

# THE DIGNITY APPROACH TO HUMAN RIGHTS AND THE 'IMPAIRED AUTONOMY' OBJECTION<sup>1</sup>

(Article published in HUMAN AFFAIRS 29, 273–285, 2019 DOI: 10.1515/humaff-2019-0023)

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There is little need to argue for the importance of human rights (HR) in our world. If one looks at the role they play today, it is hard to deny that their reach has extended beyond anything the drafters of the 1948 Universal Declaration could have hoped or imagined. However, even though human rights today have a far greater impact on politics than in the past, the philosophical reflection that surrounds them has had a less fortunate history. It is doubtful whether we are today in a better position than we were in 1948 to answer any of the philosophical questions surrounding them, including, and perhaps most crucially, the question about their foundation. Why are human rights standards – of whatever sort – that we should adopt, or even just take seriously?

The first two parts of this paper summarize my recent work on the above question and the third takes it a step further. In particular, I will show 1) why the main orientations in the contemporary philosophy of human rights all fail to yield a satisfactory foundation, 2) sketch an alternative foundation that exploits critically Kant's intuition that human dignity rests on our capacity for moral behavior; 3) address one major objection my approach is bound to attract – and in a certain form has already attracted: if human rights rests on human dignity, and human dignity rests on our rational capacity for moral deliberation, does that mean that people with impaired rational capacity are not entitled to human rights?

## **1) The foundational debate: the state of the art**

Philosophers working on human rights today fall quite neatly into one of the following categories: instrumentalism (also known as reductivism), non-instrumentalism (also known as orthodoxy), and practice-based or political approaches. Below, I will summarize them and show why, in my view, they all fail to yield a convincing foundation.

### *a) Instrumentalism*

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<sup>1</sup> The first two parts of this paper reproduce passages from my book (Caranti 2017), at times with minor, mainly stylistic changes. Also the third part reproduces few passages from a paper of mine previously published (Caranti 2019). The project leading to this paper has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 777786.

Instrumentalists identify human rights with standards that have a binding normativity simply because they are instrumental to certain goods we definitely need. Human rights have normative force because, without them, societies could hardly flourish, or even reach a decent standard of well-being. Thus, human rights do not protect any intrinsic dignity of human beings; rather, they protect and serve fundamental human *needs* and must be taken seriously as long as we care about humans.

When it comes to specifying what these goods are, instrumentalists have different answers. Some think that *agency* is the feature in question. For example, Griffin (2008) thinks that HR protect human dignity by affording humans the necessary means to exercise their capacity for agency. Alternative instrumentalist accounts suggest that a plurality of goods, not just one, as in the agency-based account, lies at the foundation of HR. John Finnis (1980) suggested an allegedly objective list of human goods: life, knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness and religion. Similarly, James Nickel (2007) argues that HR secure (and are thereby justified by) four values: life, the steering of one's life, avoidance of cruel and degrading treatment and avoidance of severely unfair treatment. Cruft, Liao and Renzo (2015) also include the positions of John Tasioulas (2012, 2013, 2015), Henry Shue (1997), David Miller (2012), Amartya Sen (1984, 2004) and Martha Nussbaum (2001, 2011) in the instrumentalist/pluralist family.

While each of the variations of instrumentalism presents specific problems, for the sake of brevity, I will directly mention here what seems to me (and others) to be their fatal shortcoming. All instrumentalist accounts conflate needs, goods, and capabilities, on the one hand, with rights on the other. The fact that something is very important for me (and for all other human beings) is not a sufficient reason to turn that thing into something I have a right to. To use Raz's felicitous example (Raz 2010), to be loved is among the most important things in human life, but would it make sense to say that there is a right (or human right) to be loved? Instrumental justifications do not justify any *right*. They simply reinforce the importance of certain things for human lives.

#### *b) Non-instrumentalism*

While instrumentalism starts with the identification of some more or less objective human values and then moves (almost magically) to their transformation into things we have rights to, non-instrumentalism relies on human beings' supposed intrinsic worth. The point of HR is not to protect the interests of humans but to protect a *status* humans possess. It is by virtue of this status that human interests acquire normative force. Thomas Nagel (1995) endorses this intuition about the inviolability of persons, originally introduced by Kamm (Kamm 2007, 271), as the basic ground for HR. Unfortunately, like Kamm, he does not think it necessary to justify that inviolable status. Similarly, Dworkin (2013) thinks that the fundamental human right is having one's dignity recognized, but he says nothing regarding the grounds of that very dignity.

This unwillingness to say something of substance about human dignity needs further scrutiny because it exposes the major problem with how orthodoxy is currently practiced. For example, after asserting that humans have dignity, Nagel puts a halt on any further inquiry by arguing that '[a]ny attempt to render more intelligible a fundamental moral idea will inevitably consist in looking at [the] same thing in a different way' (1995: 92). In other words, for Nagel, there is no point in asking for a justification of human dignity, and, in fact, we do not need to do so. It is sufficient to realize that we possess certain basic rights and that they are commonly conceived as protective of a status and generally immune to interest-based trade-offs. We would not say that my right not to be murdered vanishes if we discovered that my assassination would prevent the killing of two other people. We immediately and non-controversially perceive my right not to be murdered as basic and in no need of further explanation/foundation. Basic rights are expressive of an inherent dignity we attribute to ourselves without further ado. In short, on the one hand, our dignity is grounded in the fact that we have those rights. On the other hand, those rights, and *a fortiori* basic human rights, are grounded in our dignity.

Obviously, this reasoning seems circular. In fact, another quasi-orthodox thinker, John Tasioulas, notices that and attempts to provide an alternative account (Tasioulas 2013, 300). While an appeal to human dignity remains essential (that is what makes him an orthodox), Tasioulas thinks that one cannot do without a reference to fundamental human interests (his instrumentalist component). Since we all have certain fundamental interests *and* since we are worthy creatures that deserve to have these fundamental interests taken into consideration, it follows that we have certain basic rights, in particular (and not accidentally) those which protect our fundamental interests. Bringing interests into the picture, Tasioulas seems to think, avoids circularity because we can now explain that, for example, we have a human right not to be tortured because this *is* one fundamental interest of an entity whose dignity is beyond dispute. We can now explain, in a way not available in Nagel's pure deontological orientation, why human rights protect certain *fundamental* interests, rather than everything one has reason to care about, and why there can be rational debate on whether something is to count as a human right or not. Obviously the debate will be about whether X is an interest fundamental enough to generate a corresponding duty for all individuals and, therefore, it is a human right to have X secured.

But notice the irony: the circularity Tasioulas charges Nagel with also affects his own account. Since he, like Nagel, does not explain why humans have dignity, but simply asserts that these creatures deserve to have their fundamental interests considered. In other words, we have human rights that protect our fundamental interests because we are worthy creatures, and we are worthy creatures because our fundamental interests deserve to be taken seriously.

To my knowledge, this is as far as the orthodox school goes nowadays. Even when people acknowledge that the omnipresent reference to human dignity in all major human rights

documents may be something more than a rhetorical move, and some foundational role is reserved for that notion, it appears that saying something about why we have it remains taboo.

c) *Practice-based View*

Finally, I will say a few words on the third foundational orientation. An increasing number of leading scholars, including John Rawls (1999), Joseph Raz (2010), Charles Beitz (2009), Allen Buchanan (2013, 2015) and Samantha Besson (2015) think that the essence of human rights is to be found in the role they have come to play in the practice of international politics. Specifically, human rights define the limits of state sovereignty and, as a consequence, identify the cases in which the international community (under whatever institutional form it presents itself) has the right to intervene to protect individuals from domestic authorities. Most of these scholars are non-committal regarding the possibility that a moral substratum lies at the foundation of international human rights. However, they believe that nothing essential is left out if we justify HR by looking at the role they have come to play in international practice, without assigning to human dignity any foundational role. The foundation of HR is either the *de facto* universal or quasi-universal acceptance of these limits by institutions around the world or the *acceptability* of the same limits given some non-parochial, non-comprehensive standards.

What is wrong with the political view? Even if one wants to be charitable, some problems seem to stand out as being particularly serious. To begin with, there is room to argue that the political view violates what Joshua Cohen (2006) has called the "fidelity condition." This condition demands that any philosophical account of HR must be faithful to, or at least not too distant from, the way in which HR are introduced in official documents and appealed to by activists around the world. Now, the main HR documents, from the UDHR onwards, all introduce HR as expressive of the intrinsic *dignity* of the human being. In line with the central intuition of natural law and natural rights -- the ancestors of HR, *pace* Moyn (2010) -- these documents construe the normativity of HR as being fully independent of states, institutions, and established patterns of international politics. Precisely because of this independence, HR are thought of as being capable of limiting the authority of states and of providing criteria with which to critically assess existing political realities. It thus seems that practice-based justifications turn the normativity game upside down, making the obligatory force of HR dependent on the existence of the status quo, instead of having the authority of the latter (including the sovereignty of states) depend on the pre-existing normativity of certain rights.

The political view, however, does not need to be rendered so passively, just replicating whatever the practice dictates. Following Rawls's methodology in *Political Liberalism*, scholars like Cohen (2006), Beitz (2009) and Ferrara (2014) point to public reason, in its global version, as the instrument through which human rights can and should be identified and justified. Since global public reason does not simply mirror a *modus vivendi*, but promises to yield an agreement

for the right reasons between comprehensive doctrines at the political level, these scholars think they can avoid the a-critical acceptance of whatever the practice has established. Global public reason expresses the point of view of democratic and decent peoples that may disagree at the comprehensive level but are capable of finding a shared normative basis at the political one. At the same time, precisely because global public reason yields a *shared* political normativity, we can justify the coercive side of HR.

Relying on global public reason, however, is more problematic than it seems. I offer a number of reasons why this is the case in *Kant's Political Legacy*. In this context, I can only mention the reason least noticed by other authors. Let us keep in mind that the perspective of public reason presupposes a willingness and, I would say, a *habituation* to establish a degree of detachment from our deepest comprehensive convictions in favor of a negotiation with other individuals. Not accidentally, Rawls confines the idea of public reason 'to a conception of a well-ordered constitutional *democratic* society' and clarifies that '[t]he form and content of this reason are part of the idea of democracy itself' (Rawls 1999: 131). Public reason hence presupposes a *liberal* attitude toward difference shared by all reasonable citizens, liberal and non-liberal. Non-liberal citizens living in a liberal democratic society are expected to share an ability to adopt, when discussing public and political issues, a viewpoint that is detached from their comprehensive doctrines. One cannot expect the same, though, of non-liberal citizens socialized within non-liberal institutions. Why should they discuss justice (national or global) by adopting a detached viewpoint? Obviously, non-liberal peoples may arrive at the exact same normative conclusions concerning human rights as those that are dear to liberal peoples. In all likelihood, however, they will do so not because they use global public reason, but because of some overlap between the values of HR and the values present in their comprehensive doctrines. Representatives of the dominant religious group in a hierarchical society, for example, may be ready to concede to non-believers something consonant with human rights (say the right to protest against the government). But they will concede it not because they adopt the point of view of global public reason, but simply because the value of tolerance is part of their comprehensive doctrine.

Even in its most sophisticated form, then, it seems that the political view, like the two preceding ones, fails to yield a convincing account of HR, let alone a foundation thereof.

## **2. The dignity approach**

Why do all accounts of human rights so far considered turn out to be, in the end, unsatisfactory? The hypothesis I will explore is that they all lack a crucial ingredient, that is, the simple intuition latent in all major documents of human rights that human beings are *worthy* creatures, despite the atrocities for which they have been responsible. Within 'humanity', by virtue of which, the documents say, we have human rights, there is supposed to be something

extraordinarily valuable and awe-inspiring that serves as an insuperable barrier against certain forms of degradation.

Needless to say, focusing on this alleged kernel of value means overcoming the practical compromise dear to Maritain and Roosevelt according to which we can agree on HR and human dignity “on the condition that no one asks us why”. In choosing this path, I know that my position will appear to be a form of ultra-orthodoxy, or perhaps of ‘foundationalism’, to use Tasioulas’ derogatory label (Tasioulas 2015, 46-47). To make things worse, in construing the required account of human dignity and worth, I take my lead from Immanuel Kant, and even if I quickly diverge from him on a number of crucial points, this choice will still be perceived by many as somewhat bizarre. Among other things, Kant’s account of human dignity seems to rest on his controversial doctrine of our belonging not only to the phenomenal, but also to the noumenal world, a very metaphysical tenet indeed.

Still, a Kantian foundation should not be discarded before one has critically explored its potential. The central thesis, in itself far from original, is that humans have dignity because they are capable of a unique form of freedom, namely autonomy, which allows them to perform actions motivated by what they take as morally obligatory.<sup>2</sup> This autonomy-based account of human dignity is not only at the center of Kant’s philosophy but also – as can be shown - of (a) common sense and (b) of all major cultural traditions and revealed religions, at least when reasonably interpreted. Autonomy, however, is not to be understood merely as the ability to choose one’s path in life, or as the ability to be rational in the sense of purposive agents. With Kant, we refer to a capacity distinct from and ‘higher’ than practical freedom. We have in mind the ability to act under self-imposed moral constraints. Unlike other human features, autonomy is not only peculiar to, or most developed in, the human species. It also has an intrinsic value, as it reveals humans to be capable of behavior that exacts respect. We are not merely self-masters, but also, and most significantly, potentially righteous ones. We are not merely free, but we are free to choose a path of integrity and mutual respect. And precisely because we have this capacity, precisely because morality is within our reach, we are entitled to a degree of respect unfettered by contingent circumstances.

The argument is thus largely inspired by Kant, and yet it shares with Kant only the intuition of a link between a capacity for moral agency and dignity. Further down the argumentative path, I take a couple of turns that make my approach significantly different from any Kant would be ready to endorse. To begin with, I hold that autonomous agency need not be restricted to agency under the auspices of the Categorical Imperative. I argue that authentic, duty-based moral agency occurs even when people act under different moral imperatives, such as the Golden Rule or other well-known moral formulas, including the maximization principle dear to utilitarians. Also, and perhaps even more against Kant, I deny that autonomous agency is a

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<sup>2</sup> Kant suggests the connection between autonomy and human dignity in various passages of his writings. Perhaps the most vocal is to be found in the *Doctrine of Virtue* (MS, 6:434–5).

peculiarity of human animals, defending the weaker thesis that humans are merely capable of this form of agency *to the highest degree of development* in the animal world.

Much should be said to explain this alternative foundation in finer detail, let alone to back it up with solid arguments. However, in the remaining part of the paper I am not going to do that. This is partly because I have done so in a previous publication, and partly because I now think that with any approach similar to the one I am defending, dealing with a preliminary objection takes precedence over any refinement or discussion of other potential difficulties. If we manage to remove this preliminary obstacle, the very idea of making an effort to develop and defend a Kantian foundation of human rights should appear more reasonable. In addition, the discussion of this major objection will afford the possibility to better define the angle of our foundation, thereby salvaging it from very easy misunderstandings.

### **3. Impaired autonomy**

If human rights are grounded on a capacity (autonomy), does that mean that humans who are temporarily or permanently impaired in their cognitive skills do not enjoy the protection of human rights? If that were the case, my foundation would run into a fatal difficulty. Human rights are commonly understood as tools in the hands of the weak to defend themselves from abuses of all sorts by the strong. If we end up denying human rights to people who are particularly weak, like those with mental impairments, then something essential is wrong in my approach.

Fortunately, neither Kant's moral thought nor my foundation is bound to such a counter-intuitive conclusion. First, let us distinguish the cases we are dealing with. In the case of children, one can hardly quarrel with the fact that they are given fewer rights than adults and that this happens precisely for the fact that their rational capacities are not fully developed. For example, children do not have the right to vote because it is assumed that their ability to think autonomously has not developed sufficiently. At the same time, their potential to reach full autonomous status is part of the reason why they have all the other rights (human or not) we usually attribute to people. Actually, sometimes they have certain rights – like access to certain state benefits designed to help their development – that adults do not have. Hence we attribute more or fewer rights to children precisely by using their autonomy (or potential development thereof) as a moral compass.

Analogously, elderly people who have lost in part or fully their ability to think are denied certain rights (think of all the restrictions that come with a declaration of *non compos mentis*) and yet keep other rights because we still respect them for what they were once capable of doing (thinking and acting autonomously). Respecting a rational creature when its capacity for fully autonomous behavior is in place seems to entail respecting her even when she happens to lose - in part or in full – that capacity. Marc cannot be said to be really respecting Charles *now*, when Charles is a fully autonomous agent, if it is understood that Marc can do whatever he wants with

Charles the moment the latter loses his ability to think. If that is the case, then Marc was not respecting Charles even when he was healthy.

The same point can be seen from another angle: Imagine how odd it would sound if I were to tell you: "I respect you because you have this wonderful capacity for moral agency. Hence, I make sure that you enjoy all the rights that come with that status. But also rest assured that the moment that capacity vanishes, I will stop considering you a subject of rights up to the point that you are degraded to the level of animals or the like". One can certainly restrict, as in the previous case, the number of rights one enjoys; it would be odd to defend the right to vote or someone to use her property after *non compos mentis* is declared. Yet, the subject does not lose all her rights. While there is latitude for discussion about precisely which rights (human or not) the person should retain, what matters here is the principle. We cannot ignore her (intact) capacity for suffering, for having interests and needs, without affecting negatively, in retrospect, the way in which we treat her. *Mutatis mutandis*, the same can be said for people who have lost – temporarily or permanently – their ability to think because of illnesses or accidents of different sorts.

A different case is that of people who were born with severely diminished rational capacities that we know will not improve in the future, or with no rational capacity at all. In these cases, I submit, we are permitted to treat these individuals in the same way in which we treat other sentient animals. Then, our respect should be made dependent (and perhaps proportional) to their capacity for suffering, as opposed to being linked to the recognition of a status usually non-amenable to trade-offs and the weighting of other people's interests.

This line of thought is slightly different from the one advanced by Allen Wood (1998) and Onora O'Neill (1998) in dealing with this classical impasse concerning Kant's moral thought. Wood, for example, argues - and O'Neill agrees— that we should abandon Kant's idea that rational nature is to be respected always as embodied in persons. As he puts it, 'my main argument here depends on saying that we should also respect rational nature in the abstract, which entails respecting fragments of it or necessary conditions of it, even where these are not found in fully rational beings or persons. The point I am making is easiest to see, and hardest to deny, in the case of many human beings...who lack 'humanity' (in the technical sense [i.e., rational nature]), and therefore must fail...to be persons at all. They include small children and people who have severe mental impairments or diseases which deprive them, either temporarily or permanently, of the capacity to set ends according to reason.' (Wood 1998, 198). My argument is not that we should respect the fragments of the rational nature these particular subjects embody. Rather, I am arguing that we respect the full rational capacity these subjects have the potentiality to reach or used to embody. It remains an open question (to me at least) whether Wood and O'Neill would agree with my suggestion that these cases are radically different from the ones posed by human subjects who were never and will never be



autonomous.

Be that as it may, in the context of a reply to Peter Singer's account of speciesism, Shelly Kagan (year) has recently made a compelling case to show that one can both identify the source of our worth in rational nature (in my language, autonomy) and be able to attribute to people born with no rational capacity the same protection we attribute to 'normal' humans. While the argument in my opinion ultimately fails, it contains a crucial intuition that helps us to understand better the approach I am defending.

Kagan starts from the premise that the reason we attribute to humans a higher status than animals is not generically what makes us human, but specifically the part of our genetic setting that constitutes us as *persons*, which Kagan loosely defines as rational capacity and self-awareness. We can see this when we realize that we tend to attribute the same degree of moral consideration to entities that are seen as similar to persons, but are not human. We do not think, to use his example, that an evil act against Superman or E.T. is less of a problem because these two individuals are not human. The offence is serious because Superman and E.T. are *persons* in the specified sense, or at least we take them as such.

This intuition, that I fully share, shows why people who believe in human rights (at least conceived along the lines I have suggested) do not need to be speciesist, and this is a major advancement for which Kagan has to be credited. In fact, rights that are supposed to be conferred on individuals merely by virtue of their belonging to the human species do seem to be rely on some form of speciesism. But Kagan's brilliant way to reveal that what we value in humans is not their bare humanity but what we called their personhood removes this danger.

It should be noticed, though, that Kagan does not use his analysis to arrive at what seems to be the *natural* conclusion regarding humans who were born with no rational capacities. Instead of saying, as I do, that these humans are not persons and therefore are not entitled to human rights, he argues that, while it is true that these individuals are not 'persons', they are nonetheless members of a 'persons-species', that is, of a species that *most of the time* displays in its members the required features of personhood. It is in virtue of this belonging that these members deserve – thinks Kagan -- better treatment than primates or animals in general.

This conclusion, however, is highly problematic. If members of a species have a value *merely* by virtue of belonging to that species and by virtue of what the species *normally* displays, but, by definition, these individuals lack, it is not clear why we should grant them the same protection we reserve for individuals endowed with the relevant features. Paradoxically, it seems that one could do so only through the endorsement of that speciesism from which Kagan's modal personism was supposed to be sharply distinguished.

In a very recent article, Andrea Sangiovanni has moved a criticism to the dignity approach that resonates with the one we have just addressed, while adding new twists that deserve attention. Sangiovanni argues that we may be autonomous, but not all *to the same degree*. As he puts it,

“some individuals’ capacity to act morally are very high – on average and in normal conditions, they display great moral strength, resoluteness, resilience, and courage – whereas others’ capacities are very low. So, if dignity resides in the (awesome) capacity to act morally, then why should not those with greater moral capacities have greater dignity, and therefore higher status?” (Sangiovanni 2019). This conclusion would obviously be in stark contrast to what Buchanan (2010) called the egalitarianism of human rights. Moreover, Sangiovanni warns against a possible easy way out. If we say that the difference individuals display in moral behaviour is insufficient ground to deny that we all have the same capacity, but simply that we exercise it more or less often, or more or less well, then ‘we seem to have departed very far from a common-sense view of what a capacity is, and to have won the argument at the price of a highly controversial metaphysical view’ (Sangiovanni 2019, 000).

How can I reply to this modified attack? To begin with, it is important to realize that autonomy in my reading is ‘simply’ the capacity to overcome all sensuous impulses if that is necessary to act morally. I do not want habits, ‘second natures’, developed in an Aristotelian way through exercise, to be part of autonomy. It is simply not what I mean. To be entitled to the status that confers human rights, in my theory, you simply need to pass a minimal threshold. This threshold is precisely that you can overcome all your impulses. Now, is it ‘self-evidently false as a matter of fact’ that all human beings have that ‘minimal’ capacity? I do not think so. And certainly Kant thought differently. Through his famous example, in the second critique, of the man threatened to provide false testimony against an innocent prisoner, and in general through his admittedly controversial and yet compelling theory of the ‘fact of reason’, Kant appeals to the immediate consciousness that each of us has of possessing this capacity. To build on Kant’s example, we do not know whether we *would* be courageous enough to resist the threat of the powerful man to do what morality commands, but we all know that we *could*. We immediately perceive that the gap between thinking that this is the right thing to do and actually doing it is not too large for us. Kant thinks that we know that as a undeniable fact about ourselves. Now, I do not claim that this immediate consciousness is a rock-solid basis for proving that the opposite view is ‘self-evidently false’. After all, short of the possibility of appealing to evidence, and given that we are not talking about an *a priori* truth, could there be such an argument? I am happy with the result that, construed in the minimal way I just described, autonomy is not at all far away from personal experience and common sense. We find it any time we reflect on what we could do if forced into the shoes of the poor man threatened into giving false testimony.

The point can perhaps be further illustrated by a thought experiment. Let us imagine that we have to judge a woman who has stolen property but claims to be affected by kleptomania. It seems that we only have two options: either we believe the story and consider her insane, hence not responsible for the crime, or we do not believe her and, independently of all the possible mitigating circumstances we may acknowledge, we find her guilty. We do not say that

her autonomy (and therefore her accountability) was depleted. We do not punish her because she did not develop past moral fortitude. We either say that she was free/autonomous, hence responsible, or we decide that she was sick, hence not responsible because she was not an agent at all. Moreover, if we decide that she is guilty, we do not make the gravity of punishment dependent on 'how autonomous' she was but on how pressing were the sensible motives that inclined her towards that kind of behaviour (she was hungry, needed the stolen property for the wellbeing of her children, and the like). It seems to me that this is the way we usually reason about people and their responsibility, and I think that a minimal, non-scalar conception of autonomy is an integral part of this way of thinking. If that is the case, perhaps my account (and Kant's) is not as removed from common sense or as helplessly metaphysical as Sangiovanni seems to believe.

Finally, is this minimal conception of human autonomy compatible with my making room for animal autonomy, that is for different degrees of autonomy *among species*? I think it is. While I tend to attribute a certain degree of moral agency to non-human primates, I do not suggest that they reach the ability to silence all their natural impulses, that is, that they reach the minimal threshold of autonomy. One can talk about 'animal autonomy' but this is nothing but a rhetorical way of expressing the point that animals *approximate*, without reaching, the capacity of 'pure' agency. In fact, I attribute to animals the capacity of self-sacrifice (how could one deny that to dogs, for example?), but this is different than acting autonomously. Animals seem to sacrifice themselves because the empathic impulse to save their master or their offspring can be stronger than the instinct of survival. In contrast, humans are supposed to make (or to be able to make) a conscious and relatively detached deliberation about their course of action. In animal morality it is just this conscious, free, reflexive endorsement of such an act that seems to be missing.

The upshot of my reply to Sangiovanni is thus that, on the one hand, a focus on autonomy does not compromise the egalitarianism of human rights. We are not making human rights dependent on moral fortitude as a well-developed and practised virtue, but on the existence of a minimal capacity equally shared by all humans, with the sole exception of people born with no or profoundly diminished rational capacity. On the other hand, no matter how liberalized our conception of autonomy is compared to the original Kantian one, our approach still has the resources for drawing a line between humans and animals, at least until we have reason to believe that some animals have reached the ability not merely of making selfless, heroic acts, but of choosing freely to do so.

## **Conclusion**

The dignity approach is an attempt to remedy the shortfalls of the contemporary foundation of human rights' normativity, no matter whether carried out in an instrumentalist, non-instrumentalist or political manner. It should be seen as an attempt to take the idea at the center

of the culture of human rights seriously, namely that there is something called human dignity and that human rights derive from it. The argument grows from Kant's intuition that we are worthy creatures because we can act merely for the sake of duty, even in extreme circumstances. Compared to the alternatives at our disposal, the dignity approach enjoys the significant advantage of facing the real challenge that any foundation of human rights cannot afford to ignore, that is, of saying something about the reasons why the interests of human persons matter and why not all institutional settings are compatible with the status human beings have in this world. This approach is deeply controversial, and it lends itself to a number of serious objections that await further research for satisfactory answers. However, the resources to rebut them are not as limited as people seem to assume, as my reply to the impaired autonomy objection was intended to show. In addition, the same reply reached the non-insignificant, almost surprising result that an approach resting on Kant's notion of personhood saves human rights from the charge of being the quintessentially speciesist class of rights. It turns out that we have human rights not because we are part of the human species, but because we have a certain capacity, which simply happens to be embodied by most members of the human species. Finally, we have shown that a focus on autonomy is compatible with the egalitarianism of human rights and does not commit us to attribute human rights to animals.

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