

## [Review] Andrea Sangiovanni (2017) Humanity without dignity: moral equality, respect, and human rights

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# Review

## ***Humanity Without Dignity: Moral Equality, Respect, and Human Rights***

Andrea Sangiovanni. Cambridge, MA: Harvard University Press, 2017. 320pp.

David Jason Karp<sup>\*</sup>

This book aims to reject theoretical approaches that ground human rights in a notion of dignity, understood in terms of an equal rank, transcendental/spiritual quality and/or human capacity for rational agency. It argues instead that the idea of human rights should be grounded in a fundamental moral right of each person not to be treated as inferior. It defends this argument with reference to a substantive account of what it means to be treated as inferior in the relevant sense—dehumanization, instrumentalization, infantilization, objectification and stigmatization—combined with an account of when and why these are wrong. The book says that they are wrong: if and because they are cruel; if and because these forms of treatment affect a person’s capacity to present and to define themselves, as themselves, within a social community; and if and because they occur without meaningful consent. The book applies these ideas to non-discrimination rights; claims that the ideas provide people and states with reasons to create and to maintain an international human

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rights system; and argues the moral rights explored in the book are “fundamental” (which Sangiovanni defines in a way that is marginally different from Shue’s (1996) definition of “basic” rights: rights that are structurally necessary for other rights).

The book is clearly aimed at an audience of scholars and advanced students who work in the analytical tradition of political and legal philosophy. Readers hoping for detailed engagement with the best contemporary scholarship on Hegelian and late Frankfurt School views on human recognition and self-interpretation; international history on state human rights obligations and indivisibility; the actual nature of state sovereignty as a contemporary forms of international organization; or historical sociology on how and why modern bureaucratic states treat people the way that they do—might come away from the book feeling somewhat excluded from its method and approach. If, however, you are one of the people who gets excited by hypothetical examples that are tailor-made to illustrate key points of the argument (peppered by a few literary examples and interesting real legal cases); by distinctions between “Orthodox” and “Political” approaches to human rights; by typologies of “Aristotelian,” “Christian” and “Kantian” accounts of human dignity; and by debates about such ideas as the “Mirroring View,” the “Expressive Harm Account” and the “Single Practice Assumption,” then this book is for you.

Sangiovanni is right in his overall aim to emphasize the importance to human rights of treating each person as not inferior in moral status to oneself. In much of the critical human rights discussion, “equality” and “difference” are presented as the most salient opposites. Perhaps, though, the most relevant antonym of “equal” is “inferior.” This strikes me as the right general direction of travel, not only as a way of bridging the gap between universalism and particularism in human rights theory, but also as an insight into what is missed by the empiricist quest to quantify measurable variables (“How many international-criminal justice trials have there been?” “How many cases of recorded torture have occurred?”), in order to arrive at conclusions about whether the world is getting better at respecting human rights (Sikkink 2017). At one point, deep within the introduction to chapter 5, Sangiovanni says that his arguments explain why anti-discrimination rights “deserve to be considered *in the same class as* more severe violations of human rights, such as genocide and torture” (211, emphasis in original). Putting aside a small qualm about the use of the words “more severe” in this quotation (which risks begging the question in the wrong direction), this strikes me as an important question to be problematizing (Karp 2015). Indeed, in many respects, the book comes across most strongly if that is viewed as

its central research question. However, once one gets under the skin of the book's promising direction of travel to assess the inner workings its arguments, one finds that there is still plenty of room for further debate and discussion. The rest of this review will highlight two of the areas around which this debate could occur.

Firstly, is the argument against “dignity” approaches convincing? I am not certain that Sangiovanni's approach and what he calls “dignity-first” approaches are sufficiently distinct. The critique of dignity-based approaches gives the book its main title, so this is more than a peripheral concern. When theorists discuss dignity as a philosophical foundation for human rights, they mean that people have human rights—and therefore that obligations are owed to them—on the basis of something about their humanity that goes beyond brute needs, capacities or nature. The nature of this “something” varies. It can be an elevated role or rank (which Sangiovanni classifies as “Aristotelian”), a connection to a transcendental or spiritual realm (which Sangiovanni classifies as “Christian”), or a capacity for rational agency and self-directedness (which Sangiovanni classifies as “Kantian”). If and because all people have dignity, defined in one or more of these ways, then all people have human rights. An example of a theory that is genuinely different from these has been recently provided by Phillips (2015), when she says that “brute” foundations are not needed, but abstract foundations are not needed *either*: human rights and equality exist simply when and because we collectively claim them and are committed to them. However, Sangiovanni does not take this social-constructivist plunge. His whole book is structured around the idea that an objective foundation for human rights must exist in order to provide a secure normative underpinning for our commitment to international human rights practice and law. He goes on to identify abstract features of the human condition beyond brute need/capacity other than those emphasized by Aristotelian, Christian and/or Kantian approaches, such as our social vulnerability, and the power of others to block the construction and expression of the self. However, rather than a non-dignity theory, this seems like it could be a fourth strand of what ultimately boils down, both structurally and substantively, to another dignity-based approach. It posits non-physical, non-brute, non-natural aspects of the human condition, the importance of which generate moral rights that need to be respected. This is the function that “dignity” serves in dignity-based approaches to human rights.

At first glance, one is tempted to consider whether what Sangiovanni is really after could be called a “Romantic” or “Hegelian” tradition of dignity, on par with the other

three. But such a move would be hamstrung by several of the liberal and Kantian specifics that he works into his theory. The reader is told, for example, that in order to respect another as an equal, that other needs to be treated with “opacity.” He means by this that each person has the right to present the face they want to the world (and have that face recognized), without feeling compelled to reveal anything that’s on the inside. This is quite far away from the deep, human need to have one’s *true* self recognized by others that has characterized so much theory on human recognition. It is instead much more reminiscent of Kant’s (1996/1784) famous early essay “What is Enlightenment,” with its (un-reformulated, pre-Hegelian) distinction between the public and private self. Sangiovanni then doubles-down on this by saying we can consent to allow people and institutions (for example, when we sign up for military service) in to what would otherwise be inner and private. In doing so, we open ourselves up to dehumanizing, instrumentalizing, objectifying treatment, which, because we consented, can end up outside of the scope of human rights concern. These moves are not necessarily problematic in and of themselves (this is a substantive question that I do not have space to address), but they do not entirely help Sangiovanni to advance his aim of rejecting Kantian approaches to “dignity” in order to propose a radical alternative.

Sangiovanni contrasts his own view that human rights duty-bearers have negative duties *not to disrespect or violate* others’ equal moral status, from the view—which he attributes to “dignity” approaches—that human rights involve positive duties *to elevate* in one’s own mind the [equal status/transcendental quality/moral agency/existence of an interior life] of each and every other person. However, further clarification is needed on why “dignity” approaches could not be cast in “negative” terms, and on why an approach based on Sangiovanni’s emphasis on social relationality could not be “positive.” In principle, there could be negative and positive versions of each, as well as versions that reject a negative/positive dichotomy altogether. So while the application of a distinction between negative and positive obligations in respect of others’ dignity and/or equal humanity is a useful insight that should generate further discussion and debate, I am not convinced either that being exclusively “negative” is a virtue (see Donnelly 2008), or even if it is, that it is a virtue that is necessarily unique to Sangiovanni’s theory as compared to the views that he critiques.

Secondly, is equal moral status *fundamental* to provide a foundation for international human rights law and practice, in the way that Sangiovanni suggests? The

answer is yes and no. The foundation of human rights obligations in international human rights law currently comes from the respect, protect and fulfil conceptual framework. It is important to understand that one of the key reasons behind the introduction of a tripartite framework was to move beyond the idea that there needs to be only *one kind* of foundation for human rights obligations; that *either* positive *or* negative obligations are uniquely fundamental for human rights; that arguments in favour of one foundation need to proceed by attacking other foundations first (Bódig 2015). There is good reason to think that Sangiovanni's view merits consideration when thinking about what it means to "respect" human rights. However, "protect" and "fulfil" are also important. They are structurally quite different, and they do not require the same rich appreciation and understanding—in the mind of the duty-bearer—of equal moral status. They simply require that people are appropriately protected and that they have their human rights fulfilled. To see this point better, consider that Sangiovanni explicitly presents dehumanization and cruelty as unfortunate side effects—what Shue (1996) would call "standard threats"—to human rights that come about from time to time in a modern state system. In presenting this view, he does not consider the possibility that modern bureaucratic states are *inherently* dehumanizing, at the same time as they treat each person as an equal. The failure to appreciate the humanity of each person is not an accidental by-product of modern bureaucratic states; rather, this can be viewed as part of their very purpose. When my access to health care (or lack thereof) gets determined by a cold, hard look at the documents that I can present to an impartial bureaucrat, rather than by my personal/social relationship with my master, my prince, my feudal lord, or my employer, then this *equalizes* at the same time as it takes many of the *human* elements out of the picture. If I qualify, I qualify, and if I don't, I don't (for example, if I am an unauthorized migrant). State bureaucracies are not always "cruel"; sometimes they are simply cold. This suggests that the contours of "fulfilling" human rights are quite different from the contours of "respecting," or "protecting" them, and suggests that each has important features not entirely covered by the other. Sangiovanni is correct that dehumanization and cruelty are more central to the idea of human rights that many scholars have realized, but this needs to be balanced against the existence of other co-existing aspects of human rights practice and law for which these ideas might be less salient or fundamental.

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