

Oche Onazi *Editor*

African Legal Theory and Contemporary Problems

Critical Essays

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Contents

1 Introduction.....	1
Oche Onazi	
Part I Law	
2 On ‘African’ Legal Theory: A Possibility, an Impossibility or Mere Conundrum?	17
Chikosa Mozesi Silungwe	
3 When British Justice (in African Colonies) Points Two Ways: On Dualism, Hybridity, and the Genealogy of Juridical Negritude in Taslim Olawale Elias	31
Mark Toufayan	
4 Decoding Afrocentrism: Decolonizing Legal Theory	71
Dan Kuwali	
5 Connecting African Jurisprudence to Universal Jurisprudence Through a Shared Understanding of Contract	93
Dominic Burbidge	
6 The Legal Subject in Modern African Law: A Nigerian Report.....	109
Olúfẹ́mi Táíwò	
Part II Rights	
7 African Values, Human Rights and Group Rights: A Philosophical Foundation for the Banjul Charter	131
Thaddeus Metz	
8 Before Rights and Responsibilities: An African Ethos of Citizenship.....	153
Oche Onazi	

9	The Practice and the Promise of Making Rights Claims: Lessons from the South African Treatment Access Campaign	173
	Karen Zivi	
10	Unpacking the Universal: African Human Rights Philosophy in Chinua Achebe's <i>Things Fall Apart</i>	199
	Basil Ugochukwu	
Part III Society		
11	Legal Empowerment of the Poor: Does Political Participation Matter?	221
	Oche Onazi	
12	The Humanist Basis of African Communitarianism as Viable Third Alternative Theory of Developmentalism.....	241
	Adebisi Arewa	
13	Crime Detection and the <i>Psychic Witness</i> in America: An Allegory for Re-appraising Indigenous African Criminology	265
	Babafemi Odunsi	
	Index.....	289

Chapter 7

African Values, Human Rights and Group Rights: A Philosophical Foundation for the Banjul Charter

Thaddeus Metz

7.1 Introduction

Probably the most salient feature of ethical-political-legal thought among indigenous sub-Saharanans is the importance accorded to community. Some interpreters of the African tradition maintain that community is itself to be valued for its own sake (e.g., Tutu 1999, pp. 34–35, 212–213), while others hold that living communally has the effect of enhancing some other, more basic value such as people’s vitality or well-being (e.g., Magesa 1997; Gyekye 2010).¹ Regardless of the precise relationship between community and morality, there is little doubt that the ‘communitarian’ label is apt for characterizing sub-Saharan norms (Gyekye 1997, pp. 35–76; Masolo 2004; Wiredu 2008).

There is a *prima facie* tension between communitarianism, on the one hand, and a concern for human rights, on the other. Crudely put, a communitarian perspective accords some kind of normative primacy to a society, whereas human rights are by definition duties that others have to treat individuals in certain ways, regardless of group membership, and even when not doing so would be better for society. Is there any place for human rights in an Afro-communitarian political and legal philosophy, and, if so, what is it?

In this article, I seek to answer these questions, in part by critically exploring one of the most influential theoretical works on human rights in the sub-Saharan region, namely, Claude Ake’s ‘The African Context of Human Rights’ (1987). In this piece Ake famously maintains that a characteristically Western approach to rights is inappropriate for indigenous black peoples, in two major respects. First, Ake contends that although a human rights legal framework might be suitable for an

¹ While still others, such as Bujo (1997, pp. 24–42, 2001, pp. 45–71), contend that communal dialogue is the way that one can reliably come to know how to behave rightly.

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‘individualistic’ society, it is not for one of the sort common among traditional sub-Saharan societies, where rights should be ascribed to groups in the first instance. Second, Ake maintains that, insofar as rights are relevant, rights to socio-economic goods are of much more importance in an underdeveloped, African context than rights to civil liberties, due process and the like.

Using Ake’s article as a foil,² I draw on values salient in sub-Saharan moral worldviews to construct a new, unified philosophy of rights that not only provides reason to doubt his two claims, but also offers a promising way to reconcile a communitarian framework with a robust prizing of human rights. After articulating Ake’s position (Sect. 7.2), I spell out in detail the proposition that individuals have a dignity in virtue of being capable of community, and provide evidence for its African credentials (Sect. 7.3). Then, I indicate how a basic requirement to treat our special capacity for community with respect plausibly accounts in a unified manner for a variety of rights, including central human rights (Sect. 7.4) and ‘group’ ones that intuitively exist (Sect. 7.5). This analysis will, in effect, indicate what all the major articles of the *African (Banjul) Charter on Human and Peoples’ Rights* (OAU 1981) morally have in common. Finally, I relate this theory of rights to Ake’s two claims above (Sect. 7.6). That is, I show that the idea of individual rights in fact comports well with prominent African judgments of human dignity, viz., that Ake is wrong to think that for rights to ‘make any sense at all in the African context’ they must be ones of a group (1987, pp. 9–10), and I also argue that Ake is wrong to think that ‘liberal’ rights are of ‘no value to most Africans’, as he puts it (1987, p. 10). I conclude by considering objections to the claim that I have effected a genuine reconciliation between Afro-communitarianism and human rights, and by providing reasons to favour my reconciliation over Kwame Gyekye’s influential attempt to wed the two perspectives (Sect. 7.7).

7.2 Rights and Ake’s Communitarianism

In this section, I first briefly explain what a human right is and how it differs from related concepts such as a group right, after which I present Ake’s view that many human rights, particularly those related to civil liberties, due process and political opportunities much prized by those in the West, are unimportant from an African perspective. For Ake, properly valuing community means deeming group rights and rights to socio-economic development to be paramount.

7.2.1 Rights and Types of Them

At the core, one has a *right* to something, by definition, insofar as agents have a stringent duty to treat one a certain way that must be fulfilled even if not doing so

²Note that I do not seek to engage with the corpus of Ake’s work.

would result in a marginally improved quality of life or in somewhat fewer violations of this same duty in the long run. For example, having a right to property means that others may not steal your things, either in order to make themselves or someone else better off, or even to prevent other thefts elsewhere in society. Note that this definition leaves open the idea that a given right of yours (to property) could be properly overridden by other kinds of considerations, e.g., by another's stronger right (to life).

A human right is of course a particular kind of right, one that, by definition, has three properties, at least one of which is lacking in other kinds of rights. First, inherent to the concept of a human right is that its bearer is an individual, and, specifically, least controversially, a human person. There is debate about whether human rights apply to literally all human beings, including those that are not persons (such as anencephalic infants), and whether they apply to only human beings (or also to, say, chimps). It is therefore wise, when simply defining what I (and what I presume most readers) mean by 'human right', to be neutral among these competing views.

Second, a human right is essentially such that others have a stringent duty to the individual because she has some quality shared by characteristic human beings. Roughly, one has a human right in virtue of one's humanity. That is a rough statement because it suggests that there is in fact some property that every human being has that makes one owed certain duties, where such a claim is controversial and need not be invoked by an adherent to human rights. One might have something fairly called a 'human' right if others must treat you a certain way because you exhibit a feature that *nearly* all, even if not *literally* all, human beings have.

Third, it is part of the meaning of the phrase 'human rights' to be speaking of duties that are so important as to warrant recognition by at least legal institutions. Such recognition usually comes in the forms of: organizing society so that people are not disposed to violate these duties; using defensive force to ward off immediate threats of their violation; censuring, perhaps by punishing, those who have violated them; and facilitating compensation for victims of violations of them. Saying that implicit in human rights discourse is the idea that a political body such as a state ought to recognize them is not to say that they are in fact recognized. I side with those who maintain that human rights are moral categories that in principle offer a vantage point from which to criticize an entire system of enforcement as unjust.

In sum, one essentially has a *human* right to something insofar as agents have a duty to treat an individual a certain way that obtains because of some quality she shares with (nearly) all other human beings, that must be fulfilled even if not doing so would result in a marginally improved quality of life or in somewhat fewer violations of this same duty in the long run, and that is so weighty that it ought to be recognized by legal institutions. I submit that rights other than human rights are well construed as missing at least one of three qualifying features. For instance, a right that does not warrant public recognition is perhaps best called a *merely* 'moral' right. A right that obtains not because of features typical of human beings, but rather of animals, is reasonably called an 'animal' right. And, of most interest to readers of this chapter, a right the bearer of which is not an individual, but instead some kind of collectivity composed of individuals, is aptly called a 'group' right.

7.2.2 *Ake on Human Rights*

Many sub-Saharan intellectuals are suspicious of the *concept* of human rights, and not merely the *discourse* about it. Human rights discourse has often been criticized for serving ideological purposes, e.g., for legitimating forms of imperial intervention in the affairs of African and other countries. Such criticism does not necessarily reject the claim that there *are* human rights, but instead focuses on the undesirable functions of certain (*mis*)representations of them. However, there are theorists in the African tradition, similar to Jeremy Bentham and Karl Marx in the Western, who reject the existence of human rights as such, or at least the standard Western interpretation of them. The Nigerian political scientist Claude Ake is foremost among them, although there are others.³

I read Ake as making two major objections to a human rights-centred approach to development in sub-Saharan Africa. One is that '(t)he idea of human rights, or legal rights in general, presupposes a society which is atomized and individualistic' (Ake 1987, p. 5, see also 9), whereas typical indigenous black societies are not. By terms such as 'atomized' and 'individualistic', Ake means that people tend to think of their own good as distinct from the interests of others. It is only given that kind of orientation, where people are 'conscious of their separateness' (Ake 1987, p. 5), that it can make sense to claim a right, to hold that others have a duty to treat one a certain way even if not doing so would benefit the broader society.

Ake suggests that the values characteristic of black Africans, in contrast, include 'a sense of belonging to an organic whole, be it a family, a clan, a lineage or an ethnic group' (1987, p. 9), such that 'we do not allow that the individual has any claims which may override that of the society' (1987, p. 5). If sub-Saharanans tend to 'assume harmony, not divergence of interests' (1987, p. 5), i.e., that the individual's good is compatible with, and indeed *constituted* by, doing whatever would help others, then rights are out of place, for there would not, it appears, be any need to protect individuals from treatment that would benefit the broader society.

Ake's characterization of African values is arguably embodied in maxims that are often taken to encapsulate them, such as 'I am because we are' (e.g., Mbiti 1969, p. 108) and 'A person is a person through other persons' (e.g., Tutu 1999, p. 35). Although these sayings will sound like descriptive banalities to English-speakers unfamiliar with the context, they are in fact primarily evaluative claims. They express the idea that one's highest good is a matter of developing one's personhood or living a genuinely human way of life, which one can do only insofar as one enters into community with other people. The suggestion that African values typically include the idea that the best life is utterly a function of supportive relationships with others seems to jibe with Ake's view that human rights are out of place in sub-Saharan societies; for such rights imply that one's urgent interests can be satisfied only if others forgo well-being that they could have otherwise had.

³For similar views, see, e.g., Legesse (1980); Gbadegesin (1991, pp. 66–67); Nkondo (2007).

Ake does not reject the concept of rights altogether, but merely individual ones. He maintains that the idea that the individual's good is constituted by what she does for the community is consistent with, and probably even entails, the idea of a group right:

It is necessary to extend the idea of human rights to include collective human rights for corporate social groups such as the family, the lineage, the ethnic group. Our people still think largely in terms of collective rights and express their commitment to it constantly in their behaviour...If the idea of human rights is to make any sense at all in the African context, it has to incorporate them in a concept of communal human rights. (Ake 1987, pp. 9, 9–10)

Given the way I have defined 'human right' as having an individual bearer, it is a contradiction in terms to speak of a 'communal human right' in the way Ake proposes. However, his underlying point is clear: group rights are apt for an African value system, and not individual ones such as what I and most readers mean by 'human rights'.

Ake has another major reason for rejecting human rights in an African context, at least as normally understood by Western and United Nations advocates of them. The latter tend to believe that rights to freedom of expression and association, to a fair trial and to hold public office are vitally important and worthy of substantial attention from the state. According to Ake, however, if these rights are appropriate, they are only in a society that differs from the sub-Saharan region in not suffering from extreme poverty, for two reasons.

First, Ake claims that what he calls these 'liberal' rights can have value only if there are the resources to make use of them, which Africans by and large lack. Ake provides the example of someone who has the legal right to run for a government position but lacks the time and money to campaign, as he must scramble just to stay alive. For Ake, since this right is 'unrealizable', it is pointless to recognize.

Second, access to socio-economic goods that would help people in 'the struggle for existence in its brutal immediacy' (1987, p. 5) are much more important than rights for those who can 'afford to pursue the more esoteric aspects of self-fulfilment' (1987, p. 5). Supposing one had to choose between food to stave off hunger and medicine to combat disease, on the one hand, or the rights to freedom of speech and thought, on the other, it appears foolish to opt for the latter.

Interestingly, although Ake rejects the applicability of the *concept* of human rights, viz., ones the bearer of which is an individual, he believes that it could be useful to invoke the *phrase* 'human rights' when seeking to foster development in the sub-Saharan region (1987, p. 8). As a rhetorical device, he thinks that *talk* of 'human rights' could be a promising way to unite various constituencies into a coalition that would struggle against fascism, poverty and illness on the African continent.

In sum, Ake maintains that standard Western ideas of rights are not suitable for an African context. For traditional black peoples, the bearer of rights ought to be a group and the objects of them ought above all to be socio-economic goods, whereas, for Westerners, it is suitable for the bearer of rights to be an individual and their objects to include civil liberties, fair trials and similar opportunities. In the rest of

this chapter, I provide reason to believe that the concept of human rights is, *contra* Ake, suitable for traditional sub-Saharan societies. I argue that the idea of human (individual) rights is part and parcel of typical African acceptance of a requirement to respect human dignity, and that such respect entails recognition of the so-called ‘liberal’ rights alongside socio-economic ones.

7.3 Dignity and Community

Ake is correct that African values tend to be communitarian, but they are best interpreted as being only ‘moderately’ so, as the Ghanaian political philosopher Kwame Gyekye has influentially put it (1997, pp. 35–76), meaning that they are consistent with human rights. My aim in this section is not so much the empirical one of providing evidence that indigenous black peoples actually widely believed in human rights, something an anthropologist would do,⁴ but rather the theoretical one of tracing a variety of human and other rights from basic values that many of them have accepted. Whereas Ake argues that fundamental commitments held by many traditional African cultures rule out human rights as fitting for them, my goal is to demonstrate the opposite.

Crucially, Ake neglects the substantial literature indicating that many sub-Saharan societies and their intellectual expositors have believed that individual human beings have a dignity. Kwame Gyekye and Kwasi Wiredu, who have done the most to relate the worldviews of the Ghanaian Akan to an English-speaking philosophical audience, contend that the Akan believe that each human being has a dignity by virtue of being a child of God (Wiredu 1996, p. 158; Gyekye 1997, p. 63). The Nigerian philosopher-theologians Pantaleon Iroegbu and Godfrey Onah each ground their respective Afro-centric moral frameworks on the value of human life, with the former explicitly speaking in terms of ‘human dignity’ (2005a) and the latter remarking that ‘Africans have a sacred reverence for life’ (n.d.). Francis Deng, the renowned theorist of human rights in Africa, maintains that the Dinka, a people in the South Sudan, believe in human dignity, grounded on one’s having been created by God (2004, p. 501). Mutombo Nkulu N’Sengha, who has written on the Banjul Charter and its bearing on a global ethic, makes it clear that his Luba people, from the central region of Africa, believes in human dignity, as grounded principally on human life (1998), and the influential moral theorist Bénézet Bujo, from the same area, routinely appeals to the concept of human dignity when articulating a characteristically African ethical perspective. Usually, Bujo grounds our dignity on our life-force, as the divine spark in us (2001, pp. 2, 138–139, 142), but on occasion suggests that it inheres in our communal nature (2001, p. 88). Finally, in South Africa one finds members of the Constitutional Court invoking human dignity when articulating what ‘*ubuntu*’ means (1995: para 225, 309–311), the term for

⁴For a brief summary of some of the anthropological research and my judgment about what it shows, see Metz (2012a).

humanness that is often used to capture morality among Zulu, Xhosa and Ndebele speakers and others in the southern African region. South African intellectuals and philosophers also routinely maintain that *ubuntu* involves treating others, who have a dignity, with respect (Ramose 1999, pp. 49–64, 138–145, 163–195; Botman 2000; Mnyaka and Motlhabi 2005).

It would be too strong to say that there is a ‘consensus’ of those familiar with African ethics that dignity is central to it,⁵ but these citations (which could be easily multiplied) indicate that at least one major swathe of sub-Saharan moral thought appeals to the idea. The proposition that typical individual human beings have an equally superlative, essential worth that demands respect is widely taken by ethicists, jurists, activists and the like to entail the appropriateness of the category of human rights. In an African context, our dignity is most often thought to inhere in our souls or life-force (or both), sometimes in our communal nature, and occasionally in our intelligence.

Elsewhere I have argued that dignity *qua* our capacity for community is the most promising idea in sub-Saharan moral thought with which to ground human rights, rejecting the other candidates of divinity, vitality and rationality (Metz 2010, 2011a, 2012b, c). Rather than recount that criticism, I simply here present my findings. That is, I now indicate how our ability to enter into community with others, construed in a certain way, is plausibly what gives us a dignity, and in the next sections demonstrate how that value promises to be the thread sewing together human and other intuitively appealing rights found in the Banjul Charter.

To begin see how our communal nature can make good sense of human dignity and human rights, consider what is plausibly meant by ‘community’. I have argued that the ideal of community in characteristic African thought is well construed as the combination of two logically distinct kinds of relationship, what I call ‘identity’ and ‘solidarity’.⁶ To identify with each other is largely for people to think of themselves as members of the same group – that is, to conceive of themselves as a ‘we’, to engage in joint projects, coordinating their behaviour to realize common ends, and to be emotionally invested in the group’s doings, e.g., with regard to pride and shame. Identity is a matter of people sharing a way of life, with the opposite of it being instantiated by people defining themselves in opposition to one another and seeking to undermine one another’s ends.

To exhibit solidarity with one another is for people to care about each other’s quality of life, in two senses. First, it means that they engage in mutual aid, acting in ways that are expected to benefit each other (ideally, repeatedly over time). Second, caring is a matter of people’s attitudes such as emotions and motives being positively oriented toward others’ good, say, by sympathizing with them and helping them for their sake. For people to fail to exhibit solidarity could be for them to be indifferent to each other’s flourishing or to exhibit ill will in the form of hostility and cruelty.

⁵For examples of apparently resolutely utilitarian interpretations, see Tangwa (1996); Bewaji (2004).

⁶See Metz (2007), from which next few paragraphs borrow.

Identity and solidarity are different sorts of relationship. One could identify with others but not exhibit solidarity with them – probably workers in relation to management in a capitalist firm. One could also exhibit solidarity with others but not identify with them, e.g., by making anonymous donations to a charity. My proposal, following the intimations of several African thinkers, is that a promising conception of community as worth prizing includes both kinds of relationship. Consider how the two elements are found in these sub-Saharan ethical perspectives: ‘Every member is expected to consider him/herself an integral part of the whole and to play an appropriate role towards achieving the good of all’ (as per the Yoruba philosopher Segun Gbadegehin 1991, p. 65); ‘(T)he purpose of our life is community-service and community-belongingness’ (according to the Igbo theologian Pantaleon Iroegbu 2005b, p. 442); ‘Harmony is achieved through close and sympathetic social relations within the group’ (so says the former South African Constitutional Court Justice Yvonne Mokgoro 1998, p. 3); ‘If you asked *ubuntu* advocates and philosophers: What principles inform and organise your life?...the answers would express commitment to the good of the community in which their identities were formed, and a need to experience their lives as bound up in that of their community’ (sums up the South African intellectual Muxe Nkondo 2007, p. 91).

Some Africans might suggest that we have a dignity by virtue of *actually* being part of a community, as above. For instance, H. Russel Botman remarks that ‘(t)he dignity of human beings emanates from the network of relationships, from being in community; in an African view, it cannot be reduced to a unique, competitive and free personal ego’ (2000; see also Cobbah 1987; Bujo 2001, p. 88). However, this position would counterintuitively entail that individuals who were not in relationships of identity and solidarity, say, those in solitary confinement, would lack a dignity.⁷

In order to be able to conclude that nearly all human beings, including isolated ones, have a dignity on grounds of community, one must hold the view that they have it in virtue of being the sort of individual naturally *capable* of communal relationships with others. If one were driving a bus and had to choose between striking a normal human being and a cat, one should run over the cat, the intuitive explanation for which is that the human being is worth more. On the African-based view I am advocating, the reason the human being is worth more than the cat or indeed anything else in the animal, vegetable and mineral kingdoms is that one has the essential *ability* to commune with others, roughly, the biological capacity to think of oneself as bound up with others and to act for their sake, i.e., *to be friendly or to love*, in a broad sense.

To sum up, I have pointed out that it is common for theorists of African ethics to maintain that human beings have a dignity that demands respect, and have also articulated the view that what confers dignity on us is our capacity for community of a kind that is also influential in sub-Saharan moral thought. In the next section, I explain how a system of human and other important rights characteristic of the Banjul Charter follows from a basic principle requiring us to honour our special capacity for community *qua* identity and solidarity.

⁷Setting aside highly contested metaphysical claims to the effect that, say, one is always already in community with spiritual beings such as God and ancestors.

7.4 From the Dignity of Our Communal Nature to Human Rights

African values are well known for being communitarian, on the one hand, but also, as discussed in the previous section, for recognizing the dignity of individuals, on the other. A theoretically promising way to combine these values is in the form of a principle prescribing *respect for persons in virtue of their dignity as beings capable of community*. In this section I demonstrate how this philosophical articulation of salient sub-Saharan values provides a basis for a variety of human rights. The rough idea is that human rights are understood to be duties that the state and other agents have to protect, enable and otherwise express respect for people's ability to commune, where human rights violations are conceived as infringements or other degradations of that ability.⁸

7.4.1 Socio-Economic Goods

If what makes us special is our capacity for relationships of identity and solidarity, then the state has a duty to fight poverty, as probably does any other, wealthy agent well placed to do so. Treating people as having the ability to commune and as having a dignity by virtue of that requires fostering community by helping the worst off, for two reasons.

First, if the state did not adopt welfare programmes, it would be failing to respond to the people in its territory as individuals with whom to relate on a communal basis. The state would not be fostering relationships of mutual aid consequent to sympathetic altruism between it and residents, were it to leave them to fend for themselves, and, furthermore, residents would be unlikely to share a sense of togetherness with such a state.

Second, for the state to prize people as capable of community means helping them to develop it amongst themselves, which, in turn, means providing the kinds of resources likely to enable the maintenance and spread of identity and solidarity between residents. Such resources are naturally going to include goods such as money, education, food and healthcare, which will keep people alive and able to engage in joint projects for one another's benefit. However, the relevant resources will also include information, infrastructure, technology, labour and the like that would foster communal relationships and combat anti-social ones, with examples being women's shelters, counselling services, neighbourhood parks and reconciliatory projects.

⁸Some of the analysis of human rights is taken from other, recent work (Metz 2010, 2011a, b, 2012b, c), while the discussion of group rights is entirely new; the major contribution of this article is to demonstrate how both human and peoples' rights plausibly have a common, African source in the dignity of our capacity for community.

In sum, if the state did not fight poverty and thereby failed either to exhibit identity and solidarity with its residents or to enable residents to exhibit these relationships with one another, then it would be failing to treat our capacity for such relationships as having the highest value in the world and hence would be violating so-called 'positive' human rights.

7.4.2 *Political Power*

It is common for African political theorists to point out that traditional sub-Saharan societies are plausibly viewed as recognizing human rights to participation in governance (e.g., Gyekye 1992; Wiredu 1996, pp. 172–190; Bujo 1997, pp. 157–180; Ramose 1999, pp. 135–152; Legesse 2001). Many indigenous black peoples had chiefs or kings who tended to make decisions consequent either to consensus among popularly appointed elders or to anyone speaking her mind about the issue. The legitimacy of political leaders rested on not merely the extent to which they would act for the sake of the common good, but also the consensus-oriented and widely consultative procedures by which they would determine how to act.

These and other democratic orientations, such as one vote for each person, are straightforwardly viewed as ways of respecting people's capacity for community. A state that denied its residents the final authority to make political decisions would particularly degrade their ability to identify with one another, as not only would the state fail to genuinely *share* a way of life with its residents, but also residents themselves would not be sharing a way of life with one another. In addition, a state that accorded people the unequal opportunity to influence political decision-making, say, by giving more votes to the educated, would be failing to treat people as *equally* valuable for being capable of identifying with one another.

7.4.3 *Due Process*

A basic obligation to respect people's capacity for community means treating them in accordance with the way they have elected to use it. Although one ought in the first instance respond to everyone in a communal way, if another person is acting in an anti-social way, and the only way to make him stop or to assist his victims is to respond in a comparably anti-social way to him, it would not degrade his capacity for community to do so. For example, if someone has stolen an item and refuses to give it back, the state would not be treating his capacity for community disrespectfully if it forced him to do so. Similarly, if a person has foreseeably instilled fear in others because of his violent actions and given them good reason to spend resources protecting themselves, then it would not be degrading to incapacitate him or engage in other punitive actions likely to reduce the likelihood of crime (cf. Holmgren 1983).

Although it would not be degrading to exhibit division and ill will toward another when necessary to counteract her exhibition of these behaviours, it would be degrading to be anti-social in these ways to someone who has not been so herself. Hence, it becomes urgent for a third-party such as a state to resolve disputes between residents, and to do so in a way that is by and large ‘fact-finding’, i.e., a matter of determining who has been an aggressor and who has not. That, in turn, requires according individuals the rights involved in what is usually called a ‘fair trial’, e.g., the right not to be punished without guilt having been established, the right to the assistance of an attorney in understanding and making use of the law, the right to mount a defence, the right not to be coerced into confession and so on. All these protections are essential in order to separate the guilty from the innocent, i.e., those who have misused their special capacity to commune with others from those who have not, and to distribute burdens appropriately.

7.4.4 *Civil Liberties*

The last major cluster of human rights that I consider is the collection of ‘negative’ ones to non-interference. If people have any human rights at all, they have them not to be ethnically cleansed or enslaved for economic advantage, not to be raped for a sense of power, not to be tortured for the fun of it, not to be segregated on a racial basis and not to be assaulted for voicing one’s political opinions. I again suggest that violations of these rights are well understood as degradations of people’s capacity for community.

In the previous sub-section, I suggested that it is not disrespectful to act in an anti-social way toward someone if that is the only way to rebut his own anti-sociality, but that it would be disrespectful otherwise. Such a principle suggests that what genocide, torture, slavery, systematic rape and other gross infringements of civil liberties have in common is that they are instances of substantial anti-sociality, i.e., division and ill will, directed to those who have not acted this way themselves, thereby denigrating their special capacity to exhibit the opposite traits of identity and solidarity. Concretely, one who engages in such practices treats people, who have not themselves been anti-social or unloving, with great enmity or in an extremely unloving way: The actor treats others as separate and inferior, instead of enjoying a sense of togetherness; the actor undermines others’ ends, as opposed to engaging in joint projects with them; the actor harms others for own sake or for an ideology, as opposed to engaging in mutual aid; and the actor evinces negative attitudes toward others’ good, rather than acting consequent to a sympathetic reaction to it.

So far, I have explained how the two salient African values of dignity and community, when theoretically united in the principle that agents ought to respect people because of their capacity for community *qua* identity and solidarity, are plausibly at the basis of a wide array of human rights. It would be degrading of individuals, and more specifically their ability to commune with one another, if the

state did not fight poverty, were undemocratic, did not guarantee a fair trial, or infringed freedoms of bodily integrity, movement and the like. In the next section, I address the category of rights that Ake believes should be deemed primary in African societies and that famously figures prominently in the Banjul Charter, namely, group rights.

7.5 Individual Dignity, Group Rights and the Value of Community

Group rights are ones in which the bearer is not an individual but rather some kind of assemblage of them. The Banjul Charter is well known for speaking of a ‘people’ as the relevant group, and there is substantial debate in the literature about what that term is supposed mean, viz., whether it stands for a state or a potentially non-political group such as a nation, and, if the latter, what is involved in the notion of a nation.

Setting the issue of the bearer aside for now, one finds in the Banjul Charter two notable clusters of people’s rights, both of which the Ake of ‘The African Context of Human Rights’ would likely accept, given his clear commitment to fighting what he calls ‘fascism’ and to meeting basic human needs. First, there are rights of a people not to be dominated and to resist domination (Article 20), and, second, there are rights of a people to natural resources, socio-economic development and an environment necessary for the latter (Articles 21, 22, 24).

A third plausible candidate for a group right is that to culture. *The Charter for African Cultural Renaissance*, recently adopted by the African Union (AU 2006), speaks of: African peoples evolving, being provided resources, and being enriched (Preamble and Articles 3, 5), the rights of minorities to their cultures (Article 5), the cultural advancement of African states (Article 18) and the African diaspora being entitled to consideration (Articles 30, 32, 33). It is natural to think of talk of duties with respect to peoples, minorities, states and a diaspora as being group-based.

Rights to self-determination, socio-economic development and culture do seem to exist, but the question is whether a group is indeed the ultimate bearer of these rights. There are two common ways to conceive of these kinds of rights in the literature, but I reject both in favour of a third alternative.

One way is to accept that groups have an intrinsic value in themselves⁹ on the basis of which they are bearers of these and potentially other rights. Working within the community-oriented framework I articulated above, one might suggest that it is not only individuals capable of community that have a dignity, but also actual communities, i.e., networks of identity and solidarity, themselves. If community itself had a superlative, inner value in the way that individuals capable of this relationship do, then it, too, would be good candidate to bear rights.

⁹Or are capable of flourishing, a view that Ake might favour in light of his apparent adherence to an ‘interest’ theory of rights, as discussed below in Sect. 7.6.

This is not an implausible strategy, and the suggestion that the relevant group is a community *qua* the actualization of identity and solidarity is particularly worthy of exploration. However, I do not take it up, largely on grounds of theoretical parsimony. In seeking to ‘codify’ rights by appealing to fundamental African values, as I am in this chapter, it would, all things being equal, be more desirable to do so with a fewer rather than greater number of properties. It would therefore be theoretically neatest if I could account for all intuitively relevant rights with the single idea of the dignity of the individual’s communal nature.

Another way to put the point is this: in order to know whether one has to appeal both to an individual and a group to account for fairly uncontested rights, one should first see whether it is possible to account for them with only one of these bases. In the following, therefore, I explore the view that all rights are grounded on the dignity of individuals, which dignity they have in virtue of being capable of identifying with others and exhibiting solidarity toward them. If that project turned out to be unsuccessful, then, and only then, would one have sufficient reason to appeal to groups as bearers of rights.

The main rival to the view that groups are valuable in themselves and so are bearers of rights, which the political scientist Chandran Kukathas calls the ‘corporate’ conception of a group (2006, p. 14), is the view that groups are of merely instrumental value, viz., a ‘collective’ conception of them (2006, p. 15). On the latter model, a group is nothing but individuals collected in a way that is useful for those individuals, where the collection is not good for its own sake. On this reading, any right that *appears* to be a group right is ultimately not, and is, upon reflection, seen to be merely a right of many individuals. Kukathas favours this view, and consequently deems genocide, for example, to be wrong not because it targets a people or some other group such as humanity, but rather because it kills many individuals (2006, p. 21).

Although I am loathe to maintain that groups have a dignity or other intrinsic value that makes them bearers of rights, I am also resistant to reducing the way to treat a group, particularly a community, to a mere tool to be used for the satisfaction of individual interests. There is instead a third option, one that is a natural companion of the view that individuals have a dignity insofar as they are capable of community. According to this alternate perspective, a community is *expressive* of what makes individuals dignified and so merits some moral protection.

Although a community, *qua* relationships of identity and solidarity, is of course not one and the same thing as the mere capacity for it inherent to the individual human beings who make it up, it is their actualization of that capacity. And it is plausible to suggest that respecting the individual’s *capacity* for community requires giving moral consideration to the way he has *actualized* it, or, equivalently, that impairing relationships is to degrade those who have created them. When an agent disrupts communal relationships, say, those of family members, she is doing wrong not merely insofar as the *effects* on individuals will be harmful, but also in that she is *thereby* expressing disrespect of them as individuals who are special because of their ability to commune.

Returning to the specific apparently ‘group’ rights above, relating to self-determination, development and culture, I am committed to the view that, ultimately, the bearers of them are individuals. However, I need not hold the implausible view that when communal relationships are disrupted, the wrongfulness of it is entirely a matter of the bad *consequences* for individual lives; instead, I suggest that such disruptions are *in themselves* forms of degrading treatment of individuals. For example, overtaking an existent community, as instances of relationships of identity and solidarity, and dominating it for self-regarding ends is to treat disrespectfully the individuals who created it. And by a similar rationale, to fail to protect a group’s culture is reasonably deemed to be a human rights violation because it would be a failure to prize individuals who have come to share a way of life.

7.6 Diagnosing Ake’s Errors

In the previous two sections, I drew out some of the major implications of a principle of respect for the dignity of persons, where dignity is taken to inhere in the capacity for community *qua* identity and solidarity. I demonstrated how this African-based principle entails and plausibly explains several kinds of human rights and also does a reasonable job of accounting for what Ake and other African theorists have (mis) construed as ‘group’ rights. In this section, I return to – in order to refute – Ake’s two major arguments against the view that a human rights-centred framework is appropriate for an African context.

First, recall Ake’s claim that human and individual rights more generally are appropriate only for people who think of themselves as separate, i.e., as those who have a good that can obtain independently of their helping others. If one holds the view that the highest good for oneself is to enter into community with others, then, Ake suggests, individual entitlements that would come at the expense of others’ interests are out of place. Recall his view that Africans ‘do not allow that the individual has any claims which may override that of the society’ (1987, p. 5).

In reply, consider, first, as I have suggested above, that African morality is well interpreted as summed up by the principle that one does the right action and becomes a good person by treating others who are capable of community with respect, where such treatment involves according them individual rights. There is a major difference between simply doing whatever would maximally promote community, on the one hand, and doing what would respect people for their ability to commune, on the other. From the perspective of a moral agent, one seeking to live a genuinely human way of life, one is obligated to respect dignified beings, which means acting in accordance with human rights. In short, thinking of one’s own good as bound up with certain supportive relationships with others, which Ake and others rightly deem a communitarian perspective, is perfectly consistent with thinking of those others as having individual rights.

To nail down the point, consider this scenario. In the country where I reside, about only one in four people receives the organs she needs to survive. One way that

I could help prevent many deaths would be to painlessly euthanize healthy, innocent individuals and then redistribute their organs. At the cost of one life, I could save at least three or four more. But it would be mad to suppose that I would be properly valuing community to act in this manner. Instead, to do the right thing and become a real person, I must not do whichever act would maximize community, but instead must respect individuals in virtue of their capacity for it, i.e., deem others to have rights to life that may not be overridden for the sake of benefiting society. Ake formulates his thesis from the vantage point of one *claiming* rights against another, supposing that such an individual must be ‘atomized’ in her outlook, and he neglects to look at things from the perspective of one *respecting* the rights of another, which need not be ‘atomized’ or ‘separate’ at all.

Is Ake correct, however, that for an individual to claim a right against another is for her awareness to be one of ‘separateness’? Interestingly, no, not necessarily. When standing up for one’s rights, there need not be any implicit judgment that one’s good is separate from the flourishing of one’s group. Consider cases in which someone aims to kidnap me for a ransom or to rape me to experience a feeling of control. Such actions would not be ones from which the clan or broader society would benefit, and so when I claim that I have human rights not to be treated in these ways, I am not necessarily implying that what is best for me is separate from action for the sake of others.

Now, there will be *some* situations in which claiming individual rights would come at some cost to the society, and, indeed, that is essentially part of what it is to be a right (as defined above in Sect. 7.2). In these situations, I submit, it is not inappropriate to think one’s interests as being separate from those of others. Consider the organs case again. If someone were to try to forcibly euthanize you in order to obtain organs necessary to save the lives of three strangers, you would be justified in resisting and doing so on the ground that what would be good for you in this scenario would conflict with the greater good. Here, if your consciousness were indeed ‘atomized’ or ‘individualistic’, it would be so in an innocuous sense, and would be neither undesirable, nor ‘un-African’. To be sure, duties to aid nuclear and extended family members are weighty in characteristic sub-Saharan moral thought; one is expected to sacrifice quite a lot for others (e.g., Appiah 1998; Gyekye 1997, pp. 70–75). It does not follow, however, that deeply rooted in the African tradition is the view that, say, one lacks an individual right to life. Acknowledging that there can be extreme situations in which individuals are rightly sacrificed, e.g., where the entire community would perish unless an innocent were killed (cf. Gbadegesin 1991, pp. 66–67), shows merely that this right can sometimes be overridden, not that it fails to exist at all, either in fact or in African peoples’ characteristic thought.

Recall Ake’s second major reason for doubting that human rights are apt for traditional sub-Saharan societies, that civil liberties and political opportunities are not only unrealizable, but also unimportant, in conditions of extreme poverty. If one must choose between the right to free speech and the right to food, where one will go hungry without the right, then the latter takes priority and the former would be empty.

The point seems fair in cases of a stark choice of this sort, as even liberals such as John Rawls acknowledge (1971, pp. 542–543). However, things are very rarely so stark. One way to respond to Ake, here, would be to appeal to empirical evidence indicating that civil liberties and political opportunities in fact are extraordinarily instrumentally useful for obtaining socio-economic goods. That evidence has been around for at least a good 30 years, ranging from the analysis of Rhoda Howard (1983, pp. 467–482) to that of Amartya Sen (1999, esp. pp. 146–188). Indeed, one commentator summarizes Sen’s thorough research on food scarcity as having established that ‘no substantial famine has ever occurred in an independent and democratic country where government tolerates opposition, accepts the electoral press, and can be publicly criticized’ (Vizard 2006, p. 116).

Rather than recount the social scientific data indicating that it is difficult to meet residents’ basic needs without so-called ‘liberal’ rights, I pursue different, more theoretical angles in response to Ake. I point out how the African theoretical foundation above provides reason to doubt that these rights are irrelevant when ‘unrealizable’ for lack of resources, and also show how it entails that they have an importance comparable to socio-economic rights.

With regard to the conditions under which a right obtains, or is realizable, Ake is well construed as holding what is known as an ‘interest theory’ of rights, where a right is essentially a protection of an interest (Wenar 2011). Such a conception would make sense of his view that a right is pointless if it is not, in combination with other conditions, sufficient to satisfy the relevant interest. To quote one of Ake’s examples,

Granted, I have the freedom of speech. But where is this freedom, this right? I cannot read, I cannot write. I am too busy trying to survive I have no time to reflect. I am so poor I am constantly at the mercy of others. So where is this right and what is it really? (1987, p. 10)

It is no doubt true that the right to free speech would be of *greater* weight if the individuals who have it had time, education and the like to ‘make use of it’. However, given a dignity-based perspective on rights, as articulated above (Sects. 7.3 and 7.4), it is plausible to think that the right to free speech would have *some* importance even under conditions of resource scarcity. In contrast to an interest-based conception of human rights, a dignity-based one construes rights as ways of treating a being with dignity respectfully. The function of a human right, on this latter view, is not necessarily to make anyone better off or to improve his quality of life; instead, at bottom, the point of a right is to avoid another person’s degradation (Metz 2011a, pp. 541–543, 545–547).

Specifically, then, consider a state that curtailed people’s freedoms of speech and association by forbidding them from criticizing government policies, firing academics who engage in research that the government disapproves of, interfering with the formation and running of trade unions and other civil society organizations, and requiring people of a certain gender or genetic disposition to enter certain professions. And think about a state that impaired people’s ability to run for public office, say, by having previous leaders choose the next group of them, or by restricting eligibility to those of a certain lineage.

According to Ake, such policies would not count as rights violations, if people lacked the resources to make use of the legal possibilities. However, I submit that the policies would count as human rights violations, even in such a circumstance, as they would degrade people's capacity for community. In particular, consider the ability to identify with others, and, especially, to engage in joint projects. One's capacity to truly cooperate in an endeavour, or to genuinely share a way of life, would be treated disrespectfully by all the above policies, which would undermine relationships based on voluntary and transparent terms of interaction.

Note that some kind of dignity-based perspective among sub-Saharan leaders probably best explains the substantial growth over the past 10 or 15 years in regional mechanisms designed to protect human rights to civil liberties and political opportunities, such as the *Protocol to the African Charter on Human and Peoples' Rights*, which set up an African Court to enforce them (OAU 1998), and the *African Charter on Democracy, Elections and Governance* (AU 2003), both of which documents explicitly speak of the 'dignity' and 'sanctity' of human beings and of their 'human rights'.

Turning away from whether human rights exist and retain an importance in the absence of resources with which one could take full advantage of them, I address the final issue of whether civil liberties and political opportunities are as important as socio-economic goods. One way to question Ake's claim that they are not would be to appeal to interests that the former would satisfy and to weigh those interests against those satisfied by the latter.¹⁰ Given a dignity-based approach to rights, however, I make a different argument.

Instead, I point out that there are several different respects in which one's capacity for communal relationships can be degraded, and that while there are different degrees of degradations, they are not captured by a civil-political versus economic divide. Above I argued that to treat another's capacity for community with respect plausibly requires observing rights to civil liberties, due process, political power and economic goods (Sect. 7.4). Withholding any of these entitlements would be to degrade the individual. It is true that it would be particularly degrading, say, for a state to withhold food from its residents, but it would appear no less degrading, and probably more, for a state to torture them because of their union activism or to execute them without trial because of their political views.

Such cases, and others, suggest the principle that the more intrusive a policy, the more degrading it is. The more state action impinges on one's survival, or selfhood, or bodily integrity, the more disrespectful, compared to reductions in what one might call 'sociality', e.g., taking money or putting under house arrest. The philosopher and development theorist Martha Nussbaum puts the point by saying that dignity is 'more deeply violated' when 'internal' capabilities are stunted than when 'combined' (or what she perhaps ought to call 'external') ones are (2011, pp. 30–31). Such a view is intuitive and cuts across the civil-political versus economic distinction.

¹⁰ A strategy executed by Howard (1983, pp. 482–490), who invokes the value of moral integrity.

7.7 Conclusion: How to Be a Moderate Afro-Communitarian

In this chapter, I have critically addressed Claude Ake's view that human rights are inappropriate for an African context because of a communal value system shared by many sub-Saharanans and because of the economic hardships many of them face. I have argued that although Ake is correct that traditional black peoples below the Sahara tend to think that the ability to live a human way of life is constituted by prizing communal relationships, it does not follow that human rights are inconsistent with such a perspective. Roughly, I pointed out that many of these peoples believe that individual human beings have a dignity, perhaps in virtue of their essential capacity to commune, that demands respect, i.e., that requires a moral agent to observe the human rights of others. I have also argued that awareness of the dignity-based foundation for human rights characteristic of much African moral thought enables one to see the moral significance of rights to civil liberties, due process and political power in comparison with those to socio-economic goods.

I conclude by responding to concerns about whether I have truly reconciled communitarian and human rights frameworks, and by defending the particular way I believe I have done so relative to Kwame Gyekye's influential reconciliation. Regarding the former, some might suggest that I have not in fact demonstrated how individual rights are compatible with a communitarian value system. For one, I have not addressed the concern that sometimes appealing to rights can cause rifts in society.¹¹ There will be many occasions when observing human rights would not only prevent communal relationships from forming, but also cause discordant ones. For another, I have, in the final analysis, denied that there are any group rights, and instead have sought to reduce peoples' rights to the rights of individuals to respect in virtue of their having actualized their dignified capacity to commune. If a perspective counts as 'communitarian' just insofar as a collective is prioritized, then it appears that I have failed to ground human rights in a communitarian framework.

In reply, I maintain, with much of the field, that there are degrees of communitarianism, ranging from 'moderate' to 'extreme', to use Gyekye's terminology. And I accept that the sort of communitarianism I have advanced here is not extreme. An extreme communitarianism might well either prescribe whichever actions maximize cohesion in the long run, or imply that groups are the ultimate bearers of moral claims. However, these are not the only possible or plausible forms of communitarianism. The moral philosophy I have articulated counts as 'communitarian' insofar as all its elements are based on the single, fundamental value of our communal nature, construed as the capacity to identify with others and to exhibit solidarity with them. I have contended that the best way to respond to the African value of community is not to treat individuals merely as a means to certain social ends, but rather to respect them as

¹¹ An issue that goes beyond Ake's concern that appealing to rights implies an atomized conceptions of oneself.

dignified because they are capable of community. Surely, to kill one innocent in order to benefit others, perhaps in trivial ways, is not to properly value communal relationships.

Gyekye (1997, pp. 35–76) agrees with this conclusion, but provides different grounds for it. He, too, is a moderate communitarian, recognizing human dignity and corresponding individual rights. Gyekye provides three reasons for thinking that African values cohere with human rights, none of which, I now argue, is as compelling as the idea that human rights are well conceived as a matter of respecting beings who have a dignity because they are capable of community *qua* identity and solidarity.

First, Gyekye contends that pretty much whenever individual rights are observed, then the group can expect to flourish (1997, p. 64). A society, he points out, is likely to be better off when its members have the ability to ‘do their own thing’. In reply, that might often be true, but will not always be true, as the organs thought experiment discussed in this chapter indicates. Sometimes there are deep conflicts of interest between individuals and the greater good, and in such scenarios, a tough choice must be made.

Second, Gyekye implicitly appears to hold that the appropriate moral framework must reflect the nature of the self, which, combined with the view that the self has both individual and social dimensions, entails that the correct morality must give consideration to a person’s autonomy (1997, pp. 52–59). However, nothing morally prescriptive, *viz.*, about how we ought to treat one another, follows merely from descriptive claims about what we are in fact like. The bare fact that individuals can step back and criticize communal norms does not mean that they should be given license to do so, a *non sequitur* that Gyekye appears to make.

Third, and most promising, Gyekye maintains that individuals have a dignity respect for which requires according human rights (1997, p. 63). While I of course am sympathetic to this line, Gyekye fails to flesh it out. He notes that a theorist could seek to ground dignity on either the individual having been created by God or her having the capacity for autonomous reasoning. However, he does not, in the end, provide reason to favour one or the other, and, furthermore, does not derive specific rights from a particular conception of human dignity (cf. Metz 2012c).

In contrast, in this chapter, I have spelled out a theory of human dignity with a clear Afro-communitarian pedigree and demonstrated how it can account for human and other rights that we intuitively have in a unified manner. The ‘rational reconstruction’ of sub-Saharan values undertaken here gives the reader strong reason to doubt the central claims of Ake’s influential work on human rights in an African context, and occasions awareness of what might philosophically unify the human and peoples’ rights typical of the Banjul Charter.¹²

¹²For comments on this and related work, I thank Oche Onazi and Oritsegbubemi Tony Oyowe.

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