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LIBERALISM, DEMOCRACY AND TRANSFORMATION IN SOUTH AFRICA

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> "They can go to the Constitutional Court a 100 times, but we are not going to allow them to stop change"
> *President Nelson Mandela*
> *The Star May 11 1999*

> 4.11.1.2 The democratic movement must resist the liberal concept of 'less government', which while being presented as a philosophical approach towards the state in general is in fact aimed specifically at the weakening of the democratic state. The purpose of this offensive is precisely to deny the people the possibility to use the collective strength and means concentrated in the democratic state to bring about the transformation of society"
> *from "The State and Social Transformation" ANC Discussion Document The African Communist, First Quarter 1997*

1. Introduction

The final report of the TRC elicited heated criticism from several quarters. Opposition parties were outraged at its "ANC-bias", claimed it had "lost its way", had failed to appreciate "different cultural attitudes" and was "a huge rhetoric exercise to reinforce a lie".[2] Mahmood Mandani, too, accused the TRC of establishing its "version of the truth ... through narrow lenses",[3] although his criticism makes a different point.

Implicit in much of this criticism is the sentiment that the state has taken sides, and thereby acted illegitimately. More generally, the policy of transformation is perceived as itself unfair because of its programmes of racial preference. For some this concern about the nature of the South African state is expressed via a conceptual distinction between "liberation democracy" and "liberal democracy", with the former involving the permanent capture of state power and resources in the name of the "people", and the latter, neutrality, tolerance and pluralism.[4]

For Mandani, on the other hand, the way the TRC has framed its inquiries and deliberations into "the truth" is to be criticised not for neglecting white perspectives but for compromising too much with "the political compromise of 1994 and hence "the legal fetishism of "Apartheid". [5] For the opposition parties, it is the intuition (more or less articulated), that the state should remain neutral in relation to different ways of life and individual preferences and aspirations, that fuels their objection. One of the aims of what follows is to identify the conceptual structure of this intuition, the conceptual principles of the political argument to which it belongs. Implicit in much of this criticism is, I suggest, the (liberal) view that the state should eschew perfectionism and not seek to promote any one understanding of the good at the expense of others. I thus a) identify the

specific conceptions of equality and freedom informing this perspective and b) discuss their role in the debate over transformation.

I also attempt to draw out and delineate the concepts and normative principles implicit in the ANC's transformation project. Mamdani, for his part is, as we have seen, concerned that the "experience of the most" has been "written out of history" [6] If he is right, the ANC will have failed to live up to the very majoritarian and perfectionist principles upon which, I shall suggest, its transformation project depends. And these principles, I also argue, and those of a form of democracy whose interpretation of the values of freedom and equality cannot be caught by any distinction as coarse as that between "liberal" and "liberation democracy'.[7]

2. The liberal theory of equal liberty and the neutral state

This theory employs a conception of liberty that is individual, negative and pluralist. These characteristics all reflect a specific conception of the person viz. as a moral agent able to form, revise and pursue individual conceptions of the good [8] Thus each individual is to enjoy the fullest liberty to realise her aims and preferences compatible with an equal liberty for others. All those conceptions of the good the pursuit of which does not infringe upon the personal freedom of others to pursue their own conceptions of the good are thus admissible under this principle of liberty. The principle of equal liberty provides the requisite moral space for the pursuit of any members of this set of reasonable conceptions of the good. Excluded are those conceptions of the good, the pursuit of which, if allowed, results in a "net decrease in the number (of conceptions of good) eventually practiced."[9]

Only this principle of liberty accords, it is argued, proper respect to individuals as moral agents. Any violation of the autonomy of the individual, occurring, for example, as a result of sacrificing the good of some to the greater good of others, is thus ruled out on this principle. In order to accord equal respect to all persons, as persons, the principle of the "separateness of persons" [10] must be respected. Not to do so involves denying to some the status of autonomous moral agents. In the Kantian idiom, individuals must be treated as ends in themselves, not as means for the attainment of the goals of others. In this perspective there exists, then, a plurality of reasonable conceptions of the good and individuals should enjoy the "maximum degree of non-interference (negative liberty) compatible with the minimum demands of social life" [11] in order optimally to pursue their conceptions of the good. The moral demands of living with others, of social life, are here satisfied by apportioning equal degrees of sovereignty or discretionary freedom to individuals so that each may "pursue his own good in his own way" (Mill). Society, on this view, is best arranged when it is governed by principles that do not presuppose any particular conception of the good, for any other arrangement would fail to respect them as moral persons capable of autonomously choosing and practicing their own conceptions of the good. Hence, for Dworkin, "the constitutive morality of liberalism consists of a theory of equality which supposes that political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life. [12]

Were a determinate conception of the good to be promoted by the state the consequence would be that individuals not sharing the conception in question would be coercively interfered with [13] Their rights to negative liberty would be either diluted or altogether arrogated. Equality, on this view of the person and society, consists, then, in a distribution of negative liberty that is equal across individuals. Only those distributions which do not abridge or abrogate anyone's negative liberty can thus satisfy the requirements of equality.

The normative priority of the individual entails, too, that any adjustment to the schedule of individual rights or to the scope of the questions to be decided by the individual rather than by social-decision procedures must be consented to by those affected. Because they hold such rights as individuals, individually, any decision to give up a portion of them to the collectivity must be a unanimous decision. The practical obstacles to satisfying the requirements of unanimity results very often in recourse to judicial review and supermajoritarian thresholds, measures designed to protect individual rights from interference by the collectivity.

It is worth pointing out, though, that such devices (entrenched clauses, judicial review) are not entailed by a liberalism of the sort under consideration. [14] What is required is that, whether constrained by a formal constitution to do so or not, majorities do not in the course of the democratic political process strive for any outcome incompatible with the principle of the greatest equal liberty. Individual rights to negative liberty are not themselves to be considered appropriate subjects for political deliberation and decision-making. Irrespective of whether their derivation is from some "Archimidean point" [15] or the hermeneutics of public life[16] they provide the framework for the political process itself and it is only by so respecting and protecting them that "the fact of pluralism" [17] can be maximally accommodated.

3. Liberal equality and transformation

For those who endorse (more or less implicitly) the above conceptions of freedom and equality the transformation policy of the current government is quite plainly unacceptable. From their point of view, its redistributive programmes and special opportunities for the previously disadvantaged black citizens constitutes a flagrant violation of the neutrality required from the state if individuals are to be respected as moral persons. When offices, posts, capital and credit are not equally accessible to all, the individuals discriminated against are prevented from realising their potential as autonomous moral persons [18] It is just because "transformation is tougher than transition"[19] that many white citizens have decided to "fight back". [20] The transformation project is perceived as straightforwardly inegalitarian and the call for a national consensus as adding insult to the injury of affirmative action. [21]

For others, the transformation project can be accomodated by a liberalism of the sort sketched above, after some conceptual adjustments. Thus, once it is acknowledged (and not all liberals are prepared to acknowledge this e.g. those who identify in "character" a

condition sufficient for escaping from any "poverty trap") that socio-economic conditions can prevent individuals from being able effectively to exercise the rights to negative liberty formally theirs, it becomes possible to justify redistribution and preferential treatment ("reverse discrimination') on impeccably liberal grounds [22] These are seen as measures needed to rectify inequalities produced by the white minority regime. It is possible to read some explanations of transformation in this way, e.g. when Mbeki identifies as its goal the breaking of the connection between race and economic inequality[23] and refers to the need for "emergency measures" [24] in order to effect this result. And it has been interpreted in this way by some white liberals too. [25] A "difference-blind social space" [26] characterised by a "level playing field" and neutral state is (still) considered the objective of such interventions. Whatever collective intervention may exist it is always fulfilling a role defined for it by the equal individual liberty principle i.e. the "normative priority of individual to community" [27] remains intact in spite of the importance accorded collectively initiated measures of compensation.

4. Transformation and the Politics of the Common Good

The objective of transformation, according to Mbeki, is the establishment of a society characterised by "the equality of the national groups", [28] by a proper "racial balance" or representativity"[29] throughout all its sectors, classes and status orders. This society is one in which the importance of "affirming the **national** character ..."[30] (emphasis added) has been recognised, i.e. the fact that South Africa comprises (sub-national") clusters of individuals and that a determinate mode of co-existence of these is constitutive of an ethically satisfactory social order.

Attaining this objective entails "transforming the entire fabric of social life in South Africa" [31] and requires, under current circumstances, the policies of preferential treatment for black citizens referred to above. How, once this transformation is achieved, such a mode of co-existence is to be maintained is not clear. What is clear, though, is that what is envisioned here is the society as a whole, as a collective unit of agency, acting upon itself to secure a certain outcome or structure for itself. [32] This, then, is a common good requiring collective action. It is, moreover, a common good of a specific sort – the goal held in common is not that of a society of autonomous liberal individuals each striving for her own good within a framework of state neutrality, but rather that of a society in which a specific conception of the good is pursued by the state itself, in which the society seeks to achieve a certain "end-state" for itself through "collective instruments of decision" (Taylor) and action. This collectivity just is, then, a "transindividual" entity, one that exists to the precise extent that individuals decide and act together, and not separately, as "individual choosers". Its members wish to be defined primarily as such, i.e. as participants in a common undertaking "concerned about the shape of their society/culture as a whole"[33] (Taylor 1992 "Atomism": 47). When society is thus understood, i.e. as a collective entity in the above sense, it can then rightfully determine the distribution of collectively and individually held rights. [34]

The project of transformation cannot, then, be accommodated under the principles of a liberalism of equal individual rights which is loath to acknowledge the claims of collective identities and which only allows for collective intervention vis-à-vis the above rights when this is necessary in order to realise them. This is not the case with respect to the project of transformation because it is quite clearly grounded in a judgement about the nature of the good life, viz. it requires a social context in which white citizens have been displaced from hegemony not only in the political sphere (narrowly defined) but throughout society. The transformation policy of the ANC has, then, to be understood as itself an effort to realise a specific conception of the good, rather than as an attempt to equalise the conditions under which individuals and communities pursue their own conceptions of the good. This policy cannot, thus, be equated with the attempt to actualise *de facto* what would otherwise remain merely formal individual rights. It cannot be understood in the terms of any such "dialectic of *de jure* and *de facto* equality" (Habermas) because its aim is not merely to level the relations among anonymous citizens.

This, then, is just the sort of good whose pursuit is not acceptable within a liberal perspective because it does not accept the ultimate normative priority of the individual over the collective. On the contrary, here it is up to the collective to decide on what the proper pattern of individual interaction is to be – rather than this being simply allowed to crystallise out of unconstrained individual undertakings. This could at best only quite accidentally produce the requisite distribution of national group identities and would not, in any case, satisfy the desire for collective control that marks the project of transformation.

The objective of transformation is not to establish a "difference-blind" society because "racial representivity" would not then be a consideration of any importance. Just what is meant by "equality", "balance" and "representativity" is left open – does it mean "reflecting national demographics" (and if so how exactly) or do other considerations come into play when "balance" is determined? Be this as it may, what is clear is that racial identity will continue under such conditions to be of importance in determining the distribution of individuals across positions, posts and offices. This does not mean that any one national or racial group will receive systematic preference over another and inequality of this sort is not integral to the project. It does, however, mean that an individual will be debarred from entry into a particular position if her admission would upset of the structure of "equality among all our national groups". Thus "difference-blind" criteria of admission operate only within the limits of "representativity" and some individuals will find their life plans frustrated by the application of the criterion of "representativity".

Those who are excluded, then, by this project, are all those who do not identify with the principle of collective self-regulation as described above; those who, in other words, do not identify their good with the good of the nation so understood. This is not restricted to individuals of any specific racial identity but includes all those who identify with a society in which an individual's freedom to practice her conception of the good is held to be of paramount importance and in which, as a consequence, only those conceptions of

the good the pursuit of which does not infringe on the freedom of other individuals are permissible. If all these are excluded by the pursuit of such a common good so, too, however, does a society of liberal individuals involve the exclusion of all those for whom the good life and a certain national configuration cannot be separated. It should not be thought that the contrast drawn here denies that "liberal individuals" are at all concerned with the overall shape of their society. They might be. But their support for collective decision-making and for collection action is intended by them to establish conditions propitious for the maximisation of individual (negative) freedom, not for its restriction by the collective to which they belong.

5. Democracy and Liberalism in the Project of Transformation

How can this official promotion of a conception of the good life be defended? It is not enough to claim that because its supporters are so numerous in South Africa – the majority – it is *ipso facto* just. This would be to beg the very issue at question here viz. whether the collective should have the meta-right to decide on the distribution of rights between itself and individuals i.e. whether the collective has the right to interfere with the realisation of individual conceptions of the good and life-plans. On the other hand, it needs immediately to be added that the presumption **against** the collective holding this right would appear no less question-begging. For the majority, pursuing this common good is as much an expression of identity and preference as is the pursuit of individual goods. It may well require the abridgement of certain individual rights as positions will not be equally open to all individuals (as "individuals") under conditions where "representativity" is considered crucial and from a liberal point of view this is considered oppressive, not of any particular racial group perhaps, but of liberal culture itself. But to repress the majority preference in the name of individual rights seems no more reasonable than not to. What freedom, equality and pluralism require is by no means self-evident in the case of this contention for no neutral metric would seem to be available to adjudicate it. We are dealing here with two qualitatively different (and incommensurable) conceptions of freedom and the good. [35] One prioritises individual freedom and the equal distribution of such freedom. The other collective self-determination and equality of influence over collective decisions which , under conditions of division, amounts to according to the majority the right to represent the collective itself. [36] Equality, here, consists in equal weight being attributed to individual inputs to collective decisions and is not violated if the preferences of some turn out eventually not to be satisfied.

So, rather than attempting to adjudicate this contention it would seem more fruitful to explore the grounds which might be invoked in defense of the legitimacy of the project of transformation as well as those respects in which it can be seen as itself respecting the principles of liberalism. This not in an effort to downplay the undeniable tension that exists between this project and the prioritisation of individual freedom in the standard liberal model. The state in South Africa today officially promotes a specific conception of the good life for South Africans at the expense of other such conceptions. And this policy rests on a conception of the "true" nature of South African society i.e. that the "truth" of South African society is that it does not merely comprise individuals but rather

("sub") national clusters of individuals and that membership of these clusters is a significant part of a citizen's identity.

Doesn't this promotion of such a "state-truth" render the regime not only fundamentally illiberal but also "democratic" only in the totalitarian sense (of e.g. the erstwhile "peoples' democracies")? Another way of approaching this might be via a consideration of the "national consensus" around the project of transformation. What sort of "consensus" is this? What are its implications for dissidents and does it extinguish political pluralism?

What is perhaps most interesting about the project of transformation is just the way in which it is articulated with principles deriving from the liberal tradition. In the first place it is not clear that this project involves the abridgment of any **fundamental** individual rights. There is no reason to expect the practice of transformation, nor the realization of its goal of "equality between the national groups" to be incompatible with the protection of fundamental rights and freedoms. [37] Thus the (individual) freedoms of thought, expression, association and political participation, for example, are not touched. [38] And whether these are given a primarily liberal or democratic gloss – i.e. whether they are construed as vehicles for **individual** self-fulfillment or (participation in) **collective** deliberation and self-determination – seems less important, in the present context, than the fact of their constitutional entrenchments. To be sure, the freedoms of some are abridged in order to promote the good as conceived by others, but this is done in a constitutional framework that preserves the **fundamental** rights of all, both *qua* sovereign individuals and as members of the collective.

The ANC, according to Mbeki, is committed to the principle of pluralism and the rights and freedoms indissociable from it. [39] The "rules of the game" of multi-party democracy are, then, not the "rules of the game" of transformation as understood by the ANC – it is itself subject to the anonymous rules governing the democratic contestation of and access to power. [40] It would like as many citizens as possible to identify with its interpretation of equality and the constitution, but there is no reason to believe that it does – or will – consider such identification a condition of participation in the democratic process itself.[41]

The national consensus would not, then, seem to involve any closure in excess of that always required to maintain the conditions of democratic political contestation. It is properly seen as an interpellation, a call rallying citizens to the project of transformation and not as itself setting the limits of legitimate political discourse and practice. It is, then, compatible with political pluralism and keeping "open" the "place of power" (Lefort).

Although the project of transformation involves the pursuit of a common good and the use of state power to realise it, it no more seeks to deny moral personality, equality or freedom than does the liberal project. Transformation does, however, rest on a different understanding of these values. Thus it depends e.g. on a specific conception of equality which differs from that embodied in the principle of equal individual liberty. Equality in collective decisions under conditions of division entails the primacy of the will of the majority over that of minorities whereas any such arbitration by number is irrelevant to

the principle of equal individual liberty. On this latter, individuals are equal to the extent they equally enjoy such liberty and not to the extent they enjoy equality of influence vis-à-vis collective decisions. It is upon this last conception of equality that the project of transformation draws to legitimate itself. Does this mean that it boils down to a mere "counting of noses"? Without fully engaging the question of the conditions of just collective decision-making, or that of the extent to which these are satisfied in South Africa, what can nevertheless be said is that the democratic identification of the popular will requires the satisfaction of the conditions of proper public deliberation and argumentation[42] (as well as counting) and that these are obviously only imperfectly realised in South Africa today. [43]

Those attached to a liberalism in denial of "national difference" may find the form of majoritarianism discussed above incommodious, but it is no less democratic for that reason. They are obliged to conform to legislation but are free to contest it – they are not subject to any forced "ethical integration" (Habermas). As far as the TRC is concerned, the relevant question has to do with whether or not in considering its "truth" – i.e. its understanding of the history and nature of South African society – as setting the parameters for the commission's reflections and decisions, the ANC has overstepped the mark of legitimate partiality? In addressing this question it must not be overlooked that the state in question is, in some important respects, democratic and perfectionist rather than liberal and neutral. And, the new national identity incorporated in this understanding of the "truth" of South African society is not, it is worth repeating, some sort of "higher third" (Schmitt) able to blend old antagonistic identities into a new synthesis without loss. It would be wrong, however, on the analysis offered here, to run this sort of **democratic** hegemony together with hegemony **tout court.**

Notes

1. This is an expanded and revised version of my "Nation-Building and Democracy in the new South Africa" presented at the "All Russia Conference of Africanists: Africa in a Changing World", Moscow University 1-3 October 1997.
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2. "Leaving the Past where it Belongs" *The Star* 24th February 1999.

3. "Truth seen only Through Narrow Lenses" Mamdani M, *The Star* 16 December 1998.

4. See Adam *et al* 1997 83:84.

5. Mamdani *op cit.*

6. *Ibid.*

7. Adam *et al* 1997 84:84.

8. See Rawls 1972: 27.

9. See Paul and Miller 1996: 296.

10. Rawls *op cit.*

11. Berlin 1969: 47.

12. Dvorkin 1978.

13. As Kant famously puts it: "Men have different views of the empirical end of happiness and what it consists of, so that as far as happiness is concerned, their will cannot be brought under any common principle nor thus under any external law harmonising with the freedom of everyone" (Kant 1990: 128).

14. See Rawls Political Liberalism, 1993.

15. See Rawls 1972.

16. See Rawls *Political Liberalism.*

17. *Ibid.*

18. See Rawls 1972: 84.

19. Asmal, K. "Transformation is Tougher than Transition" *Sunday Times* May 30, 1997.

20. Democratic Party election slogan.

21. See Leon, T. "Representativity is the New Apartheid" *The Star* 18 February 1999.

22. See Tayjor 1992, "Politics of Recognition".

23. Mbeki, T. Proceedings of the National Assembly, 10 June 1997.

24. *Ibid.*

25. See Owen, K. "The New Right is Missing the Point" *Sunday Times* 12 November 1995.

26. Taylor *op cit.*

27. Ganthier 1992: 157.

28. Mbeki 1998 286.

29. Mbeki 1998 49; 75 149.

30. Mbeki 1998 39.

31. Mbeki 1998 48.

32. To call a society a "collectivity" or a "collective entity" is not necessarily to embrace any "baroque metaphysics" according to which a "communal life is the life of an outsize person" (Dworkin 1992, 26) and society itself a single subject (the individual 'writ large') and thus present to itself across the whole surface of the social body" (Ranciere 1995: 39). The pertinent distinction is rather, between, on the one hand, the individual, and, on the other, the collective understood as an association whose individual members observe determinate rules of decision and political conduct.

33. Taylor 1992, "Atomism": 47.

34. See Coleman "The Balance between Rights Individually held and Rights Collectively Held" in *Lessnoff* 1990.

35. see Bellamy 1992.

36. This is because not to do so amounts to considering (the view of) each member of the minority as worth more than (that of) each member of the majority. See Gutmann and Thompson 1996 for a discussion of the majoritarian principle.

37. Mbeki 1998 56; 57; 144.

38. For Tayjor such fundamental rights "ought to be unassaiably entrenched" while others "can be revoked or restricted for reasons of public policy by means of the ordinary political process of building majorities with a view of legislatiave action" (Taylor 1992 'The Politics of Recognition" 59; 60).

39. Mbeki 1998 54; 57; 144.

40. Mbeki 1998 55, 57.

41. Mbeki 1998 144.

42. See Barry 1995 and Gutmann and Thompson 1996 on the role of public dliberation vis-à-vis just collective decisions.

43. Of course, if on the other hand, one remains convinced that the ANC believes it possess an "unchallengable right to govern" (*Mail and Guardian* editorial vol 15 no 18 May 7-13 1999 p20) and that it is the privileged expression of the will of the nation "which, itself, remains outside and above all governments and all laws" (Arendt 1973: 163) some other principles will have to be invoked in defence of the policy of transformation.

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