

Right, History and Practical Schematism

Daniel Tourinho Peres
Universidade Federal da Bahia / Cnpq

ABSTRACT: The aim of this article is to present some threads of the relationship between the notion of *sensus communis*, history and politics in Kant, so as to establish the bases for an analysis of Kant's philosophy of history, which would be the equivalent of the schematism of pure concepts to his politico-juridical philosophy.

I.

Few philosopher reproduce so faithfully, at the level of thinking, the tensions inherent to the object considered. Such is certainly the case of Immanuel Kant, for whom this reproduction has a very specific sense, to the extent that the object, in what it possesses of the universal and necessary, responds to the determinations of thought. Kant, however, did not consider only the tensions; he considered equally, as Ricardo Terra has demonstrated (TERRA 17 E 18), the way of working them. It is known that, for Kant, history is the history of right, or rather of juridical institutions which place themselves in the path of the realization of the rights of man. On the other hand, we know that politics, as Kant states in *Perpetual Peace*, is the doctrine of right put into practice, or rather it is the ever precarious realization of the idea of right, which must be reviewed or reformed as soon as such a necessity becomes clear to the faculty of judgment and conditions are favorable to change. Since "in order to produce from them [particular volitions of all] a common will, which no one of the all is capable of, in the *carrying out* of that idea [the idea of a civil society which administers law universally] (*in praxis*) the only beginning of the rightful condition to be counted upon is that by *power* (...) it can be anticipated that in actual experience there will be great deviations for that idea (of theory)" (KANT 8, 371).

Thus the history of freedom, which is the work of man, begins with evil (KANT 4, 115). The paradox appears to be that freedom, having its origin in reason, places itself on the correct path only with the development of reason itself: The enlightenment, the "foundation of a mode of thinking which may transform, over time, the rough natural disposition towards moral discernment into determined practical principles, and so finally transform a *pathologically* extracted agreement on a society into a *moral* whole " (KANT 3, 21). Enlightenment and politics go hand in hand in outlining the public sphere, where the determinations – and destinies – of life in society are decided upon.

Politics presents itself in the public sphere and has in its "foundation" the public use of reason. When approached, by means of transcendental reflection and from the perspective instituted by the philosophy of history, it comes to be seen as the gradual institutionalization of the determining activity of judgment and its principles, through which juridical pretensions find their means of legitimization and correction with regard to the agreements which are being empirically woven at the level of opinion. What is intended here is to analyze briefly the sense of such precarious, historically conditioned agreements as schemata of a basic agreement which is made at the level of judgment and its principles – a basic agreement, the foundation of which is found in *common sense* as a transcendental and regulative principle of human action. If politics is then the "realization" of the idea of a perfect republic, which in truth, being the thing in itself, is never represented as a phenomenon (KANT 2, 371), it cannot renounce the philosophy of history as a discursive form capable of serving as schema, as a translation at the level of understanding of that

which may only be represented by pure reason. To borrow the words of Lehmann, Kant “only excludes the possibility of an intuitive realization (*intuitive*) of intellectual intuition (**Anschauung**); we may ‘realize it’ discursively” (LEHMANN 14, 166).

II.

Philosophy of history, as Cavallar states, constitutes the empirical part of Kant’s practical philosophy (CAVALLAR 11, 292), which has in rational right its normative instance and in politics its mode of execution. But the philosophy of history is not *only* the empirical, material part of Kant’s practical philosophy, since in mediating the tension between the ideal and the real (TERRA 17) it also serves as guarantee, at the level of judgment, against any possible skepticism or abandonment of all practical perspective linked to freedom. Thus it is necessary to read with a certain reserve Kant’s often repeated statement that pure practical concepts, with regard to their objectivity, may dispense with any positivity linked to them. Thus, if it is certain that the idea of a perfect civil constitution, for example, does not cease to be a norm for all juridical ordinance, even if there has never been a constitution close to it, it is also certain that *subjectively* it is necessary to be convinced of the possibility of – and moreover the sense of – realizing such an ideal in the world. Therefore, this second moment of practical judgment is, in its widest sense, the action itself of schematizing, i.e., “to render a concept comprehensible (*fasslich*) through analogy with something of the senses” (KANT 7, 65). However, in the case of a practical concept, of an idea of reason, because time, form of intuition, does not serve as an adequate direct schema, what exists is the activity of symbolizing, which then operates as an analogy of schematism. But schematism or symbolism is not the point of interest, what is of interest is that a pure practical concept, in this case the concept of a perfect civil constitution is made “comprehensible” when history, in the totality of its course, is considered as “schema”, in other words, when the concept is *considered at the time of its realization* – progressive and constant – in sensibility, i.e., empirically. “Considered” because such a schema of an idea of reason only supplies the “rule or principle of systematic unity for all use of understanding” (KANT 1, 693), here in the case of all use of practical reason.

As guarantee against possible practical skepticism, the philosophy of history contains certain elements. As early as 1784 Kant states that all the human talents and capabilities can only be fully developed in the species (KANT 3, 23). Of course, the individual may have, on the premises of practical reason, as presented in the second *Critique*, grounds on which to base his hope of seeing the realization of the highest good, union of virtue and happiness, in which the former is a condition of the latter. With the philosophy of history, with the construction of history from pure principles, it is, in its turn, the species which, “in reflecting upon its material and natural conditions becomes conscious of itself as infinite” (DEGGAU 12, 306) and sees one – subjective – condition satisfied for the realization of the highest political good.

But the perspective of the species, and that is what is important to my argument, responds to the adoption of a point of view, the cosmopolitan point of view, which in the end determines the power to judge [*Vermögen zu Urteilen*], or put better, the understanding and its object. The guiding thread of construction – perhaps it would be better to say (philosophical) reconstruction – of a systematic history of human actions is, according to reflection 1420, that goes beyond the purposiveness of nature in its legislation upon contingency, which remains nature (KANT 3, 17), the idea of right (KANT 11, 618). It follows that formal elements are present in history, since in it are presented the ways in which choices (*Willkürn*), in their external relations, should relate to each other. As reflection 1404 further states, “in history there is nothing permanent that may bring to hand an idea of what changed, except the idea of the development of humanity, and that by means of a civil unity of peoples, producing the greatest unity of its strengths” (KANT 11, 612).

This philosophical and systematic history, as it is put in reflection 1471, is also a task in four moments, each of which corresponds to one of the moments presents in the table of categories.

Thus, when it is a question of judging history as to its progress towards a greater good and of tracing for it an *a priori* plan, the human species as a whole (quantity) is taken; the greater good, to which it directs itself, is found in what there is of morality (quality); the internal improvement of each man is not sought, what is sought are his external relations in society (relation); to connect *a priori* progress toward the greater good with the causes currently acting in society, in such a way as to consider the necessity of existing progress towards the greater good (modality) (Kant 11, 650). Therefore, it is this table of categories applied to the course of history which presides over the discursive “construction” presented in *Idea for a Universal History*.

The facts which compose history are then objects of reflection; they are not, however, raw facts but works of the imagination. In *Anthropology*, the imagination is presented, in § 34 A, as the faculty of making the past present (memory) (KANT 10, 182), of making the future present (the faculty of prediction and prognosis, § 35 e 36) (KANT 10, 185 a 190) and of linking both, past and future, to the present (the faculty of designation, § 38) (KANT 10, 191). It is the faculty of making the future present which, without doubt, is most associated with a philosophy of history, since even taking “a look at the past, is only with the intention of making the prediction of the future possible” (KANT 10, 186). It is, then, this perspective which Kant assumes in turning, in 1786, towards a possible beginning of human history. Such an account, we well know, is merely conjectural, a simple exercise of the imagination accompanied by reason (KANT 4, 109); but it is an account, the central point of which is constructed from the juridical categories, or rather from the association between forms of life and ways determining property. The conflict between land owners, a form of life linked to agriculture, and nomadism, linked to hunting and pasturing, will be resolved by the institution of a civil constitution which, if perfect, is the highest purpose of civilization (KANT 4, 117). But what it is important to see is that such a conflict reproduces, at the level of image, a conflict which the *Doctrine of Right* presents in a more abstract way: the conflict between the limitation of possession to purely physical possession and a concept of property which goes beyond physical possession, confirms the necessity of considering possession to be intelligible. Thus, in the *Doctrine of Right*, such a conflict generates an antinomy, the result of which consists in affirming that only the second conception shows itself to be compatible with the idea of right itself (KANT 2, 255). At the level of theory, criticism, which for that matter occupies the position of a trial-court, may well resolve these questions. At the level of history, i.e., in practice, the solution is political and requires the authority of what is sovereign, through the power capable of administering the law, in other words, of instituting distributive justice, a task which in 1784, in *Idea for a Universal History*, Kant stated to be the most difficult (KANT 3, 15 – T. 14). One passage of the *Doctrine of Right* demonstrates the real dimension of the problem, adding new elements:

The indeterminacy, with respect to quantity as well as quality, of the external object that can be acquired makes this problem (of the sole, original external acquisition) the hardest of all to solve. Still, there must be some original acquisition or other of what is external, since not all acquisition can be derived. So this problem cannot be abandoned as insoluble and intrinsically impossible. But even if it is solved through the original contract, such acquisition will always remain only provisional unless this contract extends to the entire human race (KANT 2, 266).

The end of this long passage takes us back to the perspective of the 1784 text and its cosmopolitan intention. We are as far from the beginning, when original acquisition of the land by means of first occupation was affirmed as we are from the moment at which the original contract will find itself extended to all of mankind. Clearly, past and future are linked by a plane which, “in a certain way, has an *a priori* guiding thread” (KANT 3, 30). Thus, empirical elements are linked in a determined form and are constituted, precisely, as cases which *present* this form. It is certain that reflective judgments formulated from the perspective of the philosophy of history, even without

producing certainty, may subjectively claim for themselves, a sufficient degree of assent to guide determining judgment, and this guidance not only refers to the past or the future but principally to the present. But in affirming the necessity for the original contract to extend to the whole human species, Kant widens, to the global scale, another point of the *Doctrine of Right*, at once within the ambit of private Law and of permissive law: “the way to have something external as one’s own *in a state of nature* is physical possession which has in its favor the rightful *presumption* that it will be made into rightful possession through being united with the will of all in public lawgiving, and in anticipation of this holds *comparatively* as rightful possession” (KANT 2, 257).

Thus, he who first appropriates an external object, he who first states that ‘this is mine’, affirms, at the same time, the institution of legislation, the validity of which is universal and imposes an obligation on everyone (KANT 2, 253). Conflicts are no longer resolved by private choices, each judging his right with nothing in common to unify them. Once the juridical law is instituted, it is public judgment which resolves conflicts. But, let us not forget, that since right has its beginning in force, which is authorized by permissive law, it can easily be foreseen how many mistakes will be made before the idea of the original contract extends itself to all mankind. The provisional nature of possession and judicial precariousness appear to imply the necessity for correction, without threatening juridical certainty .

At least three other passages in Kant’s texts point in the same direction: one is also found in *Perpetual Peace*, where Kant, discussing permissive law and the law of possession by means of conquest states the following: “the prohibition here only affects the *mode of acquisition, which from now on* shall not hold, but not the *status of possession*, which, though it does not have what is required in order to be called a right, was nevertheless *in its time* (that of putative acquisition) taken to be legitimate to the public opinion of every state at the time” (KANT 8, 347 – the second and fourth highlights are mine). Another passage is found in the *Doctrine of Right*: whomsoever is touched, in his property, by reform enforced by the political power, can complain of nothing, since “the reason for their possession *hitherto* lay only in the *people’s opinion* and also had to hold *as long as* that lasted” (KANT 2, 325 – first and third highlights are mine). But it is in *Perpetual Peace* that we find the formulation which puts the question most eloquently: “political wisdom, *in the conditions in which things are at present, will make reforms* in keeping with the ideal of public right *its duty*” (KANT 8, 373 – my highlight). That extract can only be disturbing, for what is the sense of convert into duty that which, from the point of view of reason, always was a duty? Is pure practical reason, which is what would be stated here, in its prescriptions, empirically measurable? Does pure practical reason recognize any type of temporal – or even spatial – determination which would limit the validity of its principles? In other words, does the determination of the norm depend, in its own determination, on the circumstances and context of application? On this point history is, then, the result of the imagination as the faculty of designation: “the faculty of knowing the present, to the extent that it (the faculty) constitutes the means of linking the representation of what was predicted with the representation of what passed” (KANT 10, 191) - faculty of designation, of finding the *signs* which link the past and the future.

Things, however, are not at all simple, and an exhaustive analysis of the question goes beyond these notes. An approximation, however, may shed some light: in the same way as the categories of understanding are not acquired derivatively, i.e., from experience, but *a priori*, from reflection and analysis of the syntheses which understanding works on a multiplicity given in intuition, so that the sensible synthesis, itself a result of the action of understanding according to its own legislation, operates as an occasional cause for the original acquisition of the categories (OBERHAUSEN 15), something analogous may be said of practical concepts, i.e., juridical pure concepts in their link with history. Only that reason is no longer simply a legislative faculty, as is the case of understanding and pure will, which both have their tables of categories, but is also a faculty which, by its nature, determines ends and, beyond that, judges the course of the world according to them: in the case which occupies us here, the highest political good, perpetual peace by means of the unification of choices of all, i.e., a cosmopolitan society.

It is not, thus, a question of giving primacy to the historical to the detriment of the rational, reducing the latter to the former. Kant warns on more than one occasion of the illegitimacy of such a procedure (KANT 5, 140/141; KANT 2, 229). Far less is it intended to state that practical reason is measured by history, or that time limits pure practical reason. Of course it is a question of affirming history as a condition for the recognition of practical concepts, but in the following sense: practical concepts do not have their genesis in history and continue to be considered as originally acquired *a priori* concepts; but only in history, by means of history, do such concepts know clarity and distinction, because they are recognised in the context of their application. Stated otherwise, history provides material for reflection, which will then seek the form which organizes it, a form which has its origin in the superior faculties of the mind, i.e., in pure reason. In other words: history – coherent, systematic discourse regarding human actions, which allow themselves to be subsumed under universal practical principles, principles which are merely regulatory and not determining – posits itself as *the fact*, the possible conditions of which are then investigated, *fact* which is demanded by reason itself. This avoids attributing to Kant a historicism which is not his. It merely affirms the necessity, for that matter subjective, for a determined state of things – in which a juridical conflict is present – as an opportunity to achieve clarity as to the pure principles which preside over juridical syntheses and the direction of reform, whenever it is the case. And it is always the case, as soon as the discrepancy between the ideal and its realization is seen and it is possible to discern the possibility of overcoming it.

III.

Kant thinks of political action, in its conformity to the principles of rational right, as a reforming action of existing institutions and positive legislation. Political action which has then the task of realizing the republican constitution, the only one fully in conformity with the principles of rational right, in submitting itself to such a principle, finds in republicanism the spirit of the idea of the original contract (rational), its means of expression (KANT 2, 340). One more important dimension of political action is its solidarity with its discourse, since the latter, to the extent that it mediates between the normative instance and historical effectiveness, positions itself as a condition of possibility of politics. Condition of possibility because it is the discourse, which as collectively formed judgment, informed by the conjuncture [the condition in which things are] but determined by the form of pure practical reason in its juridical use, places the moment of recognition, in practice, of a duty which until then was imposed in theory. It realizes, thus, the function of a schema.

The above passages to which reference is made and which share a temporal determination, not only indicate that the faculty of judgment mediates between pure principles and empirical reality. But it is also at another point in his work that Kant reveals his preoccupation with his own time, when history fulfills, in the most complete way, its role as guarantee. It is the famous passage from the *Conflicts of the Faculties* where Kant makes reference to the French Revolution, which was the historical-political act *par excellence* which marked not only the end of the eighteenth century, but the whole of the subsequent politico-philosophical imagination. In fact, that passage from *Perpetual Peace* in which Kant stated a propitious moment, capable of “generating” a duty, already referred to the Revolution:

Thus political wisdom, in the condition in which things are at present, will make a reform in keeping with the ideal of public right its duty; but it will use revolutions, where nature of itself has brought them about, not to gloss over an even greater oppression, but as a call of nature to bring about by fundamental reforms a lawful constitution based on principles of freedom, the only kind that endures (KANT 8, 373).

Without wishing to add anything new here to the many interpretations of these passages from the work of Kant, it is hoped only to emphasize certain points and as such Renaut's interpretation will be taken as a paradigm. To him, the advent of the French Revolution must be taken as one of those cases in which "nature and liberty are joined in the subjective experience of philosopher reflecting his feeling of pleasure in the face of the historical progress of the law" (RENAUT 16, 411). Thus, it would not be at all unjust to state that such a reading rests on an aesthetic and not a political solution for right disputes. Two questions, however, must be retained: the judgment of aesthetic reflection, with its problematic universality, presents important elements, without doubt, for the analysis by analogy, of political judgment in Kant. But it is the second point which is more important here. For what sense – if indeed it has any – can an aesthetic solution have for the right? The sense that by means of the French Revolution, the idea of a republican constitution became clearer, to the extent that, once it had become an object of reflection for the faculty of judgment, it produced an effect on our sense of justice (KANT 6, 293). By going beyond the established legal limits, revolutionary action reveals the limits of *sensus communis*, of the faculty of judgment and shows just how far such limits are one from the other. The feeling of pleasure then flows from the recognition of a social order which is more just, because it is closer to the ideal of reason. The French Revolution – and the effect which it provokes in the spectators, the enthusiasm for the affirmation of the rights of humanity – is then a *sign* of the realization of the ideal of law, since it allows to see more clearly "the idea of a constitution in harmony with the natural rights of human beings (...) [idea that] lies at the basis of all political forms (...) [and is] the eternal norm for all civil constitutions in general" (KANT 9, 90).

To make a concept comprehensible by means of its presentation is, as already seen, the act of schematizing. The shared, communicated sense of approval, serves then as element for "construction" of the schema of right, the focus of which is the idea of a republican constitution as the only one which fully conforms to reason, the only one that is permanent. In the first *Critique*, it was the imagination which, urged on by understanding, produced the schemata for the concepts. In the *Critique of Practical Reason* it is not the imagination, but understanding itself which schematizes a law the origin of which is found in pure reason. Now, it is the *sensus communis* which schematizes, which finds sensible translation, which may be located in experience, for the pure concepts. It is this, as the faculty of designation (*facultas signatrix*), which serves as imagination and appoints the French Revolution as a sign of progress, linking then, just as a schema, the ideal of reason and the reality of the course of the world. And because it is a product of *sensus communis*, of this sense of community, the schema must be produced publicly, i.e., discursively and by means of the public use of reason. But in truth the *sensus communis* is firstly an idea which possesses transcendental status, to the extent that it, as an operation of reflection, places itself as a condition of possibility to search for a judgment which has universal validity (KANT 6, 293/294 – T. 196).

Also in the *Conflicts of the Faculties*, Kant states that the enlightenment of the people is the public instruction regarding the duties and rights in relation to the State. Furthermore, that it is a question of natural rights, which are derived from the *common human understanding* (KANT 9, 89), from the *sensus communis* in operation with the maxims which are exposed by Kant in the third *Critique*; 1) think for yourself; 2) think in the place of all others; 3) think always in agreement with yourself (KANT 6, 294). It is at this moment that critical philosophy shows itself to be supportive of politics and to complement it. Certainly not when imbued with the discourse of school, but when it presents itself as public discourse, in other words, a discourse something like opinion, is taken to its conclusion by reason in its public use and according to its own method, namely: the public method, the bearer of a universal and cosmopolitan pretension (KANT 10, 629) and which operates precisely with the maxims of common human understanding. With these elements it is held that the first task of philosophy, stripped of any prerogative of school, consists precisely of affirming as

possible a form of politics which does not lose sight of the limits of simple reason, a possibility which is assured, at least subjectively by the critical philosophy of history.

In this task, the philosopher, as with any citizen who makes use of his understanding, starting from a context of pluralism, should take precise care, comparing his judgment with the judgment of others, to construct publicly and discursively the “schemata” which mediate between the normative (theory of political right) and reality (historic-positive law), schemata which, like opinion and collectively formed common will, which bring together the ideal state of practical principles and socially shared expectations regarding the realization of ends (KANT 8, 386), contribute, at least subjectively, to a certain assent relative to the concept – or rather, to judgment – which they transmit if they are not integrated, thanks to their degree of certainty, to a *Wissenschaft* – finally, barely go beyond the registration of an opinion, although well founded –, not for that are they outside the system of reason, since they move precisely in the direction of its unification. (ZINGANO 19).

IV.

By way of conclusion to these brief notes, it is fitting to state that it is Kant, and not Hegel, who in the history of philosophy, places the bases for the consideration of a reconstructive analysis of history, in such a way as to find in it the forms which, even without containing its origin, being rational find their moment of realization there. Once again it is Kant, and not Hegel, who sees in such a reconstruction the way of making our representations, that is, our concepts clearer. The often maligned Kantian apriorism, ready to adhere to any determination, is an image which began to crystallize precisely starting with Hegel. If the philosophy of history, in Kant, takes care to trace an *a priori* plan for humanity, it is also true that in its course, humanity has known reverses even if they have not shaken the belief in progress. History shows us the right moment; the discourse about history, as a schema of pure concepts, may really favour such a moment. It does not impose itself, however, like something inexorable; and its discourse, closer to opinion than it is usual to accept, offers no certainty at all.

Thus, the political idealism of Kant is far from being an ultra-rationalism. The philosopher who imposes limits on his theoretical use of reason is that philosopher who recognizes the fallibility of reason, of the use of reason, it is better to say. In the constellation of practical philosophy perhaps politics is the area that is most subject to error, where the certainties are the slimmest. To recognize such questions is really the first step towards the institutionalization of politics within the limits of simple reason. Politics which do not relinquish a theoretical dimension but which, it can never be sufficiently stated, are far from the dominion of *Wissenschaft*.

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