there is an argument for the quota system that says the quota system is not only about breaking down ongoing racism or prejudicial attitudes towards 'non-white' sports people but is also trying to break the back of 'racial inertia'. Cornelius[123] refers to this being a serious problem in South Africa by saying that sport selectors have not engaged and have not been acquainted with the communities that have been previously excluded from participation.[124]This creates an 'old-boys' network where:

> selectors are not necessarily objective people. They pick players they know. They develop inexplicable loyalties to poor performers. They are vulnerable to bootlicking by experienced players. They do not always appreciate the depth of talent from which they really can choose. And they are easily pressured into avoiding experimentation and risk.[125]

So coaches, selectors and backroom staff mostly do as they have always done. The old racist habits of selecting white players only will not die unless a quota system exists that forces them to select players outside of the tried and tested few, who because of apartheid are usually white.

Besides the concerns I have highlighted above regarding quota systems to break down prejudice and bias, another consideration regarding this specific argument is necessary.

If it is the case that the selection of players has been tainted by racialism and it is predominantly white players who get selected because selection processes are based

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[123] S. Cornelius, 'Levelling the Playing Field: Affirmative Action in Sport in South Africa', *International Sports Law Journal,* vol. 3, 2002/3, pp. 1-7, p. 6.
[124] Cornelius, 'Levelling the Playing Field', p. 6
[125] Ibid, p. 6.

mainly on habit and going with 'what you know', then the moment you try to reverse this by reintroducing racialism into sport we again create a racial space that can form other bad racist habits.

Brian Penrose succinctly articulates this problem by saying that the 'problem that has been raised against a quota system, even by people fairly committed to the urgency of transformation, is that it perpetuates the use of the apartheid racial classification system'.[126] Christopher Merritt and his co-authors maintain that,

> to insist on artificial quotas as a demonstration of ... change [in rugby and cricket] does a disservice to desegregation. There has, in effect, been a re-racialisation of sport despite the cosmopolitan rhetoric of the 'rainbow nation'; and, by an insistence on quotas of 'non-white' players, a return to the old and excoriated racial divisions. The non-racialist arguments that were at the heart of the anti-apartheid movement have been conveniently ignored in the cause of what looks patently like a form of retribution.[127]

So in the new 'dispensation' of selection under the quota system, it could be the case that 'non-white' players will always be selected based on their race first and this could as mentioned earlier defeat the object and very nature of competitive, professional and international sport. To reverse this habit would then take another concerted effort to change the system and break this habit. By then we could see South African sport fall far behind world standards of sporting excellence.

My belief is that a selection process and system based not on racialism but on merit at the competitive, professional and international sporting level means that a new habit can

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[126] Penrose, 'The Ethics of Selection Quotas in South African Sport', p. 27.
[127] C. Merrett, C. Tatz, and D. Adair, 'History and its racial legacies: Quotas in South African Rugby and Cricket', *Sport in Society: Cultures, Commerce, Media, Politics,* vol. 14, no. 6, pp.754-777, p. 771 as quoted in B. Penrose, 'The Ethics of Selection Quotas in South African Sport', p. 27.

begin to form. That is a 'habit' and culture in selection that keeps excellence at its core and upholds the nature of competitive, professional and international sport.

However, it would be imperative that in a system based on merit-only a host of workshops, courses and active measures could be taken to make sure that administrators, coaches and selectors can see beyond their biases and should be able to select and coach any player regardless of their race and other morally relevant factors. And, as there are in everyday society (based on laws), there should be punitive measures that are measured out if racism and racial biases are seen to be taking place in sport.

6. CONCLUSION

Let me conclude by stating that throughout the paper it has been my aim to look at widely used arguments that are in favour of the racial quota system to determine if any of these defeat the initial presumption I have made that competitive, professional and international sport selection should be based firstly on merit.

This presumption is based on four considerations. One, that the nature of competitive sport is based on competition between two teams. It is performance based; it measures individuals or teams by their athletic performances. Therefore, I believe that athletes that are the best, merit wise, have a prima facie right to be selected in a team. The moment one removes the unpredictability of the result from the competition, the 'game' ceases to be competitive in nature. Selection based on merit allows for this competition to exist. Two, selection that best respects the individual personhood of athletes is one based on merit only. Selection on merit treats individual athletes as having 'equal moral status as persons'.[128] When we select players on anything but merit, we neglect to select them on the fair basis that allows them respect, a sense of fulfilment and recognition, based on such status. Three, that one of the core tenants of professional sport is that it is entertaining. The better the performance, the more entertaining a sport is. Athletes

[128] Altman, 'Discrimination', p. 16.

selected on merit make for the highest quality of play and entertainment. If selection is not based on merit, it can water down the entertainment value and thus affect professional sports' ability to generate revenue. Professional sports exist because they generate revenue. Without revenue, sport cannot be sport as a profession. And finally, international sport is mainly about national pride, one nation's best against another's. And for this basic tenant of such sporting interactions to be upheld, the 'cream of the crop' of a country should be selected as anything else would be disrespectful to international sport.

The widely used arguments I reviewed were also fourfold. One, that quotas are needed for compensation of the past. Two, that quotas are needed for role models. Three, that quotas are needed to create fair and representative sports teams and four, that the quota system is used to break down prejudices and biases that came from the history of our sordid past.

It is my contention that each of these arguments provides tentative arguments for the use of the quota system but none of them without questions and considerations. These considerations do not, however, show that the racial quota system is morally wrong but instead that the quota system cannot be unequivocally, based on these arguments, justified. Without such solid justification, I believe they have not provided a sufficient burden of proof, and the arguments do not trump or defeat the presumption that competitive, professional and international sport selection should be based on merit-only.

I therefore believe that competitive, professional and international sport selection in South Africa should be based first on merit. Further, I believe a new transformation tool or system should be developed, one similar to the weaker approach to affirmative action as defined by Pojman.[129] This tool or system could include the dismantling of segregated sports institutions, individual sporting scholarships for disadvantaged individuals be made freely available, and the use of race as a tiebreaker when candidates for positions in

[129] See p. 8.

teams are relatively equal, merit wise.[130] These could constitute and begin to lead to an equal, fair and just professional sporting environment in South Africa.

[130] Pojman, 'The Case against Affirmative Action', p. 98.

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