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## ***Ubuntu* as a moral theory and human rights in South Africa**

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### SUMMARY

There are three major reasons why ideas associated with ubuntu are often deemed to be an inappropriate basis for a public morality in today's South Africa. One is that they are too vague; a second is that they fail to acknowledge the value of individual freedom; and a third is that they are rooted in a traditional, small-scale culture more than a modern, industrial society. In this article, I provide a philosophical ground for ubuntu that is not vulnerable to these three objections. Specifically, I construct a moral theory grounded in African world views, one that suggests a promising new conception of human dignity. According to this conception, human beings have a dignity by virtue of their capacity for community, understood as the combination of ideas and actions that exhibit solidarity with them, where human rights violations are egregious degradations of this capacity. A new account of human rights violations straightforwardly entails and explains many different elements of the African Bill of Rights and naturally suggests certain ways of resolving contemporary moral dilemmas in South Africa, such as land reform, political power and deadly force. If I am correct that this jurisprudential interpretation of ubuntu can ground a public morality, it provides guidance to resolve present-day disputes about justice and provides a way to address our worries about vagueness, collectivism and anachronism should not stop one from thinking that some 'ubuntu' can ground a public morality.

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[1](#) E McKaiser 'Public morality: Is there sense in looking for a unique definition of *ubuntu*?' *Business Day* (2008) 11. [[Links](#)]

[2](#) Y Mokgoro 'Ubuntu and the law in South Africa' (1998) 1 *Potchefstroom Electronic Law Journal* 2.

[3](#) GM Nkondo 'Ubuntu as a public policy in South Africa' (2007) 2 *International Journal of African Renaissance* 1. [[Links](#)]

[4](#) See several expressions of scepticism about the contemporary relevance of traditional African ideas about 'African culture and personality' (2000) 3 *African Studies Quarterly* 10-11. [[Links](#)]

[5](#) Constitution of the Republic of South Africa, 1996, <http://www.info.gov.za/documents/constitution> (accessed 31 October 2011). [[Links](#)]

[6](#) *Port Elizabeth Municipality v Various Occupiers* (2004) ZACC 7; 2005 1 SA 217 (CC); 2004 12 BCLR 1268 (CC).

[7](#) In particular, see Justice Albie Sachs's remarks in *Dikoko v Mokhatla* (2006) ZACC 10; 2006 1 BCLR 1 (CC) para 113, as well as views ascribed to Justice Yvonne Mokgoro in D Cornell 'Ubuntu, pluralism and the responsibility of legal academics to the new South Africa' (2008) 20 *Law and Critique* 47-56. [[Links](#)]

[8](#) I might also fail to adhere to certain stylistic conventions to which academic lawyers are accustomed from my colleagues.

[9](#) Comments made at a Symposium on a New Humanism held at the Stellenbosch Institute for Advanced Study, February 2010.

[10](#) Eg MO Eze *Intellectual history in contemporary South Africa* (2010). [[Links](#)]

[11](#) Sometimes the word *ubuntu* is meant to capture not merely Southern African moral views, but sub-Saharan African moral views generally. I lack the space in this article to compare the two bodies of thought, but elsewhere I have drawn on anthropological and sociological findings indicating that there are many important similarities between a wide array of African moral theories below the Sahara desert. If so, then Mbeki's suggestion that *ubuntu* is unique to South Africans is incorrect. See M Ramose 'An African moral theory' (2007) 15 *Journal of Political Philosophy* 321. [[Links](#)]

[12](#) An assumption present in M Ramose *African philosophy through ubuntu* (1999).

[13](#) The following several paragraphs draw on T Metz 'Human dignity, capital punishment, and an African ethic' (2007) 15 *Journal of Human Rights* 83-85; [[Links](#)] T Metz & J Gaie 'The African ethic of *ubuntu/botho*' (2010) 3 *Journal of Education* 274-276. [[Links](#)]

[14](#) As is made particularly clear in Ramose (n 12 above) 51-52. For similar ideas ascribed to sub-Saharan Africa, see K Wiredu 'The African concept of person-hood' in HE Flack & EE Pellegrino (eds) *African-American perspectives on ethics* (1992) 104; [[Links](#)] I Menkiti 'On the normative conception of a person' in K Wiredu (ed) *African philosophy* (2004) 324. [[Links](#)]

[15](#) D Tutu *No future without forgiveness* (1999) 31. [[Links](#)]

[16](#) For representative statements from those in Southern Africa, see S Biko 'Some African cultural concepts I like. Selected writings by Steve Biko' (1971/2004) 46; [[Links](#)] Tutu (n 15 above) 35; N Mkhize 'Ubuntu and the person' in J Nicolson (ed) *Persons in community* (2008) 38-41. [[Links](#)]

[17](#) A Shutte *Ubuntu: An ethic for the new South Africa* (2001) 30. [[Links](#)]

[18](#) C Pearce 'Tsika, Hunhu and the moral education of primary school children' (1990) 17 *Zambezia* 14. [[Links](#)] M Letseka 'African philosophy and education' (1996) 27; [[Links](#)]

- al (eds) *African voices in education* (2000) 186. [ [Links](#) ]
- [19](#) Metz (nn 11 & 13 above).
- [20](#) For similar expressions from Africans far north of the Limpopo, see S Gbadegesin *African philosophy* Gyekye *Beyond cultures* (2004) 16; [ [Links](#) ] P Iroegbu 'Beginning, purpose and end of life' in P Iroegbu *Kpim of morality ethics: General, special and professional* (2005) 442. [ [Links](#) ]
- [21](#) Mokgoro (n 2 above) 3.
- [22](#) Nkondo (n 3 above) 91.
- [23](#) M Munyaka & M Motlhabi 'Ubuntu and its socio-moral significance' in FM Murove (ed) *African ethics: comparative and applied ethics* (2009) 69 71-72. [ [Links](#) ]
- [24](#) Tutu (n 15 above) 35.
- [25](#) P Kasenene *Religious ethics in Africa* (1998) 21. [ [Links](#) ]
- [26](#) For an analysis of these two different ways of responding to value, see P Pettit 'Consequentialism' (1989) 100 *Ethics* 116; [ [Links](#) ] D McNaughton & P Rawling 'Honouring and promoting values' (1999) 100 *Ethics* 116; [ [Links](#) ]
- [27](#) I refine this approximate principle below.
- [28](#) Which I have argued in Metz (n 11 above).
- [29](#) I do not address group rights in this article, deeming 'human rights' to pick out the entitlements of individuals.
- [30](#) See, eg, R Nozick *Anarchy, state, and utopia* (1974) 28-34. [ [Links](#) ]
- [31](#) For a discussion of the role of dignity in South African jurisprudence, see S Woolman 'Dignity' in S Woolman *Constitutional law of South Africa* (2002) 36; [ [Links](#) ] A Chaskalson 'Dignity and justice for all' (2009) 100 *International Law* 24; [ [Links](#) ] L Ackermann *Human dignity: Lodestar for equality in South Africa* (unpublished) [ [Links](#) ]
- [32](#) For a discussion in the South African context, see D Jordaan 'Autonomy as an element of human dignity in law' (2008) 8 *The journal of Philosophy, Science and Law* <http://www6.miami.edu/ethics/jpsl/archives/dignity.html> (accessed 31 October 2011); [ [Links](#) ] Woolman (n 31 above).
- [33](#) I Kant *Groundwork of the metaphysics of morals* (1785), [ [Links](#) ] I Kant *Metaphysics of morals* (1785)
- [34](#) HR Botman 'The OIKOS in a global economic era' in JR Cochrane & B Klein (eds) *Sameness and difference: potentials in South African civil society* (2000) [http://www.crvp.org/book/Series02/II-6/chapter\\_x.htm](http://www.crvp.org/book/Series02/II-6/chapter_x.htm) (accessed 2011). [ [Links](#) ]
- [35](#) See, eg, Justice Mokgoro's remarks in the South African Constitutional Court case *State v Makwanyane* ZACC 3; 1995 6 BCLR 665; 1995 3 SA 391 paras 309-311; Ramose (n 12 above) 138-145; MJ Bhengu *Ubuntu and humankind* (2006) 29-87. [ [Links](#) ]
- [36](#) I argue the point in T Metz 'African conceptions of human dignity: Vitality and community as the ground' (2011) 13 *Human Rights Review* 1. [ [Links](#) ]
- [37](#) See J Rawls *A theory of justice* (1971) 505-506. [ [Links](#) ]
- [38](#) For an *ubuntu*-based discussion of the moral standing of beings who in principle cannot exhibit individuality, see Metz 'An African theory of moral status: A relational alternative to individualism and holism' (2011) 14 *Practical Philosophy* <http://www.springerlink.com/content/j5g38kl117110628/fulltext.pdf> (accessed 31 October 2011)
- [39](#) In order to justify coercion, a parallel principle is widely used by Kantians, who prize the capacity for rationality.
- [40](#) Eg Tutu (n 15 above); D Louw 'The African concept of *ubuntu* and restorative justice' in D Sullivan & J Van Niekerk *Restorative justice* (2006) 161; [ [Links](#) ] A Krog 'This thing called reconciliation: Forgiveness as part of the journey towards wholeness' (2008) 27 *South African journal of Philosophy* 353. [ [Links](#) ]
- [41](#) Ramose (n 12 above) 120: 'The authority of law rests in the first place upon its recognition of self-determination of individual or collective right ... This is the basis of *ubuntu* constitutional law.' See also Kasenene (n 25 above)
- [42](#) Secs 11-18 & 21-22 South African Constitution.
- [43](#) Sec 205(3) South African Constitution.
- [44](#) Secs 12 & 34-35 South African Constitution.
- [45](#) Sec 19 South African Constitution.
- [46](#) JS Mill *Considerations on representative government* (1861).
- [47](#) Secs 26-27 & 29 South African Constitution.
- [48](#) Sec 25 South African Constitution.
- [49](#) G Nkwinti 'Minister of Rural Development and Land Reform Cluster Briefing' 2 March 2010 <http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71656?oid=164364&sn=Detail> (accessed 2011). [ [Links](#) ]

- [50](#) See BR Boxill 'The morality of reparations' (1972) 2 *Social Theory and Practice* 113. [[Links](#)]
- [51](#) See especially Ramose (n 12 above) 135-152; LJ Teffo 'Democracy, kingship, and consensus: A South African perspective' in Wiredu (ed) *A companion to African philosophy* (2004) 443. [[Links](#)] A particularly careful and influential article. Wiredu *Cultural universals and particulars: An African perspective* (1996) 172-190. [[Links](#)]
- [52](#) Wiredu (n 51 above) 173.
- [53](#) Which principle also neatly entails the injustice of nepotism and cronyism, as I argue in T Metz 'African perspectives on public governance' in FM Murove (ed) *African ethics: An anthology of comparative and applied ethics* (2002) 11-22. [[Links](#)]
- [54](#) Wiredu (n 51 above) 180.
- [55](#) This phrasing is found in both M Ramose 'An African perspective on justice and race' (2001) 3 *Polylog* <http://them.polylog.org/3/frm-en.htm> (accessed 31 October 2011); [[Links](#)] and LJ Teffo 'Monarchy and the African perspective' 1 *Journal on African Philosophy* <http://www.africaknowledgeproject.org/index.php/jap/issue/view/1> (2011). [[Links](#)]
- [56](#) *S v Walters* (CCT 28/01) (2002) ZACC 6; 2002 4 SA 613; 2002 7 BCLR 663.
- [57](#) See a draft of the bill amending the Criminal Procedure Act, 1977, regarding the use of deadly force, [http://www.justice.gov.za/legislation/bills/2010\\_cpamendbill.pdf](http://www.justice.gov.za/legislation/bills/2010_cpamendbill.pdf) (accessed 31 October 2011). [[Links](#)]
- [58](#) *Walters* (n 56 above) para 54.



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