

Is there an African path to Disability Justice

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NOTE: The Early Career Fellowship application form has been updated since this proposal was submitted.

Abstract

African legal theory, or legal philosophy, is defined as an enquiry into the ways in which law, legal concepts and institutions mirror the most salient and attractive communitarian values in sub-Saharan Africa. This project aims to show the role that can be played by African legal theory in forging and grounding a new response to exclusions suffered by people with disability in Africa as a matter of justice. The project is a response to the neglect of an African account of disability in African ethical, moral, social, legal and philosophical thought and more generally in the literature on disability justice. Drawing from historic and contemporary multidisciplinary sources and using a combination of immanent and transcendental critique as its methodology, the project seeks to demonstrate why an African-inspired legal theory of disability justice can constitute a valid alternative to some dominant Western approaches, particularly because of the stringent duties of community, love and compassion it imposes on all individuals for the human condition of others. This African-inspired theory not only provides an appropriate context to extend the reach of issues central to contemporary disability justice discourse, it can also shed new light on issues such as the meaning of disability itself, the nature of obligations owed to disabled persons and the type of institutional responses necessary to achieve the ideal of disability justice, the absence of which continues to define the lived experiences of millions of Africans today.

The Research Idea *The innovative thesis of the project*

Faced with a history of prejudice and rejections about its capacity for knowledge, African ethical, moral, social, political, philosophical and legal scholarship has been more preoccupied with defining its identity and significance to the world of knowledge than with the many historic and contemporary local and global problems. This is particularly true of African legal theory, or legal philosophy, which has continued to suffer doubts about its existence and its ability to contribute to contemporary problems of legal theory. A direct consequence has been both the inattention to and the failure to develop responses to concrete African and global problems. A good example of these is the problem of disability, particularly the nature of our obligations to people with

disability. This project aims to reverse this harmful trend, first by providing an African-inspired legal theory of disability justice, and second by exploring the practical implications of this theory, in particular demonstrating the conditions necessary for realising these ethical and moral ideals in concrete legal, social and political terms. In relation to the first objective, the African-inspired legal theory of justice will be discussed in comparison with contemporary theories, with the cumulative objective of demonstrating areas of distinctiveness and convergence as well as its novelty to disability justice discourse. In relation to the second objective, various constitutional models and educational strategies will be studied, just as lessons from different parts of the world will be studied, so as to establish the most appropriate way to institutionalise these ethical and moral ideals.

Background *Current research reference points and their limitations*

Disability is arguably one of the main sources of exclusion across the world. Over one billion people currently live with a disability, with a large proportion of this people excluded from education, healthcare and other public goods and services. Responses to disability range from the medical and social models to today's capabilities and human-rights models, with the last two approaches giving primacy to justice as a form of response. Disability and justice have traditionally been autonomous discourses. Disability was conceived as a misfortune or medical condition and completely isolated from justice. Justice, specifically influenced by the social contract tradition, implied the fair allocation of public goods based on a sort of hypothetical and mutually beneficial agreement, the requirements of which automatically excluded people with disabilities. Such views are no longer dominant in contemporary legal, social and political scholarship. Amartya Sen and Martha Nussbaum's capabilities approach stands out in this respect in bringing disability and justice discourses together. Nussbaum, for instance, offers a comprehensive alternative setting out a threshold level of capabilities for every citizen in society, including disabled persons, in addition to spelling out institutional arrangements for those who fall below that threshold. Although Nussbaum's approach, like the human-rights approaches, is sensitive to local differences, it is avowedly universal. However, as with other approaches, it developed largely from Western cultural understandings of disability and justice. At present, the literature lacks a comprehensive non-Western response to disability justice, a remedy to which is sought in this project through African legal thought.

The Focus *How the research provides a fresh approach to real-life problems*

Of the one billion people across the world with a disability, 80 million are African. The human condition of Africans with disability is exacerbated by the extreme levels of poverty and dire institutional infrastructures across Africa. Recent responses to disability in Africa have largely been influenced by the United Nations Convention on the Rights of Persons with Disabilities and regional initiatives of the African Union. Despite this, a large gap remains between international treaty commitments and domestic implementation. Only a few African countries have the national laws and institutional facilities that are needed to treat people with disabilities with dignity and respect. Part of the problem is a societal and cultural dimension and the inability of international treaties to penetrate domestic settings, except occasionally through benevolent state actors. Cultural perceptions of disability have contributed to many societal exclusions, as is recognised in the literature on Africa. Although such perceptions are difficult to change, little, if any, literature exists on how certain African ethical and moral values can serve as an antidote to such exclusionary cultural beliefs and practices. Most of the focus has, rightly, been on the normative power of human rights. However, this overlooks the potential of human-rights discourse enriched by the ethical and moral values of African societies themselves. It is only by nurturing ethical and moral values that Africans can confront the exclusionary cultural practices that have prevented the meaningful societal inclusion of many disabled people and also arrive at an alternative framework for realising human rights.

Theoretical Novelty *What conceptual innovation the research is aiming at*

The project is original in two main ways. First, it offers a legal theory of justice that mirrors the most attractive sub-Saharan African communitarian ethical and moral values as a direct result of the neglect of disability in African scholarship and in the wider literature on the subject. Exploring African ethics and morality in relation to human disability provides a unique opportunity to transform some contemporary legal, social and political ideals, to make them not only more inclusive but also reflective of the voices and intellectual viewpoints sidelined in decisive debates about disability justice. Although African ethical and moral values emphasise human values of community, love and compassion, their inclusiveness should not be assumed, particularly if those values are defined in terms of mutual advantage or completeness or ethnicity. In consideration of this potential limitation, the project will, particularly if there is a need to, refine or reconstruct African values to make them more inclusive and capable of constituting

valid alternatives to some dominant Western approaches to disability justice. This task is contingent on the second original contribution. African legal theory continues to suffer from scepticisms about its existence, which casts doubts over the whole premise of this project. By proposing an African-inspired legal theory of disability justice, this project seeks to contribute to a more comprehensive understanding of African legal theory, including its relevance to many contemporary legal, social and political problems. It seeks to achieve this by introducing wider audiences to its key questions, impulses, concepts and problems.

Methodology *How different disciplinary inputs will interact in empirical inquiry – specific methodological examples are often helpful for non-specialist readers*

Immanent and transcendental critique will be deployed as methodological devices for investigation and analysis of primary and secondary materials, particularly books, journal articles, laws, policy reports and statements, theses and internet sources. A combination of both device types will allow the flexibility of working with the ideals' and premises of African and dominant legal theories of justice. It will also enable the ideals to be reformulated or even, if they fall short or cannot clearly realise their potentials, new ideals to be devised. Immanent critique alone would provide a basis for investigating and evaluating the literature on African legal theory, legal theory in general and disability justice, not only to sympathetically test and expose internal contradictions within the literature, but by using transcendental critique as well, real justice and emancipation may be achieved.

Immanent critique alone may be somewhat restrictive in the light of the objectives of the project if it predominantly (but not only) seeks to unlock the normative potentials of dominant legal, social and political ideals and institutions. Immanent critique may be a useful tool to expose the unrealised normative potentials of existing legal, social and political ideals for justice, but sometimes real change can be achieved only by transcending those ideals by devising altogether new ideals, concepts and institutions. Therefore, in methodological terms, an African legal theory of disability justice may be inspired by dominant legal, social and political theories of justice, but it is not necessarily constrained by them.

Work Plan *How the work will be organised over the award period and what outputs are intended.*

The research project will last 12 months. The project will run from the beginning of September 2015 until September 2016. The main output from this research project will be a monograph made up of three related parts. Potential target publishers include Springer Netherlands, Edinburgh University Press, Ashgate Publishing Company and Edward Elgar Publishing. The first part of the monograph will discuss the aspiration for disability justice with a focus on sub-Saharan Africa. It will then consider the problems through the existing models of disability, particularly the capabilities and human-rights approaches, both of which will be discussed in the light of their philosophical underpinnings in the disability justice literature. The next part of the book will formulate a response through African legal theory. In doing so, the book will attempt to deal comprehensively with questions about African legal theory, scepticisms about it and how they might be resolved, what it means, its key concepts and foundations, and how those foundations might yield disability justice. The third and final part will deal with the institutional dimensions of the African theory of disability justice. In addition to the monograph, a report of the main research findings will be provided for policymakers.

Outcome *What further steps and what longer-term outcome are envisaged.*

The primary outcome will be a monograph offering a much-needed resource to reflect on the struggles for justice of people with disability in Africa. It will explore the strengths and limitations of current responses to disability, and also the strengths of an African-inspired legal theory of justice. In this respect, it will be a valuable resource for reflection on the nature and potential benefits of African legal theory to resolving contemporary problems for purposes of teaching, research and intercultural exchanges, particularly for those interested in African contributions within such exchanges. Additionally, academic workshops, seminars and conferences in Africa, the United Kingdom and the United States will be identified for dissemination of the key research findings. Although the primary audience for the monograph is the academic world, it will also seek to influence domestic and international policymakers, Non-governmental organisations and disability organisations in Africa and beyond. For this purpose, the project will include the drafting of a report for disseminating the main findings of this research to policymakers. Moreover, a summary of the research findings will be made available to the wider public through the web pages of the School of Law at the University of Dundee. This will be used to draw attention to the significant issues affecting disabled

people in Africa. The project will also launch an online blog. This would not only report on the key problems and findings, but also promote further awareness of the project.