

## REPLY TO MY CRITICS.

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I would like to express my deep gratitude to Alessandro Pinzani, Cristina Foroni Consani, Milene Consenso Tonetto, Robinson dos Santos, Aylton Barbieri, Delamar José Volpato Dutra, Andrea Faggion and Joel Thiago Klein for commenting with competence and rigor on my book. All my critics raise important questions and offer me the opportunity to clarify and hopefully strengthen my thought. Some criticisms overlap, and I will signal to the reader when my replies are directed to more than one scholar. In the limited space I have at my disposal, I am afraid I can address only some of the points my critics raise. However, I will make an effort to select those that promise to be most damaging to my interpretation, as opposed to those that are easier to deal with.

### ALESSANDRO PINZANI.

Like most critics, Pinzani focuses his attention on the first part of the book, devoted to my Kantian foundation of human rights. The main problem he sees is my focus on Kant's notion of autonomy, which we both understand as a specific capacity for moral behavior (*Wille*), not as a generic capacity to set ends for oneself (*Willkür*). Pinzani notices that Kant never uses this notion in his philosophy of law (*Rechtslehre*), where it is precisely *Willkür* that plays a major role. Autonomy is mainly, if not exclusively, an ethical notion. Since human rights are generally conceived of as legal rights or proto-legal rights, a Kantian foundation of them would need to focus on Kant's philosophy of law, not on his ethics. Obviously, if Kant's philosophy of law depended on his ethics, that is, if the normativity of the Universal Principle of Right were to depend on some normative thesis grounded in Kant's ethics, the problem would not arise. Even if Kant does not speak of autonomy in the *Rechtslehre*, it could very well be that all he says about law there ultimately depends on some claim grounded in his ethical

writings, most importantly the *Foundation and Critique of Practical Reason*. If that is the case, it would seem only natural that human rights, like any other legal rights, were grounded on an intrinsically ethical notion. Pinzani, however, is a ‘moderate independentist’: he thinks that Kant’s theory of law enjoys a degree of independence from ethics. The normativity of the rights and duties we find in the *Rechtslehre* is for him freestanding, at least up to a point, even if I could not say up to what exact point. From this perspective it is no wonder that Pinzani is puzzled by an attempt to construe as Kantian a strategy that moves from an ethical notion towards legal rights. In other words, Pinzani thinks that there is nothing wrong in advancing a foundation of human rights that starts from Kant’s ethical notion of autonomy. However, one should not call it a ‘Kantian’ foundation because Kant, in his view, never adopts that strategy.

Since Pinzani, unlike other critics, does not question the prospects of a foundation of human rights based on Kant’s ethical notion of autonomy *per se*, but only the possibility to read in Kant such a strategy, let’s focus on this last point. Pinzani argues that the logical starting point of the *Rechtslehre* is not a subjective right (e.g. the innate right to freedom I focus on), but the duties that subjects have first towards themselves and then towards others. One can see this in Kant’s use of the first Ulpian rule. We start from the duty *honeste vivere* through which a subject affirms her value as a human being towards others. She thereby acquires the right to be treated as a human being by other persons. In other words, one starts from the affirmation of oneself as a human being, thanks to the adoption of a certain rule. From this duty one acquires the right to be treated as a human being by others. This process of self-affirmation and mutual recognition of rights is the gist of the *Rechtslehre*. Unlike in the tradition started by Locke and continued by other liberals, with Kant we do not start from individual rights people have before the constitution of the juridical community. We start from certain duties humans recognize for themselves and arrive at individual rights only through the mutual recognition that takes place within the juridical community. We can do altogether without the idea of a subject already endowed with certain rights or prerogatives in the state of nature.

The first thing I would like to reply is that, even grating the soundness of Pinzani’s point about the precedence of duties over rights in the *Rechtslehre*, one can hardly make sense of the fact that humans have this duty to live honestly unless one presupposes that they have a certain moral perspective on themselves. Why should I bother to live honestly if by definition the law is yet to be constituted and I cannot appeal to any moral obligation to do so? It seems to me that behind the stringency of the Ulpian rules lies a preceding self-understanding of the subjects as creatures that are bound to live honestly because they perceive themselves as moral subjects that would not live up to their nature, were they to make dishonesty the default disposition in their relations with others.

Secondly, Pinzani does not seem to pay much attention to two things that speak quite clearly against his reading of the *Rechtslehre*. To begin with, and quite simply, Kant does say that an innate individual right exists. This right is not acquired, as Pinzani (p.4) recognizes, and therefore it cannot be among those generated by the process described above. Pinzani admits that the innate right to freedom is an exception to the generation process he describes but he does not seem to recognize the magnitude of this exception. This innate right functions as a

pre-established limit to all possible decisions citizens make regarding the distribution of rights they assign to each other. In attributing to each individual an equal and most extended sphere of external freedom (this is at least my reading of the innate right to freedom), this innate right partly predetermines the process of mutual recognition dear to Pinzani. It certainly does so *partly* because it is left to the general will of the specific juridical community to spell out how exactly we are going to design the equal spheres of freedom each citizen enjoys. The only constraint imposed by this right is that a universal law applies in such a way that no one is under the arbitrary choice of others. Which specific universal law does the community adopt is indeed up to the community to decide. And I think there is room here to move from a minimal state to the most welfare oriented, a point we will come back to when replying to Faggion's criticisms. The main point, in any event, is that an innate right already predetermines the choices of the juridical community and, among other things, rules out a priori, so to speak, an unequal distribution of spheres of freedom as well as restriction of them unjustified by the necessity to give the exact amount of freedom to everyone.

Thirdly, if I am right in the reconstruction of Kant's division of rights I offer in Chapter One, our innate right to external freedom has three main features: (a) it is a natural right that, as such, rests on a priori principles; (b) we are entitled to it before the establishment of a commonwealth (even if a state may be required to enforce it); and (c) it stems from a moral capacity. I think that these features hardly fit with the Habermasian (if I may say so), de-moralized reading of the *Rechtslehre* Pinzani offers us. On this reading, I quote 'individual rights possess a derivative and secondary character, because they derive from the duties that each juridical subject has in relation to the recognition and respect of the external freedom of others. (Estudos Kantianos, this issue p.14)' I quite simply believe that Kant's notion of an innate right to external freedom reflects what he owes to the tradition of natural rights. This legacy may be acknowledged without making Kant nothing but a natural rights theorist. In fact I share Pinzani's idea that Kant interestingly departs from the liberal tradition in making the state something more than a notary and policeman of prepolitical individual rights. And yet I wouldn't go as far as saying that what the state is called to do is not constrained by limits that are not up to the juridical community to decide. Those limits are set by the normative content we find in the pre-political right to freedom.

Fourthly, Pinzani does not say much about Kant's explicit story regarding the *ground* of the innate right to external freedom, which, again, seems against the moderate independentism he endorses. Kant says that we have that right 'by virtue of our humanity'. I have offered my reading of what 'humanity' means in this context. The central idea is that Kant must be appealing to our autonomy and not to our generic practical freedom. We need a capacity whose possession ipso facto confers on us some worth. And this task cannot be discharged by a generic capacity for self-direction. The crucial point is that we need to be able to do that awesome kind of behavior that silences all our self-regarding considerations for the sake of morality. Pinzani neither challenges this reading nor offers an alternative. It would be open to him, I guess, to argue that the humanity Kant refers to in this passage is the one that subjects are bound to discover in themselves through an affirmation of themselves as juridical subjects, according to the process mentioned above. But he is not explicit about that. One thing is clear. If I am

right, then one cannot say, like Pinzani does, that the notion of autonomy never appears in the *Rechtslehre*, because it is the ultimate foundation of the all-important innate right to external freedom, whose normative content is identical with that of the Universal Principle of Right.

Finally, in order to show the impracticability of my strategy to ground human rights on a Kantian notion of dignity, Pinzani reminds us that for Kant one can lose one's dignity as citizen upon breaking the law. Kant even makes room for the idea that criminals de-humanize themselves once they commit a crime. As such they can even be owned by other persons, alienated, used as things. Since human rights are meant to prevent, among other things, this sort of degradation, what sense is there in starting from Kant to find their foundation?

The first thing to say here is that what the subject loses, as Pinzani himself recognizes, is his dignity as a citizen, which is to be understood as a right to non-interference, not his dignity as a human being. Even if Kant does say that the criminal 'ceases to be a person', he cannot mean that the criminal loses everything that produces respect for him as a human being. In fact, Kant says that he can become an instrument in the hands of others, but they can never take the criminal's life or the parts of his body. If the criminal were reduced to the condition of an animal, that is, if the crime literally changed his nature, thereby degrading his arbitrium from liberum to brutus, then there would be no reason why free citizens could not take his life, like we do with animals for a number of purposes.

This interpretation is reinforced by textual evidence, cited by another of my critics, Milene Consenso Tonetto, against Sensen's interpretation of dignity in Kant. In a passage of the *Doctrine of Virtue* Kant says "I cannot deny all respect to even a vicious man as a human being; I cannot withdraw at least the respect that belongs to him in his quality as a human being, even though by his deeds he makes himself unworthy of it. So there can be disgraceful punishments that dishonor humanity itself (such as quartering a man, having him torn by dogs, cutting off his nose and ears)" (TL AA: 06: 463). And Kant continues by saying that even the most vicious person is to be treated as a human being because he "can never lose entirely his predisposition for the good" (TL AA: 06; 464). Even if we may lose our legal dignity, it seems that for Kant we may never lose our dignity as human beings. The latter is not contingent on how we behave. Finally, even if we grant for the sake of the argument that Kant expressed a view on punishment that is at odds with his own notion of human dignity, let alone at odds with our contemporary understanding of human rights, this does not seem to me sufficient grounds to conclude that a) one cannot have a foundation of human rights that rests on Kant's notion of autonomy and b) that this strategy is not a Kantian one. Since the notion of autonomy is so central for Kant's practical philosophy, while his comments on criminals are, to say the least, peripheral, I would say that my strategy still has a strong basis for being described as a Kantian one.

Pinzani's concluding remarks insist precisely on the possibility to qualify my foundational strategy as Kantian. One can hardly see, he says, how one can derive the idea of human rights from Kant's juridical and political philosophy, no matter whether one starts from the concept of external freedom understood as autonomy, or from the idea of dignity, or from the status Kant attributes to citizens within the state. Well, my foundation never started from external freedom understood as autonomy because my argument never equated external freedom with

autonomy. It rather indicated that Kant's innate right to external freedom exemplifies how one can derive certain innate entitlements from our autonomy (my reading of the crucial 'by virtue of our humanity' phrase). Moreover, it never suggested one should use Kant's notion of legal dignity to start such a foundation, and I thank Pinzani for having highlighted what a bad start that would be. Finally, it never recommended to start from the status Kant attributes to citizens in the state. The sheer fact that Kant restricts full citizenship to some individuals within the state makes his account hopelessly incompatible with the egalitarianisms of human rights. And yet the argument does suggest a path, starting from the moral notion of autonomy to the foundation of human rights, that seems to me quintessentially Kantian.

## **CRISTINA FORONI CONSANI.**

Cristina Foroni Consani offers a clear and punctual reconstruction of my arguments to which I have very little to add or reply. Her summary is very accurate and run in a sympathetic spirit for which I am thankful. I take that the critical part of her comments are to be found in her reconstruction of an alternative account of dignity, the one offered by Jeremy Woldron. In particular, as Consani rightly points out, Woldron and I agree on the necessity to refer to the notion of dignity in a foundation of human rights. The difference is that while I – in a traditional vein – construe dignity as a moral value, Woldron provides an account of it that remains within the perimeter of the law, thereby offering, to borrow Consani's fortunate expression, a political foundation of dignity and of human rights. Let me recap briefly this alternative account .

Woldron starts from a serious consideration of the circumstances of politics. Prominent among those is a radical disagreement of citizens about comprehensive doctrines. This fact suggests to Woldron the necessity to think of rights not as the expression of a pre-existing agreement on normative content, but as shared procedural norms that allow us to make decisions having coercive force precisely in that condition of radical pluralism and in a democratic way. This is the essence of his ethical positivism according to which the law is not supposed to borrow any content from morality but nonetheless must conform to procedural and democratic criteria to be legitimate. Woldron's positivism is not merely descriptive. It does not limit itself to describe how a system of norms works with no critical space for the analysis. It also describes what counts as a legitimate set of norms, and yet nothing in this check of legitimacy seems to be borrowed from morality.

Consoni proposes to keep this scheme in mind to understand Woldron's political foundation of human rights. She uses Woldron's own example, in turn taken from Arendt, of a merely political commitment to the value of equality in ancient Greece. Citizens of the democratic Athens allegedly had no moral commitment to the equality among citizens, let alone human beings. Their commitment to recognize themselves as equal sprang from the awareness that a political community would have been impossible without it. Something similar happens with dignity and human rights. Humans have learnt that without a political commitment to treat everyone as a dignitary entity no global political community is possible.

Even if at the level of comprehensive doctrines we disagree profoundly about ‘what humans are entitled to by virtue of their humanity, we commit to human rights because we know that this enables an acceptable global compromise on how institutions should treat individuals. Dignity works as the overarching and organizing concept of the norms we agreed upon (in this sense it is the foundation of human rights) and establishes a fruitful dialectic with the norms of which it is the organizing idea. Our notion of dignity depends on the list of human rights we agreed to, but we may also change that list in virtue of a new shared understanding of that organizing idea. Moreover, this process may ultimately lead to an agreement even at the moral level. But what makes Woldron’s account different from mine is that the starting point is not a moral commitment, but a political compromise.

What can we say about this interesting way of construing the relation between dignity and human rights? Let us go back to the prescriptive or ethical character of Woldron’s positivism. As we said, in his perspective there is room to be able to draw a distinction between legitimate and illegitimate bodies of law. A legitimate body of law is that which makes room for the radical pluralism of our societies (and a fortiori of our global community) and finds shared procedures for making decisions in these conditions. An illegitimate body of law cannot or does not want to do that, and overcomes disagreement through some form of imposition, that is, in the absence of a shared procedure to make collective decisions. This distinction reveals an evident problem of ethical positivism. It presupposes evidently presupposes the moral value of treating citizens as equal in the shaping of the laws they will have to obey. Even if this egalitarian commitment, like in ancient Athens, is a political compromise, one still needs to be able to distinguish between good and bad political compromises. Political compromises of all sorts have given rise in history to political communities, at times quite stable, that one would like to consider as utterly unjust. So the sheer ability for a body of laws to generate a political community cannot be what determines its legitimacy. It is hard to see how we could draw the distinction Woldron himself wants without some external, probably moral, standard. So either Woldron’s ethical positivism is faithful to its amoral orientation but does not seem to be able to keep its prescriptive character, or it does so but is no longer a form of positivism. If we apply this general criticism of Woldron’s positivism to his political foundation of human rights, we have the following: not all compromises about human rights are good ones and not all definitions of dignity arising from those compromises are good either. The sheer fact that there is international consensus on a set of human rights now is too thin a basis for considering the list we have as a good one. What we expect from a philosophy of human rights is a solid argument that shows why they exist and why their list includes some and excludes others. The availability of an agreement on these questions does not make the result more justified than the agreement among Athenians on the fact that only Greeks could be considered equal (being the other ‘barbaros’, hence legitimate slaves).

## MILENE CONSENSO TONETTO.

Tonetto uses critically the analysis of dignity in Kant offered by Sensen, to which we already made a quick reference in our reply to Pinzani, to raise some questions about my

argument. She makes an important point against Sensen's reading of Kant's conception of dignity showing that Kant does not make our dignity as human beings dependent on the quality of our behavior. This is in fact one of the main reasons why I believe that an autonomy-based conception of dignity meets two central desiderata of a theory of human rights. It construes the ground on which human rights rest in a way that their protection is not dependent on circumstances and it protects even criminals from forms of degradation that the culture of human rights considers incompatible with their humanity. Still, Tonetto thinks that some of the points Sensen makes can be used to raise some questions about my argument. They are the following: 1) do I construe human dignity as a relational or as a non-relational property?; 2) do I see human dignity as an absolute or intrinsic value?; 3) do I make dignity dependent on agency (e.g. a criminal loses his dignity)?, 4) How does autonomy/human dignity generate human rights?

I have already given my answer to 3) in my reply to Pinzani. On my (and I think Kant's) reading, human dignity, with the rights that may be inferred from it, does not depend on performance. But what about the other three questions? Regarding the first, I would like to stress that the significance of the distinction may have been exaggerated in this context. Even if we grant Sensen, just for the sake of the argument, that in Kant dignity is a relational property, while in the contemporary paradigm it is conceived of as a non-relational one, it seems that, embedded within the idea that humans are elevated above the rest of the animal world, we have all we need to arrive at the same normative conclusions the contemporary paradigm aspires to by making dignity a non-relational property. If we are elevated above the rest of nature, this means that we are entitled to a kind of treatment other species are not. Of course it remains to specify exactly what provisions we are entitled to (Tonetto's fourth question), but a difference of treatment and the special status of humans, with their being entitled to something merely by virtue of what they are, have already been secured. After all, in the context of my argument I do make autonomy a relational property. I put it in terms of a difference of degree rather than in kind between human and animal autonomy. Hence, I guess that I am committed to say that dignity is a relational property (probably this is not the case with Kant, as Tonetto argues against Sensen). But again, I do not see what major problems this has for my ability to secure humans a special treatment compared to other species, or at least to move the first step in that direction.

Regarding Tonetto's second question, I am ready to say that in my view dignity is an intrinsic value. It is 'intrinsic' to the human species because it rests on a defining feature of the species itself. The value of humanity is intrinsic in humanity itself. Is it also an absolute value? It depends on what we mean by 'absolute'. If this means that the value sets powerful barriers against the possibility to sacrifice the interests of those who have dignity for the sake of utility maximization, just to give the most obvious example, then certainly dignity is absolute. On my account, one cannot torture a terrorist just to deter other possible terrorists. Already different, however, is the case of torture if one is certain (assuming one can be) that this will prevent the loss of many innocent lives. In that case we have the intrinsic value of the terrorist - certainly not diminished by the fact that he is a terrorist - against the equal and equally intrinsic value of the victims, whose life could be spared. More clearly and less controversially, 'absolute' does

not mean that if I have to sacrifice the value of one person for saving the equally important value of many others, I am not authorized to do so. A good example of how people may consider human dignity as an absolute value in a way that I would oppose is the famous ruling of the German constitutional court that I discuss in the book (p.263). It will be recalled that the court ruled on the German air safety law passed in the aftermath of the terrorist attacks of 9/11. The law allowed the German air force to shoot down an airplane hijacked by terrorists if there was overwhelming evidence that it would be used as a weapon to kill a large number of civilians. The constitutional court annulled the law with the consideration that the lives of the passengers could not be used as means for saving the lives of others. As I said in the book, this ruling is puzzling. Does it make sense to protect the lives of passengers (who would die anyway) at the cost of the lives of those on the ground targeted by the murderers? It is only if one considers this value absolute in this unreasonably strong sense that one would be drawn to that counterintuitive conclusion. And I think that neither Kant nor I are committed to that interpretation. The general idea of my approach is that dignity is both an intrinsic and a very important value. So important that it trumps other moral values (happiness, security, utility). It is thus absolute in the sense that it is freed (*ab-solutus*) from the competition with these other values. But certainly it is not absolute or unconditional in the sense that one cannot weigh conflicting claims to the protection of the very same moral value.

The last question Tonetto poses is perhaps the most difficult one because, as I grant in the book, there is no easy way to move from the recognition of human dignity to a well-crafted list of human rights. And I am ready to admit that there is no principled way, independent of the political compromises of the sort that led to the 1948 UDHR or to the two treaties of the sixties. In other words, I think it is perfectly reasonable to leave to the provisional, always revisable decisions we make as global community as to what rights pertain to humans by virtue of their dignity. I am also ready to concede a point dear to the instrumentalist view: that one can hardly arrive to a list of human rights with no consideration of the interests humans generally have. My only concern with this derivation is when the normativity of human rights is thought to be *exhausted* by their capacity to protect certain fundamental value. We protect human interests - whatever we may politically decide are the most urgent and those whose satisfaction we deem as necessary to give proper consideration to human dignity –*because* humans are worthy creatures. And the reason why they are worthy creatures has nothing to do with their interests, no matter how urgent and strong.

## ROBINSON DOS SANTOS.

Robinson dos Santos offers us a careful analysis of the occurrences of the word ‘dignity’ in Kant’s works and raises concerns similar to Tonetto as to my understanding of this crucial notion. For what concerns the absolute, intrinsic and unconditional value of dignity, I would like to send the reader back to what I said in response to Tonetto. In a nutshell, quite apart from what Kant meant with these adjectives, I intend human dignity as an intrinsic value of the utmost importance, but not absolute or unconditional in the sense that weighing conflicting claims by equally worthy creatures is forbidden (the case of the German constitutional court



examined above).

But Santos makes two further extremely interesting points about dignity. Again inspired by Sensen he points out that the terms Kant uses to qualify human dignity (intrinsic, unconditional, absolute) strongly suggest that he sees it as an objective value. From this perspective our duty to respect ourselves and other people would arise from a sort of passive recognition of such value, up to the point that a morality based on this recognition may look dangerously similar to one that derives its normativity from an external command such as the one believers receive from God. In short, too much emphasis on dignity as the fundamental moral value in Kant's ethics seems to make it heteronomous or at least dangerously close to moral realism. This is to be contrasted with another interpretation of Kant's ethics in which the duty to respect ourselves and others does not arise from our giving in to the intrinsic goodness of an objective moral value, but from the command of our own reason. Only on this reading we would get back the familiar picture of Kant's ethics as introducing, from the first time in the history of philosophy, the notion of an autonomous morality.

Santos rightly notices that I flirt with the first interpretation, allegedly committed to attribute a degree of heteronomy to Kant's ethics. But I do not think that construing morality as grounded on the recognition of our dignity makes Kant's ethics heteronomous in the least. Let us recall that for Kant (KpV 5:5) freedom (autonomy) is the *ratio essendi* of the moral law. Autonomy is a necessary and sufficient condition for morality. Conversely, the moral law is the *ratio cognoscendi* of freedom. We know ourselves as free/autonomous because it comes to us as a fact (of reason) that the moral law is obligatory for us. This means that it is our reason – not an external authority – that recognizes our autonomy and, as a consequence, our dignity. It is a bit like paying homage to an artist who we think is the greatest of all time, as opposed to paying homage to the same artist because a critic suggested that we should do so. I do not see much space for heteronomy here.

From this perspective the idea that on our reading Kant becomes a moral realist needs qualifications. It all depends on what we mean by moral realism. If by that we mean the idea that moral claims point to or rest on facts, and are valid if these facts are true, then Kant is a moral realist. The qualification is, obviously, that the moral 'fact' that generates all moral claims is not a sensible one. We do not make experience of our autonomy, hence of the ground that establishes our dignity. At most we encounter our autonomy in our practice and we cannot take it out of the picture if we still want to construe ourselves as agents. But this is different from making an experience of autonomy. When we articulate in rights and duties our respect for beings endowed with dignity we ultimately refer to a value which we will never encounter in our experience. I leave up to the reader to decide whether this qualification still construes Kant as a moral realist or not. Terminology is not so important, after all.

The other interesting point Santos makes concerns my liberalized version of the moral law. In the book I argue that a person displays her autonomy even when she performs actions inspired by moral formulas other than the Categorical Imperative. I go as far as saying that any bit of behavior performed under a rule that is severed from my interests counts as potentially autonomous, moral behavior (I say potential because with Kant I think that we can never be certain that some unconscious egoistic motive is not the true drive of my action). Santos

however attributes to me the idea that the moral law, the categorical imperative and the Golden Rule can be considered as equivalent ('una equiparacao' he says). I have never suggested this. I want to keep firm the point that the moral law is a principle more abstract than the various formulas of the categorical imperative and that the latter and the Golden Rule are two different moral formulas, with different normative implications. And I agree with Santos that the Golden Rule, with its reference to an obligation towards others ultimately depending on the way I *want* or *desire* others treat me, makes it closer to a hypothetical imperative than to a categorical one. But this is fully compatible with the fact that assuming the Golden Rule requires at times (most of the time I would say) a sacrifice of my immediate and egoistic interest. Even if stealing would greatly benefit me on this occasion, I do not do it because I do not want others to do the same with me. As I say in the book, what attracts me is the general human ability to perform actions that are severed from an egoistic calculation, authentically impartial and at least based on reciprocity, quite independently of the specific moral formula one adopts. And behavior performed under the Golden Rule does meet these conditions (at least most of the time).

## **AYLTON BARBIERI.**

Barbieri's rich, careful and detailed commentary turns on three main points that he himself clearly distinguishes: 1) Kant's conception of 'innate freedom' (we will see that this expression Barbieri uses is dubious) is unfit for any conception of human rights ('it does not license any illation about human rights' he says), but is only the major premise of Kant's theory of property; 2) 'innate freedom' is further unfit as a basis for human rights because the beneficiaries of the right to 'innate freedom' are also the beneficiaries of the rights (or permissions) Kant infers from it, among which 'innate equality' and 'innate independence' (again expressions by Barbieri). Since Kant restricts equality and independence to a subset of human beings (economically independent men), it would follow that 'innate freedom' is clearly incompatible with the intrinsic egalitarianism of human rights; 3) according to Barbieri, I fail to distinguish between an ethical and a juridical notion of humanity; moreover, I do not realize that the only legitimate starting point for a (more or less successful) Kantian derivation of human rights is the juridical notion of humanity, not the ethical one I appeal to.

Let me deal with Barbieri's criticisms in reverse order. I think that answering the last of his points first allows me to reply more clearly to the other concerns. In criticizing my interpretation of the reason Kant offers to ground our innate right to freedom - Kant says we have it 'by virtue of [our] humanity' (MS 237) - Barbieri argues that I fail to distinguish between two notions present in Kant's thought: an ethical and a juridical notion of humanity. Moreover, he argues that Kant 'evidently' means the juridical notion in the passage in question and that therefore my reconstruction is stained by 'confusion'. Well, let's see. To begin with, if I am not mistaken Barbieri fails to tell us what this juridical notion of humanity consists of. Not only does he fail to indicate any textual evidence in which Kant would at least indirectly point to this mysterious notion of juridical humanity, but he even fails to attempt to give his own definition. All he does is to remind us of the rather obvious fact that respecting humanity in the domain of ethics implies duties that are not identical to those implied by the respect

of humanity in the juridical domain (objective difference) and that the motive for respecting humanity is only relevant in the ethical sphere (subjective difference). But these are not two different notions of humanity. These are two different ways in which one respects *the same thing* in two different domains. Similarly, the fact that Kant makes room, as we saw with Pinzani and Tonetto, for a notion of juridical dignity (the one we may lose) and an ethical notion of dignity, which we may also call dignity as a human being (the one we never lose), is not a basis to infer that he also has two different notions of humanity. It may very well be that the two dignities relate precisely to the different ways in which one is called to respect the same humanity in two different domains. In the juridical domain, respect for humanity entails the recognition to each citizen of his juridical dignity (which I suspect is nothing but his entitlement to the sphere of freedom secured by the universal principle of right). In the ethical domain, respecting humanity (this time in me or in others) entails adopting a certain motive and discharge of duties that, as Barbieri knows well, apply only in this case. But we are still far from being given any reason that all this presupposes two notions of humanity at work.

Secondly, even granting for the sake of the argument that Kant has a notion of ‘juridical humanity’, or that there is material in Kant out of which one could construe it, I believe it is incumbent on Barbieri to show how the justification of our innate right to freedom would go with the assumption of this notion. I believe that if we read humanity the way I suggest one can make sense of Kant’s idea that a defining feature of ourselves entitles us to a right. Since we have this awesome property of moral behavior, we have an innate right to be treated with respect, which Kant spells out in terms of being immune from the arbitrary will of others, thereby enjoying a sphere of freedom that is only limited by the condition of compatibility with the equally extended spheres of freedom of all others. If I am to reject this reading of the role that humanity plays in this argument, I would like to hear how non-ethical humanity is supposed to ground this right. Again, I fail to see where Barbieri even sketches this argument.

Let us now move to the other two concerns Barbieri has. The first criticism is that there are four explicit references to ‘innate freedom’ in the *Rechtslehre* and all of them make a direct or indirect reference to private property, while none of them suggest in the least that they are amenable to a derivation of what we call human rights. The first thing to notice is that the expression ‘innate freedom’ (like the subsequent ‘innate equality’, ‘innate independence’ and so on) is quite unfortunate. Freedom is neither innate or acquired. Kant says that it is the *right* to freedom that is innate. In fact, it is not that I was born with freedom (as a matter of fact I can easily be born into a condition of slavery). I was born, if Kant is correct, with a *right* to freedom, which is obviously different. This may be, however, just a terminological question.

More important is Barbieri’s idea that even in the passage in which Kant describes our sole innate right he is making (I guess an indirect) reference to private property, a reference I would be remiss to ignore. The basis for this claim is that Kant says that ‘what is innately mine or yours can also be called what is internally mine or yours (*meum vel tuum internum*); for what is externally mine or yours must always be acquired’ (MS 237). While Barbieri is certainly right in highlighting the novelty and importance of Kant’s theory of property in the *Metaphysics of Morals*, with its all important a priori justification of private property

construed as a condition on the possibility of the exercise of my external freedom, the mere appearance of the words ‘mine and yours’ in the passage above appears insufficient to conclude that private property has any role to play in the justification of our innate right to freedom. Two things: 1) the description of what is innately mine or yours as ‘internal’ can hardly be understood in the sense that what we are innately entitled to is an internal property (freedom understood not as external freedom but as the capacity to set ends). If I have a capacity it does not make sense to say that I have a right to it (at most I may have a right to its exercise); hence the freedom that is internally mine must be the sphere of actions I am innately entitled to. This is compatible with saying that whatever goes beyond this abstract entitlement to a sphere of external freedom, for example a right to *this* piece of land or to *this* house, presupposes an acquired right, that is, the existence of a state that entitles me to that specific property; 2) private property cannot be what Kant tries to ground through the innate right to freedom because the deduction of non-empirical possession (private property) Kant offers in the *Rechtslehre* (MS 6: 249-50) starts from the external freedom secured to me by my pure practical reason and moves to the possession of something as a condition on the possibility of the exercise of that freedom. In the words of Kant, “since pure practical reason lays down only formal laws as the basis for using choice and thus abstracts from its matter, that is, from other properties of the object *provided only that it is an object of choice*, it can contain no absolute prohibition against using such an object, since this would be a contradiction of outer freedom with itself.” (MS 6: 250) If that is correct, then my entitlement to (external) freedom established by my innate right must rest on something else than the right to private property, on pain of making Kant’s argument circular. On my reading, it rests on our autonomy.

Finally, in various parts of his comments Barbieri seems to suggest that Kant sees the passage from the state of nature to the civil state as bringing about the limitation of the otherwise limitless ‘innate freedom’ which is the object of our innate right. If this is what Barbieri means, it is quite problematic. The limitless freedom I enjoy in the state of nature by definition does not stand under the condition that it must “coexist with the freedom of every other according to a universal law”, which is the condition Kant explicitly imposes on the freedom I have an innate right to. So the story is not that I have an innate right to a limitless freedom in the state of nature that becomes constrained the moment I enter the civil state. The story is that I have a (moral) innate right to freedom already limited by the same right possessed by all other humans, which becomes enforced and protected by law once we all leave the state of nature (if, of course, the state is designed in the right manner).

What about Barbieri’s last concern, centered on the problems implicit in giving a Kantian foundation of human rights when Kant argues for an unequal distribution of certain basic rights? Human rights are intrinsically egalitarian (Buchanan 2010). Kant seems to think otherwise. The reply here can be rather quick. 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 interestingly halfway between the domain of morality and that of the 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 importantly is an equality of status. It follows that whatever Kant says about specific features of the rightful state (for example passive citizenship) does not affect the pre-political entitlements Kant assigns to human beings (the innate right to external freedom) on which my foundation insists. In other words, all the problematic positions Kant endorses in the *Rechtslehre* – Barbieri mentions the discrimination between passive and active citizens, but we could add 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 fitness 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 seems to be a problem of internal consistency for Kant. It is neither a problem for my foundation nor for its Kantian pedigree.

## DELAMAR JOSÉ VOLPATO DUTRA.

Delamar José Volpato Dutra articulates five criticism of my interpretation but I think it is fair to say that the main concern he has is similar to the one we saw in Pinzani. Autonomy is not a notion that is central to the *Rechtslehre*, and a derivation of essentially juridical norms such as human rights that start from a non-juridical notion is at least suspicious. Dutra, however, does not merely question, like Pinzani, whether such a foundation could be legitimately called Kantian. He goes deeper and argues that starting from autonomy makes my foundation of human rights intrinsically inconsistent. This is so because I want to hold on to the traditional understanding of human rights that sees them as juridical or proto-juridical claims, not merely moral entitlements. As Dutra puts it: “It is inconsistent to maintain that human rights are grounded on a moral property, but are actually juridical restrictions.”

Moreover, I stick to Kant’s idea that the law should not get into the business to enforce merely ethical duties, such as telling the truth. And this would make my position even more inconsistent because it is not clear how I can keep this distance between ethics and law once I have grounded the latter on the former. The problem of consistency I get myself into becomes fully apparent when I admit that human rights protect individuals not only from the degradation others can cause to them but also when they degrade themselves through their own actions. Dutra takes lying as a good example of degradation because Kant himself believes that if I lie, I ipso facto annihilate my dignity: “By a lie a human being throws away and, as it were, annihilates his dignity as a human being” (MS 6: 429). Hence I have two problems: 1) on the one hand, if I say that human rights protect people from self-degradation, then it appears I should drop my notion of unethical behavior about which rights in general and human rights in particular can remain indifferent. I should rather construe human rights as prohibiting also self-degrading unethical behavior; 2) more profoundly, even if Dutra does not make this point explicit, Kant’s admission that one can lose one’s dignity ‘as a human being’ through lying seems at odds with what I have been arguing against Pinzani and Barbieri. It will be recalled that my line of defence was to insist that dignity for Kant can never be lost.

Let us proceed this time in the same order in which these criticisms have been raised. To begin with, it is not clear to me (and I think Pinzani is on my side on this) why I cannot conceive of human rights as juridical obligations and at the same time hold that their normativity is ultimately grounded on a moral point. I can have a certain moral view of human beings that sets limits on the way in which the coercive force of the law is authorized to treat them. For example, if I think of them as self-determining entities worthy of respect I may think that the law should take this feature into account and be designed in such a way that citizens are not treated as children, let alone as means for the sake of the collective well-being. In addition to shaping the boundaries for law design, so to speak, the very same moral property can say something about obligations individuals have (towards themselves and others) which, if violated, do *not* generate arbitrary restrictions of external freedom. These merely moral obligations spell out conditions that must be met if individuals are to live up to the standard set by that moral feature. But since failure to live up to that standard by definition does not entail restriction of other peoples' spheres of freedom, and since virtuous behavior cannot be coerced but only freely chosen by the individual to have any significance, it follows that the law has no business in enforcing the obligations of this latter kind. In short, in the scenario I am proposing, which I think is very similar to the one Kant has in mind, a moral property does two crucial yet distinct jobs. It predetermines limits for any legitimate use of legal coercion and defines the set of obligations that must be met to make the individual virtuous, which is a standard different and higher than the one met by the person who does not violate the law.

Regarding the degradation that the human being may bring upon himself, we need to distinguish two points. To begin with, what I had in mind with this idea of self-degradation was quite simply the possibility that humans do things not only morally wrong but also wrong in any possible sense (genocide, ethnic cleansing, murder and so on). My point was that human rights are supposed to protect even the worst individuals from treatment that would be incompatible with their status as human beings. So, quite apart from what Kant says, lying is not a good example of the cases I was referring to in that context. Hence, I am not bound to transform human rights as instruments of an ethical state, as Dutra suggests, because what I mean by self-degrading behavior is quite different from the behavior that violates merely moral duties. This, however, does not solve the second issue I need to respond to. If Kant thinks that lying is a serious form of degradation, that even takes away our dignity as a human being, it seems that I face a dilemma: either I insist in saying that certain merely moral violations are not the business of human rights, but then I am forced to give up the hope to qualify my dignity-based theory of human rights as Kantian (a new version of Pinzani's criticism) or I defend my Kantian inspiration but I then need to deny there are merely moral wrongs that human rights should not be concerned with.

As it is easily detectable, it all depends on how we read the passage about lying and the loss of human dignity we cited above. I grant that there is room to say that this passage goes in the opposite direction compared to those Tonetto and I referred to above to prove that in Kant

human dignity can never be lost. At face value though, it seems that the textual evidence in favor of the interpretation suggested by Tonetto and myself is stronger. The passages in fact are more numerous and, more importantly, clearer. Crucial in this regard is the qualification Kant uses when he suggests the possibility of a loss of human dignity through lying. I do not think it is an accident that Kant says that the liar loses his dignity ‘as it were [*gleichsam*]’. Through this qualification Kant is probably signaling to the reader that the annihilation [Vernichtung] is not to be taken in the literal sense. In fact, Kant may have talked about a quasi loss of dignity, or of a loss, ‘as it were’, in the case of lying because there is something peculiar about lying that runs most evidently and directly against what makes us recognized by others as human beings. In communicating (sincerely) my thoughts I signal to the others that I am a thinking being, endowed with reason and the ability to use it to produce thoughts that tell others who I am, what I believe in and so on. If I lie, Kant probably thinks, I subtract credibility to that medium (my communicated thoughts) through which others have the opportunity to recognize me as an independent, spontaneous, thinking entity. In other words, I subtract credibility to the most important piece of empirical evidence I can offer to signal to others that I am not a thing or an animal. Actually, in jeopardizing what shows me to others for what I am, I become ‘less worthy than a thing’, as Kant says. In fact those I lie to know what a thing is and what use to make of it, while they are confused as to what I am now, given that I have damaged the most powerful means at my disposal to show my intrinsic nature (independent, spontaneous, thinking subject). As Kant puts it:

communication of one’s thoughts to someone through words that yet (intentionally) contain the contrary of what the speaker thinks on the subject is an end that is directly opposed to the natural purposiveness of the speaker’s capacity to communicate his thoughts, and is thus a renunciation by the speaker of his personality, and such a speaker is a mere deceptive appearance of a human being, not a human being himself. (MS 6:429)

Lying runs contrary to the rational capacity (trustworthy communication) that signals our nature as human beings. And yet it cannot remove it altogether, because we remain capable of telling the truth in other occasions. One can have doubts about this Kantian view of lying. But it is quite clear that something along the lines I have suggested is what leads Kant to the thought that in lying it is *as if* I lose my nature and the dignity associated with it.

If the above is correct, even this controversial passage is insufficient basis for concluding that a) human dignity can be literally lost for Kant and b) that for this reason any derivation of human rights starting from a Kantian notion of dignity is destined to inconsistency or to the other fatal shortcomings Dutra charges me with.

## ANDREA FAGGION.

Faggion thinks that my lamentation on how Kant has been in the last decades used for various theoretical desiderata without enough hermeneutical care could very well be self-directed. In fact she thinks that my attempt to derive human rights as we know them from Kant’s innate right to external freedom is like “tirar leite de pedra”, which I guess can be legitimately

translated as wringing blood from a stone. This is the case, mainly, because she thinks that Kant's innate right to freedom conveys a negative prohibition of illegitimate interference in my sphere of action and nothing more than that. No matter how hard I try, there is no way that one can arrive from this normative point to the positive provisions human rights usually include. Faggion is also keen on pointing out that even if Kant says we cannot be content with a merely negative compliance with the Categorical Imperative's formula of humanity and it is our duty not only to avoid impairing people's pursuit of their ends but also to help them in their realization, this positive compliance is a merely 'meritorious duty'. It is one of the ethical obligations that cannot be translated in juridical ones (like being sincere in the discussion of Barbieri). Similarly, Kant does not make the argument that the enjoyment of positive duties is a precondition for the enjoyment of the spheres of freedom the innate right secures. In sum, my starting from Kant's innate of right to freedom is a non-starter.

The main problem with Faggion's reading is that she appears to pay scant attention to the fact that my suggestion is not to derive human rights from our innate right to external freedom, but from a conception of dignity understood and grounded along Kantian lines. In Chapter One I focus on the innate right to freedom only because I think that is how Kant *exemplifies* a derivation from autonomy to pre-political rights. It is not so important for my argument that Kant derives a specific right to freedom understood as independence from arbitrary coercion. I will explain later the way in which I understand the content of this right, because I think Faggion and I disagree about that, too. But the first and most important point is that my foundation should be evaluated for its ability to generate human rights as we know them *from dignity*, not from the innate right, with its following 'authorizations', Kant describes.

As I admit in the book and as I repeat in response to Tonetto, the derivation from dignity to specific human rights cannot proceed in a deductive way and there is room here for political compromise, negotiation, approximation, revision and so on. All I borrow from the specific innate right Kant defends is a set of abstract and formal criteria that set constraints on the human rights we want to assign to each others in this process. The main constraints are that individuals' freedom can only be limited to make it compatible with that of everybody according to a universal law and that the ensuing spheres of freedom have to be equal. As I argue following Höffe, from equality three extra constraints are derived and I refer the reader to my discussion of them (KPL p.22-23). What matters here is to understand that these constraints operate at a level of abstraction that makes it possible to construe a very different list of human rights (more or less 'positive' to use Faggion's terminology). If we - as a political community - decide that the freedom of everyone is to be limited for the sake of helping the poor or for providing access to those material resources human rights usually promise, this does not violate those constraints in the least. Obviously the very same constraints are also compatible with a law that imposes less redistributive obligations. As I said, these things have to be left to political compromise, at the national or global level, of the sort we are familiar with. But of course these constraints are not compatible with anything, because they rule out a priori default discriminations among individuals, breach in their formal equality, arbitrary political rule, ethical/religious states with their limitations of freedom unjustified by the need to protect other spheres of freedom. And as I have said repeatedly in my replies, the fact that Kant holds on to



specific positions (e.g. passive citizenship) that seem to be helplessly incompatible with these constraints is no reason to ignore their intrinsic potential for designing a normative framework in which specific human rights can be generated.

Here we find our second point of disagreement with Faggion. Although she admits that Kant is no defender of the minimal state, she seems to suggest that the Kantian constraints just mentioned rule out any space for positive rights or distributive justice. But why would that be? In affirming that my sphere of freedom cannot be limited by the *arbitrary* choice of others, Kant is not ruling out the possibility that individuals in a political community (national or global) collectively decide to limit their freedom for the sake of introducing some welfare provisions in favor of the needy. Obviously that decision cannot be imposed by someone on others, but there would be no imposition if it sprang from the general will. Of course a commitment to some positive rights cannot be logically inferred by those constraints. But what Faggion needs to say, and I think she cannot say, is that such a commitment dictated by the general will would be a violation of those constraints. I fail to see how that would be the case. And of course if that is not the case, then there is logical space in my argument to move from dignity, *via* the constraints imposed by the innate right to freedom, to a conception and list of human rights not too distant from the understanding of them established by practice (Cohen's fidelity condition).

## 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 time 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 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 have 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-Constantine 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 as 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, would not have taken away the necessity to adopt a different, noumenal perspective to make sense of human morality. In short, even if our progenitors were monkeys, we would still 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. In particular, Klein is sceptical of one of the arguments offered to ground these limits. As Kant puts it:

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 (ZcF 8: 355–356).

In other words, 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 to 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 those 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*» (IaG: 18) is to argue that 1) each creature, or better each ‘species’, has a set of prefixed, God-given specific dispositions, and 2) nature makes sure that these dispositions develop completely. The second proposition adds the idea that 3) the disposition of the human species is reason, and the third the idea that 4) 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 live 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 a period 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 the 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.

**ABSTRACT.** In this essay I reply to the very interesting comments about my book *Kant's Political Legacy. Human Rights, Peace, Progress* (University of Wales Press 2017) offered by the following Kant scholars: Alessandro Pinzani, Cristina Foroni Consani, Milene Consenso Tonetto, Delamar José Vulpató Dutra, Robinson dos Santos, Andrea Faggion, Aylton Barbieri and Joel Thiago Klein. A theme on which my critics commonly insist is the compatibility between Kant's theory of right (in particular some of the rights and duties spelt out in the *Rechtslehre*) and the values central in the culture human rights. Another one is whether it makes sense to use an essentially moral concept, such as that of dignity, for the foundation of human rights, given that they are usually conceived of as juridical or proto-juridical rights. In general all commentators raise informed and well documented points that deserve keen attention.

**KEY WORDS:** Kant; Human Rights; Peace; Progress.

## NOTES

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