

LOCATING RIGHTS IN THE AFRO-COMMUNITARIAN SCHEME: TESTING THE COMPATIBILIST ARGUMENT

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Abstract

In this paper, I explore the relationship between individual rights and duties within the Afro-communitarian discourse in African political philosophy. The notion of individual rights is prominent in modern African political philosophy, which is usually used to refer to the tension between community and individual in Afro-communitarianism. In this paper, I specifically focus on this question: Can Afro-communitarianism ground a plausible conception of individual rights that will be of benefit to modern African societies? I will discuss two approaches within the Afro-communitarian discourse that have offered a response to this question. On the one hand, are the duty-based incompatibilists who defend the primacy of duties over individual rights and claim that Afro-communitarianism is incompatible with individual rights. On the other hand, are the rights-based compatibilists who claim that Afro-communitarianism is compatible with individual rights by according to rights and duties equal status in African political philosophy. In this paper, I will take issues with the latter. First, I argue that rights-based compatibilists have not been able to locate individual rights in Afro-communitarianism beyond selective rights granted to a few persons by the community. Second, I argue that some rights-based compatibilists ground their theory of rights on an idea of community that is not communitarian. With these arguments, I establish that rights-based compatibilism does not dislodge the claims of duty-based incompatibilism.

Keywords: Individual Rights, Duty, Community, Afro-communitarianism, African political philosophy

Introduction

Is there a relationship between individual rights and duties within the Afro-communitarian discourse in African political philosophy? I pose this question because while defending the idea of personhood salient to traditional African societies in his “Person and Community in African Traditional Thought” (1984), Ifeanyi Menkiti claims that “[i]n the African understanding, priority is given to the duties which individuals owe to the collectivity, and their rights, whatever these may be, are seen as secondary to their exercise of their duties” (MENKITI 1984, 180). In other words, Menkiti gives primacy to duties over individual rights. On this ground, Menkiti proposes duty-based incompatibilism that considers duties primary and individuals’ rights secondary, thereby making individual rights incompatible with Afro-communitarianism. This Menkiti’s claim has initiated Afro-communitarian discourse on the place and relevance of individual rights within the African political philosophy. At the forefront of this Afro-communitarian discourse are the right-based compatibilists, such as Kwame Gyekye (1997), Bernard Matolino (2018), Thaddeus Metz (2011, 2020), Jonathan Chimakonam (2018), who argue that individual rights, as well as duties, should be of paramount importance in African political philosophy. For instance, Gyekye defends what he calls “moderate communitarianism” that espouses that Afro-communitarianism is compatible with individual rights and, therefore, individual rights should be accorded equal status with duties.

In this paper, I will mount two objections against right-based compatibilists’ arguments. Key to my objections is demonstrating that the rights-based compatibilists are unable to locate an idea of individual rights that is compatible in status with individual duties in Afro-communitarianism, hence unable to dislodge the claims of the duty-based incompatibilists. First, I will argue that the rights-based argument revolves around a notion of individual rights grounded on the ideas allowed by the community. These rights are selective in nature in that they accrue to individual persons and not individual humans. Their expression is granted by the community norms that do not allow them to enjoy the same worth as individual duty. Second, I will object to the claims of some rights-based compatibilists that ground individual rights on account of a community that is not communitarian. This objection rests on the claim that the compatibilist debate in African political philosophy is owed to the tension between

individual and community in Afro-communitarianism. Thus, the argument in defence of the possibility of an idea of individual rights that shares equal worth with duty should remain within the tensioned communitarian idea of community.

To achieve my aim in this paper, I will begin by examining the position of duty-based incompatibilists. I demonstrate how the defence of duty over rights is grounded on accounts of personhood in African thought that primes the significance of the community over the individual. In the second section, I examine the rights-based compatibilists' response to the issues generated by duty-based incompatibilists. I show how Gyekye argues the compatibility of Afro-communitarianism and individual rights with his moderate communitarianism. I discuss the argument of other rights-based compatibilists in defence of individual rights within the Afro-communitarian discourse in African political philosophy. In the third section, I demonstrate how the position of rights-based compatibilists seems to be pursuing the same ends as duty-based incompatibilists. I show that the inescapability of the community influence in what we term individual rights informs why duty-based incompatibilists does not give serious attention to the possibility of the idea of individual rights, in its expressive form, compatible with the ideas of Afro-communitarianism.

The Duty-based Incompatibilists Position on Individual Rights

In this section, I examine the position of duty-based incompatibilists in African political philosophy. They hold that individual rights and duty do not have the same status in African political thought. The duty-based incompatibilists (MENKITI 1984, 2004; IKUENOBE 2018a; 2018b; MOLEFE 2017; 2018a; 2018b), house their idea of duty in the conception of personhood in Afro-communitarianism. I examine these ideas of personhood, specifically how the normative understanding of persons affirms the importance of duties to the community.

Personhood, argues Menkiti (1984, 176), “is attained in direct proportion as one participates in communal life through the discharge of the various obligations defined by one’s stations”. This idea of personhood laid the foundation for the idea of duty in African political philosophy. It holds that the norms and obligations are essential for pursuing and sustaining personhood. To act contrary to the

community's norms and the obligations' terms is to have one's personhood denied. Menkiti (1984) argues that the values and norms of the community are fundamental to the community and individual. An ideal individual is understood as someone who has attained the status of personhood, defends the norms and seeks the interests of the community rather than individual interests and rights. For him, "in the African understanding, priority is given to the duties which individuals owe to the collectivity, and their rights, whatever these may be, are secondary to their exercise of their duties" (MENKITI 1984,180). By implication, individual rights and their interests do not supersede the community norms and standards. What is important is the obligation an individual owes to the community.

Polycarp Ikuenobe (2018a), an adherent of Menkiti's views, supports the argument that the communitarian value system that defines African culture emphasizes the place of duties and obligations more than rights. In agreement with Menkiti, he notes that personhood in an African perspective combines both the biological and psychological parts of individuals with the normative part. The latter entails certain duties and obligations individuals owe to the community and the exhibition of communal values that authenticate personhood. Ikuenobe defends a notion of personhood that gives an individual various rights as a social entitlement. He submits that a conception of rights that lacks duties to others and responsibility to the community implies a conception of rights where the individual does not interact with others, and/or becomes a lone being.

Ikuenobe (2018b) notes that the structure of duty-based ethics rests on human agency. This is because an individual's obligation to her community affirms the place of free exercise of rationality and autonomy. However true this is, as a defence of rights in the Menkitian scheme, the choices available to individuals in the duty-based communitarian societies espoused by Menkiti are limited. The choices are arguably constrained by norms and governing values of societies. It is challenging to have a comprehensive understanding of rights, especially individual rights, outside the lens of norms and ethos available for human expression (TSHIVHASE 2011).

Motsamai Molefe (2017; 2018a; 2018b) strengthens the morality of duty as the adequate response to the tension between individual and community in the Afro-communitarian discourse when he argues that Menkiti's argument for the morality of duties is a means

of securing the wellbeing of every member of the community. Molefe claims that defending the primacy of duties and the secondary status of rights in African moral and political philosophy is the best way to interpret Afro-communitarianism. Molefe argues that our personhood is captured in our relationship and our communing with other community members. This relationship demands certain duties from us. We can interpret this to mean that the flourishing of our relationship with others rests on the priority we will place on duties (see also OELOFSEN, 2018). Molefe continues that these duties, on which individual personhood is anchored, are for the wellbeing of every member and the promotion of the common good. Attaining personhood is essential in the communitarian African life, it is what guarantees a meaningful life. For Molefe (2020), living a meaningful life is necessarily a derivative of personhood.

Molefe's (2018a, 227) scepticism on rights is expressed when he notes that "if rights would take [a] central place in African thought, this would threaten the very possibility of individuals attaining a status of personhood that entirely depends on them prioritizing the social goal of securing the wellbeing of all". However, these rights doubt would have been unnecessary if Molefe (2018a) understood that the goal of rights in political philosophy secures the ground for human wellbeing and flourishing that characterizes a good and just society. Nonetheless, it is also convincing from an assessment of Afro-communitarianism that what we owe ourselves as community members in Afro-communitarian ethics are duties, not rights. The care we owe others and the priority we give to reducing the pain of others and promoting wellbeing could not have been a demand of rights by us, nor a right expected to be exercised by the agent. It is more of an ethical obligation resting on the ideological stance of the community. While that is true, the recognition of rights is to have a scheme in place to monitor the abuse of individuals in social relations.

The Rights-based Compatibilists Reactions to the Duty-based Incompatibilists' Position on Individual Rights

In the preceding section, I discussed the arguments of duty-based incompatibilists, which establish that Afro-communitarianism is incompatible with, what one might consider as a major feature of African political philosophy, individual rights. This approach holds that whatever can be called rights in African thought does not hold the

same status as duty. In this section, I discuss the reactions to this position by the rights-based compatibilists. Arguing from the rights-based personhood approach, rights-based compatibilists claim that most controversies on individual rights within the Afro-communitarian discourse in African political philosophy arise out of the misinterpretation of the notion of self and personhood, which presents personhood as something to be attained by conforming to communal norms, duties and obligations. They argue that such misinterpretation of self and personhood beclouds the compatibility of Afro-communitarianism with individual rights.

Gyekye (1997) leads the debate on the relationship between individual rights and duties. He developed an account called moderate communitarianism, which aims to establish the kind of relationship that should exist between rights and duties. Following that, moderate communitarianism is a reaction to the primacy of duties over rights in Menkiti's duty-based theory.

Gyekye describes Menkiti's (1984, 2004) accounts of self as radical and promoting an unrestricted influence of community on individuals. Menkiti's conception of personhood, in Gyekye's assessment, offers a narrow perception and understanding of self – that is, a perception that only gives credit to the role of community in the creation of individuals' identity and their interests. Contrary to Menkiti's radical communitarianism, Gyekye argues that his moderate and restricted communitarianism considers the self as both a communal and autonomous being. The individual has a capacity for certain features such as rationality, choices and will, which Gyekye sums up as mental features. These mental features, Gyekye argues, are not created by the community. They are part of the psychophysiological components of the individual. They are important features in the personhood of the individual because they play essential roles alongside the community in the individual's actualization of the self. Their presence and functions indicate the place of self-expression and individual autonomy, consequently affirming the place of individual rights and their status.

Moderate communitarianism is an Afro-communitarian theory of personhood that is considered sensitive to individuals' rights. Gyekye (1997, 62) argues:

[I]ndividual autonomy – which is acknowledged in communitarian conceptual scheme – must involve recognition of the ontology of rights: indeed, individual autonomy and individual rights persistently appear as conceptual allies. A communitarian denial of rights or reduction of rights to a secondary status does not adequately reflect the claims of individuality mandated in the notion of the moral worth of the individual.

However, rights, understood as the property of individuals, find actualization in a social framework. The individual is, by nature a social being. It is this sociality that constitutes the identity of the individual as they co-exist with others. The fulfilment of the community's demands on the individual is essential in attaining personhood in communitarian societies. However, moderate communitarianism does not regard the community as the sole determinant of personhood, individual rights also play a role. This partial involvement of the community in personhood is Gyekye's ultimate distinction from the radical communitarians such as Menkiti. Gyekye admitting the obligation of individuals to the community and the primary status of duty argues that individual rights are as fundamental as the duties to the community. This is the making of Gyekye's equal-worth thesis. He argues that despite the emphasis on communal obligations, the individual who is autonomous and self-assertive has the capacity to evaluate the community norms. Following Gyekye, Thaddeus Metz (2011) emphasizes individual rights. Drawing very much from the idea of Ubuntu that promotes harmonious relationship, Metz defends individual rights that are based on the capacity for friendliness. According to Metz, "typical human beings have a dignity by virtue of their capacity for community or friendliness, where human rights violations are egregious failures to respect this capacity" (METZ 2011, 559).

We need to understand how the capacity for friendliness that guarantees dignity is to be understood in Metz's analysis. Firstly, is the assumption that everyone must have this capacity and must have it in similar degree with others, and to the extent of guaranteeing one's dignity - a condition to enjoy what should be known as fundamental rights. Secondly, friendliness is suspected as being theorized as

another form of obligation to the community, the hallmark of an Afro-communitarian notion of personhood. Simply put, since dignity that guarantees human rights is the same dignity that guarantees individual personhood in Metz's (2011; 2020) account, friendship may be interpreted as a form of obligation, that one must be committed to becoming a person. By implication, the idea of human rights is a derivation of the community that sets the standard for personhood.

Bernard Matolino (2018) attempts an account of the compatibilism of rights and Afro-communitarianism that is grounded on a conception of personhood that strictly emphasizes the constitutive elements of the self without being encumbered with normative details of the communitarian community. He argues that the idea of community Menkiti and Gyekye hold as constituting the African view of community, makes the idea of rights of non importance in African political philosophy. This first move, Matolino (2018) notes, should be matched with a conception of a non-communalist alternative account of community within the Afro-communitarian set-up that would allow the significance of individual rights. The motivation for this kind of community is how the notion of Afro-communitarianism has evolved from the settings of traditional African societies to modern African societies; hence, the need to pay attention to emerging forms of community on the continent.

There are two predictable objections to Matolino's (2018) approach to the compatibilism of rights with Afro-communitarianism. First, there is suspicion that his thesis echoes Gyekye on the need to emphasize the biological and psychological aspect of the individual, a position that limits the influence of the community on the conferral of personhood. Secondly, the danger of allowing a non-communalist defence of individual rights in the communitarian projects betrays the very essence of the compatibilist thesis, which is reconciling rights and duties, individual and community within the Afro-communitarian discourse in African political philosophy.

Jonathan Chimakonam (2018, 123) also defends the compatibility of Afro-communitarianism with individual rights. He argues for the possibility of individual rights using an African trivalent logic called Ezumezu. Ezumezu posits, among other things, that "for any two polar truth values, there is an intermediate point at which they may come together to form a complementary truth value" (Chimakonam, 2018, 136). Chimakonam (2018) uses this logic to defend the mutual

independence of individuals and their mutual interdependence as they form a community. Their independency affirms the existence of individual autonomy and rights. It also shows that individuals' autonomy and rights ought not to be tampered with, as individuals hold the sustenance of community values in their interdependency. This version of Afro-communitarianism rests on the fact that it is individuals that form communities.

From Chimakonam's (2018) account, one would notice a contradiction in the status of the individual and the need for harmony with the community. If individuals are independent beings as conceived, the mutual interdependence that exists between them and the community would be unnecessary. The desire for community, I believe, rests on the incompleteness of the individuals (see CHEMHURU, 2018). In addition, it is easier to account for individual rights in a logic that sees the community as the creation of already existing individuals. The community, in this sense, has one duty, which is to serve its creator's interests and, as such, the individual can manipulate the community for her interest. However, it is not convincing if the notion of community in Chimakonam (2018) stands as an African view of community. Chimakonam's analysis here suggests a community of self-interested individuals. In what follows, I discuss in detail some of my worries about rights-based compatibilism.

The Problems with Rights-based Compatibilism

In this section, I show why the rights-based compatibilists might not be responding to the dislodgment of rights by the duty-based incompatibilists. I show how the different account of rights in African thought does not locate an idea of individual rights that is compatible with duty in Afro-communitarianism. I will engage with rights-based compatibilists by focusing on the question of individual rights in modern African societies.

However, most of the criticisms that have been levelled against duty-based incompatibilism do not guarantee the compatibility of individual rights and duties in African political philosophy. It has been argued that given the relationship between rights and justice, it is difficult, if the argument of duty-based incompatibility is correct, to argue that Afro-communitarianism can offer any principle of justice and a theory of a good society, hence, the

imperative of the rights-based compatibilism. The closest arguments regarding this compatibility have been ones that defend the idea of rights, and not particularly individual rights. This concern is important because the issue at the heart of Afro-communitarianism in African political philosophy is the relationship that exists between community and individual, which the conflict between individual rights and duty is hinged on. While the duty-based incompatibilists argue that no idea of individual rights is compatible with individual duty to the community, rights-based compatibilists ought to defend either the compatibility of the same or the primacy of individual rights over duty. At best, while some defend an idea of rights granted by the community, which are sometimes selective and expressed by some individuals and not by all individuals, others took a non-communitarian approach to defend an idea of individual rights in Afro-communitarianism.

Gyekye's conclusion that the community takes precedence whenever there is a clash between individual rights and duties to the community suggests the incompatibility of the equal worth of the status of individual rights and duty in African political philosophy. Gyekye claims that the communal values of reciprocities and mutual sympathies have priority over the demands of individual rights in a communitarian society (GYEKYE 1997, 62). It, therefore, becomes unclear in a community where duties supersede rights, as claimed by Gyekye, if an individual can genuinely exercise his/her rights of expression when doing so threatens the community's normative structure. Gyekye's subtle acceptance of the primacy of community affirms why Matolino (2009) and Famakinwa (2010) see no difference in Gyekye's moderate communitarianism from Menkiti's radical communitarianism. While Matolino (2009) maintains that the structure of moderate communitarianism is unclear on what its priority is, Famakinwa (2010) holds that Gyekye does not see individual rights as a primary social value.

Chimakonam and Nweke (2018) attempted to save Gyekye's rights-based theory by identifying two senses of rights in Gyekye's notion of personhood. These include rights as participatory and rights as entitlements. In agreement with Kwasi Wiredu (1996), the right to participation in community life is available in Afro-communitarianism. This right is entrenched in the individual journey to personhood. An individual is nurtured by the community through

relationship, participation, and demonstration of belongingness. During this process, the individual acquires and exercises the right of participation in the community system. It is these rights that aid the individual's growth to personhood. Following the attainment of personhood, the individual can demand his/her entitlement rights, such as the right to free speech and property in the community. Since being a person is a requisite for the full expression of these forms of rights, whatever we make of their nature connotes a kind of selective rights owned by individual persons and not individual humans.

On the surface, the two kinds of rights identified by Chimakonam and Nweke appear to be individual rights in that the individual exercises them. However, on a critical look, the expression of these rights is limited to the scope of the community's norms that grant the personhood of the rights-holders. Expression is one of the core aspects of individual human rights. One may need to add that irrespective of the tradition that undergirds one's society, be it communal or liberal, the demand for rights is, among other things, a demand for freedom from oppressive relationships, and consequently for self-realization. The latter cannot be devoid of the right of freedom to choose between alternatives. Rights must be expressive and not be constrained by nature.

From the above, it is difficult to defend a notion of inalienability of rights in Gyekye's rights-based theory, in that rights can be withdrawn by the community that gave them to the individual. The inalienability questions would always surface in conceptions of rights that is not grounded on the intrinsic qualities of human beings but inspired by communal normative features of humans. A similar question can be raised about Metz's (2011) ubuntu-inspired rights theory grounded on persons' capacity for friendliness and community. We can infer that the African tradition does not conceive an idea of human rights as natural rights, grounded in the individual intrinsic possession; instead, on a necessary relationship with others. I argue that not regarding the intrinsic qualities of human beings as the only criterion for human rights in African conceptions of rights could weaken the demand for rights by people that think they must conform to the community norms to earn dignity and respect.

One would see that Metz and Gyekye seem to share some similarities in their analysis of rights. They seem to have sympathy for a particular mode of analysis that appreciates liberal values. Both

struggle to make their defence of freedom, rights and autonomy of individuals by playing around with both the liberal and communitarian scheme. Gyekye and Metz both share the same commitment to valuing community; its harmony and shared common good, and individual features like freedom and autonomy that are arguably alien or ‘silenced’ in the Afro-communitarian thought.

While Gyekye and Metz’s rights-based theories can be said not to be promoting the ideas of individual rights, the analysis of other rights-based compatibilists such as Matolino (2018), Chimakonam (2018), to rescue the alienability of individual rights in Afro-communitarianism seems to avoid the source of the problem, the Afro-communitarian community. These attempts at defending individual rights, freedom, and autonomy in Afro-communitarianism end in the conception of community as the coming together of people to establish a relationship – an Afro-communitarianism, which suggests that the community is the product of the will of its current members. This conception of community is highly contentious. It does not describe and respond to the strict sense of community identified as Afro-communitarian, where the problem of identity and marginalization is tensioned in African thought from which Matolino and other rights-based compatibilists try to rescue the individual. Therefore, these accounts suffer an outcome misplacement. The African idea of community is more than a current arrangement of people with interests (MENKITI 1984).

Matolino (2018) and Chimakonam’s (2018) conception of community as the formation of individuals can be dislodged on the grounds that it passes for a description of an association, having the nature of voluntary membership, without a solid binding sociocultural force. Their accounts of community, on which their ideas of individual rights rests, can be termed as the idea of the community as a collection of self-interested individuals and not a cultural community where the tension between the community and individual in Afro-communitarianism originates. Cultural community is known for strong norms, and its creation is exclusive of its current members. Some of its norms were agreed upon based on the issues and dilemmas the community confronted in history, which led to a resolution that defines the cultural community. The continuity in cultural communities makes it different from a mere association of individuals, whose formation is easily dissolvable.

To make reference to another form of community that is informed by different social elements of modern African societies to defend the presence of rights may not be out of place. What is wrong with such a move is that Gyekye's failure to reconcile rights with community in loyalty to what is considered by some to be the essence of African thought (communitarianism) still resurfaces in these alternatives. It is an extension of Gyekye's dilemma, hence, the need to suggest a non-communalist version of community does not hold anything to the African essence that captures the Afro-communitarian notion of community. There may truly not be anything called the African view of community, which Afro-communitarian theorists must analyse, as Matolino usually objects but an account of community in African thought must appeal to a communitarian philosophy. Otherwise, we might not be making a contribution to Afro-communitarianism. The point of this analysis is that rights-based compatibilism has not been able to adequately locate individual right; in its universal nature, in Afro-communitarianism. The analysis either revolves around a non-communitarian idea of community or an idea of community that does not dislodge the claims of the duty-based incompatibilist.

Given the difficulty of searching for individual rights in Afro-communitarianism without committing to borrowing from non-communitarian ideas, we can conclude that the defence for theories of human rights in Afro-communitarianism is a difficult adventure. While we think of the inability of Afro-communitarianism to prioritize human rights, we may count on liberalism for the guarantee and expression of human rights. Liberalism offers a convincing framework for interpreting rights, especially fundamental human rights. This is because liberalism emphasizes the individual as the central point of attention in any social structure and arrangement. It further grounds its concerns in the individual through the recognition and prioritizing of core elements such as autonomy and freedom.

Conclusion

In this paper, I argued that the core motivation behind the rights-based compatibilism is the lack of attention to individual rights as found in the works of duty-based incompatibilists in African political philosophy. This paper assessed the theoretical commitment of the rights-based compatibilists to locating and defending individual rights

in Afro-communitarianism. In my assessment, what rights-based compatibilists stand to achieve is locating the ground for certain forms of rights in African thought, a testament that the rights discourse is not alien to Afro-communitarianism. Nonetheless, I showed that the rights-based compatibilists fail in defending the basis for the expression of individual rights, the source of the tension in Afro-communitarianism. Therefore, I conclude that both duty-based incompatibilism and right-based compatibilism share similar ends.

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