



Treatise

How Should Human Dignity be a Ground for Human Rights? A Preliminary Exploration

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Abstract

This paper explores the possible relations between human dignity and human rights and identifies the appropriate account of the relations. There are at least three crucial issues concerning human dignity as a ground for human rights. The first is whether dignity is a useful notion for human rights. Some say dignity is a useless or incoherent notion by itself, while others say dignity cannot justify human rights because it cannot demonstrate why people have the rights equally. The paper rejects both of these. The second issue is about the connection between the two notions. Some say that support for dignity does not entail support for human rights, while others say that the support for human rights does not involve support for human dignity. Through examination, the paper supports the statement that the support for human rights entails the support for human dignity (primarily, the article supports the justification that grounds human rights, at least in part, on dignity). The third issue is that of grounding: How does human dignity ground human rights? Some claim capacities are appropriate for understanding dignity, while others claim that we should add vulnerabilities in understanding the notion when it grounds human rights. The paper offers a dualistic view that accommodates both by treating interests concerning agency and equality as grounds for human rights. Finally, the paper elucidates the advantages of dualism compared to the capacity-based pluralism recently posited by Pablo Gilabert.

Keywords: human dignity, human rights, normative agency, equality, dualism, vulnerabilities, Pablo Gilabert

Introduction¹

While there are disagreements on how to envisage the history and roles of human rights,² in our moral, political, and legal world, it is uncontroversial that the language of the rights has been almost accepted as a *lingua franca* that might be claimed worldwide.³

However, in terms of the notion of human dignity, which is often referred to as where human rights are derived (e.g., Preambles of the ICCPR, the ICESCR, and the Vienna Declaration), the convergence is absent. Some thinkers and practitioners claim that we should not use the term human dignity radically, while others more modestly insist that we should avoid treating human rights as grounded in human dignity.⁴

The purpose of this paper is to conduct a preliminary exploration concerning the relations between human dignity and human rights. The investigation focuses on three questions. The first is the question of usefulness: Is human dignity a useful notion for human rights? The second is one of connection: What is the connection (especially entailments) between human dignity and human rights? The third question is of grounding: How does human dignity ground human rights?

Through the exploration, I claim the following. Human dignity is a useful notion for human rights in the sense that human rights partially depend on human dignity. This dependence is to be understood that interests connected with dignity (including interests associated with equality) ground human rights.

¹ I would like to express my gratitude to those who commented on the presentations based on the paper at the IVR workshop at the Dimitrie Cantemir Christian University of Bucharest (July 2022) and MUNI Legal Theory Workshop at Masaryk University (Online) (November 2022), as well as two anonymous referees. I am especially grateful for Dr. Martin Hapla's invitation to the workshops and subsequent support, concern, and care. I also benefited from Editage proofreading. In addition, this paper is supported by the Murata Science Foundation M22 research grant 015 and JSPS KAKENHI Grant Number JP21K12821.

² For example, while some theorists see human rights dating back to the French Revolution (Lynn Hunt, *Inventing Human Rights: A History*, New York, W. W. Norton, 2007) or, in the extreme, ancient Greek and China (Micheline R. Ishay, *The History of Human Rights: From the Ancient Times to the Globalization Era*, Oakland: University of California Press, 2004), other theorists who insist that the defining role of human rights appeared after World War II (Charles Beitz, *The Idea of Human Rights*, Oxford: Oxford University Press, 2009; Allen Buchanan, *The Heart of Human Rights*, Oxford: Oxford University Press, 2013) or in the 1970s (Samuel Moyn, *The Last Utopia: Human Rights in History*, Cambridge: The Belknap Press of Harvard University Press, 2010). In addition, while some theorists of human rights envisage that human rights 'constitute the most urgent demands of basic global justice' (Pablo Gilabert, *Human Dignity & Human Rights*, Oxford: Oxford University Press, 2018, p. 78), others claim that we should not see them as requirements of 'sufficient protections' but as rather 'egalitarian material equality' (Samuel Moyn, *Not Enough: Human Rights in an Unequal World*, Cambridge: The Belknap Press of Harvard University Press, p. 214, et passim).

³ Of course, some thinkers are still sceptical about the desirability of universalising human rights. Gilbert notes the scepticisms (and responses to them). See Gilabert, *Human Dignity*, Ch. 6.

⁴ In this paper, I use *human dignity* and *dignity* interchangeably. Of course, the former may be more restricted because, in history and current usage, the term *dignity* has accommodated a broader meaning beyond *human* dignity, such as dignity possessed by 'many things, all of them ultimately created by God' in Thomas Aquinas's writings (Michael Rosen, *Dignity: Its History and Meaning*, Cambridge: Harvard University Press, 2012, pp. 16–17) or the dignity of animal and nature still sometimes claimed.

1. Usefulness: Whether dignity is a useful notion for human rights

In this section, I investigate the claims of uselessness in invoking the concept of dignity for human rights⁵ (although the claim of usefulness or uselessness can be categorised as a claim of connection, I separate it from other claims of connection to add clarity to types of claims concerning usefulness.) There are several types of claims on usefulness.

(1-1) Uselessness of dignity by itself

According to those who claim this, human dignity by itself is not a useful concept because of the following:

- (a) Replaceability: human dignity can be replaced with other clearer notions (e.g., autonomy,⁶ agency, and respect⁷) or
- (b) Inconsistency: it is inconsistent that dignity is sovereign and can be taken away (as claimed by Justice Clarence Thomas,⁸ Steven Pinker,⁹ and Andrea Sangiovanni¹⁰).

(1-1-1) On the criticism of replaceability

Concerning claim (a), there are perhaps two responses, which are not contradictory. The first accommodates the gap between dignity and other allegedly more explicit notions. Take the path of James Griffin, one of the most influential theorists who ground human rights on dignity, as an example. He claims that dignity interpreted as normative agency is the ground for human rights (together with practicalities, which means the consideration of human

⁵ I believe there are also claims of uselessness in using the concept of human rights for human dignity. For example, the notion of human rights can be thought of as 'rhetorical nonsense' (Jeremy Bentham). Alternatively, some Marxists have thought it is useless or dangerous to use the language of human rights for justifying or envisaging human dignity (Gilbert, *Human Dignity*, sect. 4.2.2.4), while not only other Marxists but Marx himself condemn dignity for taking 'refuge from history in morality' (Marx's statement from 'history in morality', cited by Rosen, *Dignity*, p. 41). I do not touch on these in the paper.

⁶ For example, Michael Rosen's interpretation of normative agency in Griffin's *On Human Rights*, Oxford: Oxford University Press, 2008. See Rosen, *Dignity*, p. 5, cf. p. 25. However, as I point out, it can be misleading if Griffin's final view on autonomy and dignity is shown in the book. In addition, for Griffin, autonomy constitutes only one part of normative agency, which is his interpretation of dignity relevant to human rights. See *On Human Rights*, pp. 151–152.

⁷ Ruth Macklin famously claims that dignity can be replaced by respect for autonomy or person. 'Dignity is a Useless Concept: It Means No More Than Respect for Persons or Their Autonomy', *British Medical Journal*, Vol. 327 (2003), pp. 1419–1420.

⁸ Adam Etinson explains Thomas' position well. 'Dignity in 'the Streets': A Comment on Gilbert', *Journal of Global Ethics*, Vol. 16, No. 3, pp. 288–293, at p. 289.

⁹ Steven Pinker shows this as one of the sources of 'stupidity' of dignity. 'The Stupidity of Dignity', *The New Republic*, 28. May 2008.

¹⁰ Sangiovanni's case: If you are tortured or live in misery, you are said to lose dignity. However, this means that a person in a miserable condition loses dignity because they lose something required to be with dignity. Thus, dignity is not possessed as sovereign because it can be taken away. However, people who use the term dignity believe that dignity is sovereign and dignity is possessed even in miserable conditions. So, there is inconsistency. Andrea Sangiovanni, *Humanity without Dignity: Moral Equality, Respect, and Human Rights*, Cambridge: Harvard University Press, 2017, pp. 24–26.

and social nature in justifying the rights). However, Griffin himself admits that dignity as normative agency is only plausible in the context of human rights and that ‘there are several acceptable uses of “dignity” not relevant to human rights.’¹¹ Thus, he acknowledges the gap between dignity in general, and normative agency as its more specific form, arguing that we should treat the latter as giving a determinate meaning to dignity relevant to human rights.¹²

The second path is related to this: i.e., accepting the replaceability of dignity in some context (e.g., the context of human rights) and other clearer notions. If we take this path, as Griffin does, the clarity of the meaning of dignity should be given according to the context. Nevertheless, critics might say: If the content of dignity is ‘vague’ and the term ‘can be eliminated without any loss of content’¹³, then there is no need to use the term. However, is there really no need? We must acknowledge that even if the notion of dignity in some contexts (such as that of human rights) can be replaced with other notions (such as normative agency), the notion of dignity has already been embedded in our language practice, such as that of human rights. Then, there is a pro tanto reason to continue to use the notion if we should respect people’s usage when they find significant meanings in it.¹⁴ The fact that dignity needs interpretation implies neither that it is a useless concept nor that we should not use the term.¹⁵

If these two paths exist, there is no reason to surrender to the criticism of replaceability.

(1-1-2) On the criticism of inconsistency

Concerning claim (b), it should be emphasised that we can understand human dignity coherently by accommodating ‘dual meanings’ of the term; Dignity is ‘inalienable’ and at

¹¹ Griffin, *On Human Rights*, p. 151.

¹² To put it from the other side, dignity relevant to human rights cannot capture the whole meaning of dignity. For example, a Japanese anthropologist Taichi Uchio emphasises subjective elements of dignity in Fukushima prefecture after the tsunami and nuclear power plant explosion, broader than that articulated in human rights documents. *Dignity after 3.11: An Ethnography of Post-Tsunami Reconstruction in Japan (Fukko to Songen: Shinsaigo wo Ikiru Minami Sanriku Cho no Kiseki)*, Tokyo: The University of Tokyo Press, 2018, p. 89. This includes the dignity of the dead, which is not well explicated in human rights documents or related documents (*Ibid.*, pp. 177ff, 229ff). Rosen also discusses the dignity of the dead. *Dignity*, Ch. 3.

¹³ Macklin, ‘Dignity is a Useless Concept’, p. 1420.

¹⁴ See further Etinson, ‘Dignity in ‘the Streets’’, p. 292. When Macklin presents ‘the diagnosis’ that dignity is a useless concept, she frankly admits that she does not know the reason or ‘aetiology’ of why people appeal to the language of dignity. ‘Dignity is a Useless Concept’, p. 1420. Nevertheless, this aetiology is vital because people use the term developed in our language practice while finding the moral weight of the term.

¹⁵ On this claim, some might claim that people can acquire more (for example, effectiveness in communication) when they use an unambiguous word, such as agency, instead of dignity. However, I think it depends on consequentialist calculus. We can compare the benefits of replacing dignity with a more apparent notion and the costs of losing the power that the former notion has historically possessed. Even though I cannot fully elaborate on this point, it seems that there are pro tanto reasons to continue to cling to the use of dignity: (1) We have already incorporated the notion into our important language practice at the level that it is hard to comport without the notion; (2) As a result of this fact, we lose the motivational power if we stop using the word dignity. I am grateful to Martin Hapla for his question on this point.

the same time ‘precarious and stands in need of social protection’ (Pogge 2014a; 2014b).¹⁶ This dual meaning is to be understood as the former inalienability meaning requiring the realisation of the latter protection-call meaning.¹⁷ This dual meaning is not unique to human dignity, and the structure is also possessed by notions like the Invincible Armada, as I have already pointed out elsewhere.¹⁸ Perhaps people in the Spanish empire assumed that the invincibility of the Armada should be realised, while it was not always invincible. Like the Invincible Armada, inalienable dignity should be realised while it is not always achieved.¹⁹ Then, we can understand the notion of dignity coherently.

In this way, the claim of the uselessness of dignity by itself does not stand. Hereafter, I move to the uselessness of dignity in justifying human rights.

(1-2) Uselessness of dignity in justifying human rights

Critics often present this claim while holding the inability to explain equal possession of human rights as its rationale.²⁰ According to this claim, human dignity depends on human capacities. However, these capacities vary among individuals. If this is so, it is natural to reflect the variation, leading to the conclusion that human dignity is possessed more by some people and less by others. As a corollary, human dignity cannot explain the equal possession of human rights.²¹

To this claim, theorists of human rights who depend on the notion of human dignity, such as James Griffin, have responded while acknowledging the variations in relevant capacities

¹⁶ Thomas Pogge, ‘Dignity and Global Justice’, in Marcus Düwell, Jens Braarvig, Roger Brownsword, and Dietmar Mieth (eds.), *The Cambridge Handbook of Human Dignity*, Cambridge: Cambridge University Press, 2014, pp. 477–483. Thomas Pogge, ‘Explicating Dignity toward a Minimal Conception of Global Justice’, *China Human Rights*.CN, Oct 30. 2014.

¹⁷ Pablo Gilabert offers the distinction of ‘status dignity’ and ‘condition dignity’, which can be understood as an interpretation of the dual meaning. See *Human Dignity & Human Rights*. However, his framework for explicating dignity is more controversial than the one necessary to respond to the criticism of inconsistency, so I avoid deploying Gilabert’s notions.

¹⁸ Kosuke Kiyama, ‘Human Rights Based on Human Dignity: Defence and Elaboration through an Examination of Andrea Sangiovanni’s Critique’, *Journal of Global Studies*, Vol. 8 (2019), pp. 1–24.

¹⁹ Ibid., p. 5.

²⁰ Sangiovanni claims that there are three main traditions of human dignity, i.e., the Aristocratic, the Thomistic, and the Kantian traditions, and they cannot explain the equal possession of human dignity among individuals. According to him, there are ‘variations’ for individuals to carry themselves in dignified ways (the Aristocratic tradition), to have rational or volitional capacities similar to God’s image (the Thomistic tradition), and to choose rationally (the Kantian tradition). See his *Humanity without Dignity*. Allen Buchanan, especially after his book *The Heart of Human Rights*, argues in a similar vein. According to him, if we interpret dignity as a notion from which to ascribe human rights to each individual, it leads us to trouble: How can we explain that ‘those who have that characteristic [that confers a moral standing] to a higher degree do not have a higher moral status?’ (p. 136, cf. p. 74). This trouble is caused because there are variations in interests among individuals. The trouble, together with other reasons, leads Buchanan to propose another interpretation of dignity that depends on the function of the international human rights system.

²¹ This subsection is a developed version of arguments shown in my previous paper. See Kiyama, ‘Human Rights’, pp. 7-8.

among individuals. Griffin claims that we should ignore the variations in the capacities beyond some set *threshold*.²²

To this reply, critics such as Allen Buchanan (2013: pp. 135–137) and Andrea Sangiovanni (2017: pp. 105–106) are not satisfied because they think that the threshold cannot help being arbitrary and there is no reasonable justification for it. Sangiovanni maintains that ‘marking a particular threshold seems arbitrary’ and there is no plausible answer to ‘what might justify putting the threshold *here* rather than *there*?’ (2017: pp. 105–106)

However, I think we can offer the threshold in a non-arbitrary way. This should be understood as three responses to the variation problem: (a) the offer of justification of the threshold and the treatment of variations, (b) *below*, and (c) *above* the threshold.

(1-2-a) Concerning the justification of the threshold

While acknowledging that requirements of capacities are sometimes vague, the best defenders of dignity have tried to demonstrate the determinate threshold. As one of them, Griffin offers two strategies to be combinedly utilised: interpretation of dignity and consideration of practicalities.

The first is to narrow down the interpretation of dignity to restrict its scope to human rights. In Griffin’s case, interests related to normative agency are picked up,²³ and in the dualism that I want to support, interests related to normative agency and equality are highlighted.

Second, to interpret these interests in the relevant social circumstances, practicalities should be consulted. Practicalities are ‘empirical information about ... human nature and human societies’ that contributes ‘to fix[ing] boundaries for the right’ in question.²⁴ For example, interests related to knowledge might take the form of a right to elementary school education in Japan or Romania. However, in some societies, including familial societies in some areas in Brazil, they might take the form of a right to get information from families. In each case, the threshold can be given.²⁵

Of course, the content of the relevant information in practicalities might be disputed, but it does not mean that the justification of the threshold cannot be given. So, then, how can we explain the variations *below* and *above* the threshold?

²² Griffin, *On Human Rights*, p. 44; ‘Human Rights: Questions of Aim and Approach’, *Ethics*, Vol. 120 No. 4 (July 2010), pp. 741–760, at p. 748; ‘Human Rights and the Autonomy of International Law’, Samantha Besson & John Tasioulas (eds.), *The Philosophy of International Law*, Oxford: Oxford University Press, pp. 339–355, at p. 348.

²³ For example, the notion of normative agency has been criticised for its obscurity: Whether it means an ‘austere’ or ‘rich’ interpretation? See John Tasioulas, ‘Taking Rights out of Human Rights’, *Ethics*, Vol. 120, No. 4 (2010), pp. 647–678, at p. 660; Allen Buchanan ‘The Egalitarianism of Human Rights’, Roger Crisp (ed.), *Griffin on Human Rights*, Oxford: Oxford University Press, ([2010] 2014), pp. 77–113. p. 95) For Griffin, the answer is ‘[h]uman rights...are rights to what allows one merely to act as a normative agent’. ‘Human Rights: Questions’, p. 747. That is, he narrows down the interpretation of normative agency (the component of the concept of dignity).

²⁴ Griffin, *On Human Rights*, pp. 38, 73.

²⁵ Kosuke Kiyama, *The Philosophy of Human Rights: The Search for Underlying Values in the Modern World (Jinken no Tetsugaku: Kiteitekikachi no Tankyu to Gendaiseikai)*, Tokyo: The University of Tokyo Press, 2022, Ch. 3.

(1-2-b) Concerning the variations *below* the threshold

The defenders of dignity (interpreted as some capacities) can agree with critics that the variations of capacities *below* the threshold lead to the unequal possession of human rights. For example, assume that some capacities related to human dignity, in Griffin's case, the ones relevant to normative agency, are acquired and lost gradually. For instance, because of the lack of some prudential/rational reasoning capacities, a ten-year-old girl does not have the right to vote. However, a 33-year-old person is usually considered to deserve this right.²⁶ Alternatively, if these capacities are gradually lost because of severe dementia, there is a *prima facie* reason to say that a person with dementia loses the right, at least morally, if not legally.²⁷

(1-2-c) Concerning the variations *above* the threshold

In contrast to the variations *below* the threshold, the defenders of dignity should not allow the variation *above* the threshold to enter the consideration of the possession of human rights. If they do, we cannot avoid the conclusion that some possess the rights more and others possess less, as critics have mentioned. Then, how is it possible to avoid the conclusion?

There are at least two possibilities. The first is to insert egalitarianism in the human rights practice into the consideration of the variation.²⁸ The second is to interpret the notion of dignity as containing the protection of interests or values related to equality.²⁹ For example, psychological interests like *the integral sense of self* (as I interpret it) can be interests of this

²⁶ This is the path taken by Griffin in his *On Human Rights*, Ch. 4.

²⁷ Of course, this can be criticised as not embracing the rights of those with mental disabilities. I think the appropriate response to the criticism is to bite the bullet and point out that the power of the criticism depends on the types of justification that are offered for the threshold. For example, if we follow the view that autonomy with reasoning power is the basis for the right to vote as Griffin does, when a person's ability to choose the candidate in an election with reasoning is lost, the right to vote loses its prescriptive meaning because of the principle of *ought implies can*, while there must be some mechanisms to reflect their other interests. See *On Human Rights*, Ch. 14. However, if we take the dualism that envisages interests related to equality as also grounding for human rights, we can accommodate more people as human rights holders. Besides, if there is a mechanism for engaging in politics to reflect equality even when they lose the mental capacity to choose a candidate, there can be a right to this engagement.

²⁸ This is what Allen Buchanan had once alluded to (in his 'The Egalitarianism of Human Rights' and 'Human Rights') and chose when he elaborated on an international legal conception of human rights (see *The Heart of Human Rights*). James Griffin offers another possible reason for the insertion; that is, the insertion of 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'. See Griffin 'Human Rights', p. 755; See also Kiyama 'Human Rights Based on Human Dignity', p. 7.

²⁹ I understand that Katherine Eddy has offered this interpretation of dignity. 'On Revaluing the Currency of Human Rights', *Politics, Philosophy & Economics*, Vol. 6, Issue 3 (2007), pp. 307–328. James Nickel who thinks that four claims—'a secure claim to have a life', 'a secure claim to lead one's life', 'a secure claim against severely cruel or degrading treatment', and 'a secure claim against severely unfair treatment'—are the main grounds for human rights also interprets human dignity as requiring protection from 'treatment that is severely degrading or unfair'. James W. Nickel, *Making Sense of Human Rights (Second Edition)*, Oxford: Blackwell Publishing, 2007, pp. 62, 66; See also his 'Griffin on Human Rights to Liberty', in Roger Crisp (ed.), *Griffin on Human Rights*, Oxford: Oxford University Press, 2014, pp. 185–205.

kind.³⁰ Even though some theorists, including Allen Buchanan³¹, think that interests cannot justify equality,³² I think the second possibility can and perhaps should be pursued. This is because the second interpretation can guide us on how to interpret the practice by offering the standards of desirable interpretation when the practice allows plural interpretations. I will touch on this point later. Nevertheless, these possibilities suggest that we can justify equal possession of human rights by individuals while appealing to human dignity for justification.

From the above section, we can conclude that dignity is a useful notion by itself and for human rights.

2. Connection: The connection between dignity and human rights

Now, let us move on to the two main types of scepticism concerning the entailments of the two notions as criticisms of the connection.

(2-1) Support for dignity does not entail support for human rights.

Investigations in Section 1 cover some types of the claim,³³ so I would like to focus on the particular types here.

(2-1-a) Dignity should be achieved without using the term human rights.

The supporters of claim (2-1-a) say that in a world where the language of human rights is often abused for the interests of the powerful states, the dignity of individuals can be achieved better without the language of human rights.³⁴

However, this claim seems to stand only when the statement that *the world without human rights protects individual interests (connected with dignity) better than the world with human rights* is correct. Obviously, this is a claim that is hard to argue for and against in social

³⁰ As I understand, the notion of 'opacity respect' by Ian Carter and developed by Sangiovanni can be seen as a candidate for demonstrating the importance of interests related to equality, even though Sangiovanni would like to show the notion not by the inquiry into psychological interests but by interpreting the typical cases of degradation or misery, such as torture and being sent to slave camps. See *Humanity without Dignity*.

³¹ See Buchanan, 'Human Rights' and *The Heart of Human Rights*.

³² This is part of the reason Buchanan, in his *The Heart of Human Rights*, rejects 'the mirroring view' that sees interests as a ground for human rights, and my argument can be interpreted as saving the view to ground human rights (partially but notably) on interests. See Section 3 of this paper.

³³ I dealt with the criticisms; (2-1-b) dignity cannot justify equal possession of human rights; and (2-1-c) dignity grounds things that are not captured by the language of human rights, hence dignity is too broad for human rights. Looking back, (2-1-b) can be answered by pointing out that we can insert egalitarianism into dignity and explain equal possession of human rights, and (2-1-c) can be answered by narrowing down the interpretation of dignity in the context of human rights and introducing considerations of practicalities.

³⁴ For example, the US supported authoritarian regimes even when it supported 'human rights diplomacy' under Carter's administration. See Noam Chomsky, *The Umbrella of U.S. Power: The Universal Declaration of Human Rights and the Contradictions of U.S. Policy*, 1999, Seven Stories Press.

scientific ways.³⁵ Nevertheless, the claim should be doubted because the language of human rights can be invoked not only by the powerful but also by various agents. For example, the hegemonic double-standard use of human rights by the powerful can be regulated by agents such as NGOs, international organisations, or citizens.³⁶

Then, contrary to claim (2-1), the supporter of dignity should (at least usually) endorse human rights.

However, there is an opposite claim.

(2-2) Support for human rights does not entail support for human dignity.

Claim (2-2) is the position taken by theorists³⁷ such as Charles Beitz. He claims that dignity was just accidentally introduced in human rights documents³⁸ and proposes a type of political conception of human rights that does not depend on the notion of human dignity but takes the human rights practice as a theoretical premise.³⁹

To evaluate this claim, what is needed includes the following:

- (i) The elaboration of the meaning of invoking considerations that are taken by drafters in human rights theories;⁴⁰
- (ii) historical scrutiny of the drafting process;⁴¹ and
- (iii) the comparison of theoretical advantages and disadvantages of Beitz's version of political conception and conceptions that rely on dignity.

I cannot engage in (i) or (ii) here. Yet concerning (iii), the following can be said: If we need to justify human rights practice that has been criticised from the formation period of the

³⁵ This is because the comparison involved needs to incorporate hypothetical speculation in the world (where human rights discourse does not exist), hugely different from our real world.

³⁶ See David Luban 'Human Rights Pragmatism and Human Dignity', in Rowan Cruft, S. Matthew Liao, Massimo Renzo (eds.), *Philosophical Foundations of Human Rights*, Oxford: Oxford University Press, 2015, pp. 263–78; Gilibert, *Human Dignity & Human Rights*, p. 96

³⁷ Sangiovanni's claim that dignity is useless in justifying human rights also falls into this category. See *Humanity without Dignity*. However, as Kiyama argues, the ideas of *the integral sense of self* and the opacity respect based on this sense that Sangiovanni supports are functional equivalents to human dignity, not alternatives to it. See 'Human Rights Based on Human Dignity'.

³⁸ Charles Beitz, 'Human Dignity in the Theory of Human Rights: Nothing but a Phrase?' *Philosophy & Public Affairs*, Vol. 41, No. 3 (2013), pp. 259–290.

³⁹ Beitz, *The Idea of Human Rights*.

⁴⁰ For example, whether this type of originalism should be supported or not.

⁴¹ For example, as Morsink and Glendon pioneered. See Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, Philadelphia: University of Pennsylvania Press, 1999; Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House, 2002.

Universal Declaration of Human Rights (UDHR),⁴² we cannot take the fact that the practice has been formed as a theoretical premise.⁴³

If this is so, we must have a moral locus from which to evaluate the formation, change, and elaboration of the human rights practice. Human dignity is not the only notion that can play this role.⁴⁴ However, in our world, to some degree, the notion of dignity has guided moral reasonings that formulate the human rights practice. For example, when the drafters wrote the UDHR, they incorporated the notion of dignity in human rights documents to demonstrate some remnant of their moral reasoning,⁴⁵ even though they dared not to go deeper into 'speculative' grounding of the notion thinking that the interpretations of dignity might differ between advocates of 'liberal-individualistic', 'communistic', and 'personalistic' types of society.⁴⁶

Alternatively, the reason why the language of human rights can guide citizens' behaviour even when there is no legal remedy and the 'enforcement deficit' exists is that citizens are outraged and put pressure on the violators, typically but not exclusively states, by mobilising shame.⁴⁷ People are not moved by the human rights practice itself, which contains deficits in its operation, but by values that should guide the practice and behaviours therein. If human dignity has played the role, then there is a pro tanto reason to see the supremacy of dignity over other potential moral notions. Human dignity is a notion, perhaps the most reliable one, that can perform this role of evaluating and forming practice.

3. Grounding: How human dignity grounds human rights

Thus far, I have argued for the claim that human dignity grounds human rights. Then, how does it ground them?

⁴² Such criticisms at least include (1) those based on the respect for cultural diversity (See, for example, American Anthropological Association (The Executive Board), 'Statement on Human Rights', *American Anthropologist: New Series*, Volume 49, No. 4 (1947), Part 1, pp. 539–543), (2) the views that the support for the creation of human rights practice was just a politically strategic behaviour, which should not be taken as a premise. The latter is because there was no such agreement to allow some functions of the practice, such as some economic or political sanction based on human rights. See Chandran Kukathas, 'The Mirage of Global Justice', *Social Philosophy and Policy*, Volume 23, Issue 1 (2006), pp. 1–28, at p. 23; David Reidy, 'Political Authority and Human Rights', in Rex Martin and David A. Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* Oxford: Blackwell Publishing, pp. 169–188, at p. 172; David Miller, *National Responsibility and Global Justice*, Oxford: Oxford University Press, 2006, p. 171; David Miller, 'Personhood versus Human Needs as Grounds for Human Rights', in Roger Crisp (ed.), *Griffin on Human Rights*, Oxford: Oxford University Press, pp. 152–169.

⁴³ Kiyama, *The Philosophy of Human Rights*, sect. 5.3.2.

⁴⁴ *Ibid.*, Ch. 4.

⁴⁵ Matthew S. Liao and Adam Etinson, 'Political and Naturalistic Conceptions of Human Rights: A False Polemic?' *Journal of Moral Philosophy*, Vol. 9, No. 3 (2012), pp. 327–52, at p. 335.

⁴⁶ See Jacques Maritain, *Man and the State (Revised Edition)*, The Catholic University of America Press, p. 107. See also Jacques Maritain, 'Introduction', in UNESCO (ed.), *Human Rights: Comments and Interpretations*, New York: Columbia University Press, 1949, pp. 9–17, at p. 9; Glendon, *A World Made New*, pp. 77–78; Griffin, *On Human Rights*, pp. 22–25.

⁴⁷ Luban, 'Human Rights Pragmatism', pp. 267–269.

Even though the role of dignity, that is, the theoretical position of human dignity in grounding human rights, is an important issue,⁴⁸ I would like to concentrate on the matter of the interpretation: How should we interpret human dignity to ground human rights?

There are several options. The first is the restriction of interests that ground human rights. This includes monism, which treats interests related only to normative agency as relevant to human dignity in the context of human rights (Griffin 2008), and dualism which claims that interests that are related to agency and equality should ground human rights as the requirement of dignity (Eddy 2007⁴⁹). The second option is to accommodate plural interests relating to dignity for grounding human rights. Recently Pablo Gilabert claimed this.

Here, I would like to demonstrate the supremacy of the first way for restricting interests, particularly dualism, to Gilabert's proposal.

In his recent book *Human Dignity & Human Rights*, Gilabert proposes grounding dignity on the *valuable capacities* of human beings, from which human rights are 'derived'.⁵⁰ He says that 'the features making up the basis of dignity must be general, valuable, and important'.⁵¹ As these features, he lists up some capacities, for example, a capacity for 'prudential reasoning'.⁵²

However, there has already been significant criticism. Adam Etinson pointed out that in Gilabert's framework, considerations of vulnerabilities (such as our feeling pain) are just treated as 'instrumental', because the vulnerabilities are considered only when they matter to other capacities (Etinson 2020: p. 290). According to Etinson, however, these vulnerabilities are shared universally (more than capacities) and should be taken intrinsically. Therefore, they should be the ground for human rights.

I agree with Etinson's claim that not only capacities but also vulnerabilities should ground human rights. However, a question must be answered: What kind of features should be included in the ground for human rights to express vulnerabilities? Human beings are so vulnerable to many things, including objects clearly unsuitable for human rights. For instance, the loss of love or the experience of the death of a loved family member might lead a person to depression, but no one thinks that there are human rights to be exempt from them. Then, we must identify vulnerabilities that are suitable for being the ground for human rights.

I propose that we consider the interests of individuals related to equality as identifying these vulnerabilities. For example, we can think that when social cruelty exists, where human rights are violated, the *integral sense of self* is in danger.⁵³ This sense requires the control by

⁴⁸ Theorists have combined some interpretations of (some parts of) dignity with other considerations. For Griffin, as I touched on, a part of dignity combined with practicalities is thought to ground human rights. For John Tasioulas, (some part of) dignity and the burden of (interests related to) dignity on others are considered. See his 'Taking Rights out of Human Rights'.

⁴⁹ Buchanan once suggested this possibility (see 'The Egalitarianism of Human Rights'), even though, afterwards he turned his back on this possibility completely (see his *The Heart of Human Rights*).

⁵⁰ Gilabert, *Human Dignity & Human Rights*, p. 125.

⁵¹ *Ibid.*

⁵² *Ibid.*, p. 137; Gilabert, 'Defending Human Dignity and Human Rights', *Journal of Global Ethics*, Vol. 16, No. 3 (2020), pp. 326–342, at p. 326.

⁵³ I am inspired by Andrea Sangiovanni's argument in his *Humanity without Dignity*.

an agent of the relations with others (regarding what they present to others). And this sense cannot exist when they are treated as inferior. Thus, interests connected with equality (i.e., relations that do not make someone inferior) should ground human rights.

Then, from Gilabert's position, what difference does this way of thinking make? Hereafter, I explain the difference, sometimes taking the human right to democracy as an example. By doing so, I demonstrate the advantages of incorporating interests connected with equality as the ground for human rights.

4. Advantages of dualism against Gilabert's capacity-based pluralism

I argue that there are four advantages of dualism compared to Gilabert's proposal.

The first advantage is that there is no need to worry about creating second-class citizens. I explain this by taking the human right to democracy as an example. Let us assume that creating second-class citizens violates the human right to democracy without going into the precise meaning of this essentially contested concept.

For Gilabert, the wrongness of creating second-class citizens lies in not respecting agents' 'capacities for moral and prudential reasoning'.⁵⁴ By contrast, for dualism (i.e., the supporter of equality as a ground for human rights), the wrongness of creating second-class citizens lies in denying equality in a way that infringes on the interests of maintaining *the integral sense of self*. Here, the difference highlights the already-mentioned contrast between the concentration on capacities and the accommodation of interests concerning equality-related vulnerabilities.

In Gilabert's view, there is a risk that if people are judged not to exercise the capacity for *prudential reasoning*, these people might be considered as being inferior. If this is the case, there might be a solid reason for denying equal standings of citizens, as epistocrats such as Jason Brennan claim. Brennan claims that because in our non-ideal world, many citizens lack 'competence' as decision-makers, we should not support democracy. For example, he maintains that many people cannot 'be aware of' and 'understand' the relevant facts, and they cannot 'reason about those facts in an appropriate way'.⁵⁵ Hence, he proposes to adopt epistocracy, where political power is distributed more to the 'competent' citizens. In short, if people are judged not to have the capacity for *prudential reasoning*, they cannot be given equal political rights. Gilabert's view accommodates this danger of creating second-class citizens as long as he clings to capacities for *prudential reasoning* to justify political rights. However, if the unequal standings are a danger to interests related to *the integral sense of self*, the creation of second-class citizens is to be regulated. This is an advantage if we think democracy should be supported, as the human rights practice endorses.

The second advantage of dualism is that it can contribute to identify rankings among interests that ground human rights. For example, we can think that maintaining an integral sense of

⁵⁴ Gilabert, *Human Dignity & Human Rights*, p. 137. Gilabert says that 'people have rights to political participation because they have some of these valuable capacities. Therefore, even if by violating their political rights a government could give people happier lives, it would normally be wrong to do so' (*Ibid.*, p. 137).

⁵⁵ Brennan, Jason, *Against Democracy: With a New Preface by the Author*, Princeton: Princeton University Press, 2017, p. 162.

self is a condition for having flourishing lives. If you are treated inferior, it is usually hard for you to have a life with integrity. For example, as Sangiovanni claims, if you are in fear of oppression, your 'capacity to flourish' and your access to the goods in your life diminish.⁵⁶ Then we can say that equality (founded on the importance of *the integral sense of self*) is 'a constituent ingredient and structural element of a flourishing life.'⁵⁷ Hence for dualism, when interests connected with equality and those connected with normative agency collide, the former has a pro tanto reason to be prioritised. This kind of ranking is hard to achieve for pluralists, including Gilibert, who lists up many capacities horizontally⁵⁸.

Third, as we saw, accommodating equality based on *the integral sense of self* can capture vulnerabilities that significantly matter in human rights violations. This sense is infringed in typical human rights violations, such as rape, torture, and being sent to slave camps.⁵⁹ Hence, dualism can well capture interests that are widely shared.

Lastly, dualism can capture equality in the language of interests. To illustrate, let us see the recent claim by Allen Buchanan. He says that in the human rights practice, the *status egalitarian function* exists. However, he holds a view that this function cannot be captured by the interests of human beings (Buchanan 2013: p. 275), leading him to reject the approach that grounds human rights to human dignity. However, because dualism well captures

⁵⁶ Sangiovanni, *Humanity without Dignity*, p. 241.

⁵⁷ *Ibid.*, p. 82.

⁵⁸ A referee kindly suggested that I should elaborate more on the relation between my interpretations of normative agency and equality in order to elucidate their relations to dignity. I once inquired about this point in my book written in Japanese (Kiyama, *The Philosophy of Human Rights*, Ch. 6), so I would just like to explain the basic arguments shown in the book regarding how we should understand the two notions in the context of human rights.

First, the interpretation of normative agency should not be parochial. Griffin's idea of normative agency possesses parochial and non-parochial aspects. On the one hand, Griffin, in his interpretation of autonomy, says that we should be able to choose our lives. If a traditional community impedes this choice, it constitutes a violation of autonomy and liberty (Griffin, *On Human Rights*, pp. 161, 163). David Miller and Rainer Forst criticise this for being 'parochial' because one can lead a flourishing or decent life without always choosing their lives, such as a person who finds goodness in following his higher calling (David Miller 'Personhood versus Human Needs as Grounds for Human Rights', in Roger Crisp (ed.), *Griffin on Human Rights*, Oxford: Oxford University Press, 2014, pp. 158; Rainer Forst 'The Justification of Human Rights and the Basic Right to Justification: A Reflective approach', in Claudio Corradetti (ed.), *Philosophical Dimensions of Human Rights: Some Contemporary Views*, Springer, 2012, p. 90). On the other hand, Griffin also shows the understanding of a 'worthwhile life', which does not depend on choosing but on identifying the good (Griffin, *On Human Rights*, p. 46). I claim our interpretation of normative agency should be in the second way of Griffin's conception of normative agency if it is the grounding value for human rights. This is because we cannot vindicate that a life with choice is the only worthwhile one

Second, for all sorts of worthwhile lives, the integral sense of self, on which equality relevant to human rights is grounded, should be assumed as a necessary condition. As Sangiovanni suggests, this is because our life can be worthwhile only when the elements of life are integrated, that is, without being fragmented by the attack of others.

Therefore, as grounding values for human rights, equality is necessary for normative agency and should be treated rigorously. This relation should be understood as built in the notion of dignity in the context of human rights because these values are derived as the interpretations of values underlying human rights practice.

⁵⁹ Sangiovanni, *Humanity without Dignity*.

interests related to *the integral sense of self* as interests that are infringed upon when a person is treated as inferior, we can make sense of the egalitarian function of the human rights practice while using the language of interests to ground human rights.

5. Conclusion

Through the paper, I have claimed the following. First, human dignity is a useful notion for human rights, in that human rights partially depend on human dignity. Second, this dependence is to be understood that interests related to dignity (including interests connected with equality) ground human rights.

This suggests that we should still use the notion of human dignity to ground human rights.