

Human Rights Based on Human Dignity: Defence and Elaboration through an Examination of Andrea Sangiovanni's Critique

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I. Introduction

Recently, vigorous debate has emerged in the field of the philosophy of human rights, attracting not only moral, political, and legal philosophers, but also historians, lawyers, and civil society organisations. In the current debate, opponents attack so-called naturalistic theories of human rights, which historically comprise the mainstream of human rights theories. Naturalistic theories see human rights as those all persons have in virtue of humanity, and the rights are assumed to be captured by our moral reasoning independent of institutional or practical reasoning. Against this view, many critics contend that human rights cannot be captured simply by moral reasoning and we should focus more on practice(s) wherein human rights play their roles.

Some advocates of the naturalistic views tie values or interests that should ground human rights with the notion of human dignity. Specifically, they interpret the notion in international human rights documents like the Universal Declaration of Human Rights as embodying the moral reasoning underlying human rights. At the same time, stringent criticisms have appeared, which are against the assumed connection between human rights and human dignity. These claim that human dignity *should not* be the basis of human rights, because it contains normatively undesirable problems.

The purpose of this paper is to show that the notion of human dignity as a grounding value of human rights and naturalistic theories can be defended from criticism. To accomplish this, the paper is structured as follows. First, it shows that in influential theories of human rights such as the one offered by James

Griffin, the notion of human dignity in contemporary human rights documents is treated as providing important guidance for grounding human rights. Then, this paper defends dignity from Andrea Sangiovanni's series of new counter-arguments. Sangiovanni insists that theories of dignity should not be adopted while proposing a justification of *fundamental* human rights based on the value of resisting *social cruelty* for a person's *integral sense of self*. This paper responds to his contentions, arguing that his criticisms of dignity are ungrounded and the notion can work in the justification of human rights. In addition, implicit difficulties in his suggested view of human rights are pointed out, which to be overcome, will need the basic ideas of naturalistic theories.

II. Human Dignity in Naturalistic Theories

Before proceeding to the criticisms, I briefly overview how the notion of human dignity is used in contemporary influential theories of human rights. James Griffin, whose work, *On Human Rights* is often treated as not only the best book supporting naturalistic theories but sometimes as 'the most sophisticated philosophical treatment of human rights since the Universal Declaration' (Tasioulas 2016), locates dignity at an important position for his theory. He argues that in order to envisage the ground of human rights, which are 'indeterminate' in the current world, it is necessary to reinterpret their history and current practice. According to him, we use the 'Enlightenment notion' of human rights, which appeared in the late 18th century at the latest and survived until now (Griffin 2008: sect. 1.1). Although the Enlightenment notion is incomplete to achieve 'determinateness', it is possible to find the substantive explanation of the central value in the notion (Griffin 2008: sects. 2.1-2.3). According to Griffin, we can acquire the substantive explanation by searching for the best interpretation of the notion of human dignity that appeared in the tradition and exists in current international human rights documents (Griffin 2008: 5-6, 21). Presuming this, as the interpretation of (human) dignity relevant to human rights he shows the notion of normative agency: 'our being able to form a conception of a worthwhile life and then pursue it' (Griffin 2008: 47). Thus, in his view, human rights are considered as 'protections of ... dignity' interpreted as normative agency (Griffin 2008: 3).

Like Griffin, many naturalistic theorists conceive dignity as an important

source of human rights, as in the case of Martha Nussbaum, who interprets the notion in the language of capabilities (Nussbaum 2011: 31, 62-7). Therefore, to these theorists, dignity in contemporary human rights documents should be interpreted as embodying moral reasoning such as for agency or central capabilities (Griffin 2010a: 751; Liao & Etinson 2012: 335). In this way, in many naturalistic theories, dignity is captured as the primary source from which to ground human rights.

III. Sangiovanni's Criticisms of Dignity and Responses

1. Theories in Three Traditions, or Mixed Theories?

Andrea Sangiovanni's recent book titled *Humanity without Dignity* offers a comprehensive view that objects to human dignity, with unique and precise analyses of some philosophical views of dignity.¹ He considers three branches in the philosophical traditions of dignity, namely Aristocratic, Christian (especially, Catholic, *inter alia*, Thomistic), and Kantian, and rejects them all. I believe that the best contemporary theories of human rights that utilise the notion of dignity do incorporate advantageous resources of the three traditions, and it is logically possible that even if each of the three traditions has pitfalls, a human rights theory that relies on the best elements of the three can avoid them. As such, Sangiovanni's focus on the three respective traditions (or contemporary exemplary theories thereof), not on contemporary *mixed* theories of the three, may lead him to underestimate the potential of dignity for the desirable theory of human rights.

Consider Griffin's argument again, this time as one of the best mixed theories available in the contemporary debate that utilise elements of the three traditions. First, when he interprets dignity through normative agency as a grounding value of human rights, he employs the notion of dignity used by Christians, *inter alia*, Pico della Mirandola, as an important instruction (Griffin 2008: 26, 31, 133, 152; Griffin 2010a: 742, 751; Griffin 2012: 14-5; Griffin 2014: 226-8). He observes that at least after the late Middle Ages persons in the Christian world started to envisage themselves as 'having been made in God's image' and as normative agents or the 'creator[s]' of themselves like God (Griffin 2008: 150). Second, he is to some extent close to Kant.² The similarity appears when he sets the notion of normative agency authoritative to human rights and

acknowledges ‘deriving’ concrete human rights from it, similar to how Kant derived rights from the ‘Universal Principle of Right’ (Griffin 2008: 192; Crisp 2014: 145). In addition, importantly, there is a symmetry between Kant’s dignity possessed by those who are ‘the subject of a morally practical reason’ and Griffin’s dignity possessed by normative agents (Crisp 2014: 146-7). Third, Griffin treats human rights based on normative agency as the special standing of (most) human beings compared to other beings, similar to the special status aristocrats possessed compared to others in the past. According to him, ‘[h]uman dignity must be a high value inhering in human status’ (Griffin 2014: 226; see also Griffin 2008: 26-7, 44). To summarise, Griffin uses some elements of the Christian tradition to envisage the idea of normative agency, which, similar to Kant, he treats as authoritative and applicable to rational and volitional agents, based on which he decides who are in the class of high status or standing.

Like Griffin, many contemporary naturalistic theorists adopt views that contain elements of the three traditions. Although I believe this fact alone can help them avoid the problems of each tradition claimed by Sangiovanni,³ some of his criticisms still apply to many, including the best naturalistic theories of human rights that utilise the notion of dignity. At least Sangiovanni’s two criticisms of the Aristocratic tradition and one of the three traditions are still relevant to the best naturalistic theories, and it is worth responding to them.

2. Two Criticisms of the Aristocratic Tradition and Responses

Sangiovanni’s criticisms of the Aristocratic tradition apply directly to many dignity-based naturalistic views. According to his interpretation of the tradition, those with ‘elevated social standing’ (Sangiovanni 2017: 18, 23) were treated as having dignity, while in the contemporary sense, all persons are assumed to possess this standing. In this sense, if we live with the standing, we are treated as living dignified lives. According to Sangiovanni, a person may lose dignity understood in this way when faced with torture or slavery, because in this situation, he or she is no longer in the standing of a ‘dignified man or woman’ or loses the ‘capacity to live such a dignified life’ (2017: 24-5). Therefore, in this understanding of dignity, ‘[t]he person who lives in squalor lives a life “beneath the dignity” of a human being; such squalor makes him or her incapable of acting in a dignified or “decent” way; people in such conditions are not living lives that are “worthy of dignity”—worthy, that is, of their higher place in the

order of nature' (Sangiovanni 2017: 25). He sees this view as implicit in influential naturalistic views and criticises them. Especially criticised are David Miller's human needs theory in which decency or the level of needs is set according to societal conventions, and Martha Nussbaum's approach where humans' central capabilities are treated as necessary for a life with dignity. According to Sangiovanni, the problem exists in the depiction that dignity can be lost. If you do not live in miserable adversity, you are said to live with dignity. This means that others can destroy your dignity or your ability to live in a dignified life when, for example, you are sent to a slave camp or tortured (Sangiovanni 2017: 25). Sangiovanni sees several pitfalls or implausible consequences of the depiction. Hereafter, I respond to the alleged problems.

First, according to Sangiovanni, the depiction has two 'odd' implications, both of which concern the existence and absence of dignity. One is 'the implication that someone who is very poor (or living in "squalid" conditions), and who as a result does not "stand tall", *lacks* dignity or, in Nussbaum's phrase, is "unworthy" of dignity, or, alternatively, must be living an "indecent" life' (Sangiovanni 2017: 26, italics original).⁴ For example, in Nussbaum's view, you are *unworthy* of dignity if you do not possess one human central capability among those listed. The other 'odd' implication mentioned by Sangiovanni is that 'someone who is strong enough to *withstand* an assault on his or her dignity doesn't have a claim against his or her oppressor, since, if the claim is based on the worth of living with "human dignity", then his or her human dignity has not been set back at all' (Sangiovanni 2017: 26, italics original). However, these implications are not odd at all. Regarding the former concern, we must consider the use of the term dignity. As Thomas Pogge (2014a; 2014b) rightly points out, there are 'two distinct but related meanings' of dignity. One is 'inalienable' dignity, and the other dignity is 'precarious and stands in need of social protection'. This dual meaning can be coherently interpreted as 'inalienable' dignity requiring its own 'realisation' (Pogge 2014a; Pogge 2014b). We can understand this dual meaning of the concept using the analogy of the Invincible Armada. Why do we need to think of the Invincible Armada as always invincible? Some people (perhaps mostly in Spanish empire) 'expected' the Armada to 'realise' to be invincible, although in reality, it is not always so. Human dignity is treated as inalienable, because it is expected to be so, and thus to realise that. Therefore, the dignity of a person in squalid conditions is not yet realised, but at the same time, it is

expected that he lives a decent life or realises dignity. Thus, he *is* worthy of dignity. Regarding the latter concern, we must take the inter-subjective nature of social standing into account. Even if the oppressed can ‘withhold an assault’, the existence thereof means that her standing is in danger. Dignity as social standing or status exists when her *relations* with others are composed in a relevant way, such that her decent life is secured in a community or her capabilities are treated as (part of) objects of social policies. (This point can be understood as one requirement of ‘practicalities’, especially that of general social information. I return to this later.)

Sangiovanni’s second criticism of the depiction that dignity can be lost is that wrong events that allegedly harm dignity are wrong, because of reasons other than the harm to dignity. In his view, it is ‘hard to believe’ that ‘the wrongness of torture or slave camps [is] contained in the fact that it makes it hard for us to maintain a dignified bearing’; rather, ‘it is the suffering, the humiliation, and ... the cruelty involved in cases like these that matters, *not* our dignified bearing’ (Sangiovanni 2017: 25-26, italics original, see also 210). Certainly, it is true that there are obviously many wrongs in slave camps and torture, where the interests of a person not well-connected to her social status or standing are involved. At the same time, however, interests that are connected to her status and standing are also infringed. Both types of wrongs occur at the same time. Reading Sangiovanni’s statement as ‘in torture and slave camps many interests other than those connected to social status or standing are infringed’, it is true, but who is the theorist who insists that dignity in the Sangiovannian-aristocratic sense captures *all* wrongness in torture and slavery? As long as the notion of dignity concerns human rights, as in the uses of Miller, Nussbaum and Griffin, the purpose of the reference is to explain the grounds of human rights. Theorists of dignity or decency explain these grounds by limiting the interests to those connected to dignity or decency while acknowledging the importance of other values. As Miller rightly argues, ‘the grounds that one gives for the human right not to be tortured do not have to explain the full wrongness of torturing’ (Miller 2014: 161, n.11). To distinguish human rights from other domains of ethical notions (even if the latter can also show reasons for the wrongness of torture), core interests that should ground human rights are needed. Indeed, Sangiovanni himself classifies the particular wrongs involved in torture as those which infringe the interests necessary to an ‘integral sense of

self' (2017: 75-86). I return to this point in the final section.

3. Criticism of the Three Traditions and a Response

Sangiovanni offers another criticism that applies to all three traditions, as probably the most grievous one. In these traditions, we cannot find reasons why dignity is possessed by all *equally*, because there are variations between persons in realising levels of dignity or their capacities to realise it. These are variations in persons' capacities to live according to their status as humans in the Aristocratic tradition, their rational and volitional capacities that are similar to God's image in the Christian tradition, and their ability to choose rationally in the Kantian tradition (Sangiovanni 2017: 26, 28-35, 104-5). According to Sangiovanni (2017: 26), questions like the following hold: 'Why shouldn't those who have realized their human dignity to a greater extent have more of a claim than others?' '[D]on't individual capacities to live in accordance with "human dignity" vary? And, if that is true, shouldn't their claims vary too?' As a result, it becomes difficult to show that we are *equal* in dignity. He sees the explanation of equality as a desideratum that any theories of dignity must offer, following the observation by Allen Buchanan ([2010]2014) that the egalitarianism of human rights exists in our practice (Sangiovanni 2017: 15).

Naturalistic theorists, *inter alia* Griffin, have responded to this line of criticism while acknowledging the variations in capacities for or realisations of the values that ground human rights. They argued that while capacities or realisations vary, relevant to human rights is the threshold or minimum level of capacities or realisations. In this view, once persons are above the threshold of capacities or realisations, then remaining variations are irrelevant to the status. For the proponents of this view, '[n]one of these continuing differences in degree above the threshold prevent there being a valuable status' (Griffin 2010b: 348; cf. Griffin 2008: 44; Griffin 2010a: 748).

Perhaps, Sangiovanni wants to point out that because in this view it is admitted that there are gradations of status below the threshold—for example, children's insufficient capacity may not grant them the full status (Griffin 2008: sect. 4.7)—the view must also admit gradations of status above the threshold; i.e. there is no reason not to do so. Yet I think there can be at least two reasons.⁵ To explain, I formulate the argument of dignity in question as follows: interests related to the capacity for x, or realisation of x should explain the possession of

dignity and thus of human rights. The objection is that the capacity for x or realisation of x would not be equal above a set threshold, and it is natural to reflect this inequality in the possession of dignity and human rights. Here, I suggest that one possible reason to reject the inequality above the threshold is that the list of interests related to the capacity of or realisation of x contains an interest related to equality. For example, if a psychological interest of recognition by others as equals is the interest of this kind—I think Sangiovanni’s idea of an ‘integral sense of self’ relies on this kind of interest and touches on this point later—, then there is a strong reason to think that dignity is equal among persons who possess it. Another possible reason is that equality of dignity should be inserted from outside the formulation, and this should override the natural requirement of reflecting variations of the capacities or realisations relevant to dignity above the threshold. Perhaps a probable specific rationale for the insertion is the strong egalitarianism of dignity enshrined in the actual practice,⁶ or the fact that ‘[e]qual respect for persons figures in ethics at a particularly deep level’ which ‘gestures some form ... of equal moral weight for all persons’ (Griffin 2010a: 755). If it is difficult to deny these two possible reasons, it means that the notion of dignity need not explain the equality of capacities or realisations of it, as obvious in the latter possibility. Therefore, there is no need to adopt the desideratum of explaining equality in dignity. In other words, our support for the egalitarianism of human rights does not necessarily require the egalitarianism of the capacities or realisations of persons’ dignity.

IV. Criticisms of Naturalistic Theories and Responses

Sangiovanni does not only argue against the notion of dignity but also against naturalistic theories. Although he examines and criticises Griffin’s and John Tasioulas’ works as two exemplary naturalistic theories, hereafter I concentrate on his criticisms of Griffin, as Sangiovanni’s views of Tasioulas seem plausible.

Sangiovanni’s basic thought in criticisms of Griffin’s view is that it cannot show the content of human rights, which should be distinguished from other moral rights or all moral rights ‘simpliciter’. As seen, for Griffin, the grounding value of human rights is normative agency, and human rights are distinguished

from moral rights simpliciter in the sense that the former is 'necessary for the protection of normative agency' (Sangiovanni 2017: 180; cf. Griffin 2008: 64, 90, 101, 263). Yet Sangiovanni is sceptical about whether this distinction can work. His contention is the same as the already suggested dilemma of 'austere' and 'rich' interpretations of normative agency (Buchanan [2010]2014: 95-6; Tasioulas 2010: 659-660; Cruft 2014: 124; cf. Raz 2010: 326). According to the 'austere' interpretation, normative agency is treated as 'the bare capacity for intentional action together with some measure of its successful exercise' (Tasioulas 2010: 660) or the capacity ensured if 'existence as normative agents' is maintained (Buchanan [2010]2014: 95). Adopting this interpretation, however, even slaves can be treated as possessing normative agency, since their owners obviously utilise their capacity for 'intentional' action (Tasioulas 2010: 660). Thus, possibly, even a slave 'can form a conception of a worthwhile life within the constraints to which they are subject and take effective steps to pursue it' (Buchanan [2010]2014: 95). On the other hand, it is possible to adopt the 'rich' interpretation, which states that relevant normative agency requires the protection of 'the opportunity for "reasonably effective" or "adequate" normative agency' (Buchanan [2010]2014: 95), which can accommodate the right against slavery. Yet this comes at a tremendous cost: indeterminacy regarding how much liberty or wherewithal is required for 'reasonably effective' or 'adequate' normative agency (Tasioulas 2010: 660; Buchanan [2010]2014: 98). If all moral rights that can contribute to 'adequate' normative agency are considered as human rights, then we cannot distinguish these from moral rights simpliciter (cf. Raz 2010: 326-7). When Sangiovanni rejects Griffin's view, this dilemma is suggested in a replicative way. He highlights the same misgiving for 'rich' interpretation when mentioning, '[i]f Griffin identifies "normative agency" as a fully realized capacity "to choose one's own path through life" ... then *all* moral rights could be construed as contributing to such a life' (Sangiovanni 2017: 180, italics original). Alternatively, as in the 'austere' interpretation, he says that if what Griffin says is that normative agency requires moral rights that are 'necessary' for its protection or those rights without which agents cannot live worthwhile lives, then, a moral right against slavery is not 'necessary', because her position as a slave makes it only difficult for her to live a worthwhile life, not to make it impossible (Sangiovanni 2017: 180-1).

Griffin's basic reply to this dilemma is that it exists only when the 'austere'

and 'rich' interpretations are 'the only plausible ones' (Griffin 2010a: 747). According to Griffin, however, '[h]uman rights ... are rights to what allows one merely to act as a normative agent' (2010a: 747). This should be the criterion to distinguish human rights from other moral rights. As such, '[n]ormative agent' is ... a threshold term' (Griffin 2010b: 348). Yet questions continue. What is required to be allowed 'to act as a normative agent'? How can we determine the threshold of normative agency?

For this, we must look at how Griffin determines what is required to be allowed 'to act as a normative agent' and what is not, or the threshold of the requirement of normative agency. Griffin's writings can be interpreted as supplying at least two theoretical sources for the threshold. I show that the first should be reduced to the other substantial interpretation, and the latter should be supported with provisos.

The first interpretation is suggested by Sangiovanni. According to it, the threshold is given because any theory of human rights must be faithful to 'the way human rights are conceived by practitioners' (Sangiovanni 2017: 181). As explained in section II, Griffin wants to achieve the determinacy of sense by appealing to the historically developed notion in the current language community. From this, the interpretation sees his writings as indicating that the determinacy of the language of human rights, which requires a threshold of requirements of normative agency, is given by reference to the use of the language in the actual practice.

Important is being faithful to the use of practitioners if the grounding value of human rights should be 'taken up' and 'endure' in the language community, as Griffin (2008: sect. 4.6; 2010a: 750; 2014: 221) and perhaps most human rights theorists accept.⁷ If the determinacy of the language is important for any view of human rights to be taken up and endured in practice, then we may think that the threshold should be searched for in the practice.⁸ We cannot, however, rely simply on practice, as there are many values and interpretations of these in the practice. In addition, even the value of normative agency in practice is open to many interpretations among the participants therein. Some practitioners believe that the right against discrimination can be shown from the value of normative agency while others do not,⁹ and the practice itself cannot demonstrate whether it contains the right or not. Therefore, to determine what is inside the threshold that should be taken up and endured, substantial

reasoning is needed.

Therefore, a substantial source is needed to appropriately interpret the value of normative agency that would set the threshold. The second source found in Griffin is this substantial one; i.e. 'practicalities'. Practicalities represent 'empirical information about ... human nature and human societies' (Griffin 2008: 38) and contribute 'to fix[ing] boundaries for the right' in question (Griffin 2008: 73). Griffin uses the human right to basic education as example. In his view, even though an illiterate person can have the capacity to choose and pursue his or her worthwhile life, literacy without doubt increases the number of those who can actually choose and pursue their worthwhile lives. Yet it seems also true that if people can access not only to the literacy education, but also bachelor's or doctoral studies, the number of people who can actually choose and pursue their worthwhile lives will increase (Griffin 2010b: 348). If so, do we have a human right to the latter education? In Griffin's view, to set the boundary of the content of a right (e.g. the level of education required to represent the human right to education), we must see not only the effects of the content (e.g. the effect of education) on normative agency, but also social manageability (Griffin 2008: 37-39). Griffin proposes considering the 'general run of people' as the application of social manageability to set the boundary of the education required as a human right (Griffin 2010b: 348). According to him, '[i]n drawing the dividing line, we should consider the general run of people' and when 'the conditions necessary to ensure that this general run of people will be at or above the threshold [of normative agency]' the boundary of the required education will be set (Griffin 2010b: 348). Thus, in Griffin's view, we can set the boundaries or lines of objects of human rights by considering social manageability.

However, substantive criteria are needed to judge what is or is not needed for social manageability. For Griffin, the principle of 'ought implies can' is at the centre of the practicalities or social manageability (Griffin 2008: 98-100, sects 6.1, 6.2). I claim that while this line of thought is essentially appropriate, it should be complemented with at least two provisos.¹⁰ Griffin states that practicalities require consultation with human and social nature, in which the 'ought-implies-can' principle is a criterion to determine the requirement of human rights. According to him, concerning the human nature, the limits of 'human understanding' and 'human motivation' are the determining factors of human

rights (Griffin 2008: 72, 98), while for social nature, the ‘particular circumstances’ of a society determine these (Griffin 2008: 38).

As a proviso to this line of thought, first, I claim that the reference to human nature, such as human understanding and motivation, should be limited only to normatively desirable nature. Consider the following case of the formation of adaptive preference, as an example of undesirable human understanding. A reasonably rich society exists wherein the norm that higher education such as doctoral studies are reserved for males is prevalent. At the same time, many women are so accustomed to the norm that they do not even think about obtaining higher education, even if this will increase the prospect of the success of their worthwhile lives. I believe, in this society, even if women can choose and pursue some worthwhile lives without higher education, it is not desirable to treat their understanding as given, and hence the conditions to decide the success of worthwhile lives of the ‘general run of people’, for example, as given. Here, we should avoid assuming the nature that ‘people tend to get accustomed to an undesirable situation and form their worthwhile lives according to it’ as *a priori*.¹¹

Second, concerning social nature (although it is related to human nature), in restricting the content of human rights, the relevant social nature should be *robustly* infeasible, not *weakly* infeasible.¹² *Robust* feasibility is the unrealisability that in the present and foreseeable future, the realisation of the objects is impossible. Examples here include everyone’s right to go to the Moon. *Weak* feasibility is the unrealisability that society has failed to accomplish the object because of volitional, structural or other avoidable failures, not because of unavoidable failures. I claim that the former is relevant in restricting the content of human rights, but the latter is not. The reason is that a human right should not be determined by the failures of society that can be avoided. If we approve of weak infeasibility as a legitimate reason for a right not to exist, the right is subject to real-world failures and loses the potential to change these failures, and thus, to realize itself.¹³

I do not claim that these provisos as exhaustive, but (in collaborations with other appropriate provisos¹⁴) they make it possible for practicalities to show the threshold and restrict the content of human rights. In this sense, Sangiovanni’s critique of Griffin does not succeed.¹⁵

V. Sangiovanni's Alternative: A Genuine Alternative to *Humanity with Dignity*?

I. Sangiovanni's Alternatives to Dignity and Naturalistic Theories

Instead of dignity and the naturalistic theories, Sangiovanni shows the idea of 'integral sense of self' and a context-sensitive human rights theory. According to his interpretation of the 'paradigmatic' instances of treating others as inferior or unequal such as torture or genocide, the 'wrong-making property' is 'social cruelty' (Sangiovanni 2017: 75-6). Social cruelty is wrong because it involves the 'use of another's vulnerability to attack or obliterate ... [his or her] capacity to develop and maintain an integral sense of self' (Sangiovanni 2017: 76). By self he means 'what is sometimes called one's self-conception, one's conception of the values, commitments, and concerns that are central to one's life, the relationships and roles that make one the "kind of person" one is' (Sangiovanni 2017: 79). To have an integral sense of self requires that a person has two views of herself, first as 'a creator and enactor' and second as 'what ha[s] been created and enacted' (Sangiovanni 2017: 79). This sense has special value as it is 'a constituent ingredient and structural element of a flourishing life' (Sangiovanni 2018: 82). Social cruelty attacks the sense by destroying 'our nature as *self-presenting* beings' (Sangiovanni 2017: 82 italics original). Sangiovanni insists that torture endangers our self-presenting nature (2007: 83-5); thus, social cruelty (and its cases like torture) is wrong. To protect us from social cruelty he requires 'opacity respect', which means treating the inner life of a person as 'opaque' (Sangiovanni 2017: 88). According to Sangiovanni, this type of respect is required because by making 'the contingent aspects of ... [persons'] life and situation as opaque' (2017: 88) it can offer space for self-presentation that is required to guarantee the conditions necessary for an integral sense of self (82-5, 88-90). In this way, he postulates the integral sense of self and opacity respect as substitutes for dignity and the respect based on it.

The idea of an integral sense of self also plays an important role in Sangiovanni's unique view of human rights. According to him, there are 'multiple' human rights practices, and human rights should vary according to the context of each practice. He continues that naturalistic theories assume the existence of 'an underlying moral unity to human rights practice' (Sangiovanni 2017: 196). However, he proposes abandoning this assumption and accepting that

'conceptions' of the human rights 'concept'—'moral rights whose systematic violation merits universal moral, political, and legal concern' (Sangiovanni 2017: 197)—can differ according to each practice. For example, a human rights 'conception' for Amnesty differs from the 'conception' of, say, a Canadian politician who considers whether the country should intervene in Syria, because their contexts are different (Sangiovanni 2017: 198-9). The context must be specified, the expected role of human rights in the specified context explicated, and human rights in the context and their role identified (Sangiovanni 2017: 205-6). Sangiovanni (2017: chs. 5 and 6) focuses on the international legal human rights system as an example of multiple practices and sees rights constitutive of equal moral status as 'fundamental', as they avoid social cruelty and protect the integral sense of self (Sangiovanni 2017: 240, cf. 210-1). These 'fundamental' rights also allegedly demonstrate the moral reasoning behind 'the super-norms of international law, namely *jus cogens*, *erga omnes*, and rights nonderogable in states of emergency' as their 'moral heart' (Sangiovanni 2017: 235, cf. 241-4).

2. Do Sangiovanni's Alternatives to Dignity and Naturalistic Theories Succeed?

Although Sangiovanni's alternatives are unique and interesting, I doubt that his proposal of resisting social cruelty for the integral sense of self can succeed as a genuine alternative to dignity. I also argue that naturalistic theories are needed to deal with the shortcomings of his context-based view of human rights.

First, problematic for him is explaining the reason for regarding interests connected to social cruelty, and thus the integral sense of self, as a suitable basis for equality and 'fundamental' human rights. Although he shows the interests from his interpretation of paradigmatic cases of treating others as inferior or violations of human rights, it seems that in these cases, many *interests* are infringed including those concerning the integral sense of self and normative agency, for example. Here, it is difficult to single out interests that are peculiarly infringed in the paradigmatic cases. If so, the reason that one or some interest(s) are implicit in wrongdoings and serve as the basis of 'fundamental' human rights must be highlighted. Sangiovanni himself singles out a person's interests connected to an integral sense of self for a person, namely being able to see herself as an 'autonomous, or self-governing' self-creator and self-created (2017: 80). I dare not criticise this view, although

Rozenboom (2018: 508) regards it as close to the Kantian view Sangiovanni criticises. However, noteworthy is that singling out interests relevant to ('fundamental') human rights gives rise to the question of what interests should ground human rights. In this situation, where many interests can explain the wrongness of typical human rights violations, he cannot avoid engaging in the controversy over what interests are appropriate as a basis of (in Sangiovanni's case 'fundamental') human rights. This is the question that candidates of the answer have been noted by naturalistic theorists (e.g. normative agency or central capabilities) (Griffin 2008: 93-4).

Second, related to the first point, I argue that Sangiovanni's strategies to answer the 'variation objection', which he regards as fatal to the dignity-based theories as we discussed earlier, is very close to the strategies adopted in naturalistic theories. In his conception of the integral sense of self, as Sangiovanni (2017: 104) recognises, individuals' capacities to develop or maintain it vary: some are vulnerable, while others are not. To avoid the conclusion 'we are not equal because our vulnerability differs', he seems to introduce two strategies. The first is to argue that our 'central rights-generating interests against inferiorising treatment grounded in our sociable nature' (Sangiovanni 2017: 103) requires equality. I read this as meaning only that our interests for equality are stringent and should be respected. Naturalistic theories can take the exact same position as seen in section III. Sangiovanni's second strategy is to invoke opacity respect to vulnerabilities of individuals (2017: 104-9). In the first place, it is difficult to interpret Sangiovanni's statement that 'the third-party duties, and hence the character of the rights, will vary according to people's *vulnerability*' (2017: 105, italics original) in a way consistent with his conception of opacity respect, which requires treating another's inner lives (88) and 'another's weakness and vulnerability as opaque to us' (91). Perhaps we can understand this coherently by interpreting it as 'vulnerabilities of a person should be reflected in our attitudes toward her, but we must behave as if they are opaque'. This interpretation approves, however, that respect for a person with *less* vulnerability and another with *more* vary, because we are required to reflect on the variation. Sangiovanni may reply to this by saying that "variance" ... should not be understood in terms of scalar', and '[t]he respect that people are owed will vary in more complex ways' (2017: 105). To explain the 'complex way', he provides two arguments concerning less and more vulnerable persons

respectively. First, we must 'embrace' variations and acknowledge that specific vulnerabilities shape 'interests against particular kinds of harm' or social cruelty (Sangiovanni 2017: 106-7). For example, we must consider the special interests of children or patients with a mental illness who possess the capacities to develop and maintain an integral sense of self (107-9). Yet is this a claim far from those of naturalistic theories? Consider Griffin's normative agency theory. I believe that as long as a person is a normative agent, if her certain vulnerabilities such as suffering from amyotrophic lateral sclerosis threaten normative agency, then there is a *prima facie* reason to acknowledge her special interests in the use of a wheelchair and so on (even though the embracement should be 'practical' to be the base of human rights as discussed in the previous section). Second, Sangiovanni insists that even less vulnerable persons whose integral sense of self is not easily fractured still have the interests in the guarantee of social conditions for this sense of self. To demonstrate this, Sangiovanni (2017: 109) relies on a 'general' assumption about the interests relevant to our ability to maintain an integral sense of self. He argues that if there is a person with a strong integral sense of self that is not threatened when the assumed conditions against social cruelty envisioned by Sangiovanni are deprived, she 'lack[s] the essentially sociable nature that is typical of us as human' (Sangiovanni 2017: 109). Note that these consultations of social and human nature are the same as those embraced by naturalistic views in the name of practicalities. If he claims the consultations are appropriate, he must acknowledge that his view is only a version of naturalistic theories, not an alternative to it.

Third, I doubt that 'practices' of human rights can be separated and their contexts can be isolated. For example, even when Canadian political leaders are concerned about only human rights the violations of which can be a reason to intervene in another country, it is not morally controversial to say that they must also consider conditions of the interests of persons in that country after the intervention. In other words, the leaders must be concerned not only about the human rights relevant to *jus ad bellum*, but also about those relevant to *jus post bellum*. Importantly, the latter concern also guides local politicians in the country intervened as well as international or domestic human rights organisations. If so, it is dubious that the human rights practice can be separated into practices and the contexts isolated.¹⁶ Even if we can isolate the

contexts, the context-sensitive view faces another problem. If human rights violations in the context of Amnesty differ from those in the context of coercive interventions, persons whose interests are infringed on cannot see whether the infringements can be blamed by appeal to the language of human rights or not. For example, to know whether an infringement of interest is an appropriate matter of human rights in the context of Amnesty requires moral calculus, which needs tremendous understanding of at least the purpose, history, costs, and benefits of the existence of Amnesty. This means that the information on the context is beyond the reach of ordinary persons who use the language of human rights, and I cannot believe that they agree with the result of the calculus. However, if we see the history of human rights, as Forst (2018: 203) points out, the language of human rights has been used to 'cut across the contexts'. If so, then Sangiovanni's 'concept' of human rights as 'moral rights whose systematic violation merits universal moral, political, and legal concern' cannot provide guidance regarding the correct usage of human rights that span many contexts. This is because the 'concept' cannot show whether each violation of interests less than the worst misery of persons perhaps such as their death by a chemical weapon is a matter of moral rights that merits universal concern. We need the notion of human rights that regulates across contexts and provide predictability for persons who use the language. For that a more substantive grounding value of human rights is needed, which is typically demonstrated in naturalistic theories.

To this claim, I suppose Sangiovanni might reply that the multiplicity of practices can be compatible with 'the idea of a single project' of human rights, because he introduces an interesting analogy to argue that the multiplicity of practices does not entail the abandonment of 'the idea of a single project'. In his view, to engage in the 'project of building a vibrant city', there is no need for artists, engineers, and restaurant staffs to conceive of themselves as engaging in the same practice; rather, they may have different ideas of a vibrant city and they may engage in different practices (Sangiovanni 2017: 204-5). Yet is Sangiovanni prepared to affirm that if everyone in the city interprets the idea of a 'vibrant city' in his or her own way, it may lead to a city where within a square kilometre of the city centre a nuclear power plant is located, surrounded by small English gardens and many Japanese restaurants? I cannot consider this is a vibrant city, and perhaps even the engineers and politicians who want

to introduce the powerplant at the centre of the city cannot envisage this as a vibrant city if they understand the necessity of secured area around the powerplant. There can be inconsistencies in participants' ideas about a vibrant city, which leads the city in a way no one thinks as vibrant. Fortunately, what we need in the context of human rights is a determinate idea of the rights to guide the endeavour of those who participate in the language community of human rights, not a vague notion like 'vibrant city'. This paper showed that thus far, the idea is made possible by naturalistic theories that envisage persons as having human rights in virtue of *humanity*, and among these, theories indicating the grounding value of the rights as an interpretation of *dignity* remain promising; i.e. we still need an idea of *humanity with dignity*.¹⁷

Notes

1. Sangiovanni deals with and opposes (human) dignity, not only that used in human rights theories, but also that in broader ethical theories of equality. However, not to blur the focus of the paper, I concentrate on the dignity used in the former.
2. Note that Griffin rejects Kant's ethics for several reasons such as excluding 'practicalities', which he thinks necessary for a theory of human rights (see, for example, Griffin 2008: 59, 76, 96; Griffin 2014: 222). I touch on 'practicalities' later.
3. For example, as Griffin envisages human rights as secularised from the Christian natural rights tradition (2010b: 339-40), the claim on the relation between soul and body, called 'hylomorphism' can be avoided. Sangiovanni (2017: 31-6) sees hylomorphism as desperately controversial, but at the core of the Christian tradition.
4. Cruft (2014: 124), as an objection to Griffin, has a similar concern.
5. My explanations below get basic hunches from Buchanan ([2010]2014).
6. Griffin (2008: 144) seems to use this reason.
7. Sangiovanni would also accept this, as he requires a human rights theory to be 'reasonably determinate' to help evaluate and improve the practice, or according to him, 'practices' (Sangiovanni 2017: 179).
8. Even though some important human rights documents in the practice are not fully morally authoritative, partly because political powers have affected the formation thereof, they should be treated as 'recording the considered convictions of their drafters' (Miller 2014: 154) that are accepted by many people.
9. Barry & Southwood (2011: 373) doubt that the right against discrimination can be accommodated as a human right by normative agency.
10. I think Griffin notices both provisos. For example, when he says there is no human right against a rare disease, the treatment of which costs tremendously, he envisages the *robust* infeasibility that I touch on later (Griffin 2008: 98). My argument can be interpreted as offering more general and appropriate formulations of the provisos.
11. Note that Griffin claims more in somewhat different direction that there are values, the appropriateness of which is naturalistically guaranteed irrespective of the preferences of the persons in question (Griffin 2008: 112-120).
12. I borrowed the expressions of *weak* and *robust* feasibility from Valentini (2012: 190-1), although I do not follow perfectly her use thereof. Cruft (2018: 331) also offers a similar distinction between infeasibility that is 'logically, metaphysically, or physically impossible' and that which is not.
13. For several ways in which human rights can be appropriate objects of aspiration and guide our actions, see Brownlee (2018). Griffin says, however, against the view that human motivation is plastic and changeable, arguing that even aid workers who know the plight of the famine aid considerably less than the level that further aid makes the benefit of the aid worker's or his important person's benefit equal to the benefit of the aided (Griffin 2008: 72-3). For scepticism regarding the 'natural partiality' Griffin treats as given and non-changeable, see Cruft (2010: 180-1). Note, however, that this is to be understood as a debate between the sorting of objects into *robust* or *weak* infeasibility, not as one concerning the very distinction between them.
14. For example, the compatibility of rights inside human rights can be included in the practicalities, as Miller (2007: 185-195) elaborates as an interpretation of Griffin's notion of practicalities.
15. This does not mean that I completely agree with Griffin's view. Rather, I think that

equality of status should be added as a grounding value of human rights, as Eddy (2007) and Buchanan ([2010]2014) do. My point is only that practicalities play an important role in distinguishing human rights from rights simpliciter.

16. In addition, I am sceptical about the possibility of identifying the expected role of human rights in a given context. Let me show an example. As his interpretation of the international legal human rights system, Sangiovanni (2017: 207) states it is 'uncontroversial' that its one vivid role is making individual moral rights as a common concern of the *international community* following the 'two-level model' shown by Charles Beitz (2009). However, as Schaffer (2017) persuasively argues, it is possible to see the role of the system as mainly empowering individuals and groups in the *domestic* context, not as positioning it international concern. This shows that identifying the role of human rights in an 'isolated' context—even if the isolation is possible—is also not easy, and the identification can be contested.
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Abstract

Human Rights Based on Human Dignity: Defence and Elaboration through an Examination of Andrea Sangiovanni's Critique

Kosuke Kiyama

Recently, vigorous debate has emerged in the field of the philosophy of human rights. Currently, opponents argue against so-called naturalistic theories that view human rights as possessed by all persons in virtue of humanity. In particular, the notion of human dignity, often appealed to by naturalistic theorists, is widely challenged.

The purpose of this paper is to defend the notion of human dignity as a grounding value of human rights as well as naturalistic theories against criticisms. To accomplish this, the paper is structured as follows.

First, it shows that in influential theories of human rights such as the one offered by James Griffin, the notion of human dignity in contemporary human rights documents is treated as providing important guidance for grounding human rights.

Second, the paper defends dignity from Andrea Sangiovanni's series of recent counter-arguments. To begin with, although Sangiovanni criticises three traditions of dignity, namely Aristocratic, Christian, and Kantian ones, it is pointed out that the best mixed theories of these traditions can avoid many of his criticisms. This paper, however, considers his two concerns regarding the Aristocratic tradition and one pertaining to all three traditions as worthy of examination, and thus responds to him. The paper shows that his three criticisms are ungrounded and the notion of dignity can work in a theory of human rights.

Third, this paper defends naturalistic theories, by analysing and replying to Sangiovanni's criticisms of Griffin's view. Sangiovanni insists that naturalistic theories, *inter alia* Griffin's, cannot distinguish human rights from other moral

rights. The paper points out that the core of this criticism is a replication of an already suggested dilemma of the ‘austere’ and ‘rich’ interpretations of normative agency. It then argues that even Griffin’s theory can demonstrate an appropriate threshold of distinguishing human from other rights by considering ‘practicalities’ while proposing provisos for them.

Finally, the paper analyses Sangiovanni’s alternatives to dignity and naturalistic theories: an idea of ‘integral sense of self’ and a context-sensitive human rights theory. The paper doubts that his idea of an integral sense of self can succeed as a genuine alternative to dignity. This is because, first, support for this idea requires engaging in the very controversy among naturalistic theories: which interests should ground human rights. Second, the idea uses the exact same theoretical resources of practicalities as those in typical naturalistic views. The paper also claims that naturalistic theories are needed to deal with the shortcomings of Sangiovanni’s context-based view of human rights, such as the inseparability of contexts, and (even if separable) too much of the calculative burden of human rights for individuals in each context. Based on the present investigation, the paper concludes that to guide our language community of human rights, we still need naturalistic theories and dignity-based views are promising candidates among these; i.e. we still need an idea of *humanity with dignity*.