Classical Liberalism and the Distribution of Benefits and Burdens with respect to Health-Care

Siyabulela Thomas Tsengiwe

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Declaration

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

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Siyabulela Thomas Tsengiwe

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Abstract

The South African government is proposing major health policy reforms, the National Health Insurance (NHI), in response to extreme inequalities in healthcare, where the middle and upper classes have access to quality healthcare in the private sector and the majority is subjected to poor healthcare in the public sector. The debate is fierce among South Africans as to what should be the appropriate healthcare policy for the country. Fundamentally, healthcare is an ethical issue of how benefits and burdens should be distributed in society and can better be understood through moral reflection. At the heart of this study is a critical review of one of the influential theories of justice, namely, classical liberalism that normally finds its expression in social and economic policies and in this case the focus is on healthcare. The question that this study seeks to answer is: can classical liberalism produce the right distribution of benefits and burdens with respect to healthcare? The suggestion of this study is that classical liberalism gives an inadequate account of how to distribute benefits and burdens with respect to healthcare. For more coherent accounts, the study proposes that we need to look in the direction of John Rawls and social equality. Government's approach seems to borrow from elements of Rawls and social equality.

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1. Introduction

One of the biggest challenges facing the world today is growing socio-economic inequalities between the upper, middle and lower classes. This has been magnified by the coronavirus pandemic. According to Statistics SA, South Africa's inequality measured by the Gini coefficient of income has been 0.67 in 2006 and 0.65 in 2015, placing South Africa amongst the most unequal countries in the world. South Africans, given the extreme inequalities even under the democratic dispensation, are leading separate lives and socially distant from one another. The middle and upper classes, among others, live in gated communities with private security, send children to private schools and public schools in the suburbs, and make use of private healthcare whilst the vast majority must endure poor public services.

Government estimates the country's expenditure on health to be 8.5% of GDP with 4.1% spent on 84% of the population in the public health sector whilst 4.4% is spent on 16% of the population in the private health sector, mainly funded through health insurance. In terms of total GDP for 2021, this translates to around R246 billion for 84% of the population and R264 billion for 16%. Intuitively, there is something terribly wrong with this state of affairs. Since the dawn of democracy, although important advances have been made in the amalgamation of fourteen departments of health that catered for the former Republic and Bantustans into a single and deracialised system, extreme inequalities in healthcare have self-perpetuated based on socio-economic status. A privileged few, black and white, have access to quality healthcare in the private sector and the vast majority mainly black who cannot afford medical health insurance are subjected to poor healthcare in the public sector. Common sense morality tells us there is something bad about many

who are in pain, suffer and die every year because of lack of access to quality healthcare. The national government has introduced a major policy reform proposal, the NHI, to parliament and the debate is fierce among South Africans as to what should be the appropriate healthcare policy for the country.

Ismail Serageldin, in the 9th Nelson Mandela Annual Lecture, posits, “Extreme inequality is corrosive; it hardens the attitude of the rich and powerful towards the poor and lowly; it builds acceptance of the incongruity of wealth and misery and exclusion; and it undermines the very notions of social justice and social cohesion. It makes a mockery of fairness and leads to the slippery path of class warfare as the only means of redress.” “Health is a fundamental human right, and universal health coverage (UHC) is critical for achieving that right. UHC represents the aspiration that good quality health services should be received by everyone, when and where needed, without incurring financial hardship” (WHO 2021). South Africa’s world-renowned constitution provides for healthcare services as a human right. Of course, how this human right is realised is left to the law-makers.

Fundamentally, healthcare is an ethical issue of how benefits and burdens should be distributed in society and can better be understood through moral reflection. Arnold Beauchamp and Bowie in reference to questions of social and economic inequalities state that “several well-reasoned and systemic answers to these and related questions have been grounded in theories of justice – that is, theories of how social and economic benefits, protections, services, and burdens should be distributed” (2014:540). It is through these theories of justice that the political question of who gets what in society is assessed on moral grounds, which then

places different classes of people and how they are treated, at the centre of these theories. At the heart of this study is a critical review of one of the influential theories of justice, namely, classical liberalism that normally finds its expression in social and economic policies. In this case the focus is on healthcare. The question that this study seeks to answer is: can classical liberalism produce the right distribution of benefits and burdens with respect to healthcare? The matter of distributive justice with regards to healthcare may well be approached by focusing on issues that tend to dominate debates about health policy and in the South African context these include state capacity; mismanagement and corruption; tax burden; and fiscal constraints - issues that, it must be admitted, have important moral significance. “Among those who conditionally support or oppose the [NHI] Bill, concerns about state corruption and capacity to deliver on the major reform of healthcare financing and delivery system proposed in the Bill feature prominently” (Solanki and Cornell 2001:812). This study takes a different approach by giving prominence to the fundamental principles of justice that are undercurrent in such policy debates. The suggestion of this study is that classical liberalism gives an inadequate account of how to distribute benefits and burdens with respect to healthcare. For more coherent accounts, the study proposes that we need to look in the direction of John Rawls and social equality. Government’s approach seems to borrow from elements of Rawls and social equality.

There is something special about healthcare relative to other social services, which warrants prioritisation and solidarity. Classical liberalism, which is often mistaken with libertarianism, gives an account of justice that prizes individual freedom. Although classical liberalism and libertarianism have something in common, that

is, the centrality of individual freedom, the major difference between the two is on what constitutes individual freedom. Based on what they view as constituting individual freedom their perspectives on the task of the state differ considerably. The right distribution of resources, according to classical liberalism, based on the prominence it gives to individual freedom, would be the one determined by free markets but unlike libertarianism it allows for some regulation of the markets and moderate redistribution to mitigate the situation of the poor - “limited government”.

The strongest objection to classical liberalism is its conception of the individual, and flowing from this, how it construes freedom as non-interference which then informs what it views as the task of the state. According to Carol Hay (2012:148) liberalism has been criticised for being “overly individualistic”. The critique asserts that individuals are not born in a vacuum but are situated in social relations and can therefore not be defined in isolation from those relations.

South Africans are having critical conversations on what stands to be a major reform of the country’s health sector. The study will provide insights into some of the theories of justice that are at play, implicit or explicit, in respect of the path that South Africa should take in reforming its health system, providing an intellectual platform that could have the effect of empowering citizens to engage more meaningfully in respect of this reform and the democratic process in general. Support that cuts across social classes will be needed for the successful implementation of any major policy reform of the health system. A comprehensive conversation and understanding about the change needed to the health system

might contribute to forging a South African identity and advance social change, something that is critical for social cohesion and nation building.

Following the introduction, the paper starts with a section on the structure of the South African health system. The next section provides an analysis of classical liberalism and its implications for health policy. Section 4 deals with egalitarianism and specifically that of John Rawls and social equality, including what they would endorse in respect of healthcare. The paper concludes with a summary of the argument and what the study had sought to show.

2. The structure of the South African Health System.

Before turning to the various theoretical perspectives on what would be a just distribution of health care, it's critical to first lay out the structure of the South African health system that in fact these theories of justice must respond to and assist in informing an appropriate model of universal healthcare. It's also important to get a sense of the main goal of NHI, its basic workings and where the major disagreements are in the health policy debate.

The South African health system consists of a public sector that serves the vast majority and a private sector that provides medical services to around 16% of the population who can afford health insurance, referred to as medical schemes. "The health system is organised into three areas of health care service delivery. These are: primary health care services; hospital and specialised services; and emergency medical services" (Department of Health 2015:31). Primary healthcare

which is made up of clinics and health centres situated mostly in township and rural communities has received priority under the democratic dispensation as the foundation for public health. Public health services are provided through three spheres of government wherein national government is responsible for health policy and allocation of funds from the national budget to provinces that carry the responsibility for implementing health policy through public hospitals and clinics. Local government is mandated with ensuring an environment that is not harmful to the health of the people and runs some clinics. “Although the public health system is delivered at a provincial level, the funds are raised predominantly from national taxes and allocated to provinces as revenue through a mix of unconditional and conditional transfers” (Van den Heever 2019:16).

The administration of public hospitals is centralised in provincial health departments. Most of public healthcare users receive health services free of charge at the point of delivery with only those that have reached a specific income threshold but cannot afford health insurance being subject to pay user-fees. In terms of the national healthcare act of 2003, among categories of persons eligible for free health services at public establishments are pregnant women and children below the age of six years who do not belong to medical schemes and all persons receive free primary healthcare except for those who are members of medical schemes. It’s important to note that among those using public hospitals, many use private general practitioners and pay out-of-pocket but because of limited financial means cannot access private hospitals. The Office of Health Standards Compliance which has as its main function, monitoring and enforcement of national

health norms and standards compliance by public hospitals often finds these health establishments failing to meet the set norms and standards.

The national government recognises that there are serious quality problems in the public healthcare sector such as staff shortages and attitudes, waiting times, cleanliness, drug stock outs, infection control, safety and security of staff, overburdened facilities and deteriorating infrastructure but that these problems cannot be addressed sufficiently without changing the basic structure of healthcare in the country referred to as the two-tiered system - a public sector for the vast majority and the private sector that serves a minority. According to the national government the two-tier system results in an unjust distribution of resources that favours the affluent and disadvantages the poor and the working class. Even if attempts were to be made to increase budget allocations to public health, considering fiscal constraints, the huge imbalances between the two tiers would persist with differentiated treatment as if some humans are more worthy than others in respect of life.

This runs contrary to the view of the official opposition, the Democratic Alliance (DA), that government must focus on fixing the public health sector, in particular the governance and management of public hospitals to a point where those who are on private health insurance would want to make use of public health facilities resulting in a decline in demand for private health insurance. For the national government, this, if it ever happens, might take another hundred years, given the underlying structural problem, the two-tiered system that perpetuates inequalities in healthcare. The national government thinks that this is health *apartheid* under a

democratic dispensation *albeit* that the minority that receives quality healthcare is black and white. “The main contributor to inequity in healthcare is the existence of a two-tier healthcare system where the rich pool healthcare funds and resources separately from the poor. These inequities have also resulted in maldistribution of key health professionals between the public and private health sectors, as well as urban and rural areas as well as among the districts” (Department of Health 2015:15). According to national government, the mandatory pooling of risks and funds into a single payer will give effect to principles of equity and social solidarity that must inform how the country’s healthcare system is structured. In this way the poor and working class will not be left behind in accessing quality healthcare. Looking at the complexity and multifaceted nature of the problem of public healthcare including the shortage of resources and management failures it does seem that the solution can’t be solely the dismantling of the two-tier system but that government must simultaneously address problems of corruption and maladministration in public health institutions. However, changing the basic structure seems fundamental in rebuilding public health institutions and bringing about a more equal healthcare system.

The biggest channel for accessing private sector health services, particularly private hospitals and specialists, is through private health insurance that is taken voluntarily and is comprised of profit-based companies and non-profit medical schemes. The minority that can afford premiums for private health insurance also receives tax credits from government which basically serves as an indirect subsidy for private health services. “South Africa’s system of medical schemes provides the predominant form of lifetime coverage for families regarded as having adequate

incomes. Adequacy here can be regarded as families with income earners who are active taxpayers. Income earners earning below the threshold required to pay income tax are generally unable to afford medical scheme coverage" (Van den Heever 24:2019). The private health system provides high quality care, but concerns have been raised with regards to cost escalations that even place some sections of the middle class under financial hardship.

The Council for Medical Schemes responsible for the regulation of the medical schemes industry states that there are currently 75 medical schemes in the country with 20 open to all and 55 that are company specific being restricted to employees. These medical schemes have a total number of 8.9 million members in a South African population that according to Statistics South Africa is currently estimated at 60.6 million, leaving 51.7 million South Africans uninsured and thus dependent on the public health sector.

In 2019 the Competition Commission of South Africa released its report on a health market inquiry which was initiated to deal with serious concerns pertaining to high and increasing costs of private healthcare. It states, "In our review of the South African private healthcare market we found that it is characterized by high and rising costs of healthcare and medical scheme cover, and significant overutilization without stakeholders having been able to demonstrate associated improvements in health outcomes" (Competition Commission 2019:30). Clearly, the problem of the South African health system does not only pertain to poor public health services but also escalating private healthcare costs.

In response to challenges facing the South African health system, particularly, poor quality of health care in the public sector and escalating costs in the private health care sector, national government wants a major overhaul of the structure of healthcare through the introduction of the NHI Bill. The overall goal of NHI is to provide for universal health coverage through a mandatory and central fund that will be the single payer of healthcare from accredited service providers, public and private. The intention is to include the majority in accessing quality healthcare based on need and regardless of the ability to pay for the services. “NHI is a health financing system that is designed to pool funds to provide access to quality, affordable personal health services for all South Africans based on their health needs, irrespective of the socio-economic status” (Department of Health 2015:12). The chief source of income for the fund will be revenue raised through general taxes that include payroll and a surcharge on personal income. “Citizens in a single-payer system do not pay premiums to a private insurance company. Instead, they pay taxes or separate health care premiums to the government, which then runs an insurance program for all citizens. When you go to the doctor, the government (your insurer) pays the doctor’s bill” (Alex Rajczi 2019:28). South Africa’s proposed single-payer system is similar to the British National Health System. In the British system the government employs most of the doctors and hospitals are publicly owned whereas in the Canadian single payer system “almost every Canadian doctor is in private practice and most hospitals are privately run. The government only replaces the private insurance market” (Alex Rajczi 2019:28).

According to the White Paper on NHI, under NHI a person eligible to receive healthcare must register as a user with the fund at an accredited service provider

or health establishment and will be issued with an NHI card that will serve as proof of registration when seeking healthcare services. A user must first access healthcare services at the primary healthcare level as an entry point into the health system. This would be close to where the user resides. The different care levels are primary; secondary; tertiary; and quaternary. Patients who need to be treated by specialists or in hospitals will have to be referred by primary healthcare providers. A person must pay directly for health care services if that person fails to comply with referral pathways or seeks services that are not deemed necessary or seeks treatment that is not included under the NHI fund. To prevent inappropriate and expensive use of health services and to ensure long-term sustainability and affordability, gatekeeping will be implemented at the primary level.

The healthcare service providers both public and private must register with NHI and receive accreditation which would ensure that they meet the set norms and standards for quality healthcare. The NHI fund will enter contracts with accredited healthcare service providers and pay them directly for the services rendered. Healthcare service providers, private and public, include general practitioners, specialists, clinics and hospitals that would have complied with the national norms and standards. The fund will determine payment rates annually for healthcare service providers, health establishments and suppliers as well as develop and maintain a service and performance profile of all accredited and contracted healthcare service providers. The White Paper on NHI provides for a Health Care Benefits Pricing Committee that will recommend prices of health service benefits to the fund. Once NHI has been fully implemented, medical schemes may only offer complimentary cover to services not reimbursable by the fund. NHI will not

cover everything for everyone and thus services to which there is no coverage, such as cosmetic surgery, must be paid for fully by the patient.

The official opposition is vehemently opposed to NHI as an appropriate model to achieve universal health coverage. The DA objects to NHI, among others, on the grounds of state incapacity to manage such a large-scale undertaking; mismanagement and corruption; additional tax burden; and fiscal constraints. Fundamentally, as a center-right party, it is concerned that NHI will erode the freedom of choice for both users and healthcare service providers. The middle class which currently can afford private health insurance and access private medical service providers as it wishes will now be forced to pay into a single pool for all South Africans and restricted in how it accesses medical care through referral pathways. “Referral pathways are also an unnecessary and burdensome provision, which may lead to users being unreasonably excluded from being covered by the fund. For example, what would happen to a pregnant woman who decides to skip the general practitioner (the primary care giver) and go straight to her regular gynecologist or obstetrician?” (DA 2022). Doctors, specialists, private hospitals and other service providers that currently transact with private health insurance on behalf of users will now be coerced to contract with a government scheme on all services covered by NHI. There will also be more price regulation under NHI including prices for service benefits. The DA is also concerned about the negative impact on the existence of private medical schemes. “This is therefore the abolishment of choice and not merely a limitation of freedom of choice…The main characteristics of the open society is individual freedom or autonomy” (DA 2022). There is no doubt about the commitment of the DA to the freedom of the

individual. The DA thinks that NHI is too much state intervention, which places a huge tax burden on citizens. The common refrain, “government must get out of the way”. “The financing model of this Bill will mean the removal of the tax credit benefit afforded to medical aid clients while imposing a new tax on ordinary South Africans to fund this new SOE [State Owned Enterprise]. Our submission is that ordinary South Africans have been squeezed dry by government taxes and cannot be subjected to yet another tax” (DA 2019:9). The correct path to universal health coverage according to the DA would be for government to focus on fixing the governance and management of the public health sector as a way of ensuring that all citizens access quality healthcare.

The problem for the DA is not so much about the resources allocated to the public health sector but how they are managed. There is nothing unjust with the few who can afford to receive higher quality healthcare in the private sector than the majority who do not have the means. It is through the coexistence of private health insurance and the public sector funded through general tax revenue that individual rights will be respected. “Public health care institutions have suffered from a culture of corruption and incompetence which has led to poor management, underfunding, understaffing, a loss of skilled staff and deteriorating infrastructure” (DA 2019:3). The DA is therefore opposed to the NHI that would result in the integration of the public and private health sectors and has proposed an alternative. “That is why we have proposed the *Sizani* Universal Healthcare Plan (SUH) which would seek to rollout universal healthcare within the next 5 to 8 years and ensure that all those who are reliant on both the public and the private health systems are protected and catered for” (DA 2019:4). At the core of SUH is a government

subsidy for all South Africans that make use of both public and private health services. The subsidy is composed of the existing budget for public health. There will also be the reallocation of tax credits that are available to members of medical schemes to be shared between public health users and medical scheme members. The proposed alternative to NHI, the SUH, is essentially a framework that focuses on improving efficiencies in public health facilities such as hospitals and clinics as a way of providing universal health coverage. *Sizani* has been borrowed from the *Zulu* vernacular, meaning 'help'. The DA is probably calling for the state to help the disadvantaged majority that must continue to use public health services without causing disruption to private healthcare. In the introductory part of the SUH document, the DA uses language that would make the center-left government jealous. "In addition to the complexities of delivering public healthcare, is our country's history of segregation and subsequent legacy of inequalities…This has meant that those who have no choice but to surrender themselves to the public services are mostly poor and they are mostly black South Africans…The deep inequalities which exist in our country play themselves out painfully in the health system" (DA *Sizani*:3). The difficulty arises regarding what the DA proposes should be the policy response in addressing what it correctly identifies as deep inequalities in the health system. It's not aimed at advancing equality but rather mitigating the situation of the poor by ensuring that the resources which have been allocated for public health are managed efficiently to improve the performance of public hospitals. The disagreement between the national government and the DA is not simply about the practical problems highlighted correctly by the official opposition but more about the foundational principles upon which the health system should be run. It is these foundational principles that are the primary subject of this study.

Yes, for the efficient and effective delivery of any agreed universal health coverage model, the practical problems as correctly pointed out by the DA must be adequately addressed. The national government cannot escape responsibility for the mismanagement of public services leading to poor service delivery, including public healthcare. State incapacity and corruption are practical problems that must be dealt with seriously and urgently but that does not negate the need for a reflection on the fundamental principles undercurrent in health policy debates. This leads us to the following critical assessment of classical liberalism, a theoretical perspective that tends to dominate social and economic policy debates and in this context the focus is on healthcare.

3. Classical Liberalism and Libertarianism

The foundational value of liberalism is the freedom of the individual. The basic assumption is that from the state of nature humans are free to act in a manner they see fit in pursuit of their goals. The rationale for respecting freedom of the individual is that reasonable and self-interested individuals follow different ways of living. This is good for personal development, creativity and innovation. Without the respect for individuality, humanity would not be witnessing the kind of cultural development and civilisation it is seeing in today's world. If there are to be any restrictions imposed on citizens by the state, there must be justification. "Only a limited government can be justified, indeed, the basic task of government is to protect the equal liberty of citizens" (Zalta 2022:4).

Liberalism is not homogenous but consists of different forms that are as a result of how various liberals conceive freedom; thus leading to different views about the task of the state. The vision of freedom espoused by classical liberalism falls within the “negative liberty” (Zalta 2022:4) tradition, which construes freedom as being free from being interfered with in one’s activities. Individuals must be free to choose how they want to live and as such must not unnecessarily be interfered with by any individual, group or the state provided they observe the same rights of others. If one is prevented from acting in a manner that she would have chosen because of having been coerced to act in a particular manner by any other human being or the state, then that constitutes unfreedom. The job of the state is to ensure that citizens do not coerce each other without justification. From this perspective, the right distribution of benefits and burdens in society would be the one that prizes individual rights. The difficult question for liberals is: how can anyone be said to be truly free if one does not have the capability to do what one is said to be free to do? To answer this question classical liberals unlike libertarians, condone some form of state intervention.

In contrast, the “positive liberty” (Zalta 2022:4) tradition conceives of freedom as something internal that enables the individual to do what she wants to achieve her goals. In this sense, one is empowered to fulfil her goals and thus autonomous. What is the point of equal opportunities if some do not have access to quality education, it could be asked. Samuel Freeman (2002) asserts that what matters is not the mere formal equality (absence of statutory restrictions that exclude certain groups of people from accessing positions) of classical liberalism but real equality of opportunity in which citizens are capacitated by society in order to effectively

compete for opportunities. “Society then has a duty to support an education system to even out class barriers so that those with similar abilities can compete on an equal footing” (Freeman 2002:116). Other left-leaning liberals “argue that fairness requires still more, namely, both adequate universal healthcare so that all may realise their capacities, and preventing excessive accumulations of property and wealth” (Freeman 2002:116). In positive liberty, freedom is viewed as an expression of social relations of one person to another that are characterised by autonomy and non-domination. Individuals enjoy autonomy in pursuit of their goals and are thus not subject to the will of others but rather dependent on their own will. “Such a person is not subject to compulsions, critically reflects on her ideals and so does not unreflectively follow custom and does not ignore her long-term interests for short-term pleasures” (Zalta 2022:6). They are also not in relations of domination in that they are not subject to the arbitrary power of another.

In the liberal tradition, classical liberalism is categorised as “old” liberalism, which is different from the “new” liberalism, importantly, on how it views the relation between individual freedom and private property. For classical liberals, freedom and private property are closely related. The view is that an economic system based on private property is consistent with individual freedom, allowing each to lead own life, free to deploy one’s resources as one sees fit. It advocates for free markets based on private property. Private property is treated as a *sin qua non* to freedom. “Unless people are free to make contracts and sell their labour, save and invest their incomes as they see fit, and free to launch their enterprises as they raise the capital, they are not really free” (Zalta 2022:8).

The “new liberalism” puts to question the kind of connection that classical liberalism makes between individual freedom and private property. Classical liberalism is rejected, among others, on the grounds that “…property rights foster an unjust inequality of power. They entrench a merely formal equality that in actual practise systematically fails to secure the kind of equal positive liberty that matters on the ground for the working class” (Zalta 2022:11).

The strongest objection to classical liberalism is its conception of the individual, and flowing from this, how it construes freedom as non-interference which in turn informs what it views to be the task of the state. Carol Hay states that liberalism has been criticised for being “overly individualistic” (2012:148). This is so because classical liberalism conceives of the individual as in the state of nature, ready-made and self-sufficient. Such an individual does not seem to be dependent on relationships with others in pursuit of her goals. This construal is untenable, none of us is not situated in a social context and self-sufficient. “Because liberals conceive of the individual as prior to, and separable from, his or her social context, they are primed to conceive of what is important for the individual solely in terms of his or her individual rights. This causes liberal citizens to neglect the connection between rights and duties” (Hay 2012:145). This kind of individualism fails to appreciate that personal identities must also be understood in the context of social relations, hence the prominence it gives to negative freedom – non-interference. Accordingly, the task of the state is to protect individual freedom.

John Christian (1991:343) says that this conception of the task of the state “…has been given expression by the general liberal emphasis on negative liberty - the

claim that the liberty of a person is strictly a function of the restraints that the agent faces in the carrying out her decisions. The person - the complex set of functioning capacities and the forces that condition them - is not to be counted in the calculation of the freedom of that agent". Critiques of classical liberalism assert that individuals are not born in a vacuum but are situated in history and can therefore not be narrowly identified as simply rational and freely choosing beings. We are all born into families of a particular social and economic status and situated in certain communities and this becomes part of who we are as individuals. The choices that individuals make are also influenced by values that are a product of relationships with other fellow human beings. "Communitarianism immediately sees the human person as an inherently (intrinsically) communal being, embedded in a context of social relationships and interdependence, never an isolated, atomic individual. Consequently, it sees the community not as a mere association of individual persons whose interests and ends are contingently congruent, but as a group of persons…who have common interest, goals and values" (Gyekye 2003:297). Carol Hay (2012:148) remarks that this criticism of an isolated and atomistic individual has also been spotted by those who give "relational conceptions of autonomy and selfhood".

On the far-right of the classical liberals is Robert Nozick, a leading proponent of libertarianism who takes a strict and rigid position in which individual rights are the sole defining principle of justice. The basic premise being that individuals own themselves and are thus sovereign. Nozick develops a theory of distributive justice known as "theory of entitlement" (2014:554), which is made of three components: "original acquisition of holdings, transfer of holdings, and rectification of injustice in

holdings” (2014:555), that are used to determine who is entitled to what in a free-market society. On original acquisition, what Nozick is concerned with is how one has come to own resources, and if these were obtained legitimately, then the person is fully entitled. The transfer of resources, equally, must have taken place legally in a “voluntary exchange” (2014:555), between a buyer and a seller or a donation.

In respect of the burning issue of what is the right distribution of benefits and burdens in society, Nozick is focused on the history of ownership and exchange, asking how in the initial situation goods were obtained and how they were exchanged; the results do not matter as they are a product of free individual choices made legitimately. According to Nozick by just looking at the results, that is, the existing pattern of distribution where others occupy the upper and middle classes and the rest in the lower class, there is nothing that can be concluded about such a situation whether it is just or unjust but rather look for answers to these questions on how this situation came about. If the results are such that a few prosper, and the rest are left behind as a result of legitimately obtained resources and legal exchange there is nothing wrong. Contrary to John Rawls, Nozick finds no reason for compensating disadvantage that arises from individual differences in natural endowments resulting in others getting ahead and therefore no need for the state to intervene to remedy the situation. Nozick says its analogous to a man complaining about not having been preferred in a romantic relationship - it's hard luck that he does not have attractive features and must just live with the fact that he has not been chosen, no injustice has been committed that would warrant that the situation is made right.

Nozick is vehemently opposed to government interventions that would tax the rich even the bare minimum in order to help the poor. According to Nozick this amounts to a violation of individual rights of those who have legally earned their income and wealth, who must be free to choose what they want to do with their hard earned money. For Nozick, individual social and economic liberties are as important as the basic rights. Nozick advocates for a far-right role of the state than classical liberalism - the “minimal” state whose task is confined to the provision of security, protection of property and enforcement of contracts. Nozick’s position on individual rights and what the state can do or not do is built on John Locke, “Locke views property rights in an unowned object as originating through someone’s mixing his labour with it” (2014:557). The income and wealth of the affluent is as a result of their labour and taxation by the state in this sense is basically laying a claim on a part of the person’s labour, which is similar to forced labour, thus rendering a person a slave. The reasoning is that people have the right to own their labour because they own themselves.

Nozick has no problem with the affluent, who out of empathy would decide voluntarily to donate to charity in order to help the poor but certainly they must not be coerced by the state through taxation. “The fundamental libertarian claim is then that each person is absolute owner of herself, body and powers. Because we each have absolute property in our persons, it is supposed to follow that each has absolute powers over what she owns or acquires consistent with other’s ownership rights. On this conception a person’s liberties are among the things owned by that person…” (Freeman 2002:128). Strict libertarianism denies that property rights are

partly determined by social institutions but rather exclusively derived from individual natural rights, that is, before society.

Nozick in his focus on the process rather than the results at any given point in time, says “A utilitarian who judges between any two distributions by seeing which has the greater sum of utility and, if the sums tie, applies some fixed equality criterion to choose more equal distribution, would hold a *current time-slice principle*” (2014:556). Nozick’s critique on the *current time-slice* principle is not just reserved for utilitarianism but for all theories, that according to Nozick, are patterned, including Rawls. For Nozick, even if everyone were to have an equal share of resources from the starting point, people are going to make decisions about using those resources in ways that would inevitably give rise to inequalities and therefore alter any initial patterned distribution that was viewed just by those who favour such a pattern. To illustrate this point, he gives a hypothetical example of a star basket-ball player who ends up earning what could be viewed as obscene amount of income from the tickets bought by no less than a million people annually, who were in the same position in terms of resources as the basket-ball player was at the beginning. Nozick argues that there is nothing unfair about this situation because these are individuals who have chosen to exchange freely in the market and the million spectators have benefited from the enjoyment of watching the game and the star basket-ball player is entitled to his earnings. According to Nozick, because such inequalities are inevitable in a free market, marked by private ownership, if one takes any of the “patterned” principles of distributive justice such as Rawls, then the state will have to continuously interfere in the lives of the people to bring about some equality and this violates individual freedom. The state has no right to

tax the star basketball player in order to fund some welfare programmes, if it does, it's a violation of the star's sovereignty to do what he wants with his money.

Matt Zwolinski holds a sympathetic view towards libertarianism, cautioning against misleading generalisations about this intellectual tradition and highlighting the importance of making a distinction between various forms of libertarianism. According to Zwolinski the libertarian tradition is diverse and in fact not as conservative as it has been made out to be. "There are, in the first place, a significant number of prominent libertarian theorists who have supported some form of state-based welfare payments to the poor. The reasons offered in support of such advocacy have varied, but by and large tend to fall into one of the two categories: restitution of past injustice, and relief for those who for one reason or another do not share in the prosperity created by a market system" (Zwolinski 2015:1).

Zwolinski believes that it is mistaken to depict libertarians as "social Darwinists" who together with Hebert Spencer believe that the poor should be left to their own fate – survival of the fittest. He argues that libertarians do care about the poor but differ with other theories of distributive justice on the means of assisting them, favouring voluntary actions over state intervention. Accordingly, there are non-libertarian liberals that have made policy proposals aimed at addressing the plight of the poor in society. Zwolinski makes a distinction between classical liberalism, which advocates for moderate state welfare to help the poor and would therefore justify coercion under specified circumstances, and strict libertarianism such as

that of Robert Nozick who absolutely rejects the forceful appropriation of other's property in order to promote the welfare of others.

Zwolinski finds alignment between Nozick's strict libertarianism and Kant's categorical imperatives. "To take from Peter in order to give to Paul is to treat Peter as mere means, and thereby run afoul of the Kantian moral imperative that requires us to treat each person as an end himself" (Zwolinski 2015:5). Libertarians favour voluntary actions on the part of the affluent in assisting the poor. Zwolinski believes that one of the reasons for what he views as an unfair representation of libertarianism is that the debate tends to centre on Robert Nozick whose work is mostly popular for criticising Rawls theory of justice. Zwolinski sees a significant common ground between Nozick and Rawls. "Both Rawls theory and Nozick's are, after all, genuinely liberal, individualistic theories that are in principle compatible with a broadly capitalist mode of economic organisation" (Zwolinski 2015:16).

Further, Zwolinski says that because Nozick provides for the rectification of past injustice, that opens a path to recognising welfare. So, if it's found that those who own property obtained it through illegitimate means, and this may go far back into the past, then those who had lost out from such injustice must be compensated. It may well be that some want to give credit to Nozick in respect of the third component of his theory of entitlement which provides for the correction of past injustices that would warrant interference by the state but the practical difficulties of effecting this provision tend to make it less significant on the question of what is the right distribution of benefits and burdens. Think of illegitimately obtained property that occurred in the distant past, for example land, how far back does the

state go? Claimants must also provide proof and there is always the fiscal challenge of financing land claims - much easier said than done.

Samuel Freeman, focusing on liberal institutions, disagrees that libertarianism could be classified as liberal. He makes a substantive distinction between classical liberalism, “high liberalism” and libertarianism. Freeman describes classical liberalism as the concept that advocates for free markets and considers the distribution that arises from the markets as just but permits for some redistribution. High liberalism is “the set of institutions and ideas associated with philosophical liberalism” (Freeman 2015:106), whose advocates according to Freeman include Kant, Mill, and Rawls. Regarding libertarianism, Freeman means “the doctrine argued for by Robert Nozick” (2015:106).

Freeman’s main claim is that libertarianism’s similarities to liberalism are superficial; in the final analysis, libertarianism rejects basic liberal institutions. At the core of the major differences between libertarianism and liberalism is how the two conceive of individual rights. Freeman points out that, what libertarians mean by individual rights goes beyond liberalism’s basic rights to include absolute property and contract rights. “It is a fundamental libertarian precept that people ought to have nearly unrestricted liberty to accumulate, control, and transfer rights in things (property), whatever the consequences or constraints may be for other people” (Freeman 2002:127). The result of this conceptualisation of individual rights by libertarians, Freeman asserts, ends up militating against the very basic rights that liberals are committed to, and which are critical for individual freedom.

Freeman elaborates on the reasons why libertarianism cannot be classified as liberal, focusing on the approach of libertarians to various liberal institutions including alienability of basic rights, property, markets, public goods, and political power. For the purposes of this study, it would be worth reflecting on how, according to Freeman, libertarians approach the issues of alienability of basic rights and public goods. About alienability of basic rights, the difficulty according to Freeman is that when absolute property and freedom of contract are considered together with the libertarian account of self-ownership they go against basic rights. “For what libertarian self-ownership ultimately means is that we stand toward our person, its capacities, and the rights of moral personality in the same normative relationship as we stand to our rights in things. All rights are conceived as property rights” (Freeman 2002:131).

Basic rights are then placed at the same level with any other rights to property and can be alienated as the owner chooses. This, Freeman says, opens the way to, for example, permitting a person to sell himself into slavery and the state having the obligation to enforce such agreements made by consenting adults. This transfer of rights in oneself effectively undermines the person’s freedom. “Libertarianism is, in the end, not so much about liberty as it is about protecting and enforcing absolute property and contract rights” (Freeman 2002:133). The implications, among others, of giving such prominence to absolute property, Freeman states, is that it is morally permissible to discriminate based on race, ethnicity, gender and religion in your private property, which contradicts what liberals view as basic rights of persons. Basic rights “define a person’s status as a free agent, capable of rationally deciding her good and taking responsibility for her actions” (Freeman 2002:134). For

liberals, basic rights are inalienable, “they are secured against the wants of those who would dispossess themselves of their basic rights and abandon their freedom and independence” (Freeman 2002:134). Libertarians do not subscribe to the concept of public goods which must be provided by the state because the markets cannot effectively provide such goods. In the libertarian world, the role of the state is strictly confined to the protection individual rights and enforcement of contracts - “night watchman”. “For governments to tax people to provide public goods is unjustly coercive, as it is for government to tax some and redistribute it to others (for purposes of health care, unemployment, emergency relief, and so on)” (Freeman 2002:138).

Classical liberalism and libertarianism have something in common, that is, the freedom of the individual as a foundational value and a free-market economy based on private property. However, there is an important distinction between the two which is to be found in their conception of individual rights and the role of the state, resulting in different accounts of the right distribution of benefits and burdens. Compared to libertarianism, classical liberalism is not as callous in its policy implications as it has been made up to be but cannot escape the criticism that it is overly individualistic - viewing persons in isolation of their relations and thus placing the interests of the individual above those of society. Credit, if any, must be given to classical liberalism to the extent that it allows for some moderate redistribution to mitigate the situation of the poor and working class but certainly not aimed at reducing inequalities.

The right distribution of healthcare according to classical liberalism would be the one determined by free markets with some moderate taxation of the affluent to fund public health for those left behind. Classical liberalism would insist on the freedom of choice for both users and private healthcare service providers and thus a separation of public and private health sectors. Based on the notion of limited government it would oppose an expansive tax regime that coerces the well-off to pay for quality healthcare for all. An expansive tax regime and mandatory fund for health care would be disrespectful of the rights of individuals to choose to belong to private medical schemes using their own money to access private medical care. According to Freeman, although both classical and high liberalism endorse the markets as an efficient mechanism for the allocation of productive resources, they differ on the role they place on the markets in determining the right distribution of goods and services. Classical liberals give prominence to the markets as the ultimate measure for just distribution and therefore put more weight on the rights of private property and freedom of contracts. In contrast high liberals “maintain that property rights should be decided by asking which system of property laws best enables citizens to realise their freedom and independence by effectively exercising their basic rights and liberties...” (Freeman 2002 119). Thus, all citizens must have a fair share of the benefits of the market in order to be truly autonomous and take advantage of their basic freedoms. Following the logic of classical liberals, the state has no right to force the middle and upper classes to cross-subsidise the healthcare of the poor and lower classes through a mandatory fund such as the NHI that will be a single payer for health care services to the demise of private health insurance. This constitutes a violation of liberty. Given its commitment to a market economy based on private ownership and how that informs the distribution

of resources, classical liberalism would advocate for the preservation of the private health sector, particularly, private health insurance. The fixing of public health would have to be done separately from the private health sector. Apart from the valid practical problems that the official opposition, the DA, has raised, although not surprising, it's interesting to see how at the level of fundamental principles, its premises for rejecting NHI as highlighted in the previous section, fall neatly into classical liberalism.

Besides classical liberalism being incoherent in general as a theory of justice, there is something special about human health that classical liberals appear to miss, which warrants access to quality and more equal healthcare for all. The specialness of health is borne out of what healthcare does for humans, namely, to improve quality of life, sustain and save lives. All societies tend to place the value of human life highest. Ill health, in addition to the pain and suffering, physically and emotionally, that it causes, has the effect of diminishing the human capacity to function in pursuit of one's ends. For example, if we were to take a social good closer to health in its importance such as education, although a person is disadvantaged by lower education and lack of skills, such a person may still function in pursuit of her ends including being engaged in economic activities as opportunities arise, *albeit* at lower levels. In the context of COVID-19 across the world, there were times when all countries had to sacrifice all other social goods in order to protect lives, which demonstrates the uniqueness of health. It could be safely said that there is almost no human being who is as vulnerable as the sick, which calls for utmost care and concern for quality healthcare for all, let alone the economic benefits of a healthy nation.

Imagine two people, X and Y. X needs further education and Y who is seriously ill needs healthcare. Suppose public funds available are so limited that they can fund either X or Y. Any attempt to divide the allocation of funds will not yield the desired results for both. A hard choice must be made, either X or Y gets the funding. If a question were to be posed as to who the funds should be allocated to, everyone would intuitively say Y. This is because of the value that humans place on the life of a fellow human being. Such intuition is consistent with Norman Daniels' theory of the specialness of health needs compared to other social goods. This hypothetical case must not be interpreted to mean that a case of justice cannot be made for equalising education, rather it is meant to illustrate the urgency of equalising healthcare based on the specialness of health. Friends of liberals might object and argue that classical liberals are not oblivious to the special character of health needs but what they deny is that this automatically translates into placing the interests and claims of society above those of the individual. The specialness of health needs according to classical liberals would then be addressed through a moderate taxation of the affluent to guarantee a minimum standard of healthcare for the poor and the working class to achieve universal health coverage. What they cannot deny is that they put less weight on the specialness of health needs based on their fundamental commitments than egalitarians who place more value on societal interests and claims.

Norman Daniels, on the question of what is special about healthcare relative to other social goods, states that "Specifically, even in societies in which people tolerate significant and pervasive inequalities in the distribution of most social goods, many feel there are special reasons of justice for distributing healthcare

more equally" (1981:146). Daniels asserts that the question of what is the right distribution of healthcare cannot be answered without first establishing a theory of healthcare needs which must recognise the specialness of healthcare from other social goods. In light of limited resources for healthcare such a theory should rank the kinds of things healthcare does for humans and hence the need for prioritisation of healthcare services. In this regard, Daniels opts for a narrow definition of health as the absence of diseases that would hinder normal functioning of humans. He draws a line between the use of healthcare services to prevent and treat diseases and uses to meet other social goods such as beauty – cosmetic surgery.

Daniels places healthcare in a category of needs whose lack puts at risk the normal functioning of humans. "We can characterize healthcare needs as things we need to maintain, restore, or compensate for the loss of, normal species-functioning. Since serious impairments of normal functioning diminish our capacities and abilities, they impair individual opportunity range relative to the range normal for our society" (1981:160). He makes a connection between healthcare needs and real equality of opportunity. Accordingly, the design of healthcare systems must be underpinned by the principle of fair equality of opportunity. His claim is that, "if an acceptable theory of justice includes a principle providing for fair equality of opportunity, then healthcare institutions should be among those governed by it" (1981:161). In this regard he invokes John Rawls theory to provide a distributive theory of healthcare by including healthcare institutions among the social institutions giving effect to fair equality of opportunity. Daniels advocates for a multi-tiered healthcare system based on the varying levels of importance of the healthcare services as they relate to various kinds of healthcare needs. "The basic

tier would include healthcare services that meet important healthcare needs, defined by reference to their effects on opportunity" (1981:175). This tier would be publicly funded through a national health insurance scheme and free at the point of service.

So far the discussion has been on the critical assessment of classical liberalism, its distinction from libertarianism and policy implications for healthcare. There could not have been a better way of ending this section than a Rawlsian approach to the distribution of healthcare provided by Daniels. What follows is an explication of Rawls theory of justice in contrast to classical liberalism and the kind of health care model it endorses.

4. Egalitarianism

4.1 John Rawls Theory of Justice.

John Rawls begins by describing the principal task of any theory of justice as the advancement of social cooperation whose primary concern must be the basic structure of society. In contrast to the isolated individual of classical liberalism that is derived from the state of nature, Rawls starting point on principles of justice is social cooperation which presupposes collective life. It is not the elevation of the individual and his/her rights over society advocated by classical liberalism. Rawls puts it "These principles are principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation" (1971:4).

Society amounts to a cooperative arrangement for the benefit of its members who would have been in a far worse position were they to choose to lead lonely lives. Humans are interdependent and none is self-sufficient. Rawls is worried about the distribution of goods for the improvement of the prospects of the least advantaged in democratic and market-based societies whereas classical liberals are basically concerned with the freedom of the individual.

Rawls notes that in the cooperative arrangement there is a conflict of interests "since persons are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share" (1971:4). This calls for principles of justice that will regulate the appropriate distribution of benefits. For classical liberals who give prominence to individual freedom and competition no such conflict should arise in the distribution of benefits as individuals would be getting what they deserve from the deployment of their labour and capital, save for some moderate redistribution to provide welfare for the poor and the working class. The situation dictates no intervention by the state to reduce inequalities of income and wealth that are inevitable in market economies, so goes the logic.

Rawls departs from the premise that, what makes the basic structure to be the primary concern is its profound effects on persons from birth which largely determine their life prospects. Rawls thinks that human beings are situated in history as against the individual of classical liberals that appears to be born in a vacuum. "The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of

life, determined in part, by the political system as well as economic and social circumstances. In this way the institutions of society favour certain starting places over others. These are especially deep inequalities" (1971:7). Rawls holds the view that it is these inequalities that the principles of justice must respond to in order for fairness to prevail in society - any credible theory of justice must address structural rigidities that reproduce inequalities in society.

Rawls builds upon the modern social contract theories, arguing that a fair and just theory of distribution can only be established from a starting position in which the people concerned about what rules would govern their society do not know their historical, social, economic and natural status. "Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like" (Rawls 1971:11). "In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract" (Rawls 1971:11). It is under these conditions which characterise the initial position that fairness is to be found, where any partiality based on one's natural endowments and social background is eliminated and, in this regard, "the principles of justice are chosen behind a veil of ignorance" (Rawls 1971:11). Under these conditions all those involved in reaching an agreement on the rules that would govern the distribution of resources and opportunities in society are equal, which makes it fair, hence Rawls refers to his theory as "Justice as Fairness" (1971:10). Rawls asserts that under the said conditions its only logical that the group of people, where each reasonable individual aims to benefit the self would arrive at two principles: "the first requires

equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society" (Rawls 1971:13). It is from the second principle that Rawls develops the difference principle, which holds that inequalities are justifiable only if they deliver the greatest benefit to the least advantaged person.

Rawls premise on the difference principle is that inequalities which arise from natural endowments and social circumstances are undeserved. The reasoning being, natural endowments and social advantages are not the making of those who possess them and therefore are arbitrary from a moral standpoint. These advantages are as a result of accident of birth, which Rawls humorously likens to a natural lottery. Those disadvantaged in terms of natural abilities and social circumstances should be compensated through various means that benefit them thus improving the quality of lives of the less fortunate. This is done without disabling those who are getting ahead but then they must be prepared to share the fruits of their natural endowments and social advantage if justice is to prevail and social cooperation sustained. "It is not in general to the advantage of the less fortunate to propose policies which reduce the talents of others. Instead, by accepting the difference principle, they view the greater abilities as a social asset to be used for the common advantage" (Rawls 1971:92). This also addresses one of the major criticisms of strict egalitarianism (communism) that advocates equal share of outcomes, that, it discourages creativity and innovation as well as disincentivises hard work which in the long run would lead to the lowering of the

overall standard of living. If those with greater natural talents are to deploy them to their full which stands to benefit society, then it is not irrational for them to receive a larger share.

According to Clayton and Williams, for moderate egalitarians such as Rawls, “what matters is that the interests of the worse off should be given greater weight when we are assessing social and economic policy” (2000:3). As Clayton and Williams say, it’s about giving “priority to benefiting the least advantaged, rather than utilitarianism, which seeks to maximise the sum of benefits which individuals enjoy” (2000:5). Rawls sets out to provide a theory of justice that would serve as a better alternative to utilitarianism. He is opposed to the utilitarian conception of distributive justice because it views individual rights as unimportant in its maximisation of the overall good. The right distribution in utilitarianism will be the one that brings about the greater good and thus making the majority happy regardless of what happens to the minority. People are treated as if they have the same wants that can be translated into a uniform measure. Rawls states in respect to classical utilitarianism that “The main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it” (1971:20). According to Rawls, among the people in the original position, none who reasons properly, would advocate for utilitarianism because they know that they might end up being alone or amongst the few that would have to be sacrificed for the good of the majority. Rawls states, “Thus it seems that the principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage” (1971:13). Rawls is also critical of the utilitarian thought because of how it

construes the relation between right and good. In utilitarianism “the good is defined independently of the right, and then the right is defined as that which maximises the good” (Rawls 1971:22). The good precedes what is right, which then opens a dangerous path wherein people’s actions towards others are not constrained because what matters in acting in a manner that is right is the overall goodness it produces. Although at face value, utilitarianism appears attractive, namely, the better overall state of affairs, upon closer examination it would lead in certain cases to the violation of basic freedoms.

Rawls asserts that his two principles of justice are an egalitarian conception of justice. In support of this assertion he explains how the difference principle covers some of the ends of redress, represents a conception of reciprocity, and how it provides an interpretation of fraternity. Redress holds that “undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for” (Rawls 1971:86). Following this reasoning, equal treatment and real equality of opportunity requires that more resources should be allocated to those naturally and socially disadvantaged. Unequal and poor healthcare provision, given what healthcare does for humans, is problematic as it is weighed in favour of the few in society to the marginalisation and humiliation of the majority, which does not auger well for social cooperation. Further, it undermines the principle of real equality of opportunity. Rawls points out that although the difference principle covers some of the ends of redress it is not the same as the principle of redress. The difference principle “does not require society to try to even out handicaps as if all were expected to compete on a fair basis in the same race. But the difference principle

would allocate resources “so as to improve the long-term expectation of the least favoured. If this end is attained by giving more attention to the better endowed, it is permissible; otherwise not” (Rawls 1971:87). The focus is on changing the basic structure so that those who are naturally endowed benefit on condition that the situation of those left behind is improved. In this way justice becomes a function of social arrangements as against giving prominence to individual freedom. “…the difference principle expresses a conception of reciprocity. It is a principle of mutual benefit” (Rawls 1971:88). Rawls argues that the well-off in society are already favoured by natural endowments and social circumstances, taking into account the standard constraints, the focus should be on maximising the expectations of the less favoured. Maximising a weighted mean of expectations between the fortunate and the disadvantaged is in essence favouring the fortunate twice over. “Thus the more advantaged, when they view the matter from a general perspective, recognise that the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life; they recognise also that they can expect the willing cooperation of all only if the terms of the scheme are reasonable” (Rawls 1971:88). What is the value of social cooperation to the disadvantaged if the fortunate are not willing to benefit all in society? Rawls does not deny that the fortunate are entitled to their acquisitions but that this must be in keeping with the terms of a fair system of cooperation. If the well-off seek to gain at the cost of the less fortunate that poses a threat to the harmony of social interests and order.

Rawls further states that the difference principle accords with fraternity, namely, “the idea of not wanting to have greater advantages unless if this is to the benefit

of others who are less well off" (1971:90). He gives an example of a family situation in which members would object to maximising value as utilitarianism would demand and only wish to gain if that would further the interests of all. "Those better circumstanced are willing to have their greater advantages only under a scheme which this works out to the benefit of the less fortunate" (Rawls 1971: 90). According to Rawls, the inclusion of fraternity together with liberty and equality provides a democratic interpretation of the two principles of justice and will not drive to a meritocratic society in which equality of opportunity "means an equal chance to leave the less fortunate behind in the personal quest for influence and position" (Rawls 1971:91). Importantly, Rawls also points out that the outcomes of the difference principle engender self-worth on the part of the disadvantaged and to some degree limits hierarchy and inequality.

Rawls' theory seems to be a complex combination of the respect for basic freedoms and mutual benefit. There is an attempt to find a right balance between freedom and equality in market based and democratic societies. Rawls pays respect to individual rights as clearly stated in the first principle but limited to basic rights such as political freedoms, freedom of expression, association, religion and conscience. The first principle on basic rights, deals with the weakness in utilitarianism and in this regard has something in common with classical liberals - respect for individual rights. It is on social and economic spheres of life that the difference principle becomes critical and, in this regard, Rawls advocates for state intervention including measures such as taxing the rich to provide the greatest benefit to the least advantaged. Rawls is not against capitalism, marked by private ownership, but what seems to be his preoccupation is how the benefits of such an

economic organisation, which will inevitably result in inequalities, are shared by all citizens to advance social cooperation without which social order is under threat. Rawls' kind of capitalism has a more demanding societal concern than the moderate welfare capitalism of classical liberals. The major difference between Rawls and classical liberalism is in Rawls' concern with the basic structure of society into which individuals are born, that is, the deep inequalities which mean different expectations. Through his original position, "under the veil of ignorance" and the second principle, the difference principle, Rawls account of justice moves in the direction of equality. Rawls would support changing the structure of the South African health system referred to as the two-tier system which reproduces healthcare inequalities. Such change according to Daniels' theory demands that healthcare institutions be regulated by the principle of fair equality of opportunity. Rawls endorses an expansive tax regime to fund healthcare in order to increase benefits for the least advantaged. In a manner that appears compatible with Rawls' concern for the basic structure of society, national government holds the view that quality healthcare cannot be successfully extended to the majority without changing the basic structure of the health system. There is a systemic problem in South Africa's health sector that if not addressed will continue to perpetuate gross inequalities in healthcare. The national government accepts inequalities of income and wealth in a market-based economy but is seriously concerned with how the benefits of such a society are shared, which appears aligned to Rawls. Implicit in government's approach to the provision of quality healthcare is the obligation placed upon the affluent to assist the least advantaged in ways that go beyond merely mitigating their situation as classical liberalism would advocate but moving in the direction of more equal healthcare. In this regard the interests of the worse-

off are given greater weight. Nothing is being aimed at disabling the affluent from getting ahead but that the less fortunate should not be left behind in healthcare and hence the pooling of resources into a mandatory and single fund for the benefit of all. Poor and unequal healthcare relegates the lives of the majority to being less worthy; it undermines self-worth and promotes hierarchy. This can never be good for social cohesion and nation building. “Metaphysical freedom, formal political equality, equality of respect, and protection from interference may seem cold comfort to those in dire material need, a point that is pressing in South Africa, where the achievement of political equality in 1994 has come to seem less substantial against on-going (perhaps increasing) economic inequality, and the ongoing economic and social legacies of apartheid” (Allais 2015:186).

4.2 Social Equality.

There is a contemporary egalitarian movement that provides a more nuanced understanding of freedom and equality. Contrary to the tendency of associating Kant with right-wing liberalism as Zwolinski does, given the centrality of freedom in Kant’s philosophy, Lucy Allais provides a different perspective on Kant’s account of freedom. It constitutes a departure from seeing individuals in isolation but in relation to each other and thus associating Kant with egalitarianism. Allais begins with Kant’s moral philosophy, the ‘Categorical Imperative’ as a foundation for his political philosophy on freedom, which she refers to as equality of freedom. “The final statement of his fundamental moral principle (the Categorical Imperative) is as the principle of autonomous willing, and this is inseparable from his view of the

equal value of all rational agents, which calls for each being treated with equal respect" (Allais 2015:185).

If it is the case that human beings are capable of rationality and therefore autonomous, Allais asks how anyone including the state can justify coercion. According to Allais, Kant's response to this question is that state coercion becomes a necessity in order to create enabling conditions for each person's freedom, which is a different justification from those based on addressing problems of the state of nature or natural endowments. State intervention becomes necessary because when people exist in society, they act in ways that constrain each other's choices and are also interdependent. Allais points out that the challenge is how humans are to relate to each other in ways that take into account their interdependence and the constraints to each other's choices whilst respecting each one's autonomy. "Kant thinks that the only solution to this problem is to create a state in which all of us are equally subject to universal law. He holds that without certain assurances with respect to the actions of others we are in relations of domination" (Allais 2015:191). For such assurances, Allais asserts, humans cannot rely on private virtue but public power. In private virtue those who are giving are superior and the receiving are inferior, and that kind of relationship can only be made right by law. According to Allais not only beneficiaries of the generosity of fortunate individuals are unfree but also the generous are not free as they are not rightly related to the beneficiaries.

To illustrate the role of the state in creating enabling conditions for the freedom of everyone, Allais uses Arthur Ripstein's example of private property and public

roads. Suppose a situation before government in which everyone has equal piece of land. Anyone intending to travel from one place to another is dependent on private landowners' arbitrary individual decisions to permit them to cross their land. Even if the landowners were virtuous and generous and always permitted the people to cross their land, the people are still dependent on their goodwill and therefore in an unequal power relation. “The Kantian answer to the problem is that our equal status as free moral beings can be realised only if there are public roads linking all bits of private land to each other, so that we are not subject to the landowner’s choices (whether virtuous or not). Only by being subject to the universal law, rather than systematically subject to private choices and private virtue, can we be properly related to each other as free equals” (Allais 2015:192).

In contrast to libertarianism and to some extent classical liberalism, this provides a view that respecting individual freedom is not merely an issue of not being interfered with but requires public law that capacitates each person to be his or her own master and not dependent on other’s arbitrary choices. It is on these grounds that Allais claims that Kant’s account of freedom is egalitarian. “The equal value of humans gives us moral grounds for caring about welfare distributions, and also places limits on what can be done to promote welfare or overall good where this is not consistent with respecting the dignity of each individual” (Allais 2015:187). According to Allais, although what is paramount in Kant is not the distribution of goods, his account of freedom is not just about basic rights and equal opportunity but has serious implications for the distribution of goods and a better state of affairs. It would be morally impermissible for the poor to be dependent on the private virtue of the affluent since they would be wrongly related as this would be a relationship

of dominance, hence public law becomes necessary to deal systematically with the challenges of social and economic inequalities, fostering the right relations – “equality of freedom”. Philanthropy for Allais is inadequate because it is through state action that we are rightly related.

“Kant’s account of political freedom is not simply about non-interference and a minimal state. Rather the account is about what is necessary for human beings to relate rightfully to each other in ways that respect all of our autonomy and protect us from being systematically dependent on other’s arbitrary choices, including on private virtue” (Allais 2015:194). It is on this basis, argues Allais, that Kant justifies coercion by the state, that is, to create enabling conditions for all to realise freedom in which public law becomes crucial for human beings to coexist in relations of non-domination and therefore respect for their equal worth. The worse-off cannot be said to be free if they are to depend on charity, being at the mercy of the goodwill of the affluent, but rather realise their freedom and respect for their dignity when the state intervenes through public policy and taxation to meet their basic needs whilst protecting private property. “Kant’s fundamental concern is not with an even distribution, but with what it is to treat people as equals and with respect” (Allais 2015:199).

From the point of view of social equality, poor and unequal healthcare is problematic in that it erodes equal value of humans. Equal value calls for treating all people with respect. It is inhumane and completely wrong to subject humans including women and children to the type of treatment that we often see in public hospitals and yet those who can afford private health insurance receive the best

medical care. What is the meaning of freedom to the vast majority that is subject to poor and unequal healthcare? The national government's intervention on universal healthcare which integrates the public and private healthcare systems, effectively creates conditions for human beings to relate with one another in a manner that shows respect for equal worth - equal treatment in healthcare regardless of social and economic status. A policy approach underpinned by minimal and limited governments leaves the lower classes exposed to what Allais refers to as "others arbitrary choices, including private virtue" and thus undermining the realisation of their freedom. In "equality of freedom" the task of the state is extensive, justified on the basis that it's necessary in order to create enabling conditions for each person's freedom – positive freedom. Further, although the "equality of freedom" and Rawls' theory call for state intervention resulting in a more equal distribution of goods, the motivation differs. "Equality of freedom" is motivated by equal value of humans whereas Rawls' basis is natural endowments. The distribution of goods is not the primary concern of "equality of freedom" as it is with Rawls but rather what it means to be rightly related.

Carina Fourie (2011) considers a similar notion of social equality that focuses on the social status accorded to everyone in society. Fourie views social equality as a struggle for substantive transformation at the core of which is the elimination of status hierarchies that treat certain individuals or groups of people as inferior and others as superior in society. Fourie is asking what it means to treat people as equals. She posits that there are oppressive relationships in society that must be broken down such as ranking people according to hierarchical status if there is going to be any real equality. Within the egalitarian tradition, this kind of equality is

different and more robust than distributive equality which is concerned with the overall welfare or the welfare of the worse-off. Fourie argues that “social equality is a significant and distinct yet neglected component of what it means to treat people as equals. Discussions in contemporary philosophy tend to be dominated by questions about the role of equality in distributive justice, in other words, by what can be called distributive equality” (Fourie 2011:108).

Status hierarchies consists in evaluating others as inferior and some as superior and importantly translating that evaluation into a particular treatment. “A status hierarchy occurs when a behaviour, social practice or policy expresses a particular kind of unequal relationship between a person or group of people, and others. More specifically, it is a relationship between inferiors and superiors” (Fourie 2015:111). Fourie emphasises that, what matters in hierarchies of social status, is the kind of relationship between social positions and not the absolute level of treatment. The fundamental problem, for example, in the case of public policy is not that those who are regarded as worse are treated badly or those regarded as better are privileged but that they are not treated as equals. “This is what makes social equality strongly egalitarian” (Fourie 2015:112). At issue is not whether some are not receiving the set minimum level of minimum benefits but rather the difference in levels of benefits. “A theory of social equality is comparative, being concerned with the relationship between individuals and their relative positions in a status hierarchy, and it is unspecific, in other words, it is not concerned with the actual level of benefits or welfare of those in the hierarchy. This could be contrasted with the notion of distributive equality” (Fourie 2015:112). Essentially, the content of social equality is that people stand in equal relation to each other as against being

subjected to differentiated treatment based on the evaluation of their social status as either better or worse.

The goal of those who advocate for a version of universal health coverage that keeps the public and private health sectors separate is to guarantee that the disadvantaged majority receives services that at least meet the minimum standard of basic healthcare by improving the management of public health facilities. They are not aiming at equalising the quality of healthcare in both sectors. It is therefore not comparative in its approach in the hierarchy of the health system but concerned with the specific level of benefit for the vast majority. The national government on the other hand envisages a health system in which everyone regardless of class would share the same health facilities and thus receive the same treatment. This effectively eliminates status hierarchy in the health system in which the affluent are superior and the vast majority, inferior. It is this superiority complex that Serageldin in the Nelson Mandela Annual Lecture warns against, that, “it hardens the attitude of the rich and powerful towards the poor and lowly… and it undermines the very notions of social justice and social cohesion. It makes a mockery of fairness and leads to the slippery path of class warfare as the only means of redress”. Fourie thinks that the national government’s policy on universal healthcare is strongly egalitarian – equality of access to quality healthcare. What seems to be the South African experience under the democratic dispensation, is that, as the middle and upper classes retreated from public services such as education and health and as these services deteriorated they have become less concerned in giving material and emotional support to such public institutions. They start thinking that, in fact, their taxes are going to waste and that those communities in which these public

institutions are situated are irresponsible. The disadvantaged face double jeopardy of poor services and get blamed for being irresponsible and yet the primary problem is structural. This is the moral corrosiveness of extreme inequalities that renders human solidarity difficult and threatens social order.

Fourie establishes a dynamic link between social equality and various principles of distributive justice in the sense that unequal distribution of goods could create conditions for a hierarchy in social status and vice-versa. For a society of equals, the principles of distribution to be adopted must be those that would undermine status hierarchy. To the extent that, as Rawls claims, the outcomes of the difference principle reinforce self-worth on the part of the least advantaged and to some degree limits hierarchy and inequality, Fourie should find Rawls' principles acceptable. Fourie gives an example of the capabilities approach to distributive justice as one that undermines status hierarchies. In her distinction between statutory and informal social inequalities, Fourie is critical of distributive equality. She points out that status hierarchies need not be institutionalised as they are often found in the social system. Fourie gives the example of an unwritten rule that instructs those of lower status to stand when someone of higher status enters a room. "With an emphasis on the justice of institutions, distributive justice is often silent about informal inequalities in civic life, the workplace, individual behaviour within family, associations and so on" (Fourie 2015:116). Thus, theories of distributive justice such as the promotion of the overall welfare or welfare of the worse off, on their own, fall short of creating a society of equals. The other criticism of distributive equality highlighted by Fourie, which makes it a frail form of egalitarianism, is that its value is only instrumental whereas social equality also

contains intrinsic value. Its intrinsic value is founded on the assumption that treating individuals or groups as inferior is wrong because humans have equal moral worth. Often, when people reflect on the damage caused by social inequalities such as status hierarchies, they only look at this from the point of view of the victim, the inferior. Fourie closes this gap by pointing out also at the damage that could arise on those regarded as beneficiaries - the superior. “A morally distorted social system which falsely deems some to have lesser worth and others greater, is likely to harm not only those deemed inferior but also those considered superior” (Fourie 2015:119). She highlights the damage associated with having higher status as “a distorted moral capacity, cognitive distortion and emotional costs (2015:121). With respect to distorted moral capacity, Fourie states, “being treated as superior, particularly where this is associated with extreme social stratification and with oppression, could foster cruelty, a lack of empathy and inhumanity. Think of South Africa under apartheid” (Fourie 2015:120). In this regard, Fourie cites the example of Desmond Tutu’s claims about the damage caused by apartheid “…we have all in different ways been wounded by apartheid…Those who were privileged lost as they became more uncaring, less compassionate, less humane and therefore less human…. Those who opposed apartheid could also end up…becoming like what they most abhorred”.

Elizabeth Anderson is concerned, firstly, with how recent egalitarian thought in particular luck egalitarianism which can be traced back to John Rawls opens itself up to criticism by the right-wing on account of lacking limits to what the state can do and thus allowing for unjustified coercion of individuals. Anderson’s second concern with this kind of egalitarianism is its narrow focus on the distribution of

goods and thus neglecting the essence of authentic egalitarianism which is about changing social relations for the benefit of all. Anderson holds that these problems arise from a misunderstanding of the crux of equality. This is so according to Anderson because recent egalitarian scholars seem to have forgotten that egalitarianism arose as a response of political movements that stood in opposition to oppression including status hierarchies and domination at the core of which are unequal social relations. The alternative theory she proposes is called “democratic equality”. “In seeking the construction of a community of equals, democratic equality integrates principles of distribution with the expressive demands of equal respect. Democratic equality guarantees all law-abiding citizens effective access to the social conditions of their freedom at all times” (Anderson 1999:289). The fact that people hold different social and economic positions in society cannot justify domination. Anderson contends that luck egalitarianism fails to show equal respect for all citizens in the sense that based on “bad option luck” it denies some citizens from accessing social conditions of freedom. Through “bad brute luck”, it engenders domination in which the claims that people have on one another in society are rooted on regarding some as superior and others inferior. The social equality movement is not advocating for equality of income and wealth as strict equality (communism) would do but rather for equal treatment in how humanity relates in modern and market-based democracies. Quality healthcare would be amongst those priority social goods that constitute social conditions for freedom.

In comparing the democratic conception of equality with “equality of fortune”, Anderson says that the former seeks to eliminate socially constructed oppression and thus views equality as a social relationship whereas the latter seeks to remedy

what it perceives as injustices produced by nature and thus view equality as a pattern of distribution. “Thus, equality of fortune regards two people as equals so long as they enjoy equal amounts of some distributable good – income, resources, opportunities for welfare, and so forth…. But democratic egalitarians are fundamentally concerned with the relationships within which goods are distributed, not only with the distribution of goods themselves” (Anderson 1999: 314). The main principle of justice arising out of Anderson’s conception of equality based on the social contract, is that “the fundamental obligation of citizens to one another is to secure the social conditions of everyone’s freedom” (1999: 315). The meaning of freedom in this regard is radically different from the negative conception of libertarians and classical liberals based on non-interference by the state but rather the social conditions of free citizens is that “one stands in relations of equality with others” (Anderson 1999:315) and for citizens to be able to do so requires an expansive state. Libertarians, Anderson argues, the manner they construe freedom overlooks the value of having the capabilities to do what one wants. She supplies Amartya Sen’s conception of freedom as a better alternative to libertarianism. To function as a free person, one must have a real choice on how to lead one’s life and without certain capabilities, choice is an illusion. “A person's capabilities consist of the set of functionings she can achieve, given the personal, material, and social resources available to her” (1999:316). Following from this, Anderson holds that egalitarians should aim at equality for all in the area of capabilities. Among others, “to be capable of functioning as a human being requires effective access to the means of sustaining one’s biological existence – food, shelter, clothing, medical care…” (1999:317). This ties with Daniels’ notion of the specialness of health needs whose lack of satisfaction puts at risk the normal

functioning of humans and thus rendered unable to cease opportunities that may arise in society. Anderson has an ally in the national government in the sense that its approach to universal healthcare cannot be construed as simply being preoccupied with the distribution of goods to the neglect of social relations. This is evidenced by the fact that NHI seeks to give equal respect to all in the provision of healthcare by integrating public and private. Following Anderson's argument, access to quality and equal healthcare means access to social conditions for the exercise of freedom. It means having the capabilities that would enable each one to pursue his/her goals in a market based and democratic society.

On the basis that humans have equal moral worth, social equality asks what it means to treat people with respect and in this regard provides a more sophisticated account of justice that conceptualises freedom not as merely about non-interference but creating conditions for the exercise of freedom, which justifies state intervention, otherwise people would be in oppressive status hierarchies and relations of domination. Since social equality is relational and takes seriously the fact that what individuals choose to do does affect others and that people are interdependent, not only does it expose the weakness in classical liberalism's conception of the individual, but it is also more robust than Rawlsians whose focus is on the distribution of goods. It goes beyond distribution to make primary, what it means to treat people with respect. Although Rawls theory is focused on the distribution of goods, Rawls explains how the difference principle provides an interpretation of fraternity and that the outcomes of the difference principle engender self-worth on the part of the disadvantaged and to some degree limits hierarchy and inequality. Social equality has profound implications for public policy

and in this case, health policy. Social equality prescribes a healthcare system that treats all with equal respect. It would support a health policy that seeks to integrate public and private health sectors in which the poor and the working class could find themselves sharing a room in hospital with the affluent. This sharing of spaces by the affluent and the disadvantaged creates opportunities for conversations that would be in the common interest regardless of their inequality of income and wealth, engendering solidarity and social cohesion.

5. Conclusion

Classical liberalism gives an inadequate account of how to distribute benefits and burdens with respect to healthcare. The inadequacy arises from the very foundation of classical liberalism, that is, how it conceives the individual. It is “overly individualistic” and thus leading to a heavy bias towards individual rights and less weight put on the obligations humans owe to one another in society. This is untenable because humans in society are interdependent and none is self-sufficient. Flowing from this is how it construes freedom as simply non-interference, negative freedom, resulting in a distorted view about the task of government - limited government.

Classical liberalism, which is often mistaken with libertarianism, prizes individual rights in the sense that individuals must be free to choose how they want to live and as such must not be unnecessarily interfered with by any individual, group or state provided they observe the same rights of others. The right distribution of

healthcare according to classical liberalism would be the one determined by free markets. It would insist on the freedom of choice for both users and healthcare service providers and thus a separation of public and private health sectors. Based on the notion of limited government it would oppose an expansive tax regime that coerces the well-off to pay for quality healthcare for all. This constitutes a violation of the freedom of individuals to choose what they want to do with their hard-earned money. Of course, it's important to acknowledge that classical liberalism allows for some moderate redistribution to mitigate the situation of the poor. In this regard it is not as bad as the strict libertarianism of Robert Nozick. Nevertheless, it is not aimed at reducing inequalities, hence it would advocate for fixing public health separately from the private health sector and thus maintain the two-tier system in the South African context.

The formal equality of opportunity of classical liberals would leave the majority lacking in the necessary capabilities to fully exercise their basic rights. Although both classical and high liberalism endorse the markets as an efficient mechanism for the allocation of productive resources, as Freeman puts it, they differ on the role they place on the markets in determining the right distribution of goods. Classical liberals give prominence to the markets as the final measure for just distribution and therefore put more weight on the rights to private property and freedom of contracts. Moreover, classical liberalism, in its preoccupation with individual interests, appears to miss the specialness of health needs and the obligations we have towards each other that warrant prioritisation and social solidarity. The specialness of health is borne out of what healthcare does for

humans, namely, to improve quality of life, sustain and save lives. All societies tend to place the value of human life highest.

For more coherent accounts we need to look in the direction of John Rawls and social equality. Rawls theory is a complex combination of freedom and equality. The major difference between Rawls and classical liberalism is in Rawls concern with the basic structure of society into which individuals are born, that is, the deep inequalities which mean different expectations. Through his original position, “under the veil of ignorance” and the second principle, the difference principle, Rawls account of justice moves in the direction of equality. The first principle on basic rights addresses the weakness in utilitarianism and in this regard has something in common with classical liberalism - respect for individual rights. The difference principle seeks to increase benefits for the least advantaged, embraces redress, reciprocity and fraternity and thus advances a more equal society. From a Rawlsian point of view the structure of the South African health system referred to as the two-tier system which reproduces inequalities in healthcare would have to change for the benefit of all. Rawls would endorse an expansive tax regime to fund healthcare in order to increase benefits for the least advantaged. High liberals such as Rawls “maintain that property rights should be decided by asking which system of property laws best enables citizens to realise their freedom and independence by effectively exercising their basic rights and liberties...” (Freeman 2002 119). Thus, all citizens must have a fair share of the benefits of the market in order to be truly autonomous and take advantage of their basic freedoms – positive freedom.

Social equality asks what it means to treat people with respect and in this regard provides a more sophisticated account of justice that conceptualises freedom not as merely about non-interference but creating conditions for freedom, which justifies state intervention, otherwise people would lack autonomy and be subject to relations of domination. Since social equality is relational and takes seriously the reality that what individuals choose to do does affect others, not only does it expose the weakness in classical liberalism's conception of the individual, but it is also more robust than Rawlsians whose focus is on the distribution of goods. It goes beyond distribution to make primary, what it means to treat people with respect. This has profound implications for public policy and in this case, health policy. Social equality prescribes a healthcare system that treats all with equal respect based on the equal moral worth of humans. It would support a health policy that seeks to integrate public and private health sectors in which the poor and the working class could find themselves sharing a room in hospital with the affluent. Poor and unequal healthcare treats the vast majority in the South African situation as inferiors as if humans do not have equal moral worth.

The national government's proposed reforms to the South African health system, the NHI, seem to borrow from elements of Rawls and social equality. It seems to be the case because NHI is aimed at equalising healthcare for all in which the well-off cross subsidises the worse-off. NHI dismantles the two-tier system into an integrated universal health coverage for all regardless of the ability to pay. "NHI is a health financing system that is designed to pool funds to provide access to quality, affordable personal health services for all South Africans based on their health needs, irrespective of the socio-economic status" (Department of Health

2015:12). The chief source of income for the fund will be revenue raised through taxes such as payroll and a surcharge on personal income. “The main contributor to inequity in healthcare is the existence of a two-tier healthcare system where the rich pool healthcare funds and resources separately from the poor, these inequities have also resulted in mal-distribution of key health professionals between the public and private health sectors, as well as urban and rural areas as well as among the districts” (Department of Health 2015:15). According to the national government, the pooling of risks and funds into a single payer for both public and private healthcare service providers will give effect to principles of equity and social solidarity that must inform how the country’s healthcare system is structured.

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