

Human Dignity : The critically essential, universal and encompassing axiom for legal and political jurisprudence in governance of the state - and - of mankind.

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Historical Perspective:

The words of the Roman lawyer, political theorist and statesman - **Cicero** (106 to 43 BC) - **“*Salus Populi Suprema Lex*”** - ‘*The welfare of the people is the supreme law*’¹ - echoes in the mind when one considers the concept of ‘Human Dignity’ as the critically essential and encompassing axiom for legal and political jurisprudence in governance of the state - and - of mankind.

The cuneiform cylinder depicting- and accepted as- the ‘**First Charter of Human Rights**’ promulgated by **Cyrus II the Great of Persia** (576 to 530 BC) - dating from his dynasty at around **538 BC** - enshrined: freedom of association, freedom from oppression, freedom from forced labour and slavery, religious freedom and the non-violation of individual rights... essential concepts still utilised in all representative Declarations of Human Rights today!²

Human Dignity - Philosophic- and Legal perspective:

Analytical minds have - over the centuries contemplated the divine differentiation of man. This philosophy ordained the exploration of the existential prowess and divergence of man in relation to self and the diverse community of mankind.

Cicero contemplated that ‘*dignitas* referred also to the ***dignity of human beings as human beings...***’³

In unison - Classical Roman thought postulated that ***Dignitas hominis*** - the honour of man – was bestowed concomitant to the civil status of man. ⁴

Hugo de Groot (Grotius) – Dutch Lawyer & Philosopher (1583 – 1645) ...held that ***“...the offices of humanity, cannot be denied even to enemies, whom a state of warfare has not deprived of the rights and nature of men”***⁵

Immanuel Kant (1724 – 1804) a German Philosopher from Königsberg in Prussia is regarded as *‘the father of the modern concept of human dignity’*. ⁶

Kant’s understanding of human dignity required that ***“individuals should be treated as ends and not simply as means to an end.”*** ⁷

Charles Bernard Renouvier (1815 - 1903). In 1848 this French philosopher stated: *‘The Republic is a state which best reconciles the interests and the **dignity of each individual with the interests and dignity of everyone’*** ⁸ After the **French Revolution** (1789–1799) *“Dignity also took on a much more communitarian face, in part due to the common **association of dignity and communitarianism with republicanism”*** ⁹ based on the declaration of: *‘Rights of Man and of the Citizen’* approved by the Constituent Assembly of France, August 26th 1789. ¹⁰

1 **Cicero M**, *‘de Legibus III’* : at paragraph 8: <http://www.thelatinlibrary.com/cicero/leg3.shtml>

2 **Cyrus the Great** : ‘Charter’ : http://www.iranchamber.com/history/cyrus/cyrus_charter.php

3 **Cicero M**, *‘De Officiis I’* : at paragraph 30 & 67 : <http://www.thelatinlibrary.com/cicero/off1.shtml>

4 *Ibid* : at paragraph 96

5 **Grotius H**, *‘De Jure Belli ac Pacis’* -1625 - (Ed: Richard Tuck R & Barbeyrac J – Indianapolis 2005) Book II, Chapter 19 at paragraph 6. & *Ibid* EJIL - 6 infra

6 **McCrudden C**, *‘Human Dignity and Judicial Interpretation of Human Rights’* : The European Journal of International Law Vol. 19 no. 4 © EJIL 2008 : <http://www.ejil.org/pdfs/19/4/1658.pdf>

7 **Kant I**, *‘Metaphysics of Morals’*, Section 38 of the Doctrine of Virtue (Ak. 6:462). *Ibid* EJIL - 6 supra

8 **Renouvier C**, *‘Manuel Républicain de l’homme et du citoyen’* (1848); with introduction by M. Agulhon, 1981), at 93. *Ibid* EJIL - 6 supra

9 **McCrudden C**, *‘Human Dignity and Judicial Interpretation of Human Rights’*

10 *The rights of Man* : http://www.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man_and_of_the_Citizen

Core Perspective - 'Human Dignity' - in the our time:

The rightful legacy of the endeavours of mankind over centuries, has been the convergence of 'Human Dignity' as the nexus of contemporary jurisprudence in the broadest sense, encompassing the endowment of 'Charters of Human Rights' to the divergent citizens in democracies of the world!

The preamble to **Universal Declaration of Human Rights** - adopted by the United Nations General Assembly on December 10th 1948 at Palais de Chaillot – leads with:

*“Whereas **recognition of the inherent dignity and of the equal and inalienable rights** of all members of the human family is the foundation of freedom, justice and peace in the world...”*¹¹

The **Basic Law for the Federal Republic of Germany (Grundgesetz)** 1948 opens with a clause on Human Dignity which states:

*“**The dignity of man is inviolable.**”*¹²

The first section of the *Founding Provisions* of **The Constitution of the Republic of South Africa 1996** states:

*“**The Republic of South Africa is one, sovereign, democratic state founded on the following values: Human dignity, the achievement of equality and the advancement of human rights and freedoms.**”*¹³

The essence of all these declarations is epitomized in the prophetic and inspiring words of the first democratically elected president of The Republic of South Africa - **Nelson Rolihlahla Mandela** - at his inaugural address on May 9th 1994 in Pretoria, when he said:

“We enter into a covenant that we shall build a society in which all South Africans, both black and white, will be able to walk tall, without and fear in their hearts, assured of their inalienable right to human dignity - a rainbow nation at peace with itself and the world.”¹⁴

Applied ‘Human Dignity’ in the South African context:

Based on what has been said, one can concur with those maintaining that *‘Human Dignity is indeed a justiciable end enforceable right, that informs the interpretation of possibly all other fundamental rights.’* Echoing what I said at the onset: *“‘Human Dignity’ is the critically essential and encompassing axiom for legal and political jurisprudence in governance of the state and of mankind.”*

Core values of the South African society are enshrined in The Constitution of the Republic of South Africa 1996 and particularly in the second chapter - The Bill of Rights. At the heart of this declaration lies Section 10 stating: *“Human Dignity - Everyone has inherent dignity and the right to have their dignity respected and protected.”*¹⁵ No one is excluded and all are proclaimed to have inalienable *‘inherent dignity’* safe from disrespect or loss.

Read with Section 1 of the Constitution, which not only confirms the centrality of Human Dignity, but also sets *“...the achievement of equality and the advancement of human rights and freedoms”* as fundamental values of our Constitutional Order - one realizes that *‘Human Dignity’* is the common denominator in the adjudication of all fundamental rights as recorded in Chapter 2 of the South African Constitution, as quoted above.

11 *Universal Declaration of Human Rights of the UN* : http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

12 *Basic Law for the Federal Republic of Germany* : <http://www.iuscomp.org/gla/statutes/GG.htm>

13 *The Constitution of the Republic of South Africa* : <http://www.info.gov.za/documents/constitution/1996/a108-96.pdf>

14 **Mandela N**, *Inaugural Address*, Pretoria 9 May 1994 : <http://www.sahistory.org.za/article/nelson-mandela039s>

15 *The Constitution of the Republic of South Africa : Chapter 2 - The Bill of Rights*

Human Dignity - In South African Case Law:

Context – Core Value in Law:

In judgment of the matter *Dawood v The Minister of Home Affairs 2000* O'Regan stated that:

“Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights.”¹⁶

Context - Equality: (section 9)

In *President of the Republic of South Africa v. Hugo 1997* Goldstone said: *“At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups.”¹⁷*

Context - Life: (section 11)

In the *State v Makwanyane 1995*: In declaring the death penalty as unconstitutional Chaskalson held that: *“The death penalty destroys life, which is protected without reservation under section 9 of our Constitution, it annihilates human dignity which is protected under section 10, elements of arbitrariness are present in its enforcement and it is irremediable”¹⁸* He concluded - inter alia - in saying that: *“The rights to life and dignity were ‘the most important of all human rights, and the source of all other personal rights...’¹⁹*

Context - Freedom and security of the person: (section 12)

With reference to several international Declarations of Human Rights on the prohibition of inhuman, cruel or degrading punishment, Langa - in *State v Williams 1995* - reflected that: *“... a common thread running through the assessment of each phrase is the identification and acknowledgement of society's concept of decency and human dignity.”²⁰*

Context - Freedom of religion, belief and opinion: (section 15 - limitation of rights i.t.o. section 36) In context of the administration of corporal punishment to children in Christian Education SA's private schools - contrary to the prescripts of the Minister of Education – re: ***Christian Education SA v Minister of Education*** 2000 Sachs J held: *“There can be no doubt that the right to freedom of religion, belief and opinion in the open and democratic society contemplated by the Constitution is important. The right to believe or not to believe, and to act or not to act according to his or her beliefs or non-beliefs, is one of the key ingredients of any person's dignity... Religious belief has the capacity to awake concepts of self-worth and human dignity which form the cornerstone of human rights.”*²¹ Citing the central significance of ‘Human Dignity’ when balancing rights under the limitations clause Sachs confirmed the illegality of corporal punishment as an imposition on the rights of children, accordingly imposed a limitation on non-parental corporal punishment in South Africa.²²

Several further examples of the assent or limitation in the context of Human Dignity can be cited including: ***De Reuck v. Director of Public Prosecutions*** 2004 - the rights of children vs possession of child pornography; ²³ ***S v Manamela*** 2000 ²⁴ – the presumption of innocence... & more.

In closing: The continuing & divergent debate by analytical minds on the relevance & efficacy of ‘Human Dignity’ will shape its defining importance as legal axiom...

‘Salus Populi Suprema Lex’

16 ***Dawood v The Minister of Home Affairs***, 2000 (3) SA 936 (CC) : at paragraph 35 .

17 ***President of the Republic of South Africa v. Hugo***, 1997 (4) SA 1 (1997). : at paragraph 41

18 ***State v. Makwanyane and Mchunu***, 1995 (6) BCLR 665 (CC) : at paragraph 95

19 *Ibid.*, at paragraph 144

20 ***State v Williams*** 1995 (3) SA 632 (CC) : at paragraph 35

21 ***Christian Education SA v Minister of Education*** 2000 (2) SA 794 (CC) : at paragraph 36

22 ***Christian Education SA*** : at paragraph 51&52

23 ***De Reuck v. Director of Public Prosecutions*** 2004 (1) SA 406 (CC) : at paragraph 61

24 ***S v Manamela*** 2000 (3) SA 1 (CC) : at paragraph 40