

TRIBUTE

Thank you, Satang, and to my friends and colleagues at the Pretoria Centre for Human Rights for bringing us together to celebrate the remarkable career of Professor Charles G. Ngwena, which I am pleased to see continues to flourish.

It is a privilege to give this address ... to have the opportunity to savor the blessings of friendship and collegiality with Professor Ngwena. I have known him since 2000 when we first met at the World Association of Medical Law conference in Helsinki.

Our first co-authorship was in 2001 and our most recent co-authored chapter was published this year. In between, there have been many co-authorships, co-editorships and opportunities to teach in his programs, first at the University of the Free State and then at the Centre for Human Rights University of Pretoria.

Perhaps most pleasing of all, were the relaxing times my husband, Bernard Dickens and I spent with Charles and his wonderfully joyful wife, Patricia.

I have been asked specifically to address Professor Ngwena's contributions to scholarship. His scholarship ranges across a broad spectrum of issues, including labor law, disability law, constitutional and human rights law, health law, bioethics, reproductive and sexual health law and rights.

While I am best equipped to address his scholarship on reproductive justice, I want to take us to a higher level of abstraction and ask three questions:

- What characterises his scholarship?
- What are some of the highlights of his scholarly contributions to our understanding of equality?
- How has his scholarship facilitated dialogue?

- 1 **What characterises his scholarship ... For starters, I would like to identify three features: First, its rigor. Second, the way this body of scholarship puts theory in conversation with reality, and third its insight ... Let me take these features in turn.**

First the rigor of his work.

It is exhaustively researched and skillfully and even beautifully written, suggesting that his writing goes through many, many drafts

Charles never hesitates to submit his drafts for comments for improvement ... He does not just ask for comments, rather he prefaces his requests by saying that he would especially appreciate how a certain section might be better framed or whether an explanation might be better articulated.

Second, I want to note Professor Ngwená's particular ability to put theory in conversation with reality, to the benefit of both ...

Here I am reminded of his scholarship on why transparency is essential to advance the goals of procedural justice, especially in the health sector. That is, the obligations are owed:

- to ensure that laws are sufficiently clear, sufficiently transparent, to providers and patients alike, so that the laws can be implemented in a way that are fair to all concerned, and in addition,
- are the obligations owed to ensure accessible and timely administrative procedures, including appeal procedures, to allow patients who are unfairly treated to contest such treatment.

Professor Ngwená's ability to relate theories of procedural justice with the realities that that women face, for instance in accessing abortion services in many African countries has feminised and contextualised abstract theories of administrative justice.

This scholarship has given new life to theories of administrative justice, sometimes described as due process. Professor Ngwená's advocacy has incentivised health systems to be more transparent in the delivery of services, especially to women.

Third, is the quality of insight

Professor Ngwená's scholarship is characterised by its insight ... its insight into the vulnerabilities of the victims of discrimination, sometimes called the discriminatee. Insight as a characteristic of his scholarship is especially apparent when one looks at the trajectory of his career.

His scholarship has given new and much needed meanings of justice to particular subgroups of individuals who are subordinated and whose subordination has been neglected or overlooked. Such subgroups include employees living with HIV/AIDS, pregnant women with AIDS, those with various sexual orientations and gender identities, those with disabilities, those who have been raped or sexually abused, and, for example, those with unwanted pregnancies, including poor women and girls.

You might ask from whence this treasured ability for insight comes ... I wonder whether it might have come from his experiences of living in different communities beginning with where he was born, in Marondera, Zimbabwe, located 72K east of Harare?

Having examined what are the attributes that characterise Charles' scholarship, let me turn now to the question.

2 What are some the highlights of his scholarly contributions to our understanding of equality?

His scholarship has expanded the protections of anti-discrimination law:

- from those with immutable characteristics such as ethnic origins to include those with mutable or evolving characteristics, such as health or pregnant status,
- Charles' scholarship has gone beyond single ground discrimination to address intersectional discrimination, such as on grounds of disability, youth and poverty to enable fuller understanding of the wrongs of discrimination resulting from intersecting or interacting grounds.

While his contributions to equality scholarship are multiple, what makes Charles' scholarship distinctive is how it has exposed the structural forms of discrimination, especially those structural forms that are experienced by people living with disabilities. He has shown how in his own works and here I quote, how

structural barriers ... prevent the equal participation of persons with disabilities in socio-economic spheres, including in the sphere of reproductive autonomy. Achieving equality and eliminating unfair discrimination require states to take positive steps to accommodate persons with disabilities. The transformative implication of this approach is that it is not the person with disability who must fit into existing societal arrangements but rather the arrangements that must be restructured to accommodate disability and facilitate equal participation and enjoyment of human rights.¹

This scholarship has helped to solidify the obligations that flow from rights to non-discrimination. That is, and I quote again,

non-discrimination obligations are unequivocally framed with a view to achieving substantive equality or de facto equality as opposed to merely formal or de jure equality, to assure not just equality of opportunity but also equality of outcomes and rendering the socio-economic environment accessible to persons with disabilities.

3 Let me now turn to a third and final question: How has Professor Ngwenya's scholarship facilitated dialogue?

In his pioneering book, *What is Africanness? Contesting nativism in race, culture and sexualities*,² Professor Ngwenya goes well beyond his central discipline of law to build on social theory to generate intercultural, interdisciplinary and international dialogue about matters of race, culture, gender, and sexuality.

In so doing, his book provides the tools necessary to facilitate dialogue about the cultural and disciplinary structures of thinking. That is, those structures of thinking that have contributed to a historical tendency toward homogenisation when constructing African identities.

The relevance of the book's methodology goes well beyond issues of distinguishing African heritage from other heritages particularly concerning sexual orientation and gender identity. By providing us with the vocabularies necessary to challenge our respective thinking, the book has facilitated multiple dialogues across disciplines, cultures and nations.

1 C Ngwenya 'Reproductive autonomy of women and girls under the Convention on the Rights of Persons with Disabilities' (2018) 140(1) *International Journal of Gynecology and Obstetrics* 128-133.

2 C Ngwenya, *What is Africanness? Contesting nativism in race, culture and sexualities* (2018).

In conclusion, having explored these questions about his scholarship I want to conclude by speaking directly to Charles.

Charles, you are a major architect of the fields of health law, sexual and reproductive justice, and disability rights. Through it all, by virtue of your intellectual stature, your remarkable scholarly output and your reputation as a teacher and mentor, you have provided a public voice on some of the most contested issues of our times.

You are sought after for your balance, your wisdom and, when appropriate, your penetrating no-nonsense approach to problems. In your gentlemanly and scholarly ways, you have made the unspeakable speakable. In your courageous ways, you have shown how one gets one's point heard and recognised as legitimate.

You have motivated and inspired countless others to contribute to the design and building of these fields. You give unsparingly of your time:

- to review papers of new and seasoned scholars alike,
- to read innumerable thesis and dissertations, and book manuscripts, and
- to provide insightful comments on drafts that inspire authors, many of whom are gathered here today, to run the many extra miles needed to meet the standard of excellence.

As a gentleman and as a scholar, you have enabled more democratic conversations. In a world where public speech has historically been constructed as male, you have ensured all voices are heard and validated in the public space.

For this and for your manifold scholarly contributions to building justice, let me say on our collective behaves, thanks and ever thanks.

*Being a speech delivered by Professor Rebecca J. Cook,
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University of Toronto at the Conference on Advancing Sexual and
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