

Human Rights, Human Agency and Respect: Extending Griffin's View

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I.

The language of rights is used broadly: to encompass such important matters as human rights, criminal law rights, the rights of citizenship, and such trivialities as my right to park in the space I purchased, your right to feel aggrieved at my rudeness, a fouled footballer's right to a free kick; it also encompasses rights borne by non-persons such as animals, babies or groups.

James Griffin focuses on a particular subset: human rights. He argues that 'we do not yet have a clear enough idea of what human rights are'; his account builds on the intension of the concept as 'a right that we have simply in virtue of being human' (1-2).¹ For Griffin, the best way to make this determinate is to construe human rights as grounded in personhood, understood thus:

We human beings have a conception of ourselves and of our past and future. We reflect and assess. We form pictures of what a good life would be – often, it is true, only on a small scale, but occasionally also on a large scale. And we try to realize these pictures. This is what we mean by a distinctively *human* existence [...]

To be an agent, in the fullest sense of which we are capable, one must (first) choose one's own path through life – that is, not be dominated or controlled by someone or something else (call it 'autonomy'). And (second) one's choice must be real: one must have at least a certain minimum education and information. And having chosen, one must then be able to act; that is, one must have at least the minimum provision of resources and capabilities that it takes (call all of this 'minimum provision'). And none of this is any good if someone then blocks one; so (third) others must also not forcibly stop one from pursuing what one sees as a worthwhile life (call this 'liberty') (32-33).

This focus on personhood as 'normative agency', as Griffin calls it, is attractive as a development of the indeterminate intension. Our form of agency – our ability to make reason govern our will (to make decisions that we intend to result from our 'capacity to distinguish true values from false, good reasons from bad' (150)), and to act out what our reason-governed will determines – is both distinctive to humans and intuitively of paramount moral importance. Many other morally important features, such as the capacity to feel pain and to flourish or suffer, are not unique to humans. And many of our distinctive features, such as linguistic ability or technical expertise, are not so obviously of great moral significance.

But why focus only on normative agency and not, say, our capacity for theoretical reason, or our rich emotional life?² One answer is that the language of rights seems particularly apt to mark protections of agency. Consider the 'third-party beneficiary problem' (Hart 1955: 180-181): if I promise you that I will care for your father (thereby placing myself under a duty to care for him), does your father hold a right corresponding to my duty, just as you do? To make sense of the multifarious uses of rights language mentioned in my opening sentence, I think we have to adopt an 'Interest Theory' of rights that will include some third-party beneficiaries as right-

¹ References to Griffin 2008 are given as page numbers alone; all other works are referred to fully.

² Thanks to Tom Pink for pressing me on those important aspects of being human that are not encompassed by normative agency.

holders, but that is a story for another day. For now, it is notable that even if your father holds a right corresponding to my promissory duty to care for him, this is much less obvious than the fact that you as promisee hold such a right. Similarly my violation of the duty seems more obviously disrespectful to you (the promisee) than it does to your father, even if my violation is more harmful to him than you. An appealing explanation of these differences is that the language of rights is particularly appropriate to characterize the normative relation generated by reasoners engaging with each other as reasoners. When I make a promise, you agree to it, and I then violate it, I thereby disrespect your will as someone who agreed to the promise for what you saw as good reasons. I do not so directly disrespect your father's will; my violating my promise need not do this at all (perhaps your father was unaware of the promise). I suggest that it is because your agency is at stake – your will as someone responding to reason – that the language of rights seems especially appropriate to capture my relation to you. Rights language, although used broadly as outlined in my first paragraph, is most at home in characterising the protection of agency.³

Thus by focusing on normative agency, Griffin homes in not just on one of humans' distinguishing features most naturally conceived as important, but on that feature to which rights language is most central. This does not imply that we should see all promissory rights as human rights. For Griffin, the importance of personhood as normative agency grounds three 'highest-level human rights': (1) the right to *autonomy*, construed as the capacity to assess options and form some conception of a worthwhile life; (2) the right to *liberty*, construed as freedom from interference in pursuing one's conception of a worthwhile life insofar as this conception encompasses 'the most important components of a good life available to human beings' (163-4); (3) the right to *welfare* or *minimal provision*, construed as the degree of health, food, housing etc. sufficient for forming and pursuing a conception of a worthwhile life.⁴ Thus one does not have a human right to protection from any possible negative impact on one's capacity as a reasoner, nor to protection in the pursuit of whatever one has decided to pursue – such as any old promise accepted from another. Human rights are protections 'not of a fully flourishing life but only of the more austere life of a normative agent' (53).

II.

Despite its enormous appeal, the personhood-as-normative-agency approach is taken in surprising directions by Griffin. I will not criticise him for developing a 'natural rights' account (derived straightforwardly from the notion of the 'the rights we hold simply in virtue of being human'), as opposed to a 'political' account.⁵ My concern is more sympathetic: while Griffin is correct to ground human rights in normative agency, he conceives this too narrowly. I focus below on five claims – while being painfully aware that they cover only a small portion of Griffin's text.

³ This, perhaps, explains the enduring appeal of the 'Will Theory' of rights despite its incompatibility with many everyday uses of the term. As noted in the main text, I favour the 'Interest Theory' but believe many of the intuitions driving 'Will' theorists suggest that rights are especially apt for protecting agency. See Kramer, Simmonds and Steiner 1998 for the 'Interest'/'Will' debate.

⁴ Because its justification as a human right turns, for Griffin, on its importance for autonomy and liberty (cf. 149), welfare seems, strictly, to occupy a lower 'level' than autonomy and liberty.

⁵ But see §IV below, final paragraph.

1. Griffin claims that human rights can conflict with and be overridden by retributive justice. A convict's just imprisonment must be understood as a *justifiable violation* of the convict's human rights (65-66). This seems implausible. If a conviction and punishment is just, then it seems mistaken to say there has been any form of human rights violation, even a justifiable one.⁶

Griffin is correct to note that many issues of justice are not human rights matters – such as the injustice of free riding on a bus (41, 64). But this does not establish that justice can *conflict* with human rights. It simply reminds us that human rights concern only a subset of issues of justice. In my view, appropriate respect for a convicted criminal as an agent capable of responding to reason *requires* punishing them. Punishment is the appropriate way of engaging with such a person about what they have done, and the engagement here is precisely with the person as a reasoner who can come to understand the moral import of their actions. Rather than being in tension with respect for agency of the type protected by human rights, such engagement-through-punishment is the right way to respect a convict's normative agency.

2. While Griffin thinks there is sometimes a conflict between human rights and *retributive* justice (justice in punishment), he thinks that *rectificatory* justice (justice in compensation) for those wrongly punished falls outside the realm of human rights, without conflicting with them: 'In a society with proper welfare provisions, not to be compensated will not undermine the *personhood* of the victim of a miscarriage of justice' (199). Nonetheless Griffin concludes that because of the 'settled use' of human rights to encompass such miscarriages, we can – on the basis of broadly Wittgensteinian considerations about meaning being a matter of family resemblances – allow current usage which sees miscarriages of justice as human rights issues (210). But for Griffin this is a stretch. Personhood as normative agency is not threatened by such miscarriages.

This again seems doubtful. First, simplistically, some forms of miscarriage of justice, such as wrongful imprisonment for thirty years, are clear infringements on normative agency because they significantly limit the person's capacity to pursue their choices. Griffin would accept this point; it seems entailed by the claim discussed above, that imprisonment infringes personhood in the relevant sense. (While this is mistaken with regard to *justified* imprisonment, it seems correct regarding *unjustified* imprisonment.) Griffin's contention is the subtler point that a miscarriage of justice *as such* – where this includes subjecting a wealthy person to an unjustified but trivial fine, or where this includes no more than an official condemnation – has no impact on personhood (199). But even this seems debatable. Respect for a person as a normative agent requires that miscarriages of justice suffered by that person be rectified. This follows from the same considerations driving point no. 1: punishment engages the convicted person's will as reasoner; failure to rectify unjust punishment involves failure to engage properly with someone as a reasoner. Personhood in the 'normative agency' sense seems at stake here.

The two issues mentioned so far both involve a difference between Griffin and me on the relationship between punishment and normative agency. The next two involve an

⁶ Tasioulas is similarly concerned (2010: 673). Griffin's view is shared by Husak (2007).

alternative difference: about whether a person's normative agency can be affected by events of which they are unaware.

3. Griffin claims that undetected violations of privacy would not have an impact on the victim's normative agency: a peeping Tom 'does not actually inhibit his victim's agency' (237). Because of this, Griffin argues that there is a human right to privacy that protects against *all* violations (including those of which the victim would have remained unaware) only because such a right offers the instrumentally best method of protecting people from violations of which they *are* aware, these latter being violations that affect personhood. Notably, this rationale for a human right to privacy does not extend protection to the privacy of dead people (320, n. 27).

But isn't a 'pure' invasion of privacy – an undetected voyeur – sometimes still an attack on the victim's personhood? Maybe Griffin would respond that insofar as this is true, 'personhood' is being stretched beyond normative agency. If 'personhood' encompasses every aspect in which people should be respected, then of course any disrespectful action will violate it. But this will be the case whether or not the relevant action has any effect on the victim's normative agency.

We can resist this response. Undetected violations of privacy can be attacks specifically on normative agency. This is perhaps clearer in cases involving worse impositions than violation of privacy. Gardner and Shute's case of 'pure rape' (leaving no physical scars, committed on a sleeping or drugged victim who never discovers or suspects that they were raped or touched in any way) looks relevantly similar (Gardner & Shute 2000). While this involves an attack on many aspects of personhood, one of the things going on is that the perpetrator knowingly imposes on the victim something bad for them, and to which they would therefore reasonably object, and the perpetrator should have known this.⁷ In this way the perpetrator's action fails to respect the victim as a practical reasoner even though this action has no effect on their consciousness and hence no effect on their will.

The same applies to some undetected violations of privacy. If the perpetrator acts in a way which they should know that the victim would reasonably object to, then the perpetrator fails to respect the victim's reasoning capacity even though it has not actually been exercised. I expand on this in §III below.

4. As in his defence of a right against undetected invasions of privacy, Griffin locates our duties to dead people and people with severe mental health difficulties as somehow *derived* from something supposedly easier to justify: the duty to respect the actual agency of full agents. The reason to respect the dignity of dementia victims is 'deep respect for the full persons they once were, traces of whom may still survive', and he takes a similar line concerning respect for 'the dead body of a beloved parent' (236-7). In 'neither case does the respect seem to be best explained in terms of possession of a human right' (237).

The refusal to use the phrase 'human rights' here might be correct, at least regarding dead people. But it seems strange to detach the reasons for respect in these cases

⁷ A mental state conception of well-being would deny that pure rape can be bad for its victim. One could try to use such an account to defend Griffin's position on undetected violations of privacy, but Griffin himself points out the shortcomings of this approach to well-being in his 1986, 7-20.

from the *direct* importance of the relevant dead person or person suffering from dementia. Griffin writes that someone who fails to act respectfully in these cases ‘has grossly defective feelings’, and the implication is that that is the main failing in such disrespect (236). Perhaps I am misreading Griffin, but it appears that he thinks that because of the limitations built into our human psychological makeup, most of us could not be appropriately respectful to full living agents without also respecting them when dead or mentally disabled, and the requirement to respect the latter is derivative from the requirement to have the correct attitude to full living agents.

If Griffin’s thought is as suggested above, it seems misguided. It fails to recognise that attacks on dead people or people with severe mental health problems are disrespectful of their victims independently of ‘the full persons they once were’. They are disrespectful even if the victims were never full normative agents but were, for example, always severely disabled. Such disrespect derives directly from the importance of the victim, and not from whether respect for victims of this type is necessary in order to ensure respect for full agents. Whether such cases can be explained as disrespect for *personhood as normative agency* is debatable; I will argue that there is a sense in which they can.

5. My fifth focal point is the claim that *respect* for human rights (as opposed to *promotion* of their non-violation) is required only because of ‘practicalities’ such as human motivational and epistemic limitations. Griffin says this takes us to ‘the heart of normative ethics’ (69).⁸

This claim is akin to but more far-reaching than the fourth: that we only have duties towards dead and mentally disabled people because the structure of our sentiments makes such duties required if we are to behave well towards living full agents. The claim under consideration now concerns not the existence but the precise content of our duties (to full agents) as duties of *respect*. The default position for Griffin appears to be that we should promote human rights (I think he would say the same about duties that do not correspond to rights):

The obligation that human rights lay upon us is to do what is most likely to minimize their violation – for example to choose the form of government that is most likely to bring about this result. And minimize not just the government’s violation of its citizens’ rights, but also one citizen’s violation of another’s rights (253).

But Griffin notes that we are sometimes required only to *respect* human rights and thus, for instance, not to kill one person when so doing is the only means to prevent five similarly placed others from suffering similar rights-violating deaths:

At times, the only moral life open to us involves *respecting* values, not *promoting* them. By ‘respecting’ the value of human life, for example, I mean primarily, but not solely, not oneself taking innocent life; by ‘promoting’ life, I mean bringing about its preservation as much as possible by any means open to one. We must come to terms with how certain limits to human nature determine limits to moral obligation (74).

In the paragraphs leading to this passage, Griffin mentions ‘limits to our capacity to calculate consequences’ and ‘motivational limits’ (70, 72). He goes on:

[L]ife must be respected, and [...] one must simply follow the norm, ‘Don’t deliberately kill the innocent’ – follow it because that is the only moral life available to the likes of us, though one might also adopt the policy that exceptions will be allowed only so long as the case for them is especially convincing. [...] Talk of an especially convincing case introduces an epistemic scale,

⁸ See also Griffin 1996, esp. 116-119.

not another moral one. It is the statement of a policy – an openly conservative policy – for what to do when something as important as human life is at stake and our calculations of the goods at stake are altogether too shaky and incomplete and badly conceptualized for us to be willing to live by (80; see also 126-128).

The implication is that if our calculations were not so shaky and badly conceptualized, and if our motivational capacities were not unavoidably biased – if we were superhuman ‘archangels’ in Hare’s sense (1981: 44-45) – then we would not need the constraints on minimising suffering that require respect for life rather than its promotion.

Yet should we really see the constraint to respect rather than promote life as grounded in our human limitations? Would archangelic surgeons violate no rights if they sacrificed a healthy archangelic patient in order to save five others? This seems doubtful because, *independently of the human limitations Griffin outlines*, such sacrifice for others looks like an unjustified violation of, among other things, the patient’s normative agency. *Even for archangels*, this violation does not seem justified by how it supports the normative agency of the five who are to be saved. Intuitively Griffin’s approach makes the requirement of respect rather than promotion insufficiently foundational, and gives promotion an unwarranted default status. The approach also wrongly grounds the requirement of respect in the (limitations of the) character of the agents who have to engage in respect, rather than in the character of those being respected.⁹ It seems more natural to regard respect as required, when it is, because of the particular nature of the people (or animals, artworks etc.) who merit respect – a nature that would call for respect even from humans who lacked the limitations Griffin outlines.

Many human rights call for respect in this technical sense. For example, even though people’s right not to be tortured might often require promotive actions (e.g. campaigning against torture), it would not allow me to torture one person if that was the only way to prevent similar torture to five comparable others. Maybe not all human rights call for respect in this way: consider positive rights such as the right to education. Nonetheless, because many human rights require respect, the previous paragraph implies that if we are to preserve Griffin’s attractive main claim that human rights are grounded in normative agency, then we need an explanation that makes clear why normative agency (sometimes) merits respect. The calculative and motivational limits on our capacity to respond to human rights are not the correct explanation.

III.

Griffin can retain his attractive ‘normative agency’ conception of human rights while avoiding the five problematic claims listed above if he adopts an enriched account of both normative agency and respect.¹⁰ In the current section I develop this account to address the first four problems outlined in §II. In §IV I tackle a difficulty. And in §V, I start on the fifth problem mentioned above.

⁹ For an argument against such an ‘agent-focused’ approach, see Kamm 1996, 237-258.

¹⁰ This is also, I think, the way to address Buchanan’s complaint that Griffin leaves insufficient space for rights to equal status to qualify as human rights (2010).

The two key steps in addressing the first four problems are as follows: (i) We should conceive the respect for a person's normative agency that human rights require as not just a matter of ensuring that the person attains and continues in the state of 'being a normative agent', but also as ensuring that the person is treated in a manner minimally consistent with or appropriate to their nature as a normative agent. That is, we should extend our conception of the *respect* that human rights require to encompass more than the technical sense of a non-promoting 'constraint'. (ii) We should recognise that respect (in this broader sense) for a normative agent involves a central role, in our behaviour towards the agent, for the conception of a 'worthwhile life' (to use Griffin's phrase (33)) that the agent *should* adopt, as well as a role for the conception they *actually* adopt.

For Griffin, the function of a person's human rights is to make sure that the person attains and continues in the state of 'being a normative agent'. Insofar as a person's human rights require 'respect', this means that when, in the face of conflicting rights, we decide whether to *make sure that a particular person attains and continues in a state of normative agency*, we should do so in a non-promoting way: we should sometimes refuse to destroy the person's normative agency in order to make a net gain in the preservation of normative agency overall. In Griffin's technical sense, 'respect' – like promotion – governs *whether someone's attaining or continuing in a valuable state* will be ensured or not.¹¹ But this is a strangely narrow conception of respect. In everyday usage 'respect' covers much more: respecting something valuable means responding to it in a manner minimally appropriate to its value. If we plug this broader conception of respect into Griffin's account, we see a person's human rights as violated not just by behaviour that destroys their normative agency or leaves it unjustifiably unsupported, but also behaviour that is in some sense inconsistent with the person's being a normative agent, or deeply inappropriate given their normative agency. In this broader sense, respect for normative agency includes, e.g., a (defeasible) requirement to engage with people when acting in ways that have a major effect on them. *As normative agents*, people should be engaged with – reasoned with, explained to, listened to – when we act in ways that affect them significantly. This applies even when our actions' effects are not effects on normative agency. Similarly, Raz notes that respect involves 'appropriate psychological acknowledgement' of what is valuable: we should *think* of normative agents *as normative agents*.¹² I touch below on further aspects of respect in this broad sense.

Buchanan argues that Griffin faces a dilemma in choosing between an 'austere' and a 'rich' interpretation of the claim that human rights protect normative agency. The austere interpretation maintains that human rights 'simply serve to ensure our existence as normative agents' (Buchanan 2010: 695). This limits rights inflation but leaves us with too few human rights: even slavery 'need not and typically does not destroy an individual's capacity for normative agency' (ibid.). By contrast, the rich interpretation sees human rights as protecting 'the opportunity for "reasonably effective" or "adequate" normative agency' – but it is indeterminate what counts as 'adequate' agency and the risk of rights inflation is high (ibid.). Raz and Tasioulas

¹¹ Admittedly, Griffin writes that '[b]y "respecting" the value of human life, [...] I mean *primarily, but not solely*, not oneself taking innocent life' (74). The italicised section suggests Griffin means respect to include more than the technical 'constraint' idea. But he does not expand on this to avoid the problems outlined in §II above.

¹² Raz 2001: 161.

charge Griffin along similar lines (Raz 2010: 326; Tasioulas 2010: 660). Griffin replies that

we can identify both states below normative agency (e.g., a life entirely consumed in a desperate struggle to keep body and soul together) and states above it (e.g. especially well endowed with practical wisdom and material resources). And in drawing the dividing line, a society should consider the general run of people. It must identify what is necessary to ensure that this general run of people will be above the threshold (Griffin 2010: 748).

This reply, by rejecting the austere interpretation, delivers conclusions – that slaves and impoverished people are, like babies and severely mentally handicapped people, not normative agents – that misdescribe people. It fails to highlight the distinctiveness of those who manage to make reason govern their will even while very restricted. We should do our best to avoid classifying slaves and deeply impoverished people as in a state ‘below normative agency’. This classification risks leading us to forget that slaves and impoverished people govern their own wills and have their own reasons, just like ‘us’.

An alternative reply to Buchanan draws on my suggestion that a person’s human rights not only protect their normative agency, but also require respect – in a broader-than-‘constraints’ sense – for them as a normative agent. Armed with this point, Griffin could stick to the most austere conception of normative agency and maintain that human rights against slavery and to liberty, say, are generated by the importance of *respecting* people’s normative agency austere conceived, rather than being necessary to protect people’s *qualifying* as normative agents. Thus Griffin could – as he should – allow that slaves and impoverished people are normative agents; but he could simultaneously maintain that their human rights are violated because they are not being treated in ways that are called for by their status as normative agents. Their normative agency, while actual, is disrespected.

What is it to respect normative agency in my broader sense? The second step in addressing the first four problems outlined in §II is to recognise the importance, in one’s dealings with normative agents, not just of their actual choices, but of what they should choose. Normative agents can make reason govern their will: they are capable of responding to the good, to what genuinely makes life worthwhile, and also to what is genuinely valuable in non-anthropocentric terms. We can conceive something like an ‘agent’ that does not work in this way: a machine that will ‘choose’ one or other option depending on weights placed on its scales. This is not a normative agent because its decision is not responsive to reasons. One might think that respect for normative agency requires simply respecting whatever choices the agent makes: helping them or not impeding them in whatever they choose. But this does not recognise normative agents’ difference from the machine mentioned above. As agents capable of responding to reason, we merit assistance in developing the *capacities* to choose in the light of reason, and Griffin is good on this (179-182). We also merit assistance in pursuing *what reason dictates* that we should pursue, and Griffin tends to overlook this. When a person makes poor life choices, the requirement to respect what they should have chosen will be in tension with the requirement to respect what has actually been chosen. We experience this tension when attempting to behave respectfully towards someone who, for example, embraces dogmatic religious or political views that they should have avoided. In such cases, respect for the person as a normative agent should be guided both by respect for the person’s choice *and* by respect for what should have been chosen: in typical cases it is

not respectful to the person as an agent immediately to force them to pursue what they should have chosen, but nor is it respectful to their agency merely to accept their poor choice without engaging with them about this, and without sometimes being willing to act against what was chosen.

Of course I do not deny that respect for normative agency partially involves not impeding people's actual choices (Griffin's 'liberty'). For not only are we unlike the machine above; we are also unlike a cat or a mouse who makes choices governed by reasons, but not *understood as reasons*. Unlike animals, we make our choices for reasons that we can conceive as reasons: we can respond to the good qua good. This is one ground for limiting paternalistic interventions. Because we know what we are doing when we make choices, it is appropriate to extend greater respect to them. Respect for normative agents who have made poor choices – unlike cats and mice – normally involves engagement with such agents as reasoners, rather than compelling them to pursue 'the good' independently of their reasoning capacity.

But this is all of a piece with my main claim that one strand in respect for us as *normative* agents must give a central place to what is good for us independently of whether we choose it. Griffin is deeply sensitive to the fact that our interests will not coincide with what we choose. This is the launch point for his persuasive rejection of the 'taste model' of value judgement and his defence of the objectivity of the values of 'accomplishment, enjoyment, deep personal relations, certain kinds of understanding, and [...] the components of personhood' (116). But he rarely considers that respect for personhood in his sense can *itself* sometimes license overriding a person's freely made choices or imposing what the person should have chosen when in the circumstances they could not make a choice. Instead, such cases are taken by Griffin to involve limitations on the personhood interests of the agent, justified by other values or by the personhood of other people.¹³ This underplays the way in which respect for the normative agency of a given agent involves, in part, respecting what they should have chosen.

The two steps sketched above let us make a start on alleviating Griffin's problems. First, they support the thought that justified punishment is not inconsistent with respect for normative agency. I am tempted by the communicative-retributive theory that hard treatment is justified as the only way to communicate to a wrongdoer the nature of their action and the community's condemnation of it (Duff 2001). If this is correct then punishment is required by respect for a convicted wrongdoer's normative agency. Failure to punish when this is justified is – perhaps setting aside cases of justified mercy – disrespectful of the wrongdoer's capacity to respond to reason: it involves failing to engage with the wrongdoer about the seriously mistaken choices they made.

Furthermore, if this is right then a convicted wrongdoer should choose to be punished. As responsive to reason, they should choose to be engaged with in the manner necessary to bring them to understand what they have done and to understand the community's response. Given the seriousness of wrongdoing, in such cases *what the*

¹³ See the cases discussed in Griffin's Ch. 3. Griffin countenances overriding a person's choices for the sake of that very person's normative agency in his discussion of suicide (217).

agent should choose dictates how to behave respectfully to them as reason-responsive, independently of what they actually choose.¹⁴

Secondly, given the discussion above, a miscarriage of justice will be a serious error in engagement with a person as a normative agent. Even if the punishment was materially slight, the message communicated will have diverged sharply from that appropriate to an agent who governed their will correctly in light of the good, and our thoughts about the agent will have been similarly divergent. Failure to acknowledge this will disrespect a person as a normative agent: it will be inconsistent with recognition that the person in question is a reason-responsive agent.

Thirdly, many undetected invasions of our privacy will be attacks on normative agency because they are actions we would ask others to eschew if we could – because important values are at stake that, as normative agents, we should be aware of. For example, a voyeur who, for their sexual gratification, observes someone undressing, can thereby violate values of sexual integrity which the person under observation should recognise and embrace. And someone who regularly observes another closely without the subject's knowing this, and who does so intending to document the person's life without telling them, can thereby violate an important value: the value of knowing what important things others know about one. Both values – sexual integrity and knowing what important features of one's life are known – should not be pushed too far. The latter does not extend to the prohibition of nosy curtain-twitchers. And the former should incorporate an exception for undetected observation of a subject known to be an exhibitionist: someone who has embraced sexual integrity in a manner consistent with being observed. Nonetheless, many undetected invasions of privacy involve violations of important values even though they go undetected. Because the victims, as normative agents, should be sensitive to these values, they would normally (barring cases of unusual response like the exhibitionist) and justifiably want any such invasions not to take place. Furthermore, these are uncontroversial values that most people should recognise. Persisting with voyeuristic activities in the face of these facts shows disrespect to the victim's normative agency.

This is consistent with the plausible thought that the values themselves – sexual integrity, awareness of others' knowledge of one – are the main reason why the relevant activities are morally wrong. Their wrongness derives directly from these values, as well as indirectly via the value of normative agency. This is compatible with our calling them *human rights* violations because they disrespect normative agency.¹⁵

Something similar can be said about respect for dead people and those who have lost their normative agency to mental illness. Here we cannot appeal to what the person *should* choose, for they cannot choose. We can only appeal to the way important

¹⁴ This perhaps supports a *right to be punished*, rather than simply showing the *consistency* of normative agency and justified punishment. But proving the consistency is enough for my purposes. It is less easy to do this for alternative theories of punishment, but I believe this can be done for rehabilitative and deterrence theories (at least, versions of the latter aimed at deterring re-offending by the convict): such theories make punishment a matter of engaging with the offender as a normative agent.

¹⁵ See Griffin's similar point that what most obviously makes torture wrong is that it 'causes great pain', but its being a human rights matter depends nonetheless on its relation to normative agency (52).

values are at stake to which, if the person were a full normative agent, they should have been responsive. This extra distance from the actual choices of a victim who is a normative agent is one reason why the language of ‘human rights’ seems inappropriate (though in my view it remains attractive regarding those with severe mental health problems). Nonetheless there is an extended sense in which some types of disrespect to dead or severely mentally disabled people involve disrespect for normative agency. I hesitate to say that it is disrespect for *the victim’s* normative agency, for the victim in these cases is not now a normative agent. But the victim, even if dead, can still be regarded as a human being, ‘one of us’, and we humans are generically normative agents even though not all of us have this character – just as generically dogs have four legs even though not all dogs do. I think this lets us make some sense of the thought that offending against what the victim *would or should have chosen if they could* involves a form of normative-agency-related disrespect even when the victim cannot make choices.

Perhaps this is a stretch and we should instead say that only other aspects of a dead or mentally disabled victim’s personhood are at stake, aspects distinct from normative agency. Well-being is one obvious candidate: a dead person’s well-being can be profoundly affected by disrespectful actions, I think, and we can make sense of this independently of their normative agency. Parallel things can be said about the well-being of people whose mental health problems deny them agency. In less bold moments this well-being-based view is my preferred approach to non-agents of the types under consideration. It still differs from Griffin by making one of the victim’s own features (namely, their well-being) our reason to respect them, rather than the importance of the ‘full person they once were’ or the importance of respect for other full agents. But it makes the issues more distant from human rights on the normative agency view.

IV.

Griffin will worry that on my broad conception of respect for normative agency, especially if we take the bold position eschewed in the last paragraph above, ‘human rights would expand to fill [the] whole domain [of moral obligation], which is so counter-intuitive a consequence that we must avoid it’ (201). Griffin is certainly correct to want to avoid this, and I accept – although I am less certain here – his further wish to avoid human rights expanding to cover ‘all substantial injustices’ (ibid.). There are two grounds for these worries. One is that the conception of *respect* to which I appeal seems to encompass any requirement to treat a person as normative agents should be treated; this appears to make every breach of promise or contract a human rights violation. The other is that I seem to allow any genuine value at all to become a matter of normative agency – and hence of human rights – because it is something to which a normative agent should be responsive; this does indeed seem to make human rights encompass all morality.

To some extent, the narrow idea of personhood as specifically *normative agency* can forestall the latter worry. It seems implausible to regard free riding on the bus as disrespectful to other passengers’ normative agency, even if it is disrespectful in other ways (198). Free riding does not seem inconsistent with minimal recognition of one’s fellow passengers as people responsive to reason. So not every failure to respect a value that normative agents should have recognised will involve disrespect for

normative agency. I suggest that trivial values and values that few are likely to recognise seem, intuitively, too distant from normative agency even though there is a sense in which any normative agent should be responsive to them.

This still leaves every non-trivial promise and contract a matter of human rights, given that breaching a promise or contract is an archetypical case of disrespect for a person as someone whose reason one has engaged. In the remainder of this section, I consider three responses, the third arriving only in the section's final paragraph. First, one could use a notion of *importance* to limit what is meant by 'respect' or 'normative agency' or both. On the latter version of this account, human rights do not secure *respect for normative agency as such*, but rather *full or deep respect for the important aspects of normative agency*. Thus even crucial promises – to deliver the wedding rings on time, say – are not matters of human rights because they are not important enough in this sense. Breaching the promise here will not manifest full disrespect for the promisee as a normative agent; it will not be inconsistent with treating the person as a reasoner, in the way that torturing the person or engaging in some forms of invasion of privacy will be.

This appeal to 'importance' might seem too vague but although Griffin does not use my broader conception of 'respect', he has to appeal to this same conception of importance to draw the limits of normative agency *as a condition* where he wants it: so that slaves lack it and so do homosexual people seeking to get married in the UK today, yet people who are relatively poor but with enough to live on in a society of great inequality do not.¹⁶ In explaining why same-sex marriage is required by human rights, Griffin makes whether a person has attained the condition of normative agency depend on whether some of 'the most important components of a good life available to human beings' are open to that person (163-4). This looks like a useful notion of importance to flesh out respect for personhood in my broader sense: full or deep respect for the *important* aspects of normative agency requires only that we respect people's capacity to choose and their reason-governed choices when these concern 'the most important components of a good life available to human beings'; agency's relation to other matters falls outside the realm of human rights. This might deliver a plausible extension for human rights. And – to repeat a point from §III – doing it my way rather than Griffin's allows us to say that homosexual people in the UK now, like slaves and many torture survivors, are fully normative agents despite suffering a human rights violation: that violation is to be explained in terms of *disrespect* for (the important aspects of) normative agency, not non-provision of it.

However, the idea of 'importance' is worrying. Does relative poverty among affluent people really not count as important in the relevant sense? Does failure to deliver the wedding rings? The concept's vagueness allows us to get the extension right by appealing to intuitions that are difficult to substantiate. Maybe this is correct: I can picture an argument that this appropriately reflects everyone's vagueness about the extension of 'human rights'. But it is worth looking at further ways to limit the respect for normative agency that human rights require, bypassing 'importance'.

A second approach maintains that human rights – unlike other rights – have to be individualistically justified. A right is individualistically justified if and only if some

¹⁶ See again Buchanan 2010: 695-6, Raz 2010: 326; see also Cruft 2010a 177-178.

valuable feature of the right-holding person is normally sufficient on its own to ground the existence of the right for this person, independently of whether this serves or diserves other people or values. If, instead, the person's right frequently vanishes when it conflicts with other people's interests or freedoms, say, or if it only exists because it serves or ensures respect for other people as well as the right-holder, then this right is not individualistically justified (Cruft 2006: 154-58).¹⁷

Tasioulas and Raz think all moral rights are individualistically justified:

Individual moral rights, of which human rights are a subspecies, are grounded in some normatively salient characteristic of the individual right-holder (Tasioulas 2010: 657).

"X has a right" if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty (Raz 1986: 166).¹⁸

But many important moral rights – including a scientist's right to pursue research that will threaten cherished religious beliefs and most of a given person's property rights – are justified by what they do for the wider community, rather than simply what they do for their holders. Raz recognises this when he argues that some rights are justified by how they serve the common good rather than simply their holders' interests; he mentions the journalist's right not to reveal their sources (Raz 1986: 179). Raz tries to accommodate such counter-examples by allowing that a person can hold a right in cases where that person's interests only justify a duty *because serving these interests in this way also serves other people's interests*. Thus Raz maintains that the journalist has a right not to reveal her sources because (as required by his theory) the journalist's interest justifies a duty; but he maintains that the journalist's interests only justify this duty because serving them also serves the common good (ibid.). While Raz presents this as a way to interpret his theory it is actually an admission of defeat for, as Kamm notes,

[i]f the satisfaction of the interests of others is the reason why the journalist gets a right to have his interest protected, his interest is *not sufficient* to give rise to the duty of non-interference with his speech (Kamm 2002: 485).

In my view, we should allow that many moral rights are not individualistically justified, but we should see individualistic justification as a distinguishing feature of *human rights*. A non-individualistic approach (e.g. one which made a person's human rights' existence depend partially on how they serve other people) would fail to make human rights mark an area of morality in which we should 'take seriously the distinction between persons' (Rawls 1971: 27). Surely *human rights* are individualistically justified, if any are. We can fit this within our Griffinian framework thus: a person's human rights are a subset of their *rights requiring respect for normative agency*: those grounded in the importance of *that person's normative agency considered on its own*, those that would exist on this ground even in the face

¹⁷ Individualistic justification is a matter of why a right *exists*, not of the conditions under which, although existent, it can be justifiably *overridden*. The adverb 'normally', in the main text, reflects the thought that a right can be individualistically justified in my sense even if its ground in the right-holder is defeasible in extreme circumstances (Cruft 2006: 155, n. 3).

¹⁸ The quotation from Raz only makes rights individualistically justified in precisely my sense if one reads 'other things being equal' and 'sufficient reason' appropriately (see *ibid.*). The quotation from Tasioulas only makes rights individualistically justified if read with an implicit 'only' or 'primarily' thus: '[i]ndividual moral rights [...] are grounded [*only or primarily*] in some [...] characteristic of the individual right-holder'; Tasioulas's text supports this reading.

of strong countervailing considerations and whether or not they will also serve what is important for others.¹⁹

This gives an alternative way to prevent my broadened conception of *human rights as securing respect for normative agency* from encompassing too much. Many rights that seem to protect normative agency are not individualistically justified and hence cannot qualify as human rights. I already mentioned property rights and rights to pursue scientific research that threaten religious beliefs. We should, I think, adopt the individualistic requirement as a condition on human rights.

But can we thereby exclude important promissory and contractual rights? This depends on the success of a non-individualistic account of such rights, such as a consequentialist account which makes even the most important promissory and contractual rights justified primarily by their role in a system which serves the common good. I am not sure this works. My right that you deliver the rings on time appears normally to track only my important interests in the smooth running of my wedding.

So we are still left with the problem of excluding important promises and contracts. One response accepts that these are human rights. When taking human rights as a secular extension of the natural rights tradition, this can seem attractive. Options to avoid this include (a) returning to the notion of ‘importance’ and leaning on this heavily to exclude all promises – but I have said this is problematic, (b) abandoning my broadened conception of human rights as encompassing *respect* for normative agency, and reverting to Griffin’s ‘normative agency as condition’ view (for breaking important promises or contracts does not stop one attaining a condition of normative agency, even if it disrespects a person as a normative agent) – but I have argued against this, or (c) heading for a more ‘political’ conception of human rights. One version of this last option maintains that human rights must be everybody’s business, and hence permissibly enforceable by or on behalf of all humans. This would exclude promises or contracts as ‘private’ matters.²⁰ I find this option – when added, as an extra necessary condition, to my individualistic extended version of Griffin’s theory – quite attractive as a way of mapping the rough extension of contemporary human rights language. But it makes human rights a messier normative category than if they were simply rights individualistically justified by their holders’ normative agency. I shall not take a stance on this final suggestion; I leave it open whether we should allow important promissory and contractual rights to be human rights.

¹⁹ Raz thinks some canonical human rights are not individualistically justified: “The right-holder’s interest [in his own freedom of expression], conceived independently of its contribution to the public interest, is deemed insufficient to justify holding others to be subject to the extensive duties and disabilities commonly derived from the right to free speech” (1986: 179). Raz concludes that this human right is justified by how it serves the interests of people beyond its holder. We can argue against Raz by focusing on the importance *to the individual* of being unimpeded in speech, whether or not they use this opportunity. But we should also take the extended line I propose for Griffin: even when freedom of expression is not necessary to ensure fulfilment of some interest of the right-holder, *respect* for many of the right-holder’s interests – responding to this person appropriately as bearer of these interests – requires respecting their speech. Specifically, respect for a person *as a normative agent* requires this, whether or not such respect serves anyone else.

²⁰ Other versions of the ‘political’ approach would also do so, of course.

V.

I have argued that Griffin is correct to ground human rights on normative agency (§I), but that normative agency generates a requirement of *respect* broader than the technical ‘constraint’ notion (§III), and that only rights to respect for normative agency that are *individualistically justified* will be human rights (§IV). Making these two moves allows us to address the first four problems in §II without broadening human rights to encompass all morality – though I have left unresolved whether they encompass important promises and contracts.

What of the fifth problem in §II? Why does an individual’s normative agency merit respect? Unlike some values (e.g. happiness, welfare), normative agency – our ability to make reason govern our will – seems to cry out for respect, in both the technical and the broader sense. Griffin’s account does not make this sufficiently fundamental. This is, I suspect, partly because for Griffin human rights are a subset of a wider class of norms advocating respect and promotion for *interests* or *needs*. He writes that his account

can [...] be seen as a kind of need account: what is needed to function as a normative agent. What is needed will be air, food, water, shelter, rest, health, companionship, education, and so on. There will clearly be great overlap between the lists that emerge from [Griffin’s own account and the needs accounts of human rights developed by David Wiggins or David Miller]. [...] But the lists will not be the same. The personhood account is more focused and exclusive in the role it specifies: what is needed to function as a normative agent (90).

Note that the needs mentioned in this passage are fairly simple and ‘material’: food, water, companionship, education. In discussing the metaphysics of human rights, Griffin writes:

[J]udgements about human interests can be correct or incorrect. They report deliverances of a sensitivity to certain things going on in the world: namely, interests being met or not met. [...].

The notion of ‘meeting an interest’ is rather like the notion ‘soothes’: something is relieved. [...]

[A] statement about being soothing and a statement about meeting interests must be much like one another because, on closer look, the first statement *is* an instance of the second. An ointment, say, soothes an irritation, and an irritation is in the general class of pains and discomforts, which are cases of disvalues. Compare ‘That ointment soothes my irritation’ with ‘That accomplishment makes my life fulfilled’. In the second judgement, too, a value enters to explain why people are in certain respects as they are – namely, with interests met or unmet. It explains why some people suffer from a sense of emptiness or futility, especially at the end of life, whereas others do not [...]

[T]he emptiness in question occupies much the same sort of place in our life as does an irritation that some ointment might soothe. Both are lacks that are part of human nature (119-120).

I do not dispute these claims. But to follow Griffin by focusing on *needs* and *soothing* can lead one to overlook aspects of normative agency relevant to its meriting respect. Soothing involves the material satisfaction of a felt appetite, changing someone’s body and thereby changing their sensations. Many aspects of personhood in Griffin’s sense are correctly captured by this model: e.g. having enough food to survive in order to make decisions and follow them through. Being educated is similar, involving changes to one’s body and (that part of it which is one’s) mind that enable one to grow into a mature decision-maker. Nonetheless, I think Griffin’s examples can lead one to overlook the unusually complex nature of normative agency, and the attendant complexity in how it can be disrespected. I mention three aspects briefly.

First, normative agency is knowingly guided by something external: *the good*, where this is not necessarily what is *good for the agent*. Many of our interests in our normative agency, and our interests generated by our being normative agents, are special: not just interests in doing something or getting something that will be good for us, but in doing or pursuing something that is good in a wider sense, and doing so because it is good. These central features of normative agency must be reflected in its moral importance. By contrast, simpler interests – in food or in being soothed – need not be interests in ‘the good’ in the relevant sense (e.g. even if the balance of reason requires me to go on hunger strike, I still have an interest in receiving food).

Secondly, the interests generated by my being a normative agent are partly cognitive or epistemic. I do not mean that we must have a certain cognitive capacity – to understand and mentally manipulate options, and make a choice – in order to be autonomous in Griffin’s sense, though that is certainly true. What I mean is that any normative agent must, qua normative agent, unavoidably possess certain beliefs with a certain content. An example is mentioned by Weil:

At the bottom of the heart of every human being, from infancy until the tomb, there is something that goes on indomitably expecting, in the teeth of all experience of crimes committed, suffered, and witnessed, that good and not evil will be done to him (2005 [1943], 71).

A less controversial example is the belief that one’s arm is moving acquired when one decides to move one’s arm. I think this belief and Weil’s are examples of the same phenomenon: beliefs generated independently of inference from observation, simply from one’s being an agent who acts (in the arm case) or an agent among others (in the Weil case).

I cannot defend this fully here, but I suggest that it is impossible to possess autonomy in Griffin’s sense – the capacity to choose one’s own path through life, governed by an appreciation of what is good – without possessing something like the belief that other autonomous reasoners will not do evil to one, including the beliefs that one will not be lied to, kicked or beaten. The phenomenology of observing or suffering evil supports this: there is not only the sensation of pain or anguish (as victim) and moral outrage (as victim or observer), but also a form of cognitive dissonance, a little akin to the sense one gets, when misjudging a staircase, of trying to step on a stair that is not there. But this analogy makes it seem more trivial and contingent than it is. In the case of severe evil, the cognitive phenomenology is that the world is not simply not as I believed it was; it is rather that the world is not as I cannot help but believe it to be. I cannot help but understand reasoners as beings who do not do evil to each other, and in some mental compartment I go on believing this in the face of evil (see Winch 1989: 155).

If this is correct, then respect for people as normative agents will involve not only fulfilling what are in some sense their ‘material’ needs (for food, water, for the materials of education, for companionship, for things not to get in their way) but also the cognitive or epistemic needs attendant on their being agents. That is, while disrespect for normative agency can involve violating a person’s material flourishing, it can also (in a way that has no parallel for many other interests) involve undermining the success of beliefs they cannot help holding – in roughly the same way that preventing someone’s arm from moving when they will it creates a cognitive dissonance in addition to the ‘material’ nuisance of preventing the person from using their body as they have willed.

Thirdly, normative agency non-instrumentally requires that certain rights exist. Raz puts this in terms of interests, writing that we have an interest in the existence of certain rights independently of whether they help us avoid suffering:

Some rights may be based on an interest in having those same rights. [...] A right is a morally fundamental right if it is justified on the ground that it serves the right-holder's interest in having that right inasmuch as that interest is considered to be of ultimate value, i.e. inasmuch as the value of that interest does not derive from some other interest of the right-holder or of other persons. [...] [But it is] very unlikely that all moral considerations derive from people's interests in having rights. Are not their interests in avoiding starvation, in being adequately educated, and other similar interests of moral relevance as well? (1986: 191-2).

Kamm makes a similar claim. Her version eschews the language of interests. She says that our nature as 'high worth' beings requires the existence of certain rights independently of whether these rights best promote our interests:

[T]here may be a type of good that already exists but that would not exist if it were permissible to transgress the right of one person in order to save many lives. This is the good of being someone whose worth is such that it makes him highly inviolable and also makes him someone to whom one owes nonviolation. This good does imply that certain of one's interests should not be sacrificed, but inviolability matters not merely because it instrumentally serves those interests. [...] Inviolability is a reflection of the worth of the person. On this account, it is impermissible for me to harm the person in order to save many in the accident, because doing so is inconsistent with his having this status.

[....]

It is important to distinguish the good [...] of the person, which may give rise to his inviolability, from its being good for the person to be a person of such worth and, hence, inviolable. Even if it is in his interest, this is not the source of the rights associated with his being inviolable. He must have a certain nature, rather than an interest, in order to be worthy of inviolability (Kamm 2007: 253-4).

Both Raz and Kamm here argue that certain rights are justified (for Raz: because they serve certain interests; for Kamm: because they reflect our nature) independently of whether they help us in what I have been roughly calling 'material' terms. They are justified independently of whether they will be respected and even independently of whether the right-holder is ever aware of their existence – and hence independently of whether they will make the right-holder's life feel better.

It seems to me that our character as normative agents supports Kamm's and Raz's thought. It is precisely because we are able to make the good govern our will that we are 'high worth' beings who merit, or have a non-instrumental interest in, a particular normative status, a status requiring that we be *respected* in both the technical and broader senses. Such a respect-style moral framework seems essential to other valuable goods, such as friendship: the only conceptually possible way to be a genuine friend is for one to be subject to respect-type duties to one's friend. The relevant necessary constituent of friendship here is not simply *belief in* the existence of such duties, nor simply *compliance with* or *acceptance of* such duties. Rather, the duties themselves – normative entities requiring 'respect'-type directed concern for a particular person – are a conceptually necessary constituent of friendship. Similarly, I suggest, Kamm is correct to think that a respect-type moral framework is an essential concomitant (if not, perhaps, *component* in this case) of normative agency. The directed concern that this framework requires is made necessary by our being normative agents, beings capable of responding to each other as reasoners.²¹

²¹ For a development of the argument of this paragraph, see Cruft 2010b.

Each of the three claims above about normative agency needs much more discussion. Griffin could reasonably respond that he finds the last two claims (that respect for a person's normative agency requires respect for certain unavoidable *beliefs* about how one will behave in relation to the person, and that it also requires the obtaining of a respect-style normative framework) implausible. He has, after all, offered his own account to rival the third claim: the account of respect I criticised under no. 5 in §II.

Nonetheless, the three claims remind us that normative agency can be disrespected not just by stopping someone being an agent or acting on their agency, but also by failing to respond to what the agent should embrace, by failing to respect the agent's unavoidable epistemic commitments, and by treating the agent as someone who lacks rights even when so treating them does not otherwise harm them. I think we need something like the claims above in order to make a start on a more attractive account of the nature of respect, and of why normative agency requires it – (a) one that makes normative agency require respect even from Hare's 'archangels', rather than making respect required by our human limitations, and (b) one that grounds the need for respect primarily in the nature of normative agency, rather than in the nature of the beings who encounter it. Focusing on interests that are appropriately complex, less straightforwardly 'material', less like soothing, can get us closer to this. In my view, the most promising way of building on the vague intuitive intension of the notion of human rights is to develop an account of *human rights as respect for normative agency* that takes its cue from these thoughts. As Griffin has persuasively shown, human rights protect normative agency; but they protect it by requiring *respect* for it in a broad sense that we can only fully understand by thinking further about what it is to make reason govern our will.²²

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