

Strange bedfellows: Rethinking ubuntu and human rights in South Africa

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Summary

Can an African ubuntu moral theory ground individual freedom and human rights? Although variants of ubuntu moral theory answer in the negative, asserting that the duties individuals owe the collective are prior to individual rights (since African thought places more emphasis on the collective), Metz's recent articulation in this Journal of an African ubuntu moral theory promises to ground the liberal ideal of individual liberty. I pursue three distinct lines of argument in establishing the claim that Metz's project fails to convince – that individual freedom and rights cannot be successfully grounded in a moral theory that already regards some extrinsic value (that is, communal harmony) as the most fundamental moral value. First, I suggest that Metz's attempt to ground human rights in his ubuntu moral theory raises the problem of where the fundamental value lies in his theory. That is, in seeking to integrate two potentially-conflicting and non-instrumental values in his theory, Metz substantially modifies his original ubuntu ethical principle in such a way that the communitarian/ubuntu status of the theory is undermined. Second, I argue that, even if Metz's theory were sufficiently communitarian/ubuntu-like, it could not possibly ground individual freedom as a non-instrumental value. Third, I argue that Metz employs a tendentious reading of the concept of human rights; in particular, that he erroneously construes rights as duties. Since this last argument rests on a subtle distinction between individual rights and duties, I try to suggest how the distinction can be made in spite of the fact that these concepts are strongly related. Although I do not directly address Metz's treatment of specific human rights issues in South Africa, throughout I contend that these theoretical lapses cast enormous doubts on his overall project.

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1 Introduction

Respect for basic human rights is a very important feature of the modern world. This is in part due to the fact that they are politically salient and there are pragmatic reasons why people deeply care about them. A moral theory that fails to adequately capture the importance we attach to these rights would be considered by many as inadequate. Communitarian moral theories are often seen as exemplifying this theoretical deficiency. Consequently, proponents of variants of the theory have been burdened with the responsibility of accounting for the importance we attach to basic human rights and thus resisting the charge of collectivism – the accusation that such theories cannot sufficiently account for individual rights and liberties – that has been persistently laid at their door.¹ Yet, trying to account for human rights within a normative system that fundamentally prizes some communal or relational good over individual ones is like attempting a trick the aim of which is to eat one's cake and have it. Metz's recent contribution to the debate strikes me as one such attempt.² He insists that, although other available alternatives of African *ubuntu* moral theory are susceptible to the charge of collectivism, his preferred version can do the trick.

Notwithstanding my frivolous analogy, I believe that reading Metz's article is worthwhile and repays close philosophical attention. It represents one person's search for a distinctively African communitarian approach to morality that is suitable for public policy formulations on matters that are pertinent to South Africa, and perhaps Africa as a whole. Yet, disagreements there are bound to be when a moral theory is advertised in the public space as a panacea to conflicts and problems of monumental proportions. This article is an attempt to articulate some of my disagreements with Metz's attempt to 'construct an ethical principle that not only grows out of indigenous understandings of *ubuntu*', but also 'clearly accounts for the importance of individual liberty' and 'serves as a promising foundation for human rights'.³ I think that ultimately Metz fails to deliver on these promises. I pursue several distinct but interrelated lines of arguments in establishing three central claims. In the first section, I argue that there are good reasons to doubt the communitarian status of Metz's *ubuntu* moral theory – I explore what it means for a theory to be truly communitarian and then express

1 See, eg, Gyekye's defence of moderate communitarianism as better equipped in adequately accounting for individual freedom and rights than its rival, extreme communitarianism, in K Gyekye *Tradition and modernity: Philosophical reflections on the African experience* (1997); see also JO Famakinwa 'The moderate communitarian individual and the primacy of duties' (2010) 76 *Theoria* 152-166 for an insightful criticism of Gyekye's view.

2 T Metz '*Ubuntu* as a moral theory and human rights in South Africa' (2011) 11 *African Human Rights Law Journal* 532.

3 Metz (n 2 above) 534.

some doubts about whether Metz's theory counts as one. In the second section, I argue that Metz has not successfully shown that individual freedom is compatible with an *ubuntu* ethic. My strategy is to explore three options available to Metz for establishing the compatibility of the two and argue that each one presents new problems for his *ubuntu* moral theory. In the final section, I cast doubts on the initial appeal of Metz's account of human rights. My contention is that Metz's account controversially proposes that rights are represented as duties.

2 The communitarian status of Metz's *ubuntu* moral theory

In its simple form, Metz's variant of the moral theory of *ubuntu* is unquestionably communitarian. But Metz has not offered us a simple theory; there are several layers of intuitions that have shaped the development of what is now his preferred *ubuntu* moral theory.⁴ My immediate aim is to examine in some detail some of his recent philosophical commitments with a view to determining whether the theory in its current expression still retains its communitarian pedigree.⁵ I think that we have reason to suspect that it does not. In particular, I argue that a moral theory is sufficiently communitarian if it adequately captures the basic tenets of communitarianism. One such core aspect of communitarianism is its construction of the individual moral agent as necessarily embedded in a network of relationships. I take this to be the foundational claim about the causal dependence of the individual on the community. Alternatively, a communitarian theory should fully capture the value of community as a non-instrumental good. Implicit in this claim is the view that, in any hierarchical ordering of values, community should rank higher than other alternatives.⁶ To be more specific, then, my view is that on both

⁴ See T Metz 'Toward an African moral theory' (2007) 15 *Journal of Political Philosophy* 321-341 for the original expression of Metz's *ubuntu* moral theory. Since then, the theory has been developed and sometimes modified to include, eg, an account of human dignity, human rights, etc. The following publications represent the development in Metz's and modification of his original intuitions about a distinctive African moral theory: T Metz 'Human dignity, capital punishment, and an African moral theory' (2010) 9 *Journal of Human Rights* 81-99; T Metz 'African conceptions of human dignity: Vitality and community as the ground of human rights' (2012) 13 *Human Rights Review* 19-37; T Metz 'Developing African political philosophy: Moral-theoretic strategies' (2012) 14 *Philosophia Africana* 61-83; T Metz 'African values, human rights and group rights: A philosophical foundation for the Banjul Charter' in O Oche (ed) *African legal theory and contemporary problems: Critical essays* (2013) (forthcoming).

⁵ Compare Ramose's criticism of the African status of Metz's *ubuntu* moral theory in MB Ramose 'But Hans Kelsen was not born in Africa: A reply to Thaddeus Metz' (2007) 26 *South African Journal of Philosophy* 347.

⁶ In characterising the core commitments of communitarianism, I rely on Bell's threefold distinction of communitarianism as expressing a metaphysical claim regarding the communal nature of the self, normative claim about community as

core aspects of communitarianism, Metz's favoured *ubuntu* theory is to be found wanting; indeed, it seems to veer dangerously in the direction of the liberal tradition.

Metz's project on *ubuntu* begins with a critical survey of the available literature with the aim of articulating not the prevailing view of morality among Africans, but instead a justified moral principle that is faithful to values found in sub-Saharan Africa. In order to do this, he explores the term *ubuntu* and the associated maxim 'a person is a person through other persons'. And having considered and rejected a variety of expressions of this maxim as an ethical principle, Metz settles for one according to which 'an action is right just insofar as it produces harmony and reduces discord; an act is wrong to the extent that it fails to develop community'.⁷

Along the way to arriving at this favoured principle, Metz explicitly claims that the aim of morality is not individual well-being or self-realisation. On his account, the fundamental moral value that a moral agent ought to promote inheres in certain kinds of relationships rather than in anything internal to the individual.⁸ However, since promoting certain kinds of relationships, in particular friendly ones, may sometimes justify sacrificing individual freedom and other basic human rights, Metz introduces a deontological constraint to the theory. 'A moral theory that focuses exclusively on promoting good outcomes however one can', Metz cautions, 'has notorious difficulty in accounting for an individual right to life, among other human rights'.⁹ Consequently, he suggests an alternative way of responding to value that requires moral agents to 'prize' and 'honour' harmonious relationships as opposed to promoting these values as much as they can. Yet, while integrating a deontological constraint may be an attractive feature of the theory, it is worth noting how an original intuition has been modified.

In this connection, there are three important points I wish to make. First, it is worth pointing out that in the original statement of the ethical principle it seems that the moral agent is obliged to do the good – that is, promote harmonious relationships – everywhere. Now, it appears that sometimes the good is not worth doing. More importantly, the moral agent within the *ubuntu* moral system has moral reasons to refrain from doing the good, and these reasons derive not necessarily from her valuation of community, but from facts about some inherent value in the individual – that is, specific entitlements the protection of which assures the individual's well-

the fundamental value and methodological claim about the importance of communal context in moral and political reasoning – the last of which is omitted since it is less relevant for my present aims. See D Bell *Communitarianism and its critics* (1993).

⁷ Metz (n 2 above) 334.

⁸ Metz (n 2 above) 334; T Metz '*Ubuntu* as a moral theory: Reply to four critics' (2007) 26 *South African Journal of Philosophy* 369.

⁹ Metz (n 2 above) 540.

being. So, although the theory still retains its commitment to the view that morality is other-regarding, it seems to imply that there is some non-instrumental value inherent in individuals rather than relationships, and this value is worth pursuing for its own sake.¹⁰

Second, and relatedly, it appears that there are now two, rather than one, non-instrumental values in Metz's *ubuntu* theory. Alternatively, it is not entirely clear that we should still regard friendly relationships as the sole fundamental moral value a moral agent ought to promote. If the view that harmonious relationships are constitutive of the good and the claim that basic individual rights ought to be respected are accurate, then it seems that there are two normative aims worth pursuing. Further, it does not seem entirely true that the morally-right action is one that promotes harmonious relationships as per Metz's statement of the original *ubuntu* ethical principle. To adequately reflect the recent modifications of the theory, it appears that Metz's preferred version of an African ethical principle should be modified such that the morally-right action is the one that produces harmony and/or exhibits respect for human rights. But Metz has not done so – which may suggest that he still regards harmony in relationships as the sole fundamental moral value, in which case it is unclear how his theory can fully account for individual freedom and other basic liberties.

Third, and further, not only does the theory in its more recent appearance equally prize two distinct moral values, but it also prizes two competing – insofar as they are potentially conflicting – non-instrumental values. Although it is maybe the case that these aims sometimes coincide, it is nevertheless true that they do diverge. In fact, the need for Metz to incorporate a deontological constraint in this *ubuntu* moral theory is born out of the recognition that the goal of achieving harmony may sometimes be at variance with the aim of upholding individual freedom and other human rights.¹¹ If I am right, then it follows that Metz has now fragmented the fundamental moral aim in a way that gravely undermines the original statement of the favoured principle. Yet, his theoretic romance with human rights does not end there.

Having integrated the deontological constraint, Metz could not miss the theory's potential to ground human rights in spite of its communitarian leanings – something he pursues in a roundabout way by first providing an account of human dignity. In his view, the available *ubuntu* conceptions of human dignity in Southern African thought are inadequate. More specifically, a view of human dignity grounded in relationships or in communal belonging is inadequate

10 See Metz (n 8 above) 383 for the claim that the basic moral reasons for acting are extrinsic rather than intrinsic. For a defence of a version of *ubuntu* that holds that the basic moral reasons for acting are intrinsic and thus advocates individual well-being as the fundamental moral aim, see J van Niekerk 'In defence of an autocentric account of *ubuntu*' (2007) 26 *South African Journal of Philosophy* 364.

11 I return to these issues later.

because if dignity inhered in relationships or 'were a function of actually being in community', then a person in solitary confinement 'would counter-intuitively lack a dignity'.¹² For a more promising conception, Metz proposes that¹³

one is to develop one's humanness by communing with those who have a dignity in virtue of their capacity for communing.¹⁴ That is, individuals have a dignity insofar as they have a communal nature, that is, the inherent capacity to exhibit identity and solidarity with others ... it is not the exercise of the capacity that matters for dignity, but rather the capacity itself.

I want to draw attention to something rather odd in the preceding passage that further deepens my suspicion that more recent expressions of the *ubuntu* theory under consideration reflect a radical shift from the original simple statement of the ethical principle. It is odd that a theory that originally locates the fundamental moral value in certain kinds of relationships would opt against the conception of dignity as inhering in such relationships. The reason why I consider this odd is that, since dignity is non-instrumentally valuable, grounding dignity in something besides what the theory says is constitutive of the good immediately identifies two potentially-conflicting non-instrumental values – one that is extrinsic (that is, inheres in relationships) and another that is intrinsic. This reiterates my earlier point that Metz's *ubuntu* theory in its fully-fledged version seems to incorporate two distinct and conflicting moral values. But there is a further source of worry.

In the first instance, my misgiving about the communitarian status of the theory relates to how the view that human dignity resides in an individual's *unexercised capacity* for community theoretically represents the moral agent. It seems to me that grounding dignity in a yet-to-be-realised capacity for community represents the individual as existing in principle outside the network of relationships that constitutes community. The mere possession of that capacity sets the individual apart from the community, insofar as having that capacity expresses the promise of the individual's subsequent entry into

12 Metz (n 2 above) 543. It is not entirely clear, and Metz does not say, why a proponent of that view cannot happily bite the bullet and admit that dignity cannot be had outside of the network of relationships that constitute a person's identity, since whatever individual attributes a person may have are dependent on facts about the community. However, for a more appropriate response, see, eg, A MacIntyre *After virtue* (1984) 173, who argues that communal roles remain even in isolation, and C Taylor *The ethics of authenticity* (1991) 33, who contends that even in such isolated states, 'dialogue continues within us'.

13 Metz (n 2 above) 544. I shall suggest shortly that merely having such a capacity does not by itself suggest that an individual has a communal nature.

14 I should point out that the suggestion here that 'one is to develop one's humanness by communing' strikes me as odd for a theory that emerged out of a careful review and denunciation of *ubuntu* moral theories that hold individual wellbeing and self-development as the fundamental value. Metz seems to have, without any warning and argument, reverted to the view that the aim of morality is self-development.

community. In resisting the view that dignity is a matter of 'actually being in community', Metz implicitly represents the individual as necessarily occupying a place outside of those relationships that constitute community. This view of dignity thus produces a subject who in principle is able to impinge his will on the community from without. Not surprisingly, then, Metz is keen to emphasise the role individual choice plays in the eventual exercise of that capacity. Here is Metz, 'part of what is valuable about friendship or communal relationships is that people come together, and stay together, of their own accord'.¹⁵ The image, then, is of autonomous individuals who, through practical reasoning in something akin to a Rawlsian original situation, have chosen *of their own accord* to live with others in community.

But why is such a representation of the individual moral agent problematic? In order to fully answer the question, we must first recognise that Metz's reason for claiming that what is special and valuable about a human being is the *capacity for community* is primarily to capture the communal nature of the self. That is to say, he seems to recognise that for his moral theory to be genuinely *ubuntu* or communitarian, he must integrate the metaphysical claim about the causal dependence of the individual on the community. What has emerged, however, is the complete opposite: that is, that the distinctive *capacity* that gives humans dignity cannot be causally dependent on the community since any actual community must presuppose it. By offering an account of dignity that is independent of communal belonging or relationships, it appears then that Metz not only cannot account for the communitarian belief that the individual is causally dependent on the community, but also, he rather ingenuously shows support for the view that the community is causally dependent on the individual – in particular, it is merely the outcome of individual choice.¹⁶

But that is not all. With the Kantian capacity for individual choice an essential part of the definition of the individual, it is not entirely clear that it is the capacity for community that is doing the important work in grounding human dignity, even on Metz's account. Indeed, it

15 Metz (n 2 above) 584.

16 It is worth pointing out how this feature of his theory sets Metz apart from African and Western communitarians, even though his theory is supposed to be communitarian. Eg, Menkiti maintains that individual facts, like dignity, are dependent on communal ones when he explicitly claims that in the African communitarian normative system 'the reality of the communal world takes precedence over the reality of the individual life histories, whatever these may be' (IA Menkiti 'Person and community in African traditional thought' in RA Wright (ed) *African philosophy: An introduction* (1984) 171). See also J Kenyatta *Facing Mount Kenya* (1965) 180; and LS Senghor *On African socialism* (1964) 49 93-94. Among Western communitarians, similar views are held. Eg, Taylor contests the idea of the individual as independent of society in C Taylor 'Atomism' *Philosophy and the human sciences: Philosophical papers* (1985) 2. On his part, MacIntyre (n 12 above) 250 is opposed to the idea of individuals voluntarily entering into community with already established interests.

is worth pointing out that Metz seems to rather disturbingly construe the capacity for freedom as playing a fundamental role in grounding human dignity. And he construes the capacity for community as essentially including the freedom to exercise it as one deems fit. He thus insists on 'one's ability to decide for oneself with whom to commune and how' and is keen to emphasise that that capacity for freedom ought not to be restricted.¹⁷ One way to see this is to recognise how the capacity for freedom underlies the capacity for community, in the sense that whether or not the latter capacity is exercised is ultimately a function of the former capacity. Metz anticipates this criticism and writes:¹⁸

Although a person does need a Kantian ability to make voluntary decisions in order to engage in communal relationships, they are not one and the same thing; for one could make deliberative choices that have nothing to do with one's identity and solidarity with others.

However, this response fails to convince since it sidesteps the real issue. The real issue is not whether the capacity for freedom (that is, making individual choices) and the capacity for community are one and the same thing. Instead, it is about which one is more fundamental for dignity – in explaining what is special about humans and distinguishing them from non-human animals.¹⁹ And Metz's answer is not the simple one that it is the capacity for community, but rather it is that capacity constituted by the capacity for voluntary decisions. So what makes us special and gives us dignity is not merely our capacity for community. Instead, it is the capacity for a *freely-chosen* community. Here is Metz again, 'what is valuable about friendship or communal relationships is that people come together, and stay together, of their own accord'.²⁰ What has emerged then is that the capacity for freedom is what underlies and gives value to the capacity for community. It is in this sense that the capacity for freedom seems to be doing more work in Metz's account of dignity than he acknowledges.

Even so, Metz will likely object that a communitarian moral theory need not endorse the conception of the individual as causally dependent on the community in the way I have been suggesting. He could argue that his project is really about the substantive moral aim of valuing communal harmony by which individuals ought to live. Thus, the argument concludes, the theory is sufficiently

17 Metz (n 2 above) 584.

18 Metz (2010) (n 4 above) 94.

19 In accounting for human dignity, Metz specifically asks: 'What is it that makes us (typically) worth more than members of the mineral, vegetable and animal kingdoms?' Metz (2012a) (n 4 above) 19. Perhaps, implicitly aware that some non-human animals also arguably have a basic capacity for community, he is keen to emphasise *freely-chosen* communal relationships as more valuable and thus as the basis for dignity. This is why I think the capacity for freedom is doing more work in grounding dignity in Metz's theory than he seems to have realised.

20 Metz (n 2 above) 584.

communitarian. Yet, while it is true that on Metz's theory, honouring friendly relationships is a moral goal, what the analysis so far has revealed is that it is not the only non-instrumental value worth valuing – individual liberty and basic human rights are also taken to be non-instrumentally valuable. It seems to me that this tacit acknowledgment of individual freedom as equally valuable as communal harmony further casts doubt on the theory's claim to being communitarian.

I have two reasons for so thinking. First, if I am right that more recent expressions of the theory integrate two potentially-conflicting moral aims, then it does not follow straightforwardly that moral reasons for acting always derive from our valuation of community. Indeed, in certain borderline cases where these aims conflict, moral agents can have reasons for acting that derive neither from their valuation of harmony nor the aim of reducing discord. Since respecting human rights is something worth doing morally, and doing so sometimes goes contrary to realising harmony, it seems that moral agents can have reasons other than community-based ones for acting. Thus, it is not a straightforward matter that this is a substantive theory that prioritises communal harmony. Second, the valuation of individual choice and freedom seems to implicate the liberal commitment to a plurality of moral outlooks or conceptions of the good such that the theory seems to counter-intuitively undermine the substantive moral reasons it proposes by justifying moral outlooks that do not recognise honouring community as a non-instrumental value. Such a theory is anything but communitarian. Indeed, Metz's theory strikes me as more liberal than communitarian despite the claims to the contrary. This is because if we take him seriously by truly upholding the value of individual choice and recognising a plurality of conceptions of the good, then it seems to me a belief in a theory that regards relationships as the bearer of the fundamental moral value would be merely optional.

However, perhaps Metz's *ubuntu* theory cannot be neatly placed in a liberal or communitarian scheme. Perhaps this seemingly *equal* valuation of the individual choice and community is a unique feature of the theory, setting it apart from the extremes of liberalism and communitarianism. In what follows, I argue that, in attempting to incorporate the value of individual freedom within a single normative system that already prizes communal harmony as the fundamental moral value, Metz's *ubuntu* theory is caught in the horn of dilemma.

3 Collectivism and individual freedom

One of Metz's aims is to show that his version of an *ubuntu*-inspired moral theory is impervious to the charge of collectivism. As he

articulates it, the criticism is that such a theory with its²¹ uncompromising majoritarianism or extreme sacrifice for society ... is incompatible with the value of individual freedom that is among the most promising ideals in the liberal tradition.

I should add that for a theory that already takes communal harmony to be the fundamental moral value, the criticism is even more acute. In this section, I intend to motivate the claim that Metz's *ubuntu* theory fails to adequately deal with the criticism.

Let me quickly clarify this aim. Although I argued in the previous section that Metz's theory is less communitarian than it purports to be, here I am claiming that even if the theory was sufficiently communitarian, it could not successfully resist the charge of collectivism – the criticism that individual liberty and communal harmony are incompatible.

Of course, the onus is on Metz to show that communal harmony and individual freedom are indeed compatible. But what would this compatibility amount to? It could not possibly mean that these values never conflict, since his integration of the deontological constraint into the theory is precisely to resolve such conflict. So by compatibility, Metz must have meant that his theory can either (i) incorporate both values while offering some criteria of ordering between them; or (ii) equally value communal harmony and individual freedom as non-instrumental goods, in which case it eschews any such ranking of moral values. Suppose then that Metz can tackle the problem and show that the values of communal harmony and individual freedom are compatible in either sense within his *ubuntu*-inspired moral theory. I suggest that there are three possibilities – I consider each in turn and outline the costs for his theory. I argue that each option represents a *cul-de-sac* and that consequently Metz has not convincingly shown that his theory is resistant to the charge of collectivism.

3.1 First horn: Individual liberty trumps harmony

Consider, for instance, the right of a gay person in a community that deeply abhors homosexuality and sees it not only as totally opposed to its established values (for instance the value of procreation), but also as a threat to the moral health and overall harmony of the community. The individual has the right to freedom of sexual expression, an entitlement the upholding of which would be in tension with communal values and harmony. In a world in which human rights are valued, it seems that the right to express one's sexuality in ways that fall outside the dominant hetero-normative paradigm would remain valid and can be insisted on, even if doing so would hurt relationships or result in a substantial division in the community. Admittedly, there are cases in which this specific conflict

21 Metz (n 2 above) 533.

may not arise – for instance, if this form of sexual expression is consistent with communal values.²²

Assuming then that there are conflicts between the values of harmony and individual freedom and that an agent must act, a moral theory that requires us to value these goods equally does not take us beyond the original conflict; it merely reproduces it. This is so because at the root of the conflict is our desire to regard these goods as equally valuable in themselves. If this is right, then it seems there is a rational compulsion on a theory that seeks to integrate both moral aims to provide a clearly-defined way of ordering these values in the event of a conflict. One possibility is to prioritise individual freedom over harmony. In this way, the theory retains the two values within the *ubuntu* normative system even though one of them – harmony – is merely instrumentally valuable. (In the above case, the freedom of the gay person ought to trump communal harmony and values.)

This may initially strike some as different to Metz's view, seeing that he at various times clearly regards communal harmony as the fundamental moral value. He repeatedly emphasised that the fundamental moral value worth pursuing for its own sake is friendly relationships. Thus, we are enjoined to '*prize or honour such relationships*',²³ and elsewhere he adds that one becomes a moral person insofar as one *honours communal relationships*, '*prizes identity and solidarity with other human beings*' and that '*an individual realises her true self by respecting the value of friendship*'.²⁴ Moreover, in an earlier work, Metz claims that '*as opposed to well-being or self-realisation, this account of ubuntu posits certain relationships as constitutive of the good that a moral agent ought to promote*'.²⁵ Yet, it is not at all obvious that Metz is entirely opposed to ranking individual freedom above communal harmony. The deontological aspect of the theory seems to work in part because individual freedom is so ranked. It implies that when these values are paired against each other, individual freedom should trump harmony.

In any case, it matters less whether Metz actually believes individual freedom should always trump harmony since my argument is that if he were to take this option, which clearly values the liberal ideal of individual freedom, then there are huge costs for his theory. One such cost is that it can only value harmony instrumentally – that is, relative

22 Disregard for the rights of gay and lesbian persons is a pervasive feature of many African communities and, interestingly, these attitudes and practices are justified on grounds of protecting communal harmony and safeguarding against whatever is divisive and harmful to communal harmony. If Metz is right, then there are grounds – specifically community-based ones – for withholding an individual's freedom to sexual expression.

23 Metz (n 2 above) 539.

24 Metz (n 2 above) 540 (my emphasis). Once again, this last interpretation of the maxim seems to commit Metz to the view that respecting the value of friendship is merely a means to realising oneself, something he explicitly denies. See, eg, his response to Van Niekerk (n 10 above) 382.

25 Metz (2007a) (n 4 above) 334.

to individual freedom, the aim of achieving harmony is merely subsidiary. This supposition would ultimately render null and void the original ethical principle which obliges moral agents to promote harmony and reduce discord. Relatedly, this option completely strips the theory of any remaining claim to being communitarian since it would now appear that the fundamental moral value worth pursuing for its own sake is individual freedom. If I am right about my earlier claim that the theory cannot capture the causal dependence of the individual on the community, then, by prioritising individual freedom over harmony, it cannot possibly capture the communitarian belief that achieving harmonious community is the fundamental moral aim. What is more, this option would make the theory degenerate into a version of liberal theory, in which case the charge of collectivism does not even begin. Any attempt then to defend the theory against that charge would amount to a fictitious exercise.

3.2 Second horn: Harmony trumps individual liberty

Again, if compatibility means that a single normative system merely integrates two potentially-conflicting values, then, assuming that we are faced with a conflict, another way to order these values is to prioritise harmony over individual freedom. In this case, considerations of communal values and harmony should trump the individual's right to sexual freedom. In the original statement of the *ubuntu*-inspired ethical principle, Metz seems to have done this by explicitly endorsing the principle that 'an action is right just insofar as it produces harmony and reduces discord; an act is wrong to the extent that it fails to develop community'.²⁶ Once again, this option may retain the value of individual freedom alongside communal harmony. However, in cases where individual freedom conflicts directly with harmony, this option would imply that the moral agent does the right thing in promoting harmony.

I should note again that, although this is one way of integrating the two values within a single normative system, this does not seem to adequately characterise Metz's position since, as already indicated, he has incorporated a deontological constraint in the theory barring moral agents to promote harmony by way of undermining individual freedom. Yet, there are costs *should* Metz take this option. One obvious one is that the theory would be unable to fully capture the value we place on individual freedom – that is, it cannot account for it as non-instrumentally valuable. I think it is fairly uncontroversial to regard most, if not all, basic human rights as valuable in themselves. In the rights to life, dignity, freedom, and so forth, are enshrined basic goods that are desirable in themselves, not merely as a means to some more fundamental value such that when that more fundamental value cannot be secured, protecting these rights would be optional. Alternatively, these rights may be violated in the promotion of that

26 Metz (2007) (n 4 above) 334.

fundamental value. The Universal Declaration of Human Rights (Universal Declaration) and the South African Bill of Rights, which rights contained therein Metz discusses extensively, assume this much. If this were not the case, then not only would the obligations they impose require further justification, but also the very fact of having them would be counterproductive.

A moral theory that values individual freedom merely instrumentally is inadequate and would be the ideal target of the charge of collectivism. Should Metz take this option, his theory would be unable to fully account for individual freedom. Moreover, taking this option would fall far short of Metz's own promise to go beyond what other *ubuntu* proponents have said on the matter.²⁷ And they are all generally agreed that the value of individual freedom is only secondary. So, should Metz take the option under consideration, then his theory would be no better than the ones he disapproves of. Indeed, the charge of collectivism is in part the criticism that if communitarian and *ubuntu*-inspired moral theories acknowledge individual rights, they do so instrumentally. Moreover, an instrumental valuation of rights fly in the face of the supposition that rights represent basic moral goods that are desirable in themselves – something I claimed is implicit in the South African Bill of Rights and the Universal Declaration.

I should reiterate that, although each of the horns considered so far seems not to fully capture Metz's position on the matter of the compatibility of harmony and individual freedom, my claim is that there are potentially-damaging costs for the theory should he opt in favour of either. What then fully captures Metz's account of the compatibility between these values?

3.3 Third horn: Harmony and individual liberty are equally valuable

Let us suppose that the two previous options do not sufficiently reflect Metz's view. In that case, a more plausible representation of his view would be that he fragments the fundamental moral aim in a way that permits honouring both values. That is, Metz's view is that moral agents should equally value harmony and individual freedom. Indeed, this strikes me as Metz's strategy, not only in entertaining two conflicting values in one single theory, but also in tackling the charge of collectivism. One reason motivating this characterisation of Metz is that he proposes what appears to be conditions under which moral

27 Metz (n 2 above) 533 clearly promised to do better than other 'self-described adherents to *ubuntu*' who have 'done little to dispel such concerns' – that is the idea that an *ubuntu*-inspired theory cannot adequately value individual freedom. In this connection, he quotes GM Nkondo '*Ubuntu* as a public policy in South Africa' (2007) 2 *International Journal of African Renaissance Studies*, who sees an *ubuntu*-inspired theory as expressing 'the supreme value of society, the primary importance of social or communal interests, obligations and duties over and above the rights of the individual'; Metz (n 2 above) 533.

agents would have reason to either sacrifice the aim of promoting harmony or the aim of respecting individual liberties.

The first condition is captured in the deontological constraint. Here Metz cautions against promoting harmony at all costs. He specifically claims that when doing so would violate an individual's legitimate rights, we are to refrain from doing so. According to Metz:²⁸

[A]n instruction to promote as many communal relationships as one can in the long run would permit a doctor to kill an innocent, relatively-healthy individual and distribute her harvested organs to three others who would otherwise die without them, supposing there would indeed be more of such relationships realised in the long term. A moral theory that focuses exclusively on promoting good outcomes, however one can (which is teleological), has notorious difficulty in accounting for an individual right to life, among other basic rights.

So we seem to have a condition that pairs the values of harmony and individual liberty together in such a way that whenever promoting harmony threatens individual liberty, we ought to sacrifice the former. That way we honour the latter, which honouring implies that we do not use immoral means to promote the relevant value. But in honouring harmony, an equal valuation of individual freedom is encouraged. It seems then that the theory can account for the value of individual freedom.

Yet, Metz also provides a condition under which harmony should trump individual freedom. In this case, when individual freedom poses a threat to communal harmony, the former can be justifiably limited. Consider, for instance, his example of how a right may be justifiably limited. Metz tells us that 'it might not degrade human dignity, and hence might justifiably limit a right, to lock an innocent person in a room in order to protect others from a virulent disease he is carrying'.²⁹ It seems then that in this instance communal harmony clearly trumps individual freedom. All these seem to suggest that we cannot possibly regard one value as more fundamental than the other since the priority relation between them runs in both directions. That is, there may be justification for prioritising either value depending on the conditions.

Does this way of *equally* honouring both values within a single framework settle the debate over the incompatibility between individual freedom and communal harmony? I suspect that it does not. One reason for my suspicion revolves around the fact that these conditions Metz proposes do not necessarily represent two different conflicts. Are these different conflicts – one in which the agent has strong moral reasons to prioritise individual freedom and another in which the agent has strong moral reasons to prioritise communal harmony? I do not think so. That is, the proposal that we should respect basic human rights when promoting harmony threatens them

28 Metz (n 2 above) 540.

29 Metz (n 2 above) 542.

(that is, the case of the doctor versus the innocent) does not suggest a different conflict to the proposal that we should prize communal harmony when individual freedom threatens it (that is, the case of the diseased individual versus the community). It seems to me that whenever promoting communal harmony poses a threat to individual freedom, an equal threat is directed in the way of the former – in which case the scenarios Metz describes pick out one and the same conflict.

The point I wish to make here is that for a theory that equally values individual freedom and communal harmony, the implication is that whenever these values go head-to-head, a moral agent has equally valid reasons to honour both values. This means that every instance of conflict between individual freedom and communal harmony presents the moral agent with two equally valid, but potentially conflicting, principles for acting, namely (i) we ought to restrict individual freedom;³⁰ and (ii) we ought to sacrifice communal harmony.³¹

The first principle suggests that a moral agent should act in such a way as to prize harmony, which effectively means restricting individual freedom. Since the moral agent must act, upholding the first principle would amount to violating the second. On the other hand, the second principle requires the moral agent to honour communal harmony by upholding individual freedom – which basically means that we are to sacrifice communal harmony. However, in doing so, the agent would be violating the first principle – that is, going against equally valid reasons requiring the agent to uphold individual freedom. The problem is that in doing precisely what Metz's *ubuntu* moral theory obliges, the moral agent would be violating some valid principle within that theory. And that violation would be justified by the same theory. But that is not all. It seems that if the moral agent is to abide by the first and second principles, then in many instances the agent could not possibly act. Rather than violate either principle, the agent may have strong moral reasons to refrain from acting.

I find these features of Metz's *ubuntu* moral theory to be deeply incoherent. It seems to justify not only the violation of its own principles, but also inaction, even though it is developed in the first place as a theory to guide the action of moral agents. In fragmenting fundamental moral aim into two distinct and equally valid aims, this *ubuntu* moral theory reveals an internal incoherence.

30 Partly implied by the claim that communal harmony is the fundamental moral value. Metz has to claim this, otherwise, as I indicated earlier, it would imply that individual freedom should always trump communal harmony, in which case the latter turns out to be merely an auxiliary aim of morality. This, I argued, would completely strip the theory of its final claims to communitarianism.

31 Implied by the deontological constraint of the theory.

But perhaps the accusation of incoherence is unfair. Perhaps Metz could be more charitably read as suggesting that whether we restrict individual freedom or promote communal harmony should be determined on a case-by-case basis. In specific cases, the theory will provide one obvious principle that will guide the moral agent. So Metz's example of an innocent person with a virulent disease who can be justifiably locked up so as to protect the health of the community provides one clear principle – we ought to restrict individual liberty *in this particular case*. A moral agent would not be violating any valid principle within the preferred *ubuntu* moral theory since the only thing the agent has moral reason to do *in this case* is to promote the health of the community. While this strategy evades the charge of incoherence, it comes with its own unique problems as well. For one thing, it undermines Metz's own aim of developing a principle or basic norm that is intended 'to account for what all permissible acts have in common as distinct from impermissible ones'.³² Here it seems that whether some act is morally permissible depends entirely on the particular case we are considering and the principle may vary depending on whether the case requires the moral agent to restrict individual freedom or sacrifice communal harmony. Well, every moral theory, except for consequentialism, at some point requires judgment to apply. It is a matter of debate about how far one can go.

Even so, it seems to me that a theory that seeks in conflict situations to adjudicate between these values on a case-by-case basis should be fairly precise about how to go about it. In the event of conflict between harmony and individual freedom, why should we restrict individual freedom in one case and not in another? On what basis should we decide on whether a particular case requires us to sacrifice harmony? Any acceptable response to these questions, it seems to me, must appeal to something other than the values themselves. Since the theory equally values these goods, it must appeal to some higher value or more fundamental principle in discriminating between cases in which individual freedom is to be restricted and cases in which communal harmony is to be sacrificed. Metz has not provided any clear guidance in this regard and so would benefit from a substantial revision. But, more importantly, in appealing to some higher or more fundamental value in resolving the conflict between equal values, I suspect that the overall substance of the theory would have changed significantly. This is because that higher value need not be communal harmony, in which case the Metz's original aim of showing that his theory takes communal harmony to be the fundamental moral value would be undermined.

By way of summary, then, there are three possible ways for accounting for the compatibility between communal harmony and individual freedom – each with huge costs for Metz's *ubuntu* theory. These range from the entirely losing the *ubuntu*-communitarian

32 Metz (2007) (n 4 above) 321.

substance of the theory (first horn), failure to account for basic human rights as non-instrumentally valuable (third horn), to the theory betraying a deep-seated incoherence (third horn) by justifying the violation of one its own moral principles in any instance action.

4 Human rights and their violations in Metz's *ubuntu* theory³³

I think that Metz rightly grounds human dignity in a non-variable feature of the human being (that is, some human capacity) so that human rights, which are subsequently grounded on human dignity, are, by extension, grounded in a non-variable quality, thus enabling the theory to capture the intuition that human rights are equal among persons and not had in degrees. Even so, the emerging account of human rights and what constitutes their violation strikes me as problematic.

On first approximation, it seems to me that human rights are protections of intrinsic rather than extrinsic goods. Perhaps some may find this controversial. So, for those who do not already share this intuition, it is worth spelling out that rights are installed primarily as protections of certain goods (for instance, life, security, privacy, freedom, and so on) in the individual holding the relevant right, and these goods pertain to facts about the individual's constitution. To my mind, this effectively precludes suggestions to the effect that human rights are installed as protections of basic extrinsic value, in particular certain kinds of relationships. I read Metz as making such a claim. In his view, human rights are fundamental protections against enmity and unfriendly relationships.³⁴ My aim is to contest this notion of human rights and the corollary that human rights violations are instances of 'substantial division and ill-will'.³⁵

One reason why that construal of human rights is objectionable is that it obscures the distinction between the relational nature of the concept and the basic good a right is meant to protect. By the relational nature of the concept, I mean that basic rights typically entail a duty on the part of another, thus placing the right holder and duty owner in some form of relationship. Yet, we can distinguish the (nature of) relationship between right holders and duty owners from the particular good that the right is meant to protect. The view that human rights are fundamentally protections against enmity blurs this distinction by focusing merely on the relationship between right holders and duty owners and insisting that basic rights are installed to protect against certain kinds of relationships, namely, unfriendly ones.

33 I lack the space to treat each of the human rights (issues) that Metz addresses in his article (n 2 above). Even so, what I say here about his construal of rights is applicable to his treatment of the relevant rights.

34 Metz (n 2 above) 546.

35 Metz (n 2 above) 548.

In doing so, however, it conveniently downplays the specific entitlements that are central to notions of rights and quite simply fails to recognise that a legitimate right claim can be made, even when doing so would result in enmity between the right holder and the duty owner. An individual's right to freedom of sexual expression, for example, remains a valid entitlement that can be insisted upon even if doing so would not promote harmonious relationships or would result in substantial division among members of the community.³⁶

Another reason why the submission that human rights are protections against ill-will and enmity is objectionable is that it construes the relevant individual entitlements as instrumentally valuable, their value being merely a function of whether or not they contribute to the aim of reducing discord or enmity – something that Metz should be denying if he is to adequately account for human rights as non-instrumentally valuable. Of course, upholding basic human rights may sometimes coincide with realising friendly and harmonious relationships. But there are borderline cases as well. In such cases where these aims diverge, it appears that one of the two aims must be prioritised. I think that while a state of affairs characterised by the absence of enmity is more desirable than the reverse, a legitimate rights claim would remain so and must be upheld even when doing so could result in, or deepen, widespread animosity and ill-will. It seems to me that it is only in this way that we can fully account for the value of individual freedom and human rights. Such rights embody intrinsic goods that are worth valuing in themselves, not merely because they are consistent with communal harmony.

Does this mean that human rights are not defeasible? I make no such claim. There are instances in which individual rights are justifiably limited. My view is that on such occasions it is not the case that individual freedom and rights are valued instrumentally. This is because any justification for restricting certain liberties must appeal to other more fundamental ones. That is, human rights are only justifiably limited when they are in conflict with other more fundamental rights. However, the restriction of individual rights on grounds of communal harmony cannot be justified.

Let me explain. Suppose that a certain employer installs an e-mail-monitoring system at work. Employees may understandably feel aggrieved. But supposing we were to restrict the employer's right to install an e-mail-monitoring system at work, it seems to me that doing so would be justified by appealing to the employees' right to privacy, in which case the conflict is between the basic liberties – one liberty is justifiably restricted for another. Although a right is limited, a much stronger right is upheld. Suppose, however, that we were to restrict the employer's action on the grounds that doing so would promote

36 For a detailed view of human rights as heavily focused on privileges of a rights holder, see RB Brandt 'The concept of a moral right' (1983) 80 *Journal of Philosophy* 44.

harmony or reduce the overall negative feeling in the workforce. In this case, my view is that the individual right is being treated as merely instrumentally valuable since here it is paired against some other kind of value, which is regarded as more fundamental. The point here is that in order to fully value human rights as non-instrumental goods, they must always trump other kinds of value whenever a conflict arises. But individual rights may be justifiably overridden when it is in conflict with other fundamental rights.

Rather curiously, Metz agrees with me on the preceding point when he says that 'only some stronger right can outweigh these "negative" rights to be free from interference'.³⁷ But if this is the case, then it implies that under no circumstances should communal harmony trump an individual's negative rights. What follows is that Metz's theory seems to imply that individual rights rank higher than communal value and so should always trump the latter (second horn above). As I argued earlier, there are huge costs for Metz's theory should he regard individual freedom as the most fundamental value – one of which is that the theory's final claim to being communitarian is completely lost.

Further, in characterising rights as protections against certain kinds of relationships, in particular unfriendly ones, I suspect that Metz may have disingenuously accounted for the duties individuals (and the state) owe each other rather than on the basic entitlements individuals have.³⁸ Of course, it is true that talk of rights evokes corresponding duties. My point, however, is that it matters where one puts the emphasis. Focusing on the duties individuals owe each other can easily obscure the fact that basic human rights are to a certain degree conflicting notions. For instance, if each individual were to fulfil their duties towards others, then the opportunities for friendship and goodwill opens, whereas emphasis on individual entitlements may not necessarily be compatible with harmony and goodwill.³⁹ It is all well and good when a communitarian theory enjoins individuals to fulfil their duties towards one another. In fact, this is precisely what is expected of such theories – they typically prioritise duties over rights precisely because this is conducive to and consistent with the

37 Metz (n 2 above) 548.

38 Metz's discussion of rights focuses almost entirely on duties of individuals and the state. See, eg, his treatment of the human rights to socio-economic goods where he claims that 'with regard to solidarity ... the state must do what it can to improve their quality of life, and to do so for their sake consequent to a sympathetic understanding of their situation' Metz (n 2 above) 550. It is easy to see how a sympathetic understanding of the situation of the poor can generate a duty on the part of the state and subsequently contribute to overall harmony, but this does not suggest any entitlement on the part of people. Can the citizens also justifiably insist on their entitlements even if this disturbs the peace and harmony?

39 The rights to liberty and privacy, eg, have tags built into them barring others in the first instance to keep their distance and thus do not necessarily provide a fertile ground for the flourishing of friendly relationships. To put it simply, a negative right is the right to be left alone and to do one's bidding.

communitarian aim of promoting communal harmony.⁴⁰ Yet, rights and duties are distinct notions.⁴¹

One way to fully distinguish between rights and duties is to consider the latter from the perspective of the rights holder. This is because they are in the first instance the rights holder's basic privileges. The recognition that others have a duty not to interfere, for example, is dependent on the fact that such rights are in the first place entitlements or privileges a rights holder should enjoy. In this sense, there can be rights (for example negative ones) in the sense of entitlements even when there is no one to perform certain duties. That is, my right to life does not disappear if there is no one with a corresponding duty not to interfere (admittedly, what may disappear is the need to assert such a right, but the entitlement remains). Conversely, the notion of duties can be best appreciated in the first instance from the perspective of the duty owner. If I am right, then since Metz's original promise was to demonstrate how his preferred version of *ubuntu* moral theory can account for the central *liberal ideals* of *human rights* and *individual freedom*, not necessarily accounting for the duties we owe each other, this emphasis on duties strikes me as inadequate.

Finally, if rights as entitlements are privileges, then they are valuable for the well-being and flourishing of the rights holder. In other words, from the perspective of the rights holder, asserting her basic rights to life, freedom, privacy, etc is an important way to ensure her well-being and flourishing. From the perspective of the rights holder, asserting a right is a matter ensuring her well-being or flourishing. For example, recognising and asserting my right to freedom are vital to my well-being and development for I could not possibly flourish as an individual in conditions of enslavement or the absence of freedom. So, it appears that at least from the perspective of the rights holder, human rights can be grounded in self-regarding concerns. In contrast, Metz thinks that human rights are more plausibly grounded in other-regarding concerns.⁴²

However, it seems to me that duties are more appropriately grounded in other-regarding concerns. My duties towards others derive primarily from facts about the other – facts about the other's entitlements or needs, for instance. But my rights are in the first

40 Menkiti, eg, writes that African communitarian societies are organised around the requirements of duty. In his words, 'in 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 (n 16 above) 180). See also Metz (2007) (n 4 above).

41 In private correspondence, Metz denies this distinction, arguing that to have a right just is to have a duty of a sort. My claim is that rights and duties are related but nevertheless distinct. For a detailed discussion of the distinction between rights and duty, see J Donnelly 'Human rights and human dignity: An analytic critique of non-Western conceptions of human rights' (1982) 76 *The American Political Science Review* 303.

42 Metz (n 8 above) 384.

instance entitlements I recognise and assert for my flourishing. I suspect that it is this belief that rights are grounded in other-regarding concerns that ultimately leads Metz to, I think erroneously, emphasise duties rather than basic rights. If I am right that human rights are more plausibly grounded on self-regarding concerns, then there are damaging implications for Metz's *ubuntu* moral theory, namely, that in its current expression, the theory seems to imply that reasons for acting are at once other-regarding and self-regarding. This strikes me as incoherent. Yet, in making this point, I am only reiterating, albeit in a slightly different manner, an earlier point: that, in trying to accommodate two potentially-conflicting non-instrumental values – or two potentially-conflicting principles – Metz's *ubuntu* theory exposes an internal tension.⁴³

Indeed, it is rather curious that a theory which explicitly claims that the fundamental moral value is *extrinsic* (that is, resides in something outside of the individual, namely, relationships) should proceed to define human dignity as an *intrinsic* moral value (that is, specific to the constitution of the individual and independent of relationships), and subsequently ground human rights on this intrinsic value. Such a theory betrays several levels of incoherence. At one level, it seems to claim that the moral value moral agents ought to promote is both *intrinsic* and *extrinsic* – and this despite obvious claims denying that moral value is *intrinsic*.⁴⁴ At another level, the incoherence has to do with the fact that when there are conflicts between advancing either value, the moral agent in advancing one must, necessarily, undermine the other. But if moral agents do the right thing in undermining either of these moral values, then the theory itself must somehow justify sacrificing some value it regards as valuable in itself.

But that is not all. In the event of a conflict, a moral agent experiencing conflicting motivations with regard to the relevant moral values may have to appeal to something other than the values themselves in adjudicating between them, in which case either value is insufficient to motivate agents to act and a third alternative value would have been introduced to the theory. Alternatively, on the pains of undermining either value one would justifiably refrain from acting altogether – something that itself is deeply disturbing for a theory that is supposed to guide agents in acting.

5 Conclusion

Can an African *ubuntu* moral theory successfully ground individual freedom and human rights? I have discussed three distinct arguments in establishing the claim that Metz's goal of grounding the liberal ideals of individual freedom and rights in his *ubuntu* moral theory fails

43 See Metz (n 8 above) 15-16.

44 Metz (n 8 above) 383.

to convince. My first suggestion was that Metz's attempt to ground human rights in his *ubuntu* moral theory raises the problem of where the fundamental value lies in his theory. That is, in seeking to integrate two potentially-conflicting and non-instrumental values in his theory, Metz substantially modifies his original *ubuntu* ethical principle in such a way that the communitarian/*ubuntu* status of the theory is undermined. Second, I argue that even if Metz's theory were sufficiently communitarian/*ubuntu*-like, it could not possibly ground individual freedom as a non-instrumental value. Third, I argued that Metz employs a tendentious reading of the concept of rights; in particular, that he erroneously construes rights as duties. I argued that, although they are related, these notions are nevertheless distinct.

All this leads me to suggest that an *ubuntu* ethic is not entirely suitable for grounding public morality. Perhaps for more industrialised and globalised societies, in which the liberal ideals of freedom and human rights are of paramount importance in shaping public morality, an *ubuntu* ethic can only play a much more restricted role than it did in pre-industrialised African societies.