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Citation: Onazi, Oche (2021) Towards an African path to disability justice. Independent Social Research Foundation (ISRF) Bulletin, 2021 (XXIV). pp. 35-41.

Published by: Independent Social Research Foundation

URL: <https://www.isrf.org/2021/08/24/towards-an-african...>
<<https://www.isrf.org/2021/08/24/towards-an-african-path-to-disability-justice/>>

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TOWARDS AN AFRICAN PATH TO DISABILITY JUSTICE

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Introduction

I had intended to write about the human rights of people with disabilities in Africa, but my book¹ took a different path after I began to engage with arguably the most attractive literature in African philosophy. I became fascinated by a conception of community, constituted by individuals in ethical relation to each other, a characteristic that I found more attractive than the abstract, ahistorical and autonomous individual that has dominated the Western philosophical and legal philosophical tradition. Although intrigued by this idea of community, I was nevertheless puzzled by it since it appeared inattentive to disability or people with disabilities. Rather than the orthodox human rights approach (or Martha Nussbaum's capabilities approach), I found it more interesting to explore and understand what a legal philosophy of disability justice would look like if it mirrored what I describe below as the African relational community ideal.

The African relational community ideal

The relational conception of community is not the most dominant, but it is arguably the more attractive version because it presupposes

1. Oche Onazi, *An African Path to Disability Justice: Community, Relationships and Obligations* (Cham 2020: Springer Nature).

an ethical and relational ideal founded on ethical and horizontal obligations between people that may or may not comprise it.² What is undoubtedly attractive about this conception of community is that it is formed through or defined by human relationships. It does not exist as a metaphysical entity or have an existence that is separate from, takes precedence over, or supersedes the existence of its members.³ Thus, the community is not simply the absolute imposition of the values of the group or collective entity onto individuals, but rather it is defined by diverse ethical relationships between those who may or may not comprise it. As Drucilla Cornell eloquently describes this attractive feature, the community is... 'not outside us, something "over there", but is inscribed in us'.⁴ In other words, the community is constituted by 'an interactive ethic, or an ontic orientation in which who and how we can be as human beings is always shaped in our interaction with each other'.⁵

What Cornell importantly draws to our attention is the role of community in defining what it means to be a person. Personhood is either earned, performed, or granted to those who can discharge their obligations to others. Put differently, personhood is dependent on a type of mutual reciprocity between each member of a community, an attribute found only in those who can perform their obligations to others.⁶ It follows that those who cannot perform or discharge their obligations to others can only be human beings, which is a less valuable or lower moral status. It draws a distinction between persons and human beings with a hierarchy assigned to persons over human beings. And it is this distinction or hierarchy between persons and human beings that presents difficulties for people with disabilities, especially those with cognitive and extreme physical disabilities. Although the concept of obligation in African communitarian philosophy often refers to virtues and human excellences, it is defined in an active and able-bodied way, which is not attentive to the obstacles that may prevent

2. Ibid., 17.

3. Ibid., 7.

4. Drucilla Cornell, *Law and Revolution in South Africa: Ubuntu, Dignity, and the Struggle for Constitutional Transformation* (New York 2014: Fordham University Press), 161.

5. Drucilla Cornell and Karin Van Marle, "Exploring 'ubuntu': tentative reflections," *African Human Rights Law Journal* 5, no. 2 (2005): 195–219, 205.

6. Onazi, *An African Path to Disability Justice*, 19.

people with disabilities from discharging their obligations to others. The problem is that there is a demanding standard of obligations that takes for granted the distinctiveness of people with disabilities, who are potentially excluded from the regime of obligations synonymous with being part of a community.

Contribution of the book

My book takes the relational conception of community as its core element but relies on a different conception of personhood to ground the proposed legal philosophy of disability justice. My proposals in the book are modelled on a conception of personhood of the Nso people of Cameroon and developed by the work of Godfrey Tangwa. Unlike the dominant conception of personhood, this version does not rigidly define individuals or place them into '... a hard analytic frame, by specifying the necessary and sufficient criteria, conditions, or capacities for being human'.⁷ It makes no distinction between persons and human beings, and it does not rank human beings according to any individuating features. It is an open-ended or non-essentialist conception of personhood, which accommodates changes in the characteristics of human beings. It importantly recognises that the moral worth of human beings is constant and unchanging regardless of changes to their physical and mental make-up and socio-political economic status. An advantage of this conception of person is that it widens the scope of people to whom obligations are owed, since the moral consideration of others is not contingent on individuating features or moral qualities.⁸ Being a human being is the only criterion to be the recipient of the obligations of others. People incapable of reciprocation are owed obligations in the same way as they are owed to people capable of reciprocation.

7. Godfrey Tangwa, "The Traditional African Perception of a Person: Some Implications for Bioethics," *Hastings Center Report* 30, no. 5 (2000): 39–43, 40.

8. Onazi, *An African Path to Disability Justice*, 25.

Community

From the above foundation, the book develops what I have called an African legal philosophy of disability justice comprised of ethical ideals of community, relationships, and obligations. In combination, these ideals are proposed to serve as a criterion for evaluating, criticising, and modifying existing legal and political institutions, as well as creating new ones to ensure that people with disabilities are included within the range of relationships characteristic of community life. This approach has a present and futuristic dimension, which can be used to critically evaluate existing institutions as well as serve as a foundation to create new ones. Disability justice is measured through these ideals as a way of ensuring people with disabilities are part and parcel of various forms of community life. Therefore, disability injustice is the exclusion from various forms of community relationships. Accordingly, the relational conception of community should be understood as the first principle, the core element, and the source of other principles of disability justice. It is the foundational ethical ideal of my account of disability justice.

Relationships

Once the relational conception of community is prioritised as the core element of disability justice, the importance of relationships (between parents and children, siblings, friends, fellow citizens, acquaintances, strangers and much more) becomes central. Human relationships of love, care, compassion, generosity, friendship, and solidarity among other things characteristic of daily community life in Africa as well as across the world would be at the core of my proposed legal philosophy of disability justice. The premise from which the approach proposed begins is that human relationships are not only fundamental, but also a universal feature of human life as a direct result of our incompleteness and need for connection with each other.⁹ Therefore, the book seeks to draw attention to the kind of relationships that elude people with disabilities as well as the social and cultural beliefs and perceptions that prevent them from community life because of their bodily, sensory,

9. *Ibid.*, 28.

and mental impairments. The emphasis on relationships not only sheds light on the exclusions or injustices experienced by people with disabilities, but also the kind of interventions that can be made or how changes in the design of societal institutions can be made to include people with disabilities into community relationships.

From this perspective, poverty can be understood as a factor that prevents people with disabilities from experiencing or sharing community relationships. The same can be said about the lack of access to healthcare, food, education or employment opportunities, housing etc. They all can be understood as obstacles to community relationships of people with disabilities.¹⁰ This is also the same with inaccessible public transport, inaccessible buildings and the absence of roads and street pavements that make it difficult to move around for daily needs, or to visit friends and loved ones.¹¹ These all have a negative effect on the relationships and community experiences of people with disabilities. The point is that these and other exclusions or injustices are not only violations of human rights or capabilities, but also violations of the quality of community life of people with disabilities.

Obligations

The third element of the approach proposed in the book concerns obligations. Here, it places emphasis on the obligations that should be owed to people with disabilities by the state and citizens without disabilities. As earlier suggested, the problem with obligations in African thought is that they are routinely characterised as mutually reciprocal concepts, a feature that excludes people with disabilities from community life. An asymmetrical conception of obligations is proposed as a more attractive and inclusive approach since it does not place stringent demands for mutual reciprocation. Once an asymmetric conception is adopted then it is much easier to justify and extend obligations to people with disabilities. Asymmetry is an important way of appreciating that people do not have the same needs and abilities as well as the ability to carry out obligations in the same

10. *Ibid.*, 127–128.

11. *Ibid.*

way as others.¹²

The application

Although the scope of the book has been to set out what an African legal philosophy of disability justice would look like, it goes to some extent further in outlining how to realise the obligations it demands in practice. Part of the reason for this is to avoid a well-known criticism of obligations in African communitarian philosophy that they are akin to acts of supererogation (that is, actions that go beyond what a moral duty strictly requires), even though they are not treated as such by most writers in the field. Despite this, and broadly speaking, there is limited research investigating how obligations should be practiced. It is not clear in the literature how members of a society should express, convey, or discharge their obligations to others, especially to people with disabilities. Therefore, I have turned to tax as a bridging concept that can unify, transform, and translate such moral obligations into legally binding commitments of people without disabilities to people with disabilities. Tax is consonant with the binding or stringent nature of obligations in African communitarian philosophy as well as uniquely moral and legal in nature. The obligation to pay tax is primarily a moral obligation, but in the absence of law it is incomplete, hollow, and indeterminate.¹³ With no law, tax is simply a moral obligation which cannot command widespread levels of societal compliance. Therefore, tax is proposed to connect ordinary and abstract moral obligations in African communitarian philosophy into practicable and legally enforceable commitments. In this context tax is not simply a source of revenue for the state, but a placeholder of the altruistic obligations of citizens to be generous, benevolent, compassionate, friendly, or to help, love and respect the most vulnerable in society. I have argued that tax can be transformed into a practical and legally binding commitment to provide resources that can be channelled into removing barriers to enable people with disabilities to fully participate in community life.

12. *Ibid.*, 133.

13. *Ibid.*, 154–158.

Conclusion

It would be reasonable to conclude that the above proposals must be supported by a robust citizenship education agenda that involves all segments of society, which in turn can help create—as I have described in my book—a new public culture of obligations to people with disabilities. The book has outlined how a hypothecated tax scheme can help contribute to this agenda. Specifically, a hypothecated tax scheme can be used to create (or augment existing) National Disability Services across the African continent to enable the state and citizens without disabilities discharge their obligations to people with disabilities. Tax has its limitations, but it can be used to address the urgent and drastic conditions faced by millions of people with disabilities across the African continent.