

SYMPOSIUM
HUMANITY WITHOUT DIGNITY



A REPLY TO COMMENTS

BY
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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.

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