African Ubuntu and its View on Law, Human Rights and Sustainable Development Goals

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Dorine E. van Norren

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For Vuyisile ('the one that brings happiness')

'The soul of a bird is in its nest'- African proverb

('local talent is the source of endogenous development'; Chivaura 2006, 239)

Illustration: Wheel of Values/Africa; © D.E. van Norren 2017

TABLE OF CONTENTS

LIST OF ILLUSTRATIONS

LIST OF TABLES

UBUNTU AS A WAY OF LIFE

MPHO TUTU VAN FURTH[1]

Ubuntu is described as an African philosophy. The definition that is often given is that a person is a person through other people. Actually, Ubuntu is a way of life. It does not reside in one's head. It is expressed in how you interact with other people and with our planet as a whole.

When one says: 'I live a separate life and I don't need to know anything about your way of life', this is a form of (Apartheid) privilege. This book on Ubuntu encourages an active type of listening moving away from privilege and listening from the heart. This type of listening recognizes whose stories dominate and whose stories are absent from our considerations when we decide how to shape our common future.

Amstelveen, 7 June 2024

[1] Priest, wife, mother, artist, theologian and public speaker

UBUNTU HUMAN INTERDEPENDENCE

ALBIE SACHS

As a former judge of the constitutional court, engaged in writing Ubuntu jurisprudence and someone who played a role in the creation of the South African constitution, I was asked to write an introduction to this book from my personal experience.

Ubuntu, a profound African concept of human interdependence, played a huge role in South Africa's transition from apartheid to non-racial democracy. Anyone wishing to understand its significance, the context in which it was developed and its capacity for providing repair to other torn parts of the world, can feast on the cornucopia of materials and debate in this book.

In my own case, the story starts with me lying in a hospital in London recovering from a bomb placed in my car by South African security agents, costing me my right arm and sight in my left eye. I received a note with a sharp message: 'don't worry, comrade Albie, we will avenge you!' Avenge me? I thought… should we cut off the arms and blind the eyes of those responsible? And my response was immediate: 'No, no, no… if we get democracy, if we get freedom, if we get the rule of law, *that* will be my soft vengeance --- roses and lilies will grow out of my arm'.

The theme of soft vengeance became the theme of my life. I returned home from exile, helped create the new constitution, voted as an equal for the first time in my life, served as a Justice on the Constitutional Court and, finally, helped promote the construction of a beautiful building for the Court, filled with art, in the heart of what had been the Old Fort Prison where both Gandhi and Mandela had been locked up.

And during this process, at a very personal, intimate level, my notion of soft vengeance coalesced and merged with Ubuntu. Through South Africa's Truth and Reconciliation Commission I met the man who organized the bomb in my car. I almost fainted, he was elated. I heard afterwards that he went home and cried for two weeks. I don't know if this is true, I want to believe it is true. He had the courage to come forward and acknowledge

what he had done. It was more important for me for him to discover his humanity than for him to go to jail.

This book deals with the value of Ubuntu for contemporary society, not just the African one but the Global society. It is a gift that Africa brings to the world in terms of human interdependence: ‘I am because we are’. It stands for all humanity.

Cape Town, 7 April 2024

STRUCTURE OF THE BOOK

This book deals with the value of Ubuntu for contemporary society, not just the African one but the Global society. Anyone that lives or has lived amongst Africans will know what 'I am because we are' stands for.

Centering around the themes of the Sustainable Development Goals, this book contains a rich variety of examples of Ubuntu, both in living testimonies of people, as well as in theoretical philosophical background and proverbs. It uses both theoretical sources as interviews with people in South Africa and a few Africans outside South Africa. In this context it analyzes both its development concept in socio-economic terms, as its relationship with nature, as the resonance across the continent in similar concepts. Critics, who are also given space in this elaborate oversight, cannot maintain that Ubuntu is merely a relic of the past, no longer embodied by the people whose heritage it is. The book clearly articulates how Ubuntu is expanding conventional human rights and economic theory and what it could add. It does so by first analyzing how South Africa's Ubuntu heritage and its apartheid past translated into the draft constitution and the expansive Ubuntu jurisprudence that emanated from that legal history, giving people concrete rights. The book also describes the Ubuntu based policy practices in South Africa, most expressly in governance and diplomacy, and to what extent it faltered and still has potential, especially in the economic realm. Since the Truth and Reconciliation Commission already attracted wide attention, the book mostly sheds light on lesser-known examples of Ubuntu or Batho. The author is also clear about the enormous challenges faced by countries in the Global South wanting to chart their own course based on their cultural convictions, within the global neo-liberal context. The ideal of Ubuntu is by no way achieved, just like with human rights, it will always be a benchmark in order to strive for a better world. Furthermore, the book examines to what extent South Africa based its international negotiation strategies on Ubuntu with regard to the Sustainable Development Goals, as well as how people in South Africa perceive the Sustainable Development Goals from the perspective of Ubuntu. It concludes with what potential Ubuntu has for rewriting development theory both from the legal perspective - such as a wider collective sense of (human) dignity - as from the economic and sustainability perspective, considering man and nature as part of a greater whole that needs to be shared.

This book invites Africans to be more vocal about their positive heritage, and step into the post-colonial future, especially in the international realm. How do you entice international readers and negotiators to step out of their normal mode and see the world through the eyes of the other? The greeting of South-Africans is after all Sawubona: I see you. At the same time, it invites the non-African readers to take cognizance of the rich history and everyday reality of African philosophy and way of life. It entices them to embrace the potential of intercultural knowledge and understanding to brace the challenges of climate change and global inequality, teaching how to reconcile the seemingly opposite universal values with cultural particularities and maintain the best of both.

PREFACE:
MY PERSONAL JOURNEY

This book first appeared as an annex to my Ph.D. research: *Development as Service, A Happiness, Ubuntu and Buen Vivir interdisciplinary view of the Sustainable Development Goals*, (Van Norren, 2017). It was inspired by my stay in South Africa in 1994 as an exchange student at the University of Cape Town (UCT) and the subsequent years that I would come on holiday to visit or as part of my job as a desk officer for Southern Africa at the Dutch Ministry of Foreign Affairs.

It is in South Africa that I learnt the value of Ubuntu. That was not the purpose of my stay, but nevertheless the outcome. I came to study international law, as part of my (international) law studies at the Free University of Amsterdam (VU). I decided to focus my interest on African affairs choosing African customary law, regional economic integration in Africa and legal aid as subjects for what was supposed to be a five month stay. As a side activity I signed up for the UCT Choir for Africa. Since South Africa was transitioning to a new democracy, and I wanted to be part of that process, I participated in voter education. My lodgings were in the Woolsack residence, and as I was soon to find out populated with black students only. This triggered a crash course in African friendship, customs and ethics which I thoroughly enjoyed. At the end of my stay, I thought, if life can be like this, why have I always been living a different one?

The 80 (wo)man strong UCT Choir for Africa proved to be the most intense experience with rehearsals three times a week and frequent meetings, in which decisions were made by consensus, and that would often last for hours. To my European mind, this was an inefficient way of decision-making, but at the same time it was one that strengthened our social bonding, and it gave us a united sense of purpose. For me it was a way to relax, do nothing and let my mind wander. Time was after all a relative thing, and as I learned later in life, only expensive if you want it to be so.

One day a letter arrived addressed to the choir, read out loud by the choir director in our weekly meeting. It was signed by the incumbent President of the new Republic of South Africa, Nelson Rolihlahla Mandela, as the director announced with a slight smile, whilst the choir fell silent in a gasp

of surprise. Having won the national competition the previous year, the choir was invited to sing at the inauguration, for the President himself. That never happened, but we did sing for the specially invited general public at the inauguration. For some inexplicable reason another choir took our place when we arrived at the venue. My European mind wanted to get to the bottom of it ('unfair'), but my fellow choir members quickly let it go and adapted to the new circumstances.

I had not expected to be there in the first place, as a new member of the choir struggling to get along in Xhosa, Sotho and Zulu. The choir members had, however, insisted that the four 'whities' – an American, Zimbabwean and two Dutch – should be there, as an expression of the 'new South Africa', the rainbow nation celebrating unity in diversity. After all, "out of the experience of an extraordinary human disaster that lasted too long, must be born a society of which all humanity will be proud," as the President said, expressing "that spiritual and physical oneness we all share with this common homeland." And thus, we celebrated the "common victory for justice, for peace, for human dignity", at the Union Building while we listened to these words. By a twist of fate, I stumbled on the inauguration hall, exploring the grounds out of boredom, waiting for our turn to sing. Together with my Dutch friend and American friend (coincidentally called Nelson), we managed to squeeze into the inauguration illegally, vindicating the earlier 'unfairness'.

My Woolsack friends often took me to the townships, mostly to buy booze for our parties. As it was the time that Amy Biehl, a white Australian student, had just been stoned to death in the township, I was somewhat apprehensive at first. I had been firmly warned by friends, family and the university, not to venture there. My friends laughed at the idea and assured me that as long as I came along as their friend and not as a political activist, I would be fine. After all it was their home and I should be welcome there. I remember my first visit, squeezed in the middle of the back seat of the old car that the PhD student from Malawi owned, and the five minutes that I stepped outside to see the liquor store, very well.

It was during one of these visits in later years that I stumbled on the word Ubuntu. I had asked a question as to why someone had acted in a certain way. 'That's Ubuntu', had been the brief answer. 'Ubuntu. What is that?' I had asked. Everyone had looked up in surprise and, though I did not know anyone there, except my one friend who had taken me along to a store in Guguletu, they formed a circle around me. Before I knew what was happening, they patiently started one by one explaining the word Ubuntu to

me. I cannot now recall the answers, but it left a lasting impression on me. Not so much for the beautiful words that were spoken, but because I felt it came not only from the heart but from the soul. Obviously, this thing called Ubuntu was not trivial, but essential in most of the African life that I had taken part in so far. All of a sudden, it had a name. And I liked the sound of it.

In subsequent years while I would visit, I watched my friends going through the Truth and Reconciliation Commission process, clustered around the television. I could not listen to the horror stories and asked them why they would want to listen to such atrocities. They assured me it was important, as 'it is our collective experience.' Little did I know that this too was Ubuntu. In the meantime, my then boyfriend filled my mind with his bible called 'black consciousness' of his hero Steve Biko. In his mind Mandela had sold out, leaving little economic liberation. He did not go to vote.

I stored the experience in the back of my mind, as life took me elsewhere, to other continents, at first against my own will and firm plan of settling in South Africa. Until such a moment that it suddenly popped out, in a meeting with the Dutch Advisory Council for International Affairs 25 years later, in 2010. If we were going to redraw the Millennium Development Goals in a participatory fashion, I pleaded, then why not involve the African thought of Ubuntu in it? It was an outlandish idea that did not make it into the report that I drafted on behalf of the Council. First of all, I needed to explain what Ubuntu was. When someone remarked this would be tantamount to cultural relativism of human rights, I thought 'wait a minute', wasn't Ubuntu about collective human dignity? The chairperson concluded it was best that I carry out my own research on the relevance of Ubuntu for international policy making. I took up the challenge. The result is bundled in this book.

After Madiba, the reconciler, and his esteemed guests left the Union Building grounds, I took the entire choir up to the empty inauguration hall. We stood behind his lectern, and sat on his chair and that of his daughter. When I look at the picture of myself in that chair, I know now that I have a legacy to fulfill and a message to carry on.

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LIST OF ABBREVIATIONS

AU African Union
AZAPO Azanian People's Organisation
BASIC/BRICS Brazil, South Africa, India, and China
CC Constitutional Court
CTF Continental Free Trade Area
DIRCO Department of International Relations and Cooperation
EU European Union
FDI Foreign Direct Investment
GPG Global Public Goods
G77 Group of 1977
ICC International Criminal Court
ICT International Communication Technologies
SA South Africa
LDC Least Developed Country
OWG Open Working Group (United Nations)
PSC Public Service Commission
PM Prime Minister
MDGs Millenium Development Goals
NDP National Development Plan
NEPAD the New Partnership for Africa's Development
NHI National Health Insurance
SRHR Sexual Reproductive Health Rights
SADC Southern African Development Community
SCA Supreme Court of Appeal
SIDP Service delivery improvement plan
SDGs Sustainable Development Goals
UHC Universal health Coverage
UN United Nations
UNECA United Nations Economic Commission for Africa
UNDP United Nations Development Programme

CHAPTER 1

INTRODUCTION

1.1 Purpose and content of the book

This book is part of a larger series that addresses the question of how 'Other' (i.e., non-Western) Worldviews look at 'development'. The word development is on purpose between brackets, as it is not a universal concept and understood differently in different cultures. The word non-western is equally contentious as it takes the West as a reference point and therefore, I shall interchangeably use 'from the Global South'. The series emerged from the PhD research *Development as Service, A Happiness, Ubuntu and Buen Vivir interdisciplinary view of the Sustainable Development Goals* (Van Norren 2017). This book addresses the question of how the African worldview of Ubuntu de- and reconstructs legal and development policy and what contribution it can make to the implementation of the Sustainable Development Goals (SDGs) and particularly discussions pertaining to how to move ahead post-2030. The concept and especially the merits versus criticism will be looked at through the lens of postcolonial theory.

South Africa was chosen as a case study because of the (worldwide) prominence that Ubuntu gained in overcoming the apartheid legacy (via the Truth and Reconciliation Commission). Moreover, South Africa is significant not only as a power player in (southern) Africa, but also as an upcoming power in the BASIC/BRICS coalition and thus as a voice in future development discussions. Finally, the author's familiarity with this country was crucial. Furthermore, it has articulated its concept in its draft constitution and jurisprudence, as well as in various national policies and in its diplomacy. South Africa was not part of the Open Working Group (OWG) negotiating the SDGs but nevertheless took active stances on several topics and had influence through other Southern African Development Community (SADC) members that were part of the OWG.

Chapter 1 introduces the book. Chapter 2 explores the concept of Ubuntu in its philosophical, environmental and socio-economic dimensions as well as how it is still 'living' today and what resonance it has in the African

continent. Chapter 3 introduces the merits of Ubuntu. Chapter 4 looks at the criticisms leveled against it, such as the claim that it romanticizes the past. Chapter 5 explores the application of Ubuntu in legislation such as the (draft) constitution of South Africa. Chapter 6 introduces the jurisprudence that ensued as a consequence of this legislation. Chapter 7 treats the policies based on Ubuntu such as Batho Pele, People First. Chapter 8 analyzes how Ubuntu is applied in foreign policy, the so-called 'Ubuntu diplomacy'. Chapter 9 analyzes the negotiations leading to the Sustainable Development Goals (SDGs) and specifically the African position in it, as well as how well Ubuntu is reflected in the SDGs, in terms of process and outcome. Chapter 10 concludes on Ubuntu's possible contribution to development theory and its deconstruction as well as policy implications. Chapter 11 gives information on other books in this series, which originally formed part of the same PhD.

1.2 Worldviews and Development Goals

Including culture in development goals or in human rights is contentious. The mainstream idea is that development is inherently 'good' and needs to be promoted (hence development cooperation or 'aid' programs). The concepts of development and human rights are supposed to be universal. Highlighting cultural nuances is supposed to lead to 'cultural relativism' and thus undermining of human rights and development (Chapter 4; Van Norren 2020a). At best culture, from the dominant Western perspective, is seen as something separate (heritage), that does not need to be promoted in development schemes and was thus largely excluded from the SDGs (Chapter 9; Van Norren 2022a). Critics of this approach point at the need to decolonize knowledge, and correlate dominance of the West with under-representation of the South.

It is paramount to transcend this dichotomy of universalism versus cultural relativity. Sousa Santos (2008) therefore proposes to transcend universalism through 'cross-cultural dialogues.' A dialogue between cosmovisions such as Ubuntu in Africa and dominant (economic) views on development and dominant (legalistic, positivist) views on justice, can shed light on claims of universality of the SDGs and the sustainability discourse (Van Norren 2020a). It makes the underlying values apparent. Moreover, a dialogue between cosmovisions of the Global South such as of Ubuntu with Buddhist Happiness in Asia, and Buen Vivir in indigenous America, can reinforce that discussion and give it more legitimacy. This also reveals the different views on concepts of wellbeing, nature and human relations and their interrelationship. Obviously, there are more views that can be explored in

relationship to the SDGs in future, such as Green Islam and indigenous Oceania (Australia, New Zealand, Polynesia).

The idea of 'science' as we understand it today was first conceived in the West, so applying a Western academic lens to 'non-Western' worldviews is problematic. Similarly, the concept of the 'non-West' negates the reality of the 'Rest' of the world, as it still takes the West as a reference point. Therefore the (positive) term Global South may be more appropriate. Applying a Western academic lens in this case still traps the worldviews in a logical positivist perspective (Van Norren 2021). It presupposes that one is able to place oneself outside reality and not partake in it. Therefore, a ***critical realist approach*** is taken to present described worldviews as neutrally as possible and offset them against conventional theoretical approaches without framing them in any particular theory. This approach also serves to reveal implicit power relations in knowledge. This de- and reconstruction is derived from Third World Approaches to International Law (TWAIL) and post-colonial economics (opposing modernist economics) (Van Norren 2022a).

1.3 Postcolonialism

Postcolonial arguments regarding Africa can take two forms. Firstly, a total rejection of the 'aid industry' declaring it 'dead' and inefficient (Dambisa Moyo, 2010), which is embraced by the political right. Secondly, the argument of the political left, claiming the un-masking of 'development' as a justification to erase the colonial heritage and continue neo-colonial exploitation (Odera Oruka) (Haenen 2012, 222), calling for an African approach to 'modernization' (Nkrumah, Nyerere) (Haenen 2012, 222 and 115-129). Both, however, resist Africa's dependency on the West and the corollary negative perception of 'underdeveloped' African countries. It is argued that this emancipation has to come from within. Ubuntu may offer this perspective, provided the international arena offers the space for true emancipatory debate and action (Haenen 2012, 121).

Modern development theories are based on the idea of modernism. Underlying modernism are certain beliefs such as: sovereignty of humans over their environment, individual sovereignty, freedom, self-interest, belief in the market as leading to collective welfare (à la Adam Smith), emphasis on private property, rewards based on merit, materialism, the quantification of value and the instrumentalization of labor (for the market and production process). Furthermore, modernism is embedded in European traditions of truth established by reason (Descartes), empirical knowledge (Hume) and

non-belief in magic, leading to positivist worldviews whereby the source of knowledge is based in logic or sensory experience, rejecting metaphysical origins. 'Backward' non-Western societies were, or still are, deemed to be stuck in metaphysical worldviews and religious authority (Weber; Durkheim). All of these have been deconstructed by several ***post-modernist schools***. Liberal postmodernism cherishes multiculturalism and posits that how we come to knowledge is culturally constructed. Postmodern relativists add that the West should abstain from passing judgment on other cultures. Critical postmodernism assumes that the West dominates and exploits 'the Rest' and pleads for including the feminine (care ethics) (feminist postmodernism) and recognizing economic structures as culturally constructed (postmodern Marxism) as well as the power of colonizers ('developed') versus decolonized ('developing') leading, *inter alia*, to a financial flow from the Global South to the Global North (dependency theory). Postcolonialism focuses on the marginalization of the discourse of 'Other' cultures and presents new narratives on how to be ethical by deconstructing old theory and reconstructing new paradigms. Sub strands are postcolonial law and economics.

Postcolonial economics questions the 'hard science' character that economics has acquired by means of mathematics, presenting itself with universal outcomes, which are beyond question, thus erasing hard science's uncertainty principles, veiling the cultural hegemony of economic science and reducing other cultures as implicitly inferior.

Sen defines development in terms of people's capabilities to overcome their 'unfreedoms'. The economics of well-being therefore means the freedom to foster a valuable state of 'beings and doings' ('functionings'). Sen identifies five basic freedoms:

1. Political and participatory freedoms and civil rights: freedom of expression, free elections, etc.;
2. Economic facilities: participation in trade and production, a fair labor market;
3. Social opportunities: adequate education and healthcare provision;
4. Transparency guarantees: openness of government and economic life; and
5. Protective security: law and order, social security (Sumner, Tiwari, and Tiwari 2009, 46).

'Individuals can differ greatly in their abilities to convert the same resources into valuable functionings. *Therefore, evaluation that focuses only on*