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Theories of Distributive Justice and Post-Apartheid South Africa[†]

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ABSTRACT *South Africa is a highly distributively unequal country, and its inequality continues to be largely along racial lines. Such circumstances call for assessment from the perspective of contemporary theories of distributive justice. Three such theories – Rawlsian justice, utilitarianism, and luck egalitarianism – are described and applied. Rawls' difference principle recommends that the worst off be made as well as they can be, a standard which South Africa clearly falls short of. Utilitarianism recommends the maximization of overall societal well-being, a goal which South Africa again fails to achieve given its severe inequality and the fact of the diminishing marginal value of money – that a given amount of money tends to produce more utility for a poor person than it does for a rich person. The final theory, luck egalitarianism, aims to make distributions sensitive to individual exercises of responsibility. This view also objects to South Africa's inequality, this time on the basis that the poor are overwhelmingly worse off through no fault or choice of their own. These major theories of distributive justice therefore all propose large scale redistribution to the benefit of the (predominantly black) poor. Perhaps more surprisingly, all three views also provide support for class-based affirmative action, as opposed to South Africa's race-based Black Economic Empowerment.*

Introduction

Contemporary South Africa is characterized by marked distributive inequality. South Africa's income Gini coefficient is 57.8, indicating the eighth highest level of inequality out of 169 countries surveyed by the UNDP (United Nations Development Programme, 2010). The top quintile has a 65 per cent share of annual household consumption expenditure, while the bottom quintile has a 3 per cent share (Statistics South Africa, 2011a, p. 45). Even within richer groups, wealth is highly concentrated: 4 per cent of the population earn 40 per cent of national income (South African Institute of Race Relations, 2010, p. 182).

Such high levels of inequality would raise questions even had they arisen through historical processes that were unremarkable by global standards. However, the peculiar injustices of South Africa's modern history cast a long shadow. Two decades after the end of apartheid, inequality is still largely along racial lines. White personal income is eight times higher than African personal income (South African Institute of Race Relations, 2010, p. 181). African-headed households have average consumption expenditure of R45,000, while white-headed households have consumption expenditure of R235,000 (Statistics South Africa, 2011a, p. 11). Even more extremely, 25 per cent of African-headed households fall in the bottom expenditure quintile, compared to less than 1 per cent of white-headed households (Statistics South Africa, 2011a, p. 8). Half of

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Africans, but only 1 per cent of whites, live in relative poverty (South African Institute of Race Relations, 2010, p. 273).[1]

This article examines these distributive features of South Africa from the viewpoint of contemporary political theory. More specifically, it considers these issues from the perspectives of three prominent Anglo-American theories of distributive justice: John Rawls' famous justice as fairness (Rawls, 1999a, 1993); utilitarianism, which Rawls treated as the chief rival theory and which has been developed further in the late twentieth century (Bentham, 1970; Hare, 1981); and the main post-Rawlsian egalitarian theory, luck egalitarianism (Arneson, 1989; Cohen, 1989).[2] These theories have not to date been systematically applied to South Africa.[3]

There is an obvious rationale for applying these three theories to post-apartheid South Africa. With the exception of Rawls' position (Rawls, 1999b), the theories are intended to be 'cosmopolitan', having global extent (Singer, 1993, 2002; Knight, 2008, 2012; Tan, 2012), and some argue that even Rawlsian justice is best construed as cosmopolitan (Beitz, 1979; Pogge, 1989). In addition, a second, less obvious rationale for applying such theories in the South African context can be developed which does not rely on cosmopolitan premises.

The preamble to the Constitution aims to 'establish a society based on democratic values, social justice and fundamental human rights' (Republic of South Africa, 1996). But while South Africa is now democratized, and the constitution itself contains a bill of rights focusing on fundamental rights, there is no fixed view in public life on what social or distributive justice consists in. The Constitution addresses the topic only in the most general terms, noting, for instance, that expropriation must be 'for a public purpose or in the public interest' and 'subject to compensation' decided by agreement or by the courts (Republic of South Africa, 1996, sec. 25). The intention of its authors was presumably for fuller guiding principles to be decided democratically, but such principles have failed to materialize, which may explain the magnitude of the continuing inequality. Political theory may be able to provide the missing principles, and Anglophone political theory, with its focus on individual rights – a focus shared by the Constitution, which rejects 'group rights, on which the mystique of apartheid had so largely depended' (Davenport and Saunders, 2000, p. 572) – may seem a particularly useful perspective.

I argue that there is a significant degree of congruence in the practical prescriptions of Rawlsian justice, utilitarianism, and luck egalitarianism in the context of contemporary South Africa. One of my two main findings will not be surprising to those familiar with contemporary political theory and the current distribution in South Africa. All three theories recommend significant redistribution to the benefit of the poor. The second main finding may, however, be less obvious. I maintain that these theories all recommend that existing racial affirmative action policies be replaced with affirmative action to benefit economically disadvantaged groups. While the upshot of the redistribution and affirmative action would undoubtedly be a major net transfer of resources and opportunities from the white (and, to a lesser extent, Indian and coloured) to the black population, the rationale for this would not be racial. Rather, blacks are disproportionately poor, and their poverty cannot be justified on Rawlsian, utilitarian, or luck egalitarian premises.

Before proceeding, I should address a worry one might have about the appropriateness of my approach.[4] It might seem perverse to focus on theories of

distributive justice given the extraordinary injustices of South Africa's recent history. Some form of *compensatory* justice may seem more fitting. But even if compensatory justice is necessary, it is obviously insufficient. In particular, it is hard to see how it would address the very significant inequalities generated in the last two decades. It would, for instance, do little for the precarious situation of many recent arrivals from other parts of Africa. Thus, some application of distributive justice, such as that I offer, is needed even if we accept that compensatory justice has a role.

The remainder of the article is arranged as follows. In the first substantive section I describe the three distributive theories alluded to above, and provide a simple illustration of their respective appeal. In each of the subsequent sections I apply one of the theories to contemporary South Africa.

Three Theories

The first theory of distributive justice to be considered is Rawls' *justice as fairness.* Rawls is often regarded as the greatest English-language philosopher of the 20th century, and certainly its greatest political philosopher. His magnus opus, *A Theory of Justice,* was published in 1971. It offers a modern form of social contract theory, arguing that the appropriate arrangement of a society's 'basic structure' – its main social and economic institutions – can be ascertained by imagining the arrangement that would be selected by self-interested individuals in a hypothetical 'original position'. In the original position individuals are behind a 'veil of ignorance' that deprives them of information about their particular preferences, objectives, and talents, though they have access to general social and economic information (Rawls, 1999a). In other words, they know their society, but not their position in it.

Rawls maintains that persons in the original position would be concerned to secure the things most essential to pursuing their goals, whatever they may prove to be, even at the cost of foregoing the possibility of great material benefits. He thus suggests that individuals would prize equal provision of the basic liberties (political liberties, freedom of thought, freedom of association, and so on) above all, and once these were satisfied insist on a robust form of equal opportunity ('fair equality of opportunity'). Only then would they be concerned to secure income and wealth, and given the possibility that they may be the worst off members of society, they would choose to maximize the amount of income and wealth of the worst off class, as proposed by the 'difference principle'. Thus, Rawlsian justice identifies three considerations of justice, in the following order: first, equal basic liberties are to be secured; second, fair equality of opportunity is to secured; finally, economic inequalities are to be arranged to the greatest benefit of the least advantaged group (Rawls, 1999a, pp. 266-267).

The next theory is *utilitarianism,* which can be traced, in a developed form, at least as far back as the 18th century and Jeremy Bentham (1970). Rawls himself took this as the dominant theory of morals and politics, and developed justice as fairness in response to it. Central to utilitarianism is individual utility or welfare, which is a matter of how well an individual's life is going for them. Utilitarianism maintains that an action is good insofar as it increases overall welfare, and bad insofar as it decreases overall welfare. Often, as in this article, utilitarianism is understood as having a corresponding

theory of justice, which equates distributive justice with maximizing welfare (see Mill, 1969; Hare, 1981; Kelly, 1990).

A major internal dispute among utilitarians concerns the appropriate measure of welfare. Bentham associates it with hedonic pleasure, a view with which J. S. Mill broadly agreed though he suggests that 'higher', more intellectual pleasures make a greater contribution to welfare. Others have followed Aristotle (1954) in focusing on 'objective lists' of goods that are required for human flourishing or, by contrast, on subjective assessments of happiness and life satisfaction (Sumner, 1996). R. M. Hare and many other present day utilitarians associate welfare with preference satisfaction, individuals having higher welfare levels, the more their preferences are satisfied. For our purposes, we need not distinguish between these philosophical views of welfare. We should note, however, that on all of them, welfare is strongly influenced by wealth, but is not just a matter of wealth. For instance, the wealthier generally have better access to intellectual pursuits, and to objective goods such as health; they are also generally better able to realize their goals and, as empirical studies in South Africa and many other countries have shown, happier and more satisfied with their lives (Møller, 1999; Davids and Gaibie, 2011). But while the wealthier are generally happier (and so on), they are not happier to the same extent as they are wealthier: millionaires are not hundreds of times happier than the poor, for instance. This general fact of the diminishing marginal value of money will be important later in our discussion.

The final theory to be considered is *luck egalitarianism.* Since Rawls many writers have responded to outcome-focused theories, such as utilitarianism and Rawls' own justice as fairness, by suggesting that *how* a distribution has been arrived at bears on its justifiability (see Nozick, 1974; Dworkin, 2000). Kymlicka presents the following justification for such a move (Kymlicka, 2002). Suppose two identically talented persons chose to exercise their responsibility differently. One chose to work hard tending his crops, while the other chose to relax and play tennis all day. In a year's time, the farmer's crop is ready, and he will be well-off, but the tennis player has little to his name – even his tennis court is overgrown from lack of attention. In such circumstances, intuition suggests the farmer has at least something of a reason for resisting attempts to share his crop with the tennis player. Enforcement of an equal distribution seems implausible given that the unequal outcome has resulted from individual choices against a backdrop of initial equality. Even if end-state distributions are part of the picture, they do not seem to be the whole picture.

Luck egalitarianism, the most prominent attempt to move away from a pure focus on outcomes, combines this move with a presumption in favour of equality (Arneson, 1989; Cohen, 1989). On this view it is unjust for some to be worse off than others through no fault or choice of their own (Temkin, 1993). However, where there is an inequality that is the result of individuals' choices, luck egalitarianism sees no injustice. In short, it seeks to make distributions sensitive to individual exercises of responsibility or, what it takes to be the same thing, equalize or neutralize the influence of luck on people's prospects.

Luck egalitarians differ among themselves on a number of points of interpretation, one of which should be mentioned. Some, following Ronald Dworkin's well-known proto-luck egalitarianism, favour resources as the appropriate measure of advantage; others like Richard Arneson, treat welfare as the measure; and yet others

prefer different solutions, such as G. A. Cohen's hybrid account, which uses both welfare and resources. As with the related dispute among utilitarians, we need not settle the question of exactly what advantage consists in. My earlier comments regarding welfare and wealth apply here also, and something similar applies regarding resources. Dworkin proposes the measure of an equal share of resources to be a distribution in which no individual favours someone else's overall bundle of resources to their own. Crucially, Dworkin includes not only impersonal resources, such as wealth, but personal resources, which are physical and mental capabilities, including talents (Dworkin, 2000, pp. 322-323). Thus, as is the case with welfare, Dworkinian resources increase with, but are not reducible to, wealth. Luck egalitarianism will inevitably be concerned with economic distributions, but not only with them.

To see the appeal of these three views of distributive justice, suppose that we can alter a distribution in a society in any of the following three ways. First, we could rearrange existing economic resources such that the worst off are made as well off as they can be. Second, we could increase overall societal resources and welfare, though not in such a way that the worst off are as well off as they can be. Finally, we could rearrange existing resources to eliminate involuntary advantages and disadvantages, but not in a way that increases overall advantage levels or makes the worst off as well off as they can be. Were it possible, I think we would choose to achieve all three of these changes. Were that impossible, and we were only able to bring about one of the changes, I think we would feel something of a pull from each alternative. Our final decision would come down to the *extent* of the improvement (in terms of the advantage level of the worst off, or of overall advantage levels, or of the correspondence between advantage levels and choices) offered by each change.

For instance, a very small (e.g. R10 or welfare equivalent) improvement for each member of the worst off quintile of society might be more valuable than a similarly small (e.g. R10 or welfare equivalent) improvement for the two best off quintiles, even though the latter provides a greater overall increase in advantage levels (for the top two quintiles contain more people than the bottom quintile alone). This suggests that a certain priority for the worst off is justified, as Rawls suggests. But it does not seem very plausible that that priority should be absolute as Rawls claimed. Were a possible welfare benefit for the better off quintiles 1000 times the size of a possible welfare benefit for the worst off quintile, selection of the former benefit over the latter is plausible. This suggests that utilitarian considerations have some weight. Similar considerations apply to luck egalitarianism. A large reduction in unchosen inequality (for instance, resources being transferred from millions of members of the rich to millions of members of the equally hard-working poor) would seem to be more valuable than a small improvement in overall advantage levels or in the condition of the worst off.[5] But a very small reduction in unchosen inequality (for instance, resources being transferred from one member of the rich to one member of the equally hard-working poor) could easily be outweighed by even modest improvement in overall advantage levels or those of the worst off.

In short, then, each of the three theories captures part of distributive justice. In the remainder of this essay I apply each theory in turn to contemporary South Africa.[6]

Rawlsian Justice Applied

As we have seen, Rawls' highest objective is to secure the basic liberties. While that would have been a pressing concern in South Africa twenty years ago, matters have improved greatly. Liberty of conscience (including religion), freedom of association, and 'the rights and liberties covered by the rule of law' (Rawls, 1993, p. 291) are firmly entrenched in the constitution and generally upheld. The political liberties are also in the main secure, with South Africa now an established democracy in which each person has one vote in fair and free elections, and may stand for office. Recent government attempts at heavy-handed press regulation, and the appearance of interference in the judicial process, are cause for concern and should be addressed where they appear. The response to protests and strike action, most notably the incident in Marikana, which saw 34 platinum miners shot dead by South African Police Service officers in August 2012, also raises serious issues about the rule of law, militarization of policing, and links between government and industry.[7] But such issues should be considered in the context both of the performance of other developing countries and South Africa's recent history which, for instance, saw over 17 million blacks imprisoned under the Urban Area Act's pass laws until its repeal in 1986 (Davenport and Saunders, 2000, p. 511). There is need for improvement, but South Africa's performance as regard's Rawls' first objective is reasonable in the circumstances.

Rawls' next highest objective is to secure fair equality of opportunity. Here, South Africa has again seen remarkable improvement, being far removed from the 'colour bar' which denied Africans access to skilled trades for much of the twentieth century. Even so, it may seem that objectionable legal discrimination has reappeared in the guise of Black Economic Empowerment (BEE) policies. Under the Broad-Based Black Economic Empowerment Act of 2003, which came into force fully in 2008, companies with annual turnover in excess of R35m are expected to achieve specified levels of African, coloured, and Asian representation in ownership, management, and employment, as well as pursue BEE objectives in skills development, preferential procurement, enterprise development, and socio-economic development. Companies with turnover between R5m and R35m are expected to comply in four of these seven areas. Might these affirmative action policies threaten fair equality of opportunity?

To answer this question, we must first note that Rawlsian fair equality of opportunity is not limited to removing formal racial or other barriers to employment. Rawls understands it as requiring that 'those with similar abilities should have similar life chances' (Rawls, 1999a, p. 63). So where individuals are talented, but their prospects threatened by inferior education, for instance, state involvement to improve their prospects is justified. There is ample evidence of a historical racial divide in education, both in terms of the quality of the output and (in schools) staff/student ratios and expenditure, that would have a major impact on the current workforce (Fedderke and Luis, 1999; Fedderke et al, 2000, 2003). 2 million African adults, and fewer than 10 thousand white adults, have received no education (South African Institute of Race Relations, 2010, p. 373). Inferior health would also be a possible source of inequality of opportunity on a Rawlsian scheme (Daniels, 1985, 2008; Rawls, 1993). Health facilities were only formally desegregated in the early 1990s, and rates of disease and mortality remain much higher for Africans than for whites, both due to inequality of healthcare provision and wider social and economic inequalities (Coovadia et al, 2009). 74 per cent

of whites have medical aid (private health insurance), compared to only 9 per cent of Africans (South African Institute of Race Relations, 2010, p. 468). Thus, affirmative action in South Africa might be justified on a Rawlsian basis, as necessary to secure good opportunities for those with good abilities who are impended by poor education, and/or inadequate healthcare early in life.

However, while affirmative action might be justified on grounds of fair equality of opportunity, there are two general problems with BEE from that perspective. First, the main effect of BEE has to date been 'narrow', shifting ownership and control into black hands, and such movements of assets and power among, in the main, already elite groups obviously falls short of the ideal set by fair equality of opportunity. It does nothing to improve the life chances of the vast majority of the (mostly black) underprivileged population. Even more recent broad-based BEE is focused on managerial positions, a small minority of posts.

Second, even setting aside this point, and assuming that BEE will eventually realize genuinely broad objectives, it is hard to see how affirmative action *solely for the benefit of particular racial groups* might be justified on the basis of fair equality of opportunity. The fact that black people on average have worse access to education and healthcare does not provide any warrant for, say, black people to receive preferential treatment in cases where they have received better education or healthcare. To do so would be to increase inequality of opportunity.

While an African, coloured, or Asian person being better off than a white person is not the standard case, it is hardly so unusual as to be negligible. There are millions of such cases: for instance, 4 million Africans have personal income in excess of R50,000 per annum, while 1.5 million whites have personal income of less than R50,000 (South African Institute of Race Relations, 2010, p. 245). 8 per cent of African-headed households, 27 per cent of coloured-headed households, and 54 per cent of Asian households fall in the fifth (top) quintile by consumption, while 16 per cent of white-headed households fall in the fourth quintile (Statistics South Africa, 2011a, p. 8).

Furthermore, more money generally means better education and healthcare. The top consumption quintile spent an average of R8,003 per year on education, and R2,990 per year on health, while the fourth quintile spent R1,379 and R820 respectively (Statistics South Africa, 2011a, p. 128). It is ludicrous to exercise affirmative action in favour of top quintile black people on the basis that they have been disadvantaged where they have actually benefited from six times the education expenditure, and four times the healthcare expenditure, of white people in the fourth quintile. This is what BEE requires, so it clearly cannot be defended on the basis of realizing fair equality of opportunity. As Daryl Glaser notes in his critique of BEE, '[t]he problem is simple: there can be situations where races may be equal but people are not' (Glaser, 2010, p. 306; see also Glaser, 2007). Making advantaged black people even more advantaged, at the cost of less advantaged whites, is a bad trade from the individualistic Rawlsian perspective.

In fact, a version of this problem arises even where two job applicants are of the same race, but one is from an advantaged background and the other from a disadvantaged background. The problem here is not as extreme as in 'poor white' cases, as a poor black person would not be competitively disadvantaged as a poor white person would be. But fair equality of opportunity requires that similarly capable people have similar life chances, and that is clearly not achieved where no preferential treatment is shown for

those from disadvantaged backgrounds. Those from poor townships or rural areas, reliant on state education of dubious quality, rarely have the qualifications to fairly compete in the labour market with the privately-educated offspring of the wealthy, whether the latter are black or white. Thus, even setting aside the specific shortfalls of BEE as practiced to date, affirmative action for the benefit of particular racial groups is both too differentiating and too undifferentiating: it will extend the opportunity shortfall of some of the already disadvantaged on the basis that they are white; and it will fail to correct the opportunity shortfall of the rest of the already disadvantaged on the basis that being disadvantaged is no ground for preferential treatment.

A policy of affirmative action which targeted special assistance to those who suffer from educational, health, and other competitive disadvantages in the labour market would be a much more plausible way of furthering fair equality of opportunity. In practice, this would amount to socioeconomic affirmative action. Such a policy would undoubtedly improve the position of the black population on the whole, but because it is predominantly poor rather than because it is black. Rawlsian justice thus suggests the rejection of BEE, which should be replaced with broad but non-racially motivated affirmative action.[8]

Rawls' third and final consideration is that provided by the difference principle, which requires that distributions maximize the income and wealth of the worst off. South Africa has, yet again, made great strides in the right direction on this score. Access to electricity and clean water, especially in rural areas, has improved markedly since the mid-1990s. Social grants have also been extended on a large scale, with 42 per cent of households now receiving a social grant (Statistics South Africa, 2011a, p. 38). Furthermore, ANC schemes are far more effective at targeting need than were apartheid schemes, whose effectiveness was limited by their racial focus. For instance, in 1952 the maximum old-age pension for white people was an astonishing twelve times that for Africans, and the former remained higher as late as 1993 (Davenport and Saunders, 2000, p. 666). Most tellingly, those living on less than $1 per day (at 2005 prices) numbered 1.7 million in 1996, but only 0.4 million in 2009 (South African Institute of Race Relations, 2010, p. 271).

For all these changes for the better, it seems fairly clear that contemporary South Africa does not maximize the income and wealth of the worst off group. The difference principle does not only prioritize the interests of the very most deprived members of the population. Though Rawls is vague on the crucial question of how to define the worst off group on which the difference principle focuses (see Lötter, 2010), it seems clear that he intends this group to be very large – perhaps as much as a third of the population. When we look at the worse off in South Africa in this expanded sense, progress is less apparent. The number of people in relative poverty increased from 16 million in 1996 to 19 million in 2009 (South African Institute of Race Relations 2010, 272). Furthermore, as my opening paragraph noted, the worst-off quintile of households has not even a twentieth of the consumption expenditure of the best-off quintile. Given both the persistence of widespread poverty, and the presence in society of the resources to tackle it, it is not plausible that the state has no means of increasing the worst-off's income and wealth. For instance, income, property, or luxury taxes could be increased, with the revenues transferred to the worst off through increased social grants, better service provision, and job creation schemes.

One possible reply here is that, given the need to maintain international competitiveness and see off the threat of 'brain drain', higher taxes would be counterproductive.[9] The economy would suffer if international businesses invest elsewhere, or South Africa's best and brightest are driven to seek their fortune overseas. Two points are worth making in reply. First, it seems likely that some higher level of taxation, especially of the wealthy, is achievable without a serious loss of international competitiveness. For instance, top rate income tax in South Africa is 40%, lower than the 45% rate in Australia, Germany, and the United Kingdom. While top rate federal income tax is lower in Canada (29%) and (by a tiny margin) the United States (39.6%), this is more than offset by double-digit provincial and territorial income taxes throughout Canada, and state income taxes in 43 U. S. states. An increase in this major tax, at least, would not put South Africa at a disadvantage to its major competitors in the international labour market. Second, the difference principle is in any case compatible with some loss of international competitiveness. Suppose, for instance, that some new strategy of higher taxation and public expenditure did result in decreased GDP. This might nevertheless be acceptable from a Rawlsian perspective provided that the resulting distribution favoured the worst off, as may well be the case given the increased public expenditure. Competitiveness concerns do place a limit on how much taxation and expenditure is appropriate, as a highly uncompetitive economy would be bad even for the worst off. But it seems very likely that the worst off would be better served by higher than present levels of taxation and public expenditure.

While Rawlsian opposition to BBE amounts in practice to a relatively minor adjustment of policy, replacing a racial focus with a socioeconomic focus that has similar results, Rawlsian opposition to current distributive outcomes is much stronger. Though this opposition is not racially motivated, in practice it would generate a net flow of resources from the white population to the black population. Still, the redistribution would not uniformly take the form of transfers from white to black: rich Africans would be just as liable for taxation as rich whites, and Asians, who like whites have a majority in the top quintile of consumption of household expenditure, would also be significant net contributors. As with fair equality of opportunity, the difference principle treats race as itself unimportant.

Utilitarianism Applied

The results of applying utilitarianism to contemporary South Africa are apparent once we recall that, though utilitarianism is concerned with maximization, it is not concerned with maximizing income or wealth, and so does not take, say, economic growth as its primary goal. For utilitarians, the key consideration is that of the diminishing marginal value of money – the fact that a given amount of money tends to produce more utility when used by a poor person than it does when used by a rich person (Singer, 1982; Hare, 1997). For instance, R10,000 in the hands of a household in the top quintile will make almost no welfare difference: they already spend R228,000 on average, so R10,000 is barely noticeable to them. But R10,000 in the hands of a household in the lowest quintile might make a big improvement to their lives: they spend only R11,000 on average, so an extra R10,000 would allow for a near doubling of expenditure, which for people struggling to

make ends might mean the difference between electricity and no electricity, clean drinking water and dirty water, a covered or an uncovered toilet. Such improvements make for a significant welfare improvement on any of the measures of welfare mentioned earlier. Furthermore, such improvements will make for a significant net gain in welfare even where they come at much higher monetary cost for the better off: even an R50,000 loss to the better off would typically have much smaller welfare effects than an R10,000 gain for the better off. In short, utilitarianism presents a strong case for redistribution to the poor, just as the difference principle did.

Of course, though this redistribution would generally benefit poor black people, it would not recognize racial distinctions as being intrinsically important. Utilitarianism similarly presents no support for BEE. It would be a welfare-inefficient use of resources to give rich, well-educated black people preferential treatment over poor, badly educated white people, for two reasons. First, if two people are equally capable of fulfilling a position, and one's education was inferior, it is likely that the less well educated person has greater potential to contribute to the economy. They have managed to achieve the same level of capability even with limited opportunities, so in the same position they can be expected to achieve more than more privileged rivals. Indeed, this kind of consideration is at the heart of the efficiency argument for affirmative action, but it is confounded by forms of affirmative action that extend the advantages of already advantaged people provided they are of a certain race. Second, notwithstanding any wider efficiency benefits to the economy, appointing qualified less privileged persons to available positions, regardless of race, clearly generates a more equal distribution, as income streams are thereby directed to poorer parts of the community. For the reasons of diminishing marginal returns already mentioned, a distribution that favours the worst off promotes utilitarian ends better than a highly unequal distribution.

A countervailing thought here is that black South Africans might feel better knowing that there are policies designed specifically for their benefit.[10] As they are a large majority, bringing about that positive feeling may have weight for utilitarians. I do, however, doubt that this is as important as the two opposed considerations mentioned above. First, there are reasons for thinking that this positive feeling may not be very widespread. Given that BEE picks out a large majority of the population for preferential treatment, it is hard to see why an individual would feel any strong attachment to it. In particular, poor black South Africans may feel a stronger attachment to affirmative action which picked out the poor for preferential treatment. Socioeconomic affirmative action that picked out the bottom two quintiles for preferential treatment would give a poor black person a competitive advantage over three-fifths of the population, whereas BEE would give them an advantage over less than a tenth of the population. Poor black people may, then, begrudge BEE, given that it would only confer a small fraction of the competitive advantage of socioeconomic affirmative action. Second, insofar as BEE does in fact inspire positive feelings, the extent of its contribution to welfare is probably relatively minor. The two opposed considerations I mentioned pinpointed material changes – increased productivity and a transfer of assets to the worst off. Even if many black people did have positive feelings on account of BEE, in each case the amount of welfare increase will be very small, so the sum of these increases may well be less than the sum of a smaller number of much larger increases brought about by material

improvements (for instance, clean drinking water made available by employment, which is in turn made possible by socioeconomic affirmative action).

I therefore conclude that utilitarianism delivers a broadly similar result to Rawlsian justice in the South African context. It recommends a radical redistribution of resources from the rich to the poor, and does so on a non-racial basis.

Luck Egalitarianism Applied

In principle luck egalitarianism is compatible with any level of inequality. It does not have an intrinsic concern with helping the worst off, just because they are worst off, as Rawlsian justice does. Nor is luck egalitarianism concerned with the diminishing marginal utility of money, as utilitarianism is: for the luck egalitarianism, it is no argument that a more equal distribution would increase welfare, because increasing welfare is not its concern. Rather, it is concerned to eliminate involuntary disadvantage; voluntary disadvantage is none of its business.

Is some large part of South Africa's inequality due to chosen disadvantage? Might the racial economic divide be explained in this way? Adherents of such a view might cite the fact that 30 per cent of the African working-age population are unemployed on the official definition, while only 5 per cent of the white working-age population are unemployed on the same measure (Statistics South Africa, 2011b, 6.13). But even were such a difference wholly down to individual choice, it could hardly explain why whites have five times as much spending power. The relevant statistic is not the number of unemployed, whose contribution to household expenditure is relatively small, but rather the number of employed. On that measure there is a much smaller difference of 70 per cent versus 95 per cent, hardly adequate to justify expenditure of R45,000 versus R235,000. Furthermore, the difference in employment is probably attributable to disadvantages in, for instance, education and health, and perhaps also racial discrimination, that make it harder for black people to get jobs. African-headed household expenditure on education is R1,129 per annum and on health R539, compared to white expenditures of R6,598 and R3,487 respectively (Statistics South Africa, 2011a, p. 104). It is not choice, but lack of opportunity, that often restricts black access to jobs. Luck egalitarianism would recognize that as being morally salient, as it makes people worse off through no fault or choice of their own. It would therefore make compensatory arrangements. These include affirmative action, but as some whites face similar disadvantages, and many blacks do not, such affirmative action would not pick out race as a relevant category.

Other luck egalitarian measures would include a more general transfer of resources from rich to poor, on the basis that the rich are generally advantaged, and the poor disadvantaged, through no choice of their own. The main reasons for this, concerning differences, such as those in health and education, that affect life chances from an early age, have already been mentioned.

Are there particular members of the rich who can be picked out as having particularly oversized advantages, relative to their choices? If two people are equally successful, and the first person had better education and health care early in life, it seems that the second person's success is more wholly a result of their choices than the first

person's, as in the latter case the success is likely to be partly attributable to the initial advantages. Luck egalitarianism is therefore inclined to treat the initially more advantaged persons' resources as more open to redistribution. In practice, given the continuing effects of apartheid and earlier white domination, that will mean that white people are a disproportionately large source of compensation for poor (usually black) people. Nevertheless, many black people have privileged backgrounds, and are equally liable for compensation. The higher net contribution of those with privileged backgrounds would, to some extent, be achieved by increased taxation on income, property, and luxuries, which I have already mentioned as desirable for other reasons. It might also be extracted in a more precise way through such measures as means-tested social grants and university tuition fees, and the aforementioned socioeconomic affirmative action.

Luck egalitarianism also highlights another group, which is not privileged in the traditional sense, as a particularly appropriate source of compensation. Major beneficiaries of BEE (and especially the ownership- and management-focused BEE that has been seen to date) have benefited from a privilege – access to a competitive advantage that was denied to others. For its beneficiaries, BEE is the equivalent of manna from heaven. It presents an opportunity that has not arisen from the beneficiaries' choices, and from which other relevantly-similarly positioned persons were excluded on the arbitrary ground of race. Advantages derived from such opportunities are therefore to be treated as unchosen privileges, and subject to luck egalitarian redistribution as are other privileges.

It seems likely, however, that this privilege is less impactful than others. Beneficiaries of BEE have benefited from the exclusion of only a small minority of the population, while beneficiaries of more familiar privileges (such as private education and healthcare) benefit from advantages denied to the majority. As such, the latter seem to confer the greater competitive advantage. The important point is that, in assessing fair shares, the entire bundle of privilege is taken into account. Hence, though a wealthy BEE beneficiary is due less insofar as BEE has benefited them, it may be that they did not benefit from other privileges, in which case they are probably due a greater share of their assets than is the typical wealthy person. But if a wealthy BEE beneficiary did benefit from traditional privileges to a certain extent as well, they would be due even less than someone who only benefited from traditional privileges to that extent.

It is worth emphasizing that the foregoing argument does *not* say that major BEE beneficiaries are guilty of any wrongdoing. Indeed, it does not even say that those with privileged backgrounds are guilty of any wrongdoing. These groups are particular targets for redistribution on a luck egalitarian scheme because their advantage levels are strongly influenced by factors other than their choices, not because their choices are themselves wrongful.

Conclusion

I have argued that three major theories of distributive justice – Rawlsian justice, utilitarianism, and luck egalitarianism – exhibit a surprising level of agreement in the South African context. They all recommend a large scale redistribution to the benefit of

the (predominantly black) poor. A further, more surprising result agreed on by all three theories is that this redistribution should be conducted in non-racial fashion. BEE should be rejected in favour of socioeconomic affirmative action, as the objectives of fair equality of opportunity, utility maximization, and elimination of involuntary disadvantage all recommend benefiting those who lack opportunities, rather than some particular racial group. This combination of redistribution and affirmative action with non-racialism is, I suggest, a promising basis for addressing some of South Africa's most pressing problems, including its outrageous poverty.

Acknowledgements

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Notes

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[1] Those in relative poverty live in households that fall below a poverty threshold that takes into account both income and household size; for instance, in 2009, the poverty threshold was R1,259 for a one person household and R4,544 for an eight person household.

[2] An alternative, avowedly African approach to distribution is presented in Metz, 2009; 2011, pp. 551-554; 2012, pp. 76-79.

[3] Glaser 2007 and 2010 mention Rawls in an egalitarian critique of racial affirmative action in South Africa.

[4] Thad Metz raised this concern.

[5] It may seem puzzling to discuss improving the condition of the worst off and eliminating involuntary disadvantage as alternative strategies, rather than alternative descriptions of the same strategy. But while the poor certainly tend to be involuntarily disadvantaged, the two strategies are distinct in principle and sometimes in practice. For instance, if I have R1000 which I can assign either to A, who is prudent and quite poor, or B who is destitute having burnt down his business through his own free will, I would give my money to B if I am concerned with improving the condition of the worst off, but to A if I am concerned with eliminating involuntary disadvantage.

[6] I do not attempt here to combine the theories into a single pluralistic theory. Arneson's 'responsibility-catering prioritarianism' is a theory of this sort (Arneson, 1999). I have suggested a similar view elsewhere (Knight 2008, 2009).

[7] This case does, of course, also raise the issue of the distribution of income. I address this later in the section.

[8] It might be countered that socioeconomic affirmative action is impracticable. It would, however, be a relatively simple matter for government to require that any history of private education and medical aid is taken into account when assessing applicants, as well as parental wealth. These would serve as better proxies for advantaged upbringing than would race.

[9] I thank a referee for urging me to consider this line of argument further.

[10] I owe this suggestion to Thad Metz.