

The London School of Economics and Political Science

Kant and the Global Standpoint

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Abstract

Two interpretive trends have driven the recent revival of Kant's political philosophy. On the one hand, a focus on his cosmopolitanism as providing a normative agenda for a global political order. On the other hand, a turn to Kant as a theorist of a distinctly state-centred political morality, based on his much debated property argument. This thesis argues that these interpretive trends have sidetracked us from Kant's most sustained, systematic and original cosmopolitan vision as it is laid out in the *Doctrine of Right*. I develop this framework through the notion of a global standpoint as a distinctly first-person perspective from which agents reflexively recognise their systematic interdependence in a world of limited space. The global standpoint binds what I call 'earth dwellers' – corporeal agents who concurrently coexist on the earth's spherical surface – to a certain kind of comportment towards distant strangers. It is a standpoint from which we must interact with others with the aim of finding shared terms of coexistence. What is particularly fascinating about this cosmopolitan vision and of continuing relevance is the way in which Kant folds it into his account of juridical statehood. The global standpoint is not only predicated on the existences of states. Despite being concerned with our comportment *beyond* borders, the ensuing obligations are also to be implemented within the state context. Kant's cosmopolitanism as conceived from the global standpoint is not directed at a global institutional order, but a world of distinctly outward-looking states that bind themselves (and their citizens) to rightful comportment towards other states and non-state peoples of their own accord. We take up the global standpoint from within states by transforming them into cosmopolitan agents.

Table of Contents

Introduction	7
1. The Right to be Somewhere	23
2. On Original Common Possession	58
3. Cosmopolitan Encounters	89
4. Sharing Principles	123
5. Juridical Self-Constraint	159
6. Progress without Teleology	196
Concluding Remarks	231
Bibliography	240

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Abbreviations of Kant's Works

All citations refer to volume and page numbers of the Prussian Academy Edition of *Kant's gesammelte Schriften* (Berlin: Walter de Gruyter and predecessors, 1900—), with the standard A/B form for the first/second editions of the *Critique of Pure Reason*. Where available, I have used translations from the Cambridge Edition of Kant's works, published by Cambridge University Press under the general editorship of Paul Guyer and Allen Wood.

Ant	Anthropology from a Pragmatic Point of View
CBHH	Conjectural Beginnings of Human History
CF	The Conflict of the Faculties
CJ	Critique of Judgment
CPR	Critique of Pure Reason
CrPrR	Critique of Practical Reason
Discovery	On a Discovery whereby any new <i>Critique of Pure Reason</i> is made superfluous by an older one
DoR	Doctrine of Right
En	An Answer to the Question: What is Enlightenment?
Gr	Groundwork for the Metaphysics of Morals
ID	Inaugural Dissertation
IUH	Idea for a Universal History with a Cosmopolitan Intent
Logic	Lectures on Logic
PL	Lectures on Pedagogy
PP	Toward Perpetual Peace
Preparatory DoR	Preparatory Works for the Doctrine of Right
Preparatory PP	Preparatory Works for Perpetual Peace
Proleg	Prolegomena to any Future Metaphysics
Rel	Religion within the Boundaries of mere Reason
T&P	On the Common Saying: This May Be Correct in Theory, but it is of No Use in Practice
WOT	What is Orientation in Thinking?

The contemporary slogan, Think Global-Act Local, requires modification. We need first to ask what it means to Think Global, because we do not yet know how.

— Susan Buck-Morss, *Hegel, Haiti, and Universal History*, Preface.

We shall not cease from exploration. And the end of all our exploring will be to arrive where we started and know the place for the first time.

— T.S. Eliot, *Little Gidding*.

Introduction

While Kant's status as a key figure in the history of philosophical cosmopolitanism has never been in doubt (e.g. Kleingeld & E. Brown 2014; Kleingeld 2016), for long his ideas were primarily absorbed only indirectly through his moral philosophy. First generation cosmopolitans in contemporary global justice debates (e.g. Tan 2004; Caney 2005), for instance, prominently invoked Kant's ethical idea of all humans as members of a single, all-encompassing moral community (Gr 4:433-440, see also Kleingeld 2016, pp.19-21). In so doing, they reflected a wider, long-standing tendency to politicise Kant's moral writings. The primary "culprit" in this regard was John Rawls (2000, pp.143-328), who had effectively turned the *Groundwork's* account of ethically good willing as self-legislation into a 'decision-making procedure' for the generation of universally binding principles of justice: this, despite Kant's own insistence on a sharp distinction between right and ethics. Consequently, Kant was read as a kind of proto-constructivist about justice (Rawls 1980), vindicating the political ideal of a well-ordered democratic society constituted by collectively self-legislating citizens of equal moral standing.¹

This has changed over the last few decades, as interpreters have begun to study Kant's actual political writings in their own right. In particular, two interpretive tendencies have emerged, which are in some tension with each other. On the one hand, a set of innovative work on his occasional political essays, in particular *Perpetual Peace* (e.g. Höffe 2006; Lutz-Bachmann 1997), occasioned a resurgence of interest in Kant's cosmopolitanism. Presenting Kant as a theorist of cosmopolitan constitutionalism (G. Brown 2009) or even global democracy (Held

¹ Versions of this idea can be found also in Reath (1997) and Maus (1994).

1995), authors focused on his prescriptive agenda for a global political order laid out in the essay's three 'Definitive Articles'. The latter call for every state to have a republican constitution, demand the creation of a league of free states, and envisage a 'cosmopolitan right' to interact across boundaries. The ensuing debates primarily investigated Kant's rationale for vindicating this specific set of cosmopolitan institutions instead of some equally conceivable alternative: for instance, his choice of a limited, voluntary league of states instead of the coercive form of world government that he had preferred earlier. This led to further debates about the essay's applicability and hence its continued relevance under contemporary circumstances (e.g. Habermas 1998).

The second and even more recent interpretive trend was driven by a revival of interest in the *Doctrine of Right*, the first part of Kant's late *Metaphysics of Morals* (1797) and arguably the most systematic formulation of his political philosophy. The spoilt state of significant portions of the text was among the main reasons why the *Doctrine of Right* received only little attention until the late 1980s.² Yet, Bernd Ludwig's (1988) crucial rearrangement of what he had identified as editorial errors at the printing stage elucidated crucial parts of the argument and initiated a systematic and philosophically oriented body of interpretive work (Flikschuh 2000; Ripstein 2009; Byrd & Hruschka 2010).

Interestingly, the elevation of the *Doctrine of Right* to Kant's most significant work in political philosophy has come with a 'statist backlash' of sorts.³ Until recently championed as a cosmopolitan figurehead, Kant is increasingly associated with a particularly compelling argument in favour of a distinctly moral justification of the modern state (e.g.

² The seeming textual disorder even led some interpreters to concur with Schopenhauer's 'senility thesis' (e.g. Arendt 1982), according to which Kant's intellectual vigour was already waning at the stage of writing the *Doctrine of Right*.

³ This is not to deny that much of the recent innovative work on Kant's cosmopolitanism has very well taken into account the *Doctrine of Right* (e.g. Flikschuh 2000; Kleingeld 2004; Kleingeld 2011; Muthu 2009, pp.122-210). The category of cosmopolitan right in particular has of late received increased and more systematic attention in the literature (Benhabib 2004; Byrd & Hruschka 2010, pp.205-210; Niesen 2007; Kleingeld 2011, pp.72-92).

Ripstein 2009; Hodgson 2010; Stilz 2011a). This is not without textual warrant: while earlier essays such as *Perpetual Peace* are emphatic and unconditional in their cosmopolitan commitments, large parts of the *Doctrine of Right* seem to focus on a cluster of ideas – around (the relation between) property rights, political obligation and state entrance – familiar from the classical social contract tradition.

Kant's own acknowledgement that he had “towards the end of the book worked less thoroughly over certain sections than might be expected in comparison with earlier ones” (DoR 6:209), may easily be taken to confirm this impression. Precisely at the point at which Kant has developed and delineated the domain of right most systematically, he appears also to have become more sceptical of anything like justice beyond the state and appears to have pulled back from the earlier uncompromising cosmopolitanism. So, for example, whereas *Perpetual Peace* had included sharp criticisms of state power and of warfare, the *Doctrine of Right* arrives at a much more favourable view of the state as a distinct kind of juridical agent in virtue of being a necessary enforcer of individual rights claims. To some interpreters, Kant's considerations on international and cosmopolitan right seemed to be little more than appendices to a view of justice, prominent in early liberal thought, as effectively terminating in state establishment.

On an interpretive level, Kant's much-discussed property argument, around which Bernd Ludwig (1988) himself had constructed his *philosophical* case for a reconceived approach to reading the *Doctrine of Right*, played a crucial role in this context. For long regarded as obscure, inaccessible and largely a failure, the idea that the connection between state authority and the possibility of individual property rights is at the heart of the *Doctrine of Right* and its most original innovation has rapidly become a commonplace among interpreters.⁴

⁴ Another seminal piece to this effect was Brandt (1982).

In a wider context, the ‘statist backlash’ was further fuelled by the fact that it proved conducive to the incipient absorption of Kant’s political thought into contemporary normative theory. His distinctly *moral* justification of state authority could not only be nicely juxtaposed to Hobbesian, Lockean and Communitarian alternatives;⁵ it also coincided with a more general return of statism even in contemporary global justice debates, where a growing camp of internationalists revisited earlier cosmopolitans’ farewell to the idea of sovereign statehood and argued for a system of nationally independent though internationally interdependent states (e.g. Buchanan 2004; Valentini 2011; Sangiovanni 2008).

The argument that I will develop in this thesis defies both these interpretive tendencies. I believe that it is precisely in the *Doctrine of Right* that Kant develops his most sustained, systematic and original cosmopolitan vision. This is not to deny the absolute centrality of his property-based justification of the state. Instead, Kant folds his long-standing cosmopolitan commitments *into* a novel account of juridical statehood. I shall develop this claim through the notion of a global standpoint as a reflexive, first-person standpoint through which individuals must acknowledge their interdependence with others in a world of limited space. Yet despite being concerned with our comportment *beyond* borders, the global standpoint is itself conceived from within the state. That is to say, the pertinent obligation – to interact with distant strangers on a reciprocal basis – is predicated on the existence of states and institutionally implemented within them.

Hence, Kant’s global standpoint is ultimately also a global standpoint on the state. It is directed not at the ideal of a global institutional order, but at a cosmopolitically transformed notion of statehood. I hope to show that this is not only among the most original

⁵ This holds analogously with regard to recently burgeoning debates on state territorial rights, where Kantian accounts are usually construed in opposition to their Lockean and liberal nationalist opponents (Stilz 2011b; Ypi 2014).

(though rarely appreciated) insights of Kant's political philosophy, but also one of continuing relevance. In the remainder of this Introduction, I will (1.) lay out the main ideas underlying my interpretive framework and then (2.) sketch the structure of the argument of this thesis, before (3.) concluding with some remarks on method.

1. The Global Standpoint

The cosmopolitan framework which I develop in this thesis will first lead us away from the state context and Kant's property argument with which it is usually associated. Yet, it is not the kind of cosmopolitanism familiar to interpreters: a substantive normative account usually associated with essays such as *Perpetual Peace*, which is said to deliver blueprints of a global institutional order, substantive principles of distributive justice or even concrete lists of human rights. Instead, I will urge us to take a step back and turn to a deeper and more systematic cosmopolitan vision: how we should conceive of the way individuals relate to one another in virtue of the fact that they share the earth in common. That is to say, what I take to be most fascinating about Kant's global thinking in the *Doctrine of Right* and wish therefore to spell out more systematically is a particular way of framing the problem of global coexistence.

At the heart of the framework I propose is a thought to which interpreters of Kant's cosmopolitanism have thus far paid scant attention: the mere fact that they can affect and constrain each other with their choices by virtue of sharing the limited space of the earth's spherical surface unites humans in a particular kind of community. I call this community one of 'earth dwellers', that is, corporeal agents in direct physical confrontation with each other. It is neither one of shared humanity (in Kant's noumenal sense) nor of (property-mediated) global citizenship, but one of "possible physical interaction" (DoR 6:352). I

hope to show that much of Kant's cosmopolitanism in the *Doctrine of Right* is concerned with coming to grips with the nature and normativity of this distinctive type of community among earth dwellers.

Kant's focus on this community of physical beings who act on and thereby affect one another merely in virtue of inhabiting and sharing one space can only be understood in the wider context of the moral domain of right. To be more precise, the "place-related" kind of cosmopolitanism I shall reconstruct over subsequent chapters is intricately tied to his attempt to develop an account of the "formal external relation between the power of choice of one person to that of another" (DoR 6:230). Kant believes its global scope to be constitutive of the very concept of right itself: the earth's spherical surface is that stage on which possible rights relations between agents unfold as relations of choice that manifest themselves externally in 'earthly' time and space.

Its global scope is reflected in Kant's claim that the very concept of right gives rise to three functionally differentiated though constitutively intertwined forms of rights relations at state, international and cosmopolitan levels. Together, these constitute a complex, self-sustaining system of right. "If the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition", Kant insists, "the framework of all the others is unavoidably undermined and must finally collapse" (DoR 6:311). None of the three levels fully instantiates the idea of rightful relations; none of them could persist on its own.

A vital element of the framework I propose is constituted by the perspective from which it is conceived: the insight into the normativity of embodiment under conditions of spatial constraints endows earth dwellers with a distinctly first-person standpoint through which they reflexively recognise their systematic interdependence with other agents in a world of limited space. What I shall call the 'global standpoint' encapsulates a radical shift in perspective away from an Archimedean

observer's 'view from nowhere', to a first-person standpoint from which agents must interact with one another with the aim of finding shared solutions to shared problems.

This reflexivity is vital to Kant's global standpoint. It elucidates how, in virtue of sharing the earth in common, we each affect one another, but it also indicates the sense in which we are each able reflexively to relate to all those human beings with whom we stand in thoroughgoing interaction. It is a standpoint, that is to say, through which we acknowledge our ability to locate ourselves vis-à-vis everyone else, and from which we interact with others. This kind of reflexivity is a feature of Kant's philosophical thinking in general. It is central to his Copernican turn that the very loss of a transcendent, cosmological perspective means that reason needs to determine its limits *reflexively*. Indeed, this insight has long been central to accounts of Kant's theoretical philosophy and has of late been taken more seriously among proponents of Kantian ethics.⁶

When it comes to Kant's political philosophy, however, the idea that our external interactions with others are similarly perspectival is less well established. This has, on the one hand, certainly to do with the fact that it has for long simply not been considered an essential part (and hence in the context) of his critical philosophy. Recent attempts to appropriate the *Doctrine of Right* for primarily normative purposes,

⁶ Most prominent in this context is Stephen Darwall's (2006) reformulation of Kantian ethics from a "second-person standpoint". Darwall's aim is to present morality as concerned with our relations to 'concrete others' and obligations as grounded in the reciprocal authority agents have to make demands on one another (see also Thompson 2004). It is the second-person standpoint – "the perspective you and I take up when we make and acknowledge claims on one another's conduct and will" (Darwall 2006, p.3) – from which he derives his particular understanding of morality as equal accountability. Darwall's reconstruction is geared both against first-personal internalist readings such as Korsgaard's (2007) constitutivism, and Nagel's (1989) third-personal "view from nowhere" that regards others from an impersonal agent-neutral perspective. Given that Darwall's second-person standpoint is only a particular *kind* of first-person standpoint – namely one that includes a second-personal *aspect* (see also Pauer-Studer 2010) – it ends up being strikingly close to the (inherently relational) way I will reconstruct Kant's political philosophy. Ariel Zylberman (2016) has recognised this.

however, have exacerbated this tendency by likening its justificatory method to the foundationalist forms of natural rights reasoning that are prevalent in contemporary political philosophy. In this thesis, I shall argue that Kant takes not only our perception of the world to be perspectival, but also our interactions with other agents in it.

Rather than being subjectivist, however, the global standpoint constitutes a *constrained* first-personal perspective. Kant remains committed to the enlightenment dictum that we must think for ourselves which, in turn, requires that we think from the point of view of every other rational agent. He is interested in a specifically “human standpoint” (Longuenesse 2005), that is the standpoint of reason shared by all finite rational beings. Again, the human standpoint is not a detached, objective standpoint but a first-person standpoint that has a certain kind of impartiality criterion built into it. The global standpoint binds us to interact with distant strangers in a particular kind of way, namely by acknowledging our shared earth dwellership. An accurate understanding of what this amounts to thus requires that we come to grips with Kant’s vision of the (global) community of ‘original common possession’ as that idea which simultaneously functions as the reference point for the global standpoint and a constraint on it.

Notice, though, that the global standpoint does not come with substantive principles on the basis of which a genuine plurality of agents could coordinate their interactions. It is not a single standpoint on the whole but is constituted instead by a plurality of first-personally reflexive standpoints in disjunctive relation, coming together under the concept of original common possession. What we share with other earth dwellers is the capacity to come to terms with the fact of our concurrent coexistence on the earth as juridical equals. The global standpoint thus issues a *formal* requirement to comport ourselves in a certain way. We must interact with each other in a manner that allows a plurality of agents with diverse and potentially incompatible sets of principles and

political arrangements nevertheless normatively to structure the common space they share by negotiating shared terms of coexistence.

This open-endedness is particularly vital for Kant in the colonial context, that is when states and their citizens interact with distant strangers who do not share their statist political arrangements. These ‘cosmopolitan encounters’ reveal that the reflexive awareness of shared earth dwellership is itself predicated on the state context. That is to say, it is their rightful condition ‘back home’ – their membership of already established polities from which they have ‘sailed forth’ – that binds the conduct of Western emissaries, settlers or traders on whichever soil they set foot. On a textual level, I will show how this is reflected in a recursive argumentative sequence that leads to the global standpoint *through* Kant’s property-based justification of statehood. Citizens of Western states arrive at the global standpoint by means of reflecting on (the moral conditions of possibility of) their own, statist form of political organization. Substantively, this implies not only that Western states and those who claim to represent them abroad must refrain from simply extending the modern state to the world at large. Given that they lack the grounds on which to predicate *anything* of their stateless counterparts, it also means that they must limit themselves to making unilateral offers of peaceful interaction to the other side in the hope that they gradually get to know and understand each other.

Yet, the global standpoint is not only predicated on and taken up from within states. It is also incumbent on states to institutionalise the pertinent requirements of their own accord. Their very existence forecloses the possibility of a truly public global institutional order with the power to make universally binding laws. The reason for this predicament is that Kant conceives of states as moral agents with an artificial (sovereign) will that would be destroyed if they had a supremely coercive agent above them. This explains why he construes both domains of rights relations beyond the state as characteristically *non-coercive*: states lack the authority to force other states into a coercive

federation and their citizens lack the authority to force distant strangers into a cosmopolitan rights regime.

I thus read both domains of public right beyond the state not as blueprints for a global constitutional order, but as laying out norms of international and cosmopolitan conduct that states and their citizens respectively are duty-bound to impose on themselves in their interactions with other states and non-state groups. In the cosmopolitan context, this implies that the obligation to interact with other earth dwellers from the global standpoint is not only predicated on the existence of states but must also be legally implemented by them. It is states themselves who must legislate provisions that (coercively) constrain their citizens' comportment abroad. Only where traders, settlers or missionaries attempt to establish interactions with distant strangers on fair or equitable terms can we hope for the gradual emergence of something like a meta-language that allows us to agree shared principles. In the absence of global coercive institutions, juridical self-constraint is the only means by which we can hope to find peaceable terms of coexistence with other states and non-state actors.

Contrary to first impression, it thus turns out that Kant's global standpoint does not actually issue a daunting (and frankly implausible) requirement to take a practical stance towards *all* of mankind. Such a stance would be bereft of all context and blind to the pertinence of actually existing social relations; it could hardly be action-guiding. Instead, the global standpoint provides us with a reflexive and critical stance on our very own statist political arrangements, asking us to recognise the relations of property, territory or sovereignty we find ourselves in as the contingent products of history that they are. But rather than doing away with them, Kant's cosmopolitanism is geared towards a world of *radically reformed* states that bind themselves (and their citizens) to rightful comportment towards other states and non-state peoples of their own accord. We take up the global standpoint from within states by transforming them into cosmopolitan agents.

2. The Argument of this Thesis

In laying out some of the core ideas of this thesis, I showed how my argument first leads us beyond and away from the state context (as well as the textual focus on Kant's property argument), in order to return to it eventually. This is not to say, however, that in the end we are back to where we started. For, we come away with a *cosmopolitically transformed* notion of the state, that is one which acknowledges obligations of international and cosmopolitan right and thus binds itself and hence its citizens to interact with other states and distant strangers on peaceful terms. The shape of this argument is also reflected in the structure of the thesis.

Chapter 1 lays the groundwork for my novel perspective on Kant's cosmopolitanism by carving out the conceptual space of Kant's concern with the concurrent existence of a plurality of corporeal agents on the spherical surface of the earth. I start by inviting us to read beyond the much-discussed property argument, focusing on the subsequent discussion of 'original acquisition of land' and the ensuing right to be somewhere. I show that Kant there introduces a moral relation that is basic to the *Doctrine of Right* yet insufficiently appreciated: the domain of embodied agency under spatial constraints. The relation between what I call *earth dwellers* is 'external' but not property-mediated, thus eluding a distinction generally deemed both definitive of Kant's political philosophy, and exhaustive: that between innate and acquired right. Consequently, it can neither be reduced to a relation of shared humanity (in the noumenal sense), nor of shared citizenship in a man-made political institution like the state.

Chapter 2 goes on to develop the moral domain pertinent to embodied agency under spatial constraints as a template for Kant's global thinking. I do so by reconstructing his notion of original common possession of the earth, emphasising its formal character as opposed to the material conception prevalent in the natural law tradition. The core

of the chapter is constituted by a detour into Kant's theoretical philosophy; this is motivated by his characterisation of original common possession as 'disjunctive'. I argue that the idea of original common possession describes a system of mutual exclusion in which a plurality of persons think of themselves as standing in a relation of 'possible physical interaction' in virtue of sharing a limited space. Kant's 'global standpoint' constitutes a reflexive, first-personal perspective from which we think of ourselves as participants in a cosmopolitan community of individuals whose fates are inevitably bound up with one another in the most basic normatively relevant way.

Chapter 3 gathers more systematic evidence against an interpretation of the *Doctrine of Right* that stops short at the property-based argument for state entrance. I here investigate the *puzzle of non-state peoples*, showing why, rather than being licensed to coerce non-state peoples into the state, Western emissaries must interact with them on the basis of cosmopolitan right. I make two claims in particular: first, Kant's recursive justification of state entrance is predicated on the existence of reciprocally raised property claims, such that peoples without established property systems lack the pertinent duty. Second, Western settlers must interact with non-state peoples from the global standpoint. It is their own state citizenship that binds them, in the context of *cosmopolitan encounters*, to treat their counterparts as earth dwellers and to go no further than offering themselves for 'commerce'.

Chapter 4 continues the search for a shared basis on which the participants in disjunctive community could coordinate their coexistence. To that end, I turn to Onora O'Neill's suggestion that all it takes for principles to be shareable and hence authoritative for a plurality of agents is a specific, namely law-like, form. Principles simply need to be abstract and general enough in order to hold for *all* earth dwellers, statist and non-statist alike. Ultimately, however, O'Neill overlooks that the coordination of a plurality of *interacting* agents requires norms that are vested with *interpersonal* authority. Private agents are

constitutively unfit to come up with such principles. However, given that at the level of cosmopolitan right Kant also denies a shift to the *coercive* public standpoint, we are left with the unsettling prospect of an actual dialogue with non-state peoples through which we can hope to gradually get to know and understand each other.

Chapter 5 argues that our obligation to interact with other earth dwellers from the global standpoint is to be implemented at the state level. In order to make this claim, I read Kant's two domains of rights relations beyond the domestic context not as depicting a blueprint for a global institutional order, but as spelling out a set of juridical obligations that are predicated on the existence of states and the discharge of which is incumbent on states (and their citizens) themselves. Rather than a public global order, Kant's mature cosmopolitanism is thus geared towards a world of radically reformed and distinctly outward-looking states that bind themselves to rightful comportment towards other states and non-state peoples of their own accord. In the absence of truly public rights relations that encompass the entire cosmopolitan plurality, we must constrain our own comportment in order to find peaceable terms of coexistence with other states and non-state actors.

Based on this notion of a 'cosmopolitanism within one country', Chapter 6 reconceives Kant's notion of cosmopolitan progress as a process in the course of which states gradually move towards conformity with their own underlying cosmopolitan principles. Focusing on the *Doctrine of Right's* agent-oriented conceptualisation of progress rather than the process-oriented teleology central to *Perpetual Peace*, I read perpetual peace – a condition in which all states interact with other states and non-state peoples on the basis of mutually agreed terms – as an idea of reason that arises as a corollary of our obligation to take up the global standpoint. Insofar as we act on our own duty to transform states in line with cosmopolitan principles, we can reasonably hope that other states will act likewise and that non-state peoples accept our offers for commerce, such that we can gradually approach a condition of

peace. The practical belief in the attainability of the “entire final end of the doctrine of right” (DoR 6:355) serves to orient our cosmopolitan activity from the global standpoint analogously to the way in which, in the ethical context, the postulates of practical reason allow us to set the highest good as an end without a sense of moral despair.

3. Some Remarks on Method

This project originally started out with the aim of making Kant’s mature political philosophy fruitful for contemporary disputes about global justice. My initial worry was that, despite the fact that the debate has by now gone through a number of consecutive “waves” (Wollner 2013) and is already in the process of being historicised (Forrester 2014; Moyn 2016), its heavily practice-oriented character continues to drive its proponents towards a certain kind of philosophical impatience. Consequently, the deep and systematic reflection on the question what unites individuals globally that I hoped to find in the *Doctrine of Right* promised to directly enrich global justice disputes.

As I went along, however, I quickly noticed that by seeking to simultaneously interpret *and* normatively defend Kant’s cosmopolitanism, I was running the risk of inheriting the very predicament I associated with the prevalent ‘normative Kantianism’ that I had set out to avoid. For the compromises that such an endeavour unavoidably requires would have allowed me neither to go beyond the philosophical surface textually speaking (such that I would end up saying hardly anything new or surprising as far as Kant is concerned) nor normatively to justify the ensuing position in a way that would satisfy contemporary proponents of global justice. Lest I fail to successfully speak to either audience, I thus decided to engage with Kant’s cosmopolitanism on its own philosophical terms, going much more into interpretive depth than initially expected.

Concretely, this means that I read Kant's cosmopolitanism not only as intricately connected to the notion of right but also through the lens of his philosophical system as a whole. In this, I depart from much work at the heart of the recent revival of Kant's political thought particularly in the Anglophone context, which proceeds from the assumption that isolating Kant the political theorist from Kant the systematic philosopher goes some way in making the former more accessible to contemporary readers (e.g. Ripstein 2009; Ellis 2005). In contrast, I shall claim that we will not be able to come to terms with the form of Kant's global thinking unless we link it, at least to some extent, to the general form of his philosophical thinking. I simply do not think that the most promising way to demonstrate the continued practical relevance of Kant's politics is necessarily to vindicate it "without taking on the full commitments of his broader project in practical philosophy" (Ripstein 2009, p.356).

That is not to say, however, that this thesis should be read as a purely exegetical exercise in Kant-scholarship or a project of historical reconstruction. I say this not only because I will indeed indicate at several points throughout the thesis (and sum up more systematically in its Conclusion) where I see striking contrasts between the Kantian conceptual framework and the contemporary global justice mainstream arise. It also speaks to a more fundamental view about the point of studying the history of philosophy in the first place: that it is precisely engagement with great philosophers that can help us understand and get a new perspective on our *own* concerns and philosophical problems, and be it in virtue of coming to appreciate an entirely different way of approaching the pertinent questions. As Allen Wood pointedly puts it, "solving a philosophical problem is not like solving a problem in engineering" (Wood 2002b, p.218) in the sense that the issue is not primarily to find a solution that enables us to do something in the future that we could not do in the past, but rather to come to better *understand* the problem in the first place. And given that most of our philosophical

questions have been created and shaped through a long historical process in which philosophers over and over again adopted, criticized and modified the thoughts of earlier ones, we cannot even fully understand them unless we understand their origins.

In interpreting a text, however, our aim should not be to rethink an author's thoughts – this would be an impossible task, particularly when it comes to a contested and at times obscure work such as the *Doctrine of Right*, where we can hardly hope for a single correct interpretation (which is not to deny that there are more or less coherent and convincing ones). Our aim should rather be to work out what the author *meant* by what they said, and that may include asking a text our own questions and making sense of it using concepts and ideas that the author herself may not have had at her disposal (Wood 2002b, p.223). The corollary is that the very attempt to recover, understand and articulate the meaning of a text can provide the most original and surprising insights into our own contemporary problems – it can tell us who and where we are philosophically. This, however, requires that our interpretive engagement is serious, detailed and sustained lest we simply find our prior commitments reflected in the text. Given that my aim in reconstructing Kant's cosmopolitanism is thus to speak to Kant-scholars and normative political theorists alike, I have tried to employ his technical vocabulary sparingly – whilst remaining aware that there are insights we would genuinely miss if we dispensed of it altogether and likened Kant's vernacular outright to that of contemporary political philosophy.

Chapter 1

The Right to be Somewhere

In the Introduction, I gave an overview of some of the predominant ways in which Kant's political philosophy is currently read. We saw that interpreters interested in Kant's cosmopolitanism have traditionally focused on the institutional parameters of a cosmopolitan world order laid out particularly in *Perpetual Peace*. At the same time, I identified something like a 'statist backlash' driven by the rediscovery of *Doctrine of Right's* property argument, on the basis of which interpreters construe a distinctly moral justification for modern statehood.

My reconstruction of what I call Kant's global standpoint will lead us away from both of these interpretative trends. This is not because I believe them to be without merit in principle, rather they may distract from what I take to be among the most fascinating and original aspects of Kant's political philosophy, namely a deeply systematic reflection on the way in which human beings relate to one another merely in virtue of their concurrent coexistence on the spatially bounded earth.

It is important to put my cards on the table from the outset particularly with regard to the (by now) widely accepted centrality of statehood and property in the context of the *Doctrine of Right*. I take it that the mere amount of space, effort and philosophical sophistication Kant dedicates to justifying a property-based duty of state entrance makes a strong case for its systematic importance. While, in Chapter 3, I will endorse a modified reading of this argument (that questions its scope of validity in particular), I do not want to challenge its significance as such. My aim is rather to point out an important way in which the

property argument is not the end of the story either textually or systematically speaking – that, *on its own*, it is bound to give us an incomplete picture of what is going on in Kant’s mature political philosophy. Specifically, it leads us to overlook a distinct cosmopolitan vision that is central to the *Doctrine of Right* as a whole.

The aim of the present chapter is to do some necessary groundwork by creating conceptual space for this reading. I will do this by suggesting an interpretation that does not build on the *Doctrine of Right*’s much-ploughed sections on international and cosmopolitan right (which I turn to in later chapters) rather than a rarely appreciated passage of the section on ‘private right’, i.e., the very part that is usually invoked in the context of state-focused interpretive frameworks. My intention is to point to a crucial yet insufficiently acknowledged concern in the *Doctrine of Right*: the conditions of embodied agency under spatial constraints as constituted by the earth’s limited surface. In this chapter, I start to illustrate this concern through Kant’s mysterious ‘right to be somewhere’, pointing out that sustained reflection on this right offers a vital insight into a particular kind of moral relation that is ‘external’ (as located in time and space), but not property-mediated – a relation among what I will call ‘earth dwellers’. Given their focus on Kant’s central distinction between innate right and acquired right, interpreters have rarely appreciated the significance of this relation, or indeed what follows from it. In the course of this chapter, I will develop the conceptual tension that the right to be somewhere constitutes with regard to the *Doctrine of Right*’s overall architecture, a tension that will pave the way for a reconceived account of Kant’s global theorising in the next chapter.

The argument proceeds as follows: I start, in Section 1, with a sketch of the right to be somewhere as introduced by Kant in the *Doctrine of Right*’s section on private right. The remainder of the chapter then focuses on the difficulty of making sense of this right within the broader architectonic structure of the work, namely that it eludes classification

with regard to Kant's vital characterization, introduced in Section 2, of all rights as either 'acquired' or 'innate'. After excluding the right to be somewhere from the domain of acquired right (Section 3), Section 4 sets out to show that it cannot be part of the innate right on either of the latter's currently predominant readings. My reflection on the normative implications of the concurrent existence of physically embodied agents under circumstances of spatial constraints thus brings to light a distinct kind of moral relation that can neither be reduced to our shared humanity in a 'noumenal' sense, nor to legal-institutional membership in a shared polity. It is this moral relation – between physical beings that act and affect one another in virtue of inhabiting a particular, limited space – that will be at the centre of subsequent chapters.

Let me also mention that, as we go along, I shall raise a number of questions that I will only be able to answer (or, for that matter, fully grasp) at later stages. But this should not keep us from achieving this chapter's aim, which is to sketch the conceptual landscape on which the main argument of the thesis as a whole shall unfold.

1. On Original Acquisition of Land

As I just mentioned, the idea that the property argument not only contains the key to Kant's justification of political authority but is indeed central to the *Doctrine of Right* (if not his entire mature political philosophy) as a whole is now well-established among interpreters.¹ Ever since Reinhardt Brandt's (1982) seminal analysis, debates have focused on the precise nature of the (partly obscure) argument, and how the duty of state entrance is supposed to follow from it. The gist of the account – while individuals have claims to property in the pre-civil

¹ E.g. Flikschuh (2000), Ripstein (2009), Byrd and Hruschka (2010). This is of course not to say that the property argument is the only site of debate with regard to the *Doctrine of Right*. To name just one example, there is an extensive body of literature on the domain of public right and its institutional implications (e.g. Waldron 1996).

condition, they can vindicate those claims only through entrance into the civil condition – is increasingly popular even among contemporary normative theorists (e.g Stilz 2011a). The latter appreciate both the refreshing nature of its account of property rights (one that is reducible neither to the traditional natural rights nor purely conventionalist accounts) and the unconditional kind of political obligation following from it. I will save closer consideration of the property argument for later chapters. For now, I want to leave these much-trodden battlegrounds behind and turn to something Kant adds only *after* having laid out the details of the actual property argument (DoR 6:245-57). His enigmatic claim there is that

all human beings are originally (i.e., prior to any act of choice that establishes a right) in a possession of land that is in conformity with right, that is, they have a right to be wherever nature of chance (apart from their will) has placed them. (DoR 6:262)

Surely, the passage’s marginal location within the text explains at least to some extent why it has, with few exceptions,² largely dropped off interpreters’ radar. I postpone until Chapter 3 the important question as to why Kant introduces the idea that every person has a right to be somewhere only after the bulk of his discussion of property. For now, let us get a first grip on what he is doing in this passage by taking a closer look at the more immediate context.

Having painfully ‘deduced’ the conditions of possibility for having something external as one’s own – the details of which we can bracket for now – Kant turns to the question how objects can be rightfully *acquired* (DoR 6:258ff.). He starts by distinguishing two kinds

² For instance Byrd and Hruschka (2010, pp.126-129) and Niesen (2007; 2011). In contrast, the widely cited volumes by Timmons (2002) or Denis (2009) contain not a single reference to the right to be somewhere. If anything, systematic reflections tend to be found within discussions of ‘cosmopolitan right’, where Kant repeats a line of argument from the passage in ‘private right’ that I will focus on. I say more about the relation between these two passages in the subsequent chapter.

of acquisition: things can either be acquired by being derived from what belongs to someone else (through a contractual exchange), or they can be acquired *originally*. It is the latter kind that Kant is primarily interested in. Readers familiar with Kant's theoretical philosophy may associate the notion of original acquisition with his account of concept formation. There (see in particular *Discovery*; ID), Kant argues that the a priori forms of space and time as well as the categories are 'originally acquired': they are grounded in innate receptive capacities of the mind (and hence 'original' in the pertinent sense), but these cognitive capacities can in turn only be enabled or activated by sensible impressions.³ While I will return to this analogy later on in this chapter, it is important to notice that in the present context, Kant of course has a different kind of original acquisition in mind: the acquisition of a previously unowned object by bringing it under one's control.

Kant then goes on to focus his attention on a particular *kind* of original acquisition, namely first acquisition. Claiming that "first acquisition of a thing can only be acquisition of land" (DoR 6:261), he argues:

Land (understood as all habitable ground) is to be regarded as the *substance* with respect to whatever is movable upon it, while the existence of the latter is to be regarded only as *inherence*. Just as in a theoretical sense, accidents cannot exist apart from a substance, so in a practical sense no one can have what is movable on a piece of land as his own unless he is assumed to be already in rightful possession of the land.

Admittedly, this claim is no less puzzling than the right to be somewhere, which it immediately leads up to. What does seem to be clear is that Kant is proceeding regressively here, from reflections on the possibility of property rights, to the more fundamental conditions of

³ See also Zoeller (1989), Longuenesse (1998, pp.221-225; pp.249-253).

raising anything like a claim to an object as “ours” in the first place. But what argumentative work is this regressive move intended to do?

An intuitively appealing explanation – and the one generally adopted by interpreters with a serious interest in this passage – is that Kant is simply alluding to a straightforward sense in which people’s relationship to land precedes their relationship to other external things: I need to own the land in order to possess something that is placed on it (e.g. Byrd & Hruschka 2010, pp.123-143). But this reading seems dubious both conceptually and textually speaking. Conceptually, there may very well be a sense in which stable enjoyment of my property right in my car depends on my ability to park it on a ground that I have secure access to. But surely my ownership right in itself cannot be contingent on that. Textually, notice that Kant is not talking here about ownership in the sense of private property (something which I can claim as mine regardless of whether I am physically connected to it) at all, but about mere physical possession or occupation.⁴ Consequently, he is not referring to land in the sense of a fenced-in plot of territory – described as “residence (*sedes*), a chosen and therefore an acquired *lasting* possession” – but merely as “habitable ground” (DoR 6:261). The fact that Kant seems to have something weaker in mind when it comes to (original acquisition of) land suggests that the thought presently under consideration is not as swiftly continuous with the prior property argument as it may seem at first.

This suspicion is further nourished if we read a bit further on. At first sight, things seem to get even more confusing. For Kant now introduces an aspect that so far has played no role at all: the earth’s spherical surface. The finitude of the globe, he explains

⁴ The term “rightful possession [*rechtlicher Besitz*]” may at first sight conflict with this reading. Yet, it is defined by Kant as that “with which I am so connected that another’s use of it without my consent would wrong me” (DoR 6:245) – physical possession – and opposed to the notion of “merely rightful possession [*bloß rechtlicher Besitz*]”, which refers to actual ownership.

unites all places on its surface, for if its surface were an unbounded plane, people could be so dispersed on it that they would not come into any community with one another, and community would not then be a necessary result of their existence on the earth – The possession by all human beings on the earth which precedes any acts of theirs that would establish rights (as constituted by nature itself) is an *original possession in common* [...]. (DoR 6:262)

The core idea (unpacked in more detail in the subsequent chapter) seems to be that the earth's spherical surface makes it physically impossible for human beings to get out of each other's ways once and for all. Instead, they stand, from the beginning, in a relation of "possible physical interaction" (DoR 6:352) with everyone else globally in the sense that the earth's circumference entails that interaction is unavoidable. If the world were an unbounded plain instead of a limited sphere – if interaction *was* avoidable – nobody would have to make any claims to exercise their capacity for choice and action against another.

But let us not get ahead of ourselves. Only in the subsequent chapter will we take up the task of getting to grips with the kind of moral relation that Kant seems to associate with (or even ground in) the simple fact that a plurality of humans concurrently coexist on the globe. At this point, I shall limit myself to drawing a more basic conclusion concerning the notion of 'original acquisition of land'. Notice, to that effect, that the spherical surface of the earth (that is to say, the spatial constraint it constitutes) only accrues its moral relevance in conjunction with another material factor: that human beings are not only morally accountable, but also physically embodied agents who necessarily act in time and space. Borrowing a concept from Sharon Byrd (2010, p.107), we can think of humans in this sense as "earth dwellers": corporeal beings who have to share the earth in common with a plurality of agents

of the same kind and who (unlike lions, rabbits and bees) are able to grasp the normative implications of this fact.⁵

This context, I take it, strongly suggests that the notion of ‘original acquisition of land’ is at most indirectly continuous with the property argument. What it actually does is introduce a novel topic: the way in which, as embodied agents who act in time and space, humans *inevitably* make a particular kind of seizure, namely the piece of land that they take up in virtue of the very fact that they are spatially extended (embodied) agents. Having ‘somewhere to be’ thus constitutes a basic presupposition for the very kind of moral interaction which, I hope to show, is at the heart of Kant’s cosmopolitanism. Cases like that of refugees or stateless persons illustrate how failing to have one’s place on earth secured, and hence being vulnerable to the arbitrary choices of others, essentially deprives humans of this (external) kind of moral agency (Ypi 2014, pp.294/5; Flikschuh 2000, pp.156/7).⁶

Notice that our reconstruction of the notion of ‘original acquisition of land’ as introducing the theme of embodied agency rather than simply another kind of property claim also equips us with an acute awareness of its problematic status. For on the one hand, there is a sense in which ‘original acquisition of land’ is, qua unavoidability, ‘blameless’: unlike any other acquisition, acquisition of a place on earth occurs without an individual’s act or fault but merely by virtue of their physical entrance into the world (Flikschuh 2000, p.157). We just are the kinds of beings that, in virtue of pursuing projects and holding each other morally accountable within time and space, need to be somewhere. On the other hand, though, while entering the world itself is not something

⁵ Any (potential) corporeal rational beings of other planets are not earth dwellers and hence not members of this original community of land. On the role of “extra-terrestrials” within Kant’s philosophical framework, see Szendy (2015).

⁶ I am not asserting that, without a place, we would be deprived of *all* moral agency – presumably, we could for instance still be virtuous (in the ethical sense of willing in accordance with the moral law). Notice also that I am interested in the way in which the external kind of moral agency I am talking about requires *a* place in general rather than a *specific* place. Nomadic peoples or ‘travellers’ such as the Roma, for instance, are thus not *se* deprived of it.

we choose to do, the very fact that we enter the world *with* the capacity for choice and action has normative implications: where and how we pursue our ends necessarily impacts where and how others can do so. In Kant's own words, it implies that "the choice of one is unavoidably opposed by nature to that of another" (DoR 6:267). We are, as it were, not just apathetically thrown into the world, we actively claim a place on earth as ours – just in virtue of acting.

Over this chapter and the next, I will develop this puzzle more systematically and reconstruct the two-pronged argument Kant develops in response to it: on the one hand, he grants earth dwellers a right to be somewhere. On the other hand, he attaches strings to this right, namely to conceive of their own legitimate possession of a place as a "possession in common" (DoR 6:262) with all others. I will bracket the latter part of this argument until the next chapter and focus for now on the right to be somewhere. Given that the brevity of the passage to which we have limited our attention so far precludes a more comprehensive picture of this right, we need to contextualise it with regard to its systematic role within the broader architectonic of the *Doctrine of Right*. This is what I shall turn to in the remainder of this chapter.

2. Embodied Agency under Spatial Constraints

So far we have tried to make sense of the right to be somewhere within the narrow confines of a few crucial paragraphs in the *Doctrine of Right's* section on 'private right'. I will now turn to the bigger picture and try to relate it to a distinction generally deemed of vital importance to the argumentative structure of the work as a whole: that between innate right and acquired right. It is not only Kant himself who points us to the distinction's significance for what is to follow by introducing it at the text's earliest stages (DoR 6:237); recent interpretive debates on Kant's

political philosophy have confirmed its indispensability for understanding the *Doctrine of Right* as a whole.⁷ In this section, I will seek to fit the right to be somewhere into either of these categories and conclude that these attempts are doomed to fail. Yet, as it will turn out in the subsequent chapter, this failure proves instructive with regard to Kant's cosmopolitanism.

But let us go a step back first. The concern with embodied agency under conditions of spatial constraints does not only appear in the final version of the *Doctrine of Right*. To the contrary, Kant struggles with it already in the preparatory works. At this stage, he seems to be aware of the conundrum emerging from the insight that the space I occupy is, on the one hand, "inseparable from my existence" (VRL AA23:237) but on the other hand a claim to something external to me that has normative implications for others. In the face of the strange conceptual ambiguity that attaches to this 'right to be somewhere', Kant dithers noticeably and seems unsure how to fit it into the overall architectonic he envisions for his political philosophy. Eventually, he settles on provisionally characterising it as an "innate but nevertheless established [*entstandenes*] right to a thing which should not be conceived as acquired because it is connected to my existence" (VRL AA23:237).

Quite surprisingly, in the *Doctrine of Right's* published version, any explicit reference to this ambivalence disappears completely. Kant apparently takes himself to have solved the problem. Indeed, the distinction between innate right and acquired right is introduced as exhaustive. As he explains in a short appendix attached to the Introduction to the *Doctrine of Right*, which sets out to provide a "general division of rights" (DoR 6:237):

The highest division of rights, as (moral) *capacities* for putting others under obligations (i.e., as a lawful basis, *titulum*, for doing so), is the division into *innate* and *acquired*

⁷ As an example, consider the exchange between Flikschuh (2010a) and Ripstein (2010).

right. An innate right is that which belongs to everyone by nature, independently of any act that would establish a right; an acquired right is that for which such an act is required. 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.

Every right, we are told, belongs to either of two categories: either it is innate, thus belonging “to everyone by nature, independently of any act that would establish a right” (following a Roman law term that Kant takes up here, it belongs to us ‘internally’), or it is acquired, that is it requires an act to be established. Kant goes on to explain that there is only one innate right: a right to “freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law” (ibid.). Surprisingly, though, the innate right is not unpacked any further. Instead, it is “put in the prolegomena” (DoR 6:238) immediately after being introduced and not taken up again. There seems to be something about the innate right that renders it unsuited for inclusion into the body’s main text, which goes straight into the domain of acquired right (what is “externally mine or yours”), i.e. property rights broadly construed.

We can illustrate the wider conceptual significance of this distinction by focusing on the two moral domains that the categories ground respectively. More specifically, let us look at their scope of inclusion. On the one hand, the innate right is something all free and finite beings have “in virtue of [our] humanity” – a specification that I will focus on shortly. In contrast, acquired rights (as Kant will go on to argue in subsequent sections) are possible only in the civil condition, that is under a general will that makes coercive public laws valid for everyone (DoR 6:255). The pertinent kind of property relations are thus relations among co-citizens sharing membership in an empirical institution that embodies such a will. Acquired right is not only more

momentous in its implications (ultimately yielding state entrance), its possibility is also much more difficult to establish and requires Kant to engage in a complicated deduction the details of which are all but clear (DoR 6:249). Given the architectural significance of the distinction between the two rights categories, we would like to know how Kant takes himself to have solved the puzzle that apparently caused him so much headache in drafting the work: is the right to be somewhere an acquired right or is it an innate right?

3. An Acquired Right to be Somewhere

The intuitively most plausible answer would be to file the right to be somewhere under the class of acquired rights.⁸ At least this is what Kant's own placement of the notion in the text seems to suggest. As we saw in the first section, it is introduced in the *Doctrine of Right's* section on private right (as concerned with 'acquired rights'), more specifically in the part that deals with the question "how to acquire something external" (DoR 6:258). Moreover, this reading seems to be in line with

⁸ In this chapter and for most of the thesis (with the exception of my discussion of contractual relations in Chapters 3 and 5), I will equate the category of acquired right with property rights, that is the rightful entitlement to call an object of choice one's own. In so doing, I neglect to some extent the two further titles included in it: contract rights – the right to "another's choice" (DoR 6:270) – and status rights – the right to "a person akin to a right to a thing" (DoR :260), for instance that of parents over a child. I do this mainly because I take it that property has a kind of conceptual priority over the other two instances in the sense that it constitutes a 'paradigm case' that most clearly illustrates what Kant considers problematic about "having external objects as one's own" (DoR 6:245) in general. Most importantly, the corresponding kind of acquisition (DoR 6:260) – by deed, as opposed to by agreement (contract) and as required by law (status) – is uniquely problematic in putting (unaffected) others under an obligation through a unilateral act. This priority relation notwithstanding, let me also emphasise that the two other instances of acquired right share with property the two crucial features that my discussion – at least within the confines of the present chapter – will focus on: on the one hand, they are material rights to something external located in time and space. On the other hand, the pertinent rights require an act to be established – an act that brings a contract into existence, or one that brings people into the respective fiduciary relation (e.g. marrying or begetting a child). Hence, regardless of how one stands to my claim from conceptual priority, my exclusive focus on property does not actually change the substance of my discussion as far as the present chapter is concerned.

Kant's conceptual map as just outlined. Recall that, as we were told earlier, rights in external objects require an act to be established. The definitional point was to distinguish acquired rights from that which is ours innately or, in Kant-speak, 'internally'. It seems to follow that anything external to me that I claim as mine must fall under the category of acquired right. My place on earth, as occupied by my physical self, is of course external to me. And there is surely a sense in which I 'acquire' a place on earth in virtue of being born. On the other hand, I have already hinted to the way in which the concern instantiated in the notion of 'original acquisition of land' is not directly continuous with the property argument. Let me now underpin this argument systematically by offering three considerations that speak strongly against treating the right to be somewhere as an acquired right.

First, as I have already briefly mentioned above, the category of acquired right is concerned with claims to objects as 'mine'. What Kant deems interesting when it comes to control over external objects is *not* the possibility of 'holding' an object – that there is a sense in which I can legitimately call an object 'mine' as long as I have it under actual physical control (in my 'empirical possession') Kant takes as given, but also not very interesting. The actual conceptual challenge is to vindicate the possibility of calling something 'mine' "even though I am not in possession of it" (DoR 6:246). It is what Kant calls 'intelligible possession', possession of an object *without holding it* that the category of acquired right is primarily concerned with and the possibility of which the section on private right aims to prove. Such a non-empirical (intelligible) connection between my capacity for choice and action and an object of my choice (ultimately parasitic on the possibility of the pertinent relation *between persons*) amounts to a synthetic a priori judgment that requires a deduction in order to be vindicated (DoR 6:249).⁹

⁹ The details of this deduction are obscure and perennially contested. Given that the textual order seems to partly break down at the relevant passage it is not even clear

Importantly though, the right to be somewhere is limited to physical possession, or occupation. It is not a right to this or that specific place (that we could claim even in our absence), but a right to be granted a place *somewhere* on the earth such that the conditions of embodied agency are fulfilled. Consequently, Kant specifies in a footnote, “merely physical possession of land (holding it) is already a right to a thing, though certainly not of itself sufficient for regarding it as mine” (DoR 6:251). Hence, he concludes, the right to be somewhere is “consistent with the principle of outer freedom” (*ibid.*) and does not require a deduction in order to be vindicated – notably unlike acquired rights, from which it must thus be systematically distinct.¹⁰

Second, while acquired rights require an act to be established, it is highly questionable whether our coming into the world is to be considered an act in the relevant sense. In a passage of the general introduction to the *Metaphysics of Morals*, Kant defines an action of legal relevance (a *factum* or ‘deed’) as one whose author can be considered to have freely caused it, that is if “the agent is regarded as the *author* of its effect, and this, together with the action itself, can be *imputed* to him” (DoR 6:223, see also 6:227). Moreover, this ability to bring about imputable actions (to be a ‘cause libera’) is precisely what constitutes moral personality (DoR 6:227). Note that on this definition, a deed contrasts both with a coerced act, *and* with one that causes an unintended chain of events (Kersting 1984, p.3). So if, in falling off my bike, I knock you over, your potential injuries cannot be imputed to me.

Now, Kant seems unsure how to evaluate our coming into the world in this respect. As he notes in the preparatory works to the *Doctrine*

whether Kant does in fact provide the “*Deduction of the concept of merely rightful possession of an external object (possessio noumenon)*” (DoR 6:249) that §6 announces. While Ludwig (1988) suggests a relocation of part of §2 to §6 in order to replace what he considers the missing deduction, others like Byrd and Hruschka (2010) resist that move.

¹⁰ I concede that at this point Kant comes very close to calling the right to be somewhere an innate right, by presenting it as an analytical implication of the universal principle of right or what he here calls “law of outer freedom”. Yet, as we shall see below, settling on this verdict would be premature.

of *Right*, the space that I occupy “is inseparable from my existence” (VRL AA23:237). Strictly speaking, my “existence is not yet a *deed* and hence not unjust [injustum]” (VRL AA23:279). On the other hand, there is of course a sense in which I have seized a piece of land in virtue of being born (“ihn einmal gleichsam apprehendiert habe durch Geburt”, VRL AA23:237) and our physical presence does have an impact on others. As mentioned in the last section, even if we do not enter the world *at will*, we do so *with a will*. There is thus a sense in which earth dwellers “claim entitlement to the land they occupy” (Flikschuh 2000, p.158) and which is a precondition for acting in the actual sense.

While this means that, on some level and in some way, we can be held to account even for the normative implications of something we have never *set out* to do,¹¹ what does seem clear is that this cannot be the same way in which we are held to account for consciously and actively apprehending and claiming things as ours. For, notice that the obligation we incur in virtue of appropriating objects is indeed far-reaching: property acquisition effectively comes with a duty of state entrance. Kant does not seem to regard the normative implications of original acquisition of land – the “sheer facticity of our placement, willy-nilly, on the surface of the earth” (Shell 1996, p.150) – as that consequential.

This leads me directly to my third point, which requires a look at the larger structure of the *Doctrine of Right*. We have seen that Kant affirms a strong connection between acquired right and statehood: the kind of moral relation that would render the exclusion of others from objects of one’s choice permissible is possible only under territorially organised political authority. Now, if the right to be somewhere *were* an acquired right, we would expect a universal duty to enter the state to hold among all agents, who, in virtue of their embodiment, ‘acquire’ a place on earth (cf. Niesen & Eberl 2011, p.261). This duty could take

¹¹ I save considerations on how exactly our coming into the world is obligation entailing for the next chapter.

one of two forms. First, Kant could vindicate a global polity. Yet, in contrast to the powerful cosmopolitan metaphors we know from other works of the critical period,¹² the mature political philosophy is reluctant to vindicate global institutions that in any sense resemble the modern state:¹³ while in earlier writings, Kant considers versions of a coercive global authority, at the point where the concept of right is most systematically developed – in the *Doctrine of Right* – he backpedals and restricts the sphere of inter-state relations to a loose, voluntary alliance of states “that must be renewed from time to time” (DoR 6:345). The sphere of ‘cosmopolitan right’, moreover, is restricted to a so-called hospitality right (the “right of a foreigner not to be treated with hostility because he has arrived on the land of another”, PP 8:357).

Alternatively, rather than a duty to enter one single global state, Kant could prescribe a universal duty to enter just any state (among a number of states). I take it that, in this regard, the evidence is at least inconclusive. While there are of course passages where Kant remarks that it is “wrong in the highest degree” to remain in a condition that is not rightful (DoR 6:307-308), he is also highly sceptical of any attempt at forcing communities that do *not* live under state-like political institutions into states.¹⁴ Both in *Perpetual Peace* (PP 8:358) and in the *Doctrine of Right* (DoR 6:266), he fiercely condemns European states’ colonial practice at the time, whose malicious attempt at conquering foreign lands under the false pretext of mere visiting he decries as “inhospitable behaviour” (PP 8:358). It seems that in these passages, Kant does not only want to say that peoples who fail to organise

¹² See the pertinent notions from the ‘moral world’ in the *Critique of Pure Reason*, through the ‘kingdom of ends’ in the *Groundwork*, to the moral cosmopolitan community in the *Religion* (Kleingeld 2011, pp.161-164). I will come back to some of these ideas in later chapters.

¹³ This has traditionally bothered Kantians with strongly cosmopolitan inclinations, who have argued that were Kant to have taken seriously his own moral universalism, he should have embraced more ambitious ideals like world citizenship and global democracy (e.g. Held 1995), or even a full-blown world state (Hodgson 2012).

¹⁴ See for instance the contributions by Kleingeld, Niesen, and Stülz in Ypi and Flikschuh (2014).

themselves in states cannot be compelled to do so, but he even remains silent as to whether he takes them to be committing a wrong in the first place (see also Muthu 2009, p.199).

This puzzle will be at the centre of attention in Chapter 3. For our current purposes, the diagnosis that there *is* a textual ambiguity suffices to support the primarily negative conclusion that we aim to draw. For, the least we can say is that Kant is very cautious about affirming anything like an analytical connection between the general circumstances of human agency and modern statehood, which would indeed leave the latter as the uniquely permissible living arrangement. Yet, given the strong connection, throughout the *Doctrine of Right*, between the concepts of acquired right and statehood, this is precisely what we would expect if the right to be somewhere was meant to be included in the former category.

4. An Innate Right to be Somewhere

So while Kant himself introduces the right to be somewhere in the section on acquired right, it is hard to make sense of this placement on a systematic level. It is thus not surprising that interpreters who have approached the notion in more depth have generally agreed with this assessment and tended to classify it as somehow contained in the innate right (e.g. Byrd & Hruschka 2010, p.126 ff.; Kleingeld 1998b, p.79; Kleingeld 2011, p.84; Benhabib 2004, pp.25-48). Rejecting this move turns out to be more demanding and requires us to take a closer look, in this section, at the concept of innate right. My aim is to show that on either of the two dominant contemporary readings of the innate right, which I will call the *relational* and the *foundational* views, the empirical circumstances of our concurrent corporeal existence (constituted by the spherical surface of the earth) extend the purview of the innate right. The right to be somewhere thus cannot be part of it.

To start with, we can register a simple yet indubitable fact as to the pertinent set of rights holders: from a table and a taxonomy (DoR 6:240) Kant provides, it seems clear that “humans [*Menschen*]” are the subjects of the innate right. Notice, however, that this descriptive specification – whosoever can be identified as a member of the human species must be accorded an innate right to freedom – leaves open the two crucial normative questions concerning the *grounds* and the *content* of the right.¹⁵ Ultimately, we are interested in the latter question: what is the innate right a right *to*, and (most importantly) does it contain the right to be somewhere? In order to answer this question, however, we also need to attend to the former question concerning which feature of human beings precisely gives rise to it or, textually speaking, how we should understand Kant’s claim that the innate right belongs “to every man by virtue of his humanity [*Kraft seiner Menschheit*]” (DoR 6:237).

The relational reading

Let us start with what I shall call the *relational* reading (Ludwig 1988; Flikschuh 2009, pp.434-439; Zylberman 2016), for on this account it is not hard to see why the right to be somewhere should not be included in the domain of the innate right. According to the relational reading, the notion of humanity (as grounding the innate right) should be understood as referring to human beings’ noumenal status as expressed in their capacity for morality, i.e. to act from pure principles of practical reason alone. To be more precise, we each have the innate right in virtue of our capacity to morally account for the way in which, in choosing and acting, we affect and constrain others. It is with regard to this relation of reciprocal influence that the innate right ascribes to every person a certain standing, namely one of juridical equality.

¹⁵ Peter Niesen’s (2005, pp.55-58) attempt to reduce the innate right to the descriptive function seems unsatisfying to me given the technical significance that the notion of humanity plays across Kant’s writings.

Consequently, the innate right amounts to an a priori, formal entitlement affirming the equal validity of everyone's reciprocal claim to be recognised as an agent with full legal status: each has the same moral power to "put others under an obligation" (DoR 6:237) through their choices as everyone else. Motivating this reconstruction is an underlying, broader view about the general concept of right as operating, like all of Kant's moral concepts, at the level of intelligible or merely rational relations between persons (Flikschuh 2009, p.438). It structures a particular subcategory of intelligible relations between us as morally accountable agents: those which concern the form of each person's respective exercise of their capacity for choice – notably in contrast to Kant's ethics that is merely concerned with our maxims for action. This picture in mind, the innate right just falls into place as the subjective, first-personal formulation of the idea of reciprocal constraint under general laws. Within the system of right, understood as an external – but formal and a priori – morality, the claims to exercise their capacity of choice of each do not exceed those of anyone else.¹⁶

Proponents of the relational reading take it that evidence for their interpretation of the innate right as a formal and reciprocal claim to juridical equality – grounded in our (noumenal) capacity to morally account for our actions – comes from the various 'authorizations' (DoR 6:237) Kant attaches to it: innate equality, original innocence and strict reciprocity of juridical obligation. For these constitutive features of innate right, which are "not really distinct from it", are all specified in strictly relational terms, invoking treatment that each person can rightfully expect from all others independently of any act of theirs.

¹⁶ The relational reading thus invites us to understand the innate right and the first of the three "Ulpian formulae" (*honeste vive*) as mutually constitutive. That is to say, the system of right as a system of reciprocal constraint is spelt out not just in virtue of an obligation to respect *others* as juridical equals, it also requires me to assert myself as a juridical subject of equal standing in my interactions with others. As an "inner outer rights duty" (Ludwig 2013), the duty of rightful honour prescribes to every agent a duty to assert their *own* "worth as a human being in relation to others" (DoR 6:236), i.e. not to allow others to treat them in certain ways by claiming their rights.

Consequently, the innate right can be understood as mainly delivering a normative criterion for legitimate laws of any kind including, for instance, those regulating property relations.

In order to make sense of the innate right along these lines, we do not need to go as far as Flikschuh (2009, p.438) and claim that it contains no substantive rights entitlements *at all*. Kant himself mentions a substantive right that can be understood as directly entailed by the innate right (consistently with the present interpretation) and a direct object of external law-making: the right to freely communicate one's thoughts to others (DoR 6:238).¹⁷ What is indeed a necessary implication of the view, however, is that the innate right, understood as a purely relational and a priori moral claim to a certain moral standing vis-à-vis others, cannot possibly contain anything "external" in the sense of a material right *to* something located in time and space – such as the right to be somewhere.

The foundational reading

Let us turn to the second prominent interpretation of the innate right. On the foundational reading (Ebels-Duggan 2012; Hodgson 2010; Ripstein 2009; Stilz 2011a; Pallikkathayil 2010; Byrd & Hruschka 2010), it is grounded not relationally in moral accountability, but foundationally in the capacity of each to rationally set and pursue the ends we have set for ourselves.¹⁸ Rather than in the way persons reciprocally relate to one other through their actions, the source of innate right is located in a higher order capacity of each person independently. This "ability to make choices in general" (Hodgson

¹⁷ I am grateful to Peter Niesen, who has repeatedly pointed this out to me.

¹⁸ Ripstein (2009, p.34) is actually ambivalent between a foundational and the relational reading. While sometimes he talks about innate right as a relational entitlement "within a system of reciprocal limits of freedom", his prevalent talk of purposiveness, bodily self-control, and self-mastery as normatively basic (e.g. *ibid.* 24) makes his account at least ambivalent between the two (cf. Flikschuh 2010a).

2010: 800) functions as a fundamental value, a normative bedrock on which Kant's entire political philosophy is thought to be constructed. It is this ability that identifies human beings as the object of juridical concern and that the innate right is supposed to protect.

The relational aspect of right comes in only indirectly, as a requirement of rational consistency: in valuing my own fundamental capacity for choice and action, I must thereby also value that capacity in every other rational agent (Hodgson 2010, pp.797-800). The innate right to freedom thus has internal (and coercively enforceable) limits built into it that allow for everyone's *equal* exercise of their capacity for choice and action. It endows each person with an "equal sphere of discretionary space *in virtue* of her capacity for self-directed action" (Pallikkathayil 2010; p.133, my emphasis, see also Ebels-Duggan 2012, p.564). Ends that a rational agent chooses and pursues are to be respected insofar as they remain within the confines set by the fact that others' choices are just as valuable.

Initial reasons to be wary of this reading emanate from the observation that it sits uneasily with Kant's wider (practical) philosophical commitments, in particular his non-foundationalism (Flikschuh 2015) and his non-instrumentalism (Zylberman 2016, p.105). As to the former, Kant's views about human finitude and the fallibility of judgment are usually deemed to ground a deep scepticism – prominent throughout all parts of his philosophical work – about (particularly Cartesian) forms of justificatory foundationalism that proceed from indubitable first principles. As to the latter, the idea that principles of right are instrumental to the protection of each our individual freedom (rather than being constitutive of a distinct kind of moral relation) seems in tension with his focus on the form rather than the matter (and hence the consequences) of practical laws.

A forceful attack on the foundationalist reading would require a detailed analysis of the notion of humanity in the context of Kant's *Groundwork*. For, notice that proponents of both predominant views of

the innate right generally assume that the notion of humanity within the passage currently under scrutiny “presuppose[s]” (Ludwig 1988, p.102) or “follow[s] from considerations similar to” (Hodgson 2010, p.792) those underlying the concept’s arguably more famous appearance, which is in the *Groundwork’s Formula of Humanity* – the second formulation of the categorical imperative (Gr 4:427-29), which asks us to “act in such a way that you treat humanity in your own person and in that of others never merely as a means but always at the same time as an end in itself” (Gr 4: 429).¹⁹ In the context of laying out this idea, Kant repeatedly talks about humanity or rational nature (which are used equivalently) as something of “unconditioned and incomparable” or even “absolute” worth. Among interpreters of the *Groundwork* this has given rise to the perennial question which characteristic feature it is that makes humanity the appropriate material for a principle of practical reason and thus the ultimate object of moral concern.

Proponents of the foundationalist reading tend to take their cue from a particular answer to this question developed by Allen Wood (1999, pp.118-132) and, most systematically, Christine Korsgaard (1996a; 1996b). On this interpretation, the notion of humanity depicts a ‘value-conferring’ property of persons individually, namely their capacity to rationally set ends for themselves (Korsgaard 1996a, p.110). Again, the clue is that this capacity – properly understood! – already has limitations built into it: in viewing ourselves as having value-conferring status by virtue of our power to set ends, we are bound to view anyone with the same power as having an equal status (Korsgaard 1996a, p.123; Sussman 2003).

Proponents of the relational reading, in contrast, draw on an interpretation of the idea of humanity as invoking agents’ part-noumenal nature accrued through their capacity to act from duty alone. In virtue of their shared humanity, they stand in a moral relationship

¹⁹ Pallikkathayil (2010, p.132) even goes so far as to say that the “foundational elements of Kant’s political philosophy are justified by the Formula of Humanity”.

that cannot be reduced to or grounded in a prior, non-relational value such as the individual capacity to set one's own ends. Individual human beings' standing as objective ends is both constituted and constrained by the higher-order idea of humanity in which they participate by virtue of their power to act from pure practical reason.²⁰

While I consider the foundational take on humanity in the *Groundwork* to be flawed as an interpretation (cf. Timmermann 2006) and questionable as a normative argument in its own right (cf. Langton 2007), I do not have the space here to make good on these claims. In fact, a wider critique of rights foundationalism would distract from the main purpose of this section, which concerns the possibility of filing the right to be somewhere as part of (or necessarily implied by) the innate right. Instead, I shall set out to show that *even if* we run with the foundational reading of the innate right, the right to be somewhere cannot be included in it.

Let me first explicate how precisely its proponents link the right to be somewhere to the innate right. Keep in mind, to that effect, that the foundational reading comes with a shift in emphasis: away from the way in which our choices affect others, to the foundational value of that very capacity (and our opportunity to exercise it). This turns our attention to the conditions of purposiveness itself. Proponents of the foundational reading thus suggest that, since the only way in which individuals can act in the external world is through their bodies – “having control over my body is essential to my ability to set and pursue ends” (Hodgson 2010, p.811) – the innate right at its core describes a

²⁰ This reading also seems to be more in line with the argumentative structure of the Introduction to the *Doctrine of Right*, which does not start with the innate right – in fact, it does not appear until the appendix (DoR 6:237) – but by introducing and systematically developing the moral *concept* of right as depicting a certain kind of relation (DoR 6:231). This gives further plausibility to reading the former as following (analytically) from the latter, such that it is the normative relationship that functions as a bedrock of Kant's discussion rather than a first-personal capacity. Ebels-Duggan (2012, p.897), for instance, overlooks this when she argues (to the opposite) that “based on the innate right to freedom, Kant formulates his Universal Principle of Right”.

right “to your own person” (Ripstein 2009, p.57). This right is understood in an explicitly physical sense, endowing its subjects with basic powers of bodily self-control. While a more extreme version (e.g. Hodgson 2010) of this claim almost likens the innate right to a kind of property right in one’s body, Ripstein’s (2009, p.68) more moderate version cautions that “I do not have property in my own person; I just am my own person”.

The implication is that, notably in contrast to the relational view, the innate right does include a material right to something “external” in time and space: our bodies. Let me be clear that I have no fundamental objection to the claim that the subjects of innate right are corporeal beings who use their bodies for the pursuit of the projects they have set for themselves. What I do want to block is a *further* extension of this right so as to include the right to be somewhere. The thought here is the following: given that we do not act in empty space but on the earth’s surface, a right to not have my body interfered with by others should *also* include a right to the place on earth that I occupy. After all, the space our bodies occupy is necessarily space on the earth’s surface (Ripstein 2009, p.372)! Under conditions where space is scarce, the right to a place on earth is thus thought to just come with the innate right. As Byrd and Hruschka (2010, p.128) have it, the right that nobody “throw me against my will into the ocean or rocket me into the universe” is supposed to be entailed by the “*internal* (in contrast to the *external*) mine and thine”.

Notice that if this argument were sound, proponents of the foundational reading would have successfully shown that we should treat the right to be somewhere as part of the innate right. In order to reject it, I will have to make a more general argument about the pertinent sense of space in the context of Kant’s construction of the concept of right in the Introduction to the *Doctrine of Right*.

Constructing Right in A Priori Space

So let us take a closer look at the Introduction to the *Doctrine of Right*. Towards the end of the last section, I already mentioned that the innate right is introduced only in an ‘appendix’ (DoR 6:233) attached at its very end – the bulk of the Introduction serves Kant to set out the conceptual contours of the domain of right more generally as the object of the entire investigation to follow. Kant starts (in §B) with the moral concept of right. It is defined as the “sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom” (DoR 6:230) and explicated through three features: first, the concept of right refers to the external and practical relation of two or more persons, “insofar as their actions, as deeds [facta] can have (direct or indirect) influence on each other” (DoR 6:230). Having encountered Kant’s definition of a deed in the last section, we can infer that right is concerned with the reciprocal influence of imputable acts of morally accountable agents. Second, it only concerns the relation between persons’ respective capacities for choice and action (‘Willküren’). In the sphere of right, that is to say, agents encounter each other through the reciprocal effects of each of their external actions on all others, not by way of their ‘passive’ wishes or needs. While both actions and wishes are expressions of the human faculty of desire (*Begehrungsvermögen*), only the former is “joined with one’s consciousness of the ability to bring about its object by one’s action” (DoR 6:213). And third, right deals only with the *form* of the relation of choices, not their respective *matter*; the motivations for an action as well as its ends are entirely irrelevant as far as right is concerned. In a nutshell, the moral concept of right pertains to the formal external relation between the power of choice of two or more persons.

It is absolutely vital to understand what is going on at this stage. Some interpreters (Höffe 1999, pp.47-50; Kersting 2004, p.14) take Kant to be developing the concept of right by applying the general

concept of morality to the basic empirical fact of the coexistence of embodied rational beings within limited space. A peculiar kind of anthropology of right (Höffe 2013, p.117 ff.) is said to set out the relevant “conditions of application” that make right necessary in the first place. Yet, notice – and this is a crucial insight in the context of this chapter – that there just is no reference to the empirical circumstances of human coexistence on the earth in the relevant passage. Neither the limited space circumscribed by the spherical surface of the earth, nor the normative implications this yields in the face of our own corporeal existence, play any constitutive role as Kant develops the moral concept of right. As we saw in the first section, these aspects are first mentioned far into the section on private right. Kant’s argument in §B is an entirely analytical answer to the question, posed in the antecedent paragraph, regarding the necessary and sufficient conditions of legitimacy for any actual body of positive laws (Ludwig 1988, p.92).²¹

This is not to deny that there is a sense in which time and space *in general* enter into Kant’s analysis of the concept of right: after all, Kant takes external agency to be constitutive of rights, so spatial considerations are analytically relevant (Ludwig 1988, p.86). That is to say, space matters with regard to the *form* of juridical relations – the only way in which deeds as “facta” (DoR 6:230, see also 6:227) can reciprocally relate to one another in a juridically relevant sense is *in space*. Yet, the particular conditions of *bounded* space as crucial to the right to be somewhere are not in view at this stage of the argument (see also Hirsch 2012, pp.36/37). This becomes particularly clear in a memorable yet puzzling statement in §E (DoR 6:232/3) of the Introduction:

²¹ In §A of the Introduction, Kant distinguishes between a doctrine of positive right (the study of an actual positive legal order) and a doctrine of natural right (which can be cognised a priori by reason), whereby the latter is supposed to provide something like a legitimacy criterion for the former.

The law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, as it were, the *construction* of that concept, that is, the presentation of it in pure intuition a priori, by analogy with presenting the possibility of bodies moving freely under the law of the *equality of action and reaction*.

In order to understand this passage, we need to go a step back first. In §C (DoR 6:230), Kant had derived from the moral concept of right (in conjunction with a universalizing rule) the universal principle of right:

Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.

This principle is then rephrased into its imperatival form, the universal law of right (“so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law”, DoR 6:231). In omitting all references to the agents’ maxim, the universal law specifies right in the strict or narrow sense: as being externally enforceable. The enforceability in turn is a direct corollary of the interpersonal character of right: given the equal status of everyone’s claim to exercise their freedom for choice and action, my own freedom is (coercively) limited to the condition of its compossibility with everyone else’s equal freedom. The rightness of my action is not a matter of my personal inner judgment but that of an external authority capable of determining the validity of my freedom claims relative to everyone else’s equally valid claims (Flikschuh 2011, p.142). I am juridically obliged (and can be coerced to act accordingly) whether I acknowledge my obligation or not.

Given that the universal law of right thus connects right analytically with the permission to use coercion, it can also be “represented as the possibility of a fully reciprocal use of coercion that is consistent with everyone’s freedom in accordance with universal

laws” (DoR 6:232). Right in this strict sense need not appeal to the agents’ own consciousness of duty “as an incentive to determine his choice in accordance with this law”, but “rests instead on the principle of its being possible to use external constraint” (ibid.).

Back to §E. Kant there seeks to explicate the universal law of right further by connecting it back to the moral concept of right. Let us look more closely at the two analogies he employs in this context. First, there is the claim that we arrive at the law of reciprocal coercion by constructing the moral concept of right “in pure intuition a priori”. What does it mean to ‘construct’ a concept? In a well-known passage of the first *Critique* (CPR A713/B741), Kant explains that the construction of concepts is characteristic for mathematical reasoning (cf. Shabel 2004). When we construct a concept we “exhibit the a priori intuition corresponding to it” (CPR A713/B741). Kant’s pertinent case for concept construction understood in this technical sense is geometry: all we need to do in order to prove that two sides of a triangle are together longer than the third side is to ‘construct’ or represent such a three sided figure – whether on paper or in the imagination – in a priori space. This is why, as Kant had argued much earlier in the first *Critique*, geometrical cognition is synthetic a priori: it rests on propositions that include an extension of cognition independently of all experience (CPR B40).

In the present passage, Kant evidently likens juridical space (the form in which we relate to one another externally) to geometrical space (the form in which objects appear as outer).²² In so doing, he emphasises that the concept of right is constructed with “mathematical exactitude” (DoR 6:233) in non-empirical, unbounded space. In analogy to the first *Critique*’s denomination of space as that (a priori) necessary form of intuition through which it is possible for us to perceive particular objects, here space as a form of intuition a priori similarly figures as the necessary formal condition through which the construction of (external)

²² I borrow the useful term ‘juridical space’ from Moggach (2000).

rights relations is possible for us in the first place. The “law of reciprocal coercion” places individuals in a precise and systematic relation in non-empirical, unbounded space. Alluding to the conciseness characteristic for the geometrical construction of a straight line between two points, “a doctrine of right wants to be sure that *what belongs* to each has been determined” with precision (DoR 6:233).

But mathematical space is not the only image Kant uses in this passage in order to illustrate the construction of the moral concept of right. We also see him comparing the law-governed external relations between agents (that the concept of right constructs) with law-governed relations between “bodies moving freely under the law of the equality of action and reaction”. Just as mechanical laws bring physical objects into systematic interaction with one another, so does right enable individuals to coordinate their interactions by placing them in a precise and systematic relation in non-empirical space. This construction of juridical space in terms of interacting, mutually determining forces that operate with the necessity of mechanical laws evokes associations with the category of community or reciprocity as developed in the *Critique of Pure Reason* (CPR A80/B106, B110-11). This analogy is a crucial one whose full implications (particular for Kant’s cosmopolitanism) I will develop at length in the next chapter. At this point suffice it to say that the invocation of physical space serves Kant to further exemplify the construction of rights relations in a priori (unbounded) space. Just as a physical law imposes a priori an order on objects in space, so does the law of “reciprocal coercion” impose an order on individuals and their potentially conflicting freedom claims. In the *Prolegomena*, Kant repeats the mechanical analogy of force and counter-force, which emphasises both the equal validity and the reciprocity of freedom claims:

Thus, there is an analogy between the legal relation of human acts and the mechanical relation of motive powers. I can never do something to someone else without giving him a right to do the same to me in the

same circumstances; just as no body can act on another through its motive power without thereby causing the other to react equally against it. (Proleg 4:358 fn.)

Let me sum up my discussion of the Introduction to the *Doctrine of Right* in this subsection, which has yielded two important insights. First, I pointed out that the moral concept of right is modelled in pure intuition a priori. It is unbounded (a priori) space that constitutes a formal condition for the construction of something like a general schema of rights relations. It is not until the section on acquired right that we move from a vision of rights relations as essentially unbounded (extending across possible persons in space indefinitely) to bounded (empirical) space and hence the conditions under which these relations play out on the spherical surface of the earth. Only once “the a priori construction of rights relations [is mapped] onto empirical space” (Flikschuh 2011, p.145) is a possible world in which “people could be so dispersed on it that they would not come into community with one another” (DoR 6:262) off the table. Within the confines of the Introduction, however, the pertinent spatial framework is that of space as an a priori form of intuition.

I think that this narrative provides the most plausible account of the (important) role that the earth’s spherical surface plays within the argumentative structure the *Doctrine of Right*. I do not want to pretend, however, that it allows us to fully come to terms with this notion in the context of Kant’s wider philosophical framework. In order to see why, let me distinguish two ways in which empirical facts can be contingent or non-necessary: first, there are facts that are *subjectively* contingent in the sense that they result from human agency. The fact that I have an obligation to pick up your daughter from school is contingent on my having promised you to do so – I could have done otherwise. Second, there are facts that are *objectively* contingent in the sense that they could have been otherwise but they are *not* a function of human willing and agency. For instance, I take it that the fact that humans are finite agents

with certain cognitive capacities is objectively contingent; we may very well have been omniscient beings. The fact that the earth's surface is spherical, I want to suggest, is contingent in this latter way; it may very well have been an unbounded sphere. The empirical circumstances of our coexistence on the earth are not in principle open to modification by human willing and agency. Instead, they constitute an objectively given condition within the limits of which human agents are constrained to establish possible rights relations.

The upshot is that the earth's circumference is not simply an empirical given that triggers or conditions an *a priori* obligation (analogous to the way in which the fact of my promise to pick up your daughter relates to my *a priori* obligation to keep my promises).²³ Instead, it is itself co-constitutive of a specific kind of moral interdependence relation (and the ensuing obligations): as we have just seen, the relevant kind of juridical normativity would simply not be pertinent under circumstances in which agents could infinitely disperse rather than being constrained to articulate their claims to freedom of actions and action within limited space. As mentioned, this does not necessarily make it easier to fit the earth's spherical surface into the wider conceptual framework of Kant's practical philosophy, built as it is upon a set of related distinctions such as those between *a priori* and *a posteriori*, noumenal and phenomenal, or empirical and intelligible. Helping ourselves to notions such as that of an "impure [*nichtreines*] synthetic a priori" (Höffe 1999) in this context may be useful in order to articulate and illustrate this predicament, but not solve it.

²³ I take it that this speaks against a possible teleological rendering of the notion, according to which the earth is spherical in shape because, morally speaking, person's fates are bound together. Kant's claim, in *Perpetual Peace* (PP 8:362/3), that we are warranted to read nature as having created conditions in which we unavoidably have to put up with one another *given* our duty to find terms on which to get along, may be taken to speak to such a reading. In my view, however, the empirical circumstances of coexistence are significant in virtue of being constitutively intertwined with our juridical obligations rather than arising from our acknowledgement of them.

Let me finally turn to the second and more immediately relevant insight, which specifically concerns the right to be somewhere. It turns out that even if we insist, following proponents of the *foundational* reading, on the corporeality of juridical agents, the right to be somewhere cannot be included in the innate right. For the empirical circumstances under which rightful relations play out on the earth, that is the concurrent existence of a plurality of corporeal agents within a bounded sphere, are not covered by the moral concepts introduced by Kant in the Introduction to the *Doctrine of Right*.

Conclusion

The modest aim of this chapter is to create conceptual space for a domain of moral inquiry – pertinent to the concurrent existence of a plurality of earth dwellers – that is rarely acknowledged in interpretations of Kant’s mature political philosophy. I have done so by presenting the right to be somewhere as a rather recalcitrant notion that can be accommodated neither within the category of innate nor within that of acquired right. I want to close this chapter by going back once more to the analogy, briefly alluded to in the first section, with Kant’s account of concept formation. It is startling that there, in a completely different context, the notion of ‘original acquisition’ equally provides a middle path between something that is neither purely ‘innate’, nor ‘acquired’ in the pertinent sense.

Concerning the origin of notions such as time and space, Kant is faced with (and intervenes in) what he perceives to be a deadlocked debate between rationalist and empiricist positions (Zoeller 1989). On the one hand, empiricists see the world itself as intrinsically ordered spatiotemporally and argue that we can acquire, or derive, concepts like time and space through the senses. On the other hand, rationalists like Descartes and Leibniz assume the existence of ‘innate ideas’, including

time and space, that do not originate in external objects but solely in the “power of thinking within me” (Descartes 1984, p.303): they are the product of mere human mental activity. Kant is particularly concerned to distance himself from the rationalist account. In a reply to his critic Eberhard, who had collapsed Kant’s position in the first *Critique* into a straightforward form of rationalism, Kant emphasises that

[...] the Critique admits absolutely no divinely implanted or innate representations. It regards them all, whether they belong to intuition or to concepts of the understanding, as acquired. (Discovery 8:221)

Crucially, time and space as the forms of intuition (just as the twelve categories) do not lie in the mind ready to be discovered, but first emerge through the mind’s activity of coordinating, according to certain universal laws, the formation of sensory material. What is innate, according to Kant, is the possibility (or form) of representation – its underlying ground – not representation itself. Yet even the cognitive power that precedes and conditions all representations does *itself* require sensible impressions in order to be first enabled. In the earlier Inaugural Dissertation (ID 2:406), Kant presents the acquisition of space and time as an “abstraction [...] from the very action of the mind, an action coordinating the mind’s sensa according to perpetual laws”. The kind of ‘acquisition’ (of forms of intuition and pure concepts) Kant has in mind thus differs significantly from the acquisition of empirical intuitions and concepts: it is an *original* acquisition that has its source in an a priori capacity of the mind, but in turn only occurs under the effect of sensible impressions. It does not presuppose anything like innate ideas, but the mere spontaneity of thought. As Kant nicely summarizes himself (Discovery 7:222, my emphasis):

The ground of the possibility of sensible intuition is [...] the merely particular receptivity of the mind, whereby it receives representations in accordance with its subjective constitution, when affected by something (in sensation).

Only this first formal ground, e.g., the possibility of a representation of space, is innate, not the spatial representation itself. For impressions are always required in order first to enable the cognitive power to represent an object (which is always its own act). Thus, the formal intuition which is called space emerges as an *originally acquired* representation (the form of outer objects in general), the ground of which (as mere receptivity) is nevertheless innate and the acquisition of which long precedes determinate concepts of things that are in accordance with this form.

Although Kant's use of juridical metaphors in his epistemology is well-established (e.g. Henrich 1989, O'Neill 1989), I do not want to overstep the limits of plausible comparison. It is nonetheless interesting to see Kant reverting to the notion of original acquisition – first developed to describe his position with regard to a crucial epistemological question – when it comes to the piece of land that we unavoidably take up in virtue of coming into the world as embodied agents. Just as the concepts of time and space are neither innate nor acquired, so original acquisition of land is accounted for by a kind of right that is neither innate nor acquired in the pertinent sense. Stretching this analogy yet a bit further, we may even say that while human beings have an innate status of moral equality, this standing becomes *juridically* relevant only under spatial circumstances in which they are bound to *originally acquire* a piece of land.

Of course, while Kant's epistemological agenda ultimately is to reject both the rationalist and the empiricised outlook that he distances himself from by appeal to original acquisition, when it comes to the *Doctrine of Right* innate and acquired right do indeed remain of central architectonic importance. My aim in pointing out the puzzling status of the right to be somewhere has not been to question the usefulness of this distinction as an overall organizing principle for (an interpretation of) the text, but merely to cast some doubt upon its exhaustiveness. What I hope to have shown in this chapter is that the kind of moral relation

emanating from insight into the normative implications of our concurrent existence, as embodied agents, on the earth – a relation among what I called earth dwellers – displays features of either category and ultimately eludes classification. Indeed, that there is such a conceptual space is occasionally even acknowledged in passing by interpreters. Herb and Ludwig (1993, p.294) for instance remark that human beings enter the world as “beings who are subject to obligations which are neither innate nor freely assumed through an act that establishes an obligation“. The implications of this puzzling insight, though, are rarely systematically explored. This is due, more than anything, to the general assimilation in the literature – admittedly following Kant’s own presentation – of external relations to property relations. Given its marginal position in the text, the fact that relations among earth dwellers are external but *not* property-mediated can of course easily slip attention. Yet, it constitutes an essential concern of Kant’s throughout the mature political philosophy that, as we will see in the next chapter, is particularly crucial for his global thinking.

Chapter 2

On Original Common Possession

In the preceding chapter, I introduced a moral domain that, according to my reading, figures prominently in the *Doctrine of Right* yet easily slips attention: the domain of embodied agency under spatial constraints. I developed its contours drawing on the concepts of original acquisition of land and the ensuing right to be somewhere. The relation between what I called earth dwellers – embodied moral agents interacting with other such agents on the spherical surface of the earth – turned out to be ‘external’ but not property-mediated. It thus eludes a distinction (between innate and acquired right) generally deemed both definitive of Kant’s mature political philosophy, and exhaustive.

In the present chapter, I seek to go a step further by showing how this relation serves as a template for Kant’s global thinking. I will make two main claims in this regard: first, Kant’s cosmopolitanism is one of earth dwellers. That is to say, the mere fact that embodied agents can affect and constrain each other with their choices unites them in a community with all those who jointly inhabit a bounded territory, the earth. Kant’s cosmopolitanism thus neither depicts a global ‘kingdom of ends’ constituted by ‘noumenal’ beings united in their shared humanity, nor a shared polity with actual legal-institutional membership, but a community of physical beings that act and affect one another in virtue of inhabiting and sharing one space.

Second, the concern with embodied agency in limited space entails a radical shift in perspective when it comes to global theorising: Kant’s global standpoint is not that of an Archimedean observer with a ‘view from nowhere’, but a distinctly first-person standpoint through

which agents reflexively recognise their systematic interdependence with other agents in a world of limited space. In other words, our interactions with other earth dwellers is perspectival just as much as (on Kant's view) our experience of the world is.

I will develop both these claims through a discussion of the notion of original common possession of the earth. Central to my reconstruction will be a conversation and contrast between Kant's construal of the concept and that prevalent in natural law thinkers such as Grotius, with which the idea of original common ownership is typically associated and against the background of which Kant himself developed his own account. The contrast with this tradition will also help to further elucidate the precise way in which embodied agency matters for Kant. On Kant's formal, relational account of global connectedness, physicality does not matter (as on a material conception) qua bodily needs and interests, but in virtue of grounding a particular kind of moral agency.

The chapter proceeds as follows: I start (in Section 1) by sketching Grotius's conception of common ownership with a particular view on Mathias Risse's recent adaption of it, which is pitched as a contrasting foil for the remainder of the chapter. Over the following two sections, I go on to systematically develop Kant's alternative notion of original common possession of the earth. Given that the insight to be gained from the (by now familiar) passages of the *Doctrine of Right's* section on private right is limited (Section 2), this requires a detour into Kant's theoretical philosophy (Section 3). Specifically, I will take my cue from Kant's characterisation of original common possession as 'disjunctive' in order to draw an analogy between the epistemic "standpoint on the whole" (Longuenesse 2005) as identified in the category of community, and what I develop as the global standpoint: it is a reflexive and first-person standpoint the thinker constructs by shifting his ground to the standpoint of the other. Awareness of this shift in perspective will allow us, in Section 4, to draw together how

thoroughly Kant's understanding of original common possession differs from that prevalent in the natural law tradition: it describes a system of mutual exclusion in which a plurality of different persons stand in a relation of 'possible physical interaction', compelling them to take up a reflexive stance towards those with whom they share a spatially bounded world. The concluding Section 5 puts further flesh on the bones of this contrast by way of contrasting my account of a cosmopolitanism for earth dwellers with Peter Niesen's empiricised notion of 'earth citizenship'. This confirms that Kant's cosmopolitanism, as construed from the global standpoint, is not primarily interested in material entitlements, but in framing the question of how individuals relate to one another globally.

1. Grotius on Common Ownership

The idea of humanity's original common ownership of the earth – ultimately of biblical origin – has a long pedigree in the history of political thought. While, starting with Aquinas, the notion was invoked by a large array of theorists from diverse traditions, it received its most systematic development in the work of early modern thinkers from Grotius to Pufendorf and Hobbes. Particularly Hugo Grotius's conception of original common ownership as laid out in *De Jure Praedae* (Grotius 2006, henceforth DJP) and *De Jure Belli ac Pacis* (Grotius 2005, henceforth DJBP) turned out seminal not only for the natural law tradition but in fact much of the early modern discourse on property (Brandt 1976). It is his account – together with Mathias Risse's recent adoption of it – that I want to sketch in this section, in order to subsequently reconstruct what Kant makes of it. Like his 17th century contemporaries, Grotius employs the notion of original common ownership in order to justify property rights and state boundaries, which he does by presenting them as the result of an (idealised) historical

process that saw the division of an initially common stock. He starts with the assumption that God gave the earth to humans in common for the satisfaction of their needs (DJBP II.2.2.1). This original community though is not one of actual *joint* ownership, but rather a “negative community” where nothing belongs to anyone (de Araujo 2009, p.256). As part of a natural right to their “life, limbs and liberty” (DJBP I.2.1.5), people are free to take possession of things and use them for the satisfaction of their needs. But this restricted right to use what is owned in common does not authorise anyone to accumulate objects or exclude others from similar use before or after physical possession (Salter 2001, p.539). The lawful use of things is confined to the immediate usage or consumption of what people find growing on the common, grounded in a right of self-preservation.

Much of Grotius’s account is then concerned with telling a story of how this initial, universal use-right was gradually transformed into a scheme of property rights and territorial boundaries. This narrative is pervaded by a fundamental ambiguity that arises from Grotius’s notorious combination of what he calls “a priori” and “a posteriori” methods (DJBP I.1.12.1). While, on the one hand, he offers a narrative of (idealised) historical developments drawing on a number of philosophical, literary and theological sources, he does so against the assumption that “the acknowledged facts of human history are not arbitrary or accidental, but necessary” (Buckle 1991, pp.5-6). Given that human nature so drastically constrains possible solutions to given problems that the particular outcomes can be seen to be inevitable, history reveals the logic of a distinctively human situation. Grotius wants to show that history “proves the existence” (DJBP Proleg. §40) of the independently valid laws of nature. In inferring the a priori from the a posteriori, the rational history of property becomes its justification – what happened ought to have happened.

The emergence of rights in property and territory figures as part of a wider account of the evolution of society from simpler to more

refined ways of life, which starts with a very basic conundrum: the exercise of a use-right with regard to objects that are incorporated in some way, particularly food, de facto already amounts to the exercise of an exclusive right because it is in their very nature that they cannot be re-used (DJP Ch.7 Section 101). A clear-cut distinction between use and property right is thus impossible from the outset. A major shift then occurs once people start to grow discontented with a way of life that merely allows them “to feed on the spontaneous product of the earth, to dwell in caves, to have the body either naked or clothed with the bark of trees or skins of wild animals” (DJBP II.2.2.4). In the process of leaving this relatively simple life, they treat more and more objects as if they were bound up with their purposes of consumption and thus limited in re-usability. Initial forms of occupation thus lead to other, more extensive forms. This transition from a simple way of life to a more refined one is only possible with more extended forms of exclusion and abstinence (Salter 2001, p.544) – the primitive form of use-right is no longer feasible. As soon as community members (publicly) start to recognise this fact, an elementary form of private property is underway. The initial act of seizure to satisfy bodily needs is treated as grounding a right to recover possession after usage.

Hence, the need for private ownership arises as a natural response to circumstances generated when human beings abandoned their original life of primitive simplicity, proceeding through an extension of a right to use unclaimed things. How exactly this process goes ahead is not always entirely clear. In the earlier DJP, the transition from mere use to the ‘institutional fact’ of legitimate property is rather vaguely described as a mental act that is “produced by reason” and “retained in mind” of all parties involved (DJP Ch.7; see also de Araujo 2009, pp.361/2). An occupation that began with physical effort may, after a while, endure mentally, just because individuals continue to treat an object as if it were still occupied. Yet, it remains unclear who exactly has to recognise the validity of property or how they do so. Sometimes

it sounds as though all the claimant is required to do after the initial act of seizure is to maintain the intention of possession, for instance through “some activity involving construction or the definition of boundaries such as fencing in” (DJP Ch.7 Section 102).

In DJBP, Grotius is more explicit that private property cannot arise by “a mere act of will”, given that “one could not know what things another wished to have, in order to abstain from them – and besides, several might desire the same things” (DJBP I.2.6.2). Instead, ownership arises “by a kind of agreement, either expressed, as by division, or implied, as by occupation” (DJBP II.2.2.5). That does not mean that there was once an explicit original agreement about the division of the common stock. Rather, private property arises gradually out of a series of many explicit and tacit contractual steps between consenting parties. Absent visible objections “it is to be supposed that all agreed, that whatever each one had taken possession of should be his property” (DJBP II.2.2.5). The division of movable objects (like cattle) is followed by immovable property (like land), eventually leading to the drawing of territorial boundaries and the formation of states. Yet, even after division, rights in property and territory retain a close connection to the original purpose of basic needs satisfaction, as expressed in a right of necessity that sanctions the revival of the primitive use right (i.e. taking from the surpluses of property holders) in cases of extreme and unavoidable hardship (DJBP II.2.6.1-4). The rightfulness of each co-owner’s share of resources, and each state’s share of space, of what was originally a common stock remains conditional upon everyone else’s equal ability to satisfy their basic needs.

The rough outlines of Grotius’s account of humanity’s original common ownership of the earth at hand, I now want to look at Mathias Risse’s (2012; 2013; 2015) recent revival of the concept, which had fallen out of fashion for quite some while. The main motivation for turning to Risse is that it is only in his work that we see the notion employed as a fundamental conceptual pillar of a theory of *global*

justice.¹ Note that, strikingly, Grotius himself is not overly interested in questions of genuinely global concern, but in justifying particular property holdings and state boundaries. Risse however identifies a “universally acceptable, non-parochial standpoint” (Risse 2013, p.22) in Grotius’s needs-based framework, a standpoint he takes to be ideally suited for the adjudication of issues of global concern – including those pertaining to resources, territory, immigration and environment. The need to theorise from such a standpoint is said to arise from a twofold empirical development: in a globalised economy, humanity is increasingly interconnected, while at the same time confronting more and more problems that “concern our way of dealing with the earth as a whole” (Risse 2015, p.84) and thus point out to us the limitations of our planet.

Risse adopts the overall outlook of the Grotian framework as just outlined, modifying it in two important respects. First, he explicitly de-historicises the account. His talk of ‘original’ common ownership does not aim at an originally actual state of affairs, but seeks to highlight the – exclusively normative –² sense in which resources and spaces that exist independently of human activities might be taken to be owned in a way that is prior to the moral claims that individuals or groups have to these resources based on, for instance, occupancy or invested labour (Risse 2013, p.8). Second, he secularises Grotius’s account by replacing the appeal to God (and His ‘divine gift’) with intuition-based natural rights talk.³ Risse’s aim is to “make maximally uncontroversial claims that lead to a universally acceptable, non-parochial standpoint to adjudicate question of global reach” (Risse 2013, p.8). More specifically,

¹ Strictly speaking, the idea of common ownership only provides one of five grounds of justice that Risse appeals to in the course of *On Global Justice* (2012), but without doubts it figures crucially in its overall argument and is developed at length.

² I say ‘exclusively’ because Grotius’s own account seems to have *both* a normative and a historical dimension – as seen in his shifting back and forth between a priori and a posteriori methods.

³ Risse (2013, p.2) defines natural rights as “moral rights whose justification depends on natural attributes of persons and facts about the non-human world”.

his notion of original common ownership draws on the intuitive plausibility of three separate claims (Risse 2012, pp.113/4): first, the fact that resources and space are valuable and necessary for all human activities. Second, the (normative) claim that the satisfaction of human needs matters morally. And finally, the assumption that nobody has a claim to resources and space based on contribution or personal achievement, given that they exist independently of human activity. These three claims in conjunction are supposed to warrant the theoretical starting point that “all human beings, no matter when and where they were born, are in some sense symmetrically located with regard to the earth’s resources and space” (Risse 2015, p.88) – in a nutshell: they originally own the earth in common. Bringing in Risse will not only allow us to see even more clearly how Kant departs from the natural law tradition, whether it is embodied by its early modern or contemporary adherents. It also opens up a wider contrast between Kant’s global thinking and the (distributive and needs-based) methodological framework predominant in the more recent global justice literature that Risse reflects paradigmatically.

2. Kant on Original Common Possession

I now want to turn to Kant’s notion of original common possession. A superficial look into the *Doctrine of Right* will indeed make it appear not all that different from the Grotian tradition. As we saw in the preceding chapter, the idea is first introduced in the section that deals with the rightful acquisition of external objects. To acquire something means to “bring it about [...] that it becomes *mine*” (DoR 6:258). Recall, in particular, that Kant is interested in the possibility of acquiring something *originally*, as opposed to deriving it (through exchange) from someone else. At the very beginning of the pertinent passage, Kant then specifies that what is acquired originally is never acquisition of what

does not belong to anyone (a *res nullius*), because “possession of an external object can originally be only possession in common” (DoR 6:258).

If we were merely to restrict our attention to what Kant says in this opening paragraph, where he essentially provides a condensed version of the argument to follow, we would most likely read Kant’s conception as very much in line with the natural law tradition.⁴ In other words, in introducing the idea of original common possession of the earth within the context of a justification of property rights, Kant may easily be read as claiming that individual acquisition must somehow be thought of as ‘derived’ from what is originally possessed in common. And yet Kant, who is presumably aware of the resemblance, immediately distances himself from Grotius on that point (Edwards 1998, p.127). What he has in mind is explicitly not a “primitive community (*communio primaeva*), which is supposed to be instituted in the earliest *time* of relations of rights among human beings and cannot be based on principles [like Kant’s notion, JH] but only on history” (DoR 6:258).

In order to get a grip on Kant’s eagerness to delimit his conception of original common possession from that of the natural law tradition, we need to recap last chapter’s reconstruction of the dilemma that arises, on the following pages of the *Doctrine of Right*, from reflection on original acquisition of land. Recall that, on the one hand, acquisition of a place on earth occurs without any fault of ours – given that we need to be *somewhere*, we cannot be ‘blamed’ for coming into the world and taking up space. At the same time, and as beings with the capacity to act and be held morally accountable for our actions, there is an important sense in which we do claim a place as ours. Our original

⁴ Recently see Pinheiro Walla (2016), who takes Kant’s account of original common possession to address the same problem as that of Grotius, namely the implausibility of inflexibly vindicated acquired rights when this would go against the very rationale of their introduction (on her view, individuals’ basic needs fulfilment).

acquisition of land thus yields normative implications: where and how *we* pursue our ends necessarily impacts where and how *others* can do so – in virtue of the earth’s spherical surface, “the choice of one is unavoidably opposed by nature to that of another” (DoR 6:267).

In the last chapter, I mentioned that Kant offers a two-pronged argumentative move in order to deal with this puzzle; I there focused on the first part: the right to be somewhere, which is granted to every embodied agent in virtue of coming into the world. Yet, while we have such a right (otherwise we could not act), we also need to take into account that the piece of space we take up at any particular point in time cannot be taken up by any other person. In a second step, Kant thus attaches conditions to the right to be somewhere: while “all human beings are originally (i.e. prior to any act of choice that establishes a right) in possession of land that is in conformity with right”, we need to conceive of this legitimate possession of a place as a “possession in common” (DoR 6:262) with all others. And lest we still fail to notice that what is going on in this line of argument is very different from Grotius, Kant adds *again* that his notion of original common possession is

not empirical and dependent upon temporal conditions, like that of a supposed *primitive possession in common* (*communio primaeva*), which can never be proved. Original possession in common is, rather, a practical rational concept which contains a priori the principle in accordance with which alone people can use a place on the earth in accordance with principles of right. (ibid.)

Let us take stock of what we have found so far. Two aspects of Kant’s puzzling line of argument, as we have reconstructed it, are striking. First, while Kant’s notion of original common possession seems to speak to a concern that arises from human beings’ embodied nature, it is of a very different kind compared to that of Grotius: Kant’s concern is with the kind of systematic interdependence relations that persist among embodied agents just in virtue of the fact that they act and coexist in

finite space. Such agents of course need to be somewhere – they need a place on earth in order to act in the first place. Yet, they are very different from (Grotian) needy beings that share a world of limited resources with beings that have similar needs, for the satisfaction of which they have to use, occupy and appropriate goods. Remember how in the last chapter, we saw Kant set out the moral domain of right as providing a formal account of the “external and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other” (DoR 6:230).

Second, Kant seems to *reverse* the argumentative sequence as we know it from the natural law tradition (Flikschuh 2000, pp.152;163). While we saw Grotius (and following him, Risse) start with the idea of a common stock in order to subsequently divide it up in accordance with a predetermined distributive principle, the *Doctrine of Right* proceeds *from* unilateral acquisition of land *to* the idea of original possession in common. Original common possession, that is to say, is not an argumentative starting point but the conclusion: something like a normative implication of the fact of individuals’ acquisition of land under circumstances of spatial constraints constituted by the earth’s spherical surface. To think of the earth’s surface as possessed in common is an a priori necessary condition of the unavoidable act of first acquisition in virtue of one’s coming into the world as an embodied agent. Kant thus employs the idea of original common possession of the earth in order to visually express what it means to exist as an embodied moral agent, together with other such agents, within limited space: namely, to understand that the corollary of one’s own right to be somewhere is one’s acknowledgement of others’ equal right. For, among a number of moral equals, “originally no one had more right than another to be on a place on the earth” (PP 8:358).

To sum up, Kant introduces original common possession in order to illustrate the way in which embodied agents that jointly inhabit a bounded territory are united in an original community. Yet beyond

that, the pertinent passage does not lead us very far in elucidating the concept. The precise nature of this community remains something of a mystery, nor is it clear why it constitutes the conclusion of Kant's argument rather than its starting point. What is evident is that Kant operates with a more formal notion of community than the natural law tradition: the sense in which for Kant the original community takes the form of an "original community of land" (DoR 6:262) is not that of a resource repository for everybody's needs satisfaction. Instead, what he is saying is that the earth's spherical surface constitutes the unavoidable conditions of (potential) interaction. Kant is less interested in rightful entitlements to this or that piece of land, resource, or object. Instead, he is interested in the way in which human beings stand, from the beginning, in a relation of "possible physical interaction" (DoR 6:352) with everyone else globally – given that, as physically embodied beings, they are constrained to occupy a portion of space on the earth (which cannot simultaneously be occupied by anyone else).

Echoing this line of thought, Kant repeatedly calls his conception of original common possession "disjunctive" (Preparatory DoR AA 23:321; 322; 323). In a passage of the preparatory works (23:322) that nicely gathers some of the core ideas discussed in this and the preceding chapter, he argues for instance that

[...] every man occupies, if and wherever on earth he comes to exist with no fault of his own, a place on earth, and can think of this as a rightful act of apprehension, that is in virtue of the disjunctive-universal possession of this or that place on the surface of the earth (as a sphere).

It is this notion of 'disjunction', I want to claim, which is key to understanding the precise nature of Kant's original community of possession.⁵ Given that it is a term with structural significance in Kant's

⁵ The similarity between disjunctive community and the disjunctive judgment has been extensively explicated by Milstein (2013), whose work has been of great use to me in this context.

philosophical system, its further elucidation requires a detour to his theoretical philosophy.

3. Disjunctive Judgment and Original Community

In the last section, we got a first impression of Kant's conception of original common possession as laid out in the context of the *Doctrine of Right's* passage on original acquisition of land. The present section seeks to further deepen our understanding, drawing on Kant's characterisation of original community as 'disjunctive'. The notion of a 'disjunctive community' is a technical term that Kant develops in the *Critique of Pure Reason*, where it is introduced in the course of a wider (and perennially contested) argument about the nature of space, objects, temporal relations and the unity of experience. While it would go well beyond the scope of this chapter to try to elucidate every single claim that Kant makes in this context, we do need to keep in mind one of the most important tenets of the first *Critique* as a whole: human beings' knowledge of the world depends on a system of fundamental categories or what he calls 'pure concepts of the understanding'. Controversially, Kant thinks that he can develop these categories from nothing more than logical forms of judgment expressed in a systematic "table" (CPR A70/B95). After all, that is what the human intellect fundamentally is for Kant: a capacity to make judgments (CPR A69/B94, A81/B106, see also Longuenesse 1998).

One of these forms of judgment is the 'disjunctive judgment', the exclusionary 'either...or' (CPR A73/B99). In a disjunctive judgment one divides a concept, call it A, into its mutually exclusive specifications, call them B, C, and D. The affirmation of any of these specifications of A is a sufficient condition for negating the others (if A is B, it cannot be C or D), and conversely the negation of all but one is

a sufficient condition for affirming the remaining one. What is important to understand here is that the disjunctive form of judgment divides a logical space (the extension of a concept) into mutually exclusive *and* jointly exhaustive spheres. The known constituents mutually exclude each other (they are logically opposed to one another) but *together* exhaust the space of logical possibility, i.e. they "determine in their totality the true knowledge" (A74, see also Watkins 2011, p.44). Thus, there is a sense in which the state of each is bound to the others: the affirmation of one member implies the negation of the others, and the negation of all members but one implies the affirmation of the remaining member. A disjunctive judgement, that is to say, relates all concept subordination to a unified logical space within which concepts reciprocally delimit each other's sphere and meaning.

As already mentioned, the logical forms of judgment then ground categories or 'pure concepts of the understanding'. In our case, the disjunctive judgment yields the category of 'community' as the third category of 'relation', alongside 'substance' and 'causality' (CPR A80/B106, B110-11). What connection Kant precisely has in mind between forms of judgment and the categories is perennially contested. In order to avoid falling prey to the very Leibnizean rationalism that he had himself rejected in the earlier 'Amphiboly' section, however, Kant's idea cannot be that relations of things in space are essentially the same as relations of concepts (Longuenesse 2005, p.194 ff.).⁶ Yet even granting that Kant is not guilty of assimilating logical and material relations, the weaker claim that the same *acts of mind* or "procedure[s] of understanding" (CPR B113) that generate the forms of judgment also generate the synthesis of spatiotemporal manifolds under concepts is no less puzzling. The argument is that similar to the way in which, in a disjunctive judgment, a concept is divided up into its constituent

⁶ Watkins (2005) agrees that when Kant talks about "the same procedure of the understanding" (CPR B113) that underlies judgment and the use of categories, he does not in any straightforward way 'derive' one from the other but merely points out a similarity among the respective mental acts.

components (bringing them into a relation of mutual determination *and* exclusion), so in a material whole, things mutually determine one another in an object or body considered as a whole (CPR B112/3).⁷ In both, members are represented as reciprocally coordinated with one another as parts that come together to constitute a whole. Just as two logically opposing propositions exclude each other, so two objects cannot occupy the same spatial position (at the same time). And just as the constituents of a disjunctive judgment, taken together, include the entire sphere of knowledge in that particular domain, so substances, in order to be an object of experience, must stand in a unified space, a whole that is the product of its various constituents. Consequently, the category of community has two names: ‘Reciprocity’ (with an emphasis on the relation of causal interaction) and ‘Community’ (with an emphasis on objects’ being part of one space).

In order to elucidate the surprising connection that Kant stipulates, between the understanding’s representation of relations among concepts and empirically given things in space, we need to have a closer look at the first *Critique’s* section on the “Analogies” (CPR A 177-218, B 218-265). There, Kant tries to show how precisely the categories of relation provide the human understanding with ‘schemata’ through which we synthesize the manifold of appearances into an intelligible horizon of spatiotemporality. Each of the three analogies examines how a particular category constitutes the condition of a particular type of temporal experience.

In the third Analogy (CPR A211/B257), Kant claims that we can only experience appearances as co-existing *simultaneously* by applying the concept of community.⁸ This, in turn, is to suppose that

⁷ Guyer (1987, p.452, fn.17) notes that “as is often pointed out, Kant’s connection of the real relation of reciprocal influence with the logical notion of an exclusive disjunction is the most tenuous of all”.

⁸ For extensive treatments of the third analogy (which was for a long time neglected in Kant scholarship), see Watkins (2005, pp.217-229), Longuenesse (2005, Ch.7), Shell (1996, Ch.6).

the objects are in relations of mutual interaction – they “reciprocally contain the ground of the determination” of the other (CPR B 258). Why is this so? It would seem that I can just look at my chair, then look at the table standing next to it and simply know without further ado that they co-exist simultaneously. Yet, Kant does not think it is that easy, for while we always apprehend objects successively (we see one object first, then the other), we have no given (absolute or objective) framework within which we might locate events and states of affairs in time. Hence, we need the help of the categories that relate the perception of objects in time “prior to all experience, and indeed make it possible” (CPR A177/B219). For instance, if we look at the table first and then at the chair, we can only judge that they exist simultaneously (instead of being two perceptions following onto each other) if we could *reverse* the perception, i.e. look at the chair first and then at the table (CPR A211). Unfortunately, given that time is not perceivable, we cannot directly read this reversibility off our perception – it requires subjecting our apprehension to a rule that cannot be derived from that apprehension itself (Allison 2004, p.265). This rule, which allows for the judgment that each object occupies part of a larger unified space, takes a disjunctive form and requires regarding the coexisting things as constituting a community.

So the sense in which simultaneously existing objects stand in “dynamical community” (CPR A213) and determine certain features of each other is primarily spatial: one substance is thought to be the cause of certain determinations in another and vice-versa insofar as each is in some sense responsible for the spatial position of the other. If two things exist simultaneously, they mutually exclude each other, as each object has its place by virtue of the place of everything else. And as only spatially separated objects are capable of coexisting simultaneously, spatial positions partly condition temporal positions. To sum up, we cannot locate particular objects vis-à-vis one another without first being

able to comprehend them as coordinate participants in a unified horizon of possible experience.

This enlightening comparison already leads us some way to understanding what Kant seeks to suggest by calling the original community of possession ‘disjunctive’. Just as a disjunctive judgement relates mutually exclusive concepts to a unified logical space, so the idea of a disjunctive community elucidates how in virtue of sharing the earth in common, we each affect one another in the phenomenal world. Kant thus picks up the general construction of rights relations in analogy with the mechanical law of action and reaction in the introduction to the *Doctrine of Right* (as discussed in the preceding chapter), which now serves as a template upon which to conceive of rights relations within the empirical space constituted by the earth’s spherical surface.

Again, spatial and temporal aspects are mutually constitutive: from a temporal perspective, the idea of disjunctive community grasps the *essential simultaneity* of our coexistence with one another on the earth’s limited surface. In explicating the notion of original common possession, Kant clarifies that the relation among participants in the original community of possession is not “a relation to the land (as an external thing) but to other humans in so far as they are *simultaneously on the same surface*” (Preparatory DoR AA23:322, my emphasis). Our own corporeal nature and the earth’s surface are only normatively relevant (in the way they are) in virtue of our *concurrent* existence. To sum up, Kant’s original community describes a system of mutual exclusion in which persons stand in a relation of ‘possible physical interaction’ in virtue of simultaneously occupying different parts of the earth.

In order to fully exploit and appreciate the significance of the notion of disjunction and the pertinent category, we have to go yet a step further. Following Beatrice Longuenesse (Longuenesse 1998, pp.375-394; Longuenesse 2005, pp.184-211), we need to notice what makes the category of community so interesting and indeed unique among the categories: the perception of spatiotemporal simultaneity

does not merely require us to perceive, or presuppose, interaction among the things we observe. It also requires us to posit *ourselves* within that interaction as phenomenal bodies that coexist among them. Kant takes our body to mediate our perception of the simultaneous existence of other substances: we can only experience substances as standing in relations of community under the condition of experiencing them as coexisting with our own body. A change of our own location is only noticeable through its altered relation to other objects (and the other way round), as Kant explains:

From our perspective it is easy to notice that only continuous influence in all places can lead our sense from one object to another, that the light that plays between our eyes and the heavenly bodies effects a mediate community between us and the latter and thereby proves the simultaneity of the latter, and that we cannot empirically alter any place (perceive this alteration) without matter everywhere making the perception of our position possible; and only by means of its reciprocal influence can it establish their simultaneity and thereby the coexistence of even the most distant objects (though only mediately). (CPR A213-14/B 260)

Our experiencing the coexistence of other substances with our own body – through the light that “strikes our eyes” and “plays between the bodies” – is the condition for our experiencing their respective relations of community. Each objective change of spatial position of our body is made evident to us by the alteration of its relation to other bodies.

Kant illustrates this idea particularly nicely in his (little-known) essay *What is Orientation in Thinking*. There, he develops his stance with regard to the wider philosophical issue of ‘orientation in thinking’ (pertaining to the scope of reason and the existence of God) by way of a comparison with two more familiar and seemingly manageable forms of orientation. First, he reflects on the possibility of geographical orientation (WOT 8:134/5). At first sight, it may look as though we are able to orient ourselves in a landscape by drawing on certain objects or

fixed points – the altitude of the sun, the position of the stars or a compass. Yet, Kant thinks the idea that we could merely orient ourselves by drawing on external things misleading. Instead, the most immediate (and important) point of orientation is in fact our own subjective feeling of left and right, which we (implicitly) rely on when distinguishing South, North, East and West. Without this “feeling of a difference in my own subject” (WOT 8:134) we would be ignorant of the relation in which we ourselves stand to the world surrounding us and thus remain entirely disoriented.

This becomes even clearer when we imagine ourselves attempting to find our way around in a pitch-dark room (WOT 8:136/7). Given that we are familiar with the room’s general lay-out, all we require in order to spatially locate all items in the room is knowledge of the position of one piece of furniture together with – importantly – our feeling for left and right. If instead somebody had rearranged the furniture, we would be completely lost. In both examples, it is a subjective feeling that serves as a relevant point of orientation in space. More specifically, it is my body – its location in space – that provides the necessary reference point: the subjective feeling of left and right is nothing else than a “feeling of a difference between my two sides” (WOT 8:137). We can only grasp space through our own position in it.⁹

Now, Longuenesse argues that by requiring us to locate ourselves in the world,¹⁰ the category of community provides us with what she calls a ‘standpoint on the whole’: a reflexive standpoint from which we locate and situate ourselves in interaction with the world

⁹ The larger philosophical point in this context relates to the perspectival change that comes with Kant’s Copernican turn: given that a topography of reason has to be done without the bird’s eye view that (which he takes to be at the root of both rationalist megalomania and empiricist scepticism), what we are left with is our ability to determine the limits of reasons through reflection upon reason itself – similar to the way in which we can only grasp space through our own position in it.

¹⁰ ‘Us’ here refers to the “empirical unities of consciousness associated to a body we represent as our own in the unified empirical space and time whose representation we thereby generate” (Longuenesse 1998, p.391). On the relation between self-consciousness and consciousness of one’s body, see also Longuenesse (2006).

surrounding us.¹¹ I want to suggest that it is this standpoint on the whole, and in particular the reflexivity that comes with it, which can be understood as providing the template for Kant's global standpoint.¹² Unlike in the theoretical philosophy, where we relate to the external world around us with a *speculative* interest (to gain knowledge about it), in the domain of right we *practically* relate to other agents that we affect and physically encounter in it. It is the same intellectual capacity that enables us to take a common epistemic "standpoint on the whole" of objectively existing things, and which allows us to take a moral-juridical standpoint on the "whole of interacting beings" (Longuenesse 2005, p.206). And in the same way in which our perception of the world is perspectival, so are our interactions with other agents.

As we will see in subsequent chapters, the step from the community of material substances, to a cosmopolitan community of individuals each with their own respective standpoints is all but trivial. For what we now relate to are no longer objects, but a plurality of diverse and interacting agents, each of whom makes claims (to exercise their capacity for choice and action) upon us from their own perspective. While I will thus have to make sure to identify the limits of my analogy between theoretical and juridical domains, for now I want to focus on the relevant similarity. That is to say, I want to zoom in on the way in which the idea of a disjunctive community elucidates how in virtue of sharing the earth in common, we each affect one another in the phenomenal world, but we are each able – from the global standpoint – to reflexively relate to the whole of human beings with which we are in thoroughgoing interaction. It compels us to take up a reflexive stance towards those with whom we share a spatially bounded

¹¹ Longuenesse goes as far as to say that "by the location of us in the empirically given world", not only "the astonishing edifice of Kant's Analogies of Experience comes to completion" (Longuenesse 1998, p.392), but in fact Kant's critical philosophy as a whole. It is at this point that we truly are the authors of the representation of the very world in which we locate ourselves.

¹² Here I follow Milstein (2013, p.124).

world. This is the way, I take it, in which in Kant's political philosophy, the 'standpoint on the whole' becomes the 'global standpoint'.

4. Kant and Grotius on the Global Standpoint

With our analysis of Kant's original community as 'disjunctive' at hand, we can now sharpen the contrast with the Grotian framework. I will start by laying out what distinguishes the two conceptions on a substantive level, subsequently turning to their role in the respective broader argumentative structure. It is the crucial insight into Kant's shift in perspective that will allow us to see just how different his global standpoint is.

On a conceptual level, an essential contrast has emerged over the last three sections between Grotius's *material*, needs-based principle for the division of the common stock of resources and land on the one hand, and Kant's *formal* argument pointing out relations of interdependence that obtain among individuals globally in virtue of their unavoidable coexistence on the earth on the other. In both arguments, human physicality grounds the idea of original common possession, yet in very different ways. Risse's Grotian account provides a legitimacy criterion for rightful appropriation of land and resources grounded in the satisfaction human bodily needs. In Kant, embodiment comes in as a mere precondition for a particular kind of moral agency ('Willkür', i.e. our capacity for choice and action), a formal account of which the *Doctrine of Right* sets out to provide. The ensuing contrast is nicely elucidated by drawing a distinction between Grotian *relations of ownership* – focused on the “usefulness for human purposes of three-dimensional spaces” (Risse 2015, p.91) – and a Kantian *relation of wills* of individuals (Deggau 1983, p.100).

Kant himself articulates this difference most clearly in the preparatory works for the *Doctrine of Right*. There, he clarifies that the

relation between original common owners is not “a relation to the land (as an external thing) but to other humans in so far as they are simultaneously on the same surface” (Preparatory DoR AA23: 322). This of course makes for a stark contrast to the Grotian model, which Risse takes to provide an explicitly “nonrelational” (Risse 2012, p.89) ground of justice: it gives rise to principles of just entitlement that “apply among all human beings regardless of what relations they share” (Risse 2012, p.7). For Kant instead, to say that the earth constitutes the basis of possible physical interaction *just is* to make a claim about how individuals relate to one another globally.¹³ Of course, in depicting a mere form of relations of choice between subjects, such a conception does not lend itself to substantive implications of the kind we can get out of the Grotian understanding of common ownership. Following the latter, natural law already contains a principle of just distribution: the principle of need as determined by human nature and discerned by reason. On the Kantian picture in contrast it is, in a way, ‘all up to humans’: it is them who have to come to terms with the fact that they have to share the earth in common. What the idea of original common possession points out is the fact that, and the way in which, their fates are inevitably bound up with one another. It merely provides a standpoint from which individuals can think and act globally with the intention of finding shared solutions for shared problems.

With regard to the broader argumentative structure, we have already noticed that original common ownership occupies contrasting places in the respective justificatory sequences. Grotius *starts* with original community conceived of as a historically real state of affairs and proceeds from there – embedded within a wider account of societal

¹³ Johan Olsthoorn has rightly pointed out to me that Kant’s “relationality” is conceptually distinct from what Risse invokes as “relational” grounds of justice in a way familiar from current normative debates, where relations are usually taken to be mediated through social practices (Risse 2012, pp.7/8). Yet, I take it that the contrast I construe still helps to illustrate the way in which a Grotian notion of common ownership is only indirectly or derivatively inter-personal.

evolution – via distribution in accordance with a principle that derives its validity from the structure of human nature, to individual property and territorial boundaries. Risse replaces the historical narrative with an appeal to secularized natural rights reasoning. What renders the assumption of humanity’s collective ownership of the earth intuitively plausible is the mere insight that there is something all humans need (space and resources) but which none of them can make a prior claim to, for instance based on individual achievement or labour. Yet, he does abide by Grotius’s argumentative sequence: original common ownership figures as a conceptual starting point from which a distributive rationale unfolds.

We saw Kant turning this sequence upside down: he *starts* from the insight into the conundrum of original acquisition of land, from which the need to think of the earth as possessed in common follows as a normative implication (Flikschuh 2000, p.168). The requirement to think of the earth as possessed in common, that is to say, is a corollary of (unavoidable) first acquisition we make by virtue of coming into the world as embodied agents. Kant employs the idea of original common possession of the earth to visually express what it means to exist as an embodied moral agent, together with other such agents, within limited space. It would thus be misleading to say that this fact just *makes it the case* that we possess the earth in common. Rather, original common possession is something we *judge to be the case*, reflexively acknowledging the need, and at the same time our ability, to come to terms with the plurality of perspectives that humans bring to bear on each other on the earth’s spherical surface.

The inverted structure of Kant’s argument reflects his fundamental shift in perspective that amounts to a radical redefinition of what it means to think globally. The global standpoint is not a pre-established view ‘from nowhere’, but it is reflexive and first-personal: a standpoint the agent constructs by shifting his ground to the standpoint of the other. To think of the earth as possessed in common illustrates

the requirement, directed at each particular agent, to take a reflexive stance towards their own existence as an embodied agent in a world of limited space. It is a standpoint *through* which we acknowledge our ability to locate ourselves vis-à-vis everyone else, and *from which* we act and interact with others. Kant's global standpoint is premised on each of the particular standpoints a multitude of agents initially hold.

It is this radical shift in perspective that endows Kant with the deep, systematic view of how individuals relate to one another globally. For, it means that Kant is engaged in a justificatory project that is fundamentally different from that of Grotius or his contemporary follower Risse: his aim is not to explain or vindicate the individual distribution of what was 'originally' given to all in common. Kant is interested in a much more fundamental question than how to divide up the world; he uses the idea of original common possession in order to explore the most fundamental way in which individuals relate to one another globally. Importantly, this way is independent or at least derivative of the ways in which each of us relate to biophysical space.

It seems plausible to argue that Kant's motivation for inverting the sequence of Grotius's argument is precisely the latter's tendency to *obliterate* the global standpoint by essentially consolidating existing holdings and borders rather than questioning them. By contrast, in arising from the unavoidable conditions of our coexistence on earth, Kant's global community has priority over contingent, man-made communities of right-holders or co-owners. I will have more to say in subsequent chapters about what this means precisely. For now, suffice it to anticipate that Kant is not suggesting that we should do away with all kinds of particular relations, commitments and institutions.¹⁴ Rather, the global standpoint is one from which we critically reflect on existing relations of property, territory or sovereignty that we have inherited.

¹⁴ Compare, again, Kant's reluctance to embrace a world state solution.

5. Earth Dwellers and Earth Citizens

Over the course of the preceding sections I have provided a formal and relational interpretation of Kant's notion of original common possession. This interpretation was based on my reconstruction of the right to be somewhere in Chapter 1. I presented the original community of what I call earth dwellers as one between embodied moral agents in direct physical interaction with each other. They are united with all those with whom they jointly inhabit a bounded territory, the earth, by the mere fact that they can affect and constrain each other with their choices. Moreover, insight into the normativity of embodiment under conditions of spatial constraints endows earth dwellers with a distinctly first-person standpoint through which they reflexively recognise their systematic interdependence with other agents in a world of limited space. I have argued that it is this standpoint from which agents are able to think and act globally that makes Kant's cosmopolitanism in the *Doctrine of Right* most distinctive.

In developing this interpretation, I largely focused on the pertinent passages in the 'private right' section. I now want to leave this context behind and turn to the category of cosmopolitan right as laid out in the *Doctrine of Right* and *Perpetual Peace*. As I briefly intimated before, Kant there repeats the argument now well-known to us: in virtue of the fact that "nature has enclosed [us] all together within determinate limits (by the spherical shape of the place they live in, a *globus terraquaeus*)", he writes, we stand "originally in a community of land", which is a "community of possible physical interaction" (DoR 6:352). Given that I will investigate the domain of cosmopolitan right in much detail over the course of subsequent chapters, I here want merely to indicate that the interpretive framework I have just developed broadly fits the concern that there drives Kant's discussion. Moreover, my aim is to show that the formality of Kant's argument does not make it any less interesting, or indeed devoid of normative implications. I will do so

by contrasting an interpretation of cosmopolitan right based on my formal and relational reading of original common possession with Peter Niesen's attempt to extract from it a material conception of what he calls "earth citizenship".

To start with, notice that Kant equates cosmopolitan right with a right to hospitality, that is "the right of a foreigner not to be treated with hostility because he has arrived on the land of another" (PP 8:357).¹⁵ This right entitles a visitor of foreign territory to be dealt with justly for the duration of her (temporary) stay and to seek what Kant calls 'commerce' (broadly understood as including a broad range of cultural, economic or political exchange). In a nutshell, I take it to be a communicative right to attempt contact with distant strangers. What hospitality explicitly does *not* contain is a right to remain permanently on the land of a foreign country or even settle there (DoR 6:353).

In order to get a better grip on cosmopolitan right, we can follow Peter Niesen (2007; 2011), who deserves credit for providing a unified account of it. On Niesen's view, the two examples Kant discusses in this context pertain to a negative and a positive dimension of the right to hospitality respectively. On the one hand, the negative dimension figures prominently in Kant's condemnation of European states' colonial practice at the time, whose attempts at conquering foreign lands with recourse to misleading claims to hospitality he decries as "inhospitable behaviour" (PP 8:358). Newly 'discovered' lands may not be appropriated without the consent of those who have already settled in the region. The second group of cases Kant considers are those where individuals end up at some place through no fault or responsibility of their own, but merely due to unfavourable circumstances. In a preliminary draft for *Perpetual Peace* (Preparatory PP AA23:173), Kant

¹⁵ Cosmopolitan right itself has only recently received increased attention in the literature, with different motivations: Benhabib (2004) makes it fruitful as a way to think about refugee and asylum rights; Byrd and Hruschka (2010, pp.205-11) take it to be dealing with rights to engage in international trade; Niesen (2007, pp.90-108) stresses its role within Kant's critique of colonial occupation.

discusses the victims of a shipwreck washed ashore, as well as sailors seeking refuge from a storm in a foreign harbour (Kleingeld 1998b, p.76). Both, he argues, can legitimately claim hospitality rights to remain on the host lands and cannot be returned to the sea or their homeland if this would in any way endanger them (PP 8:358).¹⁶

Niesen's own aim in turning to cosmopolitan right is to develop a conception of what he calls "earth citizenship", which endows individuals with a list of substantive rights immediately derived from the right to be somewhere (Niesen 2007; Niesen & Eberl 2011, p.329; Niesen & Owen 2014). What Niesen takes to be the common denominator in the two examples just outlined is an affirmation of the fact that "we need to be somewhere rather than nowhere, and that we need to use and appropriate territory and territorially based stuff" (Niesen & Owen 2014, p.20). The right to be somewhere, Niesen thus claims, includes a set of entitlements that account for the "territory-based nature of human lives" (Niesen & Owen 2014, p.20), or as he calls it, our "earth citizenship". The idea of territory-based entitlements is meant quite literally here: through mere reflection upon our concurrent existence on the earth, Niesen hopes to assemble a "substantive list of human rights like the one articulated in [...] the Universal Declaration" (Niesen & Owen 2014, p.21), including far-reaching entitlements like a transnational right to freedom of communication.

Yet, Niesen's account of the right to be somewhere in terms of 'earth citizenship' raises a number of questions that cast doubt on whether Kant's account does actually lend itself to such a list: is his right to be somewhere a general right to just *any*, or to some particular place that, through 'nature of chance', I happen to occupy? While the case of the shipwrecked person only seems to give us the former, Kant's discussion of non-state peoples points beyond that, to the latter. More

¹⁶ Notice that the two cases also specify the range of agents covered by cosmopolitan right. While the anti-colonial argument pertains to interactions between states and non-state peoples, the shipwrecked examples involves an interaction between a state and individuals who are not their citizens (Niesen 2007, p.97).

importantly, how much space do I have a right to? Sure, given that human agency is at stake, someone who is locked up in a suitcase fails to have a place on earth in the relevant sense.¹⁷ But beyond that? Why do the relative small nomadic communities have a right to occupy the ‘great open regions’ they traverse (DoR 6:353) – disallowing other people, to whom the land might be equally useful, to even settle in the proximity of these lands?

Against the background of my relational interpretation of original common possession developed in this chapter, it should be clear why these questions will ultimately have to remain unanswered. We saw Kant replacing a material, needs-based principle for the division of the common stock of resources and land that he inherits from the natural law tradition with a thoroughly relational argument pointing out systematic relations of interdependence that obtain among individuals globally just in virtue of their unavoidable coexistence on the earth. Such a conception does not lend itself to the substantive implications we can get out of a more Grotian understanding of common ownership, where natural law already inheres a principle of just distribution: the principle of need as determined by human nature and discerned by reason. Nor, *pace* Niesen, can our empirical existence as vulnerable beings with bodily needs have direct rights grounding justificatory force, such that their very structure might be taken to equip us with substantive entitlements when it comes to resources and land.

Niesen’s conception of earth citizenship, I want to suggest, thus overestimates the extent to which we can derive particular substantive entitlements from the idea of original possession in common. For Kant, to account for the spatial or territorial dimension of human existence is not to draw up a list of rights, but to acknowledge the fundamentally global nature of rights relations – that humans both need to and are able to get to grips with the fact that they have to share the earth in

¹⁷ I am grateful to Markus Willaschek for this example.

common. They *need* to do so because of the systematic interdependence that obtains globally just in virtue of the reciprocal relation between agent's choices, and the ensuing 'unavoidable unity' of all places on the earth. And they are *capable* of reflexively and critically relating to their own respective standpoints, normatively structuring the common space they share by negotiating the terms of their coexistence. The focus of such a conception is not on a substantive list of pre-political entitlements that individuals bring to bear in their interactions, but on the *quality* of interaction it prescribes: how we ought to deal with one another globally.

It is in this spirit – with a focus on the *mode* of interaction among embodied agents – that we should read the section on cosmopolitan right. As guests, they may “present themselves for community” (PP 8:358) or at least offer to engage in cultural, economic or political exchange (“commerce”, DoR 6:352). Guests may pass through, but – unless refusal involves their ‘destruction’ – they may not stay against the will of the inhabitants; this constraint holds even where inhabitants fail to accord with visitors' view of what it is to make proper use of territory. The most pertinent case, to be discussed at length in the following chapter, is that of non-state peoples. Kant ascribes to Western emissaries or travellers (whatever the intention of their visit) a formal, communicative right to *attempt* contact of intellectual, commercial or any other kind with distant strangers. It is this mode of comportment that I take to be at the normative core of cosmopolitan right. Going back to the idea of original common possession this goes to show, once again, that Kant's cosmopolitanism for earth dwellers is concerned with the quality of human interactions, not the quality of matter. The category of cosmopolitan right thus speaks to a fundamental thread of argument that lies at the heart of Kant's mature political thought and pervades it throughout. It is a cosmopolitanism not of humanity in the abstract, but in direct physical confrontation with each other.

Conclusion

In this chapter, I have drawn on my preceding reflections on the right to be somewhere in order to reconstruct what I called Kant's global standpoint. My claim was that to think of oneself as an earth dweller is to think of oneself as participant in a cosmopolitan community of individuals whose fates are, in an important sense, inevitably bound up with one another. A crucial aspect of this framework was shown to lie in the change of perspective from which we think globally: away from the Archimedean observer that distributes global shares, to a reflexive first-person standpoint through which agents recognise their unavoidable interdependence. Kant's global standpoint does not come with ready-made solutions to shared global problems, but seeks to provide a perspective from which agents can resolve to find them.

Let me end by pointing out that, while in this chapter I drew on Grotius's material conception of original common ownership in order to carve out Kant's position, the implications of the emerging contrast go well beyond the specific comparison of two thinkers. For, Grotius's needs-based framework (as recently adapted by Risse) neatly fits into a widespread tendency, among contemporary normative theorists, to reduce questions of global concern to questions of how to divide the world up. Indeed, it is fair to say that despite a global justice literature that has skyrocketed over the last decade, more systematic reflections on what it would *mean* to theorise globally still remain the exception rather than the rule. Much work retains a steady focus on the possible extension and application of values, concepts and principles originally developed from within and for the nation-state, to the world at large.

Moreover, my reconstruction of original common possession also goes against the way Kant's *own* cosmopolitanism tends to be read. Linking up with last chapter's discussion, notice that the two most prominent interpretive approaches can be read to take their cue from the respective categories of innate or acquired right. Some construe

Kant's cosmopolitanism as depicting a moral community among all rational beings qua shared humanity, constituting a 'kingdom of ends'. On this view of Kant as a moral cosmopolitan,¹⁸ human beings have universal rights and obligations in virtue of being joint members of a 'supersensible world' (Kleingeld 1999b, p.509; Benhabib 2004). Others (briefly discussed in the last chapter) ascribe to Kant a distinctly political cosmopolitanism of shared membership in some kind of global polity. This reading takes the notion of 'world citizenship' literally, aiming at a worldwide legal and political order that unites all human individuals in one political body.

In contrast to both these dominant approaches, I have suggested to model Kant's global community on the right to be somewhere (which, as we saw, cannot be collapsed into either of the two categories). This community is not one of shared humanity, nor of shared citizenship, but of embodied agents in direct physical confrontation with each other. And its function is not to provide an objective criterion for adjudicating distributive shares. Instead, it constitutes a reflexive insight through which individuals acknowledge their interdependence with others in a world of limited space. On such a view, we take up the global standpoint not primarily with the aim of dividing up the material world or – as I showed in the last section against Niesen's notion of earth citizenship – arriving at a set of substantive entitlements from the armchair. Instead, the aim is to convincingly frame the question of how individuals relate to one another globally. As I will show in more detail in subsequent chapters, Kant's global standpoint provides a normative criterion for how to interact with distant strangers with the aim of finding mutually agreed terms of coexistence.

¹⁸ On the distinction between moral and political cosmopolitanism in wider debates about global justice, see Kleingeld and Brown (2014).

Chapter 3

Cosmopolitan Encounters

The last chapter introduced the concept of Kant's global standpoint. Drawing on the first *Critique's* category of community and the 'standpoint on the whole' it provides, I reconstructed the disjunctive community of original common possession. I took it to elucidate how, by virtue of sharing the earth in common, we each affect one another, whilst also being able reflexively to relate to the whole of humanity. The underlying thought was that we can think about the way in which we rightfully relate to other agents (with whom we are in thoroughgoing interaction) along lines similar to the way in which we situate ourselves in interaction with the world surrounding us. The most important upshot is that it is not only our perception of the world that is necessarily reflexive and perspectival, but also our interactions with other agents in it.

An important motivation underlying my argument was the need to go beyond Kant's property argument, taking seriously his subsequent discussion of what I presented as a more basic moral relation among earth dwellers. So far, I made this case on a textual level, inviting us to literally 'read further' than the argument from a property-based duty of state entrance. The present chapter aims to add further and more systematic evidence against an interpretation that effectively stops short at that point of the argument. I will do so by investigating an interpretive problem that has only recently gained increasing attention:¹ how it is possible that the bulk of the *Doctrine of Right* seemingly concerns itself with the justification of a universal and coercible duty of state entrance

¹ See various contributions in Ypi and Flikschuh (2014).

(based precisely on the property argument), while on its final pages Kant seems to exempt non-state peoples from this duty. Call this the *puzzle of non-state peoples*. I take it that this is not just a marginal textual issue that is easily solved, but that it raises hard questions about the role of property rights and statehood with regard to the wider structure of the *Doctrine of Right*.

My discussion of the puzzle of non-state peoples aims to make good on two claims in particular. The first one is that, on Kant's view, the duty to enter the state is indexed to, and contingent on, the existence of a (publicly enforced) practice in which people raise reciprocal claims to objects as rightfully their own. Kant's property argument is conceived *from within the state* and recursively justifies a system of public law-making qua its capacity to regulate reciprocally raised property claims. As a corollary, (non-state) peoples without established property systems lack the pertinent duty, nor can they be forced into the state by settlers or colonizers from abroad.

Instead – and this is my second claim – the latter must interact with non-state peoples in acknowledgement of shared earth dwellership. For, Europeans arrive at the global standpoint through recursive reflection on their *own*, statist form of political organization, such that they cannot predicate any juridical obligations on non-state peoples. In the context of the cosmopolitan encounter, this standpoint binds them to go no further than offering themselves for interaction (*commerce*).

The argument of the chapter proceeds as follows: Section 1 lays out the puzzle of non-state peoples by contrasting the currently predominant reading of Kant's property argument as grounding an unconditional duty of state entrance with his seeming exemption, later on in the *Doctrine of Right*, of stateless peoples from this dynamic. The central question is why Kant takes Westerners to be bound to interact with non-state peoples on the basis of cosmopolitan right rather than having a license to coerce them to enter the state.

In Section 3, I go on to scrutinise three different recent attempts to make sense of this puzzle, which approach it either from a rights-based or an obligation-based perspective. While I follow Katrin Flikschuh's claim that Western emissaries, settlers or traders are duty-bound by their rightful condition 'at home', in Section 4 I argue that in order to obtain that very conclusion we need to *extend* the regressive move underlying her argument beyond Kant's property argument and to the global standpoint. What juridically constrains Westerners in their interactions with non-state peoples is that they must think of themselves and their interlocutors as joint participants in the disjunctive community of original common possession, that is, as earth dwellers with the shared capacity to come to terms with the fact of their concurrent coexistence in limited space. However, they cannot equally predicate the relevant obligations of their stateless hosts, who might lack this reflexive awareness given that the relevant regress never gets off the ground for them. Hence, they are left with the mere *attempt* to establish cosmopolitan interaction. It remains an open question how precisely – on the basis of which shared principles – citizens of Western states and non-state peoples can coordinate their concurrent coexistence.

1. Kant's Puzzle of Non-State Peoples

In order to get a grip on the puzzle of non-state peoples and its possible impact on the wider architectonic of the *Doctrine of Right*, we need to start with some textual groundwork. In this section, my aim is to juxtapose two pieces of textual evidence in particular. First, I will reconstruct the predominant reading of Kant's property argument as grounding a universal and unconditional duty to enter into the state. I then go on to lay out his seeming exemption of non-state peoples from the very logic of this argument on the final pages of the *Doctrine of Right*. What appears to be his simultaneous affirmation and denial of the (property-mediated)

moral necessity of statehood sets the stage for the discussion in the remainder of the chapter.

The Property Argument

Let me start with a brief reconstruction of Kant's property argument. As I intimated earlier, it was for long regarded as obscure, inaccessible and largely a failure. Only fairly recently has it come to be seen as containing the argumentative heart of the *Doctrine of Right*.² I am interested here specifically in a distinctly non-instrumental justification of statehood construed around the unavoidable though problematic act of unilateral acquisition of objects of our choice (e.g. Brandt 1982; Flikschuh 2000; Ludwig 1988; Ripstein 2009).³

While the proponents I have in mind disagree on some of the interpretive detail, they generally start with the concept of right (or the innate right as its first-personal formulation) as giving each agent something like an equal (formal) entitlement to exercise their capacity for choice and action.⁴ The complication arises from the fact that we typically pursue our projects not in empty space, but by means of using external objects. Any remotely complex project that individuals set out to pursue will require them to appropriate external objects.

The moral vindication of claims to have objects as one's own, however, is not at all unproblematic. For, the required license to exclude

² Ground-breaking to that effect were Brandt (1982) and Ludwig (1988).

³ I will not discuss here in any detail an alternative, instrumental reading of Kant's justification of statehood according to which property-claims are not per se morally problematic but simply incomplete prior to their vindication by political authority (e.g. Byrd & Hruschka 2010). While this interpretation would not fundamentally alter the wider narrative of this chapter, I do think that it risks losing sight of what current interpreters take to be most distinctive about Kant's argument, namely the unconditional necessity of statehood. I will come back to this distinction between instrumental and non-instrumental readings – which has been somewhat blurred in the course its absorption into contemporary liberal theory (Applbaum 2007; Valentini 2012; Stilz 2011a) – below in my discussion of Stilz's take on the puzzle of non-state peoples.

⁴ I will bracket at this point the different readings of the innate right outlined in Chapter 1, as they are immaterial to my present argument.

others from what is ‘mine’ cannot be got from the general concept of right.⁵ Equipping each with an equal entitlement to use their capacity for choice and action, it does include a right to physically use, occupy or hold objects of my choice such as the famous apple in my hand (DoR 6:247/8) – what Kant calls “empirical possession” (DoR 6:250). Yet, whether I am also entitled to have a right over an object “even without holding it” (DoR 6:250) is a different matter altogether. For, this kind of “intelligible possession” (DoR 6:250) describes a *moral* relation between the wills of persons independently of space and time (DoR 6:249): it does not pertain to the way in which I relate to an object, but to the way in which I relate to others *with regard* to an object (that they acknowledge as rightfully mine). In claiming an unowned object of my choice as mine (independently of my physical connection to it) I obligate not the object but all other persons, namely to refrain from further use of the object in question henceforth.

The problem is that, in unilaterally imposing such an obligation on others, I presumptively arrogate to myself the authority to determine (as well as interpret and ultimately enforce) their rights and obligations. Yet, as their moral equal, I do not in fact have any such authority.⁶ As Kant puts it, unilateral wills are incapable of legislating “coercive law for everyone with regard to possession since that would infringe upon freedom in accordance with universal laws” (DoR 6:256). We thus face a seemingly irresolvable tension with regard to the possibility of intelligible possession. On the one hand, it would seem that the very fact that “I have the physical power to use an object of my choice” (DoR

⁵ Given that intelligible possession is not analytically contained at the level of the very concept of right, Kant calls it a “synthetic a priori proposition of right” (DoR 6:246), which is in need of a “deduction”. Whether he ever gets round to providing the announced deduction remains contested among interpreters. The preparatory works (23:271-336) are full of Kant’s repeated (though seemingly unsuccessful) attempts to deduce intelligible possession.

⁶ One way of putting the point is to say that the possibility of acquiring external objects of choice, in licensing an additional way in which I can be entitled to achieve the ends I have set for myself, introduces a “mine or yours structure” (Ripstein 2009, p.59) that does not apply at the level of general rights relations.

6:251) requires that I can do so rightfully. A law that commanded that external objects *cannot* be owned by anyone (but have to remain ‘res nullius’), would thus be “contrary to rights” (DoR 6:251). On the other hand, though, we have seen that, in virtue of their necessarily unilateral nature, claims to rightful appropriation are morally highly problematic as they compromise the (innate) juridical equality of all others. For Kant, this is a real and serious conflict of practical reason that he presents, characteristically, in the form of an antinomy (DoR 6:255).⁷

His solution consists in a twofold move. On the one hand, the “postulate of practical reason with regard to rights” (DoR 6:247) – that Kant also calls a ‘permissive law’ – authorises me to claim objects of my choice and thus to (problematically) put others under an obligation.⁸ Yet, it does so under the condition that I submit to a public authority (thus entering into the state) that connects my claims to own external objects with a duty to respect the property claims of all others (DoR 6:255). Only a public lawgiver that represents an omnilateral or ‘general united will’ has the authority to prescribe coercive law to everyone, thus turning merely provisional rights-claims into conclusive rights. The upshot of this argument is that state entrance is morally necessary: only the state can morally vindicate reciprocally raised property claims. This duty, moreover, is presented not only as *unconditional* but also *coercible*, such that I can force anyone who unilaterally (hence problematically) raises property claims against me to jointly enter the civil condition.

⁷ Across Kant’s work, antinomies describe (seeming) paradoxes of two opposed yet equally justifiable claims or inferences that point to an illegitimate extension of finite human reason beyond its proper jurisdiction. While antinomies make their most famous appearance in a section of the *Critique of Pure Reason* that is concerned with four sets of dialectical inferences about the nature of the world, they also play an important role in the second and third *Critiques*.

⁸ I will discuss the role of the permissive law in more depth in the following section.

Kant on Non-State Peoples

With a good idea of Kant's property argument (as grounding a universal duty of state entrance) at hand, we can now turn to another passage, which may potentially be taken to undermine the former. The comments I have in mind are located at the very end of the *Doctrine of Right* in the section on cosmopolitan right (DoR 6:352/3) and are concerned with the interactions between Western settlers or colonizers and non-state peoples (which I shall henceforth refer to as the *cosmopolitan encounter*). Let me be clear that, given both the brevity and ambiguity of Kant's remarks in the relevant passage, I do not want to claim to have the only possible or correct interpretation (or that there could possibly be one). I do think, however, that there is a coherent and persuasive way of reconstructing the textual evidence that raises serious questions about the property argument as just outlined. It is worth quoting the relevant passage (DoR 6:353) at length:

The question arises, however: in newly discovered lands, may a nation undertake to *settle* (*accolatus*) and take possession in the neighbourhood of a people that has already settled in the region, even without its consent? If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these people are shepherds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations) who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. This is true despite the fact that sufficient specious reasons to justify the use of force are available: that it is to the world's advantage, partly because these crude peoples will become civilized [...] But all these supposedly good intentions cannot wash away the stain of injustice in the means used for them.

Kant's primary concern in this passage is with Europeans' comportment towards non-state peoples. He starts by denying the former a right to deprive the latter of their land by effectively treating it as 'res nullius' and settling there without obtaining their consent. In obtaining this consent they should not make fraudulent contracts, for instance by taking advantage of the "ignorance of those inhabitants with respect to ceding their lands". This is in line with Kant's prohibition, earlier in the *Doctrine of Right*, on forcing a people to adopt (what are for them) unfamiliar kinds of land-use – for instance, forcing a hunting people to become a farming people (DoR 6:265). While would-be settlers have a hospitality right not to be treated with hostility when they arrive on foreign soil, they are not entitled to permanently remain or settle there, but can be turned away (provided that they do not face certain death as a result).⁹

Kant connects these remarks on land-use with a more general critique of the burgeoning colonial practice of his time and the very idea of a civilizing mission. Europeans cannot just go around establishing a civil condition for others wherever they may take it to be absent. While Kant suspects the civilizers' intention to be "specious" anyway, even good intentions "cannot wash away the stain of injustice".¹⁰

Does the passage also allow us to gain any insights about non-state peoples themselves? While Kant provides very little detail on this, it seems fairly clear that he takes them to lack the kind of established property systems Westerners are used to, at least as far as land-use is concerned. The groups he has in mind – for instance nomadic, hunting and pastoral peoples "like the Hottentots, the Tungusi, or most of the American Indian nations" – follow a non-sedentary way of life and merely use the land over which they roam for their sustenance without

⁹ This argument seems particularly directed against a Lockean tradition of justifying colonialism based on appropriation of land qua innocent occupation.

¹⁰ Earlier in the *Doctrine of Right*, Kant formulates a general prohibition to "found colonies, by force if need be in order to establish a civil union with them [i.e., non-state peoples, JH] and bring them into a rightful condition" (DoR 6:266).

claiming property rights over it. Whether this is a historically accurate assumption for Kant to make is irrelevant at this point, given that what we are interested in is a purely conceptual question.¹¹

The further question of non-state peoples' *political* standing is much more difficult to answer. Clearly, they do not live in what we commonly take to be modern states, that is territorial forms of centralised authority exercised through formal structures of government. Yet Kant also seems to deny that non-state peoples are just a wild, uncivilized bunch of individuals. His preferred term 'peoples' (*Völker* or *Völkerschaften*) is indicative in this context (DoR 6:343, 352/3):¹² peoples are defined as a union of a multitude of human beings, with a will uniting them (DoR 6:311). While Kant thus intimates that non-state peoples have some kind of (possibly informal) internal constitution or political organization, he hesitates (that is, he is unwilling or takes himself to be unable) to specify it any further.

What is more interesting in this context, however, is actually something Kant does *not* say, namely that they have a duty to enter the state. Given his insistence, elsewhere, that it constitutes a "wrong in the highest degree" (DoR 6:307) to remain in the state of nature, the total omission of any claim to the effect that non-state peoples commit a moral wrong seems at least worth remarking on (Muthu 2009, p.199). The least we can say is that the question whether members of non-state peoples *wrong one another* by not entering the state is not the primary one in the current context. Kant's focus is not first and foremost on non-state peoples' internal relations, but on their interactions with their

¹¹ Stilz (2014, p.204) worries that many non-state peoples, such as the native Americans, *did* actually claim distinct territories within which they allocated land rights to individuals.

¹² Mary Gregor translates both 'Völker' and 'Völkerschaften' as 'nations' (a notion closely associated with nation-states), yet particularly the latter is clearly supposed to be neutral between statist and non-state peoples (Niesen 2007, p.106 fn.13). Kant's remark that the notion "right of nations [*Völkerrecht*]" is actually a misnomer and "should instead be called the right of states" (DoR 6:343), further confirms this.

propertied visitors, some of whom have arrived at their shores with the intention to settle there or even to ‘civilize’ them.

Let me summarize the puzzle of non-state peoples as I have developed it in this section. On the one hand, there is Kant’s property argument as seemingly grounding a (coercible!) duty to enter into the state with all those against whom we cannot but raise claims to external objects. On the other hand, we have his silence as to non-state peoples’ duty to that effect, and a clear prohibition on colonizers’ possible attempts to coercively enforce it *for* them. The question then is what exempts non-state peoples from the distinct, property-based dynamic of state entrance. In other words, what is it here that “limits” the category of cosmopolitan right to hospitality?

Recall that we first encountered (a less elaborate version of) this puzzle in the first chapter. There, my observation regarding Kant’s reluctance to vindicate statehood universally formed part of my argument that the right to be somewhere is not an acquired right. In a wider context, I took it to provide initial cause for resisting the widespread equation of external moral relations with relations of property, or acquired right. In the intervening chapter I went some way in sketching the moral domain (of earth dwellership) that fills this gap. The present chapter seeks to further explore the relevance of earth dwellership by showing that we need to mobilise its conceptual and normative resources in order to come to terms with the puzzle of non-state peoples.

2. Making Sense of Kant’s Puzzle

In the preceding section, I assembled the textual evidence in support of what I have called Kant’s puzzle of non-state peoples. While interpreters have long ignored the possible tension it creates or at least tried to deny its systematic significance, this has recently started to

change. Over the following sections, I will scrutinize three different attempts to make sense of this conundrum within the confines of the *Doctrine of Right*.¹³

I just hinted at the fact that we can approach the relevant passage from two perspectives: either we look for hints about non-state peoples' own normative standing, or we focus on Kant's claims concerning settlers' comportment towards them. Accordingly, we can make sense of Kant's rationale for the pertinent claims along either of these lines: if we focus on the former concern, we will tend to think that it is something about non-state peoples themselves which warrants their being treated in the specified ways. Call this the *rights-based view*. Alternatively, where our focus is on would-be colonizers' moral comportment towards those whom they intend to 'civilise', we will tend to think of Kant as chiefly concerned with specifying Europeans' obligations towards stateless peoples. Call this the *obligation-based view*.

I do not want to present these as hermetically separated or mutually exclusive exegetical strategies. Yet, it is interesting to see that in their attempts to make sense of the puzzle of non-state peoples, interpreters tend to opt for one or the other of these interpretive approaches. Hence, it is worth structuring the following discussion along the lines of this analytic distinction. While I will ultimately vindicate a version of the obligation-based view, I hope to show that the two perspectives are more intertwined than is usually assumed.

¹³ A possible reading to which I will not pay more detailed attention ascribes to Kant the view that non-state peoples are so far down the scale of human development that they are just too immature to live in a rightful condition. Nevertheless, the argument goes, we would better approach them with an attitude of benign neglect and leave them to their own devices. In this vein, Kant's comments about the lamentable attachment of "savages" to their "wild, lawless freedom" (DoR 6:316) could be read as in line with his earlier comments about the inability of non-white races to self-legislate the moral law (e.g. Ant 15:878). Yet, as Pauline Kleingeld (2011, pp.92-123) has shown in meticulous interpretive detail, since the mid-1870s Kant had undergone a transition away from the racist views he had espoused earlier. Sankar Muthu (2009, p.202) suggests, for instance, that the mature Kant's comments about the "barbarous, crude, and brutish" (PP 8:355) follow Montaigne's ironic play with the idea of New World individuals as natural savages and cannibals, intended to criticize the violent behaviour of European states.

Stilz's Rights-Based View

A version of the rights-based view is defended by Anna Stilz (2014): she wants to show that we can coherently describe non-state peoples as operating under a system of property rights (if an incomplete or imperfect one) such that they can legitimately claim the pertinent moral status against statist settlers. Stilz's key move is to argue that merely in virtue of their occupation of the land on which they reside non-state peoples acquire some form of rights over it. However, given that conclusive property rights are possible only under state authority, these rights are 'provisional'. That is to say, they are "rights of empirical possession that are established through a process of physical appropriation that occurs in time and space" (Stilz 2014, p.213).¹⁴ Importantly, notwithstanding their provisional status, these rights are still strong enough to impose binding duties on others. More precisely, they have a "rightful presumption" (DoR 6:257) in their favour even before and beyond their vindication by political authority. That is why European settlers have an obligation to respect indigenous peoples' first possession of land (and thus, more generally their political form of life).

I should point out that Stilz slightly diverges from the property argument as reconstructed above. More specifically, she operates with a different understanding of the way in which, outside the civil condition, property claims are merely 'provisional' such that we require the state in order to make them 'conclusive' (DoR: 256/7). My own exposition implied a *justificatory* relation between provisional and conclusive property,¹⁵ according to which the former notion points to a conceptual (or, more accurately, a moral) problem with unilateral

¹⁴ Stilz's account of acquisition of land as a generic kind of empirical (physical) possession contrasts with the way I have tried to develop this idea in earlier chapters. On her view, expelling someone from a piece of land they occupy is no different from wresting an apple from their hand. My own strategy was to show that there is more to the idea of original acquisition of land by connecting it to the broader circumstances of human agency under spatial constraints.

¹⁵ I borrow the conceptual distinction between *temporal* and *justificatory* readings from Flikschuh (2017).

acquisition in the absence of public authority: only the state is able to make the required judgments that constitute property rights. Stilz, in contrast, defends a *temporal* reading, according to which provisional property just precedes conclusive property in time.¹⁶ That is to say, in the state of nature, people can have almost fully defined (yet insufficiently secure) rights in objects of their choice, for the vindication or enjoyment of which they (have to) enter into the state.

I suspect that the latter interpretation, in virtue of the ensuing instrumental justification of state authority, risks losing sight of what is most distinctive about Kant's account of political obligation as incurred through an unavoidable though highly problematic act of property acquisition. It seems to me that, on a textual level, this reading (to which Stilz subscribes) does not take seriously enough the inability of unilateral wills to legislate "coercive law for everyone with regard to possession since that would infringe upon freedom in accordance with universal laws" (DoR 6:256). Hence, its proponents have a hard time making sense of the way in which Kant sees himself (or reason more generally) confronted with an actual antinomy when it comes to the moral vindication of property rights.

While I am thus sceptical of attempts to assign much prominence to the idea of provisional (property) rights, I shall not pursue this line of argument further at this point. For even if Stilz's reading holds up, she still needs to explain why non-state peoples' acquisition of land does not unleash a dynamic of state-building. As we have seen, she does not deny that provisional rights function as a conceptual link between state of nature and civil condition (as that condition in which property is conclusive). Stilz herself concedes that they come with political obligations, thus serving "as a prerequisite to the future establishment of a civil condition" (Stilz 2014, p.213). So how

¹⁶ In fact, Stilz (2014, pp.209/210) takes her account to strike a middle way between the two interpretations. The claim, however, that provisional rights "have moral content, and they make normative demands on others in the state of nature" (Stilz 2014, p.218) warrants my suspicion that she is much closer to the temporal reading.

come non-state people are somehow barred from this logic, both with regard to their internal relations and in their encounter with would-be colonisers? It would seem that the latter could simply force them into the state by settling on and thus making claims to their land.

With regard to the former problem, Stilz (2014, p.205) bites the bullet. Notwithstanding Kant's silence on the issue, she claims that "stateless people may wrong one another by refusing to enter into the civil condition". All we can say is that Europeans lack "the authorization to coerce others to *fulfil* their political obligations" (Stilz 2014, p.205; my emphasis).¹⁷ Her argument for that latter claim, in turn, draws on the idea that the duty to enter the state (and the authorization to coerce others to do so) is conditional on our physical coexistence being *unavoidable* rather than resulting from "nature or chance" (Stilz 2014, p.207). European would-be colonizers, however, bring about the pertinent interaction wilfully and could easily avoid it by "leaving their vicinity" (Stilz 2014, p.207). This is why the process of state entrance does not get off the ground.¹⁸

Stilz thus opts for a reading of Kant's 'unavoidability clause' according to which the need to enter the civil condition is contingent on a certain configuration of people at a particular geographic location. This argument is reminiscent of Jeremy Waldron's (e.g. 2011) similarly empiricised version of Kant's unavoidability clause that Waldron dubs the "proximity principle". Yet, as I hope to have shown in previous chapters, this misconstrues the relevant modality. When Kant talks about unavoidability of contact and the way rights-relations become

¹⁷ Sankar Muthu (2009, p.208) even goes a step further in denying such a duty on the grounds that non-state peoples could easily exit their social group. Only within groups with a sedentary lifestyle, he thinks, are internal interactions sustainable and unavoidable enough to trigger a duty of state entrance.

¹⁸ In Chapter 2, I have myself pointed to the contrast between the deliberate missions of European would-be colonizers on the one hand, and the shipwrecked sailors washed ashore on the other hand (Preparatory PP AA23:173). Yet, there Kant's point was precisely that individuals have the pertinent hospitality rights *regardless* of how interaction comes about.

pertinent among those living ‘side by side’, something other than (what I called *subjectively*) contingent proximity relations is at stake.

Keep in mind that Kant introduces the idea of ‘unavoidable physical interaction’ in the context of remarking on the earth’s circumference (e.g. DoR 6:262, PP 8:358). In Chapter 1, I called the fact that the earth’s surface is spherical *objectively contingent*. While it could have been otherwise, it is not a result of human agency: it constitutes the objectively given spatial condition in which earth dwellers are constrained to establish possible rights relations. Consequently, what matters in the pertinent context is the *necessity* of interaction and the ensuing sense in which, ultimately, *nobody* can avoid living side by side with all others. The fact that we cannot just disperse infinitely in the way we could if we did, for instance, live on an unbounded plain, is juridically relevant.

In a nutshell, it seems that Kant is not interested in the question whether an actual encounter has been brought about deliberately, such that it could also have been avoided. Rather, the way in which the earth is shaped makes it impossible for us to avoid interaction once and for all such that we must somehow put up and get to terms with being close to each other. This insight, however, blocks Stiliz’s intended move and throws her back onto the shaky terrain she entered by invoking the notion of a provisional right. On the rights-based reading, it thus remains unclear how we can ascribe the relevant juridical status (somewhat analogous to that of propertied citizens) to non-state peoples without following the implications of the pertinent argumentative logic all the way down.

Ripstein’s Obligation-Based Account

Let us move on to the second, alternative strategy. On what I call the obligation-based reading, the constraints within which would-be colonizers’ must interact with non-state peoples are not grounded

primarily in the latter's juridical status and their pertinent entitlements. Rather, they are justified with regard to the former's own juridical obligations. The basic idea is that if we know the limits of our own claims, we also know the extent of theirs.

Arthur Ripstein advocates such an account. On his view, non-state peoples' *actual* juridical situation is completely irrelevant as far as Westerners' comportment towards them is concerned. When Ripstein argues that, from the outside, we must assume just "any multitude of human beings" to be in a rightful condition (Ripstein 2014, p.149), I do not think that he wants to assert that wherever we find a throng of people we must take them to constitute some kind of political community. Rather, I take him to affirm a kind of epistemic modesty with regard to non-state peoples' form of political life. The idea seems to be that while Kant takes them to have *some* kind of internal organization (the exact nature of which we are unlikely to fully understand from the outside), we should refrain from judging whether they instantiate a lawful condition or not.¹⁹ Any uncertainty about the kind of arrangement we have in front of us notwithstanding, we "must treat a nomadic or hunter-gatherer society as though it is in a rightful condition" (Ripstein 2014, p.165) .

Ripstein's argument is thus not unlike Stilz's in that its core is similarly anti-paternalist in spirit.²⁰ The idea is to block the extension from a particular moral conduct that holds for members of one party, to the authorization of a third-party to actively enforce this conduct *for them* – to ensure the former's compliance with their own obligations. In

¹⁹ Ripstein's awareness of Kant's reference to nomads as 'peoples' – defined as a "union of a multitude of human beings (MdS 6:311),[that] has as its principle of unity a will uniting them" (Ripstein 2014, p.165) – seems to confirm this. On the other hand, though, Ripstein takes his argument to even hold for "violent multitude that interacts barbarously" (ibid.). Now, if *this* is his position, it seems to become even more difficult for him to systematically distinguish the grounds of cosmopolitan right from the dynamic of state entrance, such that my objection gains further traction.

²⁰ Sankar Muthu (2009, p.199) similarly grounds Kant's take on non-state peoples in anti-paternalist considerations, claiming that stateless people are "duty-bound to become civilized through their own internal efforts".

our case, this entails that Ripstein (like Stilz) refrains from ruling out the possibility that non-state peoples may themselves have a duty to enter the state with one another, whilst denying Europeans' entitlement to rectify this wrong. In taking charge of stateless peoples' affairs, Europeans wrongfully and "forcibly deprive" them of the "possibility of making their own arrangements" (Ripstein 2014, p.168). Regardless of whether we are aware of non-state peoples' obligations or not, what we do know is that our own obligations do not extend so far as to tell them what to do: we must not take it upon ourselves to make arrangements *for* them. Even if we do not know 'who is in charge' around here, we can reliably rule ourselves out.

As such, the argument that X is doing wrong while there is nothing Y can do to prevent X from doing it – simply because it lies outside Y's sphere of authority – is certainly plausible. But Ripstein needs to say more than that. He needs to explain why Europeans do not have a right to force non-state peoples into the state *with* them, for instance simply by appropriating the land on which the latter roam. In order to make that further claim, Ripstein would need to provide a systematic ground for delimiting the normative purchase of the property argument to which he is otherwise committed. That is to say, he would have to provide reasons why the interactions between Europeans and stateless peoples lie outside the scope of the property argument. Otherwise put, we need to know what distinguishes the cosmopolitan encounter from the interactions of private individuals in a state of nature, who *can* indeed force recalcitrant individuals to enter into the civil condition with them. Unless Ripstein shows why European settlers and nomads stand in a kind of relation that differs from a private rights relation, he cannot block the logic of the property argument.

Ripstein himself is well aware that Kant claims both "that everyone is entitled to use force to bring others into a rightful condition with them", and that no group "may force another group to share a rightful condition with them" (Ripstein 2014, p.145). Yet, I do not see

that he provides a systematic criterion for distinguishing the two cases that would allow his ‘hands-off’ attitude in the latter scenario to go through. Ultimately, it remains unclear *just what it is* about non-state people’s very “existence” (Ripstein 2014, p.165) that imposes the pertinent “obstacle to colonization”, if it is not supposed to have anything to do with non-state peoples (i.e., their juridical standing) themselves. Even if Ripstein is correct to argue that all we need to know about the claims of non-state peoples are the limits of ours, he still owes us an account of the latter: why are our claims against non-state peoples limited to hospitality in the first place?

Two questions in particular remain unresolved on his obligation-based view: we are neither told why European settlers have the pertinent kind of obligations towards stateless peoples, nor why the latter qualify as the appropriate addressee of said obligations – why we should take them to have the relevant juridical standing. It seems that these two problems cannot be solved in a satisfactory manner without at least some kind of revision to the property argument. This motivates my turn to an alternative version of the obligation-based reading.

Flikschuh’s Obligation-Based Account

Let us for a moment go back to the beginning of this chapter. In laying out the puzzle of non-state peoples, I characterised it as consisting of two elements: a particular reading of Kant’s property argument as grounding a universal duty of state entrance on the one hand, and his seeming exemption of non-state peoples from such a duty on the other hand. The interpretations I scrutinised over the two preceding sections – Stilz’s rights-based and Ripstein’s obligation-based reading – tried to come to terms with the second while keeping faith with the first. Each of them, however, encountered difficulties in making sense of the puzzle of non-state peoples within the parameters of the property argument as it is usually conceived.

In this section, I will look at an attempt to make headway with regard to this conundrum by rereading Kant’s account of property itself. In challenging the reconstruction of this argument as laid out in the first section, Katrin Flikschuh’s (2017, pp.64-99) version of the obligation-based reading seeks to push back against the idea of the modern state as a universally required form of political organization. Instead, Flikschuh presents the requirement to enter the state as indexed to the contingent social practice of reciprocally raised property claims, such that non-state peoples simply lack the pertinent duty.

Before I turn to Flikschuh’s revisionary claim about the property argument’s scope of validity, I need to say a word about the wider methodological picture in the background. Emphasising Kant’s profound non-foundationalism, what Flikschuh calls his method of “recursive justification” does not start from indubitable first premises or innate ideas but from a first-personally affirmed *experiential* (hence fallible and revisable) condition – a subject’s own cognitive awareness of her having an experience of a specified kind (Flikschuh 2017, pp.70-74).²¹ Recursive justification regressively “turns in” on this premise by inquiring into its subjective possibility conditions, that is the transcendently necessary (mind-dependent) presuppositions that a person must accept as valid for her given that she affirms the experience in question.

Flikschuh (2017, p.74) puts particular emphasis on the strictly first-personal nature of the recursive argumentative structure, making a sharp “distinction between subjective necessity and objective validity (reality)”.²² That is to say, the justificatory regress affords the agent insight into that which they must accept about themselves *given* their

²¹ Flikschuh borrows the term recursive justification from O’Neill (1989, pp.21;23;43)

²² This makes for an important contrast with other proponents of (versions of) the recursive reading such as O’Neill, Korsgaard or Ameriks, who typically vindicate the relevant initial experiential context as something we *cannot but* hold such that the ensuing regress accrues a novel (characteristically Kantian) kind of objectivity that is not mind-independent but indexed to the human standpoint.

initial affirmation of the relevant experiential premise. This is particularly pivotal in the context of practical reasoning, where the bindingness of recursively vindicated principles of action is limited to the reasoning subject herself and cannot be third-personally attributed to others given that they may not share the relevant experiential conditions. The thought is that I cannot infer a reason's objective or indeed universal bindingness *for everyone* from its unconditional validity *for me*.

In line with this methodological stance, Flikschuh reads Kant's property argument as a recursive inquiry in the moral conditions of the possibility of *existing* property relations. To be more precise, the relevant first-personally affirmed experience consists in the fact that I raise (what I regard as) morally valid property claims against you. This claim in turn – to be more precise, the intelligible relation I thereby implicitly invoke – is morally possible only in the civil condition. Hence, the duty of state entrance is a necessary presupposition of the rightfulness of my property claim against you. The question, that is to say, is not whether I can claim objects of my choice as “rightfully mine” (DoR 6:245), but rather *how* I can do so (morally speaking). The answer is that the possibility of property is contingent on state entrance. For, only under public authority is the kind of moral relationship that our conventional property practices presuppose possible.

Notice also that the experiential context Kant is said to have in mind is not some kind of pre-political property convention, which then leads (in the course of a historical sequence) into the state. Rather, he takes the empirical reality of a system of *publicly enforced* property rights as given and asks for its condition of possibility. That is to say, the argument proceeds *from within* the state context.²³ The regulation of

²³ Flikschuh (2017, p.85) finds evidence for this view in the opening paragraphs of the *Doctrine of Right's* Introduction (DoR 6:230), where Kant introduces his project as providing a normative criterion – “what is right” in a moral-juridical sense – for a positively given body of laws – “what is laid down as right”.

reciprocally raised property claims is a core feature of such a system of public law-making and, as it turns out, its justificatory ground.

So on Flikschuh's recursive reading, Kant's property argument provides reflexive insight into the moral requirement of state entrance as a (recursively) necessary condition of reciprocally raised property claims: *given* that I raise property claims against others, I ought to enter into the state with them (Flikschuh 2017, p.85). Only the state as a particular, territorially structured institutional arrangement with a claim to exercise its authority over a specified geographical area makes property morally possible. The crucial implication of the fact that the duty of state entrance is triggered by, and hence premised on, the existence of a practice of property claims is that anyone who never commits an act of acquisition – as is the case, by hypothesis, of non-state peoples – simply does not incur the pertinent duty in the first place.²⁴ Kant can thus simultaneously (and consistently) affirm an unconditionally valid duty of state entrance for those who share the relevant experiential context, whilst denying it in relation to others.

Now, notice that while Kant's derivation of a duty of state entrance from the act of acquisition shows why non-state peoples themselves lack the pertinent duty, what it does *not* show is that settlers are wrong in depriving them of their lands by simply acquiring it. More generally speaking, while Flikschuh has cleared up why one party of the cosmopolitan encounter has a duty that the other side lacks, it remains to be seen what their *interaction* is supposed to be based on.

At this point, Flikschuh argues that to say that non-state peoples themselves may not be in a rightful condition is not to say that Western settlers do not stand in a relation of right *with* them (Flikschuh 2017, pp.89-91; see also Flikschuh & Ajei 2014). In particular, the very fact

²⁴ The encounter between Western emissaries and non-state peoples itself is crucial for this narrative, for only the *actual* confrontation with ways of doing things otherwise can unsettle Westerners' assumption as to the universality of their own experiential context, such that they can reflexively acknowledge the contingency of their own duty to enter the state (and, as a corollary, non-state people's lack thereof).

that the latter are themselves in a rightful condition binds them to a certain form of interaction with non-state peoples. That is to say, in virtue of their membership of already established polities from which they have ‘sailed forth’, Westerners do not only have obligations of domestic and international right, but also of cosmopolitan right. Hence, they are bound in their interactions with non-state peoples by the very narrow confines constituted by the right to hospitality – they can offer themselves for trade and commerce and attempt contact with those on whose shores they find themselves. What they *cannot* do is simply acquire territory with the intention of unleashing the property-based dynamic of state entrance. Their own public rightful condition ‘back home’ binds would-be colonizers’ conduct on whichever soil they set foot and, more generally, differentiates the cosmopolitan encounter from that between individuals in the state of nature.

Flikschuh’s obligation-based account fills an important gap that we identified in Ripstein’s version. For we are now in a position to make sense of Western settlers’ obligation vis-à-vis stateless peoples, namely as implied by their own juridical standing as state citizens. As emissaries of their own juridical condition, they travel with the (cosmopolitan) obligations they incur in virtue of their membership in it. It is the very fact that one party already is in a public (or rightful) condition that distinguishes the cosmopolitan encounter from the interactions of private individuals in the state of nature.

I am less confident, however, that it also provides a sufficient answer to the second question raised by Ripstein’s account: what qualifies stateless peoples as the corresponding addressee of the pertinent obligation? Notice that we do not only have to account for the ground of Europeans’ duties, but also for why they should ascribe juridical subjectivity to stateless groups. Even if we assume (correctly, as I think) that the cosmopolitan encounter should be read as conceived from the perspective and as concerned with the obligations of (members of) statist peoples, what is it that compels them to identify their

counterparts as having a shared juridical standing that warrants the pertinent kind of treatment?

Given her wider rejection of rights foundationalism, Flikschuh is understandably reluctant to ascribe the requisite standing to non-state peoples on the basis of third-personal considerations. On her view, any kind of formal juridical standing manifests itself only indirectly through empirically instantiated rights relations.²⁵ In the current context, she helps herself to the normative implications of Western settlers' widespread *de facto* (though abusive) appeal to hospitality rights in their interactions with non-state peoples (Flikschuh & Ajei 2014, pp.232/3). The idea is that by virtue of invoking a juridical concept such as hospitality, they necessarily presuppose the formal juridical equality of their claim's addressees. If they then deny their counterparts the kind of treatment to which their claims' reciprocal structure binds them, they commit a "critical conceptual error": they use a juridical concept in order to justify an action that is inconsistent with rights talk in general. The purported rights claim fails to meet the condition of its own validity.

While this strikes me as an elegant move, I am after a stronger conclusion. Exposing colonizers' "Jesuistic" appeal to hospitality in order to deprive them "of such justificatory appeal to rights language" (Flikschuh & Ajei 2014, p.233), I think, does not go quite far enough. In particular, it does not bind would-be colonizers to engage with non-state peoples on juridical terms (the very invocation of which may very well oblige them immanently) in the first place. Hence, I want to know what (if anything) binds them *regardless* of the juridical concepts or rights they *de facto* invoke for specious justificatory purposes. As I hope to show in the final section, accounting for Westerners' duty to ascribe to non-state peoples the requisite standing does not require us to leave the reflexive, first-person standpoint: I shall not rely on the third-personal

²⁵ See for instance her related argument that the innate right, understood as a relation of reciprocally acknowledged legal imputability, requires acquired right for its empirical instantiation (Flikschuh 2017, pp.131/132).

ascription, to each, of earth dwellership as an objectively given ground of obligation. Instead, we can remain within the logic of recursive justification and simply regress *further* beyond the property argument and to the global standpoint.

3. Encounters among Earth Dwellers

In the last section, I introduced Flikschuh's recursive interpretation of the property argument, which unfolds against the background of her more general reading of Kant's philosophical method as regressing from given experiential starting points to their subjectively necessary presuppositions. On this reading, Kant's justification of statehood falls out of a recursive reflection on the conditions of possibility of (contingently raised) property claims. Given that non-state peoples (at least on Kant's view) fail to make any claims to objects as their own, they thus lack the pertinent duty of state entrance.

I indicated my sympathy with this controversial move. Its most important merit lies in the acknowledgment of the fact that it is impossible to make sense of the puzzle of non-state peoples without rethinking the property argument (as it is currently read) at least to some extent. Yet, while Flikschuh's proposal improves on Ripstein's version of the obligation-based reading in an important regard (tying statist' cosmopolitan obligations to their rightful condition 'at home'), it leaves another problem unresolved: how non-state peoples can figure as a constituent component of a cosmopolitan relation. If the cosmopolitan encounter is a matter of statist peoples' obligations, yet those obligations are not property-based, something more needs to be said about the relevant juridical standing that warrants non-state peoples' treatment under the auspices of cosmopolitan right. In this section, I suggest that the required category is that of earth dwellership. That is to say, Western emissaries need to interact with non-state peoples from the

global standpoint. I shall moreover claim that we get to the global standpoint by further extending the regress initiated by Flikschuh *beyond* the property argument.

Regressing to the Global Standpoint

I have no principled issue with Flikschuh's reading of Kant's recursive justification of statehood as indexed to an existing property practice. In fact, its departure from a distinctly first-personal justificatory premise reverberates nicely with my argument in Chapters 1 and 2. Yet, I think her regress does not go quite far enough and needs to be extended *beyond* the property argument. My aim in doing so is to establish two claims in particular. First, I want to show that there is a *further regress* within Kant's recursive argument that Flikschuh misses: a regress from reflection on the moral possibility of property (and the ensuing duty of state entrance), to a reflection on the possibility of having a place to act at all (and the ensuing need to think of the earth's surface as possessed in common) as its condition of possibility.

Second, I would like to suggest that this further step amounts to a regress from a *contingent* experiential starting point (the fact of acquisition in general) to its *non-contingent* presupposition (the fact of original acquisition of land). Consequently, the extension of the recursive strategy I advocate amounts to a regress to global standpoint. It is the reflexive awareness of shared earth dwellership which grounds statist peoples' obligation to think of themselves as in a cosmopolitan relation with non-state peoples.

In order to substantiate the first claim, we can go back, for a moment, to the beginning of Chapter 1 of this thesis. Recall my puzzlement, there, that what I presented as Kant's crucial consideration from original acquisition of land (and, consequently, original common possession) comes only *after* the entire property argument. After all, I read the former as articulating something like a fundamental

presupposition of the latter. Flikschuh's recursive method now puts us in a position to make sense of this textual order as a regressive move.

Kant starts Chapter 1 of the *Doctrine of Right's* section on private right from within the experiential premise that we raise property claims against each other, vindicating state entrance as its subjective condition of possibility. In Chapter 2, he then turns from the question how to have an object of one's choice as one's own, to the question "how to acquire something" (DoR 6:258). Here we get the further, familiar move from the concept of original acquisition in general, to the idea of original acquisition of land as the unavoidable though normatively non-innocent first acquisition (DoR 6:261). The idea is that if property is to be (morally) possible, original acquisition of land needs to be (morally) possible. And the latter requires reflexive acknowledgement of the implications of our embodied agency under conditions of spatial constraints: we need to think of ourselves as in disjunctive community with other earth dwellers.

This importantly clarifies the relation between the argument from property on the one hand, and the argument from original acquisition of land (leading to the idea of earth dwellership) on the other hand. In Chapter 1 of this thesis, I argued that the latter introduces a novel topic, concerned with the normativity of corporeal agency under spatial constraints, rather than simply another sort of property claim. We now notice, however, that the relation is more complicated: what, so far, I presented as two distinct sets of considerations actually form part of a single regressive chain: the argumentative sequence leading to the reflexive awareness of ourselves (and others) as earth dwellers goes *through* the property argument.

So while my amended reconstruction of the regress goes further than and beyond the property argument, the latter still constitutes a vital element of the justificatory sequence as a whole. This has a momentous implication: we only reach the reflexive awareness of ourselves and others as earth dwellers *via* the property argument – the

former is dependent on and presupposes the latter. While my move thus extends the scope of our obligations beyond those with whom we are in a property-mediated relation (i.e., our co-citizens) to all participants in disjunctive community, it does not similarly extend the scope of obligation bearers. For, the reflexive awareness of our systematic interdependence with other agents in a world of limited space is dependent on the property argument; and so are the pertinent (formal) constraints on our comportment when we engage with those others with the aim of finding shared terms of coexistence. These obligations do not bind anyone outside the relevant experiential context. In other words, insofar as non-state peoples do not raise property claims we cannot predicate of them a regress to the global standpoint.

My second claim is closely related. The thought is that Kant's transition from the property argument (and the pertinent duty of state entrance) to a more fundamental domain circumscribed by the concurrent existence of a number of embodied agents on the spherical surface of the earth amounts to a regress from a *contingent* starting point to its *non-contingent* implications. On the one hand, from the contingent fact that people raise property claims against each other follows, as its subjective presupposition, a (recursive) duty of state entrance that is restricted in scope to all those against whom we raise property claims. Yet, the further regress brings to light the way in which our relationship to the land precedes our relationship to other external things in the sense that having a place to be somewhere is a necessary presupposition not only of claiming rights over objects of our choice, but of juridical agency in the first place. We thus have the pertinent (cosmopolitan) obligation against whomsoever takes up space on the earth's spherical surface as an embodied agent.

I need to clarify what I mean by talking about a regress from a *contingent* starting point (the fact that we regulate our external interactions on the basis of a publicly enforced scheme of property) to its *non-contingent* presuppositions (the need to acknowledge that original

acquisition of land unites us with all other earth dwellers in a disjunctive community). What I do *not* have in mind is a shift from a reflexive first-person to an objective third-person standpoint.²⁶ Such a shift would precisely throw us back on to the Grotian terrain from which I sought to distinguish Kant's cosmopolitanism in the preceding chapter. What the further regress does on my account is *constrain* the first-person perspective and hence our comportment towards others – it provides a normative foundation for our *own* comportment vis-à-vis others.²⁷

Specifically, the global standpoint binds us (that is, propertied citizens) to reflexively relate to the whole of human beings with whom we are in thoroughgoing interaction. In other words, the further regress does not entail that non-state peoples simply *are* earth dwellers, as though that was an objective status ascribed from an Archimedean standpoint. Rather, we are duty-bound to conceive of them *as* earth dwellers with whom we share a common predicament as well as the capacity to come to terms with it, and to interact accordingly. This is important precisely because it prevents us from third-personally predicating any obligations to those who do not share the contingent starting point. While the regress binds us in our own comportment towards other earth dwellers, it cannot equally bind those others unless they share the premise from which the regress gets off the ground, that is, the existence of publicly enforced property claims. To sum up, we have a duty of state entrance towards those against whom we first-personally raise property claims, that is, our co-citizens. And we have

²⁶ This is a common move among some proponents of (versions of) Kant's recursive argumentative strategy. Christine Korsgaard (e.g. 1997), for instance famously wants to get the categorical imperative (something *non-contingent*) out of the hypothetical imperative (something *contingent*). The idea is that reflection on the first-person standpoint yields obligations that are objectively binding, for instance by virtue of being 'rationally non-rejectable'. This is *not* what my argument suggests.

²⁷ This, I take it, is also what early proponents had in mind in reconstructing Kant's arguments recursively (e.g. Ameriks, 1978; O'Neill, 1989). For Onora O'Neill, for instance, to say that "all reasoning must have some standpoint, and what it establishes is conditional on that standpoint" (O'Neill 1989, p.64) is neither to fall into scepticism or subjectivism, nor to leave the first-person in favour of a third-person standpoint, but constitutes a reflexive demand to constrain your own reasoning in a certain way. I return to this issues in the subsequent chapter.

duties to interact from the global standpoint with those against whom we (cannot but) first-personally raise a claim to have a place on earth, that is, all earth dwellers.

Attempting Interaction

According to my extension of Flikschuh's recursive reading of Kant's justification of statehood, reflection on the possibility of property rights does not only yield a scope-restricted obligation of state entrance. It also yields, further 'downstream' as it were, state-transcending obligations towards all those with whom we are in a disjunctive community in virtue sharing the earth's spherical surface.

The former, I take it, accounts for Western emissaries' no-right to simply coerce non-state peoples into the state. For, it presents the need for the modern territorial state as arising in (and hence contingent on) a context in which individuals raise claims against one another to have external objects as their own. The existence of the relevant kind of property practice, that is to say, is both necessary and sufficient to unleash the process of state-building that determines and enforces the invoked rights within a specified geographical area. As Peter Niesen puts it, the obligation to enter the state and the authorization to coerce others to do so are thus "wedded to a specific vision of individual private property as the exclusion of others from the use of objects" (Niesen 2006, p.268). According to Sankar Muthu, "the problems that the state is created for [...] are those of settled peoples" (Muthu 2009, p.207). Westerners thus cannot simply extent their own particular institutional arrangement 'overseas' to non-state peoples. For given that the latter do not share the relevant practice, they also lack the pertinent duty.

Now, what about the second kind of obligation, pertinent to our relations beyond the state context? What does it mean to act towards non-state peoples from the global standpoint, that is, in acknowledgement of their earth dwellership? It means that we need to

comport ourselves in a certain way: Western emissaries or travellers (whatever the intention of their visit) have a formal, communicative right to *attempt* contact with distant strangers. Cosmopolitan right is equated, after all, with hospitality, described as a right “of offering to engage in commerce with any other, and [...] to make this attempt without the other being authorised to behave toward it as an enemy” (DoR 6:352). Hospitality constitutes something like a criterion for rightful contact between strangers, giving travellers arriving at the soil of a foreign people a right to make communicative offers without being treated with hostility or even “as an enemy”. As indicated in the final section of the preceding chapter, it binds us to a certain *mode* of comportment.

Notice, though, that cosmopolitan right is *non-coercive* in an even more profound way. Western travellers and emissaries do not only lack entitlement to force non-state peoples into the state. Even their cautious attempts to make contact with the other side are not guaranteed to be reciprocated. Unless rejection would result in their ‘perishing’, their offer to establish anything like rights relations can be declined by their stateless hosts. Western emissaries cannot force non-state peoples to take up their offers of contact but are simply left to hope that they will do so.²⁸

Kant’s remark that we need to interact with non-state peoples on a *contractual* basis (DoR 6:353) is indicative to that effect. In general, a contractual relation is described by Kant as the acquisition of the right to another person’s deed (which may simply consist in handing over an object one has acquired) through a voluntary and mutually advantageous exchange (DoR 6:272-4). One party (A) acquires another party’s (B) action, while B acquires a right to whatever A has promised in return. I will have more to say about Kant’s likening of cosmopolitan

²⁸ In *Perpetual Peace* (8:358), for instance, Kant applauds the protectionist trade policies of Japan and China, who can be taken to refuse Europeans’ offers to enter into commercial relations (see also Muthu 2009, p.196)

relations to contractual relations in Chapter 5. For now, I want to emphasise a particular feature of a contractual interaction, namely that it consists of two parts or moments (Vanhaute 2014, pp.136-139): someone making an offer and someone else taking up or assenting to that offer. Agent A offers their bike to B, while B offers a piano lesson in return. Only if both parties have a positive and voluntary intention to exchange deeds do they enter a contractual relation, such that their wills can be conceptualised as “united” in agreement (DoR 6:272).

This structure is very much reflected in the cosmopolitan encounter: while Western travellers are perfectly entitled to make an offer to engage in commerce (widely understood), whether the interaction actually comes about depends on whether the other side takes up that offer. In other words, a cosmopolitan relation is nothing we simply *have*. Rather, it is something we need to *bring about*. Notice, furthermore, that *even if* these relations do come about – if non-state peoples accept the offer to interact – the resulting relations are bound to remain non-coercive in yet another way. For although cosmopolitan right is introduced and treated within the domain of public (rather than private) right, it crucially lacks a designated omnilateral rights enforcing authority (DoR 6:311, see also Kleingeld 2011, pp.86-91). The interactions between statist emissaries and their stateless hosts are not presented by Kant as (required to be) subjected to a higher coercive authority.

I postpone my discussion of Kant’s motivation for presenting cosmopolitan right as *non-coercive* until Chapter 5. For now, notice the fact that he does leaves us in a rather odd situation. All we are left with are good faith attempts to make contact with our prospective hosts. Yet, where our offers are rejected, contact cannot be compelled. There is surely a sense in which, on a textual level, this fits within the parameters of the recursive reading. For it allows us to say that we are duty-bound to honour non-state peoples’ status as earth dwellers in our interactions with them, without thereby also predicating the pertinent obligations to

them. This, recall, was an implication of the fact that the regress to the global standpoint (and hence the pertinent insight into shared earth dwellership) goes *through* the property argument. What binds Western travellers abroad is their juridical situation ‘back home’, which is not shared by non-state peoples.

But we need to be careful not to beg the question here. For what is left entirely open is how – on the basis of which principles – statist and non-state peoples can get along. Frankly, what is the point of our constrained comportment if it may as well lead nowhere? Why must we act from the global standpoint if we may have to put up with unilateral attempts? The requirement to make rightful contact appears to be on shaky grounds without the secure prospect that it will lead to a rightful interaction of some kind. Now, I want to withstand the temptation to look for quick fixes here. The idea of a non-coercive offer to enter juridical relations, on which I shall close this chapter, is curious and – as we shall see in the subsequent chapter – a real problem for Kant. Its conceivability let alone moral possibility will continue to occupy us. Suffice it to say at this point that it is very well possible that a neat solution may simply not be available to Kant.

Conclusion

In this chapter, I have used a seemingly narrow textual puzzle in order to work through some issues of larger structural significance. In particular, I set out to investigate why (what is generally taken to be) Kant’s universal normativity of state entrance does not seem to apply to stateless peoples. My larger aim in doing so was to clarify the structural role of the property argument and its relation to the interpretative framework developed in prior chapters. Textually, I reconstructed a recursive argumentative move from Kant’s reflection on the possibility of property (and the ensuing duty of state entrance), to the more

fundamental domain spelling out the moral implications of the (non-contingent) fact of embodied agency under spatial constraints.

The implication is that Western emissaries are juridically constrained in their interactions with non-state peoples in a way that is predicated on their own juridical situation back home. It is a regress *via* and *beyond* the property argument that binds them to deal with non-state peoples in acknowledgement of their shared earth dwellership. While this interpretive move allows us to make sense of statist peoples' no-right to force non-state peoples into the state with them, this is not to claim that it provides an easy fix for Kant's puzzling characterization of the cosmopolitan encounter as a whole. In particular, we have made no headway on the looming question on the basis of which norms or principles a cosmopolitan plurality – including statist and non-state peoples – could coordinate their coexistence.

Let me end by linking the discussion of the present chapter to the idea of a global standpoint on a more conceptual level. In particular, I think we need to draw out an important insight concerning the question what is involved in employing the global standpoint specifically as a concept of *political* morality. Recall that, in the preceding chapter, I developed the notion in analogy to what Longuenesse calls the 'standpoint on the whole'. The idea was the following: in the same way in which, in the speculative domain, we reflexively relate to the 'whole' of objects outside of us, in the cosmopolitan domain, we are each required and capable of reflexively relating – from the global standpoint! – to the whole of human beings with which we are in thoroughgoing interaction.

Now, underlying the present chapter was an implicit move from the idea of agents approaching the world with a speculative interest, to agents approaching the world with the practical intention of finding shared solutions to shared problems. At the end of this chapter, we have to conclude that this transition – from epistemic to political cosmopolitanism, from geographic to political orientation, or indeed

from the standpoint on the whole to the global standpoint – is far from trivial. For, the determination of our own spatial position with regard to the whole of objects outside of us differs significantly from the way in which we relate to the whole of embodied rational beings. What we relate to are no longer objects, but persons that share a limited space with us, each of whom makes claims (to exercise their capacity for choice and action) upon us from their own perspective.

In a nutshell, the global standpoint, conceived as a notion specifically of *political* morality, is not a single standpoint on the whole. Instead, it is constituted by a *plurality* of first-personally reflexive standpoints in disjunctive relation, coming together under the concept of original common possession.²⁹ In other words, the meaning of the very notion of disjunction shifts from a mere logical category that depicts relations of incompatibility between objects inhabiting the same space, to a normative one that articulates the way in which agents with diverse and potentially incompatible sets of principles and forms of political organization nevertheless share a common world. This leaves us with the difficult questions how – on the basis of which kind of principles – this genuine plurality of agents and communities can coexist and regulate their interactions. All we can say as we conclude the present chapter is that Kant seems confident that the solution cannot consist in a simple extension of the state-based model to the world at large.

²⁹ By “coming together” I do not have in mind some kind of convergence rather than the “dynamic relations between human forces of attraction and repulsion” that we saw Kant likening to relations of action and reaction between physical objects (Shell 1996, p.168).

Chapter 4

Sharing Principles

In the preceding chapter, I took a first step towards clarifying how the notion of the global standpoint impacts on our current property-based understanding of Kant's political philosophy. Drawing on the puzzle of non-state peoples, I tied both the need to enter the state *and* our reflexive awareness of shared earth dwellership to the presence of publicly enforced property claims. The upshot is that cosmopolitan right is *non-coercive* not only in a sense that rules out a simple extension of the modern state to the world at large. Beyond that, Western emissaries can go no further than unilaterally offering cosmopolitan relations to their stateless counterparts.

I ended the chapter on the note that it remains unclear on the basis of which principles a genuine plurality of earth dwellers with diverse and potentially incompatible perspectives and political arrangements (encompassing statist and non-state peoples alike) can coordinate their interactions, that is, find shared terms for their concurrent coexistence. In particular, why should Western emissaries take up the global standpoint in the cosmopolitan encounter and constraint their comportment towards non-state peoples accordingly, if their interactions are bound to stop short of institutional mediation?

The present chapter picks up at this point by scrutinizing a particular proposal how to deal with this conundrum. The idea, which I take to be at the heart of Onora O'Neill's reading of Kant's politics, is that it is precisely the constraint we impose on ourselves through which we obtain the required kind of principles. All it takes for principles to be shareable for a plurality of agents is a specific, namely law-like, *form*.

Consequently, principles simply need to be abstract and general enough in order to hold for *all* earth dwellers, statist and non-statist alike. On this view, to act from the global standpoint is to do so on the basis of principles that are universally authoritative by virtue of their form.

Taking our cue from O'Neill's important and influential reading of Kant will prove instructive, not least because she departs from an acute awareness that we need norms that are shareable among, and authoritative for, an actual plurality of agents. Ultimately, however, she does not sufficiently acknowledge the kind of plurality we are faced with in the domain of right, which is a plurality of *interacting* agents. Under these circumstances, I shall argue, we require principles with *interpersonal* authority, which private agents are constitutively unfit to come up with.

The primary line of argument in the present chapter is thus negative: I shall deny that we obtain the required kind of principles by constraining our own reasoning (and hence comportment) accordingly. For each party in the cosmopolitan encounter lacks the unilateral juridical authority that would allow them to coordinate their interactions. This holds true regardless of how hard they may try to see their own judgment from the standpoint of others. Hence, we cannot from the global standpoint identify norms on the basis of which both sides, with their potentially incompatible sets of principles, could get along. There is a crucial difference between approaching one's interlocutor from a constrained first-person (hence global) standpoint, and taking oneself to have the authority to issue mutually binding principles. However, given that Kant *also* denies that we can force those we encounter in the cosmopolitan context into coercive institutions with us (that could, from a public standpoint, issue the requisite principles), this line of argument has unsettling consequences also in the wider context of this thesis: as strict rights reciprocity cannot be had in the cosmopolitan context, all our constrained comportment does is initiate a dialogue through which we can hope to gradually find shared terms of coexistence.

The argument unfolds as follows: I start, in Section 1, with a brief reconstruction of O'Neill's take on Kant's politics, focusing in particular on the way in which agents create principles of justice by subjecting their own reasoning to a specific modal constraint. Section 2 embeds this idea within O'Neill's wider constructivist take on Kant's philosophy. In particular, I lay out her *continuity thesis* – the idea that across all domains of rational activity, reasons are shareable and hence authoritative in virtue of having a certain formal property, namely that they are generalizable or law-like. In order to see where precisely her argument goes wrong, Section 3 looks more closely at each of the domains of rational activity, distinguishing the respective need for consistent thinking, consistent willing, and consistent interaction. Most importantly, it is O'Neill's undifferentiated account of practical reasoning as focused on a certain logical property of reasoned principles which leads her to lose sight of the fact that we are looking for principles with the capacity to coordinate a plurality of interacting agents. Such principles require an *interpersonal* kind of authority that cannot be self-legislated by each of them independently.

However, as Section 4 reminds us, Kant also denies the possibility of a coercive institution that could legislate, from a public standpoint, principles that bind the entire cosmopolitan plurality. All we are thus left with is the unsettling prospect of an actual dialogue with non-state peoples through we can hope to get to know and understand each other – a process that unavoidably starts with the cautious communicative offers Kant puts front and centre of the cosmopolitan encounter. It remains to be seen how this leaves room still to make sense of cosmopolitan right in juridical terms at all.

1. O'Neill on Kant's Politics

Onora O'Neill takes the domain of politics in Kant to be fundamentally characterised by a “plurality of potentially interacting and diverse agents” (O'Neill 2004, p.156). I have already indicated that this starting point nicely reverberates with the problem that we have carried over from the preceding chapter. Not only do we need principles that can coordinate the coexistence of a *plurality* of agents each with their standpoint on the whole. O'Neill is also acutely aware of the first-personal nature of the standpoint from which we interact with others, given that for Kant “all reasoning must have some standpoint, and what it establishes is conditional on that standpoint” (O'Neill 1989, p.64). This latter thought is of course closely connected to her wider constructivist reading, which I shall discuss in the next section. I begin, however, by focusing specifically on O'Neill's take on the domain of politics in Kant and the requisite principles.

Justice and Virtue

The notion of justice is vital to O'Neill's reconstruction of Kant's political philosophy (O'Neill 1996, pp.154-183; O'Neill 2004, pp.65-80) and gets defined, most prominently, in opposition to the concept of virtue. Notably, O'Neill does not develop Kant's account of justice out of the *Doctrine of Right*.¹ Instead, she turns to a distinction between two kinds of duties that Kant makes in the context of the *Groundwork's* discussion of the categorical imperative (Gr 4:424). These are introduced by way of her specification of respectively relevant negative criteria that in turn relate to Kant's further distinction between two

¹ O'Neill rather bluntly confirms this when, in closing a chapter on Kant's conception of justice, she concedes that “I have said nothing about the texts within which *he* discusses the connections between basic principles and just institutions“, that is “his political philosophy, and in particular the *Doctrine of Right*“ (O'Neill 2004, pp.79, my emphasis).

ways in which a proposed maxim can give rise to a contradiction:² what is contrary to *perfect duty* cannot even be consistently thought of as a universal law (it fails what is usually called the ‘contradiction in conception’ test). What is contrary to *imperfect duty*, in contrast, can be consistently conceived of, though not willed as a universal law (thus failing the ‘contradiction in willing’ test).³

The main structural difference is that perfect duties – or duties of justice, as O’Neill goes on to call them – are correlative to rights (O’Neill 1996, pp.128-163).⁴ If a principle fails to pass the relevant test, the proposed action is generally and universally prescribed or prohibited. Justice, O’Neill (1996, p.184) argues, “is a matter of perfect obligations, matched by rights; its demands fall on all, and are owed to all”. Imperfect duties, in contrast, do not prescribe specific acts towards particular individuals (they can be observed in numerous ways), but call for virtues such as sympathy (O’Neill 1996, pp.184-5).⁵

O’Neill spends the bulk of her discussion reflecting on the *kinds* of principles that would fail to pass the respective test. This involves, first and foremost, asking how to conceptualise the agents to whom the principles are meant to apply, that is how to make the appropriate kinds of “empirically accurate generalizations” (O’Neill 1996, p.57) while avoiding idealizing assumptions about their capacities, capabilities or vulnerabilities. The thought is that, if construed according to a conception of agency that is abstract and general enough, the proposed principles of justice will be shareable among (and have authority over) everyone who falls under the required description, thus effectively being

² Hope (2014) provides an illuminating discussion of this distinction.

³ Kant’s example of the former is the maxim of false promising (Gr 4:422) – a successful false promise is impossible in a world where everyone makes false promises, because no one will trust another to keep their promise – while his example of the latter is the maxim of never assisting others in need (Gr 4:423).

⁴ That O’Neill grounds rights in obligations and not, as is common, the other way round, is generally considered one of her significant contributions to debates about global justice, in particular socioeconomic (human) rights. See Brock (2011).

⁵ I take O’Neill’s distinction, elsewhere, that “principles of right prescribe *types of act*; principles of virtue prescribe *types of end*” (O’Neill 2002, p.332) to essentially get at the same point.

global in scope. At the core of her account of justice is the rejection of what she calls principles of injury (O'Neill 1996, p.164), that is principles that aim to destroy, undercut or erode agency itself. From this general idea, she goes on to develop a set of more comprehensive obligations – applicable to individual actions, social practices and the design of political and economic institutions alike – not to coerce, exploit vulnerabilities, violate trust, or to damage the environment.

Her account of virtue, by contrast, is built around a rejection of indifference to the needs of others. The thought is that, while actions based on principles such as indifference to or neglect of others' needs may not inflict direct injury on specific individuals, they do undermine personal agency and social relations such that they are to be equally rejected (O'Neill 1996, pp.191-3). Hence, the ensuing imperfect duties (of virtue), such as that of charity, account for human vulnerability in ways that justice does not address.

While this gives us a good idea of the contrast between justice and virtue on O'Neill's account, let me highlight the structural similarity rather than the difference between the two domains of duties. For they do emanate from the same kind of modal constraint – the constraint that, according to O'Neill, applies across *all* kinds of practical reasoning: it is the simple question “what principles can a plurality of agents of minimal rationality and indeterminate capacities for mutual independence live by?” (O'Neill 1989, p.213) that yields duties of justice and virtue alike. The upshot is that, systematically speaking, there is nothing specific about the *form* of justice reasoning. Like all (practical) reasoning, it “begins with a minimal, modal, but authoritative demand: that others cannot be given reasons for adopting principles which they cannot adopt” (O'Neill 1996, p.3). Again, I want to bracket for now the wider rationale underlying the formulation of this modal constraint. What I would like to highlight at this point is that we obtain principles of justice by each constraining our reasoning accordingly. O'Neill's view that, substantively speaking, this will deliver us no more than the

most abstract and general principles is an implication precisely of her acknowledgement that it is a *plurality* of agents for whom the proposed norms are meant to hold.

Sharing as Generalizing

We just saw that on O'Neill's interpretation, there is nothing specific, for Kant, about justice as a species of practical reasoning more generally. All we have to do is constrain our reasoning by choosing principles that have the required generalizable (or law-like) form, such that they are shareable by all those to whom they are meant to apply. I suggested that, at least on a conceptual level, principles of justice can thus be legislated by each agent separately – notwithstanding the fact that the norms that will pass such a test will be highly abstract, given that they are meant to apply to a plurality of agents. I shall now further substantiate this claim by looking at two concepts that play a prominent role in O'Neill's account: public reason and communal sense. I want to claim that her politicised take on these concepts further confirms that she takes principles of justice to emanate from an agent-internal, modal constraint.⁶

Let us first look at the idea of a public use of reason (e.g. O'Neill 1989, pp.28-50).⁷ In invoking this concept, O'Neill takes up a central line of argument from Kant's *Enlightenment* essay, according to which, to free ourselves from the famous "self-incurred immaturity", we must "make public use of [our] reason in all matters" (En 8:36). The fact that

⁶ I take it that the primary inspiration for O'Neill's inclination to politicise notions stemming primarily from Kant's theoretical philosophy is Hans Saner (1973), one of the earliest (and most influential) interpreters to stress the importance of political categories for understanding the structure of all of Kant's major writings, in particular the first *Critique*. Saner argues that core political concepts such as freedom, public reason or the rule of law are already there "in form" in the theoretical philosophy, although they unfold "materially" only in the later political writings (Saner 1973, p.68). Kant's vision of perpetual peace, for instance, is said to grow out of his quest for eternal peace in philosophy based on reason (Saner 1973, p.254).

⁷ Others have followed O'Neill in constructing an account of Kant's politics around the idea of public reason, e.g. Velkley (1989), Deligiorgi (2005), Patrone (2008).

O'Neill follows Rawls's subtle move from a public *use* of reason to an ideal of a public *exchange* of reasons speaks to her intention to use this concept specifically as a model for the generation of authoritative principles of justice in the realm of politics.⁸ Ultimately, however, what is crucial is not that we subject our disputes to the "free and critical debate among all those involved" (O'Neill 1989, p.38; see also O'Neill 2004, p.143). Rather, what qualifies a reason as public in the requisite sense is that it can be followed in thought and adopted for action by everyone involved. This, in turn, is a matter of its formal property: we obtain public reasons not by literally reasoning *with* others, but by virtue of constraining our own reasoning appropriately.

This is in line with Kant's employment of the notion in the *Enlightenment* essay. Notice that Kant distinguishes public and private uses of reason rather unconventionally (from a contemporary perspective at least) through the respective audiences addressed.⁹ Private reasoning is the kind of reasoning that is fit for a limited audience, for instance while in a specific role such as that of an employee: as a civil servant, military officer or churchman, we are bound to the dictates of a given authority. Now, this is also precisely what Kant associates with the situation diagnosed as self-incurred immaturity, where we do not think for ourselves, but defer to the judgment of others. Rather than making up our own minds, we rely exclusively on books for intellectual reflection, on spiritual advisors for our consciousness, on doctors for our diet (En 8:35). By contrast, the public use of reason is not bound to any given ends and is accountable to all: one speaks as a "citizen of the world" (En 8:37). The only authority we respond to is the authority of reason, as that which we share with all other human beings.

⁸ Beyond that, O'Neill (1997) has herself explicitly rejected Rawls's deflationary account of it as constrained to the limited purpose of political legitimacy.

⁹ O'Neill (1989, pp.32/33) makes rather a lot of this distinction and the ensuing contrast between what she calls "civil" and "intellectual" freedom.

I do not want to deny that the *Enlightenment* essay has political overtones. Indeed, the idea of addressing all “citizens of the world” does invoke strong cosmopolitan associations. My unease is more specific and relates to O’Neill’s attempt to build a conception of (how to generate principles of) justice on the notion of public reasoning as Kant conceives of it in the *Enlightenment* essay. For, it strikes me that what he is primarily getting at in this context is a *mode* of reasoning, a particular way in which we constrain our own reasoning such that the ensuing principles have a specific formal property. O’Neill politicises that notion, using it as a template for an actual process of reasoning out norms that are mutually binding.¹⁰

Let us now go on look at a related and no less prominent concept in O’Neill’s reading of Kant: the idea of communal sense [*sensus communis*, *Gemeinsinn*] (O’Neill 1989, pp.24-27). This notion is particularly prominent in the third *Critique* (CJ 5:293ff), where Kant argues that the highest achievement in the use of our rational faculties not only requires that we think for ourselves (to be the author of and stand in for our own thoughts) but further demands that we “put [ourselves] into the standpoint of others” (CJ 5:295). This “maxim of enlarged thought” does not ask us to take up a transcendent or detached Archimedean standpoint (that Kant considers constitutively unavailable anyway). Instead, and echoing my argument in Chapter 2, the common standpoint we are meant to develop is one that is premised on each of the particular standpoints we initially hold. To think in common, that is, to make use of one’s faculty of *sensus communis*, means to shift one’s own grounds to the standpoint of others and make it accessible and thus

¹⁰ Of course, the *Enlightenment* essay is one of Kant’s earlier works, written long before he had worked out the moral domain of right and the significance of external coercive lawgiving in politics. I thus do not want to rule out that he intended to give the notion of public reasoning a broadly political dimension.

oneself accountable to them – to expose one’s judgments to the “collective reason of mankind” (CJ 5:293).¹¹

A similar line of argument can be found in the *Orientation* essay (WOT 8: 146 fn.). There, Kant goes so far as to assert that we do not reason or even think correctly unless we think in common with others (WOT 8:145). To discipline reason “means no more than to ask oneself, whenever one is supposed to assume something, whether one could find it feasible to make the ground or the rule on which one assumes it into a universal principle for the use of reason” (WOT 8:146 fn.). That is to say, we need to think “in continuity with others to whom we communicate our thoughts, and who communicate theirs with us” (WOT 8:144).

Again, what stands out is O’Neill’s attempt to invoke the idea of *sensus communis* specifically as a model for political community.¹² It is supposed to encapsulate a “politics of reason” (O’Neill 1989, p.24) aimed at the generation of principles with authority among the members of any possible community. What suits this reading is the fact that, in the final pages of *Orientation*, Kant himself shifts from the idea of an individual agent who chooses a maxim to provide a subjective distinction or standard to orient her *own* thinking, to a defence of free speech in the context of a situation where multiple human agents whose lives are linked to each other set out to find shared principles through an exchange of reasons.

Yet, once again I want to raise doubts as to whether the concept of *sensus communis* lends itself to the substantive political interpretation that O’Neill would like it to have. As Kant explains in *Orientation*, to think from the standpoint of others amounts “to nothing more than to

¹¹ Interestingly, in the *Anthropology* (7:219) Kant defines the inability to judge one’s thoughts from the standpoint of another, the loss of *sensus communis*, as the central characteristic of madness.

¹² The primary (and original) culprit here is of course Hannah Arendt (1982), who draws extensively on the idea of *sensus communis* in her attempt to reconstruct the third *Critique* as essentially a political work.

ask *oneself* with regard to everything that is to be assumed, whether he finds it practicable to make the ground of the assumption a universal principle of the use of reason” (WOT 8:146-7 fn., my emphasis). Similarly, in the third *Critique* we are told that to use one’s capacity of *sensus communis* is simply to weigh one’s judgment “with the collective judgement of mankind” (CJ 5:293). Again, what Kant affirms is that shareable principles are simply ones that have the right form. But for that purpose, we do not (literally) have to reason *with* others rather than constrain our own reasoning in the requisite way.

My brief discussion of O’Neill’s employment of the notions of public reason and communal sense, I hope, provides further evidence for my point about the form of justice reasoning in her account of Kant’s politics. O’Neill politicises – or, to put it more charitably, overemphasises the political undertones of – both concepts, suggesting that principles of justice are somehow contingent on a prior exchange of reasons or a collective act of reasoning or even negotiation. Yet, what ultimately matters on her account for a principle to go through is a modal test that each agent can (fail to) apply appropriately. Either a principle does have the generalizable form required to be shareable among all, or it does not.

Let me be clear also that despite some unease I have expressed about O’Neill’s politicised take on these notions, nothing I have said so far goes to criticise or even repudiate her reading. To the contrary, I indicated that the very fact that she starts from a predicament similar to ours implies that we should actually be inclined to follow her footsteps. Before I go on to scrutinize her argument further, let me briefly remind us of its potential implications for the ‘cosmopolitan encounter’ that was at the centre of the preceding chapter. Recall that we are still looking for principles with the ability to coordinate the coexistence of a cosmopolitan plurality, including statist and non-state peoples alike. O’Neill’s proposal, I take it, is that such principles simply need to have the right form. If they are abstract enough so as to be shareable by all

agents involved, they have the authority to bind all of them equally. In other words, by taking up the global standpoint – that is, shifting our standpoint to the standpoint of the other(s) –¹³ we can obtain juridical principles (i.e., principles of justice) that are global in scope.

Western colonizers could then be reproached for failing precisely on that score: they simply refuse to put themselves into the standpoint of their potential hosts; or at least do a very bad job of it. If they *did*, by contrast, apply the pertinent universalizability test properly (while making accurate assumptions about their counterparts), they could, at least in principle, identify norms with authority over all of them prior to and independently of the actual cosmopolitan encounter. They could then arrive at foreign shores with the requisite, binding principles for coordinating their interactions with distant strangers ready at hand. This is the narrative that I shall seek to refute in the remainder of this chapter. In order to point out where precisely it goes wrong and how so, we need to contextualise O’Neill’s take on Kant’s politics with regard to the wider, constructivist interpretive framework from which it emanates.

2. The Continuity Thesis

Having laid out O’Neill’s take on the normativity of Kant’s politics, I shall now go on to embed these specific claims in the wider interpretive framework from which they emanate. Further down the line, this will allow me to locate precisely where I take her reading to go wrong. To that effect, I will introduce what I call O’Neill’s *continuity thesis*: the idea that across all domains of rational activity, standards of reasoning have authority in virtue of having a certain, law-like formal property. In other words, we must refrain from thinking, willing or interacting on the basis

¹³ Recall that it was precisely this requirement of mutual perspective-taking through which I introduced the concept of the global standpoint in Chapter 2.

of principles that cannot be adopted or shared by all agents for whom they are supposed to hold.

While I have no doubt that the *thesis* has much going for it as an overall meta-narrative underlying Kant's critical project, my claim will be that it ends up being too sweeping and that it risks lumping together what are ultimately significantly distinct domains of rational activity. O'Neill goes too far in linking, in fact reducing, Kant's discussions of politics to larger issues about the powers and limits of human reason, such that she ends up underestimating the implications of the fact that we need principles with *interpersonal* authority. Before we get there, however, I need to clarify what it is that O'Neill takes to unify the different realms of rational activity.

The Predicament of Reason

The crucial starting point in order to understand O'Neill's *continuity thesis* is Kant's rejection of foundationalism, that is the idea that in securing the unity of our experience and action we could rely on some external standard that does not itself require further vindication. As Kant famously argues in the first *Critique*, the reasoned principles that would guide and integrate all our rational activity can be neither 'discovered' by introspection (in a Cartesian manner) nor be 'read off' the world. As far as our speculative engagement with the world is concerned, the aim of Kant's famous Copernican turn is to challenge the idea that our experience is somehow united by a real-existing unity that it mirrors. Analogously, in the practical domain it turns out that we are not the kinds of beings who have the terms of coexistence or coordination among us "instinctually programmed" as part of our native endowment (O'Neill 1989, pp.21/22), or can just receive them from an external authority such as God.

However, giving up on reason, Kant thinks, is not a viable strategy either. Arbitrary thinking – indulging in what today goes under

“postmodern” (O’Neill 2015: 23) scepticism about reason – will end in confusion and disaster. Again, the prospects of chaos and disorientation loom with regard to both our theoretical and practical engagement with the world. As Kant sets out to show in the first half of the *Critique of Pure Reason’s* Transcendental Dialectic, it is the “peculiar fate” (CPR A vii) of unconstrained theoretical reason constantly to fall into difficulty and contradiction on its proverbial flights of metaphysical enthusiasm. While we cannot but inquire into the ultimate grounds of our conditioned access to the world,¹⁴ our attempts to make sense of the world as a unified whole puts us at risk of slipping into superstition (O’Neill 1992, p.284). Analogously, the anarchical lack of order in moral and political life, itself a mere illusion of freedom, will not last for long but be replaced by a superior power that makes its subjects “bow under the yoke of laws given by another” and “wrench away” their rights (WOT 8:144/5).

Given that we are not in a position to live *without* reason, processes of thought and action (lest they be tangled up) need to be disciplined in *some* way – a critique of reason, that is to say, cannot be merely destructive but must vindicate at least some standards or principles as authorities on which we may rely in our thinking and acting. Finite rational beings face the challenge of putting their trust in reason when it comes to guiding their thought and action without thereby relying either on its own (delusory) omnipotence or on external authorities that would provide a firm foundation or unequivocal guidance.

I briefly hinted at the pertinence of this problem to theoretical and practical (including, for O’Neill, political) modes of reasoning alike.

¹⁴ The problem is thus not just (as occasionally suggested by O’Neill) that giving up on reason would be dangerous, but that it is plainly impossible. Reason’s ‘interest’ in its own architectonic unity has it relentlessly seek the unconditioned conditions of our mediated access to the world and thus to unify our lower cognitive capacities of sensibility and understanding. Given that reasoning is thus something we unavoidably do, we’d rather do it appropriately.

In both domains of rational activity we require “maxims for a plurality-without-pre-established-harmony“ (O'Neill 1992, p.300),¹⁵ principles through which finite reasoners that share a world can coordinate their thinking and acting respectively. Yet, those principles can neither be externally imposed nor dogmatically stipulated, for instance as emanating from a supposed divine plan or our own instinct. Given that human reason turns out to be at once indispensable and finite, the question is whether there are *any* principles that can have authority for beings of this kind. Can we vindicate standards of reason that do not themselves rest on any foundationalist grounds?

O'Neill's Constructivism

We just saw that, according to Kant, human reason is a finite capacity rather than a God-given “inner light” that is “complete and entire in each one of us” (Descartes 1984, p.27) such that we could rely on it as a foundational guiding principle. However, if we give up on reason, things are bound to fall apart. Kant's solution to this predicament, according to O'Neill (1989, p.13), lies in a turn to the reflexive nature of reason. Throughout the first *Critique* reason is characterised as an active capacity that not only generates problems but that is also able, in virtue of its reflexive structure, to resolve them – namely, by disciplining *itself*.¹⁶ The thought is that reflection upon the very nature of the problem can take us a long way towards solving it.

Recall that we are looking for principles for a possible order among a plurality of uncoordinated agents. In this context, O'Neill speaks of “circumstances of reasoning” (O'Neill 2015, p.3) that arise

¹⁵ Somewhat unconventionally and drawing on occasional usage Kant makes in the first (CPR A666/B694) and third *Critiques* (CJ 5: 182), O'Neill defines “maxims” (which are often associated exclusively with Kant's ethics) very broadly as principles that organize and integrate our more specific cognitive capacities across all domains of rational activity (O'Neill 1989, p.19).

¹⁶ The discipline of reason is defined by Kant as “the compulsion, by which the constant tendency to disobey certain rules is restrained and finally extirpated” (CPR A709/B737).

when a plurality of potential reasoners finds that their communication and interaction are not antecedently coordinated. Now, the most fundamental condition any set of such principles is to fulfil is that it be adoptable by each of those agents for whom it is supposed to hold. Reasoning thus turns out to be primarily a negative strategy: we can only overcome the limitations of ordinary human cognition by rejecting those candidate principles that the plurality of reasoners with whom we need to coordinate could not adopt or follow.

O'Neill characterises norms of reason (and their authority) as something (to be) *constructed*:¹⁷ given that they can neither be found inside ourselves nor read off the world, the organization of our thinking and acting is a process rather than a product – one of ongoing “practices of connection and integration rather than as once and for all laying of foundations” (O'Neill 1989, p.8; O'Neill 1992, p.292). Ultimately, reason properly understood is “a term that we use for the necessary conditions of any coordination, however minimal, by those among the reasoning is to count” (O'Neill 1996, p.60). What we can specify in advance are certain minimal constraints on this process rather than its substantive outcomes: standards that need to be met such that we can accept, reject or revise what is being proposed as standards for sharing knowledge or recommending and coordinating actions.

Importantly, Kant thus turns the presumptive shortcoming that consists in the *finitude* of human reason into a virtue: the insight that we lack a “supposed divine perspective“ (O'Neill 1992, p.302; see also O'Neill 1989, p.46) from which we could conclusively vindicate principles that unify our cognition and regulate our coexistence with other agents motivates the attempt to turn reason ‘upside down’. It is conceived of as an inter-subjective guide that allows a multitude of individuals to think together and coordinate politically rather than an external authority.

¹⁷ On O'Neill's Kantian constructivist method more generally, see for instance Barry (2013) and Hill (2013).

This idea comes across nicely in a passage at the beginning of the first *Critique's* Doctrine of Method (CPR A 707/B735, see also O'Neill 1992; Ypi 2013, pp.775-778), where Kant likens the critical construction of reasoned norms to a building project.¹⁸ He starts off by characterising the predicament of vindicating reason as one in which a number of individuals must jointly construct a building. The first part of the book, the Doctrine of Elements, is supposed to have provided us with an inventory of the labour force and the building materials available. Our initial hope notwithstanding, these will not make for a tower that “reach[es] the heavens” but rather for a modest cottage “just roomy enough for our business on the place of experience and high enough to survey it” (CPR A707/B735). Yet, we still lack a “common plan of procedure” (CPR A707/B735) according to which to erect the building. We must come up with a plan that can be followed by a plurality of fellow workers. Each must be able to agree to and to adopt the common plan lest each of us “build his own according to his own design” such that we end up with an “arbitrary and blind project” (CPR A707/B735) that is doomed to collapse, such as the Tower of Babel. This metaphor is supposed to encapsulate the way in which, according to O'Neill, the vindication of reason is a *constructive* task for Kant.

The Continuity Thesis

Following O'Neill's constructivist reading of Kant's vindication of reason, what it is for reasoned principles to have authority is to be the outcome of a properly construed (that is, constrained) thought process.

¹⁸ Kimberley Hutchings (1996) is much more sceptical than O'Neill about the merits of this metaphor and in general about Kant's success in vindicating reason in the Doctrine of Method. On her view, in being premised both on the limitation of reason and the assumption of the capacity of reason to transcend that limitation in the process of critique, the Doctrine of Method sets itself a task which it cannot fulfil from the outset. “Caught up in in the tangles of its own incapacity” (Hutchings 1996, p.27), reason has to fall back on political solutions that, in shifting between authoritarian claims and dissolution of all authority, are no less “volatile and paradoxical” (Hutchings 1996, p.12).

In particular, we are to reason in ways that others can follow and adopt for themselves. Now, it is vital to add that, on Kant's view, this thought is immediately connected to the idea of lawlikeness. For, *what it is* for a principle to be adoptable by a plurality of agents is for it to have a certain form: the perfectly general form of a law. The self-discipline of reason is thus described by Kant as its "own an indeed negative law-giving" (A711/B739). The idea of lawful thinking (and acting) is contrasted with unconstrained or arbitrary rational activity and vindicated as the form of reasoning that is accessible to all.

This explains why the categorical imperative plays a crucial role in O'Neill's project of reason's self-discipline. In its version known from the *Groundwork*, it asks us to only adopt maxims which we can at the same time will to become a universal law (Gr 4:421). On O'Neill's view, this universalization demand can be taken to encapsulate a more general requirement to think and act, across *all* domains of rational activity, on principles that can be coherently adopted by all agents. The categorical imperative gives us a formal criterion for ruling out internally contradictory maxims, that is those which we cannot consistently *think* (perfect duties) or *will* (imperfect duties) to be universally adopted. In other words, we rule out those maxims that lack the required formal feature of being generalizable (O'Neill 1992, p.296). Hence, the categorical imperative is to be viewed as the supreme principle of reason that ties together Kant's critical project as a whole.¹⁹ Reason disciplines itself simply by asking whether the grounds of a proposed maxim or principle can be universalised (O'Neill 1989, p.59).

What I want to highlight at this point is the idea that norms or standards are considered to be reasoned by virtue of having a certain form. And crucially, this is said to hold for standards that are supposed

¹⁹ On this expansive notion of a categorical imperative as a kind of meta-norm governing all rational activity, see also Allison (2004, pp.53-54) and Mudd (2017). Markus Willaschek (2010, p.185) instead argues that "only pure practical reason issues categorical imperatives". I return to this question in the context of my discussion of the regulative principle of theoretical reason in the next section below.

to guide our thinking as much as our willing and our interactions.²⁰ At the core of what I want to call O'Neill's *continuity thesis* is consequently the claim that, across all domains of rational activity, reasoned principles have authority in virtue of a certain formal property, namely their law-likeness. The thought is that not only the problem but also its solution is structurally similar across these different spheres: we require principles with a specific, generalizable form. This, of course, is an idea we are familiar with from our earlier discussion of O'Neill's take on Kant's politics as focused on the shareability of principles of justice.

There is no doubt that the *continuity thesis* provides a deep insight into the architecture of Kant's philosophical project as unified, at the most fundamental level, by a single guiding idea: that (critical) reason only answers to itself, rather than anything outside of it (see e.g. Ripstein 2009, p.355). Following O'Neill's constructivist specification of this idea, reasoned principles need to be shareable by all agents for whom they are to hold. What we need to do in order to obtain such principles is to follow a certain reasoning process. As O'Neill's emphasis on the categorical imperative makes clear, what matters is that across all fields of theoretical and practical engagement with the world (and other individuals), we think lawfully. Hence, to say that a principle could be adopted among and thus shared by a number of reasoners is just to say that it has authority in virtue of its form.

Let me also point out that O'Neill's constructivist take on Kant further enforces the preliminary impression that her framework sits nicely with my own argument as developed in preceding chapters. Not only does she depart from a similar predicament – the need to regulate the coexistence of a *plurality* of agents that do not naturally or

²⁰ I am not denying that willing is a kind of acting for Kant, given that (unlike wishing or even merely deciding to do something) it is a kind of causality in the sense of involving an effort to realise what one wills (Gr 4:394). In contrast to wilful action alone, however, the domain of *interaction* has a specifically relational aspect that puts the focus on the consistency of one action with another (rather than the internal consistency of its underlying maxims).

harmoniously converge on shared principles. What is more, her attempt to overcome the unavailability of a “divine perspective“ (O’Neill 1992, p.302; see also O’Neill 1989, p.46) – a perspective from which we could conclusively vindicate principles that unify our cognition and regulate our coexistence with other agents – with a reflexive turn to the (appropriately constrained) first-person standpoint seems to provide a promising avenue for a possible solution. The need to *constrain* our own comportment in the cosmopolitan encounter also turned out to be a central aspect of what I developed, in preceding chapters, as Kant’s global standpoint.

And yet, there is a worry – to be substantiated in the subsequent section – that the *continuity thesis*, in all its elegance and simplicity, is also too sweeping. There may very well be a sense in which the problems of cognitive, moral and political order arise in one and the same context for Kant. Yet, if we overemphasise this idea, we risk overlooking the way in which the problems we face in these various domains of rational activity are also *distinct*, so warrant different strategies of response. I hope to show that it is the peculiarities of the juridical realm in particular to which O’Neill pays insufficient attention.

3. The Authority of Reasoned Principles

In the preceding section, I introduced the *continuity thesis* in order to illustrate what it is that O’Neill takes to unify the challenges of consistent thinking, willing and interacting. The basic thought is that across all domains of rational activity, the kind of principles that have authority are those that are shareable in virtue of their universalizability. I now want to problematise this claim by examining more closely what *distinguishes* these realms in the pertinent regard. My primary focus will be on the contrast between Kant’s ethics and his political philosophy in order to show that O’Neill’s undifferentiated conception of practical

reasoning leads her to misconstrue the latter. I shall claim that where we need to regulate the interactions of a plurality of diverse agents, we require principles with *interpersonal* authority. A mere formality requirement will not do under such circumstances.

Consistent Thinking

As just mentioned, my focus in this section will be on the difference between Kant's domains of ethics and right, specifically when it comes to the authority of the requisite principles. I will start, however, with a discussion of the authority of reason in the theoretical realm. My main intention in so doing is to underline that there *is* a lot to be said for the kind of continuity O'Neill invokes – as long as we retain an exclusive focus on the consistency of our thinking and willing respectively. It is only once we reflect on the possibility of consistent interactions among a plurality of agents that her claim turns out to be too sweeping. Moreover, the present subsection feeds in to another line of argument that I initiated in the conclusion of the preceding chapter and picked up in the present chapter: the difference between the single standpoint on the whole of interacting objects (that I drew upon in first developing the global standpoint in Chapter 2), and the multiple standpoints on the whole of embodied agents that coexist on the limited surface of the earth.

It may seem unclear at first what it would even mean to talk about the authority of reason in the context of Kant's theoretical philosophy. In order to elucidate this question, let us have a closer look at the role Kant assigns to reason in this domain. What we are looking for are standards – principles of theoretical reason – on the basis of which subjects can organise and integrate their thinking. As we saw in the preceding section, whether there are any such (non-foundationalist) norms at all with the ability to regulate the cognitive activity of rational agents is anything but clear. Consequently, Kant does not take up this

question until the very end of the *Critique of Pure Reason* – only after the Aesthetic and the Analytic of the Transcendental Doctrine of Elements have discussed the ‘lower faculties’ of cognition. In the Appendix to the Transcendental Dialectic, Kant then introduces the notion of the *systematic unity of nature* as reason’s fundamental principle (e.g. CPR A648/B676).²¹ The thought is that by providing the idea of the world as a well-ordered, systematic unity whereby all events can be subsumed under causal laws, reason plays a legitimate role for our activity as theoretical reasoners.

What is clear from Kant’s discussion, and indeed central to his view, is that this principle (and thus reason as a whole) can only have regulative use (CPR A644/B672). We can employ the idea of systematic unity in order to guide our acquisition of knowledge.²² Yet, in contrast to the understanding, the unity that reason seeks to create – the unity of rules under principles (CPR A302/B359) – never applies to anything directly given in experience.²³ While reason will thus never provide us with the systematic unity it strives towards, in its regulative function it can still enable us to actively organize our experience of the world instead of just passively responding to it.

Now, by arguing that reason’s essential function is to guide our use of the understanding through the principle of systematic unity, I have not yet made good on my claim that we are warranted to speak of reason’s “authority” in the theoretical domain, at least in the sense that it would bind us normatively.²⁴ For, some interpreters have denied this

²¹ To be more precise, in the Appendix Kant turns to the *positive* contribution of reason, after having spent the bulk of the Dialectic exposing the contradictions that result if we attempt the (dogmatic) proof that our thinking could be unified by some *really* existing unity.

²² I take it that the more specific ideas of reason – most prominently the ideas of God, freedom and immortality, that the second *Critique* goes on to develop as the postulates of pure *practical* reason – are mere specifications of systematic unity as the quintessential idea of pure reason *tout court* (Mudd 2017, pp.94, see also CPR A695/B723).

²³ On the difference between constitutive and regulative uses of our faculties, see Friedman (1991). I return to this distinction in Chapter 6.

²⁴ My discussion in the present paragraph has benefitted immensely from Sasha Mudd’s (2017) lucid paper.

and argued that the principle of systematic unity binds in a way that is merely *transcendental* (e.g. McFarland 1970; Walker 1990). That is to say, it constitutes something like an a priori condition of the possibility of our cognition of objects such that we cannot but link bits of cognitive information in systematically unified ways. In presenting the attempt to seek systematic unity as something agents *necessarily* do whenever they apply empirical concepts or form empirical judgments (rather than something they *ought* to do), this reading makes talk of reason as having “authority” over our cognising activity effectively nonsensical.

While I do not have the space here to refute this reading, I think that weighty textual and conceptual considerations speak against it. Textually speaking, there are numerous passages in the first *Critique* in which Kant explicitly uses normative language in order to characterise reasons’ regulative principle and the requirements deriving from it (CPR A671/B699; A509/B537; A750/B778; A548/B576; A570/B598; A646/B674). Conceptually speaking, moreover, the *transcendental* reading has the effect of blurring Kant’s sharp distinction between the constitutive role of (principles of) the understanding – which agents cannot but use in representing objects – and the merely regulative role of (principles) of reason, which are introduced as neither determining anything given in the world nor in our way of understanding it. In particular, Kant’s (implicit) claim in the *Transcendental Analytic* that the understanding can apply its concepts to experience without any ‘systematic unity’ constraint makes it difficult to conceive of reason’s principles as having transcendental status.

Hence, I want to argue that it *does* make sense to speak of reason’s regulative principles as being authoritative, in this sense of providing a normative standard for (rather than causally determining or descriptively characterising) agents’ cognitive activity. Seeking systematic unity is not something we necessarily do but something we ought to do. Of course, this leaves open the (further) question of what kind this normativity is. Some interpreters suggest that the regulative

principle binds only hypothetically, under the condition that agents adopt a particular cognitive end like doing science (e.g. Guyer 1990; Kitcher 1994; Willaschek 2010). On their view, the command to seek unity is only required for those who decide to satisfy their speculative interest (by inquiring into nature), which is not valuable or obligatory in itself. It is a methodological device for extending and perfecting our understanding of nature.

Others, in contrast, defend the view that the regulative principle is *categorically* binding (Mudd 2017; Allison 2004). Here, the thought is that cognitive unity is an objective end obligatory for every agent to pursue, due to its important role in the overarching ('broadly practical'²⁵) project of systematic unity that is the supreme aim of *all* rational activity (Mudd 2017, p.101; Kleingeld 1998a, p.314; Guyer 2000, p.87). All of reason's activities have unconditional worth in virtue of serving this telos. In its theoretical function, reason is supposed to guide our use of the understanding through the regulative principle of systematic unity. Given that this principle is consequently "inseparably bound up with the essence of our reason" (CPR A695/B723) rather than an agent's contingent motives, it can be considered as issuing a kind of categorical imperative.

The vindication (central to this second reading) of the idea of a categorical imperative as a kind of supreme meta-norm sits nicely with O'Neill's framework as laid out so far. As we saw in the preceding section, on her view the categorical imperative encapsulates the general requirement – pertinent across all domains of rational activity – that reason discipline *itself*. Nevertheless, I want to abstain from taking a stance on the difficult exegetical question in which way reason's regulative principle is normative. Rather, let me make a more general point about the principle of systematic unity: its authority is *intrapersonal*.

²⁵ On this view, the 'narrow' practical (i.e., moral) and the theoretical employment of reason are both in the service of the wider, 'broadly' practical aim of reason to satisfy its interest in systematic unity.

That is to say, we are each independently bound to organise our own cognitive activity rather than, for instance, the way we relate to others. Hence, the requisite principle is *self*-legislated.²⁶ We each (ought to!) regulate our access to the world by submitting to reason's own principle rather than that of spurious authorities. The supreme principle of theoretical reason is authoritative for each agent taken individually and is not contingent on other agents or their rational activity.²⁷

Consistent Willing

Let us proceed to Kant's ethical theory. The claim I want to defend in this context is that the structure of moral deliberation – while taking on board genuinely relational considerations on some level – is still *intrapersonal* in a way that is structurally analogous to the one just identified as pertinent to Kant's theoretical philosophy. Such a denial of the relational nature of Kant's ethics seems somewhat counterintuitive and needs to be unpacked with care. Is morality, after all, not about what we owe to *others*?

In order to answer this question, notice that Kant's ethics is the domain of good willing or moral conscience. The supreme principle of practical reason guiding the will of rational beings is the categorical

²⁶ Kant himself talks about the way in which reason legislates the idea of systematic unity *to itself* (CPR A695/B723, A701/B729).

²⁷ Of course, there remains nevertheless an important sense in which the principle – as emanating from reason as a *shared* capacity – is itself *shareable*. For in virtue of constraining the relevant rational activity in the way required, we elevate our particular individual standpoint to a generalised, human standpoint. As Kant puts it in the *Orientation* essay, this recourse to a perspective that is simultaneously subjective and shared provides guidance on our “rational excursions into the field of supersensible objects” (WOT 8:142) even in the absence of external criteria. This idea resurfaces in the Appendix, where Kant calls the principle of systematic unity both a merely subjective maxim *and* one that is objectively valid (CPR A680/B708; A666/B694; A651/B679; A648/B676): while it is subjective in the sense of containing no truth-apt claims about its object (we have no warrant for *knowing* that nature constitutes a unified system), in virtue of emanating from reason itself the principle obtains a novel kind of objectivity such that it holds for all agents who share in this capacity. For this distinctively Kantian kind of objectivity characteristic for propositions arising from our rational nature, see Chignell (2007b, p.53).

imperative (Gr 4:412-21).²⁸ By subjecting possible maxims to this intrapersonal test, we filter out those maxims that are internally incapable of being willed as universal law due to their defective internal structure. Again, the thought is that reasoned willing is a matter of *self*-constraint: we need to will lawfully, i.e. adopt maxims of action that have the form of a possible practical law. In O'Neill's vernacular, reason disciplines itself by picking what we judge to be *shareable* maxims (O'Neill 1989, p.56). It is precisely this power to act in accordance with the representation of laws that, on Kant's view (Gr 4:412), characterises the will of a rational being, as something distinct from the rest of nature.

Importantly, however, the authority of such principles is *intrapersonal*, that is limited to the deliberating agent.²⁹ For notice that the categorical imperative tests the permissibility – the moral quality or worth – of individual maxims for action. And, again, we *self-legislate* the requisite kind of principles: we each first-personally constrain our willing by asking ourselves whether we judge our own subjective maxim to be adoptable by others. Such an act of self-legislation (and subsequent self-subjection) is not contingent on what others will. Nor can it, crucially, prescribe to them what maxims they ought to adopt. To ask whether we can without contradiction will a maxim to hold as a universal law is not to want it to hold as such a law. In a nutshell, moral reasoning is *intrapersonal* in the sense that its supreme principle (the categorical imperative) is autonomously, that is, *self*-legislated.³⁰ For, its authority is limited to the agent deliberating about what she ought to do.

²⁸ Given that humans are not simply rational, but *finite* rational beings, Kant argues in the second *Critique* that reason produces further ideas (the idea of the highest good as well as the 'postulates' of God and immortality), which I shall not discuss here.

²⁹ See Grenberg (2015) on Kant as a theorist of first-personal moral phenomenology.

³⁰ In an unpublished manuscript, Kleingeld and Willaschek (2017) argue that while Kant takes individual principles for action (what they call "Moral Laws") to be "self-legislated", this cannot be said of the categorical imperative as the normative criterion guiding our adoption of maxims (the "Moral Law"). As it is not my main concern in the present context, I shall refrain from getting into this issue further.

This of course is not to deny that ethical reasoning includes an important relational dimension. For, while the categorical imperative requires us to give law to *ourselves* in the name of rational nature, this demand is grounded in the moral standing of *other* agents.³¹ Recall the *Groundwork's* argument to this effect, which I briefly mentioned in Chapter 1: when we think ourselves under moral obligation, we necessarily regard ourselves in a certain way, namely “as belonging to the sensible world and yet to the intelligible world at the same time” (Gr 4:453). In ascribing this status to ourselves, and expecting other human beings to act accordingly, we cannot consistently deny that they have equally good reasons to conceive of themselves in this way (Timmermann 2006, p.86). Consequently, we have to regard them as joint members of a possible intelligible order such that, as ends in themselves that deserve unconditional respect, they restrict our choices.

However, to say that the command to legislate universal law *on behalf* of rational nature in general is grounded in the moral status of others is in turn not to say that, in doing so, we legislate *to* anyone but ourselves or that the relevant norms actually regulate our interactions with others. Kant's moral point of view is that shared by all free and finite reasoners. Other agents figure in our moral deliberation as *generalised* and *internalised* others, constituting something like a ‘second person within’.³² What we do when we filter out candidate maxims with the help of the categorical imperative is to take up “the point of view [...] of every other rational being” (Gr 4:438), a point of view which is perfectly general yet *intrapersonal*.

³¹ Christine Korsgaard, in contrast, famously argues that Kant derives the moral law from the bare idea of rational agency. The thought is that the reflective structure of self-consciousness makes us accountable both to ourselves and to others: to constrain my ends in accordance with my fellow agents is a demand purely of my own personal autonomy, properly understood (Korsgaard 1996a, pp.188-224).

³² I borrow the term “second person within” from Korsgaard (2007), while diverging from the way she uses it. What I have in mind is closer to what Stephen Darwall describes as the “representative authority” of the abstract moral community as a whole (Darwall 2013, pp.34-49). Darwall associates this form of authority with what he calls moral obligation ‘period’, a non-relational kind of obligation that is contrasted with a bipolar kind of obligation (owed to a specific other).

Now, before we go on to highlight what distinguishes the domain of right or politics in this regard, it is important to notice that the problem with O’Neill’s account of practical reasoning – centring around the idea of principles shareable by a plurality of agents – already starts here. For, she is actually quite reluctant to acknowledge that it is consistent *willing* that is at stake in the *Groundwork* (see e.g. O’Neill 1989, pp.81-104). As we saw in Section 1, O’Neill employs the categorical imperative as a procedure for the generation of reasonably acceptable principles of *justice* based on individual moral deliberation. In doing so, she follows John Rawls’s (2000, pp.143-328) attempt to turn the categorical imperative from a principle of self-legislation into one of other- or even public legislation – that is to say, a test through which an agent legislates an authoritative social order to *others* (Flikschuh 2012b, p.187). This semi-political reading of Kant’s ethics, however, leaves O’Neill unable to account for the fundamentally different kind of principles that we need in order to coordinate the interactions of a plurality of agents.

Let me sum up the argument of the preceding two subsections. My discussion of the role of reasoned principles in Kant’s theoretical philosophy and his ethics is admittedly sketchy and incomplete. However, my aim was rather limited. I sought to point out a very specific structural similarity, concerning the authority of reason, between these two domains that are generally (and correctly) taken to encapsulate contrasting ways of relating to the world.³³ In both realms, we require principles with *intrapersonal* authority, that is, principles that have authority over the agent who does the reasoning. Consequently, such principles can be *self-legislated*: every agent is rationally required to discipline their own rational activity by thinking and willing on the basis of shareable, that is universalizable maxims. In other words, what it is

³³ Kant himself of course argues that the highest division of philosophy is that organized by the concepts of nature and freedom (and the pertinent forms of causality), as corresponding to the division between theoretical and practical philosophy (DoR 6:217).

for a maxim to have this sort of authority is to have a certain logical property. This demand, to organize one's rational activity in a way that can be considered generalizable, is directed at each agent respectively rather than the way in which they relate to one another. As I hope to go on to show now, this is precisely what distinguishes reasoned principles in the theoretical and ethical realms from principles of right.

Consistent Interaction

So far in this section, I have discussed the authority of reason in Kant's theoretical and ethical domains, pointing to their structural similarity in this regard. I now want to turn to the domain of right or politics and the need for principles with *interpersonal* authority, which I take to be closely associated with the coordination requirement pertinent to this domain. The best way to introduce the normativity of right is through a contrast with Kant's ethics. Recall, from the last section, that ethics pertains to the realm of inner morality, or moral conscience. The categorical imperative specifies an agent-internal compatibility test with regard to maxims: an agent asks herself whether a proposed maxim of action could have the form of a possible practical law. Good willing, or virtue, is a function of the maxim's conformity with universal law. While the task that the categorical imperative confronts us with thus obviously requires us to treat others in a certain way (after all, we give laws in the name of humanity as such), it is a task set to each of us separately. Whether a maxim has the required form of generalizability is not contingent on what anyone else does.

This is different in the realm of right, as a look at its very structure reveals. Right is an external morality concerned with the way the actions of embodied agents (as manifest in time and space) relate to one another. The kind of incompatibility relations we are concerned

with here are distinct from the ethical realm:³⁴ they are not internal to a single agent's willing, but pertain to the way the choices of multiple agents confront and relate to one other. This entails that the normativity of right is irreducibly relational. For, whether an action is rightful cannot be determined except through its relation to those of other agents. Recall, from Chapter 1's discussion of the Introduction to the *Doctrine of Right* that, according to the universal law of right, "any action is right if it can coexist with everyone's freedom in accordance with a universal law" (DoR 6:230). We saw Kant illustrate this point by likening the coordinated actions of a plurality of externally free agents to the law-governed interaction of constitutive elements within a system of physical objects, held together by the Newtonian law of equality of action and reaction (DoR 6:232).

From this we can draw an important conclusion concerning the *kind* of principles that will be required in the sphere of right: we need actionable principles that allow a plurality of agents to coexist and coordinate their interactions, norms that have the authority to equally bind all of them. In other words, we need principles with *interpersonal* (rather than *intrapersonal*) authority. Now, notice that such norms need to satisfy a stronger demand than maxims both in the speculative and ethical realms. In particular, mere generalizability is not a strong enough modal criterion. For, a number of action-patterns may each very well be shareable in the pertinent sense (and thus ethically permissible maxims for action) without *in conjunction* displaying the necessary compossibility. The universalizability test of the categorical imperative with its exclusive focus on maxim's formal, internal (law-like) structure will not lead us far enough: it fatally underdetermines juridical principles.

The implication is that principles with the required *interpersonal* kind of authority to coordinate the interactions of a plurality of agents

³⁴ On the domain of right as bringing in a new kind of incompatibility relation, see Ripstein (2009, pp.355-388).

cannot be *self-legislated*. For individual agents are simply constitutively unfit to come up with principles of the requisite kind. To say that individual agents lack unilateral juridical authority is to make a conceptual point that holds regardless of how generalizable or law-like their proposed principles may aspire to be. The bindingness of such principles is simply not a function of any internal formal property. In other words, what I presented, in Chapter 2, as a formal requirement to reflexively see one's judgment from the standpoint of others – an imperative of mutual perspective-taking – will not do to identify principles on the basis of which a plurality of diverse agents with potentially incompatible sets of principles can coordinate their interactions. As I have mentioned at the end of the preceding chapter, in this context we need to think of the global standpoint's reflexivity requirement in a way that honours the fact that it is constituted by an actual plurality of perspectives in a disjunctive relation.

As far as O'Neill is concerned, this implies that her insistent emphasis on the need for principles that are shareable among a "plurality of potentially interacting and diverse agents" (O'Neill 2004, p.156) notwithstanding, she ultimately loses sight of the distinct *kind* of plurality pertinent to the domain of right. For in this domain, we are interested in the possibility of consistent *interaction* among a plurality of agents. Under these circumstances, it is not enough to account for 'generalised' others by each constraining our reasoning (and hence comportment) accordingly. Instead, we need to account for the possibility of real diversity in agents, principles and political arrangements.

With regard to the cosmopolitan encounter, which of course remains our main concern, this insight implies that while the regress to the global standpoint tells Western travellers to go no further than making communicative offers, they cannot also from this perspective identify norms on the basis of which both sides, with their potentially incompatible set of principles, could coordinate their interactions.

Wherever the requirement of constrained comportment is intended to leave us, it stops short of mutually binding principles.

4. The Possibility of Interpersonal Authority

My case against O'Neill so far was concerned with the kind of principles we *require* in the domain of right in order to coordinate a plurality of agents, rather than how we *obtain* them. In particular, I criticised her insufficient distinction between the ethical requirement to each constrain our own willing and the juridical requirement to interact consistently with a plurality of other agents. As such, this is not a particularly original insight, nor one that requires the notion of a global standpoint to be appreciated. The case for the distinctness of the morality of right from that of ethics – in particular, its externality – is defended by numerous interpreters and at the heart of a longstanding debate.³⁵

I mention this because its proponents usually take this line of argument to ground a case for the need to institutionally mediate rights relations. The familiar thought is that given that principles of right cannot be *self*-legislated, they need to be *externally* legislated: in order to have the requisite kind of interpersonal authority, principles need to be issued and enforced from a distinctly public standpoint. Only coercive political institutions have the pertinent kind of juridical authority that can unify an actual plurality of interacting agents under principles.³⁶

³⁵ Versions of the claim that Kant's domain of right is independent – in one way or other – from his ethics are defended by a wide range of interpreters including Flikschuh (2000), Horn (2014), Ripstein (2009), Willaschek (1997), Wood (2002a).

³⁶ In a sense, the “internal” (modal) reasoning constraint then simply devolves upon the coercively authoritative lawgiver. That is to say, it is the sovereign who has to reason from the perspective of all and judge whether a proposed norm (has the form such that it) *could be* self-imposed by those to whom it is meant to apply (that is, the subjects). This is precisely what Kant's idea of the “original contract” (DoR 6:315) is supposed to get at: by providing a “touchstone of any public law's conformity with right”, it binds the lawmaker in their exercise of public authority. The sovereign instantiates a ‘general united will’ by legislating in the name of all of its citizens.

Under circumstances where what matters is not the mere internal *form* of the maxim underlying an action but the way it *relates* to a set of further actions, we need a distinctly public authority that links the actions of one agent reciprocally to those of the others and, in so doing, constitutes their rightness. In making public law, institutions are able to constitute a strict form of reciprocity between the constituent parties' wills. In a nutshell, principles with interpersonal authority are principles of public right for Kant.

I take this line of argument to be perfectly accurate as far as the domestic context is concerned, where individuals relate to one another through reciprocally raised property claims. Now, if the problem arises already on a more fundamental level – if the mere disjunctive relation of individual actions grounds the need for institutional mediation – we would expect the domain of cosmopolitan right to be publicly coercive in a similar way. Yet, for reasons I will get into in the subsequent chapter, Kant denies precisely that. Although it is positioned in the *Doctrine of Right's* section on “public” (rather than “private”) right, he does not envision cosmopolitan relations to be subject to a shared political authority that could make and enforce laws in the name of all parties involved so as to ‘unify’ the entire cosmopolitan plurality.

Of course, for someone like O'Neill this need not be hugely problematic. On her view, *anyone* who applies the requisite modal constraint appropriately can identify shareable (*cum* universally binding) principles of justice. Political institutions thus come in ‘after the fact’ anyway: they are required to enforce principles whose validity is a matter of their *form* and thus ascertainable prior to and independently of their institutional manifestation. Generally speaking, the specific modal criterion that generates principles of justice by testing their shareability can be applied by any agent. Recall that O'Neill defines principles of justice as prescribing or prohibiting specific acts towards identifiable others, such that they can be said to correlate with rights (O'Neill 1996, p.184). Given that duties of justice do not only have to

be *enactable* by all (i.e., have the required formal property) but also *enforceable*, “there must be agents or agencies to do the enforcing” (O’Neill 2016, p.123).

O’Neill remarks that in today’s world the task of securing that everyone performs the pertinent set of duties is typically assigned to states (making them what she calls the primary *agents of justice*), simply because they tend to have the requisite powers and capabilities at their avail that allow them to fulfil that role (O’Neill 2011, p.183; see also, Caney 2013, p.138). If states are unwilling or unable (e.g. too weak or ineffective) to institutionalise and enforce justice within their borders, however, non-state agents (such as non-governmental organizations or transnational companies) need to step in and do the job for them (O’Neill 2011, p.185). Along these lines, even Westerns emissaries could (as a matter of principle) enforce norms regulating their interactions with non-state peoples, assuming they have constrained their reasoning accordingly.

Yet, it is precisely this sort of unilateral affirmation of juridical authority that we have ruled out. This leaves us in a predicament. For cosmopolitan interactions are simply bound to lack the strict kind of reciprocity that only coercive institutions are in a position to constitute. I think this is a real problem for Kant, and one from which there is no easy way out. On the face of it, this makes it very difficult to understand why he would want to talk about cosmopolitan right as a form of public rights relation in the first place. What it does help us to understand, however, is why he falls back on an overly cautious stance according to which we have to limit ourselves to attempting interaction with those on whose shores we find ourselves. A neat solution is not available, given that neither of the parties has the authority to make the judgments that would allow them to come up with binding principles for coordinating their interactions, nor to force the other side into institutions with the capacity to make these judgments for them.

As we simply cannot predicate anything of our counterparts, all we are left with is to initiate what promises to be a long-winded and daunting process of finding shared norms for our coexistence. Kant merely specifies how we can get this process off the ground, namely by offering an actual dialogue that allows Western emissaries and non-state peoples to get to know each other, gradually and over time.³⁷ Maybe we successfully learn to mutually understand each other such that we can ultimately find a shared basis for getting along, maybe not. Wherever this process leads, though, strict rights reciprocity simply cannot be had at the level of cosmopolitan right.

Conclusion

What motivated me to take my cue from O'Neill in this chapter was the observation that she starts from a predicament that is structurally similar to the one that we inherited from previous chapters: the need for “maxims for a plurality-without-pre-established-harmony“ (O'Neill 1992, p.300). Her initially promising answer was that in order to find such principles, agents – who are constitutively tied to the first-personal perspective – must simply constrain their own reasoning. If their proposed principles are only abstract enough, such that they have the right form, they can be said to hold for all agents involved.

My critique of O'Neill focused particularly on a crucial distinction *within* Kant's practical philosophy, between consistency in willing (ethics) and consistency in interaction (right). O'Neill's *continuity thesis* obfuscates the implication of the fact that the latter is characterised by a plurality of interacting agents, which entails that the requisite principles (in order to be interpersonally authoritative) cannot be self-legislated. The upshot for the cosmopolitan encounter is that while the global standpoint binds Western emissaries to go no further than

³⁷ Here I follow Flikschuh (2017, pp.89-91).

inviting their stateless counterparts to interact on a non-coercive basis, they cannot also from this perspective identify norms that would allow both sides, with their potentially incompatible sets of principles and arrangements, to coordinate their interactions.

At the same time, though, in the cosmopolitan context Kant *also* denies a simple shift to a public standpoint from which political institutions could mediate everyone's reciprocal claims through coercive law. Given that cosmopolitan right – somewhat disconcertingly – thus lacks coercive or strict reciprocity, we are left with the cautious attempts to settle on shared terms through a gradual process in the course of which statist and non-state peoples get to know each other and their respective ways. The question we are then left with is to what extent we can then still intelligibly conceive of cosmopolitan right as a domain of “public” right in the first place. Given that public right is supposed to be a domain of distinctly institutional normativity, we need to ask what the institutional implications of cosmopolitan right (and hence the global standpoint) are. This question will, in the subsequent chapter, lead us back to the state.

Chapter 5

Juridical Self-Constraint

The last chapter left us in a predicament: on the one hand, Western emissaries lack the juridical authority that would allow them to simply turn up at distant shores with universally binding principles in hand. On the other hand, Kant also denies that they can force their stateless counterparts into political institutions with them that would, from a public standpoint, make coercive law valid for all. I ended on the question how – given this lack of strict reciprocity – we can still conceive of cosmopolitan right as a domain of ‘public’ right.

In this chapter, I shall return to the state in order to answer this question. My claim is that the obligation to interact with other earth dwellers from the global standpoint is not only predicated on states (recall my argument, in Chapter 3, that we obtain it via the property argument) but that the state is also its site of institutional implementation. Rather than a public global order, Kant’s mature cosmopolitanism is thus geared towards a world of radically reformed states that bind themselves and hence their citizens to rightful comportment towards other states and non-state peoples of their own accord. To take up the global standpoint from within states is to transform them into cosmopolitan agents.

I will make this argument by developing a particular interpretation of Kant’s threefold system of public right that conceptualises distinct though interlocking forms of right at state, international, and cosmopolitan levels. Now, notice that the three levels are usually taken to depict something like a blueprint for a global institutional order (e.g. Höffe 2006; Lutz-Bachmann 1997). The

thought is that the conclusive establishment of public right requires a multi-level strategy ensuring that institutions are in place that regulate states' relations to their citizens, to other states, and to non-state collectives respectively. The problem with this reading is that both domains of public right beyond the state – not only cosmopolitan but also international right – are presented by Kant as *non-coercive*. As I will show in more detail in this chapter, it is the moral standing of states as juridical agents that rules out, on conceptual grounds, the option of a supranational public institution.

Instead, I will read the two domains of rights relations beyond the domestic context as spelling out a set of juridical obligations that are predicated and incumbent on states (and their citizens) themselves. On this view, which is labelled by Peter Niesen as a “cosmopolitanism within one country”,¹ the most important function of Kant's tripartite system of public right, and its primary transformative potential, does not lie in its provision of a model of a global institutional order *beyond* the state. Rather, it consists in a cosmopolitically informed and, ultimately, transformed notion of statehood itself. Specifically, Kant provides a set of juridical constraints that states are to impose on themselves. In the absence of coercively institutionalised (i.e. truly public) rights relations that encompass the entire cosmopolitan plurality, juridically self-constrained comportment is the only way in which we can hope to find peaceable terms of mutual coexistence with other states and non-state actors.

The structure of the chapter is as follows. I start, in Section 1, by returning to Kant's concept of ‘*commercium*’. My aim is to gather some initial evidence that an important aspect of the notion of disjunctive community is to change our perspective on states. The remainder of the chapter develops a structural analogy (introduced in Section 2) between

¹ On Niesen's (2012) view, this was a predominant (though subsequently largely forgotten) understanding of cosmopolitanism during the enlightenment period and can be reconstructed, for instance, in Bentham's writings. Niesen hints at the presence of such a conception in Kant without developing it in much detail.

the two similarly non-coercive domains of public right beyond the state. I start, in Section 3, by focusing on international right. I read Kant's retreat to a voluntary league of nations as a corollary of his view of states as moral agents with an artificial (sovereign) will, which rules out on conceptual grounds that they themselves be subject to a supremely coercive agent. Rather, states are duty-bound to enter a permanent congress of states and submit to its rulings of their own accord. Section 4 goes on to show that, in a structurally analogous way, states are tasked to domestically implement cosmopolitan right by legislating provisions that constrain their citizens' comportment towards distant strangers, as well as securing the rights of refugees who turn up on their own shores. Only if states coercively ensure that their citizens, when acting as traders, settlers or missionaries abroad, attempt to establish interactions with distant strangers on fair or equitable terms can we hope for the gradual emergence of a juridical meta-language that allows them to settle on shared terms. This confirms that Kant's global standpoint is also a global standpoint on states.

1. *Communio and Commercium*

I would like to start by going back to Chapter 2, where I developed the global standpoint through a contrast between Kant's notion of original common possession and that predominant in the natural law tradition as impersonated by Grotius (as well as his modern-day adherent Risse). One of my main observations was that Kant *reverses* the argumentative sequence familiar from the latter. Grotius starts with the idea of a common stock of resources and land (as a historically real state of affairs) that is subsequently divided up in accordance with the principle of need. The argument of the *Doctrine of Right*, by contrast, proceeds *from* unilateral acquisition of land *to* the idea of original possession in common. To think of the earth as possessed in common, that is to say,

is a corollary of the unavoidable first acquisition due to one's coming into the world as an embodied agent. Kant employs the idea of original common possession of the earth in order to visually express what it means to exist as an embodied agent, together with other such agents, within limited space.

I also hinted at Kant's underlying motivation for this inversion: his worry is that Grotius's argumentative sequence, in aiming to overcome the condition of original common ownership, tends to *obliterate* the global standpoint. Kant suspects that this model essentially entrenches the separation between individuals and borders between communities rather than inviting and enabling them to find shared solutions for shared global problems. By contrast, in arising from the unavoidable conditions of our coexistence on earth, Kant's global community takes precedence over contingent, man-made communities of rights-holders or co-owners.

I now want to pick up and elaborate on this line of argument by reflecting further on the relation between existing political communities and the global community of possible physical interaction. I would like to do so by pointing to a conceptual distinction, between *commercium* and *communio*, to which Kant helps himself in the context of his argument from earth dwellership. In the section on cosmopolitan right in particular we are told that the members of the original community of land do *not* stand in a relation of "*rightful* community of possession (*communio*) and so of use of it, or of property in it; instead they stand in a community of possible physical *interaction* (*commercium*), that is, in a thoroughgoing relation of each to all the others [...]" (DoR 6:352). Similarly, in the earlier passage on original acquisition of land Kant cautions that a "condition of community (*communio*) of what is mine and yours can never be thought to be original but must be acquired (by an act that establishes an external right), although possession of an external object can originally be only possession in common" (DoR 6:258).

In Chapter 2, I took Kant to be making this distinction in order to delineate his own conception of global community as *commercium* from the natural law conception of a “primitive community (*communio primaeva*), which is supposed to be instituted in the earliest *time* of relations of rights among human beings and cannot be based on principles but only on history” (DoR 6:258). As a “practical rational concept” (DoR 6:262), Kant’s own notion of original common ownership depicts a person-to-person relation (conditioned by the earth’s spherical surface) rather than a relation between persons and the external world. This is intended also to rule out a (semi-fictional) historical process, central to the natural law narrative, in the course of which resources are legitimately privatised and land legitimately enclosed (and consequently demarcated as territory).

Notice, however, that in early modern political thought, the notion of *communio* was not confined to depicting a historically “primitive” state of community that precedes the establishment of human institutions (Wolin 2004, pp.86-95). *Communio* also had another meaning that goes back to its Latin origin as depicting a fortress or, more generally, a demarcated and bounded space. According to Howard Caygill, Kant was well aware of this exclusionary and determinate meaning of *communio* as “exclusive sharing of space protected from the outside“ (Caygill 1995, p.177; see also Milstein 2013, p.124) and used it across his political writings to characterise particular social and political communities or arrangements – delineated and demarcated from others of the same kind around them – that institutionalise relations of property, territory and sovereignty.

It is this second meaning that I want to focus on in this section. For, given that we are interested in the institutional implications of the global standpoint, Kant’s reflections on the relation between the global community of original common possession and particular communities constituted by man-made institutions such as states are of immediate concern. That Kant actually has this relation in mind in contrasting

communio and *commercium* is confirmed by a brief look at a passage from the first *Critique* where the conceptual distinction is first introduced. In the third Analogy (CPR A 213-4/B260/1) Kant argues that we require the category of community in order to perceive a plurality of objects as co-existing *simultaneously* in one spatial whole. In this context, he also identifies an ambiguity in the word community as used in common language:

The word “community” is ambiguous in our language, and can mean either *communio* or *commercium*. We use it here in the latter sense, as a dynamical community, without which even the local community (*communio spatii*) could never be empirically cognized [...] In our mind all appearances, as contained in a possible experience, must stand in a community (*communio*) of apperception, and insofar as the objects are to be represented as being connected by existing simultaneously, they must reciprocally determine their position in one time and thereby constitute a whole. If this subjective community is to rest on an objective ground, or is to be related to appearances as substances, then the perception of one, as ground, must make possible the perception of the other, and conversely, so that the succession that always exists in the perceptions, as apprehensions, will not be ascribed to the objects, but these can instead be represented as existing simultaneously. But this is a reciprocal influence, i.e., a real community (*commercium*) of substances, without which the empirical relation of simultaneity could not obtain in experience.

Kant distinguishes between two meanings in order to resolve the ambiguity inherent in the term *Gemeinschaft*. “*Communio*” is a “local community” of objects, that is our perception of things as grouped together in some respect and thus delineated from other things. In the present context, we can read it as referring to a deemed “condition of commonality or shared existence, a more or less static condition of belonging together under some identifiable set of criteria that can demarcate that which belongs to the community from that which does not” (Milstein 2013, p.122). The notion of “*commercium*”, which, in

the above passage, Kant associates with the pertinent category or pure concept of the understanding, is said to depict a community characterised by mere interaction and reciprocal influence.

What is particularly interesting for us at this point is that Kant does not merely distinguish between the two concepts, but that he also specifies their relation. The thought is that we can only mentally aggregate, individuate, or locate things with respect to one another by virtue of our ability to experience all the constituent parts as interconnected with one another in a unified horizon of possible experience. As the manifold of experience does not reach us already ordered into discrete types or groups of objects, we need an “objective ground” or starting point – the idea of a dynamical community of thoroughgoing interaction – from which we intuit the composition of the world and form judgments about it. Kant’s thought is that community as “*communio*” presupposes community as “*commercium*” (CPR A214/B261): without the dynamic reciprocal influence of substances in “*commercium*”, there could be no empirical relation of co-existence or “*communio*”.

Let us take our lead from this passage. Let us, moreover, take seriously Kant’s return to the distinction between *communio* and *commercium* in the *Doctrine of Right*. We then get a picture that interestingly reverberates with the argument developed over preceding chapters. On the one hand, Kant suggests that his global community is in some way logically prior to or taking precedence over man-made communities of right-holders or co-owners, such as states. On the other hand, we only get to the idea of *commercium* through *communio*, namely by means of reflecting on the latter’s conditions of possibility. Only by virtue of our apprehension of *communio*, Kant argues in the above passage, do we realise that “this subjective community is to rest on an objective ground”. This lines in with Chapter 3’s argument that we get to the global standpoint *via* the property-based case for state entrance.

But how exactly should we think of this relation of priority? According to one possible interpretation, the global community of *commercium* is meant to *overcome* the community of *communio*. One way to understand this claim is to say that we are meant to dissolve particular human institutions into a single global community, possibly embracing an all-encompassing political institution or even world state.² Throughout preceding chapters, I have repeatedly pointed to Kant's scepticism concerning these ideas. He is not inclined at all to suggest that we ought to dissolve or even redraw boundaries, redistribute land and territory, or – more broadly speaking – do away with all kinds of particular relations, commitments and institutions.

Now, there is another way in which we could read *commercium* as overcoming *communio*. This construal, recently suggested by Christoph Menke (2015, pp.350-4), is not predicated on an expansion of the scope of political community. Rather, Kant is taken to juxtapose two *models* of political community, that is to say, different ways of conceptualising relations among co-citizens. On Menke's interpretation, the distinction between *commercium* and *communio* expresses two fundamentally different paradigms for conceiving of just relations. *Commercium* encapsulates the very form of modern rights that Menke ascribes to Kant and goes on to reject himself: the reciprocal relation between the two parties of any interaction that only together constitute a rights relation. On Menke's view, this modern, individualistic notion of rights as concerned with the dynamic, reciprocal relation among persons asserting themselves as 'mere' juridical subjects by making claims on each other to have their actions taken into account contrasts starkly with an alternative tradition of thinking about justice: that associated with *communio* understood as a

² Notice that, on a reading that likens Kant's conception of original common possession to that of Grotius, the replacement relation would be exactly reversed: *communio* overcomes *commercium*. Along these lines, Byrd and Hruschka (2010, p.207) argue that "when the land is particularized, however, the disjunctively universal right to a place on this earth is made concrete, especially for a people. When it is, the right to be in a place other than the one an individual rightly occupies disappears, and with it the right to visit that other place".

more comprehensive social praxis that for instance underlies communitarian ideals of the common good or the communist idea of true democracy. On this second view, individual actions are related not externally, thus reducing agents to a formal status of juridical subjectivity, but *internally* through an overarching conception of the good in which they all participate (Menke 2015, p.355).

On Menke's view, Kant plays an important role in the context of an (early modern) paradigm shift away from a 'thick' conception of political community as *communio* to a much 'thinner' one associated with *commercium*. At the conceptual heart of this transformation is the powerful notion of individual or subjective rights as validly assertable prior to the community itself. Now, while this is a familiar story about a central conceptual shift in early modern political thought from natural law to natural rights (Tierney 1997; Tuck 1990), I doubt that Kant actually plays the role Menke envisions for him. As we saw in Chapter 1, Kant does not start with a foundational claim about subjective rights but with the general *concept* of right as a system of reciprocal relations of which individual claims are a constitutive component. Kant conceives of right in relational terms from the outset.

I agree with Menke that, in so far as it depicts our coexistence on the earth's spherical surface, Kant's disjunctive community is not a community of shared ethnicity, culture or law – a community based on affinity or shared conceptions of the good. But that is not to say that we should *only* or *exclusively* understand ourselves as participants in *commercium*. It just means that our status as earth dwellers has logical and normative priority to any membership in positively instituted political communities. Rather than overcoming or replacing it, *commercium* gives us a different perspective on *communio*.

In this, I follow Brian Milstein (2013), according to whom the idea of *commercium* is intended to provide us with something like a "critical perspective" on social, cultural and ultimately political boundaries. The thought is that "before [in a justificatory rather than

temporal sense, [JH] we are nations, states, or even individual property-owners, we are free beings, each with our own standpoint, who are not only capable of determining our own actions vis-à-vis one another but who are capable of negotiating publicly recognized principles for sharing our life on earth”. Thinking of ourselves as co-participants in a dynamic cosmopolitan community requires that we relate critically to existing practices and institutions. We do so by asking to what extent they affirm our ability to think of ourselves as joint makers of the world around us or whether they curtail this ability by delimiting possible interaction as well as entrenching and naturalising existing separations. Taking up the perspective of *commercium* is an “exercise in critical reflection on the terms of our relations of community with one another” (Milstein 2013, p.120.) From this standpoint, we are asked to reflect on our interdependence relations with others beyond our political community as well as collectively structure and transform the terms of interaction we find ourselves in rather than putting up with them. But that is *not* to say that we necessarily have to dissolve or do away with the latter.

However, in arguing that we always “retain the reflexive capacities to build upon, critique, or revise the terms on which [we] coexist and interact with one another“ (Milstein 2013, p.127), Milstein makes it sound as though this exercise of critical reflection, i.e., taking up what I call the global standpoint, is somehow optional. On my view – and I think the passage from the first *Critique* in fact confirms this – has something even stronger in mind: the global standpoint is a condition of any possible communal standpoint. In other words, no local standpoint without a global standpoint. Textually speaking, we *must* regress further beyond the property argument and to original acquisition of land (and this implies that we *can*).

What is more, the institutional implications of Milstein’s reading remain rather vague. His primary intention is to denaturalise the foundations and thus the boundaries of political community (Milstein

2013, p.127). For, the distinction between *communio* and *commercium* allows us to distinguish the unavoidable conditions of our concurrent coexistence on the one hand, from the contingent products of history (such as relations of property and sovereignty) on the other hand.³ According to Milstein, this allows us to understand ourselves as *makers* of the practices and institutions we find ourselves in – to take ownership of them – and, ultimately, to critique, contest and revise them. Yet, how precisely what I have called the global standpoint reshapes our social and political world is still unclear. What is the practical (i.e., institutional) upshot of looking at relations of *communio* through the prism of *commercium*? This is the question I want to answer in the remainder of this chapter.

2. Right as a System

In the preceding section, I gathered some preliminary evidence for the idea that an important aspect of Kant's global standpoint consists in its function as a global standpoint on existing states. I argued that his notion of global community or *commercium* should be thought of as transforming the way we look at particular political communities from within. I want to leave this specific issue behind for now and make good on the preliminary insight it has yielded on more systematic grounds. To that effect, I shall turn to Kant's threefold system of right. My aim is to connect the above discussion of the relation between *commercium* and *communio* with the wider question that frames this chapter as a whole: how we can intelligibly think of cosmopolitan right as a domain of public right.

³ Again, this is reflected in my regress, in Chapter 3, from the *contingent* practice of reciprocally raised property claims (and the ensuing duty of state entrance) to the *non-contingent* fact of entering the world as an earth dweller (and the ensuing obligation to think of the earth as possessed in common).

Kant first introduces the idea that (what he calls) a “cosmopolitan constitution” (PP 8:358) should consist of public rights relations on three distinct (though interrelated) levels in the three ‘Definitive Articles’ of *Perpetual Peace* (PP 8:349–357). While his focus there is very much on the significance of the tripartite structure for establishing the conditions of peace, the *Doctrine of Right* develops its formal grounds more systematically. The basic thought is that

[...] under the general concept of public right we are led to think not only of the right of a state but also of a *right of nations (ius gentium)*. Since the earth's surface is not unlimited but closed, the concepts of the right of a state and of a right of nations lead inevitably to the idea of a *right for a state of nations (ius gentium)* or *cosmopolitan right (ius cosmopoliticum)*. So if the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse. (DoR 6:311)

Let me start by making two observations about this passage. First, Kant emphasises that the three forms of public right that constitute the pertinent system each derive from one and the same general concept of right. It lies in the very concept of right (conceived through its three forms), that is to say, that it be global in nature. Second, already in this passage Kant suggests that there is a sense in which international and cosmopolitan right are somehow predicated on states. “Since the earth’s surface is not unlimited but closed”, he argues, we cannot stop at the right of a state (or domestic right) but are “led” to the two further levels.

Kant’s ensuing discussion in *Perpetual Peace* and the *Doctrine of Right* then reflects this structure of exposition. He starts, respectively, with the domain of domestic right (or right of a state) as concerned with the institutional relations between individuals and their state. In *Perpetual Peace*, this domain is all about the nature of republican

government (PP 8:349-353).⁴ While the *Doctrine of Right* repeats the claim that a perfect republic – where the people act as a collective body rather than a loose collective – is the only kind of state that fully accords with its own internal standards, the focus as a whole shifts to the (prior) property argument as justifying a duty to enter the civil condition in the first place.

From there, Kant goes on to claim that the concept of domestic right entails a requirement for right between states, which in turn “inevitably” (DoR 6:311) gives rise to cosmopolitan right as specifying just relations between states and non-citizen individuals as well as non-state peoples. As far as international right is concerned, Kant advocates a voluntary federation of states that are said to have “outgrown” (PP 8:355) the need to be under coercive law. Finally, cosmopolitan right – well-known to us at this stage – is “limited” to hospitality, that is “the right of a foreigner not to be treated with hostility because he has arrived on the land of another” (PP 8:357, see also DoR 6:352 ff.).

While these three levels are distinct and functionally differentiated, Kant puts great emphasis on the way in which they are also constitutively intertwined and mutually implicating forms of public right. Only in conjunction do the three domains constitute a complex, self-sustaining system. “If the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition”, Kant insists in the passage just quoted, “the framework of all the others is unavoidably undermined and must finally collapse”. None of the three levels, that is to say, fully instantiates the idea of rightful relations such that it could persist on its own. Ultimately, securement even of

⁴ In being defined by the three principles of political freedom and equality, separation of powers, and political representation of citizens, Kant’s republicanism describes more a *way* or *mode* of governing than a specific institutional setup (Niesen & Eberl 2011, pp.209-231). In the *Contest of the Faculties* (7:91), Kant famously claims that even a monarch can govern in a republican way by treating their people accordingly.

domestic right requires an institutional manifestation of international and cosmopolitan right.

Earlier in this chapter, I indicated that the main purchase of Kant's system of rights relations is the transformative effect it has on states. This may appear to be a puzzling claim. On the face of it, a focus on the three levels seems precisely to lead us *away* from the state and more towards trans- and supra-national contexts. For, a "cosmopolitan constitution" is usually taken to depict a global, multi-faceted institutional and legal order; not only by Kant-interpreters but also by contemporary proponents of what now goes under the label of a 'global constitutionalism' (Habermas 2006; Kumm 2009).

I have already indicated that I diverge from this view. Instead, I hope to show that the domains of international and cosmopolitan right spell out two sets of obligations that are predicated and incumbent on states. In doing so, they provide us with a cosmopolitically transformed notion of statehood. It is the state rather than a global institutional order that constitutes the institutional heart of Kant's cosmopolitanism. States must bind themselves (and hence their citizens) to the pertinent kind of comportment of their own accord. For in the absence of a global public constitution, transforming states into outward-looking, cosmopolitan agents is the most promising – in fact, the only viable – strategy for finding peaceful terms of engagement with other states and non-state peoples.

3. Juridical Self-Constraint in the Right of Nations

My primary aim in spelling out Kant's conception of a 'cosmopolitanism within one country' will be to further illuminate the cosmopolitan encounter. Before we get there, however, I shall discuss the domain of international right. In order to see why this promises to be an instructive comparison, notice that it shares with the domain of

cosmopolitan right the conceptual puzzle on which we started this chapter. On the one hand, both domains are located in the *Doctrine of Right's* section on public (rather than private) right (DoR 6:343). This implies that they do not constitute pure state-of-nature contexts to start with. In this, they contrast with pre-political relations between private individuals who are coercively obliged to enter into the civil condition with one another.⁵ Rather, they are already located within the realm of a specifically institutional (as I hope to show, state-based) kind of normativity. At the same time though, both international and cosmopolitan right are also distinctly *non-coercive* kinds of public right – the pertinent kinds of interactions are, according to Kant's exposition, not subject to coercion by a supreme authority.

My claim is that we can make sense of the conceptual tension recurring on either of these levels by recognising the way in which they are equally tied to, and predicated on, juridical statehood. Obligations of international and cosmopolitical right are, in the first instance, immanent to existing states and their citizens. Rather than licensing states to force other (individual and collective) agents into state-like institutions *with* them, Kant advocates a cosmopolitan transformation of states themselves.

The Non-Coerciveness of International Right

Kant's endorsement, in both *Perpetual Peace* and the *Doctrine of Right*, of a distinctly voluntary, loose and non-coercive international federation has been subject to interpreters' puzzlement ever since. Not only does it seem to be in tension with his claim, central specifically to the *Doctrine of Right*, from the intrinsically coercive nature of right (DoR 6:231); an idea that finds its most prominent manifestation in his vindication of a

⁵ Kant *does* of course say that states are “in a state of nature [...] in external relation to one another” (DoR 6:347). However, as I shall show shortly, the fact that they are a rightful condition themselves fundamental changes what this amounts to.

coercive duty, incumbent upon private individuals in the state of nature, to enter the civil condition (such that an analogous move may be expected internationally). Almost more strikingly, Kant's position constitutes a pointed departure from his earlier writings.

Particularly the early *Idea for a Universal History* had been emphatic on the need for a strong, coercive kind of federal global authority "resembling a civil commonwealth that can preserve itself like an automaton" (IUH 8:25, cf. Kleingeld 2009, pp.177-179).⁶ At the heart of Kant's argument there is a sustained analogy between the respective states of nature on the individual and international level, matching the requirement for persons to submit to a public authority with a corresponding obligation of states to join a coercive federation.

Both *Perpetual Peace* and the *Doctrine of Right* start with the very same analogy: the claim that "peoples, as states, can be judged as individual human beings who, when in the state of nature (i.e., when they are independent from external laws), already harm one another by being near one another" (PP 8:354; see also DoR 6:344). Yet, Kant surprisingly backs away from his earlier endorsement of a coercive form of world government. The "federation" (*Bund*) of states that he continues to argue for now depicts a much weaker kind of institution.⁷ It is a merely voluntary association of states without coercive powers, one that "involves no sovereign authority (as in a civil constitution)" and "can be renounced at any time and so must be renewed from time to time" (DoR 6:344). This institution, whose sole purpose is to prevent war and conflict among its constituents, is neither established or maintained by force, nor are its decisions coercively enforced.

Kant's motivation for replacing his early model of an internationally coercive sovereign power with a relatively powerless federation remains highly contested among interpreters. A prominent

⁶ Kant makes a very similar argument in the early Anthropology Lectures Friedländer (25:696) and Pillau (25:843).

⁷ Kleingeld (2004, pp.322/3, fn.18) points out that the term federation itself is neutral as to whether or not the institution has the power to enforce its laws.

array of readers have accused him of merely giving in to the realities of power politics (call this the *feasibility argument*).⁸ Taking their cue from his (in)famous claim that states “do not at all want” (PP 8:357) to have their sovereignty curtailed in the way required for a coercive federation, they see him as simply acquiescing in states’ refusal to do what they ought to do, that is, submit under a supra-state coercive authority. This is a pointedly un-Kantian move. Since when does it matter to Kant whether or not you *want* to act on your duty? Nevertheless, it has been a major driving force behind interpreters’ attempt at making Kant ‘consistent’ with his own ideas by vindicating a world state solution even amidst his own explicit refusal to do so (e.g. Byrd & Hruschka 2008; Hodgson 2012).

There are, however, a number of textual resources on the basis of which more charitable and arguably more promising explanations for Kant’s refusal to stick to a coercive federation can be provided. First, the problem might be purely conceptual (calls this the *contradiction in conception argument*). In *Perpetual Peace*, Kant argues that in the idea of a state of states “lie[s] a contradiction” (PP 8:354), for the very notion of international right is predicated on a plurality of states that their subjection to or even unification under a single coercive sovereign would do away with. Critics, however, have complained that – taken on its own – this is a mere semantic point without much purchase (e.g. Carson 1988; Guyer 2000, p.416): the idea of international right may very well presuppose a plurality of states such that it would cease to be applicable under a global political body. Yet, this does not go to refute the desirability of the latter ideal as such. For we may question the very assumption that a right of nations (rather than a ‘right of a state of states’) is of inherent significance.

Instead, Kant may be read as rejecting a fusion of states on the straightforward normative basis that it would be either ineffective or

⁸ Famously Habermas (1998), Höffe (2006, pp.198-201).

dangerous (*the normative argument*). On the one hand, the idea is that a global state would just be too big in size so as to effectively govern and protect its citizens (DoR 6:350, Kleingeld 2004, p.318). On the other hand, Kant famously worries that a hegemonic global empire in the form of a “universal monarchy” would be likely to turn into a “soulless despotism” (PP 8:367). Absorbing all subsidiary political units such that it is freed of any checks on its power, the peace such an institution creates would be that of a graveyard. While this is certainly an important part of Kant’s worry, the purchase of his attack on ‘universal monarchy’ is limited to highly centralised forms of global government that essentially amount to a world state. The *normative argument* cannot account, on similar grounds, for Kant’s scepticism concerning possible institutional arrangements that go beyond his voluntary federation, for instance in requiring partial sovereignty transfers, *without* dissolving all political communities into a single super-state (Byrd 1995; Kersting 1996, pp.437-8).⁹

A more promising take on Kant’s position starts from the observation that, in *Perpetual Peace*, he continues to argue that the “continual approximation” (PP 8:350) of the stronger, coercive kind of federation is possible and a duty prescribed by pure practical reason. Indeed, Kant does insist on the “positive idea of a world republic” before seemingly putting up with its “negative surrogate of a lasting and continually expanding league” (PP 8:357). Now, the idea is not (as on the *feasibility argument*) that the voluntary league of nations is ‘second best’ to a coercive federations of states in the sense of being all we can hope for amidst the realities of state interest and power politics. Rather, proponents of what I call the *provisional argument* (Ellis 2005; Kleingeld 2004; Ypi 2014) suggest that it constitutes a necessary transitional or interim stage on the way to a coercive world government.

⁹ In particular, we could conceive of arrangements in which states transfer only part of their sovereignty to the federal level. See e.g. Scheuermann (2014) and Ulas (2015) for recent alternatives to a global Leviathan.

The thought is that the loose federation goes some way in giving states at least *some* means to resolve their differences, thus paving the way for a deeper union in a stronger type of federation, which remains the ultimate ideal. Kleingeld (2004, p.315), for instance, suggests that “mediating institutions (even if voluntary) can prevent, postpone, or mitigate conflicts in a way that allows for internal improvement within states, and the gradual development toward a more peaceful world”. Once created, these institutional structures will, in the course of time, be consolidated such that states at some point willingly and autonomously enter a global institution that allows their relations to “eventually become publicly lawful and so finally bring the human race ever closer to a cosmopolitan constitution” (PP 8:358). The non-coercive federation thus plays an important preparatory role for state’s voluntary submission to a coercive institution in the future.

I find the way in which the *provisional* reading capitalises on a systematic ambiguity concerning the terms ‘voluntary’ and ‘coercive’ in this context peculiar. If coercion is the imposition of another’s will on yours, how can it ever be consistent with voluntariness? Relatedly, it is at least debatable whether states have the power at all to voluntarily give up their sovereignty and hence effectively their status as states – somewhat analogous to the question whether autonomous persons have the power voluntarily to give up their autonomy and hence effectively their status as persons, for instance by selling themselves into slavery.

Yet, this shall not be my concern at this point. I take the main problem to be a different one. While the *provisional* reading makes a lot of sense within the confines of *Perpetual Peace*, in the *Doctrine of Right* Kant is much more reluctant to demand or affirm anything like the (eventual) curtailment of state power. The question does not seem to be a merely pragmatic one of how to institutionalise or bring about a coercive federation anymore. Rather, Kant has come to see the idea of a world government as in a more fundamental conflict with the juridical authority of states.

What accounts for this shift? The idea underlying what we may call the *sovereignty argument* is that by instantiating a public rightful condition among *some* individuals, states accrue a specific kind of moral status that renders them immune from being juridically compelled themselves (Flikschuh 2010b; Ripstein 2009, pp.225-230).¹⁰ This is not to deny that states (like individuals) are in a disjunctive relation such that, by remaining in the international state of nature, they do “wrong in the highest degree” (DoR 6:344). At the same time though, as supreme rights enforcers domestically, states cannot be compelled to leave this condition or consequently to submit to the norms issued by a coercive institution. Their juridical standing prohibits supranational compulsion such that we are left with a voluntary league.

Notice that we do find traces of this view already in *Perpetual Peace*, where Kant argues that a coercive duty to leave the (international) lawless condition is not applicable to states “since, as states, they already have a rightful constitution internally and hence have outgrown the constraint of others to bring them under a more extended law-governed constitution in accordance with their concepts of right” (PP 8:355).¹¹ But only in the *Doctrine of Right* does he seem to be fully aware *in what way* this is the case. For only there is Kant’s view of juridical statehood fully developed. By this, I mean the notion that the state’s essential function is to guarantee and enforce rights relations that could not exist otherwise and more importantly that, in so doing, it accrues a specific kind of moral status or personality. That is to say, in instantiating a general united or public will that imposes coercive laws on everyone (subject to it), the state acts as a distinctly public authority overriding

¹⁰ Kleingeld (2004, p.311) effectively combines a *provisional argument* with a *sovereignty argument*, claiming that the need for a transitional stage is motivated “by a concern that a state of states that is established by coercing unwilling states into it runs counter to the political autonomy of the citizens of the member states”.

¹¹ As Kant puts it in the preparatory works to *Perpetual Peace*, states are allowed to resist the attempt by others to force them to join a state of states “because within them public law has already been established, whereas in the case of individuals in the state of nature nothing of the kind takes place” (23:168).

the plurality of conflicting private wills. And this status renders the state itself immune from juridical compulsion (Flikschuh 2010b, p.480).

This allows us to see how far the analogy between lawless conditions among individuals and among states precisely goes: states, like individuals, have a will (while theirs is artificial) in virtue of which they have moral personality. Yet unlike individuals, their will is what we may call “juridically sovereign” (Flikschuh 2010b, p.480): the status of being the supreme enforcer of rights relations among some individuals is constitutive of their distinct kind of public will. Subjecting them to a superior coercive authority would effectively deprive them of their very personality and thus violate their moral status. Yet, while states’ entrance into a coercive institution would dissolve their moral personality, this is not the case with individuals. In contrast to states, the latter thus are indeed liable to being compelled into the civil condition. Against this background, Kant’s denial, in the *Doctrine of Right*, of a truly public (qua coercive) form of international right does not stem from a pragmatic but rather a conceptual difficulty. This kind of difficulty cannot be solved by simply hoping that, over time, states will turn into something else and come to a point where they want to do away with their own sovereign juridical standing.

Sovereignty and Self-Enforcement

I have just endorsed the *sovereignty argument* as the most plausible attempt to make sense of Kant’s refusal, particularly in the context of the *Doctrine of Right*, to uphold his earlier vindication of a coercive form of global government. I do not claim originality for this reading, nor do we necessarily need to invoke earth dwellership in order to appreciate it. Rather, my aim is to prepare the return to the global standpoint in the subsequent section by developing a more general reading of Kant’s tripartite system of rights relations as predicated on the existence of states and spelling out a set of obligations incumbent on them.

Notice, to that effect, that in virtue of their moral personality, states do not only have the requisite standing that protects them from being compelled into a coercive federation. They are also morally accountable and thus bearers of obligations.¹² That is to say, states are bound to acknowledge their duty to join a voluntary federation and submit to its rulings as a corollary of their very claim to be free from compulsion. Their failure to do so would be a failure to treat themselves as moral agents.¹³ This obligation is *predicated* on states in the sense that it is incurred by virtue of their own claim to a certain (juridically sovereign) standing that accounts for their immunity from outside interference. And it is *incumbent* on states in the sense that it binds them internally. While states, like individuals, ought to leave the lawless condition vis-à-vis one another, unlike individuals they cannot be forced to do so. Juridically sovereign states must impose the requisite obligations on themselves and do so of their own accord.

The observation that states ought to comply with their obligations under the law of nations but cannot be compelled to do so explains not only why Kant ends up with the loose institutional framework of a voluntary league of nations.¹⁴ It elucidates also why international right is presented as part of the juridical domain of public right despite being non-coercive. It is public in the sense that albeit states are in a lawless condition *with one another*, they each already have a lawful condition internally that binds them juridically to comport themselves in specified ways towards other states. At the same time, their moral personality means that they cannot be forced into (or more generally, be subject to) a coercive supranational arrangement.

This, however, does not yet answer the questions what the point and purpose is of states' juridical self-constraint. It would seem that if

¹² Possession of a will marks personhood and thus moral imputability for Kant (DoR 6:223). As bearers of an artificial will, states are thus morally accountable.

¹³ Analogously, in the ethical domain, anyone who lays claim to the capacity for autonomy thereby acknowledges their own status as obligation bearers.

¹⁴ Flikschuh (2010b, p.417) calls this Kant's "sovereignty dilemma".

the problem is that states “wrong one another” (DoR 6:354) in an international lawless condition, self-enforcement should strictly speaking be juridically irrelevant: where others raise legitimate rights claims against you, it should not be left to your discretion whether you act accordingly or not. Yet, this seems to be precisely the situation we are left with, for the voluntary league patently lacks the requisite authority that would allow it to establish relations of strict reciprocity among states. If states refuse to join the permanent congress or simply withdraw when push comes to shove, they can be morally blamed but neither coerced to do otherwise nor punished, for instance through economic sanctions (Stilz 2013, p.552). Practically speaking, an institution’s normative power to adjudicate conflicts remains toothless without the power to coercively enforce its decisions. By joining such a non-coercive federation that is “dissoluble at any time” (DoR 6:351), states thus remain caught up, at least to some extent, in a situation in which each of them judges in accordance with what “seems right to it” (DoR 6:312), i.e., a lawless condition. So what guarantee do states have that joining a voluntary league will make *any* practical difference to their interaction with other states?

The answer is that there can be no such guarantee. For whether one state’s subjection to a voluntary association makes any difference depends on whether other states do likewise. If, however, most or even some states continue to make use of their right to wage war in pursuit of whatever they judge to be self-defence, or refuse to accept the federation’s decision as binding, a single state’s acknowledgement of its obligation under the right of nations is bound to remain inefficacious. And yet, given that practical reason “pronounces” that “there is to be no war” (DoR 6:354), acting unilaterally in acknowledgement of their duty is all states can (and must) do. Absent a coercive global institution that would force states to abide by its objective standards, what Kant describes as a “permanent congress” of states is the only means to establish a procedure “for deciding their disputes in a civil way, as if by

a lawsuit, rather than in a barbaric way (the way of savages), namely by war.” (DoR 6:351). Hence, the only option states are left with is to enter and comply with such an institution, hoping that others will follow their example such that their juridical self-constraint is not in vain but serves the “continual approximation to the highest political good, perpetual peace” (DoR 6:355).

4. Juridical Self-Constraint in Cosmopolitan Right

In the preceding section, I focused on the domain of international right in order to start outlining Kant’s conception of a ‘cosmopolitanism within one country’. On this view, the idea of a cosmopolitan constitution is foremost meant to depict a specific kind of domestic legal and institutional arrangement. My interest in this domain was sparked by a structural analogy I identified with cosmopolitan right. Both realms are deliberately placed by Kant in the section on public (rather than private) right as characterised by a specifically institutional kind of normativity. And both are presented as non-coercive kinds of rights relations, that is, they are not subject to publicly authoritative institutions.

In the context of the right of nations, I claimed that we can make sense of this tension by understanding the pertinent requirements as immanent to states’ juridical standing. States incur obligations by virtue of their claim to (artificial) moral agency, which also renders them immune from compulsion. This is not to deny that the impossibility of a supra-state coercive authority with the power to regulate rights relations between states is not a real predicament for Kant, or to assert that there is a neat solution juridically speaking. Yet, in the absence of strict reciprocity on the international stage, voluntary entrance to a loose federation is the only way for sovereign powers to negotiate rights relations and hence to work towards a condition of peace.

I shall now go on to make a structurally analogous argument concerning the domain of cosmopolitan right. My claim is that the cosmopolitan context is similarly tied to juridical statehood. The pertinent obligations are incumbent upon states as well as those who claim to represent them, and institutionally implemented on the state level. That is to say, states are duty-bound to constrain themselves and, most importantly, their citizens to interact with outside individuals and non-state peoples on the basis of hospitality. In the absence of a global institution with coercive powers over the entire cosmopolitan plurality, juridical self-constraint is the only way in which states can initiate a gradual process in the course of which they may hope to learn to understand their stateless counterparts and ultimately find shared terms to get along.

Before I go on to make good on this claim, let me briefly recall where Chapter 3 left us in this regard. There, I used the puzzle of non-state peoples in order to make two claims. On the one hand, I restricted the scope of Kant's duty of state entrance to those who raise property claims against one another. Non-state peoples lack the pertinent duty given that they ostensibly refrain from making such claims. On the other hand, state citizens' recursive reflection on the (moral conditions of) possibility of unilaterally raised property claims not only yields a duty of state entrance towards their co-citizens, but also duties of cosmopolitan right against all others with whom they cannot but share the earth. Hence, they are duty-bound to constrain their comportment towards non-state peoples in acknowledgement of shared earth dwellership. Specifically, they must make good faith unilateral attempts to make contact with the other side. I shall now take up this line of argument and show that their rightful condition 'back home' not only accounts for Western emissaries' cosmopolitan obligations to interact with distant strangers on the basis of cosmopolitan right but that it also constitutes the only site for implementing these obligations.

Contract and Coercion

Recall, to start with, that Kant equates hospitality with a right to seek ‘commerce’. This is supposed to be understood broadly, as a formal, communicative right that allows us to “present ourselves” (DoR 6:352, see also Niesen & Eberl 2011, p.251) for a number of different modes of possible interaction including cultural, intellectual and political exchange (Muthu 2009, p.195). Kant is primarily interested in the general possibility of offering, accepting and rejecting any of these kinds of interaction. For present purposes, however, I want to focus on a narrower and in fact more traditional meaning of ‘commerce’ as referring specifically to economic or trade-related types of contact and exchange. Focusing on this aspect, which is an important though certainly not the only kind of cosmopolitan interaction Kant has in mind will allow me to make my point as clearly as possible.¹⁵

In Chapter 3 we encountered Kant’s claim that commercial relations between Western settlers, traders or emissaries and non-state peoples ought to be of a contractual kind. On the one hand, this is no surprise given that Kant takes a just exchange of goods in general to take the form of a contract. In regulating both relocation (rightful residence) and fair transaction, contracts thus also regulate two essential aspects of global trade (Vanhaute 2014, p.136). On the other hand, though, it is not clear at all whether Kant is actually in a position to conceive of a contractual relation between Europeans and non-state peoples conceptually speaking. Before I go on to unpack this claim, it will be helpful to keep in mind Kant’s general account of contractual relations as laid out earlier in the *Doctrine of Right*:

¹⁵ As Mary Gregor (DoR 6:352, remark ‘o’) observes, in the course of the section on cosmopolitan right Kant moves back and forth between the term *Wechselwirkung*, i.e., the abstract idea of interaction or intercourse in general (and, recall, the crucial concept to describe the relation of disjunctive community), and *Verkehr*, which he uses specifically in his discussion of contracts to signify exchange of property. I take this to confirm that cosmopolitan right should be understood to contain, but not be reduced to, economic forms of interaction.

Every contract consists in itself, that is, considered *objectively*, of two acts that establish a right, a promise and its acceptance. Acquisition through acceptance is not a *part* of a contract (unless the contract is a *pactum re initum*, which requires delivery) but the rightfully necessary *result* of it. – But considered *subjectively* - that is, as to whether this rationally necessary result (the *acquisition* that *ought* to occur) will actually *result* (be the *natural* result) - accepting the promise still gives me no *guarantee* that it will actually result. Since this guarantee belongs externally to the modality of a contract, namely *certainty* of acquisition by means of a contract, it is an additional factor serving to complete the means for achieving the acquisition that is the purpose of a contract. – For this, three persons are involved: a *promisor*, an *acceptor*, and a *guarantor*. The acceptor, indeed, gains nothing more with regard to the object by means of the guarantor and his separate contract with the promisor, but he still gains the means of coercion for obtaining what is his. (DoR 6:284)

In Chapter 3, I drew on this passage to illustrate the sense in which, in the context of cosmopolitan right, reciprocal interaction is something we have to *bring about*, rather than something we simply *have* from the outset. For, as Kant explains in the passage at hand, a contractual interaction consists of two parts or moments (Vanhaute 2014, pp.136-139): someone making an offer and someone else taking up or assenting to that offer. Only if both parties of a possible contract agree on the proposed exchange (of deeds or goods) are their wills ‘united’ in agreement. Analogously, while Western travellers are perfectly entitled to make offers to engage in commerce, whether the interaction actually comes about depends on whether the other side takes up that offer.

Let me now investigate this idea a bit more systematically. In particular, let me point out that there are two perspectives from which we can conceive of Kant’s appeal to contractual vocabulary. On a general level, there is a sense in which a contract is simply a pure or bare form of a reciprocal interaction. For, like any rights relation (DoR 6:230), a contractual relation is by definition one in which one party cannot bind the other to more than she is in turn bound by them. As

such, we can even think of a contract as a “prototype of rights relation” more generally (Flikschuh & Ajei 2014, p.232) – the form of a contract encapsulates a central formal feature of a rights relation, namely its reciprocity.

On the other hand, though, contractual relations also have a more specific and technical meaning for Kant. Keep in mind that the passage at hand is located in the *Doctrine of Right*'s section on private right and serves to introduce the contract as one of three ‘instances’ of acquired right alongside property and status relations (DoR 6:260). Given that Kant likens a contract to a property exchange, it should not come as a surprise that he takes non-state peoples – who, following my earlier argument, do not share in Western property practices – to be “ignorant[t]” (DoR 6:353) also of the kind of vocabulary that would allow them to enter contracts.¹⁶ How can Kant take himself to intelligibly conceptualise cosmopolitan interactions as contractual if only one side of that interaction is familiar with the relevant juridical concepts?

While there is certainly a tension here, I believe we can make productive use of it. In particular, I think that it can be taken to confirm that the cosmopolitan encounter is conceived from the perspective of statist emissaries. From the global standpoint, they obtain the reflective insight that the idea of interacting on a contractual basis may be parochial. That is to say, it is wedded to their statist form of political arrangement, which is not shared by their hosts. At the same, though, they themselves have no other juridical categories at their avail. So all they are left with in order to find shared terms with non-state peoples is to make use of their own concepts, yet to do so with a certain epistemic humility. In other words, in the absence of something like a shared

¹⁶ Kant’s requirement to interact with non-state peoples on a contractual basis was much ridiculed by critics of his time, who took it to offer “proof of Kant’s incapacity to judge of cultural-historical things”, since “primitive peoples”, according to one critic, “lack concepts of right, [and thus] treaties [with them] cannot be made, as Kant demands” (Medicus 1900; cited in Wood 1999, p.341 fn.8)

juridical meta-language, all they have to go on are their own terms of reciprocity. What they can do is to “comport themselves honourably towards the nomads *in the only way they, the settlers, know*, i.e., by offering to engage with the nomads on what are to settlers rightful terms“ (Flikschuh 2017, p.90).

More specifically, amidst non-state peoples’ lack of acquaintance with the nature of contractual conventions, Europeans can very well tell the difference between honest attempts to propose fair terms of interaction, and “fraudulent” offers, for instance when it comes to purchasing nomadic land. This difference, I would like to suggest, is one between interacting with distant strangers from the global standpoint, and denying their earth dwellership by deceiving them through “specious” (DoR 6:353) appeal to contractual conventions. The reflexivity of the global standpoint plays a critical function here: it allows Western emissaries insight into the contingency of their own juridical concepts and leads them to reflect on their mode of comportment towards non-state peoples. Their offers must take a specific form and must remain just that: offers.

Now, there is a third aspect of contractual relations that we should not lose sight of. Notice that, in the above passage, Kant argues that not two but actually *three* parties are required for a contractual relation: not only “promisor” and “acceptor”, but also “guarantor”. By ensuring that the former two deliver on what they have promised each other, the latter completes the contract and constitutes its juridical validity. We saw before that Kant takes the strictly reciprocal relation of individual wills (characteristic for rights relations) to be constituted by an omnilateral rights-pronouncing authority – no party can unilaterally claim juridical authority to bind the other’s will. As far as contractual agreements are concerned, the performance of any promised deed remains contingent on the respective party’s good will unless a public authority externally enforces the agreed terms. That is why, after all, Kant takes his reflections on contractual relations, together with the

other two instances of acquired right, to ground the need to enter the civil condition.

The fact that the domain of cosmopolitan right lacks such a designated rights enforcing authority may be taken to cause further headache concerning Kant's appeal to a contractual relation in the cosmopolitan encounter. After all, it seems to imply that European's comportment is a matter purely of their good will. Yet, this is not the case: recall that while their relations with non-state peoples are bound to lack strict reciprocity, Western emissaries are themselves members of a public rightful condition. As such, they are not only juridically bound to interact with distant strangers from the global standpoint by proposing fair and equitable rather than exploitative terms when abroad. Their states 'back home' are also tasked to institutionalise these obligations. Hence, the sense in which Kant's discussion of the cosmopolitan encounter is in fact accurately placed in the domain of public right is that states must implement and enforce the requisite obligations against their own citizens. Cosmopolitan right binds states to legislate the relevant provision of their own accord.

My focus so far has been on the way in which these provisions are to constrain citizens' comportment towards distant others; i.e., states' obligation to enforce rightful conduct by merchants, settlers, or missionaries who claim to represent them. In the narrower economic sense, this means that they set "parameters on admissible behaviour in the global market" (Kleingeld 2011, p.146) and put an end to the "exploitative, profit-seeking practices of voyagers and the actions of the quasi-sovereign corporations like the imperial Indies companies" (Muthu 2009, p.195). More generally, states must prohibit all kinds of comportment of their citizens that coerces, deceives or takes advantage of another party abroad. They must stop them from engaging in "colonial adventures" of any kind (Niesen & Eberl 2011, p.266).

That said, we should not forget that the rights and obligations of foreign newcomers are applicable not only to the cosmopolitan

encounters of state citizens abroad. Recall, from Chapter 2, that Kant also discusses states' obligations towards foreign visitors on their own territory. In this context, he mentions the victims of a shipwreck washed ashore and sailors seeking refuge from a storm in a foreign harbour (Preparatory PP AA23:173). Both, he argues, can legitimately claim hospitality rights to remain on the host lands and cannot be returned to the sea or their homeland if this would in any way endanger them. This is not the kind of cosmopolitan encounter that I have been primarily concerned with over the preceding chapters. Nor is it the mode of cross-community interaction that Kant himself was primarily worried about in formulating cosmopolitan right. Still, these cases can be taken to yield a second set of cosmopolitan obligations that states are bound to impose on themselves, towards what we would nowadays call asylum seekers (Benhabib 2004, pp.25-48). A cosmopolitically transformed state not only regulates the comportment of its citizens abroad, but also codifies the hospitality rights of a castaway who washes up on its shore pleading for food, shelter, and protection. Following the present chapter's line of argument, in a world without a global public rights regime states are the only site for an effective legal implementation and realization of refugee law.

From Free Trade to Fair Trade

I have just argued that Kant's domain of cosmopolitan right contains a set of juridical constraints that states must impose on themselves and their citizens with regard to their interactions with outside individuals and non-state peoples. That is to say, the state itself constitutes the institutional framework for realizing cosmopolitan right. This speaks to the reflexive function of the global standpoint, which is in an important respect a reflexive standpoint on states.

In the last section I asked already what the point is, juridically speaking, of such *self*-constrained comportment. The idea was that a

loose institutional framework, albeit lacking enforcement powers, helps states to resolve conflicts and builds trust among them. In the absence of a coercive federation, their own submission to the objective standards set by a permanent congress is states' only way to work towards a peaceful coexistence with other states. Analogously, we now need to answer the question what the purpose of juridical self-constraint is in the cosmopolitan domain. Why subjecting our own offers of commerce to the pertinent norms if the (possibly) ensuing interaction is bound to lack the strict reciprocity on which rights relations are modelled? In other words, what is the point of hospitality in the absence of truly *public* cosmopolitan right?

In order to answer this question, it helps to reconstruct Kant's change of mind, in the course of his political writings, away from what is initially an almost unbounded enthusiasm about free trade and cross-community interaction more generally. In essays such as the *Idea for a Universal History*, Kant praises the spirit of commerce as driving human development. The thought is that commercial relations are a specific sort of social relation that naturally grows with the development of our natural predisposition' to "unsocial sociability" (*ungesellige Geselligkeit*). In so doing, it cultivates moral predispositions that will progressively bring about the enlightenment of political institutions (IUH 8:27–8). Combining this narrative with a hierarchical account of human races and a stadial theory of human history that culminates in the supposedly superior age of commercial society (as laid out in the *Conjectural Beginnings*), the early Kant joins contemporaries such as Vitoria and Pufendorf in celebrating the civilizing effects of global commerce.

The mature Kant, in contrast, is much more ambivalent about the merits of free trade and hesitant to unconditionally welcome it (e.g. Muthu 2009, pp.186-200). In the course of the 1790s, Kant started to recognise the negative effects of the unregulated commercial expansion of Western states that earlier essays had been silent on: trade relations between foreign merchants and indigenous peoples in particular might

very well be harmful and exploitative rather than fair and mutually advantageous (Vanhaute 2014, p.134). That is not to say that he does not continue to believe that commerce *can* play an important and productive role in establishing peace among all participants in the disjunctive global community. He simply does not take this to be the case automatically or unconditionally any more. Attempts to seek commerce with strangers can be productive *under the condition* that they take a specific form. In order to yield this effect trade requires regulation that prevents malpractice. Kant thus becomes interested in “fair trade” rather than “free trade” (Kleingeld 2011, p.137),¹⁷ i.e., the limits and norms of engaging in cross-community interaction with distant others. In a nutshell, trade and commerce have to proceed against the background of (cosmopolitan) right in order to have the intended productive effects.

Of course, in the absence of a supra-national authority with the coercive powers to enforce commercial contracts – to act as their ‘guarantor’ – there can be no assurance that cosmopolitan interactions proceed on equitable, that is reciprocal and mutually beneficial terms (Vanhaute 2014, p.134). That is not to say, however, that fair transactions may not very well take place. They are simply contingent on whether the parties involved offer (what they take to be) fair terms of cooperation. In the absence of international institutions administering cosmopolitan right, some transactions will be of mutual advantage, while others are likely to be unfair, abusive and exploitative. Against this background, the effects of commerce – whether it facilitates peace rather than conflict, repression and war – depends on states’ willingness to constrain their own citizens’ activities abroad.

Kant’s hope is that, initially, successful instances of voluntary and mutually beneficial commerce increase the interdependence among participants and unites them in common interest. In the course

¹⁷ Samuel Fleischacker (1996), in contrast, reads Kant basically as a free trade apologist.

of time it may even “yield some modicum of mutual understanding” (Muthu 2014, p.90). As he puts it in *Perpetual Peace*, it may bring strangers “into understanding, community, and peaceable relations with one another, even with the most distant” (PP: 8:368). Regular and peaceful contact changes the way people see each other, and leaves them more inclined to pursue peaceful negotiation (rather than war and aggression) where tensions emerge. Ultimately, there is no guarantee that we will arrive at a shared basis for interacting with non-state peoples. Yet, by proposing (what we take to be) fair or reciprocal terms we at least show our willingness to find them.

If we look beyond the narrow domain of economic interaction and think of “commerce” as a broader communicative engagement, we can identify a similar dynamic. Niesen and Eberl (2011, pp.257/8; see also Bohman 1996) argue that cosmopolitan interaction can contribute to the emergence of something like a global public sphere in which violations of hospitality can be communicated and publicised. This creates a situation in which an injustice committed “on *one* place of the earth is felt in *all* (PP 8:360). For instance, the misdeeds and atrocities of colonisers abroad reach those ‘back home’ and create moral outrage. The thought is, again, that any form of mutual understanding among the plurality of participants in disjunctive community starts with communicative offers.

Yet, the prospect of what may ultimately lead to something like a shared juridical vocabulary should not tempt us to look for an easy way out of the predicament that undeniably consists in the non-coercive nature of both domains of right beyond the state. In his discussion of cosmopolitan right, Kant warns that

Someone may reply that such scruples about using force in the beginning, in order to establish a lawful condition, might well mean that the whole earth would still be in a lawless condition; but this consideration can no more annul that condition of right than can the pretext of revolutionaries within a state, that when constitutions

are bad it is up to the people to reshape them by force and to be unjust once and for all so that afterwards they can establish justice all the more securely and make it flourish. (DoR 6:353)

In the domestic context, Kant seems to suggest here, the revolutionary looks for a quick fix: rather than going the painstaking way of gradually reforming the legal order in line with its own underlying principles,¹⁸ she is after a violent shortcut. In doing so, Kant thinks, she destroys the prospect of a just order altogether. Similarly, colonizers on a “civilizing” mission hope for neat solutions where there are none to be had. On their view, the quickest way to establish rights relations with non-state peoples is to force them into the state or some other kind of shared coercive institution. Yet in so doing, they undermine the possibility of peaceful cosmopolitan interaction altogether. Finding terms on which such interaction can take place is a daunting process, one in the course of which statist and stateless peoples gradually learn from each other’s ways and slowly begin to communicate and interact on reciprocal terms. Our cautious, peaceful offers of interaction are only a first step intended to initiate such a process. Ideally, what they get off the ground is a dynamic in the course of which strangers who each acknowledge their ignorance of one another’s ways get to know and mutually understand each other. While this will never allow us to overcome the problem of ‘absent’ strict (*cum* coercive) reciprocity, it is the only way for us to acknowledge shared earth dwellership.

Conclusion

In developing a ‘cosmopolitanism within one country’ for a contemporary context, Niesen and Owen (2014) are motivated by their

¹⁸ I look more closely at Kant’s reformist account of political progress in the subsequent chapter.

impression that the current intellectual climate is too heavily focused on overarching supranational collectivities, constitutions and governments and thus on ways of transcending the modern state. This, they argue, has (lamentably) directed our attention away from proposals that emphasise transformative potentials that inhere it. Only once we stop restricting our theoretical horizon exclusively to models of a post-national order will we be able to envision ways of transforming our world of states (and the pertinent ideals of membership and belonging) in a cosmopolitan direction. The same could be said of the interpretive orthodoxy concerning Kant's cosmopolitanism, which is to read the tripartite system of rights relations as laying out an institutional framework for a global constitutional order.

In the context of their own conception, Niesen and Owen understandably put much emphasis on opening up states to outside influence. Their specific proposals reach from policies that extend membership and participatory rights to foreigners, to far-reaching rights of migration and movement. The reason that these aspects (with the possible exception of a legally enshrined right to asylum) remain underexposed in Kant's own account is that his worries concerning cross-community interaction are simply different to ours: for him, Western states surface mostly as would-be colonizers that travel the world with the intention of spreading their statist political arrangements, rather than being on the receiving end of migration flows. This explains why Kant is keen to formulate his hospitality right with extreme caution and with the primary intention of restricting the rightful claims of visitors.

In reconstructing Kant's own version of a 'cosmopolitanism within one country', my focus was similarly on the obligations of those arriving at the shores of distant strangers rather than their rightful entitlements. For my aim was to make headway on the encounter between European travellers and non-state peoples that has caused us so much headache over preceding chapters. Developing a structural

analogy to the right of nations, I argued that we should understand both domains of right beyond the state as laying out a set of norms that states are duty-bound to impose on themselves and their citizens in their interactions with other states and non-state groups. While juridically self-constrained comportment leaves us without the strict kind of reciprocity that only coercive institutions would be in a position to constitute, it is the only means by which states and those who claim to represent them can hope to find peaceable terms of interaction with other states and non-state peoples.

In the larger context of this thesis, in the course of which I have attempted to lead us away from the state context (and for that matter, the property argument), this chapter's argument implies a return to the state. But that is not to say that we are back to where we started. For, what I sketched was the idea of a cosmopolitically *transformed* state. Such a state acknowledges obligations of international and cosmopolitan right: it binds itself to interact with other states on peaceful terms and binds its citizens to do so with distant strangers. As I will go on to show in the subsequent chapter, this allows us to reconceive Kant's notion of cosmopolitan progress as a process in the course of which states gradually approach to their own underlying cosmopolitan principles.

Chapter 6

Progress without Teleology

In the preceding chapter, I argued that the state is the primary site for institutionalising international and cosmopolitan right. Given that, in the *Doctrine of Right*, Kant takes the idea of a supranational coercive institution to be conceptually inconceivable, the obligation to interact with other earth dwellers from the global standpoint is not only predicated on but must also be legally implemented within existing states. Rather than a public global order, Kant's mature cosmopolitanism is thus geared towards a world of radically reformed states that bind themselves to rightful comportment towards other states and non-state peoples of their own accord. To take up the global standpoint from within states is to transform them into cosmopolitan agents.

The present chapter shows how this insight provides us with a novel perspective on Kant's account of cosmopolitan progress, which is conceptualised (both in *Perpetual Peace* and the *Doctrine of Right*) as progress toward 'perpetual peace'. I shall argue that perpetual peace – a condition in which each of the three levels of rights relations is fully in line with its own regulative standard – functions as an idea of reason that arises as a corollary of our obligation to take up the global standpoint. Insofar as we act on our own duty to transform states in line with cosmopolitan principles, we are warranted to adopt a practical belief that other states will act likewise and that non-state peoples accept our offers for commerce, such that we can gradually approach a condition of peace. Our practical belief in the attainability of the “entire

final end of the doctrine of right” (DoR 6:355) serves to orientate our cosmopolitan activity from the global standpoint.

At the heart of my defence of this proposed reading will be Kant’s structural analogy between the idea of perpetual peace – the “highest political good” (DoR 6:355) – and the notion of the highest good familiar from his ethics, that is happiness in proportion to virtue. In both cases, an obligation to set what appear to be unattainable ends threatens to undermine our moral agency. On the one hand, our pursuit of the highest ethical good – cultivation of moral disposition as well as its synthesis with happiness – thus requires a belief in our own immortality and God’s helping hand (the postulates of pure practical reason). On the other hand, the belief in the possibility of perpetual peace, which presupposes that other agents reciprocate our offers for peaceable interaction, allows us to work towards the transformation of our own domestic arrangements without a sense of moral despair. Just as the postulates provide a regulative basis for *ethical* progress, so does belief in the attainability of a justly ordered world provide a regulative basis for *political* action.

The argument unfolds as follows: I start, in Section 1, by reconstructing Kant’s shift away from a teleological, process-oriented conception of cosmopolitan progress (in *Perpetual Peace*) to an agent-oriented practical belief in the attainability of perpetual peace that is more akin to the doctrine of ‘postulates’ (in the *Doctrine of Right*). Section 2 embeds this discussion in Kant’s wider account of political progress. To that effect, I introduce a distinction between *constitutive* and *regulative* levels of analysis in Kant’s politics. These levels concern, respectively, the very nature of a rightful condition – what *constitutes* it – and the *regulative* standard with which we must bring it into increasing conformity. This allows us to conceive of political progress as a process in which we reform an existing institution, such that it gradually approaches its own underlying norm. In Section 3, I return to the context of progress towards perpetual peace. While cosmopolitan

progress takes place primarily within the framework of established statehood, finite agents can only invest the requisite efforts if they have (practical) reasons to believe that those are not in vain. Our duty to transform states into cosmopolitan agents thus licenses us to reasonably hope that a condition of peace among the entire cosmopolitan plurality is attainable. However, the structural analogy between the two kinds of highest goods (and the respective practical attitudes they license) should not lead us to lose sight of their important differences. In particular, the pursuit of perpetual peace neither requires God's assistance nor fully virtuous individuals with a 'holy will'.

1. Progress without Teleology

In both *Perpetual Peace* and the *Doctrine of Right*, Kant conceptualises cosmopolitan progress as progress towards a condition of 'perpetual peace'. My focus in this chapter shall be specifically on the *Doctrine of Right*, where Kant drops the earlier teleological language in favour of an appeal to practical belief in the attainability of perpetual peace that is more akin to his ethical doctrine of the 'postulates'. I will nevertheless start this section with a brief discussion of the much contested 'guarantee' passage. This will allow us to see where Kant's argument in the *Doctrine of Right* is continuous with the teleological framework of *Perpetual Peace* and where he departs from it.

The Guarantee of Perpetual Peace

The 'guarantee' of perpetual peace (PP 8:360) – i.e., the claim that nature "wills" perpetual peace to come about irrespective of human efforts – is generally considered to be the authoritative passage when it comes to Kant's view on cosmopolitan progress; it contains what is arguably one of the most contested puzzles of his political philosophy as

a whole. Imitating the formal structure of a peace treaty, the essay's main part consists of a number of "preliminary" and "definitive" articles outlining the institutional conditions necessary to bring about peace (PP 8:349-360). The prescribed institutional arrangement, on which I focused in the preceding chapter, in turn derives from a more fundamental duty, which "reason itself prescribes" (PP 8:310/11), to work towards the establishment of a condition that puts an end to war and discord – perpetual peace. Against this background, Kant's claim, tucked away in the first of two "supplements" to the essay, comes as a bit of a surprise:

What affords this *guarantee* (surety) is nothing less than the great artist *nature* [...] from whose mechanical course purposiveness shines forth visibly, letting concord arise by means of the discord between human beings even against their will [...]. (PP 8:360)

Kant's stunning claim, it seems, is that nature – the totality of observable events – guarantees that peace will come about, whether we will it or not. Nature has not only created the (empirical) circumstances that require a peaceful order in the first place – for instance, by causing individuals to disperse "even into the most inhospitable regions" (PP 8:363) of the planet – it actually "affords the guarantee that what man ought to do in accordance with laws of freedom but does not do, it is assured that he will do, without prejudice to his freedom, even by a constraint of nature" (PP 8:365).

Echoing the essay's formal resemblance to a peace treaty, Kant argues that nature acts in analogy to a 'guarantor' power that enforces peace treaties should one of the parties fail to comply (Niesen & Eberl 2011, p.267). Invoking strongly teleological language, he insists that "nature *wills* irresistibly that right should eventually gain supremacy" (PP 8:367) and specifies unequivocally that "when I say of nature, it *wills* that this or that happen, this does not mean, it lays upon us a *duty* to do it (for only practical reason, without coercion, can do that) but rather

that nature itself *does it*, whether we will it or not” (PP 8:365).

How to reconcile this appeal to nature with the argument from duty has been the subject of sustained dispute among interpreters (e.g. Ludwig 1997; Kleingeld 1995, pp.62-67). Surely, if nature can and will achieve the pertinent task even against individuals’ wills, then whether or not agents acknowledge any duties on their part makes no difference. Conversely, if individuals *do* act on their obligations, what job is there left to do for nature? Traditionally, interpreters thus worried that Kant’s teleological account of human history threatens the normative dimension of his politics by precluding meaningful action. As just mentioned, speaking to this worry is not my primary aim in this chapter. For in the *Doctrine of Right* Kant drops the pertinent teleology altogether. Nevertheless, understanding what is going on in the ‘guarantee’ passage will help us to appreciate that the problem Kant’s conception of cosmopolitan progress is intended solve – and hence its point and purpose – nevertheless remains continuous across the two works.

A traditionally prominent interpretation of the ‘guarantee’ passage takes Kant to be engaged in a kind of proto-Hegelian reconciliation of theoretical and practical reason (most famously Yovel 1980).¹ Unsurprisingly, Kant’s supposed attempt to offer a narrative of freedom’s historical self-realisation is then diagnosed as a failure: he simply lacks the relevant metaphysical concepts required to tell the Hegelian tale. Of course, anyone familiar with Kant’s wider philosophical outlook – in particular, with the epistemological and metaphysical limits (self-)imposed by the framework of critical philosophy – should in any case be sceptical of such a reading: Kant’s systematic division between nature and freedom makes it impossible from the outset to get a moral argument out of nature. And indeed, immediately after introducing the guarantee, Kant goes on to argue:

¹ This interpretation also reverberates with a more general reading of Kant’s politics as a domain in which self-interest trumps morality (e.g. Höffe 1992). On this view, the political teleology confirms the unavailability of a genuinely moral justification of juridical obligation – nature does what humans cannot bring themselves to do.

nature, regarded as necessitation by a cause the laws of whose operation are unknown to us, is called *fate*, but if we consider its purposiveness in the course of the world as the profound wisdom of a higher cause directed to the objective final end of the human race and predetermining this course of the world, it is called *providence* which we do not, strictly speaking, *cognize* in these artifices of nature or even so much as *infer* from them but instead (as in all relations of the form of things to ends in general) only can and must *add it in thought*, in order to make for ourselves a concept of their possibility by analogy with actions of human art; but the representation of their relation to and harmony with the end that reason prescribes immediately to us (the moral end) is an idea, which is indeed transcendent for *theoretical* purposes but for practical purposes (e.g., with respect to the concept of the duty of *perpetual peace* and putting that mechanism of nature to use for it) is dogmatic and well founded as to its reality. (PP 8:361/2)

Let me point out two interesting features of this passage, which indicate that Kant does not really intend to juxtapose the arguments from duty and nature, but instead suggests an intrinsic connection between the two. First, we get a distinction between “fate” and “providence” as two standpoints we can take on human nature and history. The former is equated with a deterministic and thus ultimately fatalistic perspective from which we observe cause-and-effect relations in the world, while remaining ignorant both of their ultimate cause and their final end. The providential perspective by contrast, which Kant vindicates with regard to the guarantee, evaluates history from its presumed purposiveness.² The idea of a higher cause, that is to say, is nothing we can observe. Rather, it is “add[ed] in thought”, i.e. employed for regulative (not constitutive) purposes. We judge nature *as though* it was purposive.

Second, Kant argues that the guarantee is concerned with a specific practical purpose, namely “its relation to and harmony with the

² Kant emphasises that we should think of nature only, as it were, *in analogy* with providence, a term whose literal meaning should remain restricted to religious inquiry. Ultimately, he thus advocates that we stick to the term “nature” (PP 8:362). On the relation between nature and providence, see Kleingeld (2001).

end that reason prescribes immediately to us (the moral end)”. That which permits us to read nature as guaranteeing perpetual peace is our own moral duty to bring it about. Nature’s seemingly purposeful and unavoidable trajectory towards perpetual peace is nothing we “cognize” in the sense in which we observe law-like regularities in time and space, instead we “infer” it from a practical standpoint.³ This preliminary analysis of the pertinent passage is confirmed a little further on in the text, when Kant claims that nature guarantees perpetual peace “with an assurance that is admittedly not adequate for *predicting* its future (theoretically) but that is still enough for practical purposes and makes it a duty to work toward this (not merely chimerical) end” (PP 8:368).

So the appeal to nature’s assistance does not actually constitute a dogmatic lapse into an eschatological philosophy of history. Rather, we need to understand the guarantee from the perspective of practical rather than theoretical reason – the standpoint of the moral agent, not that of the third-personal observer. This allows us to read it as complementing rather than subverting the agential strand of Kant’s political philosophy. Individual agents are not only indispensable contributors on the path to perpetual peace, the postulated progress indeed arises from their consciousness of the pertinent duty.

I have mentioned that the *Doctrine of Right* gives up on any appeal to nature’s assistance. Nevertheless, there is a sense in which the concern that motivates Kant to help himself, in the context of *Perpetual Peace*, to teleological language in the first place remains the same. The problem is that we do not know whether attaining the final cosmopolitan end – perpetual peace – is actually within finite human capacities. Hence, in order to be able to pursue and gradually

³ The kind of cognition Kant precludes here is *theoretical* cognition (through representation of empirical objects), which does not rule out that the providential perspective provides us with a form of *practical* cognition of the course of nature. The difference between theoretical and practical cognition (or, relatedly, between cognition [*Erkenntnis*] and knowledge [*Wissen*]) has lately become subject to increasing scholarly debate, see e.g. Kain (2010), Watkins and Willaschek (2017).

approximate it (thus fulfilling our duty), we are warranted to adopt a strong kind of practical attitude (here: belief in nature's assistance). Yet, while the problem to which the teleology is meant to provide a solution remains, Kant changes his proposed solution to it and hence the way he conceptualises cosmopolitan progress.

The Highest Political Good

According to most interpreters, unlike *Perpetual Peace* the *Doctrine of Right* is notable precisely for its absence of teleological language and any talk about nature's (or even divine) assistance (e.g. Flikschuh 2000; Ripstein 2009; Byrd & Hruschka 2010). That is not to say, however, that the problem of cosmopolitan progress is not of concern to Kant. At the very end of the *Doctrine of Right* (DoR 6:354/5), in a "Conclusion [*Beschluss*]" attached to the final section on cosmopolitan right, we do get a set of claims that provide a reconceived take on a problem very similar to that which had led Kant, in *Perpetual Peace*, to evoke nature's assistance.

In the relevant passage, Kant effectively starts by repeating his argument for practical belief. The thought, familiar from the doctrine of 'postulates' in his ethics, is that a particularly strong kind of epistemic attitude can be warranted on purely practical grounds – that is, because of some end we have to set for ourselves – rather than objective evidence (DoR 6:354):

If someone cannot prove that a thing is, he can try to prove that it is not. If (as often happens) he cannot succeed in either, he can still ask whether he has any *interest* in assuming one or the other (as a hypothesis), either from a theoretical or from a practical point of view [...] An assumption is adopted from a practical point of view in order to achieve a certain end [...]. What is incumbent upon us as a duty is [...] to act in conformity with the idea of that end, even if there is not the slightest theoretical likelihood that it can be realized, as long as its impossibility cannot be demonstrated either.

He then goes on to link this idea to the cosmopolitan context, characterising perpetual peace as an item of practical belief:

So the question is no longer whether perpetual peace is something real or a fiction, and whether we are not deceiving ourselves in our theoretical judgment when we assume that it is real. Instead, we must act as if it is something real, though perhaps it is not; we must work toward establishing perpetual peace and the kind of constitution that seems to us most conducive to it (say, a republicanism of all states, together and separately) in order to bring about perpetual peace and put an end to the heinous waging of war [...]. And even if the complete realization of this objective always remains a pious wish, still we are certainly not deceiving ourselves in adopting the maxim of working incessantly toward it.

Finally, Kant invokes yet another concept familiar from his ethics, that of the highest good:

It can be said that establishing universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of the doctrine of right within the limits of mere reason; [...] The attempt to realize this idea should not be made by way of revolution, by a leap, that is, by violent overthrow of an already existing defective constitution (for there would then be an intervening moment in which any rightful condition would be annihilated). But if it is attempted and carried out by gradual reform in accordance with firm principles, it can lead to continual approximation to the highest political good, perpetual peace.

It is worth quoting these passages at length as they contain significant textual evidence that will turn out to be crucial as we go along. At least the problem Kant is concerned with appears to remain broadly continuous with *Perpetual Peace*: how the adoption of a certain practical attitude is rationally warranted (and necessary) for finite agents to fulfil their duty to gradually work towards an end (perpetual peace) the attainability of which they cannot be certain about.

That said, the way Kant conceptualises this practical attitude – and hence cosmopolitan progress – changes significantly. Notice the striking absence of any appeal to the will of nature in the pertinent passage. The teleological language that dominated the ‘guarantee’ passage has completely disappeared. By invoking the doctrine of postulates from his ethics, Kant replaces the assistance of nature or providence with a more general attitude of belief in the attainability of our ends. Of course, there is no actual mention of the ethical postulates – God’s existence and our own immortality – here. This should remind us that, as we go on to explore the analogy he invokes in this passage, we need to retain an acute awareness also of its limits. We must avoid losing sight of what it is that *distinguishes* the respective “highest goods” in ethics and politics as well as the requisite practical attitudes.

But for now, let us focus on the shift in Kant’s conceptualization of cosmopolitan progress. I would like to suggest that we can think of it as one from a ‘process-focused’ to an ‘agent-focused’ practical attitude. The former asks how to get from A to B, the latter asks how we can do what we ought to do, that is, take up the global standpoint. While I do not have the space here to explore this idea further, it seems plausible to read this change as related to the preceding chapter’s shift from a transitional dynamic of overcoming sovereign statehood with the help of nature (in *Perpetual Peace*), towards our duty to transform states from within (in the *Doctrine of Right*). For, the practical belief in the attainability of perpetual peace does not commit us to read history as an end-directed, purposive process but to the realisability of our ends. One important implication of this shift is a weakened assertability condition: while a teleology claims to find evidence of actually occurring progress in history,⁴ a practical belief claims not to need such evidence, given that *ought implies can*. We are licensed to assert the attainability of the

⁴ Along these lines, Kant’s endorsement of the French revolution – which seems in tension with his prohibitive stance on any resistance against authority across other works – is often interpreted as being supposed to be read in support of the assumption that mankind is actually on a route of “endless progress” (CF 7:85).

proposed end as long as its impossibility “cannot be demonstrated either” (DoR 6:354).⁵ We do not need to find signs of actual progress as long as its mere possibility cannot be ruled out.

2. The Possibility of Political Progress

What I have done so far is reconstruct a change in the way Kant conceptualises cosmopolitan progress. In the *Doctrine of Right*, he drops the earlier teleological language in favour of an argument for practical belief akin to the one he vindicates with regard to the ‘postulates’ we know from his ethics. This, of course, leaves open the question why Kant takes such an assent to be essential for our ability to gradually work towards perpetual peace in the first place. I take it that in order to answer this further question, we need to leave the cosmopolitan context behind for a moment and turn to the *Doctrine of Right’s* more general account of political progress.

Notice that it is not only the systematic place of political progress in Kant’s philosophy of right that raises questions, but its very conceptual possibility. For, the very idea that the ‘final end’ of politics is something we must gradually work towards yet can at most approximate by degree is at least in tension with the importance Kant attaches to our entrance into a rightful condition. The latter is presented as a ‘binary’ matter: a rightful condition is something we *do* or *do not* have, rather than something that pertains to a *greater* or *lesser* extent. This idea sits uneasily with anything like a gradual, developmental process the final end of which can only be approached asymptotically (such that its pursuit would require practical assurance).

Let me briefly introduce an example that brings this puzzle to the foreground in a particularly clear way. In her recent take on the

⁵ Willaschek (2010) calls this a “theoretical undecidability” condition on a practical belief’s warrant.

Doctrine of Right, Elisabeth Ellis (2005) laments that in construing the relationship between state of nature and civil condition, Kant “makes two arguments simultaneously” that “do not fit together very well” (Ellis 2005, p.126): on the one hand, there is “the requirement to exit the state of nature based solely on the need for a common judge of the right” (Ellis 2005, p.126). According to this strand of Kant’s argument, the only difference between the state of nature and the civil condition is that in the latter there is a central authority or judge “with the ability coercively to enforce common judgment” (Ellis 2005, p.126). On other hand, Ellis speaks of a requirement to transition “not merely to an orderly state but to republican governance” (Ellis 2005, p.126), focusing on the a priori elements of a *just* as opposed to simply a determinate exercise of juridical authority.

Ellis considers the relation between these two arguments “obscure” and “confused” (Ellis 2005, p.126). Her own strategy is ultimately to collapse them into one by suggesting that Kant envisions a single, “extremely long” (Ellis 2005, p.114) gradual transition from the state of nature to the rule of law as instantiated only in the perfect republic. The notion of “provisional right” plays a central role within this narrative. It is said to be applicable *both* in the state of nature and within “faulty” (Ellis 2005, p.133) states that mirror their own normative principles imperfectly. Notice, furthermore, that her attempt to make Kant’s entire political project conform to a single normative logic of freely willed action eliminates the need for a practical assurance of the kind that we identified specifically in Kant’s account of cosmopolitan progress. On her view, the strong propositional attitudes invoked both in *Perpetual Peace* and the *Doctrine of Right* constitute incoherent and implausible metaphysical baggage that Kant’s political philosophy should rather be “freed of” (Ellis 2005, p.42) for the sake of epistemic and normative coherence.

My primary intention here is not to assess the merits of Ellis’s interpretive framework in particular. Rather, I would like to argue that

the confusion she diagnoses is due to a more general (and, in fact, widespread) misconstrual of Kant's account of political progress. In particular, Ellis overlooks a crucial distinction between two distinct levels of analysis in Kant's politics – constitutive and regulative – with distinct sets of norms that prescribe the *creation* and the *perfection* of a legal order respectively. My aim in this section is to show that Kant's account of political progress is located on the second, regulative level and thus takes place within the constitutive framework of an established civil condition. This insight will provide us with a better grasp of the conceptual status of the practical belief in perpetual peace once we return to the cosmopolitan context.

Constituting and Regulating Rational Activities

Before I turn specifically to Kant's political philosophy, notice that the contrast between constitutive and regulative principles, norms, or judgments plays an important role across different contexts in his philosophy (cf. Hanna 2016).⁶ The definition that I shall make use of operates on the most general level: it is one between norms or principles that *constitute* a rational activity, and norms internal to that activity that *guide* or *regulate* it. In Kant's theoretical philosophy, the distinction I have in mind serves to separate the faculty of the understanding with its constitutive categories from the faculty of reason with its regulative (transcendental) ideas (CPR A642/B670ff., Friedman 1991; Buchdahl 1992, pp.167-192). While the pure concepts of the understanding are *constitutive* of the objects and hence the possibility of experience, reason *regulates* it by giving us concepts of objects (representing the world as a “whole”) that, albeit without possible instantiation in experience, allow us to approach the final end of our empirical inquiry, the complete

⁶ I do not have the space here to explore how this distinction relates to the apparently closely related (though not equivalent) contrast – first mentioned in the third *Critique* (CJ 20:211) – between determining and reflective judgments.

systematic unity of experience (see also CPR A180/B 223).⁷ Given that I have touched upon the underlying rationale for this argument in Chapter 4, I will not go into it any further at this point.

In the present context, the ethical domain is of more immediate relevance to us. There, the contrast is one between the categorical imperative as *constitutive* of moral agency, and the highest good as the principle *regulating* our actions in accordance with the categorical imperative.⁸ This set of arguments is significant to us given that, as we have seen, Kant explicitly invokes some of the pertinent concepts in the relevant passage of the *Doctrine of Right*. It will be vital to explore the analogy he thus proposes as we go on to make sense of Kant's notion of cosmopolitan progress.

So let me briefly sketch the ethical argument, which is developed most systematically in the second *Critique*. It proceeds with the constitutive principle of moral agency, the categorical imperative, already in place. The problem is that, as finite agents, we are necessarily concerned with our happiness, i.e., the satisfaction of all our inclinations and desires (CrPrR 5:124). In other words, we cannot repudiate our hope for happiness even though morality seems often to demand that we do. The absolute end of practical reason (underlying all other ends) must hence not only include the object of pure practical reason – virtue (which Kant calls the “supreme end”) – but also that of empirical practical reason – happiness.

⁷ Another way to make sense of this distinction in the first *Critique* (that I will not discuss here) is as one *within* the faculty of understanding, between the constitutive “mathematical” principles of pure understanding, and the regulative “dynamical” principles of pure understanding (CPR A178–181/B220–224, see also Banham 2013).

⁸ It is indicative that Korsgaard, who takes Kant's ethics to be primarily concerned with agency (or willing) rather than moral agency (or pure willing), construes this distinction differently: on her view (2008b, pp.7-10) a proper understanding of what it *means* to act will give us the regulative norm (the categorical imperative) internal to it, that is *how* to act. A good will is one that is in full conformity with the standard appropriate to the assessment of a will. Characteristically, this pushes Kant's practical metaphysics out of the picture.

Hence, we are led to the idea of the highest good – a world in which “happiness [is] distributed in exact proportion to morality (as the worth of a person and his worthiness to be happy)” (CrPrR 5:110-111) – because acting from duty seems often to come at the price of our happiness.⁹ If the wicked would always thrive while the virtuous bear misery, we would be left with a profound sense of practical absurdity and incoherence in the performance of our moral duties. In other words, if the highest good turned out to be a mere “phantom of the mind” (CrPrR 5:472 see also 5:114), the moral law itself would be in peril. Given that we cannot but hope for happiness in proportion to virtue, we cannot but adopt the highest good as an end.

Now, Kant *also* thinks that, as a matter of practical consistency, we can only set something as an end if we take it to be in principle attainable. Humans can only strive for ends they deem genuinely possible – *ought implies can* (e.g. CPR A806/B834; CrPrR 5:125, 471). This is problematic, given that the highest good appears to be a plainly unattainable end for us: even if we could (*per impossibile*) become perfectly virtuous – acquire a ‘holy will’ – within our lifetime *and* see to it that everyone else similarly always acts on the moral law, it still remains beyond our power to bring about the required harmony between virtue and happiness. Kant thus introduces God’s existence and our own immortality as the “postulates” of pure practical reason (CrPrR 5:107-148, Wood 1970, pp.100-154; Guyer 2000, pp.333-371). On the one hand, our own immortality makes possible a continual progress toward complete conformity of our dispositions with the moral law, which begins in this life and extends into infinity (CrPrR 5:122). On the other hand, only a supreme “cause of all nature, distinct from nature” (CrPrR 5:125) – God – is capable of synthesising virtue and happiness (the former being the ground of the latter), that is, ensuring the precise and

⁹ While the concept of the highest good receives its most detailed and systematic treatment in the second *Critique*, there are already traces of it in the Canon and the Dialectic of the first *Critique* (as the concept of a “moral world”, e.g. A808/B836). For an elucidating recent discussion of the highest good in Kant, see Bader (2015).

necessary connection between these two qualitatively different elements.¹⁰

Kant's claim is not that God *does* exist or that our souls *are* immortal. Rather, we may employ these "ideas of reason" (to which no corresponding object can be given in sense experience) as aids for our practical cognition. The appropriate epistemic attitude towards the postulates is not one of knowledge but of "practical belief" (Stevenson 2003; Chignell 2007a; Willaschek 2010) – a highly confident, "assertoric" (Logic 9:66) kind of holding-true, yet one that is not deemed to have a determinate relation to objects in the world. Our belief in the postulates has the distinctly *practical* ground of allowing us to promote the highest good as an end and thus ultimately to make sense of our vocation as agents under the demands of the moral law.¹¹ While the postulates are mere ideas the "possibility of which no human understanding will ever fathom" (CrPrR 5:132), acting on the basis of a belief that their objects exist allows us hope that our moral efforts may eventually be rewarded and hence to conceive of the highest good as a possible end of our will that we can actively approach.

Much more could be said both about Kant's notion of the highest (ethical) good and the postulates as items of practical belief allowing us to promote it by assuring us that our efforts will not be in vain. Here, I want to focus on the way in which the argument reflects the distinction between constitutive and regulative levels. The thought is that for finite rational beings like us the very idea of what *constitutes* moral agency – acting from maxims that accord with the categorical imperative – leads to a *regulative* principle that guides it, the highest

¹⁰ I bracket the third postulate of pure practical reason – the reality of our own (transcendental) freedom – given that it plays a special role for Kant that I cannot go into here. The causality of human reason is a basic presupposition of being bound by the moral law in the first place and thus of moral agency *tout court*, for without freedom we would be merely part of mechanistically ordered nature (CrPrR 5:29).

¹¹ On the wider notion of the primacy of practical reason (CrPrR 5:119-121) which underlies Kant's affirmation of the *practical* as an independent source of validity for *theoretical* claims, see Gardner (2006) and Willaschek (2010).

good. What gives rise to the regulative level is a particular feature of the categorical imperative, namely its unconditional nature. It requires us to discount, in acting morally, that which as finite agents we cannot ultimately discount: our desire for happiness. The implication is that although the constitutive level is characterised by a binary logic (every particular act either accords with the categorical imperative, or it does not), it leads to the regulative idea of a gradual process towards a world in which all more specific ends are unified.

Given that approaching such a world not only requires infinite time but also an almighty and benevolent God who ensures the synthetic connection between virtue and happiness, the regulative level requires a strong propositional attitude (practical belief in the postulates) that licenses us to assume the efficacy of our own efforts. Given that it is based on a belief in our own immortality and God's assistance, it should thus not surprise us that the second *Critique* conceptualises the gradual dynamic of moral progress on the regulative level in pointedly a-historical, indeed a-temporal terms.¹²

Regulative Politics

Having sketched the role that the distinction between constitutive and regulative principles plays within Kant's ethics, I now want to go on to suggest that it is also vital for an accurate understanding of his mature political philosophy. I do not want to claim that Kant himself clearly intended the distinction to play a critical role in the *Doctrine of Right*. In fact, it seems to be one of the respects in which the text is less devoid of

¹² In other works – particularly in some of the earlier essays on history and politics as well as the *Religion* – Kant attempts to conceptualise progress towards the highest good as occurring in historical time. However, his general construal of moral agency as noumenal and hence *unknowable* and *timeless* leaves it unclear how a notion of historically mediated moral progress is conceivable within the confines of his moral theory at all. Given the opacity (to ourselves and others) of moral disposition, how could we possibly detect whether moral progress is occurring? And given the timelessness of moral agency, how could we think of it as undergoing change in time (or even history) in the first place? See also Kleingeld (1999a, pp.70/71).

obscurities than we would hope. This is the case particularly when it comes to the regulative level and the somewhat confusing jumble of ‘ideas of reason’ that rather proliferate in the course of Kant’s argument. Yet, I think that approaching some of the main concepts and claims of the *Doctrine of Right* with the constitutive-regulative distinction in mind is a useful interpretive effort. In particular, I hope to show that it allows us to make sense of Kant’s account of political progress.

In a nutshell, the thought is that within the domain of right we need to keep apart two separate normative dimensions that concern, respectively, the very nature of a rightful condition – what *constitutes* it (and hence its juridical standing) – and *regulative* standards with which we are to bring a legal order into increasing conformity. In systematizing the distinction between the two dimensions, it is worth paying attention to two aspects in particular: their respective contexts of application (which inquiry is pertinent under which circumstances) as well as the kinds of duties they impose (and the agents to which they apply).

Let me start with the constitutive level that, in specifying what a legal system *is*, allows us to distinguish it from other entities in the (legal) world (Weinrib 2016, pp.47-57). The thought is that a rightful condition exists wherever publicly authoritative institutions enable private persons to interact with one another rightfully by making and enforcing universally binding public laws. Of course, not every organised form of power constitutes a rightful condition. While Kant has surprisingly little to say with regard to *what it is* that distinguishes such a public agent from the pure exercise of power by a private agent who just happens to have a monopoly of force somewhere (cf. Ripstein 2009, p.337), at least certain formal features of the rule of law such as generality, publicity, prospectivity, clarity and consistency will need to be in place for the minimal threshold of genuinely *public* law-making to be fulfilled (Weinrib 2016, p.62).

The norm pertinent to the constitutive level requires of private

persons who raise reciprocally valid property claims against one another to enter into the state.¹³ They must establish public institutions that enact, interpret, and enforce generally valid public laws over a specified territory, and submit to their rule. In other words, the norm calls for the creation of an agent that solves a ‘horizontal’ problem among private persons, namely their respective lack of unilateral moral authority over one another. In so doing, it enables them to interact on rightful terms. Keep in mind, though, that what Kant provides is (according to my preceding argument) not a Lockean account of state-formation as an historically actual ‘act of establishment’, but a recursive justification from within the existing state context.

This requirement is satisfied once private persons are in a civil condition constituted by a public authority that makes law in the name of all. Its absence is described by Kant as a condition of “anarchy” (PP 8:302, 346, 374) or – even worse, in the presence of a self-declared political power that conducts itself so egregiously that we are thrown back into a state of nature – “barbarism” (DoR 6:337,351, PP 8:354-5, 357, 359, 376).¹⁴ In such a lawless state of affairs, individuals cannot interact with one another on terms that respect their reciprocally equal moral status; they are, rather, subject to the arbitrary powers of others. By remaining within the latter condition, persons commit a “wrong in the highest degree” (DoR 6:307/8). For unlike violations of private rights in the civil condition, which can be rectified, violations of the constitutive norm are at odds with the very possibility of public institutions and perpetuate the lawless interaction of the state of nature.

Let us now turn to the regulative dimension on which, I hope to show, Kant’s theory of political progress is located. While the

¹³ Somewhat confusingly in the context of the present chapter, this requirement is itself phrased as a “postulate of public right” (DoR 6:307). On the question what motivates Kant to use this concept in that context, see Guyer (2005, pp.198-242).

¹⁴ In the Anthropology (7:330), Kant characterises a condition of barbarism as “force without freedom and law”. See also Ripstein (2009, pp.336-343), Weinrib (2016, pp.76-108), Ebbinghaus (1953).

constitutive level specifies what it means for a condition to be lawful (and hence legitimate), the regulative level is concerned with its adequacy or justice (PP 8:297, see also Weinrib 2016, pp.57-65). The thought is that the very rationale for bringing about political authority has moral standards for its exercise built into it. In the first place, the regulative principle of right requires the sovereign to bring the existing legal order into the closest possible conformity with an immanent standard of justice: a criterion for the just exercise of public authority is inherent to the rationale for its establishment.

The normative standard central to a rightful condition – its *regulative* principle – is encapsulated in the idea of the original contract (DoR 6:315, see also Ripstein 2009, pp.198-204).¹⁵ Kant makes it clear that by introducing the original contract as the concept “on which alone a civil and hence thoroughly rightful constitution among human beings can be based“ (PP 8:297), he does not intend to suggest that we should think of the state (or anything it does) as based on an *actual* contract, a product of voluntary agreement between private wills.¹⁶ Instead, it pertains to the normative structure of the civil condition itself and the way it regulates interactions among citizens through institutions and laws. The original contract, Kant claims, is

only an idea of reason, which, however, has its undoubted practical reality, namely to bind every legislator to give his laws in such a way that they *could* have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will. (PP 8:297)

¹⁵ I take it that the idea of a “general united will” (DoR 6:256) is located on the same normative level (fulfilling a similar function. It would warrant an independent discussion, which I cannot provide at this point. See Aichele (2008), Flikschuh (2012a).

¹⁶ The failure to acknowledge this has misled a number of interpreters (Kersting 1984; Riley 1983; Rosen 1993) to read Kant as an actual social contract theorist. For a rejection, see also Flikschuh (2000, pp.147-152).

The function of the original contract is to provide a “touchstone of any public law’s conformity with right”. It binds the sovereign in their exercise of public authority, imposing a duty to design the institutional arrangement (and to make law) such that the people could impose it on themselves. The institutional structure that Kant takes to ideally fulfil this function is that of a “true republic” (DoR 6:341). In a fully republican system of government, the lawmaker speaks in the name of everyone through officials acting as genuinely public (rather than private) persons such that citizens can be thought of as collectively ruling over themselves. It is defined by a separation of powers between legislative, juridical and executive authorities that respectively specify, apply and enforce rules that respect each citizen as an equal. Through this threefold unity of sovereign competencies, the state reflects “the three relations of the united will of the people” (DoR 6:388).¹⁷

Notice that the regulative level does not pertain to the (horizontal) relation between private individuals, but rather to the (vertical) relation between the sovereign and its citizens. Public institutions solve a particular problem regarding the former, yet in so doing create a new one regarding the latter. This opens up an additional normative dimension that simply lacks applicability prior to state entrance. For the relationship to which it pertains – that between sovereign and citizens – is not in existence. The state is the point of departure for considerations of justice to get off the ground in the first place.

I have already indicated that the duty to rule and legislate in accordance with the norm internal to a juridical condition is incumbent upon the sovereign rather than each of the private persons. As the agent

¹⁷ Kant argues that the legislative authority can be held by or entrusted to one, a few or many persons, such that the republican form of government is compatible with autocracy (monarchy), aristocracy and democracy as long as the three elements are institutionally distinct (DoR 6:338). He follows Montesquieu in defining despotism (the opposite of republicanism) through the combination of executive and legislative authority in one hand (PP 8:352; 324).

of authority, it is the sovereign – regardless of whether it is embodied and exercised by one, many, or all citizens – who is bound to continuously refine and perfect the legal order in line with its underlying idea, that of the original contract. This is not to deny that citizens have an important role to play in this process: in making use of their right to free expression, they can advise and petition the ruler, point out (in a cooperative spirit) existing injustices in “matters of taxation, recruiting and so forth” (DoR 6:319), and urge possible reforms and improvements of the law (cf. Niesen 2005, pp.129-202). In holding the sovereign accountable to the standards immanent to his claim to rule, individual citizens play their limited though indispensable part in bringing the legal order as a whole closer to justice.

Notice that the “original contract”, together with other concepts located on the same level such as the “general united will” or the “perfect republic” are ideas of reason with merely regulative function and hence not equivalent to any set of empirical particulars. No actually existing institution, that is, could ever be fully congruent with them: any instantiation of a civil condition necessarily mirrors its own underlying principles imperfectly (Ripstein 2009, p.200). But to say that perfect justice is unattainable is not to say that there cannot be a duty to gradually bring a civil condition into the *deepest possible* conformity with its own internal standard, regardless of how defective it may seem.

Strictly speaking, every existing legal order is “unjust” in the sense that, while the rule of law is formally in place, the way authority is exercised does not fully conform to its own internal standard. Yet unlike violations of the constitutive principle, these pathologies do not actually undermine the normative powers ascribed to a rightful legal order. While the former point to the absence of public authority, any defective version of the ideal republican system of government

presupposes it to be in place.¹⁸ So in Kant's politics, constitutive and regulative levels issue two sets of norms that figure as distinct, while mutually implicating, stages in a conceptually sequenced argument. Let me emphasise, again, that this sequence is of a conceptual rather than a historical kind. The distinction between *creating* and *perfecting* a legal order should be seen as analytical, that is, as serving explicative purposes rather than describing a historical process.

The contrast between the two normative dimensions and the ensuing conceptual bifurcation between (legitimate) authority and justice comes across in a particularly stark manner in Kant's prohibition of resistance and revolution.¹⁹ He (infamously) argues that the authority of an existing rightful condition is "unconditional" (T&P 8:299): no citizen can refuse obedience to the law on the grounds that it deviates from its regulative standard. Even a legal order "afflicted with great defects and gross faults" such that it is in need of "important improvements" may not be resisted (DoR 6:372). As just mentioned, citizens do very well have the right to political speech as their "sole palladium" (T&P 8:304). However, when push comes to shove, "on the part of the people, there is nothing to be done about it but to obey" (PP 8:297). That is to say, citizens' right to be governed justly, as correlating with the sovereign's duty to bring the existing legal order into conformity with the idea of the original contract, is non-coercive.

The line of argument I have developed in the present section helps us to elucidate Kant's rigid stance on this issue.²⁰ The pre-civil condition is a lawless condition: not one of injustice, but devoid of justice. In undermining the very possibility of rights relations and hence

¹⁸ In practice, it may be contested which pathology we face in a particular case.

While Ripstein's (2009, pp.336-343) preferred example of Nazi Germany may be a clear instance of barbarism, in other cases the lines will certainly be blurrier.

¹⁹ On different accounts of Kant's take on the (no-)right to revolution, see Korsgaard (2008a), Flikschuh (2008), Ripstein (2009, pp.325-355).

²⁰ Besides the rationale I focus on here, Kant also provides a number of other arguments against resistance and revolution, including from the necessarily non-public character of acts of revolution (PP 8:381) and from the conceptual impossibility of a coercive right against the highest authority (DoR 6:320).

of progress towards just government, Kant thinks, revolutionaries threaten to throw us back into anarchy.²¹ Resistance to the public authority is prohibited because it “would take place in conformity with a maxim that, made universal, would annihilate any civil constitution and eradicate the condition in which alone people can be in possession of rights generally” (PP 8:229). This claim is not empirical – that widespread disobedience even against unjust laws would lead to chaos and anarchy – but conceptual: disobedience, resistance and revolution appeal to normative criteria that are not even applicable outside the existing legal order.

The most important implication of the distinction between constitutive and regulative levels is that it allows us to reconceive political progress in Kant, namely as a gradual process within the constitutive framework of the civil condition, guided and framed by a number of regulative ideas. That is to say, Kant conceives of political progress as a process of gradual institutional perfection *within* established states. In each doing their part to bring an existing rightful condition in ever closer conformity with its own underlying standard, both the sovereign (who makes legal and institutional arrangements) and the citizens (who advise the sovereign and hold them to account) are guided by regulative ideas such as the ‘original contract’ and the ‘perfect republic’.

It is precisely the distinction between these two levels of analysis that Ellis, whose interpretive framework we briefly touched upon, lacks. This leaves her confused in the face of Kant’s simultaneous argument for the need to enter the civil condition on the one hand, and to reform the pertinent institutions on the other hand. Ultimately, her recourse to “provisional politics” covers the tension – that I took to be a conceptual sequence – by conceiving of a single dynamic from the state of nature

²¹ Of course we may question the underlying assumption that within every revolutionary overthrow (at the transition from old to new regime) there is necessarily an “intervening moment in which any rightful condition would be annihilated” (DoR 6:355).

to perfect government, rather than making productive use of it. In so doing, she overlooks the way in which entrance into the civil condition fundamentally transforms the normative landscape. While we can ascertain, at any point in time, whether or not we are in a civil condition, we can simultaneously affirm the possibility of continuous political (that is, institutional) progress within that condition.

3. Cosmopolitan Progress

My presentation of Kant's account of political progress largely focused on the domestic context. The core idea was that state entrance fundamentally transforms the normative landscape in that it yields a whole new set of rights and obligations that simply lack applicability in the absence of the pertinent relations. Political progress is thus conceived of as an institution's gradual approximation of its own underlying norm.

Now, recall my argument, in Chapter 3, that we get to the global standpoint through the (property-mediated) argument for state authority. Combined with the insight of the preceding section, this implies that there is a sense in which the creation of states gets global justice off the ground as much as considerations of domestic justice. For, state entrance comes with the obligation not only to bring the existing institution in line with its own standard *domestically* speaking. It also yields an obligation to take up the global standpoint and bring it gradually in line with (its own underlying) *cosmopolitan* principles.

I would like to suggest that the role that the idea of perpetual peace plays in the context of cosmopolitan progress is thus analogous to the role of ideas such as the 'perfect republic' in the domestic context. In gradually transforming states into cosmopolitan agents, we are rationally licensed to adopt a belief that a condition of peace between all states and non-state peoples is attainable, such that our efforts

directed at this end are not in vain. The idea of perpetual peace provides orientation for our cosmopolitan activity within the state.

Perpetual Peace as an Idea of Reason

Let me start by returning to the passage in the *Doctrine of Right's* 'Conclusion' (DoR 6:354) that I referred to in the first section of this chapter. Recall that, in the first part of this passage, Kant presents perpetual peace as an idea of reason that we adopt as a practical belief in order to "work towards establishing" it. He then goes on to characterise it as the "entire final end of the doctrine of right" and calls it the "highest political good". I take it that what Kant has in mind in referring to perpetual or "universal and lasting peace" is a condition in which each of the three levels of rights relations is fully in line with its own regulative standard.²² In such a world, all states are perfect republics, voluntarily join (and submit to the rulings of) a non-coercive federation that mediates, arbitrates and resolves conflicts, and interact with non-state peoples on mutually agreed terms.

This is not a state of affairs that will ever be empirically instantiated, but a mere *idea*. Yet, given that "morally practical reason pronounces in us its irresistible veto: *there is to be no war*" (DoR 6:354), we must at least work towards it. In particular, in each our states, we must bring about "the kind of constitution that seems to us most conducive to it" (DoR 6:354). If our attempt to realise a condition of peace is

²² I will proceed on the assumption that, in this passage, Kant refers to perpetual peace loosely, that is in the sense of "universal and lasting" or a general "condition of peace". In virtue of a simple conceptual reason, a peace that is "perpetual" should, strictly speaking, be off the table at this point. For only a coercive institution has "the resources at its disposal to guarantee its own preservation" (Ripstein 2009: 23), such that it can regard itself as existing in perpetuity. Yet, I have argued that a truly public cosmopolitan condition is something we cannot have. The only rightful forum beyond the state is voluntary and can be dissolved. This is not to say that it could not last for a long time or even forever. It cannot be thought to exist in *perpetuity*, however. If that is the case, and if the reason for this – as I have argued in the preceding chapter – is of a systematic kind, the idea of perpetual peace should, qua conceptual incoherence, not even be apt to function as an idea of reason.

“carried out by gradual reform in accordance with firm principles, it can lead to continual approximation to the highest political good, perpetual peace” (DoR 6:355).

Notice, however, that even if we do our best to transform our own state in line with cosmopolitan principles, these efforts are in vain unless other agents reciprocate our efforts. Peace will only prevail in a condition in which *all* states act as cosmopolitan agents, and in which non-state peoples do not refuse to accept our offers of commerce. Hence, I would like to suggest that the idea of perpetual peace, as the “entire final end of the doctrine of right”, gives us confidence that our efforts to transform states from within will coincide with the requisite developments beyond our power that lead to a condition of peace. By asserting, “from a practical point of view” (DoR 6:354), that perpetual peace is attainable, we are able to coherently adopt it as an end and work towards it. We are thus licensed to think of perpetual peace “as if it is something real”, lest our duty to “work incessantly toward it” (DoR 6:355) from the global standpoint be undermined by the unattainability of its end. This allows us to pursue a goal that would otherwise appear chimerical.

Let me briefly explicate this thought with regard to each of the three levels. On the level of the right of a state, domestic and cosmopolitan progress overlap. For, the gradual reform of a state’s laws and institutions in line with republican principles not only entails that its exercise of authority vis-à-vis its own subjects is brought more closely in line with its own underlying rationale. Given that republics – where power is, by definition, exercised in the name of all – tend to be responsive to citizens’ own reluctance against warfare, they are also likely to comport themselves more peacefully towards other states (PP 8:350, see also Höffe 2006). Of course, this will only lead to a peaceful world if other states invest similar efforts. A republic’s inclination to peace will hardly take effect if it is surrounded by warmongering dictatorships. And even a perfect republic can rightfully defend itself by

force if attacked by another state that refuses to mediate conflicts institutionally (DoR 6:364).

As far as international relations are concerned, states are required to voluntarily join a non-coercive federation and respect the objective standards this institution issues in cases of disagreements and conflicts as binding for them. Again, their own willingness to do so remains entirely inefficacious if other states in turn retain their prerogative to unilaterally decide when to engage in war. Kant thus argues that “only in a universal association of states [...] can a true condition of peace come about” (DoR 6:350). The alliance he has in mind – one which aspires to be universal in the sense of ultimately encompassing *all* states – is precisely the permanent congress that the right of nations is said to be limited to. States can only consistently submit to such an institution if they can reasonably hope that other and ultimately *all* states follow their example.

Finally, cosmopolitan right obliges states to legally enshrine refugee rights and coerce their citizens to comport themselves hospitably abroad. The final end of cosmopolitan right is described by Kant as the “possible union of all peoples [*Völker*] with a view to certain universal laws for their possible commerce” (DoR 6:352). I take it that such a condition is one in which states (and their representatives) find a moral meta-language for negotiating shared terms on the basis of which they can interact peacefully with non-state peoples. Now, this requires not only that states comport themselves accordingly. It also presupposes that non-state peoples accept their offers of commerce such that they can gradually get to know and ultimately understand each other. We are thus licensed to frame our own efforts to implement cosmopolitan right domestically by the “rational idea [*Vernunftidee*] of a peaceful, even if not friendly, thoroughgoing community of all peoples on the earth that can come into relations affecting one another” (DoR 6:352).

To sum up, the idea of perpetual peace arises as a corollary of our duty to take up the global standpoint from within states. It is the

duty itself that warrants a practical belief that our efforts to transform states in line with cosmopolitan principles will not be in vain but that perpetual peace is actually attainable. State entrance commits us not only to promote the perfect republic, but also a cosmopolitically embedded state that acknowledges obligations beyond its borders. But we can only do our ‘homework’ (juridically speaking) if we have warrant to reasonably hope for external circumstances in which our attempts of peaceable interaction with other states and non-state peoples are reciprocated.

In line with my earlier argument, Kant takes considerations of justice – both of the domestic and the global kind – to get off the ground within the context of established states: cosmopolitan progress is closely tied to progress within the state context. In both contexts, our activity to bring about political progress is guided by ideas of reason: just as ideas such as the original contract serve to frame our effort to transform the state into a perfect republic, so does the idea of perpetual peace serve to frame our effort to transform it into a cosmopolitan agent.

Progress without God or Virtue

At the heart of my account of cosmopolitan progress so far was the analogy between the respective highest goods in ethics and politics. The two arguments are structurally alike in the sense that, in both cases, the looming sense of practical incoherence in the face of obligatory though seemingly unattainable ends licenses the adoption of a specific practical attitude. Just as the postulates provide a regulative basis for *ethical* progress, so does belief in the attainability of a peaceful world provide a regulative basis for *political* action from the global standpoint. Both the highest ethical good and perpetual peace as the highest political good are ideas of reason that regulate our activity as agents in the ethical and juridical domains respectively. In both cases, adopting the respective

practical attitude enables us to acknowledge our respective duty without sliding into moral despair.

Now, as vital as this analogy is for the present chapter's argument, it is important also to be clear about its limitations. To be more precise, we must avoid equating the two kinds of highest goods. A number of interpreters have suggested precisely this: that cosmopolitan progress should be conceived as part of or coinciding with mankind's moral progress towards ethical perfection (e.g. Lindstedt 1999; Ypi 2010; Taylor 2010; Goldman 2012; Rossi 2005, pp.87-113; Kleingeld 2009).²³ That is to say, we have to understand the ideal of a peaceful world as a component of the higher order goal of attaining a genuinely ethical community – the highest ethical good “contains perpetual peace” (Taylor 2010, p.12).

In order to pre-empt such a misreading, recall that the highest ethical good is composed of two elements – complete virtue, as well as its synthesis with happiness. Kant introduces a postulate for each of these elements, such that the highest good as a whole can be a possible end: the postulate of immortality guarantees that *we* can be what we must be like, namely completely conform our dispositions with the moral law (i.e., acquire a ‘holy will’). The postulate of God's existence, in turn, guarantees that *the world* is arranged such that happiness is distributed in accordance with virtue (Bader 2015, p.8). My aim in this section is to show that, despite the mentioned *structural* analogy, perpetual peace requires neither of the two *substantive* elements of the highest ethical good. As a consequence, the relevant practical belief does not contain any supersensible commitments.

²³ This claim reflects a wider interpretive position, defended by interpreters such as Wood (1999, pp.321-323), Riley (1983) and Guyer (2000), that reduces Kant's political thought as a whole to its instrumental value to the domain of ethics. On this view, a law-governed social order is exclusively in the service of the higher goal of attaining a genuinely ethical community. Ultimately, the idea is that “if everyone had a completely efficacious good will, there would be no Kantian politics to study” (Riley 1983, p.17).

Let me start with the question of virtue. Some interpreters have suggested that institutional perfection requires ethical perfection: public institutions will improve alongside and as a consequence of progress at the level of virtuous dispositions.²⁴ The thought is that only appropriately minded individuals will be able to ultimately bring about perfect institutions. What is required for a cosmopolitan political order are hence ethically transformed individuals. Perpetual peace will only be realised once “humanity’s moral disposition” (Ypi 2010, p.123) is fully developed and, as it were, as a by-product of the latter.

Now, Kant is quite clear that perfecting the institutions that regulate our rightful interactions with others does *not* require that we perfect our own ethical dispositions (Ludwig 1997, p.224). As he puts it in *Perpetual Peace*, given that “it is not the case that a good state constitution is to be expected from inner morality”, being a good citizen does not require being “a morally good human being” (PP 8:366). This point is paradigmatically encapsulated in the “nation of devils” argument, around which much of the pertinent debate has crystalized (see also Höffe 1992). Kant famously argues that the problem of bringing existing institutions in line with their underlying regulative principle – turning a “more or less lawful condition” into a perfect republic – “is soluble even for a nation of devils (if only they have understanding)” (PP 8:366). Arguably, the thought is not that humans are essentially evil, but merely that they are not angels. That is to say, humans are finite rational beings capable of acknowledging the a priori demands of practical reason yet routinely fail to act on them. Hence, an

²⁴ In fact, the argument is usually that the interdependency between ethics and right goes two ways: not only do perfect political institutions require fully virtuous individuals, they are themselves instrumental to ethical perfection. *Synchronically*, politics contributes to the development of impartial dispositions in each agent by coercively guaranteeing compliance with public laws. Individuals will learn that they “cannot follow their inclinations with impunity, because if they violate the law they are subject to sanctions” (Kleingeld 2009, pp.172/3). And *diachronically*, institutions bolster the process of making mankind more virtuous across time by ‘knitting together’ the respective efforts of individual agents and consecutive generations, coordinating them over time and continuing them into the future (Ypi 2010, p.124).

improvement of rights relations in line with their underlying regulative standard does not require morally perfected, fully virtuous agents.

In a classic exchange on the issue, Bernd Ludwig (1997) and Reinhard Brandt (1997) disagree about the meaning of Kant's phrasing that the problem of republican constitutional design is solvable "for" non-virtuous citizens. While Ludwig takes it to imply that a moral politician needs to come onto the stage who arranges the established institutions *for* them in line with republican ideals, Brandt suggests a reading according to which it is citizens themselves who have the required ability. I shall abstain at this point from arbitrating this dispute, given that either of them agrees with my point that Kant decouples individual citizens' route towards virtue from institutions' route towards (domestic and global) justice.

While the issue of virtue is concerned with the question what *we* must be like in order to be able to will the highest good, let us now turn to the question which external conditions need to be given. With regard to the highest ethical good, the answer was that the world must be such that there is a necessary connection between happiness and virtue. This, in turn, requires divine intervention: only God can make it so. We must now ask what the elements of perpetual peace are that are *beyond* our control though have to be met for it to be a possible end.

In order to answer this question notice that, *pace* Guyer (2000), happiness plays no role in Kant's politics. Drawing on a distinction Kant makes concerning two meanings of the highest good (CrPrR 5:110), the highest political good is more similar, at least in this respect, to what he calls the "supreme good" (a good that is not subordinated to any other good – nothing is normatively more important) rather than the "complete good" (a good that encompasses *all* goods, including happiness). So the "entire final end of the doctrine of right" (DoR 6:355) only consists in a set of juridical relations, rather than two qualitatively different elements. The implication is that we do not need to postulate an all-powerful being with the power to synthesise (i.e., to necessarily

connect) these two elements. We can set perpetual peace as an end even without a practical belief in God or another kind of “naturalised deity” (Taylor 2010, p.10 fn.17; Williams 1983, pp.2/3).

Yet, the fact that we do not require divine intervention is not to deny that there are indeed certain elements beyond our control that need to be given if our own efforts from the global standpoint are to successfully promote perpetual peace. As I have mentioned earlier in this chapter, unless other states also reform themselves in line with cosmopolitan principles, and unless non-state peoples accept our offers of “commerce” such that we can work to find shared terms of coexistence, our own efforts directed at a condition of peace will be in vain. So what we need – and what our practical belief affirms – is not the assistance of God but that of other earth dwellers; that is, their willingness of reciprocate our attempts to bring about peaceful relations.

Much more could be said about these issues. My aim here was not to make a full-blown case against an ethicised reading of Kant’s juridical cosmopolitanism, but was more limited: that we should be wary not to collapse highest goods (or final ends) in ethics and right into one another. The highest political good – a cosmopolitan juridical order that brings about peace – does neither require fully virtuous agents, nor God’s assistance. First and foremost, this has implications for the practical attitudes that are required in each of the domains in order for us to work towards the respective final end (without a sense of moral incoherence). The postulates that the highest ethical good warrants include super-sensible features of commitment – God’s assistance and the immortality of our soul. These are metaphysically indemonstrable propositions which we are warranted in asserting on practical grounds. The practical belief in the possibility of perpetual peace, by contrast, does not include any such super-sensible (hence metaphysically problematic) elements – neither does it presuppose that we have infinite time to improve our worth nor does it presuppose a necessary

connection that could be brought about only by an all-powerful being.²⁵ The proposition that other agents will reciprocate our efforts is certainly not metaphysically undecidable in the same way in which God's existence and our immortality are simply constitutively beyond the reach of possible knowledge. Yet, given that humans are not only finite but also free, we can never conclusively *rule out* that others will do their part in working towards a more peaceful world. This alone warrants our belief that perpetual peace is attainable and the future open to our continued effort.

Conclusion

At the heart of Kant's account of political progress as reconstructed in this chapter lies the intriguing claim that the path from anarchy to justice goes through injustice: the move towards an ideal future proceeds through institutions that are initially unjust and gradually improve in line with their own underlying standard.²⁶ This is certainly not an inaccurate description of how much political change has come about historically – as an institution concentrates power so as to effectively deliver certain goods, it is being challenged and held to account by its subjects who want their voices heard. For Kant, however, this is not a hypothesis deduced from real world politics, but inherent to the two-staged logic of political normativity. That is to say, the sense in which the creation of (imperfect) systems of positive law is a necessary first step towards the emergence of fully rightful relations within them

²⁵ One important implication of the fact the practical attitude pertinent to the political domain lacks commitment to metaphysically problematic elements is that the requisite progress towards perpetual peace can be conceptualised as occurring in historical time. Recall that the inclusion of supersensible elements requires Kant to conceive of ethical progress in (problematically) a-temporal, indeed a-historical terms. In contrast, cosmopolitan progress – the gradual extension of rightful (hence external) relations beyond the state – takes place plainly within space and time.

²⁶ For a contemporary (though not Kant-inspired) argument along these lines, see Nagel (2005).

is conceptual rather than speculative. Only once a condition of public right exists can respect for the more stringent requirements of the ideal civil constitution be claimed and brought to bear against the powers that be. Hence the much criticised reformist (i.e. anti-revolutionary) flavour of Kant's politics: we honour our obligation to help bring about a more just institutional order not by undermining the current one, but by holding the sovereign accountable to the standards internal to their exercise of authority.

In this chapter, I employed this framework in order to specifically think about Kant's conception of cosmopolitan progress – progress towards perpetual peace. Emphatically – and in contrast to the domestic level – cosmopolitan progress does *not* require that we force others into transnational institutions with us. Rather, we take up the global standpoint from within existing states by transforming them in line with their own underlying cosmopolitan principles. Our final end in doing so is a condition of perpetual peace, that is one in which all states interact with other states and non-state peoples on the basis of mutually agreed terms. For such a condition to come about, however, our own efforts to transform states into cosmopolitan agents need to coincide with other states' similar efforts, as well as non-state peoples' willingness to accept our offers of commerce. The notion of perpetual peace thus serves as a regulative idea that guides our efforts from within the state. *Insofar as* we take up the global standpoint and acknowledge our obligations of international and cosmopolitan right, we may assert on practical grounds that a condition of peace is attainable.

Concluding Remarks

I began this thesis by reviewing some of the ways in which Kant is currently read, both by interpreters and normative political philosophers. I identified two dominant interpretive trends that have shaped the reception of his political thought in recent years: on the one hand, a focus on his cosmopolitanism as providing a particular institutional model of global order, citizenship, and democracy; on the other hand, the turn to Kant as a theorist of a distinctly state-based political morality, based on the much debated property argument.

My claim was that these interpretive trends have sidetracked us from a particularly fascinating (though little-noticed) strand of argument in the *Doctrine of Right* that constitutes Kant's most systematic and sustained attempt to theorise the juridical implications of global connectedness. Based on the notion of a global standpoint, I identified and highlighted a specific domain of moral investigation concerned with the coexistence of a plurality of embodied agents on the spherical surface of the earth. A cosmopolitanism that starts from this idea is not primarily intended to push a particular normative agenda, but aims instead to provide agents with a reflexive standpoint from which they must interact with distant strangers. While the pertinent obligations concern our interactions *beyond* borders, they are predicated on states and the discharge of these obligations is incumbent on states' citizens. Kant thus employs the global standpoint in order to fold the cosmopolitan commitments that permeate his political writings from the outset into a theory of juridical statehood that emerges alongside his attempt to systematically develop the domain of right.

In concluding this thesis, I will first briefly recapitulate some of the core claims made in the course of my argument (1.), before bringing together what I take to be the most important ways in which the

emerging vision contrasts with current normative global justice theorising. This will finally lead me to point to some potential avenues for further research.

1. The Argument of this Thesis

I started my argument with a move beyond the property argument that has become the focal point of state-focused interpretations of the *Doctrine of Right*. The cosmopolitan vision I set out to develop starts from the idea of original acquisition of land and goes on to sketch a ‘place-related’ domain of moral reflection concerned with spelling out the normative implications of corporeal agency under spatial constraints. The basic idea is that the mere fact that they can affect and constrain each other through their choices by virtue of their concurrent coexistence on the earth’s circumference unites what I called earth dwellers in a community of ‘original common possession’.

Yet, this global community is not intended to function as an objective criterion for adjudicating individual entitlements. Instead, it constitutes a reflexive insight that constrains our comportment beyond the state. What I called the global standpoint is a distinctly first-person standpoint from which individuals must acknowledge their interdependence with others in a world of limited space. It is the standpoint from which we acknowledge our ability to locate ourselves vis-à-vis everyone else, and from which we act and interact with distant strangers with the aim of finding mutually agreed terms of coexistence. What we share with other earth dwellers is the capacity to come to terms with the fact of our concurrent coexistence as juridical equals.

Ultimately, however, it turned out that the state remains central to Kant’s cosmopolitanism thus conceived. For one thing, we only get to the global standpoint *through* the property-based argument for state entrance, such that we must limit ourselves to making cautious attempts

to establish contact when interacting with those who do not share our own statist political arrangements. Moreover, the inconceivability of a global institutional order with coercive powers means that the state is also the site for implementing the pertinent requirements. Hence, at the heart of Kant's cosmopolitanism is the idea of a world of *radically reformed* states that bind themselves (and their citizens) to rightful comportment towards other states and non-state peoples of their own accord. Insofar as we act on our own duty to take up the global standpoint and transform states in line with cosmopolitan principles, we can reasonably hope that other states will act likewise and that non-state peoples accept our offers for commerce, such that we can gradually approach a condition of peace.

2. Theorising Globally

I mentioned at the outset that, despite its largely interpretive nature, I intend this thesis to be of contemporary interest and relevance. In the methodological remarks of my Introduction, I suggested that serious and thorough engagement with a historical text can often prove helpful when it comes to orientation with regard to our very own philosophical whereabouts. In particular, at various points throughout the thesis, I came across interesting ways in which specific aspects of my argument seemed to me to contrast with ways of thinking that predominate in more recent disputes about global justice. I would here like to pick up on some of those themes in order to point out how the conceptual framework I have developed does not only contrast with predominant interpretations of Kant but with much of the contemporary normative global justice literature.

A core feature of the global standpoint is its *reflexivity*: it is not a pre-established view from nowhere, but a reflexive, first-person standpoint through which we are duty-bound to interact with others

with the aim of negotiating mutually justifiable terms of coexistence. Particularly in Chapter 2 I hinted at the way in which this vision contrasts not only with the natural law tradition but also its modern day adherents. By virtue of its tendency to reduce questions of global justice to questions of legitimate distribution, I argued that this theoretical framework has left us with an impoverished and overly limited vision of global relations. The problem, familiar by now from the domestic justice literature (e.g. Anderson 1999; Scheffler 2003) but less so in the global context,¹ is not only that in prioritising the recipient-oriented question of ‘who gets what’ over a concern with intersubjective relations and structures, it overlooks important ways in which we relate to each other independently of each our respective holdings. Another worry is that in viewing individuals as passive recipients of goods rather than agents with the authority to raise claims and the capacity to create mutually justifiable relations, we lose sight of the power relations underlying particular allocations of goods.

In exploring the most fundamental way in which individuals relate to one another globally (rather than how to divide up the world’s material resources), the framework I developed in this thesis thus reverberates with recent efforts to re-politicise the concept of justice by refocusing it on social relations rather than individual holdings (e.g. Schuppert et al. 2015). Kant’s global standpoint is intended to provide a non-parochial perspective that actually enables us to find shared solutions for shared problems.

A second point relates to the highly *systematic* nature of Kant’s cosmopolitanism.² An idea that we encountered time and again

¹ Notable exceptions are Forst (2013), Young (2006), Ypi (2012, pp.88/89).

² Kant’s at times obsessive tendency for systematic architectonic thinking – the labyrinth of more or less related (preferably threefold) divisions and subdivisions within and across his writings – has frequently been belittled as getting in the way of argumentative substance (Bennett 1966; Strawson 1966). Other interpreters, in contrast, have associated Kant’s systematizing tendency with his rejection of (particular Cartesian kinds of) foundationalism (Ameriks 2003, pp.37-80; O’Neill 1989, pp.11-28; Flikschuh 2011, pp.138/9): absent indubitable first premises, the

throughout the thesis was that Kant takes the very concept of right – an account of the “formal external relation between the power of choice of one person to that of another” (DoR 6:230) – to raise cosmopolitan questions. Starting from the idea of right as an external morality that places rights claimants in a determinate and systematic relation in space, the thought (laid out in Chapter 1) is that the earth’s circumference constitutes the relevant spatial constraint once the a priori construction of juridical relations is mapped onto empirical space.

In this regard, Kant’s framework contrasts interestingly with the motivating concerns of contemporary theorists. The latter tend to derive the need to theorise globally from certain empirical developments, for instance the fact that we are increasingly interconnected in a globalised economy, while at the same time confronting more and more problems that “concern our way of dealing with the earth as a whole” (Risse 2015, p.84). The heavily practice-driven nature of these debates (see also Beitz 2009; James 2012) is in striking contrast with Kant’s suggestion that it lies in the very concept of right that it be global. His famous claim, for instance, that “a violation of right on one place of the earth is felt in all” (PP 8:260) should thus not be taken to express a normative concern emanating from certain empirical developments or diagnosed global ills. Rather, it speaks to Kant’s attempt to conceive of a thoroughgoing system of juridical relations that spans the earth’s entire surface.

Finally, let us focus on the *institutional implications* of global theorising. On the one hand, there is a sense in which Kant’s cosmopolitanism as conceived from the global standpoint pushes back precisely against the tendency, predominant in global justice debates, to rush to substantive principles of global reach and the requisite institutional arrangements. Kant urges us to be wary of philosophical impatience despite the urgency of eliminating perceived injustices and

only way to orient oneself in thinking – and hence to place philosophical thinking on the “secure footing of a science” (CPR B vii) – is to systematise thinking itself.

instead to systematically reflect on the question how individuals relate to one another globally. Partly, this is driven by his scepticism concerning the possibility of globally extending the very idea of statehood, or (more generally) to transfer and implement principles developed within and for the nation-state context to the world at large.³ The global standpoint thus focuses on the *quality* of interaction rather than its matter, prescribing a form or mode of engagement through which earth dwellers can settle the terms of coexistence.

This also implies that rather than providing an institutional blueprint for a global order, the main function of the global standpoint is to give us a different and critical perspective on our own *existing* institutions. I have discussed in detail the sense in which the global standpoint is also a global standpoint on states. In contrast, current global justice debates usually approach the state from either of two perspectives. First generation cosmopolitans thought of state sovereignty effectively as an obstacle to the realisation of global justice, which they conceived of as demanding just relations between individuals globally. Recent internationalists, in contrast, returned to the morality of statehood. Their main idea – which, somewhat ironically, is often taken to be Kant-inspired – is that states are to be respected as sovereign agents by virtue of the moral coordination function they play in relation to their own subjects.

Kant rejects this dichotomy between statism and cosmopolitanism. His cosmopolitanism is one of distinctly outward-looking states. The point of reflecting, from within, on the contingency of the institutions of property, territory or sovereignty that we have inherited allows us to take ownership of them – to see ourselves as earth dwellers with the capacity to collectively structure and transform our shared social world rather than putting up with the terms of interaction that we find ourselves in. Within states we institutionalise normative

³ For a methodological critique of precisely this tendency in contemporary global justice disputes, see Bottici (2003).

requirements that go *beyond* it. In doing so, we bring them in line with their own underlying cosmopolitan principles.

3. Directions of Inquiry

Having highlighted some ways in which the interpretive framework developed in this thesis contrasts with a prominent debate in contemporary political theory, I want to end on a more constructive note. In pointing to potential directions of inquiry, I shall highlight two clusters of themes and questions that my interpretation has raised and which I take to be worth exploring further.

The first direction of inquiry pertains to the questions of *politics and space* that were at the very heart of this thesis. I read Kant's cosmopolitanism as emanating from a set of "place-related" reflections on the nature of politics under conditions of limited space: starting from the insight that human agents need to be somewhere in order to act, I showed how Kant develops a distinct domain of political normativity – built around considerations from the concurrent existence of a plurality of corporeal agents on the limited surface of the earth – that can neither be reduced to rights that we have in virtue of our humanity (in an abstract noumenal sense), nor particular rights of citizenship.

The underlying thesis that the foundations of political community are place-related reverberates with an emerging discussion in the political philosophy literature about the morality of space, place and territory. A number of theorists have started to consider ways in which the spatial nature of human agency and political association co-determine what we owe to each other. The thought that a given configuration of people at a particular geographic location has moral and political ramification has proven to provide original insights particularly in debates about authority, citizenship and migration, where philosophers are struggling to get to grips theoretically with the

increasing loss of the traditional congruence between membership in a political community and territorial presence. Authors have for instance discussed the possibility that mere physical presence in a territory may ground a right to stay (Ochoa Espejo 2016) or wider rights to citizenship and democratic enfranchisement (Bauböck 2015).

It should not come as a surprise that Kantian perspectives are largely absent from these debates, given that Kant's universalism is usually known precisely for *abstracting* from all particularities. Prima facie, it would seem that such an account is doomed to remain silent on the "locatedness" of agents and political communities, leaving it profoundly inapt to theorise place-related considerations of any kind. While this thesis should have gone some way in debunking this myth, it remains to be seen whether the mere idea that Kant's cosmopolitanism can be said to be place-related on the most general level can also frame more specific attempts to theorise the moral and political significance of the relations between individuals, communities and the particular places where they dwell.

The second issue I want to raise concerns the topic of *progress in politics*. It is fair to say that the very notion of progress has fallen out of fashion in political philosophy. Politically, progressive narratives are associated with the atrocities of the 19th and 20th centuries that were justified with regard to the grand utopian visions they were supposed to bring about (Geuss 2008), as much as with the devastation caused by Western imperialism and empire in past and present (Berman 1998). Philosophically, they are linked to the dogmatic and eschatological philosophies of history that are nowadays disdained as excesses of reason leading to metaphysical megalomania (e.g. Allen 2016). For Kant, however, the assumption that progress is possible has a regulative status: it is a first-personal stance of practical belief that our political efforts are not in vein as the future is (in principle) open to our intervention. As such, it does precisely *not* make voluntary action meaningless (as much metaphysics of history is suspected to) but

constitutes a subjective presupposition for it by orienting political action towards its projected goals.

This practical reading raises a host of interesting and under-theorised questions about the significance of progressive aspiration in politics, and the reciprocal or even mutually constitutive relation it stands with what is practically possible (Goldman 2012). From the perspective of the agent, distant ideals often frame, motivate and enable concrete political efforts. And in so doing, the ideals that we bring to bear on action co-determine the limits of what we can achieve: by orienting our action towards distant political ideals, we can bring reality itself closer to the desired goal. A Kantian framework thus problematizes the antagonism (striking in many a methodological debate in political theory specifically) between distant ideals and concrete contexts of agency. In other words, it invites us to thematise more explicitly the bridge between subjective aspiration and (the limits of) objective possibility in politics rather than construing them as in stark opposition.

Of course, in taking up these themes and relating them to ongoing debates in political philosophy, we are bound to strike a balance between taking seriously the distinctiveness of Kant's perspective (which is always tied up with his wider philosophical commitments) and the prospects of making his insights fruitful for contemporary contexts and audiences that often start from a deep scepticism about his framework. Yet, this should only encourage us to aim at a better understanding of the originality of Kant's philosophical outlook, without ever ceasing to reflect on the question what we can take and what leave behind while still having a defensible position.

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