
The concepts of equality and equity in South African civil society: a reformational perspective

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Abstract

Equality-inequality is a motif that runs throughout creation as a basic (ontic) feature of reality. There is an ongoing struggle in civil society to achieve and maintain a principled and justifiable balance between equality and inequality (diversity) for the sake of ensuring equity (fairness, even-handedness) in the populace. The article commences with an overview of how the state (both in South Africa and internationally) has been giving effect to its recognition of this dual principle in its legal-juristic stipulations

(in the form of international declarations and national legislation). After proffering a reformational perspective on the innate equality that all human beings possess due to their God-ordained dignity, and on the wide range of diversities among people, an example is given of the unintended consequences that resulted from a particular South African measure to counteract past inequalities and inequities.

Opsomming

Die motief van gelykheid en gelyke beregting vertoon sigself deurgaans in die skepping as 'n fundamentele, ontiese wesenseienskap van die werklikheid. Daar is egter deurlopende wrywing in die burgerlike gemeenskap in pogings om 'n ewewigtige en werkbare balans tussen gelykheid en die verwesenliking van gelyke beregting (wat daarmee saamloop) te bewerkstellig. Die eerste gedeelte van die artikel is daarop gerig om die rigtinggewende rol wat internasionale volkeregtelike verordeninge sowel as die tersaaklike plaaslike wetgewing in voorgemelde verband speel, aan te toon. Daarna word aangetoon hoe daar, vanuit 'n reformatoriese geloofsoortuigings-perspektief, na die billike beregting hiervan gekyk behoort te word. Hoewel aangetoon word dat, volgens die reformatoriese oogpunt, alle mense gelykwaardig geskape is, blyk dit uit die Suid-Afrikaanse praktyk dat die toepassing van hierdie beginsel onbedoelde en nadelige gevolge kan inhou.

Key words:

equality, equity, reformational perspective, unintended consequences, human dignity

Introduction

The modern notion of equality in civil society is founded on the philosophy of egalitarianism which, in the Western tradition, is established on the Christian belief that God loves everybody equally. An egalitarian regards all people as equal: people are to be treated as equals, are expected to see and treat one another as equals, and to enjoy equality of social status of some sort (Zalta, Nodelman, Allen & Perry, 1995).

Social relations within human societies have long been regulated by natural law which necessitated laws to be posited (Hosten, Edwards, Bosman & Church, 1995:43). This later paved the way to egalitarianism as a basic principle of social structure which was recognized in the very first Constitution in the European-Anglo-American world, namely that of the thirteen American colonies that became the United States of America, when they released their Declaration of Independence in 1776 (Smith, 1999:191). Departing from the so-called “natural rights philosophy”,¹ the Declaration recognised the Creator as having endowed man (the human being) with a variety of inalienable natural rights. It declared, among others, that “all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness ...” (Smith, 1999:192). It should be noted, however, that despite this Declaration, much controversy ensued thereafter regarding the equality-inequality issue in the United States (Friedman, 2022:312 ff.). As discussed below, equality also forms a core principle in the Constitution of South Africa (SA, 1996).

God has entrusted the state (and hence those in government) with the duty of not only maintaining law and order and punishing transgressions in the territory under its political management but also to protect and advance the rights of citizens, among others their right to equality, and to respect of their dignity as human beings as well as their right to equal treatment as citizens of the country (John 14:21). According to Scripture, God gives control and authority to civil rulers in his name (Rom 13:1-6), thereby providing a basis for civil law and order. The state (and hence its government) is instituted by God to serve those whom it rules. In this respect, it is to reflect God’s own covenant presence, his covenant solidarity, with his people. So, it should seek what is best for its subjects (Frame, 2008:48).

In view of the many inequalities that currently still prevail in the South African civil society (and in other societies around the world), the question has become whether the state is indeed attending to its duty to ensure the

1 The notion of natural rights is imbedded in the natural law philosophy. This philosophy is an approach to ethics “that attempts to relate issues of right and wrong to humankind’s overall understanding and interpretation of life”. It argues that moral choices should not be random but should be based on the inherent value and purpose of human life within the whole scheme of things (Thompson, 2018:66). From a Christian perspective, as Frame (2008:65) indicates, the notion of natural law philosophy is rooted in Scripture. Romans 1 and elsewhere informs us that God has revealed the knowledge of his moral law to all people. Although some people repress and disobey this law, they cannot escape it entirely. Christians persist in believing that God’s grace creates moral dispositions in people, and helps them to pursue moral principles. Natural law is, therefore, understood to be a moral order found in nature itself and hence also in human beings.

equality of all its citizens. South Africa, and many other nations, display a great diversity, and hence many inequalities, in their citizenries. The following forms of social inequalities come to mind with respect to the situation in South Africa: the constant struggle against gender violence (rape and murder), atrocities perpetrated against children (rape and murder) (Lievens, 2019: no page number), unfair enrichment of individuals and groups as a result of corruption and money-laundering, the high Gini-coefficient still prevalent in South African society – indicative of a deep divide between the very rich minority and a dirt poor majority, the plight of young unmarried mothers, and more.-

The aim of this article

The purpose of the research the results of which are reported in this article was to: firstly, establish how and to what extent South Africa has legislated since 1994 to enshrine basic human rights, equality and human dignity; secondly, to establish to what extent its approach and strategy to achieve these ends have complied with principles flowing from a reformational-philosophical perspective regarding equality and equity in creation, and in civil society in particular, and thirdly, to determine whether current state policies in connection with the attainment of greater equality in the populace has not resulted in any unintended consequences.

Research Method

Due to the interdisciplinary nature of the research that led to this article, a mixed method approach was applied. A hermeneutical interpretive approach was applied for purposes of interpretation of statutes, policy documents and official international declarations (Grayling, 2021:115). The results of this approach were then subjected to an interpretivist-constructivist procedure (Van der Walt, 2020:6): findings were interpreted and subsequently reconstructed for the purpose of arriving at new understandings and perceptions regarding the overarching theme of the article, namely to gain a deeper understanding of equality, inequality and equity in civil society, and of how one particular form of unequal treatment in South Africa, Black economic empowerment, is currently being managed by the state.

A legal approach to the notion of equality in civil society

In 1996, the pendulum swung away in South Africa from an apartheid-based society characterised by unfair discrimination and inequality. The swing came about in the form of the promulgation of a new Constitution (SA, 1996). Section 9(1) of the Constitution set the wheels rolling towards a more equal society: “Everyone is equal before the law and has the right to equal protection and benefit of the law.” In the nearly three decades after the promulgation of the Constitution, provisions such as these paved the way for a multitude of provisions in various national statutes relating to equality.

South Africa’s drive towards equality in its citizenry flowed from various international instruments adopted during the second half of the 20th century. During the latter half of that century, a multitude of discussions, talks, agreements, international declarations, proclamations, conventions and covenants underscored the importance of recognising the equality of all the people of the world. Such legal codes and documents are products of ethical evaluation since they declare how people should be seen, valued and treated (Smith, 1999:159). Some of these documents are:

The Universal Declaration of Human Rights (1948)

In the aftermath of the atrocities of the Second World War, the General Assembly of the United Nations adopted its Universal Declaration of Human Rights in 1948 (UN, 1948). In the first paragraph of its preamble, the United Nations emphasises the inherent dignity and equality as inalienable rights of all people as members of the “human family”, thereby endorsing these rights as the foundation of freedom, justice and peace in the world. This document was, according to Pinker (2012:xxiii), the upshot of “a growing revulsion against aggression on smaller scales, including violence against ethnic minorities, women, children, homosexuals, and animals”.

Articles 1 and 2 of the *Declaration* elaborate on this view by declaring that all human beings are born free and equal in terms of dignity and rights; that everyone is entitled to these rights without any distinction with regards to race, colour, religion, language, political standing or opinion, social standing and/or origin, birth or status.

Twenty years later, with the *Proclamation of Teheran* in 1968, the International Conference on Human Rights reviewed the progress made internationally

regarding the application of human rights since the adoption of the *Universal Declaration of Human Rights* in 1948, and also reaffirmed its status (Patel & Watters, 1994:31).

The International Covenant on Economic, Social and Cultural Rights of 1976

As a way of confirming the international trend towards the attainment of freedom and equality as stipulated by die *Universal Declaration of Human Rights*, the United Nations General Assembly adopted this *Covenant* in 1966. In response to Resolution 2200A(XI) of the UN's General Assembly, the *Covenant* came into force in 1976 (UN, 1976(a)). In adopting this *Covenant*, the United Nations reconfirmed its overarching stance with regards to freedom and equality as outlined three decades earlier in its *Universal Declaration*, but now explicitly concentrated on equality among people in the economic, social and cultural spheres of global societies (UN, 1976(a)). The preamble of the *Covenant Charter* refers explicitly to the principles expounded in the *Universal Declaration*, namely where the latter specifies that the objectives of the *Covenant* are to be seen as the recognition of "the inherent dignity and of equal and inalienable rights of the human family [as] the foundation of freedom, justice and peace in the world".

The International Covenant on Civil and Political Rights (1976)

The United Nations General Assembly (UN, 1976(b)) adopted yet another covenant, namely the *International Covenant on Civil and Political Rights* in terms of the same Resolution (2200A(XI)). The preamble of this document confirms that its objectives are pursued for the purpose of all human beings to enjoy their civil and political freedoms (UN, 1976(b)).

Conceptual-theoretical framework

There is a plethora of legal concepts and views pertaining to the notion and concept of equality. The term "equality" refers to the fact that all people should be equally treated, and should in principle not suffer from unfair, unjustifiable or unconstitutional discrimination. Because people display a range of natural or inborn inequalities which cannot be altered through human action or state legislation, unequal treatment could in principle be justified in such cases, for instance on the grounds of merit (a person who meets the requirements of a job may justifiably be preferred for appointment to another who does not possess the required qualities or qualifications for the position; separate toilet facilities could be provided for boys and girls at a school).

Legal scholars also tend to distinguish between formal and substantive equality (Smit, 2013:82). The term “formal equality” refers to equality as defined, for instance, in legal documents such as those referred to above. The term “substantive equality” is used to refer to situations in which special measures are being applied to redress historical inequalities and imbalances to promote the attainment of equity, fairness or even-handedness. In some circumstances, the application of substantive equality might mean the invocation of affirmative action. “Substantive equality” refers to practical steps taken in a society and adhered to in people’s lives, in society and in everyday occurrences for the purpose of avoiding unfair discrimination and ensuring equal opportunities and protection for all, irrespective of whether legislation in this regard exists or not. Substantive equality does not guarantee equality of outcome. As we will show towards the end of this paper, the incorrect application of substantive equality could lead to new and unintended forms of discrimination.

Equity in the sense of fairness, even-handedness and no unfair discrimination as a form of substantive equality, is an extension of formal equality in that its primary objective is “to move beyond formal equality to substantive equality”, i.e. fairness (in terms of procedure) (Smit, 2013:82). Equity is intended to place people from different walks of life, such as the rich and the poor, and those of different social standings, on the same footing. Its objective is to establish a platform of even-handedness for all people in society: “Equity therefore invokes the requirement of fair treatment in order to achieve substantive equality as an outcome” in order to identify and redress the inequalities of standing in the lives of people by means of corrective measures (Smit, 2013:82). As mentioned, there are, however, the natural inequalities mentioned above (such as those with which we have been endowed as individual human beings) that cannot be addressed or changed by human action or legislation, for instance, intellectual capacity, inborn athletic ability, natural talents and prowess and physical characteristics. Unequal treatment based on such characteristics or features is therefore arguably not unfair (Smit, 2023). Substantive corrective measures often go hand in hand with affirmative action. For example, in South Africa, in response to the inequalities brought about by the former political dispensation, the preamble to the South African Constitution of 1996 is aimed at recognising “the injustices of our past” and to heal the “divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights” (SA, 1996).

Dworkin (2000), made another distinction, namely between instrumental egalitarianism and non-instrumental egalitarianism. Equality in this scheme

is regarded as instrumental when recognised for purposes of promoting solidarity and cohesion within a particular faction or community with a common interest. Non-instrumental egalitarianism, on the other hand, is based on personal moral convictions or other considerations, unconventionally and individually, in the sense of an individual following his/her personal approach.

Other thinkers have drawn attention to democratic egalitarianism. In terms of this perspective, equality holds the key to the establishment of order and justice in a society. Walzer (1983), for instance, was convinced that an orderly society could only function if founded on the footing of a cultural accord of shared mutual values. Scanlon (1997) concurred with this view by stating that “all people everywhere equally have the moral right to be treated to the outcome of procedure: what constitutes morally right and wrong action is set by the principles that no one could reasonably reject”.

Yet other thinkers have emphasized equality of opportunity. Within an established hierarchical structured framework (such as for example a wealthy family), a particular legitimate offspring of the family could benefit from the “privileges of aristocratic rank” in the form of inheritance (Zalta *et al.*, 1995). Another kind of application where equality of opportunity is at work, is the distribution of positions in an organisation. In this instance, sought after positions are theoretically equitably available to everybody but are normally obtained by the best qualified or skilled applicant based on merit: “In such a society, jobs and positions and so on would be open to all applicants, but only applicants who have the skills that qualify them for desirable posts are the children of the wealthy” (Zalta *et al.*, 1995). This approach clearly holds negative potential for those who lack talent, merit and the required skills.

The South African approach described at the beginning of this section can be regarded as an endeavour to install measures of restoration, a form of substantive equality, to repair damages done to black people during the country’s apartheid regime. In other words, in an effort to address such inequalities in the South African society a kind of “balancing act” in the form of affirmative action was instituted (cf. Section 36 of the South African Constitution regarding the limitation of fundamental rights in accordance with the proportionality test). The South African Constitution in 1996 intended to not only “recognise the injustices of the past” (SA, 1996), but also to institute corrective measures to counteract the effects of past inequalities of racial discrimination (SA, 1996). Sections 9(1 & 2) of the South African Constitution (SA, 1996) justifies the application of equality in a society as being everyone’s right to be equal before the law, including the right to “equal

protection and benefit of the law”, as well as the “equal enjoyment of all rights and freedoms” of the law.

Equality: a reformational-philosophical perspective

Equality and inequality a motif that runs throughout creation

A cursory, intuitive, pre-scientific look at reality reveals that equality and inequality seem to exist simultaneously and side-by-side. This insight can be metaphorically explained with reference to the three dogs now being taken for a walk in the street: they are at one and the same time equal and unequal, recognisable and equal as dogs since they are all hairy, run on four legs and able to bark; they also differ and hence are unequal in that one is small, one medium large, one very large, one white, one brown and one dappled. Put differently, they are ontically the same (equal as dogs) as well as different (unequal as dogs of different size and colour). Smith (1999:33) explains this feature of creation in the following terms:

There are a huge number of different breeds of dog, and within each breed every individual dog is unique. Yet this does not stop us from inherently knowing that a dog is a dog. We recognize an inherent ‘dogginess’ so that we can identify a dog and recognize that it is different to a cat or an elephant or a pear or a television.

This ontic motif of universality (equality in the sense of sharing common features) and particularity (inequality or uniqueness in the sense of displaying some or other special or different characteristic) runs through the entire creation, and hence is a prominent feature of the four structural dimensions of reality as distinguished by Dooyeweerd (1969:80 ff) and others. (It is important to note that we do not employ the notion of “universality” in an abstract-Platonic sense or as a Kantian “noumenon”).

The notion of “universality” refers to the features that all of humankind without exception shares, including human rights as a birth right (Pinker, 2012:543). “Particularity” refers to those features that only some of the members of humankind display, such as a particular disability, gender (which applies to roughly the two halves of humankind), or sexual preference. We hold that all people are equal as people but differ from others in many respects (some are taller, or more intelligent than others, for instance).

Although Colossians 3:11 and Galatians 3:28 confirm the equality and human dignity of all mankind, the Biblical perspective regarding the application of

the equality-equity principle in society differs from that of a legal application. For example: where the legal approach regarding benevolence is based on human dictates, the Biblical drive towards it comes from an individual's heart, inspired by the Holy Spirit and based on the principle of "loving thy neighbour as thy self".

The Bible offers the following perspectives regarding the principle of equity and equality:

- The Bible places great emphasis on the diversity among people. It constantly refers to the fact that, as human beings, we are born as diverse individuals – a diversity in terms of talents and attributes such as, for example physical appearance, skills, working abilities, health, talents, and other attributes (cf. I Cor. 12:7-10).
- All of these talents and attributes have been gratuitously and purposefully bestowed by God on mankind (cf. Eph. 4:12).
- God has a unique, predestined plan for each individual person. All of the talents and attributes they received are intended to fit into His predestined plan for their lives (cf. Rom. 8:28).
- He bestowed these talents on people for the purpose of serving one another and above all, to serve Him (cf. Gal. 5:13; 1 Pet. 4:10).
- In addition to the attributes and talents that God bestowed upon mankind, He also gave a variety of gifts, ministries, positions and offices to each individual person (cf. I Cor. 12:16-21).
- All of these gifts, ministries, positions and offices are given by the grace of God, in accordance with His sovereign will and His purpose for each individual (cf. Acts 17:24).
- All these talents, attributes, gifts, ministries, positions and offices are to be treasured, appreciated and enjoyed as demonstrations of Divine grace (cf. Eph. 4:12).
- Every individual will be held responsible for using these talents, and will have to give account of how they used them (cf. Gal. 6:7; Luke 9: 23-25).
- People are not to waste their lives on debauchery, idleness, envy, jealousy, and selfishness (cf. Philippians 2:3-4).
- The obligation to serve one's "neighbour", including the underprivileged (such as the poor) should come from the heart and conscience, and not primarily from statutory dictates (cf. Heb. 4:12; Prov. 4:23; I Thes. 2:4b; James 4:1-5; Heb. 4:12).

The Biblical perspectives regarding equity, equality, diversity, skills, talents and the calling of humankind enumerated above apply to all of mankind in general, and to reformational communities in particular. Barclay (1958:120),

in our opinion, correctly observed that the idea of special gifts (et cetera) has in the past been interpreted too narrowly as if they only pertained to members of the church. All gifts, also those given to the craftsman, the mason, the carpenter, the electrician, the painter, the engineer, the plumber, are special, and have been given by God.

In line with Biblical perspectives such as those enunciated above, Strauss (2008:627) correctly contends that “unity is not the same as uniformity”. 1 Corinthians 12:7-12 reiterates that “any special ability that a man has, comes from God” (Barclay, 1958:120). Taken from the more literal translation of the Amplified Bible, it is clear that “all these achievements and abilities are inspired and brought to pass by one and the same Holy Spirit who apportions to each person individually exactly as He chooses” (Bible, 1974). It is therefore important to note that in the light of the Bible (Romans 12:6), we must accept who we are, what we are and what the abilities we received by grace from the hand of a sovereign God are – and that we are to be content with what we have and who are; and not be envious of one another. In this regard, Barclay (1975:159) states that one of the essentials of a useful life is an honest assessment of our distinctive life to understand who and what we are (Barclay, 1975:159). It is all about God who is all in all in us. And we will have to take note of the fact that an omniscient Creator decided which gracious gifts, abilities, talents and attributes were bestowed on each individual. In fact, Ephesians 2:10 shows that God has beforehand prepared (predestined) each individual “for His workmanship” (Strauss, 2008:715). A more literal analysis of this verse from the Amplified Bible proffers a clear picture (see footnote below).²

The parable of the talents in Matthew 25 explains that we “do not all have the same giftedness ... but all must use what they have in service of the Master” (Strauss, 2008:105). Barclay (1975(b):324) reiterates this truth as follows: “God gives man differing gifts and although men are not equal in talent, they can be equal in efforts.” The man who got only one talent was punished by way of losing the only talent he had been entrusted with because he did not use it appropriately. In other words, although he did not squander it, he simply made no effort to develop his talent. Figuratively speaking, he was now left “penniless”, with no possibility of even-handed restitution. Special measures must be taken to ameliorate the situation of those who are materially, and

2 For we are God’s own handiwork (His workmanship) recreated in Christ Jesus. That we may do those good works which God predestined (planned beforehand) for us, taking paths which, He prepared ahead of time that we should walk in them – living the good life which He prearranged and made ready for us to live.

otherwise, disadvantaged. This is one of the ethical duties that government and all other parties concerned should comply with.³

Baggini (2020:49) correctly concludes with regard to situation ethics that “true Christian morality is not a long list of do’s and don’ts (laws, regulations and stipulations by the state, for instance); it’s a challenge to respond with love to the specific needs of every individual situation”. An ethics of caring comes into play here in that the state is called upon to use its judgement, to ask what would be most consonant with the biblical message of love and support of those who are weak and different, i.e., unequal in some respect (Baggini, 2020:80). Jesus reminded his followers that a law mechanistically obeyed but not internalised and felt to be right in the heart, represents no virtue (Bower, 2005:237).

The situational perspective refers to the ethical environment within the state, which includes every citizen in the state. The question that the state has to answer for itself is: How can we manage the situation in this nation-state to ensure equity (i.e., fairness [in procedure], justified unequal treatment or steps taken, depending on circumstances) and in the process, also bring glory to God? (Frame, 2008:298). According to Geisler (2010:16), “failure to recognize God as the source of moral duty does not exonerate anyone, even an atheist, from their moral duty” (Rom 2:14-15). Pinker (2012:84-841), as a secular thinker, differs from this view in claiming that “discovering earthly ways in which human beings can flourish, including stratagems to overcome (societal problems), should be purpose enough for anyone”. Space does not allow further debate about this side-issue (also cf. Stoker, 1967:226, 237; Wu, 2017:27; Thompson, 2018:59). Civil society leaders do not always recognise the ontic equal-unequal motif in creation for what it is and hence occasionally tend to overemphasise the one at the cost of the other.

3 Matthew 13:12 is often misinterpreted as if it referred to material possessions and wealth or poverty. This verse in fact refers to differences among people in terms of their spirituality – the openness of their hearts to the preaching of the Gospel. Some people are spiritually rich in this regard, and those without “ears to hear” are poor. Raworth (2022) clearly misinterpreted this Biblical perspective by thinking that Jesus referred to material possessions (wealth and poverty). On the basis of her understanding, she argued that Inequality in terms of material possessions was noted in the Bible and hence came known as “the Matthew effect” (Mat 13:12): the rich tend to get richer and the poor poorer. According to her, its tell-tale pattern is of accumulative advantage for some coupled with “spiralling disadvantage” for others (Raworth, 2022:151). According to her, the Matthew effect “will rule, unless governments take action to offset it”. The effects of inequality are not confined to the poor (or the otherwise disadvantaged); it damages the social fabric of the whole society (Raworth, 2022:161, 170, 171).

The point of this brief exposition of the equality-inequality motif that runs throughout creation is to draw attention to the hazards of overemphasizing any of the two sides of the motif. In the first part of this article, we mentioned that, according to some thinkers, equality can be justified on the basis of egalitarianism in the sense of equality of outcome (equity) based on the belief that God loves all people equally. Although the latter part of the previous sentence might be true, egalitarianism as such is based on an overemphasis of the equality pole of the equality-inequality motif in creation. When this pole is overemphasised, skewed views about the human being and society tend to surface, such as socialism, communalism, communism, and egalitarianism, all of which tend to overlook the counterpart of equality, namely inequalities in the form of inherent differences among people. The opposite is also true, of course. Social threats such as the following arise when inequality is overemphasised at the cost of equality in society: elitism, social, political and personal feelings of superiority, individualism, egoism and egotism, discrimination against others deemed to be less important (resulting in atrocities such as colonialism, apartheid, favouritism, self-enrichment, corruption, despotism, abject poverty (Friedman, 2022:298-302) and more). Human inclinations towards envy, individualism, egoism are evident in, for example, Luke 9:46-48 where the disciples argued amongst themselves about who were the greatest. In Luke 14:7, Jesus warns against mankind's impulse towards prominence and prestige – and its tendency to “take (its) place in the first seats” (Barclay, 1962:129). Peter 4:10 also emphasises the fact that people have different special gifts and abilities which they have to use to serve others in such a way “that God will receive the glory”. In other words, they have to be used for “His glory” rather than (for) protecting “our own glory” (Strauss, 2008:983).

To ensure that a balance between equality and inequality is respected and striven for by all in civil society, and that inequities are also taken into account, governments tend to resort to the adoption of a Manifesto (Bill) of Human Rights (such as can be found in Chapter 2 of the South African Constitution of 1996). The adoption of such a manifesto does not mean that inequalities in civil society are overlooked. Some people are indeed wealthier than others, accidents do cause some people to become disabled, politics do result in some people to be (previously) disadvantaged, and so forth. For this reason, governments are duty-bound to also provide for all kinds of inequities for the sake of equity (even-handedness), such as for the aged, the (previously) discriminated against, the disabled, and others. In this process, it is important for all concerned to be able to distinguish between making provision for justifiable inequalities, such as for the disabled,

children with special learning needs, the aged, those suffering from HIV-AIDS, and indefensible and reprehensible forms of inequality, such as unfair discrimination against particular individuals in society, for instance, on the basis of race or ethnicity.

Each societal relationship is responsible, in its own way, according to the principle of sphere sovereignty (Verburg, 2015: 64 ff. 100), to provide for both equality and inequality based on the tenet of human dignity. This is a feature of a modern day differentiated society (Strauss, 2009(b):779, 781). Former South African Constitutional Law Judge and legal scholar Johan van der Westhuizen correctly pointed out that each societal relationship, not only the state, should pay due respect to the issue of human equality, inequality, equivalence, and dignity in its own, unique societal relationship-stamped way (cf. Van Niekerk, 2019:17).

The dual motif of equality-inequality (universality-particularity, sameness-differentness/diversity/uniqueness/idiosyncrasy) can also be discerned in the modal dimension of reality (cf. Strauss, 2009:67 ff). One example in terms of the ethical modality will serve to make this point. All people are ethical in the sense that they would agree that it is better to act to the advantage and betterment of others and society than to harm them (Paley, 2021:177), that it is better to do the right thing rather than the wrong (Smith, 1999:159), that harmony is better than disharmony, prosperity better than poverty, and peace better than war (Baggini, 2020:162). Closer inspection will show, however, that people root their ethical beliefs in quite different religious and spiritual systems (Vigil, 2008:199; Donovan, 1986:367; Scheepers & Van der Slik, 1998:679; Pinker, 2012:220), and hence cannot reach consensus about exactly *how* to formulate generally acceptable moral principles (Paley, 2021:13, 16). It is in view of this insight that Grayling (2019:584) concluded that “we still wrestle with problems about what is good and right, ... about meaning and value, and especially about the quest for the good and worthwhile life”.

Equality-inequality rooted in God-given human dignity

The precepts of Colossians 3:11 and Galatians 3:28 transformed relationships in society by virtually destroying the barriers between people in order to bring about equality among people. The teachings of Christ came to destroy the barriers between people based on their nationality by birth, including barriers based on ceremonial and ritual practices, barriers between the cultured and uncultured people, and the barriers between different classes of people in civil society.

All people, irrespective of the degree of equality or inequality in terms of naturally endowed differences and hence diversity they might display, are equivalent, that is, equal in value, since all have been created in the image of God. All humans possess equal dignity, and whatever they do, governments ought to show respect for their equality and dignity (Nussbaum, 2012:65). Van der Walt's (2008:241) analysis of the phrase "created in the image of God" led him to conclude that it should not be understood in the essentialist sense of human beings essentially sharing the Godly trait of being divine. The human being shares with all of creation the status of having been created by God but he or she is the only being that was created in the image of God (Gen 1:26-27). It is the nature of the human being to be the image of God; it distinguishes the human being from all other creatures, and gives a special relationship to God (Frame, 2008:134). As image of God, the human being is endowed with higher status than any other being. This endowment enables the human being (all human beings, that is) to respond in some or other way to God's covenant with mankind.

South Africa's dilemma of unintended consequences

The South African experience has shown that those in power might indeed struggle to maintain a balance between providing for the needs of all people as individuals and groups enjoying the same rights and privileges in civil society, and in the special needs of a particular group of citizens. One example will suffice to make this point. The Government's intention, and the measures taken to restore social and economic equality through "positive discrimination" or "affirmative action" (substantive equality) in response to the historically disadvantages inflicted by colonialism and apartheid on non-white South Africans – in terms of the Equal Opportunity Amendment Act (2011) and other statutory policies and directives – were in themselves timely and essential to procure a fair and just society. These measures seem to have led to unintended consequences in the form of new inequalities, however. Bishop correctly asked whether South Africa was "redressing the imbalances of the past, or creating new ones" (Bishop, 2023). One impactful example of such unintended and unforeseen consequences will suffice to make this point.

South Africa's Black-Based Economic Empowerment Act (BEE) (SA, 2003), as amended in 2013, launched a combined policy initiative with the objective "to empower black people and redistribute wealth across the spectrum of South Africa's population". In other words, it was enacted to address the

historical imbalances of apartheid. This means that BEE is directed at overcoming the legacy of apartheid by emphasising the participation of black people in the economy.

Another transformative initiative with the objective of restoring Black economic dispositions, the Preferential Procurement Policy of 2022, was tabled by the South African Revenue Service (SARS, 2022). Section 2 of this Policy, referring to The Black-based Economic Empowerment Act of 2003, states that one of the objectives of the Act was to promote economic transformation of Black people. It also refers to section 217 of the South African Constitution which paves the way for organs of state to give equitable treatment to disadvantaged people who were (previously) discriminated against by means of unfair discrimination. The purposes of the Policy are:

- to provide for categories of preference in the awarding of bids;
- to provide for the advancement of persons or categories of persons (previously or currently) disadvantaged by unfair discrimination;
- to promote Black-Based Black Economic Empowerment (B-BBEE) enterprises providing services; and
- to explain the different mechanisms on how to implement these objectives.

This policy in its design, development, implementation, and review is guided and underpinned by the South African Revenue Service's (SARS) strategic objectives, intent, values, code of conduct, and applicable legislation. The Policy applies to all SARS employees, subsidiaries of SARS and the suppliers who interact with SARS in procuring goods and services.

In a sense, the promulgation of all these Acts and policies to provide in the special needs of various groups within a citizenry, in this case of South Africa, could be seen as an expression of Jeremy Bentham and John S Mill's utilitarianism (Pinker, 2012:178). By seeking the greatest "pleasure" (in the case under discussion, attempting to provide in the special needs and taking care of the interests of Black workers in South Africa), Bentham and Mill suggested that there would be less chance of personal grievance and social injustice. Social inequality is also expected to dissipate as the needs of the many are prioritized. By acknowledging this, their theory goes, no individual would be disadvantaged on grounds such as gender, religious belief, social class or personal abilities (Smith, 1999:192-193). Mill (1859/2010:168) correctly concluded: "The worth of a State, in the long run, is the worth of the individuals composing it." What the state does should be to the benefit of all its citizens (Mill, 1859/2010:159). At issue here, however, is the fact that utilitarian morality also holds that ends justifies means. In a diverse society such as that of South Africa, this could lead to oppression

or the disadvantageous treatment of minorities or non-favoured individuals. Such unfair treatment is deplorable from a Christian-reformed perspective.

Although the measures and directives described above were meant for the good of the previously disadvantaged in South Africa, they now seem to have created new inequalities in civil society in that members of the previously advantaged group now occasionally feel themselves to be unfairly discriminated against. Young white men who were not disadvantaged in the apartheid era might now feel unfairly discriminated against when seeking employment, and white majority owned companies feel discriminated against in that they may not bid for lucrative government projects (cf. Beekman, 2022:16; Pike, Puchert, & Chinayamurind, 2018:1). According to Kok (2022:16), “a governing party elite” has been abusing Black Economic Empowerment measures to make the poor even poorer, and to exclude “some cultural groups” from the economy. Based on their research findings, King and Horak (2013) added that reverse apartheid has now caused the white minority to become disadvantaged. Johann Kriegler, a former Constitutional Court Judge, concluded that persevering with BEE in its current form will do the country great harm (Kriegler, 2023:14). Gouws, a professor at the University of Stellenbosch, takes this argument a step further in commenting that the current application of BEE policies has also become an instrument for corruption (Gouws, 2023:8).

Jeffery (2013) observed that, although many SA citizens have been criticising the BEE legislation, the South African government appears to be dogged in its insistence to enforce it. Although the SME sector was previously seen as “the saviour of the SA economy”, the enforcement of affirmative action policies on it will not be able to contribute to the good policy intentions. This is because resources such as “skills, capital and entrepreneurship efforts (have) become scarce”. Chingwaru (2014) concurs by stating that BEE legislation has left SME businesses pressurised and frustrated. Based on their research, Pike, Puchert and Chinayamurind (2018:1) have found that BEE in its current form has become an obstacle for small and medium enterprises in South Africa. Unsurprisingly, Wehmhoerner (2015) concluded that BEE was not contributing to the eradication of the inequalities of the past, and then asks: “Are we correcting the past but losing the future?”

What we see at work here is the “law of unintended consequences”. When promulgating the BEE measures discussed above, government seems to have found itself confronted with what is referred to in literature as a conflict of moral duties, a choice between two evils, or sometimes “a tragic moral choice” (Frame, 2008:230). Ideally, government should have asked itself

what the potential consequences of the act might be in the short, medium and long term (Liautaud, 2021:32). It is possible, as Runciman (2022:154) noted, that the South African government at the time of promulgating these affirmative action measures did not foresee any unintended side-effects of the legislation. Its basic intent was to promote equality, and in doing so, to bring about greater equity (even-handedness, fairness) in South African society. According to the classic Greek philosopher Aristotle, what government required in circumstances such as those prevailing in South Africa around 1996 was the prudent virtue of *phronesis*, the ability to wisely foresee how BEE measures might play out in the end (Smith, 1999:102). To be able to do so in a problematic situation such as having to choose between two morally conflicting measures or situations requires a form of moral deliberation that goes beyond mere intuition and instinct (Pinker, 2012: 611).

As we have seen in the principled discussion above, bringing about equality in an absolute sense is not possible since people are ontically unequal in many respects. The intention to bring about greater equity among South African citizens is not only laudable but also feasible if managed correctly. As we have seen in the case of BEE in South Africa, measures to achieve equity can go wrong and create new forms of inequality and discrimination. What we now could justifiably expect from those in power is to revisit the entire BEE project, and come up with new measures that would ensure equity (even-handedness) on all sides.

Conclusion

The motif of equality-inequality runs through the entire creation as a basic feature of reality, but maintaining a principled and justifiable balance between them remains a challenge. In practice, it comes down to the various societal relationships, such as the family, the church, the school, the state (government), and the business sector to do their part, each in its own unique way as a societal relationship. We opened the discussion in this article with an overview of how the state (both nationally and internationally) recognised this dual motif, and gave effect to it in the form of legal-juristic stipulations (in the form of international declarations and national legislation). A reformatioal perspective brings to light that it is incumbent upon the state (and the government in charge thereof) as servant of God to provide for the recognition of both equality and the various inequalities among its citizens because all of them, as human beings – without exception – possess innate equality based on their God-ordained dignity. In doing so, the legislator

should be open to the fact that unforeseen consequences might in future flow from the promulgated measures.

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