



## Restoring Justice as a Public Virtue in the Context of HIV/AIDS

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### Abstract

In this essay, I discuss the importance of virtues as dispositions that should be cultivated for wellbeing in the Christian community in Africa. I argue that justice is a social virtue, which requires that African states should create a political and social climate that will empower citizens to seek to live lives of virtue in the context of HIV/AIDS.

### Keywords

virtues, social justice, character, community, Ubuntu

### 1. Theoretical Considerations

In this paper, I discuss the virtue of justice in the context of HIV/AIDS as a necessary public good that could empower the members of the community affected by this disease.<sup>1</sup> My goal is to argue that the Christian Church in Africa should engage political leaders in a conversation and call on them to practice justice so that people living with HIV/AIDS today can exercise the virtues needed to experience wellbeing. The HIV/AIDS pandemic is destroying the idea of wellbeing.

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<sup>1</sup> The virtues I discuss have been selected only because they lend themselves to thinking about HIV/AIDS. Anyone who turns to human virtues in search of rules misses the point and in so doing could trigger a rule-centered ethics that has been an important aspect of modernist ethics. I follow a precedent set by James Keenan to discuss hope, fidelity, care, justice, and prudence. See James F. Keenan, 'Proposing Cardinal Virtues,' *Theological Studies* 56 (1995), 711; See also his 'Virtue and Identity,' *Concilium* 2 (2000), 69.

Virtue theory has enjoyed a revival in ethical discourse during the last two decades, since Alasdair MacIntyre decried the loss of virtue in the modern world.<sup>2</sup> He also argued that the liberal society could not provide a coherent account of moral virtues and facilitate the practice of justice in the post-Enlightenment era.<sup>3</sup> MacIntyre preferred the notions of justice reflected in the Thomistic synthesis of the Augustinian and Aristotelian traditions.<sup>4</sup>

In the African context, some ethicists, especially in South Africa, have advocated the appropriation of ‘ubuntu’ values that promote togetherness in the pursuit of the common good in a political climate that was poisoned by apartheid.<sup>5</sup> The Circle of Concerned African Women Theologians has placed HIV/AIDS at the center of the quest for justice since the vast majority of people affected by the pandemic are women and children. As theologians wrestle with the issues of justice in the context of HIV/AIDS, it is important that they offer proposals that emerge out of a pluralistic dialogue because HIV/AIDS has raised moral issues that involve, religion, science, medicine, cultural, economic, and political perspectives.

Elsewhere, feminist scholars, since the publication of Carol Gilligan’s book, *In a Different Voice*, have contributed significantly to the discussion of virtues, especially on crucial questions like care and justice.<sup>6</sup> Kathryn Tanner argues

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<sup>2</sup> Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1988); see also his *Whose Justice? Whose Rationality?* (Notre Dame: University of Notre Dame Press, 1988); William Joseph Woodhill, *The Fellowship of Life: Virtue Ethics and Orthodox Christianity* (Washington D.C.: Georgetown University Press, 1996); Joseph J. Kovta, *The Christian Case for Virtue Ethics* (Washington D.C.: Georgetown University Press, 1996); Diana Fritz Cates, *Choosing to Feel: Virtue, Friendship, and Compassion for Friends* (Notre Dame: University of Notre Dame Press, 1997).

<sup>3</sup> MacIntyre, *After Virtue*, 111.

<sup>4</sup> Charles Larmore has suggested that what MacIntyre objects to in the modern liberal view is its claim that ‘the norms of justice apply to the relationship of human beings as such.’ *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987), 441. Larmore questions further: ‘But did not Christianity also aim its message at a universal audience?’ In his (MacIntyre) discussion of Augustine, he says just that, though without retracting his earlier indictment of modernity: ‘the law of the *civitas Dei* is by contrast (with Aristotle) a law for all (mankind).’ See also recent writings on the justification of virtues in Craig Dykstra, *Vision and Character* (New York: Paulist Press, 1981); Donald Capps, *Deadly Sins and Saving Virtues* (Minneapolis: Fortress Press, 1987); James F. Keenan, ‘Proposing Cardinal virtues’, 711; also his ‘Virtue and Identity’, 69; Lee H. Yearly, ‘Recent Work on Virtue,’ *Religious Studies Review* 16 (1990), 2.

<sup>5</sup> Bujo Bénézet, *African Christian Morality at the Age of Inculturation* (Nairobi: Paulines, 1990); *African Theology in its Social Context* (trans. John O’Donohue, Maryknoll, N.Y.: Orbis Books, 1992); *The Ethical Dimension of Community: The African Model and the Dialogue between North and South* (Nairobi, Kenya: Paulines, 1998); see also Augustine Shutte, *Ubuntu: An Ethic for a New South Africa* (Pietermaritzburg: Cluster Publications, 2001).

<sup>6</sup> Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Cambridge: Harvard University Press, 1982).

that feminist scholars have shifted their focus from the ‘dualism of moral orientation in public and private spheres... by a process of mutual critique, so that, for example, the family becomes a place of justice and public life an arena dedicated to nurture.’<sup>7</sup> African women and feminist scholars have addressed issues related to women’s experience and reformulated ethics, community, and human values arguing that these issues cannot be defined in abstraction from contemporary experience.<sup>8</sup>

I consider human virtues as character traits and dispositions necessary for the good and for human wellbeing and flourishing.<sup>9</sup> Central to my argument is the view that virtues are public values, which a community should promote in an open dialogue about life to enable its inhabitants to acquire those dispositions that would help them achieve the good. I take a minimal and contextual normative approach because, in the context of HIV/AIDS, some people, especially African women and children, do negotiate their marginal existence in ways that might appear to an onlooker as if they lack virtue or acquiesce to forces that dominate them. Their actions that seem to violate norms of virtuous action might be taken to affirm life and therefore be praiseworthy.<sup>10</sup> In a

<sup>7</sup> Kathryn Tanner, ‘The Care that Does Justice: Recent Writings in Feminist Ethics and Theology,’ *Journal of Religious Ethics* (2001), 171–191, 174.

<sup>8</sup> Mercy Amba Oduyoye, *Daughters of Anowa: African women and Patriarchy* (Marynkoll, NY: Orbis Books, 1995); Seyla Benhabib, *Situating the Self* (New York: Routledge, 1992); Owen Flanagan, *Varieties of Moral Personality: Ethics and Psychological Realism* (Cambridge: Harvard University Press, 1991); Susan Moller Okin, *Justice, Gender, and Family* (New York: Basic Books, 1989).

<sup>9</sup> Keenan has argued: ‘virtues are traditional heuristic guides that collectively aim for the right realization of human identity... The historical dynamism of the virtues applies... to the anthropological vision of human identity.’ Keenan, ‘Virtue and Identity,’ 2000, 74. Keenan has explored cardinal virtues of justice, prudence, fortitude, and temperance. He has replaced temperance with fidelity and self-care, ‘Proposing Cardinal Virtues.’

<sup>10</sup> Researchers have come to realize the complexity of talking about women and virtue in the context of HIV/AIDS because it is a disease that has many facets to it and demand responsibility from every one at all levels of society. Writing specifically about African women in a broad context, Gwendolyn Mikell has argued that the emerging African feminist is concerned with ‘bread, butter, culture, and power issues’ (4). Women will continue to bring their own resources to the fight for liberation, but they will also turn to other places for additional resources that will improve the human condition. She has also argued that if women have shown complicity by subscribing to ideologies of domination, they have done so as a pragmatic choice for themselves and their children. See Gwendolyn Mikell, *African Feminism: The Politics of Survival in Sub-Saharan Africa* (Philadelphia: University of Pennsylvania Press, 1997), 5, 16. For a discussion of the ways in which African women negotiate existence and identity, see Obioma Nnaemeka, ‘Nego-Feminism: Theorizing, Practicing, and Pruning Africa’s Way,’ *Signs: Journal of Women in Culture and Society* 29, 2 (2003), 257–85; Obioma Nnaemeka, ‘Mapping African Feminisms,’ in *Readings in Gender in Africa* (Andrea Cornwall, Bloomington: Indiana University Press, 2005), 32. See also Nnaemeka’s introduction to *Sisterhood, Feminisms and Power: From Africa to the Diaspora* (Trenton, N.J. and Asmara, Eritrea: Africa World Press, 1998).

context of HIV/AIDS, where the politics of neglect, discrimination, marginalization, and stigmatization have created risk situations for many people, rationality is often compromised.

For example, a woman, let us call her Maria, whose husband marries a widow, Nancy, without knowing that Nancy's husband died of HIV complications, is in a difficult position. In many cultures, Maria cannot prevent the marriage, and cannot refuse to have conjugal relations with her husband because she does not have the autonomy to ask questions about the health of Nancy, the new wife. Therefore, Maria is not in a position to make rational decisions about her sexuality in what has become a risky situation.

Two philosophers, Julia Driver and Normy Arpaly, have argued persuasively that people do not always act with autonomy and rationality.<sup>11</sup> Their perspectives offer a necessary corrective to the intellectualism of Plato, Aristotle and Saint Thomas whose works provide the background to discussions on virtue ethics today. There are indeed individuals living with HIV/AIDS because they exercised poor judgment, lived risky lifestyles, or rejected the warnings about the virus, but many women and children who live with HIV/AIDS had no choice. They and the people living with the disease today are not sinners or immoral people.

I return to the virtues because, given the right context and adequate support from the political community, individuals could be encouraged to deploy character traits that would lead to flourishing. Susan Collins has argued that Aristotle articulated his ethics in a context where the state served as an educator and authority to enable some of its members to achieve the good and moral virtue.<sup>12</sup> In the *Nicomachean Ethics* and *Politics*, Aristotle highlighted

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<sup>11</sup> Driver in *Uneasy Virtue* has argued that determining if human actions are good or bad on the bases of agent, personal traits, states of mind, or the will as Kant's approach in the *Groundwork*, and what she also calls 'character motivation' fails. Driver advances a consequentialist approach that takes into account a diversity of virtues and notes that some virtues cannot be linked to mental states. She defends the idea of partiality articulated by feminist thinkers who point out the diverse ways in which women respond to embodied persons and complex human relationships. See Julia Driver, *Uneasy Virtue* (Cambridge: Cambridge University Press, 2001); see also Julia Driver, 'The Conflation of Moral and Epistemic Virtue,' *Metaphilosophy* 34, 3 (April 2003), 367–383, 368. Normy Arpaly on her part has argued that praise or blame cannot be assigned only on grounds that people act in a rational manner as defined in virtue ethics. She argues that some decisions made on the spur of the moment or based on one's gut feelings may be worthy of praise if the individual actor's will, motivation and heart are in the right place. See Normy Arpaly, *Unprincipled Virtue: An Inquiry into Moral Agency* (New York: Oxford University Press, 2002).

<sup>12</sup> See Susan D. Collins's essay, 'Moral Virtue and the Limits of the Political Community in Aristotle's *Nicomachean Ethics*,' *American Journal of Political Science* 48, 1 (2004), 47–61; see also her *Aristotle and the Rediscovery of Citizenship* (New York: Cambridge University Press, 2006); Donald Morrison, 'Politics as a Vocation, According to Aristotle,' *History of Political*

the role of an established political community with its legal instruments, calling it authoritative, and a voice of reason, necessary to instruct members to attain virtue.<sup>13</sup> The good in Aristotle referred to a life lived by people who took morality seriously and who were prudent, were raised in a noble manner, and lived and acted justly, employing moral virtue as their disposition to actualize the good by living in the mean between excess and deficiency of what is *deon* (proper). Achieving this mean was a rational activity.

I am convinced that in the African context, the view that virtues concerned the political community is important because the failure by the post-neocolonial state to act and redress social problems, which has exacerbated HIV/AIDS, has compromised the life of virtue for many people in Africa. Therefore the priorities of the state should be changed to enable constituents to strive to lives of virtue and to experience wellbeing and pursue the good. The question then is how the state can act as educator and guardian of the common good, and in the case of HIV/AIDS, secure access to universal health.

An ethic of virtue in the time of HIV/AIDS must emerge from dialogue in each moral community; participants in such a dialogue should think of new priorities that would encourage and enable people to live a life of virtue.<sup>14</sup> The leaders of the post-neocolonial state have not played the role of educator but have perpetrated a view that the only thing that matters is making money, taking care of one's family, even at the cost of pushing other members of the community to the bottom of the heap in society. Admittedly, experiencing *eudaimonia* in such a context poses a number of challenges and calls into question the contemplative happiness proposed by Aristotle or divinely ordered theological virtues articulated by Saint Thomas. However, individuals and communities owe each other the search for life-enhancing virtues under all circumstances.

Put differently, I can talk about virtues in full agreement with Rosalind Hursthouse who says: 'in evil times, life for most people is, or threatens to be, nasty, brutish, and short and *eudaimonia* is something that will be impossible until better times.'<sup>15</sup> Hursthouse also argues that during such times parents should raise their children to be prudent, less gullible; in other words, more

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*Thought* 22 (2001), 221–41. I am indebted to Don Morrison and Susan D. Collins for some of these insights.

<sup>13</sup> See Aristotle, *Nicomachean Ethics*, 1134a35–b1, 1138a–5–11; 1094a24–28, b5–11, 1102a5–13, 1103b2–6, 31–34; *Politics* 1282b1–6, 1287a16–32.

<sup>14</sup> See Rosalind Hursthouse, *On Virtue Ethics* (Oxford: Oxford University Press, 1999); see also Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge: Harvard University Press, 1985), 8–11, 35–37.

<sup>15</sup> Hursthouse, *On Virtue Ethics*, 177.

careful as they live in society. Ultimately, she argues, and I agree with her, that those who possess virtues will reap the benefits of a virtuous life. In such a context, members of the community ought to work to promote the virtues of hope, fidelity, caring, prudence and justice.

It is important to emphasize that I stress the role the state could play because it has failed to energize the population. There are ethical perspectives that must be adopted and the state ought to play its role as educator. Demographic studies that suggest that African societies do not have any moral foundation on which to ground family life or, if they do, that the logic of such a moral foundation does not encourage the kind of traits implied in virtue theories, are false. Caldwell, Caldwell, and Quiggin articulated such a perspective several years ago in their thesis on African sexuality.<sup>16</sup>

In the rest of the paper, I will offer theoretical perspectives on the imperative of cultivating a climate of justice in a world dominated by HIV/AIDS.

## 2. Why is There a Need for Social Justice on HIV/AIDS?

Before discussing justice as a public virtue, it is necessary to explain why African churches should be engaged in a dialogue and debate about HIV/AIDS. First, most states in Africa ignored the HIV/AIDS crisis for a long time. African leaders failed to take the initiatives needed to warn people, and work with different communities to educate people on ways of preventing infections. Many people in Africa believed that this was a gay disease and that there were, supposedly, no gays in Africa. Unfortunately, this neglect gave the virus time to infect individuals, and now the disease has affected all sectors of society. The failure by African leaders to take action was an act of injustice.

Additionally, many AIDS activists have seen the debates about HIV/AIDS in South Africa, where the state ironically has done better than many other African countries in fighting HIV/AIDS, as the perpetuation of injustice. Such debates have slowed down state action against HIV, which was ignored by the apartheid government though it was well informed of the dangers (one of its ministers reportedly claimed that HIV/AIDS was 'going to shake Africa to its foundation').<sup>17</sup> In recent years the debates on HIV/AIDS, which have

<sup>16</sup> See John C. Caldwell, Pat Caldwell, and Pat Quiggin, 'The Social Contest of AIDS in Sub-Saharan Africa,' *Population and Development Review* 15:2 (June 1989), 185–234.

<sup>17</sup> Minister of Health, Parliamentary Debate, House of Assembly, April 19, 1988, 6332. See also Alan Fleming, 'South Africa and AIDS – Seven Years Wasted,' *Nursing RSA* 8.7 (July 1993), 18–19. For a discussion of South Africa's AIDS policies, see Olive Shisana and Nompumelelo Zungu-Dirwayi, 'Government's Changing Responses to HIV/AIDS.' <[www.interfund.org.za/](http://www.interfund.org.za/)

involved the South African President, Thabo Mbeki, has shocked many observers, particularly when Mbeki questioned the claim that HIV causes AIDS, while on various occasions emphasizing without qualification the toxicity of many AIDS drugs on the market.

As Deputy President, Mbeki supported research funding for the controversial drug Virodene that was developed by researchers at the University of Pretoria and described by some as major breakthrough in HIV/AIDS research. The Medicines Control Council of South Africa did not support it because other studies indicated that Diethylformamide, one of the active ingredients used in the drug, caused damage to the DNA and liver in humans. Mbeki wanted the government of South Africa to continue its funding of the research because he thought that the government had a moral obligation to provide treatment to those suffering from HIV/AIDS.

Mbeki's views changed during negotiations with big pharmaceutical companies, especially when he realized that even the US government supported big pharmaceutical companies in violation of the provisions of the World Trade Organization over Trade Related Aspects of Intellectual Property Rights, (TRIPPS). The political and economic machinations of the pharmaceutical companies that were marketing ARVs also disappointed Mbeki. However, he changed his views when he was exposed to the arguments presented by HIV/AIDS dissenters in popular literature and on the internet. He then called for more research on HIV/AIDS in the African context. He sent a letter to world leaders in which he called these positions into question, but also called for careful study and open debate on the science of HIV/AIDS because the majority views and the epidemiology of HIV/AIDS often failed to take into account the social conditions under which the disease spread and the particular context of South Africa where socio-political realities were shaped by apartheid. While these were all compelling issues, many people think that the debate has promoted injustice because it delayed prompt response to the provision of much needed drugs to people living with HIV/AIDS crisis.

Second, there is need for a new focus on justice as a social virtue because HIV/AIDS has hit vulnerable members of the African community the hardest. The disease affects children and women in a disproportionate manner. Part of the reason for this condition is that many women and children are excluded from decision-making in many countries and many of them do not exercise their right to make decisions about their lives. Furthermore, many women and children do not participate in the economic activity of the coun-

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pdf/files/vol4\_three/Chapter%207.pdf> (accessed June 20, 2005). See also O. Shisana and N. Zungu-Dirwayi, and W. Shisana, 'AIDS: A Threat to Human Security,' (Background paper, Harvard University Global Equity Initiative, 2002); Adam Sitze, 'Denialism,' *The South Atlantic Quarterly*, 103:4 (2004), 769–811.

try, a situation which keeps them poor and dependent on men. These conditions of poverty have pushed some women and children into sex work and increased their risk of exposure to and contraction of the HIV virus. In places where poverty may not be the prevailing issue, women may not be able to negotiate safe sexual practices as they would like. These and other factors have made the social context of HIV/AIDS unjust for women and children.

Third, many people living with HIV/AIDS continue to face discrimination and stigmatization. Media coverage has for a long time sensationalized the disease and created unfounded fear in people. People who live with HIV/AIDS face stigma because they are sometimes perceived as promiscuous individuals who deserve the suffering they are going through.<sup>18</sup> An intense stigmatization continues in many African countries where people have been killed because they are HIV positive. Members of some families have abandoned their relatives, or disowned them because HIV positive individuals have allegedly brought shame to the family. People have lost their jobs because they admitted that they are HIV positive. All these acts of discrimination have created a situation of injury and injustice that must be addressed with a new focus on social justice in the society.

The focus on sexuality alone has also made it difficult to manage prevention campaigns in the right way and has created false perceptions that controlling sexual behavior is the only way of addressing HIV/AIDS and other health crisis that continue to afflict people in society. In Africa, as in other places in the world, stigmatizing language continues to refer to HIV/AIDS as the African disease.<sup>19</sup> Catherine Raissiguier reports that graffiti on appeared on a wall in Paris declaring *Islam = Sida* (Islam equals AIDS).<sup>20</sup> Many people in France continue to see Muslims as undesirable immigrants who have come mainly from Sub-Saharan Africa and pose a threat to French way of life. Many Afropessimists think that HIV/AIDS confirms the view that the continent is dying. HIV/AIDS was also racialized, a perspective later underscored by a satirist in South Africa who claimed that 'AIDS will succeed where apartheid failed.'<sup>21</sup>

<sup>18</sup> Philip Setel, Milton Lewis, and Maryinez Lyons, eds., *Histories of Sexually Transmitted Diseases and HIV/AIDS in Sub-Saharan Africa* (Westport: Greenwood Press, 1999).

<sup>19</sup> Cornelius B. Pratt, Louisa Ha, and Charlotte A. Pratt, 'Setting the Public Health Agenda on Major Diseases in Sub-Saharan Africa: African Popular Magazines and Medical Journals, 1981–1997,' *Journal of Communication* (2002), 899.

<sup>20</sup> Catherine Raissiguier, 'Women from the Maghreb and Sub-Saharan Africa in France: Fighting for Health and Basic Human Rights,' in *Engendering Human Rights: Cultural and Socio-economic Realities in Africa* (eds. Obioma Nnaemeka and Joy Ngozi Ezeilo, New York: Palgrave Macmillan, 2005), 111–28, esp. 111.

<sup>21</sup> See Peter Dirk Uys, 'AIDS is a Laughing Matter,' *The Guardian*, August 3, 2001 <[www.guardian.co.uk/comment/story/0,3604,531453,00.html](http://www.guardian.co.uk/comment/story/0,3604,531453,00.html)>. Donald Messer recounts that when he mentioned this statement at a lecture, a woman told him that a South African couple who



This situation invites a new discourse on justice at the national and global level because HIV/AIDS has introduced new medical politics with Africa the epicenter of HIV/AIDS being the focus of a new politics of representation and othering.

### 3. Justice as a Social Virtue

Justice is an important virtue because it has both individual and political dimensions. Aristotle described justice at the individual level as that characteristic which disposes an individual 'to do just things, act justly, and wish just things.'<sup>22</sup> He classified justice under two parts, the general and the particular, reflecting lawfulness and fairness. General justice is lawfulness and is the sum of all virtues directed toward the good of another person. Particular justice is the right disposition towards good things such as security, money and honor in a political community.<sup>23</sup>

Aristotle further defined particular justice as equality or fairness with respect to the common good in the political community. He called general justice complete because it is based on laws directed towards another person and claimed: 'justice alone of the virtues is thought to be the good of another.'<sup>24</sup> He also expanded his view of particular justice by differentiating between distributive and commutative or corrective justice. Distributive justice involves the equal distribution of the common good, such as honor, money and the good things of life. It involves proportional distribution whereas corrective justice involves fairness and equilibrium in society. Commutative justice involves contracts and other legal transactions. Catholic theologian and philosopher, Saint Thomas later described justice as the virtue that provides the mechanism for distributing the common good.<sup>25</sup> At the particular or individual level, justice deals with restitution, recompense, or compensatory justice. In the community, justice involves the fair distribution of the resources of the state. At both levels, every member of the society expects the good and has a right to that good.

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were vacationing in Amsterdam, announced: 'You know, in South Africa, we won't have a black problem much longer; it is being taken care of by AIDS.' See Donald E. Messer, *Breaking the Conspiracy of Silence: Christian Churches and the Global AIDS Crisis* (Minneapolis: Fortress, 2004), 10.

<sup>22</sup> Aristotle, *The Nicomachean Ethics*, 1129a3–11.

<sup>23</sup> Aristotle, *The Nicomachean Ethics*, 1130a32–b5.

<sup>24</sup> Aristotle, *The Nicomachean Ethics*, 1130a3–5.

<sup>25</sup> Saint Thomas Aquinas, *Summa Theologiae* (ed. Thomas Gilby, London and New York: Black Friars, 1975), 31.

Theological perspectives on social justice are rooted in the biblical tradition and especially the prophetic writings of the Hebrew Bible. However, Christians do not have a monopoly on the idea of justice and ought to articulate their views in conversation with other religious and moral communities that have similar values. Nobel Prize-winning economist Amartya Sen has pointed out that the Mughal Emperor Akbar encouraged interfaith dialogue in the 1590s and other religious communities have taught respect of the ideas of others.<sup>26</sup> Karen Lebacqz, who has written broadly on justice, has argued that justice and acts of justice center on carrying out the obligations of human relationships.<sup>27</sup>

As members of the human community, we are engaged in various relationships. We are related to others because they belong to the same family. We have relationships with friends, occupational colleagues and members of a religious or social community, in addition to all kinds of proximal relationships. Finally, we have relationships with others because of political configurations called constitutions and institutions and the nation state.<sup>28</sup>

Therefore, at a minimum, justice calls for a reasonable recognition of the rights of others. These include the right to equality as a human being who desires liberties, self-respect, good health, power, opportunities, income, and wealth. Each member of the community is invited to participate in the creation of these goods, to participate in making decisions about how those goods will be distributed and where necessary, actively to seek to redress the wrongs that have deprived others from participating fully in the goods and opportunities that exist in the political community. Justice also refers to those practices that ought to be cultivated, because failure to engage in acts of justice will not only diminish others in society, but also deprive them of experiencing the good.

As I have already indicated, Aristotle assigns to the state an important role in helping citizens live virtuous lives for the sake of the good. Justice in this light means acting fairly to promote the good of others in the political community. This is an important perspective in Africa where the post-neocolonial state has failed to promote justice and as a result, inequality has reigned.

Recent discussions of justice have wrestled with the groundbreaking work of John Rawls, *A Theory of Justice*, in which he argues: ‘justice is the basic

<sup>26</sup> See Amartya Sen, ‘What’s the Point of Democracy?’ *American Academy of Arts and Sciences Bulletin* 57:3 (2004), 9.

<sup>27</sup> Karen Lebacqz, ‘Justice,’ in *Christian Ethics: An Introduction* (ed. Bernard Hoose, Collegeville, Minn.: The Liturgical Press, 1998), 169.

<sup>28</sup> In these relationships, one could consider justice as what J. B. Schneewind has described as ‘the habit of following right reason with respect to the rights of others.’ See J. B. Schneewind, ‘The Misfortunes of Virtue,’ in *Virtue Ethics* (ed. Roger Crisp and Michael Slote, Oxford: Oxford University Press, 1997), 183.

structure of society . . . the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.<sup>29</sup> Central to the Rawlsian idea is the notion that justice involves public reasoning, deliberation and debate to arrive at ‘agreement in judgment among reasonable agents.’<sup>30</sup> A community should work to a consensus on seven primary goods desired by individuals and distributed by the ‘political constitution and the principal economic and social arrangements.’ These primary goods are rights, liberties, self-respect, power, opportunities, income, and wealth.

These things form what Rawls calls a ‘thin theory of the good’ which Rawls considers crucial for the well being of individuals and society. He argues that the principles for allocating these goods are general and can be intuitively recognized. They are also universal, public, should offer preferences to conflicting claims, and must be final. Rawls states that the choice of these principles ought to be made in the ‘original position’, a hypothetical situation that could be compared to some prior position before human sociality.

At such a hypothetical position, members of the political community were expected to be free agents, equal, rational, self-interested, and ignorant of their position, or their preferences and religious beliefs. This does not mean zero knowledge about the society; members should have general information about the human society. However, in the process, conflicting aims could not be used to advance individuals at the expense of other claims to ensure impartiality in the choice of principles of distributing primary goods. Rawls offered an overlapping consensus to address competing interests in a liberal society where members shared common values such as democracy and similar visions of the political economy. Such a broad consensus would ensure that ‘all social values – liberty and opportunity, income and wealth and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.’<sup>31</sup>

Rawls’ proposition assumes democratic liberalism and capitalism and does not adequately address human rights. His theory does not give adequate consideration to gender and other social inequalities. Rawls’ view that there is a hypothetical situation devoid of preconceptions where the principles of justice could be determined seems unrealistic.<sup>32</sup>

<sup>29</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 7.

<sup>30</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 113.

<sup>31</sup> Rawls, *A Theory of Justice*, 62.

<sup>32</sup> See for instance the critiques by John Langan, ‘Rawls, Nozick, and the Search for Social Justice,’ *Theological Studies* 38 (1977), 346–58.

Feminist scholars contest the view that justice can be a dispassionate construction. Seyla Benhabib has argued that an ethic of justice must consider not only the concrete history of people, but also the ‘identity and affective-emotional constitution’ of others in the community.<sup>33</sup> This is a crucial dimension of justice because one cannot talk of justice and ignore effective communication with other people or segments of the political community. In order for such a communication to be effective, it must take into account the viewpoint, social location, and needs of others as well as the resources available to the state. Justice that is conceived as autonomy and rationality is meaningful if it is inclusive. Justice conceived as rights in each context means positive rights that contribute to the well being of all in the political community. As Tanner has pointed out, “a just society is not simply a society that allows people to go their own way, a just society is one that actively cares for its members by providing the ‘institutional conditions that enable people to meet their needs and express their desires’.”<sup>34</sup>

Amartya Sen has argued that Rawls’ view that justice is fairness articulates a transcendental perspective that focuses on the nature of a just society in contrast to a comparative approach, which considers alternative arrangements and asks whether some approaches are more or less just than others.<sup>35</sup> Sen prefers the comparative approach because it gives a community an opportunity to advance justice by including social policies that might eliminate hunger and illiteracy even though its implementation might violate the transcendental requirements of justice that include ‘equal liberties and distributional equity.’<sup>36</sup>

Sen also argues that the transcendental approach cannot offer more than it proposes. The transcendental approach ignores ‘comparative distances’ such as different starting points, different dimensions of transgressions, and different ways of measuring infractions and cannot offer an adequate way of ranking justice. Furthermore, even if one conceded that there is an inviolable best alternative in justice, it does not prevent one from considering the relative merits of alternative approaches.<sup>37</sup> Sen argues that his comparative approach

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<sup>33</sup> Seyla Benhabib, *Situating the Self*, 158–70.

<sup>34</sup> Tanner, ‘Care that Does Justice,’ 181.

<sup>35</sup> Amartya Sen, ‘What Do We Want from a Theory of Justice?’ Presentation at Rice University, Feb 2006, Unpublished manuscript.

<sup>36</sup> Sen, ‘What Do We Want,’ 4. Sen also draws a sharp distinction between the transcendental approach to justice and a comparative approach that includes varied discussion on issues like ‘inequities of hunger, illiteracy, torture, arbitrary incarceration, or medical exclusion as particular social features that need remedying...’ (5). He also argues that social choice theorists seem to assume transcendental approaches to justice. See Kenneth Arrow, *Social Choice and Individual Values* (New York: Wiley, 1951); see also Amartya Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1971).

<sup>37</sup> Sen, ‘What Do We Want,’ 13.

offers a compelling argument about injustice at a time of prosperity and the on-going subjugation of women. According to Sen,

... despite durable ambiguity, we may still be able to agree readily that there is a clear social failure involved in the persistence of endemic hunger or exclusion from medical access, which calls for remedying for the advancement of justice, even after taking note of the costs involved. Similarly, we may acknowledge the possibility that liberties of different persons may, to some extent, conflict with each other (so that any fine-tuning of the demands of equal liberty may be hard to work out), and yet strongly agree that arbitrary incarceration of accused people, without access to court procedures, would be an just violation of liberty that calls for urgent rectification.<sup>38</sup>

Sen emphasizes that even where people have a specific notion of justice, shared beliefs could provide partial ranking, making ‘evaluative incompleteness’ relative to a theory of justice.<sup>39</sup> Finally, Sen argues that the institutional requirements of the Rawlsian approach would be difficult to meet in the context of global justice, even with Rawls’ new starting point that includes negotiation with different peoples and giving reasonable help to decent societies that may not be just.<sup>40</sup> What emerges from Rawls’ transcendental perspective is a silence that inhibits public reasoning about justice. Rawls’ idea of a common starting point ignores the possibility of impartial arbitration, shared beliefs and prejudices that might offer an opportunity to examine the issues from the perspective of people who do not belong to the same society.<sup>41</sup>

While aspects of Rawls’ thesis are problematic, his central claim that justice calls for deliberation on the common good remains appealing because it is not structured on the notion of desert but on the idea of fairness. Rawls’ focus on distributive justice ignores deontological concerns, but one could argue that the notion of deliberation allows the community to debate the legal mechanism that is best suited for distributing the goods of the community. The assumption that in free society individuals could engage in meaningful dialogue on equal footing may not always work because even in free societies members do not have what MacIntyre calls a common story through which they can seek or appeal to the common good.<sup>42</sup>

<sup>38</sup> Sen, ‘What Do We Want,’ 16.

<sup>39</sup> See Amartya Sen and W. G. Runciman, ‘Games, Justice and the General Will,’ *Mind* 74 (1965); See also Thomas Scanlon, *What We Owe to Each Other* (Cambridge: Harvard University Press, 1998), 5; Thomas Scanlon, ‘Contractualism and Utilitarianism’ in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982); these references are taken from Sen, ‘What Do We Want,’ 18.

<sup>40</sup> John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999).

<sup>41</sup> Amartya Sen, ‘Open and Closed Impartiality,’ *Journal of Philosophy* 99 (2002): 445–69.

<sup>42</sup> A. MacIntyre, *Whose Justice? Which Rationality*, 195, 203.

This poses a real problem for many post-neocolonial states which are not ‘free societies’ and do not have a common story or narrative. In addition, dictatorial regimes have held freedoms hostage and preached equality but institutionalized inequality and kept the masses on the margins. Politicians have restricted public discourse on the nature of a political economy and common good that ought to be used to enhance the quality of life for all members of the political community. Therefore, Rawls’ notion of equality holds in every context.

#### 4. Justice Calls for Fairness

Despite these problems, justice as a virtue is also social justice and calls for a radical rethinking of the idea of fairness in the context of HIV/AIDS. In this next section, I highlight ways in which Christian communities, who are active providers of health care in some African countries, can engage the state on issues of social justice in light of HIV/AIDS. My intention is not to limit social justice to the state alone, but rather argue that the Christian community, which is called to work for justice has a responsibility to encourage state leaders to establish justice at all levels of society to enable its members to strive to promote virtue.

To begin with, a new dialogue ought to start in the post-neocolonial state about the idea and parameters of justice. A deliberative process in that context could use the notion of a minimum consensus with all perspectives in play to forge a hopeful path forward. Such an approach could work well for the church in its fight against HIV/AIDS; members of the Christian community cannot impose their view that responses to HIV/AIDS ought to be grounded on the *imago dei*. An uncritical commitment to one’s perspective, especially the theological position on social justice, is problematic because it might demand compliance from communities that do not share that moral ethos.

In this context, what might emerge as a minimum consensus on social justice that could embrace theological proposals on the *imago dei* and its implication for a life of love and compassion ought to be cultivated in tandem and tension with other positions.<sup>43</sup> Theologians and religious ethicists have mechanisms to make the necessary compromises to achieve a minimum consensus because the claims of justice in the Christian tradition prioritize the person and his or her needs, rather than deserts or reciprocity. The poor and needy of

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<sup>43</sup> Charles Curran, *Catholic Social Teaching, 1891–Present: A Historical, Theological and Ethical Analysis* (Washington D.C.: Georgetown University Press, 2000), 189.

the community deserve justice, and those infected with the HIV virus deserve justice simply because they are human beings.

I do not suggest that Christians should abandon their texts and tradition. The Christian tradition that has drawn from the heritage of the Hebrew prophets and the teachings of the New Testament as well as the vast literature on the social teachings of the church brings a perspective that employs transcendental language, divine mandates, and moral obligations. The message of the Hebrew prophets generates a provocative dialogue on justice which theologians should use to establish dialogue with other communities of discourse to champion the common good.

Rather than talk about the demands of God or the uniqueness of the Christian perspective in the fight against HIV/AIDS theologians and Christian community ought to place their ideas on the table as they engage other communities in free and open dialogue. People share a common humanity as well as basic desires, needs, and could meet those needs more effectively if they collaborate. If Christians maintain a privatized discourse on justice, their voices will not be heard on this crucial debate about justice in a world of HIV/AIDS. When theologians approach the idea of justice in tandem with others, what constitutes justice? The face of someone living with HIV/AIDS defines or provides a context to redefine justice. In the case of HIV/AIDS, the practice of justice might involve two broad agendas, a civic praxis and a theological praxis that would concretize the pursuit of justice to promote the common good.

In order to maximize justice, each community needs to establish a civic praxis that is rooted in human values. I have already argued that the state has new priorities in light of HIV/AIDS and to build a civic praxis requires some basic information. First, every member of the political community should have a clear understanding of the HIV virus and the ways in which the virus is spread. The leaders should pass on this information to its citizens on a regular basis. They need this information to think correctly about HIV/AIDS and make reasonable decisions about risk situations.

Second, every member of the community ought to participate in creating a safe environment. I am referring to a social atmosphere that is free from domination and abuse. Such an atmosphere would empower women, children and other members of the community such as those who are engaged in commercial sex to exercise their freedoms and demand equal rights to engage in activities that would minimize their risk of infection.

Third, those who govern ought to provide health care and devote the resources of the state to the fight against HIV/AIDS not simply waiting for the resources to come from NGOs and other relief agencies. The number of resources each political community devotes to fighting a pandemic that is claiming so many indicates the value that political leaders place on the lives of

their citizens. A political community cannot be committed to the survival of its members if it merely pays lip service to a deadly disease such as HIV/AIDS.

Finally, assuming civic obligations to promote justice might involve taking a stand and playing an advocacy role for those who have been affected by the disease. Such advocacy might involve forming pressure groups to demand that government leaders take their responsibility to people living with HIV/AIDS seriously.

For a long time, many people in Africa have assumed that their countries are poor and that they cannot therefore expect their governments to do anything for them. It is time for people to begin to raise more questions about the role of government in situations where political and economic marginalization exists. So much has happened to change public perception about HIV/AIDS in Nigeria and South Africa because of a few individuals who played an active role in calling on politicians to fulfill their obligations to the people. If members of the political community take their role as activists seriously, it could lead to a new accountability on the part of political leaders who will be forced to act or face civil strife. Such activism ought to emphasize the fact that health care can no longer be the privilege of the few who can afford to buy it.

The second agenda that members of the community as individuals and groups could undertake is a broad one that involves a theological praxis that may not be shared by all people in the political community. Christian communities have a worldview that is structured in the belief that all humanity is created in the image of God. These communities also proclaim that the God who has created humanity loves everybody and has set an example of love for humanity to follow. One way to demonstrate that love is to speak and act as a community on behalf of the many who are on the margins of society, especially people living with HIV/AIDS. With values that differ from one community of discourse to another, theologians would have to recognize that their communication will be heard in a significantly different manner if they themselves listen to other voices that do not come from within their community.

I am not suggesting that religious communities should ignore their core values, but am calling instead for what Stephen Hart has described as ‘recovering the capacity to express moral outrage, universal claims of justice, and visions of a better society (which) is essential if progressive political initiatives are to prosper – or deserve to prosper.’<sup>44</sup>

Such a critical voice against injustice must be raised in a society where a few members of even the elite class have access to health care and the masses have

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<sup>44</sup> Stephen Hart, *Cultural Dilemmas of Progressive Politics: Styles of Engagement among Grass-roots Activists* (Chicago: University of Chicago Press, 2001), 119.



none at all. In many African countries, members of the governing class travel overseas for medical care at taxpayers' expense while most of the citizens do not even have access to good health care facilities, let alone medicines. In societies where this is the norm, theologians ought to raise critical voices and join other communities of discourse to debate social practices that could contribute the wellbeing of all.

Theological commitments do not have to be abandoned completely because they could provide the basis from which to engage in a critical prophetic project that moves the political leaders to practice justice. A further articulation of justice through a theological praxis requires elaborate efforts in Christian communities to educate people and combat HIV/AIDS.

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