

Author: Wayne F. Buck
Contact: waynebuck@aya.yale.edu
203.623.9482
www.waynebuck.com

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X.

KANT'S JUSTIFICATION OF PRIVATE PROPERTY

The purpose of this paper is to elucidate Kant's justification of private property as it appears in the *Metaphysical Elements of Justice*.¹ I will not attempt to uncover the philosophical antecedents of Kant's justification, to correlate it with contemporary political or social influences, or to evaluate the argument as a whole. I simply want to reconstruct the argument of the *Metaphysical Elements of Justice* as clearly and sympathetically as possible.

In its entirety, Kant's is a theory not simply of property (*Eigentum*), but of what Kant calls *das Meine* and *das Deine*, of what is mine and what is yours. There are, Kant says, three kinds of things that can be mine or yours: (1) external corporeal objects, (2) a particular act of some person (*e.g.*, the promised return of a loan), and (3) the status (*Zustand*) of another (*e.g.*, the services of an employee or servant).² Only the first is, properly speaking, property, for only physical objects can be disposed of—manipulated, altered, destroyed or given up—at will. An act or the status of another may belong to me but not as my property, for there is an obligation between us in virtue of our both being persons, an obligation which does not exist between a person and a thing (PL, 96 [381-382]). But because I am here interested only in Kant's theory of property, I will take "*das Meine*" and "*das Deine*" to mean simply "property."

While Kant's argument for private property is disjointed and repetitious, it can be analyzed into two logical parts. They are:

- I. Proof that everyone has the right to own property (contained in §§1-5, 7 of MEJ).
- II. Deduction of the concept of "ownership."
 - A. *That* ownership is possible (§6).
 - B. *How* ownership is possible (§§6, 10-14, 16).

2. *Proof that Everyone Has the Right to Property*

The a priori law which serves as the core of Kant's entire theory of property is the "Juridical Postulate of Practical Reason." This law

states that everyone has the innate right to acquire and possess things as private property.

*We have an inherent right to acquire anything for our use insofar as the right is in accordance with the condition of the external synthetic unity of the will.*³

Note that the Postulate implies that any external object can be someone's property.

The *Critique of Practical Reason* presents us with three other practical Postulates: immortality, freedom as spontaneity, and the existence of God.⁴ These Postulates cannot extend our theoretical knowledge, but are necessary presuppositions of the moral law, a law which is a priori and unconditionally valid.⁵

Kant calls the a priori law which ascribes to everyone the inherent right to own property a *Juridical Postulate* of practical reason. It is a necessary presupposition, not of the moral law directly (*i.e.* of the categorical imperative), but of the corresponding fundamental juridical law—the “Universal Principle of Justice.” This principle says:

Every action is just [Recht] that in itself or in its maxim is such that the freedom of the will [Willkür] of each can coexist together with the freedom of everyone in accordance with a universal law (MEJ, 35 [337]).

Kant argues that this principle entails that every rational being who exists in space with others has the innate right to private property—that is, that it entails the Juridical Postulate. Let us first consider Kant's argument for the Universal Principle of Justice, and then his derivation of the Postulate.

Human beings, according to Kant, are both negatively and positively free. They are free *from* determination by the phenomenal realm. But they are also free to limit their actions to those whose maxims are universalizable. It is just the capacity to act on universalizable maxims—those acceptable to any and every rational being—wherein human dignity and moral worth lies. Therefore, human beings have a *right* to act on the maxims they adopt for themselves. They have the right to determine their own ends and pursue those ends as they think best. Because human beings exist together in space,

however, they can be causally affected by others through, for example, physical force, intimidation, or indoctrination. To be able, in practice, as a particular human being living with others, to pursue one's own ends in one's own way is to be externally free.⁶ The Universal Principle of Justice follows from this right to external freedom, for the principle simply expresses the latter in a Kantian formula (see again the quotation immediately above).

Having established the Universal Principle of Justice (the right to external freedom), Kant will now argue that the right to own property is a necessary condition of the right to pursue one's own ends. His argument is simple.

- (1) Having the right to pursue ends requires having the right to use things as means to those ends.
- (2) But having the right to use a thing is just what it means to own it.
- (3) Therefore everyone has an a priori right to own property.

(1) Because human beings have the right to pursue their ends (*i.e.* they have the right to external freedom) they have a right to act in those ways necessary for achieving any ends at all. When we act to attain some end, in many cases our action involves manipulating or transforming some material object. When I eat an apple, I use the object for sustenance. When I paint, I use a brush and oils to transform a piece of canvas. Manipulation of objects is thus one of the means necessary to achieving ends in general. Hence the right to use external things is a necessary condition of the right to external freedom. As Kant puts it, if reason were to forbid the use of physical objects, external freedom would come into contradiction with itself, or “freedom would be robbing itself of the use of its *Willkür*” (*MEJ*, 52 [354]). Simply put, external freedom would in effect be forbidden by reason and morally impossible.

(2) So far Kant has established the inherent right to use external objects. But this is not yet to establish the Juridical Postulate, which claims that individuals have the inherent right to *own* things. Kant makes this second step from the right to use things to owning them by means of an analysis of the concept of “possession.”

The ‘subjective’ condition of the possibility of actually manipulat-

ing a thing is physical possession. I am not able to use an axe unless I have it in hand, and I am not able to build a cabin unless I am standing on the spot where it is to be. These kinds of possession Kant usually calls "*empirischer Besitz*" and "*Inhabung*." I will call them "custody." Possession in this sense, then, is the subjective condition of the possibility of actually using a thing.

"Possession," however, cannot just mean custody. Suppose that my right to the use of a thing lasted only as long as no one prevented me from using it as I desired. Thus if someone wrests the thing from my control to use as *she* pleases, my right to use it would end. But losing the right to an object merely because another grabbed it from me is precisely the situation in which I did not have a right to use it in the first place. Therefore, my having a right to the use of a thing presupposes that I can justifiably complain if anyone interferes with my using it as I please, and that I am justified in preventing anyone who tries to do so. If I have rights to something there must be *some* circumstances in which I retain those rights even though I have lost custody of the object (MEJ, 54 [356]). Custody is neither necessary nor sufficient for possession in this sense. So "possession" must have a second meaning, distinct from custody, if having rights to things is to be possible. This sort of possession must be a relation between an individual and a thing that obtains independently of their spatial relations. Since "possession" in this sense cannot denote a sensible relation between persons and things, Kant calls it "*intelligibler Besitz*." When there is such a relation between me and some object, I have "authority" (*Gewalt*) over the object regardless of whether I have custody (MEJ, 61-64 [362-365]). Let us call this intelligible or 'noumenal' relation "ownership."

(3) Ownership, therefore, is a necessary condition for having rights to the use of a thing at all.

Kant has established the inherent right of everyone to own things, where "own" means simply "have rights to the use of." On several occasions, however, Kant seems to say that a thing is my property only if I have the *exclusive* right to use it and can justifiably use force (either directly or through some instituted enforcement mechanism) to prevent another from using it in *any* way unauthorized by me. Kant, for example, says:

A thing is externally mine if it is such that any prevention of my use of it would constitute an injury [Laesion] to me even if it is not in my possession (that is, I am not the custodian [Inhaber] of the object (MEJ, 55-56 [357]; my emphasis).

If Kant means the Juridical Postulate to ascribe an inherent right to *exclusive* private property, then a further argument is needed. He might argue that one cannot have any rights to the use of a thing unless one has exclusive rights to it. But such a claim is clearly false, and, moreover, Kant himself implicitly concedes this, for he accepts the possibility of common property (see, e.g., PL, 81 [368]). Kant in fact has not shown that private property is a necessary condition for external freedom.

Nevertheless, Kant's argument has given us two important insights into property. (1) He has shown that useful physical objects play a crucial role in freedom, and that freedom is in large part actual only in one's self-determined manipulation and transformation of physical objects. Kant has seen that the right to use objects is grounded in and must take its character from the inherent right to freedom. (2) Kant's argument has also revealed that central to ownership is the holding of proprietary rights over an object. That is, when I own something, that essentially means that I hold a right to have that object available to me, and a right (which may or may not be exclusive) to make use of that object.

2. Deduction of the Concept of "Ownership"

Kant states the problem the deduction is meant to solve in accordance with the formula laid down in the *Critique of Pure Reason*. The question of how the concept of ownership is possible and empirically valid is construed as a question about how a certain synthetic a priori judgment is possible. This is an important move, and not merely an artifact of Kant's "will to a system." The expression of the concept of ownership as a synthetic a priori judgment reveals why this concept is problematic and in need of a deduction.

In regard to those objects I have *custody* of, the following proposition is, Kant says, analytic:

(C) Another's use of it against my will diminishes my freedom (MEJ, 57 [359]).⁶⁷

If someone prevents me from using some object that I have custody of, I cannot then act as I please, whereas previously I could have. Without an axe one cannot build and without a brush one cannot paint. The proposition is analytic: it follows simply from the concepts of external freedom and custody.

But a very similar proposition regarding an object I do *not* have custody of is synthetic:

(P) Another's use of it against my will has the capacity to diminish my freedom.⁸

This proposition is synthetic—and indeed, even paradoxical. If any object is beyond my reach, and hence at a distance, how is it possible for another's use of it to act on me so as to diminish my ability to do as I please? True, he might damage the object, making it unusable, or I might feel anxious that his custody will prevent free access to it. But Kant surely wants to say that another's unauthorized use of the objects I won *by that very fact* diminishes my freedom. So even if a thief takes the settler's axe without his knowing (to prevent mental anguish), does not damage it in the least, and secretly returns it (so that the settler's free use of it is not hindered in any way)—still, Kant wants to claim, the settler's freedom would be diminished. How can this be, since *ex hypothesi* the theft has made no 'practical' difference?

To show both that and how this proposition regarding objects not in one's custody is a priori true is to provide a deduction of the concept of "ownership" (of "*bloss-rechtlicher Besitz*"). For owning something is just to be so related to it that another's unauthorized use of it constitutes an injury—in Kant's medical/juridical terminology, a *Laesion*. That is, his use violates one's only inherent right, the right to freedom (see again MEJ, 51 [353] and 55 [357]). To show that another's unauthorized use of a thing has the potential to diminish my freedom is precisely to show that that use has the potential to violate my rights and hence to show that ownership is possible.

2.1 That Ownership is Possible

Now the (very easy) deduction is performed. The truth of the synthetic a priori proposition regarding objects not in one's custody is, Kant says, a necessary condition of the truth of the Juridical Postulate of practical reason. Even though its truth cannot be established "by itself," this synthetic a priori proposition must be counted as true. In sum: It is a necessary condition of my being externally free that it be possible for my freedom to be diminished by another's use of an object I may not be in a position to use immediately. This is the import of the Juridical Postulate. Hence it *is* possible for my freedom to be diminished by the unauthorized use of an object of which I do not have custody.

The possibility of nonphysical possession cannot in any way be proved by itself, nor can it be immediately intuited as true... Instead, its possibility follows directly from the aforementioned postulate, for, if it is necessary to act according to this basic principle of right, then the intelligible condition (of a mere de jure possession) must also be possible (MEJ, 60 [361]).

Kant demonstrated that my having rights to the use of a thing entails that wrongful seizure from my custody is possible, and hence that if I do have rights to a thing, that I can quite possibly have those rights over things not in my custody. He has established, then, a weak version of the Juridical Postulate. This in turn entails the possibility of someone's wronging me—*i.e.*, violating my rights—by his use of an object not in my custody. And if "diminishing one's freedom" means "violating one's rights," (P) does indeed follow.

2.2 How Ownership is Possible

Kant has just established that it is possible to have rights over a thing not in one's custody, and to be so related to a thing that another's unauthorized use of it diminishes one's freedom. But Kant has not yet explained *how* this is possible. He has not yet shown how I can be justified in forcibly preventing another from using, even innocuously, some object of which I do not have custody.

There is, Kant says, only one inherent right—the right to external freedom. Therefore, a right to the use of a particular object must be an *acquired* right—“Nothing external is originally [*ursprunglich*] mine” (PL, 81 [368]). Such a right comes into existence by a “juridical act,” an act which confers rights one did not have previously. For anything I own, there must have been a time when I did not own it and therefore an event or set of events that subsequently brought it under my rightful authority. It follows, on pain of infinite regress (which regress is objectionable, since human beings have not existed from the beginning of time), that it is possible to be the first to acquire rights to a thing. That is, it must be possible to rightfully acquire things other than through the gift of, or an exchange with, another person. Kant calls the process by which a previously unowned thing becomes someone’s private property “original acquisition” (*ursprungliche Erwerbung*) (PL, 81 [368]).

If Kant can explain how original acquisition is possible, he will have explained how ownership is possible. That is, the concept of “ownership” will be comprehensible if we can understand how something previously unowned can be reserved for one person to the exclusion of others. How is this possible? How can reserving an unowned thing for one person’s use not diminish the freedom of others? Kant divides the process of my original acquisition of something into three steps or “moments.” The first is my apprehension (*Apprehension*) or seizure (*Bemächtigung*) of the thing. It is the *Willkur’s* act of taking custody of the object. The second is a declaration (*Bezeichnung*) that the object belongs to me. And the third is an act of appropriation or dedication (*Zueignung*) by which the object in fact becomes my property.

The problem with original acquisition can be divided in two. The first difficulty has to do with seizing the object (taking it into custody), and the second with the dedication (making it mine). It is clear that seizure is morally and juridically possible, just as it is clear that ownership is possible, for its being so is a necessary condition of the Juridical Postulate. Yet *how* can rightful seizure (and hence ownership) be possible? If I have no right to a thing (because originally *no one* has) how can I rightfully take custody of and use it, thereby erecting obstacles to its use by anyone else?

The second difficulty concerns dedication, the act whereby an unowned object becomes mine. Who performs this act which grants

me an original title to something? It cannot be the act of some other individual, for he could give me rights to a thing only if he owns it, and *ex hypothesi* no one yet does. Neither can the juridical act giving me title be the act of several together—*e.g.*, a contractual agreement between myself and others to reserve the thing for my private use. For even if we suppose that a few others agree not to use some object and not to prevent my use of it, our agreement cannot bind any one else (not, for example, future persons). The juridical act through which I acquire rights to a previously unowned thing can only be *my* act—“I acquire a thing when I act so that it becomes *mine*” (PL, 81 [368]).

But how can the declaration that a thing is my private property, a declaration that *I* make, reserve something for myself, impose an obligation on others, and thereby rightfully limit their freedom? If something previously unowned becomes my private property everyone else would be obligated to respect my wishes regarding that object, although previously they could do with it as they pleased. Declaration is the contingent act of a particular individual, and yet it establishes “universally valid legislation” (MEJ, 62 [363]). How is this possible?

Let us take the second difficulty first. Kant’s account of how declaring something to be mine can impose obligations on others is as follows:

Because of the principle of autonomy, the only restrictions binding on a rational being are those she chooses to accept. In order for original acquisition to be possible, it must be the case that (in some sense) every rational being has committed herself to accepting another’s claim to a previously unowned object as establishing the other’s right to that object, and as obligating her to refrain from using it. Therefore, since we must believe that original acquisition is possible, we must also believe that everyone has agreed to respect the first claim to possession as a rightful claim to ownership (PL, 89–90 [374]). In brief, my claim to an unowned object can impose an obligation on everyone else because all are required to believe that they have already agreed to be bound by such claims.

We can now consider the first difficulty with original acquisition. How can seizure be rightful? How can I rightfully seize something to which I have no right? Kant invokes the Idea of the original community of the land and argues that it explains this possibility. This argu-

ment completes the deduction of ownership.

Kant distinguishes the original community (*urspruengliche Gemeinschaft*) from a hypothetical primitive community (*uranfaengliche Gemeinschaft*). The latter results when individuals come together and contract with each other to give up some of the private rights they had previously acquired. They agree, among other things, to give up some of their private property. They institute for the first time relations of law and justice between themselves. Because such a primitive community is the result of the acts of individuals, it can only come into being at a particular time and hence is a product of history.

The original community of rational beings is quite different. The common possession which existed in the primitive community *necessarily* exists in the original community. But this common possession is not the result of individual acts. It is "*urspruenglich*"; in it, rational beings *find* themselves holding everything in common even before they act to establish relations of law and right. In the original community of persons, no private property has yet existed. Everyone is still free to use whatever she pleases.

In effect, the concept of an original community expresses a way of being together characteristic of human beings simply in virtue of their existing together as purposive, inherently free agents. The relations that exist between rational beings merely in virtue of existing alongside each other in a spatial *Umwelt* filled with corporeal things constitute the original community. It is therefore not the result of history but exists only "in principle": the concept of such a community is an Idea.

Having characterized the Idea of the original community, we can now examine Kant's argument that it explains how seizure, and thus ownership, is possible.

Kant's first step is to move the question from one about seizure of things to one about seizure of land. There are two kinds of physical things: those which can be destroyed and dispersed, and those which are immovable and which can only be altered. The first are movables (*Beweglichen*) and the second is the ground or land (*Boden*). The relation between the land and movables is analogous to that between substance and accident, and thus for practical (*i.e.*, moral-juridical) purposes, movables cannot be separated from the land. Consequently, one cannot originally acquire a movable unless one first acquires the land in which it inheres. The first original acquisition can only be an

acquisition of some piece of land. So if Kant can show how original seizure of the land is possible, he will have shown how original acquisition is possible.

The inherent right to external freedom entails that human beings have a right to use things in pursuit of their ends. It follows that if anyone is in a place she has not chosen to be, she has a right to be there and use the things around her (unless those things are owned by another). Thus, anyone thrown into the wilderness has the right to use the land and the things she finds there. She is necessarily in rightful custody and hence rightful possession of the land she occupies.

Is this rightful ownership an exclusive right to occupy the land she is on? Perhaps not, for if someone else has also been thrown into the same wilderness with her, he also would have a right to occupy the land and use the things on it. The two would then hold rights to them in common merely in virtue of being thrown into the same place. It seems, though, that our two unfortunates need not wind up in the same place, for they could disperse easily enough and live completely apart. *Only if they are thrown into the same place and constrained to remain there would the things they have rights to be held in common.*

In order for seizure to be morally possible, everyone must have a right to occupy any unowned piece of land. Only if everyone has this right "from the beginning" (*i.e.*, in principle), does the possibility of original acquisition and ownership, and the truth of the Juridical Postulate, follow. Therefore, everyone *must* have a right to occupy any unowned land. As we have just seen, everyone has this right only if they have all been thrown into the same place. The argument of §2.1 was that we must believe that ownership—and hence seizure—is legitimate (*i.e.* morally permissible). Kant has now argued that the condition for seizure's legitimacy is that we have all been thrown into the same place. It follows that we must believe we have all been thrown into and live in the same place.

Now, those who live on a surface of infinite extension cannot be said to necessarily live all in the same place. According to Kant, it follows as an a priori truth—a postulate—of pure practical reason that the Earth is not an infinite plain, but is instead a globe. Living on the surface of a sphere is thus a necessary condition of the Juridical Postulate and of external freedom. In virtue of inhabiting a globe, a body whose topology necessitates that every location is in the same place

(just as every location in a room is in the same place), every human being has an original right to every piece of land and thus is in an original community of land with everyone else. The Idea of an original community is a necessary condition of the Juridical Postulate and explains the latter's possibility by reference to a geographical fact. Hence that 'fact' is a priori. The Juridical Postulate is grounded on the idea of the original community of persons and on what I will call a "transcendental geography."

All human beings are originally (i.e., before all juridical acts of the will) in rightful possession of the land. That is, they have a right to be where ever nature or chance (without their will) has placed them. This possession is different from the willful and thus acquired, continuing possession characteristic of residence. It is a common possession on account of the unity of all places on the Earth as a globe. If the Earth were an infinite plain, human beings may not have been in community with each other, and thus this community would not have been a necessary result of their existence on Earth. The possession of all who live on the Earth precedes all their juridical acts, being constituted by nature itself, and is an original common possession (communio possessionis originaria). This concept of an original common possession is not empirical and not dependent on temporal conditions, as is the hypothetical and unproven primitive common possession (communio primaeva). It is instead a practical concept of reason that contains the only principle according to which human beings can use the land in conformity with the laws of right (PL, 88 [373]).

Kant here makes the remarkable claim that pure practical reason presupposes, not only that God exists and that we are free and immortal, but also that we live on the surface of a globe. What is remarkable here is that the particular shape the Earth has seems to be contingent—something to be determined by theoretical reason through experience. Kant's laborious attempts to respect and preserve both science and morality by assigning them to distinct spheres is now seriously jeopardized.

The three traditional Postulates of Kant's moral theory—God, freedom and immortality—have all the appearance of theoretical claims. That is, they are claims that certain things exist and that these things have particular properties: a supreme being exists and the self is both free and immortal. With these Postulates Kant implicitly recognizes that morality cannot be wholly separated from what is the case—the moral imperative presupposes that the universe is arranged one way rather than another.

How then does Kant prevent science—the supreme arbiter of what exists—from assuming authority over morality? He restricts the scope of science and construes the existential presuppositions of morality in such a way that these presuppositions cannot be tested by this restricted science. Although the three Postulates of Practical Reason have the status of theoretical claims (they employ concepts "thinkable" by theoretical reason), they are not decidable by theoretical reason (the "objective reality" of their concepts cannot be determined by theoretical reason).⁹ We have practical (*i.e.*, moral) reasons for believing that God exists, that we are free and immortal, and so for *practical* purposes we must uphold the Postulates. We cannot, however, use these Postulates for theoretical purposes (nor are they needed).

This solution to the antagonism between morality and science is, of course, subject to a variety of difficulties. For one thing, the three traditional postulates do not, it seems, all have the same character. Morality presupposes all of them in the sense that as moral agents we are required to *believe* that God exists, and that we are free, immortal beings. Kant, however, admitted that the actual falsity of the belief in God and in our own immortality would not invalidate the moral law. He claimed that the Postulate of freedom, on the other hand, is required by morality in the sense that were the postulate false, the moral law would not bind us. What kind of postulate is the statement that the Earth is a globe? Does Kant believe that the validity of the Juridical Postulate depends on the actual shape of the Earth, as the validity of the categorical imperative depends on the freedom of the will? Or does Kant think simply that the Juridical Postulate requires us to *believe* that we live on a globe?

I would first point out that nothing peculiar to the argument for property hangs on this question. Second, neither answer presents any

new difficulty for Kant's ethics, and neither solves any of its problems. Third, whichever interpretation we give to this new postulate, there looms with it a serious threat to Kant's entire justification of property.

What I have called the transcendental geography proclaims, as a necessary presupposition of morality, that the Earth is a globe. What looks for all the world like a contingent fact of experience, and hence within the purview of empirical science, is asserted as an article of moral faith. Kant is suddenly on the horns of a perilous dilemma, a dilemma which does not arise for the three Postulates. Whether or not these three Postulates are true, or need to be true for morality's validity, they are not subject to the scrutiny of science. Nothing in experience could possibly count either for or against these Postulates. The geographical postulate, on the other hand makes an *empirical* claim, one quite susceptible to disconfirmation by experience. Hence the dilemma that arises with the transcendental geography: Were geographers to determine that the Earth is not in fact a globe (a logical possibility), either morality would require us to deny the empirical findings of science, or science would effectively undermine the foundations of morality (by forcing us to disbelieve a necessary presupposition of morality).

The solution to this dilemma lies in realizing that Kant has stumbled somewhat by introducing the transcendental geography. The point Kant wants to make is an interesting, even a profound one, but ironically he obscures it by thinking too concretely. We can see where Kant went wrong, and what the real issue is, by working backwards through Kant's reasoning.

The climax of the argument is the startling claim that the Earth is necessarily a globe. The Juridical Postulate, he claims, presupposes that originally (*i.e.*, in principle), the land was held in common. This possession is a common possession of everything, Kant says, "on account of the unity of all places on the Earth as a globe." This is not quite right. It is not necessary for the Earth to be a *globe* in order that all places on it be unified. The requirement that all the Earth's places be a unity would be satisfied if the Earth were a cylinder, plate or any other body of limited surface area.

It would seem, then, that Kant simply needs the weaker and less remarkable claim that the Earth is necessarily finite in surface area.

But, again, this is not quite right. Kant talks about the Earth, but what he really means is the universe—*i.e.* the totality of points one can travel to or affect. This is easier for us to see, now that space travel is a routine event. So, the position Kant needs to maintain is that the finitude of the universe is a necessary presupposition of the Juridical Postulate.¹⁰

Kant is now off the horns of the dilemma. He argued in the *Critique of Pure Reason* that the question of whether or not the universe is infinite presents an antinomy for theoretical reason: theoretical reason is necessarily unable to decide this question. Correctly understood, what Kant needs is not a transcendental geography, but a transcendental cosmology. The claims of this latter discipline, like the three traditional Postulates, are not subject to scientific review. The way is clear for practical reason to assert itself. It can safely claim as a presupposition of morality the finitude of the universe and need not fear contradiction from science.

This is fine for salvaging Kant's argument, but I think that an important insight of Kant's into property still remains obscured. Kant says: "If the Earth were an infinite plain, human beings may not have been in community with each other, and thus this community would not have been a necessary result of their existence on Earth." It is a necessary presupposition of the Juridical Postulate that in principle all persons live in community with each other—*i.e.*, that we all live *together*. Kant thinks that the only way to guarantee that everyone winds up living together is to throw them all into a limited space. Kant has in mind, I think, being together in the way that people in a room are together, or in the way that villagers live together in their village—he thinks of living together as existing in proximity.

This is a mistake, however. For the purposes of Kant's justification of property, living in community with others is better thought of as being in a position to causally affect them. What is important for the argument is not how far apart people are, but whether they can (in principle) influence each other. Even if the universe were infinite, nothing in it would be at an infinite distance from anything else. Persons scattered throughout an infinite universe would still be able to causally affect each other, and in that sense would still be in the universe together. We are all of us—human beings and whatever extraterrestrials there may be—in this together, and we thereby necessarily form a single community.

Kant, in effect, is giving a moral interpretation to a certain necessary feature of space and consequently of our existence in space. He argued in the *Transcendental Aesthetic* that "we can represent to ourselves only one space; and if we speak of diverse spaces, we mean thereby only parts of one and the same unique space" (A25, B39).¹¹ Because every location is continuous with every other location, there are no regions of the universe inaccessible to us. As moral agents existing in space and time (and for that reason capable of causally affecting each other), we are required by morality to think of ourselves as living in essential community with every other rational being. It is the inevitable community of purposive, rational, incarnated beings that makes it both possible and necessary for them to establish institutions regulating their use of material things.

Wayne F. Buck
Department of Philosophy
Yale University

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¹ For other discussions of Kant's theory see: Mary J. Gregor, *Laws of Freedom* (Oxford, 1963), chapter IV, "The Principles of Acquired Right," pp. 50-63; Howard Williams, "Kant's Concept of Property," *Philosophical Quarterly* 27 (1977), pp. 32-40; Susan Meld Shell, "Kant's Theory of Property," *Political Theory* 6 (1978), pp. 75-89. Now, see also Howard Williams, *Kant's Political Philosophy* (Oxford, 1983), pp. 77-96.

² *The Metaphysical Elements of Justice*, trans. by John Ladd (Indianapolis, 1965), pp. 54-55; "Die Metaphysik der Sitten," in *Werke in Sechs Bänden*, hrsg. von Wilhelm Weischedel (Wiesbaden, 1956), Band IV: *Schriften zur Ethik und Religions-philosophie*, pp. 355-57. My references to *The Metaphysical Elements of Justice* will take the following form: (MEJ), 54-55 [355-578], where the page numbers in brackets refer to the Weischedel edition. Where Ladd does not provide a translation, I will refer, in its place, to: *The Philosophy of Law*, trans. by

W. Hastie (Edinburgh, 1887), using the form (PL, 96 [381-82]), where again the page numbers in brackets refer to the Weischedel edition. Hastie's translation is a bad one, and cannot be trusted. In quoting from the sections Ladd leaves out (*viz.* §§10-35, 37-40), I have revised most of Hastie's translations or provided my own.

³ *Handschriftlicher Nachlass* (Academy edition), vol. 23, p. 220 (my translation). The postulate is formulated as follows in the *Metaphysical Elements*: "It is a duty of justice to act toward others so that external objects (usable objects) can also become someone's (MEJ, 60 [361]; and see MEJ, 65 [366])."

⁴ *Critique of Practical Reason*, trans. by L.W. Beck (New York, 1956), p. 137.

⁵ *Critique of Practical Reason*, p. 127.

⁶ "Human freedom as a principle for the constitution of a community I express in this formula: No man can compel me to be happy after his fashion, according to his conception of the well-being of someone else. Instead, everybody may pursue his happiness in the manner that seems best to him, provided he does not infringe on other people's freedom to pursue similar ends" (*On the Old Saw: That may be Right in Theory but Won't Work in Practice*, trans. by E. B. Ashton [Philadelphia, 1974], p. 58). Compare the formulation in MEJ, 43-44 [345].

⁷ Kant's actual words are: "If I am the holder of a thing (that is, physically connected to it), then anyone who touches it without my consent (for example, wrests an apple from my hand) affects and diminishes that which is internally mine (my freedom)."

⁸ "Has the capacity to" instead of "does" diminish my freedom for the obvious reason that there can be objects outside of my custody whose use by another would not diminish my freedom—*viz.*, those objects I do not own. Kant argues that since any object *can* be owned by me, every object is such that another's use of it without my consent has the *potential* to diminish my freedom (a potential that is actualized just in case I own the object). See MEJ, 56-57 [358-59]. This formulation of the proposition needing a deduction is not Kant's, but rather my candidate for what Kant must have meant. I have taken my clue for formulating this proposition from Kant's formulation of the proposition regarding objects held in custody.

⁹ *Critique of Practical Reason*, pp. 137-42.

¹⁰ Jonathon Vogel suggested this to me in conversation.

¹¹ *Critique of Pure Reason*, Norman Kemp Smith (trans.) (New York, 1929).