

Ubuntu and Justice as Fairness

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Abstract

This paper juxtaposes John Rawls's 'justice as fairness' as articulated in A Theory of Justice and Political Liberalism, with an African worldview known as Ubuntu with a view to ascertaining whether Ubuntu can deliver 'justice as fairness' in South Africa, which is liberal and egalitarian, while also deeply influenced by indigenous African values and epistemologies, or ways of knowing. 'Justice as fairness' points to 'the moral powers' that people have, related to their 'capacity for a sense of justice' and 'for a conception of the good'. Ubuntu is not only a moral theory concerned with infusing humane dispositions. It also embodies values, morals, and notions of traditional African communal justice. Indeed in Southern Africa Justice is perceived as Ubuntu fairness. That is, doing what is right and moral in the indigenous African society. Traditional African community represents Ubuntu. There is no Ubuntu without community. And while 'justice as fairness' is anchored on 'the social contract', African traditional democracy operates in a form of discussion, or an indaba, (open discussion by a group of people with a common interest), a lekgotla (a scheduled discussion at a secluded venue), or a pitso (a public assembly for discussing issues of national concern). The indaba, lekgotla and the pitso constitute elements of 'social contract theory' as articulated by Rousseau. They are vital fora for political communication and education. The paper concludes that given Ubuntu's capacity to constitute order, it can therefore be reasonably argued that it has the potential to deliver 'justice as fairness'.

Keywords: Ubuntu, 'justice as fairness', traditional African community, social contract theory, humane ethic.

1. Introduction and Background to the Debate

In the 1970s Harvard University political scientist John Rawls (1999, p.4) argued that a society is well-ordered when it is effectively regulated by a public conception of justice in which "(1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles". Rawls (1999:5) argued that "among individuals with disparate aims and purposes a shared conception of justice establishes the bonds of civic friendship". Rawls noted that men disagree about which principles should define the basic terms of their association. Yet despite this disagreement "they understand the need for, and they are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation". A question might be raised as to why is justice such an important concern for political scientists and political philosophers? Or as Scottish philosopher Alasdair MacIntyre (1988) cogently ponders in his book: *Whose Justice? Which Rationality?* For Rawls (1999:9), "a complete conception defining principles for all the virtues of the basic structure, together with their respective weights when they conflict, is more than a conception of justice; it is a social ideal". Rawls (1999) propounded the notion of 'justice as fairness', which he argued, is "theories of justice that generalise and carry to a higher level of abstraction the traditional conception of the social contract" (Rawls, 1999:3). Rawls (1999:11) argued that the notion of 'justice as fairness' "conveys the idea that the principles of justice are agreed to in an initial situation that is fair". He argued that a society that satisfies the principles of justice as fairness "meets the principles which free and equal persons would assent to under circumstances that are fair" (Rawls, 1999:12).

Sen (2009:15) argues that Rawls's notion of 'justice as fairness' is "precisely about perfectly just institutions in a world where all alternatives are available". It is Sen's (2009:53) contention that "Rawls's foundational idea was that 'justice has to be seen in terms of the demands of fairness'". Sen (2009:62) posits that there are some contributions of great importance in Rawls's approach to justice as fairness. First, the idea that fairness is central to justice "is a major avowal that takes us well beyond the understanding generated by the previous literature on the subject of justice". Second, 'justice as fairness' points "to 'the moral powers' that people have, related to their 'capacity for a sense of justice' and 'for a conception of the good'". And third, Rawls's prioritization of liberty draws attention to "the strong case for seeing liberty as a separate and, in many ways, overriding concern in the assessment of the justice of social arrangements"

(Sen, 2009:63). For Sen (2009:69-70), justice as fairness, as a theory, is “an attempt to generalise and carry to a higher order of abstraction the traditional theory of social contract as represented by Locke, Rousseau, and Kant”.

Against the backdrop of the above exposition of Rawls’s notion of ‘justice as fairness’ in this paper, which is a conceptual exploration piece I attempt to theorise *Ubuntu* as a notion of African communal justice and fairness. Rawls (1999: xi) spelled out the central ideas and aims of ‘justice as fairness’ as those of “a philosophical conception for a constitutional democracy”. This is pertinent to my focus on *Ubuntu* as an indigenous African notion of communal justice in post-apartheid South Africa, which is liberal and egalitarian thanks to the 1996 constitution. South Africa’s 1996 constitution has been hailed as “a model liberal democratic constitution” (Jordan, 1996); that bears “the hallmarks of liberal democracy” (Enslin and Horsthemke, 2004:552; Dugard, 1998:23), and “is widely hailed as liberal and egalitarian” (Deveaux, 2003:162), because “it values human dignity and frames human rights at its heart” (Robinson, 2012:2).

In South Africa, large sections of the country remain rural, communal and very traditional. It is not unusual to observe that Black South African families “can be deeply rural, proudly traditional and communal. Or they can be pretentiously suburban, urban and very cosmopolitan whilst also still keen to retain some of the aspects that are traditional and communal” (Letseka, 2013b:352). A question one might be asked is if *Ubuntu* is to serve as a notion of African communal justice, can it potentially usher in ‘justice as fairness’ as delineated by Rawls (2005, 1999) above, and elaborated on by Sen (2009)? My view is there is no reason why it shouldn’t. And as I shall argue, the key issue is to harness those traditional elements of *Ubuntu* that can potentially infuse the central ideas and aims of ‘justice as fairness’ and to blend them into solid building blocks for supporting the “philosophical conceptions for a nascent constitutional democracy such as South Africa. My views here resonate with views expressed by other African philosophers on the viability of traditional African epistemologies for modern conceptions of political ideas and governance. For instance, Gyekye (1992:254) argues that “the ideas and values in the traditional African system of politics must be thoroughly and critically examined and sorted out in a sophisticated manner so that those that appear unclear and woolly must be explored, refined, trimmed and given a modern translation”. Gyekye encourages us “to ingenuously find ways and means of hammering these autochthonous democratic elements in the anvil of prudence, common sense, imagination, creative spirit, and a sense of history into an acceptable and enviable democratic form in the setting of the modern world”.

The paper is structured around four key sections. I begin with a brief exploration of Rawls’s notion of ‘justice as fairness’, which he cogently articulates in his two books: *A Theory of Justice* and *Political Liberalism*. This exploration is necessary in that it provides the conceptual lens through which to reflect on the notion of justice in general, and ‘justice as fairness’ in particular.

Rawls’s views are premised on the assumption that the subject of justice is the basic structure of society through which individuals cooperate as free and equal persons. In the second section I briefly sketch the normative aspects of *Ubuntu*, the view that *Ubuntu* is a moral theory concerned with the infusion of humane dispositions. In the third section I make a case for *Ubuntu* as a notion of African communal justice. It is my contention that there is resonance between the notion of ‘justice as fairness’ and *Ubuntu* as a notion of communal justice. As Keevy (2008:374) observes, “*Ubuntu* embodies not only values and morals, but also justice. Justice is perceived as *Ubuntu* fairness; doing what is right and moral in the indigenous African society”. While ‘justice as fairness’ is anchored on the notion of ‘the social contract’ suffice it to mention that ‘social contract theory’ was also a pervasive feature of traditional African politics and governance. Traditional African chiefs were bound by law to rule with the consent of the people. Acting against the advice of the council would result in the chief’s deposition (Williams, 2003; Gyekye, 1992; Guy, 1995; Ayisi, 1992). In the final section I provide some concluding remarks. I now turn to Rawls’s notion of ‘justice as fairness’.

2. Rawls’s Conception of ‘Justice as Fairness’

In 1971 Rawls published his seminal book, *A Theory of Justice*. This was followed by *Political Liberalism* twenty-two years later in 1993. The two books have since been re-published as *A Theory of Justice*, Revised Edition (1999) and *Political Liberalism*, Expanded Version (2005). I shall, henceforth cite these latest versions. I want to argue that Rawls’s two books have engraved their place in the political science fraternity by their enduring recasting of the notion of ‘justice’ in a liberal democracy. They are no doubt the most written about and critiqued books in the history of modern political science and political philosophy (Garner, 2013; Young, 2011, 2006; Sen, 2009; Pogge, 2004; Habermas, 1999, 1995; Sandel, 1998; Kukathas, 1990; Okin, 1989). As Habermas (1995:109) points out, “John Rawls’s *A Theory of Justice* marks a pivotal turning point in the most recent history of practical philosophy, for he restored long-suppressed moral questions to the status of serious object of philosophical investigation”. Similarly Sandel (1998:206) writes that “in *A Theory of Justice* Rawls offers a rich array of compelling arguments on behalf of the difference principle and against libertarian conceptions”. For Sandel (1998:184-185), *A Theory of Justice* provoked three debates: one, it raised the

question whether justice should be founded on utility, or whether respect for individual rights requires a basis for justice independent of utilitarian considerations. Two, if certain individual rights are so important that even considerations of the general welfare cannot override them, what rights are these? And third, the claim that the right is prior to the good, that is, should government be neutral among competing conceptions of the good life? In short, should the principles of justice that specify our rights not depend for their justification on any particular conception of the good life? Regarding *Political Liberalism*, Sandel (1998:189) notes that "Rawls defends the claim for the priority of the right over the good". Thus *Political Liberalism's* focus is on "issues posed by the priority of rights".

In this section I explore Rawls's underlying assumptions on 'justice as fairness' in *A Theory of Justice* and *Political Liberalism*. Later in the paper I shall juxtapose these key assumptions with the notion of *Ubuntu* justice in order to ascertain whether a case of resonance between the two can be made. In *A Theory of Justice* Rawls (1999:9) contends that "a complete conception defining principles for all the virtues of the basic structure, together with their respective weights when they conflict, is more than a conception of justice; it is a social ideal". Young (2011:65) agrees. She notes that Rawls's contention is that "the subject of justice is the basic structure of society". Indeed Rawls (1999:6-7) posits that "the major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start". As Young further elaborates, "the way institutions operate together in a society locates the members of the society in differing positions in relation to one another". Various African scholars and philosophers have long argued that in traditional African societies a person is defined by his/her communal relations and embeddedness in a community (Gyekye, 1997; Ayisi, 1992; Mbiti, 1975; Kenyatta, 1965). Rawls (1999) proposes the notion of 'justice as fairness', which he argues implies "theories of justice that generalise and carry to a higher level of abstraction the traditional conception of the social contract" (Rawls, 1999:3). The notion of 'social contract' is generally attributed to French philosopher Jean-Jacques Rousseau, who sketched it in his book, *The Social Contract*. In simple terms, 'social contract theory' provides that the basis of any legitimate society must be the agreement of its members.

In *Political Liberalism*, Rawls (2005:3) begins with "a first fundamental question about political justice in a democratic society, namely what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?". He argues that 'justice as fairness' first proposes "two principles of justice to serve as guidelines for how basic institutions are to realise that values of liberty and equality. Second, it specifies a point of view from which these principles of justice can be seen as more appropriate than other familiar principles of justice to the idea of democratic citizens viewed as free and equal persons" (Rawls, 2005:5). He argues that "political liberalism looks for a political conception of justice that we hope can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it" (Rawls, 2005:10). Thus political liberalism "aims for a political conception of justice as a freestanding view. It offers no specific metaphysical or epistemological doctrine beyond that is implied by the political conception itself". One of the aims of political liberalism, Rawls (2005:11) elaborates, "is to specify a political domain and its conception of justice in such a way that its distribution can gain the support of an overlapping consensus". For him, "a sense of justice is the capacity to understand, to apply, and to act from a public conception of justice which characterises the fair terms of social cooperation" (Rawls, 2005:19). This is because the notion of 'justice as fairness' "conveys the idea that the principles of justice are agreed to in an initial situation that is fair" (Rawls, 1999:11).

Rawls's (2005:18) account of 'justice as fairness' "begins with the idea that society is to be conceived as a fair system of cooperation over time and generations". Concomitantly his concept of a person is that of "someone who can take part in, or who can play a role in, social life, and hence exercise and respect various rights and duties". In this regard Rawls's concept of a person is of "someone who can be a citizen, that is, a normal and fully cooperating member of society over a complete life". Rawls (2005:19) argues that within the tradition of democratic thought citizens are "free and equal persons". It is his contention that "the basic idea is that in virtue of the two moral powers (a capacity for a sense of justice and a conception of the good) and the powers of reason (of judgement, thought, and inference connected with these powers), persons are free". For Rawls (2005: 20), "persons as citizens have all the capacities that enable them to be cooperating members of society". Rawls's notion of justice above can be described as Kantian in orientation. The reason for this is that for Rawls, "the history of moral philosophy culminates in Kant and more or less comes to an end in the Kantian-inspired moral philosophy that Rawls's own work exemplifies" (Berkowitz, 2006:125). In an earlier publication Rawls (1980:516) insists that the Kantian constructivism of justice "specifies a particular conception of the person as an element in a reasonable procedure of construction, the outcome of which determines the content of the first principles of justice". Thus Kantian constructivism of justice holds that "moral objectivity is to be understood in terms of a suitably constructed social point of view that all can accept" (Rawls, 1980:519).

Let me briefly summarise. I have noted that Rawls emphasises the subject of justice as the basic structure of society. According to this logic the major institutions of society define persons can expect to be, and how well they can hope to do. I argued that Rawls propagates the notion of 'justice as fairness', which he describes as theories of justice that generalise and carry to a higher level of abstraction the traditional conception of the social contract. For Rawls, a sense of justice is the capacity to understand, to apply, and to act from a public conception of justice which characterises the fair terms of social cooperation for free and equal persons. In the next section I explore the normative aspects of *Ubuntu* in the Southern African context. This is necessary for the purpose of clarifying the conception of justice in an African liberal democracy that is also marked by the pervasiveness of chieftaincy and communal interdependence.

3. The Normative Aspects of Ubuntu

A selected group of Africanist scholars in Southern Africa have dedicated their time and energy to efforts to insert *Ubuntu* into mainstream philosophical discourses and to offer coherent justifications for its philosophical veracity and epistemological and educational viability (Letseka, 2013a, 2013b, 2012, 2000; Metz, 2011, 2007; Metz & Gaie, 2010; Ramose, 2003, 1999; Teffo, 1994). In acknowledgement of the aforementioned work already done on *Ubuntu* my sketching of the notion of *Ubuntu* in this section shall only be cursory in order to avoid belabouring an issue that has been so diligently debated and delineated. Suffice it to mention though that from Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, to Zambia and Zimbabwe, indigenous African epistemology scholars have grappled with the various ways in which the notion of *Ubuntu* is perceived, appropriated and/or misappropriated. For instance,

within Bantu languages *Ubuntu* is variously referred to. As Tambulasi & Kayuni (2005:148) point out, in the Chewa language of Zambia it is known as *Umunthu*; among the Yao speakers of Malawi it is known as *Umundu*; among the Tsongas in South Africa, Mozambique, Zimbabwe and Swaziland it is known as *Bunhu*; among the Shona-speaking people of Zimbabwe it is *Unhu*; among the Basotho of Lesotho it is *Botho* while the Tswana-speaking people in Botswana and South Africa refer to it as *Setso*; among the Venda speakers of South Africa it known as *Vhutu*, while among the Nguni-speaking peoples of Southern Africa - Xhosa, Zulu, Ndebele and Nguni it is known as *Ubuntu*.

How then is *Ubuntu* as a normative concept understood among these various Southern African communities? There is tacit understanding among Southern African scholars of African indigenous epistemologies that *Ubuntu* implies among other things, a comprehensive ancient African worldview that has normative implications. That is, *Ubuntu* is a moral theory that is associated with humaneness or being humane (Metz & Gaie, 2010; Metz, 2007; Broodryk, 2002; Ramose, 2003; Letseka, 2000; Mokgoro, 1998; Teffo, 1994). Let me briefly elaborate on humanness. Generally a humane ethic begins with a commitment to the idea that humanness is good - that human nature has worth. As Johnstone (1981:180) explains, "such an ethic implies, first of all, that the human essence is worthy of pursuit. It implies that we *ought* to seek out that essence, to cultivate it, to realize it". It is Johnstone's (1981:181) view that "the pursuit of such 'humane knowledge' is what we are bound to by our commitment to humanness". Thus "humane knowledge...is at bottom an 'appreciative understanding' of one's own human nature.

It is this sort of knowledge that allows us to act humanely toward others. Being 'humanized' and growing in 'humane knowledge' amount to the same thing". Johnstone contends that the search for humane knowledge is fundamentally a personal one, a drive to understand nature from the- inside-in. For Johnstone (1981:182), "the quest for humane knowledge - and thus for human wisdom - is in fact a commitment by all who undertake it to become more fully human". Thus "to be *humane* suggests that one's conduct is guided by a respect for and tenderness toward others' beings. It suggests a prizing of these beings and a desire to protect and nourish them".

Citing Oruka (2003), Keevy (2009:35) contends that *Ubuntu* or ethnophilosophy represents the ancient worldview of traditional African societies. Keevy notes that for Oruka, ethnophilosophy represents the group's mythical, uncritical and emotive part of African philosophy. He [Oruka] regards ethnophilosophy as 'a communal consensus'; a totality of customs and common beliefs of a people; a folk philosophy that is not identified with any particular individuals, and is at best a form of religion. As Le Grange (2011:71) points out, *Ubuntu*'s "meaning is interwoven in the cultural practices and lived experiences of African peoples". In the same vein Ramose (2003:380) opines that "*Ubuntu* is the fundamental ontological and epistemological category in the African thought of the Bantu-speaking people. It is the indivisible oneness and wholeness of ontology and epistemology". Against this backdrop Letseka (2012) has offered a philosophical defence of *Ubuntu*. In subsequent publications Letseka (2013a) has explored ways in which young people can be educated for *Ubuntu*, and how *Ubuntu* morality can be anchored in communities, the families, and in personhood (Letseka, 2013b). First, the imperative to educate for *Ubuntu* is based on the assumption that "*Ubuntu* implies the capacity in African cultures to express compassion, reciprocity, dignity, harmony, and humanity" (Letseka, 2013a: 339). Second, the need to anchor *Ubuntu* morality in communities, families, and in personhood derives from the conviction that

the family is "the primary institution of formative moral development" (Okin, 1989:22). And in Africa, the family is "a microcosm of the wider society" (Mbiti, 1975:176), and "the *raison d'être* of all social co-operation and responsibility" (Ayisi, 1992:16).

While *Ubuntu* often passes as communal and interdependent, these features do not imply that *Ubuntu* is anti-individualistic. On the contrary, as Louw (2006:168) points out, "*Ubuntu's* respect for the particularity of the other links up closely to its respect for *individuality*". This is because "*Ubuntu* defines the individual in terms of his/her relationship with others. According to *Ubuntu* the self or individual is constituted by its relationships with others", hence *umuntu ngumuntu ngabantu*, or "a person is a person through others". Thus the *Ubuntu* perception of the other "acknowledges the irreducibility of the other – that is, it never reduces the other to any specific characteristic, conduct or function".

To briefly summarise. I have highlighted the association of *Ubuntu* with humanness and argued that the latter is an ethic worthy of pursuit, something we ought to seek, cultivate, and hopefully, eventually realise. I argued that the essence of *Ubuntu* as humanness is thus a requirement to act humanely towards others. As an ethno-philosophical component of African philosophy *Ubuntu* animates the indivisible one-ness and wholeness of ontology and epistemology of African thought and conduct. The key issue to which I turn in the penultimate section below is, given that the emergent and dominant feature of *Ubuntu* is humanness, how can *Ubuntu* as an indigenous African notion of communal justice be realised? The importance of *Ubuntu* as communal justice in South Africa cannot be overemphasised given that moral indiscretions such as gang wars, murder, assassinations, violent crime, domestic violence, rape and police brutality have become common.

4. Ubuntu and African Communal Justice

In the foregoing analysis I alluded to the resonance between Rawls's notion of 'justice as fairness' and the conception of justice in traditional African society as '*Ubuntu* fairness'. I suggested that while Rawls's conception of 'justice as fairness' rests on the notion of 'social contract' as advocated by, among others French philosopher Jean-Jacques Rousseau, traditional African theories of politics and governance were also premised on 'social contract theory'. In this penultimate section I want to briefly elaborate on the pervasiveness of 'social contract theory' in traditional African politics and governance. I shall also briefly remark on the view of justice in traditional African society as '*Ubuntu* fairness'.

I mentioned in the first section of the paper above that 'social contract theory' provides that the basis of any legitimate society is the agreement of its members. In his book *The Social Contract*, Rousseau (1968:77) argued that an act of sovereignty is "a covenant of the body with each of its members. It is a legitimate covenant, because its basis is the social contract; an equitable one, because it is common to all; a useful one, because it can have no end but the common good; and it is a durable covenant because it is guaranteed by the armed forces and the supreme power. So long as the subjects submit to such covenants alone, they obey nobody but their own will". Louw (2006:162) argues that Gyekye (1997:126) writes that among the Akan communities of Ghana, "in the assembly, whether in the council of the chief, or in the palace of the chief - where general assemblies of all the people usually take place - or in the house of a councillor (that is, head of a clan), there is free expression of opinion". Gyekye notes that "no one was hindered from fully participating in the deliberations of the councils or general assemblies and thus from contributing to the decisions of these representative bodies". The chief would never act without the advice and concurrence of his councillors, who acted as representatives of the people. In the same vein Mandela (1995:24) recalls that at the *imbizo* [*pitso*] in his native

Thembuland in the former Transkei "everyone who wanted to speak did so.... There may have been a hierarchy of importance among speakers, but everyone was heard: chief and subject, warrior and medicine man, shopkeeper and farmer, landowner and labourer. People spoke without interruption and the meetings lasted for many hours". Historian David Omer-Cooper (1966:36) debunks the myth that Shaka, who was Zulu king in the 1820s was an absolute despot. He argues that Shaka's position as king "depended on the loyalty of his troops and their commanders, the *indunas*, who held positions traditionally occupied by the territorial chiefs and were treated as counsellors". Indeed Shaka's portrayal as an 'execrable monster', an 'inhumane mutilator' or "a cruel tyrant who frequently attacked smaller tribes for no reason except for some sadistic purposes" (Biko, 1973:352) has been dismissed as a patently absurd exaggeration that only "suited colonial superiority notions of black self-destructive violence", and revelled at "the captivating image of a landscape littered with human bones" (Wylie, 1994:9).

It is my view that the above accounts of traditional African politics and governance confirm the prevalence of 'social contract theory' in the form of the chief's consultation with the *indunas* - the councillors, the *izikhulu* - the elders through the *lekgotla*, or with the general population through the *pitso* or public assembly. Thompson (1975:209) argues that Moshoeshe, king of Basotho "used the *pitso* to sound out public opinion". Among the Basotho the *pitso* "was a socialising and nation-building institution. In the absence of a literary culture, it was a vital forum for political

communication and education". It "promoted concerted action, which was particularly important since Moshoeshoe and his *matona* [councillors] had scarcely any means of exerting physical coercion over the territorial chiefs" (Thompson, 1975:210). Coplan and Quinlan (1997:35) note that Moshoeshoe used the *lipitso* "to unify his polyglot following, and said that these fora constituted his power and he was their servant". Guy (1994:29) notes that Cetshwayo [who was Zulu king in the 1870s] ruled with the elders of the kingdom, or the *izikhulu*, who comprised the *ibandla* - the highest council of the state. Without the *izikhulu* "the king would not make any decisions of national importance". Hence the saying, '*morena ke morena ka batho*' or 'a chief is chief by the people'. Coplan and Quinlan (1997:35) posit that "'a chief is a chief by the people' implied a negotiative, consensual rather than coercive autocracy". Thus "the chief governed only as long as the people chose to obey him. If he behaved tyrannically he would lose support". As Williams (2003:62) points out, "the reign of a particular king, however loved or despised, was never more significant than the endurance of the kingdom itself".

I now want to briefly comment on the possible resonance between traditional African justice as *Ubuntu* fairness and Rawls's notion of 'justice as fairness'. Moreover, I shall explore the potential for *Ubuntu* to engender 'justice as fairness'. I have commented on Rawls's notion of 'justice as fairness' in detail in the section titled 'Rawls's conception of justice as fairness' above and shall therefore not dwell on the issue here. Instead I want to tease out semblances of 'social contract theory' and *Ubuntu* as fairness in traditional African communities. This could be in the form of an *indaba*, *lekgotla*, or the *pitso* as described by Louw (2006) above. The *indaba*, a *lekgotla*, or a *pitso* were forums where matters of public interest were openly debate and collective decisions made. I have already touched on the role of 'social contract theory' in African traditional democracy above where I argued that it resulted from the consultation with the chief and the *indunas*, the *izikhulu* - the elders, or with the general population through the *pitso* - public assembly. What I intend to do in this final section is briefly comment on the potential for this arrangement to engender justice as *Ubuntu* fairness. This is necessary given that in post-apartheid South Africa moral indiscretions such as gang wars, premeditated murders, assassinations, violent crime, domestic violence, rape and police brutality have somehow become common.

Keevy (2008:374) argues that "*Ubuntu* embodies not only values and morals, but also justice. Justice is perceived as *Ubuntu* fairness; doing what is right and moral in the indigenous African society". She contends that "the essence of *Ubuntu* lies in its ability to constitute order, restore balance and peace within the African cosmology, and maintain the balance between conflict and harmony in traditional African communities. *Ubuntu* norms of ordering society hold worthwhile lessons for fashioning an ordered society even in the fast changing contemporary times. This is because the concept of *Ubuntu* equates justice "in terms of the proper relationships between a human person and the universe, between the person and nature, between the person and other persons" (Keevy, 2008:375). Thus "*Ubuntu* represents the African subcontinent's philosophy of shared beliefs and values" (Keevy, 2009b:67). A crucial aspect of traditional African societies is communality. As Keevy (2009:70) puts it, "the traditional African community represents *Ubuntu*; there is no *Ubuntu* without community". "A person is incomplete unless he or she maintains an active connection with the society or culture of which he or she is a part" (Libin, 2003:126). Indeed Letseka (2000:181) contends that "community and belonging to a community of people constitutes the very fabric of traditional African life". Letseka (2000:182) elaborates:

"In traditional African life a person depends on others just as others depend on him/her. The task of African philosophy is therefore to speculate about the communality of the individual in the African setting. It should provide conceptual frameworks for interpreting and analysing the humanness that Botho and Ubuntu capture. It should provide rational tools for critical reflections on personal wellbeing or human flourishing, on communal ethics and how these ought to impact on human conduct"

Linked to this emphasis on community, communality and interdependence is the importance of the chiefs and chieftaincy – *bokgōši*. Utrecht University Sociologist of Rights Barbara Oomen (2000: 80) argues that in traditional politics and governance the "moral fibre of the whole society rests on *bokgōši* [North Sotho term for chieftaincy]. *Bokgōši* encompasses religion, tradition, governance, customs, and all else, which is why a *kgōši* [chief] should be a symbol of unity. I agree with Trutz von Trotha's (1996:92) view that chieftaincy ought to serve as "an institution of local justice, of public debate, and of an emerging civil society based on the traditions of African politics and institution". From the foregoing analysis it can be reasonably argued that *Ubuntu* as fair African communal justice is only attainable if communality, interdependence, open public discussion, broad based consultation and the need for consensus on issues of moral disagreement, commitment to 'social contract theory' as a guiding principle for politics and governance, are revived as the core values of society.

In summary, in this section I have argued a case for *Ubuntu* as an indigenous African notion of communal justice. I highlighted the pervasiveness of discussion in the form of an *indaba*, a *lekgotla*, or a *pitso* in traditional African politics and argued that existence of these forums resonated with the principles of 'social contract theory', which for Rawls,

frames the notion of 'justice as fairness'. I argued that *Ubuntu* is able to constitute order, to restore balance and peace, and maintain the balance between conflict and harmony in traditional African communities.

5. Conclusion

In this paper I have teased out the 'justice as fairness' in order to ascertain its resonance with *Ubuntu* as an indigenous African notion of fair communal justice. I showed that Rawls premises 'justice as fairness' on 'social contract theory'. I underscored that given the preponderance of discussion in traditional African politics and governance in the form of an *indaba*, a *lekgotla*, or the *pitso* it can be reasonably argued that traditional African politics and governance was also anchored on the principles of 'social contract theory'. I emphasised that for Rawls, a sense of justice is the capacity to understand, to apply, and to act from a public conception of justice where persons are free and equal. I linked the notion of *Ubuntu* with humanness and argued that humanness is an ethic worthy of pursuit, worthy of seeking, of cultivating, and hopefully of realising. In this respect at the heart of *Ubuntu* is the requirement to act humanely towards others. With this in mind, and given that *Ubuntu* has the capacity to constitute order, to restore peace, and to maintain the balance between conflict and harmony in traditional African communities, it is my contention that it can reasonably deliver 'justice as fairness'.

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