

Replies to my critics

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I wish to express my gratitude to Joel Thiago Klein, María Guadalupe Martínez Fisher, and Ileana Beade for their comments. They read my book with attention and competence, benevolently acknowledging my efforts to use Kant's scholarship for intellectual clarity and – to a lesser extent – practical guidance in relation to some of the pressing political issues of our time. In the following, I will try to address the major critical points they honored me by raising.

1. Joel Thiago Klein

Klein first notices that within a Kantian perspective the very notion of a 'human right' is problematic, something which would discourage an attempt such as mine to defend the viability and robustness of a Kantian theory of human rights. The problem lies in the fact that Kant suggests, in the *Metaphysics of Morals*, that the authorization to coerce can be analytically inferred from the very notion of right. As Kant puts it «there is connected with right *by the principle of contradiction* an authorization to coerce someone who infringes upon it» (MS, 6: 231, my emphasis). Since human rights, 'pace' Sangionvanni and other scholars of political orientation, are most of the times considered as normatively binding even if there is no coercion associated with them, either because no coercive authority exists or because it fails to act for a series of reasons, including political prudence, it would seem that Kant could not have a notion of human *rights* in line with this traditional conception.

The first thing to notice here is that the very same critical point could be raised, not against an attempt such as mine to build an authentically Kantian theory of human rights, but also against Kant himself. In fact, Kant talks of an «innate *right*» that clearly holds before the constitution of the civil state, hence before the constitution of any coercive authority. And, as Klein himself recognizes, something similar could be said about cosmopolitan *right* that Kant leaves without institutional protection as he grows more and more suspicious not only of the possibility of having a world state but even of having the modest surrogate of an international federation endowed with coercive powers. This should already invite caution in taking the analytic connection Kant suggests in the sense of a denial that one can meaningfully talk of a right even if no coercive authority is in sight. I think we need here a fundamental distinction between authorization to coerce and availability of institutional or quasi-institutional mechanisms to act on that authorization. When Kant suggests the analytic connection Klein insists on, he might be indicating 'merely' that if there is a right, with it comes an authorization to coerce anyone who violates that right, regardless whether this authorization is picked up by an individual or, more likely within a Kantian framework, by an institutional authority. In other words, affirming the analytical connection between right and coercion seems to be compatible with saying that a right remains a fully legitimate right even if the authorization to coerce those who violate it cannot be enforced by an institutional authority that may still await to be constituted. In all

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events, assuming a stricter interpretation of that analytic connection entails attributing to Kant sheer and insurmountable inconsistency regarding two of the most important notions of his political thought: the notion of innate right and the notion of cosmopolitan right. Or perhaps of three of them, if we take seriously Kant's late insistence on the opportunity for the federation in charge of enforcing international right to have no coercive powers and to be dissoluble at any time. It follows that I do not think that when Kant comes closest to the notion of human rights (in his section devoted to the innate right to external freedom), he should change his language and talk more modestly about a human value, a sort of moral desideratum or a requirement of civility deprived of legal substance.

The next point Klein raises concerns my 'soft' notion of autonomy, that is, my claim – which I take as a departure from Kant – that actions do not need to be inspired by a maxim resembling in some way the categorical imperative to be considered as autonomous. Interestingly, instead of criticizing me for making the standards for autonomous agency too flexible, Klein thinks that Kant himself had no intention to tie autonomy closely to the categorical imperative. This, Klein continues, is just a philosophically rigorous way of expressing the moral law which all human beings know quite well, even if they never heard of the categorical imperative. After all, Kant would not deny that people who consciously assume the Golden Rule as supreme principle of their conduct are not autonomous only because they have not seen the shortcomings of that admittedly imperfect yet far more accessible and popular formulation of the moral law. Ultimately, the project of the *Groundwork* is that of achieving a better formulation of the moral law, not to explain to all the decent people in the world that they fooled themselves to be truly moral simply because they had not read that philosophical work yet.

I fully share Klein's point, as far as it goes. Certainly, Kant never thought that a condition for truly autonomous behavior was the perfect knowledge of the philosophically rigorous formulations of the moral law we find in the *Groundwork*. I simply want to emphasize that my attempt to detach autonomy from the moral law is more radical, with all the risks associated with it. In fact, I hold that not only people who follow the Golden Rule, but also those who consciously follow a tradition or a religion in orienting their lives, even if characterized by some controversial moral principles, may be autonomous. What interests me is the human capacity to ignore one's own interests for the sake of some greater cause, even if this greater cause is not 'doing what is right because it is right' or the like. Just to give an example, I think that the Christian martyrs who refused to worship the emperor to avoid the persecutions carried out by the pre-Constantinian Roman authority were sacrificing their lives not because they had the Golden Rule in mind, let alone the Categorical imperative, but out of a freely chosen obedience to their God. And I want to say that their conduct is as autonomous as the conduct, to use Kant's famous example, of the person who does not give in to the threats of a despot and refuses to give false testimony against an innocent man just because he thinks this is the right thing to do. More in general, and quite in line with common sense, I think that any sacrifice of one's interests for the sake of a greater cause is a potential act of autonomy. And I say 'potential' because two conditions need to apply for that act to be truly autonomous. The first is that there should not be, hidden behind the greater cause, some sort of unconscious selfish interest. This possibility was well known to Kant and I concede, as he does, that we can never have certainty about this. The second condition is that this greater cause must pass minimal moral standards. In the book I introduce this condition to avoid what I used to see an evident problem connected to my liberalized standards of autonomy, that is, the impression that I could end up considering as an autonomous hence moral act even actions that were certainly not inspired by self-interest and yet clearly wrong by any reasonable moral standard. I gave the example of the Nazi officials who refused to surrender to the allies in Berlin out of an attachment to their wretched ideology. To be frank, I am no longer certain that my theory needs to avoid this counterintuitive outcome. In other words, I am now inclined to think that even that act by the Nazi officials should be construed as an autonomous act and that we can legitimately admire it without compromising in the least our strict and profound reprobation of

the intrinsic merits of the cause that inspired it. Finally, and less problematically, I think that we need to be more ‘liberal’ than Kant about the standards of moral behavior to be able to hope that our autonomy/dignity based conception of human rights is sufficiently consonant with the diverse moral sensitivities of the world. As I try to show in chapter three, there is room for saying that all these traditions consider individual autonomy, at least in my liberalized understanding, as a central component of human value, while it is less clear that they would agree on the specific Kantian requirement that an action is to be chosen ‘for the sake of duty’ to have any moral value.

The second criticism Klein reserves for my account of autonomy is that I was too quick in considering Kant and Darwin as incompatible in their accounts of human beings’ place in the universe *vis à vis* other species. If Kant had had the opportunity to read Darwin, he would have welcomed it as an advancement of our scientific view of humans. This however that would have not taken away the necessity to adopt a different, noumenal perspective to make sense of human morality. In short, even if our progenitors were monkeys, still we would have to adopt a non-scientific perspective on human beings at this point of the evolutionary trajectory to do justice to their morality. I am ready to concede, for the sake of the argument, that a compatibility between Kant and Darwin could be skillfully construed, but I remain skeptical that Kant would be so comfortable in blurring the distinction he makes between *arbitrium brutum*, that he reserves to animals, and *arbitrium liberum*, that he attributes to humans. Kant sees this as a difference in kind rather as a difference in degree. I think the opposite and I side with the thesis that humans ‘enjoy’ an amount of freedom from their impulses greater than the one conceded to animals, even to primates, and take distance from the view that animals are fully deprived of autonomy and therefore of morality. I doubt that Kant would concede that much. After all, it is true, as Klein reminds me, that Kant thinks that humans are not the only autonomous entities in the world. Nonetheless, the other rational creatures he has in mind are closer to angels than to monkeys.

The only point Klein raises about the second part of the book is not so much a criticism of my position, rather of my endorsing a Kantian position that Klein finds problematic. The point concerns the limits of the domestic analogy and in particular one of the arguments Kant offers to ground these limits. Let me recall the argument:

While natural right allows us to say of men living in a lawless condition that they ought to abandon it, the right of nations does not allow us to say the same of states. For as states, they already have a lawful internal constitution, and have thus outgrown the coercive right of others to subject them to a wider legal constitution in accordance with their conception of right (ZeF 8: 355–356).

To sum up: individuals in the state of nature can be coerced to enter a state. States, in virtue of the fact that they have a lawful internal constitution, have no similar obligation to enter a supranational institution. The problem with this argument is that Kant does not explain why the fact that states have a lawful internal constitution makes them immune from the obligation in question. The point certainly cannot be that in the state of nature among individuals we have a condition of anarchy while in the second the domestic lawful condition of the various states makes the international community less anarchical. Even less the point can be that individuals in the state of nature are deprived of a moral standing while states (perhaps in virtue of their lawful internal constitution) have it. In the state of nature Kant attributes to individuals a crucial moral right, the innate right to freedom. Moreover, as Klein points out, if individuals were not conceived as entities with some moral standing, they could hardly be parties that agree on a contract. Rather, the point seems to be that, unlike individuals in the state of nature, states have a juridical status that imposes on other states a duty to respect their decisions, in particular that of entering the «wider legal

constitution» or not. But again, what is it in this ‘juridical status’ that justifies states’ immunity from the duty to overcome international anarchy?

I think Klein makes a solid point here and I admit that I should have explained better the reasons in favor of a limited analogy, quite independently of whether Kant had these in mind. I do not have the space here to deal adequately with this complicated point. Let me just suggest that there may be a crucial difference in the two cases mainly turning on the different impact a coercion to abandon unlimited freedom has on individuals and states. The impact is different, I suggest, because, unlike individuals, states are artificial entities, which as such are under a threat of dissolution that individuals do not face. If other people coerce me to enter a civil condition, my identity as a separate natural entity with an independent will is not at risk. If a state is coerced to abandon its unlimited freedom, most importantly the option of using violence to affirm itself *vis à vis* other states, the threat to its identity is significantly higher. It is as if an entity that was constructed out of a pact among individuals to act with a will subject only to the terms of the agreement reached among individuals were now subject to a constraint not originated in the pact but ‘coming from outside’. Individuals have created an artificial entity and now an external force substantially modifies the nature and prerogatives of that artifice. I am not sure how far this disanalogy goes, but I am quite sure that there is one. Also, I am not sure how much pointing out this disanalogy does justice to Kant’s thought. Something along these lines, I think, is latent in Kant’s point that a state of states would annihilate the subordinated states. But I do not know how well Kant’s point about the juridical status of states (the passage cited above) is captured by the disanalogy I have highlighted. In any event, Klein’s puzzlement is fully legitimate because I should have explained the point better in the book.

It is perhaps about the interpretation of *Idea* that Klein and I most disagree. I am not convinced that his reinterpretation of the first three theses of that work are faithful to the text. He proposes a reading in which all those propositions establish is the human capacity of moral behavior and moral improvement through learning. Klein is right in thinking that Kant needs both theses to establish the possibility, if not the necessity, of perpetual peace. And yet I simply believe that i) the first three propositions of *Idea* say much more than what Klein reads in them, and that ii) this additional content is both unnecessary for Kant’s argument and in itself helplessly attached to a view of the natural world influenced by the biology of his time, by now fully surpassed.

In relation to the first point, to argue that «*All natural predispositions of a creature are determined sometime to develop themselves completely and purposively*» (1aG: 18) is to argue that i) each creature, or better each ‘species’, has a set of prefixed, God-given specific dispositions, and ii) nature makes sure that these dispositions develop completely. The second proposition adds the idea that iii) the disposition of the human species is reason, and the third the idea that iv) the full development of reason can take place only in society. In other words, there is an intelligent mother nature that assigns to each species a prefixed disposition and further decides that this disposition is going to develop fully. In addition, mother nature is also careful to provide the means for this full development. In the case of the human species, it forces humans to leave in society, thereby allowing the full development of reason.

Let us set aside the fact that, as I show in the book, this whole talk of natural dispositions, influenced by Blumenbach, is hardly compatible with Darwinian biology, in which species do not come to the world with a set of natural dispositions but simply develop their genetic package out a fortuitous encounter with the environment. The central point is that this view, quite independently of its merits, says a bit more than what Klein assumes, namely that humans have «capacities or abilities, and that there is nothing in the structure of the world or nature that prevents them from being realized». This last claim does not say anything about the origins of these ‘capacities’; it does not presuppose a caring mother nature (everything may be the result of sheer chance). In fact, one may easily accept this last tenet and reject the former; it is not even committed to the idea that the ‘chief’

capacity of the human being is reason. In other words, if all Klein thinks is necessary for Kant's argument is what he suggests, I agree with him. But, I insist, this means to throw out of the window, as they deserve, the first three propositions with the dogmatic teleology they originate from and rest on.

The last point of Klein's reading I can discuss in this limited space is his suggestion to introduce a distinction between a theoretical and practical teleology in Kant. Klein agrees with my 'theoretical' teleology but insists that Kant has and also needs a practical one. My theoretical teleology is the idea that in *Idea* and elsewhere Kant gives us some compelling, albeit non-conclusive, *theoretical* reasons to believe that human affairs have a tendency to approximate the cosmopolitan condition Klein says that these reasons are not sufficient to convince the sceptics or those who do not perceive their duty to work for the sake of perpetual peace. They are of service only to back up the determination of those political agents who already feel this obligation. Moreover, on Klein's interpretation, Kant wants to attach to the theoretical teleology I defend a kind of *practical certainty*. And Klein explains that this is the account of hope, as a practically grounded expectation, Kant alludes to in various parts of his work. I have no objection to this. Leaving aside all the possible merits of 'practical teleology' the point that interests me is to highlight what is usually hidden in all accounts centered on the practical necessity of hope. Kant has a very interesting story to tell us that is displayed fully at the theoretical level and tries to establish a certain propensity in the system of human affairs through what I call systemic analysis. I am aware that, given the immense complexity of the system under consideration, a complexity exacerbated by the possibility that the objective circumstances of the world in which this system finds itself may not be constant as Kant (and I) assume, it may seem foolish to attempt a proof of that sort, even if construed in a probabilistic as opposed to deterministic language. And yet, I think that hiding this bold part of story impoverishes Kant's view of history in a rather depressing way. I simply resist the idea that all Kant has to tell us about progress is exhausted by the familiar idea that assuming that peace is realizable is a duty for us, or that he is simply trying to avoid the self-fulfilling tendency of all pessimistic predictions. I think that Kant gives us a solid theoretical hint, if not a basis, to believe that progress is the natural (not necessary) outcome of our collective actions, something which is of course compatible with an emphasis on the importance of morality (and of the practical teleology that comes with it) to increase the chances that what would be the natural outcome is not subverted by an excess of evil dispositions (and some stupidity) on the part of humans.

2. María Guadalupe Martínez Fisher

Fisher has a general criticism concerning my ability to remain within an authentically Kantian perspective after having severed moral agency from the categorical imperative. Ironically, this is the same point raised by Klein, but Fisher takes it from the other end. While Klein criticized me for failing to appreciate how Kant himself never meant to make the categorical imperative definitional of moral agency, Fisher thinks, quite the opposite, that the same suggestion makes my theory so far from Kant that one cannot even call it inspired by Kant. On this point, I can refer back to what I said in response to Klein. Ultimately, I agree with Fisher that my departure from Kant is here quite substantial, but I think that the ultimate idea, that perhaps I should grant is more Stoic than Kantian, of a strict connection between duty, the ability to act from it, the moral law on the one hand, and human dignity, on the other hand, is sufficiently close to the intuitions of our philosopher to allow me to talk, at least, of a Kantian inspiration in my thinking. This much is certain. I take the idea from Kant. Whether I transform it to the point that it loses all resemblance with the original, I leave it to the reader to decide.

Fisher also raises two more specific points. The first one turns around the question whether the way Kant formulates and applies the Universal Principle of Right (UPR) contains the elements we need for a foundation of human rights. Fisher is skeptical because i) UPR is not valid for all human beings, but only for the citizens of a certain state, and ii) Kant's distinction between passive and active citizens seems to run counter what Allen Buchanan calls the (intrinsic) egalitarianism of human rights, i.e. a strong commitment to protecting an equality of status. My answer here can be quite brief. Concerning the first point, let me say that the 'universal' principle of right applies to every human being qua citizen, independently of the particular community they happen to be a member. Hence, UPR's reach is not as limited as Fisher seems to think. Concerning the second question, the central point is the following. Since I side for a moral foundation of human rights (after all, mine is an orthodox or perhaps ultra orthodox foundation), I take myself as legitimized in using Kantian concepts that are either intrinsically moral or sit interestingly halfway between the domain of morality and that of law. In particular, I use the concept of an innate, pre-political right to external freedom, which, as I try to show in chapter one of the book, analytically brings with itself other 'authorizations' central to the culture of human rights, among which the equality of status. It follows that whatever Kant says about right, from its supreme principle down to the most specific rights and duties of the *Rechtslehre* does not affect the pre-political entitlements Kant assigns to human beings (the innate right to external freedom) that my foundation exploits. It also follows that all the embarrassing positions endorsed in the *Rechtslehre* that Fisher recalls to prove how Kant's thought is distant from the values definitional of the human rights culture – discrimination between passive and active citizens, death penalty, Talion law, denial of the right to resistance, reduced penalties for murder of infants born outside of marriage – do not say anything about the usefulness of Kant's general view of human beings and of their innate entitlements for a foundation of human rights. Obviously, there could be, and I believe there is, a problem of compatibility between these pre-political entitlements and the juridical discriminations that Kant allows among citizens, but this is a problem of internal consistency for Kant. It is neither a problem for my foundation per se nor for its Kantian pedigree. I do not see why I could not select those tenets in the Kantian corpus that are most promising for the sake of a foundation of human rights, while discarding others, especially if I, being a good orthodox, start from a moral view of human beings to ground certain basic rights they have, quite independently of the way in which the law (Kant's or others') treat them.

3. Ileana Beade

Beadé organizes her comments in two main parts. She starts with a thorough reconstruction of the main points I make in the book. Towards the end she offers some critical remarks. On her reconstruction, let me just notice that I do not rely on public reason in my foundation of human rights. This is what Rawls and the Rawlsians *à la* Joshua Cohen do, but I criticize this political approach both in its general form and in the specific forms it takes in the hands of these authors. Let me recall here the section of chapter three (91-95) where I show why public reason is not a good tool for identifying, let alone grounding human rights. Let me also recall that when I deal with the compatibility between the value of individual autonomy and the major religious traditions of the world, I do not refer to public reason. In fact, I do not expect from these traditions an ability to bracket their fundamental commitments in the search of some common 'political' value. I rather attempt to show that each tradition is committed to value individual autonomy as a moral value, not, as Beade suggests, as a political one.

This clarification may be relevant also to discuss (more than reply to) Beade's point about tolerance. She argues that I appeal to tolerance as a political value, not as a moral one. Again, I think this is incorrect. To begin with, let me say that I seldom if ever use the notion of tolerance. But this is not important because my commitment to tolerance can be inferred from my commitment to the value

of individual autonomy, which brings with itself a commitment to value pluralism and thus to tolerance. Terminology aside, though, it is important to realize that I appeal to the moral, not the political face of the value of autonomy/tolerance. Let me give an example. I do not expect Muslims to tolerate non-Muslims simply because they adopt the perspective of public reason. I expect Muslims to tolerate non-Muslims because they interpret their God as protecting the freedom of all individuals to choose their religion. And this is not a political conception of tolerance. This is an appeal to a thick value that I assume is part of an interpretation of Islam backed by textual evidence. And I give some references in the sacred texts of Islam (and *mutatis mutandis* of other religions) to prove precisely this point. Something similar could be said about my implicit commitment to the value of a 'limited' tolerance, that is, to the idea that we can tolerate much, but not all, and in particular not those who impose their views and ends on us. Beade seems to acknowledge that much when she realizes that I argue for the compatibility between the culture of human rights and the Islamic faith 'reasonably interpreted'. But she seems to consider this a piece of rather extreme optimism that can be salvaged only through the allegedly Kantian idea that one must hope that perpetual peace is realizable not because one has empirical data to believe it, but mainly because it is our duty to believe it. I do not want to discuss whether it is correct to attribute this position to Kant. I simply want to stress that, in the third part, I side for a view of the historical progress as resting not just on the duty to believe in it, but on some theoretical reasons that suggest how progress in human affairs, measured in terms of approximation to perpetual peace, is an outcome more likely than regress or stagnation.

Of the third part, however, Beade mainly criticizes, like Klein, the separability thesis, namely my suggestion that one can believe in the mechanism of social unsociability without committing to the first three propositions of *Idea*. Beade laments that I did not explain enough how the first thing could stand without the second. I think I described how social unsociability, at least interpreted in the secular manner I propose, rests on few central facts about the human condition such as the following: i) humans are forced to live together for a series of reasons, ii) they are naturally led to compete for scarce resources, and iii) they have an understanding that enables them to learn, after a series of tragic experiences, that they can reach their goals more efficiently through peaceful means rather than through war. Regardless of the merits of this argument, I think it is quite evident that it does not rest on the theses on the alleged natural disposition of the human species Kant presents in the first three theses. Quite evidently, for the above mechanism to work, nature does not need to endow all species with a specific goal and the human species with the goal of developing reason. Perhaps Beade, like Klein, sides for a minimal reading of these first theses, according to which where all they convey is nothing more than the idea that humans have a capacity for moral learning. As I said in the case of Klein, I think this minimal reading is charitable to Kant, but simply does not do justice to the text.

Even if this is true, however, one of the points Beade makes deserves more attention. Against my separability thesis she argues i) that Kant's theses that humans have natural dispositions and that they are unsocially sociable animals can be both seen, not as dogmatic tenets derived either from theology or outdated biology, but quite simply as anthropological theses. As a matter of fact we humans are rational and unsocially sociable creatures. As such, the natural disposition thesis would be no more dependent on a dogmatic notion of providence than the social unsociability thesis. I share the spirit of Beade's suggestion and yet it seems to me that an epistemic gap remains. Once again, to say that at this point of the evolutionary trajectory humans are capable of reason and moral learning is one thing. To say that nature has conspired from the very beginning to make humans into this sort of beings and still works to perfect this species is quite another. Hence, either we adopt the minimal reading Beade and Klein suggest, but then we no longer talk about Kant's first three propositions; or we are faithful to the text but then we need to explain why the social unsociability thesis could be easily accepted by a contemporary sociologist while the thesis resting on natural dispositions would be considered with suspicion, to say the least, by a contemporary biologist.