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**A Rawlsian perspective on water governance reform in  
South Africa**

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**Abstract**

Despite significant reforms in South Africa since 1994, water allocation continues to reflect colonial and apartheid legacies, with recent research revealing that Black South Africans control merely 0.5% of water resources while white South Africans retain access to 98.6%. This paper examines how Rawls' theory of distributive justice, particularly the 'difference principle', can provide ethical guidelines for water allocation that prioritise the most disadvantaged. Drawing from interview data, systematic literature review, and press analysis of the National Water Amendment Bill of 2023, the article critiques prevailing governance approaches that entrench inequalities by privileging powerful stakeholders. The proposed amendments represent significant yet limited steps toward transformation as governance efforts remain largely symbolic. While acknowledging operational challenges, this analysis demonstrates the value of Rawls' difference principle in measuring redistributive outcomes' impact on the most marginalised, providing a moral position where institutions serve all citizens rather than preserving historical privileges.

**Keywords:** *Difference principle, Existing lawful uses, Historically disadvantaged individuals, National Water Amendment Bill, Water governance, Rawlsian justice, South Africa, Structural injustice.*

## **Introduction**

South African water governance continues to reflect deep-rooted historical inequities despite post-1994 legislative reforms (Dube, 2020; Hydrosort Institute, 2021; Msibi & Dlamini, 2011), systematically denying meaningful resource access to Black communities, and perpetuating a legacy of exclusion (Kaziboni 2024; Tapela 2015). Access to water, previously tied to land through riparian water rights, was repealed by the National Water Act Number 36 of 1998; however, land ownership has largely remained in the hands of a few, with reports of 'dry' land within the country's land reform process where land is redistributed to beneficiaries while previous owners retain water rights (Dube 2020). Current efforts to reform water governance, specifically through proposed amendments to the National Water Act of 1998 (DWS, 2023a), have renewed debate among various stakeholders. While these amendments propose mechanisms intended to enhance equity, substantial debate remains regarding whether such changes will meaningfully benefit historically marginalised communities (see Ho, 2024) and how the currently privileged will be impacted (see AgriSA, 2024). Critical analysis reveals that despite transformative intentions, these amendments risk failing to dismantle entrenched privileges, particularly as they do not substantially alter existing water use rights or address structural constraints such as land-access disparities.

A significant knowledge gap thus emerges in existing water governance frameworks, particularly in defining clear ethical standards for allocating water resources equitably and justly. Current frameworks predominantly emphasise procedural equity and economic efficiency without adequately addressing substantive outcomes for disadvantaged groups (Tekwa & Dube, 2024). The question motivating this study, therefore, is how water governance could be restructured in South Africa to genuinely prioritise disadvantaged populations, explicitly ensuring meaningful redistributive outcomes. This paper addresses this gap by theoretically applying John Rawls' distributive justice framework, particularly his 'difference principle', to South African water allocation practices. Building on a qualitative study of water allocation reform that employed Rawlsian justice (Dube, 2020), this paper primarily uses a systematic review of literature complemented by insights drawn from interviews conducted during the initial study. Additional online sources were purposively identified through Google searches to capture timely

reflections and public engagement with the National Water Amendment Bill. These included statements and journalistic articles issued by civil society organisations and media articles that reported on or analysed the bill's implications. Sources were drawn from well-recognised platforms such as Mail & Guardian, Engineering News, Creamer Media, and reputable academic institutions including the University of Johannesburg and the University of the Witwatersrand. These media perspectives were particularly useful in framing the public reception and debate surrounding the proposed reforms, offering important context for the paper's exploration of justice and redistribution. Through this approach, the article critically assesses the ethical implications of South Africa's water allocation policies, proposing practical avenues for genuine redistributive justice.

Drawing from Rawls' theory of distributive justice and the South African water governance context, this paper is guided by the following key questions:

- To what extent do proposed amendments to South Africa's National Water Act align with Rawls' difference principle in prioritising historically disadvantaged communities?
- How can Rawlsian distributive justice provide an ethical framework for evaluating water allocation practices in South Africa?
- How can a Rawlsian perspective address structural and policy constraints preventing current water governance approaches from achieving genuine transformation?

### ***Historical Context and Overview of Current Allocation***

During the transition to democracy, the African National Congress (ANC) adopted an approach that emphasised economic growth without significantly disrupting existing water use patterns, effectively preserving previous privileges under the guise of equitable redistribution (Movik, 2012; Dube 2020, p. 131). Infrastructure developed during apartheid was explicitly designed to privilege the white minority population (Bayliss, 2016), with "deliberate underinvestment" of Bantustan areas (Kaziboni 2024, p. 59). This has created enduring structural disparities as water infrastructure remains a major water security challenge (DWS, 2018; see also Shologu, 2025). Legal continuity through Existing Lawful Uses (ELUs) effectively enshrined pre-existing inequalities into the new democratic system. A study by the Hydrossoft Institute (2021) that assessed persisting inequalities post-1994 found that Black South

Africans control only 0.5% of the country's water resources, while white South Africans retain approximately 98.6%, with Coloured and Asian groups accounting for 0.8% and 0.1%, respectively. The recognition of water allocations obtained before the National Water Act of 1998 impedes redress efforts, as much of the water remains locked under existing lawful use.

One critical flaw in current governance approaches is the persistent disjunction between water and land reform. Movik (2012) and Dube (2020) emphasise that meaningful water allocation reform cannot succeed without addressing historical land ownership disparities. Msibi & Dlamini (2012) also argue that the NWA's water allocation priorities were based on productive water use, yet statistics showed that land ownership in most of the country's provinces was still skewed in favour of a few (Department of Rural Development and Land Reform (DRDLR) (2017a, p.9) in Dube 2020, p. 7). This explains why 92.7% of the country's agricultural households "created backyard gardens" (StatsSA, 2018, p. 58). South Africa's approach to water justice fundamentally contradicts itself through the disconnect between land and water reform. Since access to land inherently dictates access to water, any redistributive policy lacking integration of the two will inherently fail to benefit those most disadvantaged by historical injustices. Constitutional property rights protections complicate reallocation. Consequently, water governance continues to reproduce rather than challenge existing socio-economic inequalities, reinforcing historical patterns of privilege and exclusion rather than dismantling them.

The water allocation reform strategy introduced explicitly to address historical inequities has encountered severe limitations in achieving substantial redistribution. Systemic barriers, including bureaucratic licensing complexities, institutional inefficiencies, and economic constraints, severely restrict meaningful participation by the historically disadvantaged group. Several scholars highlight how, despite formal commitments to transformation, actual water allocation continues to favour established, predominantly white commercial agricultural interests (Msibi& Dlamini, 2011; Movik, 2012; Bond, 2014; Kemerink, 2015). Furthermore, aligning equity and efficiency within the WAR framework poses inherent contradictions, complicating reallocation efforts (Dube, 2020; Dube, 2022). This is so, particularly given the National Water and Sanitation Master Plan's dependence on voluntary contributions from existing users. This strategy is criticised as inherently inadequate for

achieving genuine water justice amid scarce resources controlled by privileged groups (Dube, 2020).

The water management system is informed by the Integrated Water Resource Management (IWRM) promoted in global water governance discourse, emphasising efficiency, sustainability and stakeholder participation. However, its practical application in South Africa has faced significant challenges, primarily because it does not adequately address entrenched social and economic inequalities (Tekwa & Dube, 2024). For instance, stakeholder participation in Water User Associations (WUAs) presented challenges due to differing stakeholder needs, power dynamics, language differences and varying levels of knowledge and experience (Dube, 2020). A study in the Thukela River Basin by Kemerink, Méndez, Ahlers, Wester & van der Zaag (2013) reveals some of the challenges participation in the WUAs created for participants. However, Brown (2013, p. 178) concluded that the participatory processes allowed apartheid beneficiaries to maintain their “relative advantage”. Movik (2012) also critiques IWRM’s procedural focus, arguing that it fails to consider the historical dispossession of land and water resources, which continues to place historically disadvantaged individuals (HDIs) at a disadvantage. Tekwa and Dube (2024) also argued that IWRM’s emphasis on efficiency and environmental sustainability often sidelines social equity considerations. These contradictions reveal the limitations of technical approaches to water management that do not directly confront the politics of resource distribution. While IWRM promotes stakeholder participation and catchment-based management, it fails to directly address historical injustices in water allocation, consequently excluding smallholder farmers and marginalised communities from meaningful access to productive water use.

### ***Theoretical Considerations***

Given these persistent inequalities in water governance, there is a pressing need for a normative framework that can guide transformative reform. The theory of distributive justice is employed in this paper to re-conceptualise key discourses and principles surrounding water allocation reform in South Africa. Rawls’ (1971) theory of justice, particularly the difference principle, advocates for an egalitarian approach to resource distribution, ensuring that socio-economic inequalities are only permissible if they demonstrably benefit the least advantaged in society. The human rights-based approach to water governance, while grounded in universal principles of access and dignity, has demonstrated significant

limitations in addressing entrenched structural inequalities. Bond and Dugard (2008) argue that human rights discourses often assume that merely recognising water as a human right will lead to equitable access, yet the reality is far more complex. Hamilton also observes the limitations of a human rights approach in the context of the country's constitution arguing that “framing the constitution in rights discourse does not help the processes of redress, as 'new rights' claimants have to confront ‘a status quo that uses the same language of rights’” (Hamilton, 2006, p. 136 in Dube 2020, p. 105). This critique illuminates why, despite constitutional guarantees, water justice remains elusive in South Africa. The human rights framework emphasises procedural fairness over substantive justice. It assumes that all individuals are positioned equally to claim their rights, disregarding the systemic disadvantages that prevent historically marginalised groups from benefiting in practice. This reinforces existing inequalities rather than dismantling them, as water governance remains skewed in favour of those with political and economic power. Water needs continue to be prioritised along economic and political lines, with historically marginalised communities often left with inadequate access despite legal protections.

### *John Rawls' Difference Principle*

John Rawls' theory of distributive justice, particularly the difference principle, posits that social and economic inequalities are ethically acceptable only if they benefit the least advantaged members of society (Rawls, 1971). Within the context of South African water governance, the application of this principle critically interrogates the enduring historical privileges embedded within current water allocation systems, particularly the perpetuation of ELUs. Despite formal commitments to equity, present governance practices primarily safeguard historical allocations, thus failing Rawls' ethical standard, which requires tangible improvements in the conditions of historically marginalised communities. The difference principle not only provides a moral critique of current governance frameworks but also advocates explicitly for substantive rather than merely procedural equity. Practically, this would entail restructuring water allocation policies to repeal indefinite ELUs, enforce equitable allocations directly benefiting disadvantaged populations, and ensure that permissible inequalities demonstrably advance the position of the least privileged. Therefore, adopting a

Rawlsian perspective compels water governance reform to go beyond rhetorical commitments, mandating transformative actions that genuinely rectify entrenched injustices and produce equitable outcomes for historically disadvantaged groups.

### **Proposed Amendments to the National Water Act: Redress and Transformation**

The draft National Water Amendment Bill of 2023 represents a significant attempt to address historical water inequities through legislative reform, though questions remain about its transformative potential. This section outlines the key proposed changes within the draft bill (DWS, 2023a), specifically focusing on clauses relevant to transformation, equitable water allocation, and the redress of historical injustices. A Department of Water and Sanitation presentation (DWS, 2022) identifies critical gaps and challenges the amendments aim to address. The paper limits its scope to those focusing on equity and transformation with the National Water Act amendments. While climate change is acknowledged within these amendments, this paper primarily concentrates on provisions aimed explicitly at transformation and equity. Concerning transformation, equity, and equitable allocation of water, the Department of Water and Sanitation highlighted several significant gaps to be addressed:

- Advancement of social development and economic transformation by ensuring equitable water access for disadvantaged groups;
- Implementation of the ‘use it or lose it’ principle;
- Reallocation of unused water resources to the minister as the public trustee;
- Prohibition of water trading or hoarding of unused water (DWS, 2022, p. 7).

At the heart of these reforms is a fundamental shift in ministerial authority over water resources. The proposed amendments empower the minister, acting in the public interest, to “allocate water between sectors, provinces or catchments” after consulting affected parties (Amendment 25A) (DWS 2023a, p. 15). Such allocations by the minister will explicitly include the prioritisation of “redress of past racial and gender discrimination”, mandating that “a certain volume of water in each water management area” be set aside specifically to achieve this redress (Amendment of section 27, Act 36 of 1998) (DWS, 2023a, p. 16).

Regarding the redress of historical imbalances, the Department identified critical gaps, including:

- The Minister's limited regulatory power over Existing Lawful Uses (ELUs), which currently perpetuate historical injustices;
- Unlike licenses, ELUs lack expiry dates, preventing periodic review to reflect contemporary socio-economic priorities (DWS 2022, p. 8).

Identified gaps directly target the mechanism through which apartheid-era water rights have persisted into the democratic era. Consequently, the draft Amendment Bill revises the definition of ELUs, restricting it to water uses that occurred within two years immediately preceding the commencement of the Act, including streamflow reduction activities (DWS, 2023a). To address issues of water hoarding and inefficient use, the amendments reinforce the “use it or lose it” principle. This is achieved by adding a subsection to section 34, which states that “a responsible authority may curtail a volume of water which becomes available as a result of failure by water users to exercise the full existing lawful use volume for any period specified by the Minister” (DWS 2023a, p. 17-18).

### **Media Perspectives on the Draft National Water Amendment Bill**

The proposed amendments have sparked intense debate across South African society, revealing deep divisions about how to balance historical redress with contemporary concerns about economic stability and property rights. The proposals have elicited diverse responses from various sections, including civil society and academics. For instance, a media article by Ho (2024) highlights the potential for water resources to be weaponised for political and social control. Citing a law professor from Wits University, Ho emphasises how historical water use licenses, primarily granted to white-owned commercial farms during the previous regime, remain legally problematic. The professor argues that these historical licenses perpetuate significant inequities and systematically exclude historically disadvantaged groups from meaningful water access. Consequently, the professor regards the proposed amendments as essential for enabling the reallocation of water resources and for regulating existing water users more equitably. These views align with



those expressed by the South African Government News Agency (SAGNA, 2024), which similarly emphasises the amendment's potential to address historical imbalances. SAGNA anticipates that the amendments will enhance water access for all citizens and strengthen the department's capability to phase out previous entitlements, thereby meeting the objectives of water allocation reform.

However, opposition to the amendments reveals concerns about their practical implementation and potential economic impact. Concerns about proposed racial quotas for water allocation were raised during a virtual discussion facilitated by WaterCan and the University of Johannesburg, highlighting their complexities. As reported by Odendaal (2024), a senior researcher from the University of Johannesburg expressed apprehensions regarding potential discrimination, legality, and unintended consequences arising from the amendments. The researcher emphasised the necessity to carefully examine contradictions to equity principles and possible constitutional rights breaches. The researcher considered impacts on efficient water allocation and management repercussions for existing users, and recommended "robust implementation and enforcement of existing regulations". The aforementioned neglect the land factor and the resistance to transformation by powerful economic and political stakeholders, including global voices (see for instance IOL, 2024; Bega, 2025).

Agricultural industry organisations have been particularly vocal in their opposition, with further constitutional concerns echoed by AgriSA, which described the amendments' prioritisation of redressing past discrimination over other considerations in licence issuance as "unbalanced and unconstitutional" (de Vaal, 2023). AfriForum also recognised necessary environmental aspects within the amendments but highlighted several inconsistencies and provisions they considered unlawful. Independent Online News (IOL 2024) reports further objections by AfriForum regarding what it terms the expropriation of water rights from users who fail to utilise their allocated water within an undefined timeframe. Similarly, AgriSA (2024) emphasised the necessity for compensation mechanisms when implementing the 'use it or lose it' principle stipulated in Amendment 25A of the National Water Amendment Bill.

The proposed racial quotas for water licences have become a particularly contentious aspect of the reforms. Additional concerns were specifically raised regarding the introduction of racial and gender quotas in water use licence applications. The Amendment Bill proposes adding a subsection to section 27 of Act 36 of 1998 as follows:

A responsible authority must prioritise the redress of past racial and gender discrimination and set aside a certain volume of water in each water management area to achieve this redress (DWS, 2023a, p. 16).

A Department of Water and Sanitation official clarified that enterprises applying for licences to take or store water might be required to demonstrate Black shareholding percentages of 25%, 50%, or 75% to qualify (Bega, 2025). However, the limited scope of these reforms becomes apparent as the official further explained that this requirement applies exclusively to the remaining 1.5% of unallocated water resources, which leaves the previously allocated 98.5% unaffected (Young, Werner & de Lange, 2023). Consequently, Murombo (in Ho, 2024) criticises these amendments as insufficient, emphasising their limited capacity to disrupt entrenched historical privileges and address existing lawful water allocations comprehensively. This tension between ambitious equity goals and limited practical impact reveals the fundamental challenge facing water reform in South Africa: how to achieve meaningful redistribution within a system where most resources remain allocated according to historical patterns of privilege.

### **Analysis of the Proposed Amendments**

The proposed amendments to South Africa's water legislation represent significant, though complex, strides towards rectifying historical inequities and reforming existing water governance structures. The amendments propose several transformative measures, including:

- Repealing the right to declare ELUs, thereby dismantling privileges entrenched by colonial and apartheid-era water rights;
- Allocating specific volumes of water in each water management area explicitly to historically disadvantaged individuals (HDIs);
- Implementing the 'use it or lose it' principle to reclaim underutilised water resources;
- Empowering the Minister to allocate and reallocate water resources across sectors, provinces, or catchments.

From a justice perspective, these amendments attempt to reconfigure the institutional arrangements that have maintained unequal water distribution since apartheid. Repealing the ELU provisions responds directly to concerns raised by the Hydrossoft Institute (2021), highlighting

the necessity to eliminate or substantially revise legislation that perpetuates indefinite retention of water rights. The institute states that

With numbers of ELUs exceeding that of new licences, inequalities will remain unless the ELU registrations are phased out or new legislation is put in place to repeal the provisions and address the legislative gaps that allow ELUs to exist in perpetuity (Hydrosoft Institute 2021, p. i).

The entrenched ELU system has led to fully allocated catchments, severely restricting available water for equitable redistribution (DWS, 2017; Molewa, 2013). Historically, the African National Congress (ANC) government assured existing water users of continued access, adopting alternative measures such as demand management and infrastructural enhancements, which have ultimately proved insufficient for substantial redistribution (Swatuk, 2010 in Dube 2020, p.534).

While these amendments represent a departure from previous policy approaches that privileged stability over transformation, their practical impact remains questionable. The amendment's intent to designate specific water volumes from each water management area for HDIs represents a notable improvement; however, practical limitations remain evident since these allocations depend on a minimal 1.8% of unallocated water resources, with the dominant 98.2% protected under ELUs and licenses. Within the current act, water has also been set aside for HDIs, but the uptake of such water is reported to have been constrained by HDIs' lack of infrastructure for such water uptake. A DWS official revealed that it was part of their planning to set aside water for HDIs:

In our planning we already allocate the water as requested by the Department of Agriculture for resource poor-farmers (DWS Official #1, pers. comm., 10 November 2016).

She gave an example of the Umhlatuzi catchment, in KwaZulu-Natal, where water had been set aside for HDIs but had not been taken up. Such constraints indicate potential challenges in achieving meaningful redistribution, particularly considering how poorly resourced most small-scale farmers are.

The amendments' proposal to repeal new ELU registrations addresses historical loopholes that facilitated indefinite retention and transfer of water rights across generations, perpetuating systemic inequalities. This issue was highlighted by a study participant:

... the NWA allowed for the transfer of water rights. So, if I had land that was being taken away from me to be given to the community for whatever reasons, and my neighbour, a cousin or a brother also had a farm and we were drawing water from the same river to irrigate our farm, and he has an allocation, and I also have an allocation, I can then transfer my allocation to my brother, and when they take the farm, the farm does not have an allocation... You find that you saw the land and you saw that there was water on the land and by the time the transfer happens, the water rights are not there because water rights are not physical, it is a piece of paper. (WRC Respondent, pers. comm., 15 August 2018 in Dube, 2020, p.171).

This example illustrates how technical and legal mechanisms have been employed to circumvent the redistributive intent of post-apartheid reforms, maintaining patterns of privilege under the guise of procedural compliance.

The amendments thus present a paradox: they introduce explicitly race-conscious criteria for water allocation, a significant departure from previous equity approaches, yet apply these criteria only to a minuscule fraction of the country's water resources. The proposed amendments also enhance ministerial authority over water allocation, removing the previous autonomy of individual water rights holders to trade resources privately. However, AgriSA (2024) has raised concerns regarding potential compensation implications under the 'use it or lose it' policy, reflecting broader debates on fairness, legality, and the economic consequences of redistributive water governance policies. Legal cases can indeed arise, as attested by one interview participant who explained that:

people could not use all their allocations, some people had like 10M<sup>3</sup>l of water available and were not using all but when told that some of it would be taken away, they cried that they were now being disadvantaged, so compulsory licensing was put here to make people happy. Because you have to consult and agree with people, government was also afraid that if water was just taken from people, then the people suffer from economic losses and can take government to court and ask government to reverse their decision. There are many legal issues on compulsory licensing that have not been tested as yet (DWS Official #2, pers. comm., 10 November 2016).

These discussions highlight the complexity of achieving transformative reforms and emphasise the necessity of carefully balanced policy-making that comprehensively addresses diverse stakeholder interests and practical implementation challenges.

### **Analysis of the Proposed Amendments Through Rawls' Difference Principle**

Examining South Africa's water governance through Rawls' theory of justice provides a normative framework that goes beyond procedural reforms to evaluate whether institutional arrangements genuinely benefit the least advantaged members of society. The historical context of capitalism, characterised by processes of accumulation, dispossession, and exploitation, profoundly shaped apartheid-era water policies in South Africa, systematically excluding the Black majority and relegating them to marginal, arid lands. Despite post-apartheid legal reforms, significant disparities persist, with the Hydrosort Institute (2021) explicitly noting that "Black South Africans control merely 0.5% of water resources, while white South Africans retain access to approximately 98.5%".

These statistics represent precisely the type of inequality that Rawls' difference principle was formulated to evaluate. Rawlsian justice demands comprehensive reforms beyond procedural adjustments, ensuring meaningful redistributive outcomes. Current proposals, with their narrow focus on unallocated water, do not fully satisfy the ethical obligation to improve conditions for historically disadvantaged populations. The persistence of these inequalities demonstrates what Young (2008) terms a "structural injustice" within the basic institutions of society, precisely the target of Rawls' conception of justice as fairness.

Applying this to water governance requires asking fundamental questions: Do current arrangements maximise benefits for the least advantaged? If not, what institutional reforms would satisfy this criterion? Current legislative frameworks, notably Section 25 of the Constitution (the property clause), inadvertently perpetuate inequalities by safeguarding properties historically acquired through colonisation and dispossession. Such legislation fits what Jegede and Shikwambane (2021, p. 3) call "water apartheid", that is, "a condition whereby water law and its application discriminate against certain populations", effectively institutionalising disparities in water access and allocation. This concept of "water apartheid" exemplifies what Rawls would consider an unjust basic structure; institutional arrangements that systematically disadvantage specific groups. As Freeman (2013) notes, Rawls' focus on

basic structure reflects his concern with how “major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”. In South Africa's case, water governance institutions have distributed these advantages in ways that perpetuate historical patterns of privilege.

Rawls' notion of justice requires principles of distribution to be developed behind a "veil of ignorance", where decisions are made without knowledge of one's race, gender, or socioeconomic status, thus ensuring fairness and impartiality (Rawls 1999, p. 11). As Dube (2020, p. 141-142) explains, the "veil of ignorance" ensures that policies do not unfairly privilege individuals who have historically used their social power to maintain their advantages, thereby preventing power dynamics from corrupting distributive decisions. The veil of ignorance thought experiment is particularly relevant to South Africa's water governance, as it asks for principles of water allocation that would be acceptable if one did not know whether they would be born into a historically advantaged or disadvantaged position to be imagined. This impartial perspective provides a critical standard against which to evaluate real-world institutions, highlighting the unjustifiable nature of arrangements that perpetuate inequalities based on morally arbitrary factors such as race, class or gender.

When evaluated through a Rawlsian lens, South Africa's current water allocation system, even with the proposed amendments, falls short of the standards of distributive justice. Repealing Existing Lawful Uses (ELUs) aligns with Rawls' notion of the 'original position', which demands that principles of justice be formulated without regard to inherited advantage, thereby dismantling entrenched privileges. Allocating specific water volumes for historically disadvantaged individuals also speaks directly to the difference principle, which requires that inequalities benefit the least advantaged. Yet, implementation remains constrained by dominant narratives that frame water reallocation as a threat to economic stability. Concerns over the potential impact on commercial agriculture reinforce the idea that only large-scale farming contributes meaningfully to the economy and food security, thereby marginalising smallholder farmers. These efficiency-based arguments protect those already privileged and systematically obstruct redistributive justice, ensuring that the least advantaged remain without access to productive water use.

The limited scope of these redistributive measures, applying only to 1.5% of water resources, raises serious questions about whether they satisfy the difference principle's requirement to maximise benefits for the least advantaged. As Pogge (1989, p. 42) argues, Rawlsian justice requires not merely symbolic gestures toward equality but substantive institutional reforms that genuinely improve the position of the worst-off. The controversy surrounding racial quotas for water licences exemplifies how societal attitudes and entrenched privileges can challenge transformative policy reforms. As Murphy (1999, p. 253) contends, justice principles must transcend institutional frameworks and influence individual and collective behaviours, thereby countering social resistance to equitable resource redistribution.

The use-it-or-lose-it principle offers perhaps the strongest example of a Rawlsian approach to water governance reform. This principle embodies Rawlsian ideals by actively reclaiming underutilised resources, thus ensuring that resources are not held idly by privileged entities. From a Rawlsian perspective, leaving resources unused by those who possess them fails the moral test of benefitting the least advantaged. Therefore, reclaiming and reallocating these underutilised resources explicitly serves the principle of maximising benefits for marginalised groups, making such redistribution not merely equitable but morally obligatory. This aligns with what Rawls (1999) calls commitment to background justice, ensuring that institutions continuously adjust to prevent the accumulation of advantages that undermine fair equality of opportunity over time. In water governance, this would require regular reassessment and reallocation to maintain justice across generations. Nonetheless, stakeholder resistance, as seen in claims for compensation from AgriSA (2024), highlights practical challenges to implementing Rawlsian principles. This resistance exemplifies what Young (1990, p. 41) terms "the politics of difference", the way privileged groups frame redistributive policies as violations of their rights rather than corrections of historic injustice. The criticisms illustrate how entrenched privileges can attempt to derail redistributive justice through legal and political means.

A more robust Rawlsian approach to water governance would go beyond the current amendments to establish a comprehensive framework that places the needs of the least advantaged at its centre. This would require policy measures that recognise and address the full scope of historical disadvantage, including land reform integration, infrastructure development, and knowledge transfer. The National Water Amendment Bill, while representing progress toward more just water

governance, ultimately falls short of the transformative potential of Rawls' difference principle. A genuinely Rawlsian approach would require what Fraser (2020, p. 82) terms "transformative remedies", that is, "remedies aimed at correcting inequitable outcomes precisely by restructuring the underlying generative framework". For South African water governance, this means **moving beyond** existing water rights to implement comprehensive reform that genuinely centres the needs of historically disadvantaged communities.

## Conclusion

This article has examined South Africa's water governance framework through Rawlsian distributive justice, arguing that despite significant post-1994 legal reforms, water allocation still reflects colonial and apartheid legacies instead of achieving genuine transformation. The persistence of historical water rights through mechanisms like ELUs fails the basic Rawlsian test of ensuring that institutional arrangements maximise benefits for the most disadvantaged. This research contributes to knowledge and policy by offering a normative framework that moves beyond procedural equity to substantive justice in water governance. Future research should explore comprehensive models for water allocation, examining international best practices in post-colonial water governance.

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