

REMARKS ON “THE ONLY ORIGINAL RIGHT BELONGING TO EVERY MAN BY VIRTUE OF HIS HUMANITY”

*Andrea FAGGION*¹

INTRODUCTION

The concept of freedom is at the heart of Kant’s philosophy. It “constitutes the keystone of the whole structure of a system of pure reason” (KpV, AA 05: 04). However, speaking of “the” concept of freedom at Kant’s philosophy might be misleading. Depending on the philosophical field, Kant works with a different concept of freedom thus that one can find several concepts of freedom subtly connected to each other at his philosophy. Mistaking one for another carries serious consequences. In this paper, I will discuss some issues related to the concept of freedom to be found at Kant’s philosophy of law.

At least in our society, it seems to me that nobody is openly against a right to freedom. Nonetheless, the meaning of that juridical concept of freedom is a matter of permanent dispute among philosophers. This is why I believe a deep understanding of the Kantian concept of freedom in the context of his defense of a right to freedom should be useful to enlighten the contemporary debate.

In the first section of this paper, I deal with Kant’s definition of freedom as “independence from being constrained by another’s choice” (MS AA 06: 237). This definition is contained at Kant’s introduction of freedom as a right. I hope to show that such a definition should be treated as the liberal definition of freedom, in the sense of Isaiah Berlin’s classical paper “Two Concepts of Freedom”. In the second section, I intend to clarify the condition under which, according to Kant, one can claim a right to freedom: her freedom must be able to “coexist with the freedom of every other in accordance with a universal law” (MS AA 06: 237). My claim here is that such a universal law does not imply a political law. In the last section, I analyze the justification of our right to freedom as an innate or original right. It is at issue the relation between a right to freedom in the sense above and our human condition. I claim that the right to freedom is implied by the second formula of the categorical imperative.

I.

I am starving. A very wealthy man offers me a job. According to his offering, I should be paid with three meals a day for every working day. I will certainly starve to death whether I refuse his offering. Am I free to accept his offering?

It appears to me that the answer to this type of question divides philosophers. Clearly, the answer depends on our concept of freedom. If it is at issue the internal freedom of choice, then a determinist can say that my physiological needs determine my choice thus that I am not free to accept or refuse the job.²

Nevertheless, in this paper, I am not primarily concerned with the internal freedom of choice, i.e. choice's independence from subject's own wishes and needs. After all, a juridical relation is not a relation internal to the self. Indeed, a juridical relation is not only external to the self, it is a relation among selves (MS AA 06: 230).

This being so, our question is whether my freedom is being impaired by the wealthy man in that context, and not by my wishes and needs. Lets see. At first, I am starving to death. Disregarding if I work or not, I die. All the paths lead to death. Then, the wealthy man interferes in my situation by offering to pay for my work with meals. Now, I have two options while I had only one before. Now, I can choose between dying or working for meals. Hence, since the wealthy man's interference expands my options, it does not seem right to say that the wealthy man's choice constrains my choice.

Lets think about another situation now. A man just says: "or you work for me, or I kill you". It is a totally different situation. That man's interference in my situation is actively making any other possible option besides working for him less eligible for me by a threat of physical harm. His interference narrows my options. Since an act of his choice has such an effect on my choices, it seems perfectly reasonable to claim that my choice is being constrained by another's choice. To sum up, freedom as a right is not about the number of options available to one's choice, it is all about one's range of options being narrowed or not by the interference of another's choice.

At this point, I realize what my reader is feeling, and I happily agree with Herbert Hart that "it will be pedantic to point out to them [to those starving] that though starving they are free" (Hart, 1955, p. 175, n. 02). However, I also totally agree with Hart when he notices that this truth is "exaggerated by the Marxists whose *identification* of poverty with lack of freedom confuses two different evils" (Hart, 1955, p. 175, n. 02).

Keeping in mind Kant's clarification of the concept of right as concerning external and practical relations of one person to another - and not concerning relations between one's choice and another's wishes or needs (as in acts of beneficence and callousness) - (MS AA 06: 230), it is very useful to appeal to Hart's definition of coercion for a better understanding of the overall point of a right to freedom as a right not to be constrained by another's choice: "*Coercion* includes, besides preventing a person from doing what he chooses, making his choice less eligible by threats" (Hart, 1955, p. 175, n. 02).

I would like to complement Hart's definition of coercion by specifying the mentioned threats as "threats of using of force", since a threat might be merely a suggestion that something unpleasant will happen if an order is not followed. For instance, if a person warns me that she is not talking to me anymore if I work today, I am not under coercion. The person is actually making one of my options - working - less eligible for me. However, she is not doing that by threatening to take away from me something which belongs to me (as my life or a piece of my body), but by threatening not to share with me something which belongs only to her (herself). Therefore, that person is not properly narrowing my options: the range of options I would have anyway without her interference.

I hope the remarks above can make more precise Kant's own definition of coercion as "a hindrance or resistance to freedom" (MS, AA 06: 231), that seems too general to me. I believe those remarks are also coherent with Berlin's important clarification of the concept of coercion. Accounting for the notion of negative freedom, that is freedom in the sense of the classical liberal tradition, i.e. noninterference, Berlin explains:

Coercion is not [...] a term that covers every form of inability. If I say that I am unable to jump more than ten feet in the air, or cannot read because I am blind, or cannot understand the darker pages of Hegel, it would be eccentric to say that I am to that degree enslaved or coerced. Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act. (Berlin, 2002, p. 169)⁵

Provided that we understand what "independence from being constrained by another's choice" means, i.e. independence from coercion, from now on, we can analyze the condition under which we can claim such a right not to be coerced.

II.

Our original right to freedom, for Kant, is to be claimed if and only if our freedom "can coexist with the freedom of every other in accordance with a universal law" (MS, AA 06: 237). Does such an assertion imply that one is free always that and only when one takes part in a political community which determines what is allowed and what is forbidden for everyone?

According to Kant, the right not to be coerced corresponds to the right to be her *own master* (MS, AA 06: 237). Thus, one can understand that Kant is claiming that the negative and the positive concepts of freedom to be found in Berlin's work - i.e. noninterference (as explained in the previous section) and self-government - are analytically connected. That reading seems natural when Berlin claims that: "The 'positive' sense of the word 'liberty' derives from the wish on the part of the individual to be his *own master*" (Berlin, 2002, p. 178, my italics).

Moreover, one can remember what Kant claims in the general introduction to *The Metaphysics of Morals*: "a person is subject to no other laws than those he gives to himself (either alone *or at least along with others*)" (MS, AA 06: 223, my italics). Since the point at issue here is "the freedom of a rational being under moral laws" (MS, AA 06: 223), it seems safe to say that Kant believes that freedom as noninterference - independence from being constrained

by another's choice - is the same as the political right of participation in political legislation: the positive sense of freedom. The rationale in the identification between the negative and the positive sense of freedom would be the thesis according to which, in self-government, my choice would be constrained by my own choice, not by another's choice.

If that is so, then Kant is completely in odds with the classical liberal tradition, and, certainly, Berlin's work is one of the best sources for us to understand why is so. The core point here is that, inside classical liberal tradition, questions like "who governs me?" or "by whom I am ruled?" are logically distinct from questions like "am I interfered with?" or "how far can political authority interfere with me?":

Freedom in this sense [noninterference] is not, at any rate logically, connected with democracy or self-government. [...] The desire to be governed by myself, or at any rate to participate in the process by which my life is to be controlled, may be as deep a wish as that for a free area for action, and perhaps historically older. But it is not a desire for the same thing. (Berlin, 2002, pp. 177-178)

Before going back to Kant's account of the right to freedom in order to know if he really conflates two different questions whereas liberals do not, I believe we need a deeper understanding of the alleged logical difference between the two types of questions mentioned above. Are liberals right in logically separating claims for noninterference and claims for political inclusion? At first glance, after all, it seems that my being part of the government precludes the possibility that my choice is being constrained by another's choice.

All things considered, it is at issue here if my claim for noninterference makes sense against a political authority which includes myself in the process of legislation. If the negative concept of freedom is to be identified with the positive concept, then I can claim a right not to be interfered with only against other fellow citizens who act in disaccord with the political law. In other words, the positive concept of freedom would provide content to the negative concept of freedom insofar as I only can determine whether I am being interfered with based on a political law - i.e. a universal law - which I give "along with others".

Along centuries, liberals have been warning us against the danger of believing that "The nation did not need to be protected against its own will. There was no fear of its tyrannising over itself" (Mill, 1989, p. 06). Indeed, Mill explains why the fact that I give laws "along with others" does not preclude the possibility that my choice is constrained by another's choice:

It was now perceived that such phrases as 'self-government', and 'the power of the people over themselves', do not express the true state of the case. The 'people' who exercise the power are not always the same people with those over whom it is exercised; and the 'self-government' spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, *may* desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power. The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein. (Mill, 1989, pp. 07-08)

In other words, Mill is describing a logical possibility whose reality has spread worldwide: the tyranny of society against the individual. Certainly, at this point, one will remind us that Kant would never endorse the legitimacy of a law based on majority acceptance. Kant would not be so naive not to realize that the rule of majority could be the most serious danger against our right of independence from being constrained by another's choice. But then what does it actually mean to give a law "along with others"? Is there a Kantian meaning of being her own master that precludes a conflict with the right of noninterference?

Whatever answer one can find in Kant's political philosophy, its root should be the distinction between *will* and *choice*. *Will*, for Kant, is practical reason itself, therefore, the ground determining choice. By its turn, *choice* is a "a faculty to *do or to refrain from doing as one pleases*" insofar as "it is joined with one's consciousness of the ability to bring about its object by one's action" (MS, AA 06: 213). Thus, *will* is a faculty of legislation; *choice*, a faculty of execution. Insofar as will is practical reason, the law it gives is universal. In this sense, it is a law I give "a long with others": those endowed with practical reason.⁴

Now, it is crucial to make a point regarding the legislation of practical reason: nobody is originally entitled to speak on behalf of practical reason. In other words, political authority is not natural. Since the only one innate right is freedom, I do not have to obey other human being more than she has to obey me. This is exactly what Kant means by a right to be "his own master": "innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a human being's quality of being *his own master (sui iuris)*..." (MS, AA 06: 237) is an authorization contained in the principle of innate freedom. It does not seem to be something very far from Berlin's description of a man, as "a being with a life of his own to live" (Berlin, 2002 p. 175).⁵

Since, according to Kant, the quality of being *his own master* is nothing else than an expression of *formal or juridical equality*: the ideal according to which no human being is naturally or originally subordinate to other, since every human being is equally endowed with will or practical reason. Therefore, political legislation, i.e. the special authority of a group of legislators is not analytically contained in the concept of an innate right to freedom.⁶ But then what does it mean the universal law according to which my freedom must coexist with the freedom of every other thus that I can claim a right to freedom?

I suggest that Kant should be read as asserting that my claim not to be constrained is legitimate if and only if others' legitimate actions would not be hindered whether an action of the same type as mine were universally allowed. It seems to me that this reading is coherent with §§D and E of the Introduction of the Doctrine of Right, in whose Appendix it is to be found our passage about innate right. In §E, Kant speaks of a law of reciprocal coercion in accord with the freedom of everyone under the principle of universal freedom as the construction of the concept of right as authorization to use coercion (MS, AA 06: 232). In §D, authorization to use coercion is accounted of in terms of a hindering of a hindrance to freedom. This being so, it seems safe to say that I can claim a right not to be constrained by another's choice if and only if my choice does not constrain any other choice.

But why do I have such a right? Because I am a human being, Kant says. Why is that so?

III.

Freedom as defined in the first section, under circumstances specified in the second section, is “the only original right belonging to every man by virtue of his humanity” (MS, AA 06: 237). Why does humanity ground such a right? How is that so?

Certainly, we can disregard a reading according to which Kant would be deriving a right from our physiological constitution as *homo sapiens*. There rest two alternatives: a weak and a strong sense of humanity. On one hand, the weak concept of humanity would be the one found in the *Religion within the Boundaries of Mere Reason*, where humanity is the quality of “a living and at the same time *rational* being” (RGV, AA 06: 26). Humanity, in this weak sense, does not imply a moral personality, i.e. “the freedom of a rational being under moral laws” (MS, AA 06: 223); or, in the terms of the *Religion*, “the susceptibility to respect for the moral law *as of itself a sufficient incentive to the power of choice*” (RGV, AA 06: 27). In other words, in the weak sense of humanity, a human being is endowed with merely empirical practical reason, but not necessarily with pure practical reason. On the other hand, in the strong sense, humanity *is* the same as moral personality.

In *The Metaphysics of Morals*, the concept of humanity seems to be employed always in the strong sense (for instance, MS, AA 06: 239; 295; 387; 404; 456 and all the many passages in which Kant speaks of the dignity of humanity in one’s own person as well as in another person). Indeed, in *The Metaphysics of Morals*, when Kant explicitly distinguishes humanity from animality, he defines humanity as the “capacity to set oneself an end - any end whatsoever” (MS, AA 06: 392). I understand that a being endowed with a merely empirical practical reason would be capable to set oneself means, but not ends. My reading seems to be confirmed, when, a few pages forward, Kant claims that “humanity would dissolve [...] into mere animality” (MS, AA 06: 400) without moral feeling understood as “a susceptibility on the part of free choice to be moved by pure practical reason (and its law)” (MS, AA 06: 400). In other passage, Kant is even clearer about the confluence of humanity and moral personality in *The Metaphysics of Morals*:

Humanity itself is a dignity; for a human being cannot be used merely as a means by any human being (either by others or even by himself) but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all *things*. (MS, AA 06: 462)

Undoubtedly, this passage leads us to the *Groundwork of the Metaphysics of Morals*. In spite of its not being a juridical work, it is there that one should look for the concept of humanity grounding the right to freedom. In a few words, the right not to be constrained by another’s choice is the same as a right not to be treated merely as a means whatever are another’s ends:

a human being and generally every rational being exists as an end in itself, *not merely as a means* for the discretionary use for this or that will, but must in all its actions, whether directed towards itself or also to other rational beings, always be considered *at the same time as an end*. (GMS, AA 04: 428)

Not only can we find the same claim about humanity as an end in itself in *The Metaphysics of Morals* and in the *Groundwork of the Metaphysics of Morals*, but it is the last work explicit - though subtil - about the juridical implications of such a moral concept of humanity. There, Kant asserts that the idea of a being that “may not be used merely as a means [...] *limits all choice*” (GMS, AA 04: 428). Furthermore, Kant claims that the principle of humanity “is the supreme *limiting condition of the freedom of actions* of every human being” (GMS, AA 04: 430-431, my italics).

Those claims only can mean that my moral right not to be constrained by your choice amounts to your moral obligation not to use me merely as a means or resource for your ends, and vice-versa: your equal moral right implies my equal moral obligation towards you. This is why the innate right to freedom is at the same time a limiting condition to everyone’s external freedom of actions. In other words, one needs to recognize another’s having a will of oneself, asking for consent instead of coercing her to act as one wants her to, unless, as we have seen above, another’s own act amounts to a coercion against other choice. To sum up, the innate right to freedom *belonging to every human being by virtue of her humanity* is the only way whereby all human beings can take account of each other as ends in themselves.⁷

FINAL REMARKS

The innate right to freedom being at the same time a limiting condition to external freedom is the Kantian way to conciliate autonomy and right as an authorization to use coercion. Moreover, I would like to suggest, it is the only way to ground a moral right to freedom avoiding problems like the well-known “is-ought gap”. If Kant’s premise were morally neutral - as our capacity to figure out means for natural ends -, how could he infer a moral right not to be enslaved by others? Without a moral premise like human dignity, the obligation not to treat others as mere things would be at most a hypothetical imperative.

This being so, in spite of Kant’s very useful distinction between ethics and right, it is in order to keep in mind that right in the strict sense, according to Kant, it is still moral. Therefore, it is not possible to reconstruct the foundations of the most essential right - the original right to freedom - without employing moral elements.

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ABSTRACT: Kant compares a merely empirical doctrine of right to the wooden head in Phaedrus's fable, i. e. a head that has no brain (MS AA 06: 229). An a priori right may be acquired or innate. According to Kant, there is only one innate right (MS AA 06: 237). That only one innate right is freedom. In that context, freedom means "independence from being constrained by another's choice" (MS AA 06: 237). As a moral right, such a right implies reciprocity. This being so, it is a right to be held "insofar as it can coexist with the freedom of every other in accordance with a universal law" (MS AA 06: 237). The reason why it is an innate right is that it is a "right belonging to every man by virtue of his humanity" (MS AA 06: 237). This paper aims to clarify a few issues regarding our innate right to freedom. To start with, we need a deeper understanding of the meaning of freedom as independence from being constrained by another's choice. I will claim that such an independence should be understood as absence from fraud and violence. Following, it is in order to analyze the condition according to which freedom is a right: coexistence with the freedom of every other in accord with a universal law. I will claim that such a condition does not imply political authority. Finally, we have to handle the connection between the innate right to freedom and our humanity. I will claim that the innate right to freedom cannot be disconnected from the second formula of the categorical imperative.

KEYWORDS: freedom, right, humanity, Kant, liberalism

NOTES

1 Professor of the Department of Philosophy and of the Graduate Program in Philosophy at the State University of Londrina. Professor of the Graduate Program in Philosophy at the State University of Maringá. PhD in philosophy received from the State University of Campinas in 2007. Post-doctoral research in philosophy done at the State University of Campinas, 2009-2011, and at the University of Colorado at Boulder, 2011.

2 "Freedom of choice is this independence from being determined by sensible impulses; this is the negative concept of freedom. The positive concept of freedom is that of the ability of pure reason to be of itself practical" (MS, AA 06: 213). At this passage, clearly, Kant is talking about two points of view regarding internal freedom of choice: negative and positive, but always internal.

3 Berlin points out that one can claim that her inability to get something is due to social arrangements whereby she is prevented from having enough money whereas others are not. Thus, one can claim that the poor are victims of coercion. However, it is to be noticed that such a claim does not amount to an assimilation between poverty and lack of freedom or coercion. That claim depends on a particular social and economic theory about the causes of poverty (Berlin, 2002, p. 170).

4 Confirming my reading, in the Doctrine of Virtue, Kant speaks of the idea of humanity as such, including me as "giving universal law along with others" (MS, AA 06: 450). At this point, he is talking about mutual benevolence. As it is well known, according to Kant, benevolence cannot be the subject of political legislation at all. It is the matter of an ethical law. Hence, it is perfectly possible to understand the meaning of giving law "a long with others" outside the political discourse.

5 Indeed, Kant speaks of a quality of being "his own master" where many liberals speak of a quality of being the owner of himself. Kant explains the difference: "someone can be his own master (*sui iuris*) but cannot be the owner of *himself* (*sui dominus*) (cannot

dispose of himself as he pleases) – still less can he dispose of others as he pleases – since he is accountable to the humanity in his own person” (MS, AA 06: 270).

6 It must be noticed that I am not claiming that, according to this passage, political authority is impossible. I am just claiming that, according to Kant, political authority cannot be natural. If it is possible, it should be the result of a contract among free and equal men.

7 Certainly, this is the negative way of taking account of other human beings as end in themselves. The positive way of doing that - acts of beneficence - belongs to ethics.

Recebido / Received: 02/11 /14

Aprovado / Approved: 28/12/14

