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A Critical Inquiry into The Ethical Justification(s) For Decriminalising Cannabis Use In South Africa

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Topic: A Critical Inquiry into The Ethical Justification(s) For Decriminalising Cannabis Use In South Africa.

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Abstract

The right to privacy, as contained in the Constitution of the Republic of South Africa, grants individuals the right to engage in certain activities, insofar as those activities are private, without infringement by individuals or the state. The said right is what was relied upon by the Constitutional Court in the decision to decriminalize Cannabis, for private use. However, there is a marked difference between that which is legal and that which is moral. In this thesis, I will grapple with the ethical justifications for the decriminalization of Cannabis. Using the Ubuntu ethical theory, I will show that there is in fact no ethical justification for impeding on a moral agent's right to consume cannabis. I will begin by providing some arguments for and against the legalisation of cannabis use, showing their merits and their demerits. I will then provide an account of Ubuntu ethics and show how its tenets bear on the right to consume cannabis.

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Chapter One: Introduction

In light of the advent of the Cannabis for Private Purposes Bill, which is yet to be implemented by Parliament almost five years after the Constitutional Court's ruling that legalised private Cannabis consumption in South Africa, I intend to grapple with the ethical question of whether it is ethically justifiable to infringe on an individual's right to privacy to prevent the potentially harmful effects of long-term Cannabis usage on that individual's life, and/or on the life of others?

The right to privacy is enshrined in the Bill of Rights of the Constitution of the Republic of South Africa; it is a right that is grounded in the autonomy of an individual to choose for themselves what ought to be considered private and not to be infringed/limited by other individuals and or the state. Hence, a robust discussion will be delved into to determine the place of autonomy of an individual and the rights owed to an individual, such as the right to privacy, among others, by preserving human dignity in African thought.

The journey to the legalisation of Cannabis was a long-winded one for Mr Garreth Anver Prince, a follower of the Rastafarian faith. He began his quest for legalisation in 2002. In the first case he was involved in, now famously termed the Prince Judgement[1], Mr Prince had argued that the usage of Cannabis ought to have been legalised on the grounds of the constitutionally enshrined and protected right of one's right to religion.

Much to Mr Prince's dismay, the Constitutional Court ruled against the decriminalisation of Cannabis in South Africa. The court held that it was incumbent on the state to develop an exception to the universal restriction against the possession or use of Cannabis to protect the rights of a minority religious group. The court ultimately found that it was reasonable to justify the limitations applicable to all in terms of the use and possession of Cannabis, including Rastafarians. Mr Prince remained undeterred in his quest to have Cannabis usage and possession legalised and proceeded to argue his second constitutional challenge before the Western Cape High Court[2].

[1] Prince v President Cape Law Society and others 2002 (2) SA 794 (CC)
[2] Prince v Minister of Justice and Constitutional Development and Others; Rubin v National Director of Public Prosecutions and Others; Acton and Others v National Director of Public Prosecutions and Others (4153/2012) [2017] ZAWCHC 30

This time, Mr Prince relied upon the continued restrictions, thereby violating an array of constitutionally entrenched rights such as the individual's right to privacy, the right to equality and the right to freedom and security of people, the right to socio-economic freedom, the right to a healthy and sustainable environment, the right to freedom of religion, the right to culture and the right to grow Cannabis as a plant. The High Court honed in on the right to privacy and ruled that the criminalisation of Cannabis indeed infringed on the right to privacy. The Constitutional Court confirmed the order of the High Court and upheld the ruling that further restriction on the private use of Cannabis, including its possession and cultivation, was unconstitutional.

So what is the problem? The Rastafarians have won their constitutional challenge, and as per the judgement of the Constitutional Court on who may consume Cannabis for private use, there are no exclusions. However, there is a marked distinction between what is legally and ethically permissible. The purpose of this essay is to explore the Ubuntu ethical theory and find an answer to the question of whether there are ethically justifiable reasons to impede an individual's right to privacy concerning the use, possession, and cultivation of Cannabis insofar as the substance has potentially harmful effects, in cases of long-term usage, either on the life of the consumer or on the lives of others.

In exploring the ethically justifiable grounds for limiting private consumption, one may ask what the big deal is with limiting a right to privacy. A simplified answer could be phrased with more questions than answers. What about the right to autonomy, the right to choose for oneself, and the politics of one's identity? South Africa's democracy strives to develop individual agency and autonomy. Thus, the Constitution of the Republic of South Africa has dedicated Chapter Two to the Bill of Rights for every citizen. The chapter details the rights aimed at affirming the democratic values of human dignity, equality and freedom. Hence, ethically justifying the right to privacy requires one to find reasonable grounds that necessitate an intrusion on a person's right to life and reasons that could justify saving a person from herself. If we must respect an individual's identity, rights or autonomy and consider these somewhat sacrosanct, the question of infringement becomes challenging.

For an individual's choice to be truly accepted, we must accept that subjectively derived values, insofar as they are derived from the informed decision of an autonomous person, are valid. However, this subjectivity can be problematic since what may be valuable to the individual

may not be acceptable to others. Hence, there is an ethical struggle to discover grounds that can limit the inherent right/autonomy to save human beings from themselves.

My argument will be that there is no ethically justifiable reason to impede the right to privacy despite the various potentially long-term effects advanced. It will become evident that there is an absence of conclusive evidence that Cannabis is a casual factor upon which to impede the right to privacy and the autonomy of the individual. The ethical theory of Ubuntu finds greater applicability in a South African context. I will argue that under an African ethical dynamic where Cannabis in certain cultures is considered suitable for the moral agent, it would be unjustified to impede on a person's right to privacy.

To illustrate further that it is unjustified to impede on one's right to privacy, I will discuss the advantages and disadvantages of the use of Cannabis. This analysis will point out that there are harmful effects attached to the long-term usage of Cannabis. However, despite the known negative impact that long-term usage may have on users when it is applied in the context of the ethical theory of libertarianism, needs-based activists promote the idea that rational adult human beings ought to be entitled to take their health risks at least in some areas of their lives (Hayry 1994, p. 92). This would, therefore, yield that there can be no ethical grounds to impede one's right to privacy.

In applying the theory of Ubuntu, I similarly consider the strongest arguments and counter-arguments to justify impeding the right to privacy to determine if there are any ethical grounds to substantiate obstruct the right to privacy. Central to the theory of Ubuntu is the concept of communal relations. Respecting the capacity of others to commune and entering into deep communal relations in which one expresses solidarity and forms common ends with others in the quest to attain personhood is the key to acting with Ubuntu. Self-realisation (Metz 2017, p. 64) is, thus, understood in terms of the positive relationships developed with other human beings. One must, therefore, consider the impact that the use of Cannabis would have on the development of positive relationships between a moral agent and his community and, ultimately, how this may impact his self-realisation.

The question, then, would be phrased along the lines of: Does the personal choice to consume Cannabis result in a division in the communion the consumer forms with other individuals? I consider it plausible to claim that Cannabis consumption does not result in a division in communion, as consumption does not amount to a wrong action. It will be argued that the

consumption of Cannabis creates harmony; it is usually consumed in groups of other consumers, and this creates a sense of bonding. Cannabis consumption will be shown to aid in the care of patients with cancer and is effectively administered as part of a pain management strategy. Cannabis use bonds individuals and potentially aids in carrying out other duties towards those whom one communes with; there is no evidence that it fosters the sort of vices that undermine or threaten a shared identity (since it may enhance it by creating bonds), and solidarity, since it aids people and brings them together. It also respects the capacity of others to commune and promotes friendliness[3]; hence, it does not amount to a morally wrong action. There is, therefore, no ethically justifiable reason to impede on the right to privacy of the consumer. Communion, therefore, may be a ground that supports the legalisation of Cannabis for private use in South Africa.

Carefully examining the available research is essential for uncovering possible ethically justifiable grounds to limit the right to privacy. It shows that while there are a plethora of legal papers that refer to the legal position on the legalisation of Cannabis, and while there are a few research papers that examine the benefits or harm associated with Cannabis use, I have yet to come across any research paper that attempts to answer (from a philosophical/ethical perspective) the question of whether it is justifiable to infringe on an individual's right to privacy, concerning the potentially harmful effects of long-term Cannabis usage on that individual's life, and/or the life of others (at least within the context of South Africa).

Furthermore, this research uses the Ubuntu ethical theory as a moral framework for answering the question about the moral justification for the infringement of an individual's right to Cannabis use – again, a discussion that I have yet to encounter in the literature. Beyond this, the question that this research asks demands that we pause and re-examine the legalisation of Cannabis use from an ethical perspective, especially given the potentially harmful effects that long-term consumption of Cannabis may have on the life of the user and the lives of others. This way, the research contributes practically to real-world issues affecting many individuals. Finally, the answer to the question of this research may have an impact on our views of the Constitutional Court's ruling (or, at least, our opinions about it, insofar as it may inform policy

[3] The act of identifying with others and acting in solidarity with those that one communes with, is in a broad sense what the term friendliness denotes (Metz and Gaie 2010, p. 276). As the use of cannabis promotes bond creation satisfying the element of identifying with others, and potentially aids in the execution of duties toward others corresponding with the act of solidarity, the drug has the capacity to promote friendliness amongst users and non-users.

decisions and legislative amendments that are yet to be effected by the Legislature, to comply with the court's order).

The research methodology for this research will be the analytic method. The analytic research methodology analyses phenomenon from already established information and facts, which are analysed with the view to making a critical evaluation (Pawar. 2020, p. 48). Hence, this research will look at various scientific studies, the information and facts found therein alongside, library research on the philosophical theory of Ubuntu will be presented throughout the work. This methodology will be undertaken to support the conclusion that there are no ethical justifications for impeding one's right to privacy.

Furthermore, an analytical method of philosophy will be used to set out the principles and arguments for and against the possibility of restricting the right to privacy. Then, the concepts presented will be analysed and evaluated, with the use of critical thinking skills to reach a logical conclusion.

The structure of the paper is intended to follow the following trajectory. Chapter Two will discuss the various uses of Cannabis. It will detail the medical benefits of Cannabis, its recreational consumption and the cultural background of the use of Cannabis. Furthermore, this chapter will look into the potential benefits that Cannabis activists submit as the grounds for legalised consumption. The harmful effects of Cannabis consumption will be discussed, as with all things ingested or inhaled into the body, there are advantages and disadvantages for the human body. This chapter will include a discussion of prior medical findings about the effect of long-term usage of Cannabis on an individual.

Chapter Three will discuss Ubuntu's ethical theory about the long-term usage of Cannabis. Chapter four will focus primarily on the application of the concept of Ubuntu as it finds more applicability in the South African context to the issue at hand – that is, whether or not the Ubuntu moral framework can justifiably accept or reject the infringement of an individual's right to privacy, to prevent the potentially harmful effects of long-term Cannabis usage on that individual's life, and/or on the life of others. Thus, this chapter will seek to find out if, indeed, the personal choice to consume Cannabis results in a division within one's community, such that the harmony that is prized in Ubuntu ethics is destroyed or undermined.

The main arguments that will be delved into in this chapter will include a discussion on an individual's sense of autonomy and how this is intertwined and firmly rooted in the concept of

the community and the norms prescribed by the community. During this discussion, the question will be posed, i.e., if the community finds Cannabis consumption to be an acceptable norm within the Ubuntu framework. I will be arguing that the acceptability of consuming Cannabis as a norm within a community will be informed on how much consumption impacts the individual and what impact it has upon the harmonious relations that ought to be promoted for the greater good. Last but not least, in conclusion, I will outline the most potent argument from each of the previous chapters, namely that there is no evidence to ethically support and justify limiting the right to privacy about Cannabis use. This would be despite the potentially harmful effects of long-term Cannabis use. I will also outline potential questions for the future.

Chapter Two: Uses of Cannabis

In the first part of this chapter, I will discuss the positive effects of Cannabis, including the use of the plant in various cultures, detailing the significance of Cannabis to the adherents of these cultures. Alongside the positive effects of Cannabis and its cultural uses, this section will also discuss the modern-day use of the drug. In the second part of the chapter, the adverse effects of Cannabis use will be addressed. An analysis of scientific research on the harmful effects of Cannabis consumption will be done to place into perspective the actual beneficial elements and damaging effects of Cannabis consumption. To contextualise the former laws of South Africa detailing the prohibition of Cannabis, a thought experiment will be presented to position the reader in a position to understand the laws and the effect that such laws have on a Cannabis user. The thought experiment is utilised to understand the reason why Cannabis for personal use was ultimately decriminalised but also to understand the blemish that prohibition had left upon the lives of individuals who were convicted for possession of Cannabis in the past.

In the third part of this chapter, the reader will be led down the path detailing the hot debates between Cannabis activists and prohibitionists. In this section, an evaluation of the arguments for and against Cannabis use will be completed in light of the known positive and negative effects of Cannabis use.

2.1 Medical Uses of Cannabis

Cannabis has various usages, one being of a medical nature called Medicinal Cannabis. Medical Cannabis, which is derived from cannabinoids, refers to medical products that contain purified Phyto cannabinoids or synthetically derived cannabinoids that regulatory authorities have approved for medical use. Medical-grade Cannabis is expected to contain only Cannabidiol (CBD) and not *Tetrahydrocannabinol (THC)* and, therefore, it does not have a sense inhibiting function (Van Rensburg et al. 2020, p. 193). Medical Cannabis as an alternative treatment has gained much traction in recent times; it has become available in various forms, ranging from edibles to drinkable products (Jooste et al. 2021, p. 942). As opposed to THC, CBD displays positive psychoactive results in the treatment of anxiety and depression. It has also been shown to have a positive controlling effect on the negative psychoactive effect of THC (Jooste et al. 2021, p. 943).

Medical Cannabis is graded as falling into Schedule 0 of the Medicines Act, provided that its total make-up is less than 600 mg and that it is dispensed in smaller doses of less than 20 mg

of CBD per dose (Jooste et al. 2021, p. 942). Possession over 600 mg would require a user to be issued with a medical prescription issued by an authorised prescriber. The absence of a prescription would render possession of CBD illegal, as an excess of 600 mg is classified under Schedule 6 of the Medicine Act.

Indeed, cancer patients are sometimes administered doses of CBD for pain management of the effects of chemotherapy, even though there is moderate evidence for the efficacy of CBD for the management of chemotherapy-induced nausea and vomiting (CINV) and multiple sclerosis (MS)-associated spasticity (Van Rensburg et al. 2020, p. 193). This data raises the question of what moderate evidence understands and how this is quantified. Van Rensburg et al. (2020, p. 193) stated that synthetic derivatives of CBD, i.e. dronabinol and nabilone, displayed the best efficacy in controlling CINV. However, their recommendation was rendered obsolete at the risk of bias and a lack of consistency in trial findings (Van Rensburg et al. 2020, p. 193). A lack of consistency in trials suggests that there is no means for quantifying moderate evidence of the efficacy of CBD in the management of CINV, but this does not detract from the conclusion that there is positive evidence of CBD efficacy. In an alternative study conducted in the same year, 2020, there were more promising findings regarding the THC: CBD combination, together with other antiemetic drugs administered to chemotherapy recipients, wherein it was found that there were more individuals who responded positively toward the treatment regimen with no significant nausea (Grimison et al. 2020, p. 1556).

In 2023, a study was conducted in Thailand on gynaecological patients to determine if THC: CBD administration was beneficial in treating CINV. The clinical trial participants were all diagnosed with gynaecologic cancer and received moderate to high emetogenic chemotherapy. Half of the participants were administered a 1:1 ratio of THC: CBD, while the other half was administered as a placebo.

Those who received the THC: CBD mixture reported a lower nausea score than those who received the placebo during the first two days (Sukpiriyagul et al. 2023, p. 1350). During days three and four, the participants' scores for nausea were on par. However, on day five of the trial, those administered with the THC: CBD mixture reported lower scores for nausea than the patients on the placebo (Sukpiriyagul et al. 2023, p. 1350). It was concluded that THC: CBD cannabinoid extract was an appropriate medical approach in the lowering of CINV in patients with gynaecological cancer (Sukpiriyagul et al. 2023, p. 1351).

In light of the research findings of moderate positive evidence and positive evidence in the efficacy of the administration of the THC: CBD combination, the Cannabis drug has been rendered helpful in the management of CINV. Bonn–Miller et al. (2012, p. 6), during their research within the context of the United States of America on HIV-positive individuals, suggested that there was an increased use of Cannabis amongst HIV-positive patients, as it reportedly alleviated anxiety and depression, stimulated appetite and resulted in weight gain; and most importantly the relief of pain.

It is not uncommon in other countries to extend the use of Cannabis to the field of paediatrics. In Jamaica, Cannabis compresses are used on burns and wounds and for the reduction of pain. Cannabis is even reduced into tonics and teas and is administered to children suffering from infantile diarrhoea, teething in infants, and other general remedies for pain relief in infants (Pertwee 2014, p. 32). In chronic asthma patients, the use of Cannabis was administered as a form of treatment for the disease (Pertwee 2014, p. 32).

Cannabis has been successfully used in the treatment of tetanus as early as the 1800s (Pertwee 2014, p. 30). Tetanus, commonly described as the disease of lockjaw and spasms in the neck muscles, was treated in India by smoking Cannabis to prevent complex oral administration of the plant. Cannabis was found to relax the muscles, providing pain relief and a release of tension in the muscles around the neck.

From the discussions above, it appears that Cannabis use in the medical field has several benefits and that, considering these benefits, a compelling argument may be made for the legalisation of Cannabis based on its utility. The legalisation of Cannabis can result in more significant research on the multitude of potentially beneficial properties the Cannabis plant may carry. A limitation on the right to privacy and a continued ban on Cannabis may stand in the way of such research. It might hinder the potentiality of developing a cure or providing relief for certain illnesses through the use of Cannabis.

2.2 Cultural Uses of Cannabis

Cannabis use dates back centuries within the cultural sphere. In the Hindu faith before the advent of Christianity, it was believed that Lord Shiva – the God of Destruction, endorsed the consumption of Cannabis for its mystic inspiration and the experiences it yielded (Rafei et al. 2023, p. 460). Cannabis, commonly known as Vijaya, has also been an integral component of Ayurvedic medicine, which is used to holistically treat nausea, increase appetite and the quality

of sleep, reduce anxiety and depression and produce an overall euphoric feeling (Rafei et al. 2023, p. 460). In ancient Egypt, Cannabis use was promoted for healing and spiritual purposes. It was utilised during death ceremonies and for medicinal purposes (Rafei et al. 2023, p. 460).

'Holy herb' smoking is highly revered in the religion of Rastafarianism. Rastafarianism emanated from Jamaica. Among the practices of this group is indulgence in Cannabis consumption. It is ritually utilised and is considered a 'high sacrament' akin to Holy Communion in Christian churches (De Vos 2001, p. 93). The use of the drug among Rastafarians is to attain revelatory dimensions to understand the self, the universe and God (De Vos 2001, p. 93). It is an act of enlightenment through which one can access Rastafarian's reasoning faculty and tap into a higher level of understanding.

One of the most well-known Rastafarians, Bob Marley, a reggae artist, advocated the legalisation of Cannabis in his song "Legalize it". He referred to the use of Marijuana by its various names and detailed its beneficial and curative properties in the treatment of asthma, the flu, tuberculosis and even Numara thrombosis.

Contrary to popular belief that Rastafarians indulge in Cannabis use for recreational purposes, the close association between Rastafarians and the smoking of Cannabis stems from their belief that God opted to reveal himself to humans through the use of herbs (Pretorius 2006, p. 11). Similarly, Rastafarians believe that the practice of smoking Cannabis is essential to the uniting/healing of a nation that is generally divided due to a fractious society (Pretorius 2006, p. 12).

Indulgence in Cannabis is ritualistic for a Rastafarian. Every time a pipe is lit, a prayer is rendered unto the Jah (God) requesting the bestowment of a blessing (Pretorius 2006, p. 13). The ritual entails not just the rendering of a prayer. Respect for the act is shown by removing their hats, and silence is observed. The Rastafarian expression "I-man" is also a form of consciousness that is accessed when Cannabis is smoked between the smoker and the higher being Jah (Pretorius 2006, p. 15). Furthermore, the expression refers to the completed transformation of an individual/non-person bound by slavery into the destination of becoming a complete person (Pretorius 2006, p. 15). Spiritually, a Rastafarian transcends to a deeper connection with God through indulgence in Cannabis.

Due to Cannabis's symbolic value, the Rastafari movement was intent on legalising it as a holy herb. This process is deeply rooted in the freedom of religion prescribed in the Constitution of

South Africa. It is also the ground upon which Mr Prince relied in his initial application to the High Court in the bid to legalise the drug.

Cannabis or Marijuana has been a drug of choice amongst liberal groups such as the "Hippies". The Hippie movement, prominent from the 1960s, was a socially constituted group, with their purpose being to advocate against imperialism and to promote the legalisation of Marijuana, as opposed to its ban. As a movement, they invested themselves in concerns about civil rights, liberties and protection of the environment (Espinoza-Kulick 2021, p. 2).

Flower children, also known as "Hippies", believed firmly in meeting violence with love. At the epicentre of their movement was the use of Cannabis.

Cannabis brings people together and allows them to share an identity (Espinoza-Kulick 2021, p. 3). As their main aim was to protect and advocate for the primacy of civil rights and liberties, they indulged in Cannabis to set themselves apart from the dominant systems of power (Espinoza-Kulick 2021, p. 3). Hippies believed that the use of Marijuana would allow them to attain complete freedom, and the drug acted as a sign of cohesion (Espinoza-Kulick 2021, p. 3). For the Hippies, Marijuana was seen as a means of fostering bonds between those who indulged in the use of the drug, and it facilitated a movement of acting as a whole, sharing a single identity.

Cannabis usage in South Africa dates back to the eighteenth century. Cannabis was traditionally used in Southern Africa by traditional medical practitioners. Among the Zulu, the community herbalist traditionally known as the *Inyanga* or the diviner, traditionally known as the *isangoma* would use Cannabis sativa to treat medical conditions and to bring about altered states of consciousness for spiritual purposes, such as ancestral spirit contact and dream induction (Sobiecki 2002, p. 2). Species of Cannabis Sativa were used in initiation practices to drug or inebriate the initiate (Sobiecki 2002, p. 19). Cannabis sativa was further used by sangomas in the treatment of nervous disorders, certain diseases and anxiety (Sobiecki 2002, p. 23).

Chris Duvall (2019, p. 7) documents that during the eighteenth century, the plant leaves were dried out in preparation for smoking. Duvall (2019, p. 7) suggested that in South Africa, the Cannabis plant would be lightly fermented and then dried before it was used. Among the Xhosa cultural group, Cannabis was known for its curative properties in treating whooping cough and asthma. The plant leaves are mixed with brandy and consumed orally (Bhat 2013, p. 1479). The earliest use of Cannabis in South Africa was by the indigenous Khoisan and Zulu

inhabitants along the East Coast. Amongst the Khoisan, smoking Cannabis was indulged in communal settings by the older men (Bishop 2013, p. 26). Cannabis was also given to Zulu and Swazi warriors before entering battle to bestow upon them courageous spirits (Bishop 2013, p. 26). Bryant (1970), in his book titled "The Zulu People", details how Zulu warriors were given Cannabis to smoke and, under the exciting effect of the drug, they were able to conquer their opponents even under dangerous conditions.

In contemporary South Africa, the use of Cannabis has broken away from spiritual purposes and is now more often being used to elicit euphoric sensations. The subsequent 'good feeling' that the drug produces once consumed is the 'high' that young South Africans are chasing. Smoking Marijuana has become a sub-cultural activity, and only those who form part of that culture understand the importance of smoking Cannabis for the euphoric experience (Manu, Douglas & Ntsaba 2021, p.6). This sub-cultural activity and the ideology that only Cannabis smokers understand, the euphoria element and its importance give rise to a form of community as it is based upon the aspect of shared identity. Only if you are a user of the substance can you relate to the experience of other users.

Access to Cannabis in modern-day South Africa has evolved, and it is available in edible forms such as gummies and cookies. It is also available for electronic cigarettes or vape products. As the smoking of Cannabis has gained popularity amongst young adults, various strains of Cannabis continue to flood the market labelled with attractive names such as Peanut Butter Breath, Northern Lights, Blue Cheese, LA Confidential and many more.

The various strains also differ in their make-up. The amount of THC and CBD that each strain contains varies, giving rise to different effects/ highs. The Indica strain of Cannabis contains a higher level of THC, resulting in a more substantial sedating effect. The Sativa strain gives rise to a more energising effect. Cannabis is usually smoked in a setting of friends, students who attend the same university classes and individuals who frequent parties and outdoor musical events such as the UB40 concert. These are just a few ways Cannabis brings people together in a divided world. Cannabis has gained popularity in modern-day South Africa and has given birth to Cannabis communities. A quick search on the social media platform Facebook for Cannabis communities will yield the option to follow pages such as Now This Weed, with a following of three million individuals, or pages such as I Love Smoking Weed, with a following of 169,000 individuals and Weed Humour with a following of 1.1 million followers. These are just a few of the many communities that have formed around Cannabis smoking.

Thus, it can be deduced that many individuals consume Cannabis for recreational purposes, and it provides them with a sense of inclusivity. Communities are formed around the drug, which displays its solidifying effect in creating bonds between people.

2.3 Arguments for Prohibition of Cannabis Use

2.3.1 Cannabis and increased criminal activity

Cannabis prohibitionists argue that Cannabis ought to remain illegal as it is a drug that induces some problems with the mental health of individuals who consume the product, even to the extent of criminal insanity (McLeod 2012, p. 104).

Is this the whole truth, however? It can be argued from the literature that this was a point of view created by prohibitionists to sway the general population into believing that Cannabis was positively linked to driving users criminally insane to substantiate its continued prohibition (McLeod 2012, p. 104). This picture was probably enhanced by Marco Polo's tale of Cannabis-intoxicated Arabic assassins and by the U.S. government propaganda-driven movies such as Reefer Madness (Miczek et al. 1994, p. 401). However, a review of the literature extending over the last two decades shows that the link between Cannabis and increased criminal behaviour is slim to none, as the substance leads to a decrease in aggressive behaviour (Miczek et al. 1994, p. 401).

In my view, the arguments made by the prohibitionists about criminal activity are non-persuasive. The claim that Cannabis use gives rise to mental illnesses to the point of criminal insanity is lacking in evidence showing that there is a link between mental illnesses caused by Cannabis use and criminal activity. It remains an unsubstantiated claim.

2.3.2 Cannabis and mental health

It has been argued by some that there are strong ties between the use of Cannabis and an increased risk of developing mental health problems such as anxiety, depression and, more concerning, schizophrenia. However, looking through the literature and medical studies, I will demonstrate insufficient evidence to conclude that such ties exist (Casadio et al. 2011, p. 1781). Psychotic episodes, or the onset of schizophrenia, in individuals who consume Cannabis have been shown as being more likely to occur in individuals who had a pre-disposition or vulnerability to mental health challenges (Casadio et al. 2011, p. 1781). While this may be the case, studies have not conclusively found that Cannabis is *directly* linked/responsible to/for

mental health diseases such as schizophrenia in individuals without such predispositions (Casadio et al. 2011, p. 1781).

The uncertainty of the research, therefore, leaves the door open to arguing that Cannabis cannot conclusively be linked to the onset of mental illnesses, that being said, the impact of cannabis on ill-mental health is conditional in nature. The inconclusiveness of the research lends itself to an argument, that although cannabis cannot conclusively be linked to the onset of mental illnesses, the drug does have the potential to exacerbate mental illnesses in persons who are already vulnerable thereto, and it could well be the case that mental illnesses in long-term Cannabis users existed before the generalised practice of smoking Cannabis took place.

It is for this reason I argue that this predisposition does not matter much even if it were true as there are various other risky human endeavours that remain unregulated in South Africa. For instance the field of adventure tourism is highly unregulated to date. Adventure tourism is the undertaking of an activity such as sky diving for instance, which involves an escape from mundane day to day life, but also involves a risk to life and limb. Thrill seeking individuals, experience strong emotions of fear and excitement and thrive on the uncertainty of the outcome.

Such an industry remains highly unregulated but there persists little to none interference or prevention of the right to choose to participate in such a risky endeavour.

Factors that could lead to psychotic episodes were also discovered to be linked to the degree of usage. Research suggested that everyday Cannabis users were more susceptible to psychotic episodes (Di Forti et al. 2009, p. 490).

One may well make the argument that the decriminalisation of Cannabis for private consumption could lead to daily usage. However, a susceptibility could be formed in users to developing psychotic episodes.

fMRI studies found that the effect of the main component of Cannabis, i.e. THC, on the brain decreased memory performance in both animals and humans (Bhattacharyya et al. 2009, p. 447). Bhattacharyya et al. (2009, p. 448) found that ‘THC on mediotemporal activation might also contribute to persistent deficits in verbal learning and memory that are seen in regular Cannabis Sativa users’. However, it is noteworthy that although this empirical claim is advanced, there is no data which one can rely upon to determine if Cannabis/THC could indeed cause deficits in verbal learning and memory. To properly evaluate a link between Cannabis

use and psychotic episodes or the development of Cannabis-induced forms of psychosis, it is helpful to look at the data extracted from countries around the world that legalised recreational Cannabis consumption as early as 2012.

Hall and Lynskey (2020, p. 181) analysed data produced by countries such as the United States and Canada, which have legalised the recreational use of Cannabis. Their findings showed that, due to legalisation, there is an increase in the potency of Cannabis strains, which led to more individuals presenting in emergency departments with psychotic symptoms (Hall & Lynskey 2020, p. 181).

With the legalisation of Cannabis comes the possibility of occasional users becoming daily users due to the ease of accessibility. Hall and Lynskey (2020, p. 181) argued that the change from being an occasional user to a daily user can be predicted when one considers patterns in alcohol and tobacco consumption. It is their submission that occasional alcohol and tobacco users tend to migrate to daily usage due to factors such as accessibility and advertising. This empirical claim needs support through data analysis, which is lacking in their research. Therefore, there is no evidence for their claim that the legalisation of Cannabis can lead to an increase in daily usage. Despite the lack of evidence to prove that legalisation will result in more daily users, there is research available to suggest that daily use is more likely to result in a risk of psychosis.

A meta-analysis study was conducted in 2016 by Marconi and others who assessed the relationship between the level of Cannabis use and the risk of psychosis. Marconi et al. (2016, p. 1265) confirmed a positive association between the extent of Cannabis use and the risk of psychosis. Their findings showed that for heavy Cannabis users, the risk of developing a psychotic disorder increased almost 4-fold. In contrast, a 2-fold increase in psychosis was observed for moderate Cannabis consumers, as opposed to non-users (Marconi et al. 2016, p. 1265). Their conclusions remained stable, regardless of the definition of psychosis applied, i.e. a narrower definition might point towards a specific disorder (Marconi et al. 2016, p. 1265).

In a further study across Europe, data was analysed to determine if there was a similar link between Cannabis with an average potency and psychotic episodes. It was found that those who consumed Cannabis daily showed a modest increase in the likelihood of developing psychosis, as opposed to those who never indulged in the drug (Di Forti et al. 2019, p. 430). These harmful effects could be the reason why Cannabis has, until recently, remained illegal

for consumption, cultivation and distribution. In light of the literature presented above and studies conducted by Di Forti et al. (2019) and Marconi et al. (2016), it has been shown that although Cannabis use does not increase criminal behaviour, it nonetheless has the potential to increase the likelihood of developing some form of psychosis. Psychosis may still result in a display of aggressive behaviour toward others for which heavy Cannabis use is an underlying factor. The prohibitionists continue to have solid scientific grounds upon which to argue for the prohibition of Cannabis. While it may be the case that increased use of Cannabis has the potential to result in the development of mental health challenges, it is yet to be proven that those who do develop such illnesses are more likely to engage in criminal activity that would render them criminally insane.

2.4 Arguments for Legalisation of Cannabis Use

2.4.1 Cannabis and the lack of criminal activity

In the absence of empirical evidence that Cannabis use is linked to criminal activity, the argument of prohibition based on criminal insanity is without merit, thereby strengthening the case for the activists who are arguing for legalisation. Despite strong motivation by activists who advocate the legalisation of Cannabis, one could go so far as to say that since the drug has a calming effect, there could even possibly be a decrease in serious and violent crimes such as rape and murder among Cannabis users. McLeod (2012, p. 105) argued that there is no conclusive science showing that establishes a link between criminal behaviour and Cannabis use. McLeod's view is backed up by a scientific study that concluded that although there may be less probability that a criminal offender uses Cannabis to get away with a crime, there is no link to conclude that the crime was committed because of the use of Cannabis (Pacula & Kilmer 2003, p. 27).

However, a recent study by Dellazizzo et al. (2020) suggests that there may also be a link between Cannabis use and violent behaviour. A meta-analysis was conducted in the study to ascertain the link, if any, between Cannabis use and violent behaviour. The net for violence was cast wide, covering any physical violence, aggravated assault, sexual aggression, fighting and robbery (Dellazizzo et al. 2020, p. 2).

As for Cannabis use, all types of users were included in the study, including occasional, frequent and lifetime users. The study aimed to determine if there were any dose-response relationships between how often a user consumed Cannabis and displayed violent behaviour.

In a meta-analysis of thirty groups of participants, there was a moderate association between Cannabis use and the perpetration of physical violence (Dellazizzo et al. 2020, p. 2).

In the study, it was found that frequent, persistent and long-term Cannabis users were shown to experience more mental health and behavioural problems, such as aggression and delinquency (Dellazizzo et al. 2020, p. 2).

The study controlled for violence exhibited within intimate partner relationships, specifically for non-sexual violence. It focussed on youth and emerging adults aged 11-21 (Dellazizzo et al. 2020, p. 3). Eleven studies were conducted, one of which focussed on adolescents and five on emerging adults. The results were that globally, a 45% increased chance of displaying violent behaviour in intimate partner relationships existed for Cannabis users (Dellazizzo et al. 2020, p. 3).

In the same review, studies were conducted on mice, and the findings were that, indeed, a higher dose of THC was more likely to produce aggressive behaviour, as the side effect of THC is to lower serotonin levels (Dellazizzo et al. 2020, p. 5). However, such clinical trials on human beings are yet to be conducted. The potential association between Cannabis-induced changes in neural functioning and violent behaviour in humans' remains speculative, and future fMRI studies will need to directly measure levels of irritability and aggressiveness in Cannabis users to determine if there is an association or not (Dellazizzo et al. 2020, p. 5).

From the recent literature canvassed, it can be concluded that although the findings in humans are not yet conclusively determined, there are statistics to support the argument that more frequent Cannabis users are susceptible to developing a link to displaying violent behaviour. At the very least, the association between Cannabis use and violence is not to be overlooked, and further investigation is necessary; the studies have proven a high probability between Cannabis use and violent behaviour and more so in frequent and persistent Cannabis users (Dellazizzo et al. 2020 p. 7).

However, based on the empirical evidence that heavy to moderate Cannabis users can develop Cannabis-induced mental illnesses, the activists are presented with a challenge. This challenge remains constant despite legalisation. We have already discerned that legalisation does not necessarily produce heavy Cannabis users. These users may continue to exist even if Cannabis remains criminalised as the drug remains accessible on the black market.

The activists need to prove on a scientific basis that the legalisation of Cannabis will not produce heavy to moderate Cannabis users who are more susceptible to developing Cannabis-related mental illnesses. In the absence of such proof, the prohibitionists will win the argument solely because Cannabis has the potential to induce psychosis, even if that argument cannot be directly linked to the legalisation of the drug for private use. Based on Marconi et al. (2016) and Di Forti et al.'s (2019) evidence that increased use of Cannabis has the potential to result in the development of mental health challenges, it is yet to be proven that those who do develop such illnesses are more likely to engage in criminal activity that would render them criminally insane.

2.4.2 Cannabis and a regulated market

One of the stronger arguments that activists present is that of a regulated market that is only achievable through the legalisation of Cannabis. Criminalisation merely drives the Cannabis market underground, and there is already evidence of the emergence of a black market where the sale of Cannabis is unregulated. In the black market, there are no taxes on drug sales, and there are no regulations around Cannabis cultivation and distribution. Decriminalisation appeals to politicians and economists who would realise the value in a regulated market, as Cannabis is already known to be a cash crop that is sold widely.

Indeed, the economic potential of Cannabis may win a few more Cannabis supporters (McLeod 2012, p. 114). As part of a regulated market, Cannabis sales can be taxed. Instead of the money going into the hands of lawless suppliers, the money can be filtered into government coffers and repurposed for other uses. Cannabis taxation can even be regulated along the same lines as tobacco, sugar and alcohol. Not only will taxation then be applicable, but there is also the possibility that an added vice tax could be placed upon suppliers and cultivators, resulting in additional tax revenue. McLeod (2012, p. 110) submitted that the term regulation is less harsh than legalisation and, in all probability, more persuasive in legalisation. Also, arguing for a regulated market appeals more to prohibitionists who dislike chaos (McLeod 2012, p. 110). Prohibitionists have far-reaching expectations of the government that they voted into power; McLeod (2012, p. 110) submitted that the argument for a regulated market places a burden on the government to introduce regulations which could satisfy the prohibitionist's expectations of the ruling party, this is a win-win for the activists.

2.4.3 Cannabis and the right to freedom/autonomy

As society has evolved towards comprising increasingly self-interested individuals, activists often rely on appeals to freedom to motivate Cannabis legalisation. This was the exact appeal made by Mr Prince in his initial application to the High Court for the legalisation of Cannabis for private use. The argument for freedom is centred around the ideology that the individual ought to be the final arbiter of what is put into his/her body and that the government should not restrict choice (McLeod 2012, p. 111).

Notably, this argument may not persuade everyone to support Cannabis legal reform, and it is more likely to gain support amongst libertarians, free-thinkers, and young adults (McLeod 2012, p. 112). Rastafarians also strongly agree with the ideology that an individual ought to be the final decision-maker regarding what enters one's body. They advocate for freedom of civil rights such as religion and privacy.

In light of the positive effects of Cannabis and its use in the treatment of both physical and mental conditions, activists would argue that the legalisation of Cannabis may well lead to less strain on public health infrastructure. Conversely, the prohibitionist would say that the adverse effects of Cannabis and its ability to cause diseases such as schizophrenia ought to be a significant enough reason to continue the criminalisation of Cannabis.

2.4.4 Cannabis a petty offence to be policed.

In the debate between prohibitionists and activists on the legalisation of Cannabis, there is a revolving argument about Cannabis possession for personal use being a rather petty offence, mainly because the amounts possessed are minimal. Conviction upon such possession does more harm than good for society and the individual possessor. Prohibitionists would argue that it ought to remain illegal despite the state resources put into policing these offences, as the drug is harmful. To put this argument to bed, let us explore a scenario/thought experiment as follows:

> *Imagine an African male individual walking in the street of his local community, "minding his own business" with a Cannabis-filled joint in hand; when he observes a marked South African Police services van approaching his direction, he decides to drop the joint and walk on by. Much to his dismay, the police officer notices his dodgy behaviour and decides to stop the van. He then requests permission to perform a stop and search. The man provides permission, and in his possession, a small packet*

containing Marijuana is found. He is immediately arrested and taken into police custody; he is driven to the local butcher to weigh the Marijuana found on him; it weighs 0.05 grams, and he spends the entire weekend in a urine-soaked police holding cell.

On Monday morning, he is taken to the court in his locality and asked to plead guilty to the charge of possession of a scheduled substance believed to inhibit the senses. He pleads guilty to possession and consequently is found guilty and sentenced to a fine of one (1) Thousand Rand or one (1) month imprisonment wholly suspended for five (5) years, on condition that he is not again convicted for possession of Marijuana.

At first glance, one can immediately identify the argument that has been made repeatedly and has led to the amended laws for possession of Cannabis. An arrest on these grounds violates the constitutionally protected right to privacy and an exercise of one's autonomy. These types of arrests were not exclusive to Cannabis users walking in the roadway; they would also take place in the setting of adults gathered in their yard on a Sunday afternoon who indulged in Cannabis usage for recreational purposes.

Arrests of this nature appeared petty as the user exercised his right to freedom or autonomy. Furthermore, it is evident from the experiment described that a great deal of state resources would be utilised in the arrest, detention and processing of evidence for a mere 0.05 grams of Cannabis, hence strengthening the argument that arrests for the possession of Cannabis for private use are a petty offence in terms of policing.

A blind eye approach should not be taken to the number of unemployed individuals due to previous convictions. One should also consider that the convicted Cannabis possessor may be a family man or woman who can take on the breadwinner or income contributor role, thereby supporting other family members and the household. A lack of employment due to a previous conviction for a minor offence negatively impacts more than just the possessor.

A persuasive argument in this regard would look something like this: Based on the current unemployment rate in South Africa, which sits at a staggering 31.9%, it would be unfair to render an individual unemployable because of a previous conviction for possession of small amounts of Cannabis. The conclusion, therefore, is that punishment for Cannabis consumption is unfair and unjust. This then lends credence to the view that private Cannabis consumption should not be prosecuted.

2.4.5 Cannabis and economic savviness

Approaching the outlawing of Cannabis 'Through' a different lens, one could look at the cost of prohibition from an economic perspective. One can instantly identify the considerable expenses incurred in the criminalisation of Cannabis.

Firstly, there is the use of the police force and the funds used in employing police officers to police Cannabis prohibition. The cost incurred to house an inmate for a month in prison and the pressure this places on housing in correctional facilities, which are already overburdened, as well as the costs incurred for resources used in courtrooms to convict a Cannabis possessor, are substantial.

The cumulative cost to the state for convicting an individual for 0.05 grams of Cannabis may well support the argument that prohibition is fruitless and amounts to wasted expenditure. In contrast, there is more to gain from a regulated Cannabis market than from an unregulated one.

This makes for a strong argument from the activist that taxpayers who are ultimately responsible for funding the criminal justice system could use that money better to combat more severe crimes. Hence, there would be no justification for limiting the accused's privacy rights.

2.4.6 Cannabis and mental health argument for legalisation

Cannabis was outlawed in South Africa due to its mind-altering effects as a result of its psychoactive chemical component, THC (*delta-9-tetrahydrocannabinol)*, which is responsible for the intoxicating effect of Cannabis (Nora 2020, p. 3). Nora (2020) suggested that the methodology behind the intoxicating effect of Cannabis is achieved through the process of smoking and/or ingesting Cannabis. Once inhaled, the THC, accompanied by other chemicals, passes from the lungs directly into the bloodstream, which rapidly carries the mind-altering effect of THC directly to the brain. The user immediately starts to experience a sense of euphoria and relaxation (Nora 2020, p. 4). However, not all usage of Cannabis is thought to produce pleasant experiences. There are instances of users experiencing the emotions of anxiety, fear, and panic. These less-than-pleasant experiences can be a result of the potency of the Cannabis smoked or even the inexperience of a first time user (Nora 2020, p. 5). All in all, an activist may say that there are no harmful effects from the use of Cannabis, but as Nora (2020, p. 5) further explained, there are those who may experience acute psychosis through the use of Cannabis. This ranges from hallucinations and delusions to even possibly a loss of

personal identity (Nora 2020, p. 5); this submission aligns with the views advanced by the prohibitionist.

Although these rare instances may occur, we need to determine if there are any long-lasting harmful effects encountered in the persistent usage of Cannabis. Nora (2020) submitted that the longer-lasting effects of Cannabis could include psychotic disorders such as schizophrenia, anxiety and depression, which may result in such vulnerable individuals. This vulnerability is often linked to hereditary mental health disorders. However, the link to the development of such disorders is undeterminable, and it can be argued that there is no objective evidence of a link, as the research showed (Nora 2020, p. 15). In light hereof, the activist's argument for legalising Cannabis is arguable. Is the argument well founded?

In light of Marconi et al. and Di Forti et al.'s research, the possibility of Cannabis-induced mental health illnesses through human trials has established the probability of mental illness occurring. This places Nora et al.'s research under a dark cloud of plausible doubt, thus making the case of the activist weaker on the aspect of mental health. The activist could use Nora's research to argue that the absence of a determined link between Cannabis use and mental health can be juxtaposed with the research of Marconi et al. and Di Forti et al. and that both ought to be considered being dismissed.

2.5 My View on the Arguments by Prohibitionists/Activists of Cannabis

In evaluating the scientific research presented under part II and the data extracted from countries that have legalised Cannabis use much earlier than South Africa, the prohibitionist may well have a leg to stand on. Is it a strong enough leg? That is the question. This remains the question that still needs to be answered, and only time will tell whether the decriminalisation of Cannabis was a wise move by the South African justice system. As strong as the prohibitionist's argument is, the activist may have a checkmate move to present by arguing that the medical benefits of Cannabis far outweigh the potentially harmful effect of psychosis. They have the research to substantiate such an argument. As it stands, I agree with the activist who advocates for the legalisation of Cannabis because of its potential benefits in medicine and health care. In terms of research, CBD has been shown to have positive effects that can alleviate the pressure on an already overstretched public health system.

A 2019 research article discussed palliative care guidelines for the management of HIV-infected people in South Africa. Cannabis use was explored as an alternative form of therapy

to treat both HIV-infected people and those diagnosed with cancer (Spencer et al. 2019, p. 16). In an observational study, more than 3,000 cancer patients found that Cannabis use improved sleep, anxiety and depression levels and reduced the symptoms of fatigue, nausea and vomiting caused by chemotherapy (Spencer et al. 2019, p. 16). In a subsequent study, 198 HIV-infected patients who consumed Cannabis reported reduced activation of inflammatory markers compared with non-Cannabis users (Spencer et al. 2019, p. 16). In the 2016 John Hopkins-Lancet Commission Report on Drug Policy and Health, an additional point was made stating that in several ecological studies, greater access to Cannabis could reduce the use of opioids such as morphine for pain relief.

From the above findings, a strong argument could be made, showing that greater access to Cannabis in both cancer and HIV-infected people might alleviate the pressure on the public health infrastructure to address pain management and other chemotherapy-related symptoms. Additionally, it could be argued that Cannabis use in these circumstances also increases the quality of life. Consequently, one could argue that legalising Cannabis is a step in the right direction.

Taking the above discussion on the various benefits of the use of Cannabis into account, especially within the medical sphere, relief from pain for cancer patients, relief from growing anxiety, potential cures for diseases such as multiple sclerosis, as well as the lack of clarity regarding its potential harms, one can posit that there are strong reasons to argue that Cannabis consumption is more beneficial than it is harmful.

The above point dovetails into the debate between prohibitionists and activists on Cannabis legalisation. If Cannabis use is beneficial for the most part (creating social and religious bonds, reducing pain and eliciting some pleasure), and if it is true that injustice or unfairness occurs when private Cannabis users are arrested and prosecuted, then it makes sense that there are justifiable reasons to legalise private Cannabis consumption. However, does this stack up well with Ubuntu ethics? I will be exploring this question in the coming chapters.

Chapter Three: Ubuntu

In this chapter, a discussion will cover three main aspects. The first section will detail the definition of Ubuntu and its various meanings. In the second section, which is divided into three parts, the writer will discuss the concept of personhood, which will contain a robust discussion around the primacy of the community and the rights of an individual in part one, as well as the action-guiding principle for morally right actions in part two. Part three will discuss relational autonomy by the scholar Ikuenobe to support the view that independence is not lost in an Ubuntu environment despite the prioritisation of the community over the individual. In the third section, the writer will discuss her preferred notion of Ubuntu and personhood, detailing why it is the best to use, why it is preferred over other conceptions, and how it will operate.

3.1 Defining Ubuntu

The word "Ubuntu" comes from the Nguni word that symbolises humanness. Many sub-Saharan Africans use it in conversations about how to live a moral life (Metz 2014, p. 65). The term has varying meanings and is applicable in multiple contexts.

Although John Mbiti in the publication "African Religions & Philosophy" does not expressly use the term Ubuntu, it describes its analysis of African ethics in a way that aligns with salient ideas about the concept of Ubuntu. Mbiti coined the phrase, "I am because we are; and since we are, therefore I am" (Mbiti 1969, p. 108). Mbiti (1969, p. 106) further stated, "What happens to the individual happens to the whole group, and whatever happens to the whole group, community or country happens to the individual. People, country, environment, and spirituality are intricately related. The individual can only say: 'I am because we are; and since we are, therefore I am'."

From his 1969 work, it is apparent that he envisioned an African ethical concept that intertwined the individual's life with their community. The individual needed to understand that his actions impacted the whole group he participated in.

Much like Metz's definition of Ubuntu, Mbiti's work aligns with the two critical concepts proposed by Metz, i.e. the individual identifying themselves within the group and acting in conjunction with what serves others as purely self-centred actions would impact the whole group. One might argue that Mbiti's emphasis on the community creates the impression that

the individual is secondary. Eze, one such scholar, disagreed with Mbiti's view that the community is prioritised over the individual and vice versa within the ethical theory of Ubuntu. He submits that neither is prior.

Eze (2011, p. 12) states:

> "The relation with the 'other' is one of subjective equality, where the mutual recognition of our different but equal humanity opens the door to unconditional tolerance and a deep appreciation of the 'other' as an embedded gift that enriches one's humanity."

Ramose (1999, p. 37) quotes the maxim "*umuntu ngumuntu nga bantu (motho ke motho ka batho)*" despite the English language not being able to provide an exhaustive meaning for this maxim, it can be construed to mean that to be human is to affirm one's humanity by recognising the humanity of others. Humane relations with others must be established on this basis (Ramose 1999, p. 37). Thus, a humane, respectful and polite attitude towards others constitutes the core meaning of this maxim (Ramose 1999, p. 37).

It is discerned from the maxim posited by Ramose that for one's humanity to be realised, there are two pre-requisites: the first is to recognise the humanity of others, and the second is to establish humane relations with others within which their humanity can be recognised (Ramose 1999, p. 37). In his work, *The Ethics of Ubuntu,* Ramose explains that the maxim '*motho ke motho ka batho'* details the importance of mutual recognition and respect complemented by mutual care and sharing in the construction of human relations (Ramose 2002, p. 385). Therefore, it is understood that for one to establish his humanity and to be recognised and respected as a human being, he has to engage in human relations in which he too acts with mutual care and shares with others while recognising their humanity as the reason for his humanity to be realised.

Ramose (1999, p. 52) further describes Ubuntu as follows:

> "To be a human being is to affirm one's humanity by recognising the humanity of others and, on that basis, establish humane relations with them … One is enjoined, yes, commanded as it were, to become a human being" (Ramose 1999, p. 52).

A command, as it were, suggests that a failure to become a human being would translate to becoming a non-person. This does not mean that an agent is no longer human but is only biologically considered a human being and lacks the extra trait of humanness. Ramose's explanation speaks to the necessity of recognising the humanity of others and forming interconnected relations with them to develop one's humanness; hence, a failure to create these relationships would result in one becoming a non-person. Therefore, the ability to form communal relations is a pre-condition to attaining humanness.

Eze (2010, p. 24) also explained that the most superficial understanding of Ubuntu is that of "human-ness". It is the notion that one's well-being is intricately wound up with the well-being of others. From this, it can be discerned that while there is concern for one's well-being, this concept cannot be considered in isolation as it is dependent on the well-being of others. Who are the others? – one must ask - Mkhize (2008, p. 39). In his application of Ubuntu to the concept of the self, Mkhize observes that personhood is defined as a community wherein participants are mutually responsive to one another's needs and that "to be is to belong and to participate".

The "others" from Eze's definition, coupled with the explanation by Mkhize, points to the community as something one belongs to and agrees to participate in. This means that within the context of Ubuntu, one ought to be vested in the course for communal prosperity in order to prosper themselves.

Eze (2010, p. 190) summed up the concept of Ubuntu as follows:

> "A person is a person through other people" strikes an affirmation of one's humanity through recognition of an "other" in their uniqueness and difference. It demands a creative intersubjective formation, in which the "other" becomes a mirror (but only a mirror) for my subjectivity. This idealism suggests that humanity is not embedded in my person solely as an individual; my humanity is co-substantively bestowed upon the other and me. Humanity is a quality we owe to each other. We create each other and need to sustain this creation of otherness. Moreover, if we belong to each other, we participate in our creations: we are because you are, and since you are, definitely I am. The "I am" is not a rigid subject, but a dynamic self-constitution dependent on this otherness creation of relation and distance."

Eze's (2010, p. 190) definition demonstrates that to attain complete humanness, one's self is interconnected with those with whom one enters into communion; the survival of the self is causally dependent on others. Metz (2014, p. 69) argued that the theory of Ubuntu continues to find applicability in contemporary South Africa. One of its unique features is viewing everyone, regardless of the absence of blood relation, as part of a human family and each individual as someone with whom to commune. The primary components of Ubuntu are sharing a way of life and caring for others' quality of life (Metz 2014, p. 69).

For this paper, both these components of Ubuntu need to be explored, and Metz explains each element in greater detail. Metz (2014, p. 71) submitted that sharing a way of life entails an engagement in joint projects and the enjoyment of togetherness. He advocated for a psychological attitude of "we-ness" and exhibiting cooperative behaviour (Metz 2016, p. 6). An example of this component is best illustrated in the saying that it takes a village to raise a child. The town consists of various role players, each of whom is responsible not just for their children but for the children of their neighbours. Those who form part of such communities engage in activities that create togetherness in providing education and safety for their children.

In Metz's understanding, the quality of life component is to act with sympathy to make others' lives better for their own sake (Metz 2014, p. 71). Metz terms the act of compassion toward others as "solidarity." In contemporary South Africa, solidarity can ensure delinquent children are taken to their parents for such behaviour to be rectified and to make their lives better for their own sake.

In a nutshell, Metz explains the moral aspects of Ubuntu as follows:

"A human being lives a genuinely human way of life to the extent that he/she prizes identity and solidarity with other human beings", or "An individual realises her true self by respecting the value of friendship[4]". According to this moral theory, grounded in a salient Southern African valuation of community, actions are wrong not merely insofar as they harm people (utilitarianism) or degrade an individual's autonomy (Kantianism) but rather just to the extent

[4] Metz understands friendship as love, he explains that South African ethics grounded on community, requires a union of an identification with others also understood as sharing a way of life and exhibiting solidarity with a view of concern toward the quality of life of others. This union is what is broadly understood as friendship. South African culture places friendly relationship understood as a union between sharing a way of life and acting in solidarity with others, as the heart of morality. In other words when one shares a way of life with others and acts out of concern for another's quality of life, they prize friendship.

that they are unfriendly or, expressed more carefully, that they fail to respect friendship or the capacity for it. (Metz 2011, p. 540).

Hence, Metz proposes two critical concepts to making the community an ideal: identity and solidarity. Identity is the notion of identifying oneself as part of a larger group, and therefore, the group comprises individuals, but the group also identifies as 'We' and not I (Metz 2011, p. 538). The second key is solidarity; this is the ideal of acting in conjunction with what serves others by sympathetically making their ends your own, i.e. if they flourish, so do you through your assistance unto them (Metz 2011, p. 538). Under the critical component of solidarity, the approach is group-centred, wherein the agent acts altruistically for the sake of others.Metz (2021, p. 2) presents a view of Ubuntu that includes the realisation of the self as intertwined with other-regarding behaviour. In other words, the self is developed and cannot be achieved apart from others (Metz 2021, p. 3). He explains that exhibiting Ubuntu is not merely joining a community and acting according to its prescribed norms. Instead, "it is an ideal form of interaction between people, a type of group that people ought to strive to create and to maintain" (Metz 2021, p. 3).

Metz's view of Ubuntu reveals that the journey to self-realisation begins once one is enjoined into a community. This journey can only be completed by interacting with others while striving to create and maintain a community where other-regarding behaviour is exhibited. With inter-relatedness, one can develop oneself to its full potential.

An argument often advanced is that in communal relations, if one behaves according to the community's wants and needs, one would attain personhood, which may result in losing one's identity. Metz would counter-argue that it is not an issue of conformity but instead act on the understanding that communal relations are a desirable interaction that guide what the majority wants, causing certain norms to become dominant (Metz 2011, p. 538).

In his chapter titled Toward an African Moral Theory in Ukpokolo's Themes, Issues and Problems in African Philosophy, Metz set out the theory of Ubuntu and undertook to provide a principle of right action through his analysis of the theory. The first aspect he discusses is a shared identity; Metz (2017, p. 112) argued that one first perceives oneself as part of a collective; the collective must also adopt the individual as a fellow member. Secondly, to share an identity, the individual and the group need to have common ends, for example, the harmony

of the collective, the absence of discord and the promotion of the same projects (Metz 2017, p. 112).

Metz (2017, p. 113) argued that a shared identity needs to be coupled to act with goodwill, that is, to act for the sake of others, and this is understood as acting in solidarity with those one communes with. Solidarity is understood as acting not merely to improve the standing of others and advance their self-interest but also to make others better people and to advance their self-realisation (Metz 2022, p. 152). When acting with a shared identity and in solidarity with others for their sake, one promotes harmony within the collective.

Metz (2022) draws out a principle of right action that represents acting with Ubuntu as follows:

> "An action is right just insofar as it promotes shared identity among people grounded on goodwill; an act is wrong to the extent that it fails to do so and tends to encourage the opposites, relationships of division and ill will."

Therefore, in Metz's view, to be termed as a person that has Ubuntu, one needs to submerse oneself into the collective and share the same ends; one needs to act in solidarity with others, thereby promoting the flourishing of the collective in turn. It benefits self-realisation while intentionally engaging with others to promote harmony and avoid discordance. Actions promoting harmony understood as a shared identity and solidarity, are deemed suitable. In contrast, actions done with ill will or encouraging discordance are considered wrong.

Ubuntu, understood in the way Metz describes it, promotes the standing of the individual and the collective; neither is considered more important, but both are necessary to flourish. Metz further clarifies his position on the debate between prioritising the community at the expense of the individual. He submits that he is not suggesting that the community is above the individual; instead, he ascribes dignity to individuals, not the community. Hence, this shows his choice to use the word 'commonality' instead of the community (Metz 2022, p. 158). Using commonality, he intends to signify that African tradition is communitarian (Metz 2022, p. 158).

Lutz (2009, p. 2) would strongly agree with Metz that in a communal setting, there is no subversion of the individual. Instead, the understanding is that pursuing one's ends is done by pursuing the common good. Lutz (2009, p. 2), quoting Turaki, expresses this point well when he remarks:

"[In African ethics], people are not individuals, living in a state of independence, but part of a community, living in relationships and interdependence."

Lutz (2009, p. 4) submits that moral motivation requires individualism and communalism to co-exist. If asked why an agent should act morally, the answer should be approached from a communistic grounding. The understanding ought to be that by helping others, I support myself, as it is good for me. In this way, a genuine motive to act ethically will follow.

Metz argued that the intrinsic worth of a human being stems not from his ability to be autonomous. It results from his ability to identify and act in solidarity with others (Metz 2011, p. 544). In other words, one's worth is measured by one's capacity to relate to others communally (Metz 2011, p. 544). Metz refers to the capacity in which the actor acts rightly if he/she shares a way of life with others and cares for their quality of life. The capacity referred to by Metz requires that the moral agent lives virtuously about others. These virtues include politeness, kindness, sympathy, compassion, benevolence, altruism, compassion, sacrifice, forgiveness, mercy, and tolerance (Metz 2021, p. 4).

The capacity to express these virtues is only possible when one realises that self-development is achieved through interaction with others, i.e., exhibiting harmony and friendship.

To add to Metz's definition of Ubuntu, his article written in conjunction with Gaie explained that one displays a lack of Ubuntu: "If one harms others, e.g. by being exploitive, deceptive, or unfaithful, or even if one is merely indifferent to others and fails to share oneself with them, then one is said to be lacking" 'Botho' (Sotho-Tswana) or 'Ubuntu' (Nguni), literally lacking in personhood or humanness' (Metz & Gaie 2010, p. 275).

In the above quotation, Metz submitted that it is not enough for an individual to be part of a community; more is necessary for positive interaction. The individual must ensure that to have personhood, the interaction with others is intentional, towards displaying harmony and friendship coupled with other-regarding behaviour toward others while avoiding discordance and indifference toward others. When showing this characteristic, one is said to have personhood or humanness.

Eze (2011, p. 12) submitted that relations with others are critical to attaining personhood. This suggests that an individual's humanity flourishes through relation and distance, of uniqueness and difference. He says, "A realisation of the subjective gifts (of humanity) we bear to each

other motivates an unconditional desire to view and harness other people's uniqueness and difference, not as a threat, but as a complement to one's humanity" (Eze 2011, p. 12).

The above quote shows that to flourish as an individual, it is imperative to recognise the humanity of others, their uniqueness, and their differences from ourselves. We ought to strive to harness their differences as they complement the development of our humanity. This speaks to the importance of interrelations for individuals to develop their humanity.

Eze (2008, p. 386) further disagreed with scholars like Mbiti, who argued that there should be no prioritisation of the community over the individual and vice versa. He submitted, "The individual and community are not radically opposed in the sense of priority but engaged in a contemporaneous formation … The individual is not before the community, nor is the community before the individual". This means that although the community's role in developing the individual is necessary to developing personhood, there is no prioritisation of the community over the individual and vice versa. Instead, the two groups exist in synchronised formation for the benefit of each other. This once more implies that for complete personhood to be attained, the individual needs the community within which to recognise the humanity of others and develop his or her own.

During the Truth and Reconciliation Commission post-Apartheid hearings (1999, p. 31), the Honourable Archbishop Desmond Tutu summed Ubuntu up as follows:

> "When we want to praise someone highly, we say, "Yu, u nobuntu"; "Hey, so-and-so has Ubuntu." Then, you are generous, hospitable, friendly, caring, and compassionate. You share what you have. It is to say, "My humanity is caught up, is inextricably bound up in yours."

It is understood from the Archbishop's summation of Ubuntu that there are two conditions for displaying Ubuntu. The first is to be hospitable, caring, friendly and compassionate. In this way, one is in touch with one's humanity. Secondly, one must display these characteristics toward others, making communal relations necessary for humanness. Furthermore, this implies and corroborates Eze's disagreement with Mbiti that the community and the individual co-exist and neither is prioritised. The individual cannot exist independently. The virtues necessary to exhibit Ubuntu are relationally other-regarding, and therefore, these virtues throw one into relationships with others to attain complete humanness.

These are the core underlying principles of Ubuntu. Nussbaum (2003) observed that Ubuntu encouraged the capacity for compassion, reciprocity, dignity, harmony, and humanity and an interest in building and maintaining one's community. From these definitions and conceptions of Ubuntu, we can discern that Ubuntu is a theory that entails acting on the understanding that our good is intertwined with the good of the collective, as is our dignity and humanity. We are to act in solidarity with others to advance in our individual development; it is a symbiotic relationship into which we enter. It is apparent from the preceding discussion that the realisation of the self depends on social relations. Within the literature, an alternative understanding of Ubuntu is vested in a self-realisation approach to Ubuntu.

Molefe and Magam (2021, p. 6) suggested that moral individualism is the point of departure in the self-realisation approach to Ubuntu. They argued that this interpretation of the theory of Ubuntu values the individual realising their true humanity as the goal of morality. This interpretation of Ubuntu focuses on the self-development of certain facets of human nature as the goal of morality (Molefe & Magam 2021, p. 7). One might ask how a moral agent perfects the interpretation of self-realisation.

Molefe and Magam (2021, p. 7) submit that the goal was to achieve a morally sound character characterised by kindness, compassion, and friendliness. To exhibit these qualities, personhood enters the arena. Molefe and Magam (2021, p. 7) contended that one must immerse oneself deeply into relationships with others in the community to attain personhood. This immersion takes the form of engagement and practice (Molefe & Magam 2021, p. 7). Through engagement with others and practice, one attains whole morality with the realisation that the agent has duties unto others, the fulfilment of which is crucial for the moral development of the self (Gyekye 2004). Under this interpretation of Ubuntu, the goal of self-perfection is married to completing duties to others.

As Ewuoso and Hall (2019, p. 98) pointed out in their systematic review of Ubuntu, the theory has two components. The first is possessing certain moral traits, some of the characteristics described above by Archbishop Desmond Tutu. To be ethical, these traits ought to be displayed toward others. Who are the others? The second component is displaying these characteristics toward those with whom one enters communion to attain one's personhood. The relationship between the two components can impact how much a person is evaluated as a person. If one cannot be other-regarding, this can devalue one's status as a person (Ewuoso & Hall 2019, p. 98).

Ewuoso and Hall (2019, p. 100) concluded that the framework for acting with Ubuntu can be summarised as follows:

> "The core aspects of Ubuntu include the essentially relational nature of this ethical theory, which prizes relationship[s] of interdependence, fellowship, reconciliation, relationality, community friendliness, harmonious relationships and other-regarding actions, in which actions are morally right to the extent that they promote social integration and inter-connectedness, honour communal relationships or the capacity for the same and reduce discord or promote friendly relationships with others, and in which the physical world (horizontal line) and the spiritual world (vertical line) are fundamentally united."

The above summary of Ubuntu implies that to be a moral person; the individual needs to prize inter-relatedness with others, wherein traits of friendliness, harmony, and other-regarding behaviour are displayed. Actions pursued within these communal relations are morally right because they prize harmony and friendliness, reduce discord, and promote social connectedness. In other words, to be moral, one must engage in relationships with others, honoured to the extent that one acts to promote the harmony upon which these relationships are founded.

From the preceding discussion on the theory of Ubuntu, it can be deduced that the theory has two facets to it; the first is that of being a person who is the possessor of specific virtuous characteristics, and the second is that one exercises their virtuous traits, about others, through concern not only for your flourishing but for the flourishing of the unit and this is what is known as personhood. When one has attained personhood, one has reached the destination of being a complete person who possesses virtuous traits and exhibits these traits in the community to which one subscribes.

Now that we have established what virtuous traits are necessary and how to exercise these traits in communion with others to attain personhood, we need to develop a theory of right action that prescribes what actions are good and what are bad.

I have utilised Metz's theory of right action in this research paper. His principle is set out as follows:

Actions undertaken to promote harmony, understood as a shared identity and solidarity, are deemed right actions, while actions done with ill will or to encourage discordance are considered wrong actions.

In the application of this principle, an example would be helpful, considering the following scenario:

Whistleblowing is the act of uncovering the truth for, example, the misappropriation of funds by management. One must face the ethical dilemma of exposing the truth in fear of losing one's employment or, even worse, one's life or turning a blind eye to the truth to protect oneself.

In this instance, the potential whistle-blower is required by Metz's theory of right action to promote harmony among those with whom he/she shares an identity, which is his/her colleagues, the board of shareholders and other stakeholders with whom he/she shares the same ends that are, the growth of the company that in turn benefits all stakeholders. He/she is, therefore, required to blow the whistle on corrupt individuals. He/she promotes harmony with those with whom he/she communes and acts in solidarity by caring for their quality of life. His/her choice to blow the whistle would be deemed morally right; despite the threats to his/her employment and/or his/her life, he/she has placed the joint projects of those he/she communed with above his/her self-interest.

If he/she opts to hide the information or remain silent about his/her discovery, he/she encourages discordance within the company, which threatens the harmony of the community. Silence or indifference undermines the capacity of those with whom he/she communicates; it is unfriendly and threatens the community's harmony as the other stakeholders' quality of life is ignored. Silence or indifference amounts to discordance and, ultimately, a morally wrong action.

If a moral agent possesses the requisite moral traits of a person, how does he/she attain his/her personhood?

3.1.1 The attainment of personhood

This section will discuss the means to attain personhood, including a robust discussion regarding the individual's autonomy under the Ubuntu theory. A discussion on personhood is necessary due to the debates about individual freedom and the place of the community in a

person. It is essential in this project to deal with the possible limitation of autonomy due to the norms and ideals of the community. Menkiti (1984, p. 171) added to the definition of Ubuntu. He came to be known for his radical communitarianism, wherein he believed that the individual may only come into being as a person through his participation in the community. So, the community ultimately confers personhood to the individual (Menkiti 1984, p. 171). Indeed, as Menkiti noted: "In the African view, it is the community which defines the person as a person, not some isolated static quality of rationality, will, or memory" (Menkiti 1984, p. 172).

Menkiti further contended that for an individual to reach the destination of being a complete person or attaining personhood, they need to possess more than just the biological attributes of a human being. They must also fully immerse themselves in the community. He argued (Menkiti 1984, p. 173)

> 'that full personhood is not perceived as simply given at the very beginning of one's life, but is attained after one is well along in society, which indicates straight away that the older an individual gets, the more of a person he becomes'.

In his work, he references the elders of African communities, revered because age is significant in African thought. Older age suggests the individual has undergone a gradation process to attain moral function (Menkiti 2004, p. 329). In Menkiti's eyes, the maturity of the agent is the key to attaining complete personhood, and the community facilitates this journey by prescribing its acceptable norms. Menkiti submits that once moral agents have successfully incorporated themselves into the community, they not only have duties owed to them by the community but also become rights bearers (Menkiti 1984, p. 177).

However, Menkiti has a pre-requisite to being a rights bearer. He thinks that to be awarded rights, one must possess the capacity for moral decision-making, achieved through completing duties toward the community. This, therefore, suggests that animals would not be rights bearers, but what about those who are mentally unfit? Are they, under Menkiti's' interpretation of personhood, not to be considered humans fit for being awarded rights because they do not necessarily possess the capacity for moral decision-making? This is one criticism that is often levelled against Menkiti's view of personhood, but I will not seek to examine the critique in this paper.

For Menkiti (2004, p. 326), personhood is something at which one can fail. This, therefore, means that if one failed at achieving moral excellence after undergoing a gradation prescribed

by the community from an ‘it’ as a child, they have been unable to attain personhood, too. Therefore, an individual would not acquire the rights he/she should have as he/she cannot complete his/her duties. Menkiti (1984, p. 177) submits, ‘As far as African societies are concerned, personhood is something at which individuals could fail, at which they could be competent or ineffective, better or worse.’

A failure could occur, for example, when a man steals from his neighbour and, after being convicted and sentenced, returns to his community and fails to make amends with his neighbour. His failure to attend to his corresponding duty toward his neighbour to promote friendliness would mean he is ineffective at personhood and would not acquire rights.

Menkiti (1984) further explained that one’s relationship with the community takes precedence over the relationship with the self because the individual is only a rights bearer. There are no reciprocal duties toward others. The individual becomes self-interested to the extent that he primarily pursues his ends and flourishes alone or even to the detriment of others.

In Ramose’s (1999, p. 58-59) opinion,

> ‘personhood is something that has to be achieved, and is not given simply because one is born of human seed … thus it is not enough to have before us the biological organism … we must also conceive of this organism as going through a long process of social and ritual transformation until it attains the full complement of excellences seen as truly definitive of man.’.

Ramose (1999, p. 56) explains that the African concept of a person as wholeness does not deny individuality as an ontological fact. However, the idea ascribes primacy to the community through which the individual comes to know himself/herself and the world around him/her, reinforcing the need for human relations to attain complete personhood.

“It is in rootedness in an ongoing community that the individual also comes to know himself as a durable, more or less permanent fact of this world” (Ramose 1999, p. 57).

Ramose submitted that a person's individuality should be understood as partial wholeness. However, an individual is simultaneously other-regarding and oriented towards the greater, and when one is in this state, wholeness is attained (Ramose 1999, p. 58). Ramose argued for personhood to be understood as a journey, one upon which an individual must go through the

various community-prescribed stages and be a part of certain ceremonies and rituals, and only upon the completion of these rituals and ceremonies does one acquire the status of a person (Ramose 1999, p. 58). Before this, the individual is known as an "it".

Metz (2011, p. 537) submits that having Ubuntu is a call upon the individual to develop one's humanness and personhood, and personhood is attained through communal relations with others. An absence of ties to one's community is tantamount to not being a person (Metz 2011, p. 537). The concept of morally right actions within a communal setting is understood as behaviour that is not discordant or indifferent toward others, and it means living in harmony with others (Metz 2011, p. 537). Therefore, behaviour that conforms to indifference and discordance and is non-harmonious amounts to morally wrong actions. Authors such as Metz, Menkiti, and Ramose seem to prioritise the community over the individual. Others would argue this is radical as the individual and access to rights by being a person are being denied in favour of placing the interests of the community above that of the individual. Authors such as Gyekye have offered a moderate form of Afro-communitarianism in the literature. Gyekye (1997, p. 41) submitted that the community and the individual hold equal moral status; neither is above the other and submitted that giving the community a primacy status leads to the inevitable devaluation of the individual, and there is no room for the exercise of the rights of such an individual.

Gyekye offers a solution to this prioritisation by introducing moderate communitarianism in which equal moral status is accorded to the individual and the community: "I think the most satisfactory way to recognise both communality and individuality is to claim to ascribe to them the status of equal moral standing" (Gyekye 1997, p. 41). Central to Gyekye's moderate communitarianism is the primacy of the individual. This is in tension with Menkiti's primacy of the community.

Hence, Molefe attempts to interpret the Afro-communitarianism of Metz, Menkiti, Gyekye and Ramose from an alternative angle. Molefe submits that, saying:

> "The notion of personhood that is considered to be African is employed by Menkiti, where personhood is some kind of moral achievement. So, the two notions of personhood found in Menkiti, i.e. personhood qua personal identity and personhood qua moral achievement, are not properly a target of moderate communitarianism. Note, these two notions of

> ‘personhood’ do not even appear to be related to rights in any way or even to undermine them in any way” (Molefe 2017, p. 8)

Therefore, it is incorrect to argue that either notion of personhood, as advanced by Menkiti, undermines an individual's rights. Molefe (2017, p. 8) criticised Gyekye for his ‘unnecessary’ solution to a non-existent tension in formulating his moderate communitarianism. Molefe (2017, p. 9) argued that scholars like Gyekye also believed that the community is essential. They have assigned the community a value as if it were a thing ontologically. In contrast, a community cannot be a bearer of value as it does not have the properties to render it morally valuable, in the same way that an individual can be a bearer of moral value by being human and a bearer of human dignity (a property necessary to be awarded moral value).

Molefe (2017, p. 9-10) resolves this tension of the community vs the individual by submitting the following view:

> To say that some societies are ‘communitarian’ does not imply that one is talking about two things: a community on the one hand and an individual on the other. No, it is about how individuals socially arrange themselves and distribute roles, responsibilities and benefits to address urgent issues. Thus, ‘communitarianism’ refers to a society that underscores the importance of social relationships in addressing human issues, wherein one is expected to engage “more and more deeply” in these relationships in making sense of her own identity and responding to social problems.

In other words, to speak of the individual immersing themselves into the community is to accept that the relationships one enters into are a ‘socio-moral’ tool to a more profound discovery of the individual and as a means to respond to individual issues or a lack thereof (Molefe 2017, p. 10).

Molefe (2017, p. 12-13) divided personhood into a two-pot system: the nature of personhood and the means to attaining it. The first pot consists of moral virtues that achieve complete humanity, including friendliness, kindness, generosity, etc. (Molefe 2017, p. 13). These virtues are relational, and to be a moral person and practice these virtues, the individual has to enter into relationships with others (Molefe 2017, p. 13). Relationships are a crucial step in the journey to becoming a complete human.

The second pot is best laid out in the words of Molefe (2017, p. 14):

> "Put simply, I can only realise my true humanity by discharging my other-regarding duties to others. My personal goal of moral perfection and other-regarding duties are married into this idea of personhood. What is beginning to emerge is that the idea of personhood entails a pure other-regarding morality, wherein a moral agent understands herself to have duties to promote others' welfare in her quest to achieve the ideal of her leading a truly human life."

Emphasis is therefore placed on duties, and, as a result of the relationships formed, these duties are born toward others to act virtuously, i.e. with kindness and generosity, understanding that to flourish and attain complete humanity, one is to interact virtuously with others and discharge their duties toward the flourishing of the other, which in turn will result in their flourishing.

To whom are these other-regarding duties owed? Molefe (2017, p. 14) provided clarity. He explained that our other-regarding responsibilities are owed to all of humankind. His idea emanates from the foundational concept that since we are individuals and have interests of our own that may, at times, compete with the interests of another, we share a common interest, i.e., well-being. Therefore, we owe each other the duty of securing the overall well-being of the collective.

I quote Molefe (2017, p. 15) to support the above.

> 'So, when African scholars talk of 'the community taking priority over individuals,' they have this normative insight in mind: securing the basic needs of all as taking priority over our own (private) goals and interests. So, our other-regarding duties' target is securing the basic well-being of all human beings.'

Performing other-regarding duties to secure the essential well-being of all human beings is the means to achieve the end of human flourishing. Molefe (2017, p. 16) submitted that rights are given a secondary place in African ethics, perhaps due to their threatening nature in securing the well-being of all human beings. In other words, when we become self-interested and only wish to pursue our interests, we stop being other-regarding, thereby threatening the collective's well-being. It is what starts wars, and only a self-interested person cannot attain full humanity. Having considered the variance in the concept of personhood, Bernard Matolino criticised Ubuntu for being rigid and leaving no room for alternative interpretations of how to live a genuinely African life.

Matolino and Kwindingwi (2016, p. 199) broke down their criticism of Ubuntu into three stages:

> "There appears not only to be a consensus about what is important for Africans and their thinking but also a consensus on value and what a worthwhile life should consist of. Naturally, such a position should be considered suspicious for a few reasons. Firstly, it renders Africans – either in their pristine conditions or in their current station –incapable of individual or dissenting thought. Secondly, it makes African life hegemonic in pursuing a particularised African idealised mode of being. Thirdly, it appears to be traditionalist for the sake of being traditionalist, as it limits its advocacy to a narrative of return without paying attention to how other dynamics could shape and direct current African life."

In simple terms, Matolino and Kwindingwi argued that Ubuntu had become an outdated theory for modern African life. Its current form was idealistic; it took away an individual's autonomy on a decision-making level and has continued to be applied without considering the many dynamics that have emerged since its initial introduction.

They further explain that the theory of Ubuntu as a standard of moral ethics can only be practised within underdeveloped tight-knit communities, and interdependence is crucial for survival (Matolino & Kwindingwi 2016, p. 202). Matolino and Kwindingwi (2016, p. 202) argued that these small, tight-knit communities preferred their own instead of embracing others and their way of thinking. These communities prescribe acceptable norms to exclude other values, such as tolerance and diversity, 'Effectively, to be committed to the values of Ubuntu is to be committed at the exclusion of other values.'

Matolino and Kwindingwi believed that the Ubuntu theory was often used to further the undercover agenda of the dominant political ruling party and came to take the form of anything anyone wanted it to be. They argued that Ubuntu's appeal to values and terminology associated with a communitarian way of life was used to manipulate the people and serve the interests of the elite (Matolino & Kwindingwi 2016, p. 202).

Matolino and Kwindingwis's (2016, p. 202) main argument was that these small, close-knit communities had ceased to exist since the advent of industrialisation and modernity, rendering Ubuntu obsolete. The continued appeal to it to live a morally fulfilling life was no longer possible. If its use continued to subsist, it was only to serve the interests of those in better-off positions. Their critique of Ubuntu was that industrialisation rendered urbanised, tight-knit

communities non-existent. They said that the intimate relations of the kind that Ubuntu portrayed were best expressed in smaller societies. In urban areas, it was rarely possible to express Ubuntu.

Notably, their argument against the continued practice and call for Ubuntu did not criticise the theory's facets. However, that was a criticism of its applicability in contemporary South Africa, which presently comprises diverse cultures that do not necessarily prize commonality. Matolino and Kwindingwi argued that what was understood and considered Ubuntu did not reflect reality. The theory had no pre-colonial heritage, and the influence of colonialism might taint the expression of Ubuntu, even in rural societies in Africa. Therefore, what we perceive and understand as Ubuntu today is a made-up notion.

In the literature and views already explored above, authors such as Molefe, Menkiti, and Metz preferred the theory of Ubuntu not only because of its African personality or Africanness but also because of its ability to work. They, therefore, advocated for an ethical theory that prescribed normative behaviour to develop an individual, not an African, and to lead a flourishing way of life as a human being by being other-regarding towards other human beings. The criticism by Matolino and Kwindingwi of Ubuntu being a made-up notion that only applies to Africans is biased in that it does not investigate how the theory is flawed in its construction.

Furthermore, it is my argument that although industrialisation allows urbanisation and the absence of smaller rural communities in which intimate relations are prized, the expression of Ubuntu is still in progress. Let us consider companies, firms, churches, and clubs as communities consisting of several members. It simply means that the community has grown in numbers and that Ubuntu can still be expressed in such settings when individuals have a shared identity and act in solidarity to promote harmonious relations and avoid discordance.

The various forms of social discord in society such as corruption, crime, xenophobia, poverty etc., calls for a philosophy based on positive relationships and belongingness. I posit Ubuntu is useful as this philosophy to promote positive relationships and belonging.

Hence, despite industrialisation and the absence of close-knit rural communities, an Ubuntu value system in corporate giants remains an important part of modern societies. A corporate institution that values its people over its profits and gains will realise such profits and gains automatically, a prospering community births a prosperous corporate institution.

Case in point is the power utility Eskom, the corporate giant during 2005 adopted an Ubuntu management and leadership style under the administration of Ruel Khoza. His approach was person-centred, and after the adoption of an Ubuntu management philosophy, Eskom registered an after-tax profit of R5.2 billion over a period of 15 months at the end of March 2005 (Broodryk, 2005 p.17).

Lutz (2009, p. 5) would agree with this criticism of Matolino and Kwindingwi, as he stated: "Although some features of Ubuntu are distinctively African, its essential features are not, because it is rooted in human nature, which is common to the entire human race: Values such as Ubuntu should not only be seen as African values but also human values."

To my knowledge, ubuntu ethics has not been used within discussions about the moral permissibility of Cannabis use. By employing Ubuntu in this discourse, I am introducing a novel way of addressing the question of cannabis use and its permissibility. It is in this way, that this work is significant and novel

Wiredu (1996) postulated the following as the Akan view on how to attain personhood: "Every Akan maxim about the specifically moral views that I know … postulates the harmonisation of interests as the means, and the securing of human well-being as an end of all moral endeavour" (Wiredu 1996, p. 65). Wiredu is also understood to prescribe a moral theory of right action even though he needs to unpack it systematically. My understanding of the Akan view of attaining personhood is that an action is right as it promotes the harmonisation of interests and secures the well-being of humans. An action is wrong in that it does the opposite, which is a discordance of interests and harms the well-being of a human.

Wiredu submitted that the golden rule for serving as a moral compass for right action is what he terms sympathetic impartiality (Wiredu 1996, p. 170). Sympathetic impartiality requires us to "be willing to place ourselves in the shoes of others when contemplating an action" (Wiredu 1996, p. 237).

Impartiality suggests detaching oneself from applying one's moral decision-making capacity. Therefore, if one is conflicted between saving their daughter or saving a stranger who is simultaneously drowning, the rescuer should detach from their immediate relationship to their daughter to determine who needs saving and apply sympathetic impartiality to the decision that must be made. The application of sympathetic impartiality requires the actors to divorce

themselves from morally relevant considerations in their unique relationships with family and friends to accord equal moral status to all persons.

Wiredu submitted that telling a lie, for example, may be permissible if it fosters friendliness and harmony in the community (Wiredu 1996, p. 66). The obligation to tell the truth will only exist when it does not threaten the harmony of the community and the personhood of the moral agent.

Wiredu argued that moral rules can be exceptions, such as truth-telling. This is permissible because the rule is not overturned or reversed (Wiredu 1996, p. 66).

I discerned from Wiredu's view that if telling the truth was to cause undue harm, it should be avoided as it threatened the harmony of the community. For example, if one were captured by a genocidal military force and asked to reveal the location of their community, it would be intuitively morally wrong to give up the location as it would threaten the harmony of the community.

To determine if one is acting with Ubuntu in how they live their lives as part of the collective, there must be a yardstick against which one measures an action as morally right or wrong.

3.1.2 Morally right and wrong actions

As with all moral theories, it is necessary to have an action-guiding principle. Once such a principle is found, it will guide our actions, which will result in the attainment of our humanness and harmonious relations. The theory of Ubuntu requires those who ascribe to it to ensure that we build relations to attain our personhood and to achieve the goal of humanness. This, therefore, gives rise to a positive duty on us to ensure harmonious relations, as opposed to a negative duty, i.e. to refrain from harming others. Ewuoso and Hall (2019, p. 99) describe a morally right action as: "… the morally right action honours communal relationships, reduces discord or promotes friendly relationships with others, and in which the physical world (horizontal line) and the spiritual world (vertical line) are fundamentally united. In other words, the morally right action connects rather than separates."

Authors like Metz and Taylor proposed action-guiding principles, and each of their propositions will be discussed. However, this must not be done without considering Ramose's critique of such attempts at a principle of right action for Ubuntu.

Ramose, in his article titled ‘But Hans Kelsen was not born in Africa’ a reply to Thaddeus Metz sought to critique Metz's project of developing a normative action-guiding principle or Grundnorm, as set out in his article “Toward an African Moral Theory.” Ramose's line of argument compares Metz's first draft of the article to his final version.

Ramose (2007, p. 349) submitted that Metz’s attempt at finding an action-guiding principle or basic norm in African ethics is as elusive as Hans Kelsen’s attempt at finding a Grundnorm for a fundamental legal principle or norm which would ultimately include or define the legal structures of all cultures. Ramose (2007, p. 349) criticised Metz because Metz commented that no one else, i.e. no other scholar, had undertaken the task of developing a principle systematically and analytically in the way that he does. However, he provided no evidence to show that no one else had undertaken such a task.

To disprove Metz's claim that no one else had undertaken the task of developing an action-guiding principle, Ramose drew the attention of the reader to earlier publications by scholars such as Wiredu and Bujo, who had titled their publications along the lines of Foundations of African Ethics; suggesting that they had already undertaken the same task of developing a normative theory as Metz and his claim to be the first was dismissed as being disingenuous (Ramose 2007, p. 351).

Ramose explains that authors such as Wiredu and Bujo have developed not a single normative action-guiding principle like Metz had. However, “they speak to a multiplicity of ethical principles that found and permeate African morality without any implicit or explicit claim to immutability, essentiality, or eternity” (Ramose 2007, p. 351). Ramose (2007, p. 351) argued that Metz's quest for a single normative principle for right and wrong action renders African ethics dogmatic, while it is not.

Given Ramose’s robust critique of Metz's attempt at an action-guiding principle, I remain unconvinced that an action-guiding principle detracts from the essence of African philosophy. I note Ramose’s argument that multiple ethical principles permeate African morality, and a single principle detracts from this. However, I believe that an action-guiding principle clarifies the expectations thrust upon an individual to attain the goal of personhood.

Metz argued in response to Ramose that several tentative formulations of a normative action-guiding principle can be highlighted in the literature, even though they had yet to be discussed as systematically as he had undertaken to do (2017, p. 66). One such formulation is the quote

by Archbishop Tutu: “Social harmony is for us the summum bonum —the greatest good. Anything that subverts or undermines this sought-after good should be avoided like the plague” (1999, p. 35). From this quotation, it is deduced that an action would be wrong if it undermined social harmony, even though it was not spelt out in so many words.

Metz's right action principle emanated from the second part of his interpretation of Ubuntu: acting in solidarity. It required the agent to care for the quality of life of others and do what made them better-off for their sake (Metz 2014, p. 71). In his recent 2022 work, Metz explained that it was not a relationship foundational to morality and to which duties are owed. Instead, duties are owed to those capable of communing (Metz 2022, p. 109). Metz (2022, p. 105) posited his right action principle as ‘rightness as friendliness’. When the right action is considered this way, it gives rise to positive and negative duties toward others who can commune (Metz 2022, p. 109).

Metz’s (2022, p. 110) right action principle is framed accordingly:

> ‘An act is right if and only if it respects individuals by their capacity to be a party to harmonious ways of relating.
>
> An act is wrong insofar as it degrades those with the capability of relating communally as subjects or objects.
>
> An action is permissible if it treats beings as special in accordance with their ability to be friendly or to be befriended.
>
> An action is impermissible to the extent that it disrespects beings who can be part of relationships of identity and solidarity.’

Metz proposed a relational moral theory. In other words, a moral agent considers the capacity of others to commune as the highest good. The agent then enters into relationships with the other and avoids degrading the other's capability to relate communally. The agent recognises that any action that disrespects and degrades another’s ability to be part of relationships should be avoided, as such action is morally wrong.

Therefore, if one fails to sympathise with, for example, a neighbour whose husband assaults her over weekends because of his indulgence in alcohol or fails to assist her when such abuse is witnessed, it can be said to be disrespecting his/her capacity to be friended and his/her

capacity to relate communally. Such disregard for his/her quality of life can be said to be a morally wrong action. Alternatively, assisting him/her during her time of need or sympathising with him/her for his/her struggles can be delineated into the category of morally right action, as one is being other-regarding, promoting his/her capacity to relate communally and treating him/her as unique, due to his/her ability to be friendly or to be befriended.

Taylor (2014) provides an action-guiding principle that may be used to determine if an action is morally right or wrong. His principle is aligned with the definition of Ubuntu as provided by Metz. Taylor argued for the necessity of an action-guiding tenet as if there were no such formulation. Therefore, Ubuntu may be defined as a 'vacuous noun', therefore. He submitted the following argument: 'However, if we cannot develop a principle, then we must draw the conclusion that Ubuntu is either a more or less vacuous noun or a kind of vague guideline about how to carry ourselves or a kind of normatively charged idea of the essence of humanness'.

I agree with Taylor that an action-guiding principle clarifies the behaviour that is considered acceptable under the umbrella of acting with Ubuntu. It further clarifies the second pot, as Molefe described, on attaining personhood.

A principle is not prescriptive but acts as a guideline to the moral agent on how to act morally. Taylor uses terms to guide the moral agent down the correct path on how to act morally right.

Taylor (2014, p. 340) framed the action-guiding principle as follows: *An action is right insofar as it promotes cohesion and reciprocal value amongst people. An action is wrong because it damages relationships and devalues any individual or group.*

Douglas's principle can be broken down into steps as follows:

Step 1: *an action is right insofar as it promotes cohesion.*

Taylor (2014, p. 340) submitted that one must identify the stakeholders or participants in an action before applying this step.

Taylor (2014, p. 338) explained his use of the term cohesion without necessarily referring to a community, as he advocated for one to exercise cohesion with all participants of the human race and not just the immediate community they form part of, 'Cohesion, however, brings with it this sense of community, the bringing together and joining together of people. Cohesion, with the prefix 'co', implies a two-way process – I adhere to you, and you adhere to me – we cohere

to each other.' He submitted that the word cohesion suggested that a two-way relationship persists in which the participants adhere to each other (Taylor 2014, p. 338). I would take Taylor's view of adherence to mean that the participants in the action interact with each other and respect and recognise that each of them possesses value and dignity by being human.

Step 2: *an action is right if it promotes reciprocal value amongst the participants.*

Taylor (2014, p. 338) explained that the term value applies to groups and individuals within the group, and an action is right insofar as it does not deny any individual or the group their value. An action that devalues any participant involved in the act would fail to recognise reciprocal value, thereby rendering the act immoral.

Step 3: *an action is morally wrong if it causes damage to the relationship of communion*.

Although Taylor does not amplify an explanation of this step, in his application of this step in the case of an insider business trading example, he considers if the action of insider trading had caused damage to any of the relationships involved (2014, p.341). He concludes that even though some relationships were enhanced, others were irreparably damaged, rendering insider trading morally wrong (2014, p.341).

Step 4: *An action is morally wrong if it devalues the individual or the group. The action must recognise the value of each participant in the relationship and not deny anyone that value*.

Under this step, Taylor did not expand on the concept of value. However, in applying this step to the insider trading example, Taylor (2014, p. 341) found that leaking information that benefited some stakeholders and not others resulted in a denial of value to those not given the information. Taylor (2014, p. 342) developed his action-guiding principle in line with a deontological approach to the ethical theory of Ubuntu to demonstrate its inner workings and provide a base for understanding Ubuntu in action. This may well raise concern for the reader, as one may ask if Taylor's deontological approach to Ubuntu ought to instead be called Neo-Ubuntu. However, this is for Taylor to answer. Taylor does claim that his view reflects ubuntu ethics, and I merely reiterate his view as such. This base serves as a springboard for analysing and proposing ethical behaviour.

3.2 The Tension of Rights and Duties Within Ubuntu

There is an ongoing debate on whether Metz's interpretation of Ubuntu prioritises communal relations over individual rights. Taylor (2014, p. 337) argued that Metz's use of the term shared identity implies segregation of persons into groups or categories: 'Too often, that term implies segregation of people into groups or categories—we have a 'shared identity' because we are English speakers or because we are black Xhosa people because we come from the same town, etc.' This categorisation of persons counters the goal of Ubuntu.

Taylor (2014, p. 337) submitted that the theory of Ubuntu encompassed the individual and the group. He said that the individual and the group always share equal value, especially considering that the group comprises individuals. In other words, no individual is without associating with the group—the individual flourishes through interaction with others in a communal setting.

Menkiti (2004, p. 326), often criticised for his radical communitarianism, submitted that in the journey to personhood, the community plays a vital function and has to step in to provide the prescribed norms and assist the individual in their transformation. Menkiti (2004, p. 326) submitted that attaining personhood exceeds an isolated individual's limited capacity. It is a journey in which one can succeed or fail, much like anything else. Failure or success of the individual carries with it consequences that will impact the community, and therefore, in the journey to personhood, it must be recognised that individuals are bound up with each other.

Hence, the journey to personhood is inextricably bound up with the notion of moral arrival, as Menkiti (2004, p. 326) describes it. This notion involves a prescription of acceptable behaviour, and when one falls short of such a yardstick, it questions one's status as a person (Menkiti 2004, p. 326). Whose responsibility is it to prescribe those yardsticks? It is the community with which one acts in communion, as the individual is a group component and must arrive at the destination of personhood.

From Menkiti's above assertion, one can see why authors such as Gyekye criticised him for his radical communitarianism. Much emphasis is placed on attaining personhood through the community instead of moral arrival as a stand-alone individual. For Menkiti, moral arrival cannot be achieved through autonomous decision-making, which heavily relies on the normative concepts prescribed by the community.

We must return to the tension in the discussions on personhood – regarding communal preference vs individual rights. Menkiti (1984, p. 180) took the stance that duties to the collective are primary while the individual's rights are secondary. Other scholars criticised Menkiti's stance as excessive and radical (Gyekye 1992, p. 103-104). Gyekye (1992, p. 108) argued against Menkiti's submissions that personhood is attained when one aligns and meets the yardstick of acceptable behaviour as the community prescribes. Gyekye submitted that Menkiti's articulation of personhood places the community above the individual. He calls Menkiti's prioritisation of the community a catalyst and prescriber of norms, a form of "radical communitarianism" (Gyekye 1992, p. 108).

Gyekye. (1992, p.108) says radical communitarianism:

> … "is a view that gives an exaggerated conception of the community, wherein the community is construed as always before the individual, and this conception of the community fails to recognise the individuality of the individual and the rights that naturally belong to a human person, insofar as a person is essentially autonomous."

For Gyekye, placing the community above the individual amounts to a denial of the autonomous nature of an individual and, hence, the result of placing rights secondary to duties. Gyekye advocated that the rights of the individual and the demands of the community should bear equal moral consideration, and this is how he differs from Menkiti's conception of personhood (Molefe 2017, p. 7). Molefe (2017, p. 7) argued that Gyekye's notion of a self - i.e. the idea that an individual has natural rights by being a person - is flawed in that it emanates from Western tradition and is not congruent with African culture, where emphasis is placed on attaining personhood through a beingness with those that one is in communion with. Molefe (2017, p. 8) argued in opposition to Gyekye, stating that Gyekye assumed that rights are crucial in African tradition without actually making a case to support his view and show that rights are relevant in African culture.

I agree with Metz that the rights of an individual do take second prize in African culture. In the definition of personhood, the first prize goes to furthering harmonious relations, but why not consider an alternative way of looking at the debate between rights and communion? Instead of focussing on the separation of rights of the individual and duties toward others being of paramount importance in African thought, consider that the community is beneficial as it is created to preserve individual rights. The function of the community is to assist the individual

in safeguarding certain essential rights, such as the right to dignity or privacy. If considered this way, communal interests may not undermine individual interests or deny individual rights; communal interests take away certain rights to preserve other, more important ones.

If we consider Metz's definition of personhood, i.e., acting in solidarity, identifying oneself within the community, and making their ends your own, the ultimate goal of which is harmonious relations, autonomy is not the star of the show. Communal interests are those that still act to preserve other, more important rights. Therefore, rights take a back seat to duties. Therefore, in attaining personhood, one is encouraged to place the ends of the immediate and extended community above the furtherance of his interests to uplift the community he is part of. A negative impact on the community undermines the individual's flourishing, thus impacting his growth into a complete person. Is there no room for autonomy within Ubuntu?

3.2.1 Autonomy in Ubuntu

It is imperative for this paper to understand the manner in which the Prince Constitutional Court judgement understood the right to privacy, which led to the decriminalization of the use of cannabis for private use, thus leading us into a conversation of autonomy in Ubuntu.

The court extensively referred to the approach of the Canadian courts leading the honourable Judge Ackermann to conclude that the right to privacy needed to be understood as the right to be left alone[5]. One might at this juncture, argue that the ethical theory based on communitarianism has no room to accommodate for the right to be left alone. However, the honourable Judge in paragraph 46 went on to elaborate that the courts have had to develop a test to determine the scope and content of the right to privacy.

This test was termed the 'reasonable expectation of privacy' test. The test comprises of two facets, the first is there must at least be a reasonable expectation of privacy and, secondly, the expectation must be recognised as reasonable by society. The inclusion of societal recognition brings relational autonomy into focus.

[5] Prince v Minister of Justice and Constitutional Development and Others; Rubin v National Director of Public Prosecutions and Others; Acton and Others v National Director of Public Prosecutions and Others (4153/2012) [2017] ZAWCHC 30, Para 45.

Similarly, in the case of Harold Bernstein v L. Von Wielligh Bester[6] the Constitutional Court, held that a high level of protection is given to the individual's intimate personal space, it is an untouchable sphere of human freedom that is beyond interference from any public authority[7].

This intimate sphere is however, not without limitation, the court further noted that once an individual enters into relationships that fall outside an intimate sphere, their activities acquire a social dimension and the right to privacy within this dimension is subject to limitation[8].

The Constitutional Court elaborated in Bernstein v Bester on its understanding of privacy within a communal context. The court stated that rights were not to be construed in individualistic ways that denied all individuals are members of a broader community and are significantly defined by their respective memberships[9]. The court held,

> "In the context of privacy this would mean that it is only the inner sanctum of a person, such as his/her family life, sexual preference and home environment, which is shielded from erosion by conflicting rights of the community… Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly."

South African jurisprudence has further intertwined the right to privacy with the right to dignity both of which are highly revered in the eyes of the Constitution. Honourable O'Regan J in Khumalo[10], acknowledged that there is a close link between privacy and dignity of an individual, human beings have a right to a sphere of intimacy and autonomy that should be protected from invasion. This right of a human being serves to foster human dignity.

Drawing from the above, it is apparent that South African Jurisprudence recognises the right to privacy in conjunction with the right to dignity, without detracting that these rights are subject to limitations in the context of human relationships that are formed outside of the private realm, such as communal relations.

This than brings into sharp focus the concept of relational autonomy as presented by Polycarp Ikuenobe. Ikuenobe (2015, p. 1005) argues that personhood in African traditions contains an implied sense of relational and positive autonomy. This involves the community helping, or

[6] Bernstein v Bester 1996(2) SA 751 (CC)
[7] Ibid para 77
[8] Ibid.
[9] Ibid.
[10] Khumalo v Holomisa 2002 (5) SA 401 (CC)

guiding an individual to use their ability together with their knowledge of their social relations and circumstances, to choose freely the requisite goods for shaping and achieving their life plan (Ikuenobe 2015, p. 1005).

It is argued that individuals have the freedom of choice, in Ubuntu this freedom to choose is given meaning through one's social relations. These relations shape and provide an individual with options and choices (Ikuenobe 2015, p. 1005-1006).

Ikuenobe (2015, p.1006) presents his reader with the view that an individual's identity is externally specified by her community, the acceptable norms and standards are derived externally, which are than internalized. In the phase of internalization, the individual's identity and idea of self is formed based on the context and values of the community upon which she chooses freely (Ikuenobe 2015, p.1006). Hence, the birth of relational autonomy.

It is my argument that relational autonomy goes hand in hand with the intimate nature of privacy, which are to be protected from invasion to foster the human dignity of an individual. Human dignity is a core value of Ubuntu, therefore, despite the communitarian nature of the ethical theory, privacy can still exist and be protected to promote the dignity of a moral agent.

Ikuenobe (2015, p.1007) explains further that a moral person is rational, emotional and relationally autonomous being that is equipped with the values, normative attitudes, structures and principles of his community . In addition, the individual has the metaphysical capacity to choose freely, and such moral person must have the requisite attitude, emotions, principles, values and norms that further mutual interests, care and sympathy (Ikuenobe 2015, p. 1007).

In other words, every moral agent has the metaphysical capacity to choose freely for themselves, these choices are informed by the standards of the community that must further mutual interests, sympathy and care for the well-being of others.

In applying this to the right to privacy enabling private consumption of cannabis, the moral agent possess the capacity to choose to indulge in the substance. This choice is informed by the acceptable norms of the community such as the promotion of harmony and the absence of discord, if the choice to indulge promotes mutual interest, care and sympathy for others, the right to privacy is adequately protected.

It is my argument, that private consumption of cannabis, has been curtailed by the Constitutional court to consumption in a private realm such as one's home. Provided the consumption promotes harmony which I have demonstrated it has the capacity to do so, the

mutual interests of the community are furthered, one is, whilst under the influence cognitively able to care and provide sympathy for others, the right to choose indulgence over abstinence is an exercise of one's relational autonomy.

Respect, for this choice to freely choose indulgence in cannabis within a private sphere, respects the right to privacy and bolsters the respect for the human dignity of every individual.

Ikuenobe (2018, p. 1018) proposed a balance between rights and duties and argued that individuals possess relational autonomy. This is understood to mean that while an individual requires the assistance of the community to guide and assist in achieving the moral agent's life goals and plans, the individual retains the choice to determine which options, as provided by the community, will help in the realisation of his/her life goals and plans (Ikuenobe 2018, p. 1018). He terms this way of forming an identity with oneself and community as an African relational view of autonomy. Under this form of autonomy, the moral agent possesses metaphysical features, i.e. the ability to make free rational choices, and alongside this ability, one must retain connections with their community, and failure to do so will render the agent morally and socially dead (Ikuenobe 2018, p. 1018).

Ikuenobe (2018, p. 1018) says, "Such a person who lacks connections with his community is bereft of humanity, a social identity, values, and a meaningful life. He cannot pursue human welfare in a community where his welfare or rational life plan is embedded."

Ikuenobe's (2018, p. 1018) submission stated that an inherent function of individuality is to be self-interested and pursue one's welfare (i.e., one's life ends). This inherent function is coupled with the need to care for others; therefore, one sees himself connected to others in the community to give meaning and value to one's identity, free choices and life plan. Ikuenobe (2018, p. 1019) used the example of a young African man who was in the predicament of marrying a woman who did not get along with his family and did not accept his obligations toward his family versus his happiness in marrying the woman he is deeply in love with. Ikuenobe showed how the man's choice to refrain from marrying the love of his life is influenced by the understanding that his welfare hinges on the welfare of his family, and the two are not separate. Ikuenobe (2018, p. 1020) says that the values prescribed by the community facilitate the individual's ability to make free choices;

> "The community provides the basis for the individual to pursue freely her rational life plan in a socially safe context; this social-relational idea of autonomy gives meaning and

> moral and material content to the individual's life and choices. Indeed, one can be a full and substantively free individual only in the context of one's relations to a set of values and options that shape one's rational choices. This communal context provides the criteria, options, and value systems that help one to make sense of one's free will, choices, and actions, in that one's identity is defined by one's autonomous actions, achievements, and obligations, which are anchored in communal commitments, relationships, and recognition."

In this manner, a positive form of autonomy is born. Instead of the duty to not interfere with an individual's rights, there is the duty to provide an environment that promotes free choices and the exercising of one's rights within the acceptable values of the community.

Ikuenobe has explained in order to pursue a valuable life plan one must have choices that are made available to them as circumscribed by the community. A life plan is shaped by the choices made available to an individual by the community in accordance with a value system, in which options are prioritised from the most desirable to the least desirable (Ikuenobe (2018, p. 1021).

Ikuenobe's relational autonomy settles the tension between Menkiti and Gyekye and shows that there is no reason to perceive the individual as separate from the community; the individual is not devoid of autonomy because he/she finds his/her life plans being cultivated by the values of her community. She still retains the right to choose and exercise her rights. However, the options open to her decision-making abilities are informed by her community's values. Ikuenobe (2018, p. 1023) submitted that a moral agent who merely indulges in their appetites and passions is acting without the required rational deliberation and control to continue identifying and acting in solidarity with his community.

Ramose, too, proposes an inter-relatedness between the individual and the community wherein the individual is developed under the guidance of the community. 'The relational context reveals and conceals the potentialities of the individual. The concealed potentialities become revealed whenever they are actualised in the practical sphere of human relations' (Ramose 1999, p. 150). Ramose's contribution to autonomy in Ubuntu provides credence to Ikuenobe's view that individuality and independence are not displaced within the theory but are fully developed through the relations and guidance of those with whom one interacts.

3.2.2 My preferred notion of Ubuntu and Personhood

Concerning the definition of Ubuntu, I prefer Metz's definition of the theory for this paper. His two key concepts, i.e. identity and solidarity are most appealing to me in this research paper. Identity is posited as identifying oneself as part of the collective and sharing a way of life that entails joint project participation in union with solidarity – caring for the flourishing of others as you feel good when they win and bad when they lose. When one cares for the quality of life of others and is one with the community aiming to promote harmonious relations and mutual ends to flourish, both the individual and the collective flourish simultaneously, Ubuntu is promoted.

The concept of identity continues to hold the individual as a person with rights but also recognises corresponding duties. The idea of shared identity does not deny the individual's intrinsic value with human dignity; therefore, it has corresponding rights attached to this value. It merely provides an alternative approach to secure a life of dignity from an African perspective. Individuals can only reach complete humanness when they view themselves as part of the collective, wherein other-regarding behaviour is required. To attain my personhood, I am to reach out to others and assist them in securing their well-being, thus the individual's duty to the collective. The two concepts of rights and duties go hand in hand for an individual to flourish. It is sound that to grow morally as an individual, social relations need to exist. Individualism results in isolation whereas, when one is submerged into the community and forms communal ties with others, they ought to act upon the understanding that to develop the self, others need to be helped, as in turn, one would be helping themselves as it is good for them. When the collective flourishes, so does the individual. When it is understood that the individual and the community co-exist, there is a genuine motive to act ethically.

Thanks to the advent of social media platforms, individuals can connect with smaller communities, i.e., close communities and broader communities simultaneously in South Africa today. An individual cannot flourish in isolation, as then one would not be able to develop one's humanness without performing other-regarding actions and/or attaining moral excellence. The attainment of humanness is dependent on a relationship with others.

Metz's definition further posited what characteristics ought to be possessed by an individual to develop his other-regarding behaviour, i.e. friendliness, understanding that when one acts in an unfriendly way toward others and fails to respect friendship or the capacity for it, they would

be acting in a morally wrong way. An individual ought to exhibit cooperative behaviour and traits while displaying a psychological mindset of we-ness, acting in solidarity with others by displaying sympathy toward them.

The moral agent's goal is to act in a way that fosters a shared way of life and concern for the quality of life of others. To accomplish this, a moral agent must have or develop the capacity for compassion, reciprocity, dignity, harmony, and humanity. There must also be a keen interest in creating and maintaining a community to establish one's personhood.

The perfection of the self is connected to the completion of duties to others. Hence, my preferred notion of personhood for this dissertation is also developed by Molefe (2017).

His creation of a two-pot system allows the reader to understand clearly what he requires to attain personhood.

The two-pot system first requires the agent to exhibit the virtues of being a moral person. These virtues must be practised and perfected to perfect the self and attain personhood, necessitating the need to interact with others. Secondly, the individual must discharge other-regarding duties toward the people he enters relationships with. Within these relationships, one must exercise and exhibit moral virtues, i.e. acting with kindness, sympathy, harmony and humanity. The exercise of these duties is coupled with the understanding that by being other-regarding and caring for the lives of others to flourish, he/she, in turn, will grow too.

Molefe’s articulation of to whom these other-regarding duties are owed is most appealing to me, as his disposition is not just that they are owed to one’s immediate community but rather to all of humankind. When Ubuntu is practised in this manner, it has the potential to become a globally attractive moral theory. Molefe’s placement of rights as secondary to performing duties toward others promotes altruism and the well-being of the collective as social beings. When the collective flourishes, we flourish as individuals. Altruism is the key to attaining full humanity.

Molefe’s call for other-regarding duties towards all of humanity puts to bed the main argument advanced by critics such as Matolino and Kwindingwi that Ubuntu has no applicability due to industrialisation and urbanisation, which gives rise to the absence of tight-knit communities that are dependent on each other for survival. The reality of our modern-day lives is that daily, a moral agent will find him/herself interconnected with other individuals, ranging from her

workspace to the people she commutes with and within her home life too, sharing a way of life with all these participants and caring for their quality of life by fulfilling duties unto them is still very much alive along the journey to attaining complete humanity.

In terms of an action-guiding principle, the writer is drawn to Metz's principle. As Metz has stated, morally right action is one wherein care is expressed for the quality of life of others, along with acting insofar as it furthers the interests of others. The result is the enhancement of their quality of life. The converse is that an action that does not benefit others or improve their quality of life is morally wrong.

Although Taylor's action-guiding principle is that an action is right insofar as it promotes cohesion and reciprocal value among *people. An action is wrong insofar as it damages relationships and devalues any individual or group* - it is clear and precise. However, it may be too exact to apply in all situations. Applying this principle needs to be narrower because an act may, for instance, devalue a few group members. However, it may also enhance the value of a more significant number of members, in which case the action may still be considered proper despite the few devalued members. Alternatively, an action may damage a few relationships in the process but may also enhance other relationships, in which case it can still be considered a proper action.

For instance, if we take Ikuenobe's example of the man who chooses his family over marrying the love of his life and apply Taylor's principle of right action, the man's choice not to marry the woman may devalue her and damage their relationship, but that does not mean his choice not to marry her is a wrong action. His choice still displays value to his family and enhances his relationship with them. Therefore, it can still be considered a right action.

Wiredu's action-guiding principle is also not considered favourably by the writer as his concept of sympathetic impartiality is too onerous on an individual. In reality, the requirement of divorcing oneself from one's unique relationship for moral status to be evaluated is a cumbersome task. For instance, if one were faced with detouring a moving trolley to either save their significant other or five elderly strangers, the actor bears the onus of acting impartially in the decision of whom to save, and morally relevant factors such as a special relationship is not to feature in the decision-making process.

In reality, there are also instances, where split moral decisions, need to be made, and intuitively, one would act to save the life of their loved one rather than a stranger; such an act, according to Wiredu's definition of an action-guiding principle, would be a morally wrong act.

Chapter Four: Ubuntu and Ethical Justifications for the Legalisation of Cannabis Use

There is an ongoing debate around autonomy and how the exercise thereof stacks up against the duties that one has toward one community. Under the Ubuntu theory, the individual's autonomy is not subverted for communal relations. It is argued that instead, the community protects the right to make choices freely and autonomously, guiding the morally acceptable choices a moral agent should choose from.

Where an action is morally reprehensible, some laws will impede on the autonomy of the individual; for instance, the right to life is enshrined in the Constitution of the Republic of South Africa, 1996, and it is revered in the eyes of the law so much so that the act of taking the life of another is not only morally reprehensible but it is also unlawful in terms of the criminal laws of our country. Therefore, the autonomy of an individual may be limited in certain aspects. The purpose of this chapter is to establish if there is any limitation that ought to be applied to the right to consume Cannabis.

In Chapter Three, I outlined my preferred notion of Ubuntu as posited by Metz, my preferred notion of personhood as described and explained by Molefe in a two-pot system, and my preferred theory of right action as discerned from Metz's writing. In this chapter, I will critically apply these concepts to the choice of an individual to consume Cannabis to demonstrate that Cannabis consumption under the theory of Ubuntu does not amount to division in communion. As the choice to consume Cannabis does not result in division and consumption of cannabis does not in itself undermine the interests of others, it will be a morally right action, and there will exist no ethically justifiable reason to impede on the right to privacy upon which Cannabis for recreational use was decriminalised.

4.1 Metz's Theory of Ubuntu

Metz (2017, p. 112) posits identity and solidarity at the centre of his Ubuntu theory. He argues that one must first perceive oneself as part of a collective, and the collective must also adopt the individual as a fellow member. Secondly, to share an identity, the individual and the group need to have common ends, for example, the harmony of the collective, the absence of discord, and the promotion of the same projects (Metz 2017, p. 112).

The second concept is solidarity – caring for the flourishing of others as you feel good when they win and bad when they lose, caring for their quality of life, with the community to promote

harmonious relations and mutual ends to flourish, as both an individual through one's assistance to others and for the collective to flourish simultaneously.

Solidarity is understood as acting not merely to improve the standing of others and advance their self-interest but also to make others better people and to advance their self-realisation (Metz 2022, p. 96). When acting with a shared identity and in solidarity with others for their sake, one promotes harmony within the collective.

In my view, the concept of identity continues to hold the individual as a person with rights but also recognises corresponding duties toward the collective. The concept of shared identity does not deny the intrinsic value of the individual with human dignity and corresponding rights attached to this value; it merely provides an alternative approach to secure a life of dignity from an African perspective. It is the community that protects certain rights.

Individuals can also only reach complete humanness when they view themselves as part of the collective, wherein other-regarding behaviour is required; that is, to attain my personhood, I am to reach out to others and assist them in securing their well-being, thus the duty of the individual to the collective. The two concepts of rights and duties go hand in hand for an individual to flourish.

Metz's definition further posits what characteristics ought to be possessed by an individual in order to develop his other-regarding behaviour, i.e. friendliness, understanding that when one acts in an unfriendly way toward others, and fail to respect friendship or the capacity for it, they would be acting in a morally wrong way. An individual ought to exhibit cooperative behaviour and traits while displaying a psychological mind set of we-ness, acting in solidarity with others by displaying sympathy toward them.

The moral agent's goal is to act in a way that fosters a shared way of life and concern for the quality of life of others. To accomplish this, a moral agent must have or develop the capacity for compassion, reciprocity, dignity, harmony, and humanity. There must also be a keen interest in creating and maintaining a community to develop one's personhood.

From Metz's definition of Ubuntu, individuals come together to form communities. These communities adopt the individual as a member, and the member wholly submerses themselves into the collective. In this process, the individual is required to display character traits that are

communistic in nature, friendliness, harmony, and the avoidance of anything to the contrary or anything that may threaten the harmony of the community.

In the light of Cannabis use, this would require the user to be a member of his community, and for his community to adopt him, he is required to display characteristics of "we-ness" with those that he communes with. His behaviour while using Cannabis must be aligned with the values of his community, i.e. he is to display harmony, friendliness and no discordance. Therefore, if aggressive behaviour is a side effect of his use of Cannabis, it would not be aligned with the values of his community, and it can be said that he is being discordant, and this may render him an outsider to his community. In other words, provided the usage of Cannabis continues to promote harmony and no division between members of the group, its use can be permissible. However, any discordance as a result of the use of Cannabis would be disallowed as it threatens harmonious communion.

In contemporary South Africa, even with the impact of industrialisation and urbanisation, Cannabis can still bring together groups of people, even virtually, such as online communities, displaying its ability to foster inclusivity and the creation of bonds centred on a shared identity. These platforms are created around the recreational use and the health benefits that the use of Cannabis promotes.

Stigma about the use of cannabis are a result of negative perceptions around the use of the drug and its effects. An age-old undesirable picture is held of cannabis users being unintelligent, lazy, unhygienic and even dangerous.

These stigmas, despite the lack of factual information, may serve to undermine Ubuntu. The theory is aimed at the avoidance of acts that do not serve the mutual interest of community members, and actions that cause discordance.

It may be argued that the stigma of a cannabis user being lazy means they in no way contribute toward the flourishing of the community as they are more likely to be unemployed and rely on governmental aid for their survival. They are likely in this light to be considered a burden to society. Similarly, if the view of a cannabis user is that they are dangerous due to consumption of the drug, this may be contrary to the harmony of the community giving rise to discordant behaviour.

But, these stigmas are unfounded and based on no factual information to prove their truthfulness. Hence, it is my argument that cannabis has the potential to form communities around its use, promote friendliness, a shared identity and even solidarity.

Focusing on the recreational use of Cannabis, especially in those instances where it shows its ability to create communities with thousands of followers that express friendliness rather than discord, one can see that the use of Cannabis does not undermine shared identity and may, in some cases,

The second aspect of shared identity is sharing common ends, such as the harmony of the collective and the avoidance of discordance. The concept of harmony includes the joint project of the health of the community's constituents. In Chapter Two, it was discussed that the use of Cannabis for medicinal purposes has been scientifically proven to aid in pain relief, pain management, and relief from anxiety and depression, and no positive evidence has been advanced to prove that Cannabis smoking can lead to mental health problems such as schizophrenia.

One of the community's joint projects involves the health of its constituents in order to further the joint project of harmony within the community. A strong argument can be advanced that with the scientific proof of the medicinal benefits of Cannabis and how it can positively contribute toward a better quality of life for all, its indulgence ought to be permissible.

The drug once more displays its ability to promote communion and adhere to and foster the concept of a shared identity. Aggressive behaviour tends to lead to confrontation and division within the community; it isolates the individual from the community and creates division, which turns the concept of harmony on its head. However, studies have revealed that Cannabis leads to a decrease in aggressive behaviour (Miczek et al. 1994 p. 401). On the other hand, this study must be contrasted with the more recent study by Dellazizzo et al. (2020), where the research suggests a high probability between Cannabis use and violent behaviour and more so in frequent and persistent Cannabis users (Dellazizzo et al. 2020 p. 7).

In the light of this research, a counter-argument may be put forward that as Cannabis also possess the potential to promote acts of violence which involves a display of aggression and will result in division between the parties that engage in such acts, the substance can cause discordance and division in which case its use ought to be impermissible.

This is quite the double-edged sword one is dealing with; I would, however, still argue that since the Dellazizzo study concludes that more longitudinal studies are necessary to establish a conclusive link between Cannabis use and violent behaviour in human beings that Cannabis for recreational purposes ought to be ruled permissible in light of the Miczek study.

As the harmony of the community is the goal to be prized as a joint project, it can be argued that Cannabis use could receive a stamp of approval from community members. It reduces aggressive behaviour that leads to division between members. Instead, the drug can create bonds of friendliness and respect that will ensure the harmony of the community and prevent discordance amongst its members.

Not only does Cannabis have the capacity to foster communities, but it also promotes the joint project of the members, which is the health and quality of life of all its members. It can also diffuse division, promoting the harmonisation of the community and enhancing the concept of a shared identity.

The concept of a shared identity is pivotal in forming relationships; the individual is to see themselves as part of the collective, so much so that to flourish as an individual, the flourishing of the community must be prioritised.

The individual needs to act upon the understanding that in order to exercise the rights conferred upon him by having human dignity, such as the right to privacy, which enables the use of Cannabis for recreational purposes, he needs to ensure that he displays other-regarding behaviour toward those that he communes with. He fulfils his corresponding duties toward the community, which is the maintenance of the harmony of the collective, also termed by Metz as solidarity. Acting in solidarity requires the individual to display cooperative behaviour and be sympathetic toward others in the community.

In terms of Cannabis use for recreational purposes, the user ought to first realise that his priority is toward his community and to fulfil his other-regarding duties prior to the exercise of his right to privacy.

Let us consider the application of the right to privacy and the corresponding duty to be other-regarding towards those one communicates with. It is required of the user to first place the interests of his family/community before his own, for example, especially in terms of ensuring that his/her primary duty to his family is carried out and that his actions (in this case, Cannabis

use) do not undermine the harmony of his family/community. For instance, he would need to ensure that his family is fed and clothed and that their interests, such as the schooling of his children, are first met prior to his indulgence in Cannabis and the spending of money upon the acquiring of the substance. In this way, he is fulfilling his corresponding duties of being other-regarding before he exercises his right to privacy and the autonomous choice to indulge in recreational use of the substance.

In this way, too, his autonomy is not being subverted for his duties toward his family; it is simply the case that his rights are being provided to him through the community he is a member of. By ensuring the needs of his family are met first, the Cannabis user is acting to maintain the dignity and harmony of the community. As the community flourishes, so does he in attaining his personhood.

Another scenario where the act of solidarity can be displayed is when one notices a fellow community member struggling with anxiety and depression. She is introduced to the use of Cannabis to relieve these symptoms, and indeed, such relief is found. It must be borne in mind that the studies by Spencer et al. 2019 established positive results from the use of Cannabis in HIV-infected and cancer patients who reported alleviated symptoms of anxiety and depression.

The act of introducing her to the substance to alleviate her mental health challenges is an act of solidarity. The intention is to improve her standing to become a better version of herself and assist her with her self-realisation journey to lead to flourishing, where she encounters no mental health obstacles. This leads to the flourishing of the individual who introduced her to the substance, as she is better-off through their assistance.

This view must be contrasted with a converse situation: what about introducing individuals who have a pre-disposition for mental illnesses such as schizophrenia to Cannabis? Is the moral agent acting in solidarity with her fellow being? The answer is yes. The studies by Casadio et al. (2011) unequivocally state that although persons who consume Cannabis with a pre-disposition for mental health challenges are more likely to develop psychotic episodes or the onset of schizophrenia, the literature also states that there are no conclusive studies to directly link Cannabis to the development of mental health diseases such as schizophrenia in the first place. In the light hereof, it can be argued that introducing an individual with a pre-disposition to mental health illnesses to Cannabis to alleviate symptoms of anxiety and depression is still

an act of solidarity. It is done to improve the individual's standing, and it promotes the individual's dignity.

In Chapter Two, under the heading “Cannabis and the lack of criminal activity”, the argument advanced was that due to the calming effect of Cannabis, there could be a decrease in serious and violent crimes such as rape and murder. These social evils are rife in our contemporary South Africa. Every news bulletin details some horrific incidence of senseless killings, which are disruptive of the harmony that societies ought to be grounded upon. If Cannabis has the potential to decrease these inhumane actions, then why not encourage its use as it can maintain harmony in the community through the establishment of a shared identity and acting in solidarity, which is the end. Cannabis use in this context does not undermine the desire to be friendly towards others, promoting the virtuous trait of respect for others' human dignity.

Adding to the positive impact Cannabis has in promoting a shared identity and solidarity, it is argued that Cannabis regulations could result in additional revenue for the state, which ultimately can be repurposed into society through, for instance, the improvement of public health infrastructure or additional funds for social grants. There is a positive side to the legalisation of Cannabis as it promotes harmony, encourages inclusivity and the creation of bonds. These additional funds would uplift the community members and improve their standing, and this would amount to an act of solidarity. Thus far, it can be concluded that as the Cannabis user places the exercise of his rights secondary to his duties toward those whom he communes with, there is no ethically justifiable reason to impede on his right to privacy and the exercise of his autonomous choice.

4.2 Molefe’s Two-pot System to Acquire Personhood

In terms of acquiring personhood in light of Molefe’s two-pot system, the following is necessary:

1. The virtues of being a moral person must be displayed, which is done to further the goal of attaining complete humanity. These virtues include friendliness, kindness, generosity, etc. (Molefe 2017, p. 13). These virtues are relational, and to be a moral person and practice these virtues, the individual has to enter into relationships with others (Molefe 2017, p. 13).

2. ‘Personhood entails a pure other-regarding morality, wherein a moral agent understands herself to have duties to promote others’ welfare in her quest to achieve the ideal of her leading a truly human life.’ (Molefe 2017, p. 14)

The two-pot system must be applied to the Cannabis user who wishes to exercise his right to privacy to determine if his Cannabis use detracts from the attainment of his personhood. In applying pot one, the user is to ensure that he enters into relationships with others who take the form of an immediate and extended community. During the development of these relationships, he is to act virtuously, displaying traits of kindness, generosity and friendliness. One of how this is done is to ensure that no harm is brought to others in the community while under the influence of Cannabis. The lack of aggressive behaviour, the calmness that flows from the use of Cannabis, coupled with ensuring that at all times the user (under the influence or not) in his interaction with others displays friendliness and kindness toward others satisfies pot one in the journey to personhood as posited by Molefe.

Pot two requires the individual to display other-regarding morality. In the context of Cannabis consumption, this might take the form of ensuring that the quality of life of one’s family and community is not negatively affected by Cannabis use or that indulging in Cannabis consumption aids the moral agent in performing other-regarding behaviour.

Under the two-pot system to attain personhood, as long as the Cannabis user displays virtuous characteristics in the relationships formed and seeks out and maintains harmonious relations while simultaneously displaying other-regarding behaviour and fulfilling his duties toward others, there is no ethically justifiable reason to impede on his corresponding right to privacy.

The question left to be answered is whether actual consumption of Cannabis can deny a moral agent their personhood. The answer, in my view, is that it cannot. There is no evidence to suggest that the consumption of Cannabis impacts the virtuous characteristics that ought to be displayed in the relationships formed while simultaneously striving for harmony within the said relations. As it has been argued previously, Cannabis use creates calming environments that are more likely to foster friendliness and avoid discordance; this benefits the greater community as the goal of every member is to form harmonious relations, and such behaviour fosters harmonious living. Furthermore, to acquire personhood, the moral agent should display other-regarding behaviour toward those with

whom the agent communicates. Similarly, there is no evidence to suggest that actual Cannabis consumption has the effect of hindering the agent from exhibiting other-regarding behaviour towards his immediate and or extended communities. If anything, Cannabis consumption produces calming and relaxing effects and feelings of euphoria; such effects are more likely to produce feelings/acts of being other-regarding toward others.

4.3 Metz's Theory of Right Action and the Use of Cannabis

Metz's (2022, p. 110) principle of right action is framed as follows:

> 'An act is right if and only if it respects individuals in virtue of their capacity to be a party to harmonious ways of relating.
>
> An act is wrong insofar as it degrades those with the capability of relating communally as subjects or objects.
>
> An action is permissible if it treats beings as special in accordance with their ability to be friendly or to be befriended.
>
> An action is impermissible to the extent that it disrespects beings who can be part of relationships of identity and solidarity.'

I will examine each facet of Metz's principle of right action during the application process to explain it to the reader.

1. Consuming Cannabis under the right to privacy is right if and only if it respects individuals in virtue of their capacity to be party to harmonious ways of relating.

Therefore, if consuming Cannabis had the effect of inducing aggressive behaviour or other similar (criminal) behaviours, perhaps the user steals from family members to support his addiction, he would be disrespecting the capacity of those family members to be a party to harmonious relations. In this regard, the use of Cannabis would amount to a wrong action that would ethically justify impeding on the right to privacy of the user. However, for this to be true, one must first establish that the consumption of Cannabis does, in fact, directly induce aggressive, addictive and criminal behaviour. As we have discussed in Chapter Two, the evidence in this regard, as advanced in the studies of Marconi et al. (2016) and Di Forti et al. (2019), is that although the increased use of Cannabis has the potential to result in the

development of mental health challenges, it is yet to be proven that those who do develop such illnesses are more likely to engage in criminal activity.

2. Consuming Cannabis under the right to privacy would be a wrong action insofar as it degrades those with the capability of relating communally as subjects or objects.

In essence, an action would be wrong under this step of Metz's right action principle if it denied an individual's capability to relate communally. Being indifferent to others' interests and their right to flourish within the communal setting would also damage their capability to relate communally.

In order for Cannabis consumption to be considered a morally wrong action, it would have to be proven that it can degrade other community members' ability to relate communally. Alternatively, when Cannabis is consumed, it has the effect of excluding persons and thereby denying them their capacity to relate communally. In Chapter Two, the inclusivity effect of Cannabis was discussed; it has the potential to create communities that are grounded on inclusivity, and the drug has the effect of calming smokers down, making them less aggressive. These traits are necessary to promote the capacity of others to relate communally.

It can, therefore, be argued that Cannabis consumption does not degrade the capacity of others to relate communally. One may go so far as to argue that it has the potential to enhance and promote the capacity of others to relate communally. This potential can lead to the creation of Cannabis users and non-user communities where there is mutual respect for the capability to relate communally in a calm environment. In this regard, as Cannabis has the potential to promote the capacity to relate communally, there would be no ethically justifiable reason to impede on the right to privacy of the Cannabis consumer.

3. Cannabis consumption under the right to privacy is permissible if it treats beings as special in accordance with their ability to be friendly or to be befriended.

Under this step, the user must recognise those that he/she communes with as being exceptional due to their ability to be friendly or be befriended. If the user denies this capacity of others to be friendly or to be befriended, the act of consuming Cannabis would be impermissible.

In Chapter Two, a full discussion related to the cultural uses of Cannabis, specifically the culture of Rastafarianism, the culture acknowledges the capacity of others to be friendly and befriended. Through the research on the importance of Cannabis use to Rastafarians, it was discerned that Rastafarians believe that the practice of smoking Cannabis is essential to the uniting/healing of a nation that is generally divided due to a fractious society (Pretorius 2006, p. 12). This is the view Rastafarians hold, as society is diversified, and our varying views on any subject can lead to division between us.

In this light, it is argued that Cannabis consumers can recognise others as unique because we have differing views, which leads to diversification but can still motivate inclusivity and respect for every individual's capacity to be friendly and be befriended, as one of the core purposes for indulging in the substance is to eradicate division. When this is the view upon which Cannabis is consumed to heal and prevent division, there is the recognition of each individual's capacity to be treated as unique; there is the recognition that each individual can be befriended in order for them to be in unison amongst the community members. In the light hereof, there is no ethically justifiable reason to conclude that Cannabis consumption ought to be ruled an impermissible act, nor is there any ethically justifiable reason to impede the user's right to privacy.

4. Cannabis consumption under the right to privacy is impermissible to the extent that it disrespects beings with the ability to be part of relationships of identity and solidarity.

In order for Cannabis consumption to be declared impermissible morally, the use of the substance needs to place the user in a position where he disrespects the ability of others to form a shared identity and to act in solidarity with others. In other words, if the user denies the capacity of others to relate communally and does not form shared ends with other community members, he would disrespect their capacity to be part of relationships founded on these two concepts.

In Chapter Two, the medical uses of Cannabis were discussed to detail its potential beneficial elements. From the literature, it was discovered that Cannabis is essentially made-up of two components this is THC and CBD; about CBD, the research has shown positive benefits of its use. As opposed to THC, CBD displays positive psychoactive results in the treatment of anxiety and depression; it has also been shown to have a positive controlling effect on the negative psychoactive effect of THC (Jooste et al. 2021, p. 943).

It is a known fact that anxiety and depression lead those suffering from it to isolate themselves from their loved ones, friends, family and their extended community. This isolation might sometimes prevent the agent from communing with others, and others communing with her and this would not be ideal, as this would amount to a denial of the human dignity of the agent who has a capacity to be communed with (Metz. 2011, p. 544).

Several animal studies have shown positive effects of the use of CBD in patients who suffer from disorders such as post-traumatic stress disorder in the USA (Oberbarnscheidta and Miller. 2020, p. 395.).

Similarly, in human studies conducted on participants specifically aimed at testing for objective and subjective anxiety. When confronted with varying fearful faces whilst under the influence of CBD. The study found that the use of CBD in an anxiety-inducing situation, caused greater amounts of oxygen to flow to the amygdala region of the brain, and this effect had the ability to reduce subjective anxiety (Oberbarnscheidta and Miller. 2020, p. 395.).

As the field of study on the impact cannabis and related products have on the brain is growing, these studies are not conclusive but are very influential in arguing that cannabis can have positive effects on the mental health of an agent**.**

As the component CBD has a positive effect on alleviating illnesses such as anxiety and depression, it can be argued that the substance and its use can promote rather than detract from the capacity of others to be a part of relationships.

The substance has the potential to promote the concepts of a shared identity, respect for the capacity of others to relate communally, and the display of solidarity, as it has been demonstrated that consumption of cannabis could be one way in which the tendency towards isolation may be reduced.

4.4 Autonomy and Communal Relations

The concept of relational autonomy within African thought, discussed in Chapter Three under Section 2, is part III. As Ikuenobe proposes, this concept is understood to mean that while an individual requires the assistance of the community to guide and assist in achieving the moral agent's life goals and plans, the individual retains the choice to determine which options, as

provided by the community, will assist in the realisation of her life goals and plans (Ikuenobe 2018, p. 1018).

This means the individual retains the inherent right to make choices within African thought. However, the choices to be made are from the list of options provided to the individual by the community to guide and assist the moral agent in achieving her life goals and plans. Ikuenobe further explains that free rational thought is the prerogative of the individual. However, in making life choices, those choices must still maintain the individual's relations with her community. A choice that fails to maintain communal relations will render the moral agent morally and socially dead.

In other words, a choice that fails to maintain harmony within the community would render the agent unable to attain or maintain her personhood.

In Chapter Two, it was outlined that there are claims that persistent Cannabis use can result in the development of mental health diseases such as schizophrenia or psychosis. These claims are supported by the studies of Marconi et al. (2016) and Di Forti et al. (2019), who have provided evidence to support these claims.

Let us then use the example of a heavy Cannabis user who presents the possibility of developing psychosis due to persistent use. He is a father in a family of four; he is the husband to his wife and a father to two children. This is his immediate community; the family reside within an extended community of family, friends, and neighbours.

Both the immediate and extended communities frown upon the man’s persistent use of the drug as it carries with it the stigma of laziness and the unwillingness to promote the flourishing of the community.

Cannabis use is considered undesirable within his family because of the altered state it places the man in and the type of behaviour it exposes his children to; his wife requests him to get assistance in the form of drug rehabilitation, which she is prepared to pay for and to be by his side through his journey of recovery. The man retains his inherent right to make rational choices from the list of options made available to him by his immediate community. There are two choices for the user to play. The first is the choice to continue using Cannabis alongside its potentially harmful effect of inducing mental health challenges, while the second option is to seek rehabilitation.

Each choice has a consequence. If the man continues his Cannabis abuse, he will jeopardise the harmony of his community. Such a choice fails to maintain harmonious relations, and therefore, the man places his personhood in jeopardy, too. Conversely, if he chooses to accept the offer for rehabilitation, he would be promoting and maintaining harmony within his community and, in turn, can safeguard his personhood.

From the above illustration, it is observed that the man continues to retain his right to decide not to use Cannabis when the context of that use may lead to unethical consequences and when it does not do so. While one might ask why such rights to decide can be given to the Cannabis user, as opposed to a killer or the promise-breaker, the answer is simple.

The use of Cannabis does not pose a threat to moral life, and when it does, such threats are often an exception, not the rule. Unlike promise-breaking and killing, which is always bad (the rule) except in special circumstances (the exception), the use of Cannabis is not always harmful or morally wrong. Indeed, from the literature canvassed and the discussions held around all of the harms and benefits of Cannabis, alongside applying the ethical theory of Ubuntu to determine if the use of Cannabis results in a division of communion and if it has any impact upon denying an individual their personhood it can safely be concluded that Cannabis use is often beneficial/good. It does not result in division of communion, nor does it impact the acquisition and development of one's personhood. This is especially true when we recognise the fact of the potential of Cannabis to alleviate illnesses such as anxiety and depression, the capacity to bring people together to promote inclusivity, to promote harmonious living, etc.

The final verdict is that the right to autonomy, freedom of choice, and privacy should not be impeded in the environment of Cannabis consumption; there are no ethically justifiable grounds to impede the right to privacy.

4.5 Conclusion

From the research conducted, it has been established that Cannabis has various beneficial elements attached to it; it is utilised in many cultural practices, and it has also proven to have beneficial medicinal benefits. However, there are concerns about the potentially harmful effects of Cannabis, too, such as its potential to cause violent behaviour and its association with an elevated risk of developing forms of psychosis. This is essentially what is debated between activists and prohibitionists for Cannabis use. The main argument of the prohibitionist is that Cannabis ought to remain criminalised due to the risk of psychosis through persistent use of

Cannabis, as were the findings in the Marconi et al. study, which confirmed a positive association between the extent of Cannabis use and the risk of psychosis.

The main argument on the part of the activist is that the medicinal benefits of Cannabis in reducing and alleviating chemotherapy-induced nausea in cancer patients and anxiety and depression in HIV-infected patients ought to justify the decriminalisation and permissibility of the use of the substance. The prohibitionists, on the other hand, propose the criminalisation of Cannabis use based on the risks associated with frequent use and the development of psychosis. It would seem that the activist and the prohibitionist cannot equally respond with data or statistics to counter the other side's argument. Instead, they appear to be arguing in parallel with each other.

Given these debates and discussions, I sought to answer the primary question of this research by using Ubuntu philosophy as a theoretical basis. My preferred notion of Ubuntu for this research is based mainly on Metz's views about Ubuntu, where he defines Ubuntu in terms of identity solidarity and respect for the capacity of others to be communed with. I chose this notion of Ubuntu as Metz's two concepts that define Ubuntu delves deep into the conversation between autonomy and communal relations. Metz's concept of Ubuntu directly applies to whether the right to privacy, an autonomous right, can be ethically impeded in communal relations. Through a thorough application of Metz's definition of Ubuntu, it has been found that the substance can promote a shared identity and a shared way of life.

I also elected to use Molefe's views on personhood, specifically his description of the two-pot system of acquiring personhood; I found his methodology most appealing as it sets out the requirements a moral agent must meet to acquire his personhood. Through an analysis of Molefe's system and the use of Cannabis, it was concluded that Cannabis does not have the effect of detracting from one acquiring his personhood.

In the analysis of Cannabis use and Metz's principle of right action, it too was established that the consumption of Cannabis under the various facets of his principle does not amount to a morally wrong action.

From the research conducted, there is room for investigation into the link between Cannabis use and criminal activity and whether there is any probability that Cannabis use increases crime rates. The evidence at this stage is not conclusive. If such evidence were to exist, the issue of whether there are ethically justifiable grounds to impede the right to privacy may need to be

revisited. Further studies are necessary into whether Cannabis use is directly linked to an increase in violent/aggressive behaviour, and the discovery of a direct link may necessitate a re-look into the ethically justifiable grounds upon which to limit the right to privacy.

In the absence of conclusive evidence, Cannabis is a casual factor upon which to impede the right to privacy and the autonomy of the individual. Cannabis consumption is not to be classified as a morally wrong action or even a morally impermissible action within the Ubuntu framework. This is mainly because the consumption of Cannabis, even for recreational use, does not primarily undermine harmony – understood in terms of shared identity and solidarity.

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