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Humanity with dignity. Plea for a functionalistic theory of dignity

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ABSTRACT In this paper, I present a functionalistic theory of dignity which seeks to withstand the criticism of the concept of dignity, such those made by Andrea Sangiovanni, by arguing that there is more to dignity than these scholars may ascribe. The functionalistic theory of dignity is a reinterpretation of the notion of dignity in legal documents such as the UDHR, and calls for the protection of a dignified life for all human beings. The properties of this concept of dignity follow from the historical function it has. A dignified life is a life free from hardship. We derive the need for its protection by remembering the reasons for the implementation of dignity in legal human rights documents – as the negation of the atrocities in the Holocaust.
KEYWORDS Human dignity; human rights; political liberalism; Holocaust; Sangiovanni.

RESUMO Neste artigo, apresento uma teoria funcionalista da dignidade que procura resistir às críticas ao conceito de dignidade, tais como as feitas por Andrea Sangiovanni, argumentando que há mais dignidade do que estes autores podem atribuir. A teoria funcionalista da dignidade é uma reinterpretação da noção de dignidade em documentos jurídicos como a DUDH, e apela à protecção de uma vida digna para todos os seres humanos. As características deste conceito de dignidade decorrem da função histórica que tem. Uma vida digna é uma vida livre de privações. A necessidade da sua protecção é devida à memória das razões para a implementação da dignidade nos documentos legais sobre direitos humanos - a negação das atrocidades no Holocausto.
PALAVRAS-CHAVE Dignidade humana; direitos humanos; liberalismo político; Holocausto; Sangiovanni.

Introduction

In a poem from 1797 German author Friedrich Schiller wrote the following about human dignity: "Enough of that, I ask you please. To eat and shelter give him, once you have clothed his nakedness, dignity reveals itself" (Schiller, 1958, p. 248, translated by BK). While this short of poem does not align with the standard account of human dignity as the equal, inviolable worth of humans, it still provides a great first impression of what dignity could be, as the need for dignity would not have to be revealed if it were an equal, inviolable worth. Nonetheless, we still might wonder what exactly human dignity entails or rather what a reference to human dignity accomplishes. Given the lively philosophical debate about human dignity, which has become increasingly popular during the English-speaking discourse of recent years, we need to ask ourselves which criteria mark a convincing concept of human dignity. In this paper I will address this question and present the functionalistic theory of dignity (FTD). I will demonstrate how the FTD withstands criticism of the concept of dignity (section 1), particularly the view that dignity cannot ground moral equality, a stance taken by philosophers like Andrea Sangiovanni. According to Sangiovanni, understanding the role of dignity as the first article in the Universal Declaration of Human Rights (UDHR) requires it to ground moral equality (Sangiovanni, 2017, pp. 13-15). However, I disagree with his view and will dismiss it by outlining other possible relationships between dignity and rights that Sangiovanni overlooks (section 1).

Subsequently, I will present the FTD in detail (section 2). Analysis reveals that the FTD aligns with the concept of dignity as articulated in legal documents, notably the UDHR. This is achieved because the FTD calls for the protection of a dignified life for all human beings, which derives from the insights gained from the atrocities perpetrated by the National Socialists. I will conclude that if we think about dignity, we should be reminded of Schiller's words (section 3). Human dignity, as I argue, should not be viewed as a bestowed dowry but rather as an achievable aim for every individual, barring the presence of grave hardship. Therefore, it is our duty to prevent such hardship for every human being.

1 The philosophical debate about human dignity

1.1. Sangiovanni against human dignity accounts

In a recent, much-discussed critique of human dignity accounts, Andrea Sangiovanni challenges the idea that dignity is central to our justification for moral equality. He begins by outlining the standard conception of human dignity: Human dignity – especially in important legal documents like the UDHR - grounds the moral equality of all human beings (Sangiovanni, 2017, p. 13). In exploring the concept of dignity, he presents three contemporary traditions: The Aristocratic, the Christian and the Kantian.[1] None of these, however, meet the two desiderata that Sangiovanni claims are necessary to justify dignity at the heart of our justification for moral equality. These are: The account must explain the sense in which we are equal in dignity, and the account must explain why and in virtue of what we have dignity (Sangiovanni, 2017, p. 15).

For example, the Aristocratic tradition cannot explain how a gradable concept of dignity – i.e. an agent can have more or less dignity depending, for example, on their behaviour, justifies moral equality for every human being. He argues that this tradition also fails to demonstrate how possessing a dignified bearing grounds our commitment to moral equality (Sangiovanni, 2017, pp. 25-7). While showing that the other two traditions also do not meet the two desiderata, Sangiovanni concludes that human dignity cannot ground moral equality at all. Instead of proposing an equal moral status qua dignity, we shall reject inequality and derive an equal moral status from it, because it is morally wrong to treat someone as morally unequal. This is because as a moral unequal, one cannot maintain or develop an integral sense of self, which is morally desirable (Sangiovanni, 2017, pp. 72-5). In Sangiovanni's view, human rights should, therefore, be focussed on protecting against violations of moral equality.

1 The discourse on dignity, as presented by Sangiovanni, may seem limited. A more nuanced understanding can be gleaned from the works of scholars like Waldron (2009), Kateb (2011), and Rosen (2012). Their interpretations, which follow the historical evolution of the concept of dignity, offer sophisticated insights. Additionally, Bird (2021) provides a comprehensive overview of contemporary accounts of human dignity, contributing further to this nuanced discussion.

I contend that adhering to the standard conception of human dignity, as presented by Sangiovanni, is not obligatory. Alternative interpretations are viable and may have compelling justifications. Moreover, we could also consider different relations between dignity and rights. Sangiovanni seems to propose abandoning the concept of dignity in human rights documents. Despite the prominent position it holds, I find it unconvincing to simply disregard the first article in the UDHR because it may appear to be contradictory at first sight. Instead, I want to develop an account that derives from inequality but still appeals to dignity and is, in that sense, more persuasive than Sangiovanni's proposal.

1.2. Human dignity and human rights

Sangiovanni argues that according to his understanding of dignity, equal dignity is the ground or the foundation of equal human rights. However, this is not the only possible relation between dignity and rights. Before I elaborate on three alternative relations, I want to emphasize the account of dignity as the ground of human rights. Thus, dignity is the presupposition for having human rights (Pollmann, 2011, p. 251). In addition to Sangiovanni, this view is also echoed in Alan Gewirth's theory, where he asserts: "It is because humans have dignity that they have human rights" (Gewirth, 2020, p. 10). As a supplement to Sangiovanni's critique, I want to add that there are great difficulties in explaining equal human dignity and equal human rights in a secular context. As we will see in detail in the next sections, we would need to identify a universal attribute that confers dignity uniformly across all human beings.

Another perspective, as highlighted by Pollmann, views dignity not as a foundational principle but as a distinct human right in itself (Pollmann, 2011, p. 252). For instance, consider a legal document in which some rights have a higher standing than others. In this case, dignity could be seen as a *norma normans*. This is exemplified in Germany, where some scholars interpret the dignity enshrined in the constitution's first article as the "supreme rule of constitutional law" (Dreier, 2014, p. 375) – therefore, the *Grundgesetz* would mark a system of values with dignity at its top. Each law and each change in the political system would ultimately be measured against the dignity norm. However, German law practice shows that this practice of jurisprudence is not very compelling. Dreier notes that relying on a static concept of dignity

to resolve complex legal issues underestimates the dynamics of a free and pluralistic society (Dreier, 2014, p. 384). Furthermore, to this day, the German Federal Constitutional Court has not provided a fixed definition of Article 1 of the *Grundgesetz*.

Instead of being a special human right, dignity could also be understood as the sum of human rights (Pollmann, 2011, p. 252). In this view, living a life in dignity is synonymous with living a life endowed with human rights; they are two sides of the same coin at all times. But at the same time, this idea is incomplete. If we were to assume that we have equal dignity qua birth and therefore equal human rights without any difference between living in dignity and having human rights, one might ask why we would need the concept of dignity in the first place. Such an equation potentially renders dignity functionless, reducing it to either a superfluous term or merely an ornament, thereby making it redundant it practical terms.

Nonetheless, this idea leads promisingly to the last possible relation between human dignity and human rights: dignity as the purpose (or aim) of human rights (Pollmann, 2011, p. 252; also see Pollmann, 2014, pp. 132-5). It has a lot in common with the previous idea (dignity as the sum of human rights), as both are based on the intuition that having human rights likely entails having dignity. However, this proportion cannot simply be reversed. According to this relation, human rights are the condition for a life in dignity and not the other way around or both. We have human rights, or rather we grant each other human rights to ensure a life in dignity, a dignified life.[2] I find this relation to be the most promising and will further explore it in the following sections. At first glance, it seems like we need to abandon Sangiovanni's desiderata of human dignity. Given our awareness of contemporary human rights violations, it appears we cannot all be equal in human dignity. Hence, I propose a nuanced approach: the idea that we all possess the same potential for dignity, which I will discuss in section 2. However, before I elaborate on this idea, I would like to defend the concept of dignity against another critique to make it even more compelling. The multitude of dignity conceptions encountered thus far might suggest an excess of interpretations, raising the question: is this an overdetermination of the

2 Charles Beitz introduces a similar perspective, proposing that human dignity could be understood as a value advanced by a public practice of human rights, emphasizing its significance in international protection (2013, p. 288).

concept, and, if so, is this diversity a valid reason to abandon the concept entirely?

1.3. Too many dignities?

In almost every philosophical contribution about dignity, there is a reference to Macklin's famous paper *Dignity is a useless concept*. Therein, she argues that dignity is nothing more than respect for the autonomy of persons, but in a vague manner (2003, pp. 1419-20). Following this line of thought, Habermas argues, that dignity would be reduced to an empty formula [if understood accordingly] (2010, p. 466). And if dignity were an empty formula, then no normative significance would be added to a judgment when stating that *X is wrong, because X violates the dignity of P*. However, the FTD will not face this problem as with a function there come genuine properties.

Still, there is another more flamboyant critique in the discourse about dignity: There are too many dignity conceptions of dignity and because of the abundance of them, the concept of dignity becomes inflated and overdetermined in terms of its content.[3] The critique argues that different dignity conceptions have nothing in common and that there is no convergence between them. Therefore, the concept of dignity is always just idiosyncratic and not fit for philosophical debate. However, I think that if we take a deep inside into history of the concept of dignity, we notice that we are not confronted with anarchy, but with family resemblances (Wittgenstein, 2022, *PI 66*). I want to call these the consensual minimal usage in the history of ideas (CMI).[4] In examining various historical conceptions of dignity, a common thread emerges: dignity is consistently seen as a non-consequentialist value judgement, asserting a special status for its bearers, grounded in dignity-conferring qualities. We can illustrate this with the examples of Cicero and Kant who have

3 Michael Rosen highlights the existence of various strands within the concept of dignity, noting the absence of a universal conception. This diversity only becomes problematic when these strands are not separated properly, as illustrated through his analysis of the German ***Grundgesetz*** (2012, p. 115). Consequently, it appears that the challenge lies not in overdetermination per se, but in the intermingling of different conceptions. In my assessment, this observation still leaves the door open for the possibility that the discourse of dignity, rather than being anarchic, comprises distinct conceptions with familial resemblances, a point I will further develop.

4 McCrudden proposes a "minimum core of human dignity," a concept narrower than my proposal (2008, p. 679). I interpret his core as emerging from the historical development of the idea of dignity, characterized by predominantly modern perspectives. Conversely, my approach seeks to identify and articulate the overlapping commonalities, a strategy I believe is more effective in encompassing earlier theoretical frameworks in the discourse on dignity.

at first sight nothing in common. But we could also gather even more scholars on dignity with roughly the same results. With Cicero and Kant I use two examples to which Sangiovanni also refers, yet denies any resemblance.

Cicero's conception of dignity is twofold. First, he aligns with the Aristocratic Tradition to which Sangiovanni also refers. Dignity as dignity of office is to be understood qua membership to the nobility. If a politician possessed dignity or behaved with dignity, this showed his higher status, his higher position, for example, compared to common people, but also compared to other dignitaries who appeared with less dignity. Additionally, Cicero was also the first to attribute dignity to human nature as such. Thus, it shall be part of every investigation of dutiful conduct to always have in mind how much the nature of man (sic!) surpasses that of cattle and other animals (Cicero, 1986, *DO I 105*).[5] It is evident that Cicero's conception of dignity is consistent with the CMI. Whether qua office or qua nature one possesses dignity which exalts the bearer.

Kant is a common figure in the discourse on dignity. In his *Groundwork*, Kant famously argues that dignity has no equivalent, being the inner and absolute value of persons, attributed because a person is an end in itself which in turn derives from the ability to be autonomous (*AA 435-436*). According to this view, autonomous beings have a higher status than non-autonomous beings, such as animals that lack reason.[6] Thus, we can also see that Kant's conception of dignity aligns with the CMI.

Tracing back through the history of ideas, one could cite even more scholars who wrote about dignity and who share the CMI such as Aquinas, Pico della Mirandola or Pufendorf, as well as contemporary scholars like Waldron, Kateb or Bird. This brings me to the conclusion that there is no overdetermination or idiosyncrasy but rather contested concepts with family resemblances. However, for the purposes of this

5 Cicero explicitly excludes women from his discourse on human nature. Nevertheless, I contend that it is still justified to engage with Cicero's work. This is because, under the premise of a Ciceroean conception of human nature, women would implicitly be encompassed within its scope.

6 Frequently overlooked is the fact that, according to Kant, only persons bear dignity. Young children or mentally disabled human beings, not being autonomous, do not have dignity. Therefore, it is inadequate to use the Kantian dignity account, for example, to justify the dignity of embryos. For a more sophisticated overview of contemporary developments of the Kantian concept of dignity in modern debates, see for example Mieth & Williams (2022).

paper, it is crucial to remember that a compelling interpretation of dignity should align with the CMI to effectively counter critiques.

1.4. Conclusion

In my assessment, the first article of the most important contemporary legal document, the UDHR, cannot be ignored. Discussing human rights while omitting human dignity appears counterintuitive. Contrary to Sangiovanni who proposes to omit dignity, we saw that there is more to say about the concept of human dignity than he suggests. With the most promising relationship between human rights and human dignity with the latter serving as the purpose (or aim) of the former and with the CMI in mind, we now can think about a convincing theory which combines the recognized status of dignity in the UDHR with the family resemblances found in historical and contemporary dignity concepts.

2 What is a functionalistic theory of dignity?

This section unfolds the paper's central argument: In the aftermath of the crimes committed by the National Socialists, dignity was placed as the first article of the UDHR. From this derives the historical function to protect all human beings from such and similar crimes. From analysing the testimonies of the victims of the Holocaust, it becomes clear that the National Socialists put their victims in situations of grave hardship. Combined with the assumption that every human being inherently desires a life free from hardship, we can conclude that modern legal dignity protects, guarantees and maintains a life free from hardship for every human being. In essence, this encapsulates the functionalistic theory of dignity.[7]

7 There have been preliminary considerations for a functionalistic theory of human rights and human dignity. Lafont, as an example, illustrates the political dimensions of human rights, which derive the identity of human rights from their distinctive functions within human rights practice (2016, p. 242). She further emphasizes the importance of a humanist core within human rights, as relying solely on a political approach risks eclipsing the "human" element in human rights. The functionalistic theory of dignity will also rightly elaborate on this humanist core.

McCrudden talks about the institutional function for dignity "to provide a language in which courts can indicate the weighting given to particular rights and other values" (2008, p. 716). The functionalistic theory of dignity expands upon this concept, offering not just a linguistic framework but also elucidating its importance.

Hence, to achieve this, I will describe the historical function in detail and present extracts from Holocaust literature (2.1). Afterwards, I will extract and analyse the properties following from this historical function (2.2). It will become evident that conventional interpretations of human dignity fall short in fulfilling this historical function – they fail to protect a life free from hardship which is connected to dignity and which I will call a dignified life (2.3). Prior to concluding, I will defend this account against common objections to non-standard human dignity accounts (2.4).

2.1. The historical function

Grasping the historical function of dignity elucidates its significant placement in the UDHR. Why, for example, did other historical declarations of human rights (e.g. Bill of Rights or Déclaration des droits de l'homme et du citoyen) not mention human dignity? And why have subsequent human rights documents since then always included a reference to dignity? The answer lies in the crimes perpetrated by the National Socialists, which changed our perception of what a human rights declaration should contain in the aftermath of Auschwitz. The atrocities committed by the National Socialists compelled humanity to legally enshrine protection against such crimes. As Hannah Arendt famously stated, the Holocaust ought not to have happened (2000, pp. 13-4). This compels us to adopt, at minimum, a resolute "Never again!" stance which the global community internalized and externalized after "comprehending" the horrors of the Holocaust (for a broader historical overview also see Wyman & Rosenzveig, 1996). To protect dignity is to remember the "Never again!" sentiment, to guarantee that such crimes should happen *never again* – because they ought not to have happened in the first place. And to prevent, at least according to the claim, any human being from living in such situations like the National Socialists inflicted upon their victims which I will call situations of grave hardship. Therefore, the Holocaust is not the cause of the introduction of human dignity, but its introduction is a response to it.

For a deeper comprehension, an in-depth examination of Holocaust testimonies is essential. In order for these accounts to convey their normative power of *never again*, we must not only examine the numbers or neutral reports, but especially the words of those who have been wronged. Survivors vividly communicated their experiences in

Holocaust literature. Primo Levi, an Auschwitz survivor, recounts how the brutal realities of Concentration Camps stripped individuals of their names and, fundamentally, their identities. With this loss, every last inch of a conception of a good life is lost as well:

> No, I honestly do not feel my companion of today, harnessed with me under the same load, to be either enemy or rival. He is Null Achtzehn. He is not called anything except that, Zero Eighteen, the last three figures of his entry number; as if everyone was aware that only man is worthy of a name, and that Null Achtzehn is no longer a man. I think that even he has forgotten his name, certainly he acts as if this was so. When he speaks, when he looks around, he gives the impression of being empty inside, nothing more than an involucre, like the slough of certain insects which one finds on the banks of swamps, held by a thread to the stones and shaken by the wind (Levi, 1959, pp. 41-2).

We find another example with Elli Wiesel, who was also deported to Auschwitz. His report clarifies once again that one's conception of a good life is extremely jeopardized in a situation of hardship. It also illustrates how rapidly hardship can be normalized:

> In a few seconds, we had ceased to be men. Had the situation not been so tragic, we might have laughed. We looked pretty strange! Meir Katz, a colossus, wore a child's pants, and Stern, a skinny little fellow, was floundering in a huge jacket. We immediately started to switch. I glanced over at my father. How changed he looked! His eyes were veiled. I wanted to tell him something, but I didn't know what. The night had passed completely. The morning star shone in the sky. I too had become a different person. The student of Talmud, the child I was, had been consumed by the flames. All that was left was a shape that resembled me. My soul had been invaded – and devoured – by a black flame (2006, p. 36).

This is just a short extract of the insights into Holocaust literature. However, it leads to the conclusion that the prisoners were collectively disturbed, traumatized and suffered tremendously from the persistent fear of death, which limited their thinking, reasoning, acting, and ability to behave "humanely". They stated that at this stage, they could not reliably develop anything like self-respect: "At that moment in time, all that mattered to me was my daily bowl of soup, my crust of stale bread.

The bread, the soup - those were my entire life. I was nothing but a body. Perhaps even less: a famished stomach." (Wiesel, 2006, p. 51) They were in situations of grave hardship which can be characterized by three conditions. First, humans in grave hardship are constantly confronted with their own death, their life is in real danger. Second, not only their life is endangered, but also their life plan. They are deprived of those physical and psychological goods which would be needed for the preservation of one's own life plan. We saw this strikingly with Wiesel. Third, humans within grave hardship cannot pursue a new life plan that is not primarily centred around mere survival and fear of death. Or, in the stark words of Ruth Klüger: "In Auschwitz I stood in rows of five and was thirsty and afraid of dying. That's it, that's all, that's the sum of it" (2003, p. 113).[8] The global community was shocked by these atrocities and their reports; they want them to happen *never again*. This explains why the Preamble of the UDHR postulates:

> No, [...] Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, [...] The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations [...] (United Nations General Assembly, 1948, Preamble).

At this juncture, we can summarize the preceding findings. Given that the modern legal interpretation of dignity serves to counteract the crimes of National Socialism, and to protect against similar crimes[9], and if the crimes of National Socialism placed the victims in situations of

8 The concept of a "life plan" should be interpreted in its broadest sense. Such a plan may include an individual's idea of the good, chosen lifestyle, career goals, or religious beliefs. These items are connected through the fact that they each have meaning for an individual and to a certain extent also characterise the individual as such. One might oppose to consider Victor Frankl, who, despite the dire circumstances, maintained a life-affirming attitude that shielded him from psychological collapse (2020). Yet, even Frankl was not exempt from grave hardship. Firstly, he continually faced the threat of death, and secondly, his revised life plan was primarily a strategy to endure survival's harsh realities, albeit effective and impressive.

9 I want to focus explicitly on the situations of grave hardship which are best characterized by an extraction from Holocaust literature. There is a wide discussion about the singularity of the Holocaust (e.g., Knowlton, 1993), a topic also explored within post-colonial studies (e.g., Rothberg, 2009). Unfortunately, I cannot elaborate on this debate within this paper. However, I think that it is possible to focus on (less extraordinary) situations of grave hardship, while keeping the extraordinary historical point of reference in mind, without diminishing the potentially unique gravity of the Holocaust.

grave hardship, then it follows that the content of dignity is (which is yet to be defined in more detail) intended to protect the bearers from such situations of grave hardship, and that people should therefore have a right not to have to live in grave hardship. This normative stance is derived, firstly, from the legal codification of dignity, and secondly, from the reaction of the international community to the atrocities. From the question of what was violated and listening to the victims, the path of the functionalistic theory of dignity leads to the shared "Never again!" and the protective function of dignity against such crimes, based on the shared conviction and within the historical learning process that no one should live in situations of grave hardship. The (claim of) validity of dignity thus is always linked to its genesis. Without an account of the crimes of National Socialism, it would be impossible to understand why and against what the reference to human dignity in the important (human) rights documents is directed. In the last section, I will elucidate how the principles derived from these initial crimes can be applied to other historical and contemporary atrocities.

2.2. Properties qua function

Our exploration has led to a better understanding of the historical function of dignity. We know that it was prominently implemented in the UDHR following the atrocities of the National Socialists in order to prevent such crimes and protect people from ever getting into such ferocious situations. Keeping this function in mind, we are now equipped to explore the resultant properties and shape the concept of dignity, informed by its historical function. When the properties of a theory of dignity are discussed, scholars often address the following questions: Is the dignity "given" or accomplished and is the dignity inviolable or gradable (see e.g. Bird, 2021, 51)? Given (or inherent) dignity means that every human being has dignity simply qua human being. This idea can be easily understood through the Christian tradition of dignity. According to the orthodox Christian account, human beings have dignity qua their divine image – the dignity, the special status humans have among the other living beings, is a dowry from God (Boethius, 2010, *CP II §6*). Contemporary accounts strive for a broader accessibility while retaining the premise that dignity is an innate human attribute, often anchoring this belief in our rational nature (e.g. Lee & George, 2008, p. 175). However, there is a problem with this approach as there are

also human beings who are not capable of reason due to e.g. disabilities. These accounts struggle to convincingly reconcile how reason can be the dignity-conferring quality, while concurrently, many individuals possess dignity despite lacking this supposed essential trait. Therefore, there is a suggestion that behind this idea, God may be the underlying force (Bird, 2021, pp. 56-60). Given-dignity-accounts often correlate with the property that dignity is inviolable, which means that it is independent of any circumstances the bearer is in. The measure of dignity does not vary. Contrasting this are gradable dignity conceptions, which assert that the measure of dignity varies in accordance with the dignity-conferring quality. For example, according to the Aristocratic tradition which also is an accomplished dignity conception, dignity is earned through gracefulness and can be diminished by less dignified behaviours.

The FTD merges the concepts of inherent and gradable dignity, a notion that may seem peculiar at first glance. Yet, as our argument evolves, this amalgamation becomes increasingly coherent. First, we need to make an important assumption: From birth, every human being wants to live a life free from hardship.[10] In Holocaust Literature, we saw that life in grave hardship may be the worst thing imaginable – grave hardship led to the abandonment of one's identity. Such a life cannot be considered humane or dignified, as I will further explain in the next section. Accordingly, human beings are not born with an equal amount of dignity but with equal potential for dignity because, from birth, every human being dreads a life in grave hardship – as seen in the Holocaust and other atrocities – and instead wants the ability to live a dignified life. Dignity is not a dowry but an aim. With the idea of a potential of dignity in mind, we also see that this concept of dignity cannot be inviolable. This may seem counterintuitive and outdated to some, but I believe it is the only way to make sense of the historical function. If we accept that dignity in legal documents is meant to protect against hardship, then

10 This idea corresponds with the long philosophical tradition of self-preservation, for example with Rousseau (2009). Also, it should be noted that some individuals deliberately choose to live in hardship in specific ways (e.g. ascetics or mentally ill people). This is why the assumption has its origin in the phrasing "from birth". From birth, it can be presumed that everyone wants to live a life free from hardship although some may choose otherwise in their adolescent or adult life. Additionally, this idea is less demanding than for example Kant's dignity account since reason is not a necessary condition. Therefore, this account also encompasses individuals with severe disabilities, provided they have life plans susceptible to disruption by grave hardship imposed by others. However, this challenges the account with the accusation of being unjustified anthropocentric. While I acknowledge the gravity of this accusation, a detailed exploration of this critique falls beyond the scope of this paper.

we must realize that hardship jeopardizes dignity. As German scholar Pollmann, in whose tradition this paper stands, figuratively stated, there is no need to protect something inviolable (Pollmann, 2011, 259).

2.3. What is a dignified life?

Defining a dignified life can be approached in two distinct ways. Both accounts share the assumptions that a dignified life is a life without hardship, that every human being wants to live a life without hardship and that following a life plan without hardship is central. The perfectionist account goes beyond the foundation and sketches a specific conception of the good life and specific life plans. This aligns with the Aristocratic tradition we discussed earlier (see e.g. Kateb, 2011 or Nussbaum, 2007). We are also familiar with this account in everyday language, for example when we deem something beneath ourselves or when we describe rude or humiliating behaviour as unworthy. However, this account is too presuppositional to align with the FTD. This necessitates either adopting a broad view of human nature, potentially veering into paternalism, or label specific everyday behaviours or attitudes as dignity-conferring, risking injustice to pluralism and cultural diversity. Alternatively, we can presuppose properties that cannot be empirically achieved by every human being, thus relinquishing moral equality at any point.

This is why I prefer a liberal account, which is humbler. It does not add anything to the basic assumption that every human being wants to live a life without hardship, enabling the pursuit of diverse life plans and instead focuses more on the implication that this has. The question then becomes: What happens if one does not live in grave hardship, and conversely, what is at stake if one does? To answer this question, the liberal account stipulates a threshold of hardship. The proposition is that below this threshold, ergo in a state of grave hardship, it is not possible to reliably maintain one's life plan and develop self-respect (Pollmann, 2011, p. 253). Self-respect is to be understood as the affirmation that one's own life plan is worth to be pursued and the confidence in one's own abilities to effectively pursue that plan. It is first and foremost a matter of freeing humans from levels of grave hardship so that they can develop and pursue a life plan. Thus, possessing dignity entails formulating and actively pursuing a life plan, whereby the degree of dignity is

graded according to successful execution.[11] Under the liberal framework, the objective of human rights is to enable every individual to potentially develop and pursue a life plan in accordance with this minimal conception and thus, as a first step, to put an end to situations of grave hardship. I want to suggest – and I hope to have shown in the testimonies – that in situations of grave hardship, it is not possible to maintain or develop this kind of self-respect. We saw that in the Concentration Camps, the National Socialists created a world of perseverant need and nakedness which made any form of self-respect virtually impossible. Therefore, self-respect and a dignified life are connected. Consequently, self-respect emerges as a direct outcome of living a dignified life.

At this point, we can make sense of self-respect as the attitude towards one's own life plan, namely that it is worth living. This ensures that the FTD is consistent with the consensual minimal usage in the history of ideas. Possessing this specific attitude is a dignity-conferring quality which gives one a special status insofar as one acknowledges that one wants to pursue a life plan and at least live a life which is not in grave hardship. This belief results in the notion that it should not be permitted to be restricted in a sustained manner – the status emerges from the "No!" against any infringements upon one's life plan and the subsequent claims. It is important to note that my focus extends beyond the moral implications of these claims to encompass their legal dimensions as well. My primary interest lies in exploring the historical function of these claims and the embodiment of dignity within renowned legal texts.

2.4. Objections against a functionalistic theory of dignity and some responses

To make the FTD more compelling, I will address two objections often raised against non-standard accounts of dignity. First, a notable objection is that the FTD's failure to assume equal value for all humans from birth contradicts the widely accepted intuition embedded in everyday discussions of human rights. To strengthen this objection, one could

11 Therefore, the goal is not for all people to actually live with the same dignity, but rather to ensure that all people have the opportunity to potentially lead a life in dignity, facilitated by equal human rights. For instance, some individuals may find that their chosen life path leads to significant unhappiness. Under this interpretation, it is crucial to note that people are not compelled to pursue happiness. Crucially, the focus is on ensuring that individuals are not hindered in formulating and pursuing their life plans, and that these plans are not thwarted by the deprivation of essential goods.

also reference the first article of the UDHR, which literally states that: "All human beings are born free and equal in dignity and rights" (United Nations General Assembly, 1948, §1).

However, this does not conflict with the interpretation of dignity as a potential. All human beings are born with the equal potential to have dignity, albeit without the right conditions this potential is greatly endangered. For a clearer perspective on this, Arendt's critique of human rights offers valuable insights. Arendt notes that reality shows that we are actually not born with human rights. Instead, we should have qua birth the right to have rights (Arendt, 1968, pp. 296-7). As the enforcement of human rights is still largely bound to national states, there are still people, such as stateless individuals, who are not protected by human rights and cannot even claim their human rights due to the need for a legal nationality. Therefore, it is not problematic for the FTD to not postulate the equal value of all humans. If anything, it is critical insofar as the FTD reminds us that dignity is an aim and we should strive to change undignified situations as soon as possible. Europeans, including myself, would find it challenging to explain how they could allow people to drown in the Mediterranean on a daily basis, considering these victims are purported to possess the same inherent dignity. It is crucial for Europeans to recognize the current inequality. By listening to and actively opposing these atrocities, they must work towards establishing actual equality, rather than merely acknowledging it.

Another objection raises questions about who bears responsibility for violations of dignity. It might have been noticed that I have never spoken about generalized violations of dignity but only about jeopardies of dignity. This is because it seems paternalistic to speak about generalized violations of dignity. For example, take the case of "Dwarf-throwing" (sic!): In 2002 the Conseil d'État in France decided that the throwing of people of short stature, which had been legally forbidden shortly before, shall indeed be forbidden because it violates the dignity of the thrown people (Bieri, 2017, pp. 18-9). The United Human Rights Commission subsequently endorsed this decree. However, this situation is contentious because the people of short statue did not agree with it. Some of them viewed this attraction as dignity-conferring, as it provided them with a means of making a living that was otherwise difficult due to their size. This begs the question: Are we justified in

saying that they are violating their own dignity?[12] And even if so, does the state have an obligation to protect its citizen from violating their own dignity, especially when no one else is harmed? Perhaps we should not speak about generalized violations of dignity, even if they seem to be very intuitive.[13] However, by not doing so, we imply that individuals in hardship are accountable for their loss of dignity, a notion that also seems counterintuitive. Hence, by changing the perspective, we do not require a list of actions that violate human dignity but instead, we attempt to comprehend people who are truly in need and who cannot reliably maintain their dignity, those who cannot develop a life plan that is not centered about their bare survival. Therefore, it is important to note that the FTD does not directly protect against violations of dignity but rather against undignified situations.

2.5. Conclusion

A functionalistic theory of dignity does not postulate universal validity (i.e. every human being has equal dignity), but rather asserts a universal claim to validity (i.e. no human being should live in grave hardship and every human being has equal potential to have dignity). We now see that the FTD is very similar to Sangiovanni's project, but with the advantage that the FTD can make sense of the fact that we find dignity on the top of legal documents – it is more than a mere ornament. We also got a better grasp of the meaning of the historical function as the basis of the properties of the FTD. The properties of the FTD are justified when they can fulfil the historical function, which is explained by the implementation of dignity in important legal documents and the enshrinement in law of protection against atrocities such as those perpetrated by the National Socialists. Ultimately, I aim to provide a brief overview of how to safeguard a dignified life and the role national and international institutions play in this protection.

12 It should also be noted that the concept of dignity faces significant risks of instrumentalization, as illustrated by the "Dwarf-throwing" example. A state that either has a vague concept of dignity for its jurisprudence (e.g. Germany) or is too paternalistic in terms of the autonomy of its citizens (here e.g. France) therefore promotes and provokes the critique on the concept of dignity.

13 Avishai Margalit, a key figure in the discourse on dignity, highlights the forced pavement-scrubbing of Jews by National Socialists in Vienna as a clear violation of dignity (1998, p. 128). While this seems to be intuitively very comprehensible, still it is more reliable to render the situation in which the Jews were as one characterized by grave hardship.

3 How to protect a dignified life

In the second section, we explored the perfectionist and liberal account of a dignified life. From there, I concluded that the liberal account does not add anything to the basic assumption that every human being wants to live a life free from hardship and to pursue an individual life plan. However, even this minimalist account clashes with the reality we face today.

Today, a significant number of people still live in grave hardship: 3.6 billion people have no access to sanitation and 2 billion lack clean drinking water (UNESCO World Water Assessment Programme, 2023, p. 21). In 2021, according to the Global Multidimensional Poverty Index, 1.3 billion people lived in acute multidimensional poverty (UNDP & OPHI, 2021, p. 4). Of these, one billion lack solid cooking fuels or adequate housing. Absolute poverty confronts people with grave hardship insofar as their everyday lives are permanently centered around the (inadequate) satisfaction of their physical needs such as hunger or thirst and their previous life plan is therefore severely jeopardised or has already been lost (or even a life plan free from hardship could never be formed).[14] With the Covid pandemic in our midst, the ongoing wars and conflicts in Ukraine, Yemen, Iran, Afghanistan, Rwanda, Colombia, Gaza and many other places in our mind and with the extreme challenges of climate change yet to fully unfold, we are in a position where the progress of humanity and the possibility of hardship-free lives are in real danger. In the discourse around dignity, as we have seen with Sangiovanni, the standard conception contains the postulate that dignity is something inviolable, something that all human beings possess equally qua birth. This standard conception (in the sense of Sangiovanni) still holds too much power in the current debate. Faced with these extreme challenges, it raises the question of how theories of inviolable dignity can critically engage with these jeopardizing situations.

14 It is crucial to acknowledge that absolute poverty and the Holocaust are fundamentally distinct phenomena. However, if we listen to the victims of both, we will notice that both will talk about something that sounds familiar to the concept of grave hardship. Therefore, our focus should be on understanding and addressing this familiar concept of grave hardship. We do not need do diminish the many victims of the Holocaust, the special attitudes of the perpetrators or the industrial killings. Quite the opposite; we remember and honor these memories by fighting against contemporary (possibly less) grave hardship. While absolute poverty may not be as extraordinary as the Holocaust, our opposition to the Holocaust - anchored in the commitment to never again let humans suffer in grave hardship - serves as a bridge to these contemporary situations, allowing us to address both without diminishing the significance of either.

Consequently, these accounts have also developed a framework to gather situations of grave hardship. While dignity is non-gradable, standard accounts stipulate that respect for dignity is gradable (Bird, 2021, p. 101). Thus, according to this view, the dignity of someone who is being tortured is not considered violated or in danger; rather, it is the torturer who is seen as not respecting his victim's dignity. I consider this view to be problematic and counterproductive. Distinguishing between protecting respect for dignity and safeguarding dignity itself reveals divergent outcomes. This stems from the ambiguity surrounding the true meaning of respecting another human being. Of course, there is a rich philosophical history about the respect for persons. However, besides the eye-catching cases such as torture, the respect account faces challenges in cases of (absolute and relative) poverty, where identifying perpetrators is not straightforward (e.g. see with Schaber, 2011, pp. 151-3). Furthermore, I believe that it is more parsimonious to protect a dignified life (a life without hardship) than to protect the respect for dignity, which may condemn most situations in which a person's life is in hardship, but it does not guarantee that the situation will reliably change, rather than merely altering the attitudes an agent has towards the person in hardship.

The FTD advocates strongly for tangible measures, specifically insisting that no human being should endure grave hardship. To address these situations, we can draw on past testimonies and also ask people who are suffering for their input, so that we can better understand their needs and provide effective solutions to help them overcome their hardship. It is crucial to recognize that respect, while valuable, cannot single-handedly alleviate suffering; respect alone cannot satiate hunger. Additionally, there is a pressing need to establish legally binding contact points to allow those in hardship to report their situation and be heard. While the FTD asserts that every individual is born with equal potential for dignity, it is vital to distinguish this from the harsh reality that such potential is often compromised by the vastly unequal circumstances of one's birth. Regardless of where someone is born, we can presuppose that they want to live a life free from hardship, even though we know that, for example, many people in the Global North have a much easier time actually achieving this.

There is, of course, no blueprint, and the FTD is not a panacea. I acknowledge the existence of numerous practical obstacles that impede the effective implementation of human rights. However, I want to

emphasize that the discourse focused solely on respect often hinders progress. The FTD is a project in the tradition of political liberalism. The FTD's confrontation with the realities of politics remains an area to be explored. Another advantage of this approach is its flexibility, recognizing that the definition of a dignified life varies across culture and nations. With the UDHR, we have a possible list (and thresholds of hardship) at our disposal. Remember, dignity is the purpose (or aim) of human rights. The UDHR outlines minimal requirements for a dignified life, and the list and thresholds must be continually updated in light of future challenges and unfortunately past, present, and future atrocities. However, even without a blueprint, we know clear cases of hardship today. And we must stop them.

4 Conclusion

In this paper, I have shown that a functionalistic theory of dignity withstands the criticism against the concept of dignity by answering and solving the challenges they pose. For instance, the FTD confidently counters Andrea Sangiovanni's critique, which suggests that dignity should be understood through the standard conception as the foundation of human rights. Nevertheless, a more promising relationship between dignity and human rights in the former as the purpose (or aim) of the latter was identified. Additionally, I have illustrated how the FTD aligns with the requirements for dignity as outlined in legal documents. Sangiovanni dismisses this fact, while this account tries to recognize the historical function of dignity and its incorporation into legal documents as the legislative response to the atrocities perpetrated by the National Socialists. The FTD calls for the protection of a dignified life for all human beings, which means that no one should live in grave hardship. This claim is motivated, inter alia, by the testimonies of atrocity victims, from which we derive a "Never again!" sentiment.

Finally and fortunately, there is no reason for a farewell to the concept of dignity, but rather a call for a return to its origins, together with consistent global implementation at a minimum level, as well as national deliberation. As Schiller aptly reminds us: dignity is not a dowry; dignity is not natural and dignity is certainly not self-evident – at least not if we want it to have a genuine function in our philosophical discourse.

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