

BOOK REVIEW

OCHE ONAZI: *AN AFRICAN PATH TO DISABILITY JUSTICE: COMMUNITY, RELATIONSHIPS AND OBLIGATIONS* (2020)

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1 Introduction

The exclusion of persons with disabilities is a common phenomenon around the globe and the disability-rights movement has and continues to seek to ensure their inclusion in all aspects of life on an equal basis with others. Human rights are regarded as the most effective way to achieve this goal and the efforts of the disability-rights movement over decades culminated in the adoption of a disability-specific human rights instrument, the Convention on the Rights of Persons with Disabilities (CRPD), which came into force in May 2008.¹ Organisations of persons with disabilities participated in the drafting of the CRPD in order to give context to the particular experience of persons with disabilities across the globe and formulate a human rights instrument that reflects and responds to the lived experience of persons with disabilities.² The majority of African countries, 48 out of 54 countries, have signed and ratified the CRPD, and 49 African countries have signed and ratified the Optional Protocol to the CRPD.³ Ten years after the CRPD came into force, the

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1 GA Res 61/611, adopted on 13 December 2006, entered into force on 3 May 2008.

2 O Onazi *An African path to disability justice: Community, relationships and obligations* (2020) 41.

3 United Nations Treaty Collection 'Convention on the Rights of Persons with Disabilities: Status as at 17 August 2020' https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en (accessed 17 August 2020).

African Union adopted the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) in recognition of the unique rights experience of persons with disabilities in Africa.⁴ In spite of the existence of two disability-specific international human rights instruments, the CRPD and the African Disability Protocol, the treaty obligations they created have not translated into social change in Africa.⁵ The subject of this review – *An African path to disability justice: Community, relationships and obligations* – is a book written by African philosopher, Oche Onazi. The book seeks to explain why these human rights instruments have not brought about social change in Africa.

Onazi opines that the failure to achieve disability justice in Africa is not due to a lack of relevant laws and policies, but is because the existing human rights laws and policies fail to challenge negative cultural and social beliefs about disability.⁶ The author recognises that culture has a powerful influence on how impairments are defined and perceived and on the inclusionary and exclusionary responses to them.⁷ Much of the exclusion experienced by persons with disabilities is due to cultural perceptions of disability.⁸ These cultural perceptions also influence the attitudes of law and policy makers who are primarily responsible for addressing the exclusion of persons with disabilities in society.⁹ However, human rights literature on social change fails to engage with local factors including beliefs and misconceptions that contribute to the exclusion of persons with disabilities.¹⁰ Furthermore, this literature focuses on the normative power of human rights and overlooks the potential for positive African moral and ethical values to enrich human rights discourse and contribute to remedying the systemic exclusion of persons with disabilities.¹¹ Therefore, negative cultural perceptions of disability remain unchallenged from the perspective of positive ethical and moral African standards.¹²

The situation is further exacerbated by the fact that most theories of justice are developed from a Western perspective with Western experiences and cultural reference points in mind.¹³ As a result, these theories fail to account for the diversity of injustices faced by people, including persons with disabilities, in different parts of the globe. In order

4 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities, adopted by the African Union on 29 January 2018.

5 Onazi (n 2) 40.

6 Onazi (n 2) 10.

7 Onazi (n 2) 11.

8 As above.

9 As above.

10 As above.

11 As above.

12 Onazi (n 2) 12.

13 As above.

to address these injustices, there is a need to develop theories that reflect the diverse intellectual perspectives from around the world.¹⁴

In his book, Onazi seeks to broaden legal and political concepts on disability justice to take into account neglected African intellectual perspectives.¹⁵ Disability justice is understood as the conceptual framework for understanding and analysing the inclusion and exclusion of persons with disabilities in various aspects of life.¹⁶ The author responds to the lack of an adequate African theory on disability justice by developing his own African legal philosophy of disability justice, based on the relational concept of community.¹⁷ The scope of Onazi's book is limited to outlining the structure of an African legal philosophy on disability justice and does not go as far as addressing the practical application of the philosophy in evaluating laws, policies and practices and in creating new ones.¹⁸

2 Overview of the book

The book comprises seven chapters. In Chapter One, titled 'Introduction', Onazi explains two fundamental aspects of African communitarian philosophy, which he relies on and modifies to develop his new African legal philosophy of disability justice. The first aspect is community. Onazi's philosophy is based, like all African communitarian philosophies, on the ideal of community. Though the ideal of community is a central part of African communitarian philosophy, there are two different conceptions of community, the group-based conception of community associated with the work of Menkiti, and the relational conception of community associated with the work of Thadeus Metz.¹⁹ The author prefers and builds on Metz's conception of community, which prioritises relationships between people, regardless of whether or not they belong to a group, over Menkiti's conception of community, which prioritises the group and treats it as superior to individuals.²⁰ For Onazi, a philosophy of community that prioritises relationships between individuals holds greater promise for the inclusion of persons with disabilities compared to a philosophy that gives primacy to the group.

The second aspect is personhood. African communitarian philosophy treats personhood as the 'primary attribute of moral status and moral

14 As above.

15 Onazi (n 2) 13.

16 Onazi (n 2) 9.

17 Onazi (n 2) 4.

18 As above.

19 I Menkiti 'Person and community in African traditional thought' in R Wright (ed) *African philosophy: An introduction* (1984) 171-181. T Metz 'Toward an African moral theory' (2007) 15 *Journal of Political Philosophy* 321.

20 Onazi (n 2) 2.

consideration'.²¹ A distinction is drawn between persons and human beings and persons are ascribed a moral status that is superior to human beings.²² The basis for the higher moral significance ascribed to persons over human beings is the capacity to participate in mutual reciprocal ethical obligations.²³ Personhood is earned by individuals through discharging a number of ethical obligations to the community or to each other.²⁴ For example, infants begin only as human beings with no moral function and are only transformed into persons through the performance of duties to the community and to others. Conversely, individuals can be deprived of personhood through an inability to discharge their obligations to the community or to one another.²⁵ For Onazi, this conception of personhood, found in both the group-based and relational conceptions of community is problematic for some persons with disabilities, particularly those who lack or have limited capacity to discharge their obligations to others, such as persons with cognitive and severe disabilities.²⁶

In Chapter Two, titled 'Outline of an alternative research agenda on disability justice', Onazi justifies the need to develop an African legal philosophy of disability justice and suggests two main revisions to the relational conception of community to make it inclusive of persons with disabilities. The author notes that African communitarian philosophy, including the group-based conception of community and his preferred relational conception of community, excludes persons with disabilities. This is mainly because of the connection it makes between personhood and the ability to discharge reciprocal obligations, which has the effect, intended or not, of excluding persons with disabilities who either lack or have limited capacity to discharge certain duties.

Onazi suggests two main revisions to the relational conception of community to overcome this conceptual challenge.²⁷ The first revision involves re-defining the concept of personhood.²⁸ In order to do this, the author relies on Geoffrey Tangwa's conception of personhood, which does not distinguish between persons and human beings.²⁹ Tangwa rightly contends that personhood is an attribute of all human beings and is not dependent on the ability to perform obligations to others.³⁰ Furthermore, a human being's moral worth is constant in spite of one's mental, physical or socio economic standing.³¹ The author therefore, suggests a concept of

21 As above.

22 Menkiti (n 19) 176.

23 As above.

24 As above.

25 Menkiti (n 19) 171.

26 Onazi (n 2) 3.

27 Onazi (n 2) 33.

28 Onazi (n 2) 25.

29 G Tangwa 'The traditional African perception of a person: Some implications for bioethics' (2000) 30 (5) Hastings Centre Report 39.

30 As above.

31 Tangwa (n 29) 40.

personhood that neither makes a moral distinction between human beings and persons nor ranks human beings according to features such as age, disability etc.³² For Onazi, this conception of personhood has the potential to lead to the recognition of both the moral status and equal humanity of persons with disabilities.³³

The second revision involves redefining the nature of obligations. Onazi relies on Tangwa's work once again and suggests a departure from symmetrical or mutually reciprocal obligations to asymmetrical obligations that do not require reciprocity.³⁴ Tangwa argues that moral consideration is not dependent on reciprocity, therefore obligations are wider and more inclusive in relation to the people to whom they are owed.³⁵ In contrast with conventional literature, which perceives personhood as constituted by mutually reciprocal obligations, according to Tangwa, the only criterion for receiving the obligations of others is being a human being.³⁶ In other words, obligations are owed, even to people who are not capable of reciprocation.³⁷ Furthermore, Onazi opines that both the group and relational conceptions of community anticipate obligations that are altruistic in nature, such as compassion, care, charity, generosity, benevolence, kindness, help, respect, sacrifice and hospitality amongst others.³⁸ The author proceeds to argue that because altruism involves 'heroic and self-sacrificial acts of helping, which are undertaken without the prospect of direct and indirect reward', then asymmetry is a more compatible concept compared to mutual reciprocity.³⁹ For Onazi, personhood premised on asymmetrical obligations is capable of including persons with disabilities who either lack or have limited capacity for reciprocation.⁴⁰

Chapter Three, titled 'Disability justice in an African context: The human rights approach', as the title suggests, deals with the human rights approach to disability justice with particular emphasis on the African Disability Protocol. Onazi considers the potential of the African Disability Protocol to provide an alternative path to disability justice utilising positive African values to counter negative and harmful social and cultural practices on disability. The author opines that the transformative potential of the African Disability Protocol is diluted by its failure to adequately respond to several key African issues.⁴¹ For instance, though the Protocol

32 Onazi (n 2) 25.

33 As above.

34 Onazi (n 2) 27.

35 Tangwa (n 29) 40.

36 Tangwa (n 29) 39.

37 As above.

38 Onazi (n 2) 27.

39 J Draguns 'Altruism in its personal, social, and cultural contexts: An introduction' in D Vakooh (ed) *Altruism in cross-cultural perspective, international and cultural psychology* (2013) 1 at 2.

40 Onazi (n 2) 4.

41 Onazi (n 2) 59.

is clear about the duties owed by persons with disabilities, it does not address the critical issue of the duties owed to persons with disabilities in order to remedy the exclusions and injustices they face.⁴² Secondly, though the African Disability Protocol begins by making a statement on extreme poverty in Africa, it fails to make specific provisions to address this that go beyond the provisions already in the CRPD on the interaction between poverty, development and disability.⁴³ Furthermore, the issue of albinism is only mentioned in the Preamble and is not present elsewhere in the Protocol.⁴⁴ Finally, the Protocol has no provision on the right of persons with disabilities to choose their residence and nationality, which is surprising given that persons with disabilities are frequently denied citizenship.⁴⁵ The author concludes that the African Disability Protocol is therefore, unlikely to provide an alternative path to disability justice.

In Chapter Four, titled ‘Disability justice in legal and political philosophy: Is the concept of community a missing ideal?’, Onazi analyses Western philosophies on disability justice, paying particular attention to Martha Nussbaum’s capabilities approach, in an effort to evaluate the extent to which it encompasses the concept of community. The author concludes that it is not completely incompatible with the concept of community, because Nussbaum’s list of capabilities is best appreciated through a relational or collective lens. Nevertheless, its underpinning values of individualism are in tension with its relational elements. There is therefore, a need for an alternative approach.

In Chapter Five, titled ‘Disability justice in an African legal philosophical context’, the author begins by evaluating whether an African philosophical foundation for disability justice exists in the African literature on customary justice, pluralist justice and relational justice. He concludes that none of these concepts adequately provide for disability justice. Onazi dedicates the rest of the chapter to developing an African legal philosophy of disability justice comprised of the values of community, relationships and asymmetrical obligations. This philosophy serves as a criterion to evaluate existing legal and political institutions or to create new ones that are responsive to the needs of persons with disabilities. According to the proposed legal philosophy of disability justice, the injustices experienced by persons with disabilities indicate a breakdown of or exclusion from relationships in each community. The philosophy enables the creation of new legal and political institutions that repair severed relational ties between persons with disabilities and the communities that exclude them.

42 African Disability Protocol, art 31.

43 Onazi (n 2) 59.

44 As above.

45 As above.

In Chapter Six, titled 'Disability justice in practice: Instituting a new public culture of obligations', Onazi addresses the nature of obligations arising from the proposed African legal philosophy of disability justice. Specifically, he explores what the asymmetrical obligations would look like in practical terms. As a starting point, and as part of a wider legal and political reform agenda aimed at achieving disability justice,⁴⁶ Onazi posits that civic and citizenship education is required to address negative social and cultural attitudes against persons with disabilities.⁴⁷ The author explains that the sort of civic and citizenship education he envisions is best delivered through disability simulations, which can involve a wide range of methods such as the use of wheelchairs, being immobilised somehow, or being fed by another person⁴⁸ in order to help people to better understand the experience of disability and reduce individual prejudice.⁴⁹ It is important to note that though they can be utilised by adults who are not in formal education, disability simulations remain optional. The more difficult question is how to legally enforce altruistic values such as generosity, benevolence, compassion, care and help?⁵⁰ For Onazi, the answer to this question is in using taxation as a bridge from moral obligations to legal obligations⁵¹ and as a means to channel obligations to persons with disabilities.⁵² Taxation is able to achieve this because it is both a moral and a legal obligation.⁵³ The author favours the use of a hypothecated tax as the most ideal form of taxation to use to discharge obligations to persons with disabilities.⁵⁴ Hypothecation refers to 'directing the revenue from some tax to funding of some relatively narrow set of policies'.⁵⁵ In this context, hypothecated taxation would involve re-directing a revenue from a form of taxation such as income tax, taxes on airlines, taxes on alcohol and cigarettes to fund a national disability service, which will in turn distribute the proceeds of the hypothecated taxation scheme to meet the diverse needs of persons with disabilities.⁵⁶ Onazi acknowledges that there is still a need to carry out further research on the full implications of the application of the theory.

Chapter Seven, titled 'Conclusion', concludes the book by reiterating the main arguments set out in the book which will not be recounted here to avoid repetition.

46 Onazi (n 2) 151.

47 As above.

48 Onazi (n 2) 150.

49 A Silverman et al 'Stumbling in their shoes: Disability simulations reduced judged capabilities of disabled people' *Social Psychological and Personality Science* (2015) 6 (4) 464.

50 Onazi (n 2) 151.

51 Onazi (n 2) 153.

52 Onazi (n 2) 151.

53 E Seligman *Essays in taxation* (1925) 1-18.

54 Onazi (n 2) 159.

55 D Halliday 'Egalitarianism and consumption tax' in H Gaisbauer et al (eds) *Philosophical explorations of justice and taxation* (2015) 119 at 128.

56 Onazi (n 2) 159.

3 Significance of the book

Onazi highlights gaps in existing literature and explains how these gaps result in the continued exclusion of persons with disabilities in Africa from various spheres of life. First, the author notes that various laws and policies on disability rights, including the disability-specific human rights instruments such as the CRPD and the African Disability Protocol, have failed to produce the desired social change in Africa. This is because the literature on human rights is based on Western values and does not acknowledge diverse cultures in different parts of the world, including in Africa, and the influential role culture plays in the exclusion of persons with disabilities. Consequently, the literature fails to take into account the potency of positive African beliefs and values to bring about social change.

Existing literature on theories of justice, most notably Martha Nussbaum's capabilities approach, do not adequately encompass the African values of community and therefore, may not sufficiently address the unique needs of Africans with disabilities.

Significantly, the author also notes that existing literature on African communitarian philosophies exclude persons with disabilities due to its notion of personhood that is inextricably linked to the ability to discharge reciprocal obligations. Persons with disabilities who either lack or have limited capacity to discharge reciprocal obligations are deprived of the moral status of personhood resulting in their exclusion.

These gaps provide the author with a justification to develop a new African legal philosophy of disability justice, which is the most significant contribution the book makes. The proposed philosophy remedies the exclusionary effect of African communitarian philosophies by redefining personhood and reimagining the nature of obligations while maintaining the ideal of community that is central to African communitarian philosophies. In contrast with the literature on human rights, Onazi's proposed philosophy makes use of positive African values to bring about social change and achieve inclusion for Africans with disabilities in different spheres of life.