



Human personhood and social benevolence – reformational reflections on the right to human dignity

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Abstract

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In spite of the academic interest in human rights in reformational-evangelical circles during the past 100 years, the existence, necessity and importance of such rights, in particular the right to human dignity, have not been provided with an underlying Scriptural foundation for the understanding and evaluation of these rights. In this article the reformational perspectives of Martin Luther are utilised and developed in order to establish a moral framework for the human right to dignity and for determining its meaning and purview as a foundational human, political and legal value.

Opsomming

Menslike persoonlikheid en sosiale welwillendheid – reformatoriese perspektiewe op die reg op menslike waardigheid

Ten spyte van die akademiese belangstelling in menseregte in reformatories-evangeliese kringe die afgelope 100 jaar, is die bestaan, noodsaak en belang van sodanige regte, in besonder die reg op menslike waardigheid, nie van 'n onderliggende Skriftuurlike grondslag vir die verstaan en beoordeling van sodanige regte voorsien nie. In hierdie artikel word die reformatoriese perspektiewe van Martin Luther aangewend en ontwikkel ten einde 'n morele raamwerk vir die mens se reg op waardigheid daar te stel asook vir die bepaling van die bete-

kenis en omvang daarvan as 'n fundamentele menslike, politieke en juridiese waarde.

1. Introduction

In spite of the interest in human rights in evangelical circles over the past 100 years, the existence, necessity and importance of such rights have not been provided with an underlying Scriptural foundation to facilitate the understanding and evaluation of these rights; nor has a sufficiently sound Christian motivation been provided for the scientific reflection on the essence of human rights and how they are activated, exercised and recognised in our daily living. Despite the absence of a sound evangelical edifice upon which to erect and develop the doctrine of human rights, the human instinct for the preservation of rights will not allow them to fall into oblivion. Despite neglect and abuse of rights, people know in practice and will insist that they are of supreme importance. The suspicions felt about signs of totalitarianism wherever it manifests itself, the growing feeling for the unshakeable personal value of the handicapped and the ailing, and even the preservation of the jury-system and its common-sense approach to things, are all signs that human rights are not forgotten among ordinary people.

Johan van der Vyver, of Emory University, in *Koers* (2005:455-471), recently lamented the fact that a Scriptural foundation of human rights remains outstanding. Such a foundation is needed in view of the fact that wide disagreement exists on the issue as to whether human dignity could serve as the basis for human rights. Disagreement on this issue, according to Van der Vyver, ranges from those perspectives where human dignity is not recognised as the basic norm of a bill of rights (e.g. in the USA), to the views propounding that all categories of human rights, namely the rights of the individual, civil and political rights, economic, social and cultural rights and solidarity rights, proceed from the notion of human dignity.

For the purpose of this article the evangelical perspectives of Martin Luther are utilised in order to establish a moral framework for the human right to dignity as well as determining its meaning and purview as a fundamental human, political and legal value.

In early modern theologico-political thought Martin Luther presented the first comprehensive framework for critically evaluation of the moral duties of both political authorities and subjects in civil society. In this regard the moral views of ancient philosophers, like Cicero, influenced Luther's theologico-moral perspectives in profound

respects. Firstly, to Luther, the political and legal duties and rights of both political rulers and subjects are grounded in the moral order of God's creation – a moral order reflected in both the natural law inscribed on man's conscience, and in the moral law contained in the Scriptures. The precepts of the natural moral law are, therefore, applicable to both governors and the governed in society. To Luther, temporal government is not a specifically Christian institution; government is an institution which God has provided for the benefit of all men – it exists like other institutions of the natural order in Christian and non-Christian societies. The order of the moral natural law provides a basis for identifying, developing and refining the fundamental rights underlying the legal order in civil society. Secondly, Luther applies the fundamental moral duty of all human beings to serve their fellow men with deeds of benevolent love as the basic criterion for distinguishing between moral good and moral evil in the legal sphere. Thirdly, because all rights have their origin in fundamental moral duties for protecting basic values, human beings are unavoidably attached to God's supreme being and to other human beings (or "being" in general). Luther's perspectives on being provide the framework for establishing the basis for equality and liberty as two fundamental values governing man's political and legal obligations.

The truth expressed in these views calls upon all evangelicals to persevere in their efforts to lay the foundations for studying and evaluating human rights in their true context – the light of Scripture and the moral value of being. From a wider evangelical context and the Ciceronian-medieval sources that informed the evangelical views of Martin Luther, this article focuses on the different values embodied in the concept of human dignity and the fact that it tends to be expressed in rather vague terms. Furthermore it is contended that the unspecified notion of human dignity is expressive of a number of fundamental values (or goods) central to man's existence as a human person and indispensable for adding value to the nature of human beings in their relationships with God and their fellow human beings.

2. Human dignity is expressive of a number of fundamental values

2.1 Human dignity as the value of moral personhood

2.1.1 Human dignity as the value of moral equality

In matters concerning the kingdom of creation, Luther acknowledges the value of the insights of ancient and medieval philosophers. Luther rejects Cicero's emphasis on reason and the "absurdity" of his reliance on the doctrine of inexorable fate in the form of a *series implexa causarum*, and states that in the sphere of the kingdom of God and of grace Cicero has little to contribute in explaining the righteousness of God. However, Luther alludes positively to Cicero's contributions in the field of moral duty.¹ Luther ranks Cicero among the "philosophers of the better sort" (*LW*, 1:124 (LG); Genesis 2). He states that Cicero discusses religious issues concerning the origin of mankind with far greater discernment than does Aristotle (*LW*, 2:208 (LG); Genesis 11)),² and he often cites Cicero's statement to the effect that "extreme justice is extreme injustice" (cf. e.g. *LW*, 2:337

1 References to *LW* are to that of the American Edition of *Luther's Works* (Luther, 1958-1976). The specific work of Luther referred to, is reflected, e.g. *Lectures on Genesis* (LG), and the relevant Scriptural citation given where applicable. Abbreviations for Luther's particular works used are: *Lectures on Genesis* (LG); *Selected Psalms* (SP); *Notes on Ecclesiastes* (NE); *Theses concerning faith and law* (F&L); *Whether soldiers, too, can be saved* (SS); *Sermon on the Gospel of St. John* (SJ); *Lectures on Galatians* (LGS); *Lectures on Deuteronomy* (LD); *Lectures on Romans* (LR); *Lectures on Titus, Philemon, and Hebrews* (TP&H); *The Catholic Epistles* (CE); *Church and ministry, 1* (C&M 1); *Answer to Eck* (AE); *Concerning the ministry* (CM); *The Sermon on the Mount and the Magnificat* (SM&M); *Sermons* (S); *The Minor Prophets, 1* (MP1); *Jonah and Habakkuk* (J&H); *Word and sacrament, 2* (W&S 2); *Receiving both kinds in the sacrament* (RS); *Book of concord* (BK). References to *WA* are to the standard edition of Luther's *Werke: kritische Gesamtausgabe*; Weimarer Ausgabe (Luther, 1883-1987), *WA Br.* to the Weimarer Ausgabe, Briefwechsel. For Luther's criticism of Cicero's views on fate, cf. *BK*, 2.11.74. For examples of Luther's rejection of the insights of the ancient philosophers in the matters of religion and grace, cf. *LW*, 2:314 (although Cicero did the best he could, yet he did not obtain grace); *LW*, 2:124 (LG, Genesis 8; Aristotle and Cicero teach many things about virtues – concerning God they teach nothing); *LW*, 4:54 (LG, Genesis 21; Plato, Cicero and Socrates are great men, but they are not the church – they do not have the promise); *LW*, 7:281 (LG, Genesis 42; Cicero did not know original sin); *WA*, 57:69 (14-16; because righteousness is faith in Jesus Christ (*fides Jhesu Christi*), Cicero's views on justice and equity cannot explain the righteousness of God); also cf. Luther's statements in his commentary of Galatians (1519; *WA*, 2:503 (34-36)).

2 This is a reference to Cicero, *De natura deorum*, 1.13).

(LG); Genesis 13); 2:358 (LG); Genesis 13); 13:150 n.12 (SP; Psalm 101); 15:122 (25:223 (LR); Romans 3); 34:130 (F&L); 46:100 (SS)). The wisdom of ancient authors, like Cicero and the “fine old jurists”, was in effect preserved by God for the benefit of mankind, says Luther (*LW*, 13:199 (SP); Psalm 101). Therefore, the views of the ancients are most instructive, according to Luther, for gaining insight into matters pertaining to the kingdom of creation, for example moral duties, justice, and virtue.³

Cicero uses the notion of human dignity to express the element of human personhood which features universally in all human beings. The common moral element shared by all human beings is expressed in terms of the idea of human dignity. Dignity accrues to all people. Justice, says Cicero, is closely attached to *dignitas*, for justice is a state of mind which preserves the common good by recognising the dignity of all men – only by respecting the dignity of all people in the state can justice be accomplished (*Inv.*, 2.55.166).⁴ Therefore, the common good is based on the respect for the dignity accruing to all human beings; and the harmony necessary for preserving a just political order in the “human alliance” can be achieved (cf. *Inv.*, 2.55.166). To the extent that all human beings are endowed with dignity they are all equal in a *moral* sense. This does not mean, however, that all men are *naturally* equal: men are unequal because of their differences in office and standing. Cicero

3 Also the Calvinist philosopher, H.G. Stoker, acknowledges the value of non-Christian insights regarding the nature and role of legal norms and human rights in the jural sphere (cf. Stoker, 1970:46-49). It has to be noted that strong parallels exist between Luther’s ethical writings and Cicero’s *De finibus bonorum et malorum*. Similar to Cicero, Luther maintained that divine providence has appointed the world to be a common city for mankind, and each human being to be a part of this vast social system; that every human being has his own lot and place in life, and should take for his guidance the golden rules of obedience to God; knowing himself, and shunning excess. Parallel to Cicero’s “wise man”, Luther advances that Christian freedom, flowing from true wisdom, entails that one is free, though bound by chains; rich though in the midst of poverty; a king, for unlike the tyrants of the world, one is lord of himself; happy, for one has no need of waiting till the end of life, since a life virtuously spent is a perpetual happiness. An additional parallel exists between Cicero’s concept of virtue and that of Luther, and is contained in the notion of “half-conscious” principles of love and gratitude, inhering in every human being from his youth, and susceptible to cultivation and development, providing the foundation for incorporating the doctrine of natural law as a part of jural ethics.

4 The following abbreviations are used for Cicero’s works cited in the text: *Dom.* (*De domo sua*); *Fam.* (*Epistulae ad familiares*); *Inv.* (*De inventione (rhetorica)*); *Part or.* (*De partitione oratoria*); *Phil.* (*Phillipicae*); *Leg. Agrar.* (*De Lege Agraria*); *Rep.* (*De re publica*); *Sest.* (*Pro Sestio*).

also applies the term dignity to persons of unequal social position, human status or honour, because of leaders in the state and because of the value of their office for promoting the good of the citizenry in society. *Dignitas* in this sense is used to indicate a distinguished office which merits respect, honour and reverence (*Inv.*, 2.55.2). In managing the unequal positions of persons in the society, the government of a state should maintain and promote “peace with dignity”, which Cicero describes as the most outstanding and desirable purpose of all good and happy people. “Peace with dignity” is above all peace with honour in both the state and in one’s own life. *Dignitas* in this sense represents a virtue linked to law (cf. *Dom.*, 9.23; 50.130; *Part or.*, 8.28; *Phil.*, 8.3.10; *Sest.*, 46.98, and *Inv.*, 2.54.166). In this context dignity bears the primary meaning of worthiness, merit or desert, thereby indicating that each person should be granted what he deserves in terms of distributing justice, according to which end every person should receive his due.⁵

Cicero’s moral theory impacted strongly on the early Christian and medieval Christian traditions. Also St. Augustine’s use of the term *dignitas* includes references to the differences in status, position and rank of human beings in the *civitas terrenae*. This is reflected in his message to the Christian teacher, pointing out the dignity and responsibility of the office he holds (Augustine, 1997: *Dei civitate Dei (DCD)*, Bk. 4, Ch. 18 ff.). The use of *dignitas* in this sense runs parallel to Cicero’s application of the term. Thomas Aquinas shows how the word “person”, originally meaning a mask used by actors in the theatre, came to mean human beings constituted in dignity. Because actors played the parts of famous people in comedies and tragedies, the word “person” was applied to those who had this dignity. And, says Aquinas, because subsisting as a reasoning nature is a great dignity, every individual of reasoning nature is called a “person” (*Summa Theologica*, P(1) Q(29) A(3)⁶). In Aquinas’s scholastic philosophy the universal nature of man is linked to rational nature – every individual of rational nature is called a person. Person is a “hypostasis” distinguished by a proper dignity existing in man’s rational nature. Therefore dignity is something absolute and pertains to man’s essence. On the other hand, Aquinas also alludes to the inequality of human beings in spite of their being equal in a moral sense – because it belongs to God’s

5 Suum cuique tribuere (tribuens) or suam cuique tribuens dignitatem.

6 *Summa Theologica*, First Part, Question #29, Argument 3.

kingly dignity to have humans as his “co-adjutors”, not because there is any defect in God, but because He employs intermediary causes in order that beauty may be preserved in the universe, and also that He may communicate to creatures the dignity of causality, He clothes humans with dignity to combat sin and to maintain distributive justice in society.

The evangelical views on human personhood introduced by Luther establish a closer link between the individualistic and universalistic approaches to the idea of society. To Luther the relationships of human persons *inter se* provide the highest value of society. Through neighbourly love human beings must strive towards accomplishing God’s aim with mankind. Neighbourly love must constantly be renewed by man’s consciousness of the relationship with God. It means that the effects of love become manifested by being constantly renewed through man’s love and glorification of God. What are the implications of this view for human personhood? Firstly, it entails the moral equality of all human persons before God in spite of differences in wealth, status and position. Secondly, all men are endowed with duties and responsibilities which they cannot shun or devolve on others. Thirdly, freedom of conscience and the right of personal conviction is something inviolable and which can be defended against church, state and society. Fourthly, all human beings have their callings (as God-given obligations) to be performed for the common good.

From Luther’s evangelical perspective, dignity is actually reflective of the glory of God, because every human being and every institution should be pleasing to God and should reflect the glory of God (LW, 4:289 (LG); Genesis 24). In God’s creational order everything has its purposeful role – so for example each sex was clothed by God with its own uprightness and dignity (LW, 9:219 (LD); Deuteronomy 22) and the original value and importance of marriage envisaged by God is similarly expressed in terms of dignity (LW, 5:188 (LG); Genesis 28). The glory of God is reflected firstly in all man’s relationships to God and towards his neighbour. Human dignity is primarily a spiritual matter discernable through faith and the work of the Spirit. Therefore, the world rates it a much higher honour and privilege to be the son and heir of a prince, a king, or a count than the possessor of God’s spiritual goods, although by comparison all of these are nothing “but poor bags of worms” and their glory “sheer stench” (LW, 22:28 (LJ); John 1). Just compare all this with the “ineffable dignity” and nobility of which the evangelist speaks: “To all

who received Him,” that is believed in his name, “They have power to become children of God” (*LW*, 22:88 (LJ); John 1).

If we really believed with all our heart, says Luther, firmly and unflinchingly, that the eternal God, Creator, and Ruler of the world, is our Father, with whom we have an everlasting abode as children and heirs, not of this transitory wicked world but of all God’s imperishable, heavenly and inexpressible treasures, then we would indeed, concern ourselves but little with all that the world prizes so highly, much less would we covet it and strive after it. Indeed, we would regard the world’s riches, treasures, glories, splendour, and might – compared with the dignity and honour due us as the children and heirs, not of a mortal emperor but of the eternal and almighty God – as “trifling, paltry, vile, leprous, yes as stinking fish and poison”. For this glory, no matter how great and magnificent it may be, is in the end, consumed by “maggots and snakes in the grave” (*LW*, 22:88 (SJ); John 1). Dignity should always be determined by looking at the Word and not at the work, “and weighs and estimates the dignity of the work on the basis of the Word, where even if the work is the lowliest of all, yet this prudence values it as most precious, for he always puts the highest value on the Word” (*LW*, 25:408 (LR); Romans 10). The value of Christian sacrifice consists in prayer – in the evening in the “killing of reason,” and in the morning the glorification of God. No one can adequately proclaim the value and dignity of Christian sacrifice (*LW*, 26:233 (LGS); Galatians 3).

From an evangelical perspective Luther posits the moral liberty and equality of all human beings. Firstly all human beings reflect moral equality and liberty related to human personhood of all human beings – in the kingdom of God all men are equal in their being human persons because God does not regard the person (*LW*, 4:32 (LG); Genesis 21). He cites a number of examples reflecting God not regarding the person’s position, status or money: no person can please God except through the circumcision of the heart (*LW*, 9:110 (LD); Deuteronomy 10); God does not consider personal status by judging for the widow and the orphan (*LW*, 9:113; Deuteronomy 10); by making the shepherd boy David such a blessed king, while letting Saul become an unhappy and frustrated man, God shows that He selects without discrimination (*LW*, 13:214 (SP); Psalm 101); mankind is one dough, one person is like the other, with which God does as He pleases (*LW*, 13:214 (SP); Psalm 101); the example of God’s sincere, honest and authentic love should be followed, so that there is no discrimination between persons (*LW*, 29:53 (TP&H);

Titus 2), and although the gifts of God are manifold and different, no one is higher than the other before God – therefore everyone, even the highest, should humble himself and honour his neighbour (*LW*, 30:79 (CE); 1 Peter 2). In a fundamental sense, dignity pertains to man's godly and kind acts.⁷ Therefore through humility we lose nothing at all of our dignity, even though we accommodate ourselves to the well-being of others and indeed to the glory of God (*LW*, 6:163 (LG); Genesis 33). Christ set the perfect example by not being impressed by the great honours, their wordly dignity and their splendour.⁸ He even chides them and calls them fools and deceivers (*LW*, 23:254 (SJ); John 7). Praying to God in the name of Christ provides a prayer with the good quality and the dignity that make it acceptable to God (*LW*, 24:392 (SJ); John 16).

In spite of the fact that all men are equal in moral value before God,⁹ He distributes his gifts unequally between persons.¹⁰ So, for example, there are great differences between people regarding status and office (*LW*, 3:65 (LG); Genesis 16); every person has his own calling and gifts (*LW*, 3:129 (LG); Genesis 17); people differ

7 This is because “dignity” has to be understood in relation to the Word, faith and the working of the Spirit in man's life (cf. *LW*, 39:161 (CM 1, AE); 40:23 (C&M 2, CM)). In a spiritual sense the “lofty dignity” of the Christian cannot be comprehended – by virtue of his “royal power” he rules over all things, death, life, and sin, and through his priestly glory is omnipotent with God, because he does the things which God asks and desires (*LW*, 31:355).

8 Luther follows the view of Augustine, admonishing us not to revel in the dignity of rich parents but in the company of poor brethren (*Regula Augustini*, ch. 5, *Patrologia, Series latina*, XXXII, 1379).

9 It also means that all human beings are equal before the moral law. In this sense it can be said that there is a “natural” moral equality between all men, in that all are generically human beings. All have a moral, responsible and immortal destiny, and are inalienably entitled to pursue it. All are morally related alike to God, the common Father; and all have equitable title to the protection of the laws under which divine providence places them. As such, all men, ruler and subject, are “equal before the law”, protecting the persons and rights of both. Both, as humans and as subjects of human society, have the same generic moral right to be protected in their several (different) callings and estates of life.

10 The very essence of society posits an element of equality between the associate members. However, although the bond of society is based on equality, society contains an element of inequality, e.g. there is inequality in authority between political rulers and subjects. Just as social freedom does not destroy the obligations of the members of society, social equality does not prevent the presence of accidental differences among them. On the other hand, all members of society have social freedom and equality before the law in attaining moral virtue.

with respect to wealth, abilities and merit and therefore everyone should remain in his calling and live content with his gifts (*LW*, 3:129 (LG); Genesis 17).¹¹ To enforce the principle of arithmetic proportion in the kingdom of the world, would bring about anarchy and destroy order; hence geometric proportion must be applied in the affairs of government and civil society (*LW*, 3:130 (LG); Genesis 17). Arithmetic proportion is applied in the kingdom of God, where it is proper for all things to be equally distributed among unequals, “for the eyes and the feet, inasmuch as they are members of one body, to bear the same and equal burdens” (*LW*, 3:130 (LG); Genesis 17).

Luther’s application of the Aristotelian distinction between arithmetical and geometrical equality in the kingdom of God and the world respectively, entails that because persons are not the same, “for all are not equally strong”, the principle of geometric proportion should apply because it “does not compare one thing with another, as is customarily done in the market place; but it compares the persons and arranges the matter according to them” (*LW*, 5:308 (LG); Genesis 29). The application of the principle of geometric equality in the kingdom of the world entails that the differences between persons must be considered, and then one must assign to each one his place and distribute the burdens accordingly: firstly, the differences in the person must be observed; secondly, the duties

11 Luther maintains the distinction between the person and the offices distributed by God – we are all born equal and all alike; once we are born, God adorns and dresses us up by making one a prince and the other a citizen (cf. *LW*, 21:22 (SM&M); Matthew 5). God does not belittle physical birth and position in life, He preserves each with all its due dignity in the world. He commands that children honour their parents, though the latter may be poor beggars, that subjects obey the government, and also that parents and government use their office for the welfare and good of children and subjects and administer their office well (*LW*, 22:96 (SJ); John 1). On the other hand power is needed for persons in office to perform their duties. Therefore, says Luther, it is a “fictitious doctrine” to separate power from office (*LW*, 40:23 (C&M 2); Baptism). However, people should not revel in their offices and positions because God distributes these gifts for man to be humble and to serve his neighbour with them. If people receive the gifts of office from God, thereby being more powerful, higher, more learned, nobler than others, they should remember that God commanded them to take these gifts and serve their neighbours with them. If they do not, then they should know that even a poor shepherd boy, who compared to them has no gifts or standing whatsoever in the world, is far greater and closer to heaven in the sight of God and the angels. They, however, with their fine, high dignity and their “trappings”, will be cast into hell (*LW*, 51:351 ff. S 1; Sermon at the Dedication of the Castle Church in Torgau, Luke 14:1-11, October 5, 1544). For the principle that all persons are equal in moral worth before God and in serving one another to the welfare of the community, cf. Raath (2004: 25-55, 30-31).

and/or the station of each person should be considered (*LW*, 8:173 (LG); Genesis 48). Geometric proportion reflects the grace which should have a place in the government, in civil society and in the household (*LW*, 8:173 (LG); Genesis 48); it provides government with a “middle course” to attain justice “(f)or virtue is a quality that resolves about a middle course, as a wise man will determine” (*LW*, 8:174 (LG); Genesis 48).

Luther expresses the test for accomplishing justice in the world, according to the principle of geometric proportion, as follows: to render to each what is his own; to bother no one; and on the other hand, to help others, to promote their welfare, to prevent damage and violence, so that the guilty may be punished and the innocent protected by restraining the wicked and protecting the good, in order for the state to be in a good condition and so that each person may in peace enjoy what is his own (*LW*, 18:260 (MP 1: H-M); Micah 6).

The supreme duty among human persons to foster, practise and promote benevolence as contained in the twofold commandment of love expressed in the precept to love your neighbour as yourself and the demand to treat your neighbour as you would like to be treated, is the foundation for the just and peaceful ordering of society.¹² The Decalogue not only apprises us of our lawful obligations towards others, but we also need to discern how far the Holy Spirit has advanced us in his work of sanctification and how much we still fall short of the goal (*LW*, 41:166 (CC)). At the juncture of man’s callings, duties and responsibilities on the one hand, and the virtues of love, justice and peace on the other, the fundamental rights of

12 In so far as neighbourly love is concerned, all persons are equal, irrespective of the offices or the different roles they may have in the various estates (*LW*, 21:214f. (SM& M); Matthew 7:3). Because of the equality in calling between all people, everyone should remain in his calling and do his duty properly and faithfully (*LW*, 22:214 (SJ); John 2). Every person should know that his work, regardless of the station of life in which he is, is a divine work, because it is the work of a divine calling and has the command of God (*LW*, 27:3 ff. (LGS); Galatians 1). Therefore all people are equal in their being called by God (*BK* (AAC), 1.10.11). The commandments of God should not be interpreted to mean nothing else than to wish someone well, or that love is a quality inhering in the mind by which a person elicits the motivation in his heart. “This is a completely bare, meager, and mathematical love, which does not become incarnate, so to speak, and does not go to work. By contrast, Paul says that love should be a servant, and that unless it is in the position of a servant, it is not love” (*LW*, 27:51 (LGS); Galatians 1).

man come into play.¹³ The divine ordinances inscribed on man's conscience give rise to fundamental rights for man to fulfil his calling and duty towards God and to live in peace with his fellowman in the promotion of justice in society (cf. Witte, 2002:302). In his commentary on Habakkuk 1:7,¹⁴ on the other hand, Luther points out that if the purposes for which God instituted his creational institutions is substituted for man's evil ends, God's judgment will be exacted over man's abuse of God's gifts (*LW*, 19:112 (MP 2, J&H); Habakkuk 1).¹⁵

The complexities pertaining to the principle of moral equality, demand elucidation: Firstly, the fact that political authorities have the duty to protect the rights of all in civil society equally, should not be confused with the inequalities pertaining to social obligation. The person who faithfully fulfils his obligations cannot be classed together with the person who does not; neither can the person who respects the effects to do good with those who do not. Virtue and love should be permitted to produce social inequalities of good and evil among human beings. Therefore the doctrine of the equality of good, understood in its material sense, is false and reprehensible;

13 Rights and duties are correlative and only pertain to human personhood. Love of the person constitutes the moral bond; it is the soul of morality; yet it is the source of right and good.

14 "Their justice and dignity proceed from themselves."

15 "You have neglected justice, you have changed the Law as you pleased, you have not rendered equal justice but have done all things with violence. Therefore, because you have been unwilling to judge fairly, a judge will come against you eventually who will teach you how to judge. His justice and dignity will proceed from himself. Since you do not follow righteousness, therefore the justice and dignity of the Chaldeans will come upon you, so that the truth of the jingle will mock you: 'If you do not wish to judge, you will be judged by him.'" Luther refers to specific instances of man's existence in the state of innocence as a state of "original and true dignity": the human body in the state of innocence reflected the greatest dignity because it answered its real calling and was used for the true purpose God intended it for, namely the glorification of God (*LW*, 1:141 (Lectures Genesis, Genesis 3)); the results of sin were among others, that the human will lost its original dignity of being "good" and "righteous", pleasing God, obeying God, trusting in the Creator, by becoming depraved, making a devil out of God and "shuddering at the mentioning of His name" (*LW*, 1:141 (Lectures Genesis, Genesis 3)); also marriage of man and woman lost its dignity by losing its divinely ordained purpose, because man's flesh is kindled with passion, so that after sin, the marriage union does not take place in public like a work of God, "but respectable married people look for solitary places far away from the eyes of men" (*LW*, 1:141 (Lectures Genesis, Genesis 3)).

and equally false is the notion that governmental wisdom must tend to this equality as to its end.

Secondly, from Luther's evangelical point of view, *person* could be defined as the human subject endorsed with moral personality. Personhood is the most important element of human nature and it provides the form of rights. Morality consists in a relationship of the will with the moral law, therefore there is a difference between what is personal and what is moral. That which is moral concerns only the relationship of the will with the moral law; whereas that which is personal includes the concept of the supremacy of love. Person is a subject in so far as it is subject to and guided by love towards God and one's neighbour. Person can be defined as a moral subject, a substantial moral individual, subject to the supreme, active principle of love. For love to be virtuous, benevolence must be practiced according to the moral law.

Thirdly, in the human being moral subjectivity and person are the same thing. The moral principle which does not differ from the volitive principle is that which is supreme and most excellent in human nature. In the human being, the principle which is the highest point of existence is, properly speaking, the moral subjectivity rather than the rational faculty as held by Aquinas. Moral good and evil are present whenever the will is properly or evilly disposed, relative to the moral law. By acting morally the human being unites himself to all beings and to the divine Being, as the source of all being, loving them all and receiving love from them all. The noblest end of the human person is the communication with, attachment to, and mutual society with human beings and between them with the divine Being – the End of creation.

Fourthly, although different classes of human beings in civil society may enjoy different grades of privilege and function, according to their different natural abilities, the inferior is shielded in his rights by the same relation to the common heavenly Father, by the same golden rule of benevolence and of the equitable right which shields the superior in the enjoyment of his larger powers. Although the functions and callings of rulers and subjects may differ, the same moral law protects them both in their rights, and commands them both in their respective duties. This principle establishes between all men a moral, but not a mechanical, equality. Both higher and lower hold the same relation to the Supreme Ruler and Ordainer of civil life, God; yet they hold different relations to each other in society,

corresponding to their differing capacities and fitnesses, which equity demands.¹⁶ Therefore, although the relation of superior and inferior with their unequal powers and abilities is asserted, in the same breath the equal moral obligation of both as bearing the common relation to one divine maker and judge is maintained.¹⁷

2.1.2 Human dignity as the value of moral liberty

Cicero made an important contribution to the philosophical reflections on the value of moral liberty by introducing the view that the liberty to answer one's calling and perform one's moral duties in society are important prerequisites for establishing peace and justice in civil society. This liberty is based on the moral equality of all people in civil society. If this liberty is not the same for all, says Cicero through Scipio, it does not merit the name of liberty. Such liberty is subject to the moral duties attaining to all persons – if the people retain their rights in liberty, no form of government would enjoy greater eminence, liberty or happiness. Such a society would have the same interest, since discord arises from conflicting interests, where different circumstances afford varying benefits and advantages to different people. Since law (*lex*) constitutes the bond binding together society, and the rights (*ius*) of liberty arising from such law are equal, citizens would have equal legal status. Although people may be unequal in wealth and talents, the rights of citizens in civil society should be equal, since the state (*civitas*) is an association of people with equal rights (*iuris societas*) subject to law (*Rep.*, 1.32.48, 49). A similar perspective on the equality of moral liberty as the basis for equal rights and legal status is found in Grotius's use of the term *jus*, in the sense of a *moral equality* of the person enabling [*competens*] him to have or to do something justly. The phrase *moral equality*, to Grotius, could be either "perfect" in the sense of *facultas*, or "imperfect", in which instance it is called *aptitudo*. The Roman jurists' alluding to the *jus suum cuique tribuere* has a bearing on *facultas* (*De Jure Belli ac Pacis*, 1.1.3).

Thomas Aquinas, from a scholastic perspective, added to the philosophy of liberty and the analysis of the legal impact of moral

16 Cf. Job 31:13, 14, 15; Ephesians 6:9; Colossians 4:1.

17 This does not imply that all men are also held to be mechanically and naturally equal in physical and mental abilities. From this perspective it may also be stated that equality in the moral sense serves as the foundation of just freedom and opposes the heresy of thought which holds that equality must be "mechanical" as well as moral for society to be naturally just.

liberty by stating that freedom of choice provides the matrix in which human responsibility for good exists. Reflecting on human action and morality, Thomas Aquinas states that man is made in the image of God, and that this implies, as St. John of Damascus said, that man is intelligent and free in judgment and master of himself. So, having considered both the exemplar of that image, namely God, and the things that proceed by divine power and the will of God, it remains for man now to consider the image itself, namely man, precisely insofar as he is the source of his own actions and has freedom of judgment and power over his own works and deeds (Aquinas, 1997:1-2, Prologue).

In the evangelical fold, Luther incorporates the views of earlier philosophers in his evangelical perspectives on the moral value of liberty into his Scriptural approach in the quest for establishing justice in society. The moral liberty of man is intricately attached to the spiritual liberty established by God's spiritual law of love and the submission of man's will to the will of God (WA, 3:621 (13)).¹⁸ Through the work of God's Spirit man's liberty is a liberty of love by submitting oneself to God's Law (WA, 1:437 (27)).¹⁹ God's will, expressed in natural law²⁰ and God's moral law, is a law of spiritual freedom. Luther calls it the *lex libertatis* – it disseminates a spirit of liberty in relation to both God and one's neighbour (cf. WA, 2:500 (24)).²¹ God's law of liberty moves man to submission and obedience of divine law (WA, 39 (1):203 (20)).²² It liberates man from egoistic self-love and humbles man to serve his neighbour in love (WA, 56:481 (23)).²³

18 "Pater per filium iudicat ..., quinque conformis ei repertus fuerit, ad eum additur. Qui autem difformis, seperabitur."

19 "Omnia mandata requirunt charitatem, cum sine charitate id est, facili, prompta, hilari, libente voluntate, si implentur, non implentur."

20 Cf. Raath (2005:425-454).

21 "Nullum bonum opus [fit] nisi hilari, volente, gaudenteque corde fiat, id est in spiritu libertatis."

22 "Nulla [est] lex, sed res ipsa, quam lex in hac vita requirit."

23 "Cum liber esset, omnium se servum fecit. Que servitus est summa libertas, quia nullius eget, non accipit, Sed dat et exhibet. Ideo est vere libertas et propria Christianorum", and WA (5:38.27): "Libertas Iusticiae Christianae ... Beatus hic vir [ps. 1:1 vulg.] liber in omne tempus, in omne opus, in omnem locum, in omnem personam."; 39.4: "Omnibus ubique per omnia servit."

To Luther freedom of conscience is preceded by the conscience of freedom as a result of the justification based on faith and the breaking of the bonds of conscience ensnared by evil through hearing the gospel and promoting love according to the will of God (*LW*, 36:250, 255 ff. (W&S 2, BKS)). It brings about spiritual liberty and liberates human reason – the *christiana et libera ratio*, working in submission to the law of love (*lex Christi*) (*WA*, 4:646 (13)).²⁴ Loving God and one's neighbour is not an a-nomian activity – it reflects normative content, firstly, by demanding that man fulfils his or her god-given calling in liberty in all stations of life; secondly, it entails free activity insofar as is not prohibited by the moral law. Therefore human beings have the fundamental right to accomplish their callings in all stations of life, subject to the moral law, in promoting the common good.

The human person is the first, proper seat (or basis) of freedom, or, to put it differently: the supreme principle of rights is situated in personal freedom, being the governance with which we rule our actions in fulfilling our calling. Although we possess the freedom of choice, by means of which we can determine our actions in favour of or against the moral law, we act badly every time we make use of freedom of choice to determine actions in opposition to the moral law, and we act well every time we make use of it to determine them according to the moral law. This is what is called moral good and evil. Although we may have the physical ability to act, we do not necessarily have moral freedom, which is present only when our acts are in accordance with the limits defined by the moral law.

Moral freedom, flowing from freedom of conscience, is that part of freedom which is not restricted by the moral law. Freedom in this sense is not only *de facto* freedom but also freedom *de jure* because in man's moral freedom the notion of right begins to appear. Properly speaking we cannot have a true right to perform action forbidden by the moral law, because what is wrong cannot be right. "Right" in this sense indicates something over and above what is simply lawful. It indicates not mere liberty of action, but a certain *authority* (or governance) to act, which (because it is moral) involves a relationship with other people. This relationship is formed by the moral law itself, which simultaneously grants freedom of action to a person and prohibits others from interfering with that action. Therefore, "right" may be defined as the moral governance to act,

24 "[Ex plagis et vulneribus Christi fluit] lex rectae rationis."

protected by the moral law which obliges others to respect that governance.

Two comments need to be made regarding the social context of moral liberty: Firstly, moral freedom limits the power of civil government to the extent that its power must be exercised in such a way that its enactments do not prevent any individual from using his means, faculties and powers necessary for attaining moral virtue (or moral contentment), without moral necessity. For example, the government's obligation is to defend an equal right in all individuals by preventing a particular individual from using his right to obstruct an equal use of right in others. This is because government is the natural judge and defender of all these limits under the political equality of citizens before the law.

Secondly, the members of the social body are all "ends", in order to attain the good of virtue sought by means of human association. To this purpose society presupposes liberty. This social liberty expands and becomes perfect in the measure that social benevolence and justice expand with the diffusion of society. This liberty is the effect both by the justice possessed by society and by the virtue to which it tends.²⁵

The first right involved in the fundamental right of free human personhood, is the right not to be harmed or injured in any faculty of human nature. Secondly, moral personhood draws a number of rights in its wake: the right to speak the truth, the right to judge actions in the light of truth and justice; to reprove moral evil; to enforce justice, and to re-establish justice by means of just punishment.

Thirdly, the right to personal liberty as such presupposes that without sufficient moral motivation (in terms of the moral law) impingement on the liberty of a person would amount to moral evil. Fourthly, because right as such²⁶ is rooted in the fundamental principle of human personhood, any attempt to deprive human beings of truth, virtue and happiness would constitute an infringement of personal good. Fifthly, injury to personhood can be perpetrated not only

25 Cf. John 8:31-32: "Then Jesus said to those Jews who believed Him, 'If you abide in my word you are my disciples indeed. And you shall know the truth and the truth shall make you free.'"

26 The fundamental principle of rights pertaining to personhood, flows from *personal freedom* – the right to act subject to the moral law. Because right is a faculty of free activity, personal freedom is the foremost principle of all rights.

by other human beings, but also by man himself. However, although such activity would amount to transgressing against the moral law, there will not be injury to right, because right is always relative to others having a duty not to intrude upon that right. Sixthly, the inter-related rights of moral equality and moral liberty could together be formulated as the inalienable natural right (or privilege) to pursue and attain one's moral and equitable end, virtue, and that grade of well-being appropriate to the social position of each. A second right could be added, namely the right to liberty of thought, inquiry and belief, subject to the moral law.

2.2 Human dignity as the value of acting virtuously

2.2.1 Human dignity as the value of attaining the supreme good

An important context in which Cicero uses the concept of dignity is that of acting virtuously. Cicero uses the term *dignitas* to signify worthiness, merit or desert in an encompassing sense. In his *Letters to his Friends* (*Fam.*, 11.17), Cicero alludes to the dignified way, or “utmost splendour” exhibited by the official Lamia in discharging the functions of aedile.²⁷ Elsewhere Cicero also alludes to *dignitas* as the manifestation of worthy conduct or merit because of exceptional worthy behaviour (*Pro Lege Agraria.*, 2.2.3).²⁸ He also applies the term *dignitas* to signify merit or worthiness deserving praise.²⁹ Worthy conduct, to Cicero, is closely attached to justice and *dignitas*, for justice is a state of mind which preserves the common good by recognising the dignity of all men. By implication it is indicative of the harmony which the “human alliance” should achieve and, indeed, which is a prerequisite for the ideal state (cf. *Inv.*, 2.55).

In the patristic thought of St. Augustine, dignity is an important value in promoting the virtue of acting rationally. To St. Augustine only in the city of God the virtue of “everlasting dignity” can be attained (*DCD*, Bk. 3, Ch. 17).³⁰ From the Scriptural perspective of Aquinas it appears that whatever is contained in the notion of *dignitas* must be

27 “Is magnificentissimo munere aedilitatis perfunctus petit proeturam, omnesque intellegunt nec dignitatem ei desse nec gratiam.”

28 “... sed dignitate impetratus esse videatur”.

29 “Cum ab eo quaereretur, quid tandem accusaturus esset eum, quem pro dignitate ne laudare ...”

30 In the “true city” (of God) citizenship is an everlasting dignity.

attributed to God because creation is universally subject to God, and God has the governance of the whole universe in his hands. Therefore, all virtue must finally be attributed to divine intervention (Aquinas, P(1)-Q(22)-A(3)-O(1) ff.).

To Luther, man's highest good is not contained in his earthly existence but in God – the highest Good. Employing the Aristotelian doctrine of causes,³¹ Luther describes God as the *causa efficiens et finalis mundi* (WA, 40 (3) 209 (11) & 253 (11)).³² From Scripture and the Word of God man is able to gain knowledge of the efficient and final cause of the universe (LW, 1:124 ff. (LG); Genesis 2).³³ Knowledge of the final and efficient cause is indispensable for acting virtuously, therefore Luther states that the greatest virtues are the fear of God and faith in Him. Secular philosophy has no knowledge of these and carries on a discussion solely about the material and the formal cause; it does not know the final cause which is pointed out by Scripture through faith (cf. LW, 2:126 n. 49 (LG); Genesis 8).³⁴

31 Aristotle, *Physics*, Bk. 2, Ch. 3.

32 “[Solomon] docuit veram causam et principium, dnterem et gubernationem Politiae et oeconomiae, scilicet Deum.” Also cf. WA (40 (1) 410 (11)): “Dicimus philosophiam moralem nihil scire de deo.”

33 This means that true wisdom is contained only in Holy Scripture and the Word of God – this gives information not only about the matter of the entire creation, not only about its form, but also about the beginning and the end of all things, about who did the creating and for what purpose He created (LW, 1:127 ff. (LG); Genesis 2). Only the Word of God imparts true information about the two main causes, the effective and the final (cf. LW, 1:131 (LG); Genesis 2).

34 To fear God and to trust in Him, says Luther, is more profitable than philosophical discussions about the material cause (LW, 2:149 (LG); Genesis 9). Also cf. LW, 8:11 (LG); Genesis 4-5). Due to man's fall into sin, he is blinded to the proper purpose or aim for which God ordained his creation. By doing God's will the dignity of institutions and human acts are restored. Man is not at liberty to seek his own glory from the institutions ordained by God (cf. LW, 4:221 (LG); Genesis 24). Luther alludes to the example of Laban's resistance to the will of God, compared to the dignity God bestowed on Jacob, to compare the virtue of dignity with self-agrandisement. Compared to Jacob's dignity Laban resisted the will of God through his idolatry, pride, greed, and contempt for his neighbour in seeking his own advantage (LW, 5:296 (LG); Genesis 29). With man's creation the dignity of man consisted in the worth God bestowed on man. Luther does not materially differ from Bernard's and Bonaventure's view that the original dignity of man in the state of innocence was the direct reason for the devil's fall into sin: because of his envy on account of which he begrudged men such great dignity, namely that God would become man, the devil saw that one day the divinity would descend and take upon itself “this wretched and mortal

In an evangelical context Luther deals with virtue as a “beauty” of those qualities and acts of the mind that are of a moral nature, namely such as are attended with desert or worthiness of praise or blame; it is that value which renders any habit, disposition or exercise of the heart truly beautiful. Transposed into philosophical terms, true virtue most essentially consists in benevolence to being in general, exercised in a general good will. Benevolence, therefore, is the term for virtue or moral beauty. The primary object of virtuous love is divine Being; a propensity and union of heart to Being; the love to God – the Being of beings – because throughout the whole universe, there is nothing in comparison with the divine Being. Are human beings able to practise benevolent virtue towards God? Yes; although we are not able to give anything to God, which we have of our own; yet we may be the instruments of promoting his glory, in which He takes a true and proper delight. Therefore God should be loved according to his dignity, namely the degree in which He has those things wherein worthiness of regard exists. Loving God according to his dignity entails the glorification of God; it is the final end of creation, because the glory of God is the last end for which He created the world; glorifying God means making known God’s perfections, his greatness and excellency. This is the thing God sought of the moral world, and the final aim of in human beings as the moral agents that He created; this is the essence of the value and proper fruit and end of man’s virtue.

Secondly, it means that loving God’s creatures with a truly virtuous benevolence, amounts to glorifying God through his creatures, in whom God’s image and likeness shines forth. The virtuous love in created beings is dependent upon and derived from love to God. A truly virtuous mind, being under the sovereign dominion of love to God, seeks above all things the glory of God, and makes this his supreme, governing and ultimate goal.

God bestows his gifts and blessings on man for the glorification of God and the welfare and benefit of the neighbour. Therefore the purpose of God’s gifts is not the pleasure or the tyranny of those who have the gifts, but their lawful use must be directed towards the glory of God and the welfare and the benefit of one’s neighbour.³⁵

flesh and would not take upon itself the nature of angels” (*LW*, 5:221 (LG); Genesis 28).

35 In the world people receive God’s blessing, sovereignty, priesthood, power, strength, and intelligence, and although they have the efficient, formal and

The highest virtue of man consists in praising and glorifying God, who bestows them, and in seeing to the welfare of man's neighbour (*LW*, 5:112 (LG); Genesis 27). Man's virtuous acts in marriage and in the state are, therefore, a manifestation of man's directedness at the final cause – God the Creator of these gifts (*LW*, 5:188 (LG); Genesis 28).³⁶

All human acts should, therefore, be evaluated by looking at their final cause or purpose. In marriage, for example, this is the procreation of children, in government it is the preservation of peace. In a government the formal cause – that is the laws – may be wicked. The efficient cause – that is, a tyrant – may also be wicked. All human acts should be evaluated on the basis of the more powerful cause, namely the final cause. So it is in marriage. If the efficient cause – the married people themselves – is evil, and if the material is wicked, these wicked causes should be tolerated in order to save procreation, “this most beautiful and admirable work of God” (*LW*, 12:350 (SP 1); Psalm 51).

The most fundamental right pertaining to human beings is the right to attain the highest Good – to practise the virtue of attaining the supreme Good and to attain the highest virtue. If secular government should make it impossible for its subjects to worship God as demanded by his Word and Scripture, this would be a serious impingement upon their dignity. If also, for example in the state, the tyrant acts contrary to the will of God and disregards the supreme Good, and makes it impossible for his subjects to promote the welfare of their neighbours, this would not only be in conflict with God's law, but would also amount to a disregard of man's dignity.

2.2.2 Human dignity as the value of social benevolence

The supreme divine law for the attainment of justice in society is the twofold command of love contained in the precept to love your neighbour as yourself and the demand to treat your neighbour as

material cause, they are not concerned about the final cause (*LW*, 5:112 (LG); Genesis 27).

36 E.g. although marriage is sometimes defined as the union or companionship of man and woman, and the maintaining of inseparable companionship for life, this is not a true definition, for the final and the efficient causes are lacking. A definition directed at the final cause would read: “Marriage is the lawful and divine union of one man and one woman, ordained for the purpose of calling upon God, for the preservation and education of offspring, and for the administration of church and state” (*LW*, 5:188 (LG); Genesis 28).

you would like to be treated. This most profound commandment, says Luther, excludes every pretense of love. He who loves his neighbour on account of his money, honour, favour, power or comfort, and does not love the same person if he is poor, lowly, unlearned, hostile, dependent or unpleasant, has a hypocritical love, not a love for himself, but a love for his neighbour's goods for his own benefit, and thus he does not love him "as himself," even if he is a pauper, or a fool, "or a plain nothing" (*LW*, 25:474 ff. (LR); Romans 13).

To Luther this commandment is the hardest of all, because no one wishes to be robbed, harmed, killed, to be the victim of adultery, to be lied to, victimised by perjury, or to have his property coveted. If he does not feel the same way about his neighbour, he is guilty of breaking this commandment (*LW*, 25:475 (LR); Romans 13). This commandment, to Luther, also includes the basic truth of Matthew 7:12: "So whatever you wish that men would do to you, do so to them; for this is the Law and the Prophets." He who thinks seriously about this commandment and applies it, ought not to depend on his own actions which are elicited from within but rather he must compare all the acts, words, and thoughts of his whole life with this commandment as a rule, and immediately "the contention, the detraction, the dissention will cease, and there will be present the whole host of virtues, every grace, every act of holiness, as it says here 'the fulfilling of the Law'" (*LW*, 25:475 (LR); Romans 13). In Luther's view the members of a society can accomplish the good of the society to which they belong by practising social benevolence:³⁷ the good of the society can only be attained by loving God above everything else and your neighbour as yourself. This implies that any person wishing the good of the social body, consequently wishes the good of all those forming the body of which he himself is one. Promoting the good and attaining justice reflects the work of the Holy Spirit in us. True human dignity means acting virtuously and by growing in sanctification, human beings become new creatures in Christ. Sanctification according to the second table of Moses reflects the dignity of human beings in promoting the good and justice in society;³⁸ thereby transforming society into the most noble love of moral virtue, and aims at every other good in relation to the supreme good. Social benevolence, so to speak, proceeds from a

37 Cf. Raath (2006b:1-44).

38 For Luther's evangelical views on justice, cf. Raath (2006a:335-354).

“subjective” platform, generating “objective” virtues; thereby society increases qualitatively in dignity (moral virtue) as love, peace and justice, which form the end of society, are formed. A society reflecting the dignity of justice (the best good and the condition and legitimate origin of every good) will therefore tend principally to love as the greatest source of every good.

The kind of benevolence proper to the noblest of societies will be that by which each member of the society desires principally moral virtue (dignity) and moral perfection (sanctification). Moral excellence is of the very essence of God and not of man. God is concrete goodness, infinite reason, knowledge and power, in a personal form; so that there can be no obligation to virtue which does not involve obligation to God. To attain this aim, God’s law, as expressed in both the Decalogue and the precepts of natural law, forms the basis for attaining the highest good in society. In effect it implies that attaining the highest good in society is only possible by glorifying God and respecting the human being for what he is, as well as in promoting his dignity, namely the degree in which he has those things wherein worthiness of regard consists. “Worthiness of regard” is contained in all human beings and demands virtuous benevolence as reflected in the moral law. In this respect dignity is a wide concept which places on all men the moral requirement to treat man as a moral agent created in the image of God.³⁹ Any conduct in conflict with the moral law will, therefore, reflect injury to dignity.

Firstly, the right to freedom takes its origin in man’s liberty of conscience.⁴⁰ Therefore, liberty of conscience would constitute a connatural or fundamental right. Secondly, the connatural right to personal freedom is expressive of the right of all human beings to do all they wish with the morally good use of their powers and faculties in promoting moral virtue, unhindered by another’s caprice or wickedness. Thirdly, the general right to personal freedom, translated into more specific rights, would encompass the right to speak and seek help; the right to corporal freedom; and the right to all morally good actions, including the right to acquire other rights to promote truth, virtue and happiness.

39 This view comes close to the Calvinist perspectives of the Potchefstroom philosopher, H.G. Stoker (1970:36-37).

40 Faith enlightens man’s conscience and reason cf. *WA* (40(1):204(5); 4:646 (13); Sermon of August 15, 1520).

3. Benevolence, moral value and the “broad and idealistic concept of dignity” in the constitutional jurisprudence of the Eighth and Fourteenth Amendments to the Constitution of the United States of America

In this section there will be focused on the benevolence, moral value and the “broad and idealistic concept of dignity” in the constitutional jurisprudence of the Eighth and Fourteenth Amendments to the Constitution of the United States of America.

3.1 Benevolence, equality and liberty – the foundational rights in civil society

The theologico-jural implications of Luther’s evangelical approach, which is commonly alluded to as human dignity, provide us with a twofold conception of fundamental rights (viz. the right to moral personhood and the right to moral virtue), correlative to the values and duties posited by the moral law. The value-duty-right correlation in Luther’s theologico-jural perspectives on the functioning and promotion of the *ius commune Christianorum* in man’s social life, is not limited to man’s ecclesiastical life only.⁴¹ In his comments on the Peasant’s War, Luther pleads for the application of the principles of the *ius commune Christianorum* to man’s civil and political life (cf. Meurer, 1852:367 ff.). The common denominator to both the kingdom of God and the kingdom of the world is the justice underlying all laws and rights and protecting the values enabling man to live a virtuous life.

Christian evangelicals have the specific duty to promote an understanding and realisation of moral-jural obligations and rights in civil society. The implications of the *ius commune Christianorum* for man’s social life in civil society is far-reaching: through faith man experiences an understanding of love, equality and liberty. The right to social benevolence (love in social relations), is of divine origin and is not a humanly fabricated mechanism (cf. *WA*, 8:613(9),⁴²

41 The implications of the *ius commune Christianorum* for man’s social life in the civil sphere is far-reaching: through faith man experiences the true right to love, to equality and to liberty. The right to social benevolence (love in social relationships), is of divine origin (*WA*, 8:613 (9)). In *WA* (8:614 (1)), Luther observes: “Neque enim minus peccatum.”

42 “Ex quibus verbis habes, nihil liere ulli docere, quod sit adversus Evangelicam libertatem.”

8:614(1),⁴³ and 8:330(3)). The most basic value in the *ius commune Christianorum* is social benevolence, diversely intertwined with equality and liberty.⁴⁴ Therefore, neighbourly love, to Luther, is the most basic fundamental right and should govern all external relationships between persons (*WA Br.*, 1:397(44)).⁴⁵

3.2 The implications of the Lutheran-evangelical perspectives on fundamental rights and moral obligations

What are the implications of applying the Lutheran-evangelical perspectives of the right to human dignity to man's life in civil society? Firstly, the necessity and immutability of the idea of being embedded in Luther's theologico-jural views provide morality with its undeniable sense of obligation – an appreciation of man's role and position in the creational order of being, reflects man's obligations towards the Supreme Being and being in general. Attributing to man what is proper to the moral law produces views of human autonomy; whilst the properties of man attributed to the moral law, lead to moral relativism, historicism and positivism. In order to conform to the moral law, man must acknowledge the status, role and value of created being, not insofar as they serve the pleasure of the moral subject, but insofar as they take their place in the creational order of being. The Supreme Good, undergirding the first table of the moral law, is attained by appreciating the creational order of being and taking one's place in the creational order. Submitting oneself to the

43 “Neque enim minus peccatum est, violare libertatem divinitus statutam, quam in quodvis dei praeceptum peccare.”

44 Johannes Heckel points out that the secular views on rights are diametrically opposed to the rights based on faith in Christ: “Im Vergleich mit ihnen (die drei göttliche Grundrechte) sind die Grundrechte in weltlichen Herrschaften bloss verzerrte Schattenbilder. Schon die Umkehr der Reihenfolge ‘Bruderliebe, Gleichheit, Freiheit’ in ‘Freiheit, Gleichheit, Brüderlichkeit’ zeigt den Gegensatz zwischen der geistlichen und weltlichen Auffassung über den Sinn des Gemeinschaftslebens an” (Heckel, 1973:48). Elsewhere Heckel states that “(d)ie christliche Bruderliebe ist das erste und in Rang wichtigste Grundrecht des äusseren Gemeinlebens der Christen untereinander. Sie greift im Dienst des Nächsten und besonders der Mitchristen überall zu, wo es andere zunächst von Gott Berufene fehlen lassen” (Heckel, 1973:209). Both equality and liberty are subject to neighbourly love (cf. *WA*, 5:403(29); *WA*, 19:72(23); *WA Br.*, 6:27(10): “... die lieb soll über alles gehn und den forgang haben, ausgenommen Gott, der über alles, auch über die liebe ist”); *WA Br.* (4:241(4) & (19)): “Nihil est itaque charitatem iactare, ut libertatem laedas, nam si hoc licebit charitati in libertatem, licebit idem in totum evangelion, quod etiam quareunt tyranni.”

45 “Charitate omnes lex debet cedere, etiam orandi et sacrificandi.”

demands of the moral law provides one with the appreciation and recognition of other persons as being equal and free moral persons as oneself, and therefore worthy of the same respect as other moral subjects. If, therefore, a person invades my duty to worship God and glorify “being” for what it is, my status and value as a moral person (person subject to the moral law), free and equal in my social relationships towards other moral subjects, my human dignity, is invaded and both my duty of and right to justice as the supreme value of moral personhood is harmed. In particular the personal values contained in the moral law, which translates the realisation of “being” into social action, and which demand that every person is to be treated as a moral subject (or end) and not as a moral object (or means), are infringed.

The value of sexual integrity provides one aspect of value protected by the moral law. The facts of the case of *Boxer v Harris* (437 F.3d 1107 (11th Cir. 2006)), reflect the sad story of Boxer, a male prison inmate, forced by Harris, a female prison guard, to perform three incidents of self-inflicted masturbation when he felt “forced to comply” and two incidents wherein the guard filed false disciplinary reports against him when he refused to follow her orders in this regard. In an appeal to the United States District Court for the Southern District of Georgia, the majority of the court in appeal from the federal appellate court, in the form of a panel of three judges, turned down an application of rehearing *en banc*. The panel held that the abuse allegedly suffered by Boxer was not a violation of the Eighth Amendment, insofar as forced masturbation represents only “a *de minimis* harm”, and that he only suffered a “little” sexual abuse, not constituting “the unnecessary and wanton infliction of pain” as demanded for constituting “cruel and unusual punishment forbidden by the Eighth Amendment” (cf. *Whitley v Albers* 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251, 54 USLW 4236). Neither, according to the panel, did the forced masturbation constitute wrongdoing “objectively ‘harmful enough’” to establish a constitutional violation (referring to *Hudson v McMillian*, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156, 60 USLW 4151).

In a dissenting judgment, Barkett CJ held that to consider forced masturbation at the whim of a jailer, not “repugnant to the conscience of mankind” and therefore permissible, would be to deny the “broad and idealistic concepts of dignity, civilized standards, humanity, and decency” that are embodied in the Eighth Amendment (according to the judgment in *Estelle V Gamble*, 429 U.S. 97, 97 S.Ct. 1236, 47 L.Ed.2d 251) (quoting *Jackson V Bishop*, 404 F.2d

571). To Barkett CJ the test for measuring harm, for Eighth Amendment purposes, is the extent to which a prisoner's alleged harm violates human dignity and contemporary standards of decency. Barkett CJ held that the main thrust of Boxer's complaint concerned a violation of human dignity, and that the Supreme Court had explained that sexuality is central to human dignity "and even to the very meaning of human existence". For purposes of his judgment he relied on the judgment in the case of *Laurence v Texas* (539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508, 71 USLW 4574, 03 Cal. Daily Op. Serv. 5559, 2003 Daily Journal D.A.R. 7036, 16 Fla. L. Weekly Fed. S 427), where it was stated that laws regulating private sexual acts between consenting adults implicate "their dignity as free persons", and the view expressed in the case of *Planned Parenthood of Southern Pennsylvania v Casey* (505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674, 60 USLW 4795), to the effect that "personal decisions" relating to the matters involving sexuality are "central to personal dignity".

Barkett CJ consequently held that forced masturbation, constituting sexual abuse, undeniably violates a most basic aspect of human dignity; that the sex of the prison guard is just one among many factors that might contribute to the loss of human dignity experienced by a prisoner who suffers from the abuse, and that neither contemporary standards of decency nor basic principles of human dignity sanction compelled masturbation. By denying *en banc* review, the court ignored "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them" where an important constitutional right is at stake (according to *Colorado River Water Conservation District v United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483, 9 ERC 1016).

The dissenting judgment of Barkett CJ comes much closer to being sensitive to the nature, value and status of sexual integrity as a value pertaining to man's dignity, than is the case in the majority judgment. Firstly, Boxer's moral status as a human being and his treatment as a moral object (or means) for the self-gratification of Harris is not adequately appreciated. Secondly, Harris's invasion of Boxer's duty to shun moral evil and aspire to moral virtue adds to the gravity of Harris's negation of Boxer's dignity as a moral person.

Furthermore, the innate dignity conferred on human beings by their very existence as moral beings becomes an absolute inviolable right to be recognised wherever it is found. In the constitutional jurisprudence of the United States of America, the moral value of physical integrity has come under much consideration within the context of

the Eighth Amendment right not to be subject to cruel and unusual punishment and the corollary measure in the Fourteenth Amendment due process clause, regarding the right to liberty, containing the right to be secure in one's person. In the case of *Meredith v State of Arizona* (523 F.2d 481), a prisoner with a medical history of emphysema, was struck without justification in the solar plexus by a prison official, rendering him "totally handicapped", as a result whereof he was given four hours of oxygen therapy "to counteract the damage that had been done." It was held that the facts brought Meredith within the ambit of the Civil Rights Act (42 U.S.C. 1983), which provides that every person who, "under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress". The judgment of the court held that the right violated by an assault and battery is "the right to be secure in one's person, and is grounded in the due process clause of the Fourteenth Amendment", which is an aspect of the right to liberty (with reference to *Gregory v Thompson*, 500 F.2d 59), and relying on the case of *Rochin v California* (342 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674, 60 USLW 4795), where it was held that assault and battery in that case, "shocks the conscience" (342 U.S. at 172), it was a conduct which involves force that is "brutal" and "offensive to human dignity" (342 U.S. at 174). The court held that the prison official's conduct towards Meredith could be characterised as intentional, unjustified, brutal, "and offensive to human dignity". Firstly, the requirement that physical force must be "brutal" and "shocking to the conscience", sets the requirement for invasion of a person's dignity too high. Although the court in this case admitted that the attack on the victim's person constituted a violation of human dignity, the violation of a prisoner's physical integrity was not accepted in the case of Schy. The United States Court of Appeals for the Second Circuit in *Schy v State of Vermont* (2 Fed.Appx. 101 C.A.2 (N.Y.), 2001), found that the plaintiff, who was handcuffed with his hands behind his back, to a chain attached to a wall for longer than two hours, did not provide sufficient facts as a matter of law to suggest that the handcuffing was either brutal and offensive to human dignity, or unreasonable and that the plaintiff's contentions were without merit.

Thirdly, the essence of the right to human dignity is the freedom to act by moral agents, protected by the moral law which demands re-

spect for this liberty from others. Therefore, the treatment of persons as moral objects mostly constitutes an infringement of moral liberty. The facts in the case of *Felix* illustrate the subjection of another person for one's self-gratification and the ensuing infringement of moral liberty (liberty subject to the moral law). The Judgment of the United States Court of Appeals for the Ninth Circuit in *Felix v McCarthy* (939 F.2d 699 Jul 10, 1991), underscores the lack of appreciation of the moral context of human dignity and the resulting imprecise and vaguely defined content of the right pertaining to human dignity. In this instance Felix, an inmate at San Quentin, brought a civil rights action against prison guards for using excessive force against him in violation of his constitutional rights under the Eighth Amendment right not to be subjected to cruel and unusual punishment. Felix, without any lawful reason, was handcuffed by a prison officer and thrown against a wall, as a result of which he suffered "bruises, soreness, and emotional distress". Canby JR, relying on the case of Meredith (523 F. 2d at 484), held that "it is not the degree of injury which makes out a violation of the Eighth Amendment, but rather it is the use of official force or authority, that is "intentional, unjustified, brutal and offensive to human dignity".

Fourthly, the moral context of human rights demands an appreciation of justice for what it is. Justice is the highest truth in civil society and constitutes the root and essence of all morality from the appreciation of "being" for what it is. Man's obligation to be just ensures for him the right to act within the limits of justice. His duty to act in accordance with justice imposes on others the duty to respect this obligation. This duty-right-correlation implies that there can be no right in one person without a corresponding duty in others to respect that right. My duty, for example, to worship God gives rise to my right to worship God, a right which others have a duty to respect. Because duty is anterior to right, under the moral law, it does not necessarily give rise to rights in others. For example, my duty to worship God does not necessarily imply that other's rights are violated if I do not worship God as I should.

Fifthly, the maintaining, enforcing and application of the fundamental right to human dignity demand a serious engagement with and understanding of moral evil. The essential, connatural individual right to moral personhood and the rights pertaining to the activity of moral personhood, are rights embodied in the moral law and as such every infraction of which is itself moral evil.

Sixthly, the fundamental rights correlative to the values commonly associated with the obligations for protecting and promoting the “dignity” of man in society constitute two broad categories: The first basic category of rights in terms of human dignity is that of moral personhood. This “cluster of rights” includes the right to be treated as a moral subject and never as a moral object; the right to be treated morally equal, and thirdly, the right to be treated as a free moral person. The second category of rights is that of acting virtuously. This category includes the right to attain the Supreme Good, and the right to social benevolence. Social benevolence tends towards promoting moral virtue in society. The values enshrined in the moral law posit the duties of men as the counterparts of men’s rights to attain the highest Good and to act virtuously towards their fellow men. Because these values also provide the basis for justice in society, “dignity”, as the value of moral virtue, is the moral basis for man’s human rights. Social benevolence is based on equality: through faith in Christ all distinctions fall away; in similar fashion as Christ subjected Himself to his brothers, men should submit to one another – the one serving the other.

Seventhly, concerning Christians in particular, there should be a commitment to promote the common faith in Christ, from which flows a *communio iuris*. All Christians should live according to the *ius commune Christianorum* – with only one status and rank, namely the status provided by positive divine law (or the moral law in a spiritual sense). The benevolent liberty, exempting persons from the *lex irae* in subjection to the secular laws, cultivates the realisation that because they are followers of Christ, they are “free masters over everything and subject to no one”.⁴⁶

Eighthly, fundamental rights divested from the moral context of human “being”, open the door to relativistic and positivistic applications of connatural right. The reluctance to treat human dignity as a substantive “cluster” of rights within the purview of the Eighth and Fourteenth amendments to the United States Constitution is a typical example of an a-normative contextual treatment of human

46 Luther often quoted 1 Corinthians 9:19. In his work *De libertate christiana* (1520), Luther formulated these principles as follows: “1) Ein Christenmensch ist ein freier Herr über alle Dinge uns Niemand unterthan; 2) ein Christenmensch ist ein dienstbarer Knecht aller Dinge uns Jedermann unterthan.” Alluding to Romans 13:8, Luther states: “Ich bin frei in allen Dingen und habe mich eines Jedermann Knecht gemacht” and “Ihr sollt Niemand etwas verpflichtet sein, denn dass ihr euch unter einander lieb habt” (cf. Meurer, 1852:198-199).

dignity which, together with the disregard of moral evil within the Constitutional context, tends to reduce the fundamental right to dignity to mere cliché in constitutional jurisprudence.

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