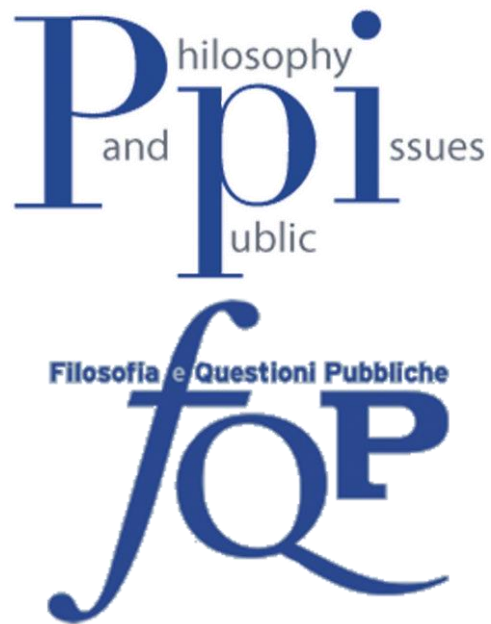


SYMPOSIUM
HUMANITY WITHOUT DIGNITY



HUMANITY WITHOUT DIGNITY
A PRÉCIS

BY
ANDREA SANGIOVANNI

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Humanity without Dignity

A Précis

Andrea Sangiovanni

Today we take it for granted that we are all, in some fundamental sense, one another's equals. But how—given the inexhaustible social, cultural, economic, cultural, political and personal differences that exist between us—can this be so self-evident? Formal answers disappoint. To say that 'basic equality requires us to treat everyone the same unless we have reason to treat them differently' is to leave all the more difficult questions open. What we want to know is when we have reason to treat people differently. Is race, for example, a reason to treat someone differently? The formal answer remains silent, since it doesn't tell us what counts in this arena as a good reason.

More substantive, but still thin, answers also leave us wanting more. To say that "basic equality means that we ought to weigh everyone's interests equally" looks either false or uninformative. It is false if we mean it literally. For example, we might want to give special weight to the interests of pensioners when allocating bus seats and special weight to the interests of those worst off when we allocate scarce resources; we might also want to discount the interests of the malicious in their malicious ends. The principle, taken literally, looks like it bans us from doing so. If we respond by saying that such consideration is not really *special* or *unequal*

because we have good reason to treat pensioners, the malicious, and so on, differently, then we seem back with the formal, uninformative answer.

A much more promising route turns on the idea that we are all equal in fundamental moral *worth* or *dignity*—a dignity that sets limits to what others may, with justification, do to us. In an important article, Gregory Vlastos writes:

To be sincere, reliable, fair, kind, tolerant, unintrusive, modest in my relations with my fellows is not due them because they have made brilliant or even passing moral grades, but simply because they happen to be fellow members of the moral community. It is not necessary to add “members in good standing.” The moral community is not a club from which members may be dropped for delinquency. Our morality does not provide for moral outcasts or half-castes. It does provide for punishment. But this takes place within the moral community and under its rules. . . . Here, then, as in the single-status political community, we acknowledge personal rights which are not proportioned to merit and could not be justified by merit.¹

He then claims that the *only justification* for such rights is the dignity of the human being:

Their only justification could be the value which persons have simply because they are persons: their “intrinsic value as individual human beings,” as Frankena calls it; the “infinite value” or the “sacredness” of their individuality, as others have called it. I shall speak of it as “individual human worth”; or “human worth,” for short.²

¹ G. Vlastos, “Justice and Equality,” in *Theories of Rights*, ed. J. Waldron (Oxford: Oxford University Press, 1984), 141-176: 155.

² *Ibid.*

The idea of dignity as a foundation of moral equality and in turn human rights has surged in popularity since the UN Charter and UDHR, and is now pervasive, informing myriad court cases, constitutions, and social and political movements around the world.

But what is its basis? There are two main dignitarian traditions: one Christian, the other Kantian. Each begins in a similar way. We have, proponents say, some special capacity—like the capacity to love, or to think abstractly, or to make decisions in accordance with reasons—that raises us up in the order of nature, that makes us special, and specially worthy of respect understood as a kind of awe. But here is an enduring problem with all such views. (There are also a range of other problems specific to each camp that I discuss at greater length in Chapter 1.) Surely our capacities for each of these things vary from human to human. Some of us are very good at making rational or moral choices, some very bad. If dignity as a kind of worth is supposed to be a function of our capacities, then those who exhibit such capacities to a higher degree should have a higher kind of worth.

And this fact, I argue, should not surprise us. Dignity comes to us as a notion from Aristotle first, via the image of the *megalopsychos*, the great-souled man, and on through Cicero and the etiquette books of the Renaissance. These aristocratic origins still cast a shadow over our own usage, as when we refer to someone with a dignified bearing, Mandela for example, or the dignity of a judge. In this tradition, it is those who display great virtue and social standing that merit dignity. This is why efforts to democratize the notion ring false.

But how do we make sense of our commitment to moral equality if we abandon dignity and equal moral worth as foundations? Does abandoning them mean that we should abandon the idea of basic equality (as, for example, Nietzsche or

Marx urge us to do)? I argue that, no, we should not accept the skeptical conclusion but we should reject the idea of equal moral worth. How do we square the circle? We need to deploy an entirely different method.

Rather than search for some set of natural capacities that are meant to make us equal in worth, we ought to consider our practices of treating one another as equals. We ought to ask, as if we were ethnographers, what function these practices play in our everyday lives, what work they do. We ought to look, for example, at what role mutual respect and the forbearance and restraint typical of it plays in those practices. Here I argue that the attitudes and norms that govern our practices, like respect, do not serve to honor or reflect a capacity that makes us worthy; rather, they serve to protect us against various ways of being treated as inferior.

This is important: on my view, the key to explaining our commitment to moral equality is to explain when and why it is wrong to treat another as inferior. We begin, that is, with paradigmatic denials of our equal moral status, and try to account for what makes them wrong without saying they are wrong because we are, in fact, equal.

It seems clear that paradigmatic violations include things like segregation, genocide, caste societies, invidious discrimination, the persecution of girls by Boko Haram, the callousness and maliciousness of a Jeremy Weinstein or a Donald Trump. Each one of those involves one or more of the following ways of treating as inferior, namely, infantilization, stigmatization, dehumanization, instrumentalization, and objectification. But why and when are these forms of treatment wrong in the special sense we are interested in? After all, instrumentalization isn't always wrong. Think of peeking over at someone's wristwatch to see the time. Even dehumanization isn't always wrong: think of a police officer

herding people, like cattle, into a stadium for a football match, but who does so entirely in accordance with standard procedure.

In short, in Chapter 2, I argue that each of these practices and associated inferiorizing modes of treatment is wrong when and because it is an instance of a special kind of cruelty. I draw from writers like Judith Shklar, who claimed that at the heart of liberalism is a rejection of cruelty.³

There are, however, many kinds of cruelty. Alongside physical cruelty, there is another kind of cruelty that is central; I call this kind social cruelty. Cruelty of this kind involves an attack on another's capacity to develop and maintain an integral sense of self. By sense of self here I mean your conception of yourself as an actor in the world—what others have called your practical identity. And by integrity I mean your capacity to see yourself reflected in your most important ends; in seeing them as *yours*.

You might think that the idea of an attack on someone's capacity to develop an integral sense of self is altogether too psychological, or simply not fundamental. But this, I claim, is a mistake. Think of the most important goods in a human life, things like love, friendship, knowledge, and raising and care of children. It is essential to us as human beings that the good of each of these things is not in the mere *having* of them. Their good is only fully realized when we can invest ourselves in them, when they reflect our aims and values.

So the kinds of practices that I have identified are wrong not just because they are, say, physically painful (think of rape here or even genocide) or denials of socioeconomic opportunity (think of discrimination). This is too narrow a view. We do not understand their wrongness unless we see that the denials of opportunity, the

³ J. N. Shklar, "The Liberalism of Fear," in *Liberalism and the Moral Life*, ed. N. Rosenblum (Cambridge: Harvard University Press, 1989).

infliction of pain and suffering, and so on, are also means by which our integrity as sociable beings is attacked. There is an ineliminable symbolic element to each of these practices. It is one thing to pull off someone's scarf, and another to pull off their *hijab*.

To unpack this further, consider that each of these practices and the forms of inferiorization with which they are associated attacks our integrity by attacking one or more of three central interests we have as essentially sociable beings—each of which is essential to preserving our capacity to develop and maintain our integrity. First, our interest in partially controlling what remains part of our inner life and what is presented to others about us. Think here of the objectification that occurs in what Erving Goffmann called 'total institutions' like prisons.⁴ Second, our interests in partially controlling the terms of our social engagement with others. Think here of stigmatization that goes along, for example, with systems of racial apartheid or with infantilizing forms of sex-based discrimination. And third, our interests in partially controlling the way we present our bodies to others, interests that are central to our capacity for intimacy. Consider rape, which is not like breaking someone's arm. The wrongness of rape cannot be understood without considering how it attacks our very capacity to see ourselves reflected in our sexual choices—consider how central our sexuality is in any human life—in seeing them as *ours*.

Once we see things in this way, we can also transform the way we understand the idea of equal moral status. Instead of seeing it as a form of equal moral worth, we see it as a status in the same sense as being a citizen, or being unmarried, or being a king is a status. Here status is understood as merely a bundle of rights. So our equal moral status is simply the bundle of rights against inferiorizing cruelty. We treat each other as equals when we

⁴ E. Goffman, "On the Characteristics of Total Institutions," in *Asylums* (New York: Penguin, 1961).

recognize these rights as central to someone's identity as a sociable being. Having established this premise, I then characterized practices of what Darwall famously called recognition respect⁵—which always involve a kind of forbearance or restraint, a yielding to another as someone who is an authority over their own life—as ways in which, sociologically as it were, we protect people against societal cruelty and hence secure their integrity. And drawing on a discussion by Ian Carter⁶, I call this kind of respect, *opacity* respect.

With this account of moral equality at our shoulders, I then turn to a case study, namely discrimination, in an effort to show how the conception defended in Chapter 2 can be used both to illuminate one of the paradigmatic ways of treating others as morally inferior, and to expand and broaden our analysis of the five forms of inferiorization already mentioned. I argue that direct and indirect discrimination can be wrong solely in virtue of the *social meaning* of the discriminatory acts or policies, and hence independently of broader societal effects and of the presence of faulty beliefs or animus toward particular groups. Social meanings are objective properties of actions, express attitudes attributable to the agent, and can be a function of unconscious beliefs and desires. But when and why are the social meanings of discriminatory acts and policies morally objectionable? I claim they are morally objectionable when and because they express attitudes that are demeaning or disrespectful, in the sense that they undermine the equal moral status of those disadvantaged by them. I then show that, when conjoined with the conception of moral equality and opacity respect from Chapter 2, my account of discrimination can be used to make sense of a range of paradigmatic instances of both direct and indirect discrimination.

⁵ S. Darwall, "Two Kinds of Respect," *Ethics* 88 (1977): 36-49.

⁶ I. Carter, "Respect and the Basis of Equality," *Ethics* 121 (2011): 538-571.

No account of moral equality would, however, be complete without a consideration of its role in our understanding of human rights. As the quote from Vlastos already suggests, the idea that we are of infinite worth is intimately tied to our understanding of human rights. Part II of *HWD* is dedicated to human rights. I offer the conception defended in Chapter 2 as a lens through which to reinterpret human rights without the idea of dignity, and therefore addresses what are sometimes referred to as the “deep foundations” of human rights, rather than their history or significance in contemporary politics. I try to move beyond the current impasse between so-called Political and Orthodox accounts, and suggest reasons why we ought to reject the idea that there is a single ‘master list’ of human rights adequate to every institutional context in which human rights discourse is appropriate. I also argue that that the central place of equal moral status in the international legal human rights system is well-deserved: states and citizens have duties to protect both their own citizens and residents and those in other states from public, systematic, and pervasive forms of cruelty typical of life in a state system. Finally, I defend the claim that the moral rights constitutive of our status as moral equals delimit a subset of *fundamental* human rights, or rather a subset of fundamental human rights *violations*.

European University Institute

SYMPOSIUM
HUMANITY WITHOUT DIGNITY



EDITOR'S INTRODUCTION

BY
PIETRO MAFFETTONE

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Editor's Introduction

Pietro Maffettone

Introduction

All human beings are morally equal. The former statement is both a platitude and deeply counterintuitive. It is a platitude insofar as most if not all political philosophers working within a broadly defined 'liberal' tradition would accept it as true. It is also a platitude insofar as some kind of interpretation of the idea that human beings are morally equal to one another seems to be embedded in many of our moral norms and political practices. Moral equality of all human beings is something we simply take for granted, a background feature of the moral landscape we occupy. To see this, imagine how you would react to a solemn political document that started with a statement to the effect that persons are created morally unequal, or to legislation that took for granted that some citizens are morally inferior to others.

At the same time, the statement is deeply counterintuitive because one thing that we know for sure from our lived experience and from theoretical and scientific reflection is how different human beings are. We vary in our physical appearance and characteristics and, most importantly, we seem to be radically diverse with regard to our intellectual and moral faculties. If the moral landscape we occupy is one of moral equals, much of our lived experience concerns the unequal attributes and features we possess as distinct human beings. Mother Teresa and Donald

Trump are not easily mistaken for one another. This seems to suggest an uncomfortable conceptual predicament – one in which moral equality can be thought of as a form of ‘*sui generis*’ axiom rather than a theorem in our ‘moral geometry’. Why ‘*sui generis*’? Because one of the defining properties of axioms is that they are self-evidently true, not, as in the case of moral equality, self-evidently controversial.

“*In virtue of what are we morally equal?*” is, then, a legitimate question. A traditional answer is that we are morally equal by virtue of our equal moral worth or dignity. Andrea Sangiovanni’s powerful and brilliantly defended argument in *Humanity without Dignity*¹ is that dignity, either secularly or religiously understood, is not the right basis for moral equality. Instead, we should start from the wrongness of treating others as morally inferior. Treating someone as morally inferior is associated with social cruelty and involves wrongful stigmatization, dehumanization, infantilization, instrumentalization or objectification. When we treat others in those ways we are attacking their capacity to sustain their sense of self; their integrity as self-presenting beings. Starting from this radical shift concerning one of the fundamental values in contemporary moral and political philosophy, Sangiovanni develops a new account of discrimination, a novel way of looking at the nature of human rights, and several insights about international legal human rights.

In the rest of this essay, I shall briefly summarise the other pieces in the special issue. I will then move on to highlight what I take to be one of the most important intellectual contributions made by Sangiovanni’s work. Finally, I will highlight what I take to

¹ Andrea Sangiovanni, *Humanity without Dignity: Moral Equality, Respect, and Human Rights* (Cambridge, MA: Harvard University Press, 2017).

be an important problem and suggest a non-trivial alteration to Sangiovanni's theory that might resolve it.

I

Humanity without Dignity and its critics

According to Elisabetta Galeotti, notwithstanding the perils intrinsically attached to calling a work of philosophy 'beautiful', this is exactly what Sangiovanni has achieved. Needless to say, beauty, depth and rigour are not synonymous with perfection. Galeotti starts her critical remarks by concentrating on the idea that human beings' central interest rests in maintaining a certain kind of integrity. Her concern is that Sangiovanni does not offer sufficient reasons to back the claim that some forms of social cruelty are an attack on the integrity of persons' sense of self as opposed to their dignity. Put differently, while Galeotti shares Sangiovanni's intuition that the 'negative route' to grounding human moral equality is to be preferred, she is not fully convinced that he has done enough to show us that the negative route should necessarily be constructed as a violation of our sense of self as opposed to a violation of our self-worth or dignity.

Furthermore, Galeotti claims that, just like dignity, the idea of possessing an integral sense of self is still subject to the problems of a) human variation and b) human beings for whom we cannot claim that a sense of self is an interest to the same degree (for example, because they are incapacitated in some way). She offers her own solutions to these problems via, in turn, the idea of an integral sense of self as a range property, and the idea that moral status and equal moral status can and should be distinguished and different kinds of rights should be attached to them. Finally, Galeotti highlights how, in her view, Sangiovanni's work overlooks

one of the potentially most pernicious forms of social cruelty, namely that which aims at making other people socially invisible.

In her contribution to this special issue, Angela Taraborrelli starts with a reconstruction of Sangiovanni's work and claims that *Humanity without Dignity* performs something akin to a Copernican revolution in the way we think about human equality. Simply put, this lies in Sangiovanni's attempt to reverse the prioritising of equality over inequality. The normative core of his argument lies in the badness of inequality, and, to paraphrase Sangiovanni's own words, the wrongness of treating others as inferiors is, morally and conceptually speaking, prior to the affirmation of their equality.

While Copernican revolutions are to be praised for the way in which they challenge received wisdom, they can nonetheless be criticized for how they depict established traditions of thought. And this is what Taraborrelli brings to bear on Sangiovanni's critique of the so-called 'dignitarian' philosophical canon. More specifically, Taraborrelli claims that Sangiovanni has too easily dismissed the Stoic tradition as powerfully reinterpreted and updated by Lord Shaftesbury. Just like Sangiovanni, Shaftesbury sees humanity as a virtue to be developed. Yet he also offers a clearer set of reasons to understand why one should develop the virtue in question, something that, in Taraborrelli's view, seems to be missing from Sangiovanni's account. Taraborrelli also takes issue with Sangiovanni's reconstruction of the Kantian tradition. His approach in *Humanity without Dignity*, she suggests, neglects one of the most powerful articulations of the Kantian view as developed by Oliver Sensen. In Sensen's picture, the Kantian idea of dignity is not what explains respect for others. Instead, it is because human beings are to be respected that they have a dignity.

Taraborrelli then goes on to discuss two further criticisms of Sangiovanni's work. The first concerns the link between social cruelty and moral equality. The second addresses the idea of an

integral sense of self. The first criticism claims that Sangiovanni's account downplays the role of freedom. The wrongness of cruelty can be depicted with regard to a violation of a person's freedom, not simply as a threat to equality. The second criticism claims that the idea of possessing an integral sense of self implicitly relies on an unacknowledged commitment to autonomy as a precondition to developing a self-conception.

Ariel Zylberman's contribution concentrates on a specific aspect of Sangiovanni's argument. Zylberman starts by reconstructing the argument in six distinct steps, beginning in Sangiovanni's account of the ways that we can treat others as moral inferiors (step 1) and ending in a conception of moral equality as the possession of equal moral status (step 6). The core of his critique lies in questioning step 2 of this line of argument, which Zylberman reconstructs as follows: "2 (*Sufficiency*) Treating others as inferior [...] is necessary but not sufficient for treating others as moral unequals." His claim, bluntly put, is that step 2 is false. Yet he also adds that, even if step 2 were to be true, Sangiovanni's argument would generate 'false negatives' (i.e. cases in which a given form of behaviour is in fact a violation of equal moral status and yet the argument offered is unable to account for it). Step 2 of the argument is, according to Zylberman, insufficiently supported by Sangiovanni. 'Sufficiency' seems to suggest that some ways of treating others as inferiors can be compatible with not treating them as morally unequal. Sangiovanni supports this claim by offering the example of someone peeking at a stranger's watch to see the time. This seems to be a way of instrumentalizing the watch's owner, and yet it need not constitute an instance of treating them as morally unequal. According to Zylberman, this is counterintuitive. In his view, only two options seem available: we either treat others as inferiors or we don't, and if we do, then we are treating them as morally unequal. If 'Sufficiency' is wrong, furthermore, Sangiovanni's argument is question-begging since it

would not be able to invoke the idea of (social) cruelty to explain the wrongness of inferiorizing treatment.

Zylberman also argues that the account cannot explain why social cruelty is a necessary component of the treatment of others as morally inferior. He offers the example of Epictetus, a slave, whose relationship with his master, Epaphroditos, is one of moral inequality and yet does not entail social cruelty since it does not undermine the slave's sense of self. Epaphroditos grants Epictetus the intellectual freedom to develop his abilities as a philosopher, and being a philosopher is surely a key element of Epictetus' sense of self. So, the morally unequal relationship between master and slave (and we can take for granted that the relationship is one of moral inequality) involves no social cruelty and thus social cruelty cannot be a necessary aspect of treating others as morally unequal.

In the closing critical contribution to this special issue, Peter Jones tackles Sangiovanni's approach to human rights. Jones starts by situating Sangiovanni's view within the broader debates on the nature of human rights that have characterised international ethics in the past two decades. According to so-called orthodox views of human rights, the latter are the moral rights we have simply in virtue of our humanity. Instead, following so-called political views, human rights are those rights or urgent interests the violations of which, primarily by states, justify international action that curtails sovereignty. As Jones correctly notes, one of Sangiovanni's contributions lies in his attempt to find an alternative to the two aforementioned approaches. This is what Sangiovanni labels the Broad View. The Broad View sees human rights as those moral rights the violation of which should garner universal moral, legal and political concern.

After this initial sketch of the terrain, Jones moves on to develop two different strands of critical engagement with *Humanity without Dignity*. The first concerns the plausibility of the concept of

human rights suggested by the Broad View. The second concerns the relationship between different conceptions elaborated within the Broad View and their relationship with their context of application. Jones argues that Sangiovanni's approach to the concept of human rights is puzzling for a number of reasons. I shall mention only three in what follows. First, the Broad view seems to suggest that human rights will be defined as such by the response that they ought to generate when they are violated, but, intuitively, we are worried of human rights violations *because* they are human rights violations, not because they generate a certain kind of reaction. Second, the Broad View suggests that the relevant universality of human rights is the universality of the concern that is generated by their systematic violation, and yet, here too, one might find the idea counterintuitive insofar as, usually, we tend to think that the universality of human rights lies with the range of relevant right holders rather than with the reaction of onlookers. Third, Jones argues that to have certain rights in virtue of one's humanity (as the orthodox view might suggest) does not require the acceptance of a dignitarian approach. Jones then moves on to a detailed discussion of the relationship between human rights and their different contexts of application. Jones' argument is complex, yet, in a nutshell, Jones is critical of the idea that the relevance of context can be as important to the specification of different conceptions of human rights as Sangiovanni seems to suggest.

II

In Praise of the Humean Turn

Much has been said by the other commentators in this issue about Sangiovanni's inversion of equality and inequality when it comes to foundation of moral equality and about the nature of human rights. In this part of the essay, I would like to explain what,

as well as the ‘negative’ approach to moral equality and human rights, I take to be one of *Humanity without Dignity*’s most important contributions. My basic claim is that Sangiovanni’s work revitalizes the deontological approach to moral philosophy by imbuing the overall argument with a liberal seasoning of Humean flavour. This is particularly visible in his discussion of moral status (which, according to Sangiovanni, should be distinguished from the idea of equal moral status, more on this below). I would like to highlight this aspect of *Humanity without Dignity* since in my view it underlies the broader philosophical enterprise of the book. The project of grounding human equality in the wrongness of treating others as morally inferior is motivated, at least in part, by the reliance on moral emotions that the new type of argument organically develops. Moral emotions, of which empathy is surely the ‘*primus inter pares*’, allow Sangiovanni to create what we can call (improperly, perhaps) a ‘warmer deontology’.

Humanity, understood as a virtue rather than a general feature or property of human beings, is a disposition to see the world from other people’s perspectives, and at the core of this disposition we find empathy:

[...] it is empathy that explains why we normally have such a strong desire to be, as Mill writes, at ‘unity with our fellow creatures’ [...] Without empathy, and without the mutual reconciliation that it naturally seeks, we would therefore be incapable of engaging reciprocally in any of the practices that makes a human life good. Insofar as it is part of the essential and sustaining infrastructure of many of the most important goods in a human life, empathy is itself good, and the disposition to project ourselves into others’ situations and seek a reconciliation with them from that perspective therefore a virtue.²

² *Ibid.*, 69-70.

It is important to stress that recourse to moral emotions is not meant, as it often is the case, to present a pure form of challenge to an exceedingly rigoristic broadly Kantian approach. Instead, the appeal to moral emotions is used to strengthen the role of several key aspects of a classical deontological morality, such as the ideas of status and rights. To put things crudely, many a reader has often been torn between Hume and Kant, seeing in both of them something appealing. However, Hume's and Kant's view of morality, and of human beings more broadly, are often said to sharply conflict, and the implicit suggestion is that selecting one approach entails relinquishing the other. Kant is often painted (simplistically) as actively downplaying the role of emotions, and as offering a picture of morality which gives pride of place to rational agency. Hume is often painted (perhaps even more simplistically) as offering a picture of human beings where 'passions' loom large and reason 'slavishly' follows them as an ex-post accounting device. Sangiovanni's work revitalises the (relatively scarce, as the economist would put it) tradition of thought that suggests we should not be required to go one way or the other. Rather, an attractive account of morality will make use of the power of moral emotions within a broader philosophical architecture that retains the appealing elements of deontological approaches to normativity. Scottish normative constructivism, as Sangiovanni calls it elsewhere,³ sees the capacity for empathy as necessary for the articulation of a moral point of view that can fully explain why we ought to treat others in a certain way. Morality requires that we offer reasons to others that they can accept from their own point of view, but what explains the sui generis pull of this reason-giving exercise is to be found in moral emotions. In Sangiovanni's words, "the reason that morality is inescapable is that we cannot avoid

³ Andrea Sangiovanni, 'Scottish Constructivism and the Right to Justification,' in Rainer Forst (ed.), *Justice, Democracy, and the Right to Justification* (London: Bloomsbury Academic, 2014), 29-64.

recognizing and then feeling others' perspectives on the world. It is in virtue of that recognition that we then owe them a justification, a reason, for our actions that they can accept from their standpoint".⁴

III

The Perils of Humanity

The work of empathy, I have just argued, is important. It makes for a 'warmer' approach than the one many of 'us' are used to and tries to put to work the power of moral emotions. However, and this will be the upshot of my discussion in this final part of the essay, humanity (understood as a virtue) can be perilous. I will start by highlighting a conceptual problem with the notion of empathy used in the first chapter of *Humanity without Dignity*. I will then move on to discuss a more general concern with what we can call 'empathy first' accounts. If my argument is sound, then a non-trivial revision of the relationship between moral emotions and the idea of moral equality might be called for.

A. Cognitive Versus Emotional Empathy

Let us start from the idea of empathy and of the moral emotions more broadly. After spending some time reading the end of Chapter 1 of *Humanity without Dignity*, one might wonder whether Sangiovanni's discussion of moral equality is really required. To be clear, I mean this as a compliment. Why should we want or need more from people than they try to practice the virtue of humanity? If we accept Sangiovanni's account of the virtue of humanity, isn't

⁴ *Ibid.*, 62.

that all we need? What is gained by discussing equal moral worth? Sangiovanni is aware of this problem and offers a rejoinder: appeals to the virtue of humanity can only contribute to the justification of basic moral status rather than equal moral status.⁵ I find his answer less than fully convincing.

Let us start with the virtue of humanity. Here is what Sangiovanni writes:

Humanity is the disposition to projectively imagine the world from another's point of view, and then to seek an 'accord and symphony' of your and the other's perspective on the world, a reconciliation that seeks a harmony of perspectives rather than division. The person who acts with great humanity is the person who is able to leap into and embrace others' point of view, and, in the case of rational beings, to seek ways of reconciling multiple and conflicting perspectives into a single one that can be shared by all. Humanity is, in this sense, the disposition displayed by the person who recognizes another's evaluatively laden perspective on the world as a reason to treat it only in ways that one could justify to it as a being that matters in its own right and for its own sake. Humanity is a natural consequence of accepting our basic reason as a ground for reflecting on what to do and what we owe to others.⁶

However, on the next page, answering a potential criticism of his view from Thomas Christiano (more in this below), Sangiovanni writes something that the reader might find puzzling. It is worth quoting him at length:

I have said that our capacity for empathy, and our recognition of that capacity's role in any flourishing life, gives us independent reason to see that beings with a conscious, evaluatively laden perspective on the world deserve justification for what we do to them that takes into account their interests as

⁵ A. Sangiovanni, *Humanity without Dignity*, 70-1.

⁶ *Ibid.*, 69.

matter in their own right and for their own sake. But does it imply that we therefore should be ‘concerned to advance the concerns that manifest themselves from that point of view,’ including ‘giving us reason to value what is valued from that point of view?’ No. I agree with Christiano that it is a mistake to draw an inference from the former to the latter. But that is precisely the point: an account of basic moral status, in my terms, tells us that we must act only in ways that we could justify from a perspective that takes into account the other’s good as mattering in its own right and for its own sake (and so mattering in ways that a robot or a rock does not), but it doesn’t yet tell us much about the content of the justification that is due to it; it doesn’t tell us what reasons we have (or lack) to act on their behalf, or to value what they value, just as it doesn’t tell us that, for example, enslaving them is morally wrong; and neither does it tell us, more generally, which kinds of instrumental treatment violate its basic moral status and which ones don’t.⁷

Note how, on the face of it, there seems to be at the very least something counterintuitive in the fact that, as human beings, and exercising the virtue of humanity, we might both seek an ‘accord and symphony’ with other human beings, and yet, at the same time, finding ourselves short of arguments to deny that they can be our property. However, the main disagreement, Sangiovanni might retort, is only a linguistic one. Perhaps ‘to leap into and embrace others’ point of view’ and to seek an ‘accord and symphony’ is just very powerful prose to suggest that one is capable of seeing things from another human being’s perspective. And yet, I think there is more to this problem than rhetoric.

More specifically, I think Sangiovanni is simply using two different notions of empathy, and that this invalidates the conclusion of his argument. There are at least two distinct ideas of empathy that are worth distinguishing. One is cognitive empathy. Roughly speaking, cognitive empathy means the ability to put oneself in another person’s shoes. Cognitive empathy is crucial. It

⁷ *Ibid.*, 70.

allows us to see the world from a different point of view. It allows us, that is, to change perspective on the world around us by giving us an understanding of how a given action or set of circumstances might be perceived and experienced by someone else. The other is emotional empathy. Emotional empathy certainly presupposes cognitive empathy. If we are blind to other people's world then we simply cannot share their feelings. Yet emotional empathy adds something to our ability to conceptualize how other people must be feeling at a certain point in time given the circumstances that affect them. To see things from another person's point of view is to be able to 'understand' the world from a different and broader perspective than our own. This is what it means to be cognitively empathetic. But to be emotionally empathetic, we are required to do more. We also need to partake in the emotions that affect the object of our empathy. Furthermore, we need to partake in those emotions not accidentally, but because these are the emotions of those we empathize with. While both Smith and Hume add some caveats to the second feature of emotional empathy, both saw empathy (which they call sympathy) to usually refer to sharing the feelings of another as a result of our cognition of those feelings in the other.

With the latter distinction in mind, let us go back to Christiano's objection and discuss it in slightly greater detail. Christiano writes the following:

It is hard to see why having seen things from the other's point of view by itself implies that I should then be concerned to advance the concerns that manifest themselves from that point of view. . . . [T]he mere fact of being able to identify with someone else's point of view does not give us reason to value what is valued from that point of view.⁸

⁸ Thomas Christiano quoted *ibid.*, 71.

Sangiovanni concedes the argument, but mentions that it is not an objection to his account. In fact, as we have just seen above, he says that it is precisely because he is, in Chapter 1, only developing an account of basic moral status that this kind of objection misses the mark. But, in my view, Christiano's argument only makes sense if we refer to cognitive empathy. For if we refer to emotional empathy, the answer to his comment is not that mysterious. I am concerned because I feel the same way as the person whose point of view I am temporarily adopting. Whether this provides reason enough (normatively speaking) for acting in a certain way is, in my view, a distinct issue (and one that we will partly address below). What seems to be certainly the case is that emotional empathy does create a clear *trait d'union* between altering one's cognitive perspective and the emergence of a concern as a result of this alteration. If the question is 'What reason would I have to value what is valued by agent Y in circumstances C?' then the answer is simply that I am myself feeling what Y is feeling in C when I emotionally empathize with Y.

So, in conceding Christiano's argument, Sangiovanni seems to be implicitly working with an idea of cognitive empathy in mind. If empathy, as understood by Christiano, cannot fully explain our concern for others, then, as we have seen, it must be cognitive empathy. And yet, at a very high level of abstraction, note how incongruent it would be for Sangiovanni to accept the idea that empathy is cognitive empathy. In the previous section of this essay, I have commended Sangiovanni's attempt to broaden the scope of traditional deontological Kantian accounts by making room for moral emotions. However, this kind of intellectual shift can only make sense, in my view, if by empathy we mean emotional empathy, not cognitive empathy. Put differently, it is emotional empathy that allows Sangiovanni to make the 'leap' beyond the

alleged rigoristic poverty of a purely Kantian universe. In a slogan, the warmth of Sentimentalism must come from feelings.

What is the upshot of this discussion? On an argumentative level, my sense is that Sangiovanni seems to face a dilemma. He either understands empathy as cognitive empathy, but then loses one of the distinctive aspects of his account – one that makes it more attractive than classical Kantian ones, or so I have claimed. Or he embraces the idea of emotional empathy, but then loses the ability to offer a rejoinder to Christiano's objection. I think it is clear that the first option is not a real one unless further argument about the link between cognitive empathy and the moral emotions is offered. The second option might initially seem more attractive. And yet, my sense is that things are not that simple: as I observed at the beginning of this section, doing so would only reinforce the impression that, if empathy can do so much for us, it is unclear why we need a theory of moral equality to complement it. To put things differently, one conclusion, as we have seen, is that Christiano is right and that empathy cannot take us very far on its own. But that option, as I hope I have shown, is not viable. A different conclusion leads us to embrace emotional empathy. However, emotional empathy gives us more than cognitive empathy and seems to take us much further on the path of 'humanity'.

B. *The Kantian Spectator*

Let us assume, for the sake of argument, that I am right, and that Sangiovanni seems to face a dilemma (as I have outlined above). What is the implication for his overall argument? Is there a way out? I think there is, but I also think that opting for the kind of solution I will shortly suggest would require a non-trivial alteration of the overall architecture of Sangiovanni's theory. The

solution, so to speak, is to question one horn of the dilemma I have suggested.

Recall that one of the horns of the dilemma is that emotional empathy gives us much more than a bare mutual understanding of our moral predicament and thus more than the mutual recognition of *basic* moral status. In fact, I have argued that, given how Sangiovanni describes the role of (emotional) empathy in connection with the virtue of humanity, one might be tempted to find a theory of moral equality redundant. But perhaps that is too strong a statement of the concern I have. Perhaps what shifting from cognitive to emotional empathy, and thus recognising the powerful nature of moral emotions, can do for our relationship to others does not make the role of a theory of moral equality redundant. Perhaps what it does *is to make the need of such a theory or account less clear*.

So, what do we need a theory of moral equality for? And here I think Sangiovanni could explore what many would see as one of the main concerns of the so-called Sentimentalists. One of the main issues for both Hume and Smith was to offer a clear account of the difference between moral emotions and moral judgments. To equate the latter with the former, both philosophers agreed, would imply exposing moral judgments to inconsistency and bias. In fact, some would argue that the Smithian idea of an impartial spectator is precisely devised as a bridge between moral emotions and moral judgments. Or, to use a distinction drawn by both Hume and Smith, to distinguish between what is approved and what is approvable. Accepting this kind of parallel, my suggestion is that a better way to conceive of the idea of moral equality in a post-Sentimentalist account *à la* Sangiovanni is analogous to the role played by the impartial spectator in Sentimentalist accounts. The idea of moral equality, to be sure, introduces a much more

‘Kantian’ correction to the overall picture of our morality. Nonetheless, this seems in many ways to be a feature of rather than a fault in the overall theory. The account of moral equality acts as a corrective to the important work done by moral emotions.

Why, then, would we need some form of ‘correction’? To see the problem posed by ‘unguided’ moral emotions, and by empathy more specifically, it is instructive to look at recent research in psychology concerning the ways people tend to empathize with one another’s feelings. Following the work of psychologist Paul Bloom,⁹ there is now sound evidence that empathy is a more complex moral emotion than the philosophical literature seems to suggest. Within the philosophical literature, and in everyday discourse for that matter, we tend to see empathy described as an unqualified good. Yet ‘real’ empathy – that is, empathy as it is practised by real human beings – is less unqualifiedly positive as a moral emotion. According to Bloom, emotional empathy is blind to numbers and short-termist. It pushes us to feel the same about large and small amounts of human suffering and to discount the value of future moral goods for the sake of present feelings. In addition, real-world empathy is necessarily selective, because we have very limited capacities to empathize with large numbers of people, and it is biased, because we tend to empathize in much more ‘tribal’ ways than the abstract notion of empathy we normally work with allows us to see.

In a nutshell, the abstract notion of emotional empathy is general, universal, unmediated by our socially constructed positions, and relatively egalitarian. Instead, empathy as practised by real human beings has been shown to be affected by the relationship in which we stand to others and by our judgments of their predicament (for example, the extent to which we believe they

⁹ P. Bloom, *Against Empathy: The Case for Rational Compassion* (New York: HarperCollins, 2016).

are responsible for their condition). In fact, empathy often *presupposes* that we recognize someone else as the kind of object that is deserving of our empathy. I do not mean to use the language of desert here to suggest that there needs to be conscious deliberation. I just use it to stress that, according to recent psychological findings, empathy is often based on a prior (perhaps unconscious) attribution of status. And that attribution is clearly not always ‘correct’, or, putting things more neutrally, not always as inclusive as we might hope it to be.

If we accept this picture of real-world emotional empathy, then it becomes clear why empathy cannot by itself play an unconditionally positive role within the broader idea of acting with humanity. Empathy is an important tool. It is a crucial one. But it requires a morally defensible account of how it should be deployed. Here, Sangiovanni might retort that he is interested in a universal and non-discriminatory idea of empathy. But that reply would take us back, at least in part, to the structure of the dilemma I have highlighted above. It would be an inadequate response for the simple reason that if we are interested in moral emotions for the reasons that Sangiovanni is interested in moral emotions (that is, because they allow us to better and more powerfully explain how we experience the basic elements of our moral universe), then it must be the empathy as experienced by real-world people that matters to us. But that empathy, as I have just stated, is far from unbiased. Thus, using it to ground an account of what we owe to others generally is problematic, among other reasons, because we do not empathize with others generally or at least not in the same way with all of them.

It could be argued that this is exactly what Sangiovanni claims. This is why, when he discusses the moral predicament of the slave owner, the latter’s lack of empathy is pointed out to her as a failure of enlarging the circle of empathy. Can’t we just say to the slave

owner that she should be consistently empathetic? But then, why should she be? Sangiovanni suggests that it is because empathy underpins all of her other valuable relationships. I find the latter answer unconvincing. To say that X is valuable because it underpins all relationships of the kind Y that give value to our life is one thing, and its certainly gives us reason to value X. But what reason does it give us to extend X to other forms of relationship that, ex-hypothesis, are not, for the agent, like Y? If status attribution comes first, and if empathy depends on it, it is hard to see what can be said to the slave owner about her lack of empathy for the slave. If there is nothing more to the virtue of humanity than the exercise of our moral emotions, then, we cannot be faulted for exercising them in a selective way, for this is, in some sense, how human beings normally work.

What is the upshot of this discussion? The slave owner who fails to empathize with her slaves is not displaying a failure of her moral emotions. And what we ought to tell her is not that she is merely failing to exercise one of the key features that give meaning and value to her life in a consistent way. What she is doing is morally wrong because a sound account of moral equality would justify casting the empathetic net more widely. The moral emotions are an important element of our moral life, but they cannot, by themselves, transform the realm of what is approved into the realm of what is approvable. For that we need a Kantian spectator – a spectator that offers a convincing account of moral equality by highlighting the wrongness of certain forms of social cruelty. Luckily, Sangiovanni's wonderful prose and powerful arguments in Chapter 2 of *Humanity without Dignity* take us a long way towards knowledge of how that spectator would picture the world around her.

SYMPOSIUM
HUMANITY WITHOUT DIGNITY



HOW WE ARE MORALLY EQUAL
AND HOW WE OUGHT TO RESPECT
EACH OTHER

BY
ANNA ELISABETTA GALEOTTI

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How We Are Morally Equal and How We Ought to Respect Each Other

Anna Elisabetta Galeotti

Human rights presuppose moral equality among humans; in turn, moral equality is usually accounted on the basis of our dignity, which constitutes the status demanding recognition and respect. In most accounts of the grounds for moral equality and human rights, dignity is singled out as the core of the human worth, the kernel of our common humanity. Sangiovanni disputes this prevalent account, carefully criticizing the three main views on dignity (ch. 1), namely the Aristocratic view (from Aristotle, to Cicero, to Baldassar Castiglione), the Christian view and the Kantian view. Then he presents his alternative (ch. 2), based on a negative approach to the issue, by means of analyzing and reflecting on the reactive attitudes governing the practices of treating others as inferiors. From such reflection, it emerges that cruelty is the wrong displayed in the different ways of treating others as inferior, and cruelty is defined as the unauthorized and wrongful use of others' vulnerability to attack or obliterate people's capacity to develop and maintain an integral sense of self. Then he takes up a thorough analysis of discrimination in order to illustrate how social cruelty works in demeaning, obliterating and deleting the sense of self of the discriminated persons (ch. 3).

In the second part of the book, Sangiovanni turns to human rights, looking for a concept that is consistent with the previous

discussion of moral equality and of the harm produced by inferiorizing treatments. In line with his argumentative approach of the first part, he defines human rights in the negative, as “those moral rights whose systematic violations ought to be of universal, legal and political *concern*”; thus, violations engendering universal concern are the way by means of which human rights can be asserted (ch. 4). Equipped with this concept, he then proceeds discussing some central topics in the philosophical discussion of human rights, namely the moral bases of international human right and the distinction between basic¹ or, better, fundamental from non-fundamental rights (ch. 5). Finally, he wonders whether we have an obligation to pursue the protection offered by human rights at the international level and to embody such protection in a system of international norms (ch. 6). His point is that human rights are primarily meant to protect people from attack on their equal moral status by a display of social cruelty. This approach allows him to answer to many open questions regarding human rights, for example which are fundamental and hierarchically prior to others, while it offers a philosophical depth to purely legal and political approaches, focused on the enforcement and on the list of the human rights we have. I think that the moral equality perspective, forcefully put forward by Sangiovanni, is indeed the key to understand and sustain the international system of human rights, and much more than other approaches to global justice, such as luck egalitarianism or utilitarianism, makes sense of what is intolerable in certain circumstances of life beyond poverty and deprivation.

Even if one should be cautious to call a philosophical book beautiful, I think that *Humanity without Dignity* properly deserves such qualification. Not only it displays rigor and clarity in

¹ H. Shue (1996), *Basic Rights: Subsistence, Affluence and US Foreign Policy*, 2nd ed. (Princeton: Princeton University Press 1996).

developing the complex and interrelated arguments, and not only it advances an original thesis concerning the grounding of human rights, but it is also beautifully written and shows a mastering of classical texts and literature which is unusual in an analytical work. The result is an enrichment of the argumentation with historical depth and literary examples, which makes the reading truly enjoyable. The book is well thought through in all its parts, and is rich of insights of many subjects, from methodology to applied ethics, from metaethics to legal philosophy, each of which will deserve a proper analysis and consideration. I shall however confine my discussion to the first part of the book, to the philosophical and moral framework where the issue of human right is located and to Sangiovanni's original argument against dignity. More precisely, I shall focus on the notion of the integral sense of self, and on its role in the architecture of the argument, and on the view of respect as opacity respect.

Let us start considering his negative approach to moral equality. Instead of looking for the common property in which human worth consists, Sangiovanni, provisionally assuming moral equality, examines its violations and wonders what is wrong about them. All major forms of treating people as inferior (stigmatizing, dehumanizing, infantilizing, objectifying, instrumentalizing) share social cruelty as their common denominator, and what defines cruelty is not just the harm and the injuries produced, but the correlated demeaning attitude for cruelty aims at attacking or destroying the integral sense of self, taking advantage of others' vulnerability. Thus, it is the integral sense of self the fundamental good and crucial interest shared by all human beings, beyond their different capacities, circumstances and projects. This notion, which is reached through the negative approach, is able to satisfy the two desiderata which the grounding of moral equality should respond to (and which dignity fails to satisfy), insofar as it explains a) why we are morally equal (equality desideratum) and b) why

moral equality is worthy and should be protected by rights (rationale desideratum). The alternative to dignity is therefore not another property, supposedly, common to all human beings, but it is rather the central human interest to develop and preserve a sense of self, which in turn needs to be socially recognized. Any functioning social agent must have an integral sense of self and receive social recognition for that is necessary in any kind of social interaction. The grounds of moral equality is not the kernel of human value shining inside any human being, but rather what we most care about, which makes us all vulnerable to wrongful violations hence requires protection via moral rights. The rejection of social cruelty, implicit in all inferiorizing treatments threatening the integral sense of self, calls for respect and moral rights. Sangiovanni thinks to have disposed in this way of the main difficulty concerning the possession of the property that makes us *digni*, worthy of equal consideration and respect, namely the actual variations in rational capacity and rational deliberations, capacity which in some human beings (small children, severely disabled individuals, victims of Alzheimer and senile dementia) is actually absent.

Moral equality requires that the reciprocal relationship within the moral and social community be governed by respect. The kind of respect relevant for Sangiovanni is “recognition-respect”, according to a well-known distinction by Stephen Darwall², that is, the respect that unconditionally we owe each other just as (equally vulnerable) human beings, and not the “appraisal-respect” which is attributed on the basis of achievements and merits and is not equal. Moreover, the recognition-respect here in order is also “opacity-respect”³ for it implies restraint confronting others,

² Darwall, Stephen (1977), “Two Kinds of Respect,” *Ethics* 88 (1977): 39-49.

³ Cf. I. Carter, “Respect and the Basis of Equality,” *Ethics* 121 (2011), pp. 538-571.

keeping the right distance to protect the self-presentation of other people without exposing them to inquisitiveness, rudeness and discomfort. Within this framework, discrimination is wrong not only because it unjustly disadvantages members of socially salient groups and exposes them to prejudices and biases, but because discriminatory acts express attitudes which are demeaning and disrespectful, hence undermine the moral equality of its victims. In order to judge an act of discrimination as demeaning, it is crucial to refer to the social meaning expressed by the act, whether intentionally or not. The social meaning of an act is an objective property, expressing the underlying attitude in the background of a given network of social standards and conventions, whether or not the agent intended to express that attitude. Acts of discrimination are thus understood not simply as disadvantageous or prejudiced, but implying attitudes of contempt, stigmatization or objectification of the target of discrimination. This expressive account of discrimination, which Sangiovanni shows it is capable to accommodate indirect discrimination, implicit bias as well as reverse discrimination, picks up the disrespect dimension as the crucial one for impairing the moral equality and attack the capacity to preserve an integral sense of self, beside limiting opportunity for individuals and keeping oppressed groups in a marginal position.

Generally speaking, the negative approach used by Sangiovanni has clearly advantages on alternatives when dealing with human values, a highly sensitive area for disagreement. While it is usually difficult to agree on the priority of a single value and on its grounding reason, it is easier to find agreement on the intolerability of the violation of a given value, and the reactive attitudes to violations provide precious guide to single out a special value on which we could agree by implication. Yet, here is precisely the critical point I'd like to raise: why is it that the value or fundamental good that the intolerable violation to our moral equality points to is the integral sense of self, instead of dignity? I understand that

dignity cannot be the starting point for the argument in favor of equal human right, for dignity, literally, means that human beings are worthy (*digni*) but it requires an account of a) why we are worthy, in virtue of what property, and b) how come we are all equally worthy. The answer to these two issues is a matter of disagreement among students of dignity and Sangiovanni believes that none of the responses in the three traditions of dignity is satisfactory (on this I shall come back in a moment). Consequently, he takes the different negative route to moral equality. In this way, he is able to establish that inferiorizing treatments, taking advantage of human vulnerability, are socially cruel, hence moral equality ought to be presupposed to make sense of our reactive attitudes. Yet, at this point, why is it that the inferiorizing treatment attacks the integrity of our sense of self, instead of our dignity? It seems to me that the greatest good of the integral sense of self does not necessarily follow from the intolerability of social cruelty and of inferiorizing treatments. To be sure, Sangiovanni makes a good case for the importance of having a sense of self, yet it is another thing to show that it is the greatest and primary good. Why cannot the sense of self be the sense of one's worth, hence of one's dignity? I conjecture that his reason to favor the sense of self over dignity lies in the two issues linked to dignity above mentioned. The first issue is to specify what the human worth consists in, what is the special human value in virtue of which all human beings have dignity, and the answer is usually found in the rational capacity, both in the Christian and in the Kantian tradition, though differently specified. The second issue is precisely connected with this answer, for, first, the rational capacity is not present in all human beings equally, and, second, in some of them, like in the severely mentally handicapped or in very small children, is absent. Thus, it seems that dignity cannot be the ground for moral equality. I think however that similar issues can be raised in relation to the integral sense of self. Sangiovanni's argument is based on the

difference between a property that all of us should possess, and the crucial center of our care and concern. The latter does not presuppose equal intellectual and moral capacity, and everyone, no matter how clever and morally accomplished, cares about oneself. Yet here the issue emerges in relation of what is meant for caring about oneself. For, if it is understood as the instinct of self-preservation, definitely, this is something that we all share, but also something that goes beyond humanity, encompassing all living beings. Sangiovanni does not take this route; by caring about oneself, he meant something more distinctly human, namely the capacity of seeing oneself, and of constructing and reconstructing one's image according to what we want to be, as well as the capacity to present oneself to others for being socially recognized. It is part of an integral sense of self also the gap between how we see ourselves and how we want to be seen, which is often a reason for self-improvement, as well as the reason to limit our social exposure. Clearly though, caring for the integral sense of self implies the *capacity* of developing, revising and reshaping our images according to our commitments and wishes. And not all human beings share this capacity in the same measure across the board. Young children have not yet developed a sense of self and people with severe mental handicaps or disabilities may have lost or never have had a proper sense of self. Even among adult persons normally endowed with rational and moral capabilities, not everyone makes the center of one's care the sense of self in the same way. Briefly, not everyone has a proper integral sense of self, some are more divided, and some are alienated, and not necessarily as the effect of violations or unfavorable circumstances, but also of diminished capacity or of mental illness or handicaps. Thus, it seems to me that the issues connected with grounding moral equality on dignity, in a way, resurface here. For no matter what the grounds for moral equality, the problems of a) human variations and b) of human beings that are not autonomous

persons in the proper sense arise and cannot easily be disposed, even adopting a negative approach.

The problem of human variations, whether concerning the capacity of rational agency or of an integral sense of self, has been, to my mind, satisfactorily responded with reference to the range property. The range property is “a non-variable property (it either exists or does not exist) that supervenes on a particular range of variation of a variable property”⁴. The equal status of persons, therefore, does not depend on a given degree of certain abilities, but rather in their (presumed) presence above a minimal threshold. If only a minimal degree of those abilities is required for the range property to be present, then, in normal circumstances, all adults are endowed with it, hence are worth the status of equal. Carter referred the range property to rational and moral capacities, but there is no reason preventing it from applying to the sense of self. Sangiovanni too hastily dismisses the range property argument because he says that it is still to be explained why the equal possession of the range property should count more than the unequal possession of the underlying property in the highest degree. I think that the answer can be found in Sangiovanni own’s argument. He has explained that the way to get to the basis of equality, i.e. the sense of self --expressed in a range property, following my suggestion-- is through our reactive responses to its violations, to the various forms of inferiorizing treatments, from humiliation to infantilization and objectification. From there we arrive at the intolerability of the social cruelty underlying such kind of treatments, and to the crucial importance of the sense of self. The responsive attitudes to violations are actually independent from how deep and articulated is the sense of self, whether it is the product of autonomous reflection or induced by social conditioning. For, it is from outside that we react to the violations,

⁴ *Ibid.*

hence the sense of self of the violated is ascribed from outside. Therefore, it does not count whether it is the display of autonomy or not, for no one undergoes any test as to the possession of a proper sense of self (as well as to the possession of the rational and moral capacities). In that sense, it is a range property, which we presume present in everyone and which make us indignant at its violations. Sometimes, however, our ascription of the range property is later revised, for example, when we realized that the individual we are confronting is struck by dementia and has no idea of who she is and where she is. This lead us to the second issue of moral equality, however grounded, namely the fact that some human beings are not autonomous and seem deprived of the capacity of having a sense of self as well as the rational and moral capacity above a certain threshold. Here, again, I think that Sangiovanni's negative approach can be helpful: if the starting point are the violations and our consequent reactive attitudes, the latter are even stronger the more vulnerable is the victim. This establishes the moral status of the victim, no matter if deprived of an integral sense of self, for the victim is the recipient of our reactive attitudes, of our care and affection and capable to reciprocate our affection and love. Such moral status deserves protection by rights and respect by us, though rights and respect are not equal insofar as these individuals are not recognized as autonomous. They will not have certain rights, those presupposing agential capacity, such as political rights or right to sign valid contracts, but they have full title to human fundamental rights. Similarly, treating them in protective ways is not an instance of disrespect, of infantilization, for they are not autonomous persons, but an instance of our care for them and for their well-being. If there is a moral duty to guide, supervise and provide for the well-being of children and people with mental and neurological disabilities, we still ought to respect them: they have a right not to be demeaned, degraded, instrumentalized and stigmatized.

Whenever someone is taking advantage of their vulnerability to make fun or mistreat them, that counts as a gross violation of their moral status.

In sum, I think that the negative approach to moral equality, focused first on violations, represents a real advantage of Sangiovanni's work compared with more traditional views, starting with the value of dignity. Yet, I also think that the shift to the integral sense of self, as the central concern of human beings, does not prevent the emergence of two issues that affected dignity, as the core value of any person, namely the issue of human variation and that of individuals with diminished sense of self or deprived of it. I have argued that the first issue can be addressed by the range property and that the second by the recognition that there are human beings who have moral status but not equal moral status, entitled to respect and rights but not equal respect and equal rights. The negative approach adopted by Sangiovanni can indeed help making both arguments, but, in my view, it does not change if the grounds of moral equality is dignity or the integral sense of self, at least once dignity is not assumed as the prior value but as the arrival point of a negative argument proceeding from violations.

A second point of Sangiovanni's argument I want to discuss concerns opacity respect, which he owes to Ian Carter⁵. Carter's position can be summarized as follows: equal recognition respect is attributed to anyone, on the (presumptive) possession of the range property; in this sense, it is unconditional and independent of the actual capacities of people. Yet, just because it is equally ascribed, it requires opacity as to the content of any person's actual capacities. In other words, if respect is to be equal and ascribed on the basis of the range property, then it must keep the right distance between people, and dispense with scrutinizing others as to the

⁵ *Ibid.*

exact degree of range property possessed. Sangiovanni elaborates from this idea differently: “When you respect someone as a person, you do not treat who they are, what they have done, or where they come from as relevant to your interaction with them. To respect in this way is, therefore, to treat the contingent aspects of their life and situation as *opaque* (unless we have been authorized to do otherwise)...”(88) If moral equality is ultimately grounded in having (developing and preserving) an integral sense of self, then respect is a kind of restraint from coming too close to people’s sense of self. Such distance is required for protecting the sense of self from violations, from social cruelty. A common and daily violation is being exposed to the public gaze without our consent. “When we respect someone as a person, we yield to them specifically as self-presenters, as individuals who have a self-conscious perspective on both the world and their place in it, and a basic desire for recognition of that perspective by others similarly placed” (89). While for Carter, opacity-respect is required by being respected as equals without inquiring into our actual capability, in Sangiovanni opacity is required as protection from social cruelty. Exposure makes us vulnerable and vulnerability incites inferiorizing treatments. Thus, in order to avoid violation to our equal moral status, we should restrain from getting too close to others, and keeping distance is what opacity respect consists in.

So presented, it seems that opacity respect is a sort of precommitment against violations of moral equality, violations which would be tempting once the fog is lifted from other people’s life and circumstances.⁶ It is certainly true that certain kinds of unauthorized exposure is disrespectful, but is this sufficient for characterizing all there is to respect for persons as opacity and distance? Suppose that you are in a hospital as a patient, and

⁶ Cf. J. Elster, *Ulysses and the Sirens* (Cambridge: Cambridge University Press, 1979).

suppose that doctors and nurses walk in your room, look at your clinical records and exams, take your temperature and blood pressure and, without chit-chatting with you, discuss your case among themselves. Certainly, you as a person, with your integral sense of self, have been thoroughly opaque to them; yet is this an instance of respectful treatment? I guess that all of us would find such a situation patronizing and demeaning of our being persons, an unfair taking advantage of our vulnerable situation as patients. It is easy to recall many other familiar examples of treatments by administrative officers or bureaucrats, who consider people just as numbers and cases, falling into this category of daily disrespect. In a way, they are minor violations of our equal moral status, and yet they are acts taking advantage of our vulnerability treating us as inferiors, despite keeping distance from people. Therefore, not all opaque treatments are instances of respect for persons, nor is respect specifically characterized as opacity. Actually, respect for persons as persons, is a form of recognition-respect, according to the well-known distinction by Steven Darwall,⁷ which Sangiovanni subscribes. And, as recognition-respect, it always implies recognition of the person as a *person* and as an *equal*.

What an act of recognition, in order to attribute respect, consists in actually varies, according to the circumstances. Respect, not being an actual “thing”, it is always attributed indirectly through different actions symbolizing respect.⁸ But, while respectful actions vary in different contexts, they are always accompanied by an *attitude of regard* for the other person which precisely represents the recognition element in respect. The

⁷ Cf. S. Darwall, “Two Kinds of Respect,” and Id., “Respect and the Second Person Standpoint,” *Proceedings and Addresses of the American Philosophical Association* 78 (2005): 43-59.

⁸ Cf. A. E. Galeotti, “Respect as Recognition. Some Political Implications,” in M. Seymour (ed.), *The Plural States of Recognition*, Palgrave Macmillan: Basingstoke, UK, 2010, 78-97.

attitude of regard implicit in acts of recognition respect is actually, in Sangiovanni own phrasing, the objective aspect of the action expressing the correspondent social meaning. Sangiovanni introduces the notion of objective social meanings, in the background of social standards and conventions, in relation to discriminatory acts. Yet the same very notion can apply to respectful acts so that an act counts as respectful if it objectively expresses an attitude of regard according to the social standards and convention of a particular context. Sangiovanni seems to acknowledge this dimension when he speaks of the basic human need of social recognition, but somehow he does not elaborate this further and does not ask himself how the basic interest for social recognition can be reconciled with opacity respect, implying a distance among people.

Actually, I think that one of the violation of the equal moral status of persons, and an attack on their sense of self, aimed at inferiorizing others, is invisibility, which, curiously enough, does not figure in the list of forms of inferiorizing treatment analyzed by Sangiovanni. A typical way of keeping groups and segments of society in an inferior and dependent position is that of keeping them publicly invisible, maybe closing them in ghettos, outside the public sight, or dismissing their presence as with servants assisting at a dinner party as statues. Most groups subject to historical oppression and domination have been made (or treated as) invisible symbolically and sometimes even literal. Women, homosexual, indigenous people, servants and poor, all have been considered and made invisible in front of the ruling class of white Christian heterosexual men of substance. Now that all those groups have been admitted to the clubs of persons, at least in the abstract, and are in principle endowed with equal rights, would opacity represent respect towards them? Is it not the case that respecting them as persons, via obscuring their life and circumstances, bracketing the latter as irrelevant, implies

reproducing their invisibility *qua* members of their group? Is it not a way of recognizing them as person only beyond who they are and in a way dispensing with their membership in the oppressed group?

In order to address this problem, I shall make use of Darwall's idea of respect as second-person.⁹ The second-personal dimension of respect means to acknowledge that respect-claims are reciprocally advanced to each other as valid source of horizontal moral authority. I would push this idea further, stating that the second person dimension of respect involves also a specific quality of the act of recognition attributing respect.¹⁰ If I respect you as a specimen of an end in itself, independently from who you are, I respect you in virtue of third-person morality, which implies opacity, but also does away with any attitude of regard for you. Yet, the opposite would be likewise unsatisfactory: respecting you, just because it is you, in virtue of the special contingent relationship between us, does not capture recognition respect properly, for we want to be respected by anyone in any social encounter. We want to be respected as persons. On the one hand, the emphasis on the particularity of the relationship may capture something there is in respect-claim; on the other hand, respect is a universal claim, advanced not in virtue of our special character, but in virtue of our equal moral status.

There is actually a tension in respect-claims between particularity and universality, or, to put it differently, between recognition and opacity. Is respect attributed because looking at you I see an equal of mine, and recognize the equal status of person, or because, bracketing you as you are, I can finally see you as my equal? In other words, does respecting someone as a person mean an individualizing act of recognition of you as my pal or, instead, a generalizing act of the recognition of the common

⁹ Cf. Darwall, "Respect and the Second Person Standpoint."

¹⁰ Cf. Galeotti, "Respect as Recognition. Some Political Implications."

humanity abstracting from you? In the latter case, the recognition of the equal status proceeds dispensing with the special and particular self, as if the traits and characters of that self would subtract from the common humanity. It seems to me that the claim to be equally respected cannot be reconciled with the idea that our self (because of its gender, skin color, religion, social class) subtracts from the common humanity.

In history, even after the eighteenth century declarations of rights, not everyone was right away recognized as a person endowed with the equal moral status and with rights, given that the model of the “person” was patterned after the ruling class of white, Christian, well educated men. Those who differed from that model were not considered persons in full, worth of equal respect, but in case only warranting paternalistic attention. In order to dispel this history of invisibility, the attribution of respect should not be opaque concerning the differential characters of minority members, but should imply recognizing the individual person as it is, neither despite nor in virtue, but given her special characters and identity. Only in this way, respect carries along the attitude of regard that always ought to accompany the act signifying respect.

In other words, respect implies a claim to being considered and attended to, given that being ignored, being erased and being invisible are precisely forms of disrespect, and, to use Sangiovanni’s own phrasing of being attacked in own sense of self. Now the point is precisely this: can the quest of recognition, regard and consideration, especially crucial in case of historic discrimination, be reconciled with opacity respect? In a sense, Sangiovanni suggests such reconciliation when he says that, in order to respect people as persons, we have to take them as self-presenters with their self-conscious perspective, and consider their quest to be recognized according to their own modes of presentation. (89). If I understand it well, here the opacity concerns

the content of the personal presentation and perspective, which should not be scrutinized closely and exposed unnecessarily. Such restraint as to the content of either the agential capacity or the integrity of their sense of self is however compatible with an individualizing act of recognition concerning the gaze of regards towards others.

In sum, the richness of Sangiovanni's argument provides materials for the solution of this problem, and yet I think that his discussion of respect with the exclusive focus on opacity easily risks to overlook the issue of invisibility, that is one of the most common and daily forms of denying others the equal status of persons. Obviously making someone visible to my gaze as an equal does not mean to expose him or her to the public sight concerning matters one wants to keep private. It means rather to consider someone as a person who has the right to choose what to expose and what to hide in public. Much as the public exposure of certain traits of character is a disrespectful attack on the integral sense of self, implying demeaning others, similarly the deletion of people with certain traits from the public sight is a denial of the sense of self of such people as worth of consideration and respect. More than that: it is a way of preventing those people from developing a healthy sense of self and self-respect.

Università del Piemonte Orientale

SYMPOSIUM
HUMANITY WITHOUT DIGNITY



DIGNITY, AUTONOMY AND
INTEGRITY OF SELF

BY
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Dignity, Autonomy and Integrity of Self

Angela Taraborrelli

In *Humanity without Dignity. Moral equality, respect, human rights*,¹ Andrea Sangiovanni presents the reader with a considerable challenge not only owing to the richness and density of the themes addressed but also due to the originality of some of his proposals which require an intellectual effort that is, however, without doubt amply rewarded.

Sangiovanni addresses the questions of what lies at the foundation of moral equality, of how it can be justified without recourse to the concept of human dignity, and how it can be protected internationally.

In the modern tradition human beings – unlike animals, plants or objects – are held to possess “dignity”: this dignity is an intrinsic value derived from some qualities human beings alone possess and which distinguish them from other animate beings. On the basis of these qualities, a set of human rights is established which, it is claimed, human beings possess in so far as they are human beings. Sangiovanni argues against the belief that the idea of dignity, inherited from the Aristotelian, Christian and Kantian tradition, can form the basis of our commitment to moral equality and the rights derived from it. Offering an alternative route, he proposes

¹ Andrea Sangiovanni, *Humanity without Dignity. Moral Equality, Respect, Human Rights* (Cambridge MA: Harvard University Press, 2017).

abandoning the search for a set of qualities or properties in virtue of which men are considered to have an infinite, absolute, and incommensurable value, and to seek instead “a more direct, less transcendent explanation of when and why it is wrong to *treat another as an inferior*” (3). In this way Sangiovanni performs the equivalent of a Copernican revolution because in doing so “the wrongness of treating another as inferior” is placed as “*prior* to an affirmation of the idea of treating another as an equal” (3). This change of perspective in effect bridges the gap between the descriptive plane and the normative plane: the commitment to moral equality, the commitment to treating others as equals, is defined, explained and founded in reference to and on the rejection of inequality. Sangiovanni offers an explanation as to *why* and how it is that we treat others as equals (in deciding not to be cruel) which, at the same time, indicates how we *ought* to treat others if we really want to treat them as equals, i.e., starting from the refusal of cruelty, and not from the recognition of some quality they might possess. This change of perspective also renders dependence on the concept of human dignity superfluous, because the concept of humanity, understood as virtue and not as a quality or property, is sufficient to justify our commitment to moral equality which does not derive from the fact that we attribute to others the possession of a quality or property called “humanity” but from the refusal to be cruel and from the rejection of the cruelty inherent in certain practices which Sangiovanni defines “practices of inferiorization”.

This new conception of humanity without dignity, which Sangiovanni defines a “negative conception”, seems to offer two advantages. On the one hand, it seems to circumvent some of the problems that have tormented generations of philosophers, such as the problem of finding a quality that justifies the commitment to equality; of agreeing on what this quality might be; of explaining why this quality and not some others have an intrinsic value; and why it is, assuming that only human beings possess it, such a quality

should make them the holders, or indeed the sole holders, of certain rights. On the other hand, it seems to allow us to define the content and scope of the concept of human rights in a new way and to justify the duty of the State system to protect human beings from violations of their status of moral equality at the international level – to which the second part of the volume is dedicated and which I shall not address here.

Although I am very sympathetic with the aims and with some of the outcomes of Sangiovanni's new conception, I have a number of doubts in regard to a) his interpretation of the philosophical tradition and the dignitarian view; b) the way in which he links the commitment towards equality to the concept of social cruelty; and c) the notion of an integral sense of self.

I begin with my first doubt (a). To my mind, Sangiovanni has too easily dismissed the Stoic tradition, especially the Roman Stoic tradition where, in fact, he could have found an idea of humanity very similar to the one he proposes. This is the idea of humanity implicit in Marcus Aurelius's expression *koinonoemosune*, translated into Latin as *sensus communis*, which was taken up — via scholars such as Isaac and Meric Casaubon and Claude Salmasius — by Lord Shaftesbury who placed it at the center of his moral philosophy. For Shaftesbury *sensus communis* has nothing to do with the Stoics' *notiones communes*, nor does it mean “common feeling” or “common sense”, but rather

Sense of Publick Weal, and of the Common Interest, Love of the Community or Society, natural Affection, Humanity, Obligingness, or that sort of Civility

which rises from a just *Sense* of the *common Rights* of Mankind, and the *natural Equality* there is among those of the same Species.²

The Stoic tradition, re-interpreted and revitalized by Lord Shaftesbury, therefore presents an idea of humanity as a virtue intrinsically linked to moral equality: whoever lacks *sensus communis* does not lack common sense, but *Humanity*, the *Sense of Publick Weal* and of the *common Interest* of mankind; whoever lacks humanity does not recognize the rights common of mankind and does not recognize others as equals. For Shaftesbury this recognition is ultimately dependent on the degree to which the rational faculties are developed. He affirms, in fact, that a *sensus communis*, that is humanity, can be developed only if one is able to maintain a balance between selfish passions and altruistic passions – both of which are, however, natural – through the complete rejection of the unnatural passions (which are of no benefit to the individual, the species nor the community). This balance can be reached and maintained through the method of soliloquy, i.e., the silent inner dialogue in which an individual “becomes two distinct persons”, thanks to which he can first become aware of his affections and reflect on them and then, through a sort of metacognitive act, can approve or disapprove them. If in approving or disapproving his own affections, the individual adopts as a criterion the interest of the whole (the species, the community, humanity) there is a coincidence between the interest of the whole and the interest of the individual because the latter, approving the affections directed towards the good of the whole, reaches a balance between the passions and a stable identity. Developing and maintaining the

² A.A. Cooper, Earl of Shaftesbury, *Characteristics of Men, Manners, Opinions, Times* (1711, 1714) (L.E. Klein (ed.), Cambridge: Cambridge University Press, 2000, 48).

sensus communis means binding oneself to the decision to be humane, and this decision allows the different selves, fragmented and dispersed in various desires and appetites, to find unity. Having *sensus communis*, being humane, therefore allows us to enjoy and have an integral sense of self.³ Here, as in Sangiovanni, humanity is understood as a virtue of the subject, rather than as a quality of the other; it develops from the decision to be humane which according to Shaftesbury means to treat others with the respect that one owes to equals. The reason for the individual's decision to be humane is, however, understandable: the advantage he derives from it becoming clear. In Sangiovanni, in contrast, not only do the reasons why an individual might decide not to be cruel, to be humane, remain unclear, but there also seems to be an absence of arguments that might convince those who have yet to take or have no intention of taking such a decision.

I am also unconvinced by the way Sangiovanni interprets Kant's idea of dignity which he finds unsuited to acting as a foundation for our commitment to moral equality. He brilliantly addresses what he considers to be the two traditional readings of Kant's concept of dignity, the Regress reading and the Address reading⁴

³ Shaftesbury says that we "make us agree with ourselves and be of a piece within" (Shaftesbury, *Characteristics*, 77).

⁴ Sangiovanni writes: "In this section, I assess two readings of the Kantian Tradition: the Regress reading and the Address reading. The Regress reading holds that rational beings are essentially evaluative beings, and our capacity for valuing things necessarily presupposes that we, *qua* valuers, must possess a different kind of value from everything else in the world, which Kant called *Würde* or dignity. The Address reading, on the other hand, eschews the appeal to a special kind of value presupposed by our rational choice. Instead, it holds that our valuing, justifying, moralizing activity necessarily presupposes the equal and reciprocal *authority* of those whom we address through that activity. Dignity is then understood as the name given to that equal and reciprocal authority" (36).

and he attempts to demonstrate how both are incapable of satisfying the Rationale and Equality Desiderata, i.e., to explain, first, the sense in which we are *equal* in dignity (*Equality*) and, second, *why* and *in virtue of what* we have dignity (*Rationale*). I shall not discuss here the merits of the interpretations Sangiovanni examines nor the various arguments offered but I cannot fail to observe that perhaps he could have taken other interpretations into account as, for example, that proposed by Oliver Sensen⁵ who questions whether Kant can be credited as the originator of the modern paradigm of dignity, namely the idea that because one has an inner worth (dignity), one can claim respect from another. According to Sensen, although Kant argues that all human beings should be respected, and that even a criminal deserves respect as a human being,⁶ he would however not ground this requirement on a value or dignity the other possesses. What is revolutionary in Kant's thought does not lie in his account of dignity, rather in the way he "justifies the requirement to respect all others".⁷ In fact, Sensen observes, Kant reverses the relationship between dignity and respect and says that men must be respected not because they have dignity, but that they have dignity because they must be

⁵ Oliver Sensen, *Kant on Human Dignity* (Berlin: De Gruyter, 2011); I quote here from O. Sensen, "Dignity: Kant's Revolutionary Conception," in R. Debes (ed.), *Dignity. A History* (Oxford: Oxford University Press, 2017), 237-262. Sensen offers a very comprehensive analysis of all the occurrences of the term 'dignity' in Kant's writings, many of which can be traced back to the Stoic tradition, which is where Sangiovanni ultimately places him, despite some differences.

⁶ Kant writes: "I cannot deny all respect to even a vicious man as a human being ... even though by his deeds he makes himself unworthy of it" (*Metaphysics of Morals* [MS], 6: 463). Page numbers refer to the Prussian Academy edition of Kant's works (*Kant's Gesammelte Schriften*, Berlin: de Gruyter, 1902-..., from now on *KG.S*), citing volume: page. All translations are taken from the Cambridge edition, general editors Paul Guyer and Allen Wood.

⁷ Oliver Sensen, "Dignity: Kant's Revolutionary Conception," 238.

respected.⁸ For Kant, respect for human beings does not follow from human dignity because this would violate autonomy, but is an unconditional command of reason: “the right (Categorical Imperative) is prior to the good (or any value)” (258).⁹ In short, one has moral standing or dignity because the Categorical Imperative commands that one should be respected, and this moral standing is equal among all human beings, but, Sensen emphasizes, “the standing is not the ground but the result of the requirement to be respected” (259). If this interpretation is correct, I have the impression that many of Sangiovanni’s objections to Kant would fall away.

I also have the impression that Sangiovanni has not done justice to Martha Nussbaum’s conception of dignity. According to Sangiovanni, Nussbaum’s conception of human dignity falls within the category of those who conceive of human dignity as a quality belonging to every human being as a human being, but which can be damaged or destroyed. From this perspective, torture, and the various forms of deprivation, would render men incapable of acting in a dignified manner or maintaining a bearing appropriate to their rank. Sangiovanni attributes to Nussbaum the belief that rights are necessary for human beings to live lives “worthy of dignity”, and that dignity can be lost. If one claims, as Nussbaum does, that “having at least this much is required for a life that is worthy of dignity”, it follows as a logical consequence, according to Sangiovanni, that “*not* having this much entails that one’s life

⁸ In support of his thesis, Sensen quotes the following famous passage: “Humanity itself is a dignity; for a human being cannot be used merely as a means ... but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself ... over all *things*” (*MS, KGS* 6:462).

⁹ This is the passage from Kant to which Sensen refers: “For, nothing can have a worth other than that which the law determines for it” (*Grundlegung zur Metaphysik der Sitten* (from now on *GMS*) in *KGS* 4: 435f).

must be unworthy of dignity, or otherwise *indecent*” (26). Now, as far as I know, Nussbaum has never claimed that dignity can be lost: according to her every human being as such, in his most bare and stripped-down reality, possesses dignity. The intrinsic value of a human being is never affected – unfortunate circumstances can never affect an individual to the extent that he is no longer recognizable as a human being. As Nussbaum writes: “there is *something* about human beings that persists throughout the blows of chance, supplying us with a basis for our moral duties”: however, “the things that matter to human life can be deeply affected”¹⁰. If this “something” persists in every circumstance and represents the basis of our moral commitment to equality, the living conditions in which an individual lives may not be suitable for a human being who possesses dignity and has an intrinsic value. This is why Nussbaum replaces the Stoic-based idea of human dignity, which is affected by what she calls the “problem of external goods” – that is the indifference to the need for external goods –, with that of *human capability*, conflating the Kantian notion of the inviolability and dignity of a person with Aristotle’s and Marx’s idea that the main powers of a human being need material support. This notion of human capacity is that *something* Nussbaum was looking for. In this new reformulation, human dignity consists in “the innate power to develop higher level human capacities”, which is the basis of moral equality and of our moral duties towards others. This power is equal in all human beings, but (unlike the Stoic notion of human dignity) “can be thwarted in development so that its more developed forms (of reasoning, moral character, sociability, and so forth) may never fully mature, or may be blocked

¹⁰ Martha Nussbaum, “Duties of Justice, Duties of Material Aid: Cicero’s Problematic Legacy,” *Journal of Political Philosophy* 8 (2), 2000, 176-206: 200.

in expression”.¹¹ Therefore, for Nussbaum, it is this innate ability to develop, common to all men, which is the foundation of their dignity, a dignity that can be offended, but never lost.

I would now like to illustrate my second doubt (b) which concerns the relationship between commitment to equality and social cruelty. The “negative conception”, as I said above, brings about a change in the form of the question and in the method of investigation: the focus is on understanding when and why treating someone as inferior is a violation of moral equality, rather than on defining what human dignity is and on which characteristics make others equal and holders of rights. This change leads to Sangiovanni’s adoption of a phenomenological method, or rather the adoption of what I would call an analytic phenomenology which should offer the following advantages: it should eliminate any metaphysical residues from the question, it should better capture the concept of moral equality and, finally, it should cast an alternative light on the concept of cruelty. In so doing, it seems to me that Sangiovanni is following the path of David Luban,¹² who in turn was influenced by Avishai Margalit, and he develops the intuitions of both in a way that is both original and fruitful. Recognizing that he had drawn inspiration from Avishai Margalit’s idea that a decent society is one in which institutions do not humiliate people, Luban announced his conception of human dignity in this way:

¹¹ *Ibid.*, 201. The connection between the universality of the principle of moral equality and global social justice is grounded in this flexible, multi-layered notion of human capabilities, which lies at the core of Nussbaum’s *capabilities approach*.

¹² David Luban, *Legal Ethics and Human Dignity* (Cambridge: Cambridge University Press, 2007).

I argue that human dignity should best be understood as a kind of conceptual shorthand referring to relations among people, rather than as a metaphysical property of individuals. Agents and institutions violate human dignity when they humiliate people, and so non-humiliation becomes a common-sense proxy for honoring human dignity”.¹³

In essence, like Sangiovanni, he does not consider human dignity to be “a metaphysical property of individual humans, but rather a property of relationships between humans”; more precisely, for Luban just as for Sangiovanni, “human dignity” designates “a way of being human, not a property of being human”; moreover, in his view, human dignity “may even be the name of more than one way of being human”.¹⁴ Sangiovanni seems to have developed this intuition, identifying among the different ways of being human one in particular, that which consists in rejecting cruelty. Hence his illuminating and profound analysis of the practices that treat the other as inferior, thereby violating his/her status of moral equality.¹⁵ Sangiovanni observes that what those practices (such as torture, racial discrimination, genocide, etc.) have in common is the presence of institutions and/or relationships that express and exemplify one or more inferiorizing modes of treatment, such as stigmatization, dehumanization, infantilization, instrumentalization, or objectification, and he

¹³ *Ibid.*, 6. On the same page Luban continues: “I examine four issues of legal ethics – the right to counsel, the duty of confidentiality, lawyers’ paternalism toward clients, and the duty of pro bono service – and draw from them a naturalized account of *human dignity as a relationship among people in which they are not humiliated*. Non-humiliation plays a key role in my understanding of human dignity” (emphasis added).

¹⁴ *Ibid.*, 66.

¹⁵ Amongst such practices Sangiovanni includes “torture; slavery; rape; segregation and apartheid; caste societies; persecution and invidious forms of discrimination; demeaning forms of paternalism; concentration and death camps; genocide; cruel, inhuman, and degrading treatment” (4).

concludes that treating others as unequal is wrong *when* they are treated as unequal in order to inferiorize them.

While I am sympathetic to this way of understanding our commitment to moral equality as rejection of cruelty, I would like to point out what in my opinion is problematic. Sangiovanni seeks to establish a basis for his commitment to moral equality without resorting to the concept of dignity, starting instead from a notion of humanity as a refusal to be cruel; interpreting cruelty as a practice of inferiorization, he defines the commitment to moral equality as a commitment against inferiorization. In my view, however, the practices of inferiorization can be described and interpreted just as well as practices that limit the freedom of others; consequently, given that the commitment to equality could be justified equally well by the commitment to refraining from limiting the freedom of others, the former would not be compellingly justified by the commitment to not treating others as unequal. It might be so if Sangiovanni had demonstrated that cruelty can be explained *only* as a practice of inferiorization, but this demonstration is not offered. More generally, the weight and the role that respect for equality and respect for the freedom of the others play in Sangiovanni's conception of cruelty remain unclear both from a descriptive and from a normative point of view.

We now come to my doubt regarding the notion of the integral sense of self (c). Sangiovanni, as I said, does not limit himself to explaining *when* it is wrong to treat the other as unequal, but also tries to explain *why* it is wrong. His answer is that it is wrong because the practices of inferiorization imply a particular form of cruelty which he defines "social cruelty" consisting in the "unauthorized, harmful, and wrongful use of another's vulnerability to attack or obliterate their capacity to develop and maintain an integral sense of self" (76). Without resorting to the concept of dignity, Sangiovanni believes that we can found our

commitment to moral equality on the basis of our refusal to commit, or to support institutions that commit, this form of cruelty which destroys the ability to develop and maintain “an integral sense of self”. What is the “self”? It is “self-conception”, that is

one’s conception of the values, commitments, and concerns that are central to one’s life, the relationships and roles that make one the ‘kind of person’ one is, including the qualities and defects of one’s personality and character.

When this sense of self is kept to a minimum degree of “reflective stability, consistency, internal coherence, and continuity across time and circumstance”, we can say that “it has integrity” (79). Having an integral sense of self also produces a sense of us as “autonomous, or self-governing: our choices, actions, values, commitments, and concerns are our *own*”. If the integrity of this sense of self is lost, one has the sense of not having control, “that we are being determined by events or by others, that we are not ourselves” (80). This integral sense of self is of value, because in addition to having an instrumental value for the enjoyment of other goods, it is “also a *constituent* of the good of each of those things” (81).¹⁶ In order for this integral sense of self to be developed and maintained as such, three conditions must be satisfied which arise from the very nature of man who is social in a very particular sense. The sociality of human beings manifests itself not just in their need or pleasure of being together, but also

¹⁶ As Sangiovanni notes, the value of many goods “for us is not merely in the *having* of them. Their value for us is fully realized only when we engage and pursue them through our own endeavor, choice, and commitment. To have value for us, to be meaningful to us, they must reflect who we are; we must be able to see ourselves *in* the pursuit and enjoyment of these goods” (82).

in their being “self-presenting beings”.¹⁷ The conditions necessary to develop and maintain an integral sense of self for beings who are self-presenting beings are as follows: 1. that they “(partially) control what is inner and what is outer, what is presented and what is hidden and, in turn, that we can (partially) control the terms in which we are to be recognized by others” (83); 2. “the presence of a sustaining social environment in which one is recognized as a member and participant” (84); and 3. given the importance of the form of self-presentation via our body, “the third condition is that we retain (partial) control over how our self-conception is presented through our body” (85). This section of the book is fascinating and is filled with considerations and observations that offer a new conception of cruelty as “attack on one’s capacity to develop and maintain an integral sense of self” and which, at the same time, broaden our understanding of human vulnerability.

Commitment to moral equality thus becomes a commitment against this form of cruelty (social cruelty) and does not need to be explained by or to be founded on the concept of human dignity. In this new framework, the role and the very notion of respect is redefined: first of all, we should respect others not because they possess dignity, but because it ensures the conditions for the development and maintenance of an integral sense of self; secondly, appropriate respect for a human being conceived of as a self-presenting being must include a particular kind of respect, namely “opacity respect” (88) which can be violated in two ways:

¹⁷ In claiming that “We not only want to be recognized as *this* or *that*, but we want to be recognized *as* self-presenting beings – as beings who have a say in how we are to be seen by others” (83), Sangiovanni reminds me of the wonderful passage of *The Life of Mind*, where Hannah Arendt, fusing suggestions of French phenomenology with the theories of Erving Goffman and the Swiss biologist Adolf Portmann, observed that on earth Being and Appearance coincide and that human beings, unlike objects and animals, not only appear or show themselves, but they decide how to present themselves.

“one can either ignore the boundaries of the roles in which someone presents themselves to us, or one can treat the role as all there is” (91-93). In short, as Sangiovanni summarizes: “we respect others as persons when we respect the integrity of their sense of self, i.e., when we respect their nature as self-presenting beings” (112).

This new conception of cruelty in addition to being in itself extremely enlightening also has undoubted advantages. For example, it seems to me that it manages to capture new forms of discrimination to be combated as well as the specificity of a number of these; additionally, it helps explain the limits of a moral theory that founds the moral permissibility of an act on mere consent (as in the case of prostitution 156-8). However, I find the notion of “integral sense of self” to be problematic and, in particular, its relationship with autonomy. In order to have a complete sense of self it is not sufficient to guarantee the three conditions identified by Sangiovanni (having control over how to present oneself, being a full member of a community, having control over whether and how to show one’s own body). In fact, having the ability to develop and maintain an integral sense of self requires the ability to develop and maintain a self-conception, which in turn implies autonomy. It is impossible to have a self-conception without being autonomous (and in possession of metacognitive abilities). Autonomy plays a much wider role than Sangiovanni admits. He argues that the sense of being self-governing and of being autonomous derive from having an integral sense of self. But perhaps it is the sense of being self-governing that allows one to have a sense of self and perhaps it is the attack on the individual’s own autonomy that produces a break in the continuity of his sense of self. After all, what are the three conditions identified by Sangiovanni if not conditions that make autonomy possible and in which autonomy it is exercised and deployed? Perhaps, therefore, our commitment to moral equality

could as well be explained by and founded on the rejection of cruelty as an attack on the autonomy of an individual.¹⁸

To this I add only one last consideration. In the conception of humanity without dignity it is not clear how humanity, which is considered a virtue, can develop. Sangiovanni seems convinced that it is enough “that we see how social cruelty is an attack on one’s capacity to develop and maintain an integral sense of self” for us to reject cruelty and to commit ourselves to moral equality.¹⁹ But if I believe that an integral sense of self is of great value to me, why should I decide to reject the forms of social cruelty towards others? This decision implies that I am as interested in others as I am in myself, or that I empathize with others and that, therefore, I am in some way already “human” according to Sangiovanni’s meaning. But where does this interest or this empathy derive from? Are they innate? Or are they acquired, and if so, how? Furthermore, it can be doubted whether a person who has never experienced an integral sense of self is capable of grasping its value, of understanding when it is under attack and so take action to defend it. A similar problem then arises in relation to respect: how do we learn to exercise “opacity respect”? How do we know “when to pierce the veil of opacity” (91)? This form of respect seems to imply the development of what Kant called “reflective judgment”, a highly refined capacity, which requires experience and practice.

I conclude with a brief reference to Sangiovanni’s discussion of the issue of human rights which certainly merits especial attention

¹⁸ Perhaps this is the sense in which this phrase from Kant should be interpreted “*Autonomy* is therefore the ground of the dignity of human nature and of every rational nature” (*GMS, KGS* 4:436).

¹⁹ “[...] we can know what social cruelty is, and how it is wrong, without needing to explain in what sense we have dignity. *It is enough that we see how social cruelty is an attack on one’s capacity to develop and maintain an integral sense of self*, and that such attacks threaten to destroy something of great value to us, namely our ability to enjoy and participate in those things we have most reason to value” (84-85).

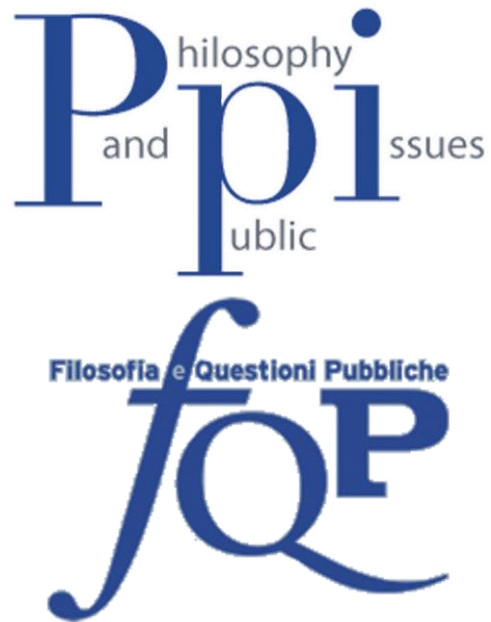
and a separate analysis in its own right. As I aforementioned, the negative conception also functions as a lens through which human rights can be reinterpreted and thanks to which we can rethink the content, the foundation and the scope of our commitment to moral equality and the human rights that go hand in hand with it. Consistent with his refusal to appeal to the concept of dignity, Sangiovanni does not define them as those moral rights *possessed* in virtue of our humanity, but as “those moral rights whose systematic violation ought to be of universal moral, legal, and political *concern*” (191). His conception – the Broad View – seeks to overcome the opposition between Political and Orthodox views of human rights, to take due account of human rights practices and the specificity of different contexts, and finally to show how the nature of the context of the state system imposes a specific form of moral, legal, and political concern – namely, the special protection of equal moral status by international law. Having interpreted moral status as a set of rights against social cruelty, he identifies the “prevention of inferiorizing social cruelty” as a constitutive goal of international human rights law. Hence his request to include anti-discrimination rights, which protect individuals from various modes of inferiorization, in the international legal human rights (ILHR) system. In doing so, Sangiovanni concludes his book in which, with his conception of humanity without dignity, he has strived to give a new guarantee not to human dignity, as Arendt demanded,²⁰ but to the many and

²⁰ “Antisemitism (not merely the hatred of Jews), imperialism (not merely conquest), totalitarianism (not merely dictatorship) —one after the other, one more brutally than the other, have demonstrated *that human dignity needs a new guarantee* which can be found only in a new political principle, in a new law on earth, whose validity this time must comprehend the whole of humanity while its power must remain strictly limited, rooted in and controlled by newly defined territorial entities” (H. Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace Jovanovich [1951], 1976), Preface, ix (emphasis added).

various forms of human vulnerability. And I think that he has largely succeeded.

University of Cagliari

SYMPOSIUM
HUMANITY WITHOUT DIGNITY



HUMANITY WITHOUT EQUALITY?

BY
ARIEL ZYLBERMAN

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Humanity without Equality?

Ariel Zylberman¹

In *Humanity without Dignity*, Andrea Sangiovanni defends the idea that moral equality and human rights are not grounded in our equal dignity, but in our vulnerability to social cruelty. Social cruelty is the wrongful and unauthorized use of another's vulnerability in order to attack or obliterate the other's capacity to maintain a sense of self² (76). In what follows I examine Sangiovanni's cruelty-based account of equality and suggest some difficulties that, to my eye, the account has yet to solve.

I

The Priority of Inequality

I begin by reconstructing what I take to be the key steps in Sangiovanni's argument for moral equality.

Philosophers have often sought to explain moral equality through, as Sangiovanni puts it, "dignity-first" accounts. Basically, you ground human dignity in some natural property (such as self-consciousness, rational agency, etc.), and you arrive at an account

¹ For helpful comments on and criticism of a previous draft, I'm grateful to Micha Gläser, Kristen Hessler, and Eliot Michaelson.

² A. Sangiovanni, *Humanity without Dignity. Moral Equality, Respect, and Human Rights* (Cambridge, MA: Harvard University Press, 2017). Reference to the book will be made directly in the text within brackets.

of moral equality in terms of equal dignity. By contrast, Sangiovanni develops an “inequality-first” account: first you explain what it is to treat another as a moral unequal and why (and when) such treatment is wrong. From there, you develop an account of moral equality as the denial of inequality.

But why pursue an “inequality-first” account? I think Sangiovanni’s idea is that since the concept of human dignity is controversial and poorly understood, an account of moral equality that did not depend on dignity would be more compelling.³

So instead of inquiring into the basis and nature of dignity, Sangiovanni begins with a different question: what is it to treat someone as one’s *moral unequal*? He notes that not every treatment of another as one’s *inferior* amounts to treatment as one’s *moral unequal*, since not all hierarchies of power, esteem and rank need be illegitimate. For instance, bosses can tell employees what to do while on the job (an authority employees lack over bosses) without thereby treating employee as a moral unequal. And so, Sangiovanni rightly distinguishes what we might call treating others as one’s *social inferior* (which need not involve a violation of equal moral status) from treating others as one’s *moral inferior*.

But what is it to treat others as one’s *moral inferior*? Sangiovanni’s answer:

1. (*Treating as Moral Inferior*) There are at least five paradigmatic ways of treating others as *moral inferiors*: (a) treating them like animals (dehumanizing); (b) treating them like children (infantilizing); (c) treating them like objects (objectifying); (d) treating them like tools (instrumentalizing); and (f) treating them as polluted (stigmatizing) (74).

³ In effect, chapter 1 of the book develops Sangiovanni’s arguments against the idea of human dignity, which I set aside here.

Further, Sangiovanni argues that pointing to one of the incidents of inferiority (a-f) is not sufficient to characterize relations of *moral* inequality.

2. (*Sufficiency*) Treating others as inferior (in any of a-f) is necessary but not sufficient for treating others as moral unequals.

Why (2)? Sangiovanni argues that treatment of others in any of a-f may in fact be compatible with treatment of others as moral equals. In support, Sangiovanni offers two examples. A police officer “might herd people out of a stadium without the slightest regard for their self-consciousness or self-control” and yet the police officer would not violate the equal moral status of civilians (74). Similarly, I could use you as an object by “peeking over to check the time” on your watch, without thereby violating your equal status (75). In order to identify moral inequality, then, (1) is not enough. One also needs to identify “a unified set of wrong-making features that explains why and when” each of (a-f) is wrong as a violation of equal moral status.

Sangiovanni’s proposal is that this wrong-making feature is *Social Cruelty*.

3. (*Social Cruelty*) *A*’s treatment of *B* is socially cruel just in case *A* makes wrongful and unauthorized use of *B*’s vulnerability in order to attack or obliterate *B*’s capacity to develop and maintain an integral sense of self (76).

What makes the use of another’s vulnerability *wrongful* is that such treatment is a harmful attack on the other’s integral sense of

self. Of course, some such attacks are not wrongful when *authorized* (consented to) by the sufferer, as may happen in some military and religious organizations (86). Moreover, Sangiovanni claims that social cruelty turns on the “objective social meaning” of the action, rather than on the specific quality of will of *A*. For example, while some accounts make it necessary for *A* to take pleasure in being cruel to *B*, *social* cruelty does not seem to require such mental attitudes in perpetrator.⁴ Sangiovanni is surely right that if the moral wrong of torture consists in cruelty, the cruelty involved must be *social*: even if torturer deeply regrets and takes no pleasure in her actions, the torture would still count as cruel and so as wrong. And Sangiovanni seems right in claiming that the wrong of torture cannot be explained solely in terms of the harm produced. If the wrong of torture consists in social cruelty, then it consists not simply in the pain (physical or psychological) produced but also in narrowing “the social, physical, and interpersonal world of the victim to such an extent that their own body becomes an enemy and their mind a surrogate of the torturer’s.” (76)

At the heart of the notion of social cruelty is the concept of one’s *integral sense of self*.

4. (*Self-Presenting Beings*) An integral sense of self requires three social conditions: (a) control over what remains inner and what is exposed to

⁴ It is not clear to me exactly how Sangiovanni understands the difference between standard treatments of cruelty and his own treatment of *social* cruelty. While Sangiovanni focuses on the *social meaning* of the act, he maintains that his account should “still be sensitive to the quality of perpetrator’s will” (Sangiovanni, *Humanity without Dignity*, 76). This seems to fudge and make unclear whether the quality of perpetrator’s will *is* necessary or not for social cruelty. The account could be clearer on this fundamental point.

others; (b) a sustaining social environment; and (c) control over one's bodily self-presentation.

I find Sangiovanni's original development of Erving Goffman's idea that we are *self-presenting beings* an insightful contribution.⁵ Having a 'self' in this sense is not one's personal or metaphysical identity, but one's *self-conception*, the conception of one's values and commitments, one's relationships and roles (79). A sense of self, then, is deeply relational: it emerges through our *interaction* with others, as we form a self-conception by having *control* over what aspects of our self-conception we *present* to others and what aspects remain concealed. This sense is *integral* when it is stable, internally coherent, and continuous and *fractured* when unstable, internally incoherent or discontinuous (*ibid.*). Typically, for sociable beings like us, lacking any of (a)-(c) is sufficient but not necessary to fracture one's sense of self, since intrapersonal factors like depression or personal tragedies can also introduce conflict and instability to one's sense of self.

To sharpen the notion of moral equality, Sangiovanni adds two further notions: opacity respect and moral status. Although the notion of opacity respect is intriguing, I think the notion that ends up doing the real explanatory work is the notion of *status*, so I shall focus on it.

5. (*Moral Status*) *A*'s moral status is constituted by moral rights protecting against inferiorizing cruel treatment.

⁵ Especially the way in which Sangiovanni develops this view as an account of the wrong of discrimination, a chapter that really shines but which, unfortunately, I cannot discuss here.

Sangiovanni helpfully distinguishes two notions of status (100). The first is the idea of status as a *position in a hierarchy* of value, such as the social prestige attributed in capitalist societies to wealthy individuals or to nobles in aristocratic ones. The second notion is legal and doesn't depend on a hierarchy of value or prestige. It is the idea of status as a bundle of rights and duties constitutive of a position or an office. For instance, the status of *citizen* is constituted by a bundle of rights and duties, such as the right to a specific nationality or to political participation. Sangiovanni's proposal is that moral status is best understood through the second notion, and so is constituted by a bundle of moral rights. The nature and content of said rights is fixed by coupling (1), (3) and (4): rights protecting not only from treatment as inferior but, more precisely, from treatment as inferior that is socially cruel.

From (5), it is a short step to (6), a full notion of moral equality.

6. (*Moral Equality*) Moral equality consists in the fact that moral agents have the same moral status.⁶

So this, I take it, is Sangiovanni's argument for an inequality-first account of moral equality. What explains moral equality is not the possession of a valued, equal status, but the rejection of inferiorizing, socially cruel treatment.

⁶ "To treat *as an equal* is therefore to treat others as bearing a moral status conferred by possession of these rights, and to do so as a result of the importance of the interests underlying those rights." (Sangiovanni, *Humanity without Dignity*, 102).

II

Moral Equality

I hope this is a faithful reconstruction of Sangiovanni's argument. If it is, I want to highlight two difficulties: (2) seems false; and even if (2) were true, still, the account generates false negatives.

I begin with the first difficulty. Recall that Sangiovanni wants to distinguish between *social* and *moral* equality in order to accommodate the thought that some *social* hierarchies can be compatible with moral equality. This distinction seems sensible enough. The trouble comes from (2), the claim that treating others as inferior in one of the five paradigmatic ways (a-f) is not sufficient for treating them as moral unequals. In fact, I would have thought that such treatment *is* sufficient for treating others as moral unequals.

To see this, look more closely at Sangiovanni's two examples. First, he claims that the police officer (call him Albert) who herds people out of the stadium *dehumanizes* civilians without treating them as moral unequals. At least on its face, this is puzzling. One might have thought that if it is true of Albert that he dehumanizes civilians, then it is also true of Albert that he treats civilians as moral inferiors. Why? Well, one might think that there are only two moral possibilities: dehumanizing treatment is treatment of the other as a *moral inferior*, and if one treats the other as a moral equal, then one does not *dehumanize* the other. In a word, the two possibilities are that Albert's act is either dehumanizing (and so treatment as moral unequal) or not dehumanizing (and so not treatment of others as unequal). If so, (*Sufficiency*) appears to be false.

The same is true of Sangiovanni's second example. It is true that when I peek over your shoulder to look at your watch and check the time I am using you, but it's more controversial to say that I'm thereby *instrumentalizing* or *objectifying* you. Philosophers who make use of these ideas typically distinguish *using* others (as servers in a restaurant, tellers in a bank, or drivers in the bus) from *treating others as mere means*, say, as a master does to a slave.⁷ That distinction enables us to make the same point: the moral options are two. When I peek over to look at your watch either I treat you as a mere means or I don't. Perhaps I don't. Perhaps the right thing to say is that when we occupy public space certain aspects of our bodies (and the artifacts we display publicly) are there for all to see, so we implicitly consent to others using what we reveal in public without thereby becoming mere means to others. In that case, there is no instrumentalization and so no treatment of others as moral unequals. But if it is true that I treat you as a mere means, then it is also true that I treat you as a moral unequal. If so (*Sufficiency*) appears to be false.

What's gone wrong? I think Sangiovanni makes a key but unargued for assumption: the denial of my claim that the moral options are two. Clearly, his view is that, setting aside cases of consent, there is a *third* moral possibility: dehumanizing or objectifying treatment among moral equals. This may well be a moral possibility. My point is that, other than these two controversial examples, Sangiovanni has provided no argument for

⁷ There is vast discussion in the literature on instrumentalization. M. Nussbaum, "Objectification," *Philosophy and Public Affairs*, 24 (4), 1995, 249-291; Ch. Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), ch. 4; A. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999), ch. 4; and S. Kerstein, *How to Treat Persons* (Oxford: Oxford University Press, 2013).

this assumption. And without such argument, we seem entitled to think that (*Sufficiency*) is false.

Now, why does this matter? For one thing, if (*Sufficiency*) is false, the general argument is not sound. For another, the falsity of (*Sufficiency*) may reveal a deeper difficulty: there is a structural flaw in the “inequality-first” approach. Recall that the dignity-first approach sought to explain the *basis* of equality in terms that do not make reference to the concept of equality. For instance, one could argue that human beings are practically self-conscious, that in virtue of such property they enjoy dignity, and from there infer that the status conferred by their dignity is equal. By contrast, the inequality-first approach begins by taking as basic the wrong of inequality. This has the advantage of bypassing the need to rely on the notion of dignity. But we can now see a disadvantage of the approach: it can seem to beg the question. For the account of equality in terms of the badness or wrongness of inequality appears to presuppose its explanandum.

But perhaps this is not so. If (*Sufficiency*) is true, none of the forms of inferiorizing treatment identified in 1 are *sufficient* for morally unequal treatment. The further feature of cruelty is what does explanatory work. However, if (2) is false and the five forms of treatment identified by Sangiovanni are *sufficient* for treatment of others as moral unequals, it is not clear why a *further* feature is necessary. And so, the worry about begging the question remains.

This brings us to what I take to be a fundamental concern about Sangiovanni’s account and the second difficulty I mentioned at the outset. Social cruelty appears to be neither necessary nor sufficient for treatment of others as moral unequals. That it is not sufficient should be uncontroversial: moral peers can be cruel to each other without thereby treating each other as moral unequals. For instance, I can reveal a trusted secret from a friend whom I regard my moral equal and thereby attack her integrity as a self-presenting

being without thereby presuming that my friend is my moral inferior. Sangiovanni can easily grant this point, but he insists on the further point that social cruelty is *necessary* for treatment of others as moral unequals. However, I am not convinced he has shown this to be so. And this is the second difficulty I'd like to articulate: even if (*Sufficiency*) is true, the account would be deficient because social cruelty is not necessary for treatment of others as moral unequals.

Take a strong agent, such as Epictetus, the Stoic philosopher born a slave to Epaphroditos. As a Stoic, Epictetus considered that all external events (including slavery) are beyond our control. Moreover, suppose that Epaphroditos was a supremely benevolent master. After all, he permitted (perhaps even encouraged) Epictetus to study philosophy and thereby made it possible for Epictetus to then pursue his illustrious career as the slave-born philosopher.

Now ask: is there social cruelty here? Does Epictetus have a fractured sense of self? We are assuming both that Epaphroditos is *benevolent* (recall: Sangiovanni is ambivalent about the quality of will required of perpetrator for cruelty) and that Epictetus is supremely *strong* of character. In fact, one might argue that it is Epaphroditos who makes it possible for Epictetus to have an integral sense of self as a Stoic philosopher, since without his benevolence Epictetus might never have studied philosophy.

This type of case generates a problem. Assuming (2) is true and further that (3-4) are true (i.e., social cruelty is necessary for treatment of others as moral unequals), it follows that Epaphroditos treats his slave as a moral equal. That is because Epaphroditos does not treat Epictetus cruelly and so – according to Sangiovanni's account – cannot treat him as a moral unequal. However, treating another as one's slave is the clearest example I can think of of treating another as a moral inferior. If my analysis

is correct, this strikes me not just as a false negative but as a potential *reductio ad absurdum* of the account.

Sangiovanni appears to anticipate this difficulty by considering cases where seemingly inferiorizing treatment not only does not *undermine* the recipient's sense of self but in fact *reinforces it* (96-98). He imagines an Oxford college servant who conceives of himself as meriting inferiorizing treatment and finds meaning in his identity as servant. Nevertheless, Sangiovanni argues, such are cases of social cruelty precisely because they "take advantage of another's vulnerability to humiliate and infantilize in such a way as to reinforce an *already fractured* sense of self." (98) Applied to the benevolent master case, Sangiovanni's response would appear to be structurally the same: regardless of Epictetus's own self-understanding, he has an *already fractured* sense of self. Why? Because internalizing a servile identity produces "a pattern of life that is rudderless and self-destructive, or ... self-*abnegating*" (98).

Pause to reflect on this line of response and notice that Sangiovanni has shifted from the *conceptual* claim that cruelty is necessary for unequal treatment to the *empirical* claim that individuals in Epictetus's situation tend to have a fractured sense of self. But what is the evidence for the empirical claim? Why suppose that an agent in Epictetus's circumstances would have a more fractured sense of self than any ordinary non-enslaved agent? Moreover, in our case, it seemed as if the slave-relation *made possible* a fundamental aspect of Epictetus's sense of self as a philosopher. So again, until more detailed argumentation is forthcoming, we seem entitled to conclude that on Sangiovanni's view there is no social cruelty in the Epaphroditos-Epictetus relation and so no moral inequality.

Let me press this point in another way by reflecting further on Albert, the dehumanizing police officer. Suppose that throughout the entire evacuation process all police officers conduct themselves

perfectly, treating others with impeccable respect. But then there is Albert, the rotten apple, who treats others in a dehumanizing way, treating civilians like a herd of animals that needs prodding.

Here is how I am thinking of this case. Albert treats the civilians in a dehumanizing way. But if, as we are assuming, (*Sufficiency*) is true, dehumanizing treatment is not sufficient for unequal moral treatment. To be unequal treatment, Albert's actions must also be socially cruel. However, it is not clear that they are. When you look at Albert's actions, they are a completely isolated event in the force: all other officers treat civilians respectfully and they make sure that Albert's actions are ineffective in harming anyone. What's more, the crowd is sufficiently large that Albert's conduct does not have the effect of attacking any individual's integral sense of self (and there is no recognizable *threat* that their sense of self will be fractured). Now, since Albert's conduct, we are supposing, cannot have the effect of attacking any individual's integral sense of self, it cannot amount to social cruelty. Here again is a case of dehumanizing but not cruel treatment. And yet, it still seems plausible to say that Albert's ill-will and dehumanizing acts amount to treatment of others as moral unequals, even if they are not cruel.

Let me pause and zoom out to get the two difficulties into view, for, I think, they are related. I suspect that there is a gap between the concepts of *cruelty* and of *moral inequality*, such that neither entails the other. (Socially) cruel treatment need not be treatment of others as unequal – as I mentioned, moral peers can be cruel to each other; and treatment of others as our moral inferiors does not seem to require cruelty in Sangiovanni's sense.

The point can be seen through the opposite of cruelty, humanity. Sangiovanni rightly notes the importance of thinking of humanity not as a psychological property but as a *virtue*. But notice that there is nothing in the concept of the virtue of humanity that requires that its exercise involve treatment of others as equals. A

feudal lord might manifest the virtue of humanity toward his vassal subjects, say, in time of drought without thereby becoming committed to treating his subjects as moral equals. The fact that it is possible to manifest the virtue of humanity without equality throws light on the conceptual gap I'm alluding to.

At the heart of Sangiovanni's intriguing account is his view that the key to unlock the basis of moral equality, discrimination, and human rights is the value of *humanity* and the disvalue of *inhumanity*, *socially cruel treatment*. Sangiovanni is clearly right that humanity is an important value that moral and political philosophy would do well to explore more deeply. But I'm more doubtful about Sangiovanni's foundational claim that cruelty can explain the basis of moral equality.

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SYMPOSIUM
HUMANITY WITHOUT DIGNITY



SANGIOVANNI ON HUMAN RIGHTS
AND EQUAL MORAL STATUS

BY
PETER JONES

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Sangiovanni on Human Rights and Equal Moral Status

Peter Jones

Andrea Sangiovanni's *Humanity without Dignity* covers a lot of territory and it is deep as well as broad in its endeavour.¹ Its argument is ultimately targeted at the idea of human rights, but much of it deals with issues general to moral and political philosophy and has a significance that extends well beyond human rights. In this brief discussion, I shall, even so, comment only on his more immediate thinking on human rights. Sangiovanni aims to vindicate rather than subvert human rights, but he does so in a way that dismantles much accepted thinking on human rights. I briefly summarise his thinking before commenting on some issues it raises.

What are human rights? A traditional answer, which Sangiovanni labels the 'Orthodox' view, is: 'individual moral rights that we possess merely in virtue of our humanity' (177). The answer of the more recent 'Political' view, as formulated by Sangiovanni, is: 'individual moral rights (or morally urgent interests) whose violation (primarily) by states makes sovereignty-overriding interference or other forms of international action ... permissible if not required' (177). He finds both answers

¹ References within brackets in the text are to A. Sangiovanni, *Humanity without Dignity. Moral Equality, Respect, and Human Rights* (Cambridge, MS: Harvard University Press, 2017).

unsatisfactory. Neither captures the diversity of thought and practice now associated with human rights. His own answer, which he describes as the ‘Broad View’, is: “those moral rights whose systematic violation ought to be of universal moral, legal, and political *concern*” (191, emphasis in the original). Thus, we discover whether a moral right is a human right by establishing whether its violation ‘ought to garner universal moral, legal, and political concern’ (191).

Sangiovanni uses the concept/conception distinction to explain how we should move from his formal concept to a substantive account of human rights (194). We should not suppose, he insists, that that entails developing a single master-list of human rights. Rather different contexts make different conceptions of human rights appropriate. Accordingly, he describes his view as the ‘Context Sensitive Broad View’ (CSBV). The kind of contexts he means are not the diverse social and cultural settings in which uniform human rights have to be realised. Rather he means the different contexts in which activists, advocates and practitioners deploy the idea human rights; these imply and make appropriate different conceptions of human rights. He also suggests that moving from the formal concept to contextualised conceptions requires ‘mediating concepts’ suited to particular contexts.

We commonly think that conceptions stemming from a single concept are rivalrous as well as different. For example, if theorists, accept a common concept of distributive justice, but go on to develop different conceptions of that concept, they present competing accounts of the distribution justice requires. Are Sangiovanni’s conceptions rivalrous? The answer depends on what explains their difference. Insofar as they reflect mere differences of context, they are not. But, insofar as they differ with respect to the same context, they compete and their proponents must disagree.

That distinction bears on Sangiovanni's appraisal of the Orthodox and Political views. As we have seen, he rejects the account each presents of the basic concept of human rights. He suggests, nevertheless, that his CSBV can subsume both views (191, 192-93). It does so by re-interpreting them as conceptions appropriate to different contexts. So understood, the Orthodox and Political views cease to be rivals, either with one another or with Sangiovanni's CSBV. But that cannot be the whole story, since Sangiovanni's critique (180-90) faults both as general theories rather only for their basic concepts. Thus, his subsumption of the Orthodox and Political views within his CSBV would seem more formal than substantive. While he finds a place for each as a *candidate* for the role of mediating concept or substantive conception appropriate to its context, he finds each to be an *unsatisfactory* candidate, at least in its extant forms.

Human Rights: the Concept

Sangiovanni, then, understands human rights to be "those moral rights whose systematic violation ought to be of universal moral, legal and political concern." That sets the template for the larger view of human rights he goes on to develop. He means his concept to be broad enough to encompass most contemporary usage (191) and to keep faith with the human rights culture that has emerged since 1945 (179, 203-05). Yet it has some puzzling features which make it an unlikely object of consensus.

First, it defines human rights by way of the response their violation should evoke. But that seems to make the tail wag the dog. Surely the violation of a human right ought to be of concern because what is violated is a human right; it is not its evoking that concern that makes it a human right. Sangiovanni's concept makes

essential to the very idea of a human right something that would seem better understood as a consequence that follows from it.

Secondly, it is the *universality* of that concern that for Sangiovanni distinguishes its object as a human right. Universality is, of course, a feature standardly ascribed to human rights but it is normally taken to be a feature (even if with qualification) of the range of those who hold human rights. Why should the relevant universality be a universality of concern amongst onlookers? That may be a roundabout way of referencing the humanity of those who hold the right – a violation's being properly the concern of *all* signals a concern for another as a human being, rather than as, say, a citizen of a particular state. But, if that is what Sangiovanni intends, it seems unduly circuitous. He may intend universality, additionally or instead, to capture the special moral significance of human rights.²

Thirdly, Sangiovanni identifies the relevant concern as 'moral, legal *and* political'; but why 'and' rather than 'or' or 'and/or'? Questioning a conjunction may seem a descent into pedantry, but Sangiovanni is consistent in his use of that conjunction and it creates a puzzle for his claim about the significance of context. It may be that a context to which political or legal concern is appropriate will always be one to which moral concern is also appropriate, since the violation of human right is for Sangiovanni always the violation of a moral right. But his emphasis on the significance of context seems to imply that a violation could be properly of moral concern and only of moral concern; one, that is, for which political or legal concern would be inappropriate.

Fourthly, Sangiovanni's concept is intentionally broad; it aims 'to capture the distinctiveness of human rights claims in all their

² Sangiovanni remarks (194) that "a central feature of all human rights claims [is] ... their universal and peremptory status".

diversity' (192). Yet it excludes one significant conception of human rights: a purely legal conception. It does so because it requires a human right always to be a moral right. For Sangiovanni that requirement does not stand in the way of his concept's accommodating international legal human rights, since those rights, he argues, must always be justified by underlying individual moral rights (212). In response, many lawyers and legal scholars would insist that, even if morality does justify the creation of legal human rights, those rights *exist* as legal rights only. Some also insist that the rationale for legal human rights is to be found within international law itself³.

Finally, there is the question of what justifies our continued use of the term 'human right'. Sangiovanni is unwilling to accept that a human right is a right we hold 'in virtue of our humanity' (191, 192), since he associates that phrase with the Orthodox view and particularly with claims about human dignity whose inadequacy he exposes in his first chapter. But the phrase 'in virtue of our humanity' need bring with it no such baggage. It need convey only that human rights are rights people hold in virtue of their status (moral or legal) as human beings, just as 'citizen's rights' are rights people hold in virtue of their status (moral or legal) as citizens. In the absence of some such clear link to humanity, the phrase 'human rights' becomes inaccurate and misleading (as it is for the Political view).⁴ Doubtless it remains rhetorically useful but that is hardly a respectable reason for conniving at its continued use.

³ See e. g. P. Macklem, *The Sovereignty of Human Rights* (Oxford: Oxford University Press, 2015).

⁴ Sangiovanni allows that, on his view, moral rights possessed by non-humans would be human rights provided only that their systematic violation ought to be of universal moral, legal and political concern (192). We may indeed share some

Human Rights: Conceptions and Contexts

The most distinctive feature of Sangiovanni's developed account of human rights is the significance he ascribes to context. As we have seen, he rejects the assumption that there should be a single unified human rights practice informed by a single master list of human rights. Rather, we should recognise a multiplicity of practices reflecting the multiplicity of contexts in which human rights can be invoked. Those practices are united by Sangiovanni's concept of human rights, but we can move beyond that formal concept and give substance to human rights only with respect to a particular context. Only then can we judge what counts as relevantly 'universal' and relevantly 'moral', 'legal', and 'political', and give substance to human rights and their correlative duties (192). Only then does a conception become 'determinate' and 'truth-evaluable' (198, 206).

The relevant context is, for Sangiovanni, one in which, or for which, we deploy the idea of human rights. His trio of human rights concerns – moral, legal, political – might lead us to suppose that those three describe the types of context that are significant. They do indeed have contextual significance for Sangiovanni, particularly it would seem for mediating concepts, but his view of contextual difference is more refined than that. In arguing for the relevance of context, he gives a wide array of examples of practitioners and activists deploying human rights in different contexts. These include (195-203) the UN High Commissioner for Human Rights; judges serving in the European Court of Human Rights; a domestic court or judge in Germany or South Africa addressing human rights issues; state-actors deciding whether

rights with other animals but it would be odd to describe the rights of all of those animals as 'human rights'.

human rights violations justify intervention in Syria or Libya or Egypt; domestic human rights movements across Latin America, sub-Saharan Africa, and Asia; Human Rights Watch considering whether it should treat homophobia in South Africa as a human rights issue; Amnesty International seeking to combat state-authorized threats to liberty; Black Lives Matter invoking human rights in relation to illiteracy amongst black children in US inner cities. Rather than try to understand these different actors as engaged in a single human rights project, we do better, insists Sangiovanni, to keep faith with the multiplicity of practices they represent (196, 198). We should embrace ‘the great diversity in the kinds of universal concern relevant to different contexts’ (198).

How far, then, should we be persuaded by Sangiovanni’s claims for context? Perhaps the clearest contextual contrast is between cases in which practitioners appeal to morally grounded but legally unrecognised human rights and cases in which they are tasked with interpreting and administering an already established body of legal human rights. Sangiovanni gives special attention to international law as a “specific context”, but the international legal human rights system has itself to address different contexts and it engages in diverse legal or quasi-legal human rights practices (178, 207-08). Yet we still have reason to expect some overlap of content between human rights legally and non-legally conceived, even though a legally recognised right is a different animal from a right that is only a moral claim. Recall, though, that Sangiovanni’s test for a human right is a right whose violation *ought* to garner universal moral, legal and political concern. We can intelligibly claim that concern for the violation of a legally established human right. But we are more likely to reach for Sangiovanni’s ‘ought’ test if we are considering not which rights are, but which *ought* to be, recognised as human rights in law (cf. 199). Those rights are likely to overlap in significant measure with morally grounded human rights, even

though the two types of right may still not be co-extensive⁵ (cf. Buchanan 2013).

Considering which rights human beings possess morally and which politically warrant sovereignty-overriding interference, are clearly two different concerns; but whether they need spawn different conceptions of human rights is moot. Sangiovanni objects that the Political view's concept of human rights is unsatisfactory, because it makes the existence of those rights depend upon shifting political contingencies (186-90). But, he claims, if we recast the Political view as a conception of human rights, and one conception amongst others, we avoid that objection (192-93). Do we? If the Political view remains a conception of the human rights we possess, its human rights will remain tied to shifting political contingencies. We can liberate it from the contingency objection only by making it a view on the international political action we should or should not take to uphold human rights, whose identity as human rights is independent of itself.

When we turn to some of the other cases Sangiovanni cites, their differences of concern have no obvious significance for conceptions of human rights. Organisations such as Amnesty International, Human Rights Watch, and Black Lives Matter, certainly focus their efforts on different domains of human rights, and single-human rights organisations such as Article 19 and PEN International even more so, but it is hard to see why their different concerns should amount to different contexts that require different conceptions of human rights. All of those organisations could function with the same conception and, insofar as there is

⁵ Cf. A. Buchanan, *The Heart of Human Rights* (Oxford: Oxford University Press, 2013).

scope for differences of conception, they might be found amongst activists within the same organisation.

Sangiovanni considers contexts to be determinative of human rights conceptions, at least in some measure. A particular context makes a particular conception of human rights ‘appropriate’. But how particular and exclusive is that ‘appropriateness’? It is difficult to know and it may not be easy for Sangiovanni to say. It is hard to believe that context alone can do much to tell us what human rights there ought to be or to pre-empt or defuse the disagreements human rights attract. It is more likely that those disagreements will still need to be addressed through substantive argument – argument of the sort that takes up much of Sangiovanni’s book.

There also seems ample scope for rights to ‘run across’ contexts, including Sangiovanni’s three broad contexts: moral, political and legal. Consider the paradigm instances he gives of ways of treating people as moral unequals from which, he argues, human rights should protect us: torture; slavery; rape; segregation and apartheid; caste societies; persecution and invidious forms of discrimination; demeaning forms of paternalism; concentration and death camps; genocide; cruel, inhuman and degrading treatment (74). Forms of mistreatment of this sort obviously merit universal concern and, if human rights ever warrant international political or legal action as well as moral concern, they must do so in these cases. The legal positivist might insist that, even though they may be motivated by the same concern as moral human rights, international legal human rights belong to a quite separate context. But Sangiovanni rejects that sharp separation, especially in the case of legal human rights that protect people from socially cruel treatment as moral unequals. Thus, the human rights that are pre-eminently Sangiovanni’s concern do not comport well with the image of three separate bodies of right – moral, political and legal

– each circumscribed by its own conception and each cocooned within its own context.

Equal Moral Status

Human rights are normally associated with moral status and with equal status. Human beings are said to possess both. They matter one-by-one and they matter equally. Their equal moral status underpins their human rights and their human rights manifest their equal moral status. Claims of ‘dignity’ or ‘worth’ are often used to express these ideas, especially in preambles to human rights declarations, and some philosophers have tried to justify them by way of a property or capacity all humans allegedly share and share equally. Having shown their lack of success, Sangiovanni concludes that we should abandon entirely this way of thinking about human rights and equal moral status and conceive their relationship in quite other terms.

The equality that matters, he argues, is absence of inequality, and inequality matters because of the bad of being treated as less than an equal – being treated as, for example, a mere animal or an object or a ‘polluted’ being. Such inferiorizing is socially cruel; it attacks or obliterates people’s “capacity to develop and maintain an integrated sense of self” (76). I listed above some severe instances Sangiovanni gives of that cruelty: torture, slavery, rape, and the like. Here I cannot do justice to his subtle and perceptive account of the harm and the wrong wrought by inferiorizing treatment; nor do I challenge it. I focus only on the way it leads Sangiovanni to invert the relationship between human rights and equal moral status as it is usually understood.

On Sangiovanni’s view, equal moral status does not precede human rights or, *qua* status, contribute to the case for them. Rather, it is a status bestowed upon us by human rights that safeguard us

from treatment as an inferior. In order of concern, therefore, inequality precedes equality and it does so in two respects.

First, equal moral status is *constituted* by or *consists* in a bundle of rights against certain kinds of inferiorizing treatment (rather than the other way round), and, second, our commitment to moral equality is *explained* by or *grounded* in the rejection of inferiorizing treatment as socially cruel (rather than the other way round). (103, emphases in the original)

Equal moral status is therefore an *object* of human rights, something to which we have a right. It is a status that human rights aim to secure for us, rather than a status that we already possess.

I do not quarrel with Sangiovanni's claim that human rights can be equality-bestowing or, more accurately, inequality-preventing, but I question whether accepting that view entails rejecting equal moral status traditionally conceived. These are two different yet compatible sorts of equality, located at different points in human rights argument. One concerns the object of some human rights (Sangiovanni does not claim that his equality is the only or the major object of *all* human rights); the other concerns the possession of human rights as such. One is a distribuend of some human rights; the other is a principle governing the distribution of human rights.⁶ It is hard to see why that distribution should be equal if we dispense with the equal moral status of human beings as bearers of human rights.

I want to point to a particular feature of human rights usage which is hard to justify without the traditional idea of equal moral status. Sangiovanni concedes that the capacity to which he appeals in condemning the social cruelty of unequal treatment – the “capacity to develop and maintain an integrated sense of self” – is

⁶ Although not only that; status matters as well as equal status.

one in respect of which people may be differently vulnerable. He argues, reasonably enough, that variable vulnerability is not a problem for his position: a common right to equality can justify different duties in respect of people who are differently vulnerable to inequality and its consequences (104-10). By contrast, such variability *is* a problem, he claims, for dignity-first accounts which make dignity dependent on a variable property such as capacity for rational action. But why should we make people's moral status – the extent to which they matter – dependent on any such capacity? Freed of that misplaced endeavour, the idea of equal moral status enables us to make sense of variable human rights. Several rights claimed as human rights, including in UN documents, are not universal. Some are unique to women, such as the right not to be subjected to forced pregnancy or forced abortion; some are possessed in childhood but not adulthood, and vice versa; people suffering from dementia or other forms of mental incapacity have rights to care that others do not, but they may not have rights to freedoms they would otherwise possess; indigenous peoples have rights that differ from those of other peoples. How, then, can these be human rights? The answer is by being rights we hold in virtue of our status, and our equal status, as human beings. So understood, the rights we have can vary according to differences in our condition and circumstances⁷; but they can remain human rights because they are rights we hold in virtue of our equal moral status as human beings.

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⁷ See further P. Jones, Peter. 2018. 'Collective and Group-Specific: Can the Rights of Ethno-Cultural Minorities be Human Rights?', in G. Pentassuglia (ed.), *Ethno-Cultural Diversity and Human Rights: Challenges and Critiques* (Leiden: Brill Nijhoff, 2018), 27-58.

SYMPOSIUM
HUMANITY WITHOUT DIGNITY



A REPLY TO COMMENTS

BY
ANDREA SANGIOVANNI

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A Reply to Comments

Andrea Sangiovanni

I am tremendously grateful to Pietro Maffettone, Elisabetta Galeotti, Angela Taraborrelli, Ariel Zylberman, and Peter Jones for writing such thoughtful and careful responses to *Humanity Without Dignity* (HWD). It is a humbling task to respond, which requires one to come face to face with how one's work appears to others, and to see, often quite clearly, how one could have done better. But it also offers an opportunity to try to make progress together even if, in the end, we decide to take different paths to the same destination. I take each response in the order in which it appears in this volume. To keep this exchange readably short, I have refrained from trying to answer every point or challenge made. Instead, I tried, to the best of my ability, to choose the lines of argument that struck me as most salient and most instructive.

Maffettone

Pietro Maffettone's perceptive and generous remarks query the role I assign empathy in Chapter 1 of *Humanity without Dignity*. He challenges two moves in the argument. First, he wonders whether empathy is not in fact sufficient, as I deny, to establish a reason to value what is valued by another agent, and so to advance their ends. He writes:

If the question is “What reason would I have to value what is valued by agent Y in circumstances C?” then the answer is simply that I am myself feeling what Y is feeling in C when I emotionally empathize with Y.¹

Second, he challenges whether an appeal to empathy can, on its own, justify *when* and *why* we ought to recognize a being as possessing a basic moral status, as a being, that is, that is owed consideration as mattering in their own right and for their own sake. He writes:

[E]mpathy ... *presupposes* that we recognize someone else as the kind of object that is deserving of our empathy. ... [E]mpathy is often based on a prior (and perhaps unconscious) attribution of status. And that attribution is clearly not always ‘correct’, or ... not always as inclusive as we might hope it to be.²

I have learned much from the response, which covers much more ground than I have intimated. Here, given constraints of space, I will only respond to the two challenges.

To respond to both, we need to distinguish empathy, sympathy, and (the virtue of) humanity. By empathy, I meant much the same as Hume or Smith meant by ‘sympathy’. According to Smith, “Whatever is the passion which arises from any object in the person principally concerned, an analogous emotion springs up, at the thought of his situation, in the breast of every attentive spectator.”³ Empathy is feeling what another being is feeling,

¹ P. Maffettone, *Editor’s Introduction*, *supra*, 24.

² *Ibid.*, 28.

³ A. Smith, *The Theory of Moral Sentiments*, ed. A. L. Macfie and D. D. Raphael (Indianapolis: Liberty Classics, 1982), I.i.1.4.

where that feeling is either caused by direct contact with the other (as in cases of ‘emotional contagion’) or by imagining what one would feel in their situation. Sympathy is concern for another’s welfare. And (the virtue of) humanity is the ability to project oneself into another’s shoes plus a desire to seek a reconciliation of different perspectives into single perspective that can be shared by all. On this picture, empathy is an emotion, sympathy a disposition, and humanity a virtue. While the three are empirically connected, they are also conceptually distinct and can come apart.

Suppose you are walking through a high security prison. You might feel empathy as you imagine the inmates trapped and examined. But you may also not be disposed to show any particular concern for their welfare. Your emotional reaction to their plight may just be automatic, and not itself give rise to any particular concern; you thus don’t have sympathy. Conversely, you may lack any emotional resonance with their plight—and so empathy—but might still be concerned for how they are faring. And, finally, in both cases, you may or may not display the virtue of humanity, which requires you to projectively imagine what the world looks like from their position, and then to seek a reconciliation with that perspective, either by justifying their incarceration as appropriate, or by challenging it as unjust.

Maffettone is therefore right to note that my conception of humanity is cognitive, and my conception of empathy emotional (with sympathy somewhere in between). My point was that the three are connected in beings like us. The capacity for empathy enables us to feel what others are feeling. Feeling what others are feeling leads us to see, at the same time, that others have a distinct perspective on the world—while we share their suffering, we still see that it as *theirs* and ours only at one remove. Empathy therefore leads us to compare our situation with theirs, and hence also to imagine how *we* must appear in *their* eyes. And seeing how we

appear in the eyes of others, in turn, leads us naturally to seek a reconciliation between their perspective and ours. If there is dissonance, we seek repair (think guilt) or escape (think shame). If there is harmony, we feel connection. So empathy leads to humanity, which implies concern for another's distinct experience and perspective on the world—a concern, that is, for how things matter to them (including how *we* matter to them)—hence sympathy. Of course, things don't always turn out that way. Empathy does not *always* lead to humanity and sympathy (as it does not in the example I have just discussed). That is why I emphasized humanity as a virtue. But the mechanisms—recounted in detail by Smith and Hume—strike me as a plausible account of an important aspect of our moral psychology when it is functioning well.

But do the empirical connections between empathy, humanity, and sympathy give us reasons to value what another person values, or, separately, reasons to recognize basic moral status in others? In brief: Maffettone says yes to the former (his first challenge), but no to the latter (his second challenge). I suggest exactly the reverse: the account of our moral psychology that I have just abbreviated gives us no reason to value what another person values, but does give us—when appropriately understood—reasons to recognize basic moral status in others.

The account doesn't give us reason to value what is valued from another's perspective. This is clear when we consider the prison case again. Suppose that your empathy with the prisoner's situation reinforces and activates your humanity and sympathy. When you imagine the life of the murderer behind bars, you not only imagine, but also feel the weight of years of incarceration; from that point of view, you can also come to understand why the murderer wants his freedom back. Your imagining his perspective leads you to feel concern for him, and also to see how you (and we) must appear in his eyes. This triggers you to seek a perspective from which the

practice of incarceration can be justified to him as a prisoner and to us as citizens (if such a perspective exists). Suppose you come to the conclusion that the practice is justifiable to him. At this point, you are under no pressure, rational or otherwise, to value what he values. You are under no pressure to think his desire for freedom gives us reasons to grant that freedom to him. Your empathy, humanity, and sympathy led you *not* to the conclusion that you should advance his ends—whatever they are—but to the conclusion that you must justify what you, along with other citizens, do to him in response to his crime. This is also why I wrote that *concern* for another as a being with an evaluatively-laden, conscious point of view on the world is not enough to ground an obligation to treat him *as an equal*. The latter requires a further stretch of moral argument; concern is not necessarily *equal* concern. This is enough, I think, to answer Maffettone’s first challenge. But what about the second?

It doesn’t look immediately obvious how we can go from a descriptive account of how our moral psychology works (in the best of cases) to a normative account of the reasons we have to recognize another being as having a basic moral status. There is no direct route. In *HWD*, in the second half of Chapter 1, I present an argument in two parts.⁴ The first part establishes, *independently of the moral psychology I just outlined*, that we have basic reasons to recognize beings that have an evaluatively-laden, conscious point of view on the world as mattering in their own right and for their own sake. This argument gives us reasons to treat such beings as having a *basic* (though not yet *equal*) moral status. Call this argument BMS.

The second part takes a more indirect route. The aim is to provide independent support for BMS. The argument has the

⁴ *HWD*, 67-71.

following form. Let's assume (as BMS affirms) that we do have basic reasons to treat beings that have an evaluatively-laden, conscious point of view on the world as mattering in their own right and for their own sake. Does recognizing BMS form part of the good for creatures like us, i.e., for creatures that have the moral psychology I outlined above? I argue that it does, and that this fact gives us further reasons to affirm BMS. The argument is equivalent in form to Rawls's 'congruence' argument, which shows that his principles of justice, justified by the original position, also affirm each person's good. This fact is meant to provide further support that the principles of justice he outlines are correct.

Summarizing, the argument goes like this. Empathy, humanity, and sympathy make some of the most important goods in a human life possible. There would be no friendship, no community, no intimacy, indeed, no morality without them. Our sensitivity to the perspective of others—to how the world looks and feels from their point of view—is therefore an essential aspect of our good. But imagine someone who has the normal range of sentiments characteristic of our moral psychology, but who fails to recognize another as a being with a conscious, evaluatively-laden point of view on the world, and hence as a being who deserves justification from a perspective shareable by him. I give the example of someone who locks a slave in a cell and does not believe he must offer him any reasons. I claim that this failure is not just a failure to recognize BMS but also a failure of *humanity*. His actions have an important form of incoherence in them that makes his life less flourishing: the abilities to feel what others are feeling, to seek reconciliation with them, and hence to be concerned for what matters to them, are at the core of his life in every other domain, but fail in this one. It is important here that he does not give reasons for his actions that, he believes, the slave must also accept. He doesn't think he needs to give any reasons that can be shareable by the slave *at all*, any more than he needs to give reasons to a rock

for why he has collected it. The slave is not due any moral consideration; reconciliation is pointless because the slave lacks a morally relevant point of view.⁵

This is a response to Maffettone because it shows that (a) the (indirect) argument is not meant to establish what kind of beings have a basic moral status (that's the role of BMS), and so (b) it therefore does not preclude the kind of moral reasoning that Maffettone rightly says is required to determine who has basic moral status. The indirect argument assumes that the slave in the example *does* have a basic moral status (in virtue of having an evaluatively-laden, conscious point of view on the world); it seeks then to establish that the master's failure to recognize this status—given the central role that sensitivity to the perspective of others has in the rest of the master's life—makes his life also less flourishing as a result.

Galeotti

Anna Elisabetta Galeotti's generous and insightful remarks raise two main issues. In Chapter 1, I make much of the familiar idea that dignity-first accounts fail, among other reasons, because they cannot answer the 'variation challenge'. If dignity as a form of fundamental worth supervenes on possession of a morally relevant natural property, such as the capacity to reason, to reflect, or to love, then, if the property varies—as it surely does among human beings—then so must the worth. Galeotti wonders whether the very same objection doesn't also apply to my account. After all, I, too, point to the relevance of a natural property—the capacity to

⁵ The master, we imagine, believes that the slave has a point of view but disregards it without reason. His failing is not, that is, epistemic. If it were, then assessing the example would raise further questions regarding culpable ignorance, and so distract us from the main line of argument.

develop and maintain an integral sense of self—which surely varies among human beings. Galeotti charitably suggests that I can answer this challenge in the same way as many dignity-first accounts do, namely by pointing to the existence and relevance of a range property. Above a certain threshold, it simply doesn't matter to what extent one possesses the capacity. As she rightly points out, the difficulty range-property accounts face is to explain why the range property is morally relevant *rather than* the subvening property. This is particularly evident with respect to dignity-first accounts: if worth matters, and worth depends on, say, rational capacity, then why *shouldn't* worth vary? The answer looks likely to assume equality rather than explain it. And so the same challenge faces my own view: if the relevant thing is possession of the capacity to develop and maintain a sense of self, then why *shouldn't* differences in that capacity above some threshold matter?

In Chapter 2, I attempt to answer the objection by *embracing* variation, rather than trying to argue that it doesn't matter above some threshold. I claim that the feature of dignity-first accounts that catches them in the net of the variation problem is the focus on *worth* and *worthiness*, on trying to find something special about human beings that raises them up in the order of nature and puts them all on a level. According to my view, we should abandon the concern with worth and reverse the order of explanatory priority: we seek to explain when and why treating others as inferior is wrong, rather than try to explain some feature in virtue of which we are all equally worthy. And I answer that question by discussing the wrongness of attacking another's capacity to develop and maintain an integral sense of self (i.e., social cruelty).

So what do I mean by *embracing* variation? If our aim is to prevent social cruelty, then it *should* matter whether someone has a greater or lesser capacity, and whether someone's sense of self is more or less integral. Variation is no longer a challenge; we should

treat people *differently* based on their capacities and their integrity; we do not need range properties. I give the examples of children and those with dementia. What counts as objectionable infantilization shifts, as does objectionable instrumentalization and objectification, precisely given the greater fragility of those whose psychological, social, and rational capacities are just beginning to develop in one case, and those whose capacities are dimming in the other.

In what sense, then, are we *equal*? The commitment to equality, on my view, is best understood as a *by-product* of our commitment not to treat as inferior in the various ways discussed in the text (when doing so would count as an attack on the integrity of another's sense of self). If we focus on the idea of equal *status*, and we treat status not in its social-hierarchy sense but as naming a bundle of rights (as we do of various civil statuses), then we are in equal in status insofar as we each have the same bundle of abstract (moral) rights against being treated (objectionably) as inferior. To be sure, this is a somewhat deflationary account of moral equality, but, I think, none the worse for it. The important point is that it explains why paradigmatic forms of treating as a moral inferior are wrong. That is, I claim, all we really need. To search for something more is to be caught by the false allure of dignity.

Galeotti's second issue raises a fundamental question about my account of opacity respect. If respect involves distance and opacity, then what about invisibility? Isn't one of the most profound forms of disrespect treating others as if they just weren't there? I am grateful to Galeotti for raising the issue of invisibility, since it allows me to expand the account of indifference I present in Chapter 3. In Ralph Ellison's *Invisible Man*, the narrator is accosted by a blond white man who insults him. The narrator grabs him, demanding an apology. None is given. He begins to beat him, furiously kicking him and butting him, "when it occurred to me

that the man had not *seen* me, actually; that he, as far as he knew, was in the midst of a walking nightmare!”⁶ To the blond man, the narrator—an unnamed black man—is not a *man* but a force of nature, a beast. He sees him only as a type; though he is there physically, he is also absent, or perhaps better, he is hidden from view. The narrator’s invisibility—and his hapless search for recognition—lead him finally to lock himself underground in a room lit by 1,369 lightbulbs,⁷ where, like the narrator in Dostoevsky’s *Notes from the Underground*, he can finally write about himself, explain himself, and hence in some way be seen. Adrienne de Ruiter recounts the story of Salim, a refugee from Iraq, as he tries to navigate Italian society.⁸ Salim says to her that, in his many efforts to try to make “contact with people, they act same like with zombie.” He feels as if he can’t get people to see him, to understand what he is saying, to be treated, as he says, ‘like a human being’. Most of the time he is just ignored, as if he wasn’t there; at other times, people turn away in fear, as if he were about to seize them or infect them. These are paradigmatic cases of the invisibility Galeotti has in mind. They are also, I think, the inevitable consequence of the dehumanization and stigmatization of blacks in the US and refugees in Italy.

These are also cases of *disrespect*. In *HWD* I characterize the central idea of respect for persons as requiring distance and

⁶ R. Ellison, *Invisible Man* (London: Penguin, 1952), 4.

⁷ “Light confirms my reality; gives birth to my form. ... Without light I am not only invisible, but formless as well, and to be unaware of one’s form is to live a death” (*ibid.*, 6-7).

⁸ A. de Ruiter, “Dehumanization and Moral Silencing: A Normative Account with Illustrations from the Refugee Crisis,” PhD Thesis, Florence: European University Institute, 2018, 136.

restraint.⁹ We must recognize, I wrote, people's need for opacity, which includes a need to (partially) control what remains hidden from public gaze, and what is revealed to others. This need is central, I argued, to our sense of our own integrity as selves. But, in treating someone as invisible, don't you also respect their need for opacity, since you don't concern yourself at all with them? And so don't you respect them as persons? No: opacity respect requires more than just distance and restraint. It also requires a coeval recognition of someone's need to be recognized as a self-presenter, as someone who can shape the terms in which they are to be seen by others. Opacity respect, in other words, requires one, in interacting with others, to recognize *why* opacity is important, and so to understand the importance of self-presentation to us as sociable beings.¹⁰ So the invisibility of Salim and the narrator of *Invisible Man* is a violation of opacity respect precisely because it is a failure to recognize the need to be recognized as a self-presenter, as someone with the power to shape the terms of their social interaction with others. This denial is wrong, in turn, because it is an attack on another's capacity to develop and maintain an integral sense of self.

This is why, in Chapter 3 of *HWD*, I also discuss the importance of *indifference* in cases of indirect discrimination.¹¹ I give the example of a Czech psychological test administered to all school-age children that has the effect of channeling a wildly disproportionate number of Romani children into special education. It does not matter, I claim, whether the test's effects were *intended*. Once the results are known, to continue with the test

⁹ Galeotti, in her insightful book on respect, A. E. Galeotti, *La politica del rispetto: i fondamenti etici della democrazia* (Bari-Roma: Laterza, 2015), also emphasizes, among other things, the symbolic and relational importance of respect in interpersonal relations.

¹⁰ I discuss this at greater length in *HWD*, 91-96; 145-147.

¹¹ *HWD*, 161-163.

evinces an indifference to the condition of the Romani that deepens their stigmatization as ignorant and brutish. Indifference, that is, can be an attack on another's capacity to develop and maintain an integral sense of self, just as invisibility can.

Taraborrelli

Angela Taraborrelli ably raises many incisive challenges in her response, and also notes interesting parallels between the account I defend and others, including Shaftesbury's account of the *sensus communis* and its role in moral judgment. I have learned much from the parallels she draws. In this reply, however, I will focus on the two challenges that strike me as most important. First, she queries my interpretation of Kant, citing Oliver Sensen's recent work on the role of dignity in Kant's practical philosophy.¹² Second, she wonders whether my focus on the integrity of one's sense of self is warranted. Couldn't one run the same kind of argument as I do but argue, in a more familiar vein, that treating as inferior is wrong when and because it limits freedom or autonomy (and so bring the account much closer to Kant)?

Citing Sensen, Taraborrelli writes:

In short, one has moral standing or dignity because the Categorical Imperative commands that one should be respected, and this moral standing is equal among all human beings, but Sensen emphasizes, 'the standing is not the ground but the result of the requirement to be

¹² See, e.g., O. Sensen, *Kant on Human Dignity* (Berlin: de Gruyter, 2011).

respected'. If this interpretation is correct, I have the impression that many of Sangiovanni's objections to Kant would fall away.¹³

Taraborrelli does not elaborate how such a reading of Kant would answer the objections I make in Chapter 1, but I take her to mean that, since the account doesn't ground the requirement to treat others equally in an account of equal dignity or worth, it does not fail to satisfy the *Rationale* and *Equality* requirements (i.e., to explain in virtue of what and in what sense we are equals). She may well be right, but it is hard to know without some further discussion. I mention some reasons why an account like this might still have trouble. First, note that my objections do not just challenge value- or worth-based understandings of dignity. In Chapter 1, I also discuss a series of objections to what I call *Address* readings (such as those associated with Rainer Forst and Stephen Darwall), which argue that dignity is a necessary presupposition of moral address (of practices of justification in one case, and second-personal address in the other). Both views are distinctive, I claim, precisely because they do *not* ground moral equality in the *value* of rational capacity but in our equal and reciprocal *authority* to make claims on others. So it is not enough to show that Sensen's account of Kant's view eschews foundational appeal to value or worth to show that it can satisfy the *Equality* and *Rationale* desiderata.

Second, the key questions are: *why* and *how* does the Categorical Imperative require moral equality? It is noteworthy that Sensen himself concedes that he did not aim to address this question in

¹³ A. Taraborrelli, *Dignity, Autonomy and Integrity of Self*, *supra*, 51. The citation is from O. Sensen, "Dignity: Kant's Revolutionary Conception," in *Dignity: A History*, ed. R. Debes (Oxford: Oxford University Press, 2017), 237-262: 259.

his 2011 book *Kant on Human Dignity*.¹⁴ Rather, he aims to show only that it is incorrect to understand Kant as grounding morality in the prior value or worth of rational capacity; the worth of rational capacity flows from the fact that morality is the law of freedom rather than the other way around. As should be clear, this does not tell us, even if we understand morality as grounded in the law of freedom, when and why we ought not to treat others an inferior. This is especially the case if we think that we vary in our capacity to act according to the laws of freedom. If that is true, and if it is also true that standing flows from the laws of freedom, then why shouldn't someone who has a lower capacity to act according to freedom's law have lower standing as a result?¹⁵ Indeed, it is unclear why, for example, discriminatory maxims—such as 'I will segregate whites and blacks because the black race is morally inferior'—do not universalize, since there is no practical or logical contradiction between the means and the purpose.

We might turn to the Second Formulation. But in what sense does segregation treat blacks as 'mere means'? Consider that they are not used as a means to anything when being segregated. Perhaps the idea is that blacks 'cannot' share the reason the maxim states. But in what sense of 'cannot'? If one says, 'they cannot share the maxim because it assumes something false, namely that blacks are morally inferior', we need an argument for that conclusion. Dignity-first accounts purport to have an answer: They say that the maxim cannot be universalized because it denies what rational willing must presuppose, namely that blacks have equal worth *qua* dignity—in virtue of their possession of an equal rational capacity—as whites. This leads them into the arms of the *Equality*

¹⁴ See O. Sensen, "Kant on Human Dignity Reconsidered," *Kant-Studien* 106 (2015): 107-129: 117: "[I]n the book I do not fully elaborate or defend Kant's positive account of why one should respect others."

¹⁵ I canvass this possibility in *HWD*, 48-50.

challenge since it presupposes that differences in possession of rational capacity *would* matter for standing. But how might it help to substitute ‘the maxim cannot be universalized because blacks have equal *freedom* (rather than *worth*)—in virtue of their possession of an equal rational capacity—as whites’? Similar problems loom.

Taraborrelli writes that

practices of inferiorization can be described and interpreted just as well as practices that limit the freedom of others; consequently, given that the commitment to equality could be justified equally well by the commitment to refraining from limiting the freedom of others, [the commitment to equality] would not be compellingly justified.¹⁶

I take Taraborrelli here to mean that there is a much more familiar way of explaining when and why treating others as inferior as wrong, namely when and because it limits their freedom. Taraborrelli does not here specify what kind of freedom she has in mind, but there are reasons to doubt whether such an account could work. The reason is that a restriction of freedom seems neither necessary nor sufficient to violate someone’s claim to be treated as a moral equal. To see why, take an example I discuss in *HWD*, namely the racist landlord who turns away a couple because they are black. Suppose that, were he to have checked further, he could have turned them away because they had pets. Here it doesn’t look like the landlord removes an option they otherwise would have had, and yet his turning them away does seem to violate their claim to be treated as moral equals. To see why a restriction of freedom isn’t sufficient to violate somebody’s claim not to be treated as inferior, there are many instances where we *permissibly* restrict people’s freedom. Most legitimate laws do so, for example. Of course, one might fine tune one’s account of freedom

¹⁶ A. Taraborrelli, *Dignity, Autonomy and Integrity of Self*, *supra*, 55.

to fit these counterexamples, and to explain the wrongness of treating as inferior in others, but until we have such an account it is impossible to say whether (a) it would succeed on its own terms and (b) whether, in fact, it would be substantially different from the account I offer in *HWD*.¹⁷

Zylberman

Ariel Zylberman's perceptive remarks raise two challenges. First, he questions whether the five categories of inferiorization I discuss—stigmatization, dehumanization, objectification, instrumentalization, and infantilization—are not, in fact, *sufficient* for treating others as moral unequals. If this is right, then the account seems to beg the question, since the wrongness of treating others as moral unequals is already entailed by the concepts mentioned. Second, he wonders whether attacks on another's capacity to develop and maintain the integrity of their sense of self (social cruelty) are *necessary* for treating others as moral unequals. If not, then it looks like an account grounded ultimately in the wrongness of such attacks fails to explain and justify our commitment to moral equality.

In *HWD*, I decided to keep the modes of inferiorization *unmoralized*. I did not want to build in the wrongness of each of these modes into their definition. This was for reasons of clarity. Leaving it open whether each mode of inferiorization is wrong makes it clear that something else is needed to explain when and why each is wrong. By instrumentalization, I meant using someone as a means (not *mere* means, which only makes sense in a Kantian

¹⁷ At one point, Taraborrelli wonders whether an account of freedom as autonomy might do just as well. It may, but we would need to know more about what kind of autonomy she has in mind, and how it offers a key to a different approach from the one I offered. See *ibid.*, 58-59.

framework). It is then a further question when and why using someone as a means is wrong. By objectification, I meant treating someone in an object-like way. In Chapter 3, for example, I draw on Martha Nussbaum in a discussion of sexual objectification. As Nussbaum makes clear, sexual objectification is not always wrong, especially among consenting adults who trust one another. Likewise, infantilization—treating like a child—can be fitting, not only in the case of children but also in the case of those whose psychological capacities are severely diminished. Even stigmatization can sometimes be appropriate. Think of the stigma attached to being a murderer. Dehumanization is perhaps the most controversial, but there, too, it doesn't seem too much of a stretch to think of cases of people being treated like animals without necessarily implying any moral inequality. I gave the example of a police officer herding people into a stadium. If we imagine that he does so in perfectly normal ways, there is nothing amiss.

But no matter. Let us assume, as Zylberman suggests, that each of these terms is best characterized as *moralized*, that is, that it *just doesn't count* as instrumentalization, objectification, stigmatization, dehumanization, or infantilization unless the action is morally wrong in an equality-undermining way. Even in this case, we need to explain *why* and *how* the equality-undermining character of each of these modes contributes to its wrongness. It would not be sufficient to simply call something dehumanization, instrumentalization, and so on, and leave it there. Why, for example, would an employer demanding that an employee complete the inventory or get fired *not* count as instrumentalization in the moralized sense, but asking an employee to have sex with them or get fired, would? The moralization just pushes the real explanatory, normative work one step back. We would still need an account of moral equality—such as the one I offer—to explain when and why actions count as infantilization, objectification, and so on, in the moralized, equality-undermining sense, and when they

don't. Thus, *even if we took a moralized view of these terms*, my account wouldn't beg the question. What matters in a dignity-first account is whether these actions undermine our fundamental worth as human beings; what matters on my account is whether these actions attack our capacity to develop and maintain an integral sense of self.

Zylberman's second point—namely that social cruelty is not necessary for treating another as a moral unequal—is pursued with the example of the happy slave.¹⁸ In this version, we are to imagine Epictetus is treated well by his master; indeed, his master, Epaphroditos, makes it possible for him to pursue his philosophical studies, and so enables him to live the life of the sage to the fullest. It seems implausible to say that this is an attack on Epictetus' capacity to develop and maintain an integral sense of self; yet Epictetus remains a slave and so surely is treated as a moral unequal.

As in all cases of this kind, we need much more information to make a judgment. The key question is the following: *Why* does Epaphroditos keep him a slave? If he is so well-disposed toward Epictetus and his studies, why doesn't he free him? Epaphroditos, let us suppose, keeps Epictetus a slave because he is a jewel in the crown of his household, a signifier of the master's social status and preeminence in Roman society. But for this to have the

¹⁸ Zylberman also gives the example of Albert the policeman who, while herding people into a stadium, treats them disrespectfully, and hence wrongfully. He says that since this is an instance of dehumanization, it must be an instance of treating them as moral unequals even if there is no attack on their capacity to maintain and develop an integral sense of self. If there is no social cruelty, then I believe there is no moral-equality-undermining dehumanization. He might be doing something wrong (e.g., having a bad day), but, unless the wrongfulness doesn't attack something much more fundamental, I find it plausible to say there is no violation of their equal moral status. This is why I find the example, as described, less plausible than the happy slave one.

significance that Epaphroditus wants it to have, everyone must see Epictetus as his servant and his property. Remember also the powers that masters had over slaves: slaves had no legal personality, no recourse, could be tortured, punished, sexually exploited, made to work at any task, and sold (many were women intended for this purpose). Epictetus' situation is therefore precarious; he is constantly under threat. The wrong here resides in much more than the fact that Epictetus is dependent on the master's will (after all, any time I walk down the street I must rely on the fact that others will not decide to jump me with a knife)¹⁹; more importantly, we need to look to the social meaning of the fact that Epictetus is kept a slave. The social meaning²⁰ of his enslavement is that Epictetus' is nothing without his master; in the eyes of Roman society, he is socially dead, a reflection of Epaphroditus' power rather than a speaker or self-presenter on his own behalf. He has no *persona* in his own right. From Epictetus'

¹⁹ On how contemporary theories of freedom as non-domination are overinclusive, see, e.g., N. Kolodny, 'Being under the Power of Others', manuscript available at [http://sophosberkeleyedu/kolodny/BeingUnderThePowerOfOthers2pdf\(2017\)](http://sophosberkeleyedu/kolodny/BeingUnderThePowerOfOthers2pdf(2017)); T. W. Simpson, "The Impossibility of Republican Freedom," *Philosophy & Public Affairs* 45 (2017): 27-53.

²⁰ I examine the idea of social meaning in much more detail in Chapter 3. At one point, Zylberman worries that it is unclear whether the 'quality of the perpetrator's will' matters, as I write in Chapter 2, in determining whether some action is socially cruel. In brief, yes, it does. What I am anxious to deny is that someone must *intend* to act in a cruel way, or even intend to attack another, for that action to be cruel. But someone's intentions and reasons for acting (and hence the quality of their will) can matter indirectly, by affecting the social meaning of an action. So, for example, my actions can be cruel if my reasons and intentions convey my utter indifference to the way a certain group is treated (without intending to convey indifference or intending to attack their capacity to maintain and develop an integral sense of self). (See the discussion of invisibility and indifference in my reply to Galeotti and see also Ch. 3 of *HWD*).

own point of view, he must realize that everything he does is only viewed in relation to his master, and that a sudden shift could take away all the privileges he currently enjoys. It is also important that what is threatened is the destruction, among other things, of the three central social conditions necessary to develop and maintain an integral sense of self; this is the threat he must live with day in, day out. Keeping someone in this condition is thus an attack on their integrity—an instance of social cruelty—and, as a form of instrumentalizing, stigmatizing, and objectifying inferiorization, is therefore also a violation of their equal moral status.

It is essential here to remember, as I argue in Chapter 2, that the *attack* on another's integrity, but not the *success* of that attack, is necessary for treating another as a moral unequal.²¹ In *HWD*, I give the example of Janie Crawford, whose natural resilience means that even when she is subject to violence and discrimination, she retains her voice. What is important is that, despite the strength of her sense of self, she is still vulnerable as a sociable being. While the particular attacks described in *Their Eyes Were Watching God* did not break her sense of self, they might have. So the fact that the attacks *threaten* the integrity of her sense of self precisely by thwarting those central control interests that are so important to it implies that her rights against inferiorizing treatment are still violated, even when the attempt fails. And so it is with Epictetus.

Jones

Peter Jones' illuminating and probing response pursues three main lines of argument. First, he wonders whether my account of the Broad View of human rights—the idea that human rights, at the most abstract level, are simply those moral rights whose

²¹ *HWD*, pp. 109-10.

systematic violation ought to garner universal moral, political, and legal concern—gets things the wrong way around. Shouldn't universal concern be a *response* to a human rights violation rather than *what makes it* a human rights violation in the first place? Second, and relatedly, he claims that my account of the *universality* of human rights is not only unconventional but also misleading. Human rights are universal in the sense that they are grounded in our equal moral status merely as human beings, not in the kind of concern they ought to generate. Third, he queries whether my account of the contextualism of human rights does not make too much of the diversity in human rights practices. Isn't there much more overlap among the contexts in which human rights are found than I allow?

Jones writes,

Surely the violation of a human right ought to be of concern because what is violated is a human right; it is not its evoking that concern that makes it a human right.²²

Why 'surely'? I don't think this is so obvious. Many concepts are identified not by reference to the internal constitution of their object but by reference to a function the object plays. The concept of a table is like this. Almost any solid can be a table. A tree trunk, car bonnet, playground swing, or a window pane can be a table. The important thing is whether someone can eat, write, or work from it. As long as some physical substrate realizes the function of a table, it is a table. I say the same thing with respect to human rights. Moral rights do not become human rights in virtue of some internal-constitutive property of the right in question, such as

²² P. Jones, *Sangiovanni on Human Rights and Equal Moral Status*, *supra*, 79.

whether it is a general rather than a particular right, or possessed in virtue of our humanity, our dignity, or our equal moral status. A moral right becomes a human right, on my view, in virtue of the role it comes plays in particular moral, legal, and political circumstances.

This may seem unpromising, as Jones notes, for the same reasons as Political Views are unpromising. Political Views, I argue in Chapter 4, face the *contingency objection*. If human rights are moral rights whose possession *qua* human rights depends on whether it is permissible to interfere internationally, then the human rights we have will seem to depend in the wrong way on the shifting dynamics of international politics. For example, Charles Beitz, a prominent supporter of the Political View, claims that many of the concerns defended in the Convention on the Elimination of All Forms of Discrimination against Women cannot be *bona fide* human rights because remedial international action would be infeasible:

The inference is that a government's failure to comply with those elements of women's human rights doctrine that require efforts to bring about substantial cultural change does not supply a reason for action by outside agents because there is no plausibly effective strategy of action for which it could be a reason. But if this is correct, then these elements do not satisfy one of our schematic conditions for justifying human rights: they are not appropriately matters of international concern. . . . But human rights are supposed to be matters of international concern, and if there are no feasible means of expressing this concern in political action, then perhaps to this extent women's human rights doctrine overreaches.²³

²³ C. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 195.

Whether women have human rights turns out to vary according to how feasible international efforts at social change would be. This seems to make the possession of human rights too contingent, too yielding with respect to the way power and self-interest shapes the limits of political possibility. But wouldn't my view—which says that human rights are those moral rights that ought to garner universal moral, legal, and political concern—fall prey to the very same objection?

The reason that the Broad View doesn't fall prey to the same objection is that the idea of universal concern deployed is different than the kind of international concern envisaged by Political Views. For Political Views, such as Beitz's, international concern is equivalent to international *action* whose aim is to prevent or remedy violations. For the Broad View, by contrast, universal concern refers not to remedial action but to the *moral significance* of the violation (for a specific context). In the women's rights example, what matters for the Broad View is whether the systematic violation of women's rights ought to garner the kind of universal moral, political and legal attention evinced by international law (given that, in the example above, the relevant context is international law). The answer is clearly yes, and does not vary along with the feasibility of cultural change or international interference. What human rights we have *does*, however, vary with the institutional context in question (on which more below), but this variation is explained by general features of that context and their implications for the moral significance of the right rather than by what kinds of action or interference are (or are not) feasible.

Jones also questions whether I have really captured the *universality* of human rights. The standard reading of universality is that human rights are possessed by all human beings, whoever they are, wherever they come from, and whatever they have done. The

problem with this reading is that it is either false or overinclusive. For example, if human rights must also be possessed by justly convicted prisoners (“whatever they have done”), then freedom of movement and association could not be human rights. Similarly, if human rights must be possessed by all human beings (“whoever they are”) then rights against forced abortion or forced pregnancy could not be human rights. And finally, if human rights must be possessed by all human beings (“wherever they are from”) then all human beings would have a right to vote in Italy (since the right to vote is a human right). This kind of challenge pushes the proponent of universality to move, like Jones, to more abstract characterizations, such as human rights are “rights we hold in virtue of our status, and our equal status, as human beings.”²⁴ On this reading, any right that can be derived (in part) from this basis counts as a human right. Now women’s rights can be human rights again, as can rights to freedom of movement and association. This is because it is not the *possession* by all human beings that is criterial, as the simpler view asserted, but the *derivation* from some fundamental aspect of humanity, such as dignity or equal moral status. The problem here, as I argue in *HWD*, is that it looks like *any* moral right that a human being can possess is grounded in a fundamental aspect of the human being. Rights against being lied to (think Kant) or insulted surely would count. But this would mean that rights against being lied to or insulted are human rights, and, more generally, it would mean that *there is no distinction* between the class of moral rights *simpliciter* and human rights. The account would therefore fail what I call in Chapter 4 the *Subclass Desideratum*.

Another strategy is to say that human rights are universal in the sense that they are *general* rather than *special* rights, where general

²⁴ P. Jones, *Sangiovanni on Human Rights and Equal Moral Status*, *supra*, 88.

rights are rights that do not depend on previous transactions, relationships, or agreements.²⁵ Promising, for example, creates special rights. The right against torture is a general right. If human rights are identified with the class of general rights, then this would also solve the objection that only *Italians* have a human right to vote in Italy. The general right, “if you are Italian, (Danish, etc.), you have a right to vote in Italy, (Denmark, etc.),” is a general right possessed, indeed, by every human being. Conditionalizing in this way can also deal with the objection from prisoners’ rights, since the right to [freedom of association and freedom of movement only if you are not justly serving a prison sentence] is a general right held also by prisoners. And this move also seems able to deal with promises, since promises are the paradigm of *special* rights. But does it really? Conditionalizing has a cost: embedding factual antecedents into the content of human rights implies that any special right can be stated as a general right. For example, everyone has a right that others keep their promises (if they have made any). Not being lied to, once again, becomes a human right, and, more generally, any moral right (embedded with its relevant factual antecedents) becomes a human right. The move thus fails the *Subclass Desideratum*.²⁶ These are some of the reasons why I favored a shift to universal *concern*—and so a functional definition—rather than universal *possession* or *derivation*. Since Jones doesn’t say much more about why we should reject such a view in his reply, I stop here.

Jones’ third line of argument disputes whether my contextualism allows too much variation in human rights practices. In Chapter 4, I argue that the Broad View of human rights

²⁵ Cf. J. Tasioulas, “On the Nature of Human Rights,” in *The Philosophy of Human Rights: Contemporary Controversies*, eds. G. Ernst and J.-C. Heilinger (Berlin: Walter de Gruyter, 2011), 37.

²⁶ I make this argument at greater length in Chapter 4.

discussed above is not enough to generate a fixed list of human rights for *every* context in which human rights matter. There is, as I write, no ‘master list’. Rather, there will be different lists for different institutional contexts, depending on what *kind* of universal moral, legal, and political concern is at stake in that context. For example, if we are focused on the state as an institution, and we are wondering what kinds of international *legal* human rights ought to restrain state violations, we will develop (appropriately) a list with a very different character than if we are focused on multinational corporations²⁷, and wondering what kind of *moral* human rights ought to govern their operation (and, say, guide our protest, or raise international attention). And different again if we were to consider what moral and/or legal human rights should govern international institutions, such as the World Bank. I have argued that it is unhelpful to say, given the very different nature of those institutions, that they are merely different specifications of a single master list for a context. The reason is that we would then wonder what should anchor the construction of the master list *itself*, and hence *independently of any particular context* (especially once we abandon the idea that human rights can be specified as the class of rights that are ‘universal’, or ‘natural’, or ‘general’, or ‘grounded in dignity’). We do better to begin with the class of all moral rights, and identify those that ought to garner universal moral, political, and legal concern in the particular contexts we are mainly interested in. In the same way as it makes little sense to judge whether someone is tall *as such*, without specifying (or at any rate implying) a reference class (tall *for a man*, tall *for a human being in 2019*, tall *for a basketball player*), it makes little sense to say ‘x is a human right’ *as such* without explaining how the

²⁷ I explore this point at greater length in A. Sangiovanni, “Rights, Interests, and Variation,” in *Constitutionalism Justified*, eds. E. Herlin-Karnell and M. Klatt (Oxford: Oxford University Press, forthcoming).

violation of x ought to garner the particular *kind* of universal moral, legal, and political concern in an institutional context.²⁸

Jones also queries whether my contextualism neglects how much overlap there is in fact between different contexts. Don't many human rights 'run across' the several contexts I mention? I have no reason to deny this. In Chapter 4, I argue that though, there is not a single human rights *practice* there is a single human rights *project* (composed of many overlapping practices) to which each contextual understanding can be seen to be contributing. This overlap shouldn't therefore be any more surprising than overlap in thresholds for tallness across different contexts (tall for a boy in class 5A, tall for a boy who is 10, tall for a 10-year old in Italy, and so on). The important point is that the overlap does not show that the same meaning is being deployed. While the general, unsaturated concept 'human right' (according to the Broad View) is the same, the particular, saturated concept (what I called a mediating concept) is not. Just as the tallness thresholds will have subtle variations across different reference classes, the lists of

²⁸ Jones also questions why I define human rights as involving the systematic violation of moral rights that ought to garner universal moral, legal, *and* political concern (see p. 7). Why not define human rights disjunctively instead, and so have an even broader view? The reason is that it strikes me that, whatever the context, the invocation of human rights *always* has a moral, legal, and political dimension. (Indeed, in Chapter 5, against Buchanan, I argue that all international legal human rights must not only evince universal moral concern but also be grounded ultimately in a moral right.) In some contexts, the moral predominates; in others, the legal. The inclusion of a necessary legal dimension may be the most controversial, but this inclusion is, I think, warranted given that human rights have nearly always invoked, even in human rights protests, with a view to their institutionalization or protection in law. Human rights language is, in a way, always a juridified language. This is not surprising given the way international legal human rights charters and conventions have formed the touchstone of so much debate and activism.

human rights will have subtle variations across different institutional contexts.

I close with an example. Suppose we ask whether and which human rights ought to directly govern *multinational corporations* (rather than the states that have the main task of regulating them). To illustrate: In 2014, Thai prawn farmers were found to be using migrant slave labor to supply UK and US markets.²⁹ It seems clear that they were *directly* responsible for human rights abuses; it is implausible to argue that it was *only* the Thai government, in not being active in preventing human trafficking, that was responsible for the human rights violation. Should one, however, conclude from cases like this that the list comprising the Universal Declaration of Human Rights straightforwardly applies to multinational corporations as well? The conclusion that we should strikes me as hasty. Focusing only on negative rights such as rights against enslavement, torture, arbitrary detention, and so on, might seem to make such an extension appropriate. But human rights, to employ standard human rights terminology, must not only be *respected*, but also *promoted* and *fulfilled*. As Henry Shue famously argued, respecting, promoting, and fulfilling human rights—even human rights against torture—requires much more than refraining from torture; it also requires establishing and maintaining a system of police to enforce anti-torture standards, a norm-making body to set up general guidelines, and adjudicatory bodies to settle cases that fall under the guidelines.³⁰ Similar things can be said with respect to, among others, the right to health, to education, and to vote. Seen in this light, our question about human rights then

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<https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>.

³⁰ H. Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd edn. (Princeton, NJ: Princeton University Press, 1996).

becomes: must corporations have responsibilities to do all of those things? Corporations are legally recognized entities organized to pursue a particular purpose. A business corporation, for example, is organized to pursue, primarily, profit. A not-for-profit can have many ends, including charitable ones. Corporations are thus voluntary organizations with legal personality that, unlike the state, are not designed to provide a comprehensive set of public goods, or to legislate and enforce their norms coercively over a territory. Corporations are, furthermore, usually subject to the legislative authority of a state that determines their legal rights and regulates their creation and dissolution. We can conclude that, while corporations everywhere have negative duties not to enslave, torture, and so on, it does not seem plausible to claim that their legitimacy—their entitlement to the respect of those subject to them and affected by their decisions—rests on their willingness to provide (or even directly subsidize) the creation of an educational or healthcare system, or a system of courts designed to provide a fair trial to all citizens on a territory. This is not only because we assume that the state in which the corporation operates is already doing so but also, more importantly, because corporations have a very different function from states (and indeed rely on state authority to exist *qua* legal entities). As John Ruggie writes, “While corporations may be considered ‘organs of society,’ they are specialized economic organs, not democratic public interest institutions. As such, their responsibilities cannot and should not simply mirror the duties of States.”³¹

³¹ J. G. Ruggie (2008), 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', no. A/HRC/8/5UNCHR), par. 53. See also J. G. Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York: Norton, 2013), Ch. 2.

It is therefore misleading, I conclude, to say that a master list of human rights applies to both states and corporations. It is much clearer to say that different, though overlapping, human rights apply to each context, precisely because the functions of those institutions are so different, and thus also the kinds of universal moral, legal, and political concern appropriate to them.

European University Institute

HUMANITY, DIGNITY, EQUALITY



DIGNITY AND HUMAN DIGNITY

BY

SEBASTIAN MUDERS

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Dignity and Human Dignity

Sebastian Muders

Introduction

Dignity's many faces

Although the terms “dignity” and “human dignity” are quite often used interchangeably in the ethical literature, it is important to keep them and their underlying notions separate: For one thing, there is a broad debate about whether inherent dignity is also applicable to non-human animals, or even to plants.¹

For another thing, there is an important tradition of dignity usage in the history of philosophy which refers to its notion as ‘aristocratic dignity.’² Although this tradition sees dignity as exclusively applicable to human beings, its usage of dignity shows

¹ Examples of authors who take seriously the notion of human dignity for animals are Frans W. A. Brom, “The good life of creatures with dignity,” *Journal of Agricultural and Environmental Ethics* 13 (2000): 53-63; and S. L. Cataldi, “Animals and the concept of dignity: Critical reflections on a circus performance,” *Ethics & the Environment* 7(2) (2002): 104–126. The claim that plants can have dignity is defended by Florianne Koechlin, “The dignity of plants,” *Plant Signaling & Behavior* 4(1) (2009): 78-79.

² This notion is used e.g. by Doris Schroeder, “Dignity: one, two, three, four, five, still counting,” *Cambridge Quarterly of Healthcare Ethics* 19(1) (2010): 118-125; other authors use the even broader notion of ‘contingent dignity.’

quite different characteristics compared to the standard features attributed to human dignity, namely that in general all human beings possess it to an equal degree.³

A failure to distinguish human dignity from other sorts of inherent dignity results in problematic claims regarding the normative equality of all living beings;⁴ and a failure to distinguish human dignity from more contingent forms of dignity leads to confusion regarding the alleged normative weight of dignity norms which are often regarded as “absolute” in the sense that they cannot be overridden by conflicting norms.⁵ Both failures obviously have huge implications on most moral and political views: Regarding the former failure, many theories of political and moral equality do not treat equality as intrinsically valuable, but as derived “from another, higher moral principle of equal dignity and respect.”⁶ Depending on our understanding of “dignity” here, the number of creatures that have to be treated equally in important respects may be vastly higher than admitted by most moral as well as political normative theories. Regarding the latter failure, if one wishes to affirm that dignity is the source of “absolute” moral

³ For a useful overview about the standard features attributed to human dignity, see Ariel Zylberman, “Human Dignity,” *Philosophy Compass* 11(4) (2016): 201-210.

⁴ This strong claim is famously defended by Paul W. Taylor, *Respect for Nature* (Princeton: Princeton University Press, 1986).

⁵ Cf. Michael Rosen’s example of alderman E.J. Wakeling in Michael Rosen, *Dignity. Its History and Meaning* (Cambridge (MA): Harvard University Press, 2012), 71-73.

⁶ Stefan Gosepath, “Equality,” in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition) (Stanford, CA: Metaphysical Research Lab, 2011), <https://plato.stanford.edu/archives/spr2011/entries/equality/>, on sec. 5.1.

norms – norms that cannot be overridden in any circumstances,⁷ – it would make an important difference which kind(s) of dignity may give rise to such norms, since they obviously restrict our moral freedom to act severely.

If, on the other hand, a distinction between human dignity and other forms of dignity is not possible, especially with regard to our fellow creatures, as influential critics of the notion of human dignity or its synonyms have maintained,⁸ then it is at least important to see *why* the concept of dignity fails to deliver this distinction. In contrast to this, my paper seeks to argue, first, that one can meaningfully distinguish human dignity from other forms of dignity; and second, to show how such a distinction can be made.

I start by listing three possible types of criteria which one might appeal to in order to establish a distinction between human dignity and other kinds of dignity: first, the bearers of these properties; second, the norms that are linked to different types of dignity, for instance, by means of justification; and third, the properties that ground the relevant type of dignity.

Following these preliminary remarks, I will argue that none of these criteria are by themselves sufficient to demarcate human dignity from other forms of dignity discussed in the literature. Nevertheless, I also argue that these three types of criteria, when taken together, *are* sufficient to do this, since each of them offers a solution to problems which plague the others.

⁷ Cf. Alan Gewirth, “Are There Any Absolute Rights?”, in Joram Graf Haber (ed.), *Absolutism and Its Consequentialist Critics* (Lanham (ML): Rowman and Littlefield, 1994), 129-146: 130.

⁸ Cf. perhaps most notably Peter Singer, *Animal Liberation* (New York: HarperCollins, 1975), ch. 6.

As indicated in the first sentence of the opening paragraph, this paper is about the *notion* of human dignity insofar as this refers to its *concept*. Thus, it does not provide a theory of human dignity which unfolds a more specific conception of human dignity, aiming to convince the reader that human dignity *exists* (if it is not an *error theory* about human dignity) and can be used to justify a set of norms that provides its bearers with inalienable rights. As things stand at the end of this paper, it might be the case that we have no sufficient reason to believe that *any* conception of human dignity that operates within the boundaries of its concept is actually true, i.e. refers to a property instantiated in the actual world. All I am arguing for here is the claim that “human dignity” refers to a distinguished kind of dignity that *could* be exhibited by certain creatures.

This brings me, finally, to two remarks about methodology. To argue successfully for the possibility of at least one conception of human dignity that can be distinguished from other forms of dignity, an important evidential source comes from paradigmatic cases that constitute the concept’s core: each successful conception of human dignity has to be applicable to these cases on pain of being accused of not being a faithful specification of its concept. As convincingly argued by Ralf Stoecker,⁹ these paradigmatic cases most often will consist in examples where dignity is not respected but violated, as such instances are the chief reasons that bring the idea of human dignity to life.

As a further methodological constraint, the paper attempts to include as many diverse conceptions of human dignity as possible, provided that they try to make their notion of human dignity fit

⁹ Cf. Ralf Stoecker, “Three Crucial Turns on the Road to an Adequate Understanding of Human Dignity,” in Paulus Kaufmann, Hannes Kuch, Christian Neuhaeuser and Elaine Webster (eds.), *Humiliation, Degradation, Dehumanization: Human Dignity Violated* (Dordrecht: Springer, 2010), 7-17.

the paradigmatic cases just mentioned. “Try to make their notion of human dignity fit” is of course a vague phrase, so I do not expect that all conceptions mentioned in this article will be able to allow that human dignity can be rightfully applied to all the cases that qualify as paradigmatic instances of the usage of the term “human dignity”. Still, I expect that all theories of human dignity regard these cases as orientation marks for the development of their own conception: If they neglect that one can correctly employ the notion of human dignity in these cases, the burden of proof rests on them to offer an adequate justification for this claim.¹⁰

I

Three types of criteria

Let me begin, then, with the identification of possible criteria which one might use to distinguish dignity from human dignity. A general presumption in favour of this possibility stems from the observation that in English and other languages, the expressions used for dignity and human dignity suggest that the phenomena underlying these terms stand in a genus-species relationship: Just as a great golden eagle is a species of eagles and an e-book a species of books, human dignity appears to be a species of dignity. Thus, we can expect the concept of human dignity to be more specific compared to the concept of dignity, and that its specifics in turn will tell us how human dignity differs from other sorts of dignity that also stand in a genus-species relationship to the latter concept.

Given the nature of dignity as a normative property, I think there are basically three alternatives which we might enlist as

¹⁰ Cf. Sebastian Muders, “Natural Good Theories and the Value of Human Dignity,” *Cambridge Quarterly of Healthcare Ethics* 25(2) (2016): 239-249, section 2.

possible criteria: As a property, dignity is something that can be possessed by certain bearers of properties, i.e. substances; and as a normative property, dignity is connected to norms. Moreover, as a normative property, dignity seems to be dependent on other properties that serve as its grounding properties: As a relevantly analogous case, take the form and material of a wooden table which is grounded in the kinds and the arrangement of the molecules that constitute it; similarly, one could assume, the ascription of dignity to an entity is dependent on the presence of certain other properties which we can label “dignity-conferring properties”.¹¹

To elaborate on these alternatives: We speak of dignity as a certain property exhibited by life forms – we say, for example, that human beings have or possess dignity; moreover, many forms of dignity have to be acquired by their bearers via certain deeds or a certain behaviour, and they also can be lost under certain conditions, without bringing their bearer out of existence. All this strengthens our assumption that we can distinguish dignity from its bearer, and that thus different forms of dignity could be attributed to different sorts of substances.

Furthermore, as a normative property, dignity is linked to one or more norms that are justified by this property or even identified with it. These norms usually take the shape of certain duties owed towards the bearers of dignity, as well as bestowing certain rights onto these dignity bearers. This does not have to be the case, though. Maybe some forms of dignity merely give us *good reasons* to treat their bearers in a certain way, without making it obligatory; or

¹¹ In this article, I take no stance on how to analyse the (metaphysical) grounding relation further. For an overview on this, cf. Ricky Bliss and Kelly Trogdon, “Metaphysical Grounding,” in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition) (Stanford, CA: Metaphysical Research Lab, 2016), <https://plato.stanford.edu/archives/win2016/entries/grounding/>.

perhaps dignity protects its bearers with norms that partly put duties on others and partly only advise others to respect its holders. In any case, it would be strange if, as a normative property, dignity had *no normative consequences at all* for people recognizing it in themselves or other objects.

Moreover, as a normative property, dignity appears to be a property whose correct attribution depends on the presence of other properties.¹² Many normative properties show this kind of dependence, and they often depend, *inter alia*, on non-normative properties: The beauty of a painting, for instance, is both dependent on further normative properties (the brilliance of its colours, the creativity of its composition) and non-normative properties (colours and composition). Whether all normative properties ultimately depend on non-normative properties is a heavily disputed question;¹³ I think that it is safe to say, though, that many forms of dignity are grounded in other properties, i.e. we can say something illuminating about *why* certain entities possess dignity of one or the other kind, and why others do not; and as soon as they lose these dignity-conferring properties, they immediately also lose their dignity.

To sum up, if one wishes to distinguish human dignity from other forms of dignity, a promising strategy is to look at different ways in which one species or kind of dignity might differ from the

¹² Cf. Robert Audi, "Intrinsic Value and Reasons for Action," *The Southern Journal of Philosophy* 41(S1) (2003): 30-56; cf. Nick Zangwill, "Moral Epistemology and the Because Constraint," in James Dreier (ed.), *Contemporary Debates in Moral Theory* (Malden (MA): Blackwell), 263-282: 270-273.

¹³ Following Derek Parfit, *On What Matters, Volume 2* (Oxford: Oxford University Press, 2011), section 82, we can distinguish between naturalist realists (who assume that all normative properties are eventually grounded in non-normative properties) and non-naturalist realists (who think that at least some normative properties are irreducible normative and primitive, meaning that they are not grounded on anything).

other; and since all relevant forms of dignity are normative properties, we might either scrutinize whether they have different bearers, or whether they give rise to different norms, or whether they are grounded in different dignity-conferring properties. Let us examine each of these alternatives individually.

II

The bearers of human dignity

The most obvious choice when attempting to contrast human dignity with other kinds of dignity is to appeal to its bearers: After all, the term itself seems to suggest this; if there are other kinds of dignity, they will not belong to human beings, but to other sorts of entities – living beings or perhaps even non-living things.

Robert Spaemann is a defender of this position: For him, “[h]uman dignity has no biological ‘reason’, but having dignity does come with biological membership in the family of free beings”¹⁴ – by which he refers to the family of human beings. We can read the first half of this passage as denying that the biological species serves as the dignity-conferring property or that indeed any biological capacity is relevant – as Spaemann also writes, he believes that the word “dignity” “denotes an indefinable, simple quality”;¹⁵ thus, all that is needed to decide who has a specific kind of dignity is to look at the (biological) nature of its bearer.

¹⁴ Robert Spaemann, “Human Dignity and Human Nature,” in Robert Spaemann, *Love and the Dignity of Human Life: On Nature and Natural Law*, with a foreword by David L. Schindler (Grand Rapids (MI): William B. Eerdmanns, 2012), 27-44: 28.

¹⁵ Robert Spaemann, “Human Dignity,” in Robert Spaemann, *Essays in Anthropology: Variations on a Theme*, translated by Guido de Graaff and James Mumford (Eugene (OR): Cascade Books, 2010), 49-72: 52.

Yet this most obvious choice is also the one most criticized: It seems to be too narrow and too broad at the same time. Regarding the former, as many well-known thought experiments like Jeff McMahan's Superchimp example have shown, to constrain the possession of human dignity to all, and only to, members of the human species has implausible results: Following McMahan, if a chimpanzee "through genetic therapy has developed psychological capacities comparable to those of a ten-year-old human child", then it surely "would be entitled to whatever forms of respect are due to normal ten-year-old human beings."¹⁶ According to all relevant conceptions of human dignity, however, ten-year-old human beings definitely are among its bearers. Thus, it is possible that non-human entities could have human dignity among their properties.

Regarding the latter, as mentioned in the introduction, there are forms of dignity, often called "aristocratic dignity" or "contingent dignity", that have human beings as their exclusive bearers: the members of a soccer team that show courage and inner strength even in face of a certain loss express dignity, and the holder of an office such as the President of the United States is also "dignified" in some way, i.e. deserves a respect which reflects their elevated position. But the members of the soccer team and the President of the United States are both human beings during their dignified state, and are thus the bearer of this moral status. On the other hand, this type of dignity is obviously different from the type we call "human dignity". Hence, the attempt to demarcate human dignity from other kinds of dignity via the bearer of this property is both too broad (since other forms of dignity also have human beings as their bearer) and too narrow (since non-human life forms could also possess this moral status).

¹⁶ Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York (NY): Oxford University Press, 2002), 211.

Against the argument that many types of dignity have human beings as their bearers, one might object that in the cases I mention, the real bearer of dignity is not a human being, but that it is the office itself or the kind of virtuous behaviour that we ought to pay respect to. I admit that this might be true in some circumstances: Imagine a socialist activist acting against the monarchy in a monarchically ruled country. In order to show his contempt for the current system, he refuses to bow before the Queen. Here, the object of his attack is not the person holding the office, but the office itself. Consider the following variation of this case, though: Now a monarchist is acting against the current ruler of the country, since he falsely believes that she has gained the throne via wrong assurances regarding her legitimacy. When meeting her, he again refuses to bow before the Queen. I submit that in this version, the activist's disrespectful behaviour is directed against the monarch, who is a human being, and the holder of the dignity that the activist refuses to acknowledge *in her*.

Against the argument that we cannot use dignity's bearers to differentiate between human dignity and the dignity of other species, since human dignity might also have non-human beings among its bearers, one could point out that even if this should be the case, there could be good reasons to distinguish human dignity from the dignity of other species, even if the norms it generates and the underlying dignity-conferring properties are the same. Imagine, for instance, that one of these norms forbids us to humiliate others. Now consider a species for whom a certain behaviour that human beings would regard as humiliating would not count as humiliating – for example, being forced to perform inferior activities that could be easily and more efficiently done by machines. Maybe the species has a long cultural tradition that forbids their use of (certain kinds of) machines, and takes great pride in pursuing even tedious and boring activities without their help. Here it seems true that we could humiliate human beings in

ways that do not affect the members of the other species, and this important difference could be marked by distinguishing human dignity from the dignity of the other species.

While I concede the argument, I deny that this difference is “deep” enough to speak of different kinds of dignity, insofar as this concerns different *normative* properties. The differences in question only modify the application of the duty not to humiliate others without changing it: The act of forcing others to perform inferior activities that could be easily and more efficiently done by machines is morally wrong only (let us assume¹⁷) insofar as it violates the dignity of its victims by humiliating them. If there is nothing else inherently or externally morally wrong about this activity, though, the differences between our treatment of human beings and that of other species (insofar as their dignity is concerned) are not of a normative kind, but simply reflect differences on how to ensure that both are not humiliated. I conclude that since dignity is taken to be a normative property, looking at the bearer alone is not a sufficient criterion to distinguish human dignity from other forms of dignity.

III

The norms of human dignity

Let us turn next to the second alternative: Maybe as a normative property, human dignity can be fruitfully distinguished from other kinds of dignity by looking at its specific norms. This strategy is

¹⁷ As we will see below, one might question that we have to appeal to human dignity in order to explain the practice’s wrongness; why not simply say that it is wrong because it humiliates human beings? Moreover, there might be ways in which the practice is *non-morally wrong*, e.g. because it disregards efficiency as an economic value.

prominent among philosophers who seek to identify human dignity with a norm. Such a right might be rather concrete (as in Peter Schaber's suggestion that human dignity is "the right not to be humiliated"¹⁸) or rather abstract (see, for instance, Rainer Forst's account of dignity as a "right to justification"¹⁹). Despite all differences in detail, the relevant norm usually both has a high generality – it doesn't protect human beings in special circumstances, but is applicable to them in all sorts of situations – and is considered to be weighty in the sense that it can hardly be overridden by norms resulting from conflicting considerations.

These two features make these norms attractive as a *differentia specifica* for human dignity with a view to the problem cases introduced above: Regarding other forms of dignity not to be found in human beings, these would be no variations of human dignity if their norms did not have the same normative weight: For example, let us assume that snails also possess some form of dignity. Yet, since all the norms that protect them individually are overridden when serious human interests are at stake, their dignity cannot be identified with human dignity. Regarding other forms of dignity also or even exclusively applicable to human beings, these would be no variations of human dignity if their norms did not possess the same generality as those that could be justified by or derived from human dignity. For instance, the respect someone

¹⁸ Cf. Peter Schaber, "Menschenwürde als Recht, nicht erniedrigt zu werden," in Ralf Stoecker (ed.), *Menschenwürde – Annäherungen an einen Begriff* (Wien: ÖBV + HPT, 2003), 119-131.

¹⁹ Cf. Rainer Forst, *The Right to Justification: Elements of a Constructivist Theory of Justice*, translated by Jeffrey Flynn (New York (NY): Columbia University Press, 2011).

deserves because of the office they hold is usually²⁰ strictly confined to the period of their service, whereas the respect which human dignity demands for their bearers ranges – more or less²¹ – through the entire period of their lives.

Despite these advantages, there are also grave difficulties if we want to use the norms connected to human dignity as the decisive criterion to establish human dignity's unique form against the other types of dignity. Either human dignity's norms remain too abstract to assist us in differentiating it from other kinds of dignity; or they are too concrete to help us seeing what is unique about it.

Let us take a look at the first class of dignity-norms. The most popular among these is Kant's famous Formula of Humanity of his Categorical Imperative: "Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end."²² As many scholars have pointed out, this hardly covers all dignity violations: For instance, cases where people are killed because they are simply regarded as "unworthy life" are not examples of a murder for the sake of something else; and when I

²⁰ I write "usually" because there are cases where someone is respected due to a formerly held position long after she has resigned from office simply because of the virtue she has shown during her public service.

²¹ I would like to leave open whether even early human embryos possess human dignity, as scholars such as Robert Spaemann maintain. Moreover, as e.g. Michael Rosen believes, human beings possess human dignity even after their death: "It is a violation of dignity to torture and degrade our enemies while they are alive. But what about when they are dead? Do we not also violate their dignity if, for example, we leave their bodies unburied to be eaten by animals? In my opinion, the answer to this question is definitely yes." (Michael Rosen, *Dignity. Its History and Meaning* [Cambridge (MA): Harvard University Press, 2012], 128).

²² Immanuel Kant, *Grounding for the Metaphysics of Morals*. 3rd edition, translated by James W. Ellington (Indianapolis (IN): Hackett, 1993 [1785]), 36.

humiliate my colleague, I might not have in mind any further aim which I seek to promote by my wrongdoing.²³

Putting these difficulties aside, we can ask what it means to treat someone (a “person”) “never merely as a means to an end”. Of course, presumably many people have an intuitive grasp of this idea: The basic thought could be that we may not treat people in ways that they couldn’t possibly consent to, e.g. killing them just for fun. But would that mean, for instance, that we may treat frogs as we please? That we are *allowed* to kill them merely for fun? Most certainly frogs don’t have human dignity. But also most certainly, it is morally forbidden (at least *prima facie* in W. D. Ross’ sense²⁴) to kill them just for fun. This means that the norm in the Formula of Humanity can be justified by something else besides human dignity. One might object that the norm merely protects “persons”, and frogs are not persons. True. But then what makes the norm human-dignity specific is the kind of the entities it protects (and maybe its addressees as well). Here, “persons” might just mean “people”, and “people” could refer to “human beings”. Thus, the reason why the norm is a dignity norm is that it protects human beings – human dignity’s bearers. Alternatively, “person” could be understood in a more technical sense. As we shall see below, in this sense, “person” means “entity which has dignity”, and thus describes the dignity conferring property: members of different species could have human dignity because they are persons. In either case, it would be not the norm that marks the difference.

²³ Cf. Peter Schaber, “Die Bedeutung von Instrumentalisierung und Demütigung als Würdeverletzung,” in Daniela Demko, Kurt Seelmann, Paolo Becchi (eds.), *Würde und Autonomie*. (Stuttgart: Franz Steiner Verlag, 2015), 159-168: 156 f.

²⁴ Ross explains this sense in his *The Right and the Good*, edited by Philipp Stratton-Lake (Oxford: Oxford University Press, 2002 [1930]), 19 f.

Things do not change tremendously when we go on to examine other candidates for dignity norms. Take Forst's "right to justification". Again, we can ask: Don't we owe frogs a justification when killing them just for fun? And again, the following reply might be given: "*We* need a justification when killing frogs, yes, but *they* cannot have a right to demand one – frogs just aren't the right sorts of entities to have rights." And this presumably means that what is crucial for enjoying the protection of dignity norms is that you are capable of having rights – by being a person, an entity with dignity-conferring capacities.

Switching to more concrete dignity norms, the problem here is that it is not clear what human dignity has got to do with it. Why, for instance, do we need human dignity to protect us against all sorts of humiliation, as Schaber claims? Clearly, being humiliated aims at damaging or destroying a human being's self-respect. So why isn't it just morally wrong to damage or destroy a human being's self-respect, period? As Rüdiger Bittner has argued, similar questions can be asked with respect to other norms typically justified by appealing to human dignity, such as torture.²⁵ What's more, these norms are seemingly not only justifiable without ever mentioning human dignity, but also by appealing to *other* kinds of dignity. For example, we can interpret Cato's famous suicide as an attempt to save his reputation – his acquired aristocratic dignity – from Caesar's *clementia*: Fearing that he would suffer an irreparable loss of self-respect should he accept Caesar's offer to spare him, he chose death instead to keep his honour. Hence, at least some forms of aristocratic dignity will also include a norm that forbids being damaged in one's self-respect.

²⁵ Cf. Rüdiger Bittner, "Abschied von der Menschenwürde," in Mario Brandhorst and Eva Weber-Guskar (eds.), *Menschenwürde: Eine philosophische Debatte über Dimensionen ihrer Kontingenz* (Berlin: Suhrkamp, 2017), 91-112.

Without being able to go through all the suggestions that have been made to identify the norms characteristic of human dignity, let me close this section with one further observation: Many concrete human dignity norms that formulate moral requirements which can also be defended by other means might be justified by appealing to what I called an abstract human dignity norm. For example, torture and humiliation may also be violations of human dignity insofar as the victims of these practices are treated as a mere means – as opposed to other wrongs that might be done to them, e.g. that they are harmed in their self-respect. However, insofar as this move aims at demarcating human dignity from other kinds of dignity by citing norms which are characteristic of the former, it inherits the problems of the abstract human dignity norms that I presented above.

IV

The dignity-conferring properties

By far the most prominent way to distinguish human dignity from other forms of dignity is by offering an explanation of the properties that ground human dignity, but not other forms of dignity (or that do only do so with the help of additional properties). The two important strands in the more recent history of the idea of human dignity – the (Roman-Catholic) natural law tradition and the Kantian tradition – likewise focus on these properties when defining the non-contingent sort of dignity shared by all human beings.²⁶

²⁶ Needless to say, these are not the only players in the field, nor do I consider the two strands just mentioned to be self-standing, in the sense of not being frequently combined with each other. There is, for example, a conception of human dignity that locates its origins in the thought of ancient Greek

As an example for the latter tradition, here is Stephen Darwall on human dignity: “The dignity of persons [...] is [...] the authority to make claims and demands of one another as equal free and rational agents.”²⁷ With some simplification involved, we may understand Darwall’s statement as saying that dignity is a right we have against other persons *because* we are all free and rational beings. As an example of the former tradition, Patrick Lee and Robert George explain what they call fundamental or personal dignity – the dignity of persons – with the following words:

The dignity of a person is that whereby a person excels other beings, especially other animals, and merits respect or consideration from other persons. [...] [W]hat makes human beings persons rather than things, is their rational nature. Human beings are rational creatures by virtue of possessing natural capacities for conceptual thought, deliberation, and free choice.²⁸

Again, with some simplification involved, we may understand Lee and George here as saying that dignity is a value which

philosophers such as Aristotle and the Stoics: Eva Weber-Guskar’s theory of human dignity as an attitude is a case in point (cf. Eva Weber-Guskar, *Würde als Haltung* [Münster: mentis, 2016]). And indeed, many of the concepts involved in the natural law tradition of human dignity stem from Aristotelian ideas. Furthermore, philosophers such as Martha Nussbaum freely draw from Kantian and Aristotelian sources when developing their own theory of human dignity. Cf. Martha Nussbaum, “Human Dignity and Political Entitlements,” in Edmund D. Pellegrino, Adam Schulman, and Thomas W. Merrill (eds.), *Human Dignity and Bioethics* (Notre Dame (IN): University of Notre Dame Press), 351-380.

²⁷ Stephen Darwall, “Respect and the Second-Person Standpoint,” *Proceedings and Addresses of the American Philosophical Association* 78(2) (2004), 43-59: 43.

²⁸ Patrick Lee and Robert P. George, “The Nature and Basis of Human Dignity,” *Ratio Juris* 21 (2008), 173-193: 174.

commands the respect of our fellow persons, a value we have *because* we are free and rational beings.

It is of course no accident that neither Darwall nor Lee and George choose “human dignity” as their explicandum, but “the dignity of persons”. In order to avoid accusations of speciesism as well as to deal with Superchimp and similar cases, “being a member of the human species” all in itself cannot be the dignity-conferring property in question, at least if we understand the notion of the human species in purely biological terms.²⁹ Personhood, on the other hand, is clearly a normative term: As Charles Taylor puts it, “[w]here it is more than simply a synonym for ‘human being’, ‘person’ figures primarily in moral and legal discourse. A person is a being with a certain moral status, or a bearer of rights.”³⁰ Understood along these lines, however, “being a person” inherits the inverse problem of “being a human being”. As a purely normative property, “being with a certain moral status” and “being with human dignity” become dangerously close to one another. True, “having a certain moral status” does not imply “having dignity” – only the converse does hold true. As we have seen in the preceding sections, there is a lively possibility that frogs and even snails possess a moral status that protects them from being killed just for fun. But if the moral status under consideration goes by the label of personhood, the concurrence of both notions is

²⁹ For a dissenting voice, see David Oderberg, who argues that we should regard “being human” as “primarily a metaphysical category with biological content that gives us the ways in which humanity physically manifests itself” and allows that “any truly rational animal, if such were metaphysically possible, would still be human.” (David S. Oderberg, *Real Essentialism* [New York (NY) and Oxon (UK): Routledge, 2007], 104 f.) If we take “being rational” as the person and dignity-conferring property, it would follow that all persons are human beings.

³⁰ Charles Taylor, “The concept of a person,” in Id., *Human Agency and Language: Philosophical Papers 1* (Cambridge: Cambridge University Press, 1985), 97-114: 92.

almost inevitable: Nobody in the debate denies that something which is a person is also a bearer of human dignity, and it would be an odd coincidence if the moral status that comes with personhood is not connected to the moral status described by human dignity at all.

One could argue that while “being a person” is a purely normative property and too intimately connected with human dignity, being a free and rational agent is much less so.³¹ And that is what both Kantians and natural law theorists are after when speaking about the dignity-conferring properties. So could we not use these to demarcate human dignity from animal dignity on the one hand, and from the various forms of contingent dignity on the other? For snails and frogs do not possess these capacities, and when we speak of the dignity of a judge or of a virtuous person, our focus is not on what these persons are able to achieve, but what they actually *have* achieved. Hence, the identification of certain capacities that are typical of human beings, not typical of other species and, as capacities, work independently from the merits that are required for more aristocratic sorts of dignity, appears to be the most promising route to eventually make the distinction that we are after.

Alas, even this route, taken in isolation, cannot deliver the expected results. The main reason for this is the limited applicability of these and other suggested capacities which make them *prima facie* unsuitable as candidates for human dignity conferring properties: A significant part of the class of human beings is left out. As I made clear in the introduction, it would be

³¹ I write “much less so” since both terms have their evaluative (and hence normative) components, as being rational as well as being free or autonomous are usually both valued for their own sake. Still, we can give a descriptive account what being autonomous or being rational amounts to, by describing what beings with these capacities can achieve.

too much to demand from any conception of human dignity that it will be able to do justice to *all* the clear cases where human dignity should be applicable, although it should certainly be able to explain our usage of the term in the majority of cases. However, rationality and personal autonomy are both capacities that appear to be not present in new-borns, small children, severely demented persons, and members of other vulnerable groups. Needless to say, similar problems plague the other candidates for dignity-conferring properties.³²

In response, three alternatives seem to be feasible. First, one could admit that, in a somewhat exaggerated formulation, human dignity really is the dignity of adult and healthy human beings. This is what philosophers such as Peter Singer or Norbert Hoerster in effect suggest.³³ According to the former, while

we may continue to see normal members of our species as possessing greater qualities of rationality, self-consciousness, communication and so on than members of any other species, [...] we will not regard as sacrosanct the life of every member of our species, no matter how limited its capacity for intelligent or even conscious life may be.³⁴

Thus, since “this view of universal and equal human dignity cannot be supported”, we should opt for “a graduated view of the

³² For a compilation of the usual suspects, see e.g. Peter Baumann, “Persons, Beings and Respect,” *Polish Journal of Philosophy* 1(2) (2007), 5-17: 7-10.

³³ Only the latter explicitly suggests to abandon the notion of human dignity in favour of the notion of personal dignity, see his *Ethik des Embryonenschutzes: Ein rechtsphilosophischer Essay* (Stuttgart: Reclam, 2002).

³⁴ Peter Singer, “Sanctity of Life or Quality of Life?,” *Pediatrics* 72(1) (1983), 128-129: 129. Although Singer speaks of “the sanctity of life” in this essay, it is the dignity of human beings he has in mind, as shown by the next quotation, taken from a more recent paper by him.

moral status of humans and nonhuman animals.”³⁵ That way, the notion of human dignity would be abandoned in favour of personal dignity, at least if we grant the ability to reason and free choice a status-conferring effect which deserves the name “dignity”. Since this paper enquires into the notion of human dignity, we do not have to pursue this option further.

Second, one could argue, that, despite appearances, each human being indeed has dignity because of the same dignity-conferring capacities, i.e. rationality and free choice. Prominent defenders of this alternative include the aforementioned Patrick Lee and Robert George, John Finnis, and others. Building on an Aristotelian hylomorphism and utilizing the notion of “radical” or “root capacities,”³⁶ these scholars argue that even human beings in an embryonic state or those in an irreversible coma already or still possess their capacities for rationality and free choice. Within this account, a root capacity is characterized as an explanatory presupposition and ontological ground for an activated capacity. For example, a mature human being’s capacity to talk or to reason is not something that happens to her merely accidentally. We expect human beings to develop these capacities because these are part of their natural kind, encoded in their biological species. If this does not happen or if human beings cease to have these capacities due to disease or injury or other disablement, this condition is regarded as a deprivation of what they still *should* be able to do. While this move succeeds in granting all human beings human dignity, the metaphysical framework within which this

³⁵ Peter Singer, “Speciesism and Moral Status,” *Metaphilosophy* 40 (2009), 567-581: 568.

³⁶ Cf. e.g. John Finnis, “The Philosophical Case Against Euthanasia,” in John Keown (ed.), *Euthanasia Examined* (Cambridge: Cambridge University Press, 2002), 23-35: 30 f.; John Finnis, “Equality and Differences,” *Solidarity: The Journal of Catholic Social Thought and Secular Ethics* 2(1) (2012), 1-22: 1-3.

account is embedded strikes many as problematic. As Andrea Sangiovanni has recently put it, Aristotelianhylomorphism looks nowadays like “a sectarian conception”³⁷ that comes at a considerable theoretical cost, while its theoretical gain remains unclear – at least if one keeps one’s eye *solely* on the dignity-conferring capacities, as I will argue shortly.

Third, some participants in the debate suggest that there are different kinds of human dignity with differing dignity-conferring properties applicable to different human beings. This proposal comes in two variations: Either the different properties that ground dignity have no effect on the norms that are connected to human dignity, or they do. An example for the latter variation is Reinhard Merkel, who claims that only a being with a subjectivity – an own point of view on the world – can have moral status and thus dignity. Still, he believes that even human beings that lack subjectivity (such as people in a PVS) have the same “right to life and dignity” as healthy human beings. However, strictly speaking, this “right” is nothing we owe to *them*; Rather, it finds its normative source in the “principle of norm protection”: As he elaborates, the primal reason not to kill them is to uphold “the general prohibition of killing as one of the fundamental norms of ethics and law.”³⁸

An example of a defender of the former variation is William FitzPatrick, who claims that, besides having a “rational nature” there is a second way of securing human dignity for a creature: “[W]hen thinking about the normative significance of a living being, it is entirely plausible that in addition to taking account of its individual mental properties, we should also be sensitive to the

³⁷ Andrea Sangiovanni, *Humanity without Dignity*, Cambridge (MA): Cambridge University Press 2018, 35.

³⁸ Reinhard Merkel, *Forschungsobjekt Embryo* (Stuttgart: Deutscher Taschenbuch-Verlag, 2002), 147, translated from German by the author of this paper.

fundamental kind of thing we are presented with.”³⁹ He thinks that being “a member of a person species” is “likewise sufficient for special moral status”⁴⁰ – “likewise sufficient”, because having the relevant capacities *also* is sufficient, regardless whether the individual belongs to a person-species or not. Thus, while Superchimp also has personal dignity, other chimpanzees do not, since Superchimp’s fellows do not belong to a person species.⁴¹ While both variants of this account might be able to reconstruct the appropriate extension of human dignity, clearly what distinguishes human dignity from other forms of dignity can no longer be located in the dignity conferring properties, at least as long as we do not get a systematic reason why these and only these properties which are suggested by Merkel and FitzPatrick are granting dignity to their bearers. As long as this request is left unanswered, there is the strong suspicion that what really guides the selection of dignity-conferring capacities is something else – namely our intuition about the rightful *bearers* of human dignity, beings who *should* possess the moral status in question.

V

A second look at the criteria

Up to this point, this article might appear to be entirely negative in its directionality: None of the three candidates for demarcating

³⁹ William FitzPatrick, “The Value of Life and the Dignity of Persons,” in Sebastian Muders (ed.), *Human Dignity and Assisted Death* (New York: Oxford University Press, 2017), 175-196: 191.

⁴⁰ FitzPatrick, “The Value of Life,” 192. “Special moral status” is FitzPatrick’s term for personal dignity, cf. *ibid.*, 190 f.

⁴¹ Of course, this presumes for the sake of the argument that chimpanzees do not belong to a person species. For arguments to the opposite conclusion, see e.g. Paola Cavalieri and Peter Singer, *The Great Ape Project: Equality beyond Humanity* (London: Fourth Estate publishing, 1993).

human dignity from other kinds of dignity have proven to be stable enough to do the job. Despite appearances, however, a close reading of the preceding sections strongly suggests that while each of the examined criteria alone fails to provide the desired distinction, all three, when taken together, *are* sufficient to do this, since each of them offers a solution to problems which plague the others. In this penultimate section, I would like to explore this solution by going once more through each of the discussed options, presenting their aforementioned strengths and difficulties, and connecting the strengths of each suggested criterion to the weaknesses of the others.

The proposal to contrast human dignity with other kinds of dignity by looking at its bearers was presented as by far the most obvious choice, since it is precisely the possibility of a dignity that is distinctive of human beings we are after when we examine the reality of this notion at first. However, this proposal was also subject to two decisive objections. First, many other kinds of dignity also appear to have human beings as their exclusive bearers: This goes for the dignity associated with the holders of a public office, but the same is true for people that show virtuous behaviour in difficult situations – e.g. when someone maintains their countenance in the face of a disastrous defeat. Hence, being a human being is not sufficient for distinguishing human dignity from other types of dignity. Neither is it necessary, though, as the second objection argues: All non-human animals showing similar capacities as human beings certainly deserve the same moral status captured in the notion of human dignity.

However, both problems appear to be solvable by appealing to the other two types of criteria: First, as seen at the beginning of section III, unlike norms that describe the kind of respect we owe to public-office holders or most non-human animals, norms linked to dignity show a high degree of stability as well as a special weight

when confronted with conflicting norms. Moreover, the grounding properties for the sorts of dignity applicable to non-human animals as well as for the different kinds of contingent dignity also applicable to human beings are certainly different from those responsible for human dignity: As indicated at the beginning of section IV, most non-human animals don't satisfy the criteria of personhood, no matter how they are (plausibly) characterized. Moreover, the moral (and legal) status of being a mayor or a judge, as well as the preferential treatment one deserves due to the dignity one acquires from one's virtuous behaviour require much more than just certain capacities to do this or that.

The idea of separating human dignity from other kinds of dignity via the norms that are linked to it also brought with it two further problems: First, it was questioned whether rather concrete norms such as the prohibition of torture, if it is claimed that these are human dignity-specific, cannot be equally justified by appealing to the psychological or physical well-being of the victims of this practice, or even by linking them to more contingent forms of dignity. Second, it remained unclear how more abstract norms which might even be identified with human dignity – such as the prohibition to use others as a mere means – can be employed to distinguish human dignity from other kinds of moral status without any reference to the dignity-conferring properties: In the example at hand, the prohibition to use others as a mere means is only dignity-specific if one adds that the norm protects “persons” – whereas the latter term is understood as “beings with dignity-conferring properties.”

Against both difficulties, the two other criteria are able to offer assistance: Regarding the charge that many of the abstract norms are also applicable to a variety of creatures that do not possess human dignity, the bearer-criterion points out that the norms that are justified in the name of human dignity should chiefly protect

human beings as their main bearers; in other words, a norm that is applicable not only to human beings, but in addition to a wide variety of non-human animals – say spiders, elephants, and frogs – cannot be linked to the kind of dignity which we refer to with the term “human dignity” and its linguistic equivalents. And regarding the objection raised against more concrete norms such as the prohibition to torture, a plausible response could argue that plausibly, all norms related to human dignity oblige their addressees to respect the capacities which serve as truth-makers of human dignity – be it that they promote these capacities, or be it that they protect their unhindered usage by all bearers of human dignity. To illustrate, one thing that makes torture wrong is that it is physically or psychologically painful. But this wrong making feature of torture does not need to be condemned by appealing to dignity, since the underlying capacity that makes this wrong possible – the capacity to feel pain – is clearly not what we are looking for when we attempt to identify the properties responsible for the attribution of human dignity, as this is not the capacity on which we rely to distinguish persons from non-persons. By contrast, another thing which makes torture wrong is its humiliating effect, and here we might more confidently argue that only persons are vulnerable to this sort of wrong-making feature, which provides a justification for the claim that this norm is distinctive of human dignity.

Finally, the proposal to distinguish human dignity from other types of dignity via the dignity-conferring properties initially raised the problem that the most appropriate candidate for such a property – being a person – is itself primarily a *normative* property, that aims, in Harry Frankfurt’s words, “to capture those attributes which are the subject of our most humane concern with ourselves and the source of what we regard as most important and most

problematical in our lives.”⁴² As we have seen, personhood’s lack of descriptive content just pushes the question what non-normative qualities guide our ascription of human dignity one step further. Furthermore, the usual candidates that are called upon to fill that role – self-consciousness, personal autonomy, rationality – are standardly interpreted in a way that leaves out significant parts of the community of human beings and thus excludes them as bearers of human dignity: Neither the new-born nor the severely demented may possess self-consciousness, personal autonomy or rationality. But as I highlighted above, these vulnerable groups form a part of the *core* of human dignity’s protectional sphere. To get once more clear about this, consider the National Socialists’ so-called “extermination of worthless life” in the “Aktion T4”, the murdering of innocent people with mental illnesses or physical disabilities which took place in Germany from 1940 until 1945. Obviously, we do not have to enquire into the exact condition of the victims in order to decide whether their murder was a violation of human dignity or not; regarding human beings as “worthless” and killing them in accordance with this judgement clearly is a dignity violation – if not, what else can be?

Once more, by appealing to the other two candidates for demarcating human dignity from other kinds of dignity, we seem to be able to resolve the difficulty: Since “being a person” is a normative property, we can measure the importance of certain attributes by querying which norms (or even more specific: which *moral* norms) are set in force to protect or promote them as a way to respect the bearers of these attributes. The idea behind this is the following: If some attributes strike us as so important that they deserve special protection by moral norms, and if these norms also show a particularly strong weight when being in conflict with other

⁴² Harry Frankfurt, *The Importance of What We Care About: Philosophical Essays* (New York: Cambridge University Press, 1988), 12.

moral norms, we can treat this as a good indicator that these belong to the family of person-conferring attributes in Frankfurt's sense. But as was argued in section III, these norms, especially when they show a certain generality and thus are applicable to all human beings, are promising candidates for human dignity norms.

This move alone will not do, however. For certain capacities which are protected by weighty and general moral norms – for instance, human life – are *not* good candidates for dignity-conferring capacities. At best, they are the ontological presuppositions for the dignity-conferring capacities: in order to be self-conscious, autonomous or rational, you have to be alive. At this point, the bearer criterion of human dignity may provide additional help: What we are looking for are not merely capacities that are most important for our lives – this would most certainly include the capacity for life – but capacities that are *distinctively important for human beings* as the primary bearers of human dignity. Here the capacity for being alive is excluded, for it is a property that is also of highest value for all living creatures – at least during a certain period of their lives. Thus, the most certain bearers of human dignity – human beings – also deliver a criterion for which interpretations of “being a person” are the most promising: An understanding of that property or set of properties that would result in completely excluding, say, small children from human dignity's protective sphere will have a hard time to be of good use within a convincing conception of human dignity.

Conclusion

Dignity and human dignity

Thus, while none of the three candidates for demarcating human dignity from other forms of dignity are able to do this on their own, they are able to carry out this task together. In addition, each

of these candidates brings in a distinctive perspective to this differentiation: As regards the norms linked to human dignity, these are identified not only as moral norms – i.e. norms that, rather than merely recommending their addressees to do something, command them to do it –, but those with a distinctive strong weight as well as a high generality. With respect to the bearers of human dignity, although this concept permits an extension which goes beyond the human species, it doesn't allow for conceptions that exclude many vulnerable groups of this species right from the start – after all, it is human dignity that we are after, not the dignity of all adult and healthy human beings. As regards the dignity conferring properties, finally, although there remains a real possibility that there are other ways of acquiring human dignity besides being a person, as authors such as FitzPatrick suggest, the latter property occupies centre stage when it comes to justifying claims about our practice of ascribing human dignity to some creatures but not to others. And while the property of being a person leaves open exactly which “thicker”, i.e. more descriptive, properties confer personhood, many potential features clearly are ruled out as inappropriate: For example, one does not become a person by being able to hop on one leg.

To conclude, my paper shows that, despite serious challenges, one can fruitfully distinguish the idea of human dignity from other forms of inherent dignity applicable to non-human life forms, as well as from other sorts of dignity relevant to our assessment of human beings. If I am right about this, a successful development of a convincing theory of human dignity cannot start from the perspective of only one of the elements discussed therein – by being exclusively focused on human dignity's bearers, or on its norms, or on its grounding properties –, but has to be constructed with a simultaneous view to all three.

As highlighted in the introduction, this result does not guarantee that human beings (and possibly some other living beings as well) have human dignity; the paper is about the concept of the notion, and all that I attempted to show is that there are ways to fruitfully distinguish human dignity from other forms of moral status, especially those that also bear the term “dignity” or its linguistic equivalents in its name. In order to establish the *reality* of the concept – i.e. its instantiation as a property of certain substances –, one would have to argue for a specific conception of it that illuminates which dignity-conferring properties are not only normatively relevant, but at the same time sufficiently widely allocated to guarantee that the vast majority of human beings – including the vast majority of human beings that are members of vulnerable groups – are indeed holders of this normative property. Moreover, as a normative property, human dignity has to give rise to norms that are so weighty that they can hardly be beaten by conflicting moral considerations. Of course, whether such a winning combination of dignity’s bearers, its grounding properties and the norms linked to it is actually available can legitimately be put into question.⁴³

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