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The concept of right in Kantian political philosophy

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Abstract

Since antiquity, political thinkers have argued that the idea of right seems to be an essential tool for analyzing the relationship between the state and individuals. Political thinkers believe that rights are very essential for human's existence in a state. If there are no rights of individuals to control the power of the governmental authority, the state would surely assume unrestrained power. It may result unwarranted absolutism. Kant's observation on Rights plays a significant role in his political philosophy. He is very much aware of the fact that a decent civil society could be established if there is proper establishment of rights of the individual. Kant proposes for a republican form of Government in a state and argues for perpetual peace that would prevail in the state as well as in the world. To achieve this goal right is an utmost necessary step which is indispensable connected to the freedom of individual. According to Kant the principles of right are the basic principles of politics based on law. But what does he actually mean by principle of right is the question of discussion? In one part of the book 'Metaphysics of Morals' Kant names 'Doctrine of Right' where he tries to explain what is right by stating, 'Every action which by itself or by its maxim enables the freedom of each individual's will to coexist with the freedom of everyone else in accordance with a universal law is right'. But how does the universal law make possible the co-existence of individual freedom with the freedom of everyone? Is there any possibility of the universal law by which right might be established in a state? If possible, how is it coherent with Kantian practical philosophy? Is such right leading us to cosmopolitan right? As because of Kant very much stresses on Cosmopolitanism and removal of colonialism, where cosmopolitan right is abolition of private property is very much essential. To inquire the answer of those questions my research paper would glimpse into Kant's philosophy of right.

Keywords: political philosophy, right, freedom, property, categorical imperative

1. Introduction

Immanuel Kant, the philosopher of class apart, is primarily renowned for his critical philosophy, not for his political philosophy. Some Kantian scholars claim that Kant is not a political philosopher of note, indeed. Even in the history of Political thought his contribution is not being granted so much. His views on politics are merely seen as forerunner of Hegelism. Raiss Hans, in his book 'Political Writings of Kant', clearly points out that the historians of philosophy including Kantian scholars have neglected his political thought mainly for two reasons. First, the philosophy of his 'Three Critiques' has drawn entire attention of his readers and admirers. Secondly, he does not write a masterpiece on political philosophy like 'Critique of Pure Reason' or 'Groundwork of Metaphysics of Morals'.

We think Hans Raiss is probably correct in his opinion. Actually, Kant's great works on critical philosophy are so popular in comparison with these political writings appear very much less weighty. But from this it should not be concluded that his political thought is not central to his philosophy. It would be a quite mistake if we draw such kind of assumption. His political thought, in fine, is ultimately connected to his critical philosophy and it is not an accidental by-production. Indeed, his political philosophy has grown organically out of his critical philosophy and if we do not pay attention to his political philosophy, we would not able to grasp all comprehensive vision of his critical philosophy.

Though Kant does not pen something outstanding on political philosophy, yet begets many valuable concepts in context of political thoughts that have been scattered in his different writings such as 'Perpetual Peace-A Philosophical Sketch', 'The Metaphysical Element of Justice', 'The Contest of Faculties', 'Theory and Practice', 'Answering the Question: What is Enlightenment', 'Anthropology from a Pragmatic Point of View', 'Idea for a Universal

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History with a Cosmopolitan Purpose'. Out of these concepts the concept of right is an important and fundamental concept in context of political philosophy.

2. The Concept of Right in Kant's Philosophy

As a political philosopher, Kant is very much aware of the fact that a decent civil society could not be established unless there is proper establishment of rights of the individual. Kant proposes for a republican form of Government in a state and argues for perpetual peace that would prevail in the state as well as in the world. To achieve this goal individual right is an utmost necessary step which is indispensably connected to the freedom of individual. Kant believes that rights are such principle of politics which are based on laws. For Kant, it was never right that ought to be adapted to politics, in contrast, it was politics which ought always to be adapted to right.

Kant in his famous work, 'Science of Right'(1796), illustrates his observation on right in a methodical manner. But he clearly states that it is so embarrassing to answer the question- what is right? just as the question- what is true law? Truth of the laws differs in different country, similarly, what hold right in a particular country at a particular time is not a sufficient solution to this question. Though it is easy to state what is right in particular cases, it is difficult to state what is right in general according to universal criterion. It is better to mark some conditions of right in order to understand its universal application. Kant observes that in first place, the conception of right:

has regard only to the external and practical relation to one Person to another, in so far as they can have influence upon each other, immediately or mediately, by their Actions as facts ^[1].

Secondly Kant observes,

the conception of Right does not indicate the relation of the action of an individual to the wish or the mere desire of another, as in acts of benevolence or of kindness, but only the relation of his free action to the freedom of action of the another ^[2].

In the third place, Kant opines,

in his reciprocal relation of voluntary actions, the conception of Right does not take into consideration of matter of the act of Will in so far as the end which an one may have in view in willing it, is concerned ^[3].

We, now can try to extract his conception of right from the above quoted observations of the great philosopher. Kant primarily indicates that the idea of right applicable to some sort of relationship among individuals where they can be affected by the actions of another either directly or indirectly and this relation is purely external and practical. In the second characteristic of right, Kant holds negatively what is not a right. He exclaims that the notion of right is not the relation of individual action doing from mere will or desire. In the case of benevolence there is an individual motive or desire lies. But in regard to right the fact is different. Right always relates to free action of the individual where at the same time the free action of another person is acknowledged. Final condition what Kant ascribes

to right is that will's material aspect is irrelevant in context of right which is itself a mutual relation among individual. For example, it is not inquired in circumstance of right whether anyone who buying goods for his trade and commerce gains a profit or not, but only the mode of transaction underlying behind it is taken into account, in manipulating the relation of reciprocal acts of will. Acts of voluntary will, are, therefore, treated only in so far as they are free and liberal and it is also related to freedom of voluntary actions of another, in accordance with a such universal law.

Kant, therefore opines, right is

the whole of the conditions under which the voluntary actions of any one Person can be harmonized in reality with the voluntary action of every other Person, according to a universal law ^[4].

Clearly as per Kant's suggestion rights may be treated as sum total of conditions under which the will of a person can bring together with will of others in accordance with universal law of freedom. Kant further develops universal principle of right by saying,

Every Action is right which in itself, or in the maxim on which it proceeds, in such that it can co-exist along with the Freedom of the Will of each and all in action, according to a universal law ^[5].

Universal principle of right imposes an obligation upon an individual, but it does not demand, let alone requires him to act according to it. It directs that if freedom has to be restricted in accordance with right and if justice is to come out ahead, it must be done so as per this universal principle of right. To restrict freedom in such a way does not result interfering with the freedom of an individual, rather merely sets up the conditions of the external freedom of the individual. This universal principle of right is actually an application of the universal principle of morality as advocated by Kant in his Categorical Imperative, when it is applicable to the domain of law and sphere of politics, it is regarded as the universal principle of right. Since it is morally essential to understand external freedom an individual may have been compelled by other people to perform his duty of getting access into a civil society. In doing so individuals requisites more morally better person and here it involves other people's reciprocation. Thus, Kant believes that the basement of a constitution or of all laws maintains "greatest possible human freedom in accordance with laws which ensure that the freedom of each can coexist with the freedom of all the others". He also expresses that from this principle all other principles of politics follow.

Kant further advocates that whatever makes hindrance of freedom is wrong according to universal laws and constrain of compulsion of all kinds are basically hindrances in the way to freedom. Naturally, if a certain exercise of Freedom is itself a hindrance of the freedom in accordance with laws, it is vacuously wrong. The constraint or compulsion which is opposed to it is right is actually 'a hindering of a hindrance of freedom'. Consequently, following logical principle of contradiction, 'all right is accompanied with an implied Title of warrant to bring compulsion to bear on any one who may violate it in fact'.

Kant upholds Right in a strict sense also.

Strict Right may be also represented as the possibility of a universal reciprocal Compulsion in harmony with the Freedom of all according to universal Laws ^[6].

He indicates by asserting this proposition that we should not conceive of right as composed of two elements—namely, the obligation imposed by a law and the authority on the part of someone who has bound another by his personal free selection, to coerce him to perform. Instead, the notion of right should be judged as “consisting immediately in the possibility of a universal reciprocal Compulsion, in harmony with the Freedom of all”. Kant asserts that right in its strict use actually unmixed with any ethical consideration and has no need of determinants of the will apart from purely external ones. Thus, a strict right, in true sense, can be called wholly external and pure. It would naturally be devoid of any precept of virtue. Therefore, only a purely external right can be regarded as right in the strict sense. Such a right is basically founded on individual’s awareness of his obligations within the law. But if it is to be pure as such, it neither may nor should refer to this consciousness as a motive by which might determine the free act of the Will. For this reason, it depends upon the principle of the possibility of an external coercion, such as may co-exist with the freedom of everyone according to universal laws. Thus, when someone says that a Creditor has a right to require from a Debtor the payment of his debt, it actually indicates the Creditor can apply an external compulsion to compel debtor like so to pay, and such compulsion is quite compatible with the freedom of everyone according to a universal law resulting right and authority to compel indicate the same thing. Therefore, if we accept right in the strict sense as depicted by Kant there is conjoined a right to compel. Kant in the course of discussion also expresses a wider sense of right where no question of authority to compel arises. In wider sense rights may be of two kinds—equity and the right of necessity. He remarks equity is such that concerns only cases as are outside strict right i.e., where there is no compulsion according to a law. On the other hand, the right of necessity applies to the cases where a person’s own life is in danger and he is eager for taking someone else’s life. A person can never be punished with any greater punishment than the thrashing of life itself. So, anybody act according to the right of necessity there cannot be no use of law.

Kant, during the discussion of science of right, divides rights into Natural rights and positive rights. He holds, “Natural Right rests upon pure rational Principles a priori; Positive or Civil Right is what proceeds from the Will of a Legislator” ^[7] He further adds that the former constitutes Private Right and the latter represents Public Right. According to him as Civil State differs from state of Nature, because State of Nature is devoid of Civil Society or such like institutions that secure the Mine and Thine by public laws. “It is thus that Right, viewed under reference to the state of Nature, is specially called Private Right”. Kant exclaims that private right is concerned with property and property is of two kinds— property which one possesses directly through physical possession and secondly, property which may be possessed indirectly.

We have already mentioned that in the ‘Philosophy of Law’ Kant deals with both private and public rights. Private rights

are concerned with property. Kant defines property as that ‘with which I am so connected that another’s use of it without my consent would wrong me’. In one sense, if anybody is holding a thing like an apple and suppose another man snatches it from his hand, first man has been wronged because in snatching from his possession, the other harms him. Kant identifies this as ‘sensible’ or ‘physical’ possession. But it is not only sense of possession to be used by Kant. According to him possession, in its right sense, must be possession of a thing that another’s use of the thing without one’s consent harms him even when he is not physically affected and not presently using the thing in context. If someone pluck an apple from one’s garden, no matter where he is present or not or whether he is even aware of the loss he is prevented from using that apple, Kant identifies this as ‘intelligible possession’ ^[8]. Kant opines that all objects of human choice may be subject to intelligible possession. But it is observed that people do consider objects as potential property of particular human beings. Now if one human being is to enjoy intelligible possession of a particular object, all the rest must refrain from use the same object. Such a condition would surely violate the universal principle of right. Kant is very much worried to think that any unilateral declaration by one human being that an object possessed by him only would transgress the freedom of others. Kant further believes that the idea of right intelligible possession is possible without distorting the principle of right is if there would be a mutual agreement among all human beings that binds together under an obligation to grant each other’s intelligible possessions. Each human being must acknowledge an obligation to refrain from using object that belong to others. So, in order to deference to the property of others, the mutual obligation is needed under the enforcement of common and general will. He holds that the state itself obligates its all citizens to respect the property of other citizens. The state, therefore, must function as a disinterested and unbiased institution that has capacity to resolve all the disputes in connection with individuals’ property. Thus, he believes, without a state’s intervention these property rights are impossible to be maintained.

Here, a puzzle may be aroused with regard to Kantian concept of property. If human beings are not any intelligible property prior to the existence of a state, yet the state’s role is to enforce property rights, then the question is – where does the original assignment of property to human beings emerge? British philosopher John Locke had willingly avoided this puzzle in his theory of property by asserting property as a product of single individual’s activity. Kant rejects the theory of Locke on the grounds that the theory sets up concept of property as a relation between a person and a thing, instead of setting up relation between the wills of several person and a thing. Since property is a relation of wills that can emerge only in a civil condition under a common sovereign power, Kant holds that prior to this civil property can be acquired only in anticipation of and in conformity with a civil condition ^[9].

Kant in the course of discussion in the ‘Philosophy of Law’ points out that there are three types of property right. First is the right to a thing, to corporeal objects contained in space. Examples of these things include land, animals and tools. The second type of property right is the right against a person, the right to coerce that person to perform an action. This is nothing but a contract right. Finally, the third

property right is the right to person akin to a right to a thing and rights to have in relationship with spouse, children and servants.

Kant thinks that from another point of view, right may be distinguished into Innate and Acquired Right. According to Kant 'Inner Right is that Right which belongs to everyone by Nature, independent of all juridical acts of experience'. On the other hand, 'Acquired Right is that Right which is founded upon such juridical acts' ^[10]. It is also called 'Internal Mine and Thine' and Kant holds that there are only one Innate right and that is the Birth right of Freedom. He further adds that freedom is self-rule of the compulsory will of another and in so far as it can be compatible with the liberty of everyone according to a universal law. Kant believes that Freedom, the sole inner right is purely original and belonging to every man in virtue of the Humanity. Equality and the right to act towards other people in not such a way that their rights are not be inconsistent with the right of freedom.

3. Conclusion

Kant has repeatedly asserted that the idea of freedom is clearly related to the concept of right of an individual. When he tries to define right, he has enthusiastically used the concept of freedom within it. Kant has said, "Every action which by itself or by its maxim enables the freedom of each individual's will to coexist with the freedom of everyone else in accordance with a universal law is right." Clearly, right of a person is to be materialized only when the free actions of a person can be reconciled with the freedom of everyone else in accordance with a universal law. Thus, his concept of freedom is fundamentally connected with his notion of right which finally related to his universal principle of morality. Actually, the principle of right is an application of the universal principle of morality, named by Kant as Categorical Imperative.

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