

# **CAN *UBUNTU* PROVIDE THE ETHICAL BASIS FOR *KING III*?**

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### **ABSTRACT**

This report sets out to determine if *ubuntu* can provide a principle of right action for business ethics and thereby to establish if the *King III* Report is indeed based on the “moral duties that find expression in the concept of *ubuntu*” as is claimed by the writers of *King III*.

The report examines various aspects of *ubuntu* and shows that *ubuntu* is a normative ethical theory, arriving at the principle of right action that: “An action is right insofar as it promotes cohesion and reciprocal value amongst people. An action is wrong insofar as it damages relationships and devalues any individual or group.”

Finally, the report evaluates the *King III Report on Corporate Governance 2009*. It argues that there is some confusion in terminology. The report finally demonstrates that the ethical values and moral duties laid down in *King III* largely do find expression in the concept of *ubuntu*.

## **DECLARATION**

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts, Applied Ethics for Professionals, in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

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Douglas Frank Paul Taylor

28<sup>th</sup> day of February, 2011.

## ACKNOWLEDGEMENTS

I have supervised many students and fully understand the amount of effort involved. In helping me complete this report, Dr Brian Penrose, my supervisor, has gone far beyond what could be expected and has been of immeasurable support. His detailed comments on various drafts have not only helped shape this report, they have shaped the way I think about philosophical writing and philosophical ideas. I gratefully acknowledge his invaluable assistance, clear input and sound advice. Any errors in this report, however, are mine alone.

I also wish to acknowledge the South Africans who do demonstrate *ubuntu* in their daily lives, despite often overwhelming forces ranged against them. There are not many, but those that do influence the rest of us to try harder and live better. In this regard, especially, Archbishop Desmond Tutu is a beacon of hope to all South Africans.

Finally, I wish to thank my wife, Veronica, for always being the pillar supporting me and for showing me that *ubuntu* is not just an ethical concept.

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## Section 1

### INTRODUCTION

Corporate Governance has become an essential element in all business transactions. Not only has the large number of frauds, from Enron to Leisurennet to Bernie Madoff, focused the attention of the public on the way companies operate, but issues such as the recent banking crisis and the behaviour of global companies in terms of, inter alia, their environmental and labour practices, have led to the public questioning the most ethical way to run a business. Internationally, various governments passed legislation, such as the *Sarbanes-Oxley Act* in the United States, or set up commissions to investigate and report on best ethical practice. In the United Kingdom, the *Cadbury Report on Corporate Governance* was followed by the Greenbury, Hampel, Turnbull, Smith and Higgs reports, resulting in what is now called *The Combined Code*. In South Africa, the first commission was constituted under the chairmanship of Judge Mervyn King in 1992. This resulted in the first *King Committee Report on Corporate Governance*. This was followed by *King II* and, in 2009, the third King Commission was established as a result of changes to the *South African Companies Act* (No. 71 of 2008) as well as emerging trends in governance

worldwide, producing *The King Report on Governance for South Africa 2009 (King III)*<sup>1</sup> (King Committee 2009).

*King III* states that the philosophy of the report revolves around leadership, sustainability and corporate citizenship. The report then goes on to state that:

Good governance is essentially about effective leadership. Leaders should rise to the challenge of modern governance. Such leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency and based on moral duties that find expression in the concept of *ubuntu*. (*King III*, p10)

The term “*ubuntu*” has been used in South Africa, and in fact throughout sub-Saharan Africa, as defining how people and communities should behave in their interactions. It has gained currency thanks to its use by Desmond Tutu (Tutu 1999) as well as a number of business leaders, academics and the Constitutional Court.

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<sup>1</sup> The King Committee produced two documents, the King Report on Corporate Governance and the King Code of Governance Principles (essentially a summarised version of the Report). This research refers to the King Report and will, hereafter, refer to this report as *King III*, followed by a page number where applicable.

The term "*ubuntu*" itself is derived from the prefix *ubu-* meaning "a collection or a group" and the suffix, *-ntu*, meaning "human" (van Binsbergen 2001, p53). The word therefore means "collection of people", or "humanness", but its significance is far greater than that. From a philosophical and ethical perspective, "*ubuntu*" has come to imply the relationships between people and how those relationships should be conducted. In the context of this research report, the initial understanding will be that *ubuntu* is a proper means of establishing or determining the relationships between people, based on the aphorism that "a person is a person through other people".

### **Research Problem**

It is the intention of this research report to determine if *ubuntu* can yield an action-guiding principle of right action for business (and other uses) and then to establish if *King III* is indeed based on the "moral duties that find expression in the concept of *ubuntu*" (*King III*, p10).

This leads to the two sub-problems in this research report:

- the first is to determine if *ubuntu* can provide an action-guiding principle of right action by which to evaluate Corporate Governance principles; and
- the second is to establish whether the ethical and moral duties and values as laid down in *King III* actually do find expression in concept of *ubuntu*.

In this report, I commence by examining the ethic of “*ubuntu*” with the intention of determining a principle of right action by which to evaluate the claim of *King III*. After considering various aspects and attributes of *ubuntu*, based on the work of many authors, in particular the work of Thaddeus Metz, I finally establish a principle of right action based on *ubuntu*. I then consider the views of the *King III* Report on Corporate Governance and try to evaluate what the authors of that report mean by ethical values and moral duties. I arrive at the conclusion that there is some real confusion about the meaning of these terms. *King III* regularly refers to stakeholders and, in order to establish how this may affect the concept of *ubuntu*, I

evaluate stakeholder theory in relationship to *King III* and *ubuntu*. I then derive a heuristic, a procedure or set of rules, which allow us to evaluate actions as laid down in *King III* to determine if they reflect the ethical and moral values of *ubuntu*. I conclude that it largely does, albeit that at times I had to tease out meaning due to the confusion about ethical values and moral duties.

### **Importance**

There has been substantial debate (see below) on the actual meaning of “*ubuntu*” in ethical terms. Not only has the term become part of the business community, as the numerous references testify, it has also been used several times in the Constitutional Court.<sup>2</sup> However, at this stage, there seems to be no real principle of right action upon which to base any ethical decisions or to build a normative ethical framework. The definitions, with few exceptions, refer to the evidence of *ubuntu* but not the moral reasoning supporting why *ubuntu* is exhibited. To be able to address these

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<sup>2</sup> See the many discussions on various court cases in Cornell, D & Muvangua, N. eds., *Ubuntu, and the Law in South Africa*, Fordham University Press, Forthcoming (2010).

issues and come up with a definition of “*ubuntu*” which can actually be used as a maxim in deciding ethical issues would be of value to all South Africans.

Secondly, if the *King III* and similar reports or ethical codes are to be effective in Africa they need to be “African”, as opposed to Eurocentric, in order to encourage adoption and acceptance by all sectors of the community. West (2006, p441) states that “There is an incompatibility between .... aspects of African culture ..... and the Anglo-American corporate environment.” Mogobe Ramose (2001, para. 8) also notes that “Similarly, law, to be worth its name and to command respect, must evince *ubuntu*.” *King III* states that its Code is based on *ubuntu*. I hope to establish that this is indeed the case, thereby validating *King III* as an appropriate code for use in (Southern) Africa and further encouraging its endorsement by all stakeholders in the business community.

## ***Section 2***

### **UBUNTU AS A PRINCIPLE OF RIGHT ACTION**

“*Ubuntu*” has been defined by many commentators, yet it seems that the essence of the term is still lacking. Certainly, it is difficult to take any one of the “definitions” and use it to create a principle-based theory of right action applicable in a business situation, which is the focus of this report.

I will first consider the various descriptors of *ubuntu*, the terms used to describe the evidence of *ubuntu*, rather than *ubuntu* itself. I then evaluate *King III’s* definition of *ubuntu* before considering other possible interpretations such as the golden rule or a Kantian dignity perspective. Finally, I use the work of Thaddeus Metz to develop a principle of right action based on *ubuntu*.

The need to develop a principle of right action arises because we require a foundation from which to determine if *King III* is based on the principles of *ubuntu*. It will not help to state, for example, that *ubuntu* implies my humanity intertwined with my community, as that does not provide a means to evaluate the claims of *King III*. What is needed is an action-

guiding principle as the yardstick by which to measure the moral values and ethical duties in *King III*. The problem that we face is that numerous authors write about *ubuntu*, but do not treat it as a principle of right action. There is also a wide variety of interpretations as to what *ubuntu* means. Most people write about the evidence of *ubuntu*, but very few on the rule of *ubuntu*.

### ***Ubuntu* Descriptors**

Desmond Tutu (Tutu 1999, pp34-35) states that “*Ubuntu* ... speaks of the very essence of being human”. According to Tutu, *ubuntu* says “I am human because I belong. I participate, I share.” We can relate to this, I think; it seems to resonate, but this does not provide me with a guideline as to how to act in all situations as does, say, the Kantian Categorical Imperative.

Augustine Shutte (Shutte 2001) argues that people only exist in relation to others and in relationship with others and that this is the essence of *ubuntu*. He argues that “living in the spirit of *UBUNTU* is not just a conventional obligation. It is my very growth as a person that is at stake. It is a matter of life and death.” (Shutte 2001, pp23-24). So we can

understand from Schutte that *ubuntu* is the spirit, the “glue” that binds us together, but how does it help me to make an ethical decision?

Similarly, Ramose (1999), argues that being human is to affirm one’s humanity by recognising the humanity of others. He states that “*Ubuntu* understood as be-ing human (human-ness) .... constitutes the core meaning of this aphorism [*umuntu ngumuntu ngabantu* – the phrase defining the concept of *ubuntu*]” (Ramose 1999, p52). It is being human which identifies *ubuntu*. I believe there is merit in this recognition of others’ humanity, and have tried to incorporate the concept in my own definition, but it is not sufficient on its own – how does a recognition of others’ humanity lead to an action-guiding principle, which is what *ubuntu* must be?

Eygelhaar (1998, p159) also observes that “Although *ubuntu* literally means African humanism, it shares values with the human race in general. Values such as respect, dignity, empathy, co-operation and harmony between members of society are not exclusively African, but comprise the human race as a whole.” Similarly, Le Roux says that if people possess *ubuntu* they will have characteristics such as being “caring, humble, thoughtful,

considerate, understanding, wise, generous, hospitable, socially mature, socially sensitive, virtuous and blessed” (Le Roux, 2000, p. 43). And Reuel Khoza (Khoza 2006) states that *ubuntu* is characterised by a range of values such as caring, reciprocity, sharing, compassion, hospitality, cohabitation, cooperation and tolerance.

So many authors give lists of characteristics but no ground rules as to why these characteristics and not others constitute *ubuntu*. They seem no different to any religious framework, to any other set of values. Numerous other authors try to describe what it is, if anything, that differentiates *ubuntu* from conventional western philosophical (and ethical) thought.<sup>3</sup>

However, in my view, I could find nothing in their writing that allows me to use *ubuntu* as an action guiding principle of right action.<sup>4</sup> There is little guidance on how to decide when facing difficult moral decisions, such as how to arbitrate between the interests of the various business stakeholders, or how fairly to allocate resources. There is an ideal, an objective, which

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<sup>3</sup> See for example Bewaji & Ramose (2003), Bodunrin (1981), Brack, Hill, Edwards, Grootboom & Lassiter (2003), Enslin & Horsthemke (2004), Iroanya (2005), Karsten & Illa (2005, 2001), Mnyaka & Motlhabi (2005), Mudimbe (1985) and Versi (1998).

<sup>4</sup> Recently Broodryk published an “Ubuntu Pledge” (Broodryk 2010, p68) which sets out a list of what could be defined as right actions (be good, live honestly, etc.) but there is still no underlying principle of right action.

says that we are to behave in such a manner that builds and sustains relationships, but how exactly we are to do this remains an issue. This is not to say that the various eminent writers on *ubuntu* are wrong; it is merely that they are writing about the essence of *ubuntu*, the evidence of *ubuntu* and not attempting to create a philosophical principle. I am thus left with the question: What exactly is the action guiding principle of *ubuntu*?

At this point, having considered the various (unhelpful) definitions and attribute lists discussed above, and the many more throughout my survey of the *ubuntu* literature<sup>5</sup> it seems 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.<sup>6</sup> What we do not have is a principle of right action. The majority of *ubuntu* literature does not appear to regard *ubuntu* as a principle of right action but rather as an ethical concept. However, it is important, for my intention to evaluate the ethical and moral values in *King III* and to test for compliance with

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<sup>5</sup> No survey of literature can be all encompassing and there is, no doubt, literature which may address my concerns. However, I did not find this in my searching.

<sup>6</sup> I am indebted to my supervisor, Dr Brian Penrose, for this comment in his review of an earlier draft.

*ubuntu*, that I have a principle of right action as my yardstick. This is what is developed below.

Furthermore, it is essential to evaluate whether *ubuntu* is an ethical construct, which provides a unique (partially, at least) principle of right action, or a mere restatement or translation of extant rules or principles of right action. If it is the latter, we cannot readily establish if *King III* is indeed based on the moral duties that find expression in *ubuntu*, because there would be none.

There are four possible interpretations of the *ubuntu* principle that require consideration before I attempt to develop a principle of right action. The first is the definition as expressed in *King III*, which describes *ubuntu* as "humaneness"; the second is that *ubuntu* is a restatement of the Biblical golden rule – "Love your neighbour as you love yourself"; the third is that *ubuntu* is a variant of dignity and therefore Kantian in essence; and the fourth is the view proposed by Thaddeus Metz that "An action is right just insofar as it promotes shared identity among people grounded on good-

will; an act is wrong to the extent that it fails to do so and tends to encourage the opposites of division and ill-will.” (Metz 2007a, p338).

### ***Ubuntu and King III***

*Ubuntu* in *King III* is defined as follows: "Simply put, *Ubuntu* means humaneness and the philosophy of *Ubuntu* includes mutual support and respect, interdependence, unity, collective work and responsibility. It involves a common purpose in all human endeavour and is based on service to humanity (servant leadership)." (*King III*, p23).

With due respect to the eminent writers of the report I am again left with a list of characteristics. In the first instance, *ubuntu* has to do with the relationship between the individual and the group. Even the translation provided by *King III* “I am because you are; you are because we are” (*King III*, p23) implies this. There is nothing to suggest that *ubuntu* means “humaneness”, even if caring, compassion and benevolence, the hallmarks of humaneness, are also characteristics of *ubuntu*. I do not disagree with *King III* that the spirit of *ubuntu* includes mutual support and respect, that in *ubuntu* there is interdependence amongst people and a striving for unity.

I can also accept that there should be mutual responsibility. I do not know what is meant by "collective work" other than some form of communalism, which, while espoused in much of the literature on "African" ethics, is a pale shadow of what I believe is meant by *ubuntu*. (Refer to my discussions below on the golden rule and later in articulating my principle of right action.) I could not find support in the literature for the concept that *ubuntu* is based on service to humanity or servant leadership, as stated in *King III*. I am not even sure what is meant by "service to humanity". Accordingly, while *King III* provides a description of what the writers believe to be the attributes of *ubuntu*, essentially this definition is little different to the many definitions above and we cannot use it to evaluate the moral rightness of actions.

### ***Ubuntu* and the Golden Rule**

There is a sizable body of literature that considers *ubuntu* from a religious perspective. While not all of it is specific, it is possible to propose that "A person is a person because of other people" is akin to the golden rule "Love your neighbour as you love yourself" in that *ubuntu* is obviously concerned with the relationship between people; it is concerned with community and

the role of the individual within that community. “Love your neighbour” is certainly a way of maintaining relationships within a community. In discussing *ubuntu* and community, Tshawane (2009, p78) observes that: “human relations have their grounding and validity in the person of God, which are manifested through love for the neighbour.” Michael Battle, too, makes the following observation about the work of Desmond Tutu:

From this African worldview, *Ubuntu* shaped Tutu’s subsequent work as the centre from which to make racial reconciliation comprehensible in the African culture. Tutu needed to communicate at this level because interdependence is necessary for people to exercise, develop, and fulfil their potential to be both individuals and a community. Only by means of absolute dependence on God and neighbour – including both Blacks and Whites – can true human identity be discovered. Indeed, such human interdependence is built into our very own creation by our being created in God’s image, our common *Imago Dei* (in Daye, 2004, p161).

While not specifically addressing the golden rule here, it is obviously the basis for Tutu's comment. Indeed Tutu (1994, p70) states that every person must love God and his neighbour as well.

More clearly, Koka (2000) says:

...the humanness that I share with others makes me conscious of the reality that in my essential being I depend on the essential "beingness" of the other. This instils in me an awareness of the other person who is my counterpart in society. This creates in me a feeling that "being for- other" appears to be a necessary condition for being for myself. In this respect, the concept of *Ubuntu* becomes the basis of the major commandment of life: "Love their neighbour as themselves" (Koka 2000, p44)

As Wiredu (2005, p.117) notes: "It is not surprising that many, possibly all, cultures are known to settle for some such principle as what, in Western culture, is called the Golden Rule." Sundermeier (1998, p174) also says that "In this light, it becomes obvious why in African society ethics can be

regarded as being grounded on one key principle - respect for and right relationship with the neighbour”.

It seems, therefore, that there is support for the “Golden Rule” view of *ubuntu*. However, we need to understand what exactly this implies for our search for an action-guiding principle of right action based on *ubuntu*.

Drucilla Cornell (2010, p 372) states that in defining *ubuntu* one could say “I am your friend because I am a friend to myself, as a being who can make himself or herself a person who struggles to make what I am who I should be.” Taking this further and invoking Kant, whom I shall discuss below, she says “We could rephrase the Kantian language of friendship through *ubuntu* as follows: In Kant, I am a friend to myself because of the dignity of my humanity. Under *ubuntu*, I am a friend to myself because others in my community have already been friends to me” (Cornell, 2010, p 373). It seems that Cornell, albeit not overtly, is reading “a person is a person through other people” through golden rule glasses. The concept of the friendship between us being reliant on my friendship with myself is much closer to “love your neighbour as you love yourself” than I believe was

intended by *ubuntu*. *Ubuntu* is an acknowledgement that one's very existence is tied up in the wider community. As Lovemore Mbigi states: "*Ubuntu* is the essence of being human, and is a positive perception of African personhood. It refers to the collective interdependence and solidarity of communities of affection." (Mbigi 2005, p 69).

It could be argued that "Love your neighbour" is focused on the immediate community (your neighbour), whereas *ubuntu* is concerned with all people. However, it seems as if that was not the intention behind the golden rule and, when asked "Who is my neighbour?", Jesus responded with the Good Samaritan parable<sup>7</sup> indicating that neighbour indeed applied to all people.

Kwasi Wiredu (Wiredu, 2005) states that morality seeks to harmonize the interests of the individual with those of the community. He says that "to live in a society is, in general, to have some conception of other selves in contrast to oneself. At the minimum, this involves having a sense of one's own interests in relation to the interests of others. It involves also, beyond

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<sup>7</sup> It is interesting to note that the origin of "Love your neighbour" comes from the Old Testament book of *Leviticus* (Ch19 v18) and in those times would certainly have only referred to the Jewish or Israeli people. When this was discussed in the parable of the good Samaritan, *Gospel of Luke* (Ch10 v20-37), the concept was expanded to the neighbour being the one who showed mercy, implying that we are all neighbours to each other.

this, some sense of the need to harmonize these interests, which, by any account, are apt frequently to conflict.” (Wiredu 2005, p117). He states elsewhere (Wiredu 2008, p334) that: “[The Golden Rule] is, in fact, a global principle. The analogy between this principle and the principle underlying African communitarianism consists in the fact that the latter also is the quest for the adjustment of certain special interests of the individual to those of the community.” But Wiredu here also is making the interpretation too parochial in the sense that it is imposing limits on the scope of *ubuntu*. The golden rule (as with *ubuntu*) should be seen to apply to all ethical decisions made by all people at all times if it is to be a principle of right action. While there may be disagreement about this issue, it seems correct to me that a principle of right action, as far as possible, must have universal applicability to all people at all times, otherwise I think we arrive at either a selective morality or some form of cultural morality, neither of which seem appropriate to me.

The problem, in my view, is not that the application of the golden rule is too communitarian - that we can overcome - but that it is too loosely worded for practical action without being further expounded. For example, how

would one use the golden rule to punish a criminal? Clearly, loving punishment is moving toward being an oxymoron. How does one apply the golden rule in business when needing to fire or retrench someone, especially if one is keeping one's own job?<sup>8</sup> Does the golden rule also apply in the distribution or redistribution of wealth - and whose wealth, mine or my neighbour's? Other issues arise. Do I render assistance to a stranded motorist specifically with the thought that I anticipate them doing the same for me? Furthermore, what if I do not love myself, how then do I treat people? The golden rule seems to maintain a tension, a demand for equality, between individuality and community which I do not see to the same extent in *ubuntu*. In *ubuntu*, in my view, my entire existence is dependent on community; I am absorbed into community and have no real existence without it (nor it without me, in the sense that a community comprises individuals). As Tomaselli (Tomaselli 2009, p584) observes, *ubuntu* "is thus distinguished from Eurocentric concepts in that it supposedly elevates the community above the Self."

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<sup>8</sup> It has been observed by the external examiner of this report that it could be argued that the golden rule can be used with regard to the punishment of a criminal in that, "if I had committed the self-same crime I would expect to be punished in the self-same way. In other words I am doing to you what I would like you to do to me when the shoe is on the other foot." I accept that this could be a view, but I think it is more akin to the adage "Do to others what you would have them do to you" than to "Love your neighbour as you love yourself".

With regard to the term “community”, it is appropriate here to consider my sense of what it means. At a macro level, community to me includes all humanity. However, I do understand that those people with whom I am in relationship – at whatever level – are a closer community than those whom I have never encountered. I believe that our action guiding principle should apply to all people, all humanity, at all times. It is only that in giving expression to the principle that we will obviously be more concerned with our immediate community than those further away, whether that is geographically or socially.

One final comment on the golden rule has to do with supererogatory acts. It is my understanding of *ubuntu*, based on much reading and many discussions, that giving, in all its senses, with no anticipation of any benefit to oneself, is expected, as long as the community benefits, even if this is to the possible detriment of the actor – the real essence of supererogation. However, in Roman Catholic tradition, acts of supererogation create a “merit fund” which can be drawn against to aid sinners. This sense of supererogatory would seem foreign to some proponents of *ubuntu*,

although it has been suggested<sup>9</sup> that in some traditional conceptions of ubuntu a supererogatory act would gain “life force” for the giver.

Thus, while there are elements of the golden rule in *ubuntu*, and vice versa, the differences between the two concepts mean that I must pursue a different interpretation and further development of *ubuntu* before I can achieve a principle of right action.

### ***Ubuntu* and Dignity – Kant, von Pufendorf and Cicero**

There is a school of thought, largely in the legal fraternity<sup>10</sup> in South Africa, that seems to regard *ubuntu* as allied to or a version of Kant’s dignity. As observed by Cornell and Mavungua (2010) “The relationship between *ubuntu* and dignity must be recognized, as they both have come to play an important role in the jurisprudence of the new South Africa, which is both rich and generative.” (Cornell & Mavungua 2010, p7). Similarly, Woolman (2009) observes that “For both the drafters of the Final Constitution and for

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<sup>9</sup> This was suggested by the external examiner of this report. It is an area which requires further investigation.

<sup>10</sup> Refer especially to the extensive discussion on this aspect in Woolman (2009) which, for purposes of focus, I have not included here.

Kant, the ideal basic law attempts to give adequate effect to three sometimes covalent, sometimes conflicting 'ideas': dignity, equality and freedom." (Woolman 2009, p2)

Kant's "Act in such a way that you treat humanity, whether in your own person or the person of any other, never simply as a means but always at the same time as an end" (Kant, 1785 p 429) is tied to Kant's belief that individuals have inherent or intrinsic worth, or, to use Kant's term, "absolute value" merely because they are rational beings. From this then comes the concept of human dignity, the basis for how people are to treat one another in the Kingdom of Ends. Kant's concept of worth is that it is intrinsic to all rational beings and is unconditional, distinctive and objective. It is this worth that Kant calls "dignity" and it is possessed by all "ends" which are themselves, "an object of respect". (Kant 1785, p 428).

Ramose (2001) supports this view of dignity when he says that: "*Umuntu*, a human being in the biological sense, is enjoined to become a human being proper by embracing *ubuntu*. *Umuntu* must be the embodiment of *ubuntu* because the fundamental ethical, social and legal judgement of human

dignity and conduct is based upon *ubuntu*.” (Ramosé 2001, para. 8).

Poovan, du Toit and Engelbrecht (2006), observe that in discussing *ubuntu* with factory workers the concept of dignity is important. They comment that “Dignity is related to respect and is created through one’s behaviour, for example, one’s interaction with others. Participants expressed the belief that respect and dignity are important values of *ubuntu*” (Poovan et al 2006, p24). Similarly, Cornell and Muvanga note that: “Both Dignity and *ubuntu* are integrally tied to an ethical ideal of what it means to be a human being, and therefore one would expect that there is a resonance between the two”. (Cornell & Muvanga 2010, p7).

In my understanding of *ubuntu*, I believe that the concepts implied by dignity are important to our understanding of *ubuntu*, but I also believe that beyond this “dignity” is the concept of “humanity”. In other words, while I concur with the Kantian view that “all value comes from humanity”; that we - and all other rational beings - have ultimate value, I do not like Kant’s term “dignity”. I want something more encompassing. At issue, for me, is the semantics of “dignity”, not so much Kant’s concept of intrinsic worth. However, it seems to me that the usual meaning of the word “dignity” - the

quality of being worthy or honourable, noble or excellent; behaving with decorum (*The Oxford English Dictionary*, 1971) – is what is now, erroneously in my view, being interpreted as Kant’s meaning. One reads that we must treat people with dignity, with respect. This is surely not what Kant intended. Words like “worth” or “value” are much more in line with Kant’s meaning. However, I also have a problem with “dignity” if it merely signifies worth. It seems to me that being worthy implies a state that has been earned by heroic actions, supererogatory acts, or great moral deeds. In my experience, there are very few people who are worthy or honourable or who exhibit worthiness, worth, nobleness or excellence. In fact, on the contrary, most people fall short of these ideals. What am I then to say? Is no one of value? Are just some people of value? Of course not, but the value does not lie in the dignity or worthiness of a person, it lies merely in the fact that a person is part of humanity. My contention is that *Ubuntu* does not rely on people being worthy but merely on a person being a person whose “personhood” is validated within the context of relationship with all other people. It seems to me that this goes beyond Kant in that to

him to be of value you had to be a rational human being. *Ubuntu* applies even to the numerous irrational human beings surrounding us.<sup>11</sup>

It has been argued by Ramose (2001) who states that “a human being in the biological sense, is enjoined to become a human being proper by embracing *ubuntu*.” (Ramose 2001, para. 8). The implication of this is that not all humans are persons and that they only gain “personhood” by embracing *ubuntu*. The implications of this concept are vast, and require further thought and investigation. For example, if I do not consider that you have embraced *ubuntu* do I have the right to treat you as a “non-person”? My sense is that this would be an inappropriate interpretation, but the question, at this stage, is beyond the scope of this report.<sup>12</sup>

I also believe that *ubuntu* goes beyond not treating people as a means and is more focused on treating people as ends at all times. In my view there are obligations inherent in *ubuntu*, obligations to act positively as opposed to not negatively. The legal profession seem in no doubt that there are

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<sup>11</sup> There are two ways to interpret this concept of irrational. In terms of normal usage many people are irrational. In Kantian terms it had to do with having full mental faculties, having the mental inability to be rational or not.

<sup>12</sup> This line of thought was suggested by the external examiner of this report.

duties and responsibilities inherent in *ubuntu*. Narnia Bohler-Muller, in discussing the law and *ubuntu* notes that “The idea that law experienced by an individual within the group is bound to individual *duty* as opposed to individual rights or entitlement should be advanced. (Bohler-Muller 2005, p80). This view is shared by Justice Lange when, in commenting on *ubuntu*, he states that "The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and *co-responsibility* and the mutual enjoyment of rights by all.” (Lange, *S v Makwanyane*, paras. 224-225). This seems appropriate. It is hardly reasonable to imagine a situation where people enjoy rights without responsibilities, and an *ubuntu*-based society could hardly be otherwise. It should also be observed that these responsibilities are positive duties.

This is Metz’s view, and he observes that: “the most promising way to construct a competitive African moral theory is to develop Tutu’s understanding of *ubuntu* in terms of a basic obligation to promote harmonious relationships and to prevent discordant ones.” (Metz 2007a, p341). Metz is convinced that relationship and harmony are important to

*ubuntu* and, in replying to his critics, comments that: “One could also suggest a more explicitly expressive version of the principle, so that one’s basic obligation is to prize harmony or to show respect for it. (Metz 2007c, p374). Again, this obligation is positively structured. It is not that we must not harm relationships; it is that we must build them.

Is the obligation, the duty, the responsibility unique to the law or relationship building? I think not. Reading all the definitions of “*ubuntu*” the one common thread that appears everywhere is the sense that there is mutual obligation to “do good” to others as opposed to “not doing evil”.

This is obviously not unique to *ubuntu*, and I accept that Kant has stressed that there are imperfect duties, which include positive obligations.

However, I do not believe that these positive duties in Kant are as explicit as they are in *ubuntu*. As Metz notes, “The requirements of an individual to help others are typically deemed heavier in African morality than in Western. A greater percentage of Africans think that one is morally obligated to help others.” (Metz 2007a, p236). To this extent I believe that *ubuntu* differs from Kant, in that the action-guiding principle that I seek in *ubuntu* will not be found in Kant.

Kant's predecessor, Samuel von Pufendorf<sup>13</sup>, in his seminal *The Whole Duty of Man According to the Law of Nature* (1735) discusses the concept of dignity as it relates to equality amongst people. He states:

There seems to him to be somewhat of dignity in the appellation of man: so that the last and most efficacious argument to curb the arrogance of insulting men is usually, I am not a dog, but a man as well as yourself. Since then human nature is the same in us all, and since no man will or can cheerfully join in society with any, by whom he is not at least to be esteemed equally as a man, and as a partaker of the same common nature: it follows that, among those duties which men owe to each other, this obtains the second place, that every man esteem and treat another as naturally equal to himself, or as one who is a man as well as he. (von Pufendorf 1735, p97).

Haakonssen (2010) observes that this “equality “is not von Pufendorf's belief that all men are equal, but that all men have some inherent value. In the passage quoted he uses the term “*dignitas*”, but later changes to

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<sup>13</sup>There is much value to be gained in reading this work and seeing how much of the *ubuntu* concept is included in von Pufendorf's work. In his views on our duties to others he essentially notes that the absolute duties owed by people to each other that we avoid wronging others, promote the good of others and that we treat people as equals, all of which resonates with *ubuntu*.

*“existimatio”* which, over time and various translations has been rendered as “esteem”, “regard”, or “standing” (which refer to my discussion on dignity and value above and later). It this *“existimatio”* which von Pufendorf attributes to the value of persons.

The point about von Pufendorf's dignity is not that he considers all people inherently equal in *“existimatio”*, but that it is a duty to consider all men of equal regard or value. This is in contrast to *ubuntu*, where there is recognition of an intrinsic worth in each person, without this recognition being a duty - it is a “fact”.

We can finally<sup>14</sup> turn to Cicero, as quoted by Martha Nussbaum, where Cicero states: “If nature considers that a human being should consider the interests of a human being, no matter who he is, just because he is human, it is necessary that according to nature what is useful for all is something in common. And if this is so, then we are all embraced by one and the same law of nature....” (Nussbaum, p184). It seems to me that this is closest to my view of the inherent value of each human being that I see in *ubuntu*. I

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14 This brief excursion was brought about by trying to find a source or alternative for Kant's “dignity”. It led to von Pufendorf and Cicero and has no doubt omitted many of their successors and antecedents.

discuss this further below, but want to observe that in my view *ubuntu* values human beings *qua* human beings, they have intrinsic value. Cicero seems to have the same view, but still only deals with how we treat people (consider their interests) and not how we regard people, which I believe goes beyond considering their interests and I think those are two different states.

### **Metz on *Ubuntu***

Thaddeus Metz (Metz 2007a, p338) comes closest to establishing a formal rule-based definition of “*ubuntu*” when he states that “An action is right just insofar as it promotes shared identity among people grounded on good-will; an act is wrong to the extent that it fails to do so and tends to encourage the opposites of division and ill-will.”

However, I disagree with Metz over various aspects of this definition, the first area being to do with good will. Metz states that: “One has a relationship of good-will insofar as one: wishes another person well (conation); believes that another person is worthy of help (cognition); aims to help another person (intention); acts so as to help another person

(volition); acts for the other's sake (motivation); and, finally, feels good upon the knowledge that another person has benefited and feels bad upon learning she has been harmed (affection)." Metz (2007a, p336).

In Metz's view, it is by exhibiting this good will that one builds and strengthens relationships. I take issue with his opinion that the person must be (perceived to be) worthy of help in order to receive help. My sense of *ubuntu* is that it applies to everyone, irrespective of merit. If merit were a criterion, there are very few people worthy of help. I have discussed this in detail in my discussion on "value" elsewhere, so will merely observe that my view of *ubuntu* is that everyone is worthy of help by their mere existence.

The second concern I have is that Metz has brought in a strong Kantian element by his use of the term "good-will". Johnson (2008) notes that Kant seems to regard the most important attribute an individual can have is good will. In this sense, a person has value, or is good, because they have the will to do good and because they exercise that will to do good (or the right moral action) on the basis of a duty to obey moral law. It is this "good will"

to obey a moral law because of duty rather than for any other reason, such as self-interest, that Kant seems to believe creates the value of a person. I consider that to the extent that there are such philosophical undertones inherent in the term “good-will” it is an inappropriate term to use in the context of *ubuntu*.

Secondly, I take issue with the concept of a “shared identity”. Too often that term implies segregation of people into groups or categories – we have a “shared identity” because we are English speakers, because we are black Xhosa people, because we come from the same town, etc. Rather than promoting universal acceptance or understanding, such a concept is too parochial with potential undertones of racism or sectarianism. Now it seems that Metz has a different view. He states (Metz 2007a, P335) that harmony involves a sense of self which implies that the individual considers himself part of a group; that the group considers the individual part of the group; that the people in the group have common ends; and that the group acts to give effect to those common ends. Metz accepts that it is hard to see how such shared identity has a moral value and thus places this shared identity in the context of good will. Here, actions undertaken by and on

behalf of the group are based on good will, as opposed to any other motivation. For the reasons cited above I remain convinced that shared identity is too heavily laden with undertones and I would far rather use the term “shared humanity”, which is substantially more neutral and broader in its application.

Finally, there is a distinct element of “individual-ness” which I believe is lacking in Metz’s definition. *Ubuntu* is about both people as individuals as well as people in the wider society. There is no mention of the individual at all in Metz’s definition and, in developing his ubuntu principle Metz observes that “A different understanding of the morality of *ubuntu* includes the idea that moral value fundamentally lies not in the individual, but rather in a *relationship* between individuals.” (Metz 2007a, P333). I believe this flies in the face of *ubuntu*, which I contend has a strong individualistic element as well. It appears to me that while the group, the community, is extremely important in *ubuntu*, there is nothing I can find in the literature that makes group interests of greater value than the individual. At all times it seems to me that both the individual and the group are of equal value, especially if one considers that a group is comprised of individuals.

While I consider Metz's definition of *ubuntu* to be the most coherent and logical thus far, on the basis of the arguments presented above I believe we have to rebuff or amend Metz's definition. This I attempt to do below.

Perhaps the essence of the debate on *Ubuntu* is summed up by Lovemore Mbigi (Mbigi, 2005, p112) when he says that "It will not be enough for Africans to state that their philosophy is a social, communitarian one. The challenge lies in our ability as Africans to translate this perspective into an enviable, organised, disciplined and prosperous way of modern life, characterised by justice and the establishment of sustainable, fair communities in which all ethnic groups and their aspirations can find a home." This is the basis of the definition to which I aspire.

### **The Principle of *Ubuntu***

My preliminary *ubuntu* principle of right action, at an earlier stage of my research, was: "An action is right insofar as it promotes cohesiveness and mutual respect amongst people."

In this definition I wanted to include community, which I tried to do with the word “cohesiveness”. I also wanted to deal with the relationship between individuals and for this purpose included the term “mutual respect”. However, the term “respect” smacks of dignity and I want to avoid that or similar terms for the reasons cited above.

I have therefore arrived at a reworked statement of the principle:

*“An action is right insofar as it promotes cohesion and reciprocal value amongst people. An action is wrong insofar as it damages relationships and devalues any individual or group.”*

I have tried to avoid the term “community” as I fear that this may restrict the applicability of the *ubuntu* to a group or collection of people – it must be greater than our local community and should essentially refer to all humanity. However, it would be naïve to think that an action affects the entire human race and I have thus used the term “people” rather than, for

example, “humanity”, as I want implied in the term “people” the concept of affected people, those people affected by the action itself.<sup>15</sup>

The term “reciprocal” is used to imply the two-way relationship inherent in *ubuntu*, while “value” is a compromise with worth or dignity or any other similar term. People have value because they are people. That value is neither ranked nor prioritised; it is inherent or intrinsic in each person’s existence; it is in virtue of their humanity or human-ness. To that extent, one could consider including the term “intrinsic”<sup>16</sup> in the definition but I am of the view that it would detract from rather than enhance the definition.

In order to try to avoid the connotations and inherent or implied meaning of value it may be possible to consider using the German “Wichtigkeit”<sup>17</sup>, still meaning value but without its English associations. However, one could then as effectively, and more appropriately, use a Zulu or Xhosa word. No

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<sup>15</sup> I debated whether to include “affected” in the maxim. I eventually decided that it would provoke unnecessary further debate, which I wish to avoid.

<sup>16</sup> Note that I could possibly have used “extrinsic” as well, in that the argument would be that people have a value in virtue of an agreement amongst themselves or the community as a result of accepting *ubuntu*. That however is a consideration for another time.

<sup>17</sup> I could equally have used the Kantian term “*Menschenwürde*”, but the implications were too great.

appropriate translation for “value” or “worth” could be found in either language and thus the term “value” was retained.

I also took the decision, following Metz, to include a negative version as this allowed some of the concepts to be expanded. In developing the alternative or negative versions of the principle I did not want to merely state that the opposite of “right” is “not right” as I considered that obvious. What I try to do is express the nuances of what I am trying to achieve with the principle. For example, in using the word “cohesion” I try to imply the essence of community, the real binding together that makes a community operative. Rather than use, for example, “uncohesive” I used the term “damaging relationships”, as, in my view, it is relationships that create cohesion in a community. The idea of damaging relationships addresses the negatives in the interaction between the individual and all other people and is the dimension of cohesiveness I wish to emphasise. The term “devalue” is, I believe, a suitable antonym for “value” and well expresses the intention that, on the one hand, value must be recognised and, on the other, no action must be seen to deny or denigrate this value. It also seemed appropriate in developing this rider that I referred to both the individual

and the group as my sense is that both are of equal importance. It may be possible to omit the term “group” here, but it is possible to conceive of situations where groups are devalued but individual members of the group are not (apartheid still managed to produce several wealthy black people, for whatever reason).

There are two further areas to be considered regarding the principle. The first has to do with the implications of the terms “right” and “wrong” as opposed to, say “good” and “not good”. This has to do with whether the principle is permissible or obligatory. In my statement of principle the term “insofar as” has been used. Thus, it states that “An action is right *insofar as* it promotes .....”. An alternative would have been to use “if” and thus the principle becomes “An action is right if it promotes .....”. My concern is that using “if” is a far stronger form of principle and implies “if and only if”, which leaves no room for neutral actions. However, the main issue has to do with “right” and “wrong”. This goes to the essence of what I am trying to achieve. As opposed to using “right” and “wrong” it is feasible to consider other terms such as “An action is admirable insofar as it.....” or “An action is morally desirable insofar as it .....”. Where does that leave the

principle? My sense is that we would be back at the beginning of the discussion and would not have a principle so much as a statement of values. My intention is to have a statement of obligatory right action – this is what you *have to do* to act in accordance with *ubuntu*. For that reason I believe that the terms “right” and “wrong” are appropriate in this context.

The second issue to be considered has to do with whether it is possible to develop an *ubuntu* principle of right action at all. Ramose (2007) states that it is not only not possible, but also inappropriate. In his response to Metz’s “Towards an African Moral Theory” (Metz, 2007a) Ramose states: “[African philosophers] speak to a multiplicity of Ethical principles that found and permeate African morality without any implicit or explicit claim to immutability, essentiality, or eternity. Metz's quest for a “normative theory”, constructed upon a “comprehensive, basic norm”, implies exactly the three features disclaimed by African ethics. Seen from this perspective, African ethics is incompatible with absolutism and dogmatism.” (Ramose, 2007, P 351). Ramose contends that there is a chasm between Metz and African ethics and that this is created by Metz’s attempt to compare Western with African philosophy. Apart from Ramose’s uncharitable attack

on Metz in this paper, it appears to me that Ramose is of the “I’ll know it when I see it” *ubuntu* school seemingly followed by Mokgoro. True, actions speak louder than words, but what I believe Metz and I are trying to do is articulate a principle from a cloud of meanings. Perhaps we are incorrect. Perhaps it is “un-African” to do so. Perhaps it is not possible to do so. However, if we cannot develop a principle then *King III* certainly cannot be based on “the moral duties that find expression in the concept of *ubuntu*” as we will not be able to define what exactly those duties are. Therefore, whether it is appropriate to develop a principle or not, it is the only way I can proceed to evaluate *King III’s* claim.<sup>18</sup>

This, then, is my principle of right action. I have taken the aphorism “A person is a person because of other people” and, based on the work of many great scholars, come to an action guiding principle of right action that states that: “*An action is right insofar as it promotes cohesion and reciprocal value amongst people. An action is wrong insofar as it damages relationships and devalues any individual or group.*” I believe that this

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<sup>18</sup> And, I must observe, that unlike Hans Kelsen and Thaddeus Metz I was born in Africa and so were my family going back some 150 years.

captures the essence of *ubuntu* and provides the principle necessary to evaluate the *King III* Report.<sup>19</sup>

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<sup>19</sup> Ideally, at this stage, I suppose I should be testing my principle in a variety of situations to tease out the nuances and possible flaws in the principle. I have not done that, firstly because my principle stands on the shoulders of many far more eminent people who have gone before me and it merely tweaks a definition based on sound and rigorous philosophical debate and, secondly, because to do so would be beyond the scope of this research report.

## Section 3

### ***KING III***

#### **Ethical Values and Moral Duties**

The *King Report on Corporate Governance for South Africa* (“*King III*”) follows two earlier reports from the same committee<sup>20</sup>. Two documents were produced by the King committee. The first is the *King Report on Governance for South Africa 2009* and the second the *King Code of Governance Principles for South Africa 2009*. *King III* is a lengthy document setting out the deliberations and conclusions of the King Committee. It is structured around nine key chapters and within each chapter are sub-topics, as appropriate, principles and an exposition of practices to support the principles. *King III* was then essentially condensed into a separate Code of Principles, summarising the main points of each chapter in *King III*.

The intention of *King III* is to provide an analysis and exposition as to what constitutes good corporate governance. It covers a number of areas, but, for purposes of this research report, the essential elements are the areas of

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<sup>20</sup> While the composition of the committee has changed over the time the three reports have been published, with only three of the original committee constituted in 1992 remaining on the committee, the committees have all been under the chairmanship of Judge Mervyn King and have substantially followed the same methodologies and processes in producing the reports and deriving the codes.

ethical leadership, corporate citizenship and stakeholder relationships.

Appendix 1 sets out those elements of the Code which are relevant.

Section One of *King III* discusses the ethical foundation on which the Report and Code are based. It states that: “Ethics (or integrity) is the foundation of, and reason for, corporate governance.” (*King III*, p21). *King III* requires that all corporate decisions and actions be based on four “ethical” values: responsibility, accountability, fairness and transparency. In addition, five “moral duties” are prescribed for company directors: conscience, inclusivity, competence, commitment and courage. (*King III*, pp21-22). In discussing the four ethical values, *King III* states that: “leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency *and based on moral duties that find expression in the concept of ubuntu.*” (*King III*, p10) (my emphasis).

*King III* also states that the “legitimate interests and expectations of stakeholders are [to be] considered when deciding the best interests of the company” and that these decisions are to be “made on a case-by-case basis” (*King III* p13).

Before proceeding to consider *ubuntu* and *King III*, it is important for us to consider the philosophical basis underpinning *King III*. As will be noted below, despite giving some guidance as to interpretation, *King III* makes use of philosophical terminology in a manner that can lead to some confusion. I therefore need to spend some time considering the four ethical values, the five moral duties and the theory supporting stakeholder interests in order to evaluate what *King III* seems to consider ethics and morals to mean and also, as faithfully as possible, to try to reconstruct what *King III* means in order to evaluate it against *ubuntu*.

It is important to note that *King III* does not consider the company to be the moral agent but states that it is the leadership that has to comply with the five moral duties. Albeit that the report states that all corporate decisions are to be based on the four ethical values the report does say that leadership is characterised by those four values. We therefore do not have to concern ourselves with debate about moral agency – whether it is the company or its agents who are morally responsible for acts carried out in the name of the legal entity, the company. *King III* states that it is the

directors of the company who have to behave and act in a moral and ethical way in their guidance of the company and their decision-making.

*King III* refers to ethical values and moral duties and these terms need to be unpacked and understood if we are to make any progress. *King III* itself defines these terms as follows: “‘Ethics’ and ‘morality’ (these terms can be used interchangeably) refer to that which is good or right in human interaction. Ethics involves three key interlinked concepts – ‘self’, ‘good’ and ‘other’. Thus, one’s conduct is ethical if it gives due consideration not only to that which is good for oneself but also good for others.” (*King III*, p118). While this explanation is of use, it does not really explain the difference between ethical values and moral duties. If ethics and morality are the same, are ethical values and moral duties the same?

It appears that there is general confusion amongst business ethicists as to exactly what the difference is between ethics and morality and this difference needs to be clarified or at least explained. Lewis (1985, p381) states that "business ethics is rules, standards, codes or principles which provide guidelines for morally right behaviour and truthfulness in specific

situations.” While Joyner and Payne (2002, p299) argue “Ethics are defined as the conception of what is right and fair conduct or behaviour. Ethics is a system of value principles or practices and the definition of right and wrong. Ethics [is] concerned with judgements involved in moral decisions: normative judgements which stated or implied something is good or bad, or right or wrong.” And again, later, (p300): "A commonsense, dictionary type definition of the word moral or even morality indicates that morality is the ability to choose between right and wrong. Reasonably, the definitions of ethics and variety are cross-referenced to each other. The terms moral and ethical have been used interchangeably .....in much of the social issues literature."

Boatwright (2007, p22) states that "Generally ‘morality’ and ‘ethics’, ‘immoral’ and ‘ethical’, and so on are interchangeable. The presence of the two words in the English language with the same meaning is because they derive from different routes ‘morality’ from the Latin word *moralitas*, and ‘ethics’ from the Greek *ethikos* (*ετηικος*). There is no difference, therefore, between describing [events] as a moral issue and as an ethical issue."

To my mind the ethical or moral decision making process is as follows: an individual (or a company) has certain values, which we can term "ethical values". These values form the basis for all actions that we take; for all decisions that we make; for what we say and what we do. On the basis of our ethical values, we derive "principles" which are guidelines to action. For example, we may have honesty as an ethical value. This would then create the principle that we should not steal, from the company or our customers or suppliers. It may also create the principle that we should be open and transparent in communicating with our stakeholders. If we were to take this further, especially in the context of *King III*, we would create a Code of Conduct by which to operate the company<sup>21</sup>.

It seems that, in principle, *King III* has adopted the same view. It defines values in the following way: "Describing conduct as 'good' or 'right' means measuring it against standards called 'values'. Ethical values are convictions we hold about what is important in our character and interactions with others. Examples of ethical values are integrity, respect, honesty

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<sup>21</sup> In September 2009 the Institute of Directors, in conjunction with the *King III* committee issued a Practice Note entitled "Ethics Management" that deals with the development of a Code of Conduct. The integration of ethical standards into the company and the reporting and disclosure of ethical conduct. It is beyond the scope of this report to discuss Codes of Conduct, but readers can access the Practice Note on <http://www.iodsa.co.za/books.asp?CatID=277>.

(truthfulness), responsibility, accountability, fairness, transparency, and loyalty.” (*King III*, p 119). It then goes on to say: "Ethical values translate into behavioural commitments (principles) or behavioural directors (standards, norms and guidelines). For example, the ethical value honesty generates the principle ‘we should be honest’. This means that we have an ethical duty not to deceive but to tell the truth.” (*King III*, P119).

Here *King III*'s intention is understandable. However, there is no distinction between ethical duties and moral duties. *King III* does not define “moral” other than to say that it can be interchangeable with ethical - then why use the term? From our ethical base, our own values, we may also believe that we have certain “moral duties”. In my opinion these differ from principles, in that I aver that moral duties are imperatives or obligations, while principles are statements of the duties that provide guidelines as to how we give effect to those moral duties, much as is described by *King III*. It has been argued above that there is little difference between ethics and morality, that ethical values and morals mean the same thing. This may well be the case but as *King III* has differentiated between these two states,

we needed to do the same thing. With this as background, we need to try to understand what *King III* means by ethical values and moral duties.

*King III* states that the four ethical values are: responsibility, accountability, fairness and transparency. As they stand, we can accept that these are values, ethical values that a company and, more importantly, a director should exhibit. We could agree that they are “good” ideals to aspire to; that we could use these values to develop action-guiding principles by which to run our businesses. However, we need to understand what *King III* means by these values.

After the preamble, *King III* starts Chapter 1 (*King III*, P20) by stating that “Good corporate governance is essentially about effective, responsible leadership”. Responsibility has two elements: one is either responsible for something or responsible to someone. This is in accordance with *King III*, which defines responsibility as: “The state or position of having control or authority and being accountable for one's actions and decisions.” (*King III*, P122).

Being “responsible *for*” something implies a duty of care or concern. One is responsible for assets under one's control, for example. It also implies being responsible for one's own actions; in other words accepting that one is liable for the consequences of one's own behaviour. Responsibility also entails being in charge, whether that be of a company, a division or a department.

“Responsible *to*” has connotations of accountability and in fact it is extremely difficult to separate the two meanings. Accountability is discussed below but possibly the differential is that responsibility has to do with "ownership" whereas accountability has to do with “stewardship”. Within the "responsible to" ambit are concepts, ethical values if you like, such as trustworthiness and dependability. After all, one can only be trustworthy or dependable to or on behalf of a third party.

The question now is: how does *King III* see “responsible”? In Chapter 1 of the report, covering ethical leadership and corporate citizenship, Principle 1.1 lays down what *King III* regards as responsible leadership. There are six points describing responsible leaders. The first point creates some

confusion when it says that "*Responsible* leadership is characterised by the ethical values of *responsibility*, accountability, fairness and transparency."

(My emphasis) (*King III*, P20). Possibly, we should say that excellent leadership or good leadership is characterised by the ethical values of responsibility, etc.

The remaining five points list the actions of responsible leaders. Such leaders build sustainable businesses; they reflect on the role of business and society; they do business ethically; they do not compromise the natural environment; they embrace a shared future with all company stakeholders.

This list sets out the kinds of actions a responsible leader should undertake.

I am not sure that it covers every action that a responsible leader should take but it certainly seems to attempt to be an all-encompassing list. My concern here is that this is not a description of ethical values but is closer to a set of principles or a list of moral duties.<sup>22</sup> In other words, rather than being a value from which a principle is derived, these values are de facto principles. As an aside, there is also the issue as to what it means to do business "ethically"? *King III* defines business ethics as: "the ethical values

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<sup>22</sup> In fact, in the *King III Code* (*King III Code*, 2009, P 20-21) these elements are listed in a column headed "Recommended Practice".

that determine the interaction between a company and its stakeholders.”

(*King III*, P118). I am not sure that this is helpful. What sort of ethics are we discussing? Are these deontological, consequential, utilitarian? While most people would argue that we "understand" what is meant by doing business ethically, if that were the case there would be no need for the entire discussion of ethics and moral values in *King III*.

Principle 1.1 then goes on to consider the board’s responsibilities. In terms of point 7, the board is responsible for corporate governance and has "two main functions: first, it is responsible for determining the company's strategic direction; and second, it is responsible for the control of the company.” (*King III*, P20) These seem to me more like duties than descriptions of the ethical value of “responsibility”.

Point 8 then causes some concern. The point states that "The board is responsible to ensure that management actively cultivates a culture of ethical conduct and sets the values to which the company will adhere. These values should be incorporated in a code of conduct.” (*King III*, P20). Here we are told that the board must ensure that management sets the

values to which the company will adhere. The report has already told us what values it expects directors and the company to exhibit. What values will management now set? Will these be different from the values in the report? It may be more appropriate for this clause to state that the board is responsible for ensuring that management and the company adhere to the values already laid down in *King III*.

Items 9 and 10 then cover the board's responsibility to ensure that the company and management behaves or operates in an ethically sound manner in line with the values driving the company's business. This again has more to do with action or a duty than a description of the ethical value of responsibility.

Finally, for completeness, item 11 covers the company's relationship with stakeholders. This is discussed in more detail below.

It seems therefore that *King III* does not actually define "responsibility" as an ethical value. What it does do is give us an indication as to what responsible behaviour looks like; in other words it really treats responsibility

as a moral duty (or, in its terms, an ethical standard), an action guiding principle, as opposed to an ethical value.

Principle 1.1 however continues under point 14 to describe the four ethical values. Point 14.1 states that responsibility means that "the board should assume responsibility for the assets and actions of the company and be willing to take corrective actions to keep the company on a strategic path that is ethical and sustainable." (*King III*, P21). Here we have a "responsible for" situation. Again, this is not a description of an ethical value; it is a description of a principal or a duty. We are therefore unable to decide exactly what *King III* means by the *ethical value* of "responsibility".

With regard to accountability, point 14.2 states that accountability means that "the board should be able to justify its decisions and actions to shareholders and other stakeholders." (*King III*, P21). Elsewhere, accountable is defined as "being responsible and able to justify decisions and actions" (*King III*, P117). Again, this is not really a definition or explanation of an ethical value, although it may be evidence of an ethical value in action. However, as opposed to being some kind of duty, this

definition is set out as an ethical principle (in other words it has a broader compass) to be used when making decisions or taking action. It is therefore much closer to an ethical value than the concept of responsibility.

Point 14.3, regarding fairness, states that: "the board should ensure that it gives fair consideration to the legitimate interests and expectations of all stakeholders of the company." (*King III*, P21). Again, this is not an ethical value but a principle to guide stakeholder interaction. However, later, it defines fairness as: "Free from discrimination or dishonesty and in conformity with rules and standards". (*King III*, P119). I am not sure that "in conformity with rules and standards" constitutes "fairness", but nevertheless this definition is closer to a value than a principle.

Finally, point 14.4 on transparency states that: "the board should disclose information in a manner that enables stakeholders to make an informed analysis of the company's performance and sustainability." (*King III*, P21). This too is an action guiding principle as opposed to a statement of ethical value, while the provided definition states that transparent means: "Easy to understand or recognise; obvious; candid; open; frank." (*King III*, P128), a

combined series of descriptors and values which leaves me more confused than informed.

It may seem that the above has been pedantic in trying to differentiate between ethical values, principles and duties. However, it seems to me that if one is going to use terminology one should use it correctly and consistently. This is especially true if we cannot take the terminology at face value due to its confused usage and will have to reconstruct it to create some means of evaluating whether *King III* is based on the philosophy of *ubuntu*. If we took the last item for example, that of transparency, then, as an ethical value, it could be defined as "Transparency is openness and honesty. In a business context the ethical importance of transparency is that it is the responsible provision of information to all stakeholders to allow for an informed analysis of company's historic performance, current financial position and future sustainability." (My definition). Below I try to address this issue by creating a heuristic for good corporate governance based on the ethical principles and moral values I believe are espoused by *King III*.

If we accept that the "ethical values" as laid down in *King III* could be ethical values but have essentially been defined or described as action guiding principles, then we need to consider the five moral duties. Again, the purpose of this analysis is to come to a position where *King III* has not only been analysed but where we can interpret and reconstruct what is meant by the authors of *King III*, as opposed to what is written.

In Principle 1.1, point 15, *King III* (pp 21-22) lays out what it terms the five moral duties, being conscience, inclusivity, competence, commitment and courage. To my mind the problem now compounds itself, as a number of these duties are in fact similar to ethical values. If we start with conscience, *King III* says, in defining conscience, that "A director should act with intellectual honesty and independence of mind in the best interests of the company and all its stakeholders in accordance with the inclusive stakeholder approach to corporate governance." (*King III*, 2009, P21) Now intellectual honesty and independence of mind are ethical values. It may be that couching them with the directive that a director should act with these values therefore makes "conscience" a moral duty, but I think not; the definition of conscience is essentially too broad to be seen as a duty.

The second moral duty of inclusivity is essentially an obligation (and therefore a moral duty), in that point 15.2 states that "legitimate interests and expectations of stakeholders must be taken into account in decision-making and strategy". (*King III*, 2009, P22) This requires no further elaboration. However, the issue of stakeholders is discussed in more detail below.

With regard to point 15.3, competence by itself can surely not be a virtue nor a moral duty; it is an attribute of a director. The moral duty arises from the necessity continually to develop the competence. Perhaps where the ethical virtue or moral duty comes about is that a director should not put him/herself forward to be a director and unless he/she is competent.

The fourth moral duty of commitment requires a director, in terms of 15.4, to be diligent to devote sufficient time and to be unwavering in dedication and effort. This unquestionably is a moral duty.

The fifth moral duty is courage. Now courage itself is surely an ethical value. However point 15.5 does not talk about courage *per se* but the courage required to take risk and to act with integrity. So the moral duty here is to act with courage, where courage is the ethical value.

Where does this leave us as far as *King III's* ethical values and moral duties are concerned? Certainly confused. It therefore seems to me that the concepts of ethical values and moral duties need to be revisited in total in order to create a coherent set of principles, ethical moral or otherwise, by which to make decisions as a manager or a board member. In this regard, see below.

### ***King III* and Stakeholder Theory**

Throughout *King III* there is reference to stakeholders. These are the people to whom the company belongs and for whom the company exists and includes the wider community. There is a large body of literature on stakeholder theory itself and my intention is to establish whether the principles, ethical values or moral duties, as laid down in *King III*, and as

interpreted below, can be incorporated into stakeholder theory and, thereafter, to consider if stakeholder theory and *ubuntu* are compatible. At the heart of this analysis is to avoid a possible problem, which could arise if *King III* is compatible with stakeholder theory, but stakeholder theory is not compatible with *ubuntu*. In this case it would be difficult to state that the ethical values and moral duties laid down in *King III* do find expression in the concept of *ubuntu*

Hasnas states that currently there are essentially three leading normative theories of business ethics - the stockholder, stakeholder, and social contract theories (Hasnas 1998). *King III* essentially espouses stakeholder theory and therefore, while the other theories may have value, they will not be further discussed in this report.

Stakeholder theory, as espoused by Freeman and others,<sup>23</sup> essentially observes that businesses are not independent of their various stakeholders and that, as the stakeholders have various rights, so business has a moral

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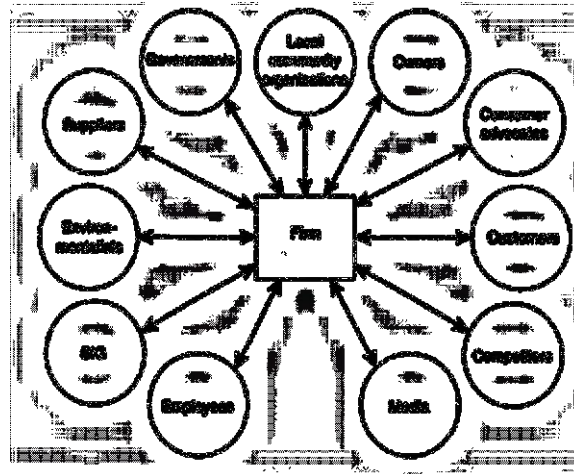
<sup>23</sup> See for example: (Freeman 1994, Freeman 1999, Freeman, McVea, Mitchell, Agle & Wood 1997)

duty to acknowledge those rights and to coordinate and promote stakeholder interests.

My concern is that I am not sure one can argue that stakeholder theory is actually a (single) normative theory. As I shall discuss below, it seems to me that either there are various normative stakeholder theories or there are various normative business ethical theories that use stakeholder theory to define the actors in applying the theory.

Stakeholder theory was brought to the fore by Freeman who defines stakeholders as follows: "A stakeholder in an organization is (by definition) any group or individual who can affect or is affected by the achievement of the organization's objectives." (Freeman, 1984, p46).

Figure 1. A Typical Stakeholder Map  
(Freeman 1984, p25)



It can be seen from Figure 1 that Freeman's definition is extremely broad and encompasses any group that has anything to do with the company. If one goes through the extensive literature on this topic, it is evident that there is an enormous range of stakeholders. There are primary or secondary stakeholders, customers and suppliers, rights holders, moral claimants, resource providers in terms of land, labour and capital, stakeholders to whom a fiduciary duty is owed and those to whom merely an ethical consideration is due, government and even future, as yet unborn, generations.

There is some debate as to whether all this analysis is appropriate.

Mitchell, Agle and Wood (1997, p854) suggest that classes of stakeholder can be categorised based on “their possession or attributed possession of one, two, or all three of the following attributes: (1) the stakeholder's power to influence the firm, (2) the legitimacy of the stakeholder's relationship with the firm, and (3) the urgency of the stakeholder's claim on the firm.”

A large part of the stakeholder literature is devoted to discussing and identifying stakeholders, largely, one suspects, with a view to identifying the rights applicable to the various stakeholder groupings. Thereafter the moral or ethical basis for considering stakeholders at all has become the basis of considerable debate. When proposed in his book *Strategic Management: A Stakeholder Approach*, Freeman's initial view of stakeholder theory was that “Each of these stakeholder groups has a right not to be treated as a means to some end, and therefore must participate in determining the future direction of the firm in which they have a stake.” (Freeman 1984, p46, as quoted in Gibson (2000) p248). This obviously Kantian approach was further developed by Freeman and Evan (1990) and seeps into much

subsequent literature. Clarkson (2000), for example, describes three approaches to stakeholder theory, being based on prudence, agency theory and deontological views. In his view, deontology provides the strongest basis for a normative stakeholder theory. Others have used principles of fairness (Phillips, 1997) or care (Wicks, Freeman and Gilbert, 1994), or social contract theory (Donaldson and Dunfree, 1999). Ramakrishna and Venkataraman (2007) approach stakeholder theory as a group of contracts amongst the firm's stakeholders, while Wicks, in several publications, looks at stakeholders from a feminist point of view. As Jones and Wicks (1999, p 211) note: "A concern for distributive justice and fairness is also widely held among stakeholder theory adherents, although the propriety of various distributive principles will always be hotly debated."

Another approach is that of trying to marry both stakeholder and shareholder theories. Cragg (2002) states that companies owe their existence to a partnership between shareholders and the community that is based on an understanding that companies have an unconditional (or what he call a categorical) obligation to treat stakeholders ethically while creating shareholder wealth. Even Freeman (Freeman and Phillips, 2002) seems to

be moving towards a combination of both aspects, but then, reading much of Freeman, he seems eager to find any acceptable base from which to strengthen his stakeholder theories.

Donaldson and Preston (1995) describe stakeholder theory as managerial, in that it requires the active involvement of managers to manage the stakeholder relationship process; as descriptive, in that it presents a model describing the corporation; as instrumental, in that it provides a model for examining the relationship between stakeholder management and performance; and as normative, as it involves acceptance that stakeholders have legitimate interests in the corporation and their interests are all of intrinsic value. Henry (2001, p159) notes that: "Normative stakeholder theory is rooted in the apparently straightforward moral intuition that a firm's responsibilities to its various stakeholders should go significantly beyond what is accepted by contemporary shareholder/stockholder approaches, and it has found considerable support among business ethicists."

However, it seems that the debate on stakeholder theory will continue for a while. Jones and Wicks (1999, p212) note that “stakeholder theory advocates, particularly the ethicists among them, are sharply divided on the appropriate moral foundation for stakeholder theory.” Donaldson and Preston (1995, pp92-93) themselves note that “More formal justifications of stakeholder theory might be based either on broad theories of philosophical ethics such as utilitarianism, or on narrower “middle-level” theories derived from the notion that a “social contract” exists between corporations or society.” While Hendry (2001, p159) observes that “After a decade of intensive debate, stakeholder ideas have come to exert a significant influence on academic management thinking, but normative stakeholder theory itself appears to be in a state of disarray and confusion.”

I think the entire debate is best summed up by the father of stakeholder theory, R Edward Freeman, when he notes (Agle et al, Page 7) that “The more I read about what has come to be called stakeholder theory, perhaps the more embarrassed I get for having had some minor role in its beginning.” At the end of all of this, we are left with a view that stakeholder

theory is still in the process of development and that much debate will continue.

It appears to me that *King III* is not so much concerned with the ethics behind stakeholder theory but seeks inclusivity of all stakeholders in the company. Chapter 8, point 6 (*King III*, p 100) states that:

A stakeholder-inclusive corporate governance approach recognises that a company has many stakeholders that can affect the company in the achievement of its strategy and long-term sustained growth.

Stakeholders can be considered to be any group that can affect the company's operations, or be affected by the company's operations.

Stakeholders include shareholders, institutional investors, creditors, lenders, suppliers, customers, regulators, employees, unions, the media, analysts, consumers, society in general, communities, auditors and potential investors. This list is not exhaustive.

At point 7, *King III* states that the board should "identify important stakeholder groupings, as well as their legitimate interests and expectations, relative to the company's strategic objectives and long-term sustainability." (*King III*, p 100). It seems that *King III* therefore is more

concerned with the identification and needs of stakeholders than any ethical basis underpinning stakeholder theory. We do, however, need to consider *ubuntu* and stakeholders. It seems to me that *ubuntu*, with its concern for individuals and community has everything to do with stakeholders and vice versa. However, there is a potential conflict because *ubuntu* seems to imply that everyone is of equal value and should be treated as such, while stakeholder theory acknowledges that the various stakeholders have to be treated differently. For example, shareholders, employees and customers have more claims against the company than the external community, and this is right. Does this then imply that the two concepts are incompatible? I think not. I believe that *ubuntu* will accept differentiation between people, provided that the principles themselves are not contravened. This means, provided differentiation between groups or classes of stakeholder maintains cohesion and the promotion of reciprocal value and does not cause damage to relationships or devalue people (humanity), that there is no conflict between *ubuntu* and stakeholder theory. While this acceptance of differentiation between people is evidenced by experience and in conversation with numerous South Africans

claiming to live by *ubuntu*, I have found little literature<sup>24</sup> to support this.

That does not invalidate the relationship between *ubuntu* and stakeholder theory, it is merely a caveat, which must be borne in mind.

*King III* states that the legitimate interests of stakeholders as well as the best interests of the company are to be considered when making decisions. This is, essentially, an ethical principle and, as such has to be held up to the *ubuntu* principle. Stakeholders are all people or groups affected by their interaction with the company with various concentric circles of influence around and within the company. Their influence, and therefore their impact on or by the company, is based on a contingency approach that avers that their level of influence depends on the situation at the time.

*Ubuntu* requires that all people are treated fairly, that interactions between them and, by implication, between them and the company are to promote social cohesion and reciprocal value between the parties. It should be noted that the report refers to “legitimate” interests of stakeholders. It is hard to see how illegitimate interests could be up for consideration, unless

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<sup>24</sup> Louw (2002, p4) notes that “Although there may be a hierarchy of importance among the speakers, every person gets an equal chance to speak up until some kind of an agreement, consensus or group cohesion is reached”. He observes in a footnote, however, that “According to some authors no such hierarchy is assumed”.

this is a device to allow companies to arbitrarily dismiss claims by stakeholders. That hardly seems likely in terms of the spirit of the report. At this level, it therefore seems that the stakeholder-focused approach adopted by *King III* is very much reflective of *ubuntu*.

A further observation to be made is that the survival of the company is paramount as, if it fails, all stakeholders are harmed. Therefore, in prioritising actions, the (long-term) interests of the company should always be considered, especially as the sustainability of the company is to the benefit of all stakeholders. This focus on stakeholders is aligned with the concern for individual and community or group in *ubuntu*. *King III's* emphasis on stakeholders is therefore in line with and finds expression in the concept of *ubuntu*.

### **A *King III* Heuristic for Decision Making**

At this stage, I have considered the concept of *ubuntu* and have developed an action-guiding principle by which we can assess the various recommendations in *King III*. I have considered the issues raised by *King III's*

use of the stakeholder concept and accepted that, while there might be slight differences, there is no basic conflict between *ubuntu* and stakeholder theory. I have considered the problems arising from an imprecise use of terminology in *King III* and it is this aspect I wish to develop further in this section.

If we set aside concerns about the meaning of ethical values and moral duties and accept that *King III* has given us a list of characteristics that it wishes to see exhibited by management and the board in the context of a stakeholder environment, then we can proceed to produce a heuristic for corporate action in decision-making in compliance with *King III*.

Copeland (2008) describes a heuristic as being: “any rule-of-thumb principle that cuts down the amount of searching required in order to find a solution to a problem”. Heuristics have been used from the time of Euclid<sup>25</sup>. Kant is reputed to have used a heuristic developed by an earlier associate in developing his ideas for *Living Forces* (Schönfeld, 2008). Nowadays heuristics are largely used in mathematics and computer science, but there

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<sup>25</sup> In fact the word “heuristic” is derived from the Greek *Eureka* – “I have found it”.

is no reason why the principle should not be used in any appropriate situation. For our purpose, which is to evaluate *King III* and *ubuntu*, I decided that creating a heuristic would provide a set of decision rules emanating from *King III*, which would allow all the recommended actions of the board and management to be evaluated against what *King III* calls the ethical values and moral duties, now encapsulated in the heuristic. Groner, Groner and Bischoff (1983) have the following to say about heuristics:

Nowadays the main usage of the word "heuristic" is mostly the adjective in the sense of "guiding discovery" or "improving problem solving." There might also be a slightly negative meaning attached to it of a less than perfect method or a lack of solution guarantee. The modern picture of a search for the solution, which might be intelligently directed but still has its inherent uncertainty, leads to its origin in ancient Greece where the verb "*heuriskein*" means to find. In the history of science we find attempts to formulate methods for finding proofs and for arriving at new discoveries. They belong to what was sometimes called the art of discovery, or later, heuristics. (Groner, et al. 1983, p1)

I accept that by developing this heuristic I am not producing the definitive explanation of *King III's* intentions. In fact, I consider the element of uncertainty essential as it allows freedom of interpretation in an area that is certainly fluid and open to different readings. Suppes (1983) confirms this view when he states that "If a heuristic achieves a total degree of explicitness it passes from being a heuristic to being an algorithm." (Suppes 1983, p87). What I am attempting to do is set out the process or procedure by which actions recommended in *King III* should be measured. For my purposes, if the heuristic covers the values and duties laid down in *King III*, then I can evaluate the heuristic rather than each and every recommendation throughout the report. This will allow the evaluation of *King III's* contention that its view of leadership is based on the ethical values and moral duties that find expression in the concept of *ubuntu* without the impossible task of deconstructing *King III* line by line.

In the Introduction and Background to the *King III* Report, Point 8 (p 10) states that "The philosophy of the Report revolves around leadership, sustainability and corporate citizenship." and shortly thereafter observes

that "Good governance is essentially about effective leadership.....based on moral duties that find expression in the concept of *Ubuntu*."

The characteristics of good governance and effective leadership, as enunciated by *King III* are: responsibility, accountability, fairness, transparency, conscience, inclusivity, competence, commitment and courage. Every action taken by management and the board, the main focus of *King III*, as well as by all employees should exhibit those characteristics.

If we use those to create a decision rule, we would have the heuristic as set out below:

Management and the board are:

**responsible for** maintaining the assets of the company and achieving sustainable economic, social and environmental performance;

**responsible to** the various stakeholders for their performance;

**accountable** to the stakeholders for their stewardship of the company;

to be committed to **fairness** in their dealings with all stakeholders, taking into account the various claims stakeholders have in and against the company;

to be **transparent**, open and honest in all their dealings with the various stakeholders and in their reporting of their sustainable performance;

to act in good **conscience** “with intellectual honesty and independence of mind in the best interests of the company and all its stakeholders” (*King III*, P21);

to **include** all stakeholders and their legitimate interests and expectations in decision-making and strategy formulation;

to exhibit, maintain and develop **competency** in their various positions;

to be **committed**, diligent and dedicated in the performance of their duties;

to have the **courage** to take the measured risks necessary for the company to succeed;

to have the **courage** to act with integrity and conscience at all times.

In my view the heuristic above sets out the ethical principles underpinning how the board and management are to act in governing the firm. The next task is to examine each element of the heuristic to determine if each does find expression in my *ubuntu*-based action-guiding principle. This is done in the next section.

## Section 4

### ***UBUNTU AND KING III***

*King III* states that good governance is “characterised by the ethical values of responsibility, accountability, fairness and transparency and based on moral duties that find expression in the concept of *Ubuntu*.” (*King III*, p 10).

Further, in stating that the board is to ensure that the company acts like and is seen to be a responsible corporate citizen, *King III* sets out a number of attributes and actions of corporate citizenship and then states: “In the African context these moral duties find expression in the concept of *ubuntu*...” (*King III*, p23). I am not sure to which moral duties this refers.

Nevertheless, what is under discussion here is what is meant by “find expression in”? Understandably, this is not defined in *King III*, but I think it needs briefly to be explored. My sense, which I think would align with *King III*, is that find expression in means representing or reflecting the object.

Therefore, finding expression in the concept of *ubuntu* means representing or giving effect to the concept of *ubuntu*. It is important to clarify this as we examine each element in the *King III* heuristic to establish if it does represent the concept of *ubuntu*.

My *ubuntu* principle, as discussed above, states that: “An action is right insofar as it promotes cohesion and reciprocal value amongst people. An action is wrong insofar as it damages relationships and devalues any individual or group.” This definition can be broken down into four constituent parts: an action is right if it promotes cohesion amongst people; an action is right if it promotes reciprocal value amongst people; an action is right if it does not damage relationships; an action is right if it does not devalue any individual or group.

The issue then is to determine whether each characteristic of this *King III* heuristic, to a greater or lesser extent, complies with the four elements of the *ubuntu* definition: cohesion, reciprocal value, no damage to relationships and no devaluation of people. If they do so, I believe we can accept that the ethical and moral duties and values as laid down in *King III* actually do reflect the ethical values of *ubuntu*.

Two aspects require discussion before proceeding. In the first instance, I do not believe that there can be one-to-one correspondence between *King III* and *ubuntu*. Nor do I think it would be appropriate if it were the case. *King*

*III* may have developed its ethical principles and moral values to reflect the principle of *ubuntu*, but there will be many other ethical frameworks which are mirrored by *King III*. Furthermore, I do not expect each element of the *King III* heuristic to reflect all four of the components of the *ubuntu* principle, although it may. My approach is to determine whether each element of the *King III* heuristic reflects at least one of four components and does not conflict with any of the others. If that is the situation then I believe I can claim that *King III* does find expression in the concept of *ubuntu*.

### **Responsibility**

As noted above, there are two areas of responsibility - responsible for maintaining the assets of the company and "achieving sustainable economic, social and environmental performance" (*King III*, P10) and responsible to the various stakeholders for their performance.

I suppose it could be argued that maintaining the assets of the company is an overriding imperative and that assets could be maintained to the

detriment of a large number of stakeholders. One only has to consider the effects of "asset maintenance" on the community by the asbestos related claims against Cape Plc and Gencor, finalised in 2003, to understand the conflict<sup>26</sup>. *King III* however adds that this asset maintenance has to be achieved while at the same time maintaining sustainable economic, social and environmental performance. This rider therefore essentially forestalls asset maintenance at the cost of sustainability but does oblige us briefly to consider what is meant by sustainability.

Sustainable development is defined in many different ways, but it appears that the most frequently quoted definition is from *Our Common Future*, also known as the Brundtland Report (World Commission on Environment and Development, 1987, p. 43):

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

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<sup>26</sup> In this widely reported case, Cape Plc and Gencor Limited, had for years run asbestos mines in Limpopo and Northern Cape where the focus was on maintaining the business and where the communities were decimated by damaging environmental concentrations of asbestos. After lengthy legal battles in the English High Court, Cape reached a settlement agreement with the claimants in 2001, but was unable to meet its terms. Renewed litigation in 2002 resulted in the signing of three new settlement agreements in 2003 (Meeran, 2003)

1. the concept of **needs**, in particular the essential needs of the world's poor, to which overriding priority should be given; and
2. the idea of **limitations** imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

The International Institute for Sustainable Development (2011) defines Economically Sustainable as:

the characteristic of prolonged, careful, efficient and prudent (wise and judicious) use of resources (natural, fiscal, human), products, facilities, and services. It is based on thorough knowledge and involves operating with little waste and accounting for all costs and benefits, including those which are not marketable and can result in savings.

These two internationally accepted definitions match the definition of sustainable in *King III* (*King III*, p 128), which states that: "Sustainability of a company means conducting operations in a manner that meet existing needs without compromising the ability of future generations to meet their

needs. It means having regard to the impact that the business operations have on the economic life of the community in which operates.

Sustainability includes environmental, social and governance issues."

It is apparent that "sustainability at all costs" is not what is intended in *King III* and, accordingly, we can accept that *King III* suggests that this responsibility for maintaining the assets of the company ought to be carried out in the best interest of present and future stakeholders.

Does this mean that "responsible for" finds expression in the concept of *ubuntu*? The element of promoting reciprocal value is evident, especially in the area of sustainability, bearing in mind that sustainability has to do with sustaining the community and environment as well as sustaining the business. Similarly, acting to maintain the assets sustainably will create or support jobs, and should not damage relationships nor devalue people. In fact, sustainable business practices should enhance relationships with stakeholders and certainly demonstrate the value of people. In my opinion, this aspect of *King III's* recommendations does reflect the values of *ubuntu*.

Apart from for what and to whom the board and management are responsible, we also need to consider another view of responsible. Being responsible implies accepting ownership, liability or accountability. It is unlikely that people would not accept responsibility for right acts, so we have to consider responsibility for wrong acts. Our principle states that it is wrong to damage relationships or devalue any individual or group. Would it be wrong to deny or refuse to accept responsibility for any wrong act committed? Refusing to accept responsibility would certainly have the result of damaging a relationship, as it would be akin to lying. It would also devalue the affected individual or group, in that they would feel inferior or belittled by someone not regarding them as important enough to accept responsibility for harmful acts. We are also enjoined to promote cohesion and reciprocal value and thus taking responsibility for someone (some group) could be regarded as demonstrating the value of the people concerned. If we briefly revert to the Cape Plc case above, the company tried to avoid taking responsibility for its actions in carelessly mining asbestos. It was claimed that South African legislation adequately provides for workers injured on the job and that it was government's responsibility to compensate the people affected. Such a case certainly demonstrates a lack

of accountability and certainly devalued the people in the mining areas.

*King III* considers that being responsible includes being accountable for ones actions and decisions (*King III*, P 122) and this is thus in accordance with my *ubuntu* principle.

Finally, we must consider who is responsible to whom in this relationship.

The *ubuntu* principle places positive and negative duties on all people. In my view this concept of responsibility, while perhaps intended in *King III* as a one-way relationship between the company and its stakeholders, also could demand responsibility between stakeholders. To expand this further, a company is responsible for paying its workforce and creating acceptable conditions of employment while the workforce is responsible for being productive and putting in a fair day's work; similarly a company must provide satisfactory products or services while the customers must pay time initially for what they receive; and so we could continue considering each stakeholder group. How does this fit into *ubuntu*? By working together, each group, each person, being responsible to the other, we build cohesion amongst the group and acknowledge that we have reciprocal value, one with another. This too is in line with the values of *ubuntu*.

All three aspects of responsibility have been shown to contain elements of *ubuntu*, and I believe that we can thus accept that "responsibility", in terms of *King III*, does indeed reflect the values of *ubuntu*.

### **Accountability**

Neither *King III* nor I can easily differentiate between accountability and responsibility.<sup>27</sup> I thus reverted to a dictionary definition of each term. *The Oxford English Dictionary* (1971) defines accountability as: "The quality of being accountable; liability to give account of, and answer for, discharge of duties or conduct; responsibility" while responsibility is defined as: "The state or fact of being responsible; a charge, trust or duty for which one is responsible." Responsible itself is defined as: "answerable, accountable". This is hardly helpful.

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<sup>27</sup> As noted above, *King III* defines accountable as "Being responsible and able to justify and explain decisions and actions" (*King III*, P117).

I would argue that “accountable”, in *King III*<sup>28</sup>, has to do with stewardship.

The directors are stewards of the business and are accountable to shareholders; the company is the steward of its environment and is therefore accountable to the community; the company is the steward of its employees’ futures and as such is accountable to them and their families. Accountability is also to do with people giving an account of themselves. On these interpretations, therefore, accountability could be regarded as different from responsibility. Accountability of course goes back to feudal times when land users gave an account of their stewardship to landowners, which accounts were heard by the "auditors".

An aspect of accountability, which shall also be considered under the heading “Transparency”, is that the account has to be understandable. One of the complaints one regularly hears is that financial statements prepared by companies do more to confuse than enlighten and in fact the worse the company's performance the more unreadable the financial statements (Baker, Kare & Dilip, 1992; Courtis, 1995; 1998; Jones, 1994; 1996; Smith

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28 It seems appropriate to accept that, despite their definition, the authors of *King III* must have believed that there was a difference between responsibility and accountability, or why else include both terms? Our task, therefore is to determine what they intended by each term.

and Taffler, 1992; Subramanian, Insley & Blackwell, 1993). It is therefore incumbent on companies to report, to give an account of themselves, in such a way that they do not, in virtue of the manner in which they report, that is in terms of the language that is used and the manner of reporting, produce financial reports that are essentially unintelligible to the average user. Such reports imply little concern for the users of financial statements, the stakeholders, and, in so doing, devalue them, thus also damaging the relationships. *King III* is at pains to recommend that reporting should be intelligible. It states that reporting should be "focused on substance over form and should disclose information that is complete, timely, relevant, accurate, honest and accessible and comparable past performance of the company" (*King III*, P109). Furthermore, the company should produce a commentary on the results which should "include information to enable a stakeholder to make an informed assessment of the company's economic value" (*King III*, P109). It thus appears that the intention in *King III* is to be accountable to stakeholders, thus demonstrating that stakeholders are not to be devalued and relationships not to be damaged, thereby reflecting the principle of *ubuntu*.

## **Fairness**

Fairness as an ethical value is a straightforward value to understand.

Fairness has to do with even-handedness, with treating people with the same criteria, from the same ethical base. Treating people fairly demonstrates that all people are of equal value. My action-guiding principle of *ubuntu* requires us to promote reciprocal value amongst people and not to devalue any individual or group. It is only by treating others fairly that we can promote reciprocal value. A lack of fairness certainly damages relationships and so this value too complies with the principles of *ubuntu*.

I want to observe here that fairness does not equate to equality, but to equity. This value does not espouse treating all people equally, but treating them fairly, even-handedly – recognising that they are all of equal value.

This is an important distinction that has partially been discussed above when considering von Papendorf's views. Based on my discussions with a range of supporters of *ubuntu*, as well as on general observation, equality as opposed to fairness is not an element of *ubuntu*. *Ubuntu* requires us to value others within the community but does not mean that a communalistic

or communistic approach has to be adopted. Certainly, those that have more than others would be expected to share, to care, but not to give everything away. *Ubuntu* does recognise differences between people. At an anthropological level, the environment in which *ubuntu* developed certainly recognised differences between chiefs, elders and the rest of the people (and certainly between men and women). The same recognition would be appropriate today in considering the hierarchy of the firm, or a hierarchy amongst stakeholders. To take this further, *equal* treatment would imply that everyone in the firm earned the same salary, *fair* treatment would imply that everyone earned what he or she was worth in relation to their contribution to the firm, and *ubuntu* would support this.

*King III* specifically deals with this issue in its principle 8.3 (*King III*, p102) which requires the board to strive to achieve an appropriate balance between the various stakeholder groupings. My sense is that here *King III* becomes confused about the distinction between “fairness” and “equality” when it states that:

This does not mean that the company should and could always treat all stakeholders fairly. Some may be more significant to the company

in particular circumstances and it is not always possible to promote the interests of all stakeholders in all corporate decisions. It is important however that stakeholders have confidence that the board will consider their legitimate interests and expectations in an appropriate manner and guided by what is in the best interests of the company.

In principle, however, I believe that *King III* and I are in agreement, as ensuring that stakeholders have confidence that they will be considered, as stated above, implies “fair” if not “equal” treatment. On this basis, therefore, the *King III* concept of fairness does find expression in *ubuntu*.

## **Transparency**

The ethical value of transparency is similar to accountability, but with a different emphasis. Transparency implies openness, honesty, a lack of guile.

As such, it is an essential element of *ubuntu*. *King III* defines transparent as:

“Easy to understand or recognise; obvious; candid; open; frank.” (P128)

Part of this definition has to do with financial reporting and is dealt with

elsewhere. The “candid, open, frank” element of the definition agrees with my interpretation here. What does transparency have to do with *ubuntu*? Perhaps here we should consider the relationship between transparency and *ubuntu* from a negative perspective. A lack of transparency between people creates a climate of distrust and suspicion and, as such, certainly damages relationships. Envisage a situation where, say, five people are eligible for a promotion. To each other they all seem equal in terms of ability, qualification and experience. It is suddenly announced that one of the five is to be promoted, but there has been no advertisement of the position, there have been no interviews, just the sudden promotion. The first question to be asked is who is sleeping with who followed closely by who is related to whom? No matter how good the reasons behind the promotion, because there was no transparency, the four overlooked staff members will resent the appointment, will probably do everything in their power to undermine the new appointee, or may just resign to work elsewhere. And we can all think of similar examples. This lack of transparency would certainly damage relationships and would probably also tend to make some of the group feel devalued. The action would also not have promoted cohesion amongst the staff. Thus transparency is necessary

for *ubuntu* to exist. My sense is that, inherently, *ubuntu* presupposes transparency amongst people. So transparency also would reflect the principle of *ubuntu*.

A question to be asked is whether transparency could damage relationships.

It is possible to conceive a situation where too much information could possibly damage relationships and cohesiveness. In my class, for example, students do not want marks published by name. In fact, they do not even want returned tests to be made available to the class - they must be placed in each individual pigeonhole. This is because students who have fared badly do not want to be embarrassed in front of their classmates and to make marks public would or could damage group cohesiveness. What my students do want, in terms of transparency, is to be informed of the process behind the marking and to be given the mark plan - all with the objective of ensuring that they are fairly treated. Such transparency does build cohesiveness. I suppose, therefore, that one ought to qualify the concept and say that “responsible transparency” reflects the ethical value of *ubuntu*.

## Conscience

*King III* calls upon the board and management to act in good conscience with intellectual honesty and independence of mind in the best interests of the company and all its stakeholders. *King III* gives some indication as to the type of behaviour expected of directors (and, by implication, management). Each decision made by the board is to be founded on intellectual honesty, considering all the relevant facts; directors should exercise objective judgement; personal interests should not take precedence over the affairs of the company; conflicts of interest should be avoided. (*King III*, P32). *King III* does not attempt to define conscience *per se*, but, in its discussion on values, it states that: “Ethical values are convictions we hold about what is important in our character...” (*King III*, P119). In my view, conscience, in this context, has to do with behaving in a manner that is aligned to one’s core values (or ethical values). When one behaves contrary to one’s values, conscience comes to the fore. How then does acting in good conscience find expression in the concept of *ubuntu*? In the first instance, acting against one’s conscience could be seen as devaluing oneself in that a dissonance between one’s true self (the self of the core values) and apparent self (the self acting against those core values)

has been created. Only if psychopathic would this not be demeaning (devaluing) of self.

I believe it could be argued that, in order to promote cohesion and reciprocal value, individuals, groups and companies should all behave in a manner aligned with personal, group or corporate values. These core values could differ from one person, group or company to the next, but it is hardly feasible that any group of people or company could possibly exist and flourish with totally discordant values. To promote cohesion and reciprocal value amongst people, we need to have shared values.

Therefore, if we are to have values that would find expression in *ubuntu*, as proposed in *King III*, we are to have a common conscience between us.

If we move beyond the word conscience to *King III's* additional terms - intellectual honesty and independence of mind – is there more to add?

How do these find expression in *ubuntu*? The problem is that we are here dealing with process or character. *King III* states that “the foundation for each decision [by the board] should be intellectual honesty, based on the relevant facts. Objectively speaking the decision should be a rational one

considering all the relevant facts at the time.” (*King III*, p32) That, surely, is how all rational people should make decisions? It has no real *ubuntu* context. It could be argued that the types of acts that would typify or be required by *ubuntu* demand these characteristics, but then so many other characteristics are also required, as is a good conscience in any moral actor. I can see no real *ubuntu* relationship here.

The last aspect that needs to be discussed here is that of “the best interests of the company”. *King III* observes in Principle 2.14 that “The board must always act in the best interests of the company. In terms of our common law, as developed through jurisprudence, the best interests of the company has been interpreted to equate to the best interests of the body of shareholders.” (*King III*, p31). If the principle stopped there, there could well be a conflict with *ubuntu*. However, the principle continues: “The [Companies] Act<sup>29</sup> states that its purpose is to promote compliance with the Bill of Rights as provided for in the Constitution. This purpose, as stated, constitutes a departure from the traditional narrow interpretation of the best interests of the company.” (*King III*, pp31-32). There is a reasonably

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<sup>29</sup> Act no. 71 of 2008, the new Companies Act.

strong body of Constitutional judgements indicating that ubuntu is a strong basis underpinning the constitution<sup>30</sup> and therefore we have a further reflection of *ubuntu* intended here.

It seems therefore that there is a tenuous link between conscience, as we have defined and discussed it above, and *ubuntu*, albeit that the reflection here is on a very dark mirror.

### **Inclusivity**

Inclusivity, in *King III* terms, has to do with involving or considering the interests of all stakeholders, which must be taken into account in decision-making. Stakeholders were discussed in detail above and the conclusion was that the concept of stakeholders was very much in line with the people, the community, the group in my *ubuntu* principle, and, in my opinion, the stakeholder dimension does not warrant further elaboration or discussion.

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<sup>30</sup> See for example Lange (1995) and similar cases.

Now, one would automatically suppose that inclusivity is an essential element of *ubuntu*. The concepts of cohesion, reciprocal value and relationships in our *ubuntu* principle are all dependent on everyone being included in all actions. However, *King III* does not say that everyone must be included in the decision-making process. It says that all stakeholders' legitimate interests must be taken into account. That is *King III's* intention, and a different matter altogether. In and of itself the concept seems reasonably clear and one might be tempted to accept that by considering all stakeholders' legitimate interests we would be promoting cohesion amongst or within groups.

However, there is an inherent problem with this as it stands. For example, Coal of Africa Limited (CoAL) is currently set on open cast mining coal near the Mapungubwe National Park. The web site of the Save Mapungubwe organisation, affiliated to the Endangered Wildlife Trust, has the following story on its first page:

Our treasured World Heritage Site is under severe threat. An Australian company, Coal of Africa Limited (CoAL) has recently been given the go ahead to begin construction of an opencast and

underground coal mine within less than 6km from the borders of the Mapungubwe National Park and adjacent to the World Heritage Site, with the approval of the Environmental Management Plan for the proposed Vele Colliery. This will compromise the environmental integrity of the area in and around Mapungubwe for current and future generations as it relates to the natural habitat, ecosystems, cultural heritage and related aspects of the environment.

The Corporate Social Responsibility page on the CoAL web site has the following quote, *inter alia*:

Coal of Africa Ltd ('CoAL') is a coal mining and development company operating in South Africa. CoAL is committed to various measures to mitigate any impact the Company's operations may have on the environment. We believe the future of mining depends on the industry's capacity to maintain a balance between profitability and preservation of new environments, human capital and the surrounding communities. (Coal of Africa, 2011)

Both the company and the environmental group believe they are right.

Whose legitimate expectations are we to consider as paramount – the shareholders, the employees and management of the company, the board of directors or the environmental group? Whatever happens in this situation is likely to damage relationships and thus, albeit that CoAL would argue that they are compliant with *King III*, there is certainly a clash with the ethos of *ubuntu*.

An interesting observation is that Coal of Africa Limited is in fact an Australian listed company. The Australian “equivalent” of *King III*, *Corporate Governance Principles and Recommendations* in a similar section states that companies must “comply with their legal obligations and have regard to the *reasonable* expectations of their stakeholders (emphasis added)” (ASX Corporate Governance Council, 2010, P22). There is a big difference between legitimate and reasonable and, while CoAL would argue that they comply with the governance of their predominant domicile, it does not remove the governance problems that CoAL faces in mining Mapungubwe.

Therefore, while superficially inclusivity seems reflective of *ubuntu*, there are certainly many situations where compliance with *King III* will not necessarily promote cohesion and reciprocal value and may well damage relationships, and thus inclusivity, as interpreted by *King III* does not necessarily find expression in *ubuntu*.

Is that a fair assessment? How would an *ubuntu*-based community face such a situation? Surely, the process would be to work together to minimise damage to the community or group relationships and to build cohesion? How would *King III* address this? In the definition of “inclusivity” *King III* states that “Inclusivity of stakeholders is essential to achieving sustainability and the legitimate interests and expectations of stakeholders must be taken into account in decision-making and strategy” (*King III*, p22). In discussing Principle 1.2 on corporate citizenship (pp22-24), *King III* is at pains to stress the importance of the social and economic environment.

The example above would be answered by Point 18 “It is unethical for companies to expect society and future generations to carry the economic social and environmental costs and burdens of its operations..... a company itself should ensure that its impact on the economy, society and the natural

environment is sustainable." Moreover, there is substantially more in the same vein. Certainly, therefore, *King III's* views on corporate citizenship reflect a strong *ubuntu* approach to relationships with outside stakeholders.

That still does not specifically address the myriad possible conflicts between internal stakeholders, such as wage negotiations between management and unions. Nonetheless, if we consider that inclusivity means that "the legitimate interests and expectations of stakeholders must be taken into account in decision-making" (p 22) then the onus is on management and the board to try to incorporate interests and expectations in all decision making. *King III* specifically states that it:

... opts for an inclusive stakeholder model of governance which considers, weighs and promotes the interests of the company's stakeholders, thus ensuring the cooperation and support of all stakeholders the company depends on for its sustainable success. In this way the company creates trust between itself and its extent internal and external stakeholders, without whom no company can operate sustainably."

Furthermore, as discussed in the section on “Fairness” above, it is definitely apparent that *King III*, as far as possible, wishes to be inclusive of all stakeholders in its deliberations and decision-making.

It is impossible to conceive of any institution where there is no potential for conflict between interested parties. However it appears that *King III* is certainly making an effort to minimise the damage that such conflicts may bring and accordingly with finds expression in *ubuntu*.

## **Competence**

How does competence constitute a moral principle? One could argue that competence is a basic requirement to be employed or to be in business. It is a *sine qua non*. Point 17 in the chapter on boards and directors has the following to say about directors:

Directors of companies are appointed in terms of the Constitution of the company and in terms of the Act. Each director of the company has a duty to exercise the degree of care skill and diligence that would be exercised by a reasonably diligent individual who has the

general knowledge, skill and experience that may reasonably be expected of an individual carrying out the same functions as a carried out by director in relation to the company; and the general knowledge, skill and experience of that director. (*King III*, p32).

While this section refers specifically to boards of directors, *King III* elsewhere states that "Although the terms company, boards and directors are used. *King III* refers and applies to the functional responsibility of those charged with governance in any entity even if different terminologies used in other entities sectors and industries." (*King III*, p17). It therefore seems reasonable to assume that the characteristics of a competent director as listed above would apply equally to management and anyone else in positions of authority within the company.

I still cannot see how competence, *per se*, can be a moral principle. *King III* states that "The board should ascertain whether potential candidates are competent to be appointed as directors and can contribute to the business judgement calls to be made by the board. In looking at the skills and suitability of a proposed candidate director there are three dimensions that require consideration, namely: the knowledge and experience required to

fill the gap on the board; the apparent integrity of the individual; and the skills and capacity of the individual to discharge his duties to the board." (*King III*, p41). This does not help in considering whether competence is a moral value.

We are thus left with the need to decide whether "general knowledge, skill and experience" or any other view of "competence" finds expression in *ubuntu*. It appears that it is from the negative requirements of the principle that *ubuntu* can validate this principle. An action is wrong if it damages relationships. Incompetence, in any area of a business, must have a negative effect on the people affected by incompetent actions or managers / directors. Incompetence therefore causes damage to the relationships between people, and one can imagine many situations where the incompetence of an individual can negatively affect the relationship between a company and an individual – as a customer, an employee, a supplier, and, in fact, all stakeholders. Incompetence can lose customers, thereby endangering jobs; incompetence can cause accidents leading to death or long-term physical damage; incompetence can lead to inefficiencies and time delays, which impact the lives of other people;

incompetence leads to frustration and anger. In fact, as Haw (2011) observes: “experts agree that emotional stress — the kind that arises from working with idiots — can contribute to the development of heart disease and precipitate acute cardiac problems in people who already have heart disease.”

Therefore, the competence of the individuals on the board or in management (the focus of the requirement) can directly affect relationships with stakeholders and is thus necessary in order to meet the requirements of *ubuntu*. I must observe, however, that this is a torturous argument, albeit that I can understand why competence is an important characteristic and that, at an intuitive level, it is an “*ubuntu-like*” characteristic.

### **Commitment**

For any ethical system to operate effectively there has to be commitment from all the people involved in implementing and living the system. What is the commitment to? *King III's* requirement is that directors should be diligent in performing their duties and should devote sufficient time to

company affairs. (*King III*, p 22). There is also provision for a performance review of directors, which requires the director's contribution to be measured against his assigned duties, with reappointment only possible after an evaluation of the performance and attendance of the director. (*King III*, p45).

Reading through the duties expected of directors in terms of *King III* it is apparent that a director could not meet his obligations, both in terms of *King III* and the Companies Act, unless he were committed. It is just not feasible. Of course, whether this is a moral duty is another question.

I think there are several elements to be considered further. In the first instance, a director should not make the commitment to be a director unless he were to live by the actual duties and responsibilities attached to the position. To that extent, commitment is a moral duty. Furthermore, one could have the same type of discussion as above with regard to conscience and use the same arguments to accept that there is a taste of *ubuntu* in commitment. Secondly, there is the commitment to the principles, to the moral values and duties of *King III* itself. Again,

commitment to the principles is very much the same as acting with conscience, as discussed above. Finally, a director has a commitment to the company and its various stakeholders. Commitment to stakeholders is necessary if the company, its managers and directors are to act in a moral or ethical way or, for our purposes, to act in accordance with the principle of *ubuntu*.

Again, I am left with the concern that commitment is an *ubuntu*-like principle, but does not specifically find expression in the concept of *ubuntu*.

## **Courage**

The final “moral value” in *King III* is courage. It seems that what is intended by the code is the necessity for the various actors within the company and its stakeholder groups to be resolute in applying the moral values and ethical principles as laid out in the code. *King III* refers to “the courage to act with integrity in all board decisions and activities”. (*King III*, p22). There is also the requirement that directors have the courage to take the necessary risks to direct and control the company’s activities.

It really is not possible to argue that this “value” is an expression of an *ubuntu* action-guiding principle. It is just an exhortation to be courageous in behaving in the manner required by *King III* and thus exhibiting *ubuntu*, or any other ethical theory, for that matter.

This concludes the discussion on the various elements of the *King III* heuristic and whether they are indeed based on the moral duties that find expression in the concept of *ubuntu*. The next section concludes the research.

## Section 5

### CONCLUSION

Acceptance of the *King III Report on Governance 2009* by all South Africans is imperative if good governance is to become the basis on which business is conducted. To the extent that *ubuntu* is regarded as an important ethical concept by the majority of South Africans, the fact that *King III* does reflect the principles of *ubuntu* should lead to its acceptance and application by the greater part of the stakeholders affected by *King III*.

In order to establish whether the ethical and moral duties and values as laid down in the *King III Code* actually do reflect the ethical values of *ubuntu*, over the course of this report I have looked at *ubuntu* and shown that *ubuntu* is a normative ethical theory. I arrived at the *ubuntu*-based action-guiding principle that: “*An action is right insofar as it promotes cohesion and reciprocal value amongst people. An action is wrong insofar as it damages relationships and devalues any individual or group.*”

I discussed the concept of ethical and moral duties as expressed in *The King III Report on Corporate Governance* and tried to ascertain whether they are

actually duties or principles. I established that there appears to be some confusion in *King III* as to the philosophical difference between duties, values and principles and accepted that, nonetheless, the spirit or intention behind *King III* allows us to develop a heuristic for deciding whether actions and behaviours exhibited by the company, its managers and directors comply with the intention of *King III*. Due to the numerous references to stakeholders, I considered the concept of stakeholders and their relevance to *King III*. I showed that *ubuntu* can provide a normative business ethical base for stakeholder theory, and, more importantly, showed that stakeholder theory could find expression in the concept of *ubuntu*.

I then created a heuristic or rule of thumb based on the ethical values and moral duties in *King III* and which could be used to apply *King III*. The elements of the heuristic are responsibility, accountability, fairness, transparency, conscience, inclusivity, competence, commitment and courage. These were then examined individually and I conclude that these elements do largely find expression in the ethical values of *ubuntu*, even if at times the fog caused by unsuitable terminology gave rise to some

torturous argument and although I could not find explicit expression of *ubuntu* in the elements of competence, commitment and courage.

Nonetheless, everything I have read about *ubuntu* and all that is contained in *King III* leads me to one conclusion. No matter the problems with terminology, the struggles with ethical theory, the difficulties in structuring a principle of right action, one overriding impression comes through – the Four Ethical Values and Five Moral Principles, as well as the Stakeholder requirements of *King III* incorporate and reflect the spirit of *ubuntu*, if not the letter.

I thus feel confident in stating that I have achieved the two objectives of this report, namely:

- determining that *ubuntu* can provide an acceptable normative ethical framework from which to evaluate Corporate Governance principles; and
- establishing that the ethical and moral duties and values as laid down in the *King III* actually do find expression in the ethical values of *ubuntu*.

## Section 6

### FURTHER RESEARCH

This report raised a number of issues that could be the focus of further research.

The first has to do with the concept of *ubuntu*, and further areas for investigation would include determining what the people, the practitioners of *ubuntu*, actually consider the term to mean.

It would be of interest to explore the scope of *ubuntu* and the meaning of community. Is it the local village, or a tribe, the population of a district or country, or does it include all humanity?

The terms used in this report were value, worth, dignity and good will.

These are largely Kantian in origin. The questions to be resolved include: what is the correct word to use, with all its connotations; and is there a non-Kantian approach that could be used? The approach adopted in determining a maxim for *ubuntu* was deontological by its very nature and it would be interesting to consider a more consequentialist or liberal view.

Despite a substantial body of literature, it seems that Stakeholder Theory requires a review and a more formal structure. Investigation could be into whether my concept of a split between normative theory and practical participant identification is correct, or is the theory itself a normative ethical business theory. Other avenues include stakeholder identification and determination of the moral basis for their claims against the company.

Finally, there is enormous scope for investigating and determining the ethical values and moral principles that should guide a company. *King III* seems to fall short in this area, either by not defining exactly what was meant by the terms, or by not being as careful in their selection as they could have been. There is a great deal of literature and many textbooks on business ethics, but this is an aspect that warrants clarification.

## APPENDIX 1

### EXTRACT FROM THE KING CODE OF GOVERNANCE PRINCIPLES FOR SOUTH AFRICA 2009

Governance element	Principles	Recommended Practice
<b>1 Ethical leadership and corporate citizenship</b>		
Responsible leadership	1.1 The board should provide effective leadership based on an ethical foundation	<p>Ethical leaders should:</p> <p>1.1.1 direct the strategy and operations to build a sustainable business</p> <p>1.1.2 consider the short- and long-term impacts of the strategy on the economy, society and the environment;</p> <p>1.1.3 do business ethically;</p> <p>1.1.4 do not compromise the natural environment; and</p> <p>1.1.5 take account of the company's impact on internal and external stakeholders.</p>
The board's responsibilities		<p>The board should:</p> <p>1.1.6 be responsible for the strategic direction of the company and the control; of the company;</p> <p>1.1.7 set the values to which the company will adhere formulated in its code of conduct;</p> <p>1.1.8 ensure that its conduct and that of management aligns to the values and is adhered to in all aspects of its business; and</p> <p>1.1.9 promote the stakeholder-inclusive approach of governance.</p>
Ethical foundation		<p>The board should:</p> <p>1.1.10 ensure that all deliberations, decisions and actions are based on the four values underpinning good governance; and</p> <p>1.1.11 ensure that each director adheres to the duties of a director</p>

<b>Governance element</b>	<b>Principles</b>	<b>Recommended Practice</b>
	<p>1.2 The board should ensure that the company is and is seen to be a responsible corporate citizen</p>	<p>The board should:</p> <p>1.1.1 consider not only on financial performance but also the impact of the company’s operations on society and the environment</p> <p>1.1.2 protect, enhance and invest in the well-being of the economy, society and the environment;</p> <p>1.1.3 Ensure that the company’s performance and interaction with its stakeholders is guided by the Constitution and the Bill of Rights;</p> <p>1.1.4 Ensure that collaborative efforts with stakeholders are embarked upon to promote ethical conduct and good corporate citizenship;</p> <p>1.1.5 Ensure that measurable corporate citizenship programmes are implemented; and</p> <p>1.1.6 Ensure that management develops corporate citizenship policies</p>
	<p>1.3 The board should ensure that the company’s ethics are managed effectively</p>	<p>The board should ensure that:</p> <p>1.3.1 it builds and sustains an ethical corporate culture in the company;</p> <p>1.3.2 it determines the ethical standards which should be clearly articulated and ensures that the company takes measures to achieve adherence to them in all aspects of its business;</p> <p>1.3.3 adherence to ethical standards is measured;</p> <p>1.3.4 internal and external ethics performance is aligned around the same ethical standards;</p> <p>1.3.5 ethical risks and opportunities are incorporated in the risk management process;</p>

Governance element	Principles	Recommended Practice
		1.3.6 a code of conduct and ethics-related policies are implemented; 1.3.7 compliance with the code of conduct is integrated in the operations of the company; and the company's ethics performance should be assessed, monitored, reported and disclosed.
<b>2. Boards and directors</b>		
Role and function of the board	2.1 The board should act as the focal point for and custodian of corporate governance	The board should: 2.1.3 monitor the relationship between management and the stakeholders of the company; and 2.1.4 ensure that the company survives and thrives.
	2.2 The board should appreciate that strategy, risk, performance and sustainability are inseparable	2.1.4 ensure that the strategy will result in sustainable outcomes taking account of people, planet and profit.
	2.14	2.14.1 The board must act in the best interests of the company. 2.14.2 Directors must adhere to the legal standards of conduct.
<b>6. Compliance with laws, rules, codes and standards</b>		
	6.1 The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards	6.1.1 Companies must comply with all applicable laws. 6.1.2 Exceptions permitted in law, shortcomings and proposed changes expected should be handled ethically. 6.1.3 Compliance should be an ethical imperative. 6.1.4 Compliance with applicable laws should be understood not only in terms of the obligations they create but also for the rights and protection they afford.

Governance element	Principles	Recommended Practice
		<p>6.1.5 The board should understand the context of the law, and how other applicable laws interact with it.</p> <p>6.1.6 The board should monitor the company's compliance with applicable laws, rules, codes and standards.</p> <p>6.1.7 Compliance should be a regular item on the agenda of the board.</p> <p>6.1.8 The board should disclose details in the integrated report on how it discharged its responsibility to establish an effective compliance framework and processes.</p>
<b>8. Governing stakeholder relationships</b>		
	<p>8.1 The board should appreciate that stakeholders' perceptions affect a company's reputation</p>	<p>8.1.1 The gap between stakeholder perceptions and the performance of the company should be managed and measured to enhance or protect the company's reputation.</p> <p>8.1.2 The company's reputation and its linkage with stakeholder relationships should be a regular board agenda item.</p> <p>8.1.3 The board should identify important stakeholder groupings.</p>
	<p>8.2 The board should delegate to management to proactively deal with stakeholder relationships</p>	<p>8.2.1 Management should develop a strategy and formulate policies for the management of relationships with each stakeholder grouping.</p> <p>8.2.2 The board should consider whether it is appropriate to publish its stakeholder policies.</p> <p>8.2.3 The board should oversee mechanisms and processes that support stakeholders in constructive engagement with the company.</p>

<b>Governance element</b>	<b>Principles</b>	<b>Recommended Practice</b>
		<p>8.2.4 The board should encourage shareholders to attend AGM's.</p> <p>8.2.5 The board should consider not only formal but also informal processes for interaction with the company's stakeholders.</p> <p>8.2.6 The board should disclose in its integrated report the nature of the company's dealings with stakeholders and the outcomes of these dealings.</p>
	<p>8.3 The board should strive to achieve the appropriate balance between its various stakeholder groupings, in the best interests of the company.</p>	<p>8.3.1 The board should take account of the legitimate interests and expectations of its stakeholders in its decision making in the best interests of the company</p>
	<p>8.4 Companies should ensure the equitable treatment of shareholders.</p>	<p>8.4.1 There must be equitable treatment of all holders of the same class of shares issued.</p> <p>8.4.2 The board should ensure that minority shareholders are protected.</p>
	<p>8.5 Transparent and effective communication with stakeholders is essential for building and maintaining their trust and confidence.</p>	<p>8.5.1 Complete, timely, relevant, accurate, honest and accessible information should be provided by the company to its stakeholders while having regard to legal and strategic considerations.</p> <p>8.5.2 Communication with stakeholders should be in clear and understandable language.</p> <p>8.5.3 The board should adopt communication guidelines that support a responsible communication programme.</p>

## APPENDIX 2

### COMMON DEFINITIONS OF VALUES AND VALUE SYSTEMS

<i>Author(s)</i>	<i>Definition</i>
C. Kluckhohn, 1951, p.395	A conception, explicit or implicit . . . of the desirable which influences the selection from among available modes, means, and ends of action.
Guth & Tagiuri, 1965, pp. 124-125	A value can be viewed as a conception, explicit or implicit, of what an individual or a group regards as desirable, and in terms of which he or they select, from among alternative available modes, the means and ends of action.
Senger, 1971, p. 416	A personal value structure “is a hierarchy of competing, fundamental life directions which act as criteria for psychological behaviour.”
Sikula, 1971, p. 281	Personal value system as “a set of individual values that exist in a scale of hierarchy that reveals their degree of importance. Individuals may all possess the same set of values but attach different priorities or degree of importance to them.”
Rotech, 1973, p. 5	A value is an enduring belief that a specific mode of conduct or end-state of existence is personally or socially preferable to an opposite or converse mode of conduct or end-state of existence.
Conner & Becker, 1975, p. 551	Values may be thought of as global beliefs about desirable end- states underlying attitudinal and behavioural processes.
Hofstede, 1980, p. 19	A broad tendency to prefer certain states of affairs over others
Ravlin & Meglino, 1987a, p. 667	Social values . . . represent general modes of behaviour individuals should or ought to exhibit.
Enz, 1988, p. 287	Organizational values are defined as the beliefs held by an individual or group regarding means and ends organizations “ought to” or “should” identify in the running of the enterprise, in choosing what business actions or objectives are preferable to alternative actions, or in establishing organizational objectives.
Hambrick & Brandon, 1988, p. 5	A broad and relatively enduring preference for some state of affairs.

Source: Agle & Caldwell, (1999) Table 8, page 362

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