

Recent Works on Dignity and Human Rights: A Road Not Taken

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Dignity in Adversity: Human Rights in Troubled Times. By Seyla Benhabib. Cambridge: Polity, 2011. 288p. \$69.95 cloth, \$24.95 paper.

Human Rights as Social Construction. Benjamin Gregg. New York: Cambridge University Press, 2012. 272p. \$99.00 cloth, \$27.99 paper.

Human Dignity. By George Kateb. Cambridge, MA: Harvard University Press, 2011. 256p. \$22.95.

Dignity: Its History and Meaning. By Michael Rosen. Cambridge, MA: Harvard University Press, 2012. 200p. \$21.95.

The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics. By Kathryn Sikkink. New York: W. W. Norton, 2011. 352p. \$27.95 cloth, \$25.62 paper.

Making Rights Claims: A Practice of Democratic Citizenship. By Karen Zivi. New York: Oxford University Press, 2012. 176p. \$99.00 cloth, \$24.95 paper.

Today the concepts of human rights and human dignity have become “conjoined twins.”¹ Dignity is ubiquitous, invoked in discussions of everything from the ethics of stem cell research to dwarf tossing (a near obsession among writers on this topic) and the pro-democracy demonstrations in Cairo’s Tahrir Square. Prominent philosophers and political theorists—including Ronald Dworkin, Jeremy Waldron, James Griffin, Jürgen Habermas, and Rainer Forst—have recently used human dignity to ground or expound upon their preferred philosophical conceptions of human rights. If nothing else, these are good times for Giovanni Pico della Mirandola, whose 1486 “Oration on the Dignity of Man” is trending.

While this surge of interest in human dignity is noteworthy in itself, I shall not attempt to trace its origins or to provide an overview of the concept’s various contemporary uses.² Instead, I want to consider what recent works on dignity reveal about the study of human rights within our discipline. When I began my graduate studies nearly 20 years ago, human rights were still in the margins of political science; today they have become central to it. Within political theory, human rights figure prominently in debates on justice, democracy, and

accountability; in world and comparative politics, rights are studied by scholars working on diverse topics, including security, development, political economy, international law and organization, social movements, norm diffusion, and comparative democratization. Only the subfield of American politics remains largely indifferent to human rights.

Despite this mainstreaming of human rights within political science, theoretical and empirical research on the subject remains stubbornly segregated. Empiricists typically treat the normative importance of rights as self-evident, while normative scholars typically neglect the boisterous political life of rights in their search for the elusive *justification* or *moral foundation* that they remain persuaded are lacking. This division is outmoded and counterproductive: The politics of human rights might well hold clues to their appeal and legitimacy, providing an alternative route for apprehending their normative character; likewise, their normative character seems indispensable for making sense of the politics and institutions they enliven.

Dignity seems to illustrate this point vividly. Not only is it a hot topic in political theory—five of the six volumes under review here are written by theorists—but recent events have thrust it to the forefront of today’s politics. To name just a few examples: Dignity has been frequently invoked in the Arab uprisings, by peasant and indigenous movements from various parts of the globe, and in antiausterity politics in Europe (think of Spain’s tellingly

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named *indignados*). Yet if dignity points in the direction of the integrated study of human rights within political science, it is a signpost for a road (so far) not taken.

These books, at least, mostly bypass it—and mostly to their detriment. George Kateb and Michael Rosen take the well-traveled philosophical route; rather than a bridge to politics, dignity for them becomes a kind of bypass of it. Benjamin Gregg and Kathryn Sikkink take different constructivist paths: Gregg's leads him inadvertently back to philosophy; Sikkink's takes her right to the bridge, but she misses the turn. Only Seyla Benhabib and Karen Zivi explore this road, with Zivi venturing a little farther. Still, their work offers a map to an integrated political science of human rights.

Kateb begins his *Human Dignity* by declaring that the defense of rights at present requires little theoretical articulation (pp. 1–2). Why, he asks, “make trouble by defending human rights at length and make worse trouble by claiming that human dignity is the basis, or part of the basis, for human rights?” (p. 2). His answer is a little surprising, especially in light of his admission that “actual progress in realizing human rights . . . has often come about without much need or use of theoretical assistance” (p. 3). Kateb believes that opposition to human rights from the radical Left, from utilitarians, and from virtue ethicists—all of whom are on the side of the great majority of the people—must be reckoned with. (The surprise is that these objections have been thoroughly addressed in 20-plus years of scholarship.)³ This project positions him as indifferent to the politics of dignity and human rights: there are by his own admission no practical problems to be solved here, and he is willing to risk making trouble for human rights in the pursuit of his theoretical ambition.

Dignity, Kateb argues, provides an existential ground for respect for human rights independent of the moral grounds for respecting them. This is not to deny a close relation to morality. The point is, rather, that “for many people, and rightly, morality has to do solely or principally with human suffering; but human dignity in its concern with status and stature has to do with the proper recognition of the identity of every human being and the identity of the human species” (pp. 12–13). Morally, rights reduce suffering; existentially, they recognize the identity of all people as humans of equal status (p. 22). Violations of human dignity have existential weight independent of suffering itself, Kateb maintains, weight that lies in the phenomenon of *degradation* (p. 16). To be treated as *not human* is importantly different from suffering (p. 17). So while the moral component in the defense of rights (concern for suffering) is necessary, it is not sufficient (p. 33). The existential component (concern for dignity) adds two dimensions to this defense: First, it highlights a particular attitude toward human beings manifest in the infliction of suffering. Second, it empha-

sizes the diminishment or deformation that people experience when they endure harsh and needless suffering (p. 36); this dehumanization often leads to rights violations (p. 39). The author illustrates these points in an enlightening discussion of Aldous Huxley's *Brave New World*, a dystopia in which there is no immorality but in which human dignity is nonetheless effaced (pp. 40 ff.).

Kateb mostly ignores the intriguing political implications of his arguments, sticking with his theoretical defense of human rights. How and how much his arguments help remains unclear; they certainly do not do much to answer the leftist critique (they are somewhat more useful against the utilitarian and virtue-ethicist challenges; see pp. 91 ff.). They do, however, make trouble for proponents of economic and social rights, in three ways.

First, Kateb rejects absolute Lockean ownership rights, calling “[claims] to a completely unregulated and barely taxed right of property” unacceptable (p. 52). He further asserts that “the right of life can be the basis to circumscribe the right of property, so as to help many stay alive and in conditions that are not miserable, and not die before their time from preventable causes” (p. 52). Moreover, since property is not quite the same kind of right as other rights, taxing it, “especially for relief of the poor,” represents no genuine conflict of rights (p. 52). The author may regard these statements as supportive of social and economic rights (though more in reply to critics on the Right, it seems); in any case, his Dickensian vocabulary and attitude toward “the poor” have the unhelpful ring of nineteenth-century charity appeals.

Second, Kateb argues that “the major human rights are found most purely and economically stated not in recent charters but in the US Constitution” (p. 28). This could only conceivably be true if social and economic rights do not count among the “major human rights,” since the Constitution is silent on them. He has a legitimate concern about the statist implications of recent charters, which permit the derogation of rights in times of national emergency or in the public interest (p. 29). But defining human rights—and, by implication, human dignity—as unconnected to social and economic rights is unhelpful (to say the least) to advocates and unlikely to blunt leftist criticism of them as “bourgeois rights.”

Third, in discussing claims of global distributive justice, Kateb argues that a just society must defer the great achievements that contribute to human stature and instead focus resources on addressing poverty. Yet the equation is different with respect to *global* poverty. Kateb doubts that “the claims of stature in the form of great achievements *in the present* can be sacrificed to the project of redistributing as much wealth as possible to alleviate global poverty.” He sees “an important difference between initiating and maintaining an exploitative policy or

condition . . . and neglecting to redress it when one does not have direct responsibility for it” (p. 183). On a charitable reading, this argument might permit the redistribution of *some* wealth (if not *as much as possible*) and, assuming an expansive, critical understanding of *direct* responsibility, license significant global poverty-reduction efforts. Still, this position is even more insular and radical than the social liberalism of theorists like John Rawls and David Miller.⁴ Kateb effectively accepts global poverty as the price we pay for great achievements. It is unclear to me how he figures these sums—and how much existential affirmation impoverished people find in monuments or space stations.⁵ Again, Kateb is not doing global antipoverty advocates any favors here; if anything, he is fueling leftist critiques of human rights. That said, he certainly delivers on his pledge to make trouble by defending them.

Arguably, Kateb’s principal aim is to give a defense of human dignity based in human stature. His “justification” of humanity is itself remarkable, and I present it in his words: “[T]here is no species like humanity. It is capable of doing not just a few remarkable things that no other species can—the same is true of many other species—but an indefinitely large number of remarkable things that no other species can” (p. 113). “Only humanity can perform the three indispensable functions: keep the record of nature, understand nature, and appreciate it. The human species, alone among species on earth, can perform these services to nature on earth and beyond” (p. 114). Performing these functions is the only thing that could justify humanity in the eyes of an external judge, “which perceives with the most complete understanding, cannot be self-interested (or not only so), and must devote itself to what is real and not itself, and do so with the high intellectual and aesthetic virtues of magnanimity, wonder, and gratitude” (p. 113). This judge (upholding the highest human standards) would appreciate that “nature, understood as distinct from humanity, would be worse off without it because humanity can do for nature in the comprehensive sense—the earth and the universe—what must be done, but cannot be done otherwise than by humanity” (pp. 113–14). In case our stewardship of nature is not enough, “it is also the case that . . . the human species can receive another nonmoral justification—justification by great achievements—that does not depend on the ability to be selfless, as toward nature” (p. 115).

The problem with great achievements is that they are premised upon treating “the great mass of people poorly”—hence, the trade-off between justice and pyramids. This is partly because “the innate ability of human beings to contribute to great achievements appears to be unequal” (p. 174). In fact, democratic culture, which precludes violations of rights in the service of great achievements, thereby “[jeopardizes] human stature” (p. 175). Kateb conceptualizes this historical tension as

a conflict between *dignity as status*, which requires equal treatment, and *dignity as stature*, which requires massive social inequalities in the service of humanity’s “great achievements.” His rueful conclusion is that while democrats can ignore past violations of rights in celebrating human accomplishments, today we must prioritize rights (domestically, anyway). Kateb tries to console himself by mustering some enthusiasm for the achievements of American culture in the humanities (he frequently equates “democratic” and “American” throughout the book), but this is about the most he can manage: “films made for smaller audiences are complex and subtle enough to deserve a long life. I do not want to quarrel with that or with the greatness of some jazz” (p. 203).

It is hard to assess this second argument, which is at times brilliant, bombastic, creative, curmudgeonly, sublime, self-indulgent, and, frankly, a little bizarre. I shall make only two points. First, justifying human existence by reference to our stewardship of nature, given current trends, is a bit like foxes justifying their existence by citing their protection of henhouses. Besides, by Kateb’s own admission, *nature* has no idea we are recording or understanding or appreciating it; this justification reflects the same species arrogance that, it seems to me, has put us and our planet on an expressway to ecological calamity. Second, it is telling that Kateb finds the political commitment to equal human status insufficient to condemn the evils of degradation and to justify human rights. His appeal to human status and great achievements betrays profound misgivings about democracy.

Rosen’s *Dignity* also posits a close theoretical connection between dignity and human rights. “Dignity is central to modern human rights discourse,” Rosen observes, “the closest that we have to an internationally accepted framework for the normative regulation of political life, and it is embedded in numerous constitutions, international conventions, and declarations” (pp. 1–2). Yet despite this prominence, Rosen regards human rights as “*obviously* deeply puzzling—almost everyone nowadays professes commitment to them, yet few people would claim that they had a good, principled account of what they are and why we have them” (p. 54; my emphasis). Unlike Kateb, Rosen is skeptical whether dignity can help make the case for human rights; in the end, it is unclear whether he thinks human rights make a case worth helping. He certainly doubts that any of the three important historical meanings of dignity—as status or rank, as a “transcendental kernel” of incomparable moral worth within all human beings, and as appropriate, graceful comportment (pp. 11–38)—can provide a “good, principled account” of human rights. Such an account has three requirements. It must “explain and justify the claim that all human beings share ‘inviolable’ dignity and that they are ‘free and equal’ in that dignity”; “show that it follows from this that they also have inviolable and

inalienable rights”; and, “identify what those rights [are]” (p. 54).

Rosen suggests—in direct opposition to Jeremy Waldron⁶—that status will not get us very far in this respect. Although Kant’s transcendental kernel looks more promising, Rosen rejects it as well (on which more later). The notion of dignified bearing, by contrast, he finds more promising than it seems. Pursuing this prospect, he develops a fourth interpretation, one that yields a right to have one’s dignity respected; while this is a very important right, Rosen concludes, it cannot provide a foundation for rights in general (pp. 55–62).

One of Rosen’s main arguments is that none of the received understandings of dignity can adequately ground human rights. I have no particular quarrel with this conclusion, but I find the question more revealing. His search for philosophical foundations for human rights is motivated by the worry that without them, human rights are somehow incoherent or untenable. Human rights must presumably lack adequate foundations at present; otherwise there would be no point to the search. Yet by Rosen’s own admission, human rights are accepted by almost everyone; are embedded in many constitutions, treaties, and deliberations; and provide an international normative framework for regulating politics—they are neither incoherent nor untenable. So it is hard to see why, exactly, human rights need philosophical foundations. Indeed, some proponents of human rights regard their lack of clear philosophical grounding as essential to their political viability. As Jacques Maritain, a prominent member of the UNESCO committee that drafted the Universal Declaration of Human Rights, famously remarked: “Yes, we agree about the rights, on the condition that no one ask us why.”

Rosen apparently sees little connection between the evident empirical success of human rights and their normative status or grounding; in this respect, his study reflects and perpetuates the division in the discipline. He does consider at length some recent legal cases involving dignity, among them the (in)famous Wackenheim (dwarf-tossing) case and several framed by Germany’s constitutional recognition of dignity as a fundamental and inviolable principle. Even here, however, Rosen’s primary interest is in the Kantian “transcendental kernel” view, which he finds inadequate because it cannot explain or justify the various rulings he considers. Questions about the political fallout from these rulings or their effects on the legitimacy of rights are ignored.

The argument is anyway rather odd. The German high court might claim that it is relying on a Kantian kernel view, but if its decisions seem inconsistent with or poorly explained by this view, that is a problem for the court, not the kernel—unless Rosen can provide some independent basis for concluding that the judgments are correct but their reasoning flawed. Otherwise, it could be that the court has simply failed in properly interpreting the kernel

or adequately articulating its relevance in a particular case. Rosen proposes that his own interpretation of dignity, with its emphasis on “the value of the symbolic or expressive aspects of our behavior toward others” (p. 126), makes better sense of what the court is doing. This might be right, and it might reflect what the court is really thinking, but it leaves the kernel uncracked.

The last part of the book considers the question of whether we owe respect to corpses and fetuses—or, more generally, whether “we owe such duties [of respect] only to persons” (p. 128). Rosen finds the “universally held belief that we have a duty to treat dead bodies with respect” deeply puzzling and important for moral philosophy. He asks whether our duty to respect the dignity of humanity has to benefit anyone and whether it is a duty owed to anyone, concluding that it does not and is not (p. 140). In answering these questions, he develops a duty-based conception of morality based in respect for humanity, a conception that he argues we should also attribute to Kant: “[I]nstead of starting from the question what maxims can be universalized without contradiction, it would be better to understand Kant as asking first how we have to act in order to treat our dignity (our inner kernel of intrinsic value) with the proper respect” (p. 147).

I am in no position to say whether this would in fact be a better interpretation of Kant. I do wonder, however, whether this formulation—which boils down to something worryingly like an injunction to treat our dignity with dignity—really does much work. Rosen’s other formulations seem equally empty: For instance, dignity “requires that we behave in ways that ‘honor’ or ‘respect’ humanity in our person” (p. 153), a requirement that he concedes provides “no clear test or set of criteria” for determining appropriate action (p. 155). The criteria are apparently clear enough to resolve the corpse question, however: “we might have [a duty to respect humanity] toward things—corpses or fetuses, for example—that are not themselves human and will not benefit from our behavior toward them,” even if we abandon Kant’s transcendental perspective (p. 157). Rosen avoids direct engagement with politics, sticking to Kant and corpses and remaining coy about what respect for fetuses entails. This is a shame, because the politics of abortion, stem cells, torture, or other contentious examples of dignity politics might enliven and fortify his rarefied discussion. Instead, he cruises along on his philosophical fly-over, ignoring the numerous off-ramps that would give him access to political points of interests on the angry, congested surface streets below.

One might expect the two self-avowedly constructivist works under review here to handle the integration of normative and empirical aspects of human rights more deftly. After all, constructivists are broadly concerned with the creation, diffusion, and effectiveness of norms (and other things). Yet as Gregg’s *Human Rights as Social Construction* and Sikkink’s *The Justice Cascade* show,

constructivist work often takes place on one side or the other of this divide. The expectation of integration arises from the casual association of constructivism with *norms* – which can refer either to an empirical phenomenon in the world or to the normativity (the “oughtness”) of a concept. In international relations, most constructivist work on human rights falls, like Sikkink’s, on the empirical side of the divide, philosophical constructivism like Gregg’s on the normative side. The problematic features of this divide are clear in these two otherwise engaging books.

Gregg rejects traditional philosophical approaches to human rights as “theological” and “otherworldly” (p. 3) and seeks a “social constructionist” alternative. I find most of his critique of metaphysical conceptions of rights insightful and persuasive. His chapter on the incompatibility of global human rights with the nation-state as presently conceived and configured is a must-read for all serious students of human rights. That said, I have reservations about his “human rights project” and about the political fallout from it.

What Gregg calls social constructionism (constructivism) entails that we regard the objects of our analysis as products of human social interaction—that we treat the “facts” in question as socially determined and variable. He rejects Rawlsian-style philosophical construction, which builds up conclusions from moral assumptions, as hopelessly metaphysical, detached from social and political reality. Gregg attempts to use social constructivism to explain the universal validity and bindingness of human rights—a bold attempt, given that social constructivism is frequently aligned (if not allied) with cultural relativism. He tries to square this circle through the idea of contingent empirical universality, which essentially says that human rights will become universally binding only if all communities willingly embrace them. Their local acceptance becomes a possible empirical basis for a future, though contingent, universality. Gregg offers a vision of human rights as noncoercive and nonimperialistic, based on locally valid norms but potentially universal (pp. 135 ff.). On his account, human rights inform a proper understanding of dignity, rather than the other way round. He dismisses conceptions of dignity invoked by philosophers, seeing them as examples of the “theological approach to human rights” that he hopes to overturn (p. 17). In his account, “the traditional notion that some persons possess dignity becomes the posttraditional idea that all persons possess it” (p. 46). Dignity is thus situated within and shaped by the “political, social, and legal categories of recognition in local communities (and potentially across communities)”; rather than reflecting some metaphysical essence, human dignity becomes a political achievement (p. 46).

All of this is quite appealing and seems like just the kind of integrated normative and empirical approach I have been calling for. Unfortunately, things go wonky in the follow-through. Gregg seems mainly interested in

providing an account of human rights that he thinks could or should command future consensus, rather than in studying local understandings of rights or exploring possible terms of their translation and negotiation. Instead of investigating the local bases for the acceptability of rights and seeking similarities and potential bridges among them, he offers his own eclectic grounding, drawing on neurobiology and a doctrine of assertive selfhood (pp. 91–99) to construct a highly idealized account. He even explains how activists might develop “indigenous” interpretations of rights as he understands them (p. 141). In the end, this is less a book about human rights as a social construction than it is about how to construct human rights along the lines Gregg thinks or hopes will attract universal support—a philosophical construct with assembly instructions.

In a further irony, Gregg’s social constructivism yields an account with no politics in it: He describes the work that politics *might* do in advancing the ideal human rights project but pays no attention to the present politics surrounding human rights or to how politics might impede the human rights project (without *almost* any consideration of politics, I should say). Apparently to advance his account’s acceptability, Gregg makes some puzzling and worrisome concessions on democracy and on women’s rights.⁷ Briefly, Gregg disputes Jürgen Habermas’s claims about the co-originality of democracy and human rights and questions Jack Donnelly’s assertions about democracy’s importance for the effective realization of human rights (pp. 97–98). The author wants to insist that human rights can emerge even in nondemocratic societies, and so they can, but he confuses the conditions of rights’ emergence with the requirements for their maintenance, wrongly concluding that human rights neither need nor require democracy. On women’s rights, Gregg condones women’s inequality and subordination so long as the women “embrace” it.⁸ He argues that “a community that discriminates against some of its members in ways that do not constitute persecution, and in ways accepted by those discriminated against, should be respected in its choice and organization” (p. 22). If “respect” here simply rules out invoking women’s rights as a pretext for military adventurism, fine. Gregg, however, wants to “rule in” baselines for women’s rights that fall well short of social, political, or economic equality and that license women’s subordination and relegation to the private sphere.⁹

The broader question is why an ideal account like Gregg’s should sacrifice *anything* on the altar of acceptability. He insists that his approach enables a critical stance on our culture and on others, yet I cannot see how these concessions are consistent with such a stance or how they can be reconciled with the conceptual architecture of his theory. (How, for instance, does women’s subordination square with the assertive selfhood at the foundation of

human rights?) If, as Gregg avows, “[h]uman rights can be legitimate for any community that comes to embrace them” (p. 158), why presume that democracy and women’s rights are somehow especially problematic? Greater attention to the political claims and struggles of feminists and of opponents of authoritarianism might have helped him avoid these difficulties.

Sikkink provides a very different constructivist reading of human rights. She recounts the emergence of the “dramatic new trend in world politics toward holding individual state officials, including heads of state, criminally accountable for human rights violations” (p. 5). The justice cascade does not indicate that perfect justice is being done or will be done, Sikkink stresses, and it does not mean that most perpetrators of human rights violations are being held criminally accountable: “Rather, justice cascade means that there has been a shift in the *legitimacy of the norm* of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm. The term captures how the idea started as a small stream, but later caught on suddenly, sweeping along many actors” (p. 5). She recognizes that this cascade is hardly inevitable, and the book is her attempt to determine how and why it developed.

Unlike the other titles under review here, *The Justice Cascade* is primarily an empirical study. Sikkink’s vast knowledge and experience and her distinctive narrative voice make the book both accessible and deeply personal, and it is full of insights and largely persuasive. It is also somewhat unusual among empirical studies in taking a clear ethical stance on its subject matter (in advocating prosecutions). The author notes that in the view of most (empirical) political scientists, doing so compromises one’s objectivity and undermines the credibility of one’s research. For a long time, she writes, she thought that addressing ethical questions would require her to “[s]top being a researcher and become a moral philosopher” (p. 229; I assume she meant to say something more like “give up on my own present research agenda”). Now she has “identified an approach that [lets her] combine attention to both normative issues and empirical research findings” (p. 229). This approach is consequentialism, which she defines as the view that “knowledge of the expected consequences is important for helping to make hard ethical choices” (p. 230). Prosecutions are good if they promote democracy and stability.

It is not clear whether this consequentialism explains the spread of norms of accountability, however. Sikkink understands norms as standards of appropriate behavior that carry a special quality of “oughtness”—which, I argue later, cannot be explained on consequentialist grounds. Norms are intersubjective, and often only a small number of people share them; they can spread rapidly, or cascade, when norm entrepreneurs push for their widespread recognition (p. 11). The justice cascade refers only to

individual legal accountability for human rights violations, though this norm is nested within wider global movements: the “human rights revolution” and the related push for transitional justice (p. 16) made possible by the third wave of democratization and the end of the Cold War (p. 24).

Three streams feed this cascade: domestic and foreign prosecutions of human rights violations, international prosecutions, and the “streambed of hard law,” made up of international human rights conventions (p. 97).¹⁰ The book traces the origins of each stream, carrying us from Greece and Portugal, whence domestic prosecutions did not diffuse, to Argentina and Latin America, whence they did; from Nuremberg and Tokyo to the ad hoc tribunals for Yugoslavia and Rwanda and the Pinochet case; and from the Genocide Conventions and Geneva accords of the late 1940s through the conventions against Apartheid and Torture in the 1980s. These streams have merged into what Sikkink describes as a decentralized, interactive system of global accountability whose most notable features are the doctrine of universal jurisdiction and the creation, via the Rome Statute of 1998, of the International Criminal Court (97 ff.).

The book tackles three big questions related to this cascade: The first concerns the origins of new ideas regarding individual criminal accountability for human rights violations; the second concerns how and why some ideas and practices become norms and diffuse; the third concerns the effects of human rights prosecutions (p. 230).

With respect to the third question, Sikkink challenges the skepticism about human rights trials that pervades the conventional wisdom and scholarly literature on political transitions. This skeptical view fears that the threat of prosecution spurs the bad guys to entrench themselves ever more deeply in power and inculcates damaging political instability (pp. 130–60). She finds little evidence to support these anxieties; in fact, her own data show (though not definitively) that human rights trials are beneficial for democracy, contribute to the rule of law, and promote political stability—this is the consequentialist case for trials (pp. 229 ff.).

With respect to the second big question, Sikkink argues that to explain why change happens, we need to pay attention to “how agents—that is, real people and organizations—promote new ideas and practices” and how, over time, these can create a “new understanding of the ways in which states ought to behave, and new understandings of the national interests of states (p. 237). This account, which she describes as “agentic constructivism” (p. 237), accommodates top-down diffusion and bottom-up and horizontal diffusion, both of which figure into the justice cascade (though the book focuses on the former).

Sikkink’s answer to the first big question is that systemic shocks and changes in the domestic balance of power account for the origins of new ideas about individual criminal accountability (p. 245). Curiously, this reads

more like a further explanation of norm diffusion than like an account of the origins or appeal of new ideas. I think that the cascade metaphor is implicated here: One can trace the streams that feed a cascade back to their sources, noting their particular paths, but this does not explain why they flow in the first place; to know that, we have to get under the surface. Put differently, explaining the diffusion of norms is not an empirical question of tracking their proliferation; it also has to do with the nature and appeal of the norms themselves—with their “oughtness.” On the author’s account, this cannot be a function of their consequences; we can only know these *after* the norms diffuse.

Sikkink acknowledges this difficulty indirectly, at the book’s end, when she asks “why certain ideas at certain moments in certain places, resonate, grab attention, and become possible”—a problem she calls the “single most difficult” one raised in her analysis (p. 261). This, finally, is a direct engagement with the first big question. Sikkink argues that issues involving bodily harm are the most likely to fuel “transnational activist campaigns because such wrongs resonate across cultures and societies. The crimes for which individual criminal accountability is sought involve exactly this subset of violent bodily harms” (p. 255), owing to the obvious injustice they involve. She also makes frequent reference to the “intrinsic power” of new norms and to the “inherently appealing” ideas that animate prosecutions (p. 231). She claims to find nothing puzzling in the intrinsic appeal of the human rights idea—the idea that “almost everyone would prefer to be alive than dead, free than imprisoned, secure than tortured, fed than hungry. Core human rights norms have resonated so profoundly in the world in part because of this intrinsic appeal” (pp. 261–62). She complains that “while psychologists can speak of . . . a ‘moral instinct,’ this is still heresy” for political scientists (p. 261).

There are two problems here. First, this kind of bootstrapping *might* be enough to ground protections against murder, torture, and arbitrary imprisonment, but it seems radically insufficient in the case of more controversial rights. What if “almost everyone” does not agree about the importance of press freedom or reproductive rights or the dignity of lesbian, gay, bisexual, transgender, and queer people or the right to health care or an adequate standard of living? Second, if Sikkink really thinks that human rights are matters of moral or psychological fact, why does she find it so hard to account for their diffusion? Why does she find it “surprising to watch how uniformly human beings—even those embedded in cultural scenarios that tell them otherwise—believe that they are entitled to something better” (p. 262) when they experience human rights abuses? Indeed, if human rights are inherently powerful, intrinsically appealing, moral or psychological facts, why are they not ubiquitous, self-executing? Sikkink’s answer is power (p. 235). This is

plausible enough, but it calls for a much more fully developed moral psychology to explain why the intrinsic appeal of human rights and the moral instinct is absent or deficient or overwhelmed in some individuals, why human rights norms (rather than some other ones) prove useful and appealing as tools to counteract power, and how persuasion and diffusion work in the case of “non-obvious” rights. Such an account, if it is available, spans the normative and the empirical.

The final two books I consider make the turn toward an integrated account of human rights, though both have only begun down this road. In *Dignity in Adversity*, Benhabib takes up, like Gregg, questions about the validity of universal human rights norms in local settings. She conceptualizes the problem primarily as one of reconciling cosmopolitan norms with territorially demarcated, democratic popular sovereignty, an approach that raises many questions. For instance, is a *demos* of the kind she imagines necessary or justifiable on democratic grounds? Is this binary framework of the universal and particular adequate for making sense of *transnational* and *supranational* legal and policy issues—those that involve or cut across many *demos*, not all of which share the same presuppositions about the validity of cosmopolitan norms? Is this depiction of the global political economy and world system conceptually and empirically rich enough to provide significant analytic leverage on the problem of social and economic emancipation that Benhabib believes is central to the struggle for human dignity (pp. 192 ff.)?¹¹

Dignity’s marquee status notwithstanding, it makes only rare appearances in the book. Nonetheless, there is a conception of human dignity at work throughout these essays in the idea of communicative freedom, which Benhabib anchors in an enlarged understanding of Hannah Arendt’s “right to have rights.” Benhabib argues that a political justification of human rights presupposes what she calls justificatory universalism, which requires “the acknowledgement of the communicative freedom of the other, that is, of the right of the other to accept as legitimate only those norms as rules of action of whose validity she has been convinced with reasons” (p. 11). This acknowledgment rests in turn on moral universalism, which is “equal respect for the other as a being capable of communicative freedom”—the right to have rights (p. 11).

Benhabib insists that this moral universalism does not determine a specific list of rights “beyond the protection of the communicative freedom of the person” (p. 11). That protection, however, entails quite a lot. It would, she argues (p. 127), “minimally” include

the rights to life, liberty (including to freedom from slavery, serfdom, forced occupation, as well as protecting against sexual violence and sexual slavery); the right to some form of personal property; equal freedom of thought (including religion), expression, association, representation, and the right to self-government.

Furthermore, liberty requires provisions for the “equal value of liberty” (Rawls), through the guarantee of some bundle of socio-economic goods, including adequate provisions of basic nourishment, shelter, and education.

In accepting Habermas’s discourse principle (p. 129), Benhabib envisions a “veto” for all citizens and residents that allows them to “demand that the conversation of justification resume and not be terminated unless their objections have been voiced, listened to, and resolved upon” (p. 159).

Benhabib argues that her account avoids metaphysical entanglements because it is a “presuppositional” analysis of rights. What this means is basically that my recognition of your right to have rights is a precondition of (presupposes) your being able to contest and accept my rights in the first place. I have my doubts whether this argument holds up, but I leave those worries aside here. The much more interesting parts of the book, I think, are those in which the author discusses how rights create a normative universe of meaning. She argues that the profusion of human rights law and treaties and the uptake of human rights norms by actors outside formal legal and legislative arenas facilitate new forms of public claims making and anticipate “new forms of justice to come” (pp. 15, 125). Benhabib calls this the “jurisgenerative” potential of rights.¹²

“Democratic iteration” is the process through which this tension between the unity and diversity of human rights is worked out—that is, in which the relation between the moral core and legal form of rights is articulated and negotiated (p. 73). Through public iterations of will and opinion formation, rights are appropriated and contextualized by democratic communities (pp. 73–75); rights acquire legitimacy—though not validity—through the exercise of democratic popular sovereignty (p. 118), which exercise itself presupposes the communicative freedom that rights both enable and express (p. 74).

The contrast with Gregg’s approach is illuminating. He attempts to erase the tension between universal and particular by defining the universal as the sum of the particular: human rights attain universal validity only when they command local validity everywhere. Benhabib, we might say, seeks to inhabit rather than to resolve the tension, to work out how universal and particular inform each other in processes of negotiating rights. This analysis is most penetrating and illuminating when Benhabib attends to the generative power of cosmopolitan norms and focuses on the potential for rights- and justice-enhancing iterations (as well as pathological ones) in the give-and-take of democratic politics. This “cosmopolitanism without illusions” (p. 16) highlights how rights and identity get negotiated and renegotiated through political contestation and how this process can bestow legitimacy on rights in particular contexts—as illustrated in an illuminating discussion of debates surrounding secularism and the public wearing of headscarves in France, Germany, and Turkey (Chapter 9).

Critics have questioned whether democratic iteration is a normative or an empirical concept; Benhabib’s reply—that it has both empirical and normative components, “as all ‘legitimacy’ concepts since Max Weber attest to” (p. 151)—leaves unclear whether she understands the concept to be *descriptive*. She often writes as if it were—for instance, in characterizing democratic iterations as “[involving] complex processes of public argument, deliberation, and exchange through which universalist rights claims are contested and contextualized, invoked and revoked, posited and positioned throughout legal and political institutions, as well as in the associations of civil society” (p. 16; see also p. 182). At other times, however, democratic iteration is deployed as “a normative concept with empirical import” that allows us to judge contentious discourses according to normative criteria deriving their justification from communicative ethics (p. 16). So, while democratic iteration refers to the processes of collective self-appropriation of cosmopolitan norms through which rights lose their parochialism, it also provides the critical standard for assessing whether genuinely democratic iterations are occurring: “democratic iterations themselves presuppose some standards of rights [those entailed by communicative freedom]” (p. 129).

As this discussion indicates, there is an unresolved tension in Benhabib’s account between democratic iteration as a normatively laden empirical description of processes of contestation and claims making around rights and as a critical normative standard for evaluating those processes and their outcomes. On the one hand, democratic iterations are supposed to describe processes through which universal or cosmopolitan moral norms are collectively self-appropriated (legitimated) by communities through democratic discourse and contestation. On the other, the rigorous standard for assessing a community’s process—for determining whether the democratic iterations are genuine or legitimate—is precisely the norms whose legitimacy *for that community* is supposedly established through this iterative process itself (cf. 130).

Democratic iteration is a powerful and very promising concept, and Benhabib’s discussions of real-world struggles over the meaning of rights are often deeply insightful. Yet I worry that in conflating the descriptive and the critical in this way, her cosmopolitanism remains under the spell of an illusion after all: that what is actually happening in real disputes over rights is what discourse ethics tells us ought to be happening in idealized discourses about rights. Put differently, Benhabib’s cosmopolitanism imagines that discourse ethics dissolves the tension between foundationalist approaches to rights and political ones; Karen Zivi labors under no such illusions in *Making Rights Claims*. In this wonderful book, she argues—against the pervasive foundationalist tendency in the literature—that instead of worrying about what rights are and what rights people have, scholars should focus on what rights do

(p. 9). That is, Zivi proposes to investigate and theorize the process or activity of rights claiming itself in seeking to grasp more firmly the normative and political significance of rights. In this respect, her approach is similar to Benhabib's: She views the tension between rights and democracy not as a problem to solve but, rather, as a relationship to understand anew (p. 7).

In seeking to apprehend rights claiming as an activity, what Zivi calls *performativity*, she “[draws] on the speech act theory of J. L. Austin and the writings of some of his contemporary interlocutors,” including Jacques Derrida, Stanley Cavell, and Judith Butler (p. 14). The key insight she takes from this conversation is that speaking, writing, and other communications never merely reflect our world but always also (re)produce it (p. 14). Performativity is (necessarily) conventional, insofar as what we mean *in* making an utterance is comprehensible only within a context or framework of conventions in which it is performed. Yet performativity can also be unconventional: What we mean *by* making an utterance can call into question or otherwise subvert existing conventions (pp. 16–19). These unconventional performances, Zivi argues, are valuable for democracy because they cannot be captured by any set of rules, they open up rather than foreclose political possibilities (p. 19). A performative understanding of rights claiming undermines the familiar view of rights as trumps, a view she finds pervasive and problematic.¹³ Seeing rights as trumps means treating them as if they create sure winners or guarantee particular outcomes. This perspective inevitably disappoints, as in fact rights often fail to deliver the hoped-for results. Politics is contingent and conflictual, and outcomes are never certain (pp. 36–42). Foundationalism limits our understanding of what people do and mean by claiming rights.

We can see this, Zivi argues, by recalling that political activity often aims to be persuasive (pp. 46–47). On the performative view, rights claiming becomes an intersubjective practice of persuasion, and as such it relies on both reason and emotion (pp. 118–19). As we engage with others in politics and persuasion, she maintains, we share our perspectives on the world, taking into consideration as we do so the views and feelings of others in our community. In the author's gloss on John Stuart Mill, it is “through this contestation and engagement with differences of perspective that one comes to be fully human” (p. 59). The meaning and power of rights derive from the engagement and openness that rights claiming entail rather than from any outcomes they deliver (p. 67); this process is valuable for democracy not because of the results it guarantees but because of the practice that it engenders (p. 121).

This conceptualization of rights claiming also undermines a familiar critique of rights focused on their pernicious effects—their disciplinary power, their reproduction of the status quo, their foreclosure of politics.

These critiques are less wrong than incomplete on Zivi's view; they miss the unpredictability and the transformative potential of rights claiming. Invoking the discourse of rights *does* replicate disciplinary power and reproduce existing rules and conventions, but she also highlights the unpredictability of rights and their transformative potential. Despite their conventionality, rights can be used to open up spaces, to introduce new perspectives, and to challenge traditional norms (pp. 78–81). Rights claiming is a kind of permanent provocation (p. 112).

In Chapters 4 and 5 of *Making Rights Claims*, Zivi discusses the debate over California's Proposition 8 and activism around HIV/AIDS in the United States and South Africa, respectively.¹⁴ Through her analysis of Proposition 8, she further explicates what makes rights claiming a particularly democratic practice, showing that it provides a language through which people can articulate, enact, and sometimes even transform our understandings of who we are as citizens and as a community (p. 22). Her reading of activism around HIV/AIDS pushes this insight, demonstrating how “rights claiming allows previously marginalized individuals to take part in the important practice of speaking and acting in public and to create new forms of political subjectivity. . . . [T]he democratic potential of rights-claiming lies not necessarily in the laws or politics it engenders or in bringing closure to a particular political debate but in the fact that it allows individuals silenced by illness, class, race, and other factors to unite and engage in acts of democratic citizenship that shift the very meaning of democratic community” (pp. 22–23). This is a superb example of enriching dialectical engagement between the normative and the empirical.

One question I have concerns what happens when rights claims fail. Of course, what failure means on Zivi's view is not straightforward: even when rights are not (immediately) recognized in law or policy, claiming them can nonetheless have important constitutive effects. Still, these effects might prove ephemeral if the broader politics in which they are embedded fails to take hold, fails to transform the status quo. In what conditions is the democratic potential of rights most often realized or solidified? When and why is it thwarted? Answering such questions would require Zivi to engage more directly with power, to become even more empirical in her understanding of the normative character of rights. An important limitation of Zivi's work is its implicit assumption that rights claiming takes place within the boundaries of established political communities, making its application in transnational or deeply pluralistic contexts unclear. Here Benhabib's approach might provide a useful model: By identifying democratic iterations at the boundaries of communities or that involve members of different or overlapping communities, she foregrounds questions of inclusion and exclusion. Zivi might benefit, and benefit us, by thinking through such boundary questions and by

exploring how conflicting political ties, linguistic and ethical traditions, or cultural understandings influence the performance of rights claims and their effectiveness.

Both Zivi and Benhabib locate the democratic potential and value of rights claiming *in the practice itself*; Zivi in particular gives us a thoroughly *political* account of rights. Their work points us toward an integrated normative and empirical political science of human rights. By way of conclusion, I want to sketch such an approach and the understanding of dignity it entails.

An integrated political science of human rights would look for the meaning and significance of rights in practices of democratic rights claiming and the politics they generate in particular contexts. Rather than a philosophical puzzle, the normative character of rights would become an object of empirical study, of how their meaning is articulated, translated, and reconfigured across time and space and how they come to work (or not) in specific contexts. Such studies would situate the diffusion of human rights discourses and practices within a pragmatic understanding of rights as tools useful for making certain kinds of politics. This approach would also identify the legal and institutional arrangements that foster democratic rights-claiming practices and examine the effects of variation in those arrangements and vice versa. All of this would require the cooperation of scholars working in various research traditions using normative, qualitative, quantitative, and even formal methods of analysis.

I began by suggesting that dignity might be a bridge connecting normative and empirical work on human rights. It is perhaps ironic, then, that the most political of the five normative books under review, Zivi's, does not articulate a conception of dignity at all. There is nonetheless a strong and very appealing notion of dignity animating her work, one linked to her conviction that political engagement makes us fully human and appropriate for the kind of integrated approach I have been advocating. By embracing the openness, the uncertainty, the provocation, and the transformative potential of rights claiming, Zivi shows how people might find dignity in politics as it is, not as it should or could or might be. She gives us the resources to understand the dignity of the marginalized and the oppressed without appeals to metaphysics, discourse ethics, the intrinsic power of rights, and so on.

On this view, dignity does not depend on recognition by others, on court rulings or prosecutions, or on great achievements—though it might be enhanced and solidified through all of these. Dignity is within everyone's power; we can constitute ourselves as dignified human beings, collectively and individually, through political engagement. That we might not succeed in achieving solidarity, realizing our rights, winning our cases, gaining the respect of others, or ending our oppression does not

make us any less human or make the struggle for rights any less meaningful politically. Dignity is no impregnable philosophical fortress; it is the constant building and rebuilding of the defenses that we can muster against the inhumanity in our world. It is, as Gregg correctly saw, a political achievement.

Notes

- 1 Schroeder 2012.
- 2 For a good survey, see Misztal 2012; for dignity's uses in contemporary legal discourse, see Barroso 2012.
- 3 Kateb pretty much ignores recent work in political theory altogether. He refers only to about 33 works written since 1993, six of which are popular news articles and one of which is a collection of poems; only a handful of works on human rights are among them.
- 4 E.g., Rawls 1999; Miller 2007.
- 5 I am reminded of Lord Curzon's construction of a lavish monument to Empress Victoria in Kolkata amidst a dire famine caused largely by imperial policy in India that killed millions; see Davis 2001.
- 6 Waldron 2012.
- 7 Cf. Beitz 2009. Why do constructivist and practice-based accounts have so much trouble with women and democracy?
- 8 In criticizing this view, I leave aside obvious problems to do with consent.
- 9 Gregg professes concern with women's welfare in health, marriage, and the public economy, ignoring how such arguments have been used historically to limit reproductive rights, subordinate women to their husbands' wills, and justify their confinement to the private sphere as a prophylaxis against moral contamination.
- 10 Foreign prosecutions occur in the domestic courts of countries other than those in which the violations took place; international prosecutions occur in ad hoc or permanent international tribunals (e.g., the International Criminal Tribunal for Yugoslavia and the International Criminal Court).
- 11 For an attempt to address such challenges within the framework of discourse ethics, see Bohman 2007. For attempts based in democracy, see Goodhart 2005 and Gould 2005.
- 12 The idea of *jurisgenerative* resources is a little misleading: Cosmopolitan norms on Benhabib's account are much broader than the law and have broader effects. In *Another Cosmopolitanism* she describes cosmopolitan norms as "morally constructive: they create a universe of meaning, values, and social relations that had not existed before by changing the normative constituents and evaluative principles of the world of 'objective spirit.' They found a new order" (Benhabib 2006, 72). I think this more expansive formulation better captures what she has in mind.

- 13 Zivi maintains that many theorists who seemingly eschew foundationalist approaches to rights—including Amartya Sen, Michael Ignatieff, and Benhabib—actually remain committed to some version of the view that rights are instrumental and that rights claiming is “a rule-bound practice that can be mastered” (pp. 35–36).
- 14 Proposition 8, until it was overturned recently by the Supreme Court, banned same-sex marriage in California.

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