

STUDIES IN GLOBAL JUSTICE AND HUMAN RIGHTS



HUMAN RIGHTS FROM COMMUNITY

A Rights-Based Approach to Development

Oche Onazi

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To my parents,
Mikiya and Ochapa Onazi

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PREFACE

Human rights have now become a means to and end of development. Human rights have not only become relevant to different dimensions of development, but also to the work of the dominant global development institutions; whose policies and programmes continue to shape how national governments attempt to alleviate the myriad challenges of poverty, inequality, disease, war and now the predicament of climate change and other old and nascent forms of human suffering.

A problem at the heart of what is often called rights-based approaches to development is their misunderstanding of the structural crises that have engulfed the African state, which continue to raise questions about whether some adaptation is required to traditional thinking to enable, among other things, new ways of thinking about how human rights should be achieved. This is generally a problem symptomatic of traditional human rights approaches. Not only are traditional human rights approaches rigid, they are also oblivious of historical and contemporary problems, realities and situations.

Although this particular limitation of traditional state-based human rights system has been recognised, the response has been, with negative consequences, to look to the market. The problem is that the nascent market-based approach to human rights gives rise to similar, if not worse, problems that affect the state-based approach, especially its failure to extricate itself from questions of the lack of participation and exclusion of the poor. The state and the market, as such, are no different; they are distant from the lived experiences of the poor. And this gap between human rights discourse and lived experience reflects not only the dominance, but also the inadequacies of state and market-based understandings alike. At present, human rights offer only a binary choice of the state or market, in the sense that the only remedy

for state failure is the market, while the state is the only remedy for market exclusion.

This book is about a new alternative, a possibility that lies in the concept of community, a unit of organisation fundamental to the ways in which contemporary Africans have been cultured to cope with the despair of their daily lives outside any meaningful impact from state and market institutions. The concept of community is presented as an ideal and a form of practice, an ideal and practice that is best, but not only, illustrated by the creative forms of solidarity, co-operation, collaboration, relationships and exchanges between residents of local, small and geographical demarcated communities. This book responds to the failure of the human rights literature to focus on the potential organising and governing capacities and structures that lie within these types of communities, including the ways in which the solidarities and relationships built therein can be channelled to augment or, where possible, replace traditional human rights approaches. This is the objective of this book; it underscores the importance of community by arguing that it can make a more meaningful impact on the human rights and lives of the poor, if what is arguably the most basic, significant and affable form of everyday life is taken seriously.

Central to this objective of the book is the need to transcend the distractive, but yet common-held opposition that concepts of human rights and community often invite. The book responds to this through insights from African moral philosophy, among other resources, to show that the emphasis it places on human independence can yield to a concept of human rights, not opposed to, but rather, established from community, a type of community that is itself constituted by expressions of love and empathy. This is simply what the title of this book, *Human Rights from Community*, implies. It is an approach to human rights based on the mutual recognition of the humanity of each person, something that is contingent on the value of interdependence and our capacity to love and empathise with each other. Human rights, from this standpoint, are not simply abstract individual claims or protections against other individuals and the state. Human rights are posited in relational terms; that is, as ingredients necessary to encourage belonging, societal harmony and peaceful co-existence. The strength of this particular understanding of human rights is that it can, at least, counter their inherent limitation as a conceptual medium to orient individuals and institutions to develop the kind of moral vision

and aptitude necessary to ameliorate the visible and invisible cries of human suffering.

A common theme that runs throughout this book is, without denying the differences between African and western values, the importance of understanding how African philosophical or moral convictions about community, human interdependence and relatedness can extend approaches and contribute to resolving problems that have dominated traditional human rights scholarship. While there are certain exceptions, not much work has been done to ground human rights from African philosophical traditions, backgrounds, interests, histories and contemporary realities. Human rights and African moral philosophy have often been discussed in opposition and not, as this book seeks to achieve, in mutually reinforcing or supportive terms.

Like human rights, the book acknowledges that community has its own fair share of limitations, which makes it a concept that can also be loathed. Because of this, the book can also be seen as the critical acceptance of community, just as it is of human rights. Nevertheless, the book argues that no matter how critical one is of the concept of community; it must be understood that the world, not just the African world, we live in today is one constituted of different communal relationships. The message, then, is that we must accept community, even though we recognise that it has limitations. We should see those limitations as insights into how to transcend, create or construct more inclusive ways of imagining and experiencing the concept of community.

This book originated and has been developed from my doctoral research thesis at the School of Law, University of Edinburgh, submitted in March 2010. The ideas and arguments throughout this book have also been influenced by my personal experiences as a Nigerian, experiences of living and witnessing, first-hand, the impact of community on different aspects of people's daily lives. Although I am mindful of the consequences of generalising what is really a personal and Nigerian experience, I do hope that given the similar problems and experiences across the length and breadth of Africa, the central ideas of this book can be modified to be relevant to such contexts and societies.

It would not have been possible to write this book without the help of several people, many of whom transcend the boundaries between personal and professional life. I want to start by thanking a number of people at the University of Edinburgh, where I spent three memorable

years researching and trying to piece together the central message of this book. I am immensely grateful to my principal PhD supervisor while I was at Edinburgh, Zenon Bankowski. I thank him for his guidance, encouragement, friendship, entertainment and laughter. His scholarship has been, and will continue to be, a source of inspiration to me. I am equally indebted to my secondary PhD supervisor, Neil Walker. I wish to thank him for his very intelligent, kind, constructive comments and encouragement. They challenged me to critically reflect on my work in ways that would not have been possible without them. I would also like to express my gratitude to my PhD examiners, Andrew Williams and Cormac Mac Amhlaigh of the Universities of Warwick and Edinburgh, respectively. I thank them for their critical, thorough, yet constructive comments on elements of central ideas of my doctoral thesis that have now been developed into this book.

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This book is dedicated to my parents Ochapa and Mikiya, and to my siblings Ori, Adadu, Agbenu and Eru; I would not have completed it without their sacrifices, encouragement, love and affection. A final dedication goes to Lisu Sarki; I am eternally grateful for the grace of her ineffable love, affection and friendship.



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Whenever a man cries inwardly: 'Why am I being hurt?' harm is being done to him. He is often mistaken when he tries to define the harm, and why and by whom it is being inflicted on him. But the cry itself is infallible.

The other cry, which we hear so often: Why has some-body else got more than I have?, refers to rights. We must learn to distinguish between the two cries and to do all that is possible, as gently as possible, to hush the second one, with the help of a code of justice, regular tribunals, and the police. Minds capable of solving problems of this kind can be formed in a law school.

But the cry 'Why am I being hurt?' raises quite different problems, for which the spirit of truth, justice, and love is indispensable.

(Simone Weil, *Human Personality*, 1942)

INTRODUCTION

Poverty means death: lack of food and housing, the inability to attend properly to health and education needs, the exploitation of workers, permanent unemployment, the lack of respect for one's human dignity, and the unjust limitations placed on personal freedoms in areas of self expression, politics and religion. Poverty is a situation that destroys individuals.¹

Two significant aspects of life in Nigeria have inspired this book. The first is the relationship between the lack of access to water, healthcare, education and electricity and the abject level of poverty in the country. Life for millions of Nigerians is characterised by daily experiences of suffering due to their inability to access, by any acceptable standards, some of the most basic requirements for sustenance. Indeed, language, particularly the dominant language of economics, tends to fail in providing the kind of analytical, descriptive and normative tools capable of assisting people to appreciate or articulate the intrinsic nature of the objects above, including the suffering entailed in being unable to access them.

To its credit, the economic concept of public goods, as the objects above have dominantly come to be known, draws attention to the collective nature of their consumption and production, something that has made them unsuitable for market provisioning. As important as this attribute may be, their public-ness, in terms of collective enjoyment or supply, does not sufficiently explain why they should be valued, so much so that they should benefit from special legal protection. A proper grasp of the significance of water, healthcare, education and electricity can be achieved, not by understanding them as public goods, but rather, in more ethical terms, as the most basic ingredients

necessary to live a life with dignity and respect. I believe that the reason why such importance is attached to them is because of the explicable link they have to human dignity, and also, that they are a crucial way of understanding what people require daily for their sustenance. Through this sort of thick ethical description, it becomes possible to begin to grasp, imagine, appreciate or articulate not only the substance of what is lacking daily in places like Nigeria, but also how this absence continues to condemn many to a form of death as suggested by the words of liberation theologian Gustavo Gutierrez in the epigraph. To live in poverty, in the terms similar to the Nigerian context, is equivalent to a form of death.

While there are certainly local ethical understandings and values that can be attached to these objects, it is equally because of a similar sense of significance that – arguably except for electricity – water, education and healthcare are understood as species of human rights. It is primarily as a result of this that they are recognised and protected by the Universal Declaration of Human Rights (UDHR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which ought to apply everywhere, to everyone by virtue of their status and dignity as human beings. States have been obliged by these documents to take the necessary steps, through legal and constitutional means, to enable acceptable levels of access to them by all individuals within their respective territories. It is the failure of the Nigerian state, among other African states, to fulfil this basic requirement that lies behind the suffering.

More recently, states have looked to and celebrated the market as the alternative, but the market has also failed to ameliorate such problems. At one level, the state has neglected, failed or is too weak to perform its primary functions. At another level, the market (the alternative to the state) is either very exclusive or only inclusive to those who can afford to participate, as many individuals are too poor to buy their way into these alternatives. What is witnessed daily, in most Nigerian, African and third world villages and cities, are people whose lives continue to exist without any meaningful impact of the state and market. The tragedy that has befallen the poor, to my mind, raises at least three important related questions. By any stretch of the imagination, how do the poor survive daily without any significant impact of the state or market institutions on their lives? Except for electricity, are the objects or public goods that the poor have often had to provide for themselves

not species of human rights? The question that stems from this is: can the ways and means in which the poor have become accustomed to surviving be effectively deployed and harnessed to augment or replace traditional human rights approaches?

A response to the questions above very much depends on understanding the significance of a particular concept, one that is not only indicative of the second fundamental experience of life in Nigeria, but also an experience that inspires the central contribution of this book. What has been, and continues to be, the only source of hope, relief, support and comfort for the poor is a deep sense and spirit of community, something that remains conspicuous in townships and villages across much of Nigeria. From the mosque to the church to family, tribal, ethnic, work-based, neighbourhood groups and non-governmental organisations (NGOs), community, according to the different ways that it can be understood, has emerged to make up for the inadequacies of the state and market.² It is this significance of community in contemporary Nigerian and African contexts that is at the heart of this book.³ As will become clear below and in Chapter 6 of the book, locality, small geographical demarcated communities, is distinguished from other types of community, to demonstrate why human rights theory and practice should be concerned about it.

Locality is not the most important way of understanding the importance of community; there are certainly other important national, political, global, interest-based, traditional, cultural, ethnic, religious, occupational and virtual connotations of the concept. Locality, however, retains special importance in this book for two related reasons. First, the importance attached to locality is based on the congeniality of dwelling to both individual and communal flourishing; furthermore, there is the contingent nature of dwelling on the production and definition of values, experiences and relationships. There is a sense of vitality in thinking of community in such terms, as it captures the complex set of relationships among those who dwell in different places, including the meanings they ascribe to their common existence, and how this is built into the fabric of the environment.

The advantage of the point above leads to the second one. As a framework or social laboratory that facilitates, nurtures, defines and sustains different values, relationships, exchanges and experiences, this particular idea of community can provide a basis to understand how those often excluded from the conventional processes of authoring

human rights, engage and ascribe a new meaning or a variety of meanings to them. A well-known characteristic of human rights discourse is the paucity of analysis of the voice and agency of human rights subjects, particularly how their everyday practices, interactions and forms of living shape and are shaped by human rights.⁴ As is argued in this book, community is the most appropriate context in which to embark on this task; in particular, to grasp how struggles and daily experiences of the poor can give new meanings to human rights, including how it can lead to new ways in which human rights can be achieved. Community provides the space, not only to learn from the creativity and resourcefulness of the poor, but also to pause and consider more carefully the sort of alternatives that can augment or replace traditional human rights approaches. To elaborate further on this point, and to justify the approach favoured within this book, a brief outline of the dominant approaches is indeed necessary.

I.1 DOMINANT APPROACHES

Two approaches have dominated and can be deduced from human rights discourse: that is, the approach through the state, and more recently, the approach through the market. The first is the more traditional human rights approach. It is built on the existing state structures of the international order, and founded on the UDHR, and the accompanying international covenants – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is a discourse built on these documents, which has meant that matters of implementing human rights are primarily a question of state action. In this context, individuals are seen as primary rights-holders, while the state is the main duty-bearer. Individual rights can only be claimed against the state, and law is the first vehicle for enforcing human rights.

Economic and social rights are designated to deal with the problems of poverty⁵ in the Nigerian context mentioned above, and they are simply dealt with as a question of justiciability.⁶ By justiciability, I mean the attempt to clarify the specific content of the economic and social rights, and firmly to establish them as enforceable rights in courts of law. Questions about whether or not economic and social rights should be legally enforceable rights or whether or not the state should be involved in implementing these rights are dealt with and remain

unsettled within the terms of the debate.⁷ The possibility, successes and failures of enforcing economic and social rights in the constitutional courts of Brazil, India and South Africa are often highlighted as a basis upon which to celebrate or criticise the supervisory authority or powers of the judiciary.⁸ Looking at things from the perspective of those who celebrate the judiciary, the countries listed above are regarded as models for others (where economic and social rights are not justiciable) to follow. Justiciability, despite acknowledged problems associated with it, is regarded as the most appropriate means of ensuring that the poor have access to acceptable standards of economic and social rights. Without in any way limiting the significance of justiciability of economic and social rights discourse, I briefly note three limitations of the approach, which are taken as a basis for a point of departure.

The first is that the justiciability debates do not engage or adequately address the question of state failure, notably how this impedes the state from effectively fulfilling its obligations to provide economic and social rights. The current state model (particularly in Africa and other parts of the third world) is engulfed by historical and contemporary structural crises, and is unable to meaningfully address different problems of human rights more generally. By structural crises, I merely mean the crises of the state or the inability of institutions of the state to provide and guarantee human rights, or simply to perform other basic functions, such as the provisioning of security. This argument about the crises of state is by no means universal across Africa, as the problems vary between countries. Distinctions can be drawn between states that have outright failed, the weak ones, the collapsed ones or those like Nigeria that are somewhere in the middle, defying neat categorisation. The point of highlighting this problem is not to deny the historical and existing benefits of the traditional state-centred human rights framework, rather it is to show that the limitation of the state is such that it raises questions about whether it requires adaptation to enable, as it were, new ways of thinking about how certain human rights should be provided.

The second difficulty with justiciability discourse is that it does not sufficiently address the problems of the state system owing to the emergence of economic globalisation, especially the problems and, paradoxically, new opportunities for participation that have accompanied it. The consequence of globalisation, with the pace of social, economic and technological transformation, has challenged conventional ways of

approaching and responding to different problems. Surprisingly, traditional human rights discourse, for all its claims and potential to address deep-rooted injustice, has failed to adapt to the changing settings with new tools. Human rights continue to operate as a state-centred discourse, as if the state exists without deficiencies. Comparisons can be drawn between the human rights literature on the one hand and development discourse and political economy on the other; the latter have embraced these changes, particularly the movement beyond and below the state and market in the pursuit of social transformation. Despite the increasing overlap between fields of human rights and development, the former seems unaffected in this context by changes to the approach of the latter.

Third, justiciability discourse does not consider other forums for participation apart from courts for the purpose of securing economic and social rights. This is perhaps more a general characteristic of human rights law (and human rights lawyers) than a specific feature of economic and social rights. While human rights law generally offers an array of rights to take part in different aspects of society, it is not clear if it encourages participation in securing specific rights claims. It leaves one to conclude, without difficulty, that although participation is an inherent part of human rights law discourse, there appears to be no participation, except through courts, for particular human rights claims. This point is underscored when looked at in quantitative terms; that is, in terms of the handful of countries that have constitutional or legislative requirements for access to economic and social rights. The judicial route, as such, is not a reality for many, especially for the poor, across the world.

To be clear, the objective, however, is not to dismiss the importance of justiciability. From the point of view of the poor, the aspiration for justiciable economic and social rights is more important today than it ever was before. But the point that I wish to highlight is that justiciability discourse does indeed stall or obscure much needed work on alternative ways in which economic and social rights can be provided. If there is one important point that stands out from the literature spawned in favour of or against economic and social rights, it is the complex nature of issues regarding the distribution of these rights, apart from the unsettling questions about the appropriateness of courts as the forum to resolve such complex issues. It seems inconceivable to think that decisions about the nature of healthcare schemes, access to medicines

or types of education should be taken without, at least, subjecting them to some kind of democratic process involving those directly affected.

The second dominant approach is an emerging one; that is, the inclination towards markets. This approach is largely influenced by the Bretton Wood institutions (BWIs) as a result of the increasing overlap between the fields of human rights and development. Although the BWIs fall outside the remit of the traditional human rights compliance system, they give programmatic content to the ICESCR through their policies, programmes and practices. The BWIs have influenced or shaped how economic and social rights are provided for the simple reason that there is hardly any African country that has not been on one of their lending programmes.

The policies that have had the most direct effect on economic and social rights fall under the auspices of the World Bank's Comprehensive Development Strategy (CDF), the Poverty Reduction Strategy Papers (PRSPs), the World Development Report (WDR) *Making Services Work for the Poor*,⁹ and particularly, the policies and programmes related to good governance. Problems of economic and social rights, or public goods (as the World Bank prefers to call them), are diagnosed as a government problem, the solutions of which are in turn linked to the initiatives for good governance. This view can be extrapolated from a reading of the WDR, the World Bank's most comprehensive advisory statement on public goods.¹⁰ The significance of this report (apart from referring to certain public goods as economic and social rights) is that it makes the claim that they fail to reach the poor because states, among other things, lack competent institutions and mechanisms of governance. In short, the World Bank suggests that the lack of public goods is a governance problem. Ironically, the main responsibility for resolving this problem, as proposed by the World Bank, lies with the failed governments themselves.¹¹

More specifically, the report suggests that the inability to access public goods is caused by regressive budgets, corruption and the failure of governments to act responsively. Key recommendations to resolve these problems include a range of approaches to increase transparency, competition, citizen involvement in monitoring, and private market participation. The recommendations also include the introduction of suitable user fees, decentralising onto local governments and indeed community participation. The latter is indicated when the WDR notes that public goods and services can be expanded to reach the poor by

'putting poor people at the centre of service provision: by enabling them to monitor and discipline service providers, by amplifying their voice in policymaking, and by strengthening the incentives for providers to serve the poor'.¹² As such, participation is recognised as a key strategy for public goods. This is really no surprise since the WDR itself emerges under the auspices of the CDF and the World Bank's PRSPs, where the combination of country-ownership and citizenship participation are considered essential for the reduction of poverty. In spite of this, as demonstrated in this book and specifically elaborated with the case study of electricity in Nigeria, the reform proposals still continue to be dominated by the so-called advantages of privatisation and other neoliberal market-based development strategies, to the exclusion of forms of participation that authentically give ownership of the related processes to the affected communities.

I.2 POINT OF DEPARTURE

Taking the significance of community in contemporary African societies, this book presents a theory that seeks to inspire the poor and vulnerable to organise themselves democratically to participate and claim ownership of the processes that determine particular human rights. The theory is hinged on revitalising the concept of community, among other things, making it an inclusive decision-making unit of organisation. As mentioned above, community is defined as a given locality, particularly a residential neighbourhood composed of people joined together by accident of proximity. Thinking in such terms allows us to understand community as the epicentre of a variety of social relationships, practices and exchanges that exist in a given place. This, in turn, allows us to understand community as an assemblage of diverse components that exist within the same place. Community, then, is not static or homogenous but multi-dimensional; it is a sort of fulcrum for different important encounters, relationships and experiences, the existence of which can be used to understand the meaning and significance of the physical environment itself.

But community, even in this specific context, comprises different meanings. A proper understanding of identity, history, family life and social relationships cannot be achieved without effectively being attentive to this specific connotation of community. The most fundamental aspects of human experience, such as the awareness of self, space,

time, agency or objectivity, cannot properly be appreciated outside the awareness of place,¹³ especially if this place (as it is suggested here) is community. It is impossible to grasp the significance of community without considering how it affects or is affected by those who dwell in it. This includes how they affect each other or members of other communities, and the kinds of conflicts that accrue from the processes of relating with others, including how those conflicts may be minimised or settled. The value and significance of community to individual and collective flourishing is related to the appropriate grasp of these issues.

This definition of community above is conspicuously sociological, mainly because it takes locality, among other things, as its main defining feature.¹⁴ Apart from local residential neighbourhoods, villages and townships have also been subject to sociological analysis, for the simple reason, as Philip Selznick's seminal work helpfully elaborates, that 'common residence is a congenial condition – perhaps the most congenial condition – for forming and sustaining communal life'.¹⁵ What is significant about this definition is that it does not exclude the possibility of depicting or forming community in different ways. Similarly, it does not exclude individuals within a given community from belonging to others. This is, however, contingent on understanding the meaning of the general idea of community itself, not a particular instantiation of it, as a 'variable aspect of group experience'.¹⁶

What this definition brings to light is the fact that no particular community, even the ones we live in, determine all of our social relationships.¹⁷ It helps us appreciate that our social relationships are products of different communal relationships. Once the idea of community is presented this way, then it potentially can accommodate a variety of interests, including how the concept can be created in different ways. It helps us understand that a variety of individuals who belong to different communities can also be united by a single framework of shared beliefs, interests and commitments. The experience of community, therefore, becomes the experience of the different opportunities and different ways for participation in relation to different needs and interests. If, or when, the opportunity for participation ceases to exist, it is difficult to conceive or say that the experience of community exists. Community, as such, is as much about the sense of belonging as it is about the sense of attachment to territory.

It must be appreciated that while recognising that the concept of community is generally desirable on the normative level of human

rights discourse, its actual definition in every context must be open to local interpretation. This also has implications for the proposed theory of community, and not just how community is defined. It implies that the theory is not proposed as a 'one-size fits all' approach; rather it should be considered as one among a range of alternatives, one adaptable to local circumstance, especially if the situations permit it as such. Indeed, if there is anything universal about the idea or theory of community proposed in this book, it is the importance of locality. It is about the importance of the immediate surroundings to how it forms a source of meaning, identity and belonging. It is about the importance of encouraging people to work together to find solutions to their problems where they reside. Whilst communities will vary in context, these attributes, it is argued, are universal to all communities.

I.3 HUMAN RIGHTS, ELECTRICITY AND NIGERIA

This book is about two mutually reinforcing tasks, with the success of one very much tied to that of the other. Both tasks are difficult. The first, arguably the more difficult one, has to do with human rights and community, the relationship of which is the basis upon which the theory of community proposed in this book is built. Presenting human rights as the basis upon which individuals mutually identify and empathise with each other (and not traditionally as individual claims) is specific to how to transcend the contentious relationship that human rights and community have often invited. The second task addresses questions of the application of the first one. It considers the practical implications of establishing human rights from community (and furthermore, the proposed theory of community) on enabling access to electricity, debatably a human right.

Access to electricity in Nigeria is used as an empirical illustration of the limitations of the state and market in Africa, limitations that have in turn made it suitable for the community approach. Nigeria is not only fascinating for a case study because of state failure or market exclusion, but also because of the scale and extensiveness of communal activity, especially its significance to the lives of the poor and vulnerable.

The heuristic value of Nigeria is primarily to give an example of the serious nature of the problems, which have made it ripe for the community approach among other solutions. The dire nature of state and

market exclusion accounts for the despair, abject poverty and suffering of nearly 70 per cent of Nigeria's population, who in turn are left with no alternative but the collective and self-provisioning of the daily needs. There is no better example of a country in Africa that thrives on non-state or market community organisational forms than Nigeria. It provides a context to ask general questions and draw conclusions, however utopian they may be, about whether it is more rational to think about the future of Africa as one free from the significance of western-modelled state or market institutions. Although the book is primarily concerned about human rights, the issues and themes it raises have broader implications for other pressing problems within different African political communities.

Nigeria is also interesting to study because it provides an optimal example of a country where economic and social rights are non-justiciable. As such, Nigeria (unlike South Africa, India, Brazil and the host of countries where economic and social rights are justiciable) provides a more appropriate context to explore alternatives to traditional state-centred human rights approaches.

Although the bulk of the evidence is drawn from Nigeria, the analysis is merely aimed at supporting and drawing wider implications and conclusions in relation to the general thesis of this book. Because of this, it might be more appropriate to consider the study of Nigeria itself as a heuristic device, one that serves as a means to understand the broader implications and feasibility of the concept of community. The heuristic potential of Nigeria is that it allows us to question and draw general conclusions about the concept of community itself in relation to different contemporary problems. Given that Nigeria is constituted with the largest concentration of diverse and multi-ethnic group configurations, the concept of community raises as many problems as it provides solutions. Conflict, competition and rivalry (particularly among ethnic communities) can be and has been fierce. The heuristic importance of Nigeria, then, is that it provides the basis upon which broader questions can be asked about what the concept of community is or should be, why it is or should be significant to human rights, the problems it raises and if or how those problems can be moderated.

If it is now apparent why Nigeria should be the object of a case study, a similar justification is required for the choice of electricity for investigation, in the sense that its status as a human right is questionable. The justification is not that electricity has more importance to the poor, so

much so that it ranks ahead of access to water, healthcare or education on any scale of priority. Rather, the reason electricity is singled out for a case study is to accentuate its equivalence to water, healthcare and education as an important factor of poverty. What is also emphasised is the instrumental nature of electricity to water, healthcare and education. The success of any comprehensive strategy that seeks to increase the level of access to water, healthcare and education depends on access to electricity.

Life without electricity is a constant struggle to cook food, power household appliances, and support healthy temperature, whether by air conditioning or heating. Electricity is fundamental to power pumps, and desalination treatment for access to clean water. Electricity is essential for healthcare, especially for refrigerating vaccines or for life-support systems, shock therapy or intensive care units. Electricity is important not only for recreational activities, but also for educational aids, such as computers. Electricity, as economists would like to look at it, is important to generating people's incomes. If history teaches us anything, it is that from Vladimir Lenin's electrification scheme in the old Soviet Union to the Tennessee Valley Authority Rural Electrification project in the United States, electricity has been an influential factor in helping millions to escape the clutches of poverty. It explains why Lenin considered electricity as a form of enlightenment, a means through which the poor can be educated to eradicate poverty.¹⁸ He considered every power station as a centre of enlightenment, and one does not have to be a follower of Lenin to understand the significance of this argument.

In spite of this thick ethical description that can be ascribed to electricity, very little acknowledgment of its importance, whether as a human right or as a result of its impact on other human rights, is recognised in the related literature. This is another important reason why electricity deserves to be studied. Unlike education, healthcare or water, electricity rarely features in the justiciability debates of economic and social rights. This seems ironic given that the lack of access to electricity has far-reaching consequences on the enjoyment of other human rights. As noted above, the ability to drink clean water or to access good education or healthcare is, in one way or the other, dependent on electricity. In spite of those obvious connections that can be made between human rights and electricity, the latter is the subject of focus and intervention of engineers and, to some extent, development economists,

but fails to attract a similar response from international human rights lawyers, philosophers, theorists, advocates and activists. In much broader terms, the relationship between electricity to poverty is beginning to be addressed.¹⁹ Although electricity has started attracting the appropriate response, this has not been to a great degree. This might be a consequence of the more recognised relationship between electricity and industrialisation to the effect that its social and ethical dimensions have not been properly established.²⁰

One noticeable exception, and leading advocate of electricity as a human right, is Stephen Tully.²¹ Tully convincingly argues that electricity exists as an attribute of a pre-existing right or a right in the context of eliminating discrimination against women.²² To begin with, the right to access electricity exists in international law as a subset of housing rights, and as recognised by the ICESCR.²³ According to Tully, even the UN Special Rapporteur on housing has been on record to include electricity as a basic requirement for adequate housing. Similarly, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) makes it clear under Article 14(2) (h) that state parties are obligated to 'take all appropriate measures to eliminate discrimination against women in rural areas . . . and, in particular, shall ensure to such women the right . . . to enjoy adequate living conditions, particularly in relation to . . . electricity'.²⁴ The reporting procedure that accompanies CEDAW also makes it a requirement to report on access to electricity among women.

On the domestic level, some states have gone on to recognise access to electricity as a human right in their law, one of which is the United Kingdom's 'people-approach to electricity'²⁵ which is a species of a rights-based approach, and recognises 'equity of access to basic energy services for cooking, space heating, and lighting, like access to water . . . as a human right'.²⁶ Other states like France and South Africa have similarly recognised electricity as a human right. In my analysis of the Nigerian electric sector reform in Chapter 5, I show that a right to electricity service now exists under Nigerian law, but it is unclear if this is proposed as a human right or just (as it seems) a consumer right. Leaving that aside for now, Tully also expands on the content and the scope of the human right to access to electricity by trying to understand how it can function like other individual human rights claims. For this to work, he argues, it must be universal and justiciable. In addition, the ramifications of governmental obligation must be clearly demarcated.

This, he acknowledges, is difficult, and not much work has been carried out in this respect. Nevertheless, this does not deter him from showing what this implies. It entails that all governments should provide equal supply of electricity to everyone within their jurisdiction. In other words, Tully is saying that the scope and content of the right 'entitles everyone to access a reliable, adequate, and affordable electricity supply of sufficient quality for personal and household (domestic) use'.²⁷ He takes each of these concepts seriously and spends time elaborating on what those terms mean, doing so with great clarity and in ways that can inform contemporary reform approaches. Unfortunately, this is yet to be fully accepted, not only among human rights lawyers or advocates, but also by the BWIs, especially the World Bank, a key driver of electricity reform in Africa and other parts of the third world.

The relationship between electricity and human rights is explored in more detail in Chapter 5, where a case study of the reform proposals for the Nigerian electricity sector is provided. Part of the general objective in this, then, is to show how human rights established from community might direct those in positions of authority to recognise the profound link between electricity, human rights and human suffering.

It is, however, necessary from the outset to highlight briefly how the approach in this book departs from Tully's. The most obvious distinction is that Tully's approach is doctrinal. It is based on the argument that electricity exists as a subset of the right to housing and also as part of the framework for the elimination of discrimination against women. Tully's approach fits within the genre of economic and social rights scholarship, the aim of which is to establish electricity as a justiciable and legally enforceable human right. Although the doctrinal literature on this subject is sparse, the aim of this book is not to contribute to it, since the book is generally a departure from traditional juridical scholarship on human rights.²⁸

In another sense, the book generally aims to show why electricity should benefit from a rights-based approach, although not a rights-based approach in the conventional sense of the term. It demonstrates why principles of human rights should serve as the ethos upon which all questions of access to electricity should be determined. In doing so, the book demonstrates 'its' rights-based approach: that is, establishing human rights from community can draw attention to human suffering and vulnerability, the type of which is occasioned by the lack of electricity. While there is a plausible argument that electricity is a human right,

this is not the only way of showing how the latter should be relevant to the former. From the perspective of this book, it is not necessary to establish the relationship between human rights and electricity directly, as the connections can be established indirectly. This is because a plausible argument can be made that the continual denial of electricity to 1.6 billion people across the world is tantamount to a denial of many things that are fundamental to living a life worthy of dignity. And this, broadly speaking, is equivalent to a denial of their human rights.

In terms of its style, the book is written as a combination of an internal and an external critique of human rights discourse. The critique is mainly influenced by the Christian anarchist, and mystic, Simone Weil (1909–43), whose writings importantly help question the capacity of human rights as a conceptual medium that can facilitate sufficient grasp or articulation of human suffering. In place of human rights, Weil offers a love-based approach to justice to help pay attention to human suffering. Despite her criticisms of human rights, and although she does not claim to advance a rights-based approach, this book, nevertheless, adapts her work as a basis upon which to question human rights, particularly the extent to which they provide the best means to address human suffering. As such, the book starts from this external perspective, but this is adapted into an internal critique of human rights. The purpose, then, is not to dismiss human rights, but rather to point to a specific limitation that might make them more amenable to a community approach.

Methodologically, the insights and arguments of this book are developed from diverse approaches in legal theory, critical legal theory, political theory, political economy, philosophy, political philosophy, moral philosophy, and sociology and social theory. African philosophy, particularly moral philosophy, has a special place in this book.²⁹ The book is an attempt to provide an example of how an African moral philosophical concept can be used to contribute to problems and concerns that have preoccupied legal theoretical or philosophical and human rights scholarship, such as the dichotomy between the individual and community. The widespread representation of Africa as a continent defined by distinct tragedies, whether this is war, famine, disease or poverty, is one of the reasons why there is a neglect or even rejection of the relevance of African thought to the resolution of different contemporary problems, not least problems outside Africa. The aim, then, is to read African moral philosophy, not in opposition to, but

in complementary or mutually reinforcing terms with traditional legal theoretical, philosophical human rights scholarship.

Many years ago, Kwame Nkrumah's writings offered a vision for a new African society and identity. His vision was based on his appreciation that Africa could no longer be defined by its authenticity due to distortions brought about by colonial rule and the ascendancy of neo-colonialism. Nkrumah proposed a philosophical system or ideology to respond to these developments, and to provide the intellectual basis for an African renaissance. This is what he called philosophical consciencism; it was a philosophy devised to mediate between the historical fact of colonisation, the reality of decolonisation and the contemporary political, economic or social experiences. Philosophical consciencism is:

born out of the crisis of the African conscience confronted with the three strands of present African society. Such a philosophical statement I propose . . . will give the theoretical basis for an ideology whose aim shall be to contain the African experience of Islamic and Euro-Christian presence as well as the experience of the traditional African society, and, by gestation, employ them for the harmonious growth and development of that society.³⁰

Nkrumah did not advocate the blind or wholesale adoption of western philosophies, values or ideologies, neither did he think a philosophy for the African renaissance could be grounded on traditional African values alone, thereby denying the relevance of forms of western thought. While a rebirth assuming western philosophical ideas alone cannot explain the African experience or social environment, a purist nostalgic philosophy denies the richness of the history, civilisations and cultures that constitute Africa. What Nkrumah proposed instead was the rationalisation, harmonisation, elevation, and ultimately, the synthesis of the dominant intellectual strands of Africa's rich heritage with resources from what he called world knowledge. Philosophical consciencism, as such, was a universal and particular proposition. Its universality lay in the universal truth of knowledge, while its particularity was defined by its overall objective of intellectually grounding and explaining the new African social environment.

Nkrumah appreciated that three distinct influences have come to shape Africa: indigenous humanist principles, western (and Christian) modernity and Islam. Philosophical consciencism was not only an

attempt to interpret the diverse sources of Africa's heritage, but also to explain the plural nature of African identity.³¹ It appreciated that postcolonial Africa had now become a melting pot of different histories, peoples and influences, a proper understanding of which cannot be appreciated outside processes of discursive engagement with the new influences that shape the composition of the formation of identity or the nascent body politic.

If Nkrumah was alive today, he certainly would recognise the dominance of human rights as a constitutive element of belonging in most African societies, even if there is a noticeable gap between their rhetoric and reality. Human rights may not have the same degree of relevance or impact as the concept of community, but they certainly are part and parcel of domestic and regional African relations. Through philosophical consciencism, it is possible to develop a kind of pragmatism that allows the appreciation of the ascendancy of human rights in the African continent. While philosophical consciencism would encourage rigorous criticisms of human rights, it would not be too naïve to expect that Africans can escape either their dominance or their corruptions. Instead, the discursive processes philosophical consciencism demands should be seen as an opportunity to engage critically and dispassionately with human rights, to distil their strengths from their weaknesses in relation to contemporary African problems. This is why, in this book, I want to push Nkrumah's vision a little further and beyond its original formulation, to explore how human rights can work in combination with African moral convictions about community and human interdependence to address problems within or without the continent.

I.4 STRUCTURE OF THE BOOK

Chapter 1 of this book introduces and argues against the traditional antagonistic relationship between human rights and community. After discussing the nature of this estranged relationship, the chapter proposes a less antagonistic way of looking at things from the standpoint of African moral values of community, human interdependence and relatedness. Human rights are given a more ethical connotation, and through interpersonal relationships in community, they become part of the inexplicable link between each human being. The chapter, however, begins by discussing the failure effectively to deploy community within human rights discourse. It highlights the insignificant use of

community, and also points to the inadequacies relating to it. Overall, the chapter should be understood as the groundwork for discussions of the theory of community in Chapter 6 of the book.

Chapter 2 singles out and discusses another particular problem with human rights through the writings and insights of Simone Weil. The primary theme in this chapter is the conceptual value of human rights as a medium to recognise and respond to human suffering. Through Simone Weil's writings, the chapter illustrates why love must be central to the design of any institution, especially human rights institutions and approaches that seek to take human suffering seriously. It concludes by showing how the African moral philosophical outlook on the value of community is supportive of this inclination to love. African moral philosophy allows us to understand community itself as something that is constituted or founded upon expressions of love and empathy. It is a helpful way of illustrating what it means to say love is a form of community.

The prognosis for problems regarding human rights in Africa is often the question of state failure. Good governance is the response to this problem. Chapter 3 provides an analysis of good governance – the concept that influences the market approach to human rights. This chapter is a prior step to understanding how good governance specifically relates to human rights by explaining what the former really means: its inadequacies, where it originates from, its salient features, and its similarity and points of departure from the concept of governance in transnational discourses. The chapter concludes by arguing for the need to look beyond good governance, and embrace different forms of participatory governance, the lessons of which can be drawn from the informal forms of collaboration and co-operation enacted by the poor to deal with the exclusion from state and market institutions.

Chapter 4 focuses on how the market approach works. It explains the reasons behind the approach's embrace of markets, and tries to understand the role of the BWIs in such processes. In doing so, it demonstrates that part of the problem is also that little attention has been paid to alternative ways of thinking about markets, especially those that offer more potential for co-operation and collaboration between the poor. As such, the problem is not so much the question of markets, it is equally of the kind of market involved. The chapter concludes by making a case for social markets, particularly the co-operative as a

suitable model for human rights, and for encouraging participation and co-operation among individuals within and between communities.

Chapter 5 demonstrates how the good governance approach translates into practice. In particular, it explores the way it encourages privatisation to the exclusion of both human rights and community. In doing so, the chapter offers a critique of the reform proposals for electricity in Nigeria, and concludes by arguing that some of the problems pointed out, especially those of poverty, human suffering and participation, might better be brought to attention by the inclusion of a relational framework of human rights, such as the one proposed in Chapter's 1 and 2. Human rights, then, might help to shift the focus of the reforms away from more trivial concerns to embrace those that understand the kinds of suffering implied as a result of the inability to access and participate in electricity.

Chapter 6 follows on from the above to explore how the whole approach to community might work. It outlines the substantive elements of the theory of community. First, it begins with a discussion of community: what it is, the problems associated with it, and how they might be overcome by offering a vision of what it ought to be. It then proceeds to discuss potential spaces (Community Forums) to encourage participation of individuals in community. Finally, the chapter offers a theory of deliberation for decision-making within such Community Forums.

Chapter 7 takes the arguments in the previous chapter further by instantiating how a community might participate in relation to the proposed human right to electricity. It offers a hypothetical co-operative model as a potential end-product of discussions in Community Forums, and considers how the aspirations for participation can be operationalised. This chapter is also a continuation of discussions in Chapter 4 about the potential role for social markets in human rights discourse. It offers a general discussion of the potential role for co-operatives in electricity, and how the existing legal and institutional framework of electricity in Nigeria can be reformed to accommodate them. The book concludes by offering a summary of the argument and reflecting on the implications of the thesis of the book more generally, and in the light of traditional state-based human rights discourse.

Notes

- 1 G. Gutierrez, *A Theology of Liberation: History, Politics and Salvation* (London: SCM Press, 1974), p. 11.
- 2 On the importance of community-based organisations in Nigeria, see G. Ayoola et al., 'Nigeria: Voice of the Poor', Country Synthesis Report for World Development Report: Poverty and Development (Washington, DC: World Bank, 2001), pp. 32–5.
- 3 An appreciation of the significance of community across contemporary Africa can be extrapolated from the literature of urban cities: A. Mbembe and S. Nuttall, *Johannesburg: The Elusive Metropolis* (Durham: Duke University Press, 2008); A. Simone, *For the City Yet to Come* (Durham: Duke University Press, 2004); A. Simone, 'Straddling the Divides: Remaking Associational Life in the Informal African City', 25 (1), *International Journal of Urban and Regional Research*, 2001, pp. 102–17; D. Hecht and M. Simone, *Invisible Governance: The Art of African Micropolitics* (New York: Autonomedia, 1994).
- 4 O. Onazi, 'Towards a Subaltern of Theory of Human Rights', 9 (2), *Global Jurist (Advances)*, 2009.
- 5 T. Pogge, *World Poverty and Human Rights: Cosmopolitanism Responsibilities and Reform* (Cambridge: Polity Press, 2002), p. 38.
- 6 Y. Ghai and J. Cottrell (eds), *Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights* (London: Interights, 2004).
- 7 C. Fabre, 'Constitutionalizing Social Rights', 6 (3), *Journal of Political Philosophy*, 1998, pp. 263–4.
- 8 U. Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India', 4 (6), *Third World Legal Studies*, 1985, pp. 107–32; B. Rajagopal, 'Pro-Human Rights but Anti-Poor? A Critical Evaluation of the Indian Supreme Court from a Social Movement Perspective', 8 (3), *Human Rights Review*, 2007, pp. 157–86; R. Plant, 'Social and Economic Rights Revisited', 14 (1), *King's Law Journal*, 2003, pp. 1–20; D. Bilchitz, *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (Oxford: Oxford University Press, 2007); O. Ferraz, 'Poverty and Human Rights', 28 (2), *Oxford Journal of Legal Studies*, 2008, pp. 585–603.
- 9 World Bank, *World Development Report: Making Services Work for Poor People* (Washington, DC: World Bank, 2004).
- 10 With the exception of electricity and water, the World Development Report acknowledges healthcare and education as human rights in which community involvement may be one way of ensuring access: *ibid.* p. 34.
- 11 The World Development Report specifically mentions that 'public respon-

sibility' for guaranteeing public goods lies on the state and citizens. However, the state carries much of this responsibility towards resolving this problem: *ibid.*

- 12 *Ibid.* p. 1.
- 13 J. Malpas, *Place and Experience: A Philosophical Topology* (Cambridge, MA: Cambridge University Press, 1999).
- 14 P. Selznick, *The Moral Commonwealth: Social Theory and the Promise of Community* (Berkeley: University of California Press, 1994).
- 15 *Ibid.* p. 359.
- 16 *Ibid.*
- 17 *Ibid.*
- 18 V. Lenin, *Collected Works*, vol. 31 (trans. J. Katzer) (London: Lawrence & Wishart, 1920), pp. 516–18.
- 19 United Nations Development Programme, *Human Development Index* (New York: United Nations Development Programme, 2011), pp. 8–9.
- 20 T. Winther, *The Impact of Electricity: Development, Desires and Dilemmas* (Oxford: Beghahn Books, 2008), p. 1.
- 21 S. Tully, 'The Contribution of Human Rights to Universal Access to Energy', 4 (3), *North-Western Journal of International Human Rights*, 2006, pp. 518–48; S. Tully, 'The Human Right to Access to Electricity', 19 (3), *The Electricity Journal*, 2006, pp. 30–9.
- 22 S. Tully, 'The Human Right to Access to Electricity', p. 30.
- 23 A similar approach to Tully's is advanced by the following authors: A. Bradbrook and J. Gardam, 'Placing Energy Services within a Human Rights Framework', 28 (2), *Human Rights Quarterly*, 2006, pp. 289–415.
- 24 S. Tully, 'The Human Right to Access to Electricity', p. 30.
- 25 *Ibid.*
- 26 *Ibid.* p. 31.
- 27 *Ibid.*
- 28 This book is strongly influenced by the following writers, who in different ways have advanced non-judicial approaches to human rights: B. D. Sousa Santos, *Towards a New Legal Commonsense: Law, Globalization and Emancipation* (London: Butterworths LexisNexis, 2002); B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, MA: Cambridge University Press, 2003); O. Okafor, *The African Human Rights System, Activist Forces and International Institutions* (Cambridge: Cambridge University Press, 2007); F. Kurasawa, *The Work of Global Justice: Human Rights as Practices* (Cambridge: Cambridge University Press, 2007); A. Sen, *The Idea of Justice* (London: Penguin Books, 2009), pp. 355–87; A. Sen, 'Elements of a Theory of Human Rights', 32 (4) *Philosophy and Public Affairs*, 2004, pp. 315–56.
- 29 E. Eze (ed.), *African Philosophy: An Anthology* (London: Blackwell

Publishers, 1998); K. Wiredu, *A Companion to African Philosophy* (London: Blackwell, 2005); P. Coetzee and A. Roux, *The African Philosophy Reader* (London: Routledge, 2003); B. Hallen, *A Short History of African Philosophy* (Bloomington: Indiana University Press, 2002).

30 K. Nkrumah, 'Consciencism: Philosophy and Ideology for De-colonisation', in E. Eze (ed.) *African Philosophy: An Anthology*, p. 81.

31 Ibid.



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Chapter 1

HUMAN RIGHTS AND COMMUNITY: UNLOCKING THE DEADLOCK

1.1 INTRODUCTION

The relationship between human rights and community is not straightforward or uncontroversial. On the one hand, individuals, mainly on account of their human rights, are oriented to live isolated, self-centred or narcissistic lives, absolved from duties and responsibilities, or simply unable to show affection and empathise with others. On the other hand, a strong commitment to community implies a threat to the autonomy or identity of individuals as a result of the aggressive assertion of the collective good. In this chapter, I want to propose a specific way of unlocking the deadlock between human rights and community from the standpoint of African moral values of human interdependence; the essence of community, belonging, societal harmony and peaceful co-existence with others.

The success of the proposition above depends very much on challenging the common understanding of human rights. The hypothesis in this chapter would be implausible if the understanding of human rights, as individual claims, remains intact. The success of the proposal depends on the need to tamper with the individualism that underpins human rights by supplanting it with values of interdependence, relatedness and mutual reciprocity, something that is derived from community. It is only from the standpoint of human interdependence that one can begin to realise the possibility of speaking of human rights and community in mutually reinforcing terms, that is, as concepts that can work together and not against each other. It will be argued that African moral convictions about community and interdependence provide a richer account of the human person, yielding to a better foundation of the 'person' in human rights terms. Interdependence places

emphasis on the connectedness between individuals and between different spheres of society. Interdependence is about continuity not discontinuity, the link between the individual and community and vice versa. Once the debate is framed in this way, then making a case for community should not in any way threaten or entail the rejection of human rights, just as the support for human rights should not entail the rejection of community.

An appropriate grasp of the argument of this chapter is contingent on understanding how human rights currently relate to the concept of community. The argument is that human rights discourse has, for the most part, developed with little reference to community. Apart from a few casual and ambiguous references to community within the Universal Declaration of Human Rights (UDHR), only the Declaration of the Right to Development and, subsequently, the rights-based approaches to development can be seen as an explicit attempt to engage with the concept. Although they make references to community, the concept is used either incoherently or simply insufficiently. The commitment to community in human rights terms is half-hearted, if not, simply inadequate. The use of community lacks proper foundation, widespread support or acceptance in human rights discourse. The chapter would proceed from those discussions by attempting to anchor human rights and community in a philosophical approach that helps bring their relational dimension to closer attention. Part of the aim, then, is also to provide the groundwork for discussions of the theory of community articulated in Chapter 6 of the book.

1.2 DEVELOPMENT'S TURN TO HUMAN RIGHTS

Human rights have operated, and continue to operate, as a state-oriented discourse, which privileges the rational capacity of individuals to construct and re-construct their reality through claims against the state. Human rights are built on a relationship between the state as the primary duty-holder and individuals as primary rights-holders. What this has meant is that the possibilities of realising human rights are placed within the potential and limits of state action, apart from the relationship between individuals being mediated through the state.

Consider the debate on economic and social rights as an example. Discussions are exclusively structured or determined by questions of making rights justiciable. Most discussions are preoccupied with

attempts to clarify the content of economic and social rights, and, furthermore, the role of the judiciary in holding the state accountable for those rights.¹ The focus on economic and social rights has almost exclusively been on formal legal sources, judicial opinions and treaties in the attempt to determine the particular levels of access and individual entitlement. Debates about economic and social rights have almost exclusively focused on litigation, some of which have celebrated the judiciary or judicial activism as champions or the only hope for the poor.

Other debates about economic and social rights raise questions about democratic legitimacy: in other words, they question the legitimacy of the judiciary in dealing with such problems. Closely related to these are questions of the constitutional and technical competence of the judiciary in carrying out these objectives, such as the allocation of resources, setting priorities or initiating policies to enable access to economic and social rights. These debates have different variations; nevertheless, they are united on the focus on the role of law in enforcing economic and social rights against the state. State law is the only avenue available for the impoverished and vulnerable to realise their human rights. The debate neglects other possible ways of achieving economic and social rights, especially those that fall out of such formal institutional arenas. There is a failure to constitute other avenues in which these rights can be achieved. In circumstances where economic and social rights are non-justiciable, the obvious agitations have been the need to legally formalise these rights through various domestic constitutional and legal initiatives.² India, South Africa and Brazil are cited as examples of the best practice. It is often argued that the fact that there are numerous problems with enforcing economic and social rights (as in the case of India, South Africa and Brazil) should not be a detraction from realising that making such rights justiciable may provide the only hope for the poor to enjoy basic standards of life.

More recently, markets have been considered as alternative means to achieve human rights, particularly economic and social rights. Economic globalisation – and the challenges it has mounted on the state-oriented human rights system – has been a key to this development. Globalisation has, among other things, contested the centrality of the state in providing economic and social rights. This can be seen in different ways, including through the set of policy formulations owing to the financial or economic obligations of states arising from the Bretton Woods framework. Whilst the Bretton Woods Institutions

(BWIs) are outside the authority of the current human rights normative or regulative order, they nevertheless programmatically structure human rights through their role over development.

The BWIs on their own part have increasingly encouraged the privatisation of economic and social rights. As it will be shown in Chapters 3 and 4, neoliberal policies such as the concept of good governance have continued to reconcile roles for markets in human rights, with the effect that markets are now considered as an alternative means through which certain economic and social rights can be realised. The market is considered as a justified alternative framework, given that human rights discourse generally takes a neutral view on the role of markets.³ As will be seen, the most visible threat to human rights in this respect emerges from the advent of national and transnational private actors, that is, transnational corporations (TNCs). These have continued to profit from the absence of any meaningful legal mechanisms to hold them accountable for human rights violations. It is obvious that the current state-oriented human rights regulatory system is no longer sufficient to grapple with the threats to it. Such distortions have taken many forms and provoked calls to rethink the contemporary human rights obligations systems. However, the more recent trend towards the privatisation of human rights has not altered its state-centred outlook. It lacks a horizontal effect as it fails to impose duties and obligations on private or non-state actors for the breach of human rights.⁴ Instead, it places obligations on the part of states to prevent private actors from committing such harms.

The foremost attempt to establish a role for community within the human rights normative framework emerges from the protracted Declaration on the Right to Development (DRD).⁵ The DRD emerged from a view that equates the lack of development to a violation of human rights and, more so, to a contravention of the universality of human rights. The DRD is considered as both an individual and collective right, which seeks to facilitate equal access to natural resources, goods and services in different third world societies. The DRD affirms the indivisibility of human rights, as it recognises the importance of civil and political rights in simultaneous terms with economic and social rights. The DRD emerged, in part, as an attempt to assert a right of all to participate and contribute to their own development. At the period it emerged, it was considered novel, given its unique attempt to assert a right of peoples to self-determination, which also

implied peoples' entitlements to their natural wealth and resources. Balakrishnan Rajagopal captures the optimism that greeted the emergence of the DRD, especially its attempt to place the 'rights of communities' into human rights thinking. As he puts it,

[I]t powerfully introduced the right of communities into the human rights-corpus, which remained focused on individuals. This had an immediate resonance among grassroots movements in the Third World, as it enabled them to use the language of human rights to protest against violence against their communities . . . it opened up the entire meaning of development, which had heretofore meant economic growth, national development, and individual entitlements. Now, communities would define what kind of development they wanted . . .⁶

As enthusiastic as these words may sound, they remain at best an aspiration, given that the Right to Development has never really materialised beyond its declaratory status. Moreover, beyond mentioning the right of peoples over their natural resources, the notion of community itself, for the purposes of this book, has not clearly been expanded upon in any detail. The DRD does not articulate any definition, scope, nature or types of communities implied.⁷ Whilst the DRD can be considered as a foundation for the role of community in human rights discourse, it still does not go far enough to properly concretise it.

Quite apart from that, the emergence of the DRD raised more questions than answers. It excluded questions of the enforcement of this right, given that the obligations for 'rights of peoples' are vested in the international community. The controversial issue of rights vis-à-vis duty-holders of the DRD also emerges in this context, something that remains unsettled today. The right has been open to several other criticisms,⁸ including from African scholars who supported and contributed to its authorship. For example, Issa Shivji has questioned the conceptual basis of this right, that is, its failure to clarify what is actually meant by development.⁹ At the risk of simplifying Shivji's position, he argues that the Right to Development reinforces the traditional state-centred approach to human rights, and thereby reinforces the hegemony of the state over human rights.

Many of the principles that underpin the DRD have now been accommodated within the framework of the rights-based approaches

to development. As earlier mentioned, the rights-based approaches provide the legal and conceptual framework to operationalise development by incorporating norms, standards and principles of human rights. The rights-based approaches draw from the wide array of international human rights treaties and declarations, as a way of operationalising, planning and programming development. They are underpinned by principles of equality, equity, accountability, empowerment and participation. The last two principles give some indication of the recognition of the role of community. Even so, from the standpoint of this book, rights-based approaches do not articulate what community entails. Like the DRD, rights-based approaches to development are at best an inspiration for, and not an actual community-based approach to, human rights.

In terms of the application of these principles, international development institutions (including the World Bank) have hesitantly embraced rights-based approaches in different aspects of their work, even though they have done so informally or without commitment. The World Bank has generally developed an ambivalent attitude to human rights, even though it admits that its poverty reduction initiatives directly impact on economic and social rights.¹⁰ Not surprisingly, the World Bank has interpreted human rights as a market-based concept, given the primacy it gives to the latter in various aspects of its work. With particular reference to community, it has only recently been recognised by the emergence of the Comprehensive Development Framework (CDF), something that is discussed in more detail in Chapter 3. Grievances for inclusion and participation were part of the reason for the emergence of the CDF. It emerged as a result of the effects of the Structural Adjustment Programmes (SAPs), which were quite diverse and are also well documented today. Participation, in its broadest sense, became the foremost grievance, especially as a means of bringing decision-making processes closer to the poor.¹¹ The BWIs have, through the CDF, attempted to create a new order that includes the state, market and civil society. It is an attempt to create non-hierarchical ordered societies, which entails the participation of all.

Regardless of this, the approach (again as discussed in Chapter 3) can be criticised for constraining claims for inclusive participation by privileging market-oriented forms of participation, particularly through a narrow conceptualisation of civil society. The neoliberal concept of civil society is quite distinct from other ways of thinking of the concept,

for instance, like the republican concept of civil society. Unsurprisingly, participation is selective in contrast to inclusive.¹² It is based on a principle of selection, which selects certain actors, interests or voices, and leaves out the most excluded of voices. It is, to say the least, an instrumentalised version of participation; it is not far-reaching in its articulation.

1.3 HOW NOT TO DEFINE COMMUNITY

As mentioned earlier, the rights-based approaches do not provide a definition of community, but one can be found in the World Bank's development framework, which (although it does not officially endorse rights-based approaches) can itself be understood as emerging in the broader climate of the increasing overlap between human rights and development. Not surprisingly, the neoliberal argument for community almost exclusively draws compatibility between community and the market economy.¹³ The primary objective for the promotion of community is to draw upon its normative resources to achieve economic growth and to promote profit. As such, community is promoted not as an intrinsic but as an instrumental value. It is not promoted on its own merit, but to add value to the market. For the World Bank, markets do not impede community but complement it. Whilst it is impossible to rule out instrumental relationships in community, there is obviously a difference between instrumental and exploitive relationships. The problem with the neoliberal view is the danger that the instrumental relationships of the market would overwhelm members of community and thus translate into exploitive relationships. This explains why a community is not merely an association. A community is distinct from an association in the sense it is not formulated to pursue an instrumental agenda.¹⁴ This is obviously a generalisation as some communities, such as the neoliberal vision of community discussed below, can be defined or deployed strictly instrumentally.

Most common interest associations are defined by instrumental gain and are exclusive to those who are allowed to participate. Membership of an association is never open to all and participation is tied to a pre-condition. It is in certain cases tied to the payment of a membership fee. For instance, the only condition for participating in the community promoted in Chapter 6 of this book is being a resident in a given local neighbourhood. The organising principle for this community is not

determined by instrumentality nor by race, religion, ethnicity, colour or gender. It starts from an exactly opposite premise: it is not (and should not) be about the pursuit of profit.

The origins of this instrumental view of community can be traced to Robert Putman's work on social capital. He refers to the networks of trust and co-operation within and between communities, which might affect improving societal problems.¹⁵ Social capital refers to the ability of individuals to create relationships both within and between other communities. In neoliberal development discourse, social capital is the bundle of values from which people can draw to improve their incomes, and, which can be 'built' to facilitate economic growth and development. The work of Francis Fukuyama has expanded on these perspectives by trying to show how social capital can be a source for building trust in society, a prerequisite, in turn, for economic growth and the pursuit of profit.¹⁶ Social capital and trust are defined by the traditional values of co-operation, integrity and reciprocity that often exist within community. Social capital depends on trust in a society and is created through mechanisms like religion, culture or tradition.

It would be too naïve to dismiss these arguments, as they clearly have their strengths. The problem with them, however, begins with the unproblematic conflation of social capital, trust, on the one hand, and with the market economy, on the other hand. In doing this, Fukuyama succeeds in instrumentalising community by recognising it only as a means to achieve economic growth. It merely recognises the advantages of markets to community and not the destructive effect they may have on community. The market becomes compatible and not a source of distortion of communal values. This view does not seem to recognise any problems between the ethos of market and community. It even goes to the extent of suggesting that markets can extend community values. The market economy is considered a source for trust and social capital in community. There is something normative about markets, which extends beyond their traditional function of the distribution and redistribution of goods.

The unhealthy market friendly conceptualisation of community is not the only difficulty with the World Bank's approach. A different but equally important difficulty is that very little has been done to expand what the community really means. The concept of community is arguably the most weakly defined concept within the CDF agenda; it has certainly not received the same attention as the market or state. This

is perhaps because the role for community has not been thought out in a programmatic way and circumscribed to projects, which are not only limited in scope, but also in time scale. The only attempt to define community in the entire Bretton Woods framework emerges from the series of Community-Based Development (CDB) and Community-Driven Development (CDD)¹⁷ projects, the aim of which is purportedly to give the poor more control over their aspirations for development. As the World Bank has claimed, the CDD and CBD projects are underpinned by 'principles of local empowerment, participatory governance, demand-responsiveness, administrative autonomy, greater downward accountability, and enhanced local capacity'.¹⁸ In terms of its definition, community is described as a culturally or politically homogeneous entity (a village or urban neighbourhood) or an administratively defined territory. Quite apart from that, the World Bank also recognises 'specific common interest group, such as herder's associations, irrigation associations, or associations of street vendors', as community. An initial difficulty with the above is that it seems to conflate the understanding of association with community, which (as already discussed) are relatively distinct concepts. Associations can, of course, become communities constituted of groups unaffected by instrumentality.¹⁹ However, this is not the case with all associations, and it is difficult to see how associations would be constituted by the same sort of virtues that exist in community. Individuals are often members of associations to pursue their parochial interests. For the purposes of the broad objective of this book (and as will become clearer in Chapter 6), it is problematic to conceive a regime of ownership or management of economic and social rights assuming common interest groups, and more specifically, outside a given locality. Without appreciating this, the sphere of participation would itself be characterised by groups who are driven by their parochial interests, quite apart from strong bonds of association, which have the tendency to exclude others.

This difficulty highlighted above leads to a further problem with the World Bank's view of community. There is quite a visible attempt to describe the community in terms of homogeneity. Apart from common interest associations, community is defined as an internally cohesive administrative unit in a village or urban community. It is true that a village may be constituted of groups with very similar identities – that is, ethnicity, tribe, language or culture. One can contrast this view with metropolitan neighbourhood or community, which cannot be

understood as such. On the contrary, it is constituted of members with multiple or overlapping communal identities.²⁰ The internally cohesive community that the World Bank imagines does not make sense where relationships within it do not reflect homogeneity. The point in raising this is not to suggest that rural communities are unimportant. Far from it, the point is to show that the World Bank's practice of community development creates a cleavage between rural and urban communities, thereby excluding the poor in urban communities from this kind of egalitarian solution. After all, most references to community, as a recent review of the World Bank's CBD/CDD projects suggests, seem to give primacy to villages or rural communities.²¹ In the end, the World Bank's practice of community development re-invokes Ferdinand Tönnies' famous distinction between *Gemeinschaft* (community) and *Gesellschaft* (society), with different strategies for each.²²

Following on from these discussions, while it cannot be categorically claimed that the value of community has not been recognised in human rights discourse, what is clear is that the approach has not been wholeheartedly or comprehensively accepted. Even so, questions of inadequacies of definition of what community entails or should entail still have to be addressed, as this seems to have been taken for granted. Similarly, with certain exceptions, there has been no comprehensive effort to ground in conceptual terms the relationship between human rights and community.²³

Except for the Right to Development and rights-based approaches to development, none of the foundational human rights documents, declarations, treaties or theories formulates or explicitly proposes a role for community. Part of the reason for this, as illustrated in the section below, is the oppositional or, to say the least, oxymoronic nature of human rights and community. Whilst discussions of these concepts have proceeded along these general lines, I will show from the standpoint of African moral philosophy that human rights and community need not be proposed in such oppositional terms. African moral philosophy is a helpful way of reframing the debate between human rights and community, furthermore, unlocking the deadlock that has prevented the collective use of both concepts.

1.4 BETWEEN THE INDIVIDUAL AND COMMUNITY

The estranged relationship between human rights and community is pursued under different pretexts,²⁴ the most dominant of which has certainly been the seminal debates between advocates of liberalism and communitarianism in the Anglo-American literature in political philosophy.²⁵ The positions vary considerably, as with the number and range of participants. The positions are fundamentally oppositional, but there are those that make concessions on the value of either human rights or community. Apart from the variety of perspectives, the less polarised positions have made it difficult to neatly categorise the respective positions under the banner of either liberalism or communitarianism. In briefly outlining the general lines along which the debate has progressed, I do not hide my preference for a certain strand of the communitarian side of the argument, particularly the strand that does not deny a commitment to human rights.

The attack on human rights is essentially an attack on liberalism, given the primacy it gives to individuals, whether this is in ontological or metaphysical terms. It is an attack on the premise that individuals must have the autonomy or freedom to choose their various opportunities, goals and values in life, something that should be achieved independent of social or communal constraints. What this simply means is that individuals take priority over community and should be free to act in accordance with their self-interest and desire. The individual is asocial and ahistorical, one who must be unattached from all affiliations, common values, attachments, customs and traditions. There are competing conceptions of the good life in contrast to a single one. The state is an important component of liberalism.²⁶ It is not a state that intervenes, rather it is one that must remain minimal and provide a neutral framework in which different conceptions of the good life can be articulated.

As such, individuals in liberal society share no political traditions or founding principles of justice. This, in turn, should be derived from a mythical state of nature.²⁷ In this fabled state, the individual is an unencumbered agent, independent of values, aims or goals. The autonomy and the atomic and unencumbered nature of individuals are absolute. The individual takes precedence over purposes, qualities and other priorities, especially when they are in conflict. What matters the most is the superiority of the individual, who has the capacity to make choices

regardless of what these may be. The capacity to remain independent and make choices is contingent on the mythical state of nature. It is pivotal to everything, especially the choice of governing principles and rules of society.

It is important to note that the primacy given to the individual does not necessarily lead to the denial of the existence or the recognition to the importance of societal relationships or communal ties. Rather, what liberals insist on is the importance of choice. Choice often means three related things. First, it means the ability to choose any such communal ties. Second, choice must itself be prior or extricated from any moral ties. Third, the membership of community must not sacrifice the inviolability of the individual. The individual must at all times take priority over community.

The autonomy of the individual is further guaranteed through some notion of rights, whether these are human rights or some other species of rights. Human rights are premised on a universal notion of human nature, one that is discoverable by reason and central to securing the autonomy of the individual. The individual is not only rational, autonomous and self-sustaining, but also must at all times be protected from the excesses of others, including the state. Individual rights claims are central to liberalism, which not only bestow entitlements and immunities against the state, but also against family, community and society. This is perhaps the most attractive argument that can be made for human rights, which has appealed to non-western supporters who see rights as a shield against different forms of political, cultural, ethnic or religious forms of authoritarianism.²⁸ This is a problem typical of duty-based orders. Not only are they hierarchical but talk of duties becomes solely a reference to duties to leaders, and community itself, something which is modelled in the image or personal characteristics of the leader.

For liberals, the only way to avoid such problems is not to deny the individual basis of human rights. What this means is that the right always takes precedence and is independent of the good, especially the common good. The importance accorded to rights can be understood in two related senses.²⁹ First, individual rights must not be sacrificed at the expense of common good. Second, underlying principles of justice necessary to allocate these rights must at all times be extricated from personal interests or prior notions of the good. There is a presumption of equality behind the language of rights, in the sense that they provide the founding principles of equality that political order seeks to

guarantee. As such, no concept of the good should be sacrificed at the expense of the other.

It is then not surprising that the central premise of liberalism, the primacy of individual human rights, has come under attack by the communitarian response. On the other side of the divide, human rights are seen to intensify the individualisation of society either by increasingly instrumentalising relationships, fuelling vested interests or narcissism, contributing to the decline of traditional moral values, or simply extricating individuals from all social ties – be they family, community and society. In Africa, for instance, human rights are seen to be responsible not only for the decline of traditional values, but also for promoting promiscuity. The unrestrained, selfish and aggressive assertion of human rights contributes to undermine the common good. The point is that if rights are constitutive of individual interests, it follows that they not only distort the values of community, but also the reciprocal moral responsibility that is an important aspect to the process of living together with others.

A similar standpoint, one which is discussed in more detail in the next chapter, is that human rights presuppose conflict since the nature of the claim not only has the potential to antagonise, but also to encourage selfish competition among individuals within a given community or between various communities. In doing so, human rights devalue the importance of the kind of love, affection or empathy that is indispensable to social intercourse. Duties, unlike human rights, offer a better way of encouraging societal connectedness, since they give primacy to harmony. All human rights would do is disarticulate individuals and prioritise them ahead of community, which can only end up damaging the fabric and cohesion within society.

However, the communitarian critique is not as straightforward as I have described it above, nor is it a uniform view. The positions vary considerably and the literature covers sociology, legal, social and political theory among other fields. Although they are diverse and multidisciplinary in nature, the common element they share is the ontological or metaphysical questions they raise about the status of the individual, and, furthermore, how this contributes to devalue the importance of community.³⁰ Most critiques reject the idea that individuals are autonomous, unencumbered and rational agents, who are separate from, or above, community. Nevertheless, in saying so, communitarian critiques of liberalism tend to come out somewhat derivative. This

may be an unfair criticism, but they give the impression that they are nothing more than an antithesis of liberalism rather than presenting an original theory of their own. They seem to be reactionary, and few of them outline what communitarianism really entails or the underlying concept of community.

Philip Selznick's work provides an exception to the rule, and his seminal article is used here not only to outline the central plank of the communitarian critique of liberalism, but also to find a minority voice that shows that the commitment to community does not always have to mean less of a commitment to human rights.³¹ Apart from demonstrating what communitarianism entails, one of the main advantages of Selznick's work is its multidisciplinary nature; it overlaps between sociological, moral and political philosophical communitarian approaches. Despite this, Selznick's work has an irreducible moral starting point. Communitarianism is essentially about the moral competence of individuals, something that can only be derived from social participation in a given community. Moral agency is contingent on the kind of opportunities for communication, interdependence and duty. Selznick relies on sociology to explicate, and correct misperception of the individual influenced by liberalism. Unlike the hollow concept of the individual that one finds in liberalism, communitarianism espouses a notion of the social or implicated self, as Selznick prefers to describe it. The implicated self is a social animal who depends on others for different types of sustenance. The nature and moral quality of the individual is a creation of society. The implicated self, as such, derives meaning from his or her co-existence or interdependence with others.

The concept of community is important to the implicated self. Attachment and participation in community are crucial to the development of moral capacity of the implicated self. Community, in turn, is the enabling environment or background framework that reconciles different forms of activities, relationships and experiences between individuals, groups and institutions. Community is not only the source of identity, but also the source of obligations to others. Such obligations are open-ended and they are not dependent on choice. Obligations to family, community and society, apart from being involuntary, entail a different set of relationships.

The morality of the implicated self is embedded in the nature and character of one's obligations. This is attained through social participation, which orients the implicated self with values necessary for

belonging and mutual recognition. Social participation is another term for civic virtue, amongst other things, which can be referred to as processes in which individuals take part to pursue some common good. Obligations, as such, define the specific roles that come from membership of a particular community. Obligations are very different from rights in terms of their nature and character. What this means is that duties are not necessarily derivative or correlative of rights. Obligations provide reasons for acting or orient certain types of behaviour towards others. The point is that the morality entailed in community not only prioritises obligations, but also such obligations can only be derived from community. This is the main difference between obligations and rights. Rights prioritise self-interest, freedom, independence or separation, and not interdependence or belonging.

Although communitarianism and liberalism give priority to different values, it would be misleading to suggest that a commitment to the community always prevents a similar commitment to rights. Selznick, after all, is what might be called a communitarian liberal, who like others,³² promotes distinct types of practices and institutions to encourage social responsibility, without necessarily undermining specific liberal values, particularly rights. What this means, as often misunderstood, is that an appeal to community does not necessarily undermine the importance of certain rights. Indeed, even if the emphasis was placed on rights, this would not prevent the need in a community to deliberate on what kind of rights are appropriate or inappropriate, including the extent to which they should or should not be voided.

Apart from drawing attention to the morality of obligations, a plausible interpretation of the communitarian critiques of liberalism is that they demonstrate how human rights can be stripped of the individualism that underpins them, making it possible to establish them on a different moral standpoint. The communitarian critique gives rights a more social outlook, the emphasis of which is on mutual interdependence and reciprocity. Communitarian rights, along with other values, are regarded as part of the process of negotiating what it means to belong together. This is not simply achieved by reiterating the importance of obligations, or linking rights more effectively with obligations.³³ Rather, it also entails situating human rights in a framework that encourages some basic empathy and mutual respect between individuals who share similar circumstances or those who, for one reason or the other, fall short of those standards.

1.5 TOWARDS AN AFRICAN FOUNDATION OF HUMAN RIGHTS

While the focus of this section is on the insights that can be gained from African moral philosophy in the context of appreciating the value of human interdependence, it is important to acknowledge that there is indeed a long philosophical tradition that allows us to begin to see the possibility for a mutually reinforcing relationship between individuals. This is a common theme that can be extrapolated from the various proponents of the concept of mutual recognition.³⁴ Human rights are understood against the background of claims for the mutual recognition of each individual's humanity. A human rights claim, then, is irreducibly ethical, and it is achieved through the willingness to identify with the other with concern and empathy. Contestations, disputes or antagonisms over different things, including human rights themselves, are resolved through this ethic of mutual reciprocity and recognition. An individual's identity is intrinsically tied to or defined by a process of the recognition of the other. The uniqueness and sanctity, similarities and differences of individuals are appreciated in the process of recognition of those who share similar human conditions. Human rights are thus intersubjective claims and not simply abstract individual claims against the state. They are a key ingredient for belonging, particularly citizenship, cultivated through this habit of mutual respect and recognition.

African moral philosophy can be used to augment the arguments above by yielding to an approach that establishes human rights not only from community, but also through expressions or habits of love and empathy. It achieves this through the value it places on human interdependence, which can furthermore be used as a basis for illustrating how to ground the relationship between the individual and community. Arguably more than any other body of work, African moral philosophy is one of the best ways to underscore the importance of interpersonal relationships between each individual within a given community. Interdependence is regarded as vital to the development and flourishing of both individuals and community.³⁵ It demonstrates the continuum between the individual and community, something that is often overlooked. The individual and community mutually reinforce each other, in that there is no one without the other. There is no conflict, there is no contradiction between the individual and community. The self is communal, something that is nurtured by interpersonal

and proximate habits of reciprocity. Interdependence is different from dependence.³⁶ It is a co-operative relationship, not an unco-operative or a vicious relationship.

What stands out as the most important conviction in African moral philosophy is the significance of communal living, something that cuts across every fact of life, ranging from societal relationships to the ownership of property. Thaddeus Metz, more recently, has explained the strength of the African communitarian ethic.³⁷ It is the spirit of community, which defines, in a loose sense of the term, the ethical life, which is in turn achieved through harmony and cohesion. The underlying meaning of community itself is modelled on familial relationships, apart from the significance of mutual respect for each individual within it. The ability to commune with others is contingent upon identification and solidarity with others. This entails, first of all, the recognition of the shared human condition and the ability to collectively pursue objectives, goals and activities with others. Second, it entails the moral comportment towards the well-being of others, one that is based on love and empathy. Love and friendship are not the most obvious way to grasp what this entails, but they are an important way of describing the ethical underpinnings of relationships in community. Ultimately, it is impossible to understand what human dignity entails in African philosophical terms outside an appreciation of the value of love and friendship. The dignity of individuals is intricately linked with their capacity to love and empathise with the other. This alters the perception of community: community becomes the capacity to commune with others through habits of love, friendship and empathy. In the next chapter, I will argue along similar lines that a strong moral devotion to human rights is contingent upon the possibility of love, in the sense of fully acknowledging the sanctity and vulnerability of each human being.

It is no surprise, then, that there have been several successful and unsuccessful attempts across Africa to build postcolonial communities based on similar moral convictions. Kenneth Kaunda's '*humanism*',³⁸ Kwame Nkrumah's '*consciencism*',³⁹ and Julius Nyerere's '*ujamaa*'⁴⁰ were all, with considerable differences, different attempts to assert African communal authenticity in the postcolonial context.⁴¹ They all shared the vision of building a postcolonial African polity based on traditional moral principles. None of these perspectives, however, emphasised human rights specifically, even though it can be deduced that these

political philosophies intended to make community serve as the foundation for everything, including human rights.

A more recent, and more robust, attempt to establish human rights from community can empirically be illustrated from post-apartheid South Africa, where the concept of *ubuntu* currently serves as the ethical basis for law, societal obligations and democratic practices.⁴² In my opinion, *ubuntu* is one of the best instantiations of Kwame Nkrumah's notion of philosophical consciencism, in the sense of the creative synthesis it proposes between African and non-African concepts. *Ubuntu* has no agreed definition but Justice Mokgoro of the Southern African Constitutional Court has advanced one of its most comprehensive descriptions:

Ubuntu (a Zulu word) is a lifestyle or unifying world-view (or philosophy) of African societies based on respect and understanding between individuals. *Ubuntu* has been translated as 'humaneness', and is derived from the expression: *umuntu ngumuntu ngabantu* [a person is a person because of other people / a person can only be a person through others]. It envelops values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity.⁴³

Ubuntu is defined by values of compassion, solidarity, reciprocity and dignity, or such other values that can be found in community. In South Africa *ubuntu* is analogous to a sort of *grundnorm* (not in Kelsenian, but in ethical terms), on which the whole legal order, including human rights, derives its legitimacy. *Ubuntu* is not only used to ground the concept of human rights, but also (as explained below) to enrich or renew it.

There is no better example of a concerted attempt to move away from the antagonism that has characterised debates about communal values and human rights than the post-apartheid South African experience. What the Southern African approach allows the most is the reconstruction of human rights in more inclusive terms. *Ubuntu* achieves this by allowing us to revisit the individualism that underpins human rights, to supplant it with the kind of interpersonal relationships that are necessary for individual and collective flourishing. *Ubuntu* allows us to see that making a case for community should not in any way threaten or entail the rejection of human rights, just as the support for human

rights should not entail the rejection of community. It shows us that human rights can also be part of what it means to belong to a particular community, something that each individual should have as a matter of mutual respect and reciprocity.

In South Africa one not only sees the mutually enforcing nature of community and human rights, but also how an African communal ethic is used to expand the reach of human rights. Justice Albie Sachs (also of the Southern African Constitution Court)⁴⁴ has emphasised the mutually reinforcing nature between (community) *ubuntu* and human rights in one of his judgments. Sachs says:

The spirit of *ubuntu*, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern.⁴⁵

In Sachs's argument one sees how *ubuntu* not only is supportive of human rights but also supportive of the entire constitutional order. I agree with Sachs that it is important not to forget that both concepts have differences, but what unites them is the primacy they give to human dignity, even though they yield to different conceptions of dignity. What unites them is that they both recognise the intrinsic worth of all human beings, particularly in the sense of treating individuals as ends not means. What makes this African moral principle so significant for human rights, and building on discussions at the outset of this section, is that it helps us see that individuals are immersed in a network of relationships, relationships that are expressions of love and compassion. In essence, from the standpoint of *ubuntu*, there can be no human rights without community.

Despite the positive connotations that *ubuntu* often invites, some commentators have cautioned against wholeheartedly embracing it, without, at least, noting and trying to overcome its limitations. Johan Van der Walt provides a good example of this viewpoint. For him, the clamour for *ubuntu* is not necessarily original or philosophically distinct. It is nothing more than an assimilation of an indigenous and communitarian ethos into the Christian and Kantian ideals of the

respect for individuals.⁴⁶ This point is made in relation to a judgment of the Southern African Constitutional Court that relied upon *ubuntu* to argue for the abolition of the death penalty. In doing so, Van der Walt urges for caution and calls for a refinement of *ubuntu*, to critically distance or discard it from its feudal and hierarchical origins and underpinnings. Because of this, it is important not to pursue the logic of *ubuntu* too far, especially in ways that lead to the unintelligibility of the sanctity of individuals outside their community.⁴⁷ Similarly, the failure to distil what is perceived as an obvious limitation could yield adversely on the value of plurality, which often suffers as a result of the emphasis on unity by *ubuntu*.⁴⁸ In other words, *ubuntu* can have far-reaching implications for the plurality and diversity of our humanity itself.

The observations above have always been the question marks about the emphasis on community, not necessarily *ubuntu* as a species of community. In my opinion, a possible way of escaping these problems can be achieved by more emphasis on hospitality and compassion, values that also underlie the rich meaning of *ubuntu*. Although *ubuntu* is commonly associated with the social constitution of the self or the reciprocity with those closest to you, the suggestion here is that what gives it the moral edge and distinguishes it from other communitarian discourses is the cosmopolitan ethic it implies, one that places humanity at the centre of all obligations. The community it calls us to see is the human community; it is not one based on territory, culture, ethnicity or religion.

We should understand *ubuntu* not from the standpoint of the sameness or familiarity, but also from the point of view of strangeness. *Ubuntu* is synonymous with values of hospitability, friendliness, care and compassion, particularly for the vulnerable.⁴⁹ This is, in essence, what the philosophy of human interdependence tries to promote. This is what Bishop Desmond Tutu means when he suggests that *ubuntu* can be likened to a claim that '[M]y humanity is caught up, is inextricably bound up in yours'.⁵⁰ *Ubuntu* presupposes that social cohesion or harmony cannot be understood apart from the overlapping and interwoven relationships that we share with other human beings. *Ubuntu*, in short, is a cosmopolitan philosophy.

This cosmopolitan conception of *ubuntu* is further underscored by looking more closely at the value it places on hospitality to strangers and the vulnerable. Strangers, the homeless, refugees or the poor are accorded a special place within the philosophy of *ubuntu*. People who

suffer from deprivations, either as a result of loss of their homes or something else, ought to be specially treated. Part of the reason for this is the recognition of the vulnerable nature of the human condition, and that we may be hosts today and strangers tomorrow. As such, we have 'an extensive obligation to admit, and be generous and supportive of, strangers'.⁵¹ This, even though it might appear selfishly motivated, nevertheless, encourages us to appreciate that all human beings, including the most powerful, are vulnerable.

The significance of *ubuntu*, then, lies not in the emphasis it yields to commonality or reciprocity, but rather the love and empathy it encourages to the vulnerable, particularly vulnerable strangers. Unlike reciprocity, this demands that the scope of one's obligations should extend beyond one's community, howsoever this is defined. The moral compass of a community is therefore measured according to its ability to accommodate both strangers and the vulnerable. *Ubuntu* is, for instance, comparable to certain versions of western cosmopolitan ethics in this respect, and it also explains why hospitality to strangers is a treasured value in African philosophy.

Interestingly, it is often said that no one is born with *ubuntu* but it is a set of values that can be cultivated over the course of life through daily encounters and relationships with others. What this means is that *ubuntu* is not just an ideal but a form of practice, a form of practice that is nurtured by daily interactions or encounters with others. *Ubuntu*, in this sense, strikes a chord and can be further developed from Enrique Dussell's⁵² notion of praxis. Here praxis refers to the kinds of relationships that are built through particular forms of actions, such as helping, sharing or other ethical exchanges with others daily. Through such interactions, the real presence of a person is experienced by the other. There is an intrinsic value in face-to-face exchanges that people share.

What makes praxis such a powerful concept is that it is underpinned by the notion of love. It is love not in its commonly associated connotations; rather love is understood as agape, where one loves the other unselfishly. It is a performative act, one that is constituted by acts of giving, commitment and the surrender of oneself to the other without remuneration. One does not have to be a Christian or a follower of liberation theology to appreciate the significance of Dussell's notion of praxis. Thinking of *ubuntu* as a form of praxis implies that the relationships we share with others are what nurtures us into good moral beings. More importantly, our moral and ethical literacy is developed

by the habits of hospitality, friendship, generosity, love and empathy to others.

Framed this way, much of the tension between community and individual human rights can at least be circumvented, if not totally eliminated. With this sort of thinking, it is possible for everyone to be recognised as a potential agent of social change, who can contribute to the good of community. It is also possible to rationalise with individuals and convince them that certain values are best protected collectively rather than independently. It draws attention to the importance of co-operation, in the sense that independent action cannot satisfactorily take care of the needs of individuals. In other words, individual needs are contingent on co-operation with others.

Once the discussion is pursued along these lines, it is possible to demonstrate that a lot more can be achieved by a community than by disaggregated individuals. The strength of this approach is showing the interdependencies that exist among individuals, including the less fortunate in the community. But as with any arrangement that implies some sort of distribution or even co-operation, it is only likely that it would generate controversies, especially when there are scarce resources, or when some have more than others. Much will depend on opportunities for open dialogue, where individuals in any given community can work out their grievances or arrangements for distribution of common goods, no matter how difficult. This is a further indication of the need for Community Forums, as will be discussed in Chapter 6. Deliberations in Community Forums can focus on different things, including questions about the primacy that should be given to human rights and other important values. Creating opportunities for dialogue should be seen as a further way of bringing the relational dimension of human rights and community into light.

1.6 CONCLUSION

Let there be no doubt that mutually reinforcing the values between human rights and community will not be easy to achieve. Just as conflicts often exist between rights, they can also be anticipated between the values protected by human rights and community. Several trade-offs have to be made about the values that should prevail at any given point. Mutual reinforcement, so defined, requires an atmosphere of negotiation, re-negotiation and compromise, something that (as sug-

gested) can no doubt benefit from proposals for Community Forums in Chapter 6 of this book. Whilst it is impossible to eliminate tensions that may arise from the need to maintain individual autonomy and the pursuit of the collective good, such tensions can be reduced by creating opportunities for open public dialogues about the strengths and limitations of the values that each concept represents. This chapter has been a modest attempt to contribute to a relationship between human rights and community. This chapter, as with the book in general, is an important part of understanding how to increase the role of community in human rights discourse, for it involves mutually understanding how the values of each concept represented can contribute to each other.

Notes

- 1 Y. Ghai and J. Cottrell (eds), *Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights* (London: Interights, 2004); D. Bilchitz, *Poverty and Fundamental Rights, the Justification and Enforcement of Socio-Economic Rights* (Oxford: Oxford University Press, 2007); O. Ferraz, 'Poverty and Human Rights', 28 (2), *Oxford Journal of Legal Studies*, 2008, pp. 585–603.
- 2 Nigeria is a good example. It is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), even though economic and social rights remain non-justiciable in the country. In spite of this, economic and social rights can be read within the meaning of Chapter II of the Nigerian Constitution dealing with the 'Fundamental Objectives and Directive Principles of State Policy'. Although it does not explicitly use the terminology of economic and social rights, the derivative principles are meant to guide the state to ensure the provision of minimum standards of welfare, healthcare and education. The absence of explicit provisions dealing with economic and social rights in the Nigerian Constitution can be traced to Nigeria's colonial past. At the time of decolonisation, it is well known that the constitutions of the postcolonial states, such as that of Nigeria, were modelled upon those of their colonisers. The Nigerian Bill of Rights of 1959/1960 was modelled on the European Convention on Human Rights, owing to Britain's ratification of the latter. It is well known that this document was not sympathetic to economic and social rights. B. A. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001), pp. 862–73.
- 3 C. Graham, 'Human Rights and the Privatisation of Public Utilities and Essential Services', in K. De Feyter and F. Gomez (eds), *Privatisation and*

- Human Rights in the Age of Globalisation* (Antwerp/ Oxford: Intersentia, 2005), p. 33.
- 4 J. Van der Walt, 'Blixen's Difference: Horizontal Application of Fundamental Rights and the Resistance to Neocolonialism', 1, *Law, Social Justice and Global Development Journal*, 2003.
 - 5 The Declaration on the Right to Development (DRD), adopted 4 Dec. 1986, G.A. Res. 41/128; U.N. GAOR, 41st Sess., at 3, Annex, U.N. Doc. A/Res/41/128 Annex (1987) (hereinafter Declaration on the Right to Development); A. Sengupta, 'On the Theory and Practice of the Right to Development', 24, *Human Rights Quarterly*, 2002, pp. 837-9; A. Cornwall and C. Nyamu-Musembi, 'Putting the Rights-Based Approach to Development into Perspective', 25 (8), *Third World Quarterly*, 2004, pp. 1415; U. Baxi, *Human Rights in a Post-Human World: Critical Essays* (New Delhi: Oxford University Press, 2009), pp. 124-55.
 - 6 B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, MA: Cambridge University Press, 2003), p. 221.
 - 7 The Right to Development is a right of individuals, groups, people and states to participate and benefit from the process of development. It is aimed at realising the full potentials of each person in harmony with community. The Declaration on the Right to Development 1986, Article 1.
 - 8 J. Donnelly, 'In Search of the Unicorn: the Jurisprudence and Politics of the Right to Development', 15 (473), *California Western International Law Journal*, 1985, p. 482.
 - 9 I. Shivji, *The Concept of Human Rights in Africa* (London: Codesria Book Series, 1989), p. 20.
 - 10 K. Horta, 'Rhetoric and Reality: Human Rights and the World Bank', 15, *Harvard Human Rights Journal*, 2002, pp. 228-9. World Bank, *World Development Report: Equity and Development* (Washington, DC: World Bank, 2006).
 - 11 One can draw parallels between this and the way participation has been embraced by the United Nations (UN) normative framework and its development agencies. Participatory decision-making has been a core feature of the UN's development work.
 - 12 B. D. Sousa Santos, 'Beyond Neo-liberal Governance: the World Social Forum as Subaltern Cosmopolitan Politics and Legality', in B. D. Sousa Santos and C. A. Rodriguez Garativo (eds), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005), pp. 35-7.
 - 13 See World Bank, Community Driven Development, accessed online at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIAL>

DEVELOPMENT/EXTCDD/0,,menuPK:430167~pagePK:149018~piPK:149093~theSitePK:430161,00.html 16 July 2012.

- 14 A. Little, *The Politics of Community: Theory and Practice* (Edinburgh: Edinburgh University Press, 2002), pp. 61–2.
- 15 R. Putman, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993), pp. 167; R. Putman 'Bowling Alone: America's Declining Social Capital', 6, *Journal of Democracy*, 1995, pp. 65–78; R. Putman (ed.), *Democracy in Flux; The Evolution of Social Capital in Contemporary Society* (Oxford: Oxford University Press, 2002).
- 16 F. Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (New York: Free Press, 1996).
- 17 The CBD are projects that involve the beneficiaries at the stages of design, whilst the CDD are projects where beneficiaries have more control over key decisions, such as the management and investment of funds. G. Masuri and V. Rao, *Community-Based and Driven- Development: A Critical Review* (Washington, DC: World Bank, 2004).
- 18 Ibid.
- 19 Paul Hirst's thesis on 'communities of choice' is an illustration of how an association can become of a community. P. Hirst, *Associative Democracy: New Forms of Economic and Social Governance* (Cambridge: Polity Press, 1994), pp. 49–59.
- 20 Etzioni describes these as contemporary communities. They are not only composed of a network of communities, but also membership is not restricted to one type of community. A. Etzioni, 'Old Chestnuts and New Spurs', in A. Etzioni (ed.), *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities* (Charlottesville: University of Virginia Press, 1995).
- 21 H. P. Binswanger-Mkhize, J. P. de Regt and S. Spector (eds), *Scaling up Local and Community Driven Development: A Real World Guide to its Theory and Practice* (Washington, DC: World Bank, 2009), p. 3.
- 22 T. Ferdinand, *Community and Civil Society* (Cambridge: Cambridge University Press, 2001).
- 23 Apart from the literature on political philosophy discussed in this chapter, the following are a few writers who have considered the possibility of a relationship between human rights and community: R. Howard, *Human Rights and the search for Community* (Boulder: Westview Press, 1995); A. Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996); M. Nandorfy and D. Fischlin, *Community of Rights – Rights of Community* (Montreal: Black Rose Books, 2011); J. Ife, *Human Rights from Below: Achieving Human Rights through Community Development* (Cambridge: Cambridge University Press, 2009).

- 24 For instance, the classical debates about the universality and relativity of human rights are a different way of understanding the debate about human rights and community.
- 25 These views originate from criticisms of the individualistic and asocial basis of John Rawls's theory of justice by Michael Sandel, Alasdair MacIntyre and Charles Taylor, among others. Such criticisms have today become a reference point for communitarian thought in political theory and philosophy. In its original formulation, these writers question Rawls's depiction of the individual by suggesting he or she could only be socially constituted. Their claims can be understood ontologically, methodologically and normatively. J. Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971); M. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982); A. MacIntyre, *After Virtue* (Notre Dame; University of Notre Dame Press, 1984); C. Taylor, *Philosophical Arguments* (Cambridge, MA: Harvard University Press, 1995), pp. 181–203.
- 26 R. Norzick, *Anarchy, State and Utopia* (London: Blackwell, 2001).
- 27 Ibid.
- 28 A. An'Na'im, *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1992); Y. Ghai, 'Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims', 21 (4), *Cardozo Law Review*, 2000, p. 1095.
- 29 M. Sandel, *Public Philosophy: Essays on Morality and Politics* (Cambridge, MA: Harvard University Press, 2005), p. 254.
- 30 A. MacIntyre, *After Virtue*.
- 31 P. Selznick, 'The idea of Communitarian Morality', 75 (1), *California Law Review*, 1987, p. 445.
- 32 T. Spragens Jr, 'Communitarian Liberalism', in A. Etzioni (ed.), *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities*, p. 47.
- 33 A. Gewirth, *The Community of Rights*.
- 34 C. Douzinas, *The End of Human Rights* (Oxford: Hart Publishing, 2000), p. 274; A. Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press, 1995); A. Honneth, 'Recognition or Redistribution? Changing Perspectives on the Moral Order of Society', 18 (2–3), *Theory, Culture and Society*, 2001, pp. 43–55; F. Hegel, *Elements of the Philosophy of Right*, trans. A. Wood (Cambridge: Cambridge University Press, 1991).
- 35 M. Battle, *Ubuntu: I in You and You in Me* (New York: Seabury Books, 2009), p. 8.
- 36 Ibid. p. 2.
- 37 T. Metz, 'Conceptions of Human Dignity: Vitality and Community as the Ground of Human Rights, 13, *Human Rights Review*, 2012, pp. 19–37;

- T. Metz, 'African Values, Human Rights and Group Rights: A Philosophical Foundation for the Banjul Charter', in O. Onazi (ed.), *African Legal Theory and Contemporary Problems. Critical Essays* (Dordrecht: Springer, 2013).
- 38 K. Kaunda, *A Humanist in Africa: Letters to Colin Morris from Kenneth Kaunda President of Zambia* (London: Longmans, Green & Co., 1966).
- 39 K. Nkrumah, 'Consciencism: Philosophy and Ideology for De-colonisation', in E. Eze, *African Philosophy: An Anthology* (London: Blackwell, 1998), p. 81.
- 40 J. Nyeyere, *Ujamaa: Essays on Socialism* (Oxford: Oxford University Press, 1968) pp. 1–13; B. Ibhawoh and Dibua, 'Deconstructing Ujamaa: The Legacy of Julius Nyerere in the Quest for Social and Economic Development in Africa', 8 (1), *African Journal of Political Science*, 2003, pp. 62–70.
- 41 R. Young, *Postcolonialism: A Historical Introduction* (London: Blackwell, 2001), pp. 252–569.
- 42 D. Cornell and N. Muvangua, *Ubuntu and the Law: African Ideals and Post-Apartheid Jurisprudence* (New York: Fordham University Press, 2011).
- 43 *S v Makwanyane & Another* 1995 (6), BCLR, 665 (CC), para 308.
- 44 *Port Elizabeth Municipality v Various Occupiers* 2004 (12), BCLR, 1268 (CC).
- 45 *Ibid.* para 37.
- 46 J. Van der Walt, *Law and Sacrifice: Towards a Post-Apartheid Theory of Law* (Oxford: Routledge-Cavendish 2005), p. 111.
- 47 *Ibid.* p. 114.
- 48 *Ibid.* p. 155.
- 49 D. Tutu, *No Future without Forgiveness* (New York: Random House, 1999), p. 31.
- 50 *Ibid.*
- 51 M. Munyaka and M. Motlhabi, 'Ubuntu and its Social Significance', in M. Murove (ed.), *African Ethics: An Anthology of Comparative and Applied Ethics* (Pietermaritzburg: University of Kwazulu-Natal Press, 2009), p. 73.
- 52 E. Dussell, *Ethics and Community* (trans. R. Barr) (New York: Orbis Books, 1988), pp. 7–16.

Chapter 2

ARE HUMAN RIGHTS ENOUGH?

2.1 INTRODUCTION

In this chapter, I consider another problem with human rights, one that does not feature prominently in the communitarian critiques discussed in the previous chapter. This chapter is concerned about what human rights offer as a way of understanding what it means to suffer and what human suffering entails by way of a response. This question raises two related issues. The first concerns the capacity of human rights to give insight into mass abuses of civil and political and economic and social rights or other injustices and forms of human suffering. In other words, do human rights offer sufficient conceptual resources to assist the proper articulation of suffering and vulnerability?

The second issue has to do with the nature of the human rights claim. It questions the extent to which human rights hinder our ability to recognise and respond to various forms of human suffering by preventing empathic or other more affectionate forms of interaction and relationships between people. In this context, I am referring to the adversarial or antagonistic nature of a human rights claim; that is, the extent to which it prevents the proper appreciation and articulation of human suffering and vulnerability.

My reason for focusing on this problem is not to dismiss human rights; rather the aim is to show how this particular difficulty can be overcome by assimilating them further with the community ethos, something that will underscore the mutuality between human rights and community. Indeed, my overall hypothesis in this chapter is that the concept of community's important contribution in this context is that it makes love (among other values) the basis for the evaluation of how human rights and human rights institutions should recognise

and respond to human suffering. To develop this argument, I return to African moral philosophy (*ubuntu*) – where community refers to our capacity to commune with others, grounded in habits and expressions of love, friendship and empathy – to show how the value it attaches to loving relationships can enrich our understanding of human rights, particularly the ability of the latter to respond to human suffering. Indeed, I would argue that a strong moral commitment to human rights should also imply a similar commitment to love, which is in turn necessary to respond to human suffering.

In order to demonstrate, and transcend, the limited capacity offered by human rights to recognise and respond to human suffering, I approach this issue almost exclusively through the seminal writings of modern mystic and Christian anarchist, Simone Weil. Her writings are used as a medium to question the ethical quality of human rights by showing their limitations in recognising, responding to and articulating how people suffer. Simone Weil's writings show what human rights lack, and how this particular limitation can be alleviated by augmenting them with love, among other values. I will show that while Weil was critical of the ability of human rights to address human suffering, a silent voice can be found in her writings that suggests she was not totally dismissive of the relevance of human rights in any given society. I argue that, if this is the case, there would be nothing unusual in highlighting or applying Weil's writings on love to human rights, even though, at some point, she vociferously claimed that rights had no connection with love. Indeed, what I seek to achieve in this chapter is to reinterpret and extend Weil's criticisms of human rights to, first of all, show that the way their ability to encourage responses to human suffering is irreducible to our capacity to develop habits of love and empathy. Second, African moral philosophy complements this particular aspect of Weil's thought by showing how addressing human suffering through love can be enriched by community, which itself is constituted by loving relationships.

2.2 SIMONE WEIL'S CRITIQUE OF HUMAN RIGHTS

My aim is not to offer a general reading of Simone Weil's philosophical or theological writings; rather I am interested in her critique of human rights. Human rights did not feature prominently in the writings of Simone Weil. Her most comprehensive treatment of the subject can

be found in her seminal essay on 'Human Personality',¹ which shall be the focus of discussions throughout this chapter. Generally speaking, Weil engages with human rights through her approach to justice, a different approach to the more contemporary work of John Rawls among others. Weil's work particularly departs from most current approaches on the central and constitutive role attached to human rights in the pursuit of or as the end of justice.² In short, Weil's work was sceptical about rights-based approaches to justice. According to Weil, when human rights become the dominant moral discourse in any given society, it is a sign that the society itself has become commodified. The effect is that rights become substitutes for justice. This was problematic in the sense that rights are a materialist concept, a concept that exudes 'commercial flavour',³ something that in turn made it dangerous to replace justice with human rights.

In Weil's view, rights claims are typical of property, contractual and legal claims and counter claims. A consequence of the commodification of society is the intensification of rivalry and conflict among individuals. The society becomes antagonistic and contentious owing to the specific nature of rights-based claims. Rights-based claims are more common among parties to conflict. This is what Simone Weil meant when she warned that '[R]ights are always asserted in a tone of contention; and when this tone is adopted, it must rely upon force in the background, or else it will be laughed at'.⁴ For Weil, a rights-based claim is analogous to a declaration of war, a declaration that marks the separation of one from the other.

There are two related consequences of rights-based claims. The first is that affable, hospitable or more affectionate interactions are untenable between parties.⁵ In contrast, Weil argued that the impulse of love and charity is more appropriate for grasping, articulating and responding to human suffering and vulnerability. The second and more profound indictment of human rights that stems from this point is that they are unable to intricately grasp or help to express the most silent cries of injustice. This is one of the points that comes out of the vivid story Weil gave of the cry of a young girl forced to work in a brothel. Weil questions the ability of human rights to enable the attention or articulation of the deep-seated nature of the violation being done to the girl. Apart from failing to comprehend or articulate the deep sense of defilement experienced by the young and vulnerable girl, human rights reduce her suffering to a grievance around wages, property or contract.⁶

Weil argued further that human rights claims were quite superficial and akin to 'the motive that prompts a little boy to watch jealously to see if his brother has a slightly bigger piece of cake'.⁷ This cry is different to one from the depth of the heart that asks, 'Why am I being hurt?' This cry is more profound, and difficult to grasp, 'it is a silent cry, which sounds in the secret heart'.⁸ It is the sort of cry that is hardly expressed in any comprehensible language. It is often the case that those who express such cries are not able to articulate themselves audibly. In these situations, the heart that cries out is the only human faculty that is capable of freely and publicly expressing itself. For Weil, such cries can simply be heard by the act of attentive silence and love.

To illustrate this point, she demonstrates that ancient Greece had no concept of rights, as the concept of justice was sufficient for the needs of that society. Weil demonstrates this from Sophocles' tragedy, *Antigone*.⁹ To briefly summarise this story, it involved two brothers, Polyneices and Eteocles, who lost their lives after being embroiled in a contest over the kingdom of Thebes. Creon, the uncle of both men, and also, the King of Thebes, prohibited the burial of the aggressor of the fight, Polyneices. Their sister, Antigone, disobeyed this injunction and went ahead to bury Polyneices. She was in turn punished by Creon, and sentenced to death for her disobedience.

Weil found nothing wrong with the fate that had befallen Antigone, especially what she considered her foolish attempt to treat both brothers equally. Creon was justified in taking the decision he reached, as Antigone was simply mistaken in doing what she did. At the same time, Antigone's actions did find justifications in Weil's views, especially when they are considered non-rationally. She was, as Weil says, overwhelmed by love, which seemed to take precedence over everything else. Antigone was not concerned with what each person had done, what they deserved or what their personal qualities were. Rather (as illustrated below), she was motivated by a type of love that is sacred and impersonal. This was simply because she considered it as a type of love that circumvents all empirical qualities of humanity. It was a 'foolish, unreasonable, absurd'¹⁰ type of love. The point is that Antigone's actions were not determined by rights.¹¹ They were motivated by justice, a kind of justice that 'dictated this surfeit of love'. It had nothing to do with rights, since for Weil, they 'have no direct connection with love'.¹²

More fundamentally, Weil questioned rights for their close association with the concept of personality. By personality, as Christopher Hamilton¹³ explains, she meant something derived from the concept of *personalism* – the metaphysical core in all human beings, something responsible for understanding the dignity and inviolability of each human being. The problem for Weil is that personalism does not quite grasp what is sacred about human beings. It functions like a shield, which presumes that the destruction of a human being is impossible.¹⁴ It assumes that each individual is indestructible, and thereby capable of withstanding the most abhorrent of circumstances. This metaphysical core shields human beings from being afflicted, and by the same token, human beings are incapable of inflicting harm on others.

Part of the problem arises from the definition of personalism. It is difficult to know what personalism is, let alone rely upon it as a 'standard of public morality'.¹⁵ The same thing applies with the concept of rights, and to combine two inadequate concepts is very limiting. According to Weil, understanding the sanctity of human individuality lies in comprehending how the soul is lacerated by the thought of harm being done to it. It comes from the expectation, even by the vilest person, that good, not evil, will be done to them. Paradoxically, the point Weil is getting at is that the 'cry of sorrowful surprise'¹⁶ resulting from the infliction of evil is not personal; rather, such cries are impersonal protests. Whilst there are many important personal cries, they do not in any way violate what is sacred in one. For Weil, it is 'neither his person, nor personality in him, which is sacred. It is he. The whole of him'.¹⁷ If it is down to his human personality, 'I could easily pull out his eyes'.¹⁸ After all, 'as a blind man he would be exactly as much a human personality as before'.¹⁹

Weil's point is that it is erroneous to justify morally abhorrent wrongs on some empirical quality of humanity. If this is done (as in most cases), it means that no individual is capable of harming the other. This is an unrealistic response to the question of why it is wrong to harm others. Weil calls us to understand the meaning and value of impersonality.

Impersonality can only be understood through a form of solitude; that is, through what she called a form of attention. It is impersonality that draws our obligations towards others, especially the most vulnerable. Antigone's actions can be used to expand on this point. They reveal the power of impersonality, given that she is not concerned about what each of her brothers has done, or what they deserve, or their personal

qualities. Rather, she is motivated by a type of love that is sacred and impersonal.

2.3 WHY HUMAN RIGHTS MATTER

Simone Weil's criticisms of human rights are very telling, and they have certainly failed to attract an adequate response. However, even on the strength of her criticisms, it can also be argued that they do not in any way reduce the continuing moral appeal for human rights across the world today. Human rights may be hugely inadequate, but it must be recognised that in certain circumstances, they may be the only source of inclusion or hope for the poor. Weil's criticisms, at best, point to the limit of human rights, especially that observing them will not always lead to the right thing to do. More than anyone today, Weil must be appreciated for pointing out this profound limitation of human rights.

There are many ways of understanding Weil's criticisms of rights, one of which is that they call us to abandon human rights altogether. Alternatively, and this is the path I choose to pursue, Weil's critique should be read not as a call to reject human rights or replace them with something entirely new. Rather, Weil's critique is relied upon to point out the limitations of human rights in relation to suffering and vulnerability, and furthermore, to point out how they can be rescued and alleviated from this imperfection. Her critique provides us with the necessary impetus to criticise human rights internally, a path that I have chosen to follow in this book. It must be appreciated that human rights have a promise that cannot so easily be dismissed or written off. It is this promise that has given them prominence today, something that makes them an indispensable tool for the alleviation of different forms of human suffering. My aim, as such, is that instead of discarding human rights, I show how human rights can re-discover their lost dimension, and furthermore, how they can encourage more responsiveness to different dimensions of human suffering.

Paradoxically, even though Weil was critical of human rights, such criticisms are pivotal to understanding how human rights can overcome their limitations in terms of recognising and responding to human suffering. Furthermore, Weil's critique can also help us guard against the complacency that comes from appealing to rights. I am referring to a certain kind of fanaticism about human rights, a belief that the mere invocation of human rights is enough to solve all

problems in society, especially poverty, inequality, war and the lack of development. This fanaticism is one of the reasons why human rights are left unquestioned or proposed as if they exist without imperfections.

It is because of these problems that I argue here that the only way we can avoid the complacency which often accompanies human rights advocacy is by subjecting them to a kind of internal scrutiny I have suggested above. We need continually to pause to try to grasp what it means to say that human rights are ethical claims for mutual recognition. In other words, we always need to question the sort of ethic involved in this type of claim. We need to understand what standards human rights presuppose, how to measure them, or how to rediscover them if or when we deviate from them. This entails understanding how well human rights function when they are called upon to assist in addressing many questions relating to human suffering. This is, after all, why the contemporary discourse of human rights emerged after the Second World War. The ethical significance of human rights today, no matter how much they have been subsequently adapted and narrowed, cannot be appreciated without understanding how, and in what ways, they can respond to various forms of human suffering.²⁰ This kind of questioning of human rights can help to develop an ethic of responsiveness among individuals and institutions towards the alleviation of human suffering. It can be achieved exactly in the way that Weil herself spoke about it; that is, through systems of public education that assist in hearing the faintest cries of suffering. She advocated new regimes and institutions 'in which this faint and inept cry can make itself heard; and . . . put[s] power into the hands of men who are able and anxious to hear and understand it'.²¹ From this perspective, an internal critique of human rights, or measuring and understanding their ethical quality, cannot be understood without the work of Weil, most notably through her concept of attention. Attention is a habit that individuals (especially those in authority) and institutions need to cultivate to try to understand better, and address, different problems around us, especially those that cause human suffering.

Before understanding how Weil's idea of attention helps in this context, we need, first, to find a silent voice in her work that is not totally dismissive of human rights. On the surface, Weil's criticisms might seem anti-human rights, and somewhat counter-productive from the perspective of this book, since the primary aim, here, is not to

dismiss but to remedy human rights. On closer inspection, however, Weil did not oppose human rights; rather, she placed them at a secondary place. She gave more priority to love, and it was not that she thought human rights had no value at all. Agreeing with this point, Peter Winch writes:

Although, as we see, she expresses herself strongly about the language of rights, it is important to realise that she is not rejecting it as always inappropriate. I think her discussion does not even rule out the possibility that injustice may, in some cases, actually take the violation of someone else's rights . . . The *inspiration* for a demand for rights may well be a concern for justice; it may be in some circumstances to struggle for rights is the best way of struggling for justice. But that does not mean that the struggle for justice is the same thing as the struggle for rights; the one struggle may be successful and the other not – may be that is even more often than not the outcome.²²

For Winch, it is important that this distinction is not lost; that is, rights may not always lead us to justice, or they might sometimes mislead us in to thinking that rights are equivalent to justice. As such, there is nothing contradictory about trying to understand how Weil's ideas can assist the framework of human rights, so that when we appeal to them as ethical guides, they can comprehensively tell us what to do to achieve development, economic and social rights, or to alleviate the suffering that results from the failure to achieve such objectives.

The concept of attention is a powerful way of achieving that, for it is:

a form of discernment of seeing what people are saying when they are hurt . . . Attention consists of suspending our thought, leaving it detached, empty and ready to be penetrated . . . Above all our thought should be empty, waiting, not seeking anything but ready to receive in its naked truth the object that is to penetrate it.²³

Accordingly, attention is simply seeing that which we often ignore. It is an ability that exists in or can be cultivated by all individuals. As the passage above reveals, this consists of an aptitude that includes a number of things; it consists of listening, looking, being still or patient, and the willingness to embrace the other with compassion and help.²⁴

It is obvious that Weil's ideas are shaped by her Christian orientation, and also her mysticism.²⁵ Weil's Christian background influenced what she meant by attention, as it was analogous to the way she thought one could experience the love of God. The unconditionality implied by God's love is the key to grasping attention. In other words, individuals had an obligation to love one another. It was a kind of expectation that many Christians and non-Christians alike might find absurd, as well as hard to observe. The biblical account of the Good Samaritan was important in bringing this into light. The significance of the Samaritan assisting the afflicted man, who was possibly his enemy and who had fallen among thieves, is exactly what attention entails. Building on the parable of the Good Samaritan, Zenon Bankowski illustrates that attention is not simply a question of understanding who one's neighbour is, but rather 'a constitutive act of making the other a neighbour by the act of helping'.²⁶ And the act of making one a neighbour is achieved through this unique act of compassion, where the non-afflicted takes on the pain of the afflicted with love.

What Weil is suggesting is not simple, especially if one considers the narcissistic nature of individuals. Even when we are genuinely motivated to assist the afflicted, our self-centred disposition only leads to condescension, or we fail to connect with the depth of the other's suffering. Individuals either remain distant, or their interventions are paternalistic: they are not often made from a position of equality. This is perhaps why Weil thought that the only way that one could sincerely assist the afflicted is when one takes part in the affliction. What she means is that it is hardly possible to understand the afflicted from a vantage position; it is only possible if one participates in their affliction. She thought that our privileged positions are more of an accident of fate than a natural one.²⁷ Attention avoids the kind of condescension that can come from the act of helping. It makes the non-afflicted and afflicted equal. Through attention, we recognise that the act of helping can be disguised by power relations, or that the act of helping can be carried out for reasons other than the actual cry of pain. This act of helping is, therefore, an act of participation, in the sense of taking part in the suffering of the afflicted. Attention helps us to recognise that all participants are equal in pain. It restores the afflicted to a position of equality with the non-afflicted.

2.4 LOVE AS COMMUNITY

Regardless of how important love may be to different aspects of our personal lives, it continues to play a peripheral role in contemporary legal, social, political and economic contexts. This is the underlying message one gets from reading the work of Simone Weil, who, among other writers,²⁸ helps us understand why love should be relevant to many current social and political issues. As demonstrated above, love is explicitly linked to Weil's concept of attention. Love, as with most of her thought, has its distinctively Christian underpinnings, even though it can be interpreted in a secular way. Weil's work often demands individual and institutional responsibility and her writings on love are both personal and political. This is also because the boundaries between her theological and political writings are difficult to distinguish. As can be deduced from above, Weil considered love as something that is sacred and impersonal, something that could be emulated from the parable of the Good Samaritan, where the love of the neighbour was really about the love of the stranger.²⁹ Love is impersonal, impartial and unconditional. It is not identitarian,³⁰ romantic or selfish. Love is unreasonable, but yet does not totally exclude rationality. After all, attention (the act of stillness) is not absolutely a form of irrationality; it requires a certain degree of deliberation.

Love certainly cannot be legislated; this should not be mistaken as the suggestion. What it can do, though, and this is the point of the argument, is provide a background or operating philosophy that can guide our actions, or the way our laws, legal frameworks, and other institutions are designed to treat those who suffer or are in need with utmost priority. After all, no law, institution or intervention can exist without a background operating philosophy.

Zenon Bankowski reinforces the point when he argues that all attempts to organise our legal, social and political systems would always fail, unless they are created in such a way that they can assist, recognise and respond to the cries of those who suffer. Love is central to how we should respond to those that suffer. As he eloquently puts it, '[T]he move to set up law and stability will only come if we respond with love to the pain we hear'.³¹ Without the inclination to love, 'law will atrophy and we will be blind and deaf to the poor and hurt'.³²

An interesting aspect of Bankowski's work is that it provides us with a contemporary approximate of love in legal and political terms. He is

referring to the concept of welfare. To appreciate this, we first need to understand what he described as love. For him, love is as an action-guiding principle, something that is not derived from reason or rational universalising principles.³³ Love is arbitrary and useful for paying attention to particular or concrete circumstances; it is a reason unto itself. Love is a grace, unpredictable and not rule-bound. Bankowski draws parallels between love and welfare, which is regarded as the closest political principle to love. Welfare is a response to particularity, something that cannot be anticipated by devising or adhering to general rules. Welfare is the act of giving according to need and not ability. The demands of welfare, like love, are impossible to determine or constrain by rules. Like Simone Weil, although with certain differences, Bankowski sees love as pivotal to how we recognise and respond to human suffering, something required at a personal and institutional level.

Another follower of Simone Weil, Raimond Gaita, takes her emphasis on love further by showing how it is pivotal to our responses to human suffering.³⁴ Gaita shows this through his attempt to offer a theory of justice based on what he calls equality of respect. Gaita is concerned about and wants to avoid common practices that render human beings 'invisible, or partially visible, to one another'³⁵ to the extent that we become morally blind to them. He insists that it is because of this that questions of justice cannot be addressed outside a full grasp of what it means to be human.

Equality of respect is a common claim at the heart of all struggles for justice; it underlies all struggles by women, men, blacks or whites against different forms of inequality. Equality of respect is an appeal that all victims of discrimination either make or seek to make. And the struggle for social justice is no more than a struggle for the equal recognition of the preciousness of one's humanity. It is a 'struggle to make our institutions reveal rather than obscure, and then enhance rather than diminish the full humanity of our fellow citizens'.³⁶ It is against the background of equality of respect that one's humanity can fully be recognised. It is then that appeals for equal access of goods can be equally and sufficiently recognised.

If almost all injustices in society are rooted in the lack of respect for one's humanity, then the question that follows on from this is how we can strive to achieve such standards of equality or recognise the fullness of individual humanity. Not surprisingly, Gaita turns to the work

of Simone Weil in developing this thesis; that is, her emphasis on love as the ultimate source of grasping the preciousness of the humanity of each person. This is the point of the moving story about the nun working in a mental hospital, a narrative with which Gaita's book began. The nun demonstrated in the most touching way what Weil meant by attention. She embraced the affliction of the patients in ways that recognised the fullness of their humanity. This was because of the kind of love she expressed towards the afflicted. It was the type of love:

of saints, which builds on and transforms that sense of individuality, and in doing so, deepening the language of love which compels us to affirm that even those who suffer affliction so severe that they have irrecoverably lost everything that gives sense to our lives, and the most radical evil-doers, are fully our fellow human beings.³⁷

Gaita (like Weil) is writing of a type of love that is impartial and pure. It is addressed to what is sacred in a person, and it is not conditional on what a person does or fails to do. It is defined by its purity, which allows us to love the good or wicked, the noble or wretched. The point he is making is that love is the source and foundation of all our obligations. It is the reason that we can truly appreciate why we should treat others with dignity and respect. If we are unable to love, he says, then we are incapable of appreciating the point of any obligation. Love defines, even for those that we do not feel directly connected with, the nature of our obligations to them. In spite of occasions where we feel less inclined to love people directly, we end up loving them because they are objects of other people's affection. For instance, prisoners only become visible to prison guards when the latter are able to see the former loved through their loved ones (i.e., their relatives). Parental love is another good example of this pure and impartial love, one that is defined by its unconditionality.³⁸ Parents love their children irrespective of the sorrow or joy they may cause. This is why parental love is one of the best examples of unconditional love, especially for the fact that it defies rationality. It is one of the best illustrations of pure love. That is:

the power of human beings to affect one another in ways beyond reason and beyond merit has offended rationalists and moralists since the dawn of thought, but it is partly what yields to us that

sense of human individuality which we express when we say that human beings are unique and irreplaceable. Such attachments, and the joy and the grief which they may cause, condition our sense of preciousness of human beings. Love is the most important of them.³⁹

As Gaita goes on to argue, even human rights, as with the social and political institutions of our respective societies, are (or should be) founded on love.⁴⁰ The point is that we cannot appreciate what humanity really is; that is, the preciousness of individuals, without the language of love. Gaita is suggesting that if we lose the ability to love, or the ability to cultivate it, then we would fail to value, observe or respect the human rights of others. Gaita's argument is powerful in this respect as it calls us to understand that the only way we can build a tractable framework of rights and obligations must be founded upon a political concept of love. In this vein, Gaita disagrees with Immanuel Kant, who wrote in disagreement on the importance of love to our obligations to others. Kant was suspicious of love. Our respect and care for others, he says, should not depend on love. Love, for Kant, cannot be commanded or generally guaranteed. To put it differently, we do not have to love people to be able to assist them.

Building on Gaita's point, if we are unable to cultivate habits of love, we are more likely to fail to understand why we should refrain from breaching the human rights of others. Love makes it possible to properly appreciate our obligations to others, even to those whom we owe no obligation. This is, of course, a possible explanation of why we are obliged to assist children, the elderly or disabled or such others incapable of reciprocating. This is the sense in which Weil understood love, as something pure and impersonal. This is best illustrated by the analogy she draws from the actions of Antigone. Antigone's decision to bury Polyneices was not motivated by what he had done but by her pure and impersonal love for him.

My argument, then, is that without a political concept of love, it would be difficult to come to terms with the demands of the concept of human rights (as proposed in the previous chapter), which is framed assuming mutual recognition of and respect for each human being. To recap, I am referring to my proposal of a framework of human rights modelled on the interdependent and compassionate nature of the African communal world-view.⁴¹ In Chapter 1, I argued that the essence

of community is the ability to identify and pursue collective objectives and activities with others. Thinking of community in this way entails understanding how it encourages moral comportment towards the well-being of others, something based on expressions of love, empathy and friendship. *Ubuntu*, a representation of the African understanding of human dignity, is intricately linked to an individual's capacity to love and empathise with the other.⁴² In other words, to share or co-exist in community means to love and empathise with others.

Part of the reason for the focus on human relatedness and interdependence in African moral philosophy is that it is the key to the full attainment of personhood, something that cannot be achieved outside mutually supportive activities with others. Interdependence, mutual reciprocity and support are pivotal for self-growth, development and flourishing. Individuals are enjoined to treat each other as ends in themselves and not just as means. To value communal relationships is to share a way of life that prioritises care for the quality of life of others.⁴³ A person's identity cannot be fully developed without this sort of web of relationships, especially the care for the quality of life that people have for each other.

This value of human relatedness or interdependence cannot fully be appreciated outside the language of love. In African moral philosophical terms, love is simply expressed through this process of identification, sharing and caring for the quality of life of others. To identify and empathise with others is synonymous with entering into ethical relationships, based on love and empathy. This is simply what it means to say love is a form of community. All relationships, interactions and exchanges on a daily basis between individuals in a given community are based on love and empathy. This means that community is itself constituted of relationships that are derived from the love and care people share for each other.

In my opinion, the advantage of the language of community centred on human interdependence is the emphasis it places on love and empathy or other more affectionate, affable or hospitable ways of interaction between individuals. This, for me, is a better way to assist, recognise and respond to human suffering. In many situations, it is this kind of language that is needed and not the typical adversarial language of human rights claims. What I am suggesting is not an outright rejection of human rights to replace it with love; nor am I suggesting that love has all the answers to the issues that I have raised in this chapter. I am

well aware that it is difficult to attain the pure standards of love that Weil prescribed. Too often love is referred to in exclusive and impoverished terms. Love, in the conventional context, would prove too exclusive, unstable or unpredictable to be relied upon. What this means is that human rights would always be there to provide protections to those whose human condition we are unable, for whatever reason, to empathise with or love.⁴⁴

My suggestion is not that we should see community as an alternative to human rights, but rather as a means of creating a less antagonistic way of thinking about human rights. This means grounding human rights within an environment that nurtures habits of love and empathy. It is indeed from the standpoint of community that one can begin to appreciate human rights, as a part of the process of understanding what it means to belong together with others in any given community. The language of human rights makes no sense outside the inclination to belong and mutually respect each other. Human rights should be about togetherness, and not radical separation. To imagine human rights from the standpoint of community, more or less, means to ground them in habits of love, empathy and reciprocal identification. To acknowledge human rights as the basis of reciprocal recognition and exchange between each human being is to absolve them from their individualistic, self-centred and inhospitable foundations. What this means is that certain human rights would be protected as part of the condition for belonging to a particular community. To deny a specific person's human rights means to deny that person membership of his or her community.

African moral philosophy complements Simone Weil by showing us how human rights can be enriched by focusing on interpersonal and interdependent relationships, the types that can be nurtured in community. It is true that community or collective arrangements are generally not well emphasised in Weil's work. A common (but perhaps misleading) impression of her work is that she develops the idea of love and attention from a purely individual standpoint.⁴⁵ I am a bit hesitant to accept this opinion, especially if one reads a little more carefully her concept of attention or the way she understood human rights, as something that radically alienates and antagonises individuals. Looked at more closely, Weil does not espouse either an individualistic or a communitarian vision. Her vision of the world is one of connectedness, one that is constituted of a web of relationships.

Weil's idea of attention can be used to show the necessary continuity between individuals and community and vice versa. Attention is a very personal and inward act that demands the highest aptitude of solitude, silence and patience, but it is directed outwards towards persons in need. My understanding of what she is suggesting is that while our awareness of those who suffer around us can only come from the act of waiting and stillness, the response is never personal but externally directed towards those who suffer around us. The gains, as such, are not personal, even though there is a degree of self-fulfilment to be gained.

To take this further, the act of attention is analogous to an act of participation, an act carried out collectively not individually. Attention is unique in the sense that it places the afflicted and non-afflicted on a position of equality. There is no distance between the afflicted and non-afflicted. The afflicted and non-afflicted become equal in pain from the moment the latter takes part in the pain of the former. Attention is proposed literally; it is a spiritual and political or personal and collective act. Attention is an action of communication; it requires us to hear and to listen. Attention is also a form of relationship or exchange; it entails giving and receiving. Most of all, attention requires openness; it is an external predisposition towards the needs of others. It not only helps us to develop awareness of the needs of others around us, but also the necessary connectedness and interpersonal relationships between human beings. It is certainly in this sense that Weil's work can be compared to African moral philosophy, even though there are clear differences on the level of emphasis they give to values of individualism and community. Notwithstanding, both strands of thought can be used to show how love can enrich our understanding of human rights, particularly their ability to respond to human suffering.

2.5 CONCLUSION

In this chapter, I have presented the limited scope that human rights offer as a conceptual medium that can enable a deeper understanding of what it means to suffer or how to respond to suffering. This discussion has been pursued almost exclusively through Simone Weil's critique of rights and the emphasis on guiding our responses to human suffering through love. The purpose has been to make a further case for community, a type of community constituted by loving relationships,

one that is indispensable to responses to human suffering, apart from transforming human rights into a more inclusive, interdependent and responsive concept. Like the work of Simone Weil, the attractiveness of community is the mandate it gives us to respond to human suffering out of love and care for the other. This is indeed a more ethical way to structure rights and obligations, making them more oriented towards enabling individuals and institutions to recognise and respond to human suffering. This is why I have argued in this chapter that community, constituted by practical expressions of loving, should form the basis upon which we evaluate how institutions of human rights should recognise and respond to human suffering.

Notes

- 1 S. Weil, 'Human Personality', in R. Rees (ed.), *Weil: Selected Essays 1934–1943* (Oxford: Oxford University Press, 1962).
- 2 For comparisons between the work of Simone Weil and John Rawls on the concept of justice, see R. Bell, *Simone Weil: The Way of Justice as Compassion* (Lanham: Rowman & Littlefield); P. Winch, *Simone Weil: The Just Balance* (Oxford: Oxford University Press, 1989), p. 181.
- 3 S. Weil, 'Human Personality', p. 18.
- 4 Ibid.
- 5 J. Waldron, 'When Justice Replaces Affection: The Need for Rights', 11, *Harvard Journal of Law and Public Policy*, 1988, p. 625–42.
- 6 S. Bachelard, 'Rights as Industry', 11 (1), *Res Publica*, 2002, p. 1–5.
- 7 S. Weil, 'Human Personality', p. 10.
- 8 Ibid.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid. p. 20.
- 12 Ibid.
- 13 C. Hamilton, 'Simone Weil's 'Human Personality: Between the Personal and Impersonal'', 98 (2), *Harvard Theological Review*, 2005, pp. 187–207.
- 14 Ibid.
- 15 S. Weil, 'Human Personality', p. 10.
- 16 Ibid. p. 12.
- 17 Ibid. p. 10.
- 18 Ibid.
- 19 Ibid.
- 20 For a different sort of criticism of the failure of human rights to take human suffering seriously, see U. Baxi, *The Future of Human Rights* (New Delhi:

- Oxford University Press, 2002), p. vii; A. Williams, 'Human Rights and Law: Between Sufferance and Insufferability', 123, *Law Quarterly Review*, 2006, pp. 132–57.
- 21 P. Winch, *Simone Weil: The Just Balance*, p. 12.
- 22 Ibid. p. 181.
- 23 S. Weil, *Waiting on God* (New York: Harper, 1951), p. 59.
- 24 Ibid. p. 96.
- 25 Z. Bankowski, 'The Space to See', in Z. Bankowski and M. Del Mar (eds), *The Moral Imagination and the Legal Life: Beyond Text in Legal Education*, vol. II (Farnham: Ashgate, 2012).
- 26 Ibid.
- 27 P. Winch, *Simone Weil: The Just Balance*, p. 182.
- 28 S. Kierkegaard, *Works of Love*, trans. H. Hong and E. Hong (Princeton: Princeton University Press, 1995); E. Levinas, 'Philosophy, Justice and Love', in *Entre Nous: On Thinking-of-the-Other*, trans. M. Smith and B. Harshav (London: Athlone Press, 1998); M. Hardt and A. Negri, *Commonwealth* (Cambridge, MA: Harvard University Press, 2009).
- 29 J. Cabaud, *Simone Weil: A Fellowship of Love* (London: Harvill Press, 1964), pp. 213–14.
- 30 Hardt and Negri offer a similar conception of love in their book *Commonwealth*. M. Hardt and A. Negri, *Commonwealth*, pp. 179–88.
- 31 Z. Bankowski, 'Images of Images of Law', 11 (3), *Social and Legal Studies*, 2002, p. 448.
- 32 Ibid. p. 449.
- 33 Z. Bankowski, *Living Lawfully: Law in Love and Love in Law* (Dordrecht: Kluwer Academic Publishers, 2001), pp. 85–101; Z. Bankowski, 'Law, Love and Legality', 14, *International Journal for the Semiotics of Law*, 2001, pp. 199–213.
- 34 R. Gaita, *A Common Humanity: Thinking about Love and Truth and Justice* (London: Routledge, 2000).
- 35 Ibid. p. xvi.
- 36 Ibid.
- 37 Ibid. p. xix.
- 38 Ibid. p. 22.
- 39 Ibid. p. 27.
- 40 Ibid. p. xix.
- 41 T. Metz, 'Toward an African Moral Theory', 15, *The Journal of Political Philosophy*, 2007, pp. 321–41; T. Metz, 'Giving the World a more Human Face – Human Suffering in African Thought and Philosophy', in J. Malpas and N. Lickiss (eds), *Perspectives on Human Suffering* (Dordrecht: Springer, 2012), pp. 56–7.
- 42 Ibid.

43 Ibid.

44 J. Waldron, 'When Justice Replaces Affection: The Need for Rights', pp. 625–42.

45 This impression that Simone Weil is against any form of collective arrangement is evident from her writings on human obligations. S. Weil, *The Need for Roots* (London and New York: Taylor & Francis, 2002), p. 4.



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Chapter 3

GOOD GOVERNANCE AS METAPHOR FOR DEVELOPMENT

... the question of good governance in Africa came up. But it came up as a condition of giving aid to African countries ... in practice that phrase meant and means those countries having multi-party systems of democracy, economies based on the principle of private ownership and of international free trade and a good record of human rights: again as defined by the industrialised market economy countries of the North. It was in this kind of context that we in Africa heard about 'good governance' ... For used in this manner, good governance sounded like a tool for neo-colonialism. We have therefore tended to despise the concept even as, out of necessity, we try to qualify under it.¹

3.1 INTRODUCTION

In this chapter, I focus on one of the most influential mainstream institutional responses to questions of poverty, especially the poverty caused by the inability to access water, healthcare, electricity and other economic and social rights, among other problems of development in Africa. Many such problems are assumed to arise from the existence of a profound governance question, one that (as the mantra suggests) can only be resolved by the concept of good governance. Good governance is a concept inspired by the Bretton Wood Institutions' (BWIs) lending initiatives. Its over-arching philosophy seeks to substitute the state for the market in processes of governance, particularly (as discussed in more detail in Chapter 4) in the process of governance of human rights.

As a first step towards specifically understanding how good governance impacts on human rights, the aim of this chapter is to explain what the concept really entails, including how it operates and the key

presuppositions that underpin it. In doing so, I also explain where the concept originates from by linking it to the broader interest in governance in late twentieth-century transnational discourses. I point out salient features of good governance, including its inadequacies, the most emphatic of which is how it overlooks the importance of community or forms of governance that either emerge from or are amenable to community.

Overall, not only will the chapter show the inadequacy of good governance (given its narrow concentration on markets), but also the existence of alternative, dispersed, disorganised, unpredictable, ad hoc forms of governance, the types that either emerge from or are amenable to small, local and spatially dispersed communities. It will be argued that despite emerging as interim responses to many diverse problems, these somewhat 'invisible' types of governance are, nevertheless, permanent and extensive enough to constitute a rival process of promoting different objectives, including human rights. They may be dispersed, ad hoc and unpredictable, yet they are permanent as a result of the permanence of the problems that are present in every city and village in Africa. Part of the reason for this argument, then, is to show that these forms of governance, as specifically illustrated in Chapter 6 of this book, offer a rival process of promoting human rights that continues to be overlooked.

3.2 THE ETYMOLOGY OF GOVERNANCE

The term governance often generates different rather contradictory meanings, even though its definition can be reduced to two dominant connotations. In its more traditional or older context, it relates to government, and the various ways in which political power is exercised. In this context, it refers to the exercise of power or the coordination and administration of social, economic and political processes within a given territory. Governance, here, is more broadly concerned with the political role of the state in directing society through standard setting of policy objectives and priorities.

More recent discussions about governance, however, refer to the state's adaptability to the internal and external transformations of the late twentieth century. Governance is used in contrast to government to imply the emergence of formal and informal regulatory structures outside any over-arching and traditional forms of political authority.²

Economic globalisation is mainly responsible for the emergence and dominance of this perception of governance. Globalisation has been symptomatic of the rise of neoliberal regimes across the world, the emergence of which is visible across different territorial boundaries. It manifests itself through the revival of classical economics or market liberalism, which, at the moment, take the form of monetarism, deregulation, privatisation and the downsizing of the civil service, among other things. In this era, the state no longer has the monopoly over governance, just as governance now emerges at multiple levels. This dominant form of governance is derived primarily from economics and finance, making market values the single most important determinant of measuring its effectiveness.³ The rules generated from market activity are used to regulate global economic and social relations. Governance is conceived in polycentric and dispersed terms and partly in the form of regulation by a combination of state and non-state institutions to support commerce and profit.

Explaining the emergence of what has come to be known as new governance from purely a legal theoretical standpoint, Orly Lobel, in a comprehensive article, has provided useful insights into the genealogy of and changes to the etymology of governance. This has largely been influenced by several developments in the domestic and international affairs of the United States and the member states of the European Union (EU).⁴ In those contexts, as Lobel illustrates, the state has embraced the vast potential of new technologies, market innovation and civic engagement in ways that enable different stakeholders to participate in governance processes. This, of course, has been encouraged through the advent of globalisation, the problems of which have also prompted internal reflection about the suitability of existing regulatory frameworks and categories within the conventional legal theory.⁵ In other words, the inadequacies of the command-and-control regulatory models as a result of globalisation have in addition called in to question the existing legal theories, laws and legal frameworks.

Lobel explains further that proponents of governance argue that traditional ways of thinking about laws and legal theory have to be adaptable to changes in the economic, social and political climate. They suggest that globalisation has marked a new phase of modernity, and this has entailed rethinking traditional categories of legal theory, policy and practice to deal with the new complexity of contemporary societies. In this emerging environment of complexity, generalised or

centralised rules are considered inadequate responses to the particularities of the new circumstances. The uncertainty and unpredictability produced by these conditions are such that they have created a need for brand new laws to cope with the 'radical indeterminacy' and 'unintended consequences'⁶ of the market framework. 'New governance' has been proposed as a substitute for command-style regulation and it is an adjustment to the changes brought about by market rule. Lobel explains:

A significant impediment for legal reform today is the diversity of the market and the broad range of social issues and problems, which require the adoption of a wide range of organizational forms and thus a unitary conception of the regulation of diverse social fields and context is impossible. There is no one size-fits-all solution to the challenges facing the regulatory state. No standard regulation can effectively govern the multiplicity of settings in which social action operates. The nature of the new economy requires legal institutions to be multiple and diverse.⁷

Part of the response to these developments has been provoked by what Lobel calls an 'internal drive' within legal theory. This simply refers to attempts to adjust and respond to these changes with more adequate legal theories. What this means is that the emergence of new governance has given rise to a functional response within legal theory. The practical response takes the inadequacies of centralised regulatory frameworks as a starting point, but also recognises the dangers or limitations of exclusively depending on markets. Regardless of this, the internal response from legal theory has placed more emphasis on the limitations of command and control legislation, and consequently its role in the production of the interventionist state, than it has on the emerging-market frameworks themselves.

The internal or functionalist dimension to legal theory has been explained in evolutionary terms, thanks to Gunther Teubner's work on reflexive law and autopoietic systems.⁸ Following on from Niklas Luhmann's seminal work on systems theory,⁹ Teubner has proposed autopoiesis as an analytical framework to explain the complexity of the contemporary globalised era. Lobel, here, is referring to Teubner's proposals for a reflexive approach to regulation, which functions in ways that enhance the self-referentiality of social systems, and as an answer

to such complexity. Each social system is described as autonomous or radically closed but at the same time open to co-operate with one another. In the United States, protagonists of new governance have operated under this school of thought, quite apart from the fact that they have explained such changes through evolutionary theories of law, which in turn, explain the rise of modern law.

On this view, modern law evolves according to a three-stage process of linear progression. The new governance protagonists have argued that modern law evolves from a system of autonomous private orders to that of a centralised regulatory model. A final step in the hierarchy, and the current approach, is the emergence of the highly dispersed new governance approach. The evolution of modern law is described according to the following manner: modern law originates from a regime of private entitlements, and proceeds to a system of formal law. Modern law then progresses to a centrally coordinated system typical of Roosevelt's New Deal regulatory models, given that formal law was, at that time, considered an inadequate framework for the operation of markets. The common view, at that time, was that markets needed to be regulated, a task that gave rise to the modern bureaucracy. This system eventually proved inadequate, quite apart from breeding an environment in which one system dominated the other. The New Deal regulatory framework was either open to capture by the more powerful systems, or merely became politicised. New governance has now emerged in the final stage of the progression to reinvent the approach to regulation. It has influenced the substitution of regulation with spatial and reflexive systems composed of self-regulatory sub-systems. Looking at the specific characteristics of the new governance model, Lobel illustrates how it resembles the market organisational model. Proposals for governance are replete with suggestions about how government bodies must also adopt practices typical of market organisations. One consequence of such arguments is that government itself is urged to downsize or reduce its costs. This is often carried out through extensive programmes of privatisation or downsizing of bureaucracies, in addition to contracting out state functions to private entities.

Another important feature of the new governance model is that it has encouraged participation at various levels of decision-making. This is one of the most visible differences with the regulatory model, where participation was monopolised by technocratic or bureaucratic experts.

The new governance model has opened up decision-making to a range of actors. In doing so, it has encouraged a new kind of expertise, types of which were lacking in the past. Participation has, at present, been extended to a wide range of activities, from legislation to the design and implementation of policies. New governance now offers a framework for everyone to participate – it has not been restricted to representatives of the market or state. For instance, the scope and processes of participation are equally open to members of civil society.¹⁰ As a consequence, a third sector of government has emerged creating a new regime of public-sector management as well as new methods of delivering social services. New governance marks a spatial shift from the formal legal entities to an era of private-for-profit as well as non-profit sector participation. Such kinds of participation not only take place at the domestic level, but also at the multi-national level, leading to claims of the emergence of a global civil society.

In addition to encouraging participation, new governance has promoted collaboration among different entities. The government's – or the state's – role has been transformed into one that facilitates collaboration between different entities. New governance now encourages shared responsibility between government, the private sector and civil society groups.¹¹ It is a commitment to dialogue at all levels of the public sector, one that now extends to local communities at national and transnational levels. There is a democratic element to new governance, in that it has sought to enhance the deliberative capabilities of members of the public, the limitation of which is that it has encouraged the participation of communities through market exchanges. Even so, new governance does not totally rely on the market. New governance is, to say the least, a middle ground between state-based and market regulation. It seems to create a flexible approach that seeks to build productive relationships from both administrative and private market mechanisms.

A further point that emerges from the above is the nature of the relationship between the old regulatory and new governance model. To address this issue, new governance should not in any way be understood as a substitute for regulation. Both models have a more complementary relationship than often acknowledged in the governance literature.¹² New governance does not replace the old regulatory model, but co-exists alongside it. Both models have a more balanced

relationship than often conceived, even though this relationship is sometimes taken for granted.

There are other fundamental problems with claims about new governance, one of which is the question of democratic legitimacy. New governance poses problems for traditional notions of political accountability. Secondly, although it disavows being a 'one-size-fits-all approach', new governance is ironically promoted as such across the globe. Ideas about new governance have not only penetrated different disciplines, but also territorial boundaries. When measured against the problems and demands of the peoples of Africa and the third world, the claims about the novelty governance become very questionable. As it is considered next, the governance terminology emerges as the latest variation to the paradigm of development.

3.3 GOOD GOVERNANCE FOR AFRICA

Most presuppositions about new governance discussed above can, with certain differences, be found in many Africa countries under the influence of the World Bank's concept of good governance. Good governance,¹³ a term specifically developed for African and third world countries, seems to encourage a more progressive relationship between legal regulation and governance. What is arguably unique or distinct about the African context, and the point emphasised in this section of the chapter, is that the concept of good governance now represents one of the most influential concepts in development discourse. The phrase good governance is often touted as the central development orthodoxy for interventions in Africa, among other third world countries, by the dominant global development institutions.¹⁴

The World Bank¹⁵ is arguably the most influential proponent of the good governance mantra, and the way it uses the term does not depart too much from the two connotations highlighted above. First, governance is deployed as the way power is exercised in the management of a country's economic and social resources for development. The World Bank, here, is obviously referring to 'old governance'; in other words, they are referring to the relationship between governance and the quality of government. This can be broken down further into three related contexts. First, governance refers to the 'form of the political regime',¹⁶ and this leads to the second dimension: that is, governance refers to processes in which political 'authority is exercised in the

management of economic and social resources of a country'.¹⁷ Third, governance also refers to 'the capacity of governments to design, formulate, and implement policies and discharge functions'.¹⁸

Seen this way, good governance is basically concerned with the 'system of national administration'¹⁹ or the 'state of being governed',²⁰ or third, 'the method of government or regulation'²¹ within a given country. This perhaps explains the World Bank's attention to bureaucratic and institutional improvements of government processes that relate to the transparency and accountability of decision-making procedures, among other things. Put differently, the World Bank's concept of good governance is premised on 'the creation of a government which is, among other things, democratic, open, accountable and transparent, and which respects and fosters human rights and the rule of law'.²² Good governance attempts to achieve this under the auspices of principles of international human rights law, or more accurately, specific human rights norms that were privileged after the Cold War. This, again, reaffirms the emergence of human rights as the ethical basis for all aspects of development work.

Not surprisingly, the World Bank acknowledges the shift from the older and more traditional perception of governance by noting multiple processes that originate from non-state or private processes.²³ As already mentioned, this is due to the emergence of economic globalisation, which has encouraged multiple forms of authority, both from within and without societies. The global economic order is, after all, symptomatic of networks of global, regional institutions and transnational corporations (TNCs), which now challenge the ideals of state sovereignty. In other words, ideas about good governance cannot be isolated from ideas about the need for third world countries to participate in the global economy.²⁴ This has, in turn, encouraged proposals to reform state governance by creating the environment for 'predictable, open and enlightened policy-making, [and] bureaucracy imbued with a professional ethos'.²⁵ It is obvious that the move to de-couple governance from the state coincides with the prevailing neoliberal economic development orthodoxy, which largely distrusts the state in spearheading economic affairs. It is no surprise then that good governance operates within this mindset, quite apart from being aware of the changing dynamics of an increasing globalised world.

The good governance terminology gained currency in the early 1980s, when markets and neoliberal economics emerged to dominate

debates about how to achieve development in the third world. Since this period, dominant 'law and development' thinking has been concerned with restricting the state from intervening in the economy. This shift in approach seems to be presented as a new paradigm, even though the importance of law to development is a product of an older discourse.²⁶ While good governance is today by far the strongest attempt to establish a relationship between 'governance and development', this link is not entirely new. There are very striking similarities between ideas about good governance and Max Weber's ideas about legal rationality and the bureaucratisation of development, and the various law and development movements that emerged from them.²⁷ One of the defining features of Max Weber's work was his attempt to explain the rise and superiority of capitalism in western societies.²⁸ For Weber, this was simply because of the superiority of European law. European law possessed formal, structural and rational qualities that were superior to other forms of law. Specifically, European law was superior to the types of law that evolved from non-western societies.²⁹ This was simply because European law was autonomous, differentiated, general and universally applicable. Non-European law, on the other hand, was incapable of enabling rational decisions without the direct interference of religious or cultural influences.

These ideas about the superiority of European law can be deciphered from Weber's tripartite classification of centralised forms of legitimate authority. It is clear that Weber's thesis founded ideas about centralised forms of legal authority within European societies. Authority stemmed from the obedience of commands, which was usually motivated by diverse intentions that included habit, routine behaviour, or 'purely personal devotion of the governed'.³⁰ For Weber, obedience to commands on such grounds had to be questioned since it had the tendency to be unpredictable. As a consequence, Weber advocated that the stability of authority of any ruling authority can only be maintained if the 'rulers and rules uphold the internalised power structure as "legitimate" by right'.³¹ This view was consistent with his belief in the governance of rules as the only stable grounds for authority.

The rational superiority of law was one of the cardinal features of Weber's classification of pure types of legitimate authority. For Weber, the nature or type of governance in any given society was a reflection of one of the following pure types of legitimate authority: formal legal rationality, charismatic, or traditional forms of authority. To begin with,

the formal rationality of law was consistent with Weber's ideas about European law, especially its influence on the rise of capitalism. Here Weber was suggesting that governance was founded on a legal code of rationally accepted norms, quite apart from a generalised system of consistent abstract rules. Such societies were always governed in accordance with clear, logical, predictable or certain rules. Weber's thought (as might already be obvious) had an inclination towards legal positivism in contemporary legal theory. Comparative views of this can be drawn from the idea of legalism, as more recently espoused (and criticised) by Judith Sklar.³² At the risk of undue simplicity, legalism refers to the view that all aspects of our 'social and personal conduct'³³ are best explained by rule following. It is akin to a fetish about rules, which determine everything, including all our 'rights and obligations'.³⁴ This is the point of legalism, the aim of which is to make law appear neutral, objective and fixed. It seems that Weber holds similar views about development; it can only be realised based on the governance of law. This may appear logical but it also raises some problems. The inclination towards the rational and formal equality of the law often masks the social differences in society, especially those among the rich and poor. Moreover, it has the effect of reducing governance to questions of law, whilst excluding other questions of moral, ethical, social and political significance.

There are at least five noticeable distinguishing features between good governance, Weber and the early law and development discourse, which need to be highlighted. These key differences, which are illustrated below, not only distinguish between good governance and the early movements, but are also helpful in illustrating the uniqueness of good governance. I defer detailed discussions of the last key feature of good governance (that is, the role the concept plays in the diffusion of human rights) to the next chapter, given its primary importance to the reason for the argument of this book.

First (and the most obvious point) is that good governance departs from giving the state a central role in structuring the pursuit of development. Good governance departs in the sense that it now places emphasis on non-state processes of governance for development. It is here that it makes a more direct connection with the contemporary views about governance described in the first section of this chapter. More specifically, emphasis on governance in Africa now prioritises the role of markets. It is fair to say that good governance – and the

second-generation reforms, in general – have been relentless in the promotion of ‘market friendly legal and institutional’³⁵ regimes, which focus on the ‘protection of property rights, the enforcement of contracts, and the provisions of other rules and institutions required to ensure a stable and attractive investment climate’.³⁶ The BWIs argue that the adoption of good governance – described as ‘rules, norms and best practices’³⁷ – will enable the ‘participation [of third world countries] in the global economic order’.³⁸ Quite apart from that, it is also most importantly argued that third world states cannot achieve ‘growth and escape from poverty’³⁹ without constituting these reforms. This has led to sweeping privatisation exercises to give a more prominent role to markets, especially in tackling poverty. Unlike the past where markets were considered too weak to drive the development process, the current proposals ironically find centralised economic coordination quite problematic. It constitutes a radical change of approach as the state is now surprisingly considered antithetic to development.

The approach is neo-Weberian, to borrow the term from Trubek⁴⁰, in that the application of precise rules is considered necessary to restrict the state from intervening in the economy. What this means is that it would be too simplistic to suggest that the approach does not recognise any role for the state. It is more accurate to say that while certain functions of the state have been weakened, other roles have been strengthened. There is a shift in pattern in the way the state has traditionally participated in the economy, and this has seen the rise of new forms of intervention, which have led some observers to speak of the emergence of a ‘new developmental state’.⁴¹ Trubek cites Brazil as a good example of where there is an existence of the ‘new developmental state’. The characteristics of the new developmental state include the promotion of the private sector as investors and the role of the state being realigned to steering investment. It also consists of public-private partnerships, export-led trade, the openness to import, entrepreneurship, innovation, the promotion of productive foreign direct investment and social policies to reduce inequality, among other things. Despite this, I am not exactly clear about how the so-called new developmental state is different from the old one, especially the more traditional developmental states of East Asia. Although there may be a few noticeable differences between the old and the new state, one can indeed question whether such differences are fundamental enough to lead to a new paradigm.

Even if one takes the view that the 'new developmental state' is something that is emerging, it is not clear if its emergence can be generalised to all states across the third world.

Secondly, given the general orientation towards markets in good governance discourse, it is not surprising that not much emphasis is given to the role of bureaucrats, even though it is fair to say that, like the state, bureaucrats have not been totally excluded from the new governance framework. There seems to be a new role conceived for a new kind of bureaucrat. Good governance has facilitated the emergence of specialised quangos, which, apart from their expertise, have been criticised for the way they are insulated from traditional forms of political accountability.⁴² Quangos seem to have emerged in hindsight – that is, as a result of lessons from the failures of initial neoliberal development approaches. Prior to this, there was a slightly less accommodating view of the role of bureaucrats. This less accommodating approach was influenced by 'public choice' theory,⁴³ which also had an impact on the World Bank's work, especially its famous study called *Bureaucrats in Business*.⁴⁴ This study provided theoretical underpinnings for the first wave of privatisation exercises in Africa and most of the third world. According to this study, bureaucrats and politicians were not just inefficient, but also wasteful in their behaviour.

Parallels can be drawn between this claim and a proposition from a particular strand of public choice theory, the *homo economicus*. It describes the decision-making behaviour of government officials. *Homo economicus* provides an analytical framework for understanding how to maximise utility in both political and economic spheres. As such, public choice theory, among other things, sheds light on 'the application of economic analysis to political decision-making including theories of state, voting rules and voter behaviour, apathy, party politics, logrolling, bureaucratic choice, policy analysis, and regulation'.⁴⁵ It concluded that government officials will always fail to act in the public interest. Public choice theory sought to explain the economic costs of bureaucratic decision-making, among other things. Its main argument was to the effect that bureaucrats would always act inimically and devoid of legislation. This was because, '[v]arious models of bureaucracy postulate that power, prestige, the size of the bureau's budget, job security, perquisites, future salary, and working conditions enter the utility function of bureaucrats'.⁴⁶ Apart from bureaucrats, politicians would always behave selfishly, quite apart from being over-burdened

with conflicting demands.⁴⁷ Above all, the existence of the following conditions would generally tend to generate 'government failure':⁴⁸ that is, the consequence of the insufficiency of bureaucratic and political economic decision-making processes.

Good governance seems to depart, to a certain extent, from the above on account of its reliance upon theories of new institutional economics.⁴⁹ This has encouraged the shift of attention to formal institutional frameworks to assist secure property rights, and to minimise the transactional costs of parties. There is also a lot of emphasis on regulation in the light of the emergence of new market processes. This is because the World Bank has more recently come to terms with the limitations of markets. This is now acknowledged in the second-generation reforms in general, which acknowledge possibilities of market failures and externalities in the provisioning of public goods. Barring these kinds of exceptions, the emphasis on regulation is to enhance the competitiveness and efficiency of markets.⁵⁰ In other words, outside public goods, which constitute market failures, state regulation has a limited function. As previously noted, the significance of law in the process of development here departs from the previous era because of the current emphasis on enhancing the security of entitlements, quite apart from the efficiency of the economic transactions.

Thirdly, the move to decentralise governance also affects formal legal and regulatory institutions. Unlike the Weber and the law and development movements – where the absence of formal law was symptomatic of unpredictability or outright anarchy – good governance is not opposed to non-formal legal institutions. More specifically, good governance places a lot of emphasis on diverse forms of private law, especially on different forms of commercial regulation. As such, there is a strong inclination towards private market actors to create their own normative regimes. In the same vein, there is also an emphasis on alternative modes of securing compliance, through mechanisms like arbitration or local norms and practices. The recognition of localised norms and practices has been because of at least three motivating factors. First, it is a response to anti-formalist critique, such as the one advanced by Trubek and Galanter. Liberal legalism, as their seminal critique called it, was premised on the view 'that development was an inevitable, evolutionary process of increasing societal differentiation that would ultimately produce economic political and social institutions identical to the West'.⁵¹ Law was not only seen as necessary to

jump-start the economy, but also as a means of encouraging liberal democracy, capitalist development and the rule of law by expunging traditionalism. In other words, the law and development movement sought to substitute the 'localism, irregularity and particularism'⁵² of non-western law with the 'unity, uniformity and universalism'⁵³ of western law. For the movement, development was not only a question of creating new kinds of law, but also of creating new institutions as well. Development was about predictable, rigid, generalised and vibrant law as well as the right legal institutions.

Secondly, the interest in non-formal sources of law is influenced by the growing appreciation of the concept of legal pluralism made popular by many works in anthropology, sociology and philosophy of law.⁵⁴ It is impossible to provide a detailed discussion of legal pluralism, except to say that the vast literature in this area has helped to show the existence of other forms beyond traditional legal positive or state law. Thirdly, there seems to be a belief that culture and society have themselves been transformed, and therefore, informal law can also, in some instances, be used to foster growth or efficiency. As such, the move beyond formal law is very much a departure from classical Weberian and law and development ideals,⁵⁵ especially those that took a negative view of tradition and culture.

The fourth distinction from Weber and the previous eras is that governance not only moves beyond law, but is interested in forms of governance dispersed across society. The emphasis on multiple sites of governance is very much a departure from centralised forms of governance, especially those of state government. The current regime is predicated on dispersing governance among different sites, including different actors. In achieving this, governance has progressively been transferred onto alternative spheres, especially those composed of at least two identifiable groups. First, governance is increasingly de-centred onto a wide array of market actors, who – as noted below – have not only become a source of governance, but also of law and normativity.⁵⁶ Here, the focus is on the second distinguishable actors in the horizontal depiction of governance: the third sector. A lot of attention is given to the third sector or, more specifically, to the role of civil society. Similar to market actors, civil society groups are not only recognised as potential service providers, but also as sources of institutional change, given the wealth of social capital that exists within civil society. This is one of the unique features of the concept of civil society,

which, for the purposes of this book, may imply a role for community. However, as distinguished in Chapter 1, community and civil society are different concepts, and the former generally emerges in neoliberal discourse as a weak device.

Comparatively, good governance is replete with references to the term civil society. By civil society, the World Bank refers to 'citizen groups, non-governmental organizations, trade unions, business associations, think tanks, academia, religious organizations and last but not least media'.⁵⁷ Civil society has become part of a wider initiative for good governance, which has in turn supported the emergence of market economies, liberal democracy and expanding political participation.⁵⁸ The interest in civil society has encouraged a lot of support for non-governmental organisations (NGOs) as leading agents of change capable of delivering good governance. This has been a problem with the conception of civil society, as it tends to be colonised by NGOs, leading to what Balakrishnan Rajagopal has aptly described as the 'NGOization' of civil-society.⁵⁹ Of course, the interest in and problems with the concept of civil society are not entirely a new academic debate. Such issues date back to the period of classical European thought, where the state was conceptualised as an entity dependent on a vibrant civil society. Civil society was in turn considered as a space inhabited by individuals, who would in turn interact with one another through free reciprocal exchanges. Their interactions were to help minimise the corruption of the state.⁶⁰ The neoliberal development discourse seems to have adopted these arguments by noting that the minimal state cannot exist without the support of a liberal public sphere. As one observer describes it:

[e]ssential to governance is the civic realm, which is maintained by political actors from both the state and society, and in which 'access to participation in the public realm is built on respected and legitimate rules'. Therefore, 'governance is concerned with the regime which constitutes the set of fundamental rules for the organization of the public realm, and not with government . . . governance clearly embraces governments institutions, but it also subsumes informal, non-governmental institutions operating within the public realm'.⁶¹

As encouraging as these developments may be, there is a difficulty found in the close association between civil society and the neoliberal

market. Civil society is, in other words, seen as vital to the constitution of markets. This view has its origins in the World Bank's private sector development initiatives. Here the World Bank problematically aligns private sector development with the process of revitalising civil society.

Other notable factors have influenced the World Bank's interest in civil society, one of which is the emergence of the Comprehensive Development Framework (CDF).⁶² The CDF has not only provided the framework for diffusing good governance, but has generally sought to encourage participation of the poor in the design of policies. On the general level, the CDF generates a more specific relationship between development, human rights and democratic discourse. It is often argued that the CDF is a response to post-Cold war events, which have allegedly brought to the fore demands for 'political, social and economic participation . . . human rights and gender equity . . . by an emerging globalized economy'.⁶³ The origins of the CDF can be traced to agitations by new social movements against the exclusive nature of the failed Structural Adjustment Programmes (SAPs). Participation emerges as a key demand, which the CDF now encourages.⁶⁴ The CDF approach relies on Albert Hirschman's concept of 'voice', among other sources of influence.⁶⁵ Voice, in simple terms, is about participation in government decisions, local and provincial councils, workplaces, capital markets and corporate governance. Participation, in this context, is broader than the emphasis on voting in early political development theories.⁶⁶ The CDF encourages this wider notion of democratic participation to amplify the voices of the poor in processes of policy-making. As a consequence, participation is now a component part of the World Bank's Poverty Reduction Strategy Papers (PRSP), and these processes seem to have had some effects (though they are superficial) on increasing country-ownership and citizen participation in the design of PRSPs.

3.4 GOVERNANCE FROM BELOW

A problem at the heart of good governance discourse is its formalism, as it still emerges as a top-down measure commonly associated with either state or market processes. The approach, as such, is unable to appreciate informal and bottom-up forms of governance, whereby a variety of groups such as small, local, residential communities, among other unofficial organisations, provide responses to many diverse problems. Not even the proponents of civil society consider small and

local communities as an important component within the good governance policy framework.

This claim can be substantiated in two related ways. First, there is no specific reference to community in the World Bank's definition of civil society noted above, so it would be wrong to assume that this definition encompasses community. Second, the role of community seems to emerge as a result of a different approach, one that is outside the framework of good governance. The use of community (as noted in Chapter 1) applies to the World Bank's approaches to Community-Based Development (CDB) and Community-Driven Development (CDD) and not good governance. In doing so, the World Bank impliedly re-invokes a distinction between *Gemeinschaft* (community) and *Gesellschaft* (society) analogous to that in the work of Ferdinand Tönnies. In Tönnies' work, *Gemeinschaft* refers to a rural or village community characterised by its specific attributes of tradition or family values. *Gesellschaft* (distinct from *Gemeinschaft*) is synonymous with society, and it offers a broader spectrum of activity, which has emerged as a result of urbanisation and modernisation. Tönnies takes a negative view of urbanisation and modernisation for destroying values of kinship and co-operation distinct to *Gemeinschaft*. To put it rather simply, *Gesellschaft* threatens *Gemeinschaft* and there is no acknowledgement of this in the World Bank's framework of governance or community development. Instead, the CDB and CDD contribute to increase the distinction between community and society. Furthermore, where community is referred to, it almost exclusively refers to rural communities. Civil society, on the other hand, is synonymous with more urban organisation forms and associations.

Another plausible, albeit ideological explanation for the exclusion of small, spatial and local communities from the framework of good governance can be taken from the reductionist nature of the concept itself. The approach not only reduces the multiplicity of problems to a governance question, but also excludes other ways of imagining the term governance. This is why this chapter is entitled 'Good Governance as Metaphor for Development', to capture its power of representation, the representation of what is or what is not governance.

Good governance has become a validating criterion for development; it has come to be regarded as the single most important factor responsible for the crises of Africa, with the effect of discounting other explanations and solutions to such problems. It is influenced by a

mindset that not only rules out other ways of conceiving governance, but also other ways of constituting development itself.⁶⁷ Good governance, which is mainly addressed in relation to government, has a moral appeal, given the pervasiveness of corruption and other problems with state governance in Africa. It is true that there is a predilection towards this type of argument, but this does not mean that there are no other ways of thinking about these problems and solutions. Although many of these problems exist as a consequence of governance, the point is often overlooked that they also occur through circumstances quite unrelated to it. Good governance generalises problems and solutions across Africa to the extent that it excludes particular understandings and solutions to such problems. Good governance, as such, presides over the production and technique of truth or knowledge of development in Africa. It is not only a criterion for validating the processes of establishing development, but also the way African societies perceive it. Problems of hunger, poverty, illiteracy, disease, democracy, human rights, corruption, war or inadequate social services are understood only in terms of the absence of good governance.

To make this point clearer, I turn to the work of Arturo Escobar. Escobar refers to the concept of development as the validating criterion for social reality in the third world,⁶⁸ and the point I seek to make is that good governance has now replaced development in carrying out this function. A proper understanding of Escobar's argument depends on understanding what he means by development. Development is simply depicted as a phenomenon that represents or even obscures all forms of social reality in the third world. Development is a discourse, a term borrowed from the work of Michel Foucault. Discourse is conceived as a process where social reality is determined or shaped by expressions of 'knowledge and power', and development is simply a good example of this. What Escobar is suggesting is that development is a particular kind of discourse that only serves the purpose of validating others. Development has the effect of excluding other representations of social reality by managing, circumscribing, representing and presenting its own version of social reality. My point about good governance is simply analogous to that of Escobar. Good governance has now become the dominant paradigm responsible for perceiving, relating, describing and understanding the problems of Africa among other places in the third world.

What is at stake is not just understanding the distortions or

misleading perceptions of Africa encouraged by the prevailing concept of good governance, but also the possibility of standing detached from or having the autonomy to construct different social realities, including different perceptions of governance.⁶⁹ This, in my opinion, is a possibility presented by a certain version of the literature on metropolitan African cities.⁷⁰ This strand of thought allows us – without ignoring the persistence of poverty or the lack of town planning that affect many in these cities – to understand African cities outside their dominant perception as failed cities. Instead, it shows us that African cities work, albeit in different ways, and despite the fact that millions of their inhabitants have to survive in poverty, owing to nearly non-existent or constantly deteriorating infrastructure. Importantly, it shows us that African cities work based on a wide variety of informal survival activities, activities that range from the networks of co-operation to flexible or nomadic forms of employment to different organisational forms and exchanges. To give one good example, David Hecht and Maliqalim Simone have described these informal activities as an invisible form of governance:

a frame of elliptical efforts, that maintain competing agendas and aspirations in some kind of functional and parallel existence – where the need to survive does not take precedence or swallow up the need to imagine, and where the need to imagine does not impede completely the ability to survive⁷¹

Invisible governance refers to the micro-political/cultural activities that weave together and sustain the fabric of many African societies. The various modes of invisible governance have different functions, most of which are concerned with the allocation or redistribution of wealth and the provisioning of public goods and services, something that occupies nearly 75 per cent or more of informal activities.⁷² Invisible governance is Janus-faced. On the one hand, it is the threat to the social cohesion essential for the creation of institutions in Africa.⁷³ On the other hand, it points in the direction of how Africans ought to restructure and reinvent themselves in the light of their complex problems. Invisible governance is not just an ad hoc response to such problems but evidence that most of postcolonial Africa has been, and continues to be, sustained outside any meaningful impact of the state and, more recently, market institutions.

Invisible governance mirrors the degree of creativity and inventiveness, in addition to the solidarity, reciprocity and co-operation, of those excluded from the formal institutions of the state and market. Invisible governance often emerges as reactions or attempts to escape the severity and rigidity of formal systems, even though that is not always the case. The organisational forms that constitute invisible governance vary in terms of size, shape or structure, and they are constituted by the network of neighbourhood associations, kinship groups, community-based organisations, co-operatives and trade unions, as well as human delivery systems, thrift associations, women's associations, widows' associations, work-based associations, religious organisations, ethnic-based associations and other organisational forms that are not easy to define.⁷⁴

While the point of the literature is to emphasise the informal activities that sustain millions of lives in many African cities, it is easy to locate small and local communities as a part of them, thereby making them a species of invisible governance. It would be wrong to dismiss community and other types of invisible governance as short-term responses to many diverse problems, as they are permanent and cover enough ground to constitute a rival process of promoting different objectives, including (if the need arises) human rights. They may be dispersed, ad hoc and unpredictable, yet they are permanent as a result of the permanence of such problems that are present in every city and village in Africa. Africa is sustained by the non-state and non-market, that is, the invisible networks of trust, solidarity and co-operation. In both qualitative and quantitative terms, invisible governance or 'governances' typify the spirit of Africa and illustrate how the various townships and villages actually function. It refers to the many types of co-operation, collaboration and informal exchange among residents in different urban communities in Africa, to ameliorate the effects of the exclusion from formal political and economic institutions. As such, they must be looked upon, as argued in this book as a whole, as a competent and legitimate source for human rights.

3.5 CONCLUSION

This chapter has outlined central propositions behind the concept, discourse and policy that now shape the resolution of many African problems, especially those related to human rights. It is an attempt to

understand what good governance entails (including its historic and contemporary dimensions) as a basis for understanding the dominant response to the problems of concern in this book. It entails looking at its inadequacies, which invited the criticism that good governance does not accommodate multiple solutions, including multiple ways of conceiving governance itself. Most importantly, and as will be discussed in more detail in the next chapter, the emphasis on markets creates similar problems that have overwhelmed the state: that is, the lack of participation, and consequently, exclusion of the poor. Good governance succeeds in generalising both the problems and solutions in Africa to the extent that it excludes particular understandings and solutions to such problems. While it would be naïve to suggest that a lot of the problems do not arise from a governance question, one must not overlook that they may also arise from other problems, not necessarily governance-related. The chapter argued that good governance specifically excludes the role of community from the range of solutions currently available. However, local urban residential communities, along with other species of invisible governance, are more than short-term responses to many diverse problems, as they are both as permanent as and extensive enough to constitute a rival process of promoting different objectives, including (if given the opportunity) human rights. I will pursue this argument in Chapter 6 and 7 in more detail by showing how the community, as a specific type of invisible governance, might encourage a change in thinking and practice of human rights. Before this, and to further lay the groundwork for those arguments, what follows is an attempt to understand more difficulties with the dominant governance approach, especially in the context of its relationship with human rights.

Notes

- 1 J. Nyeyere, 'Good Governance for Africa', *Marxism in Africa*, 1998 <http://www.marxists.org/subject/africa/nyerere/1998/10/13.htm>
- 2 J. Pierre, 'Introduction: Understanding Governance', in J. Pierre (ed.), *Debating Governance* (Oxford: Oxford University Press 2000); D. Kettle, 'The Transition of Governance: Globalization, Devolution, and the Role of Government', 60, *Public Administration Review*, 2000, pp. 488–97; R. Rhodes, *Understanding Governance* (Milton Keynes: Open University Press 1997); C. Offe, 'Governance: An "Empty Signifier?"', 16 (4), *Constellations*, 2009, pp. 550–62.

- 3 M. Hardt and A. Negri, *Commonwealth* (Cambridge, MA: Harvard University Press, 2009), p. 225.
- 4 O. Lobel, 'The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought', *University of San Diego Legal Studies Research Paper Series No. 07-27*, 2005.
- 5 Ibid. p. 274.
- 6 Ibid. p. 278.
- 7 Ibid.
- 8 G. Teubner, 'Substantive and Reflexive Elements of Modern Law', 17 (2), *Law and Society Review*, 2001, pp. 239-385; G. Teubner, 'Introduction to Autopoietic Law', in G. Teubner (ed.), *Autopoietic: A New Approach to Law and Society* (Berlin: Walter de Gruyter, 1987).
- 9 N. Luhmann, *Law as a Social System* (Oxford: Oxford University Press, 2004).
- 10 O. Lobel, 'The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought', p. 294.
- 11 Ibid. p. 298.
- 12 D. Trubek and G. Trubek, 'New Governance and Legal Regulation; Complementarily, Rivalry or Transformation', *University of Wisconsin Legal Studies Research Paper No. 1022*, 2007; N. Walker and G. de Burca, 'Reconceiving Law and New Governance', *European University Institute Working Paper No. 10*, 2007.
- 13 The focus, for obvious reasons, is on the notion of good governance as articulated by the Bretton Wood Institutions (BWIs). It is distinct from the perceptions of good governance that emerge from the United Nations and its intergovernmental agencies as well as from the African Union. The similarities and differences between these conceptions are beyond the scope of this book.
- 14 Certain arguments in this and the subsequent section are an extensively revised version of similar arguments presented here: O. Onazi, 'Good Governance and the Marketization of Human Rights: A Critique of the Neoliberal Normative Approach', 2, *Law, Social Justice and Global Development Journal*, 2009.
- 15 World Bank, *Governance and Development* (Washington, DC: World Bank, 1992).
- 16 T. Weiss, 'Governance, Good Governance and Global Governance: Conceptual and Actual Challenges', 21 (5), *Third World Quarterly* 2002, p. 795.
- 17 Ibid.
- 18 Ibid.
- 19 Ibid.
- 20 Ibid.

- 21 Ibid.
- 22 A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004), p. 248.
- 23 T. Weiss, 'Governance, Good Governance and Global Governance: Conceptual and Actual Challenges'.
- 24 Commission on Global Governance, *Our Global Neighbourhood* (Oxford: Oxford University Press 1995).
- 25 A. Anghie, *Imperialism, Sovereignty and the Making of International Law*.
- 26 M. Weber, 'The Three Types of Legitimate Rule', trans. Hans Gerth, in A. Etzioni (ed.), *Sociological Reader on Complex Organizations* (New York: Holt, Rinehart & Winston, 1961), pp. 6–15; W. Mommsen, *The Age of the Bureaucracy: Perspectives on the Political Sociology of Max Weber* (London: Blackwell, 1974).
- 27 F. Botchway, 'Good Governance: the Old, the New, the Principle and the Elements', 13, *Florida Journal International Law*, 2000-1, p. 139; D. Trubek and A. Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (Cambridge: Cambridge University Press, 2006); D. Trubek, 'The Political Economy of the Rule of Law: the Challenge of the New Development State', 1, *Hague Journal on the Rule of Law*, 2009, pp. 28–32; K. Rittich, 'The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social', 26, *Michigan Journal of International Law* 2004, pp. 199–243. For a perspective on these developments from international law, see M. Koskenniemi, 'The Fate of Public International Law: Between Technique and Politics', 70(1), *The Modern Law Review*, 2007, pp. 1–30; A. Anghie, 'Civilization and Commerce: The Concept of Governance in Historical Perspective', 45, *Villanova Law Review*, 2000, p. 887.
- 28 M. Weber, 'The Three Types of Legitimate Rule', pp. 6–15.
- 29 D. Trubek, 'Max Weber on Law and the Rise of Capitalism', *Wisconsin Law Review*, 1972, p. 720.
- 30 M. Weber, 'The Three Types of Legitimate Rule', pp. 6–15.
- 31 Ibid.
- 32 J. Sklar, *Legalism* (Cambridge, MA: Harvard University Press, 1986).
- 33 Z. Bankowski and C. Davis, 'Living In and Out of Law', in P. Oliver, D. Scott and V. Tadros (eds), *Faith in Law: Essays in Legal Theory* (Oxford: Hart Publishing, 2000), pp. 33–52.
- 34 Ibid.
- 35 K. Rittich, 'The Future of Law and Development: Second generation Reforms and the Incorporation of the Social', p. 208.
- 36 Ibid.
- 37 Ibid.
- 38 Ibid.

- 39 Ibid.
- 40 D. Trubek, 'The Political Economy of the Rule of Law: The Challenge of the New Development State', pp. 28–32.
- 41 Ibid.
- 42 A. Paliwala, 'Privatisation in Developing Countries: The Governance Issue', 1, *Law, Social Justice and Global Development Journal*, 2000.
- 43 N. Mercurio and S. Medema, *Economics and the Law: from Posner to Post-Modernism* (Princeton: Princeton University Press, 1997), p. 87; J. Buchanan, *Liberty, Market and State* (Brighton: Wheatsheaf, 1986).
- 44 World Bank, *Bureaucrats in Business: The Economics and Politics of Government Ownership* (Washington, DC: World Bank, 1995); H. Chang and A. Singh, 'Can Large Firms Be Run Efficiently without Being Bureaucratic?', 9 (6), *Journal of International Development*, 1997, pp. 865–75.
- 45 N. Mercurio and S. Medema, *Economics and the Law: from Posner to Post-Modernism*, p. 87.
- 46 Ibid. p. 93; J. Gwartney and R. Wagner, 'Public Choice and the Conduct of Representative Government', in J. Gwartney and R. Wagner (eds), *Public Choice and Constitutional Economics* (Greenwich: JAI Press, 1998).
- 47 K. Walsh, *Public Services and Market Mechanisms: Competition, Contracting and the New Public Management* (Basingstoke: Macmillan Press, 1995), p. 18.
- 48 G. Yarrow, 'A Theory of Privatisation: Or Why Bureaucrats Are Still in Business', 27 (1), *World Development*, 1999, pp. 157–68; M. Wolf, *Markets or Government: Choosing between Imperfect Alternatives* (Cambridge, MA: MIT Press, 1988).
- 49 A. Paliwala, 'Privatisation in Developing Countries: The Governance Issue'.
- 50 Ibid.
- 51 R. Bilder and Z. Tamanaha, 'The Lessons of Law and Development Studies', 89, *American Journal of International Law*, 1995, pp. 470-1; S. Adelman and A. Paliwala (eds), *Law and Crisis in the Third World* (Lochcarron: Hans Zell, Publishers, 1993).
- 52 A. Chua, 'Markets, Democracy, and Ethnicity: Towards a New Paradigm for Law and Development', 1, *Yale Law Journal*, 1998–9, p. 108.
- 53 Ibid.
- 54 It is still not certain to what extent the World Bank has embraced legal pluralism, except in relation to its foray into access to justice, which is part of the good governance reforms. Penal Reform International, *Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems* (London: Penal Reform International Report, 2000).
- 55 Here I am referring to Weber's typology of governance, which distinguishes legal rationality from traditional and charismatic forms of governance.

- 56 K. Rittich, 'The Future of Law and Development: Second generation Reforms and the Incorporation of the Social', p. 218.
- 57 World Bank, Civil Society Participation, at http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION/0,,contentMDK:20222033~isCURL:Y~menuPK:384461~pagePK:148956~piPK:216618~theSitePK:384455,00.html#empowering_civil_society (accessed on 16 March 2009).
- 58 The interest in civil society is, amongst other things, based on generalised arguments about its significance to the promotion and sustenance liberal democracy around the globe. This has led to political projects dedicated to creating civil society even in situations where the cultural and political environments do not permit it as such. One example of such initiatives can be found at CIVICUS, World Alliance for Citizen Participation, <http://www.civicus.org/>
- 59 B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, MA: Cambridge University Press, 2003), pp. 260-91.
- 60 D. Williams and T. Young, 'Governance, the World Bank and liberal theory', 42 (1), *Political Studies*, 1994, p. 93.
- 61 T. Weiss, 'Governance, Good Governance and Global Governance: Conceptual and Actual Challenges', p. 800.
- 62 The emergence of the CDF must be read in the context of the shift of the BWIs' approach to development, which now comprehensively considers political, legal and social factors in the various processes.
- 63 B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*, p. 147.
- 64 Ibid; J. Stiglitz, 'Participation and Development: Perspectives from the Comprehensive Development Paradigm', *International Conference on Democracy, Market Economy and Development, South Korea, 1999*.
- 65 B. Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*, pp. 147-50; A. Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge, MA: Harvard University Press, 1970).
- 66 J. Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper and Brothers, 1942).
- 67 This is a revised version of the argument that was presented here: O. Onazi, 'Good Governance and the Marketization of Human Rights: A Critique of the Neoliberal Normative Approach'.
- 68 A. Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 1995), p. 5.
- 69 Ibid. pp. 6-7.
- 70 D. Hecht and M. Simone, *Invisible Governance: The Art of African Micropolitics*

- (New York: Autonmedia, 1994); A. Simone, *For the City Yet to Come: Changing Life in Four African Cities* (Durham: Duke University Press, 2004); A. Simone, 'Emergency Democracy and the "Governing Composite"' (2008), 26 (2), *Social Text* 9516; O. Onazi, 'Legal Empowerment of the Poor: Does Political Participation Matter?', 14, *The Journal Jurisprudence* 2012, pp. 201–44.
- 71 D. Hecht and M. Simone, *Invisible Governance: The Art of African Micropolitics*, p. 13.
- 72 A. Simone, 'Straddling the divides: remaking associational life in the informal African City', 25 (1), *International Journal of Urban and Regional Research*, 2001, p. 103.
- 73 Ibid.
- 74 O. Onazi, 'Legal Empowerment of the Poor: Does Political Participation Matter?', pp. 201–44.



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Chapter 4

GOOD GOVERNANCE AND THE MARKETISATION OF HUMAN RIGHTS

The IFIs [international financial institutions] have embraced human rights . . . because they are now an official end of development; because they contribute directly to good economic outcomes; because they protect the interest of civil society groups and serve as a counterweight to the power of the state; and because they form part of the political climate necessary to attract investment and ensure growth.¹

4.1 INTRODUCTION

Human rights have, for at least two reasons, become a pervasive aspect of good governance. First, the normative language of human rights can arguably be seen as an instrument that nurtures, shapes, determines or validates good governance, and ultimately, the practice of development. Secondly, and the focus of attention in this chapter, is that the various initiatives and practices of good governance have themselves sustained the plurality of meanings and values of human rights. Good governance is now an important basis for the enjoyment of human rights, and it places the free-market economy (deregulation, devaluation and privatisation) as a key source of normativity for human rights. The purpose of this chapter, as such, is to consider and explain how the market-based human rights approach works, including providing reasons for its emergence, its philosophical underpinnings, its limitations, and the role of the Bretton Wood Institutions (BWIs) in the processes of its diffusion. In doing so, the chapter outlines and defends the general critique of the role of markets in human rights discourse. It shows that the contemporary interest in markets (not only in human rights discourse) is a product of history, particularly an older discourse that has

similarly considered markets as the solution to all of any given society's problems.

Going much further than the dominant critique of markets, however, I would argue that part of the problem is not necessarily the question of the market, but rather a question of the kind of market involved. The problem is the dominant neoliberal market, which among other things thwarts the possibility of solidarity, collaboration, co-operation and participation, and furthermore creates its own questions of exclusion, similar to the types of exclusion created by the state. Part of the problem, then, including the problem with the general critique of markets, is that little attention has been paid to other ways of thinking about markets. Very little, if any, attention within this debate has been given to the potential that social markets might offer to human rights. As a way of moving forward, I explain and discuss the potential of the co-operative as a species of social market for human rights. Indeed, the hypothesis in this chapter is that co-operatives can potentially resolve many problems relating to access of economic and social rights that are of concern in this book, for the simple fact that they are best suited for participation and co-operation within and between communities. A further objective of this argument, then, is to lay the groundwork for discussions about the prospective role of electricity co-operatives in Chapter 7, and also, for the general purposes of the theory of community advanced in Chapter 6 of this book.

4.2 THE CASE FOR MARKETS

Markets are without doubt, and with mixed consequences, an important feature of contemporary political societies. It is now a commonplace argument that markets impact on the quality of life in ways that the state is not capable of achieving. Dominant arguments about the significance of markets suggest that they are the best mechanism to enhance individual autonomy, liberty, neutrality and welfare. This is because of their distinct epistemic quality, which assists in predicting and determining the distribution of a society's resources. The epistemic quality of markets – that is, their ability to predict and determine resource distribution – is closely related to their ability to increase freedom, autonomy or welfare. It is often said that in preserving individual autonomy, markets guarantee the equality of all individuals because they are the only mechanism that knows best how society's

resources should be distributed. Markets promote natural liberty as a result of the spontaneous activities of individuals in society.

The work of Fredrick Hayek² has been used to provide one of the strongest normative justifications for markets in contemporary political societies, especially the dominance they have assumed in mainstream economic and development discourse. For Hayek (and now his followers), markets are important not only because of their efficiency value, but also because the market is intrinsically moral and contributes to individual liberty. Markets expand all sorts of liberties, be they political, economic or social. This is primarily because only markets know how best to distribute society's resources.

Hayek's basic premise is that markets are the only mechanism that can effectively or sufficiently utilise the dispersed knowledge in society. There is a prior question to the construction of rational economic orders, as this is not simply an enquiry into how to distribute a given society's resources. First, what must be achieved is the knowledge of all circumstances required for the distribution of resources. It is for this reason that centralised planning mechanisms have a fundamental epistemic weakness, and are therefore incapable of effectively distributing resources.

On the contrary, this is the advantage of the market, price mechanism and competition. This is, of course, because markets have the ability to co-ordinate spontaneous activities. One can see evidence of this from spontaneous ordered societies, which were distinct from structured societies. They were different in the sense that they evolved through competing interactions between diverse social actors. Markets are synonymous with the type of exchanges in spontaneous societies, exchanges that are geared towards the distribution of particular goods and services. Distribution, in turn, evolves through autonomous interactions between individuals. Moreover, unlike constructed orders, spontaneous ordered societies are not constituted by deliberate or conscious design.

For Hayek, the importance of markets rests not only on their ability to be efficient, but also on their ability to generate welfare. The promotion of welfare is value provoked by the market system, and which is communicated or utilised efficiently through the price mechanism. It follows that the market system rewards only productive actors who, in turn, make their commodities attainable for the best price. The point is that these transactions are inherently benevolent in so far as one is party to such exchanges.

The welfare attribute of markets is by far the strongest link between markets and human rights.³ One of the most important attributes of markets is their ability to maximise individual choices. This is not only achieved directly, but also indirectly.⁴ The indirect exercise of independent choice seems to be the most persuasive argument about the welfare-generating impact of markets. The point is that irrespective of the motivations of market actors, their actions have the ability, albeit unintentionally, to affect the well-being of others. Acts of narcissism or self-love are driven by a propensity to produce indirect benefits to others. These are the type of arguments that have featured prominently in arguments for the moral justification of markets in contemporary political societies across the world.

The origins of the kind of argument for the market above are obvious, as they can be traced to the timeless work of Adam Smith.⁵ A proper grasp of Smith's case for markets is conditional upon understanding the importance he attached to the division of labour. The division of labour was described as one of the most important reasons for opulence and equality in political societies. Smith wrote that not only was the productive capacity of labour greatly enhanced by the division of labour, it also improved skill, dexterity and judgement. Individual tasks become highly specialised and thereby improve productivity, since the productive circle is only likely to benefit from more than one person. Not only is the division of labour possible to affect production, it also affects the distribution of resources within societies.

But the division of labour only functions effectively if parties to it are capable of accurately determining what is best for themselves and others. Without such knowledge, participants would not have the ability to prioritise on specific tasks. Therefore, the division of labour only functions adequately through a prior attribute: the ability to 'truck, barter, and exchange one thing for the other'.⁶ The market augments the division of labour, by the way that it multiplies and distributes affordable commodities.

The ability to truck and trade is an attribute only found in mankind, even though it was also possible to find other forms of co-operation and exchange between animals. Co-operation among animals is, nevertheless, unique and different. It is different in the sense that an animal that seeks favour from man or his fellow animal has no other means of persuasion except through sympathy. This is not only true with animals, but also between humans. Human beings often appeal to the sympathy

of others when they have no other means of obtaining their good will. No society can exist without the 'co-operation or assistance of great multitudes',⁷ except for societies constituted of mature and independent individuals. But even in those types of societies, Smith says, 'man always has almost constant occasion for the help of his brethren'.⁸ In spite of this, Smith still warned against believing that sympathy alone will always satisfy our needs.

Individual needs are better met if a person seeking a favour simultaneously satisfies the benefactor's self-interest. This is a kind of reciprocity that led Smith to make one of the most influential moral arguments about the welfare-generating effects of markets. This is the meaning of Smith's oft-cited words below:

It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.⁹

No one, argues Smith, except perhaps beggars, absolutely depends on the benevolence of others for their survival. But even a beggar would sometimes find an instance to truck, trade or barter. Sympathy or compassion can never totally supply his or her needs for nourishment; the beggar would still need to purchase food, find shelter or clothes through the market. The beggar would at times need to exchange his or her old clothes with others that suit him or her better, 'or would find the need to exchange something for lodging or for food, or for money, with which he can better buy food, clothes, or lodging, as he has occasion'.¹⁰

The claims above can indeed be questioned. It is obviously possible to think of many individuals who are incapable of existing without the generosity of others. Without doubt, the physically and mentally impaired would always fall into this category.

Nevertheless, it would be misleading to read what Smith is suggesting outside his earlier book, *The Theory of Moral Sentiments*.¹¹ This would paint a more comprehensive picture of what Smith was trying to suggest. He did not totally preclude sympathy and benevolence from social and economic contexts or relationships. Moving beyond these issues, it is, however, in relation to the importance of the market that Smith's famous metaphor of the 'invisible hand' becomes relevant. His

point is this: market relations are not just the best, they are also the most appropriate mechanism for benevolent exchanges between parties. This is because of the epistemic difficulty of impartially determining the consequences of others. The 'invisible hand' is the link between individual satisfaction and the distribution of society's resources, on the one hand, and acts of vanity or self-interest, on the other. The 'invisible hand' works behind the superstructure to channel our propensities for sympathy and compassion for humanity, which are in turn cultivated through the pursuit of self-interest. Markets have an extraordinary value not necessarily by their direct consequences, but as the 'unintended consequences' of profit, gain or self-love. There is an overriding value of exchange, and it is not just relevant to satisfy individual needs.

The views above are often used to justify why authorities must at all times be restrained from directly intervening in the market. Interventions, it is suggested, only lead to the misrepresentation of the facts of the very circumstances that need to be alleviated. This is simply because attempts at intervening would only alter the information that enables markets to function. These views, it would seem, are addressed to countries with centralised or nationalised economies. Decentralisation in the form of the market is justified as the alternative, especially because its firm grasp of the complexity of knowledge is assumed.¹² Once decentralisation becomes well established, co-ordination becomes essential. It becomes necessary for the appropriate balance between considerations or changes in conditions of demand and supply to be understood. It becomes essential to understand the best means by which information can be identified, collated or disseminated. No system, as the argument goes, is quite able to achieve this level of co-ordination, except the price mechanism in market competition. The price mechanism regulates the comparative interaction between various commodities, all of which are subject to the prices of other commodities. The price mechanism only thrives during competition, which, in turn, creates a system of division of labour. The cumulative effect of all of this is that the market system effectively transmits, regulates and co-ordinates all the knowledge in the society. This stems from the primary and apparent difficulty of attaining all the knowledge of all the relevant factors necessary for the distribution of public goods.¹³

The widespread privatisation exercises (in both the first and third world) have been executed for similar reasons.¹⁴ The inevitability of 'government failure'¹⁵ has shaped the argument on which privatisation

is framed. The market – price system, exchange, choices and the interplay of these factors – emerges as a response to government failure. In the third world, in particular, much of the good governance philosophy makes exactly this point. Unsurprisingly, these problems it emerges to address are resolved in favour of markets. Predisposed to such arguments, market enthusiasts have gone to the extent of advocating wholesale privatisations to maximise productive use of resources, generate welfare, and more recently, to realise human rights. But, it is on the latter question that much of the moral argument for markets seems to lose much of its force. It is debatably the question of access and welfare that generates the utmost anxiety about markets. What follows is an attempt to outline the problem with markets, and why it threatens human rights.

4.3 THE SELECTIVE INCLUSION OF MARKETS

For the purposes of clarity, I begin with the issues that are not behind the problem of markets. The problem is not markets' ability to generate wealth or enhance incomes. Neither is the problem a doubt over their ability to expand freedom nor guarantee individual autonomy. It is not about efficiency, even though the question of market failures or public goods may contest this assumption. Rather, the most immediate concern is how markets pose challenges to welfare and distribution of resources. This is a point that comes out strongly in terms of recent ideological thinking about markets. The gap between the rich and poor, or between first and third world, or the latest manifestation of the phenomenon of the 'credit crunch', has raised serious questions about the continuing emphasis on markets.

The problem with the dogmatic defence of markets is that it fails to see that the poor can only benefit from the market if they are able to participate. That is, if they offer some services in return. This is because the market is a system of mutual reciprocity and only rewarding to its participants. What this means is that the market excludes a whole spectrum of people, especially the poor, elderly, children, or those incapacitated by some sort of disability. They can only avail themselves of opportunities offered by markets if they are able to participate. The point is, even if markets are not formulated with social exclusion in mind, there is a rationale of exclusiveness that underlies them. In other words, markets may include but only selectively.

The selective inclusion of markets, as I have chosen to describe it, is not necessarily a new phenomenon, as it definitely has its historical antecedents. Again, this is also something that cannot properly be appreciated outside Adam Smith's work, especially through a careful reading of his theory of *unintended consequences*. This theory continues to influence contemporary views for and against markets, especially those that oppose placing limits on markets. To recall, interventions are frowned at because they would distort the facts of the circumstances needing to be alleviated. Market advocates say that, only the market has the epistemic quality to know who gets what, why and how. In opposition to this argument, it is true that one may not be able to predict all actions, but one can at least predict certain consequences of one's actions. If this is so, the question becomes not one of not intervening, but rather that one should not desist from intervening when it is known that the circumstances of one's actions are likely to be harmful. The question always to be asked is: is it accurate to think that unintended consequences are invariably likely to produce good moral outcomes? A simple answer to this question is, of course, no.

Amartya Sen, in addition to being an avid follower of Adam Smith, is someone who has engaged with these and other questions in his influential work, *Development as Freedom*.¹⁶ The work merits a brief discussion, since it not only helps appreciate Smith's intention, but also illustrates the limits of holding on too dogmatically to the theory of unintended consequences. Generally speaking, Sen's thesis aims to offer a more inclusive or comprehensive account of development, one that goes beyond economic growth, Gross National Product (GNP) or technological and industrial progress to embrace human freedoms. Freedoms, he says, are a means and end of development. Understandably, markets play an important role in this process of enhancing freedoms. This is not because of their importance to income generation, but rather because they contribute to the quality of freedoms.¹⁷ And here Sen seems to be speaking about two related dimensions that markets contribute to freedoms. First, he is speaking of the freedom actually to participate or, as it were, to enter in the realm of markets. Once market entry is possible, there are always benefits that emerge from such admission. It is because of this that he argues that the inability to participate in the market is a symptom of the lack of freedom. As he puts it, '[T]o deny that freedom in general would be in itself a major failing in society'.¹⁸ The second dimension of markets in

his thinking is the more dominant one; that is, the incomparable quality of markets to expand people's incomes and create economic opportunity. This point is well known and requires no further elaboration.

Furthermore, Sen reminds us that even Adam Smith recognised the limitations of markets in certain circumstances. To show this, he draws on Smith's support for price controls on credit or usury. Smith was not advocating a general ban on usury, as such, but rather on the need for fixed interest rates. The rationale behind Smith's thinking was as of a result of the uncertain nature of market signals. Being generally malleable, markets were regularly capable of being hijacked by private interests. There was always a potential that this could slide into the waste of capital and social resources.¹⁹ Smith used yet another metaphor to illustrate his thoughts in this context. The metaphor of 'prodigal' and 'projector' served to demonstrate this point. The prodigal and projectors depicted those who manipulated capital. Prodigals and projectors were consistently driven by personal gain. They would always borrow money for their vested interests, even if such loans were at exorbitant rates.

This is obviously a departure from Hayek's scepticism towards interventions. And there are still other ways of understanding why Hayek was wide of the mark. It is possible to contest the natural spontaneity of markets. The point is that markets are presented as spontaneous institutions to the extent that there is a failure to account for the huge institutional effort to create and sustain them. What was (and still is) quite convincing instead is the extensive planning and centralisation of authority to facilitate the free market.²⁰

That question apart, Sen argues that the idea of unintended consequences should not in any way be seen as a defence, but as an attack on the morals of the rich. For Sen, no philosopher – including Karl Marx – was as critical (as Smith was) of the economic activities of the rich, especially in relation to the poor. Quoting Smith, he argues that the rich are often driven by selfish pursuits of 'their vain and insatiable desires'.²¹ Regardless of this, there was a paradox generated by much of their actions. The pursuit of self-interest might sometimes unintentionally benefit others. It was not that these actions were not deliberately intended to benefit the poor, but, rather, that the pursuit of self-gain affected them. In other words, the actions of the rich accidentally benefited the poor. The 'invisible hand' of the market is what spurs the actions of the rich to benefit the poor. In other words, it is the

market mechanism that channels the unintentional acts of the rich to satisfy the interest of society at large. Without the market, as such, the actions of the rich would have no effect on the poor. The metaphor of the butcher, baker and brewer is yet another way of understanding how the market system makes this possible. The butcher, baker and brewer are primarily driven by self-love, and not necessarily by altruism. But in spite of the narrow motivation for their actions, they can indirectly satisfy the needs of others. This is similar to the way the buyer relates to the seller. The buyer is not interested in what good his or her money can do to the baker or brewer. He or she is only interested in the meat or bread for nourishment.

Be that as it may, there is often the tendency to equate unintended consequences with favourable consequences. This has to be put into perspective in order to appreciate the potential and limits of the concept. It is true that unintended consequences can sometimes lead to favourable circumstances, but there is also a good reason to believe it would produce negative consequences. Certain actions are likely to have both positive and negative consequences. The negative or positive dimensions of unintended consequences can be made known by predictable causal analysis.²² After all, it is not difficult to predict that the market exchange will benefit both parties. The outcomes of such transactions are not as unpredictable as they are made out to be.

This alternative reading of unintended consequences should begin with some kind of rationalisation of the predictable consequences of interventions as well as our inability to intervene. Accordingly, harmful interventions can become more predictable through deliberation and causal analysis. This would challenge the dominant perception that unintended consequences (especially unfavourable ones) are by no means predictable. It entails a rationalisation that would at least provide some degree of insight for the purposes of future policy designs. Such attempts should not be swayed (as Hayek was) into thinking that attempts at intervention must always have adverse effects. A distinction must be made between the circumstances that we can discern and those we cannot. However, the point is that we ought not to refrain from intervening if we can at least predict negative outcomes.

We cannot fold our arms and watch the poor continue to suffer, claiming that their fate can only be decided by the market. Market exchanges are not intrinsically moral.²³ They are not constrained by social or ethical goals. Not even the use value of goods has any

important significance. All that matters for markets is the exchange value of goods. Markets facilitate exchanges of goods and services between individuals. The market is not necessarily concerned with the intrinsic or the use value of goods and services.²⁴ This is what Karl Marx meant by *commodity fetishism* – that is, the reduction of the multiple or vibrant forms of human activity into the production and exchange of goods and services. In capitalist societies, the exchange of goods takes precedence over people, and above all, over life itself. The market system produces a false or formal system of equality. Markets are unconcerned with existing asymmetries of ownership of wealth in society. Indeed, this leads one to ask, what is the use of suggesting that the market is free for all to participate in when it only accommodates productive members of society?

The arguments above invite a distinction between market and non-market or moral economies. The exchange value of goods (through money and property rights) is a distinguishing feature of market economies.²⁵ Decisions and functions of individuals within such entities are guided by the exchange of goods and services. The shift in exchange value is often the result of unintended consequences, many of which are devoid of ethical considerations. Market economies are 'disembodied economies'.²⁶ They are different from moral economies, which are influenced by social custom, needs and the use value of goods.

The assumption that the unintended consequences of markets will always be beneficial to everyone does not explain how individuals who are not party to exchanges can benefit from markets. It should be clear now that the pursuit of vain and insatiable desires does not always translate into generosity to the poor. This mindset silences and obscures a range of participants, such as children, the elderly, or the disabled. Market protagonists overlook or even dismiss such issues. They argue that the difficulty is epistemic, which is the impossibility of accurately determining the needs of everyone, and in this sense, only the market can neutrally or effectively provide for everyone according to their needs. As such, the role of public policy is not to pre-determine the needs of everyone. This type of stark defence of markets is what has caused the wide expansion of markets beyond imaginable limits.²⁷ Even human rights are now subject to the expansive influences of markets. A number of questions arise from the embrace of human rights by the market logic. For instance, what is the kind of mindset that has been inscribed into the structure of human rights? In Africa or other third

world countries, what kind of human rights have been moulded from good governance or the contemporary practice of market reform? It seems necessary at this point to consider the debates that have sought to reconcile human rights and markets.

4.4 MARKETISING HUMAN RIGHTS

Human rights have been no exception to the continuous overwhelming expansion of markets. This may be as a result of their nature; human rights can selectively be deployed in ways that are not only compatible with, but also supportive of markets. For instance, in good governance discourse, the argument in favour of civil political rights is often used to promote different forms of market participation. It is not difficult to understand how freedom of expression, religion or rights to association, equality and anti-discrimination can support market participation. Similarly, property and contractual rights are also a crucial element of the good governance market framework and exist as an integral part of what might more generally be called the neoliberal human rights discourse.

The BWIs have adopted this type of language, with the effect of distorting human rights from their original and proper intentions. This is a direct consequence of the malleable language of human rights. Apart from meaning different things to different people, human rights can serve a variety of interests, not least the interest of markets. In the context of this chapter, this is one of the main reasons that can be given for the co-option of human rights through the activities of the BWIs, even though it must be recognised that human rights are now embraced by everyone or every institution, whether it is in relation to questions of global justice, good or global governance or the question of development.

The favourable predisposition to human rights by the BWIs, has made the former, among other things, complementary to various market initiatives. A robust global or domestic modern theory of justice, say the advocates of this vision, must be built on a relationship between human rights, liberal constitutional democracy and markets.²⁸ To achieve this, there must be more recognition, than is currently the case, of the importance of markets to human rights.

Human rights and markets complement each other because they are all concerned with protecting individualism, freedom of choice

and consumer satisfaction. A link is drawn between the protection of dignity (the core objective of human rights) and markets. Any conflicts that may arise between different interests (for instance, between utility-maximising producers and consumers) can be prevented by liberal market-oriented constitutional mechanisms that constrain the abuse of power. The language of constitutionalism here is not restricted to the political realm, but also extends to the economic realm. The protection of human rights and non-discriminatory market-based competition needs to be established by an economic constitution as much as by a political constitution.

The market is not just important to human rights in the domestic sphere, but also in regional and transnational spheres, especially through various forms of economic co-operation. These forms of co-operation do not exist outside international constitutional rules, which guarantee non-discriminatory international trade and competition, among other things. For instance, a strong claim exists that the World Trade Organization (WTO) would, or ought to, protect human rights more effectively than other international constitutional-like arrangements. The WTO (through its dispute settlement panels and appellate body) is the most significant example of the constitutionalisation of non-discriminatory rules of economic competition beyond territorial boundaries.

This type of argument is problematic for several reasons, but I will mention just one. While it is true that the WTO does deal with some human rights issues, it does not provide protections to, and cannot guarantee, a comprehensive range of human rights. Although the current mandate of the WTO is much wider than its predecessor (that is, the General Agreement of Trade and Tariffs, GATT), it is still primarily an economic arrangement, one concerned with the production and trade of goods and services. Indeed (except for the inclusion of a regime of intellectual property rights), the whole structure of the international trade system remains the same in spite of the changes. Furthermore, the democratic deficit within the WTO makes it hardly the kind of institution suitable for the promotion and protection of human rights.

A more pertinent question (overlooked by the trade market enthusiasts) is that of the profit motivation behind the market itself, and furthermore, the negative effect this may have on human rights. After all, the current international trade system is determined by a distorted market framework, which will undoubtedly negatively affect human

rights. The point is that a prior question that needs to be addressed before one considers whether or not human rights should operate within the international market system. In other words, the nature of the market itself has to be called into question. This is something that can be understood through the critique of markets provided earlier in this chapter. One can repeat some of those observations on the global sphere in the light of the disproportionate nature of the international system of trade. The inequitable nature of international markets is exacerbated by the distorted rules of trade, which seem to make the market more suitable for some countries than others. The agitations for 'fair' in contrast to 'free' trade are one example of this difficulty, and a clear indication of the anxieties about reconciling human rights with markets on the transnational level.

4.4.1 Trade-related Market Friendly Human Rights

Upendra Baxi has indirectly pursued some of the implications of the market thesis above more vociferously than any scholar today. Baxi's²⁹ views, which merit some detailed consideration, describe the recent trends in contemporary human rights practice as evidence of an emergent and distinct 'trade-related, market friendly' (TRMF) human rights paradigm, which, he argues, is subtly replacing the paradigm of the Universal Declaration of Human Rights (UDHR). It succeeds in the promotion and protection of collective rights of global capital in ways that justify their corporate well-being and dignity, but most importantly, go against the human rights of individuals and communities.³⁰

Economic globalisation is perhaps the most significant factor in the rise of this TRMF human rights paradigm.³¹ The subtle processes of substitution are intricately connected with the emergence of a borderless economy made possible by the free flow of finance, trade, production and, to some extent, labour.³² One of the more pervasive dimensions of economic globalisation is the emergence of a 'new international division based on the globalization of production carried out by transnational corporations (TNCs), which are more prominently than ever, the agents of the new world economy'.³³ The TNCs have increasingly dominated various aspects of the economy.

Human rights has not been exempt from the influence of the TNCs, and economic globalisation in more general terms. The corporate appropriation of human rights arises from the fact that TNCs not only

enjoy legal personality, but also the capability to bear contractual property and, in some instances, constitutional rights. Quite apart from that, TNCs increasingly invoke the language of human rights in defence of their interests. The adoption of human rights by TNCs is similar to the invocation of humanity.³⁴ After all, only humans can fully enjoy human rights. There is a moral inscription of humanity that lies at the heart of all human rights claims.

In relation to good governance discourse, the processes of the co-option of human rights are also made possible through the emergence of a distinct political economy often referred to as the 'neoliberal development model', which among other things has facilitated the role of TNCs.³⁵ The distinctive features of the model can be summed up as follows:

... national economies should be open to trade, and domestic prices should conform to international market prices; fiscal and monetary policy should be prudently directed to the maintenance of price and balance-of-payments stability; private property rights should be clear and inviolable; state-owned productive enterprises should be privatized; private decision making, guided by undistorted prices, should dictate national patterns of specialization, resource allocation and factor returns, with minimal government regulation or sectoral policy; the residual government budget should be directed to targeted education programmes and social policy.³⁶

These are familiar prescriptions which those in Africa have come to know well. In most cases, the embrace of the neoliberal political economy has been a direct consequence of the influence of the BWIs. And the neoliberal political economy is the link between TNCs, the BWIs, and the market friendly approach to human rights.³⁷ The entire Bretton Woods framework, composed of the World Bank and the International Monetary Fund (IMF) and including (as noted above) the WTO/GATT treaty regimes, has served as missionaries of this political economy and, inevitably, the market view of human rights.³⁸ It is not surprising that the BWIs, for instance, have promoted this type of human rights. They are quite sympathetic to the relationship between economic globalisation and human rights. They are sympathetic to the view that finds economic globalisation as one of the best means to

improve conditions of human welfare or reduce poverty.³⁹ Economic globalisation is equally considered as one of the ways through which human rights can be realised. The World Bank, in particular, seems to find human rights compatible with the policies associated with the political economy of globalisation.⁴⁰ Both discourses have a mutually supporting relationship. Human rights provide a framework for the pursuit of development, just as neoliberal development policies provide a framework for the pursuit of human rights.

Economic globalisation and markets are increasingly proposed as a precondition for human rights.⁴¹ Again, one can refer to Baxi, who makes a similar point that 'the promotion and protection of human rights become possible only when the order of human rights for global capital is fully recognised'.⁴² Human rights typical of the UDHR are not only subordinated, but are recognised as by-products of globalised markets.

One cannot help but agree with Baxi that the celebration of markets would be dangerous to human rights. Markets would remain ubiquitous and determine everything, including the resources for the promotion and protection of human rights. This is, of course, a reading of what Baxi describes as the emergence of 'human rights markets'.⁴³ This is understood as the need for various activists or groups to operate within the market logic. The market metaphor is thus deployed to demonstrate how human rights groups compete for scarce resources. Baxi uses terms such as human rights investors, producers and consumers in very imaginative ways to describe this process. Indeed, one can defend the arguments for social markets in the final part of this chapter based on this argument. To do this, one would need to take the phrase 'human rights markets' seriously, and not (as Baxi meant) as a metaphor. After all, human rights, whether through community, need a form of market to function.

Part of the problem is that economic globalisation has influenced the rise of many private market actors⁴⁴ and inter-governmental organisations (including the BWIs) which are unaccountable for most of their actions that affect human rights. This is perhaps the most critical challenge that economic globalisation and markets present to human rights, in which attempts to make these economic actors accountable are often rejected. For instance, TNCs have shown their ability to convert 'human rights movements into human rights markets'.⁴⁵ Economic globalisation has presented other numerous challenges to

human rights, but it is safe to say that the emergence of non-state actors has been one of its most pervasive consequences. The state-centred human rights discourse is rapidly becoming obsolete in the face of economic globalisation, quite apart from the powers of the state being outsourced to non-state actors. The accountability of non-state actors is one of the enormous problems that is still debated among many scholars and activists, with most of them divided on how to deal with the role of non-state actors. TNCs have continued to resist attempts to operate within a framework of human rights as notably proposed by the United Nations.⁴⁶ Instead, TNCs have preferred to be bound by limited self-regulatory norms of corporate social responsibility (CSR), as with the Ruggie framework, which sets a universal standard for voluntary compliance with human rights norms by corporate entities and businesses.

4.4.2 *State Failure*

The limitations of the state model have had a number of disastrous consequences. One challenge is the inability of states to assert their economic sovereignty over their territory, thanks to 'regional international economic arrangements, international financial institutions, multinational enterprises, and the network of NGOs'.⁴⁷ The combination of these factors has challenged the state's regulatory competence. No longer is the state the central organiser of 'national economic development, the owner of capital and other means of production, an active participant in the production of goods and services, and the proactive regulator of patterns of corporate behaviour';⁴⁸ the state now enthusiastically promotes the virtues of the free market. Whilst the UDHR assigns responsibilities to states for the realisation of human rights – that is, 'to construct, progressively and within the community of states, a just social order, national and global, that will at least meet the basic needs of human beings'⁴⁹ – the emerging paradigm, on the other hand, departs since it challenges this redistributive role or ethic of the state. Deregulation or, again, privatisation facilitates the deliberate assault on the distributive capacity of the state.

In spite of the implications of the arguments above, there is perhaps another significant problem that seems to have been overlooked. Whilst it cannot be denied that markets have presented problems to human rights, it is equally true that human rights problems have also

been generated by the state. One cannot deny that many of these problems have emerged as a result of the complicity of postcolonial states in the production of such problems. Experiences with the state-centred human rights framework continue to raise serious doubts about its long-term viability as the vanguard of human rights. These are for reasons of state failure, especially in the postcolonies where the usual stereotypical arguments about corruption, nepotism, poor governance, and elitism are well documented and, therefore, need not be restated here.

In the African continent, for example, one of the most influential explanations of this is that the state emerged as an artificial construct, given that it evolved as the natural successor to the colonial state. Similar to the way that the colonial state 'lacked any grounding in the expectations or concerns of the indigenous societies of the territories whom it imposed its order',⁵⁰ the postcolonial state has similarly been distant from the lives of ordinary people. Regardless of other reasons that can be given for state failure, very few would argue that the postcolonial African state has not failed in its role of presiding over economic and political processes. There are, of course, differences between states in terms of the extent of these problems. However, the general point is that one must be cautious when arguing in favour of the state-centred solutions. Like the market, the postcolonial state has vast limitations and problems of exclusion.

The problem with the state unites neoliberal protagonists and their critics. For protagonists and critics of neoliberalism alike, the state has been the problem for development and human rights. For critics of neoliberalism, however, as well as rejecting markets as the alternative, their grievances are structured around the way in which the state serves as an instrument of dominant interests, particularly the way in which it reifies interests and values of global capital. The state is articulated as a mechanism for protecting the interests of the prevailing global political, economic and social climate. There is still extensive planning, centralisation and deliberate state action in favour of the market.

The role of the state brings to mind an important (but neglected) aspect of the work of Adam Smith.⁵¹ The fact is often ignored that Smith also spent much time writing about the importance of the state. Smith believed that the state had an important role to play in enforcing tariffs, wage rates, and restrictions on trade. For him, the size of government would have to coincide with the growth of the market economy.

Maintaining the market economy was indeed an expensive task, one that was dependent on 'big' government. The government had to continue playing a prominent role for purposes of defence, public facilities, civil justice and a functioning tax system. As such, the state was critical to the existence of liberty, reason and happiness in society. Though maintaining this state might be expensive, the wealth generated from a well functioning market economy was considered capable of providing enough resources to sustain it. Parallels between these arguments can be drawn with the emergence of the second-generation reforms. The state is no longer treated with the kind of suspicion that existed in the past. Moreover, much of the mistrust of the state seems to have changed with the recent global financial crisis, which has seen the state take a leading role in economic affairs. It would seem that states will always step in where there has been widespread market failure, as is the case with the current global economic crisis. The crisis has provoked calls for a rethink of local and global market-based economic models.

The difficulty in the light of the arguments in this chapter is that the market pessimist is left with no alternative but the state; so is the state sceptic left with no alternative but the market. One of the greatest fallacies (especially with implications for human rights discourse) is the assumption that the state and market are the only alternatives. The book, as such, is an attempt to transcend this binary logic. Indeed, the case for community in this book is a reaction to the so-called lack of alternatives. The book is an attempt to transcend such dichotomous debates by proposing and considering a different alternative.

For the purposes of this chapter, however, the problem is not just a question of the dichotomy between the state and market, but also the way in which markets are presented. Part of the problem is that markets are understood as systems that only allow for the pursuit of profit or self-gain, and exclude other understandings of the concept. What follows is an attempt to think of markets differently, and in this respect, how they may be a more suitable foundation for human rights.

4.5 DE-MARKETISING HUMAN RIGHTS

As already argued, markets challenge human rights in several ways. Markets function only through self-interested persons, without whom

benevolent exchanges would not be possible. Markets are inclusive only to those who participate, but are exclusive to those who, for one reason or the other, cannot benefit from the opportunities it provides. Markets, as has been described, are amoral and have no social or ethical ethos. If this is the way markets are commonly understood, then it is not difficult to recognise the insurmountable challenges they pose for the enjoyment of human rights. This is one of the important implications of the corporate capture of human rights by the nascent market friendly human rights discourse. The market friendly discourse creates a framework through which different economic actors appeal to the language of human rights, either as beneficiaries or to legitimise their activities. Markets prioritise specific human rights, which are directly connected to market participation. As a consequence, the promotion and protection of human rights typical of the UDHR can be made possible only by drawing a connection with certain basic market rights.

To remedy this problem, one alternative is how markets might be thought of, or considered from a different ethical standpoint. After all, capitalist markets are only one form of market; they are certainly not the only type of market. However, to achieve the task of thinking of markets from a different point of view, one thing that has to be dispelled or overcome from the outset is the misapprehension that the approach favoured may imply acquiescing to market capitalism. Because of this, it might indeed be safer to discard the role of markets altogether. This is (as will be discussed particularly in Chapter 6) one way of interpreting the role of community proposed in this book. It is in part a response to the problems generated by markets, and can itself be understood as an entirely different (non-market) framework.

Even so, a plausible argument can be made that it is still necessary to understand that the community (like the state) needs markets or a certain kind of economy to function, even if it is proposed as an alternative for human rights. The point in raising this is to illustrate that dichotomous arguments are not particularly helpful in this context. Indeed, the proposals in this chapter (or this book in general) are an attempt to move away from dichotomous views about the plausibility or non-plausibility of markets. What is rejected is the underlying capitalist orientation of markets. There are other ways of thinking about markets. The point is that if markets are detached from the world-view of profits or self-interest, then perhaps it is possible to understand how they might be useful to human rights.

One way I propose to achieve this is through what I call the social market. This is simply an attempt to provide human rights with an alternative market to function. The social market is a distinct economic model, one formulated by non-profit-oriented principles. The social market describes the moral economic framework that allows a wide range of moral non-profit organisational forms to operate. It is an umbrella phrase that describes different models of economic organisation that have been formulated under the influence of values of solidarity, participation, equity, mutual reciprocity, democracy and co-operation. They are businesses designed for the primary objective of meeting the special needs of the poor. They are models of organisation that operate under the social market model.

One such example is the co-operative business model.⁵² There are, of course, different types of co-operatives, which vary in function and also in the extent to which they engage with the capitalist economy or not. Some co-operatives tend to have a radical agenda at odds with capitalism, whilst others are more accommodating to it. Even so, any use of co-operatives for a radical agenda must invite the question of whether the model of organisation is a species of a capitalist business or something entirely different. Co-operatives can be a bit of both, and their potential does not lie in their autonomy or purity from the capitalist economy. Although they may exist within the capitalist economy, they, nevertheless, provide a means of ameliorating some of the problems associated or produced by capitalism.

The strength of a co-operative organisation, which can be used to argue that it is radically different from the typical capitalist business organisation, is the fact that it is formulated and operates on distinctive values and principles. The uniqueness of the co-operative model is that co-operatives are very often democratic self-help economic organisations. They are designed or formulated for the specific reason of assisting their members, and also, for the needs of the particular community in which they operate. Co-operatives achieve this by aggregating individual market power into a collective whole, to tackle certain problems in a specific community. Co-operatives provide a unique example of how specific problems are better resolved collectively than through independent action. This is one explanation of why co-operatives have not only appealed to people across the globe, but also have been able to transform millions of lives.

It is no surprise then that even before the recent phenomenon of the

credit crunch, a co-operative-driven economy has featured in several proposals as an alternative to both the capitalist market and traditional command control economy.⁵³ Co-operatives lie at the heart of David Miller's proposals for 'market socialism'. Market socialism refers to a distinct economic model, which primarily responds to failures of command and control state-socialist economies, and subsequently, the neoliberal economic models that now prevail in most countries of the world. In doing so, the idea of market socialism does not constitute a complete departure from the capitalist market economy. The objectives of market socialism include:

- (a) to obtain the efficiency advantages of markets in the production of most goods and services;
- (b) to confine the economic role of the state in a way that makes democratic government feasible;
- (c) to protect the autonomy of workers, both as individuals and as members of self-managed enterprises;
- (d) to bring about a much more equal distribution of primary income (rather than relying on secondary redistribution)⁵⁴

In keeping with these aims, the market mechanism is relied upon for purposes of provisioning of goods and services. The major difference between market socialism and the typical capitalist economy is that ownership of capital is now socialised. Market socialism exists in both pure and impure forms. In the pure model, workers' co-operatives are encouraged to source capital from investment agencies according to reasonable terms and conditions. Such co-operatives will in turn democratically exercise autonomy over decisions on production, internal organisation of the business, or how they are generally run. Such co-operatives will operate and compete within a specific market sphere with the aim of generating income for their members, which is in turn distributed according to a democratically agreed formula. The impure version of the market socialist model is simply a hybrid of a typical co-operative and capitalist organisation.

Regardless of model, Miller allays general fears among followers of classical economics about the macroeconomic efficiency of co-operative enterprises. As a better alternative to centralised economic models, the co-operative model is capable of replicating the same competitive equilibrium, which is not only Pareto-optimal, but also similar to a typical capitalist firm.⁵⁵ Given the different orientation of co-operatives,

they are always likely to react differently to changes in the market. For instance, their reaction to a sharp increase in price is predictably one that would lead to the reduction of production. This is usually not the same kind of reaction expected of a capitalist firm. Nevertheless, this is not a suggestion that all co-operatives will constantly react the same way to such developments. Even if they do not, there is always the possibility for new co-operatives to be formed in situations where others have failed (or are failing) to maintain the equilibrium of the economy. All in all, even if these arguments sound speculative, there is no reason why a co-operative business cannot function as efficiently as capitalist firms.

The main difference between Miller's proposals and mine is on the type of co-operative involved. For the following reasons, I am making a case for a broader use of co-operatives (not just worker co-operatives). First, worker co-operatives are more suitable for countries that have achieved a high degree of industrialisation. This is not the case for a large number of African and third world countries, where this kind of industrial development, for one reason or the other, has not taken place. To design an alternative economy under the leadership of worker co-operatives would be to exclude those who do not work under a formal wage structure. This would automatically exclude the poor, who are most likely unemployed, from the domain of recognition. In some situations where the poor are recognised, they are placed under the leadership of the working class.

Secondly, my scepticism about an economy driven by worker co-operatives has to do with the appreciation of the changing nature of the working class itself. Traditional notions of the working class (especially in the industrial nations) no longer command control over the economy as they did in the past. A new kind of working or labour class has emerged with the changes created by globalisation, which has in turn paved the way for highly dispersed forms of production. This is not in any way a suggestion that new forms of organisation are impossible today. Indeed, the emergence of new forms of labour has encouraged novel forms of more democratic modes of organisation and mobilisation.⁵⁶

Third, my argument is also based on the plurality and variety of activities in everyday life, which should ordinarily imply the possibility of the formation of diverse forms of co-operative. To reduce the potential of the co-operative model to the working class is to deny

the vibrancy of life itself and, as a consequence, the possibility of different solutions. The effect this would have is that it would leave out scope for the potential of what might be called social co-operatives, the kind that are more suitable for the needs of the poor. Social co-operatives are unique in the sense that they are businesses formed for one purpose only: that is, to resolve a wide range of social problems in affected communities. A particular area where the impact of these co-operatives can be felt is in the provisioning of certain economic and social rights, such as water, healthcare, education and electricity. I do not develop how the co-operative will affect all of these areas in any detail, except for the question of access to electricity, for which I show, in hypothetical terms, how this social market model of organisation can be used to address problems of access (see Chapter 7). In that chapter, I develop in some detail what exactly the co-operative is, including its advantages. Although I single out electricity as an example, my intention is not to restrict the use of co-operatives to electricity. Broadly speaking, I do hope that co-operatives, especially the model proposed in this book, will be relevant to other areas of need.

4.6 CONCLUSION

The chapter has generally demonstrated the argument about the dominance of markets in human rights discourse. It has discussed the philosophical roots of the market argument and explained why they now resonate in African and other parts of the third world. It has shown that, in addition to issues of exclusion and participation, the market ironically needs a strong state to function. The chapter has argued that part of the problem has been the kind of market involved, and an attempt has been made to show a different type of market that lies at the margins of the dominant model. The advantage of this market is that it opens up more possibilities for dealing with some of the problems of human rights through forms of co-operation and participation, attributes missing from the dominant model. Chapter 7 will take these arguments much further by sketching out a co-operative model that can encourage such forms of participation. Such opportunities would, however, only be effective if they are preceded by opportunities for participation within particular communities. This entails understanding and creating structures for participation where they do not exist.

Where they do exist, it entails nurturing them into more inclusive forms of participation. This entails understanding the constitutive role of human rights in enabling and nurturing such forms of participation. While Chapter 6 discusses the implications of community involvement, what follows is an attempt to understand the role that human rights can play. This is pursued by embedding the analysis in this and the previous chapters in a case study of the reform proposals for electricity in Nigeria.

Notes

- 1 K. Rittich, 'The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social', 26, *Michigan Journal of International Law*, 2004, p. 221.
- 2 F. Hayek, 'The Use of Knowledge in Society', 4 (XXXV), *American Economic Review*, 1945, pp. 510-30; F. Hayek, *The Road to Serfdom* (London: Routledge and Kegan Paul, 1944).
- 3 Human welfare and well-being are used interchangeably here. It is defined through the concept of utility as the satisfaction of preferences, which are measured by the ability to pay. It is a purely formal account of welfare, which excludes its actual contents, and the extent to which such preferences actually contribute to the quality of life. J. O'Neill, *The Market: Ethics, Knowledge and Politics* (London: Routledge, 1998), pp. 35–52.
- 4 S. Javons, *The Theory of Political Economy* (London: Penguin Books, 1970).
- 5 A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 1776–8, vol. I, ed. E. R. A. Seligman (republished) (Surrey: Temple Press, 1950).
- 6 Ibid. p. 12.
- 7 Ibid. p. 13.
- 8 Ibid.
- 9 Ibid.
- 10 Ibid.
- 11 A. Smith, *The Theory of Moral Sentiments* 1759 (reprinted) (New York: Cosimo Classics, 2007).
- 12 Ibid. p. 36.
- 13 Ibid.
- 14 N. Mercuro and S. Medema, *Economics and the Law: From Posner to Post-Modernism* (Princeton: Princeton University Press, 1997), p. 87.
- 15 G. Yarrow, 'A Theory of Privatisation: Or Why Bureaucrats are Still in Business', 27 (1), *World Development*, 1999, pp. 157–68.

- 16 A. Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999).
- 17 Ibid. p. 112.
- 18 Ibid.
- 19 Ibid. p. 124.
- 20 K. Polanyi, *Great Transformations* (Boston: Beacon Press, 1957), pp. 65–7 and 68–76.
- 21 A. Sen *Development as Freedom*, p. 112.
- 22 Ibid. pp. 255–7.
- 23 E. Pashukanis, 'Law and Marxism: A General Theory of Law', trans. C. Author (London: Pluto Press, 1987).
- 24 K. Marx, *Capital: A Critique of Political Economy* (New York: Pacific Publishing Studio, 2010), pp. 18–21.
- 25 J. O'Neill, *The Market: Ethics, Knowledge and Politics*, p. 5.
- 26 Ibid.
- 27 R. Keat, 'The Moral Boundaries of the Market', in C. Crouch and D. Marquand (eds), *Ethics and Markets: Co-operation within Capitalist Economies* (London: Blackwell, 1993), pp. 6–20.
- 28 E. Petersmann, 'Theories of Justice, Human Rights and the Constitution of International Markets', 17, *EUJ LAW*, 2003.
- 29 U. Baxi, *The Future of Human Rights* (New Delhi: Oxford University Press, 2002), p. 132.
- 30 Ibid. p. vii.
- 31 Economic globalisation cannot be understood outside globalisation in generic terms, which, according to Giddens, is 'the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa'. A. Giddens, *Sociology* (Oxford: Oxford University Press, 1990), p. 64.
- 32 L. Sklair, *Capitalist Globalisation and its Alternatives* (Oxford: Oxford University Press, 2002), p. 8.
- 33 B. D. Sousa Santos, *Towards a New Legal Commonsense: Law, Globalization and Emancipation* (London: Butterworths LexisNexis, 2002), p. 167.
- 34 A. Grear, 'Challenging Corporate Humanity: Legal Disembodiment, Embodiment and Human Rights', 7 (3), *Human Rights Law Review*, 2007, pp. 511–43.
- 35 B. D. Sousa Santos *Towards a New Legal Commonsense: Law, Globalization and Emancipation*, p. 197.
- 36 Ibid.
- 37 F. Garcia, 'Global Justice and the Bretton Woods Institutions', 3, *Journal of International Economic Law*, 2007, pp. 461–81.
- 38 The WTO's General Agreement on Trade in Services, or GATS facilitates about 160 services potentially capable of being privatised. These include

elder and child care, sewage, garbage, park maintenance, telecommunications, construction, banking, insurance, transportation, shipping, postal services, tourism, education, healthcare, energy and water. Also useful in this context is the Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments – Results of the Uruguay Round vol. 31, 33 I.L.M. 81 (1994).

- 39 A. Anghie, 'Time Present and Time Past: Globalization, International Financial Institutions, and the Third World', 32, *New York University Journal of International Law and Politics*, 2003, p. 243.
- 40 World Bank, *Development and Human Rights: The Role of the World Bank* (Washington, DC: World Bank, 1998).
- 41 United Nations, *Globalization and its Impact on the Full Enjoyment of All Human Rights*, preliminary report of the Secretary-General, UN GAOR, 55th Sess., 5, U.N. Doc. A/55/342, 2000.
- 42 U. Baxi, *The Future of Human Rights*, p. 148.
- 43 Ibid.
- 44 Non-state actors range from individuals, scientific and academic associations, international criminal syndicates, corporations, religious bodies and human rights organisations to other international organisations. H. Steiner and P. Alston, *International Human Rights in Context; Law, Politics and Morals* (Oxford: Oxford University Press, 2000), p. 940.
- 45 U. Baxi, *The Future of Human Rights*, p. 148.
- 46 One such example is the rejection of the failed 'UN Norms on the Responsibility of Transnational Corporations and other Business Enterprises with regard to Human Rights' by TNCs. U. Baxi, 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights', 5 (1), *Human Rights Law Review*, 2000, pp. 1–26.
- 47 U. Baxi, *The Future of Human Rights*, p. 135.
- 48 Ibid.
- 49 Ibid.
- 50 M. Chibundu, 'Law in Development: On Tapping, Gourding and Serving Palm-Wine', 29 (1), *Case Western Reserve Journal of International Law*, 1997, p. 177.
- 51 J. Muller, *The Mind of the Market: Capitalism in Modern European Thought* (New York: Alfred A. Knopf, 2002), pp. 76–80.
- 52 M. Castells and A. Portes, 'World Underneath: The Origins, Dynamics and Effects of the Informal Economy', in A. Portes, M. Castells and L. Benton (eds), *The Informal Economy* (Baltimore: Johns Hopkins University Press, 2003).
- 53 D. Miller, *Markets, State and Community: Theoretical Foundations of Market Socialism* (Oxford: Clarendon Press, 1991), p. 5.

54 Ibid. p. 9.

55 Ibid. p. 13.

56 M. Hardt and A. Negri, *Multitude: War and Democracy in the Age of Empire* (London: Hamish Hamilton, 2004), p. 108.



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Chapter 5

THE GOOD GOVERNANCE OF ELECTRICITY: NIGERIA AS CASE STUDY

5.1 INTRODUCTION

This chapter aims to demonstrate how the good governance inspired reforms in Nigeria have translated into practice, using a case study of the reform proposals for its electricity sector. The chapter discusses and offers a critique of the current reform approach, particularly its legal and regulatory framework, as well as other salient aspects, such as access of the poor to electricity, rural electrification and consumer rights protection, among other key features.

The study of electricity reform in Nigeria is developed as the basis upon which to show the importance that human rights can have on increasing access to electricity, something that elides this and other neoliberal development inspired approaches. In doing so, and in contrast to the neoliberal approaches, I propose human rights not as a subjective right, but rather as the ethos or moral authority for electricity reform. It is acknowledged that my use of human rights in this context needs to be qualified or justified. To be clear, I am by no means suggesting that human rights can be used to address all the myriad problems of the Nigerian electricity sector, or that they are something that would make the electricity sector work. This would be too demanding, since such a task is uncharacteristic of the basic objective or understandings of the work of human rights.

Contrary to that suggestion, the hypothesis of this chapter is simply that human rights, established from community, can make electricity work for the poor. It is postulated that the renewed vision of human rights can play a pivotal role at the level of the design, or through the on-going processes, of reform by functioning as a conceptual medium or guide that can draw attention to communities excluded from the

entirety of such reform processes. The success of this argument is based on a proper understanding of the approach (proposed in Chapters 1 and 2 of this book), that establishes human rights from community, and furthermore, on expressions of love and empathy vis-à-vis African moral philosophy (*ubuntu*) and the work of Simone Weil, respectively.

The advantage of this approach, it is argued, is that it can encourage a better appreciation of the relationship between the lack of access to electricity and, as a result, human suffering. Secondly, it can help to avoid significant problems of poverty and exclusion encountered by the reform of electricity, or bring them to greater attention. This can be achieved in two related ways. First, the approach is oriented towards questioning whether adequate consideration has been given (in the design of electricity reform laws and institutions) to questions of exclusion, especially the suffering that results from such exclusion. Secondly, the approach is oriented to question human rights themselves: it questions their adequacy as a conceptual medium to enable individuals and institutions to pay attention and respond to human suffering, especially all forms of suffering encountered through the lack of electricity. The approach recognises that there may be a need to go beyond (without dismissing) human rights to augment them with other conceptual sources that can help to bring human suffering to greater attention.

Apart from African moral philosophy, the impact of Simone Weil's ideas in the context of the main proposition of this chapter is conspicuous. It is argued that her notion of attention can also provide the basis to develop an ethic that allows individuals and institutions to listen attentively to those most affected or excluded by such reforms. This is, however, an ethic that can only be nurtured in communication with, and with the participation of, those affected. Attention is, after all, how we embrace and participate in the affliction of others. Put this way, this chapter prepares the ground for the arguments in subsequent chapters about the significance of encouraging the participation of communities affected by such problems.

5.2 ELECTRICITY FAILURE IN NIGERIA: A GOVERNANCE QUESTION?

I have not known twenty-four hours of uninterrupted power supply for countless years now. As I write this piece, I have not had power for the past three days! Nigerians depend largely on

their generators for their primary source of power and the public power utility as backup.¹

Those words describe the familiar sentiment shared among millions of Nigerians, many of whom survive under the constant hardship of lack of electricity. Not much has changed since about 2005 when I began to generate keen interest in electric sector reforms in Nigeria and Africa more generally. Indeed, my educated guess is that things at the moment are worse than they have ever been before, as my experience in Nigeria, where I spent some time revising this chapter, attests.

The failure of public sector electricity in Nigeria is self-evident and needs very little elaboration. It is well known that the only consistent thing about electricity in Nigeria is its inconsistency, as 40–70 per cent or more Nigerians survive daily without electricity. A brief history of the electricity sector is a helpful way of putting this problem into perspective. Prior to the current reforms, Nigeria's electric sector operated as a vertically integrated national monopoly with combined elements of generation, transmission and distribution of electricity. At that period, the electric sector was not distinct from similar sectors in different parts of the world. Electricity was then considered to be a public good in the classical economic sense of the term, which could only be managed by a centrally controlled monopoly. This responsibility in Nigeria was placed on the now-defunct National Electric Power Authority (NEPA), which operated under the now repealed Electricity Act.² Not surprisingly, one notable feature of the law was the exclusion of private market participation in the electricity sector.³

Reasons for the appalling levels of access to electricity have been attributed to the lack of private participation and the centralised nature of the redundant state-owned enterprise. Most observers have blamed the monopolistic nature of the sector for electricity failure in Nigeria.⁴ It is true that centralised electricity may be an outdated system today, but this explanation is an over-simplification of the multiple causes for electricity failure in Nigeria. Lack of competition may have accounted for most of the problems but there are certainly other reasons for such problems. Beyond questions of competition, several operational problems have also been responsible for the lack of electricity. Despite huge amounts of hydro, oil and gas resources, the generation capacity of the electricity sector has never peaked beyond 3,500–4,000 megawatts (MW) of an installed capacity of 6,000 MW.⁵ Transmission has equally

been very poor, being either unreliable or not capable of transmitting to various destinations. Transmission losses of 30–35 per cent have also been commonly reported. Distribution has not been very different in a clearly malfunctioning system.⁶ In rather simplistic terms, much of these problems can be attributed to neglect or a long history of the failure to perform maintenance operations. For example:

- No new power stations were built between 1990 and 1999.
- No major overhaul of plants was carried out between 1990 and 1999.
- Only nineteen out of seventy-nine generating units were in operation in 1999.
- Actual daily generating units fell less than 200 MW in 1999.
- No transition lines have been built since 1987.⁷

Other factors include rising consumer debts and inadequate gas supply; devaluation of the local currency, low tariffs,⁸ funding and Nigeria's typical problem of corruption can also be attributed to such difficulties. Corruption has been widespread both within the electricity sector and even in the latest efforts at reform. For instance, a recent parliamentary investigation⁹ has revealed the misappropriation of an estimated sum of \$10–15 billion during the pre-2012 process of reform. The Nigerian parliamentary hearings have also disclosed that the money was allegedly disbursed to fund new (fictitious) power stations. These were proposed to augment the existing power stations prior to privatisation.¹⁰

The rather outrageous sums involved call the processes leading up to privatisation into question. Apart from the corruption, there seems to be some sense in measuring the comparative cost of establishing privatisation, on the one hand, and the operational costs of the failed state electricity sector, on the other. A further comparison that can be drawn between the old and new processes is their inability to deliver electricity, and the drastic effect this has on the poor. From the perspective of the poor, there is no difference between the state and market in this context. Unlike the rich, the poor can ill afford to provide other means of electricity. They cannot afford what has become the general practice in Nigeria, the practice of relying on small stand-by generators for electricity needs.¹¹

As already noted, the importance of electricity has consequences that make the questions of access even more important for Nigerians.

Lack of electricity aggravates their ability to access the already poor conditions of water, sanitation, healthcare, education and other essential social services. It is perhaps the strength of these problems and, of course, other external factors that have encouraged the Nigerian government to concretise a legal and regulatory framework for electric sector reform.¹² The reforms are modelled on core elements of the Bretton Woods Institutions' (BWIs) policy on electricity reform: that is, unbundling and privatisation of the state electricity company as well as the creation of a new law to accelerate the divesture of the electricity sector.

5.3 THE ELECTRIC SECTOR REFORM POLICY: GOOD GOVERNANCE ENTERS

Electric sector reforms can be understood in the light of the climate above, and, also, in light of the World Bank's Comprehensive Development Framework (CDF) and Nigeria's Poverty Reduction Strategy Papers (PRSP), the National Economic Empowerment Development Strategy (NEEDS).¹³ Access to electricity emerges within this broad agenda for poverty reduction, with the reform of public goods constituting its focal point, primarily because of its perception as a factor of poverty. A valuable background understanding of the profound nature of the problems can be gained from a glimpse at Nigeria's latest Human Development Index (HDI) prepared by the United Nations Development Programme (UNDP). For instance, Nigeria has an adult literacy rate of 60.8 per cent.¹⁴ The combined gross enrolment ratio for primary, secondary and tertiary schools is estimated at 54.8 per cent. Life expectancy at birth currently averages about 51.9 years. Similarly, the infant mortality rate is quite high, and averages around 138 deaths per 1,000 live births.¹⁵ Several reasons are responsible for these disturbing indices, not least the lack of access to facilities, medicines and doctors. Other recent estimates suggest that only an average of about thirty doctors is available to 100,000 citizens.¹⁶ An estimated 67 per cent of Nigerians depend on private healthcare providers for their medical needs as a direct result of the failure of the public healthcare system.¹⁷ Despite this, only about 10 per cent of Nigerians have access to essential drugs. Lack of access to water is also quite perverse, with as many as 40–70 per cent of Nigerians lacking any clean or healthy alternatives.¹⁸

Lack of access to electricity is equally disturbing. It is now an important source of poverty and a human development problem. As noted above, 40–70 per cent of Nigerians survive without access to public (or now private) electricity. The reform of the sector emerges at the backdrop of such a negative public sector record, and the nature or shape of the reform approach is structured by several policy initiatives of the BWIs. For example, in addition to the World Bank's CDF or good governance, the choice of reform has also been shaped by Nigeria's adoption of the International Monetary Fund's (IMF) policy support instrument (PSI). The PSI is simply a non-lending instrument, which prescribes the conditions attached to the country's attainment of debt relief.¹⁹ These obligations, in general, have made the deregulation, liberalisation and privatisation of the power sector the only reform alternatives to follow.

Nonetheless, the most significant influential factor for choice of reform approach is Nigeria's PRSP, NEEDS, which is itself developed under the auspices of the CDF. NEEDS is driven by four main objectives: 'poverty reduction, wealth creation, employment generation and value orientation'.²⁰ Its main objective is the empowerment of people, improvement of social service delivery, encouraging private sector participation, and changing the way government works. Not surprisingly, it seeks to achieve these objectives through the market friendly language of good governance.²¹

It would appear that the language of good governance is significant in at least two related contexts. The first is, of course, the relationship between governance and government. NEEDS offers a number of proposals on how to reform government activity, through standard neo-liberal prescriptions of 'restructuring, right-sizing, re-professionalizing and strengthening government and public institutions'.²² At the same time, it seeks to tackle 'corruption', promote 'transparency, rule of law' and eliminate 'rent seeking'²³ within government realms through the introduction of a broad regime of privatisation, among other measures. This brings to mind the second dimension of good governance. NEEDS aims to free up some responsibilities traditionally held by the state and, in this respect, to transfer them onto the private sector. The role of market-based, self-regulatory forms of governance discussed in Chapter 3 is, therefore, a constitutive part of this agenda.²⁴ Without question, the importance of markets and the private sector is something distinct about NEEDS, to the extent that its concerns for empowerment

and poverty reduction, among other things, are dependent on private institutions. NEEDS is, in no uncertain terms, celebrated as a market-based development policy.

The resort to markets can be questioned for several reasons, one of which is the extent to which the ethos of the private sector can inspire hard work, reduce corruption, or invest in education, as it claims. These are beliefs that are proposed simplistically with much taken for granted. The point in raising this is to show that similar permutations lie behind the choice, nature and shape of the electric sector reforms. NEEDS is succinct about this: its introductory remarks begin with the assertion of the significance of electricity to the private sector. It even goes further to note that ensuring access for the poor is predicated on private sector participation.

Regardless of this, the choice of market reform in Nigeria can be justified for other reasons. It is also a result of the axiomatic nature of state failure. Without doubt, state failure has been a major factor for the nature of reform, since government capital has continued to dwindle over a period of time. Because of this, stimulating private participation in the electricity sector has been considered as an alternative means of generating investment. Private sector participation is regarded as the only way of freeing up large amounts of public funds for other priorities, or of promoting accountability or better customer service. Or perhaps, it is seen as just a way of reducing government deficits or debts.

Each of these presuppositions can be contested, of course, but this is not the objective of this chapter. Rather, the point in raising it is to show the priorities of dominant thinking in this context. Like most third world countries, electric sector reform in Nigeria has concentrated on attracting private investment to address the critical challenges of the sector. Generation, transmission and distribution of electricity through the private sector have been an integral part of electricity reforms. It is no surprise, then, that electricity liberalisation is the underlying philosophy behind the reform of Nigerian electricity. It is true that the arguments for privatisation have their merits given the reality of the near or total collapse of the state-led electric sector. But resolving these problems in favour of privatisation still has its significant share of problems. Specifically, it is not clear how privatisation will expand access to electricity to the poor, especially those in the rural areas. It is not clear how markets would resolve this without any special mechanism to

ensure affordability. One must not forget that the ethos of the private sector is about profits and not social welfare.

These observations and anxieties aside, privatisation has become a regrettable necessity in the light of the exceptional Nigerian circumstances. The agenda for privatisation has been provided by the legal and institutional framework which is set out by the National Electric Power Policy, the National Energy Policy and the Electric Power Sector Reform (EPSR) Act of 2005.²⁵ In terms of the content of the reforms, the core proposals for reform include the unbundling and subsequent privatisation of the electricity national monopoly. The legal framework now enables private companies to participate in the generation, distribution and transmission of electricity in Nigeria. Other features of the burgeoning electric sector include the creation of a regulatory commission, power consumer assistance and rural electrification agency.

The results are far from convincing, after nearly a decade of part-privatisation in Nigeria.²⁶ Blackouts are still the norm rather than the exception. Electricity has become increasingly expensive, if and when it is available. There is no remarkable difference between the period when electricity operated as a state monopoly and the current era of part privatisation. A plausible defence is often given that the privatisation process is still at a premature stage, but it is fair to argue that this is far from convincing. There seems to be some partial acknowledgement by the current Nigerian government that the electric sector reform has failed to attract the kind of foreign direct investment (FDI) anticipated. There is also an argument that attributes the failure of electricity reform to the Nigerian question of corruption. This seems to overlook the unprofitable nature of the dilapidated electric infrastructure as perhaps the main causal factor. Firms have always been known to choose successful entities, whilst ignoring the more depleted ones.

Apart from that, the global climate for electricity investments seems to be unfavourable to privatisation at present. Historically, on a global scale, electricity has transited from nationalisation to private ownership and now it is moving towards re-nationalisation, given the extent of global economic crisis.²⁷ Without in any way acknowledging these possible causal factors, the Nigerian government²⁸ has recently admitted the failure of privatisation is based on other reasons mentioned above: that is, the failure of privatisation is simply explained as a consequence of corruption.²⁹

Be that as it may, the present Nigerian government seems to be

re-committed to the reform of the sector, but the strategy of privatisation remains unchanged, just like the reform law and policy. The prevalence of the reform agenda only underscores the advantages of the critique in this chapter. It might provide a helpful foundation for rethinking the reform strategy. As a result, the critique of the EPSR Act in the next part cannot be more timely. It is important to note that certain observations here may be somewhat speculative, given the incomplete nature of the electricity sector reforms.

5.4 LEGAL AND REGULATORY FRAMEWORK

The role of law and institutions is pivotal to the electric sector reform, as is generally the case with law and development-type reforms. In keeping with this legal tradition, Nigeria's electric sector reform law, the EPSR Act creates an environment for a wholesale and retail competitive market by vertically and horizontally separating elements of generation, transmission and distribution. Other key aspects of the reform law consist of the creation of the following: an electricity market, electricity regulatory commission, power consumer assistance, rural electrification agency and the protection of consumer rights. As previously suggested, the process of reform has already been initiated with the formation of an initial holding company, the Power Holding Company of Nigeria (PHCN). Part of the preliminary processes also includes the formation of a new market structure, which consists of six generating companies, one transmission company and eleven distribution companies. As noted in the previous section, a partial privatisation process is now in place; it is expected to be concluded by the full divestiture of all component firms.

Generally speaking, electric sector reforms have embraced different designs and models across the globe, with the Nigerian approach above being a reflection of one of them. Electric sector reforms have varied in the degree of competition either permitted or prohibited in the process, or by the sale of the sector to single or different buyers.³⁰ Whilst the choice of the reform model has comparatively been different in Europe and the United States, in Nigeria, as with other third world countries, electric reform has been a duplication of the model indicated above. This is, of course, as a result of the influence of the BWIs.³¹ But a further reason for the model of reform is that privatisation is considered as the only way of reducing costs of production as well as the single

means of generating finance for new power stations, by unbundling the various components of the electric sector.

The starting point for such reforms is usually the break-up of the state-owned monopoly into component units of generation, transmission and supply. The predictable end-point is the emergence of an electricity market in which electricity is expected to be procured from the wholesale market and supplied to end-users. The supply aspect usually consists of customer services of billing, collection and maintenance. These new privately owned firms ordinarily function autonomously with power over budgets, borrowing, procurement and employment. They are required to pay taxes based on market interest rates and with the hope of receiving returns on equity capital. To achieve this objective, it becomes necessary to create an environment for competition to thrive.

5.4.1 *Electricity Market*

The creation of an electricity market (through the introduction of competition) is undoubtedly the most important aspect of the nascent electric sector. The responsibility for ensuring competition is almost exclusively placed in the market, which is in turn complemented by the creation of the National Electric Regulatory Authority (NERC), the aim of which is to ensure the effective functioning of the market framework. Its primary responsibilities consist of creating, promoting and preserving efficient market structures; they also include maximising resources for the provision of electricity services.³² Its other functions consist of ensuring access to electricity in rural and urban areas.³³ To perform all these tasks, its duties include ascertaining reasonable pricing of electricity, safety, security and ensuring the quality of service.³⁴ The regulatory commission is a crucial part of the objective dealing with the potential difficulties of promoting and regulating the competitive electricity market.³⁵ In an ideal situation, NERC ought to be an autonomous body, independent of government, electricity suppliers and consumers. This is partially the case, as NERC seems autonomous from electricity suppliers and consumers. But it is not so autonomous from government, which inevitably determines the appointment and accountability of the electricity commissioners.³⁶

The most daunting responsibility of the regulatory commission is undoubtedly to contrive an electricity market by stimulating

competition,³⁷ a task no doubt difficult given the inherent monopolistic nature of electricity. The competitive market framework seems compatible with certain retail aspects of electricity, but it is not quite suitable for other elements of the sector. To explain further, competition is only achievable in the 'generation and supply service-segments'³⁸ of electricity, but it is difficult to achieve in the 'network segments'³⁹ of electricity; that is, 'transmission, distribution and system control'.⁴⁰ Furthermore, electric sector competition is more suitable for large users than for small users. This is because the demands or cost of competition for large users is usually minimal.⁴¹ Because of this, retail suppliers have been known to target large consumers. On the other hand, small consumers are better served by a regulated monopoly, and not a competitive market.⁴²

Electricity supply to small consumers is usually a monopoly practice, partly 'because the profits per customer are too small to stimulate competition'.⁴³ Owing to economies of scale, supply activities are to a greater degree served by a single firm.⁴⁴ This perceived problem can, of course, be overcome by the vertical integration of elements of distribution and supply. Those problems apart, other special qualities of electricity that make it unsuitable for the competitive market include, among other things, its unsuitability for storage, which may expose consumers to the precariousness of the market.

A well-known characteristic of electricity is that its supply must always match demand, otherwise the system will totally collapse. Questions have equally been raised about the plausibility of wholesale electricity competition. The point is that, if markets are efficient or regulated properly, the price of electricity will not differ much, since the costs of generation and distribution to firms are likely to be similar. The only predictable disparity of costs is likely to emerge from retail services: that is, meter reading, data processing and billing. In spite of these anxieties, wholesale and retail competition are important components of the electric sector reform in Nigeria. The practice (as promoted by the World Bank) is usually to prevent the purchase of the monopolistic aspects of the electricity market by a single firm by placing limits on ownership or by regulating the activities of generators and distributors.⁴⁵ The market framework ought to be composed of independent electricity suppliers and distributors who compete for patronage from large consumers. The World Bank, however, recommends that the competitive process could be postponed in countries

where distribution and supply systems are so run-down that new owners need time or certainty to recover their investment.

Given the above, it would seem imperative to protect the monopoly aspects of electricity through specific legal mechanisms and initiatives, such as restricting the types of ownership in the market. Surprisingly, the provision of the EPSR Act on licensing does not prohibit the transfer of licenses.⁴⁶ It only contains a caveat that any sale, mortgage, lease or exchange must be authorised by the regulatory commission. This calls several presumptions about competition into question, and it is obvious that not much attention has been given to these anxieties. On a more positive note, however, it seems the EPSR Act does take seriously the plight of the poor, with specific proposals for a Power Consumer Assistance Fund (PCAF).

5.4.2 Electricity for the Poor

One of the novelties of the reform law is the directive given to the regulatory commission to establish a fund specifically for the needs of the poor.⁴⁷ NERC is responsible for managing both the money and assets of the fund, quite apart from setting up procedures for disbursement of such funds by the PCAF. According to the reform law, the fund will be financed through contributions of all liable consumers, who are differentiated by the fact that they are not underprivileged consumers. Similarly, funds will also be sourced from eligible customers and the Nigerian government.⁴⁸ The creation of this fund is commendable, since it is an attempt to take the plight of the poor into the equation. Nonetheless, a few anxieties may be raised about it, especially the decision not to give NERC direct responsibility over the affairs of the poor. This is, of course, a task delegated to PCAF. There are positive and negative implications of this development. To start with the negative side of things, it could simply mean a lack of concern for the poor, since an influential body like NERC does not directly see to their needs, given that such needs are left to a less powerful body with very limited strengths or funding. On a more positive note, although the PCAF may not be as powerful, the needs of the poor seem to be prioritised, given that they are attended to by a specialist body.

An argument can still be made that, although NERC is not directly responsible for the poor, it can at the same time take a more proactive role in favour of the poor. It can achieve this either through its

oversight functions or by adopting a pro-poor approach to regulation.⁴⁹ There are indeed several ways in which regulation can be designed to meet the needs of the poor. It can be done by encouraging competent governance regimes or other initiatives that might assist in stimulating poverty reduction. More specifically, it can ensure affordability as a way of guaranteeing access to electricity for the poor. Because competition is no guarantee of low electricity prices, regulation is vital to ensure affordable prices for the poor. Regulatory mechanisms can, for instance, be directed at promoting social objectives as well as human rights. Such activities could range from promoting services in deprived areas to reducing risks to public health and safety. This can only be achieved if the regulators have deep insights into the conditions and special needs of the poor. The ethical framework of human rights (and the role of public institutions in paying attention to human suffering) discussed in the concluding parts of this chapter is one way of making this possible. As will also be seen in subsequent chapters, the concerns of the poor can be taken into account by decentring regulation onto communities.

The commission can also play a forceful role in reducing poverty by the choice of the tariff system it proposes. One main function of NERC is to balance the interests of both electricity consumers and producers by ensuring reasonable pricing.⁵⁰ Recent evidence of how the commission has carried out this function seems to suggest that it is more interested in ensuring the attractiveness of the industry to the private sector than anything else. This is one interpretation of its choice of the Multi-Year Tariff Order (MYTO), the new tariff regime.⁵¹ The MYTO is a way of calculating electricity prices based on the cumulative revenue requirements of the entire sector. This approach, in no uncertain terms, is an attempt to make the sector commercially viable for private firms, quite apart from creating enough revenue for such businesses to recover the operating costs. This observation is justifiable given that the current tariffs paid by customers are not true reflections of the cost of production. The commission concedes, however, that in order to balance the needs of private investors and ordinary citizens, the government must subsidise the electricity needs of Nigerians.

This claim seems to contradict commonly held myths about the benefits of privatisation. These are arguments that have often suggested that privatisation will reduce the burden on government, to enable it to channel its funds to other pressing needs like healthcare and

education. As the current circumstances attest, this is not the case in practice. Apart from that, there is usually a degree to which a government can subsidise. What this means is that there is always a danger that electricity prices cannot be kept affordable. After all, privatisation can only succeed if prices are kept at the right level for the so-called investors. Most often, the primary way of achieving this is by increasing the tariffs. In the case of Nigeria, a sharp increase of electricity prices has already been experienced.

These concerns apart, it is important to look more closely at the responsibilities of PCAF. The importance of the fund cannot be over-emphasised in the light of the relational effect of electricity pricing on poverty. There are perhaps two notable difficulties with the way its objectives are spelt out by the reform law. First, in dealing with so-called underprivileged consumers, the EPSR Act fails to identify or point to sources where the beneficiaries of such interventions can be identified. A definition of poverty, or more specifically 'electricity poverty', is conspicuously absent, even though this is crucial in determining the level of electricity consumption that ought to be allocated to different persons.

The failure to include such a definition is not surprising, given that this is uncharacteristic of legal documents. Nevertheless, this seems important for allocating or enforcing amounts of electricity to the poor. This is also significant for other reasons, such as the contestable nature of resource allocation, which is arguably one of the main functions of the fund. Such activities are always bound to be riddled with controversy: they would raise questions about why certain individuals should or should not benefit from such a mechanism. The best way of making such difficult determinations is by providing a criterion to guide such judgements.

An understanding of the general situation of poverty is an inescapable starting point for determining the minimum levels of electricity that should be distributed. There are different ways of understanding poverty, the dominant of which are incomes-based analysis of poverty and the HDI⁵² (a less income-based measure of the poverty) of the UNDP. For present purposes, the economic indicators seem more useful in determining how electricity should be distributed, even if they fail to capture comprehensively the wider social factors of poverty. The tragic fact that nearly 70 per cent of Nigerians currently live on less than US\$1 a day gives some indication of the

inability of the poor to buy electricity without at least some form of assistance.⁵³

In the same vein, a definition of electricity poverty is also important in this context. There is really no standard definition of poverty for present purposes, and it is likely to vary in different circumstances. An understanding of electricity poverty will depend on how the quantity of electricity supplies corresponds with national poverty levels. A minimum threshold can be drawn when the amount of electricity consumption falls below an acceptable level or a certain criterion of an individual's basic needs. In Brazil, for instance, a minimum threshold of (80 kilowatt hours (kWh) per month) was fixed to give an indication of electricity poverty.⁵⁴ As such, consumers faced with those conditions are permitted to consume up to 220 kWh per month. Furthermore, there are other ways to stimulate access of the poor, which fall out of the contemplation of the EPSR Act. As an illustration, community participation or the involvement of the poor through co-operatives or other similar mechanisms to enable participation in electricity can prove quite useful.⁵⁵ In addition, the fund can extend lifeline rates to marginalised consumers. It can also cross-subsidise prices or abandon upfront connection fees. Unfortunately, none of these options seems to be considered by the EPSR Act. However, one specific policy that can indeed enhance access to electricity for the poor is a rural electrification strategy. Experts have often argued that rural electrification should coincide with or, where possible, precede privatisation.⁵⁶ Rural electrification is, of course, part of the Nigerian reform, but it is fair to say that its sequencing is questionable.

5.4.3 Rural Electrification

The overall direction of the rural electrification drive can be deciphered from the National Energy Policy, the National Electric Power Policy and the EPSR Act. Broadly speaking, rural electrification is partly connected with the poverty reduction and economic development objectives of NEEDS, which encourages grid and off-grid, as well as thermal and renewable energy technologies. The potential of renewable energy sources like solar, wind, biomass and moving water to alleviate poverty, and the impact on the environment have also been taken into consideration. In addition to being sustainable, they are not subject to the price fluctuations that occur with non-renewable sources.

In keeping with the broad objectives of Nigeria's electricity and energy policy, a Rural Electrification Agency and Fund (REAF) is proposed to facilitate electrification in the rural areas.⁵⁷ REAF is mandated to promote, support and provide rural electrification through public and private sector participation for at least three distinct but related purposes. Its first aim is to increase universal and equitable access to electricity; its second is to maximise the economic, social and environmental benefits of rural electrification subsidies. Thirdly, it is specifically created for the purposes of expansion of off-grid electrification and to encourage new approaches to rural electrification.

Uniquely, the reform law makes provisions for both grid and off-grid electrification,⁵⁸ which includes the generation of electricity from renewable sources.⁵⁹ Despite what can be regarded as positive developments, there appear to be some predictable anxieties with the proposals for rural electrification. These can be summarised as follows: first, the market orientation of the entire reform calls into question its ability to perform these functions.⁶⁰ Secondly, funding (a crucial aspect of rural electrification) seems insufficiently addressed, if not unsustainable, by the proposals contained in the law. For example, the source of funding for REAF is to come from surplus funds⁶¹ and fines⁶² from the regulatory commission, donations, gifts, loans from institutions,⁶³ and furthermore, contributions from consumers and eligible consumers.⁶⁴ The potential impact of rural electrification needs a more certain source of funding to make any meaningful impact in Nigeria. For example, a well thought-out micro-credit strategy may be a more sustainable way of achieving the goals of rural electrification. Off-grid technologies, for instance, are more suitable for dispersed forms of governance like village- or community-based co-operatives, as discussed in Chapter 7. In spite of premises about dispersed governance or participatory development in the Bretton Woods agenda, it appears that the role of 'community' (as opposed to the private sector) is still not completely accepted in practice in electricity – at least, not in the case of Nigeria.

5.4.4 Consumer Rights

The need to protect Nigerians (especially the poor) from exploitative effects of the electricity market is further guaranteed by creating a regime of consumer rights.⁶⁵ This is consistent with market reform strategies, which depend on consumer rights to ensure that products

always satisfy the needs of consumers. These are needs that can obviously affect the quality of life, the effect of which is that consumer rights can also be understood as a basic step for enjoying human rights, including the right to life. Even so, a claim can be made that consumer rights are not the most appropriate mechanisms to perform this task. Consumer rights, after all, seem to draw their inference from the ideology of consumerism, the implication of which is that it promotes the instrumental value of electricity. In other words, electricity is promoted as a material good and not as a prerequisite for the quality of life.

Looking more specifically at the proposals for consumer rights contained in the EPSR Act, NERC is empowered with the responsibility of protecting the rights of consumers,⁶⁶ who are in turn defined as end-users of electricity. They are consumers of the distribution licensee or such other entity as NERC deems appropriate. NERC is to secure the rights of consumers by ensuring the availability and adequate supply of electricity to consumers.⁶⁷ It is to ensure fair pricing by licensees as long as it takes their operating costs into account.⁶⁸ NERC is generally responsible for ensuring the safety, security, reliability and quality of service to consumers.⁶⁹ In protecting the rights of consumers, NERC has already developed several industry codes (the Grid Code, Distribution Code, Metering Code and Health and Safety standards) to ensure compliance with its mandate.⁷⁰ Similarly, NERC has duly established customer safety standards and customer complaint and handling procedures in compliance with section 80(1) of the EPSR Act. It is also responsible for establishing codes of practice to attend to special customers, such as the blind or disabled, the elderly or severely ill,⁷¹ and it has procedures for dealing with customers who have difficulties paying their bills, among other things.

NERC spells out the consumer rights as the 'right to electric service,'⁷² among other rights, which also consist of billing, metering and the right to file complaints. These rights seem to be developed from what NERC calls individual consumer rights, which include the right to safety, basic needs, information, choice or rights to be heard or seek redress, consumer education, and the right to a healthy environment. To ensure compliance with the following rights, private electricity companies are required to set up customer complaints units within their premises and at other locations of their operations. In addition, NERC has established what it calls 'Forums' in all operational areas of all distribution companies. Membership of such Forums should comprise representatives

of business and NGOs of different persuasions. The Forums should function like the 'Ombudsman' (or Ombudsperson), with part of their objective being the enforcement of consumer rights with the responsibility for final appeals from such Forums placed on NERC.

The proposal for Forums is consistent with proposals contained in the World Bank source book on the good governance of the electric sector.⁷³ Drawing on the reform experiences of various countries, the World Bank recommends that electricity governance can be enhanced by creating mechanisms for access to information and accountability, such as consumer welfare desks, surveys, consumer meetings and, as in this case, ensuring the role of the Ombudsman in maintaining consumer rights. It specifically draws on the experience of Latin American countries like Peru, Argentina and El Salvador, where the introduction of an Ombudsman has proven successful. In the case of Nigeria, it is still rather early to assess the impact of such Forums since they have only recently been proposed. One usual way of ensuring that consumer rights are guaranteed, which is conspicuously missing from the Nigerian reforms, is consumer participation in regulatory decision-making.⁷⁴ This can obviously prove a useful resource for improving the quality of services or reducing costs through the review of tariffs. It seems that the Nigerian authorities are not quite enthused by this prospect.

Regardless of this shortcoming, the inclusion of consumer rights, or more specifically, the 'right to electric service', is significant to ensure access of electricity to the poor. It can be argued that consumer rights can serve as a basis for the satisfaction of a range of human rights. It is not difficult to see that the breach of consumer rights can inevitably affect the quality of life. But the question remains, do consumer rights adequately protect such aspects of life? A simple answer is no. They might be a step towards achieving certain human rights, but they are not the best means to achieve this objective.

Besides, consumer rights seem instinctively to draw some inference from the ideology of consumerism, a term that may imply only an instrumental or material nature of electricity. It has the effect of making electricity an object of material desires and not in any way connected to our natural needs.⁷⁵ There have been several effects of the ideology of consumerism, the most significant of which are the recognition of human beings as consumers, and the fact that it overlooks their important attributes as human beings. The point is that this could very well

mean that we consume electricity not because of our characteristics of humanity but because of our artificial desires. It is true that one cannot avoid thinking of electricity in such instrumental terms, but the point in raising this is that there are other more important ways of understanding the use-value of electricity. It is because of this, and other reasons that I propose in the next part, that the language of human rights needs to play a central role in reforms of this nature.

5.5 WHAT IS HIDDEN FROM VIEW?

Consumer rights may be a regrettable necessity (especially in the absence of an alternative means of protection), but they are ill equipped to embody the kind of values that might orient the necessary behaviour capable of meaningfully connecting to the needs of the poor. Apart from this, another problem with consumer rights is that they only apply to those who can afford the status of consumers. Sadly, the vast majority of Nigerians can ill afford this status.⁷⁶ Consumer rights, then, seem to assume a false equality of access to electricity, since one can only enjoy protection as a consumer. Those that fail to achieve this are automatically excluded from the domain of recognition.

In another sense, consumer rights are also not the most appropriate way to deal with other pressing problems that arise from the reform. For instance, they cannot deal with the huge loss of jobs as a result of privatising the defunct state-owned electricity service. Whilst the EPSR Act makes provisions for the movement of employees from the defunct state monopoly into the transitional private electric companies, the Act is silent on what happens when those firms are fully privatised.⁷⁷ Are these private firms obliged to keep the services of these employees? While privatisation is expected to create a number of new jobs, it is quite apparent that old jobs will be lost.

The problem is that what is lacking from the proposals on the whole is an over-arching philosophy, which underpins the electric sector reform, and which is able to trigger appropriate responses to the needs of the poor. This is something (in the light of arguments in the previous and present chapter) that cannot be left to markets. Without a stronger ethical or moral code, such as (as I suggest) human rights, it would seem difficult, if not impossible, to achieve the social objectives of these kinds of reform. Electricity reform would be meaningless if it was not able to affect those at the bottom of society.

The question then becomes, how can human rights contribute to increase access to electricity by the poor in Nigeria? Possible answers rest on an expansion of earlier arguments about the significance of an ethic of human rights that can assist people to recognise and respond to human suffering, something which was discussed in Chapter 1 and 2 of this book. It is postulated that this sort of language of human rights ought to be inscribed as a central element of the Nigerian electric sector reform law and policy.

In order to understand the value of the argument, some more justification is needed to defend the approach. After all, sceptics might say that invoking human rights should be sufficient enough to deal with those sorts of problems. Human rights are, after all, the most dominant theory of justice, and they do not need the kind of redefinition that I have proposed for a deeper understanding of human suffering, in order to perform this sort of objective. These types of arguments imply that simply invoking the language of human rights is sufficient on its own. Human rights are invoked as if they are perfect or the best way to alleviate the cries of the poor.

Even so, a counter-argument here is that they are not the best way to achieve that, and that such arguments run the risk of complacency and of thinking that human rights are sufficient as they currently effectively have the power to bind or direct attention to niggling cries of suffering.⁷⁸ To return to the discussions in Chapter 2 of this book, this is the scepticism Simone Weil maintained about human rights. She was drawing our attention to the fact that human rights suffer from a profound epistemic weakness, which prevent them from sufficiently grasping silent cries of injustice. She elaborated on this point through the story she told of the young girl who was forced to work in a brothel. The story allows us to question whether human rights are at all capable of assisting us to understand the inviolability or preciousness of human individuality. She says we would fail to understand the violent nature of the injury being done to the girl if we tried to do so through human rights. We cannot sufficiently grasp what is at the core of the injury, and therefore, we are unable to respond, since the appropriate response is dependent on our fully grasping the nature of the violation in the first place. To speak of this type of violation in human rights terms is to speak of property- or contract-related rights violations, which are inappropriate to comprehend or convey the defilement of the young and vulnerable girl. Weil is ultimately suggesting that we should not

exhaustively rely on human rights as conceptual tools to articulate such types of violation. For this we need something stronger, and this is why we should turn to the language of love. After all, human rights are there as a fall-back mechanism for those we are unable to love.

Putting Weil's arguments about the epistemic weakness of rights into the context of some of the arguments in this chapter only goes to validate the point that human rights discourse seems to have missed some of the anxieties that have been raised. The question of electricity and its relationship to human suffering and human rights is merely one example of this point. The fact that dominant human scholarship overlooks the relational dimension of electricity to poverty is something quite bewildering.

The question then becomes (in the light of the value attached to human rights in this book as a whole), how can human rights be rescued from such weaknesses? As already indicated in this book, these types of problem can only be made more visible if human suffering serves as a way of drawing obligations to human rights. This is what, in my opinion, can be further achieved by understanding human rights from the lens of community: that is, by grounding human rights (as was argued in Chapters 1 and 2) in interdependent or interpersonal exchanges in community, which in turn are founded upon expressions of love and empathy. I am referring to my proposals for a communitarian conception of rights, which allow human rights to be understood as claims for mutual recognition, something that demands individuals treat each other with love and empathy. The presupposition is that human rights would more adequately be endowed to take human suffering and vulnerability seriously.

To take these points further, it is possible to argue that proposing a deeper engagement with the concept of human suffering is only the first step towards understanding how human rights can enable electricity, and other essential economic and social rights, for it would help orient or direct our moral and behavioural capacity to interpersonal reciprocal and empathic exchanges. This, furthermore, requires something that assists us to recognise what is not readily obvious. It is true that cases of extreme suffering can easily become apparent to us, but in the majority of cases we fail to recognise it. Indeed, there are certain conditions where suffering is permissible, or is not visible to the keen observer, no matter how hard he or she tries to recognise it. As such, it is not enough to say that human rights should assist us to pay attention to human suffering

without at least equipping them with the proper tools to achieve this. This again points us in the direction of Simone Weil's work, particularly the ethical importance she attached to love.

For Weil, the power of love is superior to none. Love is what would help us to recognise and respond to different forms of human suffering. The strength of love can be appreciated through the concept of attention; that is, the act of embracing the pain of the afflicted. It is an act of participation, where the non-afflicted takes part in the pain of the afflicted. Attention is something that helps us to remain detached, not preconceiving a particular situation, to understand the given situation on its own terms. In doing so, it encourages us to understand our obligations to the afflicted in ways that are unmatched by other moral discourses. Attention is not just something we are required to do at the personal level, but also something required at the level of institutions.

While appreciating the value of Weil's insights, I depart from her on the secondary status she gives to human rights. Human rights, for her, had less significance than compassion and love. I depart from Weil in this context, in the sense that the approach here is predisposed to a more balanced relationship between human rights and love. My reasoning for this is simple. It is misleading to think that a framework of justice founded on love alone is sufficient to deal with many of the current problems, especially the causes of deprivation across the world today. It is fair to say that love and compassion do not in any way dislodge the system that creates poverty or suffering, even though it must not be overlooked that it importantly helps to provide relief to those affected by such deprivations. These types of problems need to be challenged through a language of resistance. Human rights, as such, are better equipped for this task than the language of love.

These insights provide a modest way of understanding how the role of human rights can facilitate the recognition and response to various kinds of suffering at the level of design or through ongoing processes of reform. The analysis, on a more particular level, illustrates just how human rights thinking might come to broaden its concerns to suffering caused by the lack of electricity. It demonstrates how this ought to be taken into account if human rights are to provide the moral authority for the reform of electricity in Nigeria. At the risk of over-generalisation, the attention paid to the relief of suffering as the central theme of human rights is likely to be more effective in connecting to the lives of the poor. If suffering is taken seriously, then human rights

might help draw attention to the value of electricity, owing to our distinct characteristics of humanity.

If we accept that the nature and content of the reforms are a regrettable necessity, it is, then difficult to imagine how the post-reform matters of regulation and consumer protection can be performed without an ethical language of human rights to underpin such activities. It is implausible to think of how decisions on ensuring affordability of electricity can be sensitively taken without the goal of alleviating suffering in mind, given its relational effect on poverty. It is only then that regulatory mechanisms can improve the provision of electricity to the poor as well as address other social objectives, such as reducing risks to public health and safety.

One does not require a distinct right to electricity to appreciate the value of this argument, even if (as discussed in the Introduction to this book) there is a plausible argument for the existence of such right. In the absence of this right, however, it is still possible to make a claim for electricity through human rights. This is from the understanding of human rights as a moral language that presides over the electric sector or other reforms. Seen this way, the perception of what we understand by electricity can be altered. Electricity can become a precondition for human dignity and survival.

5.6 CONCLUSION

In considering the challenges presented by electricity reform in Nigeria, the chapter has argued for the inclusion of human rights within the proposals for reform. This should not be misunderstood as a suggestion that human rights would solve all the problems encountered by the reforms. Rather, human rights can reframe, or better still, shift the attention of the reformers to more pertinent questions of exclusion. They can help to draw attention to the relational effect of the lack of electricity, poverty and human suffering. From the perspective of this book, human rights can – with the help of Simone Weil’s work – encourage reformers to listen – with love – to those most affected, and to develop solutions in co-operation and with their participation. In the subsequent chapters, I will state the case for community as a way of building understanding of and solutions for such problems. This is, after all, an ethos behind community, an ethos that cannot itself be understood without a background concept of love.

Notes

- 1 British Broadcasting Corporation, 'Why Are We Plagued by Power Cuts?', at <http://news.bbc.co.uk/1/hi/world/africa/4338306.stm> (accessed on 31 July 2012).
- 2 S. Arowolo, 'Nigeria Power Sector Reform, Why Distribution Requires A Clear Strategy', 7, *International Energy Law And Tax Review*, 2005, p. 163.
- 3 Electric Power Sector Reform Act 2005, part I.
- 4 J. Ikeme and J. Ebohon, 'Nigeria Electric Power Sector Reform: What should Form the Key Objectives?', 33 (9), *Energy Policy*, 2005, pp. 1213–21; M. Amobi, 'Deregulating the Electricity Industry in Nigeria: Lessons from the British Reform', 41 (4), *Socio-Economic Planning Services*, 2007, pp. 291–304; A. Adaralegbe, 'Are the Electricity Laws in Nigeria Sufficient to Promote and Preserve Competition', 9, *International Energy Law and Tax Review* 2003, p. 254.
- 5 D. Hall, 'Water and Electricity in Nigeria', *Public Services International Research Unit*, 2006, p. 10.
- 6 Ibid.
- 7 National Planning Commission, *Meeting Everyone's Needs: The National Economic Empowerment Development Strategy* (Abuja: National Planning Commission, 2004), p. 70.
- 8 Ibid.
- 9 Parliamentary investigations by Nigeria's Legislative House of Representatives reveal that the previous Nigerian government of President Obasanjo made investments worth \$16 billion in electricity. Bretton Woods Project, 'Facilitating Whose Power? IFI Policy Influence on Nigeria's Energy Sector', *Bretton Woods Project*, 2008.
- 10 The Nigerian government has recently attempted to construct twelve new power stations, the most notable of which is the Mambilla hydropower project expected to generate 2,000 MW. D. Hall, 'Water and Electricity in Nigeria', p. 12.
- 11 A. Ariyo and A. Jerome, 'Utility Privatisation and the Poor: Nigeria in Focus', *Heinrich Boll Foundation*, 2004, p. 2.
- 12 Electric Power Sector Reform Act 2005.
- 13 National Planning Commission, *Meeting Everyone's Needs: The National Economic Empowerment Development Strategy*, p. 70.
- 14 United Nations Development Programme, *Nigeria: Human Development Index* (New York: United Nations Development Programme, 2011).
- 15 M. Del Mar and O. Onazi, 'The Moral Quality of Work: Resisting Complacency', 4 (4), *International Journal of Law in Context*, 2008, p. 364.
- 16 Ibid.
- 17 Ibid.

- 18 Ibid.
- 19 European Network for Debt and Development, 'Nigeria's Debt Deal Close Up', *European Network for Debt and Development*, 2005, at <http://www.eurodad.org/debt/article.aspx?id=0&item=370> (accessed on 10 February 2009); A. Odiadi 'Paris Club and Debt Relief', *Social Science Research Network, Working Paper Series*, 2008.
- 20 National Planning Commission, *Meeting Everyone's Needs: The National Economic Empowerment Development Strategy*, p. 70.
- 21 Ibid.
- 22 Ibid. p. 214.
- 23 Ibid; M. Gradstein, 'Rent Seeking and the Provisioning of Public Goods', 103 (420), *The Economic Journal* 1993, pp. 1236–43.
- 24 National Planning Commission, *Meeting Everyone's Needs: The National Economic Empowerment Development Strategy*, p. 214.
- 25 Energy Commission of Nigeria, *National Energy Policy* (Abuja: Energy Commission of Nigeria, 2003); Electric Power Sector Reform Act 2005.
- 26 Electric Power Sector Reform Act 2005.
- 27 S. Beder, *Power Play: The Fight for Control of the World's Electricity* (Melbourne: Scribe Publications, 2003); J. Stiglitz, *The Roaring Nineties: A New History of the World's Most Prosperous Decade* (London: Norton & Co., 2003).
- 28 President Musa Yar'adua (now deceased) succeeded President Olusegun Obasanjo as President of Nigeria for a term of four years which began on 29 May 2007. His deputy Goodluck Jonathan has since been sworn in as president. The direction of the reform, despite a recent re-launch, has not changed.
- 29 British Broadcasting Corporation, 'Nigeria power shortage persists', at <http://news.bbc.co.uk/1/hi/world/7426593.stm> (accessed on 31 July 2012).
- 30 R. W. Bacon and J. Beasant-Jones, '*Global Electric Power Reform: Privatization and Liberalization of the Electric Power Industry in Developing Countries*' (Washington, DC: World Bank, 2001).
- 31 Ibid.
- 32 Electric Power Sector Reform Act 2005, s. 32 (1).
- 33 Ibid. s. 32(1) b.
- 34 Ibid. s. 32(1)c.
- 35 Ibid. s. 32(2)a.
- 36 Ibid. s. 32(1).
- 37 Ibid. part II.
- 38 R. W. Bacon and J. Beasant-Jones, '*Global Electric Power Reform: Privatization and Liberalization of the Electric Power Industry in Developing Countries*', p. 5.
- 39 Ibid.
- 40 Ibid.

- 41 S. Thomas, 'Why Retail Electricity Competition is Bad for Small Consumers: British Experience', *Public Services International Unit Report*, 2002, p. 2, at <http://www.psiu.org/reports/2002-09-E-UKRetailElec.doc> (accessed on 10 February 2009).
- 42 *Ibid.* p. 3.
- 43 R. W. Bacon and J. Beasant-Jones, '*Global Electric Power Reform: Privatization and Liberalization of the Electric Power Industry in Developing Countries*', p. 5.
- 44 S. Thomas, 'Why Retail Electricity Competition is Bad for Small Consumers: British Experience', *Public Services International Unit Report*, p. 7.
- 45 R. W. Bacon and J. Beasant-Jones, '*Global Electric Power Reform: Privatization and Liberalization of the Electric Power Industry in Developing Countries*', p. 5.
- 46 Electric Power Sector Reform Act 2005, s. 69(1).
- 47 *Ibid.* s. 83(1).
- 48 *Ibid.* s. 84(3).
- 49 D. Parker, C. Kirkpatrick and C. Figueira-Theodorakopoulou, '*Infrastructure Regulation and Poverty Reduction in Developing Countries: A Review of Evidence and a Research Agenda*', Centre on Regulation and Competition, Institute for Development Policy and Management, University of Manchester, and Cranfield Centre for Competition and Regulation Research, School of Management, Cranfield University, UK, 2005.
- 50 Electric Power Sector Reform Act 2005, s. 32(1).
- 51 Nigerian Electricity Regulatory Commission, *Multi-Year Tariff Order (MYTO) for the Determination of Charges and Tariffs for Electricity Generation, Transmission and Retail Tariffs* (Abuja: Nigerian Electricity Regulatory Commission, 2008), p. 3.
- 52 Nigeria's Human Development Index.
- 53 National Planning Commission, *Meeting Everyone's Needs: The National Economic Empowerment Development Strategy*, p. 214.
- 54 S. Tully, 'The Contribution of Human Rights to Universal Access to Energy' 4 (3), *North-Western Journal of International Human Rights*, 2006, p. 520.
- 55 The absence of the role of community in electricity reforms and more generally human rights is addressed in the next chapter.
- 56 S. Tully, 'The Contribution of Human Rights to Universal Access to Energy', p. 520.
- 57 Electric Power Sector Reform Act 2005, s. 88(4).
- 58 *Ibid.* s. 88 (1).
- 59 *Ibid.* s. 88(13)d and s. 89(9)c.
- 60 World Bank, *Lighting Africa 1: Progress and Plans, Annual Report, September 1, 2007–August 31, 2008* (Washington: World Bank, 2008).
- 61 Electric Power Sector Reform Act 2005, s. 88(12)a.
- 62 *Ibid.* s. 88(12)b.

- 63 Ibid. s. 88(12)c.
- 64 Ibid. s. 88(12)d.
- 65 Ibid. s. 82(1).
- 66 Ibid. at s. 32(1).
- 67 Ibid. at s. 32(1)c.
- 68 Ibid. at s. 32(1)d.
- 69 Ibid. at s. 32(1)e.
- 70 Ibid. at s. 81(1)b.
- 71 Ibid. s. 80(1)d.
- 72 Government and Consumer Affairs Division, *Costumer Complaints Handling Procedure* (Abuja: Nigerian Electricity Regulatory Commission, 2006), p. 8.
- 73 World Bank, *Strengthening Electric Sector Governance to Promote Probity* (Washington: World Bank, 2008) at <http://siteresources.worldbank.org/INTENERGY2/Resources/electricitysourcebookch12.pdf> (accessed on 12 June 2008).
- 74 Ibid. p. 165.
- 75 This suggestion is influenced by Leslie Sklair's thesis on the culture-ideology of consumerism. It depicts how the introduction of a value system of consumerism has been part of the globalisation project. The implication is that if societies like Nigeria want to transform into market economies, they not only have to replicate political and economic institutions of the first world, but also adopt similar value systems. The point here is that one cannot separate the reform of electricity and others from globalisation and, by extension, its value-system of consumerism. L. Sklair, *Capitalist Globalisation and its Alternatives* (Oxford: Oxford University Press, 2002).
- 76 Siphoning electricity is perhaps the only alternative open to the poor if and when electricity is available. Siphoning electricity is a common phenomenon in many third world countries. There is a lively debate about whether this activity crosses the boundary of legality or illegality. N. Da Silva N and L. Rosa, 'Irregular Access to the Power Distribution Network in Brazil's Residential Sector: A Delinquent Payment Problem, or the Quest for a Right beyond the Law?', 21 (7), *The Electricity Journal*, 2008, pp. 30-90.
- 77 Electric Power Sector Reform Act 2005, s. 5(1).
- 78 M. Del Mar and O. Onazi, 'The Moral Quality of Work: Resisting Complacency', p. 352.

Chapter 6

RECLAIMING HUMAN RIGHTS: A THEORY OF COMMUNITY

6.1 INTRODUCTION

How should community be defined, operationalised or programmed in relation to the pursuit of particular human rights? How should community make human rights more effective in their task of shaping the pursuit of development in normative terms? Is participation, so to speak, possible within existing communities, or how can such communities be rejuvenated or created into sustainable organisational and decision-making bodies? What sort of problems can be anticipated with the introduction of community participation in human rights discourse, and how can such problems be addressed? These are among the concerns that motivate the analysis within this chapter.

The aim of this chapter is to expand on the substantive aspects of the theory of community, which, it is argued, can enable individuals, particularly the poor, to take part in processes that determine their human rights.¹ It outlines the philosophical, structural and procedural requirements for community participation. This is, after all, because the tangible aspects of participation can only succeed if the structural framework is clear and right from the outset. Community participation, as such, cannot succeed or precede philosophical and structural underpinning. This is, in essence, what the theory of community outlined within this chapter seeks to achieve. In doing so, the chapter expands on the three comprehensive components of the theory of community, which include what community is, or what it ought to be, the actual spaces of participation, and thirdly, a theory of deliberation for community participation.

The discussions within this chapter proceed as follows. It begins by offering a definition of community, and proceeds to justify why it is

adopted for the purposes of the thesis advanced throughout this book. It emphasises on harnessing the ethical and social resources within local residential communities in townships or villages, as a way of encouraging supporting relationships, and furthermore, assisting the most deprived in the communities to develop abilities of democratic organisation, ownership and autonomy over the processes of securing their human rights. The chapter then proceeds to discuss how participation can be institutionalised, a term that is used loosely and is quite different from formalisation. It proposes the actual spaces of participation as a further component of the theory. This is in anticipation of the fact that such forms of participation may have to be created by institutional design, since it cannot be anticipated that participation or community will exist organically. In particular, Community Forums are proposed as a new space from which decisions relating to particular human rights can be reached. But the work of Community Forums requires a third component, one that anticipates the kind of problems which participation may create. Participation can be divisive even in the most egalitarian or democratic societies. However, as troublesome as these problems may be, it is argued that they are still reducible, even if they cannot totally be eliminated. What this requires is a component that understands the value of dialogue, negotiation and compromise. To understand this possibility, a theory of deliberation is proposed to support the work of Community Forums, as the third component of the theory of community.

6.2 SETTING THE SCENE

The chapter begins with a story to help analogise what is meant by community, and in this respect, the human potential that might exist within it. This story is used as a heuristic device, as such, it is not an empirical claim based upon some form of field research. The story is about a residential community in a metropolitan Nigerian city. It is the city of Jos, the capital of one of Nigeria's thirty-six states. The city is known for its beautiful scenery and mild temperatures, and has an estimated population of about one million. Its moderate temperatures and scenery have attracted many from across the world, who now consider Jos their home. Over the years, the city has witnessed a lot of migrations, which have included members of Nigeria's dominant ethnic groups² and, also, Europeans and Americans, who constitute part of

the population within the city. The city is well known for its pluralism of race, gender, ethnicity and religion, which make it one of the most cosmopolitan cities in Nigeria. More recently, and since 2001, violent conflicts have threatened the peaceful co-existence and appeal of this city, as they have divided the population along ethnic and religious lines. A conflict between Christians and Muslims occurred in 2008, and more recently in 2010, respectively provoked by democratic elections to one of the local city councils, and later on for unjustifiable reasons.

The conflicts have not necessarily changed the living patterns within the city, which usually have ethnic, multi-ethnic, religious or multi-religious dimensions to them. Historically, living patterns have been mixed, even though there have been a few noticeable changes as a result of the conflicts. Two dominant trends are evident: first, residential communities have often been inhabited by groups of virtually the same ethnic or religious background and, second, it is possible to find residential communities (like the one described below) composed of different primordial or pious identities. Similar living patterns are usually found in densely populated inner-city and suburban residential areas.

The experience of this specific community in Jos in dealing with a particular problem is used here as a point of entry into some of the main arguments throughout this chapter. It is a community that I have lived in and experienced, and I have also participated in trying to resolve the particular problem discussed below. The community itself is unusual and not representative of all communities within the city or Nigeria. However, the problem is not unique to this community; it is one that exists across Nigeria as a whole. It is the question of robbery and other forms of crime, which threaten the security of lives across the country. The high rate of crime is a reflection of the breakdown of institutions within the state and across the country, a similar reason for the concerns throughout this book: the lack of access to human rights like water, electricity, healthcare and education. Members of this community (as elsewhere in Nigeria) have continued to spend anxious days and nights in fear of impending robbery attacks. This is further exacerbated by the level of policing in the country, and not surprisingly, the inability of the police to contain the situation. At a certain period during the life of this community, especially after exhausting all possible options, something drastic had to be done.

Before looking at what was done to address the problem, it is

important to consider the internal composition of the community. It consisted then, as it does now, of a wide range of people from different ethnic, religious backgrounds (Nigerians and non-Nigerians alike). This community is a mix of individuals and families with distinct levels of wealth and occupation. The community also mirrors the wicked social stratification that exists in Nigeria. It reflects the perverse gap between the poor, extremely poor, working class, rich and extremely rich. It is common to find members of relatively poor families providing domestic services in the homes of the working class, rich or extremely rich. In terms of age composition, the community is composed of young and old, of retired and upwardly mobile professional individuals.

Intra-communal relations are quite cordial, even if not everyone knows, or even cares about, or speaks to each other. It is common to find close-knit friendships between families that live closest to each other. Apart from such situations, friendships are built only by those who go out of their way to do so. Perhaps the problem in building relationships is that there are very few opportunities to build fledging friendships in the community. For instance, very few communal or public spaces exist for such kinds of interactions. Friendships seem only to be built through the nature of interactions among children, which in turn determine the relationships among their parents. Friendships are sometimes built among rich and poor families according to the level of interaction between their children. The most common way of building friendships outside family circles has been forged in times of turmoil, such as the ethno-religious conflicts mentioned at the beginning.

The ethno-religious conflicts reinforced, rather than diminished, the spirit of belonging and togetherness in the community, however minimal it may have been in the past. This community is an exception rather than the rule. There were certainly communities where neighbours of considerable history turned against each other in the most appalling and barbaric ways. Apart from the ethno-religious conflict, the question of crime at a certain period of life of this community was definitely a source of solidarity, care, friendship and togetherness. After consistent attacks on several homes, it became apparent that this was a problem that could only be tackled collectively, even if there was an undeniable individual dimension to it. The pain, sorrow, tears and other psychological dimensions of such attacks, or the fear of impending attacks on individual households are a problem that households

experience alone. Interestingly, these isolated individual experiences did, however, mobilise a collective effort for protection.

In an attempt to deal with this problem, a series of meetings were called by several respected members of community. The meetings were arranged, and took place on Saturdays. They were open to everyone, but not everyone attended. Many failed to attend for different reasons, which are simply open to speculation. For instance, few women attended the meetings, and this was perhaps because the dates and times for meetings conflicted with their typical domestic and family-related chores. Attendance by the poor and extremely poor was also minimal. Again, to speculate, their lack of participation may simply be because of their inferior social and economic status, or because they considered their contributions too inferior, or not rational enough to influence an audience composed of individuals with greater wealth, education and intellect. Besides, the poor were often treated with suspicion by the more privileged in the community, as they were often suspected of committing the crimes.

At the meetings, several solutions were proposed and considered, one of which was to seek the services of private security firms. This proposal was rejected by the majority present, given that these services were too expensive and also equally ineffective. The proposal that appealed the most (after being discussed and voted upon) was for the formation of a neighbourhood security association and security watch group. The association was formed, and its mandate was to work in collaboration with the police over matters of security within the community. Membership of the association was open to all residents of community, but on the condition of a payment of a monthly subscription fee. This was for administrative purposes, and for the running of the neighbourhood security watch group, which was one of the main proposals and decisions that emerged from initial meetings. Articles of association were drafted and agreed upon at subsequent meetings. Provisions were made for a chairperson, management structure, officials, decision-making and accounting procedures, and procedures for meetings, including their dates. The organisational structure was no surprise given the background of members of the community in the public service or private business sector. The structure of the main decision-making organ of the association was quite similar to a board of directors. Unlike the deliberative nature of the events leading toward the formation of the association, debates or discussions hardly existed

after it was created. There was a lot of emphasis placed on voting in contrast to deliberation by eligible members of the association.

The association succeeded in forming a neighbourhood security watch group to patrol parts of the community during the vulnerable periods of the night. This was, and still is, a well-known practice in many residential communities within and outside the city. There is a dark side to these neighbourhood watch groups, that is, the inhumane or brutal treatment given to perpetrators of such crimes.³ Such nasty incidents were never reported in this community, though they may have happened. The association and neighbourhood security watch group operated for at least a year after it was formed. Its existence was short-lived, though, since it was rocked by allegations of corruption on the part of its chairperson. For the time that the association and group lasted, however, there was a remarkable difference in the rate of crime, even though it did not totally eliminate crime. But the negative turn of events leading to the failure of the association stifled any motivation for future community organising in this context. It has now left members of this community with little or no choice but to provide their own security through the market, or to depend on the unreliable state police force. This only goes to show how difficult community participation often can be, a point that must not be overlooked.

6.2.1 Community as Locality

The narrative above raises a number of issues of importance to the general purposes of this chapter. On the positive side, the narrative reveals how a problem that threatened collective security promoted wider discussions on the problem, and of ways to address it. Importantly, it discloses how this community in many ways transcended its ethnic, religious, and class differences through attempts at public discussion and co-operative decision-making, even though, in the end, such efforts were short-lived. In the context above, security was considered as a collective problem, even though some members of this community (especially the rich) were capable of tackling it individually.

On the negative side, the narrative reveals one of the consequences of the collapse of the institutions within the state. It also reveals that the market was not an option for many in this community. It equally makes known some problems that might exist within communities,

notably, the problematic question of exclusion of the poor. It reveals the improvised nature of the understanding of democracy in that community, which privileged voting in contrast to deliberative dialogue as the basis of democratic expression. The narrative reveals the typical Nigerian problem of corruption, which eventually led to the demise of attempts at community participation and decision-making. This is only a glimpse into the difficulties that can emerge with community participation, and more so, the dangers of over-romanticising it.

Nevertheless, it also shows that self or collective provisioning of essential goods, which in turn could be species of economic and social rights, seem to be the only option available to communities across the country. As such, it underscores the point of this book: that any proposals for reform, which seek to enable access to such human rights, cannot succeed without a comprehensive strategy that involves the participation of affected local communities. This begs the question of why problems of this nature have not been dealt with at the level of community.

The most important point for the purposes of this chapter is that the community depicted in the narrative above is the most commonly associated meaning to the term. It depicts community as a specific locality within a given territory. Community, as such, is first a material or tangible thing, one that is located in a particular place. This type of community exists everywhere including in remote villages, even though it is referred to above in an urban or metropolitan context. This is obviously not the only way of describing community, even though this particular image of community readily comes to mind on the invocation of the concept. For the purposes of this chapter, there is an added advantage of understanding community in such terms. It is mainly on account of the implications of the theory proposed here on practice. It is arguably the exemplar of community as a form of practice, that is, the concrete face-to-face exchanges or relationships in either temporary or permanent settings. The experience of community is mostly realised when opportunities are devised, and individuals encouraged to mobilise collectively, to resolve problems that affect them where they live.

The sociological literature on community is replete with references to community in this context, something which has been picked up in the work of political communitarians.⁴ Such insights help to clarify what is usually regarded as a locality. A locality has several connotations. Locality refers to places where people live, work, where there are

shops, businesses and schools, among other things. It draws attention to strong family or communal relations, and how these may contribute to wider societal harmony. Locality also brings attention to local political power, which communitarian political theorists have emphasised to show how it can be channelled to determine redistributive policies and public investment.⁵ Local political power can contribute to corporate social responsibility, environmental responsibility, local community participation and internal democracy, among other things.⁶ Such implications of locality provide an indication of the potential that may be channelled to political organisation and decision-making.

More importantly, and with certain exceptions, locality provides a neutral, value-free space and a more inclusive way of depicting community, since it is defined by the physical environment, not ethnicity, tribe, religion or any other form of affiliation. The only thing that matters, as it were, is shared place. This point can be explained by returning to the narrative at the beginning of this chapter. What can be deduced particularly from looking at the composition of that community is the interlocking nature of identities and relationships between them. This is the strength that lies in local urban residential communities in metropolitan cities that can encourage a change of thinking about the idea of community itself. Unlike rural communities, metropolitan communities are more often than not composed with richness and diversity, which is in turn superior to the more traditional ways of depicting the concept. More so, unlike residential metropolitan communities in the first world, which are segregated by class or opulence, communities in Africa, and particularly in Nigeria, as the narrative in the introduction has shown, are more integrated or mixed, and representative of almost every social background. This is obviously a generalisation about all Nigerian or African metropolitan communities, but the point is that the class composition of these communities is more fluid than elsewhere in the world.

A further way of understanding the inclusiveness of the local residential metropolitan community is by paying attention to the temporal nature of its internal composition. They are communities that are constantly in the state of being constituted.⁷ It is possible to think of community, in this context, in asymptotic⁸ terms because it remains in a state of constant constitution. The identities or imaginary boundaries that constitute community always remain fluid or more open, given that they can never fully be determined. Such communities will

constantly be open to those who are not currently members. This is the powerful analogy that one can draw from the local metropolitan community in the introduction: its membership is never fixed. Some members move out, whilst others move in. Some die, whilst others are born. Membership of this sort of community is never fully determined. The community draws on its sense of history, however minimal it might be, but it also looks to the future to define what it is. The process constituting community is never concluded. This is what defines its inclusiveness.

Understanding the strengths of local neighbourhoods or communities in metropolitan cities, as also suggested in the introduction, should not in any way imply that they should take priority over rural communities. After all, bonds in residential areas are unlikely to be as robust as those of family, tribe or ethnicity. Rather, reference to metropolitan residential communities should be used to draw attention to the possibility of generating similar sorts of bonds, from the plurality and solidarity among strangers, even though they may not be as strong as the bonds in a village or rural area.

In celebrating the potential of metropolitan residential communities, one should not fail to acknowledge that they also have a dark side. Not all neighbours get along or should be expected to get along with each other. Just as it is possible to have good neighbours, it is also possible to have neighbours from hell. This should not be an impediment. Every relationship, even among close-knit families or loving couples, has its challenges and difficult moments. Such misunderstandings constitute a common aspect of co-existence with others, and they are by no means fatal, unless such challenges degenerate into outright belligerence. The second and third component of the theory of community proposed in this chapter is developed to anticipate such types of difficulties; thus it is important to understand those discussions as a possible remedy to potential problems of this nature.

6.2.2 Community as a Normative Ideal

Nothing in the discussions so far captures what, for me, is the most important thing about locality. Locality is prioritised in this chapter, not only because of the neutrality of the physical environment or neighbourhood or the kind of potential for politics it offers, but rather because of the quality of social relationships and values inhabiting such

places. What is being suggested is that there is more to the understanding of community than just territory, locality or common residency. A locality can equally be understood as the epicentre of different relationships, a place where common values, attachments and principles are cultivated. Common residency, in particular, is vital for the cultivation of values and relationships, in addition to forms of conduct, roles and duties. It is why it is arguably one of the most important aspects of everyday life.

This point can be explained by revisiting Philip Selznick's sociology of community, which was referred to in the Introduction to this book.⁹ This can be deduced from his suggestion that even when we consider community as a description of our social or everyday experiences, it has an important normative dimension. His work importantly invites us to understand the correlation between descriptive and normative aspects of community. Part of the reason why he discusses the normative side of community is to dispense with the regular scepticism about the concept. He argues that sceptics never seem to stop highlighting the dark side of community and overlook that it is a 'prima facie good thing'.¹⁰ It is an end in itself and not just a means. Its values are intrinsic, like culture, friendship, socialisation and family life.

The idea of community presupposes moral values that can be nourished and protected. This does not mean these presumptions cannot be rebutted, especially if a particular community is too narrow and exclusive. We must not forget that other concepts like friendship, family, law and culture also have dark sides. However, this does not mean that we abandon them when they deviate from their principles. Rather, we criticise and try to nurture them into inclusive concepts from our understanding of the general standards they represent. A normative theory of community must, therefore, be both affirmative and critical. On the one hand, it is affirmative when 'it explores, identifies and embraces the positive contributions of a particular community to human flourishing'.¹¹ On the other, it is critical when 'it asks of a particular community how far, in what ways and with what effects it deviates from a standard'.¹² Such standards would always differ from community in question, but the objective will remain the same: that is, one of illuminating what a good community is, as well as constructing, and nurturing it when it fails.

Following on from Selznick, it is important to pay attention not only to living experiences of people, but also to how a normative theory can

be built (to affirm, criticise and reconstruct it) from those experiences. We must seek to understand ways in which a community can contribute to human flourishing, and in what ways a particular community fails to meet these requirements. Selznick provides a list of variables that might help in this respect. They include historicity, identity, mutuality, plurality, autonomy, participation and integration. A community will hardly have all these variables; some will have more than others. It always depends on the kind of community involved: that is, whether it is religious, ethnic, occupational, institutional or residential.

Although Selznick's variables may provide a useful guide to achieving this, they are not the only way of measuring the moral quality of communities. In this chapter, I return to the Southern African concept of *Ubuntu*,¹³ to offer an alternative means to illustrate how to measure the quality of relationships within communities. *Ubuntu* is used to analogise a particular way in which this can be achieved; it is not proposed as a general moral theory for all communities. Nevertheless, from the concerns throughout this book, *ubuntu* is one way of drawing our attention to human suffering, given its predisposition to love, compassion and human interdependence.

Ubuntu, as can be recalled from Chapter 1, has no agreed definition. Some have described it as humaneness,¹⁴ whilst to others, it is simply called group solidarity. Compassion, solidarity, reciprocity and dignity, or such other values that can be found in community constitute the ethical planks of *ubuntu*. As was also mentioned, *ubuntu* is more of a cosmopolitan philosophy, given that it is founded on values of shared humanity, particularly hospitality to strangers. It depicts universal human values that transcend boundaries of culture, ethnicity and religion. Similarly, territory or boundaries should not stand in the way of expressing or experiencing *ubuntu*. For the general purposes of the argument throughout this book, *ubuntu* may be helpful in illustrating ways in which people are connected to each other through common values of humanity, which can in turn be used to address common problems. It can encourage reciprocity, tolerance, co-operation and trust in society.

What is more, *ubuntu*, as was also mentioned, is about human interdependence; it is a powerful illustration of the fact that individuals are incomplete without others. Without communion with family and community, individuals are meaningless. One's community is the basis on which self-definition begins. Life is determined through communal

relationships and acts of belonging and togetherness. *Ubuntu* presupposes that social cohesion or harmony cannot be understood apart from the overlapping and interwoven relationships that we share with others. *Ubuntu* is another way of appreciating the discussions in Chapter 2 about what it means to say love is a form or source of community. Expressions of reciprocity, solidarity, co-operation and care that people show for each other make no sense without a concept of love as the founding principle.

But in recognising the strength of *ubuntu*, one should not generalise its existence across Africa; it is certainly not something that exists within or between all communities. Nevertheless, the point in raising it is that this is something that can be encouraged through certain practices, customs and institutions, for instance, as through proposals below for Community Forums. More importantly, it can serve to measure the moral quality of any local African community when its ideals are found wanting. After all, it is common to find descriptions of African communities, local or national, overwhelmed by problems of exclusion, among other things, as those that lack *ubuntu*.

6.2.3 *The Limit of Community*

Discussions about the normative theory above can be used to assist, criticise and overcome one of the most problematic aspects of community in African societies, among other societies. Some of these problems emerged as the consequence of defining community too exclusively, as the defining factor of all of one's social relationships. Such views, with certain exceptions, have persisted in African philosophy, and can explain the failure in that body of work to recognise anything apart from ethnicity, tribe or religion as valid community. Although such views may be well intentioned, they invite negative perceptions about the idea of community. There is a tendency to understand community too rigidly, in the sense that its bonds of inclusion only translate into bonds of exclusion.

Without attempting to be exhaustive, one good example of this mindset can be found in the work of Nigerian philosopher Ifeanyi Menkiti.¹⁵ He argues that John Mbiti's famous description of African communal life – 'I am, because we are; and since we are, therefore I am' – asserts the superiority of the community over the individual in metaphysical terms. In the strongest possible terms, he argues that

'the reality of the communal world takes precedence over the reality of the individual's life histories, whatever these may be'.¹⁶ In doing so, he seems to generalise, almost to a fault, about western academic traditions when he suggests that communalism is what makes the African individual distinct from her western counterpart. Perhaps what he means to say is that communalism makes the African different from the abstract 'liberal' individual. There are really few dividing lines between African communalism and western communitarian thought about this metaphysical standpoint.

Menkiti's views are open to contest, and they have been challenged by other African philosophers. For instance, the work of Ghanaian philosopher Kwame Gyekye¹⁷ has shown that the African is not as constrained by community than Menkiti seems to suggest. Menkiti exaggerates the normative status and power of community over the individual. The individual is constituted by other influences apart from her community. Furthermore, individual autonomy is not something earned from one's duties to community; it is something that can be established in the theistic and non-theistic sense.

Menkiti does not articulate a view about what the community is or what it ought to be, even though his views on the social composition of the individual seem to give some indication of what he means by the term. He is perhaps speaking about only a tribal or ethnic community in which individuals have no choice over their identity. From his views of the metaphysical composition of the individual, a person's identity is almost exclusively defined by tribe or ethnicity, and, furthermore, by the performance of duties. In my opinion, what can be deduced as Menkiti's view of community is very exclusive. It is not exclusive because he privileges primordial ideas of community. After all, it would be wrong to deny that these are the most important defining features of individuals in any given society. Rather, it is exclusive because it seems to suggest that ethnicity or tribe are the only constitutive sources of an individual's identity as well as one's social relationships. It fails to recognise that individuals have more than one source of communal identity, something that is formed by different interactions and relationships shared with others. Our ethnic, tribal and linguistic identities might be important, but they are not the only ways in which community or our communal identity can be understood.

A direct consequence of exclusively defining community in terms of ethnic identity, and one that reinforces the problem above, is that it is

articulated in profoundly nostalgic terms. It is inspired by the appeal for the restoration of primordial values, identities or norms believed to have been lost either as a consequence of colonialism or capitalist modernity. Without reviving such values or practices, as is often argued, social change would seem impossible. It is not that there is a problem with primordial representations of community; the difficulty is rather that they are expressed in melancholic terms. This further contributes to a false depiction of the community itself: it is depicted as a place without conflict or disharmony. Attempts to assert traditional or cultural authenticity are an exaggeration of the potentials that lie within a community, especially its capacity to resolve the problems expected of it. The attempts to rediscover lost values of family, hard work or co-operation found in a traditional community not only exaggerate, but generalise that these values existed in all communities of the past. To describe this in the words of a critic of the African authenticity, 'the traditionalist perspective paints the African world before colonialism as peaceful, co-operative, and fulfilling. Order, authority, and hierarchy, in this vision, created families and communities without discord, unhappiness, or alienation'.¹⁸ In short, this mindset fails to appreciate the hierarchies and divisions within or between nostalgic communities and families.

It is impossible to deny the values of history or tradition; these are, after all, values that make us who or what we are today. At the same time, we must not over-romanticise such aspects of history, and overlook how this might contribute to a number of problems today. The grip of tribe and ethnicity, and the violence it often provokes in many parts of the world, not necessarily in Africa, partly arises from this type of mindset. The question then becomes, how can community be re-imagined in new ways that build on the strengths of the past, but at the same time, discard its weaknesses? How can community be re-imagined without necessarily denouncing aspects of its authenticity, but also include other values, which have now become part of the reality in African societies? Moreover, how can community be defined in ways that unlock the grip of tribe, ethnicity or religion as the only source of one's identity or social relationships?

6.2.4 Ubuntu as Cosmopolitanism

With its emphasis on human interdependence, *ubuntu* provides a useful philosophy to challenge such narrow perceptions of community.

To build on the arguments I outlined in Chapter 1, the real strength of *ubuntu* is not really its appeal to commonality as it is often understood, but rather its appeal to strangeness, among other things.¹⁹ The scope of obligations encouraged by *ubuntu*, for instance, extends beyond a person's immediate community, whether this is ethnic, religious, local or political. There is a strong requirement to pay special attention to strangers under the ethic implied by *ubuntu*. In addition to that, the moral quality of relationships in a particular community can be measured according to the extent to which they pay attention to human vulnerability. *Ubuntu* encourages us to appreciate that all human beings, including the most powerful, are vulnerable. The moral compass of a community is measured according to its ability to accommodate both strangers and the vulnerable.

Ubuntu is, for instance, comparable to certain versions of non-African ethics in this respect, and it explains why hospitality is also one of the most revered values in Africa.²⁰ It bears similarities with Kant's idea of hospitality, even though their similarities or differences are yet to be explored in much detail. There might be an advantage in exploring this argument along the lines of *ubuntu*, since the requirement for hospitality is not dependent on the membership of a particular territory. Indeed, it can be argued that *ubuntu*, as with other neglected African ideas in mainstream intellectual discourse, can provide alternative ways to explore these and other problems.

Ubuntu has a lot in common with the idea of cosmopolitanism, an ethic that places humanity at the core of all obligations, something that is demanded irrespective of geographical boundaries. Indeed, rights-based cosmopolitan arguments cannot sufficiently account for the rights of aliens or immigrants, since the enjoyment of any human right, in tangible terms, is tied to membership of a political community. Although it is usually claimed that a person's human right is not tied to his or her membership of a particular political community, the reality in practice is that it is. *Ubuntu* is not subdued by territory and offers a better explanation than typical human rights arguments of why we are obligated to treat each human being with dignity and respect. It may not be a coincidence that post-apartheid South Africa is one of the few places where economic and social rights apply to non-citizens. In my opinion, the assimilation of *ubuntu* into the South African legal nomenclature provides a better explanation for this than appeals to the universal application of human rights. Having said that, my objective here, as

throughout this book, is not to show the differences or advantages that *ubuntu* or other forms of African thought might have over key ideas in western scholarship, but rather to show how they can mutually reinforce each other.

In the light of the above, one interesting version of cosmopolitanism, which, like *ubuntu*, emphasises the commonness of humanity (although the former departs from latter in showing how we might overcome the exclusivity of single-based communal identity affiliations), can be explained through Amartya Sen's book *Identity and Violence: The Illusion of Destiny*.²¹ Indeed, a single-based communal identity can be described as a significant weakness of *ubuntu*, which can not only be appreciated, but also alleviated by developing it further from Sen in this context. Sen is animated by identity-related violence, which, he suggests, emerges from the tendency to depict identity in singular terms. This has been, and continues to be, the source of many conflicts across the world today, including the September and post-September 9/11 conflicts.²² The pursuit of single-based identities, Sen concludes, can be used to fuel violence and to kill without regret.

Sen's central thesis is quite rational. Individuals are not defined by single relationships but by shared relationships, which are indeed constitutive of the different ways our identities are formed. He explains what he means as follows: 'a Hutu laborer from Kigali may be pressured to see himself only as a Hutu and incited to kill Tutsis . . . he is not only a Hutu, but also a Kigalian, a Rwandan, an African, a laborer and a human being'.²³ The point is that individuals have more than one identity, which extends beyond culture, religion or nationality. To put this argument into the perspective of community, we are all certainly members of more than one community. Our (communal) identity sometimes overlaps across locality, nationality, class, gender, race, ancestry and language, among other things. The remedy, following Sen's logic, is to maximise (and not diminish) the plurality of our identities. The power of overlapping identity is that it reinforces what we share in common, that is, our common humanity.

But the difficult question is, how can or should our multiple identities be maximised? Sen seems to think that this can be done by choice, even though he acknowledges that such choices are difficult to make. Besides (and this is a point that Sen agrees with but does not resolve), it might be easier to choose or reject certain identities, but what is more difficult to reject is identities ascribed on us by others. He does not

adequately address this question or why certain identities take priority over others, or even how conflicts between identities can be resolved. These are generally very difficult questions. Nevertheless, some of Sen's suggestions above about encouraging people to understand different ways in which they are connected to each other are a helpful way out of such problems. Sen believes in the power of critical reasoning in exploring this possibility and reducing some of these problems.

In contrast, Sen rejects communitarian theories that suggest that identity is something predetermined by a fact of nature, and that, as such, it is not open to critical reasoning.²⁴ I agree with Sen that received identities, customs, traditions and practices should always be subjected to critical scrutiny. They are not in any way unquestionable. Reasoned questioning is the only way we can explain changes in abhorrent conservative practices today. We should never leave such things unquestioned, otherwise we would succumb to unacceptable conservatism.

It is not difficult to see the value of such ideas. They undoubtedly help address the tendency of community to be understood exclusively in ethnic, tribal or religious terms. More importantly, by understanding that we belong to multiple communities, we may understand how we connect with others in other ways, and in ways that bring out the shared nature of our humanity. This is one of the more interesting points that comes out of Sen's work above. Just like *ubuntu*, Sen's thesis is really about human interdependence; it is about how individuals are all connected to each other in multiple dimensions.

Giorgio Agamben's work on *The Coming Community*²⁵ achieves the emphasis on the commonness of humanity in exactly the opposite way from *ubuntu* and also the work of Sen by negating altogether any condition of belonging to community. Again, I am not concerned with the differences between these approaches, but rather with how they arrive at the same conclusion. It is also important to begin by noting that Agamben looks at the difficulties with community from a metaphysical perspective. He offers a vision of community that can transcend either identity or universality as a criterion of belonging. Agamben takes as his starting point the limitations of community, and attempts to re-imagine it in a way that would enable it to exist without exclusion. In a rather dense and complex formulation, he suggests that this can be achieved if conventional standards of belonging or singularity are re-conceptualised by an understanding of what he calls 'the whatever being':

The whatever in question relates to singularity not in its indifference to a common property (to a concept, of example: being red, being French, being Muslim), but only in its being such as it is. Singularity is thus freed from the false dilemma that obliges knowledge to choose between the ineffability of the individual and the intelligibility of the universal.²⁶

The Coming Community is not constituted of individualism or universalism such that it excludes others from it. Rather, *The Coming Community* understands and represents the multiple or horizontal relationships that exist in society. It opens up the community to more inclusive and fluid interpretations. This rests on understanding the concept of singularity, which is not attached to any condition of belonging, be it biological, social, class, tribe, race, or ethnic. Rather, it should be defined on its own terms, or for want of a better description, this singularity is not representable. The point is that there really are no words that can describe this community: the condition of belonging can only be represented by itself.²⁷ Love is a good example of the condition of belonging in *The Coming Community*. It is 'never directed toward this or that property of the loved one (being blond, being small, being tender, being lame), but neither does it neglect the properties in favour of an insipid generality (universal love)'.²⁸ Thinking of community can certainly benefit from the above. It illustrates how new communities might be constituted without prior conditions of belonging: that is, without rules, duties or identities.

In doing so, Agamben's concept of singularity calls into question the dominant way of understanding solidarity, once the unique way it offers to mobilise or constitute community is properly appreciated. Solidarity, in this context, is built through undifferentiated singularities, which are reconciled by belonging rather than the 'conditions of belonging itself'.²⁹ It is built across different categories by creating diverse relationships of being with others. Unfortunately, Agamben's views above may seem too abstract to be useful, apart from being extremely difficult to propose in practical terms. Even Agamben, as noted above, recognises that no language can adequately depict *The Coming Community*. At least, one can argue that this is a theory or philosophy of community that can attract practice to it. After all, the right practical solutions cannot be made available without a background philosophy. Besides, such questions are equally about a change of mindset as they are

about the legal and institutional frameworks that can attract practice to them. Whilst it is true that framing the right kind of law or designing the right institution might be an important way of achieving such goals, it is also contingent upon getting the philosophy right from the outset.

Unfortunately, these sorts of views have not been emphasised enough in African or Nigerian thoughts or practices of community. Dominant interpretations of *ubuntu* have failed to acknowledge that individuals are not only shaped by ethnic communal identities, but rather by a range of other communities. This is the reason why the arguments in this section are even more important for the Nigerian context. Irrespective of how hard this might be, it is what we ought to strive to achieve. Given that the following conditions might not exist in all communities, the question from the point of view of this book is how it can be encouraged, and, furthermore, how communities can strive for co-operative solutions in the face of differences that may often contradict each other? After all, it is possible to understand that fundamental differences within a community can raise practical difficulties for collective organisation or participation. Any proposal for collective decision-making in diverse or multi-ethnic societies like Nigeria can only be achieved through dialogue. There must be an attempt for shared understanding, not only of what divides, but also of what unites members in community. It is only then that communities can understand what is shared in common. What is shared in common does not necessarily have to be common values: it could also include common problems.

Ordinarily, it should not really matter whether individuals have irreconcilable differences; all that should matter is that they share a given locality, and that there are common problems within it that affect everyone. It is possible to argue that the very processes of dealing with common problems may themselves motivate better understanding of the degree of interdependence that exists within community. This is arguably the most important moral from our narrative about the Nigerian community's attempts to reduce crime. Even if the attempt was short-lived, their common problems inspired discussions and a search for collective solutions that would improve their security in ways that benefited all. In this sense, the proposals that follow must be seen as part of the process of encouraging new thinking about community.

6.3 SPACES FOR PARTICIPATION

The second component of the theory of community entails offering a specific vision of how individuals can take part in community. It is based upon the understanding that participation is dependent on certain local practices and institutions. This component is mindful of the fact that community participation is something that might emerge spontaneously, but it also has to be engineered by conscious design. Not all communities are as unique as the Nigerian community at the beginning, which seemed to create the atmosphere for participation. Even so, the narrative about the Nigerian community does raise important questions about how to sustain such engagements whenever they emerge spontaneously, given that participation, there, was short-lived.

Whatever the case may be, participation depends upon the ability to create the right social and institutional environment where individuals can become more accustomed to dealing with matters concerning their continued existence (including their collective needs, norms and institutions) or other things that are significant in their lives. A component is required to encourage suitable social arrangements that allow values and solidarities in community to thrive. This entails institutionalising processes where values of kinship, solidarity, co-operation, reciprocity, trust, love and empathy can be strengthened. Institutionalisation (used more loosely than formalisation) is a way of building stronger bonds of belonging, since it can create the environment for relationships outside the family structure, and, more importantly, it can create a different type of relationship to those that exist through the state or the market. Much of the literature on institutional design is quite helpful. It elaborates on the importance of institutions in shaping the capacity of agents to acquire different behavioural habits and dispositions.³⁰ Without pursuing the language of institutional design too far, the point is that there is really no reason why the community cannot be understood as an institution that orients the behavioural capacity of individuals within it. Institutionalisation participation, so defined, can have an impact that extends beyond simply the quality of relationships between members within a given community. It may have an effect on increasing the normative content of democracy by localising it and promoting ideals of participation, equality and empowerment or, in this case, human rights. More importantly (and this point will be pursued later), community participation is one way of contesting the narrow

domain of politics, which is often restricted to political parties or formal public institutions.

The issues outlined above call into question the standard relationship between community and state. The discussions presented so far can so easily be misconstrued as an argument for community as an exclusive or autonomous alternative which will not be impacted upon by state or market institutions. This is partly correct, in the sense that community does not necessarily have to be articulated in opposition to the state. The aim of the proposals here, is really to challenge the autonomy of the state over the authorship and production of human rights.³¹ The strength of the argument is perhaps its weakness: community must rely upon the state (regional or local governments) to devolve its powers onto it. This may entail several things, including the need to devise policies and programmes that enable communities to participate in determining their own affairs. These would vary as between budgetary allocations, training and recruitment of community workers, and most importantly, they would entail the creation of what might be called 'Community Forums' within neighbourhoods through which decisions over the provisioning of certain human rights could be subjected to democratic scrutiny. Overall, much depends upon the willingness of communities themselves to want to or demand to take charge of their own affairs. In the end, this is not something that can be imposed from above, since it is irreducibly of a voluntary nature. Given that this is an important component of this book, what follows is a more elaborate explanation.

6.3.1 Community Forums

It is important to note from the outset that the use of the term Community Forums is slightly different from how it is used in an article that I co-authored with Maksymilian Del Mar.³² There 'Community Forum schemes' were proposed to create a critical space for reflection on the limitations of our normative languages or institutions in seeing and responding to different forms of suffering and vulnerability. They were conceived as a space through which 'the particularities of suffering and vulnerability within a specific community can be recognised and communicated in a multiplicity of ways'.³³ As such, schemes were proposed as a main resource for policy-making in relation to different problems, including those regarding public goods and services in dif-

ferent communities. Community Forum schemes were to be composed of representatives from local communities, government and international economic institutions, as well as local and external persons with scholarly and artistic specialisation. That aspect of the proposal was an attempt to give a more comprehensive depiction of various forms of suffering and vulnerability, especially through media and other forms of representation. It was an attempt to move away from dominant modes of representations in statistics, economics or politics. This is consistent with the central theme of incompleteness promoted in that article.

In general terms, the article sought to provide a general theory to enable the assessment and improvement of the moral quality of work of international economic institutions by rejecting the compartmentalisation of behavioural values: that is, activities that either appeal to rules, or forms of institutional design. The article called for a more integrated approach where normative resources that appeal to different behavioural capacities can be reconciled into a balance between rules and institutional design. There was also a third element, one that focused upon the application of the theory. It aimed at encouraging the ability of international economic agents to come to terms with the limitations of their ways of seeing and acting. There, Community Forum schemes were proposed to fulfil this aspect of that theory. It was conceived (with the work of international economic institutions in mind) to create a space to encourage a variety of ways for actors within those institutions to see and react to problems.

Without deviating too far from the original proposals, Community Forums, here, are framed quite differently, even though certain aspects of the initial proposal are retained. The first is the normative function of the Community Forum. It is indeed necessary to retain its function as a site for rehabilitation. It is a personal yet collective space, where individuals face up to the limitations of their ways of seeing and acting. In this case, it can be used to encourage critical reflection on common problems, especially in ways that appeal to the understanding of common values and differences.

Participation of the kind proposed cannot succeed outside an atmosphere of love, empathy, friendship, co-operation, mutual understanding, and most importantly, a space where the limitations of recognising and responding can be understood collectively.³⁴ And it is not difficult to see how some of the insights from Simone Weil's concept of

attention, discussed in previous chapters, are one way of achieving this. Community Forum schemes can serve other purposes, for instance, encouraging social activities, to help strengthen relationships, in addition to their primary reflective or deliberative function. They can serve as a way of building civic and other forms of friendships. As mentioned in Chapter 1, Community Forums can provide a platform for discussions around competing values, particularly how tensions between the need to maintain individual and collective autonomy, among other values, can be reduced. In terms of their composition, this should be determined by the community in question, which might choose to include representatives of state, local government councils, and whosoever the community might deem necessary to participate. Most importantly, it must be open to all residents of that community.

The second aspect of Community Forums that is retained from their original form is the policy-making component, that is, Community Forums should be understood as a source for decision-making concerning problems of access to water, electricity, education or health-care. Community Forums, in this context, take a view from below as their point of departure. They are interested in maximising the quality of interactions and the agency of community to instigate social change. They are in this respect ultimately interested in creating opportunities for self-determination and self-governance. It is acknowledged that the capacity for self-governance would vary from community to community: some communities would obviously have more decision-making capabilities than others. This does not make the proposal less appealing; it just means that poorly organised communities need to be encouraged in ways that can help them fulfil their potential. This could also be achieved by retaining aspects of the previous proposals for the role of the state: scholarly (and indeed artistic) experts, in this case. The role of the latter would primarily be focused on facilitating dialogues, and nurturing the environment for collective decision-making. Community Forums, as such, will ultimately form the main institutional framework for organising participation within neighbourhoods as well as for building solidarity around common problems, and democratic decision-making.

One should be clear that as appealing as this proposal may seem, it is a bit over-romantic. It is true that it is plausible to understand community as a catalyst for change through processes of critical reflection, solidarity and collective action. It is no doubt logical to understand

the importance of neutral spaces where individuals can make connections through aggregate personal experiences in trying to deal with the problems that affect the life within their community. They clearly need an atmosphere of patience, communication and shared understanding of collective problems. There will always be differences in how these problems are understood given the diversity of culture, history and social status that may make up a specific community. It is quite possible to speculate that communities may be united around a particular problem, but it is also possible that they would be disunited by attempts to find solutions. It is very imaginable that the richer or more privileged classes would not be opposed to solutions like privatisation. At the risk of further speculation, this is a proposal that the poor might reject. The emphasis on what is shared (whether values or problems) can also serve as a pre-condition for conflict. We must not forget that, even in the most egalitarian of communities, exclusion, discrimination, unreasoned decision-making, conflict and disagreement always persist. The recent controversies surrounding the town-hall debates over healthcare reform in the United States are clear indications of the kind of difficulties that can be predicted. It begs the following question for current purposes: how can possible differences be defended in the processes of participation without necessarily destroying the harmony in community?

Courts or the judiciary can significantly contribute in this respect, even though the purpose of this book is not to develop, in much detail, their responsibility. However, an indication of what courts can facilitate in this respect is participation and the resolution of disputes that may arise as a result. An example of what is being suggested can be found in Charles Sabel and William Simon's seminal article on the emergence of a new type of public action litigation in the United States, a result of the shift from centralised to dispersed forms of governance. Sabel and Simon describe the emergence of new forms of democratic experimentation made possible by Roberto Unger's idea of destabilisation rights. Destabilisation rights in turn refer to 'a right to disentrench or unsettle public institutions when, first, it is failing to satisfy minimum standards of adequate performance and, second'³⁵ [institutions that are] 'substantially immune from conventional political mechanisms of correction'.³⁶ It simply refers to rights that allow courts to encourage collaboration between failing public institutions and members of the public affected by their services. Courts can play a similar role vis-à-vis

potential problems in Community Forums. Nevertheless, the primary responsibility rests on communities to overcome the problems that participation might raise through their own internally created dispute resolution mechanisms. Having said that, some of these problems can be anticipated by a theory of deliberation as the third and final component of the theory of community. It is this that I turn to next.

6.4 DELIBERATIVE THEORY OF INCOMPLETENESS

The aim of this section is to offer a deliberative theory suitable for participation within Community Forums. It is argued that participation within Community Forums can only be sustained through what is called a deliberative theory of incompleteness. It is a theory that embraces a range of deliberative traditions rather than a single one. The theory takes the standard deliberative democratic model as a starting point, but also accommodates criticisms of it, including alternatives proposed by radical democratic theories. What it means is that no single theory of deliberation is privileged in the context of Community Forums. First, it recognises the importance of dialogue, as with Habermas's communicative theory, but it does so without placing too much emphasis on consensus. Second, it recognises the importance of pluralism and reality of disagreement, but also does not fall into the trap of over-emphasising disagreement, as this may have an effect on provoking the worst of outcomes in the most divided communities. The value of incompleteness can only be appreciated outside the context of a discussion of the strengths and limitations of the consensual model of deliberative democracy, and indeed, the radical alternative discussed below.

6.4.1 The Primacy of Dialogue

The importance of deliberation automatically calls the prevailing conception of democracy into question. Deliberative theories of democracy have arisen out of the impoverished nature of the dominant aggregate model of democracy. They are framed to respond to the limitations of the aggregate model, which is primarily concerned with the collation of voter preferences and the election of leaders. This is indeed the dominant model of democracy across the world, which is simply a process of competition by political parties and candidates to offer their

platforms and attempt to satisfy the greatest amount of preferences. The aggregate model of democracy restricts political participation only to elections, representation and political parties. Democracy as such is understood instrumentally, as a system of procedures with very little normative content.

There are many other problems with the aggregate model, which cannot possibly be discussed within this chapter, except to say that some of these problems are clearly visible in the context of Nigeria today.³⁷ For instance, being a plural society, competition over the control of the state has only reinforced the weakness of elections and representation as a means of aggregating preferences and differences.³⁸ This is indeed one explanation for the electoral-related violence within the country, which has often taken religious and ethnic dimensions. Quite surprisingly, commentaries on the democratic deficit in Nigeria³⁹ have failed to make these connections, and neither have they seen the need to engender more inclusive democratic models apart from questions of electoral reform.⁴⁰ Electoral democracy (as prioritised by the aggregate model) is an insufficient way of responding to these problems; instead, what it seems to encourage is deep discord. Democracy becomes the competition for the control of the state at different levels, most often by the competing ethnic identities, vulnerable to capture by dominant elites. This is very often achieved by the manipulation of the electoral system. Seen this way, there are perhaps wider implications of deliberative democratic theories than their relevance to Community Forums; they, without doubt, can enrich the practice of democracy within the country.

It is impossible to pursue in detail how this might be achieved, except to say that deliberative theories of democracy provide a useful way of responding to the superficial nature of aggregate models of democracy, given the primacy of elections as the most important form of democratic expression. The starting point for most deliberative theories is that all political decisions within a body politic must be reached through processes of dialogue among free and equal citizens.⁴¹ Theories of deliberative democracy are interested in creating various forums for dialogue from which decisions of a public nature can be influenced. Deliberative democracy is not particularly concerned about the conduct of elections or even plebiscites.

The core of a successful democracy for deliberative theorists is the removal of structures that impede authentic dialogue, and to foster

agreement between parties. There is an underlying emphasis on finding agreement, the probability of which lies in creating incentives and ensuring the commitment of groups to sustained dialogue. The main presupposition is that, in deliberation, parties in conflict propose their respective positions and solutions to collective problems by offering reasons for them. The reasons put forward by individuals are then criticised, as they also criticise proposals and the reasons of others. Deliberative democracy encourages participants to be concerned for the interests of others, just as they are concerned for their own interests. The only condition attached is that such interests must ultimately be compatible with the interests of justice.

Deliberative theories of democracy aim to reduce the influence of power in political decision-making. They posit that the outcomes of deliberations should be reached by reasoned argument, without threats or the use of force. Deliberative democracy is considered as a superior way of dealing with the most difficult political questions, such as those that concern groups and identities with deep differences. It is a more plausible way of reducing, if not, eliminating the aggressive instrumental nature of partisan politics. Theories of deliberative democracy presuppose that dialogue can only function with the right type of institutions. And this would reduce the possibility for domination of individuals by other individuals or groups.

Dialogue is, for instance, the primary objective of Jürgen Habermas's⁴² procedural theory of democracy which, amongst other things, attempts to provide a framework for unhindered channels of communication in what he calls the public sphere. Habermas's theory builds on his initial ideas about the bourgeois public sphere in the European eighteenth century, which he described as a space for a whole range of debates over diverse public issues. The public sphere comprised a whole range of spaces of a public nature, including salons, literary societies and cafes, or it included the formulation of public opinion through the media.⁴³ The public sphere is an open space for informed public discussion over issues that benefit everyone in society. Individuals achieve this by engaging in rational argument over such public issues. The only condition for achieving success is that they leave out their vested or personal interests or preferences. The public sphere is conceived as a non-coercive, secular and rational arena. It is described as a space that accommodates everyone who participates without limiting their input on themes, questions, time, resources, or the actual content of the

discussions. It recognises the value of individual rights to ensure the protection of citizens from others, and the state.

All permutations about the public sphere can be found in Habermas's more recent focus on deliberative democracy, a theory depicted as the rules or procedures to help reduce the possibilities for disagreement in the process of public decision-making. What he calls democratic will-formation is dependent on public conversation according to certain procedures and reasoned argument. Public deliberation is only guaranteed through fair procedures, which in turn facilitate 'ideal speech situations',⁴⁴ that is, inclusive, non-coercive and open deliberative procedures. The agenda and participants should not be restricted by any rules that impede the deliberation. All that matters is that individuals initiate an agenda or show that they are affected by the subject-matter of deliberation. Habermas does concede that procedures may not always sufficiently accommodate all interests or always encourage agreement. Nevertheless, the ultimate goal is to devise procedures that are acceptable to all, and this in many ways depends on their moral impartiality. Consensus emerges only when the procedure is neutral about competing moral views. The processes of deliberation, as such, ensure conditions for ideal discourse. Dialogues must be open for equal participants to be effective. This depends on consensus-building as a means of ensuring that all interests are taken into consideration. These procedures must be constitutionalised in order to give them legitimacy, apart from providing criteria for rich democratic politics. The ultimate goal is to increase the area of influence of the public sphere and to ensure the accountability of administrative or bureaucratic entities. Rationality is important in deliberations, which must in themselves be communicative through arguments and counter-arguments. Decision-making must be based on consensus, which can only be transformed by the strength of better arguments. Whatever the case may be, all decisions must be reached through reasoned argument.

It is not difficult to see the ideas above about deliberation might be a potentially useful resource for decision-making within various communities and their respective Community Forums. What it entails is repeating some of the practices of deliberation within such Community Forums. The only qualification, however, is that the proposals for deliberation here are quite modest. They are not (like most deliberative theories) concerned with participating in wider political decision-making processes of the state. Nor are they concerned with deliberating in

decision-making processes of market institutions. The concerns here depart from the standard deliberative democratic theories, which are framed with institutions of the state (such as legislatures, courts, public enquiries, committees, and administrative tribunals) in mind. The concern for deliberative theories has rarely been about participation beyond those spheres, except in the case of formal consultation exercises. Even in such situations, the goal of deliberation is really to influence rather than directly take control of governance.⁴⁵ This is quite different from what Community Forums seek to achieve; the aim here is to take part in governance.

Deliberative theories of democracy are relied upon here to understand how individuals in community can actually participate. And this makes them very relevant for the work of Community Forums. Habermas's work, in particular, achieves this by importantly recognising the communicative power of civil society, even though it does not seek to give real control or ownership over processes of actual governance. His more recent theories are succinct in this respect, given that they are reformulated in light of criticisms of the public sphere for its narrow base for participation. After all, the public sphere in its original form is conceived as a single arena comprised of educated middle-class gentlemen with the gift of eloquence or rational argument. Nancy Frazer's formulation of *subaltern counterpublics* or multiple arenas has been particularly helpful in increasing the scope of participation, especially for subordinated groups whose status naturally excludes them from the public sphere.

But even if the public sphere has benefited from such reformulations, which now allow it to include excluded groups, it does not seem to adequately respond to further problems and limitations with the deliberative model of democracy. This is mainly the inability to deal with deep disagreement and difference within such spaces, not least in fragmented societies. After all, formulating alternative sites for marginalised groups to inscribe their own imaginations into politics (like Frazer's *subaltern counterpublics*) does not go far enough to question the exclusion unique within those contexts. Problems of exclusion can be anticipated even with *subaltern counterpublics*, quite apart from questions of disagreement and conflict. The point is that there is a further need to understand how conflicts and disagreements can be addressed within those contexts.

6.4.2 *Beyond Consensus: Agonistic Pluralism?*

Whilst there may be little need to justify the strengths of the communicative deliberative theory, it, however, also has limitations, which need to be understood to make deliberation a useful tool for Community Forums. Iris Marion Young and Chantal Mouffe, from similar standpoints, offer and propose an alternative version of deliberation, the emphasis of which is not reasoned argument or agreement. Apart from deliberation assuming the common good, what is arguably Young's most important difficulty with the model is its form of political communication.⁴⁶ It gives priority to a chain of reasoned argument, a type of language, which begins from a premise and leads to a logical conclusion, apart from the types of speech permitted.⁴⁷ The attack is on the elitist nature of deliberative theories. They disguise certain expressions, which do not readily fit into those accepted categories or modes of expression. Formulating general rules or practices for deliberation cannot prevent certain problems that do not find expression in the language already agreed upon. The norms of articulation are typical of the forms of expression common among 'highly educated people'.⁴⁸ It is often the case that written, formal, general or circuitous speeches take precedence over other modes of expression.⁴⁹ This is perhaps because the norms of expressiveness are culturally specific. They suit socially privileged individuals who usually tend to have better qualities of expression. Because of this, deliberative processes are not open to everyone in equal terms as may seem at first glance. Though public speaking may be difficult, everyone should, nonetheless, be encouraged to participate, rather than be discouraged from doing so, even if they fail to express themselves according to 'culturally specific norms of tone, grammar and diction'.⁵⁰

Chantal Mouffe, agreeing with much of this criticism, however, focuses on the emphasis on prior agreement or consensus as a starting point for deliberation. For Mouffe, deliberative democrats seem too fixated on the question of consensus and rational agreement, thereby ignoring the conflicting nature of politics itself. Mouffe offers as an alternative a theory of politics that is based upon the inevitability of disagreement. Democratic politics should aim to maximise opportunities for disagreements to be expressed. The grievance is that the emphasis on agreement only succeeds in disavowing the value pluralism that exists within society. The argument for deliberative democracy is that

consensus can be reached only if certain vested interests are secluded from the forums of dialogue. Disagreement is the key to understanding the essence of this model. According to Mouffe,

we have a shared adhesion to the ethico-political principles of liberal democracy: liberty and equality. We disagree, however, about the meaning of liberal principles, and such disagreement cannot be resolved through deliberation and rational discussion.⁵¹

What this means is that deliberation should not entail either tacit approval or the rejection of opposing views. Rather, it should entail recognising alternative views as legitimate, and those who hold them as adversaries. Accepting the position of an adversary is itself seen as a process of the transformation of political identity. Whilst compromises in positions are part and parcel of politics, decisions can only be considered as temporary settlements. However, Mouffe does not in any way suggest that parties would never reach agreement, rather she emphasises the temporary nature of agreements. Disagreements or conflicts do not impede democracy, but the only problem is when such disagreements manifest in antagonistic terms. The aim of democratic politics according to Mouffe should be to transform antagonism into agonism, or to transform enemies into adversaries. Agonistic politics seeks to create an environment for agonistic confrontation between adversaries, and not antagonistic confrontations. This is what democratic politics should be concerned about: it should provide a framework where differences are expressed. This is a plausible way of deliberating, even if this is not entirely the objective of her theory. Mouffe is saying that agonistic confrontations are symptomatic of a good democracy, and to say this is not a contradiction in terms.

Quite a similar approach is offered by James Tully, who proposes a brand of constitutional democratic participation based on the irreducibility of differences.⁵² Tully is concerned about the legitimacy of constitutional practices in the light of principles of constitutional democracy. Accordingly, a constitutional democracy is legitimate if it upholds certain principles, one of which is the practice of agonistic deliberation. This is because the exercise of democratic freedom implies that citizens ought to participate according to the same rules, principles and procedures in democratic-constitutional institutions or various policy-related activities. In highlighting the importance of participation, Tully

fleshes out a brand of agnostic politics, which ought to serve as a precondition for democratic legitimacy. Here agreements are seen as temporal settlements, which are always open to negotiation, given that no final agreement can ever be reached. Agonistic dialogues according to Tully should be modelled on a framework that recognises the irreducibility of disagreement. Disagreements are irreducible because there is no final consensus on the subject-matter of deliberation, including the principles or procedures that regulate such processes.

6.4.3 Incompleteness as Ideal

It is not difficult to see how the discussions above can be integrated into the proposals for Community Forums. The deliberative theory of incompleteness would place emphasis on processes of negotiation, bargaining and compromise, processes in which positions can be altered with the benefit of hindsight. Participants in dialogues must be encouraged to regard all agreements as tentative. It is important to understand that there is a premium placed on deliberation, as much as there is some recognition of the irreducibility of disagreement. Nevertheless, there is a much wider significance to such processes of agonistic deliberation: they seem to offer more scope for inclusion. Everyone is allowed to participate, so the rules of participation are open to question. This is not surprising, given that agonism generally works within a framework of pluralism, one that recognises the diversities with the same degree of equivalence.

In spite of the obvious strengths of agonism, one should not be too quick to accept them, without at least subjecting them to critical scrutiny. The major limitation, in my opinion, is that much of Mouffe's criticisms do not lead to a plausible alternative to follow. At least, the consensus model (unlike Mouffe's) implies that decisions can be reached. Agonism, on the other hand, seems only to point to the need for decisions to be subjected to further contestation. It seems certain that even if differences are recognised, a further approach is needed, which allows decision-making in the face of such diverse identities. These definitely cannot be resolved simply by acknowledging the primacy of difference; it needs something more than that. The recognition of differences on its own is not sufficient to orient ethically the kind of decision-making proposed. Besides, the temporal nature of agreements may lead to a framework of instability, given that positions can

easily be altered by deliberating parties. Outside any rules that prevent this from happening, agonistic politics will always be vulnerable to unpredictability.

Moreover, agonism seems to place a lot of expectations on the part of participants that it can actually guarantee. This is because it seems to rely heavily on the good faith of participants. It is true that any kind of democracy cannot function without parties willingly conceding their incompatible positions. However, it is not clear how all groups will recognise such differences or act with honesty or integrity. Mouffe's position seems to invite a pluralism that can so easily slide into antagonism, which is what she is trying to prevent. It expects that participants will act democratically, without actually explaining why they might do so. For instance, why would a historically dominant ethnic or religious group concede its position to a less dominant group?

A more fundamental difficulty here stems from arguments made in the first component of the theory of community: that is, the point about recognising the multiplicity of identities. Even though Mouffe defends a type of politics that would not lead to the clash of identities, it is not clear how the clash of political positions would not end up being a clash of identities. Democratic politics, after all, is often about the identity of participants. This is often the case in the kind of pluralistic societies that she imagines in her theory. The point is once the importance of identity is emphasised, the clash she conceives can also become hostile, violent or eventually unproductive. What is needed is for the multiplicity of identities to be emphasised, especially showing different ways in which individuals are connected. This possibility also does not seem available with the agonistic model. Even Tully's brand of agonism, which emphasises cultural recognition,⁵³ cannot prevent this difficulty mentioned above.

The point in moving forward is to recognise that agonism does have some value despite the limitations just mentioned. It demonstrates the chaotic nature of democratic politics, even though it does not show how such differences can be resolved, or decisions reached. What is required, for the purposes of Community Forums, is a theory that not only allows the expression of differences, but also one that recognises that, in spite of such differences (including modes of expressing them), the ultimate objective is for all individuals to contribute to the decisions in the Community Forums. Deliberation, as such, is not just an inescapable necessity, but a prerequisite for Community Forums. A plausible

way of thinking about this proposal is to consider how agonism, deliberation and such other models can contribute to the equilibrium of the framework. As such, the theory of deliberation for Community Forums embraces agonistic pluralism, which might provide a sufficient theory of plural politics, but still maintains the primacy of deliberation in the process of decision-making. It must be appreciated that both approaches are responding to the same problem; they only differ on how to resolve it. Looking at it this way, agonism and deliberation should not be understood as conflicting theories.

Given that both theories discussed above have their strengths and limitations, no single theory of deliberation should be prioritised in the context of Community Forums. Rather, the strengths of the dialogic, the agonistic and other such models should be integrated for the purposes of participation in the Community Forums. For instance, Community Forums must also be open to the existence of any local deliberative democratic models. Local models of politics, deliberation and dispute resolution ought to be encouraged in their specific country contexts. By way of example, a theory of deliberation inspired by *ubuntu* would encourage the use of emotions (like love and compassion) within deliberative forums, something which elides conventional deliberative theories discussed above.⁵⁴ With *ubuntu*, it is possible to reaffirm the case that deliberation or thorough judgement does not depend on rationality. In other words, the significance of love and empathy cannot be excluded from reaching rational decisions. All in all, these are issues that can only be sorted out on a country-specific basis. There has been a lot of work on traditional or informal judicial systems but there is very little literature on alternative democratic or deliberative systems. This is perhaps something that might be revealed through a research agenda in the Nigerian and other contexts. In spite of this significance, it is something that cannot be addressed here in any detail.

6.5 CONCLUSION

It is quite unlikely that Nigerian communities will be challenged by most of the apprehensions raised above, especially about the plausibility of the consensual model of deliberation in general. It may not be so difficult to identify common problems that may form the basis of coming together.⁵⁵ After all, access to water, electricity, education

and healthcare are problems that would affect everyone in common. Even if common problems are recognisable, one must not be under any illusions that the proposals for participation here would be easy to achieve. They will certainly take time to achieve, just like real change will take time to be nurtured. These proposals, nonetheless, provide an alternative to what is currently available in the Nigerian and other contexts. In saying that, the arguments throughout this chapter have by no means been exhaustive, and sceptics may find them too idealistic. For instance, who are they for? How are these proposals going to get implemented? How will they be funded? Forms of taxation or subsidies could be devised, or funding from the state could be mobilised, since (as discussed) its role cannot be dispensed with entirely. As much as Community Forums require initiatives from particular communities involved, they also require the state to devolve some of its powers. Sometimes these sorts of initiatives might have to be created by the state, since, as also mentioned, such forms of collaboration and participation are not always spontaneous. What is important here is that concrete proposals must be drawn up with the contributions and participation of those most affected by such problems. The importance of dialogues towards this possibility cannot be over-emphasised.

Notes

- 1 It is recognised that such questions are better dealt with in specific national and local contexts, even though general principles of community are anticipated at the normative level of human rights discourse. It is appreciated that irrespective of how community is defined, it is a relative term.
- 2 Nigeria has an estimated 300 ethnic groups, of which the Hausa, Yoruba and Igbo are the three largest. The city of Jos is also composed of a host of indigenous tribes from the surrounding villages. Plateau State, of which Jos is the capital, has over sixty ethno-linguistic groups, two of which, the Berom and Angas, constitute the largest in number.
- 3 A. Walker, 'Vigilante Groups in Nigeria', British Broadcasting Corporation, at <http://news.bbc.co.uk/1/hi/world/africa/8021468.stm> (accessed on 31 July 2011).
- 4 E. Frazer, *The Problems of Communitarian Politics: Unity and Conflict* (Oxford: Oxford University Press, 1999); M. Sandel, 'The Procedural Republic and the Unencumbered Self', 12, *Political Theory*, 1984, pp. 92–3; M. Sandel, *Democracy's Discontents: America in Search of a Public Philosophy* (Cambridge, MA: Harvard University Press, 1996); M. Walzer, *Spheres of*

- Justice: A Defence of Pluralism and Equality* (London: Blackwell, 1983), p. 225.
- 5 E. Frazer, *The Problems of Communitarian Politics: Unity and Conflict*, pp. 143–7.
 - 6 H. Tam, *Communitarianism* (London: Macmillan, 1998), p. 192.
 - 7 One helpful analogy here is the way Emilios Christodoulidis speaks about ‘reconciliation’ in his essay on the ‘truth and reconciliation’ process in South Africa. Reconciliation is a paradoxical way of rebuilding community through some sort of solidarity generated by the conflicts that provoked the need for reconciliation in the first place. As such, reconciliation generates a risk that may or may not be overcome. The process of rebuilding community, therefore, is one ‘always attuned to the aspiration of being-in-common and aware of its vulnerability’. It always draws its meaning from a vision of a better future. E. Christodoulidis, ‘Truth and Reconciliation as Risks’, 9 (2), *Social and Legal Studies*, 2000, p. 198.
 - 8 I wish to acknowledge and thank Professor Neil Walker for making me aware of this term.
 - 9 P. Selznick, *The Moral Commonwealth: Social Theory and the Promise of Community* (Berkeley: University of California Press, 1994), p. 360.
 - 10 Ibid.
 - 11 Ibid.
 - 12 Ibid.
 - 13 J. Le Roux, ‘The Concept of “Ubuntu”’: Africa’s most important contribution to multicultural education?, 18 (2), *Multicultural Teaching*, 2000, pp. 43–6; N. Blankenberg, ‘In Search of a Real Freedom: Ubuntu and the Media’, 13 (2), *Critical Arts* 1999, pp. 42–65; E. Venter, ‘The Notion of Ubuntu and Communalism in African Educational Discourse’, 23, *Studies in Philosophy and Education* 2004, pp.149–60.
 - 14 M. Munyaka and M. Mothabi, ‘Ubuntu and its Social Significance’, in M. Murove (ed.), *African Ethics: An Anthology of Comparative and Applied Ethics* (Pietermaritzburg: University of Kwazulu-Natal Press, 2009), p. 63.
 - 15 I. Menkiti, ‘Person and Community in African Traditional Thought’, in R. Wright, *African Philosophy: An Introduction* (New York: University Press of America, 1979), p. 171; I. Menkiti ‘On the Normative Conception of Person’, in K. Wiredu (ed.), *A Companion to African Philosophy* (London: Blackwell, 2004), p. 324.
 - 16 Ibid.
 - 17 K. Gyekye, ‘Person and Community in African Thought’, in K. Wiredu and K. Gyekye (eds), *Person and Community: Ghanaian Philosophical Studies* (New York: New York Council for Research in Values and Philosophy, 1992).

- 18 R. Howard, *Human Rights and the Search for Community* (Boulder: Westview Press, 1995), p.86.
- 19 M. Munyaka and M. Mothabi, 'Ubuntu and its Social Significance', p. 63.
- 20 I am aware that the advocates of cosmopolitan citizenship, such as Selya Benhabib, have developed similar arguments on the basis of Immanuel Kant's concept of universal hospitality. S. Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press, 2004); M. Nussbaum, 'Kant and Stoic Cosmopolitanism', 5 (1), *Journal of Political Philosophy*, 1997, pp. 1–25.
- 21 A. Sen, *Identity and Violence: The Illusion of Destiny* (London: Norton & Co., 2006).
- 22 The informal definition of citizenship in Nigeria is based on a similar question of single identity. It has created what has become known as the indigene and settler dichotomy. This has in turn fuelled numerous conflicts – including in the city of Jos. It is indeed a different dimension to the problem Sen is speaking about. A. Adesoji, 'Indigeneship and Citizenship in Nigeria: Myth and Reality', 2 (9), *The Journal of Pan African Studies* 2009, pp. 151–64; M. Mandami, 'Political Identity, Citizenship and Ethnicity in Post-Colonial Africa', paper presented at the *Arusha Conference, New Frontiers of Social Policy*, 2005.
- 23 A. Sen, *Identity and Violence: The Illusion of Destiny*, p. 4.
- 24 Ibid. pp. 32–6.
- 25 G. Agamben, *The Coming Community*, trans. M. Hardt (Minneapolis: University of Minnesota Press, 1993).
- 26 Ibid.
- 27 Ibid. pp. 24–5.
- 28 Ibid.
- 29 Ibid. p. 85.
- 30 H. Dreyfus, 'What is Moral Maturity? Towards a Phenomenology of Ethical Expertise', in J. Ogilvy (ed.), *Revisioning Philosophy* (New York: State University of New York Press, 1992), pp. 111–23.
- 31 I am also aware that the suggestions here have profound constitutional implications, which are, however, beyond the scope of this book.
- 32 M. Del Mar and O. Onazi, 'The Moral Quality of Work: Resisting Complacency', 4 (4), *International Journal of Law in Context*, 2008, pp. 361–2.
- 33 Ibid.
- 34 S. Krause, *Civil Passions: Moral Sentiment and Democratic Deliberation* (Princeton and Oxford: Princeton University Press, 2008), pp. 111–41.
- 35 C. Sabel and W. Simon, 'Destabilization Rights: How Public Law Litigation Succeeds', 117 (4), *Harvard Law Review*, 2004, p. 1062.
- 36 Ibid.

- 37 I. Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000); S. Benhabib (ed.), *Democracy and Difference* (Princeton: Princeton University Press, 1996); C. Mouffe, 'For an Agonistic Model of Democracy', in N. O'Sullivan (ed.), *Political Theory in Transition* (London: Routledge, 2000), p. 113; A. Gutmann and D. Thompson, *Democracy and Disagreement* (Cambridge, MA: Harvard University Press, 1996).
- 38 There are also questions about whether representation adequately deals with questions of difference. Representation is problematic for another reason, that is, it always sits at a distance from the needs and feel of the represented. According to Hardt and Negri, representation operates as a 'disjunctive synthesis': 'it simultaneously connects and cuts, attaches and separates' the represented from government. M. Hardt and A. Negri, *Multitude: War and Democracy in the Age of Empire* (London: Hamish Hamilton, 2004), p. 241.
- 39 Except for Ilan Kapoor's interesting article which compares Habermas's and Mouffe's approach to deliberative democracy, not much has been done to situate deliberative theories of democracy within the wider context of third world politics. Mouffe's work constitutes a slight exception as it is mentioned in the work of Arturo Escobar in relation to social movements. But it must be noted that, like Habermas, Mouffe does not really have third world politics in mind when she proposes her theories of agonistic pluralism. I. Kapoor, 'Deliberative Democracy or Agonistic Pluralism? The Relevance of the Habermas-Mouffe Debate for Third World Politics', 27 (4), *Alternatives: Global, Local, Political*, 2002, pp. 459-87.
- 40 Nigeria has a long history of violence, not least electoral violence, since its inception as an independent country in 1960. However, there seems to have been an escalation of electoral-related violence in more recent times with the end of military rule, with the emergence of democratic politics since 1998. The appeal to violence around elections is a testimony of the weakness of the dominant aggregate model, especially the inadequacy of elections in dealing with deep difference. Surprisingly, the only attempts at democratic reform, quite visible from elite grievances, only address questions of electoral reform.
- 41 C. Mouffe 'For an Agonistic Model of Democracy', p. 113.
- 42 J. Habermas, *Theory of Communicative Action* (Cambridge, MA: Beacon Press, 1984); J. Habermas, *Between Facts and Norms* (Cambridge, MA: MIT Press, 1995); C. Calhoun (ed.), *Habermas and the Public Sphere* (Cambridge, MA: MIT Press, 1994); W. Scheuerman, 'Between Radicalism and Resignation: Democratic Theory in Habermas's *Between Facts and Norms*', in P. Dews (ed.), *Habermas: A Critical Reader* (London: Blackwell, 1999).
- 43 J. Habermas, *Structural Transformation of the Public Sphere: An Inquiry into*

a Category of Bourgeois Society, trans. T. Burger and L. Fredrick (Cambridge, MA: MIT Press, 1989).

- 44 J. Habermas, 'Three Normative Models of Democracy', in S. Benhabib (ed.), *Democracy and Difference*, pp. 21–30.
- 45 Iris Young makes a similar argument by what she calls the decentred model of deliberative democracy. I. Young, *Inclusion and Democracy*, p. 46.
- 46 I. Young, *Inclusion and Democracy*, p. 37.
- 47 Ibid.
- 48 Ibid.
- 49 Ibid. p. 47. Young also argues that norms of good argument often exclude modes of political communication that are disorderly or disruptive.
- 50 Ibid. This is perhaps something that can be assisted by the inclusion of artistic experts in initial proposals for Community Forums.
- 51 C. Mouffe, 'For an Agonistic Model of Democracy', p. 126.
- 52 J. Tully, 'The Unfreedoms of the Moderns in Comparison to their Ideals of Constitutional Democracy', 65, *Modern Law Review*, 2002, p. 210; J. Tully, 'The Agonic Freedom of Citizens', 28, *Economy and Society*, 1999.
- 53 J. Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).
- 54 S. Krause, *Civil Passions: Moral Sentiment and Democratic Deliberation*, pp. 111–41.
- 55 A similar approach is offered by John Dryzek, who suggests that emphasis on specific needs, and not value systems in deliberations is a potentially useful alternative in the face of mutually divisive identities. J. Dryzek, 'Deliberative Democracy in Divided Societies: Alternative to Agonism and Analgesia', 33 (2), *Political Theory*, 2005, p. 218; J. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2002).

Chapter 7

ELECTRICITY FOR COMMUNITY BY COMMUNITY: THE CO-OPERATIVE MODEL

7.1 INTRODUCTION

This chapter has two related objectives. First, it proposes to sketch out a community electricity co-operative model, as a further step towards encouraging participation among individuals in different communities. It aims to build on discussions in the previous chapter by considering, in rather hypothetical terms, a particular option that might be open to diverse communities through their Community Forums. The aim is also to build on discussions in Chapter 5, which proposed human rights as the ethos for electric sector reform, especially to enable more access for the poor. The rather tentative nature of these proposals is because they are presented as a prolegomenon. They indicate, rather than prescribe, in specific detail, how practice should follow. They are not a step-by-step guide to what communities should do or how they should do it.

The second purpose of this chapter is to underscore the importance of co-operation and participation in the pursuit of electricity, something that is linked to and can be built from discussions in Chapter 4 of this book on the social market philosophy. The objective, then, is to demonstrate the possibility of creating a social model of electricity that can avoid the shortcomings of the dominant profit market model, one that creates the atmosphere for solutions to be worked out through the participation of those mostly affected. Co-operatives, as it is argued, provide a practical example of how a community can participate in the supply of electricity. Co-operatives are, therefore, the particular manifestation of establishing human rights from community, the theory of community and the social market model.

The chapter begins with a discussion of the significance of co-operatives in historical and general conceptual terms. Nigeria is used

as a case study for the purposes of this argument in this chapter, and to illustrate the kind of significance co-operatives can have for the poor in Africa. The chapter proceeds to discuss the potential of co-operatives in electricity in general terms, as a way of enabling access, co-operation and participation within and between communities. It sketches out in theoretical terms how to reframe the legal and institutional framework and then proceeds to outline the internal design for three similar types of co-operatives: that is, community supply co-operatives, community generation and supply co-operatives, and off-grid generation and supply co-operatives.

7.2 THE CO-OPERATIVE

Broadly speaking, the co-operative has a long history, which can be traced to early periods of industrial capitalism. In more recent times, economic globalisation has given rise to what might be called a second co-operative moment, as co-operatives now constitute a common phenomenon across the world. Co-operative activities have permeated different geographical boundaries in the attempt to deal with different sorts of problems. Co-operatives have varied in type, especially because of the diversity of their type of activities. They have been at the forefront of attempts to address different pressing problems, including the lack of access to essential public goods and services.

Conceptually, co-operatives can best be described as democratic, self-help economic organisations, which are formed to assist in alleviating the poor socio-economic conditions of their members and the problems within the community in which they are located. Co-operatives usually function by aggregating individual market power into a collective whole, to tackle problems vital to their members, their communities and societies at large.

The history and origins of the co-operative can be traced to England during the period of industrial capitalism. The rise of co-operatives was provoked by poverty during that period, since many peasants could only find poorly paid work in the existing capitalist factories. The industrial revolution aggravated the conditions of many of the poor and led to a situation where shopkeepers and private traders became exploitative. Individuals were left with no choice but to purchase inferior quality goods from such exploitative traders at exorbitant prices.

Given those circumstances, and other difficulties, the foundations

for what is now regarded as a global co-operative movement began at Toad Lane, Rochdale, Lancaster in 1844.¹ The Rochdale consumers' co-operatives emerged in response to the inadequate wages and poor working conditions and the pervasiveness of poverty caused by the miserable factory wage. More specifically, the co-operatives began by buying high-quality consumer goods at low cost and trading them at affordable prices to workers or other customers. The work of social reformer Robert Owen and Nonconformist churches supported these initiatives, and, furthermore, encouraged the creation of other co-operative communities across the country. Co-operative activities not only underscored the strength of collective action, but also the value of integrity in business, given the importance attached to values of autonomy, participation, equity and solidarity. These values have now been formalised into the seven guiding principles for worldwide co-operative activities today:

1. Membership is voluntary and open (co-operatives are always open to new members).
2. Democratic control by the membership (members vote on all important decisions according to the principles of 'one member, one vote', regardless of the capital contribution made by each member, or of his or her role in the co-operative).
3. Economic participation by members, both as solidarity owners of the co-operative and as participants in decision-making concerning profit distribution.
4. Autonomy and independence in relation to the state and other organizations.
5. A commitment to educating co-operative members to help them participate more effectively.
6. Co-operation amongst co-operative members to help them participate more effectively
7. Contribution to the development of the community in which the co-operative is located.²

These principles have no doubt been integral to ensuring ownership and control over the business by members of co-operatives. The democratic element seems to constitute the most important attribute that makes co-operatives unique. It is fair to argue that co-operatives may have a wider effect on deepening the practice of democracy by

extending values of participation into the economic sphere of society, not just internally within the organisation. This is, after all, one of the limitations of the practice of democracy today, that it is restricted to the political sphere. The lack of political accountability in the economic sphere is, of course, an old problem, one that can be understood from developments in eighteenth-century Europe.³ This initially became an issue after the emergence of the market economy as a substitute for centralised economic systems. The ability of markets to maintain individual autonomy was obviously one of its main sources of attraction, in addition to its ability to determine the distribution of society's resources. This was, to recap, justified by the work of Fredrick Hayek, who emphasised the superior epistemic quality of markets. His views were different, in this respect, from those of Adam Smith, who, despite supporting markets, emphasised the importance of 'sympathy and benevolence'.⁴ He believed the latter ought to be 'the basis of social relations, and economic action';⁵ as such, 'its political settings were not separable from, but rather part of, an overall framework of human relations, which were to be understood as a greater unity'.⁶

The emergence of modern capitalism, however, deviated from Smith's ideas about the proper or more humane foundations of the economy. The civic dimensions of Smith's thought were replaced by ideas about personal gain and self-interest. The emphasis on profits was a consequence of an incomplete reading of Smith's idea; that is, *The Wealth of Nations* was read without *The Theory of Moral Sentiments*.⁷ In other words, profit oriented markets were considered to be different to social markets. One consequence of this has been the prevalence of the economic sphere as a separate entity, even though the political realm still presides over economic policies.

Scott Veitch's work explains a further extenuating factor from the emergence of rights to equality, especially voting rights of citizens in European political societies. The difficulty arose from extending voting rights to citizens based on universal suffrage. This attracted a different consequence from granting voting rights according to property qualification. The effect (as we learn from Karl Marx) was the creation of two distinct constituencies, that is, the political as separate from economic constituency. As such, the 'forum of political principle, with its ideals of equality, freedom and citizenship, was not co-extensive with the economic realm and its practices of domination, exploitation and insecurity'.⁸ Instead, the 'political and economic identity are held apart, and

the idea of participation or representation in the two realms are treated as disconnected achievements, despite the enormous impact of the latter on people's daily life experiences'.⁹ The effects of these circumstances are very evident in many contexts, not least in Africa and other parts of the third world. Although economic actions continue to take more political dimensions, many societies, especially in Africa, seem to lack the same kind of accountability mechanisms in the political realm. These are of the kind capable enough to deal with these problems. Whilst the activities of many economic actors are 'undoubtedly political' . . . they 'do not register as political activities, nor – crucially – as subject to the same demands of political justification'.¹⁰ Instead, the separation between the political and economic sphere is normalised by agitations for political democracy with the effect of distilling claims for economic democracy.¹¹

The separation of the political from the economic realm described above is something that co-operatives can help to remedy. Co-operatives importantly illustrate how businesses can be more democratic, and furthermore, the externalities or spill-over effect they might on the wider body politic. Without being too ambitious, it is fair to say that the internal democracy within co-operatives is by far their greatest novelty; therefore, the discussions about the strength of co-operatives should be limited to this attribute. A lot can be said about members of co-operatives being allowed to vote on decisions regardless of the level of their investments. These democratic principles importantly address concerns of equity, since they take into consideration possible disproportionate effects of linking participation to the level of individual contributions or investments. Furthermore, education is recognised as a crucial element for more meaningful and effective democratic participation in activities of co-operatives. Accountability to the host community is also a key principle that must be mentioned in this respect. In this context, co-operatives can be contrasted with typical capitalist businesses, such as Transnational Corporations (TNCs), which operate without similar standards or expectations of accountability.

One other important factor about co-operatives is their obligations to help alleviate problems within the host community in which they operate. What this means is that, even though co-operatives may evolve for purely instrumental reasons, there is an obligation to extend their sphere of activity beyond the realms of the organisation.

It is understandable in the light of the above why several enthusiasts

have proposed substituting the current economic model with an economic system organised around co-operatives. Nevertheless, these aspirations are yet to come to light for several reasons. This is because the method of control of co-operative businesses actually prevents the kind of expansion typical of profit-making enterprises.¹² The democratic content of co-operatives prevents them from the kind of capitalisation characteristic of profit-oriented firms. Moreover, co-operatives are unlikely to appeal to investors, since the latter's level of influence does not extend beyond a single vote, despite their investment.

Regardless of what some might consider a shortcoming, proposals for the expansion of co-operative activity have featured in proposals and policies of the major international development institutions. The United Nations (UN), and its inter-governmental organisations, has been by far the strongest advocate of the expansion of co-operatives across territories. Co-operatives have been acknowledged at different forums, including at the General Assembly (GA) through a resolution recognising how they can contribute to social development, employment generation and poverty reduction, amongst other things.¹³ GA Resolution No. 56/114¹⁴ encourages governments and the relevant international institutions to collaborate both internationally or locally to provide suitable legal and institutional frameworks for co-operatives to operate.

Furthermore, the UN encourages governments in partnership with co-operatives to promote programmes that will strengthen their activities. Most recently, an Expert Group Meeting (EGM) of the UN's Department of Economic and Social Affairs has made quite stringent appeals for more meaningful recognition of co-operatives within the UN development framework.¹⁵ This call was made within the context of the current global financial crisis. The EGM recognised that co-operatives might be suitable to address some of the current economic problems. The EGM underlined this point by drawing comparisons between the performance of investor-owned and consumer co-operative banks during the recent global economic crisis. The point is that co-operative banks seemed to have fared better than most investor-owned bank during the crisis. With a different philosophical orientation, co-operatives were secure from the kind of excessive risk-taking synonymous with investor-owned banks. The UN joins other advocates in encouraging a new co-operative driven economic model,

to make business more ethical and place humanity, including the environment, at the core of its activities.

Comparatively speaking, co-operatives have not received the same degree of recognition in the work of the World Bank. They are not, for instance, specifically mentioned in the World Bank's Comprehensive Development Framework (CDF) or the Poverty Reduction Strategy Papers (PRSPs), despite the emphasis of the latter on participation of the poor in aspects of the design and implementation of these policies. Nevertheless, it is fair to say that some other aspects of the World Bank's work recognise the importance of co-operatives. The World Bank recognises the role for co-operatives in agriculture where it supports micro-credit and other co-operative initiatives.¹⁶

7.3 CO-OPERATIVES IN NIGERIA

As in other parts of the world, co-operatives are an important social business institution in Nigeria, as well as in other African and third world countries. Most co-operatives have emerged by institutional design, even though they also emerge spontaneously. In the third world in general, the relationship between co-operatives and the state is not clearly distinguishable. The state in many contexts has used co-operatives as an instrument of social control. However, a large number of co-operatives have been created independent of state support, and very often to mitigate different kinds of social and economic hardships.

Most independent inspired co-operatives operate informally in activities ranging from thrift to associations of garbage pickers.¹⁷ The diffusion of co-operatives' activities in Africa has also been influenced by the existence of a global co-operative movement. The global movement has particularly been inspiring to co-operatives formed independent of state control. Looking specifically at Nigeria, co-operative activity emerged before it became an independent nation.¹⁸ Nigerian co-operatives can trace their origins to the period of British colonial rule. This was a period where several marketing, production, thrift and consumer co-operatives emerged.¹⁹ Agriculture-related co-operatives were, and still are, by far the most widely used and successful of such organisations. Historically, the 'Cocoa Marketing Co-operatives' of Southern Nigeria were particularly successful. They were comprised of several co-operatives with 20,000 members, who belonged to 300 primary co-operatives, which were part of a federated network of

twelve unions. While they existed, their activities led to the production 10,000 to 15,000 tons of cocoa annually. Interestingly, the Cocoa Marketing Co-operatives competed with middlemen for the supply of cocoa to British firms like Cadbury's, Fry's and Rowntree. Indeed, it was the sharp practices of the middlemen that led the colonial authorities to set up co-operatives to guarantee fairer deals for firms and farmers.

Apart from producing and marketing cocoa, the co-operatives performed other functions, which extended beyond their original remit. For instance, they provided short-term loans to members, even though these were loans connected with the production of cocoa. These co-operatives enjoyed return rate of almost 90 per cent despite not being created to perform this function. There were also distinct cocoa-related co-operatives formed to encourage the practice of thrift. The Yoruba Farmer's Co-operative Society stood out in this context. Its members succeeded in saving £15,870 during 1947-8.²⁰ Cocoa Marketing Co-operatives also functioned as banks and financial educational institutions for their members. They were also a method of agricultural education, especially for transferring knowledge about new farming techniques. In addition, they provided avenues through which members could voice their grievances against the authorities.

It must be noted that on a wider scale, not all agricultural related co-operatives were as prosperous as the cocoa-producing or marketing co-operatives. To be specific, groundnuts, cotton and palm sectors were not as successful as the cocoa co-operatives. The most rational explanation for this is that they were not given the same level of institutional and organisational support as the cocoa co-operatives.

Consumer co-operatives, on the other hand, were partially experimented with in certain villages and rural communities with very little success. The problem was that it was quite difficult to diffuse practices typical of western societies to a predominantly rural country, one not accustomed to the workings of capitalist systems. Nonetheless, consumer co-operatives could supply the needs of host communities in which they operated. Their needs were quite material and ranged from the provision of soap, salt, kerosene, to that of bush lamps and tobacco. More positively, consumer co-operatives extended their activities beyond trading in cheap consumer goods. They contributed to various community or village institutions, such as maternity centres, from the surpluses of their profits.²¹

Apart from consumer co-operatives, thrift associations of different

kinds emerged during this period. They seemed to have laid foundations for what has now become a thriving thrift or craft practice in contemporary Nigeria. Esusu, Isusu and Adashi are some examples of this, and can be described as local interpretations or adaptations of thrift systems introduced during the period of British colonial rule in Nigeria. As such, thrift co-operatives might more appropriately be described as a hybrid of local and dominant practices.²² Regardless of their origins, thrift practices are now widespread across Nigeria, performing different functions ranging from assisting the poor to build up capital for particular business activities, to helping the sick search for medical care, to assisting families to bury their loved ones. Thrift activities usually serve instrumental or functional purposes, quite apart from sometimes being exploitative.

Most co-operative associations exist informally, even though a small number are registered under the Nigerian Co-operative Societies Act of 1993, which makes it mandatory for them to be registered as limited liability co-operatives, regardless of whether they are industrial co-operatives or primary and secondary co-operatives.²³ Although it is impossible to give an accurate figure of the number of co-operatives in Nigeria today, the most popular of such organisations can be found in the agricultural sector. Agricultural co-operatives have even benefited from policy and institutional support from a quango called the Nigerian Investment Co-operative Agency (NICA).²⁴ Details of its activities can be found on its website, which states that the agency was created to provide institutional support for co-operatives as part of Nigeria's government's current economic reforms, which partly attempt to build what it calls a 'caring' market economy. This, the NICA suggests, cannot exist without 'popular participation' in the economy. It acknowledges that most Nigerians do not have the economic means to participate given the relative level of poverty throughout the country. As a consequence, the body seeks to provide loans through which they can achieve inclusion. As it suggests, co-operatives are 'one of the vehicles for economic empowerment'²⁵ . . . [and] 'the national objectives of economic growth and sustainable social development'.²⁶

The developments above are commendable, but the basic justification for the introduction of co-operatives (as indicated from the website) does raise some questions. It would seem the purpose for co-operatives is conceived in narrow economic terms, which are in turn considered as the only way of promoting social empowerment.

The main point is that economic development alone is no guarantee for human or social development. The point in raising this is that co-operatives have much wider significance to the Nigerian society than what seems to be acknowledged by the policy. As it is framed, the social and humanistic side of co-operatives is hidden from view. Moreover, apart from the agricultural sector, there seems to be no clear agenda for co-operatives in other sectors of the economy. A good example of this is the absence of a role for co-operatives in the provisioning of electricity, water, healthcare and education. Even Nigeria's PRSP, the National Economic Empowerment Development Strategy (NEEDS), fails to acknowledge the role for co-operatives as part of the goal of reducing poverty. This is not surprising, since the PRSP originates from the World Bank's CDF, which also fails to comprehensively establish a role for co-operatives. There needs to be a more affirmative statement of recognition and support for co-operative businesses on the institutional level. Setting up co-operatives is indeed not a simple task. It does not rest only on a question of providing loans to the poor; it also requires legal, technical, educational and other forms of support.

7.4 COMMUNITY ELECTRICITY CO-OPERATIVES

Having looked at co-operatives in general terms, the focus of this section is to address questions of the internal design of electricity co-operatives. Community electricity co-operatives²⁷ are proposed as a new element of the existing electricity market framework, which, to recap, is composed of six generation companies, one transmission company and eleven distribution companies. As a new component of this framework, three types of community electricity co-operatives are proposed for purposes of demonstrating how communities can take part in providing their own electricity. They include community supply co-operatives, community generation and supply co-operatives, and off-grid generation and supply co-operatives. In addition to the following, a proposal is made for the creation of a National Co-operative Electricity Agency (NCEA) and various State Co-operative Electricity Agencies (SCEA), to provide financial, technical and institutional assistance for the operation of electricity co-operatives.

It cannot be overemphasised that the proposals offered here are quite hypothetical. The aim is really not to provide a comprehensive blueprint on how to create electricity co-operatives; rather it is to

provide a vision that can attract practice to it. It must also be noted that several issues with respect to these proposals cannot be sufficiently dealt with in detail here, especially because of the multi-disciplinary nature of these proposals. They cover specific areas of economics, engineering, science and technology, and architecture, among other areas. It must be appreciated that the issues raised here are better worked out by relevant experts in the related local contexts. Again, the aim is to provide a vision that can attract practice to it, rather than to provide a detailed guide on how to do it. Given the legal nature of this proposal, one question that needs to be addressed is the extent to which co-operatives can be accommodated under the current legal and regulatory framework. This is addressed next.

7.4.1 Reframing the Legal and Regulatory Framework

Proposing a role for co-operatives in the Nigerian electricity sector generally depends on whether they can be accommodated within the existing legal, regulatory and institutional framework. The conclusion that can obviously be drawn is that without any significant changes to the legal and regulatory framework, the role for co-operatives would be impossible. For electricity co-operatives to operate, they need a framework that accommodates different entities without any discrimination of who can participate. This entails re-thinking the current framework, but not necessarily creating a new one from scratch. It must be appreciated that electricity co-operatives cannot operate effectively through a legal regime that relies solely on market incentives. The point is that, apart from limitations of markets, the current framework is not accommodating to other entities like community. As such, a new regulatory approach is the first step towards establishing a role for community (through co-operatives) in electricity. What is proposed in this light is an approach that accommodates a range of actors, including their values and interests. The keywords of this approach are diversity, pluralism, collaboration and participation. The legal and regulatory framework must be inclusive enough to encourage the adoption of a wide variety of approaches. More importantly, it must give legitimacy to the interests of community in equivalent terms with market interests. Seen this way, it is possible to understand how electricity provisioning can benefit from other entities, apart from traditional institutions of state and market.

One of the best ways of understanding this in theoretical terms is by referring to Gunther Teubner's concept of reflexive law.²⁸ Reflexive law is a theoretical approach that creates the type of legal structure required for the kind of regulatory framework I have in mind. It accommodates a wide range of parties, including their values and interests. It achieves this by translating regulatory designs into practical regulatory frameworks. It simply means that law is reflexive when it does not take over the regulatory responsibility of social processes itself; rather it enables them by installing, correcting and redefining them into democratic self-regulatory mechanisms. Teubner argues that the complexity of modern life requires a different system of regulation, one in which law functions in the background by restricting itself to facilitating the coordination of other social systems.

In doing so, reflexive law increases the self-referential capacities of other social institutions. Not surprisingly, Teubner builds such insights from Niklas Luhmann's work on system theory, which enables the legal system to perform this function by enabling communication among radically closed social systems. Teubner develops a new perspective on the legal dimensions of legal and social change, which points to a new evolutionary stage of law. This is simply what reflexive law entails. Law becomes a system for the coordination of action within and between semi-autonomous sub-systems. This idea is developed from the writings of Philip Selznick and Philip Nonet, and also from Habermas's interpretation of Luhmann's evolutionary theory of law. They all identify different types of law, and show the progression from one type of law to another. Their theories are also formulated with the crisis of formal rationality in mind.

Selznick and Nonet provide a good theoretical explanation for the evolution of law. According to them, law evolves from a repressive stage to an autonomous stage, and then to a responsive stage. As the last and most important stage in the development of law, responsive law emerges to increase the level of participation and responsiveness in the creation of law as well as other societal processes. Responsive law is a product of internal developments of the autonomous nature of law. Selznick and Nonet develop this particular point from Max Weber's accounts of legal rationality in the attempt to explain how law progresses in the direction of substantive and reflexive rationality. What they mean is that responsive law includes substantive and reflexive elements, which are combinations of two different forms of legal rationality.

Returning to Teubner, he questions the capacity of responsive law to effectively provide a stable framework capable of dealing with the crisis of legal rationality. Therefore, a more appropriate way to understand responsive law is to comprehend it as a further stage for the evolution of law. Teubner is questioning the priority given to the internal, in contrast to the external, elements of legal change in prevailing accounts of responsive law. They are insufficient because they ignore external accounts of how legal evolution or transformation take place.

Reflexive law, then, is really a response to the previously mentioned shortcoming by integrating internal and external accounts of legal change, and furthermore, illustrating how law itself creates the complex environment for functionally differentiated, semi-autonomous sub-systems to operate. Teubner calls this a post-responsive legal order, one that encourages self-reflective processes within different social sub-systems.

Reflexive law responds to the inability of responsive law to deal with social complexity, and, also, the purposive and substantive aspects of law. What Teubner means is simply that reflexive rationality facilitates rather than imposes itself on social structures. It guarantees the autonomy of social institutions and creates the opportunities that allow problems to be resolved:

Reflexive law tends to rely on procedural norms that regulate processes, organization, and the distribution of rights and competences. The new procedural orientation characteristics of reflexive law can be observed in different legal fields as an emerging alternative to formal as well as substantive rationality. Under a regime of reflexive law, the legal control of social action is indirect and abstract, for the legal system only determines the organizational and procedural premises of future action.²⁹

The point is that law provides the background structural framework for the reflexive processes of other social systems. One of the best ways of understanding this, as Teubner himself notes, is through obligations in contract law. He illustrates this by drawing comparisons with how disputes are settled under the formal, substantive or reflexive law. First, Teubner shows that the formal law approach is always concerned about the fulfilment of formal, general and objective conditions of contractual obligations. Formal law does not pay attention to the social dimensions

or consequences of such obligations. It does not even take account of the relationships that parties are enabled to create. Substantive law, as second approach, is concerned with the actual outcomes, especially how interventions might produce substantive effects for individuals. Reflexive law, as the third (and Teubner's preferred approach), departs from the others by encouraging negotiations between different participants. In doing so, it provides a level playing field in which bargaining relations can take place between contractual parties. Reflexive law paradoxically influences outcomes without really getting involved in the processes of bargaining between parties.

One can indeed argue that the neutrality assumed by reflexive law ignores asymmetries of power; this impartiality has the effect of distorting the quality of relationships and outcomes. It is fair to argue that such a framework as Teubner proposes is only sufficient in conditions of equality; it cannot deal with questions of deep asymmetry of power. In this context, it would make more sense to have a reverse-discriminatory type of law that can alter huge inequalities between parties. This perhaps rests on the balancing of the reflexive and substantive aspects of law, as certain situations will need more of a partial than impartial type of law.

Teubner accepts this criticism when he talks about the importance of developing reflexive structures, which can compensate inequality of power and information. Here he particularly speaks about having standards of substantive judicial intervention. In spite of this, law will still be reflexive in so far as it is the legal system that stimulates social self-regulation. The legal system adapts to such situations in order to provide a framework through which disempowered parties can challenge or assert their positions.³⁰ Reflexive law not only enables the grievances of silent voices to be heard; it also enables the solutions they generate to be written into the logic of the system.

If the previous point is not convincing, then there is something to be said about autonomy, which, in essence, is what reflexive law guarantees. Reflexive law can provide the autonomy necessary to establish and protect communal values and modes of operation. More importantly, reflexive law can indeed create opportunities for counter-hegemonic responses against the dominance of state and market discourses. Through the autonomy that reflexive approach guarantees, communities can participate on equal terms (that is, with the same powers, rights

and freedoms) with the state and market institutions. What it achieves is that it creates incentives and protections for different parties (including communities) to achieve their desired objectives.

7.4.2 *Institutional Architecture*

The discussions, so far, have described the potential inclusion of community electricity co-operatives in legal theoretical terms; what follows is an attempt to understand the proposals in institutional and organisational terms. This is again proposed hypothetically, since the substantive aspects of these proposals can only be worked out in relevant local contexts. I begin with a hypothetical scenario: assume that a community through its Community Forum wants to provide its own electricity, and furthermore, wants to know how to set up a co-operative. A logical starting point requires considering the relevant laws that apply to this context, particularly the extent to which they permit the formation of co-operatives. In the light of discussions above, electricity co-operatives can only be created if the legal and regulatory frameworks permit them as such. While the impetus lies within the ability of the community to organise itself, electricity co-operatives can only be established if they are permitted by law. What this means is that there is also a burden of the responsibility on the state to create a suitable legal and institutional environment for the operation of co-operatives. At present, the Electric Power Reform Act 2005 and the Nigerian Co-operative Societies Act of 1993 do not consider a role for co-operatives in the electricity sector. The first recommendation, as such, is for amendments to the legal and regulatory framework to facilitate the creation of electricity co-operatives.

Following on from that, there needs to be an institutional mechanism to provide support to communities seeking to establish co-operatives. Because of this, a further recommendation is made for the creation of a specialised agency called the National Co-operative Electricity Agency (NCEA). It should be established at the national level, with the objective of initiating, administrating and supervising a policy programme of co-operative electricity in Nigeria. Such an agency should be funded by the state and ought to be responsible for providing interest-free loans to various communities seeking to set up co-operatives. Similarly, regional state governments should work in collaboration with the NCEA to set up State (or regional) Co-operative Electricity Agencies

(SCEAs), which will in turn provide local support for community co-operatives in electricity.

7.4.3 Internal Design of Co-operatives

A further aspect of the hypothetical scenario relates to the internal composition of the proposed co-operatives. It is proposed that communities should have an option of choosing from three types of co-operatives. Such choices would depend upon the size of the community given that economies of scale might impede the creation of co-operatives in small communities. However, this does not mean that the co-operative model cannot work in these circumstances. What it means is that small communities may have to collaborate with others to establish co-operatives.

At the very basic level, the first proposal in this context is for the creation of supply co-operatives by a single Community Forum or a combination of Community Forums. As expected, supply co-operatives will operate on a non-profit basis, quite apart from being democratically owned by members of the respective communities. Supply co-operatives ought to be considered as an additional element of the emerging Nigerian electricity market, and they shall be responsible for purchasing electricity from market-owned generating companies at minimal costs. The purchased electricity will in turn be re-sold to members of the community at affordable prices.

Community supply co-operatives ought to operate under the seven co-operative principles discussed above. An eighth principle, human rights, is proposed to serve as the ethos for co-operatives. It will be based on the particular conception of human rights proposed in Chapters 1, 2 and 5 of this book. This is presupposed as one way of increasing the moral consciousness among individuals within a given community, and, also, as an important step towards tackling exclusion.

It might be speculative, but it would be helpful to explore the type of decisions that shall be taken by members within a given community when challenged with certain problems. For instance, if individuals are unable to pay for their electricity, the primary response by the community shall not be to disconnect them. Rather, other modes of payment might be considered, as well as other methods of providing assistance to the poor. Communities must be able to distinguish between genuine cases of electricity poverty and classical free-riders, no matter how

difficult. This is not in any way a suggestion that the question of free-riders will not constitute a problem. It certainly will, but those whose circumstances prevent them paying for electricity ought not to be categorised as free-riders. One way of understanding such problems in their proper contexts, and, furthermore, of ensuring deeper understanding of specific individual needs within community, is to create a special Committee on Human Rights and Values within co-operatives to make such difficult judgements.

In terms of the internal structure of the proposed framework, Community Forums are proposed as the main decision-making body. The success of electricity co-operatives lies with Community Forums. Much will depend upon their ability to provide a space for dialogue, shared understanding and collective decision-making over questions of access to electricity. Community Forums shall be responsible for the creation of co-operatives and such other matters like budgeting, tariff systems and pricing, which will always vary and need to be revised from time to time. One possible alternative that might be explored is that members of Community Forums shall have the option of electing a governing board of directors, which will, in turn, appoint a manager and management staff for the day-to-day running of the co-operative. The proposed internal structure is illustrated in the diagram below. However, it is important to emphasise that co-operatives are not restricted to the proposals in Figure 7.1 (overleaf): Community Forums should be free to modify the proposals as they please or to adopt other ideas about how co-operatives should be formed.

7.4.4 Community Generation and Supply Co-operatives

The proposals above are not unquestionable, and several problems can be teased out from the suggestions. One is that the proposals are framed in such a way that they seem to be too dependent on market-based electricity, as well as monopolistic state-owned electricity. This is one of the most obvious objections to what has just been proposed; one can also question the design of the co-operative, which seems a bit elitist or equally close to the organisational structure of a company. In my opinion, the much bigger issue is its close alignment with the market.

It is true that co-operatives need markets to function, but (as will be seen) sole dependence on markets for purposes of electricity can have

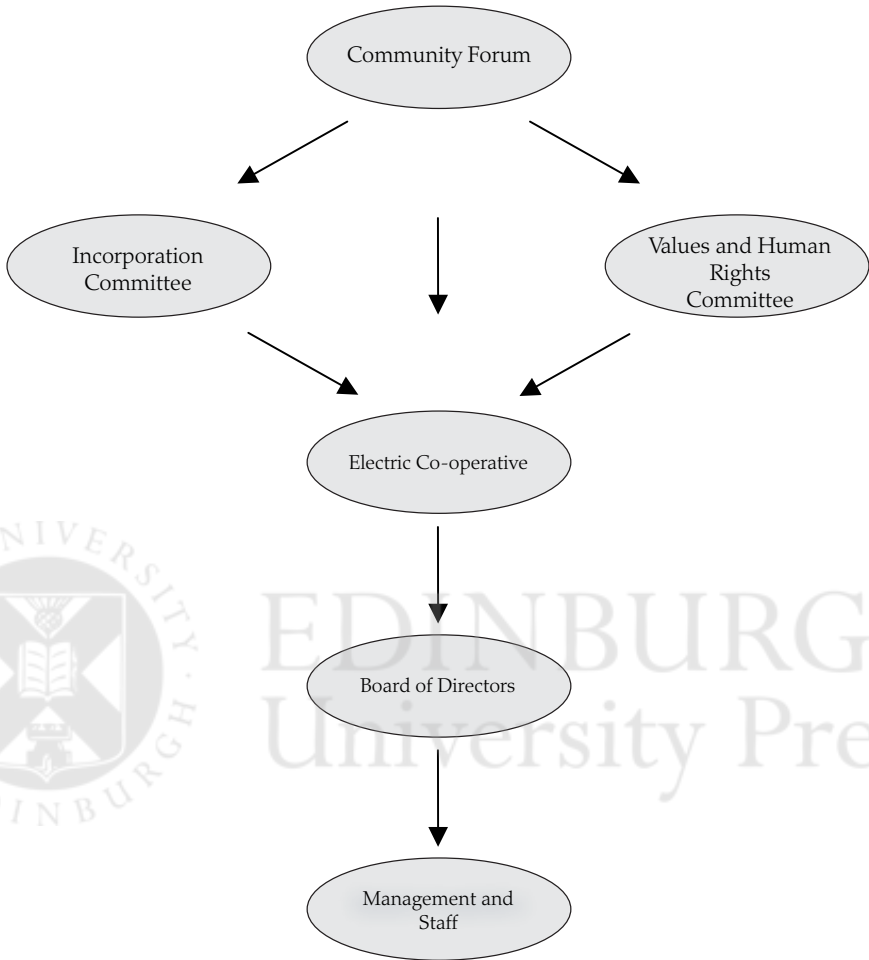


Figure 7.1 Community Electricity Co-operative Structure

disastrous consequences. As the proposals sketched out so far imply, co-operatives can only provide (cheap) electricity through privatised generation companies. Quite apart from questions of costs (which can be avoided by enforcing strict concession agreements), the most pressing problem is that the Nigerian electricity market system is just

not working. The promises of market reform have simply failed to live up to expectations. It would seem a contradiction in terms if the only option open to co-operatives is the current malfunctioning system of electricity. The point is that Nigerians should not have to wait until the market or state system works before they have an opportunity to enjoy or provide their own electricity. Supply co-operatives in this context can only work if the market system is efficiently functioning. As a consequence, the supply co-operatives might be a logical starting position, but they should not be seen as the end in themselves. The ultimate goal for communities should be to achieve autonomy, and this can only be achieved when communities are able to generate and supply their own electricity. A different kind of co-operative might provide a distinct alternative, one that combines both elements of generation and supply. The suggestion here is that a number of generation and supply co-operatives can be formed by several Community Forums to achieve this objective.

There is a much wider implication of the creation of community-owned generation and supply co-operatives. They invite a potential to move away from the national grid system, especially its cost implications, and the burdensome forms of electricity generation it presupposes. Technological developments (especially renewable technology) now make it possible to generate and supply electricity at much cheaper costs, and in ways that do not depend on huge power stations. There is very little recognition of this in Nigeria's electric reform proposals, particularly in the urban areas. That is, off-grid renewable or green technology only seems to be proposed for rural areas. Green co-operatives offer a strategy and potential for the introduction of environmentally friendly technologies.

To recap, renewable electrical sources like solar, wind, biomass, water organic matter and hydro can definitely play an important role in alleviating poverty and guaranteeing the sustainability of the environment.³¹ Electricity, in the long term, will not only be generated at cheaper cost, but also through much smaller electric plants, which are arguably more compatible with the needs and organisational capacities of communities. Most importantly, it is consistent with the drive towards environmental sustainability. Cost-effectiveness is also guaranteed when such green or off-grid generation co-operatives re-sell surplus electricity requirements to the national grid or privately owned generation companies. Green electrical products are not subject to the

price fluctuations that occur with non-renewable sources. It must be acknowledged that renewable sources also suffer from a number of technical challenges, since they are generally dependent upon certain weather, for instance, sunlight, wind or other atmospheric conditions. Regardless of this, the dynamics within the relationship between new technology, poverty and the environment have been scientifically researched and documented.³² There is a consensus among governments and international development institutions today that renewable electric technology has positive effects on both poverty and the environment. Under such dire circumstances as in Nigeria today, the potentials it offers seem to outweigh its disadvantages. It is, therefore, not too idealistic to conclude by suggesting that green or off-grid renewable electricity co-operatives offer a lot more promise for cheap, sustainable and efficient access to electricity than any other alternative in Nigeria today. It is only hoped that the arguments in the concluding parts of this chapter have drawn attention to its vast potential.

7.5 CONCLUSION

The chapter has been a modest attempt to sketch out the possibility of community participation as a way of enabling more access to electricity through co-operatives. The potentials of co-operatives have been discussed, and three co-operative models have been proposed. Discussions have been set within the context of Nigeria, and this has entailed understanding how the existing legal and institutional framework can be reformed to accommodate co-operatives. The chapter is an extension of the arguments of the previous chapter and goes beyond the actual processes of deliberation to pre-empt, without restricting, the kind of decisions that can emerge from participation. The proposals here are by no means an imposition on communities; it must be appreciated that their deliberations can lead to different outcomes. The proposals, however, should be seen as widening the range of options that communities can choose from, if the possibility to do so exists. As with Community Forums, the proposals are not exhaustive, in addition to being hypothetical. Apart from questions of funding, other important dynamics are implicated, including questions of expertise. Regardless of this, the proposals should best be understood as a vision of what can be achieved in any given context. It is hoped they can generate more debate, revisions and adaptation to different local contexts.

The intention here, as in the book in general, has not been to provide a blueprint for how it would work in practice, but rather to inspire and provide a theoretical picture that can ground this possibility in practice.

Notes

- 1 B. D. Sousa Santos (ed.), *Another Production is Possible: Beyond the Capitalist Canon* (London: Verso, 2006), p. xxvii; J. Birchall, *The International Cooperative Movement* (Manchester: Manchester University Press, 1997).
- 2 B. D. Sousa Santos (ed.), *Another Production is Possible: Beyond the Capitalist Canon*, p. xxvii.
- 3 S. Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (London: Routledge, 2007), p. 64.
- 4 Ibid.
- 5 Ibid.
- 6 Ibid.
- 7 M. Yunus, Adam Smith Lecture, University of Glasgow, 2008, available online at <http://muhammadyunus.org/content/view/178/127/lang,en/> (accessed on 25 May 2009).
- 8 S. Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering*, p. 66.
- 9 Ibid.
- 10 Ibid.
- 11 Ibid. p. 68–72.
- 12 B. D. Sousa Santos (ed.), *Another Production is Possible: Beyond the Capitalist Canon*, pp. xxvii–xxix.
- 13 J. Birchill, 'Rediscovering the Cooperative Advantage: Poverty Reduction through Self-help', *International Labour Organization*, 2003.
- 14 United Nations General Assembly, 'Co-operatives in Social Development', Resolution No. 56/224 adopted by the United Nations General Assembly at 57th Session, 2001.
- 15 Division for Social Policy and Development (DSPD), *Cooperatives in a World in Crisis*, Report of the Expert Group Meeting, United Nations Department of Economic and Social Affairs, 20–30 April 2009.
- 16 World Bank, *World Development Report: Agriculture and Development* (Washington, DC: World Bank, 2008).
- 17 C. R. Garavito, 'Solidarity Economy and the Struggle for Social Citizenship in Times of Globalization: A Study of the Cooperatives of Informal Garbage Pickers in Colombia', in B. D. Sousa Santos (ed.), *Another Production is Possible: Beyond the Capitalist Canon*, pp. 43–69.

- 18 E. F. G. Haig, 'Co-operatives in Nigeria', 49 (194), *African Affairs*, 1950, pp. 41–56.
- 19 E. Chikwendu, 'Women, Cooperatives and Economic Recovery in Nigeria', 22, *Dialectical Anthropology*, 1997, pp. 353–71.
- 20 E. F. G. Haig, 'Co-operatives in Nigeria', pp. 43–69.
- 21 Ibid.
- 22 A. Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 1995), p. 60.
- 23 Nigeria Co-operative Societies Act 1993.
- 24 Nigerian Cooperative Investment Agency, at <http://www.nicanig.org/poda/institutes.php> (accessed on 24 July 2009).
- 25 Ibid.
- 26 Ibid.
- 27 The following articles discuss the potential of electricity co-operatives: E. Ilskog et al., 'Electrification Co-operatives Bring New Light to Rural Tanzania', 33 (10), *The Electricity Journal*, 2005, pp. 1299–307. Co-operatives have a long history of success in the US electricity sector: S. Collier, 'This is not your Father's Oldsmobile: Electric Cooperatives Venture into the Future', 10 (9), *The Electricity Journal*, 1997, pp. 58–67; M. Greer, 'Can Rural Co-operative Survive in a Restricted Electricity Market? An Empirical Analysis', 25 (5), *Energy Economics*, 2003, pp. 487–508.
- 28 G. Teubner, 'Substantive and Reflexive Elements of Modern Law', 17 (2), *Law and Society Review* 2001, pp. 239–385.
- 29 Ibid. p. 251.
- 30 Z. Bankowski, *Living Lawfully: Law in Love and Love in Law* (Dordrecht: Kluwer Academic Publishers, 2001), p. 192.
- 31 World Bank, *World Development Report: Development and Climate Change* (Washington, DC: World Bank, 2010).
- 32 United Nations Development Programme, *Human Development Index* (New York: United Nations Development Programme, 2011), pp. 8–9; S. Karekezi and K. Waeni, 'Renewable Energy in Africa: Prospects and Limits', paper prepared for workshop for *African Energy Experts on Operationalising the NEPAD Energy Initiative*, 2003.

CONCLUSION: IMAGINING A POST-STATE HUMAN RIGHTS DISCOURSE

This book has presented a theory of community as a viable alternative to traditional human rights approaches to development. Whilst I do not in any way dismiss the importance of these approaches, they do, however, suffer from the limitation of insufficiently grasping the nature and consequences of state failure and market exclusion. Similarly, they crucially fail to grasp the importance community plays in the lives of the poor, also as a result of the tragic nature of state failure and market exclusion.

The success of the proposition put forward in this book has largely been dependent on justifying and establishing a reciprocal relationship between the concept of human rights and community. The book is an attempt to establish discursively a relationship between human rights and community, as mutually reinforcing and supportive concepts. Crucial to this objective has been the need to re-think human rights from their individual claims, to the mutual obligation and identification between everyone. This has meant thinking of human rights as products of community and community values.

In terms of the practical relevance of the argument of this book, it will depend on how the theory of community can be applied, tested and adapted to different country contexts, as well as how it can be used to address problems related to other economic and social rights, such as access to water, education and healthcare. In saying this, one must not fail to recognise the differences between each of these economic and social rights, which make it difficult to generalise or apply the theory of community without, at least, some adjustments. It may also be plausible to question if a community-based solution, such as the one proposed, would be suitable for education or healthcare provisioning. The answer to this is that the relevance of a community-based

approach is determined by the level to which it is deployed. There are different ways of understanding how a community can be involved. For instance, communities can be involved in the running of primary or secondary schools, or they can be involved in managing primary healthcare clinics, or they can enjoy some form of representation on boards of public hospitals. The case of water is quite similar to electricity, which is some indication that the theory can be applied to problems related to this different context.

The book is an attempt to respond to the limitations of Bretton Woods-inspired neoliberal reform approaches, which have recently attempted, even though informally, to structure the way human rights are provided in Africa, among other places. This discourse, as was seen, is facilitated by the concept of good governance which, among other things, can be understood as an attempt to create a new social, economic, legal and political order in the third world. Although good governance is a term used in connection with Africa and the third world, it emerges within the context of shifts in perceptions of governance in recent transnational academic debates. This is, of course, a reference to discussions about the rise of new forms of governance, which have emerged as substitutes to traditional state-centred forms of governance. Not only was a critique of good governance offered, it was linked up with its assumptions about human rights vis-à-vis markets. Good governance has, by implication, encouraged the privatisation of numerous traditional responsibilities of the state, especially its responsibility for the provisioning of certain human rights. Methodologically, a case study of the reform proposals for the Nigerian electricity sector has been used to instantiate the problems related to good governance, especially the negative consequences of the emphasis given to the market, and, furthermore, how the theory of community, through a creative dialectic with human rights, offers an alternative. A further aspect of this theory has been to sketch out hypothetically the potential of co-operatives in the context of electricity, to provide a model for communities to adopt and adapt to their own needs. These proposals have been made under no illusions that they will be easy to achieve. There are, of course, many hurdles that need to be transcended, including the potential difficulty of securing the autonomy of communities within the existing market framework. In practical terms, this may entail, as was argued, creating generation and supply co-operatives to allow communities to achieve this objective.

One important point that must be stressed here is that the proposals in the book have not only entailed appreciating how community can strengthen human rights, but also how the latter can strengthen the former. This has meant reformulating human rights in ways that they may serve the goals of community. This is simply because the book has also been about appreciating the moral value of human rights, even with their numerous imperfections. There are many reasons why human rights remain (and should remain) relevant in different social and political contexts today, especially in community. Without human rights, for instance, individuals would be too fragile to withstand being overwhelmed by certain demands of community. Aside from this, one must not forget also that human suffering is essentially, but not exclusively, an individual affair. As such, human rights may be one way of protecting and alleviating those that suffer. This is, however, on the condition that one of their more fundamental inadequacies is transcended, that is, their inability to enable a sufficient recognition and response to human suffering. A broader aim of this book has been to equip human rights with the proper tools to overcome this shortcoming. Simone Weil's famous critique of rights has been most helpful in this context. It was used to draw attention to the epistemic weakness of human rights, and, furthermore, to understand the inevitability of alleviating human suffering through love. In this book, the concept of love has not been proposed antagonistically, but rather as something that is mutually dependent upon a relationship with human rights. These arguments, as such, have importantly brought to light the aspirations for an ethical framework of human rights, one in which obligations to assist the poor are based on love and compassion. This is the sort of philosophy that should underpin human rights. It is one way of encouraging reciprocal practices among individuals in community.

Generally speaking, the defence of human rights in this book has in part been on account of their continuing dominance in various contemporary economic, political and social contexts, such that they unfortunately sit well with numerous incompatible interests. This is another way of understanding the critique of market friendly human rights discourse carried out in Chapter 4. It can be argued, nonetheless, that for all attempts to capture, co-opt, misuse or abuse them, human rights always seem to leave a remainder that paradoxically makes them adaptable to progressive struggles.¹ Whilst they may be captured by

the dominant neoliberal market ideology, for instance, they can be re-appropriated by the poor through community and social markets. The point is that human rights can never be closed or definitely reduced to a single meaning. They are always open to different interpretations and serve distinct purposes. In many senses, they are like love; it, too, cannot be definitely understood given its metaphysical nature. It is difficult to explain what love really is, even though one accepts that it is a good thing. Human rights are similar, and this might explain why there is little agreement on what they are or their proper function. It is the remainder that they leave that make them so unique, and, very importantly, why they have a moral appeal.

One implication of the above is that this book itself instantiates this dimension of human rights, that is, their potential for emancipation within hegemonic discourses. Looking back, the intentions here have been quite modest: they have not been an attempt to oust dominant neoliberal human rights discourse, but rather to understand the paradox that lies within it, one that always leaves a space to be occupied. There are obviously dangers of working within dominant discourses, given that it can simply be interpreted as a form of acquiescence. The strength of the approach here, however, is that it does not operate under some false sense of idealism that the only way of achieving transformation is merely by defeating hegemonic discourses. Rather, it accepts the reality of such discourses and seeks to disturb them from within. It is an approach that is certainly consistent with some of the arguments within this book, especially the approach to co-operatives or social markets.

There are other ways of illustrating this type of position, one of which is Hardt and Negri's work on the *multitude*. There have certainly been others who have argued on similar lines, but Hardt and Negri's work is used here to illustrate this point. As described by them, 'the multitude is the living alternative that grows within Empire',² the latter of which is seen as a new form of global sovereignty comprising certain dominant nation states, supranational institutions and major capitalist corporations. What this simply means is that they accept that Empire has spread its network of control across the globe through its vision of globalisation. It has, at the same time, unintentionally created new opportunities for a different kind of globalisation, one based on co-operation and collaboration:

Globalisation, however, is also the creation of new circuits of co-operation and collaboration that stretch across nations and continents and allow an unlimited number of encounters. This second face of globalisation is not a matter of everyone in the world becoming the same; rather it provides the possibility that enables us to communicate and act together. The multitude too might thus be conceived as a network; an open and expansive network which all differences can be expressed freely and equally, a network that provides the means of encounter so that we can work and live in common.³

The argument above is an important analogy of what has been attempted throughout this book. While opposed to dominant neoliberal human rights discourse, the book has not been opposed to working inside it, especially exploring opportunities for transformation and collaboration within it. There are always potential dangers of co-optation with such an approach or that communities might inadvertently contribute to neoliberal human rights discourse. There are numerous examples of strategies that have emerged from the grassroots, which have been embraced by international institutions and transformed into something else. What this perhaps means is that communities need a mechanism that secures their autonomy,⁴ but also, at the same time, opens them up for collaboration with other communities or institutions. This is another way of understanding the value of Teubner's work on reflexive law and system theory, discussed in Chapters 3 and 7. It helpfully demonstrates how communities can remain radically closed, but simultaneously communicate with other communities, through the idea of structural coupling. It is the mechanism that works in the background to enable communication among autonomous systems. A downside of Teubner's work generally is that it is often too abstract to be useful, or translated into concrete terms. For present purposes, however, systems theory does metaphorically analogue how communities can secure their autonomy from neoliberal human rights discourse, and simultaneously assert their claims of authorship of human rights.

One final, but important, point that needs to be understood within this context is the question of the commitment to observe human rights principles in non-state settings, such as the one proposed. In other words, what is, or should be, the source of human rights obligations

between individuals in community? Another way of putting this question, but from a legalistic standpoint, is what is to become of a country's international obligations under international human rights law in non-state settings? To what extent do actions of those below the level of the state, who now exert power, embrace the responsibility from the state's human rights obligations?

Legally speaking, there seems to be no reason to suggest that members of community are absolved from such human rights commitments; such obligations would operate irrespective of the change of circumstances. Even so, there are also other ways to achieve this, for instance, by aligning human rights horizontally through some sort of device, such as in constitutional law.⁵ Whilst it is true that the horizontal application of fundamental rights offers a unique opportunity, the argument here, as with most of this book, is that such legal devices, or law, cannot make sense outside an operating moral framework that establishes what binds individuals together. As such, this is something that must be done before proposing such obligations in legal terms. One must appreciate how individuals can be committed to respect the rights of others prior to how they are legally bound, or the duties they owe community are proposed.⁶ A proper understanding of this lies in grasping human rights as claims for the mutual respect and recognition of each human being. Human rights create relationships between each individual, which entails a kind of social practice that also involves rules and institutions. There is a principle of solidarity entailed in human rights, and this is a further effect of linking human rights with the idea of community. It is achieved by transforming members of society into communities of empathy and concern. There is hardly any difficulty in appreciating that a group of individuals can share a certain degree of solidarity; what is more difficult to understand is one's obligations, especially those we do not feel bound to. After all, mutual recognition relationship leaves out a range of individuals from the solidarity implied. It excludes the vulnerable, disabled, children, nature, future generations or others not capable of bearing duties. It is here community becomes important, if it is understood from the standpoint of African moral philosophy, where relationships are formed based on expressions of love and empathy. Community, then, is about recognising and assisting vulnerable and less fortunate individuals among us.

Discussions about the significance of human suffering further illustrate how horizontal obligations in community can be created. This

point, of course, takes us back to Chapter 2. It refers to the arguments about the significance of human suffering as the core reason behind human rights. This is an important way of generating obligations in community, quite apart from strengthening human rights itself. Without the ability to encourage the comportment towards human suffering, human rights seem too weak or simply inadequate to draw the kind of obligations required in community or society as a whole.

In this case, it would seem difficult to rebuild human rights in ways that have been suggested without reference to Simone Weil's work, especially her concept of love as attention. Love draws not only our attention to human suffering, but also the obligations necessary to ameliorate it. Love, the kind that embraces strangers, not only makes the invisible visible, but can potentially help recreate human rights, including the obligations to observe them. This is quite evident from Weil's discussions on human obligations.⁷ It is symptomatic of the kind of obligations that individuals in community should strive to achieve. Her discussions on obligations are important for another reason: they reveal that she was not opposed to human rights, as is generally believed. Apart from their inability to come to grips with suffering, her difficulty was the primacy given to human rights over everything else. For her, human obligations should always come first, but this is not to say that human rights have no value. Obligations are important because they express a profound longing in the human heart for good, a longing that can never be placated.⁸ Obligations are based on mutual respect, and this is what binds individuals together. For Weil, even though obligations have their divine origins, everyone possesses the power to turn their attention and love to the divine, who would in turn, channel our obligations towards each other. The point is that without such an understanding of obligations, human rights would themselves be ineffective. There are always conditions attached to human rights, but human obligations are unconditional. Such obligations analogue the kind of horizontal theory of rights that has been anticipated in this book. It is the type of obligations that ought to be shared, without condition, by all individuals, whether in community or outside it. It certainly creates new opportunities to promote non-instrumental relationships currently found lacking in human rights discourse.

Notes

- 1 E. Christodoulidis, 'Strategies of Rapture', 20, *Law and Critique*, 2009, pp. 3–26.
- 2 M. Hardt and A. Negri, *Multitude: War and Democracy in the Age of Empire* (London: Hamish Hamilton, 2004), p. xiii; M. Hardt and A. Negri, *Empire* (Cambridge, MA: Harvard University Press, 2001).
- 3 M. Hardt and A. Negri, *Multitude: War and Democracy in the Age of Empire*, p. xiii.
- 4 Robert Cover's seminal thesis on 'interpretive or paidieic communities' – communities that ascribe their meanings onto law – is relevant here. The important point is that such communities use the rights guaranteed by law, such as freedom of association, to secure their associational autonomy. R. Cover, 'Nomos and Narrative', 97 (4), *Harvard Law Review*. 1983, pp. 22–33.
- 5 Here I am referring to the horizontal effect of fundamental rights. J. Van der Walt, 'Blixen's Difference: Horizontal Application of Fundamental Rights and the Resistance to Neocolonialism', 1, *Law, Social Justice and Global Development Journal*, 2003. Some other attempts to align human rights horizontally include the draft declaration on Human Responsibilities, which is similar to the African Charter on Human and Peoples Rights, 1981, or the American Declaration on the Rights and Duties of Man, 1948. J. Knox, 'Horizontal Human Rights Law', 102 (1), *The Journal of International Law*, 2008, pp. 1–47.
- 6 I am aware that natural rights theories are justified on the basis that rights exist prior to the emergence of sovereign authority. In spite of being one way of understanding individual obligations, they are a bit too individualistic for present purposes.
- 7 S. Miles (ed.), *Simone Weil: An Anthology* (London: Virago Press, 1986), pp. 105–12 and 221–37.
- 8 *Ibid.* p. 222.

BIBLIOGRAPHY

- Adaralegbe, A. (2003), 'Are the Electricity Laws in Nigeria Sufficient to Promote and Preserve Competition', 9, *International Energy Law and Tax Review*, p. 254.
- Adelman, S. and A. Paliwala (eds) (1993), *Law and Crisis in the Third World* (Lochcarron: Hans Zell, Publishers).
- Adesoji, A. (2009), 'Indigeneship and Citizenship in Nigeria: Myth and Reality', 2 (9), *The Journal of Pan African Studies*, pp. 151–64.
- Agamben, G. (1993), *The Coming Community*, trans. M. Hardt (Minneapolis: University of Minnesota Press).
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments – Results of the Uruguay Round vol. 31, 33 I.L.M. 81.
- Amobi, M. (2007), 'Deregulating the Electricity Industry in Nigeria: Lessons from the British Reform', 41 (4), *Socio-Economic Planning Services*, pp. 291–304.
- Anghie, A. (2000), 'Civilization and Commerce: The Concept of Governance in Historical Perspective', 45, *Villanova Law Review*, p. 887.
- (2003), 'Time Present and Time Past: Globalization, International Financial Institutions, and the Third World', 32, *New York University Journal of International Law and Politics*, p. 243.
- (2004), *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press).
- An'Na'im, A. (1992), *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press).
- Ariyo, A. and A. Jerome (2004), 'Utility Privatisation and the Poor: Nigeria in Focus', *Heinrich Boll Foundation*.
- Arowolo, S. (2005), 'Nigeria Power Sector Reform, Why Distribution Requires A Clear Strategy', 7, *International Energy Law and Tax Review*, p. 163.
- Ayoola, G. et al. (2001), 'Nigeria: Voice of the Poor', Country Synthesis Report

- for World Development Report: Poverty and Development (Washington, DC: World Bank).
- Bachelard, S. (2002), 'Rights as Industry', 11 (1), *Res Publica*, pp. 1–5.
- Bacon, R. W. and J. Beasant-Jones (2001), '*Global Electric Power Reform: Privatization and Liberalization of the Electric Power Industry in Developing Countries*' (Washington, DC: World Bank).
- Bankowski, Z. (2001), 'Law, Love and Legality', 14, *International Journal for the Semiotics of Law*, 2001, pp. 199–21.
- (2001), *Living Lawfully: Law in Love and Love in Law* (Dordrecht: Kluwer Academic Publishers).
- (2002), 'Images of Images of Law', 11 (3), *Social and Legal Studies*, p. 448.
- Z. Bankowski and M. Del Mar (eds) (2012), *The Moral Imagination and the Legal Life; Beyond Text in Legal Education* (Farnham: Ashgate).
- Battle, M. (2009), *Ubuntu: I in You and You in Me* (New York: Seabury Books).
- Baxi, U. (1985), 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India', 4 (6), *Third World Legal Studies*, pp. 107–32.
- (2000), 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights', 5 (1), *Human Rights Law Review*, pp. 1–26.
- (2002), *The Future of Human Rights* (New Delhi: Oxford University Press).
- (2009), *Human Rights in a Post-Human World: Critical Essays* (New Delhi: Oxford University Press), pp. 124–55.
- Beder, S. (2003), *Power Play: The Fight for Control of the World's Electricity* (Melbourne: Scribe Publications).
- Bell, R. (1998), *Simone Weil: The Way of Justice as Compassion* (Lanham: Rowman & Littlefield).
- Benhabib, S. (ed.) (1996), *Democracy and Difference* (Princeton: Princeton University Press, 1996).
- (2004), *The Rights of Others: Aliens, Residents and Citizens* (Cambridge: Cambridge University Press).
- Bilchitz, D. (2007), *Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights* (Oxford: Oxford University Press).
- Bilder, R. and Z. Tamanaha (1995), 'The Lessons of Law and Development Studies', 89, *American Journal of International Law*, pp. 470–71.
- Binswanger-Mkhize, H. P., J. P. de Regt and S. Spector (eds) (2009), *Scaling up Local and Community Driven Development: A Real World Guide to its Theory and Practice* (Washington, DC: World Bank).
- Birchall, J. (1997), *The International Cooperative Movement* (Manchester: Manchester University Press).
- (2003), 'Rediscovering the Cooperative Advantage: Poverty Reduction through Self-help', *International Labour Organization*.
- Blankenberg, N. (1999), 'In Search of a Real Freedom: *Ubuntu* and the Media', 13 (2), *Critical Arts*, pp. 42–65.

- Bradbrook, A. and J. Gardam (2006), 'Placing Energy Services within a Human Rights Framework', 28 (2), *Human Rights Quarterly*, pp. 289–415.
- Bretton Woods Project (2008), 'Facilitating Whose Power? IFI Policy Influence on Nigeria's Energy Sector', *Bretton Woods Project*.
- British Broadcasting Corporation (2005), 'Why are We Plagued by Power Cuts?', <http://news.bbc.co.uk/1/hi/world/africa/4338306.stm> (accessed on 31 July 2012).
- British Broadcasting Corporation (2008), 'Nigeria Power Shortage Persists', <http://news.bbc.co.uk/1/hi/world/7426593.stm> (accessed on 31 July 2012).
- Buchanan, J. (1986), *Liberty, Market and State* (Brighton: Wheatsheaf, 1986).
- Cabaud, J. (1964), *Simone Weil: A Fellowship of Love* (London: Harvill Press).
- Calhoun, B. (ed.) (1994), *Habermas and the Public Sphere* (Cambridge, MA: MIT Press).
- Chambers, R. (2002), *Participatory Workshops: A Source Book of 21 Ideas and Activities* (London: Earthscan).
- Chang, H. and A. Singh (1997), 'Can Large Firms be Run Efficiently without being Bureaucratic?', 9 (6), *Journal of International Development*, pp. 865–75.
- Chibundu, M. (1997), 'Law in Development: On Tapping, Gourding and Serving Palm-Wine', 29 (1), *Case Western Reserve Journal of International Law*, p. 177.
- Chikwendu, E. (1997), 'Women, Cooperatives and Economic Recovery in Nigeria', 22, *Dialectical Anthropology*, pp. 353–71.
- Christodoulidis, E. (2000), 'Truth and Reconciliation as Risks', 9 (2), *Social and Legal Studies*, pp. 179–204.
- (2009), 'Strategies of Rapture', 20, *Law and Critique*, pp. 3–26.
- Chua, A. (1998–9), 'Markets, Democracy, and Ethnicity: Towards a New Paradigm for Law and Development', 1, *Yale Law Journal*, p. 108.
- CIVICUS, World Alliance for Citizen Participation, <http://www.civicus.org/>
- Crouch, A. and D. Marquand (eds) (1993), *Ethics and Markets: Co-operation within Capitalist Economies* (London: Blackwell).
- Coetzee, P. and A. Roux (2003), *The African Philosophy Reader* (London: Routledge).
- Collier, S. (1997), 'This is not Your Father's Oldsmobile: Electric Cooperatives Venture into the Future', 10 (9), *The Electricity Journal*, pp. 58–67.
- Commission on Global Governance (1995), *Our Global Neighbourhood* (Oxford: Oxford University Press).
- Cook, B. and U. Kothari (2001), *Participation: The New Tyranny* (New York: Zed Books).
- Cornwall A. and C. Nyamu-Musembi (2004), 'Putting the Rights-Based Approach to Development into Perspective', 25,(8), *Third World Quarterly*, pp. 1415–37.

- Cornell, D. and N. Muvangua (2011), *Ubuntu and the Law: African ideals and Post-Apartheid Jurisprudence* (New York: Fordham University Press).
- Cover, R. (1983), 'Nomos and Narrative', 97,(4), *Harvard Law Review*, pp. 22–33.
- Da Silva, N. and L. Rosa (2008), 'Irregular Access to the Power Distribution Network in Brazil's Residential Sector: A Delinquent Payment Problem, or the Quest for a Right beyond the Law?', 21 (7), *The Electricity Journal*, pp. 30–90.
- Declaration on the Right to Development (DRD) (1987), adopted 4 December 1986, G.A. Res. 41/128. U.N. GAOR, 41st Sess., at 3, Annex, U.N. Doc. A/Res/41/128 Annex.
- De Feyter, K. and F. Gomez (eds) (2005), *Privatisation and Human Rights in the Age of Globalisation* (Antwerp/ Oxford: Intersentia).
- Del Mar, M. and O. Onazi (2008), 'The Moral Quality of Work: Resisting Complacency', 4 (4), *International Journal of Law in Context*.
- Dews, P. (ed.) (1999), *Habermas: A Critical Reader* (London: Blackwell).
- Division for Social Policy and Development (DSPD) (2009), *Cooperatives in a World in Crisis*, Report of the Expert Group Meeting, United Nations Department of Economic and Social Affairs, 20–30 April.
- Donnelly, J. (1985) 'In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development', 15 (473), *California Western International Law Journal*, 1985, p. 475.
- Dryzek, J. (2002), *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press).
- (2005), 'Deliberative Democracy in Divided Societies: Alternative to Agonism and Analgesia', 33 (2), *Political Theory*, pp. 218–42.
- Douzinas, C. (2000), *The End of Human Rights* (Oxford: Hart Publishing).
- Dussell, D. (1988), *Ethics and Community*, trans. R. Barr (New York: Orbis Books).
- Electric Power Sector Reform Act 2005 (77) 92, *The Federal Republic of Nigeria Official Gazette* (Lagos: Nigeria), available at <http://www.nigeriaelectricityprivatisation.com/wp-content/uploads/downloads/2011/02/Electric-Power-Sector-Reform-Act-2005.pdf> (accessed on 14 November 2012).
- Energy Commission of Nigeria (2003), *National Energy Policy* (Abuja: Energy Commission of Nigeria).
- Escobar, A. (1995), *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press).
- Etzioni, A. (ed.) (1961), *Sociological Reader on Complex Organizations* (New York: Holt, Rinehart & Winston).
- (1995), 'Old Chestnuts and New Spurs', in A. Etzioni (ed.), *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities* (Charlottesville: University of Virginia Press).

- European Network for Debt and Development (2005), 'Nigeria's Debt Deal Close Up', *European Network for Debt and Development*, <http://www.eurodad.org/debt/article.aspx?id=0&item=370> (accessed on 10 February 2009).
- Eze, E. (ed.) (1998), *African Philosophy: An Anthology* (London: Blackwell).
- Ferraz, O. (2008), 'Poverty and Human Rights', 28 (2), *Oxford Journal of Legal Studies*, pp. 585–603.
- Fabre, B. (1998), 'Constitutionalizing Social Rights', 6 (3), *Journal of Political Philosophy*, pp. 263–4.
- Ferdinand, T. (2001), *Community and Civil Society* (Cambridge: Cambridge University Press).
- Frazer, E. (1999), *The Problems of Communitarian Politics: Unity and Conflict* (Oxford: Oxford University Press).
- Gaita, R. (2000), *A Common Humanity: Thinking about Love and Truth and Justice* (London: Routledge).
- Gewirth, A. (1996), *The Community of Rights* (Chicago: University of Chicago Press).
- Ghai, Y. (2000), 'Universalism and Relativism: Human Rights as a Framework for Negotiating Interethnic Claims', 21(4), *Cardozo Law Review*, p. 1095.
- Ghai, Y. and J. Cottrell (eds) (2004), *Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights* (London: Interights).
- Giddens, A. (1990), *Sociology* (Oxford: Oxford University Press).
- Government and Consumer Affairs Division (2006), *Costumer Complaints Handling Procedure* (Abuja: Nigerian Electricity Regulatory Commission).
- Gradstein, M. (1993), 'Rent Seeking and the Provisioning of Public Goods', 103 (420), *The Economic Journal*, pp. 1236–43.
- Grear, A. (2007), 'Challenging Corporate Humanity: Legal Disembodiment, Embodiment and Human Rights', 7 (3), *Human Rights Law Review*, pp. 511–43.
- Greer, M. (2003), 'Can Rural Co-operative Survive in a Restricted Electricity Market? An Empirical Analysis', 25 (5), *Energy Economics*, pp. 487–508.
- Gutierrez, G. (1974), *A Theology of Liberation: History, Politics and Salvation* (London: SCM Press).
- Gutmann, A. and D. Thompson (1996), *Democracy and Disagreement* (Cambridge, MA: Harvard University Press).
- Gwartney, J. and R. Wagner (eds) (1998), *Public Choice and Constitutional Economics* (Greenwich: JAI Press).
- Gyekye, K. (ed.) (1992), *Person and Community: Ghanaian Philosophical Studies* (New York: New York Council for Research in Values and Philosophy).
- Habermas, J. (1984), *Theory of Communicative Action* (Cambridge, MA: Beacon Press).

- (1989), *Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. T. Burger and L. Fredrick (Cambridge, MA: MIT Press).
- (1995), *Between Facts and Norms* (Cambridge, MA: MIT Press).
- Haig, E. F. G. (1950), 'Co-operatives in Nigeria', 49 (194), *African Affairs*, pp. 41–56.
- Hall, D. (2006), 'Water and Electricity in Nigeria', *Public Services International Research Unit*.
- Hallen, B. (2002), *A Short History of African Philosophy* (Bloomington: Indiana University Press).
- Hamilton, C. (2005), 'Simone Weil's 'Human Personality: Between the Personal and Impersonal'', 98 (2), *Harvard Theological Review*, pp. 187–207.
- Hardt, M. and A. Negri (2001), *Empire* (Cambridge, MA: Harvard University Press).
- (2004), *Multitude: War and Democracy in the Age of Empire* (London: Hamish Hamilton).
- (2009), *Commonwealth* (Cambridge, MA: Harvard University Press).
- Hecht, C. and M. Simone (1994), *Invisible Governance: The Art of African Micropolitics* (New York: Autonomia).
- Hickey, S. and G. Mohan (2004), *Participation: From Tyranny to Transformation?* (New York: Zed Books).
- Hirschman, A. (1970), *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge, MA: Harvard University Press).
- Hirst, P. (1994), *Associative Democracy: New Forms of Economic and Social Governance* (Cambridge: Polity Press).
- Honneth, A. (1995), *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, MA: MIT Press).
- (2001), 'Recognition or Redistribution? Changing Perspectives on the Moral Order of Society', 18 (2–3), *Theory, Culture and Society*, pp. 43–55.
- Horta, K. (2002), 'Rhetoric and Reality: Human Rights and the World Bank', 15, *Harvard Human Rights Journal*, pp. 228–9.
- Howard, R. (1995), *Human Rights and the Search for Community* (Boulder: Westview Press).
- Ibhawoh, B. and Dibua, J. (2003), 'Deconstructing Ujamaa: The Legacy of Julius Nyerere in the Quest for Social and Economic Development in Africa', 8(1), *African Journal of Political Science*, pp. 62–70.
- Ife, J. (2009), *Human Rights from Below: Achieving Human Rights through Community Development* (Cambridge: Cambridge University Press).
- Ikeme, J. and J. Ebohon (2005), 'Nigeria Electric Power Sector Reform: What should Form the Key Objectives?', 33(9), *Energy Policy*, pp. 1213–21.
- Iliskog, E. et al. (2005), 'Electrification Co-operatives Bring New Light to Rural Tanzania', 33 (10), *The Electricity Journal*, pp. 1299–307.

- Javons, S. (1970), *The Theory of Political Economy* (London: Penguin Books).
- Kapoor, I. (2002), 'Deliberative Democracy or Agonistic Pluralism? The Relevance of the Habermas-Mouffe Debate for Third World Politics', 27 (4), *Alternatives: Global, Local, Political*, pp. 459–87.
- Karekezi, S. and K. Waeni (2003), 'Renewable Energy in Africa: Prospects and Limits', paper prepared for workshop for *African Energy Experts on Operationalising the NEPAD Energy Initiative*.
- Kaunda, K. (1966), *A Humanist in Africa: Letters to Colin Morris from Kenneth Kaunda President of Zambia* (London: Longmans, Green & Co.).
- Kettle, D. (2000), 'The Transition of Governance: Globalization, Devolution, and the Role of Government', 60, *Public Administration Review*, pp. 488–97.
- Kierkegaard, S. (1995), *Works of Love*, trans H. Hong and E. Hong (Princeton: Princeton University Press).
- Knox, J. (2008), 'Horizontal Human Rights Law', 102 (1), *The Journal of International Law*, pp. 1–47.
- Koskeniemi, M. (2007), 'The Fate of Public International Law: Between Technique and Politics', 70 (1), *The Modern Law Review*, 2007, pp. 1–30.
- Krause, S. (2008), *Civil Passions: Moral Sentiment and Democratic Deliberation* (Princeton and Oxford: Princeton University Press).
- Le Roux, J. (2000), 'The Concept of "Ubuntu": Africa's Most Important Contribution to Multicultural Education?', 18 (2), *Multicultural Teaching*, pp. 43–6.
- Lenin, V. (1920), *Collected Works*, vol. 31, trans. J. Katzer (London: Lawrence & Wishart).
- Levinas, E. (1998), 'Philosophy, Justice and Love', in *Entre Nous: On Thinking-of-the-Other*, trans. M. Smith and B. Harshav (London: Athlone Press).
- Little, A. (2002), *The Politics of Community: Theory and Practice* (Edinburgh: Edinburgh University Press).
- Lobel, O. (2005), 'The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought', *University of San Diego Legal Studies Research Paper Series No. 07–27*.
- Luhmann, N. (2004), *Law as a Social System* (Oxford: Oxford University Press).
- MacIntyre, A. (1984), *After Virtue* (Notre Dame: University of Notre Dame Press).
- Malpas, J. (1999), *Place and Experience: A Philosophical Topology* (Cambridge, MA: Cambridge University Press).
- Malpas, J. and N. Lickiss (eds) (2012), *Perspectives on Human Suffering* (Dordrecht: Springer).
- Mandami, M. (2005), 'Political Identity, Citizenship and Ethnicity in Post-Colonial Africa', paper presented at the *Arusha Conference, New Frontiers of Social Policy*.

- Marx, K. (2010), *Capital: A Critique of Political Economy* (New York: Pacific Publishing Studio).
- Masuri, G. and V. Rao (2004), *Community-Based and Driven-Development: A Critical Review* (Washington, DC: World Bank).
- Mbembe, A. and S. Nuttall (2008), *Johannesburg: The Elusive Metropolis* (Durham: Duke University Press).
- Mercurio, N. and S. Medema (1997), *Economics and the Law: From Posner to Post-Modernism* (Princeton: Princeton University Press).
- Metz, T. (2007), 'Toward an African Moral Theory', 15, *The Journal of Political Philosophy*, pp. 321–41.
- (2012), 'Conceptions of Human Dignity: Vitality and Community as the Ground of Human Rights', 13, *Human Rights Review*, pp. 19–37.
- (2013), 'African Values, Human Rights and Group Rights: A Philosophical Foundation for the Banjul Charter', in O. Onazi (ed.), *African Legal Theory and Contemporary Problems. Critical Essays* (Dordrecht: Springer).
- Miles, S. (ed.) (1986), *Simone Weil: An Anthology* (London: Virago Press).
- Miller, D. (1991), *Markets, State and Community: Theoretical Foundations of Market Socialism* (Oxford: Clarendon Press).
- Mommsen, W. (1974), *The Age of the Bureaucracy: Perspectives on the Political Sociology of Max Weber* (London: Blackwell).
- Muller, J. (2002), *The Mind of the Market: Capitalism in Modern European Thought* (New York: Alfred A. Knopf).
- Murove, M. (ed.) (2009), *African Ethics: An Anthology of Comparative and Applied Ethics* (Pietermaritzburg: University of Kwazulu-Natal Press).
- Nandorfy, M. and D. Fischlin (2011), *Community of Rights – Rights of Community* (Montreal: Black Rose Books).
- National Planning Commission (2004), *Meeting Everyone's Needs: The National Economic Empowerment Development Strategy* (Abuja: National Planning Commission).
- Nigeria Co-operative Societies Act 1993.
- Nigerian Cooperative Investment Agency, <http://www.nicanig.org/poda/institutes.php> (accessed on 24 July 2009).
- Nigerian Electricity Regulatory Commission (2008), *Multi-Year Tariff Order (MYTO) for the Determination of Charges and Tariffs for Electricity Generation, Transmission and Retail Tariffs* (Abuja: Nigerian Electricity Regulatory Commission).
- Norzick, R. (2001), *Anarchy, State and Utopia* (London: Blackwell).
- Nussbaum, M. (1997), 'Kant and Stoic Cosmopolitanism', 5 (1), *Journal of Political Philosophy*, pp. 1–25.
- Nyerere, J. (1968), *Ujamaa: Essays on Socialism* (Oxford: Oxford University Press).

- (1998), Good Governance for Africa, *Marxism in Africa*, <http://www.marxists.org/subject/africa/nyerere/1998/10/13.htm>
- Offe, C. (2009), 'Governance: An "Empty Signifier?"', 16 (4), *Constellations*, pp. 550–62.
- Ogilvy, I. (ed.) (1992), *Revisoning Philosophy* (New York: State University of New York Press).
- Okafor, O. (2007), *The African Human Rights System, Activist Forces and International Institutions* (Cambridge: Cambridge University Press).
- Oliver, P., D. Scott and V. Tadros (eds) (2000), *Faith in Law: Essays in Legal Theory* (Oxford: Hart Publishing).
- Onazi, O. (2009), 'Good Governance and the Marketization of Human Rights: A Critique of the Neoliberal Normative Approach', 2, *Law, Social Justice and Global Development Journal*.
- (2009), 'Towards a Subaltern of Theory of Human Rights', 9 (2), *Global Jurist (Advances)*.
- (2012), 'Legal Empowerment of the Poor: Does Political Participation Matter?', 14, *The Journal Jurisprudence*, pp. 201–44.
- O'Neill, J. (1998), *The Market: Ethics, Knowledge and Politics* (London: Routledge).
- O'Sullivan, N. (ed.) (2000), *Political Theory in Transition* (London: Routledge).
- Paliwala, A. (2000), 'Privatisation in Developing Countries: The Governance Issue', 1, *Law, Social Justice and Global Development Journal*.
- Parker, D., C. Kirkpatrick and C. Figueira-Theodorakopoulou, 'Infrastructure Regulation and Poverty Reduction in Developing Countries: A Review of Evidence and A Research Agenda', Centre on Regulation and Competition, Institute for Development Policy and Management, University of Manchester, and Centre for Cranfield Centre for Competition and Regulation Research, School of Management, Cranfield University, UK, 2005.
- Pashukanis, E. (1987), 'Law and Marxism: A General Theory of Law', trans. C. Author (London: Pluto Press, 1987).
- Penal Reform International (2000), *Access to Justice in Sub-Saharan Africa: the role of Traditional and Informal Justice Systems* (London: Penal Reform International Report).
- Petersmann, E. (2003), 'Theories of Justice, Human Rights and the Constitution of International Markets', 17, *EUI LAW*.
- Pierre, J. (ed.) (2000), *Debating Governance* (Oxford: Oxford University Press).
- Plant, R. (2003), 'Social and Economic Rights Revisited', 14 (1), *King's Law Journal*, pp. 1–20.
- Pogge, T. (2002), *World Poverty and Human Rights: Cosmopolitanism Responsibilities and Reform* (Cambridge: Polity Press).
- Polanyi, K. (1957), *Great Transformations* (Boston: Beacon Press).

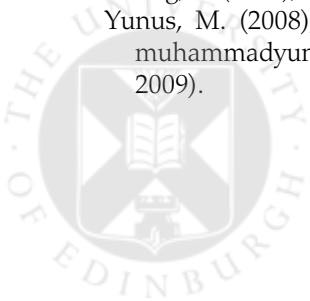
- Port Elizabeth Municipality v Various Occupiers 2004 (12), BCLR, 1268 (CC).
- Portes, A., M. Castells and L. Benton (eds) (2003), *The Informal Economy* (Baltimore: Johns Hopkins University Press).
- Putman, R. (1993), *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press).
- (1995), 'Bowling Alone: America's Declining Social Capital', 6, *Journal of Democracy*, pp. 65–78.
- (ed.) (2002), *Democracy in Flux: The Evolution of Social Capital in Contemporary Society* (Oxford: Oxford University Press).
- Rajagopal, B. (2003), *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, MA: Cambridge University Press), pp. 260–91.
- (2007), 'Pro-Human Rights but Anti-Poor? A Critical Evaluation of the Indian Supreme Court from a Social Movement Perspective', 8 (3), *Human Rights Review*, pp. 157–86.
- Rawls, J. (1971), *A Theory of Justice* (Oxford: Oxford University Press).
- Rees, R. (ed.) (1962), *Weil: Selected Essays 1934–1943* (Oxford: Oxford University Press).
- Rhodes, R. (1997), *Understanding Governance* (Milton Keynes: Open University Press).
- Rittich, K. (2004), 'The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social', 26, *Michigan Journal of International Law*, pp. 199–243.
- Sabel, C. and W. Simon (2004), 'Destabilization Rights: How Public Law Litigation Succeeds', 117 (4), *Harvard Law Review*, p. 1062.
- Sandel, M. (1982), *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press).
- (1984), 'The Procedural Republic and the Unencumbered Self', 12, *Political Theory*, pp. 92–3.
- (1996), *Democracy's Discontents: America in Search of a Public Philosophy* (Cambridge, MA: Harvard University Press).
- (2005), *Public Philosophy: Essays on Morality and Politics* (Cambridge, MA: Harvard University Press).
- Schumpeter, J. (1942), *Capitalism, Socialism and Democracy* (New York: Harper and Brothers).
- Selznick, P. (1987), 'The Idea of Communitarian Morality', 75 (1), *California Law Review*, p. 445.
- (1994), *The Moral Commonwealth: Social Theory and the Promise of Community* (Berkeley: University of California Press).
- Sen, A. (1999), *Development as Freedom* (New York: Alfred A. Knopf).
- (2004), 'Elements of a Theory of Human Rights', 32(4), *Philosophy and Public Affairs*, pp. 315–56.

- (2006), *Identity and Violence: The Illusion of Destiny* (London: Norton & Co.).
- (2009), *The Idea of Justice* (London: Penguin Books).
- Sengupta, A. (2002), 'On the Theory and Practice of the Right to Development', 24, *Human Rights Quarterly*, pp. 837–9.
- Shivji, I. (1989), *The Concept of Human Rights in Africa* (London: Codesria Book Series).
- Simone, A. (2001), 'Straddling the Divides: Remaking Associational Life in the Informal African City', 25 (1), *International Journal of Urban and Regional Research*, pp. 102–17.
- (2004), *For the City Yet to Come* (Duke; Durham University Press).
- (2006), 'Emergency Democracy and the "Governing Composite"', 26 (2), *Social Text*, 9516.
- Simpson, B. A. (2001), *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press).
- Sklair, L. (2002), *Capitalist Globalisation and its Alternatives* (Oxford: Oxford University Press).
- Sklar, J. (1986), *Legalism* (Cambridge, MA: Harvard University Press).
- Sousa Santos, B. D. (2002), *Towards a New Legal Commonsense: Law, Globalization and Emancipation* (London: Butterworths LexisNexis).
- (ed.) (2006), *Another Production is Possible: Beyond the Capitalist Canon* (London: Verso).
- Sousa Santos, B. D. and C. A. Rodriguez Garatino (eds) (2005), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press).
- Steiner, H. and P. Alston (2000), *International Human Rights in Context; Law, Politics and Morals* (Oxford: Oxford University Press).
- Stiglitz, J. (1999), 'Participation and Development: Perspectives from the Comprehensive Development Paradigm', *International Conference on Democracy, Market Economy and Development, South Korea*.
- (2003), *The Roaring Nineties: A New History of the World's Most Prosperous Decade* (London: Norton & Co.).
- S v Makwanyane & Another* 1995 (6), BCLR, 665 (CC), para 308.
- Tam, H. (1998), *Communitarianism* (London: Macmillan).
- Taylor, C. (1995), *Philosophical Arguments* (Cambridge, MA: Harvard University Press).
- ThisDay Online Newspapers (2008), 'N177bn Subsidy Unsettles Power Sector', at <http://www.thisdayonline.com/nview.php?id=137197> (accessed on 4 March 2009).
- Thomas, S. (2002), 'Why Retail Electricity Competition is Bad for Small Consumers: British Experience', *Public Services International Unit Report*, p. 2,

- at <http://www.psir.org/reports/2002-09-E-UKRetailElec.doc> (accessed on 10 February 2011).
- Trubek, D. (1972), 'Max Weber on Law and the Rise of Capitalism', *Wisconsin Law Review*, p. 720.
- (2009), 'The Political Economy of the Rule of Law: The Challenge of the New Development State', 1, *Hague Journal on the Rule of Law*, pp. 28–32.
- Trubek, D. and A. Santos (eds) (2006), *The New Law and Economic Development: A critical Appraisal* (Cambridge: Cambridge University Press).
- Trubek, D. and G. Trubek (2007), 'New Governance and Legal Regulation; Complementarily, Rivalry or Transformation', *University of Wisconsin Legal Studies Research Paper No. 1022*.
- Tuebner, G. (ed.) (1987), *Autopoietic: A New Approach to Law and Society* (Berlin: Walter de Gruyter).
- (2001), 'Substantive and Reflexive Elements of Modern Law', 17 (2), *Law and Society Review*, pp. 239–385.
- Tully, J. (1995), *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press).
- (1999), 'The Agonic Freedom of Citizens', 28, *Economy and Society*, pp. 161–82.
- (2002), 'The Unfreedoms of the Moderns in Comparison to their Ideals of Constitutional Democracy', 65, *Modern Law Review*, pp. 204–28.
- Tully, S. (2006), 'The Contribution of Human Rights to Universal Access to Energy', 4 (3), *North-Western Journal of International Human Rights*, pp. 518–48.
- (2006), 'The Human Right to Access to Electricity', 19 (3), *The Electricity Journal*, pp. 30–9.
- United Nations (2000), *Globalization and its Impact on the Full Enjoyment of All Human Rights*, preliminary report of the Secretary-General, *UN GAOR, 55th Sess., 5, U.N. Doc. A/55/342*.
- United Nations Development Programme (2011), *Nigeria: Human Development Index* (New York: United Nations Development Programme).
- United Nations General Assembly (2001), 'Co-operatives in Social Development', Resolution No 56/224 adopted by the United Nations General Assembly at 57th Session.
- Van der Walt, J. (2003), 'Blixen's Difference: Horizontal Application of Fundamental Rights and the Resistance to Neocolonialism', 1, *Law, Social Justice and Global Development Journal*.
- (2005), *Law and Sacrifice: Towards a Post-Apartheid Theory of Law* (Oxford: Routledge-Cavendish).
- Veitch, S. (2007), *Law and Irresponsibility: On the Legitimation of Human Suffering* (London: Routledge).

- Venter, E. (2004), 'The Notion of Ubuntu and Communalism in African Educational Discourse', 23, *Studies in Philosophy and Education*, pp. 149–60.
- Waldron, J. (1988), 'When Justice Replaces Affection: The Need for Rights', 11, *Harvard Journal of Law and Public Policy*, pp. 625–42.
- A. Walker, 'Vigilante Groups in Nigeria', British Broadcasting Corporation, <http://news.bbc.co.uk/1/hi/world/africa/8021468.stm> (accessed on 31 July 2011).
- Walker, N. and G. de Burca (2007), 'Reconceiving Law and New Governance', *European University Institute Working Paper No. 10*.
- Walsh, K. (1995), *Public Services and Market Mechanisms: Competition, Contracting and the New Public Management* (Basingstoke: Macmillan Press).
- Walzer, M. (1983), *Spheres of Justice: A Defence of Pluralism and Equality* (London: Blackwell).
- Weil, S. (1951), *Waiting on God* (New York: Harper).
- (2002), *The Need for Roots* (London and New York: Taylor & Francis).
- Weiss, T. (2002), 'Governance, Good Governance and Global Governance: Conceptual and Actual Challenges', 21 (5), *Third World Quarterly*, p. 795.
- Williams, A. (2006), 'Human Rights and Law: Between Sufferance and Insufferability', 123, *Law Quarterly Review*, pp. 132–57.
- Winch, P. (1989), *Simone Weil: The Just Balance* (Oxford: Oxford University Press).
- Winther, T. (2008), *The Impact of Electricity: Development, Desires and Dilemmas* (Oxford: Beghahn Books).
- Wiredu, K. (2005), *A Companion to African Philosophy* (London: Blackwell).
- Wolf, M. (1988), *Markets or Government: Choosing between Imperfect Alternatives* (Cambridge, MA: MIT Press).
- World Bank (1992), *Governance and Development* (Washington, DC: World Bank).
- World Bank (1995), *Bureaucrats in Business: The Economics and Politics of Government Ownership* (Washington, DC: World Bank).
- World Bank (1998), *Development and Human Rights: The Role of the World Bank* (Washington, DC: World Bank).
- World Bank (2004), *World Development Report: Making Services Work for Poor People* (Washington, DC: World Development Report).
- World Bank (2008), *Lighting Africa 1: Progress and Plans, Annual Report, September 1, 2007–August 31, 2008* (Washington, DC: World Bank).
- World Bank (2008), *Strengthening Electric Sector Governance to Promote Probity* (Washington: World Bank at <http://siteresources.worldbank.org/INTENERGY2/Resources/electricitysourcebookch12.pdf> (accessed on 12 June 2011)).
- World Bank (2008), *World Development Report: Agriculture and Development* (Washington, DC: World Bank).

- World Bank (2010), *World Development Report: Development and Climate Change* (Washington, DC: World Bank).
- World Bank, Civil Society Participation, at http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION/0,,contentMDK:20222033~isCURL:Y~menuPK:384461~pagePK:148956~piPK:216618~theSitePK:384455,00.html#empowering_civil_society (accessed on 16 March 2009).
- World Bank, Community Driven Development, at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCDD/0,,menuPK:430167~pagePK:149018~piPK:149093~theSitePK:430161,00.html> (accessed on 16 July 2012).
- Wright, R. (1979), *African Philosophy: An Introduction* (New York: University Press of America).
- Yarrow, G. (1999), 'A Theory of Privatisation: Or Why Bureaucrats are Still in Business', 27 (1), *World Development*, pp. 157–68.
- Young, I. (2000), *Inclusion and Democracy* (Oxford: Oxford University Press).
- Young, R. (2001), *Postcolonialism: A Historical Introduction* (London: Blackwell).
- Yunus, M. (2008), Adam Smith Lecture, University of Glasgow, at <http://muhammadyunus.org/content/view/178/127/lang,en/> (accessed on 25 May 2009).



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