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KANT'S THEORY OF PROPERTY—POSSIBILITY, PROVISIONALITY, AND PROXIMITY

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KANT'S THEORY OF PROPERTY—POSSIBILITY, PROVISIONALITY, AND PROXIMITY

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ABSTRACT

This thesis examines Kant's theory of property in the Doctrine of Right by asking how rights over external objects can be justified from the standpoint of external freedom. Kant begins from the innate right to freedom as the only original right, yet property rights seem to go beyond this right: they allow one person to exclude others from using objects even when those others do not interfere with her body. The thesis argues that Kant's account must therefore address three connected problems: the possibility of property, the provisionality of acquisition, and the scope of the civil condition in which property becomes conclusive. Part I examines Kant's Postulate of Private Right, according to which it is possible to have any external object of choice as mine. It reconstructs two approaches to this claim. The Descriptive Argument explains property by appeal to the conditions under which finite agents pursue ends through external objects. The Normative Argument explains property in terms of juridical independence and the extension of right to the outer. I argue that each captures part of Kant's view: property is justified juridically, but its practical significance becomes visible because finite agents exercise freedom through external objects. Part II turns to Kant's claim that something external can be mine or yours in the state of nature only provisionally. Against interpretations that treat provisional right as a weaker or conditional kind of right, I argue that provisionality concerns the unilateral mode of acquisition. Property before the civil condition is juridically possible, but not yet conclusive, because no private will can finally impose obligations on all others. Part III addresses the boundary problem that follows from this account. If provisional rights become conclusive only in a civil condition, it must be asked with whom individuals are required to enter such a condition. I argue that Kant's Principle of Proximity does not determine rightful boundaries directly. Rather, it identifies de facto political communities that form provisional starting points for claims to public right, self-determination, and territorial authority.

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To Adriana, to Milou

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Introduction

Property rights occupy an ambivalent place in a theory of freedom. On the one hand, they seem to make freedom effective in the external world. A person who can have objects as her own can use them, return to them, plan with them, and exclude others from interfering with them. In this respect, property appears to extend freedom beyond the limits of immediate physical possession. On the other hand, property rights necessarily restrict the freedom of others. If an object belongs to a person, others are no longer at liberty to use the object without her authorization, even when they could do so without interfering with her body. Property rights therefore seem both to support freedom and to limit it. More precisely, they structure freedom by assigning powers of control to some and duties of non-use to others. The central question is how such a structure can itself be justified from the standpoint of freedom.

Kant's theory of property in the Doctrine of Right seems especially well placed to resolve this puzzle. Kant begins from the innate right to external freedom as the only original right. All further rights, including rights to external objects, must therefore be connected to this original right. At the same time, the innate right to external freedom also sets the standard by which all such further rights must be judged: no claim can be rightful unless it can coexist with the freedom of everyone under a universal law. Kant's theory therefore promises to explain property from within freedom itself, rather than by appealing to an independent value such as welfare, efficiency, or social advantage. Property rights are to be justified, if they can be justified at all, from within a theory whose starting point and limiting principle is freedom itself.

The difficulty is that this promise is hard to redeem. Kant must first explain why the innate right to external freedom can give rise to rights over external objects at all. Innate right initially seems to protect persons against bodily interference; it does not obviously explain how someone can be wronged by another's use of an object she is not physically holding. Kant must then explain how such rights can be acquired. If I declare an object to be mine, I purport to place others under an obligation not to use it; but it is not clear how my unilateral choice could create such an obligation for them. Finally, even if claims to external objects can have some significance for right before the establishment of public authority, they seem unable to become fully binding without a civil condition. Kant's account must therefore explain not only why property is compatible with freedom, but how a theory that begins from external freedom can justify rights over objects, their acquisition under unilateral conditions, and the transition to public right.

This thesis examines Kant's account by focusing on three of the most pressing problems it faces in resolving this puzzle. The first is the possibility problem: why is Kant entitled to claim that property rights are possible at all, and how is

this possibility connected to the innate right to external freedom? The second is the provisionality problem: if property rights are possible, what status can they have in the state of nature, where acquisition is unilateral and cannot yet be authorized by a public will? The third is the boundary problem: once the need for a civil condition arises, with whom must individuals enter such a condition, and how is the scope of public right to be determined?

These three problems structure the thesis. Each part is organised around one central Kantian claim and contributes to a distinct debate in the literature on Kant's Doctrine of Right.

Part I takes as its point of departure Kant's Postulate of Private Right. According to this postulate, "it is possible to have any external object of choice as mine."[1] How to make sense of this claim has proved surprisingly difficult. If property rights are grounded too directly in the innate right to external freedom, they seem to lose their distinctively acquired and synthetic character. If, by contrast, they are treated as a merely additional institution, their connection to freedom becomes obscure. Part I reconstructs two influential ways of explaining the Postulate. The first, which I call the Descriptive Argument, explains property by appeal to the conditions under which finite agents set and pursue ends through external means. The second, which I call the Normative Argument, explains property in terms of juridical independence and the extension of right to the outer. I argue that each approach captures an important aspect of Kant's view, but that neither is sufficient on its own. The Descriptive Argument explains why the impossibility of property matters for finite agents who act through external objects, but it risks moving too quickly from the possibility of property to the need for actual, stable holdings. The Normative Argument better preserves the juridical structure of Kant's view, but risks becoming too formal to explain why the possibility of property matters for freedom. The contribution of Part I is to bring these approaches into a more stable relation: property rights are best understood as a juridical extension of right to the outer, whose practical significance becomes visible because finite agents exercise freedom through external objects.

Part II turns to Kant's Provisionality Thesis, according to which "in a state of nature something external can be mine or yours but only provisionally."[2] This claim responds to a further difficulty. Even if Kant is entitled to claim that external objects can be mine or yours, property in the state of nature is acquired unilaterally. When I claim an object as mine, I purport to place others under an obligation not to use it; yet such an obligation cannot be conclusively imposed by my private will alone. Much of the literature understands provisionality as naming a weaker, incomplete, or conditional species of right, distinct from the conclusive rights that obtain in the civil condition. I argue that this strategy misidentifies the problem. Provisionality does not concern a special kind of right,

[1] (6: 246).
[2] (6: 256-7).

but the mode and conditions under which property is acquired in the state of nature. More specifically, Part II locates provisionality in the unilateral mode of acquisition: acquisition before the civil condition is juridically possible, but because it is unilateral, it is not yet conclusive. This account explains how Kant can maintain both that property must be possible before the civil condition and that it can become conclusive only within it.

Part III turns to what I call, following Waldron, the Principle of Proximity. Kant holds that the duty to leave the state of nature arises among those who "cannot avoid living side by side" with one another, that is, among those who stand in relations of unavoidable interaction.[3] Given that rights in the state of nature remain merely provisional under unilateral conditions, individuals must leave the state of nature and enter a civil condition in which rights can be publicly and omnilaterally determined. But this raises a further question: with whom must they enter such a condition? Or, put differently, how is the personal and territorial scope of public right to be specified? Part III argues that the Principle of Proximity has often been asked to do the wrong kind of work. It cannot serve as a de jure boundary-drawing principle: it cannot by itself identify the rightful boundaries of political authority. If proximity is treated as sufficient for common statehood, it tends toward a world state; if it is treated merely as necessary, it leaves boundaries underdetermined and cannot distinguish permissible boundary specification from wrongful boundary-making. The problem becomes especially clear in cases of annexation, where proximity and the necessity of the civil condition cannot by themselves explain why one political community may not be absorbed by another. I argue that self-determination is needed to explain this wrong, but that self-determination itself reintroduces the Particularity Question, since it must still be asked who counts as the relevant self-determining subject. The contribution of Part III is therefore to defend an intermediate reading of the Principle of Proximity. Proximity does not make boundaries rightful, but neither is it empty. It identifies de facto political communities: candidate publics formed through unavoidable interaction, institutional dependence, shared legal expectations, and common problems of public right. These communities are not already rightful states, but they are the provisional starting points whose claims to self-determination and de jure territorial authority must be assessed.

The sequence of these three Parts is not merely expository. Each Part gives rise to the next because each answer generates a new problem. Part I begins with the most basic question: why property rights are possible at all within a theory that begins from the innate right to external freedom. Once this possibility has been explained, however, the question is no longer whether external objects can be mine or yours, but how such rights can be acquired in the state of nature, where acquisition is unilateral and not yet authorized by a public will. This is the problem of provisionality addressed in Part II. Once provisional acquisition has

[3] (6: 307).

been clarified, the question shifts again: if rights acquired under unilateral conditions can become conclusive only in a civil condition, then it must be asked with whom individuals are required to enter such a condition. This is the boundary problem addressed in Part III. The thesis therefore proceeds through a single argumentative sequence: from the possibility of property, to the provisionality of acquisition, to the scope of public right.

The thesis is both interpretive and systematic. It is interpretive insofar as it reconstructs Kant's arguments in the Doctrine of Right and situates them within recent debates about property, provisionality, and public right. But it is not merely exegetical. The aim is also to assess the juridical problem itself: whether rights over external objects can be justified from the standpoint of freedom, how such rights can have significance under unilateral conditions, and how the need for public right bears on the problem of political boundaries. In this sense, the thesis proceeds by thinking with Kant rather than only about Kant.[4] It asks whether the conceptual resources of Kant's theory can resolve the puzzle with which the thesis began.

The thesis does not offer a complete Kantian theory of property. It does not attempt to determine the full content of property rights, the detailed rules of acquisition, or the institutional form that a rightful property regime must take. Its concern is more basic: whether Kant can justify the possibility of property rights, explain their provisional status under unilateral conditions, and account for the scope of the civil condition in which rights can become conclusive.

The argument that follows therefore begins from the most basic question raised by Kant's account: how property rights can be possible at all. Before one can ask whether such rights are provisional, how they become conclusive, or with whom one must enter a civil condition, one must first explain how a theory that begins from the innate right to external freedom can make room for rights over external objects. Part I turns to this question by examining Kant's Postulate of Private Right.

[4] I borrow the phrase "thinking with Kant" from (Stone and Hasan 2022, 54), who use it to characterize a broadly interpretive inquiry that also investigates the juridical problem of property itself.

Part I: The possibility of property rights in Kant's Doctrine of Right

The basis of Kant's political philosophy is the innate right to external freedom: "Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other person in accordance with a universal law, is the only original right belonging to every human being by virtue of their humanity."[5] The innate right to external freedom is *original* in the sense that individuals enjoy this right "by nature, independently of any act that would establish right."[6] Furthermore, it is the *only* right that individuals enjoy originally.[7] At its most basic level, the innate right to external freedom invests individuals with a claim against wrongful interference with their bodies.[8] In doing this, it also protects objects that are in individuals' empirical possession—that is, it protects individuals' use of external objects with which they are so connected that others cannot use them without interfering with the individuals' bodies.[9] To wit: if I am holding a cup in my hand to drink from it, and the only way you could use the cup would be to wrestle it from my hand, then I have a claim that you not use the cup, since doing so would interfere with my innate right to external freedom.[10]

However, it seems that the use of objects to which an individual is not physically connected is not protected in this way.[11] If I set the cup down for a moment

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[5] (6: 237).

[6] (6: 237). Kant there continues to write: "What is innately mine or yours can also be called what is *internally* mine or yours (*meum vel tuum internal*); for what is externally mine or yours must always be acquired." The terminology can be misleading. Kant's reference to what is "internally" mine or yours here does not refer to internal freedom in the ethical sense, but to what is mine innately, independently of any act of acquisition. Kant's concern in the Doctrine of Right is with external freedom: independence from being constrained by another's choice insofar as this can coexist with the freedom of all under a universal law. Internal freedom, by contrast, belongs to ethics and concerns self-mastery or autonomous self-determination. The innate right to external freedom is therefore a right to external, not internal, freedom. For the distinction between internal freedom and external freedom, see (Hodgson 2010b, 793; Mulholland 1990, 176).

[7] (6: 238): "With regard to what is innately, hence internally, mine or yours, there are not several rights; there is only one right." All other rights are acquired rights: they are rights that must be established through a specific act before we enjoy them.

[8] (6: 250): Someone who physically interferes with my body without my consent "affects and diminishes what is internally mine (my freedom), so that his maxim is in direct contradiction with the axiom of right." See also (Hasan 2018, 862): "Our right to external freedom implies a right to non-interference with our bodies" and (Ripstein 2009, 60): "Innate right requires that you and I do not interfere with each other's bodies, as delimited by the space that they currently occupy."

[9] On the meaning of external objects, see (6: 245): "[…] the expression 'an object is *external to me*' can mean either that it is an object merely distinct from me (the subject) or else that it is also to be found in *another location* (*positus*) in space or time."

[10] More specifically, this also means that there is not yet any other right in addition to my innate right to external freedom which protects the cup in my hand from being taken away by you. (6: 250): "[…] empirical possession in conformity with rights does not go beyond the right of a person with regard to himself."

[11] Precisely because—as noted in the previous footnote—the protection of empirical possession in conformity with rights does not go beyond the right of a person with regard to himself. Once

before taking the next sip, then you could use the cup and even take it away, since doing so would not interfere with my innate right to external freedom.

Or so it would seem. Kant does think that it is possible for individuals to be wronged by someone else's use of an object, even when they are not physically connected to it (that is, when they are not in empirical possession of it). According to the Postulate of Private Right:

> "It is possible to have any external object of choice as mine […]. But something external would be mine only if I may assume that I could be wronged by another's use of a thing even though I am not in possession of it."[12]

But in order for this to be true, as Kant notes, "I must be in some sort of possession [other than empirical possession] of an external object if it is to be called mine, for otherwise someone who affected this object against my will would not also affect me and so would not wrong me."[13] The sort of possession that Kant has in mind is, of course, ownership.[14]

Yet, to make sense of this claim is rather difficult: Why can individuals be wronged by the use of an object, even when they are not in possession of it? The fact that Kant postulates the possibility of property rights tells us two things. On the one hand, contrary to Locke, for whom ownership over external objects follows from ownership over oneself, Kant does not think that property rights are reducible to the innate right to external freedom.[15] If that were the case, the Postulate would be obsolete. On the other hand, the possibility of having property rights cannot be a necessary condition of the innate right to external freedom, as though one could be free only if property were possible. If that were the case, the innate right to external freedom would be undermined. The innate right to external freedom does not depend on any further rights one might have.

Yet, freedom and the right to property must be connected somehow, since the innate right to external freedom is the basis for any further rights.[16] More

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one loses empirical possession, the protection in terms of the innate right to external freedom also appears to be lost.

[12] (6: 245; 246) Possession at the end of this sentence refers to "empirical possession" (or sometimes also referred to by Kant as "physical possession"). Whenever I use the term "possession" without further indication, I refer to empirical or physical possession. See also (6: 247): "I cannot call an object in space (a corporeal thing) mine unless, *even though I am not in physical possession of it*, I can still assert that I am actually in some other (hence not physical) possession of it." And see further (6: 248): "(…) something external is mine if I would be wronged by being disturbed in my use of it even though I am not in possession of it (not holding the object)."

[13] (6: 249).

[14] Kant calls this intelligible possession, which contrasts with the empirical or physical possession introduced above. Intelligible possession is possession without holding an object.

[15] For a similar observation, compare also (Ripstein 2009, 57 fn. 2).

[16] This follows most straightforwardly from the Universal Principle of Right which holds: "Any action is *right* if it can coexist with everyone's freedom in accordance with 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" (6: 230). See also (Ripstein 2009, 31).

specifically, the idea seems to be that there is a conflict between freedom and a situation in which property rights are not possible. As Kant writes: "(…) a maxim by which, if it were to become a law, an object of choice would in itself (objectively) have to belong to no one (res nullius) is contrary to right."[17] Establishing a connection that proves neither too much nor too little has turned out to be surprisingly difficult.

Part I of this thesis reconstructs and assesses two approaches to answer the question why the possibility of property rights is postulated in Kant's Doctrine of Right, each of which understands the relation between freedom and property differently. The first approach, which I call the Descriptive Argument, explains the possibility of property by appeal to agents' capacity to set and pursue ends, and especially to the external conditions under which ends can be pursued through means. On this view, a regime limited to empirical possession is problematic because it leaves the continued use of external means vulnerable whenever the agent is no longer physically connected to them, thereby putting pressure on the thought that ends can be pursued independently.

The attraction of this approach is that it explains why the impossibility of property would matter for freedom: agents could exclude others from external means only so long as they were physically connected to them, making long-term projects practically unfeasible. Yet, this approach is problematic for various reasons. Most fundamentally, its difficulty is that it appears to shift from the modest claim that property rights must be possible, to the stronger claim that agents must have actual, reliably available means for carrying out their ends.[18] Moreover, this implies that independence, under the Descriptive Argument, must be understood as robust protection against others' discretionary interference. Yet property rights cannot secure independence in that demanding practical sense.

This makes the second approach a natural alternative, which replaces this problematic conception of independence on which the Descriptive Argument relies with a juridical or normative understanding of independence. The second approach, which I call the Normative Argument, responds to the question why Kant thinks that property rights must be possible primarily in terms of juridical independence rather than the conditions of purposive agency. On this view, the point of property rights is not to explain how agents can carry their projects through, but to establish a determinate normative relation between persons and

[17] (6: 246). Right referring to the innate right to external freedom. Note specifically also the reference to maxims in the Universal Principle of Right which must be in accordance with a universal law just as much as actions (6: 230).

[18] Strictly speaking, Kant formulates the Postulate of Private Right as the claim that it "is possible" to have an external object of choice as mine. When I sometimes say that property rights "must be possible," I do not mean that anyone must actually own property, nor that property follows analytically from the innate right to freedom. I mean that the possibility of property must be admitted from the standpoint of right: a principle that made all external objects necessarily incapable of being mine or yours would be contrary to right.

objects such that agents are not left dependent on others' discretionary choice as a matter of right.

The appeal of the Normative Argument is that by changing the conception of independence it seems to avoid the difficulties facing the Descriptive Argument. Yet its own drawback is that in doing this, it risks weakening the explanatory force that makes the Descriptive Argument attractive in the first place. In this case, it becomes difficult to see why there is a conflict between freedom and a situation in which there are no property rights. The Postulate then risks appearing as an unmotivated addition to the innate right to external freedom.

Thus, while each approach to the question why Kant postulates the possibility of property rights has its own strengths, each also comes with its own weaknesses. The central claim defended in Part I of this thesis is that we must combine these approaches, but not by treating them as equal foundations. The Descriptive Argument should be understood as a diagnosis of the problem: it shows why a condition in which external objects could never be mine or yours would leave finite agents exposed to others' unilateral choices in their use of external means. The Normative Argument supplies the justification: it explains why this exposure is objectionable as a matter of right, namely because the outer would otherwise remain outside reciprocal, law-governed determination. The thesis of Part I is therefore that Kant's Postulate of Private Right is best understood as a juridical extension of right to the outer, whose practical significance is illuminated by the descriptive fact that finite agents exercise freedom through external objects.

To make this claim, Part I proceeds as follows. In Chapter 1, I begin by developing the Descriptive Argument in three steps: (i) individuals enjoy an innate right to external freedom understood as the ability to set and pursue ends independently, (ii) being able to set and pursue ends independently requires property rights, therefore (iii) it must be possible to have property rights. I analyse each premise in detail, providing an initial reconstruction of the argument in order to clarify how it is meant to present one answer to the question why Kant claims that property rights must be possible. First, I offer an account of the innate right to external freedom in terms of setting and pursuing ends (section 1.1). Second, I spell out the idea of independence in terms of non-interference (section 1.2). Third, I explain why, according to the argument, property rights are required in order to set and pursue ends independently (section 1.3).

In section 2 of the first chapter, I turn to what I take to be the three most compelling objections to the Descriptive Argument. The first objection (section 2.1) is a determinacy objection. It holds that the Descriptive Argument is problematic because it fails to determinately distinguish between external objects to which individuals are entitled, that is, which they can claim as their property, and objects which individuals would like to use but have no claim to exclude others from using. The second objection (section 2.2) is a structural objection.

It concerns the relation between freedom and property established by the Descriptive Argument. The objection argues that, given that according to the second premise of the Descriptive Argument the ability to set and pursue ends *requires* property rights, it violates both the synthetic status and the a priori status of the Postulate: property rights begin to look derivable from freedom, while the argument also appears to rely on empirical assumptions about embodied agency. The third and final objection (section 2.3) is an adequacy objection. It argues that for the Descriptive Argument to be plausible, it must rely on an understanding of independence as robust non-interference that property rights cannot in fact secure. I reconstruct each objection in its strongest form and then ask how far the Descriptive Argument can respond on its own terms before its difficulties press toward a more explicitly normative account.

The order in which these objections are considered is not accidental. They form a cumulative sequence because each response available to the Descriptive Argument gives rise to the next difficulty. In response to the determinacy objection, the Descriptive Argument can respond only by retreating from the justification of actual claims to the more modest claim that property rights must be possible. Yet the responses to the structural objection reveal that this retreat is unstable: the argument continues to draw its force from the thought that agents require stable access to external means, and therefore remains under pressure to move from mere possibility to actual claims. The adequacy objection then exposes a further consequence of this pressure. If independence is understood as practical security in the pursuit of ends, property rights cannot secure it.

Chapter 1 concludes by locating these difficulties in the Descriptive Argument's conception of freedom. Its appeal lies in connecting property with agents' ability to set and pursue ends independently; its problem is that this same conception pushes the argument beyond the modest claim that property rights must be possible. Chapter 2 therefore turns to the Normative Argument, which approaches the relation between freedom and property from juridical independence rather than purposive agency.

Chapter 2, section 2, then develops this Normative Argument as an alternative answer to the question why Kant claims, in the Postulate of Private Right, that the possibility of property rights must be admitted. First, I present the argument in general terms (section 2.1). Second, I show how this argument avoids the problems identified with the Descriptive Argument (section 2.2). Third, I argue that the Normative Argument is nevertheless also problematic, for while it avoids those problems, it does so only at the risk of losing the explanatory force that made the Descriptive Argument appealing in the first place (section 2.3). The Postulate then risks appearing as an unmotivated addition to the innate right to external freedom. The result is therefore a dialectical imbalance: the Descriptive Argument has strong explanatory force but proves structurally

unstable, while the Normative Argument is structurally more coherent but risks losing the force that made the former attractive.

Section 3 then asks whether the two arguments can be bridged: whether the Normative Argument can avoid the Descriptive Argument's problems while preserving its explanatory force.

Before proceeding, a few clarifications are in order regarding what the present discussion does *not* address.

Part I does not offer a full account of the *content* of property rights in Kant's theory. Property admits of considerable variation, and may involve different incidents in different cases. Following Honoré, it is now commonplace to understand property as comprising a bundle of distinct incidents, which may vary from case to case.[19] Accordingly, individuals may hold property in a more restricted sense than that captured by "full liberal ownership." Someone may, for example, have rights to use and manage a thing without also having the right to alienate, destroy, or alter it. In such a case, it is still correct to say that this person has a form of (limited) property in the thing.[20] The present discussion focuses on what is usually taken to be the lynchpin of property rights, namely the right to exclude.[21] I take this to be sufficiently uncontroversial for present purposes.[22]

Second, Part I brackets all discussions concerning the *provisionality* of property rights. As is now widely recognised, Kant argues that there are property rights in the state of nature, yet these rights are held only provisionally.[23] Property rights become conclusive only within a civil condition, where they are sanctioned and enforced by political institutions.[24] Provisionality will be addressed at length in Part II of this thesis. The present discussion focuses exclusively on why property rights must be possible at all; whether they are provisional or conclusive is, at this stage, beside the point. That said, the argument developed here does concern natural right, in the sense that it seeks to explain why property rights must be possible prior to, or independently of, an institutional framework. This, however, does not require taking a stand on the specific issue of provisionality.

Finally, Part I does not offer a theory of the *acquisition* of property rights. Any theory of property must explain how rights over external objects are acquired,

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[19] (Honoré 1987, 161). Though for criticism, see (Penner 1996).
[20] Compare (Stilz 2018, 245).
[21] Hasan for example writes: For Kant, property (Eigentum) refers specifically to claims on the external world that involve discretionary use of an object not currently in one's grasp. Property entails the right to exclude others from use and to recover or retrieve an object from another (Hasan 2018, 850). With reference to (6: 245; 270).
[22] For a notable exception, see (Westphal 1997), who argues that Kant's argument can justify only rights of use and not full property rights, and therefore cannot ground the strong exclusionary claims typically associated with ownership. This restrictive reading has not been widely accepted.
[23] In a state of nature "something external can be mine or yours only provisionally" (6: 256-7; 312).
[24] (6: 257; 264; 267; 312; 329; 341; 350).

and in Kant this issue is especially important because his theory begins with the postulation of the possibility of property rights rather than with an account of acquisition. Once the Postulate is properly understood, we know *why* property rights must be possible; we do not yet know *how* any particular object comes to be someone's own. This marks an important contrast with theories such as Locke's, in which labour-mixing is usually taken both to justify property rights and to explain their acquisition. In Kant, by contrast, these questions are distinct. The present discussion is concerned only with the former question. That said, some of the arguments considered below will reveal a further difficulty: certain ways of explaining why property rights must be possible seem to presuppose stronger assumptions about acquisition than they officially acknowledge. Part I therefore does not attempt to explain how property is acquired, but it does ask whether some reconstructions of the Postulate tacitly rely on such an account.

With these caveats in place, I turn first to the Descriptive Argument discussed in Chapter 1.

Chapter 1 The Descriptive Argument

1. The Descriptive Argument stated

Why does Kant postulate the possibility of property rights in the Postulate of Private Right? One influential answer to this question can be reconstructed as follows. Call this the Descriptive Argument:

> **Premise 1:** Individuals enjoy an innate right to external freedom understood as the ability to set and pursue ends independently, that is, free from wrongful interference.
>
> **Premise 2:** Being able to set and pursue ends independently requires property rights.
>
> **Conclusion:** Therefore, it must be possible to have property rights.[25]

Let us take a closer look at this argument. I proceed in three steps. First, I examine the claim that individuals have a right to set and pursue ends (section 1.1). Second, I consider the claim that they have a right to do so independently (section 1.2). Third, I examine the claim that property rights are required if individuals are to set and pursue ends independently (section 1.3). The aim is

[25] Versions of what I call the Descriptive Argument have been defended by (Ripstein 2009), (Stilz 2009), (Byrd and Hruschka 2010), (Hodgson 2010a), and (Ebels-Duggan 2012). Ripstein writes: "External freedom is a matter of being able to set and pursue one's own ends" (Ripstein 2009, 77). And further: "secure title in things is prerequisite to the capacity to use an object to set and pursue ends" (Ripstein 2009, 67). Stilz writes: "In order to be externally free, I must be able to take up and use physical means—at the very least, spaces and also potentially objects—in order to carry out my choices. I am not externally free merely by thinking or wishing or setting myself a goal, without taking any concrete actions; I cannot be externally free in chains. I am externally free only when I can do something to further my projects. And this means that I must be able to actually take up some means to my ends without fear of your interference with my acts. External freedom thus involves the use of pieces of the physical world, where this use is potentially subject to interference by other persons" (Stilz 2009, 39). And further: "securing our independence requires us to acquire new rights of private property over the external world" (Stilz 2009, 42). Hodgson writes: "Setting and pursuing ends without being subject to the choices of others requires the ability to exclude them from certain objects even when one is not physically connected to them" (Hodgson 2010a, 58). And further: "freedom requires the possibility of property" (Hodgson 2010a, 62). Ebels-Duggan (2012, 898) writes: "Kant argues that the Universal Principle not only *allows* for a system of property rights, but in fact *requires* that it be possible for us to establish such claims. I suggest that we understand his argument as claiming that our freedom is more restricted without property rights than it would be with them. If you lack entitlements to control external objects anyone may snatch any object that you are using as soon as you lay it down. This renders your ability to pursue your ends dependent on others' choices not to interfere" (emphasis in original). Byrd and Hruschka formulate the point differently, but their argument points in the same general direction. They write: "In order to use something I must possess it, but before I can possess, and thus before I can use, anything, I must have the ability to take the thing into my possession in order to use it" (2010, 111). These authors differ in important ways, and I do not claim that the argument reconstructed here corresponds exactly to any one of their views. Rather, the three premises are intended to capture, in schematic form, a recurrent line of thought in the literature.

reconstructive rather than critical; the assessment of the argument follows in section 2.[26]

1.1. Setting and pursuing ends

According to the Descriptive Argument, the innate right to external freedom concerns individuals' ability to set and pursue ends of their own. Being able to set and pursue ends for oneself requires more than merely wishing for them: one must take oneself to have the power to achieve them by using means available to one. In this sense, the Descriptive Argument connects external freedom not simply with the having of wishes, but with purposive agency and choice.[27]

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[26] The formulation of the Descriptive Argument provided in the schematic version and throughout this section is deliberately strong in at least two respects. First, it states the interpretation of innate right to external freedom assumed by the Descriptive Argument, namely that external freedom is to be understood in terms of agents' ability to set and pursue ends independently. This interpretation is contentious and will be reassessed in Chapter 2, where I argue that Kantian external freedom is better understood as juridical independence under a universal law. Second, the formulation of Premise 2 is deliberately strong. The argument derives its attraction from the thought that property rights are not merely compatible with external freedom, but required for the independent pursuit of ends. As the objections below will show, however, this strength is also the source of its difficulty: the argument threatens to shift from the claim that the possibility of property rights must be admitted to the stronger claim that agents require actual, stable claims to external means.

[27] Kant's discussion of choice at (6: 213) supports this reconstruction. He distinguishes choice from wish by claiming that choice involves consciousness of one's ability to bring about its object through one's action, whereas without such consciousness the act of the faculty of desire is merely a wish. The point, then, is not yet that the end must in fact be successfully realized, but that setting and pursuing an end involves more than merely desiring it: it involves taking oneself to be able to act toward its realization.

For a similar line of thought, compare (Ripstein 2009, 40, 67), who links external freedom to persons' capacity to set and pursue their own purposes and explicitly connects this to Kant's distinction between choice and wish: one can choose an end only if one takes oneself to have the means to pursue it.

Further support for this reconstruction can be found at (6: 392), where Kant writes: "The capacity to set oneself an end—any end whatsoever—is what characterizes humanity (as distinguished from animality). Hence there is also bound up with the end of humanity in our own person the rational will, and so the duty, to make ourselves worthy of humanity […] by procuring or promoting the *capacity* to realize all sorts of possible ends, so far as this is to be found in a human being himself" (emphasis in original). See also (6: 385): "An end is an object of free choice, the representation of which determines it to an action (by which the object is brought about). Every action, therefore, has its end; and since no one can have an end without himself making the object of his choice into an end, to have any end of action whatsoever is an act of freedom on the part of the acting subject, not an effect of nature."

Two potential difficulties already visible here. First, the formula "setting and pursuing ends" may not be as unified as it first appears. The appeal to freedom seems initially to rest on the thought that agents must be able to set ends of their own, whereas the move to property becomes pressing only once ends must be pursued through external means. If so, the argument may risk presenting these two claims as a single package without yet showing clearly how the transition from the former to the latter is secured. Relatedly, the former may invite a more subjective understanding of agency, while the latter seems to require a more objective account of the conditions under which ends can be pursued. Second, the argument may appear to rely on a further transition from the pursuit of ends to their achievement. Since the case for property rights seems strongest when the relevant end is not merely pursued but can be brought about through the stable availability of means, there is a question whether the argument presupposes stronger success conditions than it explicitly acknowledges. I reserve both problems for later discussion.

If setting and pursuing ends requires agents to take themselves to be able to realize their ends by using means available to them, this raises the question of what kinds of means can stand at an agent's disposal. We can distinguish two kinds of means. First, there are one's own personal powers. One's right to the use of these powers is innate, even though their development may depend on training, education, or assistance from others. One's personal powers are subject to one's own choice and not to the choice of others.

Consider someone who studies engineering and learns how to design bridges. Through training, she acquires the capacity to calculate loads, draft structural plans, and evaluate alternative designs. When she sets herself the end of constructing a bridge, pursuing that end involves bringing these developed abilities into operation. These capacities function as means in the sense that they make the pursuit of the end possible.

Second, there are means external to the agent. Whether one can pursue particular ends depends not only on one's personal powers but also on whether external means are available. Suppose the engineer now sets herself the end of building a bridge across a small river. In pursuing this end, she must not only rely on her reasoning and technical expertise; she must also make use of materials such as steel and concrete, instruments for measurement and construction, and a suitable site on which the bridge can be built.

These items are not part of her personal capacities. They are external objects that she must use if her plan is to be realized: calculations become blueprints, and blueprints become a standing bridge, only through materials, instruments, and a site. The pursuit of many ends therefore involves the coordinated use of both personal powers and external objects.

To set and pursue ends is therefore not merely to form intentions; it is to bring means under one's direction. For finite agents, this involves both personal powers and, in many cases, external objects. The conception of freedom assumed by the Descriptive Argument therefore already points beyond mere willing or wishing toward the practical use of objects in the external world.[28]

1.2. Independence

According to the Descriptive Argument, individuals do not just have a right to set and pursue ends simpliciter: they have a right to do so independently. For the purposes of the Descriptive Argument, independence is understood as freedom from wrongful interference by another's choice.[29] Here, the distinction

[28] At this stage, the point is not yet that external objects must be ownable, but only that the pursuit of many ends takes place through objects external to the agent.

[29] This understanding of freedom is grounded in Kant's account of right at (6: 230–2). Kant defines the innate right to external freedom as "independence from being constrained by another's choice" (6: 237), and in the Introduction to the Doctrine of Right he characterizes a wrong as a hindrance to freedom, so that coercion is justified only as the "hindering of a hindrance to freedom" (6:230–2). On this basis, interference is relevant to right not simply as

between the two types of means that one can use when setting and pursuing ends becomes important.

When individuals use their innate powers as means to set and pursue ends, the use of these powers is protected by their right to bodily inviolability. To exercise one's reasoning, to move one's body, to speak, to deliberate, or to withhold action are all ways in which an individual makes use of capacities that belong to her simply in virtue of her humanity. Because these powers are subject to her choice, interference with their exercise constitutes wrongful interference with her person.

If another were to compel her movements, silence her speech, restrain her bodily motion, or otherwise direct the use of her capacities according to a foreign choice, this would not merely frustrate a particular project; it would subject her powers to the will of another. The innate right to external freedom protects precisely against such subjection. It secures the agent's authority over the use of her own capacities in the pursuit of the ends she sets for herself.

When individuals use external objects as means in setting and pursuing ends, we need to distinguish different ways in which agents can stand in relation to those objects. One such relation is empirical possession, that is, a physical connection to the object in the course of one's activity.

Consider again the engineer engaged in the construction of a bridge. As she measures a beam, holds a tool, or operates machinery, she is physically connected to these objects. If another were to seize the tool from her hand or push her away from the machinery she is operating, this would not merely affect the object; it would directly interfere with her bodily action. The disruption of the object's use would at the same time be a disruption of her embodied agency.

In such cases, the protection of the object's use derives from the innate right to external freedom. Because the object is physically incorporated into the agent's present activity, interference with it amounts to wrongful interference with her person. The right that is at stake is not yet a right over the object as such, but the right not to have one's embodied agency constrained by another's choice.[30]

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any causal impact upon another, but as a form of hindrance by which one person's choice subjects another's external freedom to a foreign choice. For a similar reconstruction, compare (Ripstein 2009, 15–16, 81–82), who argues that interference with another person's freedom creates a form of dependence and that independence requires that one person not be subject to another person's choice.

[30] Kant's discussion of empirical possession at (6: 249–50) directly supports this point. He argues that if I am holding a thing and am therefore physically connected with it, someone who affects it without my consent—for example, by snatching an apple from my hand—thereby "affects and diminishes what is internally mine (my freedom)" (6: 250). The point is that, in such a case, interference with the object is at the same time interference with my person, because the object is physically incorporated into my present activity. Kant therefore treats a proposition about right with respect to empirical possession as analytic: it does not yet go beyond the innate right a person has with respect to herself, but follows directly from the fact that another's action hinders my embodied use of the object.

Things change, however, when an individual relies on objects to which she is not physically connected. Return to the engineer. While measuring a beam or operating a drill, she is empirically in possession of those items. But much of her activity does not involve such continuous physical contact. She may lay her tools down while reviewing a plan, step away from a stack of materials to inspect another part of the site, or leave the construction area temporarily to consult with a colleague. The steel beams, the stored concrete, the measuring instruments, and even the designated construction site itself are not constantly integrated into her bodily movements.

In these moments, although the objects remain integral to the project she is pursuing, they are no longer physically connected to her person. Another individual could, as a matter of physical possibility, move the materials, pick up the tools, or occupy the space without interfering with her body. The relation between agent and object is now indirect: the objects are part of her ongoing plan, but they are not part of her present bodily activity.

In such cases, the innate right to external freedom does not appear to provide the same form of protection as in the case of empirical possession. Since no immediate bodily interference is involved, interference with the object does not immediately amount to wrongful interference with her person. It therefore seems that, where the physical connection is absent, others are at liberty to make use of those objects, even if doing so affects the project she has set herself. But if that were the case, the agent's ability to set and pursue ends independently would seem to depend on the contingent choices of others.[31]

1.3. Property

This situation might strike us as troubling. If independence, as the Descriptive Argument suggests, concerns individuals' ability to set and pursue ends, and if this ability involves the use of external objects as means, then a system limited to empirical possession would allow individuals to exclude others only from objects they are physically holding or from the space they presently occupy. It would thus make an individual's limited capacity to occupy space and to hold objects the measure of their ability to make objects into means, and thereby to set and pursue ends. The only external means an individual could employ independently would be those with which they are physically connected at a given moment.[32]

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[31] This is the point at which the Descriptive Argument introduces property rights: they are supposed to secure an agent's relation to external objects beyond the limits of empirical possession.

[32] This point already indicates one of the pressures to be discussed below. The Descriptive Argument derives much of its force from facts about finite embodied agents: that they can physically hold only some objects, occupy only some spaces, and pursue many ends only over time. The question, addressed in section 2.2, is whether such considerations can support the Postulate of Private Right without compromising its a priori status.

At the same time, other agents, in the exercise of their own freedom, could render objects unavailable to an individual whenever she is not in empirical possession of them. The range of ends she can effectively pursue would therefore depend on whether she can maintain uninterrupted physical control over the objects required for her projects. Her having only two hands, or being unable to occupy multiple places at once, would determine what means she can reliably use. In this way, her finite bodily capacities would become the measure of what external means are available to her.[33]

The bridge example illustrates the problem. While the engineer is measuring a beam or operating a drill, she is empirically in possession of those items. But the project also requires tools, materials, foundations, and a construction site to remain available while she moves between different stages of the work. If others were free to remove materials, relocate equipment, or occupy the construction site whenever she is not physically connected to them, the continuity of her project would be constantly exposed to disruption. The feasibility of pursuing her end would hinge on her ability to maintain continuous bodily control over each object involved. The scope of her purposive activity would thus be confined to what she can literally hold onto at any given moment.

On the Descriptive Argument, this restricts freedom because it confines purposive agency to what can be carried out within the narrow limits of bodily presence and physical grasp. More complex or temporally extended projects remain vulnerable to the contingent choices of others.[34]

For this reason, the Descriptive Argument holds that the Postulate of Private Right extends the innate right to external freedom by making room for objects that can be subject to a person's choice even when they are not in her empirical possession. It makes possible a relation to external objects that does not depend on uninterrupted physical control.

On this view, individuals can have a claim against others to refrain from using external objects that they employ as means in the pursuit of their plans, even when they are not in empirical possession of them. Thus, in the case of the engineer, the materials stored on the construction site, the tools she sets down while calculating load distributions, and the designated building area itself would remain available to her project as objects others are not at liberty to use without authorization. Their use would no longer depend on her ability to maintain continuous bodily contact.

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[33] See for this point especially (Hodgson 2010a, 60).

[34] This is one of the central insights captured by the Descriptive Argument. It resonates especially with Kant's claim at (6: 247) that "a maxim by which, if it were to become a law, an object of choice would in itself (objectively) have to belong to no one (*res nullius*) is contrary to right." The passage suggests that a condition in which external objects could not be mine or yours would be problematic from the standpoint of external freedom itself. The difficulty, to be discussed below, is how this thought can be reconstructed without moving too quickly from the possibility of property rights to the need for actual, stable claims to external means.

The only apparent reason to deny the possibility of property rights would be that such rights limit others' ability to use external objects. But that objection must itself be justified by appeal to freedom. Otherwise, the agent's ability to pursue ends would be limited for the sake of something other than the equal freedom of all. Thus, the Descriptive Argument must show not only that property rights would help agents pursue ends, but also that admitting such rights is compatible with the freedom of others.[35]

A restriction imposed by a system limited to empirical possession would be justified only if a right to exclude others from external objects beyond the limits of physical possession were incompatible with another person's freedom. It would be defensible only if allowing an individual to exclude others beyond the limits of physical possession would itself violate other individuals' independence. But another person's freedom does not depend on access to any particular object as such. From the standpoint of their freedom with respect to that particular object, the Descriptive Argument claims that there is no decisive difference between my continuously holding it and my having a right that secures it to me when I set it down. The Descriptive Argument therefore claims that the possibility of property rights does not introduce any additional restriction on their freedom beyond what is already implicit in respecting each person's bodily independence.[36]

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[35] The underlying thought is that only freedom itself can set limits to freedom. Kant's own formulation of the Universal Principle of Right requires only that the freedom of each be consistent with the freedom of all under a universal law (6: 230), and in the Postulate of Private Right he argues that if the use of an external object could not coexist with everyone's freedom under such a law, it would be wrong; but since practical reason lays down only formal laws for the use of choice, it can contain no absolute prohibition on the use of objects of choice as such (6: 251). Restrictions are therefore justified only insofar as they are required by the equal freedom of others. For a similar reconstruction, compare (Ripstein 2009, 63–64), who argues that any further restriction on a person's ability to have objects as her own would limit freedom "on the basis of something other than its own conditions" and would therefore interfere with each person's status as sui juris; see also (Hodgson 2010a, 61–62).

[36] Two qualifications are necessary here. First, the comparison between empirical possession and intelligible possession abstracts from the problem of unilateral duty-imposition. Even if another person's freedom is not restricted in a materially different way by my intelligibly possessing an object than it would be if I continuously held that object in empirical possession, a further juridical problem remains: in claiming an external object as mine, I purport through my unilateral choice to impose on others a duty to refrain from using it. This problem is not addressed in the present section, which reconstructs the Descriptive Argument only at the level of the possibility of property rights. It will become central in Part II, where I discuss Kant's claim that property rights in the state of nature are acquired only provisionally until they are authorised under an omnilateral will.

Second, the comparison with empirical possession is itself limited. There is, of course, an important practical difference between a system limited to empirical possession and a system that allows intelligible possession: far more objects can be mine in the latter case than I could ever physically hold or occupy at one time. Indeed, this is precisely what gives the Descriptive Argument much of its appeal. The argument begins from facts about finite embodied agents—their limited bodily presence, their inability to hold all relevant objects at once, and their pursuit of temporally extended projects. Yet, when it explains why property rights do not violate the freedom of others, it tends to abstract from those same empirical facts and considers only the formal point that others have no right to any particular object as such. This asymmetry reveals a potential pressure on the Descriptive Argument. It suggests that the argument draws its

Consequently, the restriction imposed by a system limited to empirical possession cannot be justified by appeal to freedom itself. On the contrary, if freedom is concerned with the ability to set and pursue ends without being subject to the contingent choices of others, then it must include the possibility of securing external objects as one's own. Setting and pursuing ends independently therefore seems to require the possibility of excluding others from certain objects even when one is not physically connected to them.

1.4. Conclusion

The Descriptive Argument can now be restated in simple form. It begins from the claim that external freedom concerns individuals' ability to set and pursue ends of their own. Setting and pursuing ends requires the use of means, and many ends can be pursued only through the coordinated use of external objects over time. A system limited to empirical possession therefore appears insufficient. If others are free to take up or interfere with such objects whenever they are no longer physically connected to the agent, then the agent's ability to pursue ends depends on the contingent choices of others. The Descriptive Argument therefore concludes that, if individuals are to set and pursue ends independently, it must be possible for external objects to be secured as their own beyond the limits of continuous bodily control.

The attraction of the Descriptive Argument lies in its considerable explanatory force. It offers a clear and intuitively powerful account of why Kant might think that the impossibility of property rights stands in tension with freedom. If external freedom concerns individuals' ability to set and pursue ends, then a world in which external means can never be secured beyond immediate physical possession appears to threaten that freedom. The argument therefore does more than assert that property rights are possible; it makes that possibility seem pressing. This motivational force is what makes the Descriptive Argument so appealing.

Yet even at this stage, several tensions are already visible. First, the formula "setting and pursuing ends" may conceal a package whose unity has not yet been fully explained: freedom seems initially to attach to the setting of ends, whereas the pressure toward property arises only once ends are pursued through external means. Second, the argument moves between subjective and objective standpoints, invoking both the agent's taking herself to be able to act and the actual conditions under which action can be carried through. Third, the argument may be pulled between a weaker claim about the pursuit of ends and a stronger claim about their successful realization, and it is not yet clear which of these does the relevant justificatory work. Fourth, the argument seems to rely,

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motivational force from empirical features of agency while seeking to justify property at the formal level of right. The difficulty generated by this will be taken up below in connection with the a priori status of the Postulate.

at least in part, on empirical facts about embodied agents and their finite bodily capacities, even though the Postulate of Private Right is meant to have an a priori status. Finally, the argument risks moving from the modest claim that property rights must be possible to a stronger claim that something closer to actual, stable, and secure control over external objects is required. These tensions do not yet refute the Descriptive Argument, but they indicate where its difficulties begin to emerge. The next section turns to these pressures in the form of three objections.

2. Objections

The objections considered in this section are best understood not as isolated criticisms of the Descriptive Argument but as a progressive series of pressures that gradually force it away from its original form. Each objection arises from the response available to the previous one.

The first objection concerns the determinacy of the Descriptive Argument. It holds that the idea of setting and pursuing ends cannot by itself distinguish between external objects that are means to their ends and objects they merely wish to use, but over which we have no claim to exclude others. I argue that this objection, on its own, is not yet decisive. It succeeds in showing that any attempt to use purposiveness as a direct criterion of entitlement fails. But the Descriptive Argument need not do that much. It can still establish, at a more basic level, that if external freedom is to be exercised in a world of shared objects, the system of right must make it possible for claims to external objects to become determinate. In other words, what the Descriptive Argument must establish is not actual property rights, but only their possibility.

Yet this response raises the question whether the Descriptive Argument really can retreat in this way from actual claims to the mere possibility of property rights. This is the issue raised by the second objection, which is structural in nature. If freedom and property are connected as closely as the Descriptive Argument suggests, the Postulate of Private Right is threatened in its synthetic status: property begins to look derivable from freedom rather than introduced through a distinct synthetic extension of right. At the same time, because the argument appeals to the conditions under which finite embodied agents pursue ends through external objects, it also seems to threaten the a priori status of the Postulate. Together, these pressures suggest that the Descriptive Argument cannot remain at the level of possibility, but is pushed toward the stronger claim that agents require actual, stable claims to external means. If that is correct, however, then the response to the first objection fails, since the Descriptive Argument would once again be pushed beyond the mere possibility of property rights toward the justification of actual claims.

Moreover, if the Descriptive Argument is pushed toward actual, stable claims, a further difficulty arises. The third objection concerns the argument's adequacy: even if agents need stable access to external means in order to pursue ends,

property rights as such cannot secure independence in that robust practical sense. Property rights can establish independence only in a normative sense. This already points beyond the Descriptive Argument toward a distinct answer to the question why the possibility of property rights must be admitted: the Normative Argument.

Taken together, these objections will suggest that the Descriptive Argument rests on a conceptual equivocation. Its initial appeal lies in the thought that external freedom requires agents to be able to set and pursue ends through stable access to external means. But once the argument is pressed in that direction, it runs into the three difficulties just outlined: the distinction between choices and wishes cannot determine entitlement, the Postulate is threatened in its synthetic and a priori status, and the relevant conception of independence becomes more robust than property rights can secure. These pressures are not merely dialectical difficulties. They reflect a deeper problem in the argument's starting point, namely its treatment of purposive agency as primary where, as Chapter 2 will argue, Kant treats juridical independence as fundamental. Taken together, then, the objections progressively push the Descriptive Argument beyond its original form and point toward the Normative Argument as a distinct answer to the question why the possibility of property rights must be admitted.

2.1. The determinacy objection

The first objection concerns the role played by Kant's distinction between wish and choice in the Descriptive Argument. As the argument was reconstructed above, external freedom is not connected with the mere having of desires, but with the capacity to set and pursue ends through means one can take to be available. The basic thought is that one may wish for anything, but one can choose an end only if one takes oneself to have the means to bring it about, or at least to be able to bring such means within one's control. The determinacy objection asks whether this distinction can do the work the Descriptive Argument seems to assign to it. More specifically, the question is whether the distinction between wish and choice can yield a criterion for determining which external objects an agent may rightfully claim, and which she may not.[37]

The Descriptive Argument relies precisely on this distinction.[38] On this reading, freedom does not protect the success of every plan an agent may happen to form. What it protects is the agent's capacity to choose and pursue ends through means she can rationally take to be available to her. The contrast between

[37] This objection draws on (Wright 2022). The reconstruction presented here adapts and expands her analysis to the present argumentative framework and focuses exclusively on the difficulty concerning background conditions and the dependence of purposiveness on prior entitlements.
[38] Recall above that the Descriptive Argument held: "Being able to set and pursue ends for oneself requires more than merely wishing for them: one must take oneself to have the power to achieve them by using means available to her. In this sense, the Descriptive Argument connects external freedom not simply with the having of desires or wishes, but with purposive agency and choice."

particular purposes and purposiveness is thus meant to rest on the Kantian distinction between wish and choice. Mere wishes fall outside the scope of right; freedom protects only the exercise of choice in relation to ends that can genuinely be pursued through one's means. Kant distinguishes choice from wish by claiming that choice involves consciousness of one's ability to bring about its object through one's action, whereas without such consciousness the act of the faculty of desire is merely a wish.[39] The point, then, is not that the end must in fact be successfully realized, but that setting and pursuing an end involves more than merely desiring it: it involves taking oneself to be able to act toward its realization.

At first sight, this distinction appears promising. Many of the ways in which others affect us seem to frustrate our purposes without violating our freedom. Suppose, for example, that the engineer intends to buy a particular tool needed for the bridge project. If someone else buys the last tool in the store when she had intended to buy it, her plan is frustrated. Likewise, if another person occupies a place where she had hoped to stand, or makes exclusive arrangements with someone she had hoped to consult, her purposes are disrupted. Yet such cases do not ordinarily appear to involve violations of right. The distinction between wish and choice, and the associated contrast between purpose and purposiveness, is meant to explain why: these acts may frustrate a plan, but they do not yet seem to interfere with the underlying capacity to choose and pursue ends. They merely alter the circumstances in which agents exercise their purposiveness.

The objection holds, however, that this distinction cannot do the relevant work. Once choice is understood as involving the agent's taking herself to have sufficient means for an end, many intuitively rightful acts begin to look like wrongful interferences with purposiveness after all. Suppose the engineer takes herself to have enough money to buy the tool, and the tool is available in the store. On the proposed account, this seems sufficient to distinguish her choice from a mere wish: she does not merely want the tool, but takes herself to be in a position to bring about the end of buying it. But if another person buys the last tool before she arrives, one of the conditions on which the sufficiency of her means depended is removed. If the distinction between choice and wish is doing the relevant work, this now appears to restrict her ability to choose that end. Yet that result is implausible. The other individual has not wronged her, nor does she have a claim to exclude others from buying the tool merely because it figured in her plan. The same structure applies to the other examples.[40] The problem is therefore not merely that others frustrate her purposes. Rather, under the very distinction between wish and choice on which the Descriptive Argument relies,

[39] (6: 213).

[40] (Wright 2022) develops this point through the example of an individual who intends to buy a quart of milk at a store, only to find that another person has bought the last available quart before she arrives. I adapt the example here to preserve continuity with the engineer case used throughout this section.

such acts seem to interfere with her capacity to choose and pursue ends. This is the starting point of the determinacy objection.

One natural response is to weaken the role of means-sufficiency. Perhaps freedom does not protect the agent's ability to pursue an end under favourable conditions, but only her ability to try to act toward that end. This move blocks the objection's strongest inference. If freedom protects only the agent's practical effort, rather than the background conditions under which the end can be realized, then ordinary changes in the world need not count as wrongful interferences with freedom. Others may frustrate the success of my plan without interfering with my purposive agency as such, since I remain free to try.

The point can be put in terms of the tool example. On the stronger reading, the engineer's choice to buy the tool depends on her taking the tool to be available as a means to her end; when another person buys it first, the conditions under which she could successfully pursue that end are removed. On the weaker reading, however, this does not show that her freedom has been restricted. What freedom protects is not the continued availability of the tool, but only her capacity to act toward the end: she can still go to the store, attempt to buy the tool, seek another tool, or revise her project. The shift is therefore from protecting the conditions under which an end can be successfully pursued to protecting only the agent's attempt to pursue it.

Yet this weaker formulation creates a different problem. Suppose, for example, that the engineer attempts to build a bridge and another person takes some of the materials she had intended to use. Her project may now fail, but her attempt as such has not obviously been interfered with: she can still try to build, revise her plan, or continue with what remains. If freedom protects only the attempt, then the loss of the materials looks less like a distinctive wrongful interference with freedom and more like one ordinary obstacle among others. But the Descriptive Argument seemed compelling precisely because certain projects appear to require more than the mere liberty to try: they require that some objects remain available to the agent over time. Thus, if freedom protects only the attempt as such, then the loss of those objects no longer appears to mark the kind of interference for which property rights are needed. Read strongly, the argument threatens to count too many ordinary frustrations as violations of freedom; read weakly, it threatens to lose the force needed to explain why property matters at all.

The determinacy problem reveals a deeper instability in the Descriptive Argument's central formula of "setting and pursuing ends." The two components of that formula do not obviously perform the same work. The appeal to freedom seems initially to arise from the thought that agents must be able to set ends of their own, since without that they would not count as self-directing agents at all. But the pressure toward property does not yet arise at that level. It becomes pressing only once attention shifts from the adoption of ends to their pursuit through external means. Merely setting an end does not itself

require any determinate relation to external objects. Property becomes relevant only when an end must be carried out in the world through external objects whose use may conflict with the choices of others. The Descriptive Argument therefore appears to draw its intuitive force from one claim and its conclusion from another: the normative appeal of freedom is supplied by end-setting, while the argument for property is supplied by end-pursuit. At the very least, this suggests that the connection between the two is not as immediate as the formula "setting and pursuing ends" makes it appear.

This instability also affects the standpoint from which the argument proceeds. End-setting seems naturally tied to the agent's own practical perspective: it concerns the ends she adopts as her own. End-pursuit, by contrast, brings into view the conditions under which those ends can actually be carried through in the external world. The Descriptive Argument thus appears to move between a subjective and an objective standpoint without clarifying how the two are connected. If the relevant standard is what the agent takes herself to be able to do, then the protected domain threatens to expand too far, since too much may count as bound up with her purposive agency. If, by contrast, the relevant standard is objective sufficiency under actual conditions, then freedom threatens to depend on something too close to successful realization. The instability between setting and pursuing ends therefore reappears as an instability between subjective and objective standards of agency.

The Descriptive Argument therefore needs a criterion for distinguishing between those external conditions that belong to an agent's protected purposive agency and those that merely form part of the changing background against which she acts. One possible response is to identify the relevant means by reference to those to which the agent is already entitled. On this proposal, the tool, the space, or the anticipated meeting fall outside the protected domain because the agent never had any right to them in the first place.

But this response is no less problematic. The distinction between wrongful interference with purposiveness and mere frustration of purpose now depends on a prior specification of which means or conditions an agent may rightfully treat as hers in pursuing an end. This reverses the explanatory order. The appeal to purposiveness was introduced precisely in order to explain how such entitlements could be grounded within a self-limiting system of equal freedom. If purposiveness can identify the protected domain only by presupposing antecedent entitlements, then it no longer grounds those entitlements but depends on them.

The determinacy problem is therefore circular. If purposiveness is interpreted in terms of the empirical sufficiency of means under changing background conditions, then many intuitively rightful acts begin to look like wrongful interferences with freedom. If, by contrast, purposiveness is restricted to means and conditions to which the agent is already entitled, then the account presupposes the very entitlements it was meant to explain. In either case,

purposiveness fails to provide a stable basis for distinguishing genuine claims to external objects from mere desires.[41]

The objection, however, may be asking too much of the Descriptive Argument. It assumes that the argument must identify, from within the distinction between wish and choice itself, which particular external objects belong to whom. But that is a stronger requirement than the Descriptive Argument needs to meet. Its task is not yet to establish determinate entitlements, but to explain why a condition in which such entitlements can become possible is required at all. Put differently, the Descriptive Argument need not show who is entitled to what; it need only show why external freedom, if exercised in a world of shared objects, must admit the possibility of property rights over external objects.

The objection is powerful against the stronger claim that purposiveness can determine particular entitlements. Once purposiveness is tied to the sufficiency of one's means, many intuitively rightful acts begin to look like wrongful interferences; and if purposiveness is instead defined by reference to what one is already entitled to use, the view becomes circular. But this does not yet show that the Descriptive Argument fails altogether. It shows only that the distinction between wish and choice cannot by itself tell us which particular object is mine and which is not. What it can still do is explain why the external exercise of freedom requires that such a distinction be possible at all. Kant's own distinction supports this more modest point: choice, unlike wish, involves consciousness of one's ability to bring about its object by one's action.[42] The question, then, is not yet how determinate entitlements are allocated, but whether right must make room for a relation to external objects that goes beyond mere wishing and can figure in purposive agency.

Seen in this light, the determinacy objection reveals less a refutation of the Descriptive Argument than a limit built into any unilateral standpoint on external objects. This is not yet the full problem of provisionality; it is the determinacy problem viewed from the standpoint of public right. The problem is not simply that agents disagree about which objects they may use. It is that, in the state of nature, each agent relates to external objects only from her own unilateral standpoint. Each can declare that a particular object is needed for her purposes, or that she has taken it into her possession, but such a declaration is still only the act of one will. It cannot, by itself, authoritatively determine obligations for everyone else. Kant's point is precisely that "a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external."[43] By my

[41] A structurally different circularity will return later when normative independence is introduced, see Chapter 2, Section 2.3.2.

[42] (6: 213): "The faculty of desire in accordance with concepts, insofar as the ground determining it to action lies within itself and not in its object, is called a faculty *to do or to refrain from doing as one pleases*. Insofar as it is joined with one's consciousness of the ability to bring about its object by one's action it is called choice; if it is not joined with this consciousness its act is called a wish."

[43] (6: 256).

own choice alone, I cannot impose on others a duty to refrain from using an external thing that they would not otherwise have had; such an obligation can arise only through a will that is united and public rather than merely unilateral.[44]

This helps clarify why the determinacy objection has force. If the distinction between choice and wish is applied only from the standpoint of the individual agent, then the boundary between what is merely useful to my project and what is rightfully mine cannot become publicly determinate. From my perspective, the tool, material, or site may appear as a necessary means to my end; from another's perspective, the same object may appear available for her own use. What is missing is not merely a sharper psychological criterion distinguishing choice from wish, but a public juridical standpoint from which claims to external objects can be authoritatively settled. Kant describes the state of nature precisely as a condition in which such public determination is lacking: it is a condition "in which there is no distributive justice,"[45] and therefore one in which there is no competent judge to decide disputed rights with rightful force.[46]

Yet the determinacy objection should not be understood as showing that property rights are impossible in the state of nature. Kant's claim is not that the state of nature is necessarily a condition of injustice, as if no rightful claims could exist there at all. Rather, it is a condition "devoid of justice (*status iustitia vacuus*),"[47] because, where rights are disputed, there is no public authority competent to render a binding verdict. This distinction matters for the Descriptive Argument. The objection shows that purposiveness cannot itself determine which particular objects belong to whom. But it does not show that the Descriptive Argument fails to establish the more modest claim that the possibility of property rights must be admitted. It shows, rather, that if such claims are to become determinate, they must ultimately be capable of public determination under an omnilateral will.

In that sense, purposiveness does not directly generate entitlements. It points to the need for a juridical framework within which claims to external objects can be authoritatively determined. The circularity worry therefore succeeds against purposiveness as a direct criterion of entitlement: one cannot move simply from the fact that an object figures in my chosen end to the conclusion that I may exclude others from it. But the objection need not defeat the weaker thesis that the Descriptive Argument requires at this stage. The point is not that property rights are already fully specified in the state of nature, but that external freedom

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[44] Kant puts the point especially clearly at (6: 261): "By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the united choice of all who possess it in common." See also (6: 264): "a unilateral will cannot put others under an obligation they would not otherwise have. – But the condition in which the will of all is actually united for giving law is the civil condition."

[45] (6: 306).

[46] Kant defines the state of nature as "a condition in which there is no distributive justice" (6: 306). Its opposite is not merely a social condition, but the civil condition, understood as "a society subject to distributive justice" (6: 306).

[47] (6: 312)

must admit the possibility of such rights and, with it, the possibility of their public determination.[48]

Nevertheless, one might wonder whether the Descriptive Argument really entails only the possibility of property rights, or whether it in fact relies on something stronger, namely the thought that agents need actual, stable claims if their freedom is to be externally exercised. This is where the next objection enters. For if the connection between freedom and property is understood too tightly, the argument threatens both to collapse the Postulate of Private Right into the innate right to external freedom and to slide from the possibility of property to actual holdings.

2.2. The structural objection

In the previous section, the Descriptive Argument was defended against the determinacy objection by weakening its ambition: it need not itself determine who is entitled to what, but need only establish the possibility of property rights. Yet one might wonder whether this retreat to possibility is plausible. If the connection between freedom and property is drawn in the tight way the Descriptive Argument suggests, then the Postulate of Private Right begins to look less like a distinct synthetic principle and more like something already contained in the innate right to external freedom itself. Moreover, insofar as that connection is explained by appeal to what finite, embodied agents need in order to set and pursue ends, the argument seems to rely on empirical considerations in a way that threatens the Postulate's a priori status. Once property is treated as flowing from freedom in this way, the argument also seems to press beyond the possibility of property rights toward the thought that agents need actual, stable claims if their freedom is to be externally exercised. The structural objection therefore asks whether the very move that seemed to answer the determinacy objection can be sustained. Can the Descriptive Argument really retreat to the possibility of property rights, or does its close connection between freedom and property threaten the synthetic and a priori status of the Postulate while reintroducing the pressure toward actual holdings?

The Postulate of Private Right is explicitly introduced by Kant as a synthetic a priori addition that extends the Universal Principle of Right.[49] That has two implications. First, given that it is synthetic, it is not supposed to be derivable

[48] This anticipates, without yet resolving, the question of provisionality discussed in Part II of this thesis. Kant's point at (6: 312) is that the state of nature need not be a condition of injustice, but it remains a condition devoid of justice because disputed rights lack public adjudication. For present purposes, this means that the Descriptive Argument need not show how determinate holdings are conclusively fixed in the state of nature. It need only show why the possibility of external mine and thine must be admitted.

[49] For helpful exposition of why Kant treats intelligible possession as raising the question how a synthetic a priori proposition about right is possible, compare (Varden 2024, 412), especially her contrast between the analytic relation of person to body and the synthetic relation involved in outer mine and thine. Varden emphasizes that property is synthetic a priori because it concerns an external object that can be mine even when it is spatially distinct from me; cf. (6: 253).

from the innate right to external freedom. An adequate interpretation must therefore avoid treating the Postulate as something already implicit in the concept of innate right.[50] Second, insofar as it is a priori, its justification cannot be grounded in empirical facts or anthropological considerations about human nature, even if such considerations may be relevant to its application.[51]

Kant writes:

> "On the other hand, a proposition about the possibility of possessing a thing external to myself, which puts aside any conditions of empirical possession in space and time (and hence presupposes the possibility of possessio noumenon), goes beyond those limiting conditions; and since it affirms possession of something even without holding it, as necessary for the concept of something external that is mine or yours, it is *synthetic*. Reason has then the task of showing how such a proposition, which goes beyond the concept of empirical possession, is possible *a priori*."[52]

This passage makes clear that the possibility of property rights cannot be treated as already contained in innate right. The Postulate must extend the concept of right synthetically, while being justified a priori rather than by appeal to empirical conditions of human agency.

At the same time, some connection between freedom and the possibility of property rights is not optional. If there were no such connection, the Postulate of Private Right would appear unmotivated. Since the innate right to external freedom is the sole original right and the basis of all further rights, any account of the possibility of property must ultimately be connected to it. Without such anchoring, the Postulate would look like an arbitrary addition to the system of right. Kant's own reductio confirms the need for such a connection: if no external object of choice could ever be mine or yours, freedom would "annihilate" its own external use by putting usable objects beyond any possible

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[50] More radically, some commentators question whether the Postulate is derivable from more fundamental principles at all, treating its status as a "Postulate" as marking a limit to systematic proof; e.g. (Willaschek 1997). The present objection is more modest: it grants that the Postulate must be connected to innate right, but contends that the proposed argument connects them too tightly.

[51] "If, therefore, a system of a priori cognition from concepts alone is called metaphysics, a practical philosophy, which has not nature but freedom of choice for its object, will presuppose and require a metaphysics of morals, that is, it is itself a duty to have such a metaphysics, and every human being also has it within himself, though in general only in an obscure way; for without a priori principles how could he believe that he has a giving of universal law within himself? But just as there must be principles in a metaphysics of nature for applying those highest universal principles of a nature in general to objects of experience, a metaphysics of morals cannot dispense with principles of application, and we shall often have to take as our object the particular nature of human beings, which is cognized only by experience, in order to show in it what can be inferred from universal moral principles. But this will in no way detract from the purity of these principles or cast doubt on their a priori source. – This is to say, in effect, that a metaphysics of morals cannot be based upon anthropology but can still be applied to it." (6: 216).

[52] (6: 250); emphasis added.

use.[53] The point is not that property is derivable from freedom, but that the possibility of property must be connected to freedom if the Postulate is not to appear arbitrary.

The difficulty, then, is to establish a connection between freedom and property that is neither too weak nor too strong. The Descriptive Argument is attractive because it provides a firm connection: if agents are to set and pursue ends independently, property rights must be possible. Yet this connection may be too firm. If property is required for external freedom itself, the possibility of property begins to look derivable from innate freedom rather than introduced through a distinct synthetic Postulate.

A parallel worry arises with respect to the Postulate's a priori status. The Descriptive Argument appears vulnerable if it grounds property in what finite, embodied agents need in order to set and pursue ends. For then the justification of property seems to depend on empirical facts about human agency: our bodily limitations, temporal extension, and need for stable access to external means. But Kant insists that practical philosophy has "not nature but freedom of choice itself for its object," and that a metaphysics of morals cannot be based upon anthropology, even if it can be applied to it. If the possibility of property rights is justified by appeal to what human beings, given their empirical constitution, require in order to carry out their projects successfully, then the argument appears to compromise the a priori status of the Postulate.[54]

These two worries concern the status of the Postulate: the Descriptive Argument seems to make property both too directly derivable from freedom and too dependent on empirical facts about finite agency. They also revive the worry that the argument does not in fact stop at the possibility of property rights. If freedom is said to require property in the way the Descriptive Argument suggests, then what appears necessary for freedom is not merely that property be possible, but that agents actually enjoy stable claims to external objects. Once stable access to external means is treated as something human beings need in order to set and pursue ends successfully, the argument begins to look less like a claim about the possibility of property and more like a claim about the actual conditions under which freedom can be exercised. If that is right, then the response to the determinacy objection becomes unstable, since that response relied precisely on the claim that the Descriptive Argument can establish only the possibility of property rights, not that anyone actually holds property. The Postulate of Private Right asserts only that "It is possible for me to have any

[53] (6: 246).

[54] The problem is not only that such a justification would appeal to empirical facts. It is also that the fact that an individual needs certain objects in order to carry out her projects is a monadic feature of her agency and therefore cannot by itself generate juridical duties for others. This objection is developed by (Hasan 2018); see especially his discussion of the "conceptual structure of purposive activity" and the claim that such considerations merely set reason the task of identifying a legitimate ground of rightfulness, rather than supplying one.

external object of my choice as mine."[55] The issue at stake is therefore the possibility of property rights, not actual ownership.

To see the force of this worry, consider a world in which no one actually acquires property, perhaps because no one pursues ends requiring stable control of external means. In such a world, the possibility of property rights remains intact, but no one owns anything. If the Descriptive Argument implies that persons in such a world would be unfree simply because they do not hold property, then freedom would wrongly be made to depend on contingent acts of acquisition. That would go beyond the Postulate's claim by making actual ownership, rather than the possibility of property, constitutive of freedom.

In what follows, I respond to these worries in three steps. First, I address the claim that the Descriptive Argument violates the synthetic status of the Postulate by making property rights derivable from the innate right to external freedom. Second, I consider the charge that the argument compromises the a priori status of the Postulate by appealing to empirical facts about finite, embodied agency. Third, I return to the further worry generated by both lines of objection, namely whether the Descriptive Argument, even if defended on those first two fronts, nevertheless tends to require actual, stable holdings rather than the mere possibility of property rights.

2.2.1. The synthetic status

I argue that the Descriptive Argument can be defended against the first part of the structural objection, namely the charge that it violates the synthetic status of the Postulate, by separating two claims that the objection runs together. One is a claim of practical necessity: that the possibility of property is required if freedom is to be externally exercised among embodied agents in a shared world. The other is a claim of derivability: that property therefore already follows from the innate right to external freedom, whether analytically or through a justificatory argument amounting to proof. The structural objection gains force only by conflating these two claims. The Descriptive Argument relies on the former, not the latter: it treats the possibility of property as practically necessary for the external exercise of freedom, without claiming that property is derivable from innate right.[56]

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[55] (6: 246).

[56] This line of response is structurally similar to Katrin Flikschuh's interpretation of the Postulate of Private Right in (Flikschuh 2007). Like Flikschuh, I argue that the Postulate is motivated by a practical problem internal to the idea of right and that its role is to authorize a synthetic extension that is practically necessary yet not derivable from the innate right to external freedom. However, whereas Flikschuh frames the issue primarily in terms of an "antinomy of right" between unilateral acquisition and equal freedom, the present argument reconstructs the tension in terms of relational independence among embodied agents and the material conditions of purposive agency. The difference concerns the route by which the practical necessity of the Postulate is established, not its systematic status as a non-derivable yet practically justified extension of the concept of right.

Kant's own characterization of practical postulates supports this distinction. A Postulate, according to Kant, is not a proposition derivable from prior principles, but a theoretically indemonstrable proposition that is practically necessary as an "inseparable corollary" of an unconditionally valid practical law. Read in this way, the possibility of property rights need not be treated as already contained in innate right. Rather, it can be understood as a practically necessary proposition whose grounds cannot be demonstrated in the form of a proof.[57] Kant draws precisely the distinction the objection overlooks. The possibility of property rights under the Postulate of Private Right must not be derivable, yet it can still remain a practical necessity.

Thus, the structural objection slides between two distinct theses. The first is a derivability thesis, according to which property follows from the innate right to external freedom, either analytically or through a justificatory argument amounting to proof. The second is a practical necessity thesis, according to which property is required for the exercise or realization of freedom among embodied agents in a shared world. The response developed here accepts the second thesis but denies that it entails the first. Practical necessity can motivate the Postulate of Private Right as a practically necessary extension of the system without thereby yielding a derivation from what precedes it.[58]

This becomes clearer once we recall what innate right secures at its most basic level. Innate right protects each person against being constrained by another's choice, insofar as this can coexist with the like freedom of all. But it does not yet explain how protection against interference with one's person can extend to a rightful relation to particular external objects. For that reason, it does not yet explain how a relation of mine and thine with respect to external objects is possible.

From this perspective, the problem is not that property would be incompatible with equal freedom. The problem is rather that, if innate right is understood solely in terms of bodily independence and empirical possession, it is not yet intelligible how others can be under obligations to refrain from using objects that they can use without interfering with my body. The transition from "you may not interfere with my body" to "you may not use this object even when I am not holding it" must be explained in some way, but explaining it in terms of

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[57] For Kant's definition of postulates see (5: 132). It is a proposition that is synthetic, possible only a priori, and not provable "of itself" (6: 250-2).

[58] To see why this distinction matters, compare Guyer's alternative strategy, as reconstructed and criticized by (Flikschuh 2007, 3–4, 7–8, 16–17). Flikschuh notes that Guyer treats Kant's practical Postulates as a "particular kind of proof" and takes the Postulate of Right to be capable "at least of a practical proof," thereby making practical provability stronger than practical justifiability. She later characterizes Guyer's account of the juridical Postulate as an "extended demonstration" of the possibility of property, comprising proof of its moral possibility, theoretical possibility, and practical necessity. If that were correct, the Postulate would cease to be an independent synthetic extension and would instead become a consequence already contained in innate right. Against this, Flikschuh insists that the Postulate is better understood as a practically necessary yet theoretically indemonstrable justificatory proposition.

practical necessity does not make it automatically derivable from the innate right to external freedom.

The practical necessity of property for the external exercise of freedom is thus not a claim about what follows from innate right by conceptual analysis. It is a claim about what is required if right is to extend beyond bodily independence and empirical possession. And according to the Descriptive Argument, right is required to extend beyond bodily independence because, otherwise, individuals could not pursue the ends they have set themselves independently. Once this is seen, the structural objection can no longer infer derivability from practical necessity.[59] The possibility of property may be practically necessary for freedom without being already contained in the concept of innate right.[60]

The reliance on practical necessity is in fact a strength of the Descriptive Argument. As noted in the introduction to Part I, without some connection between the innate right to external freedom and the possibility of property rights, the Postulate of Private Right would seem arbitrary. It would be hard to see how it could remain faithful to the claim that innate right is the basis of all further rights. Practical necessity also makes Kant's own reductio intelligible: if no external object of choice could ever be mine or yours, freedom would "annihilate" its own external use by putting usable objects beyond any possible use. The reductio does not show that property is derivable from innate right. It shows instead that the possibility of property is practically necessary for

[59] The structural point advanced here can be further illuminated by analogy to the role of the Postulate of God in Kant's moral philosophy, as discussed by (Flikschuh 2007). Flikschuh emphasizes that the practical necessity of postulating God does not render God's existence derivable from the moral law. Rather, the moral standpoint gives rise to a practical need—namely, the coherence of the highest good—that reason cannot theoretically satisfy. The Postulate therefore functions as a practically justified yet theoretically indemonstrable assumption. Its authority lies not in proof but in the practical indispensability of the assumption for sustaining the standpoint of moral agency. The present argument adopts a structurally similar approach with respect to the Postulate of private right. The claim is not that intelligible possession is analytically contained in the innate right to external freedom, nor that it can be demonstrated as its justificatory entailment. Rather, the exercise of reciprocal independence among embodied agents generates a practical problem that cannot be resolved within the resources of innate right alone. The Postulate authorizes the assumption that a juridical relation of intelligible possession is possible, without purporting to derive it. As in the case of the Postulate of God, practical necessity does not collapse into theoretical proof; instead, it marks the point at which reason must extend itself synthetically in order to preserve the coherence of its own standpoint.

[60] This response already points beyond the Descriptive Argument. The Descriptive Argument did not originally claim that property is derivable from purposive agency; rather, it claimed that the possibility of property is practically necessary if freedom is understood through the setting and pursuit of ends. But once the structural objection is answered by distinguishing practical necessity from derivability and by treating the Postulate as a practically justified synthetic extension of right, the justificatory centre of gravity begins to shift away from purposive agency itself and toward the juridical structure of right. That shift will become more explicit in what follows.

freedom's external use, even though that connection cannot be established by proof from innate right alone.[61]

In this respect, the Descriptive Argument need not collapse property into innate right. It can establish the practical necessity of the possibility of property rights without making those rights derivable from innate right.

Yet this response gives rise to a further difficulty. In appealing to the practical necessity of property for the external exercise of freedom among finite, embodied agents, the argument seems to invoke empirical considerations about the conditions of human agency. If that is right, then the Descriptive Argument may avoid the first horn of the structural objection only by exposing itself to the second, namely the charge that it compromises the a priori status of the Postulate. It is this worry to which I now turn.

2.2.2. The a priori status

The second part of the structural objection thus arises from the form of the previous response. In order to defend the Descriptive Argument against the charge that it violates the synthetic character of the Postulate by deriving property from innate right, I appealed to the practical necessity of property for the external exercise of freedom among finite, embodied agents. But that way of putting the point seems immediately to invite an empirical reading. The Descriptive Argument begins from the setting and pursuit of ends, and its force derives from familiar facts about human agency: that we act through bodies, that our actions unfold over time, that we cannot remain in continuous physical contact with all the objects our projects require, and that many ends can be pursued only if some external means remain available to us over time. If the Descriptive Argument depends on such facts, however, then it seems to rely on anthropology rather than on a priori right.

This worry can be put more precisely. The problem is not simply that the Descriptive Argument refers to human beings as embodied agents. The problem is that it may seem to justify the possibility of property by appeal to what beings like us happen to need in order to set and pursue ends successfully. Under that reading, the possibility of property would depend on facts about our bodily finitude, our temporal extension, and our need for stable access to external means. But Kant insists that practical philosophy has "not nature but freedom of choice itself for its object," and that a metaphysics of morals cannot be based upon anthropology.[62] If the Descriptive Argument rests on what human beings,

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[61] This point will become important again in Chapter 2. One difficulty for the Normative Argument is that, although it preserves the synthetic and a priori status of the Postulate more successfully, it risks weakening this sense of practical necessity. It can explain why right must extend to the outer, but it is less clear whether it can explain with equal force why a condition in which property rights are impossible would conflict with freedom itself.

[62] (6: 216).

given their empirical constitution, need in order to carry out their projects, then the a priori status of the Postulate seems compromised.

This objection would be decisive if those empirical considerations were doing the justificatory work. While Kant insists that the metaphysics of morals cannot be based upon anthropology, it can be applied to it.[63] To defend the Descriptive Argument it might therefore be argued that it need not say that because human beings need certain things, others are therefore under obligations with respect to them. Nor need it say that facts about embodiment themselves generate rights. Instead, it can rely on a weaker and more defensible claim. This claim is that once the external exercise of freedom is under consideration, the problem to which the Postulate responds becomes visible only under the conditions of finite agency in a shared world. Bodily finitude, temporal extension, and dependence on external means do not by themselves ground the Postulate. They show why, for beings like us, a principle of right that secures only the person and empirical possession leaves a further juridical question unanswered. In that sense, the empirical considerations identify the point at which the extension of right becomes necessary at the level of application, without themselves supplying the normative ground of that extension.

On this response, the appeal to embodiment should not be read as an appeal to anthropology in the objectionable sense, that is, as grounding right. What does the normative work is a principle of right: the thought that freedom must be capable of external exercise under conditions consistent with the like freedom of all. The empirical considerations do not yield that principle, nor do they derive rights from need. They enter only in showing how, for finite agents who act externally through objects over time, the limits of a regime restricted to bodily independence and empirical possession come into view. If that is correct, then the Descriptive Argument does not compromise the a priori status of the Postulate simply by referring to the human conditions under which the problem of external mine and thine arises.[64]

Still, even with this qualification, the response does not remove every difficulty. For even if the Descriptive Argument does not ground property rights in empirical facts about finite agency, it still seems to move beyond the mere possibility of property rights. Once those empirical conditions are brought in at

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[63] (6: 216): "[…] a metaphysics of morals cannot be based upon anthropology but can still be applied to it."

[64] This response should not be understood as a complete vindication of the Descriptive Argument as an independent justification of the Postulate. One might worry that, in the Descriptive Argument, facts about finite embodied agency do not merely identify the conditions under which the problem of external mine and thine becomes visible, but supply much of the argument's justificatory force. If so, the distinction between grounding and application cannot by itself fully answer the a priori objection. I return to this point in Chapter 2, where I argue that the descriptive considerations can be retained only once the Normative Argument supplies the juridical ground of the Postulate. On that account, the Descriptive Argument does not ground the possibility of property rights, but identifies the empirical configuration in which the normative problem becomes practically salient.

the level of application, stable access to external means begins to look less like a formal possibility and more like a practical requirement of successful agency. The pressure toward actual, stable claims therefore reappears here in a new form.

2.2.3. Actual holdings

The structural objection then reveals a more fundamental problem with the Descriptive Argument. The first response argued that in order to preserve the synthetic status of the Postulate, practical necessity must be distinguished from derivability: property can be required for the external exercise of freedom without already being contained in the innate right to external freedom. The second response distinguished between grounding the Postulate in empirical facts and using such facts to identify the conditions under which the problem of external mine and thine becomes visible. Yet these responses seem to push the Descriptive Argument toward something stronger than the mere possibility of property rights. For once the argument is framed in terms of what is practically necessary for beings like us to exercise external freedom in the world, the pressure arises to say not merely that property rights must be admitted as possible, but that agents must actually be able to rely on stable claims to external objects.

This is a real difficulty for the Descriptive Argument. The Postulate of Private Right asserts only that it must be possible for an external object of choice to be mine. Its modal claim concerns the possibility of rightful possession, not the actuality of any particular holding. But the Descriptive Argument draws much of its intuitive force from the thought that finite agents cannot set and pursue ends externally unless some means remain stably available to them over time. The more strongly that thought is pressed, the more the argument begins to look as though what freedom requires is actual, effective access to the objects on which purposive activity depends. If that is right, then the Descriptive Argument risks going beyond the Postulate's claim by making actual holdings, rather than the possibility of having something as one's own, constitutive of external freedom.

Avoiding this result requires a more juridical formulation of the point. What matters is not actual ownership, nor actual secure access to particular means, but the availability of a juridical form under which claims to external objects can in principle be secured. On this view, the relevant claim is not that anyone must in fact hold property in order to be free. It is rather that, if external freedom is to be exercised under conditions of plurality, right must make room for a possible relation to objects that is not exhausted by empirical possession. The requirement would then concern the juridical possibility of external mine and thine, not the actual possession of any particular object.

This difficulty suggests that the Descriptive Argument has reached a limit. The pressure toward actual holdings seems to be avoidable only by recasting the

response in more explicitly juridical terms. But once that move is made, the centre of gravity begins to shift away from the descriptive conditions of end-pursuit and toward a different kind of argument altogether—one concerned less with what agents need in order successfully to carry out their projects and more with what a system of right must make possible if external freedom is to be juridically intelligible. It is this shift that points beyond the Descriptive Argument in its original form and prepares the ground for the Normative Argument developed in Chapter 2.

The unresolved pressure also sets up the next objection. For once the Descriptive Argument appears to require actual holdings rather than the possibility of property, the further question arises what kind of independence those holdings are supposed to secure—and whether property rights can in fact secure that kind of independence at all.

2.3. The adequacy objection

The first two objections challenged the Descriptive Argument at the levels of determinacy and structural status. The third objection reveals a further difficulty. It asks whether property rights can in fact secure the kind of independence that the Descriptive Argument requires.[65]

According to the second premise of the Descriptive Argument, being able to set and pursue ends independently requires property rights. The thought was that a regime limited to bodily inviolability and empirical possession leaves agents vulnerable whenever they rely on external objects with which they are not physically connected. In that case, an agent's ability to pursue ends depends on whether she can maintain continuous bodily control over the objects her projects require. The Descriptive Argument therefore concluded that the Postulate of Private Right must make possible rightful possession of external objects beyond uninterrupted physical possession. Only in this way, it was argued, can agents have a claim against others to refrain from interfering with the external means through which they pursue their ends.

The present objection holds that, if the Descriptive Argument is to succeed, it must presuppose a robust, modal conception of independence. Independence cannot here be understood merely as the normative status of being wronged if others interfere. It must instead amount to practical security against others' discretionary interference. For if freedom consists in independence from another's discretionary choice, then it is not enough that interference would be wrongful; one must not remain exposed to others being in a position to interfere at their discretion. So long as an agent's use of external objects depends on others choosing not to interfere, she remains dependent on them, even if they never actually do so. On this understanding, independence requires not merely

[65] This objection is pushed in (Bader 2025).

that interference count as wrongful, but protection against vulnerability to such interference.

The force of this objection is sharpened by the previous section. Once the Descriptive Argument is framed in terms of the practical necessity of property for finite agents, and once it is acknowledged that this creates pressure toward actual, stable claims, the relevant notion of independence begins to look more robust than the argument officially admits. For the more strongly the argument appeals to the practical conditions under which agents can actually carry out temporally extended projects, the more it seems to require not merely that interference would be wrongful, but that agents be secure against being practically disrupted by others' discretionary choices.

Yet, property rights appear unable to secure this kind of independence. They alter the normative status of wrongful interference by making certain uses by others wrongful and by authorizing exclusion. But they do not prevent others from being in a position to interfere, nor do they free agents from practical reliance on others' compliance or on effective enforcement. Whether wrongful interference is avoided in fact depends on contingent motivational and perhaps institutional conditions, not on the mere existence of a right. If freedom requires security against discretionary wrongful interference, then property rights seem unable to supply what the Descriptive Argument requires them to supply.

A response on behalf of the Descriptive Argument is nevertheless available, though it also transforms the argument. The fact that property rights do not by themselves eliminate practical vulnerability, a defender of the Descriptive Argument might say, need not be taken as a defect of the argument. It may instead be taken to reveal a defect of the state of nature. Property rights alter the normative status of wrongful interference even where they do not guarantee compliance, and the gap between rightful possession and practical security helps explain why a merely unilateral condition of right is unstable. On this reading, the inability of property rights to secure robust non-interference is not a reason to deny their importance for freedom, but a reason to recognize that freedom in the external domain requires a civil condition in which rights are publicly assured.[66]

Kant explicitly identifies this problem in his discussion of assurance in §8 of the Doctrine of Right. He writes: "I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with

[66] This response parallels the reply to the determinacy objection above. There, the failure of the distinction between choice and wish to determine particular entitlements was interpreted not as a decisive defect of the Descriptive Argument itself, but as a limit of the state of nature, in which claims to external objects cannot be publicly and authoritatively determined. The present response makes an analogous move: the fact that property rights do not by themselves secure robust practical non-interference is read not as showing that property is irrelevant to freedom, but as revealing the instability of a condition in which rights are not yet publicly assured.
This point anticipates the later discussion of provisionality.

regard to what is mine." The difficulty is not that rights cannot exist outside the civil condition, but that reciprocal assurance of compliance cannot be secured without public authority. Each person's entitlement to coerce in defence of right must be reconciled with the equal entitlement of others. This reconciliation cannot be achieved through unilateral enforcement. It requires a collective, public will capable of providing assurance to all.

The failure of property rights to ensure robust non-interference in the state of nature therefore need not be thought to undermine the Descriptive Argument's force. Rather, it explains why the state of nature is unstable. Individuals can intelligibly claim rights over external objects, and interference with those objects can intelligibly count as a wrong. Yet without public assurance, each remains vulnerable to others' non-compliance. The resulting insecurity does not show that property is unnecessary; it shows that property, once claimed, makes salient a further requirement—namely, the establishment of a civil condition in which rights can be authoritatively enforced.

This reading is supported by Kant's claim that if no acquisition were cognized as rightful prior to entering the civil condition, the civil condition itself would be impossible. Laws concerning what is mine and yours in the state of nature, Kant writes, contain the same content as those in the civil condition when considered purely by reason. The difference lies not in their form, but in their execution: the civil condition "provides the conditions under which these laws are put into effect." The point is not that the civil condition creates property ex nihilo, but that it supplies the institutional framework necessary for its effective realization.[67]

On this interpretation, the inability of property rights to secure robust non-interference in the state of nature is not a defect in the argument. It is precisely what generates the need for public authority. Property rights establish a normative structure within which interference is intelligible as a wrong; the civil condition supplies the coercive framework required to transform this normative standing into stable, publicly assured independence. What the objection treats as a failure of the property argument thus emerges as a key step in Kant's broader account of why we must leave the state of nature.

The difficulty, however, also reveals what would be needed for a more adequate account. If property rights cannot secure robust practical independence, then their significance cannot lie in eliminating an agent's vulnerability to others' choices. Their significance must instead be understood normatively. If property rights were not possible at all, an agent's dependence on others with respect to the external means of her projects would not register as a juridical wrong. Others might frustrate her plans, but they would not thereby violate any duty owed to her. Once property rights are possible, by contrast, the same dependence takes on a different significance. The agent may still remain practically vulnerable, but

[67] (6: 312).

that vulnerability now exists within a normative relation in which others can wrong her by interfering with what is hers. The importance of property rights would then lie, not in guaranteeing practical security, but in transforming mere exposure to others into a juridically cognizable form of wrongful interference.

But this way of putting the point marks a shift away from the Descriptive Argument in its original form. The response to the question why Kant postulates the possibility of property rights no longer turns primarily on the claim that agents need stable access to external means in order to pursue ends independently. It turns instead on the claim that relations to external objects must be capable of juridical determination, so that interference with them can count as wrongful. Independence is therefore no longer understood as robust security against disruption, but as a normative status within a system of right. This is precisely the direction in which the Normative Argument will proceed. The adequacy objection therefore does not simply refute the Descriptive Argument; it shows that the argument can avoid demanding too much of property rights only by moving toward a distinct, more explicitly juridical understanding of independence.

3. Conclusion

This chapter has reconstructed and assessed what I have called the Descriptive Argument for the possibility of property rights in Kant's Doctrine of Right. The attraction of this argument lay in its considerable explanatory force. By connecting external freedom with agents' ability to set and pursue ends independently, it offered a vivid account of why a condition in which property rights are impossible appears to stand in tension with freedom. If agents can use external means only so long as they remain in empirical possession of them, then the external exercise of freedom seems vulnerable whenever bodily control ceases. In this way, the Descriptive Argument made intelligible why Kant might think that a regime in which nothing external could ever be mine or yours would leave freedom incomplete.

At the same time, the preceding sections have also revealed the shortcomings of the Descriptive Argument. The determinacy objection revealed that the appeal to purposive agency cannot by itself determine which external objects may rightfully count as mine and which remain mere objects of wish. The only way to avoid this objection, I argued, is for the Descriptive Argument to retreat from establishing actual claims to establishing only the possibility of property rights. However, the structural objection then showed that given the close connection between freedom and property, the Postulate of Private Right is placed under pressure in both its synthetic and its a priori status. While these challenges can potentially be resolved by emphasising the Descriptive Argument's reliance on practical necessity and applicability to empirical considerations, these responses destabilised the retreat to the possibility of property rights. Finally, the adequacy

objection brought out that, once the argument is pushed toward actual, stable claims to external means, it comes to rely on a conception of independence more robust than property rights can in fact secure. Taken together, these objections do not merely expose isolated weaknesses. They reveal a deeper instability in the Descriptive Argument's underlying conception of freedom.

The problem, it seems, is that the Descriptive Argument treats freedom primarily in terms of the setting and pursuit of ends, while understanding juridical independence as a condition added to purposive agency. But this order of explanation proves unstable. For the more strongly the argument appeals to the practical conditions under which agents carry through their projects, the more it is driven beyond the modest claim that property rights must be possible toward the stronger claim that freedom requires stable access to external means. Yet once the issue is framed in those terms, the argument threatens both to demand more of property rights than they can provide and to obscure the distinctively juridical character of Kant's problem.

This does not mean that the Descriptive Argument should simply be discarded. Its central insight remains important. It explains why the impossibility of property appears to matter for freedom at all. What the chapter has shown, however, is that this insight cannot itself serve as the justificatory core of the argument. If the possibility of property rights is to be explained in a way that avoids the difficulties identified in this chapter, freedom must be reconstructed more explicitly in juridical terms, not primarily as the successful or independent pursuit of ends, but as law-governed independence from another's choice.

Chapter 2 therefore turns to what I call the Normative Argument. The aim of that chapter is to show whether the possibility of property rights can be grounded more adequately by beginning from juridical independence itself rather than from purposive agency. The question, in other words, is whether the explanatory force preserved by the Descriptive Argument can be retained without reproducing the instabilities to which it gives rise.

Chapter 2 The Normative Argument

1. From the Descriptive Argument to the Normative Argument

The objections considered in Chapter 1 showed that the Descriptive Argument is problematic because it pointed beyond the mere possibility of property rights toward the need for actual, stable claims, revealing a deeper instability in the Descriptive Argument itself. The argument begins from the thought that external freedom is to be understood through agents' ability to set and pursue ends, while treating independence as a qualification on purposive agency. But the preceding discussion suggests that this order of explanation must be reversed. What is primary is not purposive agency as such, but juridical independence: the problem of property arises only once freedom is understood, in the first instance, as independence from subjection to another's choice under law. It is this deeper conceptual point that motivates the transition to the Normative Argument.[68] On Kant's own formulation, freedom is "independence from being constrained by another's necessitating power of choice, insofar as it can coexist with the freedom of everyone else under a universal law."[69] What is fundamental here is not the protection of end-setting capacity, but the juridical relation in which persons stand to one another. Freedom is relational independence under universal law.[70]

Several considerations support this shift in emphasis. The decisive point is that "independence from being constrained by another's necessitating power of choice" is not equivalent to a right to exercise one's own power of choice. The two formulations direct attention to different objects. A right to exercise one's own choice would make the protected object a capacity belonging to the agent, and would therefore treat right as grounded in the value of that capacity. By contrast, a right to independence from another's necessitating choice places the emphasis on how persons may stand in relation to one another. What is at stake is not, in the first instance, the promotion or protection of a valuable power of

[68] This line of argument is indebted to Katrin Flikschuh's critique of what she calls the "free choice" reading of Kant's innate right. In particular, I rely on her distinction between (i) independence from another's necessitating power of choice and (ii) a right to exercise one's own power of choice; on her clarification of the distinction between mere Willkür and law-governed free choice; and on her claim that Kantian external freedom is constitutively law-governed rather than a form of law-independent negative freedom. I also draw on her appeal to Kant's surrounding discussion of the "authorizations" and to his formal specification of the general concept of right in support of a juridical reading of innate right. My use of these points is nevertheless selective and adapted to the purposes of the present chapter. Flikschuh's own argument is broader and more revisionary: she develops a positive interpretation of innate right in terms of legal accountability and goes on to argue that innate right is not foundational to acquired right, but that its practical vindication depends on acquired right. I do not rely here on that fuller systematic claim. Rather, I use her critique in the more limited role of showing why a choice-centred reading of freedom is unstable and why a more explicitly juridical reconstruction becomes necessary. See (Flikschuh 2022).

[69] (6: 237).

[70] See also (Pallikkathayil 2026, 220).

choice as such, but the exclusion of a certain kind of interpersonal relation, namely one in which one person's choice determines another's outward action. The moral weight thus falls, not on the value of choice considered in abstraction, but on the juridical significance of not being subject to another's determining choice.

Once this distinction is brought into view, a further confusion in the Descriptive Argument becomes visible. The argument tacitly treats Willkür, understood as the agent's capacity for self-directed action, as though it were itself the object protected by innate right. But mere power of choice is not yet external freedom. Kant's distinction between mere choice and free choice matters here. To act merely from Willkür is simply to do as one pleases; it does not yet amount to an exercise of externally free agency. External freedom arises only where choice stands under a law of freedom, and in the juridical domain that law is the universal law of right. The significance of right therefore cannot lie in securing a pre-juridical sphere within which agents may exercise an antecedently given freedom of choice. Rather, right concerns the form under which choice can count as free at all in the external domain, namely its coexistence with the freedom of others under a universal law. What is protected is not arbitrary choice as such, but law-governed choice.[71]

This also shows why the Descriptive Argument is pulled toward a conception of freedom that is closer to liberal negative freedom than Kant's own. On a negative conception, freedom is first understood as unobstructed choice, and law appears only subsequently as an external restriction upon it. But that is not Kant's structure. For Kant, external freedom is constitutively law-governed: an action counts as externally free only insofar as it can coexist with the freedom of everyone else in accordance with a universal law. Law is therefore not an external limit imposed on a prior freedom; it is internal to the very concept of externally rightful freedom. To read innate right as if it protected a prior sphere of discretionary control over one's means and projects is already to have departed from that framework. The Descriptive Argument's emphasis on agents' ability to set and pursue ends therefore captures, at most, something that calls for juridical determination; it cannot itself identify the primary content of innate right.

The surrounding text confirms this. Immediately after introducing innate right, Kant lists a set of "authorizations" that are "not really distinct from it": innate equality, being one's own master (sui iuris), being beyond reproach before one has acted (iusti), and the authorization to communicate one's thoughts to others so long as this does not diminish what is theirs. Read together, these do not point to a foundational right to the successful pursuit of one's ends. Rather, they describe a juridical standing in which persons are presumed competent to bind themselves, answer for their own deeds, and remain immune from attribution

[71] (6: 218; 230; 231).

for what they have not done. The common thread is not the value of choice, but legal standing. Innate right, on this reading, concerns a person's status as one whose acts are presumptively her own and who is not, without specific justification, to be placed under the determining choice of another.

This interpretation is reinforced by Kant's prior specification of the general concept of right. Right, Kant says, concerns the external and practical relation of one person to another insofar as their actions can affect one another; it concerns the relation of one person's choice to another's choice; and in that reciprocal relation what matters is not the matter of choice but its form. That formulation is decisive. It does not define right by reference to the ends agents happen to set, nor by reference to the value of their capacity for choosing those ends. It defines right formally, as a reciprocal relation between persons whose choices can affect one another. If that is so, then to have a right is not, fundamentally, to enjoy protection for some independently specified domain of purposive agency. It is to stand in a juridically structured relation to others.[72] The Descriptive Argument therefore gets the order of explanation wrong. It begins from purposive agency and then adds independence as a condition upon it, whereas Kant's own statement of right begins from reciprocal juridical independence and only thereafter allows room for a person's external exercise of choice within that relation.

From this perspective, the weakness of the Descriptive Argument can now be stated more precisely. Its appeal to setting and pursuing ends was meant to explain why stable access to external means matters for freedom. That point retains force at the level of motivation. But once the content of innate right itself is at issue, the appeal to purposive agency proves too indeterminate and too materially loaded to do the primary justificatory work.

It encourages the thought that what right protects is an agent's effective control over the means of her projects, and thus invites exactly the pressures traced in the previous objections: the slide from possibility to actual claims, from juridical independence to robust security, and from a law-governed conception of freedom to one centred on discretionary control. Those pressures arise because the argument begins from the wrong pole. It starts from agency's practical needs and attempts to derive juridical independence from them, when the more plausible reading is that juridical independence sets the framework within which external agency can count as free in the first place.

The point is not that purposive agency becomes irrelevant. It remains essential to explaining why relations to external objects matter within a Doctrine of Right at all. But it can no longer be treated as the primary object protected by innate right. What is primary is a formal juridical relation among persons: each must stand to every other as one whose outward acts are not to be determined by another's unilateral choice, except under conditions that can be justified under a

[72] Compare (Pallikkathayil 2026, 227–28).

universal law. Only within that prior relation can questions then arise concerning the external conditions under which agency is exercised, including the role of objects, possession, and ultimately property. Thus the correct conclusion of the preceding objections is not merely that the Descriptive Argument needs refinement. It is that the underlying conception of freedom must be reformulated. External freedom is more plausibly understood, not as protected end-pursuit to which independence is added, but as juridical independence under universal law, within which purposive agency must find its rightful place.

Once this reversal is made, the path opens toward a different way of understanding why Kant introduces the Postulate of Private Right. The question is no longer simply how agents can successfully carry through their projects by securing means over time. It becomes, more fundamentally, how a system of right can relate persons and external objects in a way consistent with reciprocal juridical independence. The pressure toward a more explicitly normative reconstruction of the argument therefore does not come from outside the dialectic of the chapter. It emerges from the failure of the Descriptive Argument's underlying conception of freedom to remain stable under the objections considered so far.

The next step, then, is to reconstruct the argument for the possibility of property from within this more explicitly juridical conception of freedom.

2. The Normative Argument

The previous section has revealed a series of problems with the Descriptive Argument. The cumulative force of the preceding objections was not merely to expose a series of local weaknesses, but to reveal a deeper problem in the argument's underlying conception of freedom. As section 1 made clear, the reason the Descriptive Argument faces these difficulties is that it relies on a choice-centred understanding of freedom that treats juridical independence as secondary to purposive agency. If that diagnosis is correct, then a different answer is required to the question why Kant holds that property rights must be possible. This alternative answer, which I shall call the Normative Argument, is developed in the present section. Section 2.1 begins by setting out the argument itself. Section 2.2 then shows why this argument appears better suited than the Descriptive Argument to explain why the possibility of property rights is postulated. Section 2.3, however, argues that the Normative Argument is not without difficulties of its own. Most importantly, it threatens to lose the motivational force that made the Descriptive Argument attractive in the first place. Finally, section 3 asks whether the strengths of the two arguments can be combined, that is, whether the motivational force of the Descriptive Argument can be preserved without sacrificing the structural coherence of the Normative Argument.

2.1. The Normative Argument stated

If the previous section is correct, then the Postulate of Private Right can no longer be read primarily as responding to the practical conditions under which agents successfully carry through their projects by securing means over time. Rather, it must be understood as addressing a more basic juridical question: how the principles of right, while governing relations among persons, can also extend to the outer domain in such a way that external objects may stand within relations of mine and thine. On this reading, the Postulate is not introduced because property is a condition of being free as such. It is introduced because, unless external objects can fall within the domain of right, the outer would remain outside law-governed freedom.

The Normative Argument can be stated as follows:

> **Premise 1:** Innate right secures each person's juridical independence under a universal law with respect to the inner mine and thine.
>
> **Premise 2:** If the principles of right applied only to the inner mine and thine, then the outer would remain a domain of lawless liberty: external objects could be used, but they could not stand within determinate juridical relations of mine and thine.
>
> **Premise 3:** The outer can fall within the domain of right only if external objects can be capable of being mine or yours, that is, only if intelligible possession is possible.
>
> **Conclusion:** The Postulate of Private Right is required as an extension of right to the outer; accordingly, property rights must be possible.[73]

The guiding thought behind this argument is that the Postulate is not concerned with the permissibility of using external objects as such. A regime in which everyone were at liberty to use external objects would already suffice for use. What such a regime would lack is not permission to use external objects, but a juridical ordering of the outer as a domain governed by principles of right. It would allow use, yet leave the outer as a field in which objects remain outside determinate relations of mine and thine. The problem to which the Postulate responds is therefore not how to get from no use to permissible use, but how to

[73] This reconstruction is based on Bader's account of the Postulate of Private Right. In particular, I rely on his claim that the Postulate is best understood as a synthetic extension of right to the outer, transforming the outer from a domain of lawless liberty into one of rightful freedom, and that the Postulate concerns the possibility of acquisition rather than any requirement of actual ownership. My presentation is selective and adapted to the purposes of the present chapter. Bader's own discussion is broader: he explicitly formulates interpretive constraints on satisfactory readings of the Postulate, contrasts his view with accounts based on robust non-interference, and emphasizes that the Postulate is synthetic not by introducing substantive principles of property, but by extending the application of the universal principle of right to external objects. I bracket those comparative and critical dimensions here and return to them in the following sections. See (Bader 2025).

get from mere use to a domain in which the outer is governed by principles of right.

Once freedom is understood in the law-governed sense established in the previous section, the structure of the argument becomes clearer.[74] Right already governs the inner mine and thine: it governs how persons may stand in relation to one another under a universal law. If that governance were restricted to persons and their bodies alone, then the outer would not thereby become a domain of unfreedom. People would still be at liberty to use external objects, provided that in doing so they did not violate anyone's innate right. But the outer would remain outside the domain of right. It would therefore be a sphere of lawless liberty rather than one of law-governed freedom. The point of the Postulate is to exclude that result by making it possible for right to extend beyond the inner to the outer.

This extension should not be understood as a derivation of property from innate right. The Postulate does not say that one can be free only if property can be acquired, nor that actual ownership is a condition of freedom. Its point, rather, is that the Universal Principle of Right must not remain confined to the inner mine and thine alone. For if right governed only the inner mine and thine, the outer would remain outside its scope. The possibility of property therefore marks an extension of the application of right: the same Universal Principle of Right that already governs the inner mine and thine is extended to the outer mine and thine. The Postulate operates, not by introducing a second principle alongside the Universal Principle of Right, but by extending the domain to which that principle applies.

Once the outer falls within the domain of right, intelligible possession becomes possible. External objects can then stand in determinate juridical relations to persons, such that interference with what is owned can count as a wrong. Property rights are therefore possible, not because ownership is presupposed by freedom, but because only in this way can the outer be brought under law-governed freedom. The Postulate answers the question why property rights must be possible by showing that, without that possibility, the outer would remain a domain of lawless liberty rather than one governed by right.

Under this reconstruction, the Postulate of Private Right is neither a corollary of innate right nor an independent principle alongside the Universal Principle of Right. It is the principle by which right is extended from the inner to the outer. Its function is to make possible a domain in which external objects, no less than persons, fall within the scope of juridical relations. Property rights must

[74] Bader formulates the relevant notion of freedom in terms of "rightful freedom," whereas I continue to speak here of "law-governed" or "juridical" freedom in order to preserve terminological continuity with the previous section. Nothing substantive turns on this shift in vocabulary. In both cases, the underlying claim is that external freedom, in Kant's juridical sense, is freedom under universal law rather than a pre-juridical sphere of lawless choice, and that the Postulate extends this domain to the outer.

therefore be possible because, without them, the outer would not be a domain of law-governed freedom at all.

The contrast with the Descriptive Argument can be brought out by returning to the example of the engineer. Suppose she sets herself the end of building a bridge and, in doing so, makes use of steel beams, tools, machinery, and a construction site. On the Descriptive Argument, the point of property was to explain how her pursuit of that project could remain independent when she is no longer physically connected to the relevant objects. The problem was that, if others were free to remove the materials or occupy the site whenever she set them down, the continuity of her purposive activity would depend on her ability to maintain uninterrupted bodily control. The Normative Argument shifts the point of emphasis. It does not begin from the thought that the engineer needs secure access to means in order successfully to carry through her project. It begins from the thought that, so long as the outer is not governed by principles of right, the tools, materials, and site with which she works remain in a domain of lawless liberty. She may be at liberty to use them, but they cannot yet stand within determinate relations of mine and thine.

On this reading, the Postulate of Private Right explains why it must be possible for the engineer to have property rights, not because ownership is required for her to act at all, but because only if external objects can be mine or yours can the outer become a domain of law-governed freedom. If the beams, tools, and site could never be objects of intelligible possession, then others might still be prohibited from interfering with her body, but there would be no juridical relation by virtue of which interference with those external objects, as such, could count as a wrong against her. The point of the Postulate is therefore not primarily to guarantee the success of her bridge-building project. It is to make possible a juridical order in which the external objects involved in such a project can stand within relations of mine and thine, and in which interference with what is hers can be wrongfully imputable to others.

2.2. Strengths of the Normative Argument

With the Normative Argument now in view, its attraction can be assessed more precisely by returning to the difficulties that destabilized the Descriptive Argument. The point is not merely that the Normative Argument offers a different route to the Postulate of Private Right, but that it avoids the very pressures generated by the descriptive reconstruction itself. Because it begins from juridical independence and from the extension of right to the outer, rather than from the practical conditions under which agents carry through their ends, it does not rely on purposiveness as a criterion of entitlement, does not threaten to collapse the Postulate into innate right or compromise its a priori status, and does not require property rights to secure the stronger kind of practical invulnerability that the Descriptive Argument seemed to need. In these respects,

the Normative Argument appears better suited to explain why Kant postulates, not actual holdings, but the possibility of property rights.

To begin with, the Normative Argument avoids the determinacy problem that burdened the Descriptive Argument. That problem arose because the descriptive reconstruction tried to explain the possibility of property by appeal to purposive agency. Once freedom is understood in terms of setting and pursuing ends through means one takes to be available, the question immediately arises how this appeal to purposiveness is supposed to distinguish between objects that are rightfully mine and objects that I merely wish to use. If the relevant standard is subjective, then too much will count as protected, since almost any object may figure in an agent's plan. If, by contrast, the standard is restricted to means to which the agent is already entitled, then the argument becomes circular, since purposiveness can identify the protected domain only by presupposing the very entitlements it was meant to explain. The Normative Argument avoids this difficulty because it does not attempt to derive determinate claims to objects from the agent's purposes at all. Its claim is more formal: if the outer is not to remain a domain of lawless liberty, then external objects must be capable of standing within juridical relations of mine and thine. The point is therefore not to show, from within the structure of purposive agency, why this or that object belongs to a particular person. It is rather to show that right must make room for a possible relation to external objects under which such questions can be determined juridically in the first place. In that respect, the Normative Argument does not solve the allocation of particular holdings by appealing to purposiveness; it avoids the determinacy objection by shifting the issue from the content of individual purposes to the form of juridical relations within which claims to external objects can become determinate at all.

It also preserves the synthetic and a priori status of the Postulate more successfully than the Descriptive Argument. The difficulty for the Descriptive Argument was that, by presenting property as required for agents to set and pursue ends independently, it threatened to make the possibility of property look as though it already followed from the innate right to external freedom, while at the same time grounding that necessity in familiar empirical facts about finite agency, such as our bodily limitations, temporal projects, and dependence on stable external means. But the Postulate is meant to be a synthetic a priori extension of right: it must add something not already contained in innate right, and it cannot be justified by appeal to anthropology or to the practical conditions of successful agency. The Normative Argument avoids both difficulties because it understands property, not as a condition without which agents could not effectively carry through their purposes, but as the juridical form through which right is extended from the inner to the outer mine and thine. On this view, the Postulate does not derive property from freedom in the sense objected to in section three; nor does it appeal to empirical facts about what beings like us need in order to realize their ends. Rather, it makes the more formal claim that, if the outer is not to remain a domain of lawless liberty, the principles of right must be

capable of applying to external objects as well. Precisely because the argument proceeds in this way, it leaves the Postulate synthetic, as an extension of right beyond the person and the body, and a priori, since what does the justificatory work is the juridical idea of extending law-governed freedom to the outer, not any empirical account of embodied agency.

Finally, it avoids the adequacy problem because it does not require property rights to secure the wrong kind of independence. The difficulty for the Descriptive Argument was that, once freedom was understood through the independent pursuit of ends, independence came to look like something stronger than the mere normative status of being wronged if others interfere. If the point of property is to ensure that agents can carry their projects through without depending on others' contingent choices, then independence seems to require practical security against discretionary interference. But property rights cannot secure that sort of invulnerability. They can make interference wrongful, authorize exclusion, and render certain acts imputable as wrongs; they cannot prevent others from being in a position to interfere, nor can they eliminate the practical dependence of rights on compliance and enforcement. The Normative Argument avoids this mismatch because it does not begin from the thought that right must guarantee the successful or undisturbed pursuit of ends. It begins instead from juridical independence under universal law. On that view, the point of property is not to free agents from all practical vulnerability with respect to external objects, but to make it possible for such objects to stand within relations of mine and thine such that interference with them can count as a wrong. Independence is thus understood juridically rather than modally: what matters is not that others lack the power to interfere, but that their interference stands under a determinate normative status. In this respect, the Normative Argument fits more closely with what property rights can actually do. It does not ask them to secure practical invulnerability; it asks only that they make the outer a domain of law-governed freedom rather than one in which interference with external objects remains juridically unintelligible.

Taken together, these advantages show why the Normative Argument appears better suited than the Descriptive Argument to explain why Kant postulates the possibility of property rights. Because it begins from juridical independence rather than purposive agency, it avoids the indeterminacy generated by the appeal to ends, preserves the synthetic and a priori status of the Postulate, and asks of property rights only what they can in fact supply, namely a determinate normative relation to external objects. Yet precisely in gaining these advantages, the argument seems to lose something of the explanatory force that made the Descriptive Argument attractive in the first place. It is to that difficulty that the next section turns.[75]

[75] Two further advantages of the Normative Argument may be noted. First, unlike the Descriptive Argument, it is not tied to an exclusively private-property framework. If the point of property is to secure each individual's independent pursuit of ends through stable control

2.3. Difficulties for the Normative Argument

Yet the Normative Argument is not without difficulties of its own. Although it avoids the pressures that destabilised the Descriptive Argument, at least three problems remain. First, one might wonder whether it really shows that property rights must be possible, rather than only that the outer must be subject to some juridical ordering, since a regime of equal use-rights may seem sufficient to avoid lawless liberty. Second, insofar as the argument understands independence in normative terms, it may appear to rely on a circular account of interference, presupposing the very relation of mine and thine that it is meant to justify. Third, and most importantly, even if these first two difficulties can be answered, the Normative Argument still seems unable to recover the stronger explanatory force of the Descriptive Argument, namely its capacity to explain why a condition in which property rights are impossible stands in tension with freedom itself. It is this final difficulty that will ultimately motivate the attempt, in the next section, to bring the two arguments together.

2.3.1. The sufficiency of a use-rights regime

A first difficulty for the Normative Argument is that it may seem not yet to establish the possibility of property rights, but only the need for some juridical ordering of the outer. For even if the outer must not remain a domain of lawless liberty, one might still wonder why this requires property rights rather than a weaker regime in which everyone is equally at liberty to use external objects, subject only to the innate right protecting bodies and empirical possession. Such a regime would already appear to avoid arbitrariness at the level of use: no one would need another's permission to take up and employ external objects, and all would stand under the same symmetrical liberty. If so, it is not obvious that the mere extension of right to the outer must yield claims of mine and thine, rather than only universally shared use-rights.

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over external means, then it is not obvious how systems of joint, common, or public ownership could satisfy that requirement, since in each case an individual's use of external objects may remain mediated by the claims, decisions, or permissions of others. The Descriptive Argument therefore seems to favour a regime of exclusively private holdings, or at least to place it under pressure to explain why non-private forms of ownership would not count as defective from the standpoint of freedom. The Normative Argument does not generate this pressure. Because its claim is only that the outer must be capable of standing under juridical relations of mine and thine, it is compatible with a plurality of possible property regimes, provided that external objects can figure within determinate relations of right rather than remaining in a condition of lawless liberty. Second, the Descriptive Argument also appears to rely on hidden assumptions about acquisition. If property rights are introduced because agents need secure access to external means in order to pursue ends independently, then the account seems to presuppose that acquisition must be possible in a sufficiently direct and workable way for agents actually to obtain such rights. But that would be problematic, since the present question is not yet how property is acquired, but only why property rights must be possible at all. The Normative Argument avoids this difficulty as well. Since it is concerned only with the juridical possibility that external objects can be mine or yours, it does not depend on any antecedent view about the ease, structure, or conditions of acquisition.

The strongest response on behalf of the Normative Argument is the one already suggested above. What is at stake, on this view, is not the permissibility of use as such, but whether the outer is governed by right at all. A regime of mere use may indeed suffice for use, but it does not yet suffice for a juridical relation of mine and thine. The point of the Postulate is therefore not to explain how the use of external objects becomes permissible, but to extend the principles of right to the outer, so that external objects, no less than persons, can stand within determinate juridical relations. Only once this extension is made does the outer cease to be a domain of lawless liberty and become one of rightful freedom. In that sense, the Postulate is meant to show, not that use requires property, but that the outer cannot count as fully juridically ordered unless external objects can be capable of being mine or yours.[76]

Yet this response may seem not fully sufficient. For it explains why the outer must be juridically ordered, but not yet why that ordering must take the form of property rather than some weaker regime of regulated use. Indeed, the difficulty may be understood as the reverse side of one of the Normative Argument's earlier strengths. Precisely because the argument avoids commitment to any determinate property regime, and so does not prejudge the content of rightful holdings in the way the Descriptive Argument seemed to do, it may now appear to have loosened the connection between freedom and property too far. What it establishes, at least on its face, is that the outer must not remain wholly outside right. But that still seems compatible with the thought that the outer could be juridically ordered through a regime of equal use-rights rather than through relations of mine and thine. In this respect, the Normative Argument may seem to show too little: it secures law-governedness of the outer, but not yet the necessity of property rights as such.[77]

This difficulty already suggests why the Descriptive Argument may retain an indispensable role. For what the descriptive reconstruction can explain more vividly is why a regime of mere use-rights leaves agents' external activity exposed in a way that makes property appear necessary rather than optional. The problem, then, is not yet that the Normative Argument is false, but that it may require support from the descriptive side if it is to explain why the move from use to property is required, rather than merely available.

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[76] Bader formulates the difficulty in precisely these terms. The Postulate, he notes, is stated in terms of use, yet liberty-rights already seem sufficient for use. The central question is therefore how one moves from the mere permissibility of using external objects to claim-rights against others and the entitlement to exclude them. His own proposal is that the Postulate is best understood, not as rendering use permissible, but as extending the principles of right to the outer and thereby transforming it from a domain of "lawless liberty" into one of "rightful freedom."

[77] Compare for this footnote 75. A related worry is pressed by Pallikkathayil against normative reconstructions of external freedom: if freedom is understood in terms of effective rights or control over what is already one's own, then a regime in which nothing external is owned does not obviously involve any loss of freedom, and the Postulate becomes difficult to motivate. See (Pallikkathayil 2026, 222).

2.3.2. Circularity

A second difficulty for the Normative Argument concerns the role played by normative independence. Once the argument is reformulated in explicitly juridical terms, its central claim is no longer that property secures robust control over the external means of one's ends, but that it makes possible a form of independence under which interference with external objects can count as a wrong. Yet this move may appear to generate a new problem. For one might wonder whether the argument now presupposes the very relation of mine and thine that it is supposed to justify. If independence is explained by reference to wrongful interference, and wrongful interference is in turn understood by reference to what is already mine, then the argument seems to move in a circle: property is needed in order to explain independence, but independence is invoked in order to justify property.[78]

The pressure of the objection on the Normative Argument is straightforward. On that argument, the point of the Postulate is to extend right to the outer so that external objects can stand within juridical relations of mine and thine. But if the very notion of normative independence already assumes that interference with an external object can wrong me only where that object is already mine, then the extension of right to the outer has silently been built into the starting point. In that case, the argument would not show why external objects must be capable of being mine or yours; it would merely redescribe, in the language of independence, a structure it had presupposed from the outset.

This circularity worry is related to, but distinct from, the circularity problem raised earlier in connection with the determinacy objection. There the problem was that the Descriptive Argument could not use purposiveness to determine which particular objects are rightfully mine without presupposing antecedent entitlements. Here the problem is different. The question is no longer whether purposiveness can identify determinate holdings, but whether normative independence itself can be formulated without already relying on a prior specification of what is mine. The earlier worry concerned purposiveness as a

[78] A structurally similar circularity worry is raised by Laura Valentini in her critique of Ripstein's account of freedom as independence. Valentini argues that if freedom is defined as the robust ability to use the means and pursue the purposes one has a right to, then freedom cannot ground rights, because the specification of what counts as one's own already presupposes an antecedent account of justice. The present objection adapts that structural concern to the Normative Argument. Unlike the view Valentini criticises, however, the argument defended here does not define independence in terms of the robust use of determinate holdings, but at a formal level prior to the specification of property rights. See (Valentini 2012).
Bader addresses a nearby concern when he notes that it is often said that moralising freedom makes property presupposed by freedom and therefore incapable of being justified on that basis. His reply is that property can still be justified because the Postulate extends right to the outer, thereby making it a domain of rightful freedom. He does not, however, explicitly formulate the sharper Valentini-style objection developed here, namely that a normative conception of interference may become circular if it is defined by reference to what is already one's own.

criterion of entitlement; the present one concerns the very form of a juridical conception of interference.

The objection can, however, be answered. It succeeds only if normative independence is understood in an ownership-first way, that is, as protection against interference with what one already owns. On that reading, the wrongfulness of interference is indeed defined by reference to a pre-specified sphere of mine and thine, and the argument becomes question-begging. But this is not the conception of independence that the Normative Argument requires. Independence must instead be understood at a more formal level, prior to determinate holdings. What it requires is not security for what is already mine, but a structure of reciprocal and publicly justifiable constraint under which no person's external freedom is left subject to another's unilateral discretion. At that level, the argument does not presuppose property. It begins from a formal requirement on how persons may stand in relation to one another and only then asks whether that requirement must be extendable to their relations to external objects.

Once the issue is framed in this way, the circle dissolves. The argument no longer proceeds from a prior account of what belongs to whom and then infers that interference with those holdings is wrongful. Rather, it proceeds from the more basic thought that relations of external freedom must be governed by reciprocal constraints capable of universal justification. The possibility of property rights is then introduced, not as part of the definition of independence, but as the juridical form through which that prior requirement can extend to the outer. Property is not presupposed by independence; it is the determinate shape that reciprocal right takes once external objects are brought within its scope.

The circularity worry therefore does not defeat the Normative Argument. It does, however, clarify an important condition on its success. The argument can appeal to normative independence only if that independence is formulated formally, as a requirement of reciprocal right, and not substantively, as protection for antecedently specified holdings. Under that condition, the appeal to law-governed freedom remains intact, even though the further question still remains whether this formal argument can explain with sufficient force why the possibility of property matters for freedom at all.

2.3.3. Lack of motivation

The most serious difficulty for the Normative Argument is that, in avoiding the pressures that destabilised the Descriptive Argument, it seems to loosen the connection between freedom and property too far. Its claim is that the Postulate is required because the outer must not remain a domain of lawless liberty, but must instead be brought under right. That explains why the possibility of property is juridically significant. Yet it may seem no longer to explain with sufficient force why the impossibility of property stands in tension with freedom

itself. The argument shows why right must extend to the outer, but it risks making that extension appear as a merely formal requirement rather than as something freedom itself presses toward.

This difficulty becomes especially clear once one returns to Kant's own reductio following the Postulate. There, Kant writes:

> "For an object of my choice is something that I have the physical power to use. If it were nevertheless absolutely not within my rightful power to make use of it, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (would be wrong), then freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting usable objects beyond any possibility of being used; in other words, it would annihilate them in a practical respect and make them into res nullius, even though in the use of things choice was formally consistent with everyone's outer freedom in accordance with universal laws."[79]

Kant's claim is not merely that a regime without property would leave the outer less fully juridically ordered. It is that, if no external object of choice could ever be mine or yours, freedom would "annihilate" its own external use by placing usable objects beyond any possible use and thereby rendering them, in practical terms, *res nullius*. The reductio therefore seems to assert something stronger than the Normative Argument, taken on its own, is well placed to explain: namely, that a condition in which property is impossible is not merely formally incomplete, but stands in a genuine conflict with freedom.

At this point, the limitation of the Normative Argument comes into view. Because it is designed to avoid making property a condition of freedom in a way that would collapse the Postulate into innate right, it must deny that the impossibility of property simply amounts to unfreedom. In that respect, it preserves the synthetic status of the Postulate. But if that denial is pressed too far, the connection between freedom and property threatens to become too weak. The Postulate then begins to look like an unsupported addition to the system of right: it tells us that the outer must be law-governed, yet no longer makes fully intelligible why a world in which nothing could ever be mine or yours would be contrary to right. The reductio, however, seems to require precisely such an intelligible tension. If freedom would "annihilate" its own external use under a universalised *res nullius*, then the possibility of property cannot be merely optional from the standpoint of freedom. The Normative Argument, by itself, struggles to explain this stronger claim.[80]

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[79] (6: 246).

[80] Bader does insist that property can still be justified on the basis of a law-governed conception of freedom because, without the extension of right to the outer, rightful freedom would be "unduly limited," and the outer would remain a domain of lawless liberty rather than one of rightful freedom. The present difficulty is not that this reply fails at the level of juridical form, but that it may still leave underexplained the stronger pressure expressed by Kant's reductio,

Here the contrast with the Descriptive Argument becomes important. Whatever its difficulties, the Descriptive Argument did make vivid why the impossibility of property would matter for freedom. By appealing to the conditions under which finite agents set and pursue ends through external means over time, it explained why a regime limited to empirical possession would leave the external exercise of freedom exposed to disruption whenever bodily control ceased. In that sense, it gave the reductio real motivational force: if the use of external means could never be secured beyond immediate physical possession, then freedom would indeed appear to deprive itself of its own external use. The problem with the Descriptive Argument was not that it failed to make this point compelling, but that it made it too compelling, thereby threatening to slide from the possibility of property to the stronger claim that actual, stable holdings are required.

The weakness of the Normative Argument is thus not simply that it leaves some detail unaccounted for. It is that, once stripped of the descriptive material concerning purposive agency and the practical use of external means, it can seem unable to explain why Kant introduces the Postulate with anything like the urgency suggested by the reductio. The Normative Argument secures the juridical form of the Postulate, but at the cost of making its practical point harder to see. In this respect, the very feature that made the Normative Argument attractive—its ability to avoid the excesses of the Descriptive Argument—also threatens to deprive it of the explanatory force that originally made the connection between freedom and property appear compelling.

This, I believe, is the central weakness of the Normative Argument. Unlike the previous two difficulties, it cannot be dispelled simply by clarifying the argument's form. Rather, it indicates that the Normative Argument may need support from the very descriptive considerations it sought to leave behind. The next section therefore turns to the question whether the two arguments can be connected in some stable way: whether the Normative Argument can preserve its juridical coherence while recovering, from the Descriptive Argument, the motivational force needed to explain why the possibility of property matters for freedom at all.

3. Freedom's external use under law

The previous section ended with a genuine difficulty. The Normative Argument preserves the conceptual advantages gained through the critique of the Descriptive Argument, yet it threatens to become too formal to explain why Kant's reductio against a universalised res nullius has any real force. The Descriptive Argument, by contrast, does make that force intelligible. It shows vividly why a world in which external objects could never be secured beyond

namely why a condition in which no external object could ever be mine or yours would stand in tension with freedom itself.

immediate physical possession would seem to leave freedom incomplete. But it does so only by treating freedom in a way that the preceding sections have shown to be unstable. It interprets freedom primarily in terms of agents' ability to set and pursue ends, and it is precisely this choice-based starting point that generates the problems of determinacy, structural status, and adequacy. The question, then, is whether the explanatory force of the Descriptive Argument can be retained without reinstating its underlying conception of freedom. I argue that it can, but only if the relation between the two arguments is recast. The Normative Argument must remain the justificatory core, while the Descriptive Argument can survive only in a subordinate and revised form: not as a ground of property rights, but as a diagnosis of the practical phenomenon to which the Normative Argument supplies the juridical solution.

This means that the two arguments cannot simply be fused into a third argument standing alongside them. Nor can they be connected by a straightforward bridge principle of the form: because agents need external means in order to pursue ends over time, property rights must be possible. That would merely reproduce the pressure already identified in section three. It would again make purposive agency foundational, threaten the synthetic status of the Postulate, and invite the thought that freedom requires actual, stable control over external means. But the opposite response would be no better. If the Normative Argument is left entirely on its own, and the descriptive material is treated as no more than rhetoric, then the chapter gives up the very insight that made the Descriptive Argument compelling in the first place, namely that a condition in which property rights are impossible appears to stand in tension with freedom itself. The bridge must therefore be mediated. The descriptive insight must be retained, but its role must be altered.

The decisive step is to distinguish between the ground of the Postulate and the phenomenon that makes its necessity visible. The ground must remain normative. Freedom, as the preceding sections argued, is not best understood as a pre-juridical entitlement to carry one's projects through successfully, but as juridical independence under a universal law. What the Descriptive Argument contributes is not an alternative foundation, but a specification of the domain in which this juridical problem arises for finite agents like us. Such agents do not exercise their external freedom through willing alone. They act in the world through objects. They rely on external means that can be physically used, set down, resumed, coordinated over time, and made vulnerable to the choices of others whenever bodily control ceases. That descriptive point does not yet justify property. What it does is identify the practical configuration in which the absence of intelligible possession becomes salient.

The bridge between the two arguments can therefore be stated as follows: where the external exercise of choice necessarily involves objects, right may not leave relations to those objects wholly to unilateral discretion; it must make them capable of reciprocal, law-governed determination. This formulation preserves

the motivational force of the Descriptive Argument while assigning normative priority to the insight of the Normative Argument. Its first half is descriptive. It says that external freedom, for beings like us, is exercised through the use of objects that need not remain under continuous bodily control. Its second half is normative. It says that what is objectionable about a condition lacking property is not, in the first instance, that agents may fail in their projects, but that a whole dimension of their external activity would remain outside a regime of reciprocal right. The point of the Postulate is therefore not to guarantee success in end-realisation, but to ensure that the external use of objects does not remain dependent on lawless contingency.

Once this distinction is in place, the surviving core of the Descriptive Argument can be reformulated more precisely. Its lasting insight is not that freedom consists in being able to realise one's ends, nor that any object that figures in one's plans must therefore be protectible as one's own. Those stronger claims generated the earlier difficulties. What survives is narrower. A regime limited to empirical possession leaves an agent's relation to external means exposed to another's unilateral choice whenever bodily control lapses. If I can be protected against interference only while physically holding an object, then my external agency remains juridically fragile in a way that does not arise with respect to my own body and powers. The problem is not simply that another person may frustrate my project. The problem is that whether I may continue using the relevant means is left, at that point, to the contingent choices of others rather than to any reciprocal legal relation. This is what the engineer example was always best at showing. Properly understood, it does not show that she has a right to complete her bridge. It shows that, absent the possibility of intelligible possession, her relation to the materials, tools, and site remains exposed to others' unilateral discretion whenever she is no longer physically connected to them.

The Normative Argument can now explain why that exposure matters as a matter of right. If right governed only the inner mine and thine, or only relations involving bodily interference, then external objects could still be used, but they would not stand within determinate juridical relations. The outer would remain a field of lawless liberty rather than one of law-governed freedom. A universalised res nullius would therefore not merely leave some projects more difficult to carry out. It would leave the external use of objects outside reciprocal legal determination altogether. And that is the sense in which freedom would come into conflict with itself. It would permit beings who necessarily act through objects to encounter those objects only under conditions in which their continuing use could never be secured except by brute physical retention. The reductio thus gains its force from the descriptive point, but its conclusion is juridical: right cannot leave the object-side of external agency wholly outside the domain of universal law. It must therefore make intelligible possession possible.

The resulting argument can be stated succinctly. First, external freedom is juridical independence from another's choice under a universal law. Second, for finite agents, the external exercise of choice necessarily involves objects that can be used without remaining under continuous bodily control. Third, if such objects could never stand under intelligible possession, then their continued use would remain exposed to others' unilateral choice whenever empirical possession ceased, and the outer would remain only a domain of lawless liberty. Fourth, right must therefore make a juridical relation to such objects possible: property rights must be possible. What this argument shows is not that freedom analytically contains property, nor that actual holdings are constitutive of freedom, but that the external use of freedom cannot be brought under universal law unless intelligible possession is at least possible.

Under this reconstruction, the relation between the two arguments becomes clearer. The Descriptive Argument identifies the phenomenon of unilateral vulnerability. The Normative Argument provides its juridical interpretation. The former explains why a condition restricted to empirical possession is troubling for agents who act in the world through objects. The latter explains why that troubling feature is not merely practical inconvenience, but a defect from the standpoint of right. The bridge between them is therefore not a compromise between a choice-based and a juridical conception of freedom. It is an argument from juridical freedom whose application to embodied agents is illuminated by the descriptive fact that their external activity necessarily involves the use of objects. In that sense, the Descriptive Argument is neither discarded nor allowed to remain foundational—rather, the Descriptive Argument is transformed.

This mediated reconstruction also shows how the earlier objections can be answered without being ignored. It answers the determinacy objection because it no longer treats purposiveness as a criterion of entitlement. The revised Descriptive Argument does not attempt to tell us which object is mine and which is not. It does not move from the fact that an object figures in my plan to the conclusion that I may exclude others from it. It supports only the more modest claim that right must make such determinate claims possible if the outer is not to remain juridically unordered. It answers the structural objection because property is no longer derived from freedom in the strong sense that threatened the Postulate's synthetic status. The descriptive material does not generate the norm. It identifies the field to which the norm must apply if it is to govern the external exercise of freedom among finite agents. And it answers the adequacy objection because the conclusion no longer requires property rights to secure robust practical invulnerability. What property rights must make possible is juridical independence, not immunity from every form of practical disruption. The point is that interference with what is mine can count as a wrong, not that others must be rendered incapable of interference altogether.

At the same time, this bridge remains deliberately limited. It does not show that all rightful use must take the form of full private ownership. At most, it shows

that right must make exclusive claims possible wherever the external use of objects would otherwise remain wholly at the mercy of unilateral choice. Nor does it show how any particular object becomes someone's own. The question of acquisition remains distinct. So too does the question of public assurance. Indeed, one advantage of the present reconstruction is that it makes clear why these further steps are needed. If intelligible possession is possible, then interference with what is mine can count as wrongful. But whether such claims can be conclusively determined and reliably secured is a further question, one that presses beyond private right toward public right. The bridge therefore closes only the gap between freedom and the possibility of property. It does not yet close the gap between that possibility and any determinate regime of acquisition, adjudication, or enforcement.

For that reason, the present proposal should not be misunderstood as a full reconciliation of the two arguments. A residue of tension remains, and it should remain. The descriptive side always threatens to push beyond possibility toward the stronger thought that freedom requires stable access to actually available means. The normative side always threatens, in response, to become too thin to explain why the impossibility of property matters. The value of the mediated reconstruction is not that it eliminates this tension completely, but that it gives it a stable form. It allows the chapter to preserve the insight that a universalised res nullius would conflict with freedom, while avoiding the conclusion that freedom is best understood as a right to pursue ends successfully. The conflict is real, but its source is now clearer. What is contrary to freedom is not the mere frustration of projects. It is the prospect that the external use of objects, through which finite agents necessarily act, would remain outside reciprocal, law-governed determination.

The upshot, then, is that the Descriptive and Normative Arguments can be bridged, but only if their roles are carefully distinguished. The Descriptive Argument must be demoted from foundation to diagnosis. Its surviving point is that a condition limited to empirical possession leaves agents exposed to unilateral vulnerability with respect to the external means of their activity. The Normative Argument must remain primary. Its point is that such a condition is objectionable because it leaves the outer as a domain of lawless liberty rather than one governed by reciprocal right. Read together in this way, the two arguments no longer compete. They form a division of labour. The Descriptive Argument explains why the impossibility of property presses as a problem. The Normative Argument explains why that problem is juridical rather than merely practical. In that form, the connection between freedom and property is neither too strong nor too weak. It is strong enough to preserve the force of Kant's reductio, yet modest enough to preserve the conceptual integrity of the Postulate of Private Right.

4. Conclusion

Part I of this thesis has examined the question why Kant, in the Postulate of Private Right, holds that property rights must be possible. It began by reconstructing what I called the Descriptive Argument, according to which the possibility of property is explained by appeal to agents' capacity to set and pursue ends independently. The attraction of that argument was its considerable explanatory force. It made vivid why a condition in which property rights are impossible appears to stand in tension with freedom, since a regime limited to empirical possession would leave the use of external means vulnerable whenever bodily control ceases. Yet the analysis of that argument also revealed a series of difficulties. The determinacy objection showed that purposive agency cannot by itself determine which external objects may rightfully count as mine. The structural objection showed that, once freedom and property are connected too tightly, the Postulate is placed under pressure in both its synthetic and its a priori status. The adequacy objection then showed that, once the argument is driven toward actual, stable claims to external means, it comes to rely on a conception of independence more robust than property rights can secure.

These difficulties led to a deeper diagnosis. The instability of the Descriptive Argument does not arise merely from a number of isolated weaknesses. It reflects a more basic problem in the argument's starting point. By treating purposive agency as primary and juridical independence as a qualification upon it, the Descriptive Argument reverses the order of explanation in Kant's own account of right. This made it necessary to turn to what I called the Normative Argument. On that reconstruction, the point of the Postulate is not to guarantee the successful pursuit of ends, but to extend the domain of right to the outer, so that external objects may stand within determinate relations of mine and thine. The strength of this approach is that it preserves the synthetic and a priori status of the Postulate and avoids demanding of property rights more than they can provide. Its weakness, however, is that in becoming more juridically precise it risks losing the explanatory force that made the Descriptive Argument attractive in the first place.

The final task of this Part was therefore to determine whether these two arguments could be related in a stable way. I argued that they can, but only if their roles are carefully distinguished. The Normative Argument must remain primary, since it alone identifies the justificatory core of the Postulate in terms of juridical independence under universal law. The Descriptive Argument, by contrast, can survive only in a revised and subordinate form: not as the ground of property rights, but as a diagnosis of the unilateral vulnerability that arises when finite agents exercise external freedom through objects. In this way, the descriptive reconstruction explains why the impossibility of property presses as a problem, while the normative reconstruction explains why that problem is juridical rather than merely practical. The resulting view preserves what is

strongest in each approach without collapsing property into innate right or reducing freedom to the successful pursuit of ends.

The conclusion of Part I, then, is that Kant's claim that property rights must be possible is best understood neither through a purely descriptive reconstruction nor through a purely formal normative reconstruction taken in isolation. Rather, the possibility of property rights is justified by the juridical requirement that the external use of objects not remain a matter of lawless liberty, while the practical significance of this requirement becomes visible only once one recalls that finite agents necessarily act in the world through external means. Property rights must therefore be possible; but their possibility does not yet make them conclusive.

Part II turns to that further question. In Kant's theory, property rights in the state of nature are possible only provisionally. If Part I has clarified why external objects must be capable of being mine or yours at all, Part II will examine what it means for such rights to hold only provisionally.

Part II: The Provisionality Thesis in Kant's Doctrine of Right

In Part I of this thesis, I argued that Kant's Postulate of Private Right is best understood neither through a purely descriptive appeal to the conditions of purposive agency nor through a purely formal normative argument taken in isolation. The possibility of property is justified by the juridical requirement that the outer not remain a domain of lawless liberty, while the practical significance of this requirement becomes visible because finite agents exercise freedom through external objects.

While this established that property rights must be possible, and that their possibility does not, in principle, violate the external freedom of others, a further difficulty arises. In the state of nature, individuals can claim property rights only unilaterally: they purport, through their own will, to place all others under an obligation to refrain from using a given object. Kant argues, however, that this is problematic, because:

> "When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right. […] Now, a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external […] it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance. — But the condition of being under a general external (i.e., public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours."[81]

It therefore seems that, although property rights are possible in principle, they cannot be acquired in the state of nature. In the absence of a public legal order, unilateral claims over external objects cannot bind others as a matter of right. Kant's insistence on the necessity of an omnilateral will thus appears to exclude the possibility of pre-political property rights altogether. What exists in the state of nature would then be, at most, de facto possession rather than juridical property.[82]

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[81] (6: 255-6). The title of this section of the Doctrine of Right reads: "It is possible to have something external as one's own only in a rightful condition, under an authority giving laws publicly, that is, in a civil condition" (6: 255).

[82] The view that there can only be de facto possession, not juridical possession in Kant's state of nature has been defended by (Waldron 1996), who ascribes a Hobbesian picture of the state of nature to Kant in which no property rights exist. This view has been criticised in the literature for reasons that will become apparent in the following. (Gläser 2025) likewise denies that there is intelligible or merely juridical possession in the state of nature. However, unlike a straightforward Hobbesian reading, he argues that physical possession in the state of nature has a provisional juridical significance insofar as it anticipates rightful possession in a civil condition.

Yet Kant simultaneously insists that property rights must be possible in the state of nature. A few pages later, he writes:

> "If no acquisition were cognized rightful […] prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect (in keeping with distributive justice). — So if external objects were not […] mine or yours in the state of nature, there would also be no duties of right with regard to them and therefore no command to leave the state of nature."[83]

We are thus confronted with an apparent contradiction. On the one hand, Kant maintains that individuals cannot acquire property rights in the state of nature, since this would involve the unilateral imposition of obligations on others. On the other hand, he insists that property rights must be possible in the state of nature, since otherwise the civil condition itself would be impossible. As Stone and Hasan observe: "Kant seems to be saying that property is possible in a state of nature and that it is impossible, that there are and there aren't natural rights to property."[84]

Kant resolves this contradiction by introducing what I call the Provisionality Thesis. According to the Provisionality Thesis, "in a state of nature something external can be mine or yours but only provisionally."[85] The Provisionality Thesis is usually understood to introduce a distinction between provisional and conclusive rights, as if Kant were identifying two different kinds of right.[86] On this reading, the contradiction is resolved by distinguishing what can be acquired in the state of nature from what can be acquired only in a civil condition: conclusive rights cannot be acquired unilaterally, but provisional rights can. The two statements above are, then, no longer mutually exclusive. The first refers to

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[83] (6: 312-3).

[84] (Stone and Hasan 2022, 52); with reference to similar worries in (Ryan 1984, 79–80), who writes that "we find Kant both asserting […] that men only have property in external things when a legal order gives them that property […] and asserting that we have to assume a 'natural right' to appropriate unowned things and make them our property in a state of nature". See also (Tierney 2014, 342), who writes that "rights to property must exist before a civil condition […] and a civil condition must exist before there could be rights to property."

[85] (6: 256–7); see also (6: 312): "If no acquisition were cognized as rightful even in a provisional way prior to entering the civil condition, the civil condition would itself be impossible" and (6: 246): "Something can be acquired conclusively only in a civil constitution; in a state of nature it can also be acquired, but only provisionally."

[86] See also (Gläser 2025, 2) who writes: "the thing to do here […] is to attempt to dispel the obscurity seemingly afflicting the notion of provisionality and to thereby rescue rather than refute Kant's appeal to the merely provisional nature of external right in the state of nature. This in any event is how Kant's interpreters have generally conceived the task at hand here." The views in line with this approach reviewed here are those of (Kersting 1991; Ripstein 2009; Byrd and Hruschka 2010; Korsgaard 2018). Possible improvements upon these views, which are, however, also rejected, are those of (Bader 2026; Stilz 2014; Hasan 2018; Stone and Hasan 2022).

conclusive right—the second refers to provisional right. According to this reading of the Provisionality Thesis, property rights in the state of nature are taken to be provisional in the sense that they are weaker, thinner, or otherwise normatively deficient by comparison with the conclusive rights that arise under an omnilateral will in the civil condition.

In this part of the thesis, I argue that this reading of the Provisionality Thesis is misguided. Kant's Provisionality Thesis is not best understood as introducing a special species of right called provisional right that is distinct from conclusive right. Property rights in the state of nature are not distinct from property rights in the civil condition. After all, Kant does attribute genuine juridical significance to pre-political acquisition when he insists that "provisional acquisition is true acquisition"[87] and that "in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition."[88] Instead of introducing a distinct species of provisional right, I argue that the Provisionality Thesis concerns the mode as well as the conditions under which property rights are acquired and held in the state of nature. The relevant distinction is not, in the first instance, between two different kinds of right, but between two ways in which one and the same juridical relation can be established: provisionally under unilateral conditions and conclusively under omnilateral ones. What is provisional, then, is not the right as such, but the conditions under which it is acquired.

To understand the Provisionality Thesis, then, we must distinguish between two principles of acquisition that are often conflated: its possibility and its permissibility. My claim is that Kant's account makes room for acquisition to be possible even though, under unilateral conditions, it is not permissible as a fully authoritative source of obligation for all. Unilateral acquisition is impermissible because a private will cannot impose obligations on everyone else. But this impermissibility does not entail impossibility. It blocks conclusive acquisition, not acquisition as such. Provisionality therefore does not identify a weaker kind of right; it identifies a mode of acquisition in which a juridical claim is possible even though the unilateral act by which it is acquired cannot yet conclusively bind all others.

Part II of this thesis is divided into two chapters. Chapter 1 examines interpretations of the Provisionality Thesis that understand it as marking a distinction between two kinds of right, provisional and conclusive. After briefly situating these readings against the familiar Hobbesian and Lockean poles, between which they attempt to place Kant by formulating provisional property rights that fall short of conclusive property rights, I distinguish two main variants: (1) subtractive views, which treat provisional right as a weaker or incomplete form of full right by subtracting different features they identify with conclusive right, and (2) qualified, or conditional-rights views, which treat it as a

[87] (6: 264).
[88] (6: 312-3).

right pending conclusiveness by fulfilment of certain conditions. Against these views, I argue that, first, subtractive views are unstable: they struggle insofar as they tend to subtract either too much or too little, collapsing provisional right into full-fledged property rights or ending up denying property rights in the state of nature altogether. Conditional-rights views might appear to solve this problem and therefore to be better candidates within this camp, but they suffer from a further problem that ultimately leads me to reject them: they misidentify the real issue. For even if one succeeds in specifying a provisional right that is distinct from conclusive right, this still does not explain how unilateral acquisition can generate juridical claims at all.

Chapter 2 considers two ways of explaining provisionality without construing it as a distinct and weaker kind of right. On the first, the rights at issue are already genuine rights, but their defect lies in the absence of a public authority that could make them fully determinate, final, and peremptorily enforceable. On the second, provisionality is explained through a permissive law that authorises unilateral acquisition in advance of the civil condition, even though what is thus acquired remains non-conclusive. I argue that both approaches are unstable. The first risks making the difference between right and non-right depend entirely on public enforcement, thereby undermining the claim that there is already right in the state of nature. The second, by contrast, preserves the existence of right only by treating the acquired right as effectively conclusive from the start, so that what is said to be provisional is no longer the right itself in any meaningful sense.

Chapter 2, section 2, then develops my positive account. I argue that the Provisionality Thesis does not introduce an intermediate species of right between no right and full right. Rather, it identifies a distinct mode of acquisition: acquisition under unilateral conditions. Such acquisition is possible, and juridically significant, even though it is not yet conclusive, because the unilateral act by which it is effected cannot authoritatively bind all others. The apparent contradiction in Kant's text arises only if the possibility of acquisition is assumed to depend on the permissibility of unilateral acquisition. That assumption holds for conclusive acquisition, but not for provisional acquisition.

Section 3 considers the objection that the present account makes unilateral acquisition incoherent, since it allows juridical rights to arise from an act that remains impermissible. I argue that this objection trades on a conflation of juridical possibility with juridical permissibility. Properly distinguished, these are not the same: unilateral acquisition may be juridically possible, in the sense that it is an exercise of a conferred power capable of effecting a change in rights, even though its unilateral exercise remains impermissible in the absence of omnilateral authorization.

Section 4 concludes, by drawing together the implications of this interpretation for understanding Kant's account of property in the state of nature.

Before turning to the competing interpretations, one clarification concerning the scope of the application of the Provisionality Thesis is required. In this chapter, I use the Provisionality Thesis in the narrower sense in which Kant introduces it within the doctrine of external mine and thine: namely, as the thesis that in the state of nature something external can be mine or yours only provisionally. On this reading, the thesis is directed in the first instance at the problem of external acquisition.[89] It is therefore not being used here as a general thesis about the defective status of all rights in the state of nature. That narrower reading is, however, contested in the recent literature. Several authors argue that provisionality is not confined to property rights, or even to acquired rights more generally, but extends more broadly to rights against others in the state of nature. On such views, provisionality does not register a difficulty distinctive of external acquisition, but a more general defect affecting right as such under merely unilateral conditions.

The disagreement must be stated with some care, since the relevant authors do not all defend this broader conclusion in the same way. Bader argues that all rights against others are provisional, including innate right.[90] His central claim is that the state of nature is, from the point of view of right, a state of war because agents lack the assurance required for reciprocal right to have validity. Since the assurance problem and the reciprocity condition apply to rights as such, and not merely to property, provisionality cannot on his view be restricted to acquired right.[91] Indeed, he explicitly rejects the suggestion that the relevant defect is confined to external mine and thine and treats the apparently narrower passages as outliers within a larger body of unrestricted claims about right, war, and the civil condition. He also adds a further objection: if the duty to leave the state of nature were grounded only in the problem of property acquisition, then the necessity of the state would become contingent upon a contingent act of intelligible acquisition, whereas Kant's claim is that entry into the civil condition is necessary.

Pallikkathayil reaches a similarly expansive conclusion by a different route. She begins from the familiar thought that property rights in the state of nature are provisional because they are affected by problems of indeterminacy,

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[89] For the narrower, property-focused formulation, see Kant's placement of the discussion in Doctrine of Right, Part I, "Concerning what is externally mine or yours in general" (6: 245), together with the formulation of the Postulate at (6 :246), the lex permissiva at (6: 247), the argument concerning unilateral acquisition and omnilateral authorization at (6: 255–56), the reference to "provisional acquisition" at (6: 264), and the retrospective statement at (6: 312–13) that if no acquisition were cognized as rightful prior to the civil condition, the civil condition itself would be impossible.

[90] Bader explicitly argues that "all rights against others are provisional," including innate right, and treats the more property-specific formulations as outliers within a wider set of unrestricted claims about right, war, and the civil condition. He also argues that the assurance problem applies equally to innate right and that a purely property-based account cannot explain the necessity of the state, since acquisition of external property is contingent whereas the duty to enter the civil condition is necessary (Bader 2026, 24–26).

[91] (Bader 2026, 5–8).

adjudication, and assurance.[92] But her aim is to show that bodily rights are defective in many of the same ways. Bodily rights, she argues, are likewise subject to indeterminacy regarding what counts as interference, to adjudicative difficulty in particular cases, and to the assurance problem insofar as one's ability to rely on one's rights still depends on the unilateral choices of others.[93] From this she concludes that the establishment of the state can be justified even apart from the special case of property acquisition. Indeed, she explicitly argues that property acquisition does no unique justificatory work, since bodily rights already generate a sufficient case for political authority; and she later strengthens the parallel further by arguing that bodily rights face an analogue of the acquisition problem in cases of bodily alienation and incorporation. Pallikkathayil should therefore be read as extending the relevant defects beyond property, but not simply by collapsing bodily rights into property rights. Her claim is rather that bodily rights are defective in relevantly analogous ways, and that those defects are already enough to justify the state.

Gregory also rejects the assumption that the necessity of the state is to be explained by the particular problem of private property right. But his argument is structurally different again. On Gregory's hylomorphic reading, the necessity of the civil condition is internal to the concept of right itself. Innate right, private right, and public right are taken to form a syllogistic structure in which public right is the conceptually necessary conclusion. On this basis Gregory argues that both innate and acquired right are provisional in the state of nature, not primarily because they suffer from non-assurance or indeterminacy, but because they remain conceptually incomplete until concluded in public right. Gregory thus belongs with Bader and Pallikkathayil in rejecting a merely property-specific application of provisionality, but not in the particular explanation he gives of that broader scope.[94]

These broader readings identify an important issue. If provisionality is understood to track non-assurance, indeterminacy, or conceptual incompleteness attaching to right as such, then there is indeed no obvious reason to confine it to property rights. Bodily integrity and external acquisition would then stand, at least in the relevant respect, on the same side of the divide. My claim in this chapter, however, is that this still does not show that these considerations identify the specific problem that the Provisionality Thesis is introduced to solve in Kant's argument concerning external mine and thine. The decisive point is one of order of explanation.

The dispute is best framed by distinguishing between an upstream problem and a set of downstream problems. The upstream problem concerns the very possibility of external acquisition: how can a unilateral act generate any juridical relation to an external object at all, given that in claiming something as mine I

[92] (Pallikkathayil 2017, 35–39).
[93] (Pallikkathayil 2017, 39–44).
[94] (Gregory 2023).

purport to place everyone else under a new obligation of non-use? The downstream problems arise only once some such juridical claim is already in view. They concern whether the claim is secure, whether its content is determinate, whether disputes about it can be adjudicated, whether its correlative obligations are effective, and whether the claim can be regarded as fully valid or conceptually complete apart from public right. Assurance, security, determinacy, adjudication, and even conceptual incompleteness are downstream in this sense. They presuppose that there is already some right, claim, or juridical relation whose standing, scope, or effectiveness is in question. The problem of unilateral acquisition is upstream because it asks how any such juridical relation to an external object can arise in the first place. This distinction, I suggest, is crucial for understanding what the Provisionality Thesis is doing in the argument of the Doctrine of Right.

This is why I do not deny that assurance, security, determinacy, or even conceptual incompleteness may be relevant to Kant's theory of the state more generally. Nor do I deny that one might construct, from those considerations, a broader account of why rights in the state of nature remain defective or incomplete. My claim is narrower. It is that the Provisionality Thesis as it functions in the argument of this chapter is introduced to resolve a more specific difficulty arising within Kant's doctrine of external mine and thine. That difficulty is the tension between two claims which Kant appears equally committed to maintaining: first, that a merely unilateral will cannot conclusively bind everyone else with respect to possession of external objects; and second, that if no acquisition were already cognized as rightful prior to the civil condition, then the civil condition itself would be impossible. The explanatory burden carried by the Provisionality Thesis, on the reading defended here, is to mediate precisely this tension. It does so by making room for a mode of acquisition that is juridically possible under unilateral conditions without yet being conclusive.

This narrower reading is supported not only by the dialectical role the thesis plays in Kant's argument, but also by the location and vocabulary of the relevant passages. Kant introduces the issue in Part I of the Doctrine of Right, "Concerning what is externally mine or yours in general".[95] The Postulate is formulated in terms of having an external object of choice as mine,[96] and the lex permissiva is introduced in the context of a putative authorization to place others under an obligation they would not otherwise have.[97] The central difficulty is then formulated in terms of unilateral acquisition of something external: a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external; only a common will can provide the requisite assurance; hence only in a civil condition can something external be mine or

[95] (6: 245).
[96] (6: 246).
[97] (6: 247).

yours.[98] A few pages later Kant speaks explicitly of "provisional acquisition".[99] And in the decisive retrospective passage, he again formulates the point in terms of acquisition and external mine and thine: if no acquisition were cognized as rightful prior to entering the civil condition, the civil condition itself would be impossible; for if there were no external mine and thine in the state of nature, there would also be no duties of right with regard to them and hence no command to leave that condition.[100] Read together, these passages strongly suggest that provisionality is introduced here in order to explain the possibility of external acquisition under unilateral conditions.

Accordingly, the disagreement with Bader, Pallikkathayil, and Gregory should not be stated as the simple denial that assurance, indeterminacy, or conceptual incompleteness matter. The disagreement is rather that these considerations do not yet identify the explanatory burden carried by the Provisionality Thesis in the argument at issue here. Assurance may explain why public right is necessary if rights are to become secure and effective. Indeterminacy may explain why legislation and adjudication are necessary if rights are to become definite and publicly knowable. Conceptual incompleteness may explain why public right is necessary if right is to be fully constituted. But none of these points yet explains how unilateral acquisition can already be juridically possible in some sense prior to the civil condition. That is the upstream question. My claim is that the Provisionality Thesis is introduced to answer that question, and that it is therefore best understood, in the context of this chapter, as concerned with property rights and more specifically with the distinctive problem posed by unilateral acquisition of external objects.

For that reason, the discussion that follows confines itself to property rights. This restriction should not be taken to imply that no analogous forms of provisionality could arise elsewhere in Kant's Doctrine of Right, nor that broader readings of the state of nature are without insight. It means only that the present chapter is concerned with the narrower question of what provisionality is doing in Kant's argument about external acquisition. My contention is that, in that context, provisionality is best understood not as the general defective status of all rights under unilateral conditions, but as the distinctive juridical status of external acquisition where a unilateral act can make acquisition possible without yet making its exercise conclusively rightful. The present argument is therefore not that assurance, indeterminacy, or conceptual incompleteness are irrelevant to Kant's theory of the state, but only that they do not yet identify the specific problem the Provisionality Thesis is introduced to solve in Kant's account of external acquisition.

[98] (6: 255–56).
[99] (6: 264).
[100] (6: 312-3).

Chapter 1 Provisional right views

How to best explain the Provisionality Thesis remains contested. On one influential strategy in the literature, the Provisionality Thesis must be understood as introducing a special kind of right—namely, a provisional property right—that is distinct from the conclusive property rights that obtain only in the civil condition. On this approach, provisional property rights are weaker, thinner, or otherwise normatively deficient in comparison with conclusive rights, which are fully valid and binding. Once this distinction is drawn, the apparent contradiction in Kant's position is said to dissolve: when Kant claims that individuals cannot have property rights in the state of nature, he is taken to be referring to conclusive rights; when he claims that there nevertheless must be property rights in the state of nature, he is taken to be referring to provisional rights. Both claims can thus be true without contradicting each other, for each claim refers to a distinct type of property right. The distinction between these two kinds of right, drawn in terms of their content, is thus meant to resolve the contradiction. Given that the language of provisionality seems to mark the state of nature's deficiency in respect of external right as compared to a juridical condition qua condition of peremptory external right, the thought suggest itself to conceive of the former as possessing some but not all of the properties inhering in the latter.[101]

This strategy has an obvious attraction: it seems to place Kant neatly between two familiar preceding views concerning property in the state of nature: Hobbes denied that there are property rights in the state of nature at all. Locke, by contrast, held that individuals already possess fully binding natural property rights there. Interpreting the Provisionality Thesis as introducing provisional rights—as distinct from conclusive rights—appears to offer an attractive middle position that naturally falls between and responds to these views: it denies the absence of rights in the state of nature while simultaneously denying that there is full right in the state of nature. Instead, we find a kind of half-right occupying the space between the two.

I begin by outlining the Hobbesian and the Lockean position with which Kant's account is commonly contrasted by these interpretations (section 2.1). I then turn to a range of interpretations that seek to explain the Provisionality Thesis by identifying a kind of property right that falls short of conclusive right and thereby situates Kant between Hobbes and Locke (section 2.2). There are broadly two strategies. According to what I call subtractive views, what is acquired in the state of nature is a weaker, incomplete, or otherwise defective form of full right (section 2.3). I criticise these subtractive views, arguing that the strategy is unstable (section 2.4). In trying to specify a right that is neither no right nor full right, subtractive views tend either to collapse provisional right into conclusive right or else to deprive it of genuine juridical significance altogether.

[101] (Gläser 2025).

A possible solution to this problem might be thought to be found in the second strategy. This strategy defends what I call qualified, or conditional-rights views (section 2.5), according to which what is acquired in the state of nature is a conditional right. Against this strategy, I argue that even if it were capable of solving the problem identified with the first strategy pursued by the subtractive views, it also fails to solve the contradiction that motivates these views, for it misidentifies what is really at issue (section 2.6). Even if one could successfully distinguish a special kind of provisional right that is both different from conclusive right and not normatively empty, this would still not answer the deeper question. For identifying a different kind of right still does not explain how unilateral acquisition can entail rights at all. Identifying a distinct kind of right—whether in terms of an incomplete or conditional right—just relocates the issue. The solutions provided by views that interpret the Provisionality Thesis as introducing a distinct kind of provisional right in contrast to conclusive rights resolve the contradiction only superficially.

1. Hobbes and Locke

There are two well-known positions about property rights in the state of nature. The first is Hobbes's view, according to which no rightful claims to property exist prior to the establishment of political authority.[102]

Hobbes famously characterizes the state of nature as a condition of conflict arising from "three principall causes of quarrel: First, Competition; Secondly, Diffidence; Thirdly, Glory."[103] In such a condition, where individuals pursue gain, security, and reputation without a common authority capable of regulating their interactions, there can be no stable distinction between what is yours and what is mine. As Hobbes therefore writes, in the state of nature "the notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice."[104] In the absence of a common power capable of establishing and enforcing rules, individuals possess only a natural liberty to use their power for self-preservation.

For this reason, Hobbes likewise maintains that there is "no Propriety, no Dominion, no Mine and Thine distinct; but only that to be every man's that he can get, and for so long as he can keep it."[105] What individuals possess in the state of nature is therefore not property in the juridical sense but merely de facto control sustained by force or prudence. Because this condition is marked by pervasive insecurity—where life is "solitary, poore, nasty, brutish, and short"—

[102] In reconstructing both Hobbes's and Locke's views about property rights in the state of nature, I follow Varden (2024).
[103] Hobbes (1996, 61–62).
[104] Hobbes (1996, 63).
[105] Hobbes (1996, 63).

both reason and the passions recommend the establishment of a common authority capable of securing peace.[106]

Property arises only once such an authority is instituted. Through the establishment of the sovereign—what Hobbes famously calls the "Leviathan"—a multitude becomes "united in one Person," capable of determining and enforcing rules governing social interaction.[107] The sovereign thereby acquires "the whole power of prescribing the Rules, whereby every man may know, what Goods he may enjoy […] without being molested by any of his fellow Subjects: And this is it men call Propriety."[108] On Hobbes's view, therefore, property rights are entirely the product of political authority: only the sovereign can determine what counts as mine and thine.

If Hobbes denies the existence of property rights in the state of nature altogether, Locke defends the opposite view. On his account, rightful claims to property arise prior to political authority. Individuals possess natural rights to property, and reason enables them to establish just relations even in the absence of a common authority.

Locke begins by distinguishing property in persons from property in external things. Each individual owns themselves, and this self-ownership grounds the possibility of acquiring property in external objects. Through labour, individuals may appropriate previously unowned natural resources and thereby make them their own. As Locke famously writes:

"Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands […] are properly his. Whatsoever then he removes out of the State that Nature hath provided and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his Property […] at least where there is enough, and as good left in common for others."[109]

Because labour belongs exclusively to the labourer, mixing it with natural resources removes those resources from the common and transforms them into private property. This process of acquisition is subject to an important constraint: individuals may appropriate only on the condition that they leave "enough, and as good" for others. Within these limits, however, individuals can acquire rightful claims to property unilaterally in the state of nature, "without any express Compact of all the Commoners."[110]

Hobbes and Locke thus represent two opposing views about property in the state of nature. For Hobbes, no property rights exist there at all: what individuals

[106] Hobbes (1996, 62).
[107] Hobbes (1996, 87).
[108] Hobbes (1996, 90, 125).
[109] Locke (1988, 287–88).
[110] Locke (1988, 286).

possess is merely control sustained by force or prudence, not property in the juridical sense. Locke, by contrast, holds that property rights do arise in the state of nature and are already fully binding independently of political institutions. In brief, Hobbes denies property in the state of nature, whereas Locke affirms it.

2. Kant between Hobbes and Locke

By interpreting the Provisionality Thesis as introducing a distinct kind of right—namely, a provisional property right—it seems that Kant can be placed between these two familiar poles represented by Hobbes and Locke. Framed in this way, the interpretive task concerning the Provisionality Thesis becomes clearer. Provisional property rights must be rights of some kind, so as to avoid Hobbes's denial of property in the state of nature. At the same time, they must fall short of fully developed property rights, or conclusive rights, if Kant's position is not simply to collapse into Locke's view about property rights in the state of nature. On this reading, provisional right appears as an intermediate form of right, situated between the absence of right and conclusive right.

Many interpretations of the Provisionality Thesis aim at formulating precisely such a kind of provisional right. They assume that, if Kant is to avoid both Hobbes and Locke, then what exists in the state of nature must be a right that is in some way weaker, thinner, or less complete than conclusive right. The core strategy is therefore to identify some features that belong to conclusive right but are absent, suspended, or modified in the state of nature. Provisional right is then explained as a right that lacks one or more of the elements that make conclusive right fully valid.

In analysing these views, it is helpful to distinguish two broad families of such views. The first consists in what may be called subtractive accounts. These explain provisional rights by claiming that rights in the state of nature lack some feature that conclusive rights possess—for example, enforceability, correlative duties, determinate content, or institutional security. The second family comprises the qualified-right accounts. These do not simply subtract an element from conclusive right, but hold instead that rights in the state of nature are already binding in some sense, though only conditionally, defeasibly, or under a standing reservation or in anticipation of future public ratification.

3. Subtractive right views

Subtractive views share a single explanatory strategy. They account for provisionality by starting from conclusive right and then subtracting one or more features taken to belong to its fully peremptory form. What unifies them is not simply the thought that rights in the state of nature are defective, but the claim that this defect is best understood by reference to some missing element of conclusive right. Provisional right is thus treated as what remains once a feature

such as public enforcement, correlative obligation, determinacy, or institutional security has been withheld. The following variants are not meant as an exhaustive taxonomy, but as representative ways in which this subtractive strategy can be pursued.

3.1. Enforcement

One way of implementing the subtractive strategy is to treat enforceability as the feature whose absence explains provisionality.[111] This approach begins from Kant's well-known claim that right and authorization to use coercion are not two separable elements. Right is not one thing, and coercive authorization another that is later added to it. Rather, the concept of right is to be located directly in the possibility of connecting universal reciprocal coercion with the freedom of all. Kant holds that the authorization to coerce is analytically connected to the concept of a right. To have a right is therefore, for Kant, not merely to have a claim that others ought to respect, but to stand in a juridical relation that is in principle enforceable.[112] After all, Kant holds that the relation between a right on the one hand and its corresponding title to coerce is analytic rather than synthetic, which in turn means that it isn't clear how we are to even conceive of the former absent the latter.[113] If this is correct, then a conclusive property right would seem to require not only a claim to an external object, but also the authority to enforce that claim.

On this implementation of the subtractive strategy, provisional right is explained by saying that this authority is absent in the state of nature. Individuals may there claim objects as their own, and such claims may be intelligible as juridical claims, but they are not yet backed by the authority to impose them coercively on others. Ripstein formulates the point by saying that rights to external objects in the state of nature are "titles to coerce that nobody is entitled to enforce coercively."[114] The right is present in one sense but not in another: it exists as a claim to an object, yet lacks the enforceability that would make it conclusive. Thus, the distinction between provisional and conclusive right is drawn in terms of coercive standing. Conclusive right is a right whose enforcement can be publicly and rightfully undertaken. Provisional right is a right whose holder lacks that authority, even though the underlying claim to the object is already in place.

3.2. Correlative duties

A second way of implementing the strategy shifts attention from enforcement to correlativity.[115] On this view, what makes conclusive right conclusive is not

[111] This view is defended by Ripstein (2009).
[112] (Bader 2026, 10); (6: 232).
[113] See (6: 231), compare (Gläser 2025, 3).
[114] Ripstein (2009, 165).
[115] Compare (Korsgaard 2018, 30). Korsgaard writes: "Our rights in the state of nature, are, as Kant put it, 'provisional.' They exist in the sense that we have the right to defend them, but not

primarily the holder's capacity to enforce it, but the fact that others are under an obligation to respect it. Conclusive rights exist only within a reciprocal juridical order in which the claims of each are binding on all the others. Without such reciprocity, one may still have something like a defensible claim, but not yet a right in the full sense. The right is incomplete because it does not yet correlate with duties on the part of others. Kant defines a right as the moral capacity to put another under an obligation, which again leaves it unclear what it might be for a person to have a right in abstraction from another's owing her a duty.[116]

According to this view, then, rights in the state of nature are provisional because they exist only in the sense that one may defend them, not in the sense that others are already obligated to respect them.[117] Since no one can be morally required to uphold another's rights without reciprocal assurance that their own rights will also be upheld, the state of nature cannot yet generate full correlative duties of respect. Thus, individuals may claim objects as theirs and even defend those claims by force, but their claims do not yet bind others as a matter of duty. The difference between provisional and conclusive right is here drawn in terms of the presence or absence of correlative obligation. Conclusive right is right that others are bound to respect. Provisional right is right that may be defended by its holder but does not yet impose such duties on others.

3.3. Determinacy

A third version of the same subtractive strategy explains provisionality in terms of determinacy.[118] Here the thought is that conclusive property rights must be rights whose content is publicly fixed and definitively settled. For a property right to be conclusive, it must be determined what belongs to whom, how far a claim extends, what counts as interference, how competing claims are to be ranked, and according to what standards disputes are to be resolved. Without such public determination, rights remain too indeterminate to count as conclusive. The point of this view is therefore not that rights in the state of nature lack protection, but that their content is not yet sufficiently fixed to determine in a publicly binding way what is mine and thine. The issue is not that rights are absent, nor that they cannot be asserted, but that their content is still too unsettled to function as fully determinate juridical rights. What is missing, on this reading, is not security of enjoyment but authoritative specification.

On this reading, the principles of natural private right are too indeterminate, both quantitatively and qualitatively, to specify what any person's external acquisition amounts to in concrete terms. Since no public authority exists in the state of nature to determine the boundaries and priority of claims, each person

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in the sense that anyone else has a duty to respect them. It is only when the state is actually formed that they become, again as Kant put it, 'conclusive'"

[116] (see 6: 237), compare (Gläser 2025, 3).

[117] So basically this is the reversed version of the enforcement subtractive view.

[118] This view is defended by (Kersting 1991).

must apply the laws of mine and thine according to their own understanding. As a result, property claims remain essentially contestable until they are publicly determined by a united will. Conclusive right is therefore right whose content has been definitively fixed in a publicly binding way. Provisional right, by contrast, is right whose content remains underdetermined. Individuals may claim external objects as their own, but such claims are not yet settled in a way that can bind all others once and for all. The relevant deficit is thus one of authoritative specification.

3.4. Security

A fourth dimension along which subtraction has been attempted emphasizes not enforceability, duty, or determinacy as such, but security.[119] Unlike the determinacy view, the issue here is not that the content of rights remains insufficiently specified, but that even a right whose content is intelligible remains insecure so long as its enjoyment depends on the contingent balance of private powers rather than on a public guarantee. On this view, conclusive right is right that is not merely valid in abstraction, but publicly secured within a legal order. What distinguishes the civil condition is not simply that it adds an external mechanism of enforcement to rights that already fully exist. Rather, a right becomes conclusive only once there is a juridical order capable of securing its enjoyment through final judgment and public enforcement. Rights that lack such institutional security may already have normative significance, but they remain provisional so long as their protection depends on the contingent balance of private powers rather than on a public guarantee. The deficiency at issue is therefore not underdetermination of the right's content, but the absence of an authority able reliably to secure its enjoyment.

The problem with the state of nature is not that individuals there have no rights, but that whatever rights they have are "not secured and thus have only provisional character."[120] Rights become conclusive only in the juridical state, because only there are they backed by a public power capable of giving them reliable protection. On this account, provisional ownership is not secured ownership, whereas conclusive ownership is legally secured ownership. The distinction between provisional and conclusive right is thus drawn in terms of institutional protection. Provisional right is right that lacks public guarantee;

[119] This subtractive view is defended by (Byrd and Hruschka 2010). To some extent this is similar to what I said about property rights in the state of nature in the first chapter, where I argued that property rights cannot secure robust non-interference and, hence, other individuals can in fact still interfere with the use of objects that are in an individual's property. So it might be thought that, naturally, my view should be that the Provisionality Thesis is spelled out precisely in terms of lack of security. As I will show, however, I believe that while Byrd and Hruschka are correct in identifying the lack of security with respect to property rights in the state of nature, that does not establish a sufficient distinction between rights in the state of nature and rights in the civil condition to be speaking of two distinct kinds of rights. It explains to some extent why individuals ought to leave the state of nature, but it does not explain the Provisionality Thesis.
[120] (Byrd and Hruschka 2010, 26).

conclusive right is right secured by the institutions of public law. The relevant deficit here is one of public assurance, not of juridical content.

These subtractive accounts differ among themselves in what they identify as missing from rights in the state of nature. Some emphasize enforcement, some correlative duties, some determinacy, some security. Yet they share a common strategy. Each begins with some feature associated with conclusive right and then explains provisional right by claiming that rights in the state of nature lack that feature, while nevertheless remaining rights in some weaker or more attenuated sense. In each case, provisional right is thus understood as a diminished form of conclusive right: still a right, yet one rendered provisional by the subtraction of an element associated with conclusive right.[121]

4. The instability of subtractive right views

The preceding interpretations share a common ambition. They seek to explain Kant's Provisionality Thesis by identifying a form of right that stands between no right at all and conclusive right. On this approach, the rights that exist in the state of nature must be sufficiently robust to count as genuine rights, yet sufficiently weak to remain distinct from the fully developed rights that obtain only in the civil condition. The attraction of this strategy is obvious. It promises to preserve both sides of Kant's position: that there is property in the state of nature, but that such property is only provisional. It also fits neatly within the familiar dialectic between Hobbes and Locke. If Hobbes denies rights to property in the state of nature and Locke affirms fully developed natural property rights there, then Kant can seem to occupy a middle ground between the two by defending an intermediate juridical status: neither no right nor full right, but provisional right.

The difficulty, however, is that the subtractive strategy appears to be structurally unstable. The problem is not merely that the various views disagree about what

[121] A broader version of this general strategy can be found in Pallikkathayil (2017). Rather than identifying one single element absent from rights in the state of nature, Pallikkathayil presents them as defective in several interconnected respects. On her view, conclusive rights require at least three conditions: their content must be sufficiently determinate, disputes about their application must be adjudicable by a non-unilateral authority, and their enjoyment must be secured independently of the contingent wills of others. Rights in the state of nature, by contrast, fall short along each of these dimensions. First, there is an indeterminacy problem: it is not fully settled what counts as acquisition or interference. Second, there is an adjudication problem: even where general principles are available, reasonable disagreement about their application remains, and no individual may impose a final decision on others unilaterally. Third, there is an assurance problem: so long as I can rely only on the unilateral will of others for the security of my rights, I remain dependent on their choices. Pallikkathayil therefore argues that rights in the state of nature are merely provisional because their "definitive shape" remains unsettled and the assurance that they will be respected is lacking; only public institutions can determine their content, adjudicate disputes, and secure their enforcement in a way that makes them conclusive. In this respect, her account can be read as a more comprehensive version of the same general interpretive strategy considered here: provisionality is explained by reference to one or more defects that distinguish rights in the state of nature from fully conclusive rights.

exactly is missing from rights in the state of nature. The deeper problem is that any view of this kind must satisfy several demands at once, and these demands are hard to reconcile.[122] The four variants considered above are thus helpful because they reveal the main fault-lines along which this strategy comes under pressure.

A successful subtractive account must satisfy at least three conditions. First, it must satisfy a difference condition: provisional right must differ from conclusive right in a non-trivial and philosophically significant way. If the supposed right in the state of nature differs from conclusive right only marginally, then the distinction risks collapsing into the thought that the same right already exists prior to the civil condition and merely receives better institutional support once the state is established. Second, it must satisfy a rightness condition: whatever is attributed to individuals in the state of nature must still count as a genuine right. If too much is taken away, what remains no longer seems recognizably juridical. Third, it must satisfy an explanatory condition: the element subtracted from conclusive right must explain why the right is provisional, rather than merely incomplete in some secondary respect, or merely difficult to enjoy under unfavourable circumstances. The subtraction must therefore do more than identify some defect of rights in the state of nature; it must identify the defect in virtue of which they are only provisional rather than conclusive.

These three conditions are individually plausible, but difficult to satisfy together. If too little is subtracted, the difference condition is not met: the resulting right remains too close to conclusive right. If too much is subtracted, the rightness condition is not met: the resulting status no longer looks like a right at all. And even where some intermediate status is described, it is often unclear whether the subtraction really satisfies the explanatory condition, that is, whether it explains provisionality itself rather than merely some further deficiency in the enjoyment, effectiveness, or administration of a right that is already there.

The instability of the subtractive strategy can therefore be brought into view by asking how the different variants fare with respect to these conditions. The enforcement and correlative-duty views place particular pressure on the rightness condition. The determinacy and security views place particular pressure on the difference condition. And all four, in different ways, face pressure from the explanatory condition.

Consider first the enforcement view. On this account, provisional rights differ from conclusive rights in lacking enforceability. What exists in the state of nature is said to be a right, but one that cannot yet be coercively enforced by its holder. This proposal has an intuitive attraction, since it seems to mark a clear distinction between the state of nature and the civil condition. Yet it immediately raises a

[122] A similar line of criticism is developed by Rafeeq Hasan, who argues that attempts to explain provisionality tend to collapse either into a view on which rights in the state of nature are already too close to complete rights, or into a view on which they are too close to no rights at all. See Hasan (2018). I will return to Hasan's positive view in a bit.

difficulty concerning the rightness condition. If, as Kant insists, right and authorization to use coercion are analytically connected, then it is not clear how a right that lacks enforceability can remain a right in the full juridical sense. The more strongly one insists on the analytic connection between right and coercion, the harder it becomes to explain how something could count as a right once one of its constitutive juridical marks has been removed. Conversely, the more one weakens the connection between right and coercion in order to preserve the rightness of provisional right, the more the difference between provisional and conclusive right threatens to become shallow. The enforcement view thus risks instability in both directions at once: either it preserves the difference by sacrificing rightness, or it preserves rightness by weakening the significance of the difference.

A similar problem arises for the correlative-duty view. On this approach, what is missing from rights in the state of nature is not primarily enforceability but the correlative obligations of others to respect them. The holder may defend what is theirs, but others are not yet under duties of non-interference in the full juridical sense. Here again the intended advantage is clear: the distinction from conclusive right is sharp, since conclusive rights are rights that bind others as a matter of duty. But here too the rightness condition comes under pressure. If no one is under any duty to respect my claim, in what sense is it still a claim-right rather than merely a defensible holding, a liberty to resist, or a prudentially protected possession? A right that no longer correlates with obligations begins to look suspiciously unlike a right. To preserve rightness, one must then reintroduce some form of correlative normativity. But the more one does so, the closer provisional right again comes to conclusive right. The problem is therefore not peculiar to one formulation of the correlative-duty view; it reflects a more general pressure internal to the subtractive strategy itself. If the status attributed to the state of nature remains genuinely juridical, it risks becoming too close to conclusive right. If it remains clearly distinct from conclusive right, it risks ceasing to be juridical.

The determinacy view reveals the opposite kind of difficulty. On this account, what is lacking in the state of nature is not rightness as such, but determinacy of content. Rights exist, but their boundaries, implications, and conditions of application are not yet publicly fixed in a definitive way. This avoids the immediate problem that arises for enforcement and correlative-duty views, since what is attributed to individuals in the state of nature still looks very much like a right. Yet precisely for that reason, the determinacy view places pressure on the difference condition. If the right already exists with its essential juridical character intact, and what is missing is only authoritative specification, then the civil condition begins to look merely administrative: it settles what was already there, clarifies what was previously contestable, and publicly fixes the content of antecedently existing rights. But if that is all the state adds, then the distinction between provisional and conclusive right risks collapsing into the distinction between a right whose content is not yet fully specified and that same right once

it has been publicly articulated in greater detail. In that case, provisional right starts to look too much like conclusive right under conditions of imperfect specification. The difference becomes one of degree rather than kind, and the thought that only in a civil condition can something external be mine or yours begins to lose its force. The determinacy view therefore preserves rightness, but risks doing so at the expense of a sufficiently deep difference.

The security view faces an analogous problem. Here the thought is that rights in the state of nature are genuine rights but remain insecure so long as their enjoyment depends on the contingent balance of private powers rather than on public institutions capable of protecting them. This again has considerable appeal, since it captures an obvious defect of rights in the state of nature. Yet the question is whether this defect explains provisionality in the relevant sense. If what individuals already have is genuinely a right, and what the state adds is reliable protection, then the difference between provisional and conclusive right shrinks into the difference between insecure and secure enjoyment of one and the same right. The state then appears not as constitutive of a distinct juridical status, but as providing institutional backing for a right whose essential character already exists independently of it. Here too, then, the strategy threatens to slide toward a Lockean picture in which the state does not fundamentally alter the status of property, but protects and stabilizes what is already there. The security view may therefore satisfy the rightness condition more easily than the enforcement or duty views, but it does so by placing pressure on the difference condition.

These difficulties already suggest that the subtractive strategy faces a recurrent dilemma. Views that subtract more substantial features from conclusive right — such as enforceability or correlative obligation — tend to preserve difference at the cost of rightness. Views that subtract less substantial features — such as determinacy or security — tend to preserve rightness at the cost of difference. In the first case, provisional right threatens to collapse downward toward no right at all. In the second case, it threatens to collapse upward toward conclusive right. The middle category that the strategy is trying to construct proves difficult to stabilize.

This difficulty can also be expressed in terms of the explanatory condition. Even if one grants that rights in the state of nature are defective in one or more of the ways identified by these views, it does not follow that the relevant defect explains why those rights are *provisional* rather than conclusive. A right might be insecure without thereby being a different kind of right. A right might be indeterminate in some respects without thereby being merely provisional. A right might be difficult to enforce or insufficiently recognized without thereby occupying an intermediate status between no right and full right. The subtractive strategy therefore tends to move too quickly from the thought that rights in the state of nature are in some respect defective to the conclusion that the Provisionality Thesis is best understood as marking a diminished species of right. But that

inference is not automatic. To identify a defect in rights under pre-political conditions is not yet to identify the defect in virtue of which they are only provisional.

This is why the strategy appears unstable at a deeper level than is captured by the simple thought that some views are stronger and others weaker. The problem is not merely that one can arrange the variants along a spectrum. The problem is that the very attempt to explain provisionality by subtracting elements from conclusive right generates competing pressures that are difficult to reconcile. The more robust the right becomes, the harder it is to explain its merely provisional status. The more attenuated it becomes, the harder it is to explain why it remains a right at all. And even where some intermediate status is described, it remains unclear whether the subtracted feature explains provisionality itself or merely some secondary defect in the standing or enjoyment of a right whose juridical character has already been presupposed.

The result is that the subtractive strategy, taken as a general interpretive approach, begins to look doubtful. Its guiding idea is that Kant's Provisionality Thesis can be explained by first identifying what sort of weaker right exists in the state of nature. But the preceding discussion suggests that this way of posing the issue may itself be misguided. The closer one looks, the more the proposed middle category seems either too strong or too weak: either too close to conclusive right to explain its provisionality, or too depleted to count as a genuine right. At the very least, then, the subtractive strategy faces a serious dilemma. It must explain how provisional right differs from conclusive right without erasing its juridical character; yet it must also preserve its juridical character without erasing the difference from conclusive right. The former demand pushes it toward a stronger conception of provisional right, the latter toward a weaker one. But the stronger the right becomes, the more obscure its provisionality; and the weaker it becomes, the more obscure its rightness. The very strategy of construing Kant's thesis in terms of a distinct, diminished species of right therefore begins to look unstable.

4.1. Structure and force

A defender of the subtractive strategy may object that the foregoing dilemma arises only so long as one assumes that what is subtracted must be some constituent of right itself, such as enforcement, correlative duty, determinacy, or security. A more sophisticated possibility is to distinguish between the structure of rights and their force. On this view, rights in the state of nature retain their juridical structure while lacking the normative force they possess only in a rightful condition. Bader's recent assurance account can be read as the clearest version of such a proposal.

Bader's point of departure is the claim that the state of nature is a state of war in a specifically normative sense. The thought is not merely that actual hostilities

are likely to occur there, nor that the state of nature is dangerous only because others may in fact turn out to be aggressive. Rather, Bader argues that the state of nature is a state of war because individuals interacting under such conditions are rightfully presumed to be threats to one another. The defect of the state of nature is therefore not exhausted by empirical insecurity or by the contingent possibility of violence. What matters is that, in the absence of any public condition capable of securing rights, individuals lack assurance that others will respect their rights. In that sense, one need not first wait for a particular wrongful deed to occur. Merely standing side by side with others under lawless conditions is already enough, on Bader's reading of Kant, for persons to count as mutual threats. The state of nature is therefore not merely a condition in which wrongs happen easily; it is a condition whose normative relations are already those of war prior to any particular injury.[123]

This point matters for right, according to Bader, because obligations of right are reciprocal in a stronger sense than is often assumed. His claim is not merely that rights and duties mirror each other, nor merely that if one person has a right another must have a corresponding duty. The claim is rather that juridical obligations are mutually conditioned. I am bound to respect your rights only on condition that you likewise stand under, and will comply with, the requirements of right. More precisely, Bader argues that in order for me to be obligated to respect your rights, I must have assurance that you will likewise respect mine. The absence of such assurance is not simply a prudential disadvantage or an epistemic inconvenience. It reaches into the conditions under which juridical obligations can have validity at all. If right is reciprocal in this conditional sense, then the state of nature—precisely because it lacks assurance—undermines the possibility of rights having effective normative standing.[124]

From this Bader derives his account of provisional rights. The crucial claim is that rights in the state of nature are not thereby destroyed, forfeited, or reduced to mere non-right. Bader is explicit that the relevant phenomenon is not one of forfeiture. Individuals do not lose their rights because they have wronged others; nor are their rights cancelled by the mere fact that they stand in a state of war. Rather, the rights are retained, but they become ineffective. Bader characterizes this ineffectiveness in several closely related ways: rights in the state of nature lack validity, or more precisely material validity, and thus lack normative force. Since the reciprocity condition is not satisfied, the correlative obligations that would ordinarily flow from those rights do not become effective. Rights remain in place, but they no longer impose substantive constraints on conduct under those conditions. That is why Bader can say that no material wrong is possible in the state of nature. The point is not that there are no rights there, but that

[123] (Bader 2026, 2–3).
[124] (Bader 2026, 3–5).

rights do not have the force needed to generate effective obligations so long as mutual threat prevails.[125]

This is the point at which Bader introduces the distinction that matters most for the present dialectic, namely the distinction between the normative structure of rights and their normative force. His proposal is that the state of nature already contains juridical structure. There is already a valid *Rechtsgrund* in the state of nature, and this grounds the relevant conditional rights and conditional obligations. What is missing is therefore not right as such, nor some determinate juridical structure that only the state would later create. What is missing is rather the force or effectiveness of those rights. The civil condition is not primarily required in order to define rights, determine their content, or create them ex nihilo. Its role is instead to secure them and thereby to provide them with normative force. In this respect Bader's view is designed to occupy a middle position. Rights in the state of nature are already present in their juridical structure and are thus unlike the Hobbesian denial of pre-political right. Yet in terms of their effective normative upshot they are as if absent until the state secures them. This is why one might say that, for Bader, rights in the state of nature are Lockean in structure but Hobbesian in force.[126]

This distinction between structure and force allows Bader to characterize provisionality itself in a distinctive way. Provisional rights are not, on his account, a separate and weaker species of right that is later replaced by another species called peremptory right. The same rights are present throughout. What changes is their status. In the state of nature they are provisional because, while they possess juridical structure, they lack normative force. In the civil condition they become peremptory because the state provides the assurance that makes the reciprocity condition satisfiable and thereby renders the conditional obligations effective. The transition from provisional to peremptory right is therefore not a transition from one kind of right to another, nor from indeterminate right to determined right. It is rather a transition from ineffective to effective right, from rights that lack force to rights that have it. Provisionality is therefore explained through the contrast between structure and force, not through a contrast between underdetermined and determined rights, nor through the distinction between no right and a weaker sort of right.[127]

An important consequence of this view is that the state is not introduced primarily as a body that first determines what rights there are. On Bader's reading, the state is necessary because it secures rights and thereby gives them force, not because it first provides them with content. That is why he can insist that the juridical structure of rights is already present in the state of nature and that the civil condition should not be understood as creating the mine and thine from scratch. The state's role is rather to transform a condition in which rights

[125] (Bader 2026, 5–7).
[126] (Bader 2026, 6–8).
[127] (Bader 2026, 6–8).

are structurally present but normatively ineffective into one in which those same rights become valid in a material sense and thus capable of constraining action. By providing assurance, it turns a state of war into a rightful condition.[128]

Seen in this light, Bader's proposal can be understood as a direct response to the instability diagnosed above, that is, as an attempt to preserve an intermediate position between no right and conclusive right by locating provisionality not in the absence of juridical structure, but in the absence of normative force.

To begin with, Bader's view seems able to satisfy the rightness condition. Unlike the enforcement and correlative-duty views, it does not explain provisionality by removing some element that appears constitutive of right as such. It does not say that rights in the state of nature are not really rights because they lack enforceability, nor that they fail to be rights because they lack correlative obligations altogether. On the contrary, Bader explicitly preserves the juridical structure of rights in the state of nature. There is already a valid *Rechtsgrund*, and this grounds the relevant rights and their correlative obligations. What is missing is not rightness, but force. In this respect, his proposal avoids the danger that provisional right collapses into mere liberty, brute permission, or pre-juridical possession. Rights remain genuine rights even in the state of nature, because their juridical structure is left intact.

At the same time, Bader's proposal also appears able to satisfy the difference condition. Unlike the determinacy and security views, it does not treat the civil condition as merely clarifying, specifying, or more reliably protecting rights whose essential juridical status is already fully in place. If the only defect of rights in the state of nature were that their boundaries remained somewhat contestable or that they lacked institutional protection, then the distinction between provisional and conclusive right would indeed threaten to collapse into the distinction between a less well-administered and a better-administered version of the same right. Bader's view avoids that consequence by locating the difference at a deeper level. The contrast between provisional and peremptory right is not merely one of better specification or stronger protection. It is a contrast between rights that lack normative force and rights that possess it. The civil condition therefore does not merely improve the enjoyment of already fully operative rights; it transforms their status from ineffective to effective. In that sense, the difference between provisional and conclusive right remains substantial.

Finally, Bader's account can also appear to satisfy the explanatory condition. The subtraction at issue is not meant merely to identify some secondary defect that rights in the state of nature happen to suffer from. It is meant to explain why

[128] Bader does not restrict this account to property rights. Because the assurance problem and the reciprocity condition apply, on his view, to rights against others as such, he extends provisionality to innate right as well as acquired right and treats property-specific formulations as outliers. This is precisely the broader issue about the scope of the Provisionality Thesis flagged in the introduction.

those rights are provisional as such. On Bader's view, rights are provisional because the assurance required for reciprocal juridical relations is absent, and for that reason the correlative obligations grounded in those rights do not yet acquire force. What makes a right provisional is therefore not merely that it is insecure, somewhat indeterminate, or difficult to enforce in practice. It is that, under conditions of mutual threat, it lacks the validity or effectiveness required for right to constrain action materially. The subtraction of normative force is thus intended to explain provisionality itself, rather than some merely external imperfection in the exercise or enjoyment of a right that is otherwise fully present.

This is why Bader's proposal can seem to stabilize precisely the intermediate category that the previous subtractive views struggled to secure. It preserves rightness by retaining juridical structure. It preserves difference by locating the transition to the civil condition in the acquisition of normative force. And it explains provisionality by connecting the lack of such force to the absence of assurance under conditions of reciprocal threat. In that respect, his view promises to occupy the space between Hobbes and Locke more successfully than the simpler subtractive accounts considered above. It is not Hobbesian, because rights are already present in the state of nature. But it is not straightforwardly Lockean either, because those rights are not yet normatively effective. What the civil condition adds is not merely protection, determination, or administrative order, but the force required for rights to become peremptory.

Even so, Bader's proposal does not ultimately resolve the difficulty at issue in the present chapter. Its importance lies in showing how far the subtractive strategy can be refined. By distinguishing between the structure of rights and their force, Bader avoids the instability affecting the simpler views discussed above. Yet the very way in which he stabilizes the intermediate category also reveals the limit of his proposal. For what he thereby explains is not the specific problem to which the Provisionality Thesis is introduced as a response in Kant's discussion of external mine and thine.

The fundamental difficulty, I argue, is one of order of explanation. Bader's account is, in the relevant sense, downstream. It explains why rights in the state of nature lack validity, why they do not impose effective constraints, and why a civil condition is required if right is to have normative force. But the question pressed by the Provisionality Thesis, as it arises in the doctrine of external mine and thine, is prior to that. It is not, in the first instance, why rights that already exist fail to constrain action effectively. It is rather how unilateral acquisition of an external object can have juridical significance at all, given that a merely unilateral will cannot conclusively bind everyone else. Bader's distinction between structure and force may explain why rights in the state of nature are normatively ineffective. It does not yet explain how the unilateral acquisition of external objects is juridically possible in the first place.

This point can be put more sharply. Bader's assurance account abstracts from what is distinctive about the problem of acquisition. The absence of assurance and the reciprocity condition apply, on his view, to rights in general. Indeed, this is precisely why he extends provisionality beyond property rights. But once the ground of provisionality is defined at that level of generality, what is distinctive about external acquisition drops from view. The special difficulty with acquired rights is not merely that they, like all other rights, remain insecure or ineffective in the state of nature. It is that in acquiring an external object I purport, through a unilateral act, to place everyone else under a new obligation of non-use. That is the problem that generates the tension within Kant's discussion of acquisition, and it is precisely that tension that the Provisionality Thesis is introduced to mediate. By contrast, Bader's account treats provisionality as a consequence of the general condition of right in the state of nature. In that way, it redescribes the defective status of rights under mutual threat, but it leaves the distinctive normative problem of unilateral acquisition untouched.

The same difficulty appears if one asks what positive juridical significance pre-political acquisition is supposed to retain on Bader's account. Bader is explicit that provisional rights are genuine rights and that they are retained in the state of nature. Yet he is equally explicit that they lack material validity, that they impose no effective constraints, and that no material wrong is possible through interference with them. This means that the right only determines what constraints will obtain once a rightful condition has been established; it does not yet constrain what may happen in the state of nature itself. But if that is so, then it becomes difficult to see in what sense provisional acquisition is already "true acquisition" rather than merely a structurally represented claim whose juridical effects are wholly suspended until the civil condition. The more strongly one insists that the right lacks force, the more obscure it becomes how the act of acquisition can already alter juridical relations here and now, rather than merely anticipating a later condition in which its significance first becomes operative.

This is not to say that Bader collapses into the view that there is no right in the state of nature. His distinction between structure and force is designed precisely to avoid that consequence. The difficulty is rather that, for the purposes of the present problem, the proposal preserves rightness in too static a form: it tells us that a valid *Rechtsgrund* is already there and that the state later gives it force, but it does not yet explain how the unilateral act of acquisition is itself juridically significant under pre-civil conditions.

Bader's view therefore improves decisively upon the simpler subtractive accounts, but it does so only by shifting the explanatory focus. It no longer explains provisionality by subtracting enforcement, duties, determinacy, or security from conclusive right. Instead, it reconceives provisionality as the condition of rights whose structure is present but whose force is absent. That move succeeds in answering the earlier instability objection. But for the purposes of the present chapter it leaves unresolved the specific question how unilateral

acquisition of external objects can already have juridical significance under pre-civil conditions. In that respect, Bader's proposal shifts the explanatory focus away from the problem that the Provisionality Thesis is introduced to address here.

5. Conditional right views

One might think, however, that the very attempt to explain provisionality in subtractive terms—even in the sophisticated form given to it by Bader's distinction between structure and force—misstates the character of provisional right. For on such accounts provisionality is still explained by reference to something conclusive right has and provisional right lacks. A different strategy is to understand provisional rights not as diminished rights, but as rights that already bind in the present, though only under a qualification that prevents them from being final or irrevocable. On this approach, provisional rights are not merely weaker rights, nor merely rights whose force is suspended. They are qualified rights: rights with present normative authority that remain subject to a condition of future public completion.[129] The strategy is attractive because it seems able to preserve both sides of the middle position at once. On the one hand, provisional rights remain genuine rights, since they already bind others in the present. On the other hand, they remain distinct from conclusive rights, since they are not yet final, fully ratified, or beyond revision. In that way, the conditional-rights strategy promises to preserve rightness without collapsing into Lockean full right, while preserving difference without collapsing into no right at all.

The central question for such views is therefore not whether rights in the state of nature are present, but what work the condition is doing. More precisely, the issue is how a claim can be both presently binding and yet non-final. Conditional-right views are best understood on the model of a first-instance court order. Such an order is binding: it must be complied with unless and until it is set aside. Yet it is not final, because a higher court may still review, revise, or overturn it. On this model, provisional rights would likewise be presently binding while remaining open to later public ratification or replacement. Understood in this way, such views are not committed to an on-off picture of right. Their point is rather that provisional rights already bind, though only in a form that remains revisable in light of a future public authority. The question, then, is not whether the right binds at all, but what makes it binding without yet being final, and what exactly the later public condition adds.

Stilz offers a clear and influential version of this approach. On her view, rights in the state of nature are neither equivalent to Lockean natural property rights nor reducible to empty liberty-rights lacking genuine normative significance. Rather, first possession creates a presumption in favour of the existing holding,

[129] This strategy is pursued by Stilz (2014) and Hasan (2018).

and others are under a present duty to respect it. Yet this authority is not unconditional. Because the claim is established only unilaterally, it remains open to later ratification and possible revision by a united public will. Provisional rights are therefore genuine rights, but rights held under a standing condition: they must remain subject to public adjudication and may be altered if distributive justice so requires once a rightful condition is established. On this account, conclusive right is not simply stronger in degree. It is right whose title has been finally ratified and publicly confirmed. Provisional right, by contrast, already binds in the present, but only under the condition that it remain open to future public determination. Stilz accordingly emphasizes that such rights attach to actual holdings, impose present duties on others, and require their holders to be willing to submit them to public authority as soon as such authority becomes possible. The distinction between provisional and conclusive right is thus drawn not by denying present binding force, but by denying finality. That is what makes her view an instructive alternative to the subtractive strategy. The right is not weakened by removing some constituent element; rather, it is qualified by being held under a standing reservation of later public completion.

Even so, this initial version of the conditional strategy remains underdetermined. The difficulty is not simply that provisional rights are said to be defeasible. The deeper question is what the relevant condition is whose fulfilment would transform provisional right into conclusive right, and what role that condition is meant to play. At some points, the decisive condition seems to be the establishment of a civil condition itself: only once a public authority exists can unilateral claims be finally ratified. At other points, the emphasis seems to fall on the practical orientation or willingness of individuals to leave the state of nature and submit their claims to public adjudication. And sometimes both ideas seem to be in play at once, without their relation being clearly specified.[130]

[130] Stilz appears to invoke two different conditions here without clearly deciding between them. On the one hand, she repeatedly states that conclusive right depends on the existence of an actual public authority: "conclusive property rights can only be acquired by submission to a political authority"; "our empirical holdings must be made compatible with a rational title of acquisition, a process that can only occur under a rightful public authority"; and "only once our claims are ratified by the civil state do we attain intelligible, not just empirical, possession of our holdings" Stilz (2014, 198, 212). On the other hand, she also characterizes provisional right in dispositional terms, writing that "one's provisional right to land is dependent on the willingness to submit one's claim to the future adjudication of a rightful authority," that "in order to have a provisional right, I must aim at a future rightful condition through my appropriation," and that "the claimant of a provisional property right must look forward to the establishment of a legitimate state, and be willing to submit to just institutions […] should such institutions become possible" Stilz (2014, 217, 218). The difficulty is that these are not obviously the same condition. The first makes conclusive right depend on the actual existence of public institutions capable of ratifying and revising claims; the second makes the status of provisional right depend on the agent's willingness to submit to such institutions in the future. Stilz clearly relies on both ideas, but the relation between them is never fully specified. Is willingness to submit meant to substitute for the absence of public authority, merely to anticipate it, or simply to mark a distinct moral requirement attaching to otherwise still merely empirical claims? The paper does not clearly settle the issue.

This ambiguity matters because each option has different implications for the finality and revisability of the right. If the relevant condition is merely the claimant's willingness to enter a rightful condition, then it becomes difficult to see what public right is still supposed to add beyond external confirmation. For if that practical orientation already suffices to ground the claim's present authority, it is no longer clear why the right should remain genuinely non-final rather than already possessing the essential normative standing it awaits.[131] But if the decisive condition is instead the actual establishment of the civil condition, then one still needs an account of what makes unilateral claims already binding while remaining open to authoritative revision prior to that condition's fulfilment. The question is not simply whether the right binds. It is what future public completion is supposed to add: confirmation, completion, or possible replacement. Here the court analogy reveals the difficulty. A first-instance court order is intelligible as binding yet revisable because it already exists within an institutional framework that confers its interim authority, identifies the higher authority competent to revise it, and specifies the grounds and procedure of revision. By contrast, rights in the state of nature are supposed to precede the very public institutions that would supply such a framework. The problem is therefore not whether a binding-yet-revisable status is intelligible in general. It is what could make a unilateral claim binding-yet-revisable prior to the public authority that alone could ratify, revise, or replace it.[132]

A further difficulty concerns the temporal structure of the condition itself. If provisional rights are understood as binding but revisable pending the establishment of a civil condition, one must ask what becomes of them if that

[131] A further difficulty here is epistemic. If the transition from merely provisional to conclusive right is made to depend on an individual's willingness to leave the state of nature and submit his claim to public adjudication, then it becomes unclear how others are supposed to know whether that condition is in fact satisfied. A person may profess willingness to enter a rightful condition while in fact doing so only strategically, in order to secure recognition for what would otherwise remain a merely provisional claim. But if others cannot reliably distinguish genuine willingness from opportunistic profession, the supposed condition cannot perform the justificatory work required of it. The view would then seem to reintroduce, at a higher level, the very assurance problem discussed in Chapter One: what is lacking is not merely assurance that others will comply with determinate property claims, but assurance that they are sincerely committed to the public condition that is meant to render such claims conclusive. If so, the appeal to willingness does not resolve the difficulty so much as relocate it.

[132] Stilz has some material to resist this objection. She does not think provisional rights are binding only because there is already an institutional framework in place. Rather, she argues that empirical possession can be "legitimately binding on us even when [our holdings] are not fully just," and that provisional right depends on a claimant's willingness to submit her claim to future adjudication by a rightful authority. In this way, Stilz attempts to ground present authority through a rationally sanctioned process of appropriation that is oriented toward future public right, rather than through already existing institutions. See (Stilz 2014, 217–19), especially the claims that provisional right depends on "the willingness to submit one's claim to the future adjudication of a rightful authority," that one must "aim at a future rightful condition through [one's] appropriation," and that provisional rights are "temporary claims that hold for now, but that can be legitimately altered in the future by a rightful public authority." Even so, this reply does not yet explain the juridical structure of such interim authority with sufficient precision. It shows that the view need not collapse into a crude on-off picture of right, but it remains unclear what exactly makes a unilateral claim binding-yet-revisable prior to the public institutions that alone could authoritatively confer, structure, and revise that status.

condition is never realized. They do not thereby lapse into no right at all; agents simply remain in the state of nature. Yet neither do they become conclusive by default, as a first-instance order may become final when no appeal is brought, since no institutional rule exists in the state of nature that could transform provisional claims into conclusive rights merely through the non-occurrence of revision. The condition therefore does not seem binary in the right way. It is not as though either the civil condition obtains, in which case provisional rights become conclusive, or it fails to obtain, in which case they disappear. Rather, provisional right appears to be structured around a transition from the state of nature to a rightful condition. Where that transition never occurs, there is no obvious basis for saying that provisional rights have either been completed or revoked. They seem instead to remain indefinitely suspended in relation to a future authority that has not yet materialized. This makes the juridical structure of their revisability difficult to specify.

The problem, then, is not that Stilz's view treats provisional rights as already binding. That is precisely what gives the view its force. The problem is rather that the juridical status of this binding-yet-non-final authority remains insufficiently explained. The claim is meant to be more than a merely empirical holding, since it already binds others; but it is also meant to be less than conclusive right, since it remains open to public revision. What is missing is a sufficiently clear account of the source and structure of that interim authority. Stilz's proposal therefore improves on the subtractive strategy by refusing the crude alternative between full right and no right. Even so, the conditional structure through which it seeks to stabilize that middle position remains underdetermined.

Hasan can be read as the clearest attempt to give this conditional strategy a more determinate and theoretically stable form. His central idea is that provisional rights are not simply present rights held under a reservation of later revision, but anticipatory rights. They are rights whose present authority depends upon their orientation toward the future public condition that alone can complete them. In this sense, provisional rights do not merely await public ratification from the outside. Their present juridical significance is internally related to the public condition they anticipate. This is what gives Hasan's view its distinctive shape. Instead of saying merely that provisional rights bind now but may later be revised, he seeks to explain what sort of presently binding yet non-final authority such claims possess in virtue of their anticipatory relation to a future civil condition.

This notion of anticipation is meant to address the problem left open by simpler conditional views. The mere claim that rights are subject to future ratification does not yet explain what sort of authority a claim can possess if it is already binding yet not final. Hasan's answer is that the claim made in the state of nature is not normatively self-standing. Its present authority depends, from the outset, on being made as a claim that points beyond unilateral judgment toward a

condition of omnilateral authorization. In claiming something as mine, I do not exercise a fully conclusive public right. But neither do I merely assert a brute advantage backed by force. I make a juridical claim whose present authority is internally related to the future civil condition that alone can complete it. In this respect Hasan's proposal is more ambitious than Stilz's. It does not simply say that provisional rights are presently binding and later revisable. It tries to explain how a claim can have precisely this binding-yet-non-final status in virtue of its anticipatory orientation toward public right.

On this reading, Hasan offers a more refined account of conditionality than Stilz. The relevant condition is not simply the future existence of a civil condition, nor simply the present willingness to leave the state of nature, taken separately. Rather, present authority depends on a practical orientation toward the future civil condition, while conclusiveness depends on that condition's actual realization. This gives Hasan's view a distinctive two-level structure. Provisional rights bind now only insofar as they are asserted in anticipation of a public condition that will later determine, confirm, revise, or replace them with final authority. The civil condition therefore neither creates property rights ex nihilo nor merely reviews rights that were already complete. It authoritatively completes claims that already possess juridical significance, though only in anticipatory form. Pre-civil holdings thus matter: they have prima facie standing and must be taken seriously by the state, even if they remain subject to revision once a rightful condition is established.[133]

Hasan's proposal is therefore the strongest version of the conditional strategy. It avoids the crudest forms of the dilemma confronting the subtractive views because it does not weaken rights into near-nothingness, nor does it simply treat them as already complete rights awaiting better administration. Rights in the state of nature already bind, but they do so in a way that remains essentially non-final. Their defect lies not in lacking rightness altogether, nor in lacking merely external support, but in remaining unilateral until completed by public right. In that sense, Hasan's view offers the most promising attempt to articulate a stable intermediate category between no right and conclusive right: not no right, not full right, but a presently binding claim whose authority remains anticipatory and revisable.

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[133] I think this thought best surges in Hasan's writing in his exposition of the anticipatory view, where he writes: "I offer a different interpretation of [Kant's Provisionality Thesis], *anticipatory provisionality*, which explains why property rights are both provisional and rights. According to anticipatory provisionality, state of nature property claims do not wrong other agents, but nor are they full-fledged rights claims that simply await institutional specification. Rather, they anticipate a condition in which the authority to make such claims can no longer be unilaterally determined. *The meaning of 'anticipate' here is two-fold. State of nature property claims create the necessary background conditions for public authority. At the same time, they draw on a public authority they lack.* Although they are defective as instances of right (for reasons to be explained below), they are still rights because they are opposed to the clear wrong of remaining in the state of nature" (2018, 856; my emphasis).

Even so, the notion of anticipation does not yet yield a fully determinate juridical category. Hasan's key terms—defectiveness, anticipation, prima facie validity, and future completion—are suggestive, but their exact juridical implications remain difficult to pin down. To say that provisional rights anticipate the civil condition tells us that they are future-oriented and dependent on public completion. But it does not yet fully specify what sort of present authority they possess prior to that completion. The difficulty is no longer simply whether such claims bind, but what makes their authority binding while still remaining open to authoritative revision. If anticipation is meant to explain this intermediate status, then one still wants a clearer account of what kind of juridical force anticipation itself confers.

This is the point at which the conditional strategy continues to face pressure. The problem is no longer, as with the simpler subtractive views, that one has removed too much or too little from conclusive right. Rather, the problem is that the very mechanism supposed to preserve both present authority and non-finality remains obscure. Hasan's proposal is best read as an attempt to do for conditional-right views what Bader does for subtractive views: to give the intermediate category a more determinate structure. Yet the comparison with interim legal authority still reveals what is missing. A provisional judicial ruling can bind while remaining open to appeal because its temporary authority is already constituted by an existing legal order that fixes who may review it, on what grounds, and with what consequences if review never occurs. In the state of nature, however, the public framework that would have to confer and structure such interim authority is precisely what is absent. The question, then, is not whether revisable yet binding authority is intelligible in general, but what could make a unilateral claim possess that kind of authority prior to the public order that alone could authoritatively confirm, revise, or supersede it.[134]

A further difficulty concerns the temporal structure of anticipation itself. If provisional rights are understood as binding but revisable pending the establishment of a civil condition, one must ask what becomes of them if that condition is never realized. They do not thereby lapse into no right at all; agents simply remain in the state of nature. Yet neither do they become conclusive by default, as a first-instance order may become final when no appeal is brought, since no institutional rule exists in the state of nature that could transform provisional claims into conclusive rights merely through the non-occurrence of revision. The result is that provisional right seems not so much revocable as indefinitely suspended in relation to a future authority that has not yet

[134] Hasan himself acknowledges a residual conceptual difficulty here, namely how an agent can wrong another by attacking her property in the state of nature if full right to property is not yet present prior to the civil condition. His solution is to argue that such an attack amounts indirectly to a refusal to leave the state of nature. But this reply appears to sit uneasily with Kant's insistence that the wrong of remaining in the state of nature is a formal rather than a material wrong, and hence not a wrong done to any particular person as such (see 6: 307–308). Compare also (Gläser 2025, 4).

materialized. This makes the juridical structure of its revisability difficult to specify.

For that reason, Hasan's proposal is best read as the most sophisticated version of the conditional-right strategy rather than a decisive resolution of its difficulties. It improves on simpler accounts by showing that provisional rights cannot be understood merely as present rights plus later revision. Their present authority is internally related to the future public condition that alone can complete them. Even so, the juridical character of that anticipatory authority remains insufficiently determinate. Conditional-right views therefore improve on the subtractive strategy by attempting to preserve present rightness without collapsing into full conclusive right. But whether they succeed in explaining what makes a presently binding claim non-final and revisable prior to the existence of the public authority that alone could conclusively settle it remains uncertain.[135]

6. Conclusion

The preceding sections have considered two broad ways of resolving the apparent contradiction in Kant's account. Subtractive views attempt to do so by identifying a right in the state of nature that lacks some element of conclusive right; conditional views attempt to do so by construing such rights as already binding, though only under a standing qualification of future public completion. The most sophisticated versions of these approaches—Bader's structure-and-force view and Hasan's anticipatory-right view—show that the difficulty is not merely one of instability. Even where an intermediate status can be made more theoretically plausible, a deeper problem remains. For the real issue raised by Kant's Provisionality Thesis is not simply whether provisional right can be distinguished from conclusive right. It is whether unilateral acquisition in the state of nature can give rise to any right at all, given Kant's insistence that the unilateral imposition of obligations is impermissible.

Taken together, these interpretations represent different attempts to place Kant between Hobbes and Locke. The subtractive accounts do so by claiming that

[135] Hasan also has resources to reply here. His central claim is precisely that provisional rights are not merely present claims awaiting later review, but "anticipate" a condition in which the authority to make such claims is no longer unilaterally determined. Their present authority is therefore meant to be internally related to the future civil condition, not merely externally suspended until institutions arrive. See (Hasan 2018, 856), where he says that anticipatory provisionality explains why property rights are "both provisional and rights," that such claims "create the necessary background conditions for public authority" while also "draw[ing] on a public authority they lack," and that they are justified so long as agents are prepared to enter a state with others. Hasan therefore does offer an answer to the question how a claim could be presently authoritative without already being final. He also explicitly acknowledges, however, that "a conceptual worry remains," namely how an agent can be wronged in her property in the state of nature if full right to property is not yet present prior to the civil condition; and he adds that he does not think Kant provides a fully satisfactory solution. See (Hasan 2018, 867). For that reason, the criticism in the text is not that Hasan ignores the difficulty, but that even his anticipatory account does not yet render the juridical structure of this present-yet-non-final authority fully determinate.

rights in the state of nature lack some feature possessed by conclusive rights. The conditional accounts do so by claiming that such rights already bind, but only under a reservation of later public completion. In both cases, the underlying thought is the same: if Kant is to avoid both Hobbes's denial of property in the state of nature and Locke's affirmation of fully developed natural property rights, then what exists in the state of nature must be some intermediate form of right—not no right, but not conclusive right either.

The attraction of this strategy is evident. It promises to preserve the thought that Kant really does want to say that there is property in the state of nature, while also taking seriously his insistence that only a civil condition can yield conclusive relations of mine and thine. The difference between provisional and conclusive right is then explained by identifying some juridical deficiency, suspension, or qualification that marks rights in the state of nature as less than fully complete.

The distinction between provisional and conclusive right may seem, at first sight, to dissolve the contradiction. When Kant denies that individuals can acquire property rights in the state of nature, he can be taken to mean conclusive rights; when he affirms that such rights must nevertheless be possible, he can be taken to mean provisional rights. In this way, the tension appears to disappear once the two claims are assigned to two different kinds of right.

Yet this resolution is only superficial. The crucial point is that the contradiction does not arise because Kant allegedly attributes two inconsistent degrees of right to one and the same claim. It arises because acquisition itself appears to involve a unilateral act that purports to place everyone else under an obligation, even though Kant simultaneously insists that no unilateral will can serve as a coercive law for all. Re-describing the resulting claim as provisional rather than conclusive therefore does not yet solve the problem. For the question is not merely what normative status the result of unilateral acquisition has, but how any unilateral act can already have juridical significance in the first place. A weaker or qualified right may seem less objectionable than a conclusive right, but that does not by itself explain why it is possible. For once the distinction has been introduced, the original question simply reappears at a different level. Even if individuals cannot acquire conclusive rights unilaterally, why can they acquire provisional rights unilaterally? The problem has not been removed, but merely relocated. The fact that provisional right is weaker than conclusive right may make unilateral acquisition seem less troubling; but seeming less troubling is not yet an explanation of why it is possible. The fundamental issue remains the same: how can a unilateral act that purports to impose obligations on others give rise to a right at all, if such unilateral imposition is said to be impermissible?[136]

At this point the weakness of the preceding strategy becomes visible. The more one attenuates provisional right, whether by weakening its content or by

[136] As noted in the introduction, the difficulty is not merely to specify a weaker right, but to explain how unilateral acquisition can have any juridical significance at all.

qualifying its authority, the less clear it becomes that any right remains. If, for example, provisional right is said not to impose duties on others, or not to carry any entitlement to enforcement, then unilateral acquisition may indeed begin to seem less objectionable. But this is only because the resulting "right" has become so thin that it is increasingly difficult to see in what sense it is still a right at all.

Conversely, the more robustly provisional right is understood, the more clearly it remains a genuine right—but then the original problem returns in full force. If provisional right still imposes duties, still binds others, or differs from conclusive right only in lacking public security or final determinacy, then the question immediately arises why a unilateral will is capable of generating such a claim in the first place. The strategy thus faces a familiar dilemma. The more provisional right is weakened, the more it threatens to collapse into no right at all. The more it is strengthened, the harder it becomes to see why unilateral acquisition should be possible despite Kant's insistence that such acquisition is impermissible.

What this shows is that the difficulty does not lie primarily in determining what sort of right provisional right is. It lies in explaining how unilateral acquisition can generate any juridical claim whatsoever. The strategy of resolving the Provisionality Thesis by positing a distinct type of provisional right therefore gets the order of explanation wrong. It treats the problem as though the key question were what features the right resulting from unilateral acquisition possesses or lacks. But that is not yet the crucial issue. Before one can ask what kind of right is acquired, one must first explain how unilateral acquisition can give rise to right in the first place.

The real issue, then, is not whether one can identify a weaker, thinner, or otherwise qualified right that falls between conclusive right and no right. Even if such a category could be made out, that would still not explain why unilateral acquisition is possible. The problem cannot be solved by adjusting the outcome of unilateral acquisition; it must be solved, if at all, by explaining the possibility of unilateral acquisition itself. It is to that prior question that the following sections now turn.

What these views leave unexplained, then, is the relation between the juridical status of what is acquired and the juridical significance of the act of acquiring it. They assume that the problem can be solved by modifying the status of the right that results from unilateral acquisition. But unless one explains how the act of unilateral acquisition can itself be juridically possible, the explanatory burden has merely been displaced. The issue is therefore not first what sort of right provisional right is, but how the possibility of acquisition is to be understood under conditions in which its unilateral exercise remains impermissible.

The conclusion of this chapter is therefore negative, but not merely negative. The failure of provisional-right views shows that the Provisionality Thesis should not be understood as introducing a special juridical status between no

right and conclusive right. The difficulty is not first to identify what kind of right a provisional right is, but to explain how unilateral acquisition can have any juridical significance at all when a unilateral will cannot conclusively impose obligations on others. The question that remains is therefore not what is provisional about the right, but what is provisional about the acquisition. Chapter 2 turns to this question by considering whether provisionality can be explained without treating provisional right as a distinct species of right.

Chapter 2 Beyond provisional right interpretations

From the foregoing it seems, then, that the whole attempt to understand the Provisionality Thesis by introducing a distinct kind of provisional right misdescribes what is at issue. The difficulty lies not in the fact that authors have failed to identify any sort of weaker, thinner, or conditional right, but in the assumption that there must be such a right to be identified in the first place. The question is whether the Provisionality Thesis is really to be understood as the introduction of a right—or quasi-right—that people have in the state of nature. Treating provisional right as a distinct normative status that people possess in the state of nature seems to create an exegetical problem.

1. Two problematic alternatives

1.1. Denying right altogether

This conclusion is also drawn by Stone and Hasan, although their focus is on the correlative obligations that provisional right appears to lack.[137] They emphasize that, for Kant, a right is a moral capacity to put others under coercible obligations. Rights are correlative to obligations: to claim a right is to claim a power to bind others. Yet this is precisely what seems to be missing in the case of so-called provisional right. Kant explicitly says that in the state of nature "no one is bound to refrain from encroaching on what another possesses," and even that "human beings do one another no wrong at all when they feud among themselves."[138] If that is so, then whatever provisional right may be, it is at least not straightforwardly a right in the ordinary juridical sense, since it does not actually constrain others. Stone and Hasan therefore press a simple question: if rights are powers to constrain others through correlative obligation, and provisional right lacks correlative obligation, why should it still count as a kind of right at all? As they put it, it is "a funny kind of right that doesn't actually constrain anyone."[139]

Their response is that the familiar strategy of treating provisional right as some qualified or diminished kind of right cannot succeed so long as Kant's concept of right is left intact. One might try to assimilate provisional right to familiar categories such as conditional or defeasible rights. But, Stone and Hasan argue, such comparisons fail. Defeasible and conditional rights are still rights in the ordinary sense: when they hold, they constrain others and can be infringed. Provisional right, by contrast, is marked precisely by the fact that no wrong is done in interfering with it. It therefore does not fit the model of an ordinary right subject to qualification. Treating it as such, they argue, generates an inconsistent triad: rights are correlative to obligations; provisional right is a type

[137] Stone and Hasan (2022).
[138] (6: 255; 307).
[139] Stone and Hasan (2022, 54).

of morally valid right; and yet one does no wrong in interfering with another's provisional right. Their conclusion is that the second claim must be rejected. Provisional right is not a type of morally valid right at all.

This criticism directly targets the strategy at work in the views discussed above. The enforcement view, the duties view, the determinacy view, the security view, and even the more qualified conditional view all assume that Kant's Provisionality Thesis introduces some distinct kind of right located between no right and conclusive right. Stone and Hasan's point is that this very assumption is mistaken. Once one asks what powers and entitlements such a right is supposed to involve, the category begins to unravel. A right lacking correlative obligation is not simply a weaker right. It is not clear that it can count as a right at all.

This is why they reject the idea that Kant is introducing "some special type of right." Instead, they argue that "provisional" should be understood adverbially: not as naming a special juridical status, but as designating the incompleteness of the act of acquisition. When Kant says that in the state of nature things "can be acquired, but only provisionally," Stone and Hasan take him to mean that acquisition itself is incomplete, not that what results is a special, strangely attenuated kind of right.

The importance of this adverbial point should not be underestimated. It allows them to reconceive the issue entirely. Provisionality does not denote a distinct normative status. Rather, it marks what they call an "argumentative impasse,"[140] namely the impossibility of comprehending property purely as private right. On the one hand, there is something intelligible in the thought that an external object could belong to someone as a matter of private right; after all, having an object as mine is not, just as such, a wrong to others. On the other hand, no one can, by unilateral act alone, make a particular object theirs, since unilateral acquisition lacks the reciprocal form required by right. Provisionality marks this impasse. It does not identify a special right that bridges the gap. It marks the incompleteness of acquisition under merely private conditions.[141]

In this respect, Stone and Hasan powerfully reinforce the criticism developed in the preceding sections. If right, in Kant's sense, is correlative to obligation, then there is something deeply suspect about construing provisional right as a distinct half-right that lacks what belongs to right as such. Kant does not seem to leave room for a "right-without-obligation" as one of the species of right. Stone and Hasan are therefore right, in my view, to reject the idea that the Provisionality Thesis introduces a special juridical status somewhere between no right and conclusive right.

Where I part company with them is in the conclusion they draw from this. Stone and Hasan move from the claim that provisional right is not a distinct normative

[140] Stone and Hasan (2022, 56).
[141] Stone and Hasan (2022, 77).

status to the stronger conclusion that it "denotes no normative status at all," and that what is at issue is simply the incompleteness of acquiring ordinary rights under merely private conditions. In my view, that conclusion is too austere. It risks dissolving the problem of provisionality not by explaining Kant's claims, but by emptying one side of the contradiction of the juridical significance that generated it in the first place.

The first difficulty with their conclusion is textual and systematic. It sits uneasily with the very passage that makes the Provisionality Thesis problematic to begin with: "If no acquisition were cognized rightful […] prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition."[142] This claim is not peripheral. Kant's point is not merely that the civil condition later introduces property where previously there was none. His point is that if nothing external could already be mine or yours prior to the civil condition, then there would be no juridical material for the civil condition to take up, and no basis for the duty to leave the state of nature. The civil condition would be impossible because the very domain it is meant to regulate would not yet exist juridically.

For that reason, it is difficult to respond to the problem by denying that there are rights to external objects prior to the civil condition in any positive sense. Stone and Hasan do not simply fall back into a Hobbesian denial of right. They insist, on the contrary, that their view is not Hobbesian, and that the concept and justification of property belong to private right even if its full actuality depends on a civil condition. They explicitly say that "in a state of nature something external can actually be mine or yours" and that what it is for an object to become mine is "conceivable a priori in the state of nature."

But this only sharpens the difficulty. If something external can actually be mine or yours in the state of nature, then more must be at stake than a merely methodological or expository point. Yet if "provisional right denotes no normative status at all," it becomes unclear how that claim is to be understood. Kant's contradiction arises because he insists that there is already something juridically real prior to public right. If this is dissolved into the claim that private right is merely incomplete and lacks any positive normative status, then the contradiction begins to look less resolved than sidestepped.

But that proposal in effect forces them to treat Kant's references to external ownership in the state of nature in particular and the state of nature in general as conceptual metaphor only, which strains interpretive credibility given Kant's own lack of circumspection here: "In a state of nature something external can actually be mine or yours but only provisionally" rings rather literal. More fundamentally, the problem all along has been the obscurity over how to think of the notion of actual yet merely provisional external right without thereby

[142] (6: 312).

simply contradicting ourselves, and that problem seems to need solving so long as provisional right is thought of as a conceptually distinctive stage in the development of right, even if the sequence in which provisional right is supposed to figure as a stage does not necessarily take temporal form. To present provisional right as an intermediate stage in the realization of right is therefore arguably to merely reframe the problem at hand, not to actually solve it (Gläser 2025, 5-6).

A second difficulty arises from Kant's description of provisional acquisition as "true acquisition."[143] Stone and Hasan are fully aware of this text, and they insist that "true acquisition" means acquisition "in the true and full meaning of the word," not the introduction of some exotic juridical status. They therefore conclude that "provisional acquisition is acquisition plain and simple, but it is partial or incomplete." This is one of the most compelling aspects of their account, because it shows clearly why provisionality should not be reified into a special right-kind. Yet the same point, in my view, tells against their stronger conclusion. If provisional acquisition is really acquisition "in the true and full meaning of the word," then it becomes difficult to maintain that what results from it has no normative status at all. To say that acquisition is true acquisition, but that "provisional right denotes no normative status at all," threatens to replace the old tension with a new one. It leaves unclear what is being truly acquired if not a right to an external object.

The third and deepest difficulty concerns the argument of the previous chapter. There I argued that property rights must be possible because external freedom requires the possibility of relating to external objects in a way that binds others as a matter of right. Without that possibility, agents would remain structurally dependent on the discretionary choices of others whenever they attempted to use external means in pursuit of their ends. The Postulate of Private Right was therefore shown to be necessary because, without the possibility of property, reciprocal independence among embodied agents cannot be coherently realized in the external world.

If that argument is correct, then the cost of Stone and Hasan's conclusion becomes significant. To deny that there are rights to external objects in the state of nature in any positive sense risks undermining the very possibility that the Postulate was introduced to secure. For the Postulate does not merely announce a future political completion. It introduces the possibility of intelligible possession itself. If that possibility were absent prior to the civil condition, then the external exercise of freedom would once again depend upon others' contingent willingness to abstain, and the structural problem identified in the previous chapter would return in full force. The point is not that rights in the state of nature must already be secure, determinate, and conclusive. It is rather that there must already be something genuinely juridical in place if external

[143] (6: 264).

freedom is to be possible at all. Otherwise the civil condition would not complete rights that are already possible; it would create from nothing the very possibility of external freedom.

None of this undermines Stone and Hasan's criticism of the "half-right" strategy. On the contrary, I think that criticism is one of the strongest contributions to the debate. They show decisively that the Provisionality Thesis should not be understood as positing a strangely diminished right somewhere between no right and conclusive right. They also show, correctly, that the civil condition is not merely an external instrument for securing antecedently complete rights, but belongs to the very conditions under which right becomes fully actual.

Where I differ from them is in what follows from these insights. In my view, rejecting provisional right as a distinct half-right does not require denying that there is any positive juridical status prior to the civil condition. It requires, rather, a different account of what that juridical status consists in. Stone and Hasan are therefore right to reject the subtractive and qualified-right accounts. But they go too far, I think, in concluding that there is no positive normative status to acquisition prior to the civil condition. That conclusion sits uneasily with Kant's insistence that if no acquisition were cognized as rightful before the civil condition, the civil condition itself would be impossible; with his claim that provisional acquisition is true acquisition; and, more deeply, with the argument that property must be possible if external freedom is to be possible at all.

The task, then, is not to return to the half-right strategy that Stone and Hasan rightly criticize. But neither is it to evacuate the state of nature of rights altogether. What is needed is an account that preserves both sides of Kant's position: that unilateral acquisition is not yet conclusive, and that there is nevertheless already something genuinely juridical in the state of nature. It is at this point, I think, that a more promising line of argument appears.

1.2. Permissive theory

The difficulty just identified suggests that a more adequate interpretation must preserve two claims at once. On the one hand, Stone and Hasan are right to reject the attempt to construe provisionality as a special kind of half-right. On the other hand, their own conclusion seems too austere if it deprives acquisition in the state of nature of any positive juridical significance. If the possibility of external freedom requires the possibility of having something external as one's own, then the state of nature cannot simply be emptied of rights to external objects without cost. What is needed, therefore, is an account that avoids reifying "provisional right" as an intermediate juridical species while preserving the thought that there is already something genuinely juridical in the state of nature.

It is precisely along these lines that a different family of interpretations proceeds. Rather than trying to identify a weaker kind of right, these views begin from the thought that denying rights to external objects in the state of nature would

undermine the very possibility of external freedom. Their starting point is thus close to the line of argument defended in the previous chapter. If freedom requires the possibility of securing external objects as one's own, then there can be no absolute prohibition on external possession as such.[144] The task is therefore not to locate a half-right between no right and conclusive right, but to explain how the possibility of external property can be maintained even though unilateral acquisition appears to conflict with the equality and reciprocity built into right itself.

Weinrib and Flikschuh, in different but related ways, offer precisely such an explanation. Both reject the idea that the Provisionality Thesis introduces a distinct species of right. Instead, they locate provisionality in the normative status of acquisition itself. Acquisition in the state of nature is possible, on their view, because reason cannot forbid external possession altogether; yet this possibility is secured only through a permissive structure that provisionally authorizes what would otherwise be impermissible.

Weinrib develops this thought within a highly systematic reconstruction of Kant's doctrine of property.[145] On his view, Kant's account unfolds through three conceptual phases. The first concerns innate right and the Universal Principle of Right. At this level, persons stand to one another as free and equal beings, each endowed with the authorizations implicit in innate right, including equality and non-dependence. Property in external things does not yet arise at this first phase. The second phase introduces that possibility through the Postulate of Private Right, which allows external objects to become mine or yours. But this extension is problematic. Unilateral acquisition places others under an obligation they would not otherwise have, and thus seems to subordinate them to the acquirer's private will in a way inconsistent with innate equality. The third phase is public right, where institutions of adjudication and enforcement transform what was provisionally established at the second phase into a fully reciprocal and publicly guaranteed system of property. These phases are not historical stages but conceptual moments that stand or fall with the system as a whole.

What matters for present purposes is Weinrib's understanding of the second phase. He does not deny that there are rights in the state of nature. On the contrary, he insists that the Postulate identifies a genuine juridical possibility: having something external as one's own is an exercise of freedom formally

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[144] The point is not that right already permits unilateral acquisition in the state of nature. The claim is only that right cannot prohibit property as such without undermining external freedom. From that it does not yet follow that a merely unilateral act is a permissible way of bringing property about. For acquisition purports to place all others under a duty of non-use, and that requires a further justification. What Chapter 1 establishes is the juridical possibility of mine and thine; what the later argument denies is that this possibility is already permissibly exercisable through a merely unilateral will. The tension is therefore not that right requires what it forbids, but that right must make property possible while withholding full authorization for its unilateral exercise.

[145] Weinrib (2003).

consistent with the Universal Principle of Right, and therefore "capable of putting others under a duty of non-interference." That duty is provisional rather than conclusive because the conditions under which it operates do not yet reflect the reciprocal equality contained in innate right. Nevertheless, and this is decisive, Weinrib insists that one cannot simply cancel the second phase and return to the first. To do so would preserve innate equality only at the cost of nullifying "the possibility of external freedom that the postulate of practical reason identified with having something external as one's own." That possibility must therefore be preserved, even though its first realization remains problematic.

It is here that Weinrib's interpretation becomes especially important for the present argument. He explicitly frames the second phase in terms of permissibility. The Postulate, he says, is a lex permissiva that "permits what is otherwise impermissible," because an additional move is still pending, namely the transition to public right, which will bring external rights back into conformity with innate equality. Property in external things is thus permissible at the second phase, but not yet "put into effect under conditions consonant with" the authorizations articulated at the first phase. This is why the second phase is merely provisional. It does not lack juridical significance; on the contrary, it is indispensable. But what it makes possible is a form of acquisition that is authorized only provisionally, pending the completion of right in the civil condition.

Flikschuh offers a closely related, though differently inflected, account.[146] Like Weinrib, she begins from the thought that there can be no general prohibition on external possession. The Postulate of Private Right therefore cannot simply declare unilateral acquisition impossible. But neither can it straightforwardly endorse such acquisition as already rightful, since unilateral first possession still compromises the equal freedom of others and thus remains in tension with the Universal Principle of Right. Flikschuh's proposal is therefore to interpret the Postulate explicitly as a lex permissiva: a permissive law that mediates between these two pressures by provisionally authorizing what would otherwise be prohibited.

Her formulation is striking. The Postulate, she writes, "authorizes us to put others under an obligation" simply because we have first taken objects into our possession. Yet this special authorization "amounts to a violation of the Universal Principle of Right on both counts." The Postulate therefore does not establish that unilateral acquisition is straightforwardly rightful. "Strictly speaking," as she puts it, "the Postulate does not endorse the rightfulness of the thesis." Rather, it says only that external possession must be possible, since a general prohibition on it would itself be contrary to right. This is why she interprets the lex permissiva as "provisionally count[ing] as permissible an action

[146] Flikschuh (2000a).

that is strictly speaking prohibited." It is a preliminary practical judgment that tentatively authorizes unilateral acquisition, not because such acquisition is already fully in conformity with right, but because some resolution of the antinomy is required if the transition to a rightful condition is to remain possible.

The affinity with Weinrib should now be clear. Both reject the half-right strategy. Both insist that denying rights to external objects in the state of nature would be unacceptable, since it would destroy the very possibility the Postulate is meant to secure. And both therefore preserve the juridical significance of unilateral acquisition by appealing to a permissive structure. What the lex permissiva does, on these views, is not to create a new species of right between no right and full right. It provisionally authorizes acquisition that could not otherwise be regarded as licit, thereby holding open the possibility of external property until the civil condition can complete it. The Postulate shows that intelligible possession must be possible; the general united will later shows how it can become fully rightful.

For the present dialectic, these interpretations mark a genuine advance over Stone and Hasan. They preserve the crucial insight that the Provisionality Thesis should not be understood as introducing a special kind of half-right. But unlike Stone and Hasan, they do not conclude from this that acquisition in the state of nature has no positive juridical significance. On the contrary, they insist that there must already be such significance if external freedom is to be possible at all. In this respect, Weinrib and Flikschuh come much closer to the real issue.

At the same time, their solution remains importantly different from the one I want to defend. For both Weinrib and Flikschuh respond to the problem by treating the possibility of acquisition as dependent upon some form of provisional permissibility. The Postulate, as lex permissiva, does not merely preserve the possibility of acquisition; it renders acquisition permissible, at least provisionally, until public right can complete and stabilize it. This is the crucial point on which I shall disagree with them. Their interpretations are right to preserve juridical possibility, but wrong to identify that possibility with, or to secure it through, provisional permissibility.

In the next section, I argue that this move concedes too much. It remains within a dialectic according to which acquisition can be possible only if it is, in some appropriate sense, permitted. My own view is that Kant's Provisionality Thesis breaks precisely with that assumption. What it opens up is not a space of provisional permissibility, but a space in which acquisition is juridically possible even though its unilateral exercise remains impermissible.

2. Possibility and permissibility

The preceding discussion has narrowed the interpretive options considerably. The Provisionality Thesis should not be understood as introducing a distinct kind of right occupying a space between no right and conclusive right. But it

would be too austere to conclude from this that there are no rights to external objects in the state of nature in any positive sense. Weinrib and Flikschuh are therefore closer to the mark insofar as they preserve the thought that, if external freedom is to be possible at all, there must already be some genuine juridical possibility of acquisition prior to the civil condition. Yet their own solution still moves too quickly from this possibility to some form of permissibility. In different ways, both maintain that the Postulate, as a permissive law, makes unilateral acquisition permissible, at least provisionally, until public right completes it.

My claim is that this final step is mistaken. What is distinctive about Kant's Provisionality Thesis is not that it renders unilateral acquisition permissible prior to public right, but that it makes acquisition possible even though its unilateral exercise remains impermissible. Provisionality therefore does not identify a weaker kind of right, nor does it supply a temporary permission for what would otherwise be prohibited. Its significance lies rather in separating juridical possibility from juridical permissibility. Conclusive acquisition is both possible and permissible. Provisional acquisition is possible without yet being permissible.

The key is to distinguish two different normative questions that the preceding interpretations tend to conflate. One question is whether agents have the power to acquire rights over external objects at all. The other is whether they are at liberty to exercise that power under the conditions in which they find themselves. The Postulate establishes the first. Omnilateral authorization is required for the second. Once these questions are separated, the thought that acquisition may be possible despite being impermissible becomes far less paradoxical than it initially appears.

2.1. The permissive law as a power-conferring norm

The first step is to identify correctly what the Postulate, as a permissive law, does. Here Byrd and Hruschka's interpretation is illuminating. They argue that the permissive law in the Doctrine of Right should not be understood as a norm that merely justifies an otherwise prohibited act. Rather, it is best understood as a power-conferring norm. It gives agents "the capacity to be the owner of property," and more broadly legal powers they would not possess without it.[147]

This captures exactly what the Postulate was shown, in the previous chapter, to be needed for. Innate right secures external freedom in its most basic form, but it does not yet extend that freedom to external objects in a way that allows them to become juridically mine or yours. Without the Postulate, I may physically possess an object, but I do not yet have the juridical capacity to place others under an obligation not to interfere with it. The Postulate confers that capacity.

[147] Byrd and Hruschka (2010, 94).

It makes possible a change in normative relations with respect to external objects that would otherwise not be available at all.

Kant's own formulation strongly supports this reading. He does not first say that unilateral acquisition is already fully rightful. He says rather that "it is possible for me to have any external object of my choice as mine," and immediately adds that this "postulate of practical reason with regard to rights" can "be called a permissive law (lex permissiva) of practical reason," a law that gives an "authorization" to put others "under an obligation, which they would not otherwise have." On its face, this language is better read as conferring a juridical capacity than as simply announcing the licitness of an otherwise prohibited act. The Postulate does not merely say that I may use external things. It says that I can acquire them as mine in a way that alters the normative situation of others.

Byrd and Hruschka are, I think, right to insist that the juridical postulate of practical reason can be understood as conferring a normative power rather than as merely excusing or justifying an otherwise prohibited act. Their reading brings out an indispensable feature of Kant's text, namely that the Postulate gives agents the capacity to be owners of external objects and thus to alter normative relations in ways that would otherwise not be available. Their reading captures why the Postulate is indispensable. It neither merely secures rights that would already exist independently, nor does it introduce a peculiar intermediate right. Rather, it gives agents the normative power to acquire rights over external objects.[148] Without such a power, nothing external could ever become mine or yours in the juridical sense, and the argument of the previous chapter—that freedom requires the possibility of intelligible possession—would collapse.

Where I part company with Byrd and Hruschka is over the significance of that power. My disagreement is not with the claim that the Postulate confers a power, but with the further inference that the existence of such a power establishes the permissibility of its unilateral exercise. Juridical possibility in this sense does not yet amount to permissibility.

Flikschuh, by contrast, is more willing to acknowledge a genuine tension with the Universal Principle of Right. But she too resolves that tension by treating the lex permissiva as a norm that provisionally permits—or tentatively authorizes—an act that would otherwise be prohibited. In different ways, then, both accounts assume that once the Postulate confers the relevant normative

[148] I do not, however, follow their further claim that this excludes any deeper problem of unilateral acquisition or that the conferral of such a power suffices to show that its unilateral exercise is permissible. Byrd and Hruschka explicitly deny that the lex permissiva in the Doctrine of Right functions as a justification for an otherwise prohibited act, and they also deny that property ownership is "inherently wrongful or generally (originally) prohibited"; in that respect, the present interpretation departs from theirs. I borrow only the narrower point that the Postulate confers a juridical power or capacity, not the further conclusion that this by itself settles the permissibility of unilateral acquisition. Compare (Byrd and Hruschka 2010, 94–106).

power, unilateral acquisition must also become permissible. It is precisely this inference that I want to resist.[149]

2.2. Separating power and permissibility

Kant clearly denies that the mere existence of such a capacity is sufficient to make its unilateral exercise fully rightful. When "I declare (by word or deed), I will that something external is to be mine," Kant says, I thereby declare that everyone else is under an obligation to refrain from using it, an obligation they would not otherwise have. Yet he immediately insists that "a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent," and concludes that "only a collective general (common) and powerful will" can provide the requisite condition. Hence "only in a civil condition can something external be mine or yours." The point is decisive. Kant does not deny that a unilateral act purports to alter normative relations. He denies that a merely unilateral will can by itself provide the authorization required to bind everyone conclusively.

The crucial question, then, is whether the conferral of a normative power suffices to show that one is permitted to exercise that power. I think the answer is no. A power and a permission are not the same normative relation, and one does not follow automatically from the other. To say that an agent has a power is to say that the agent is capable of changing normative relations by acting in certain ways. It does not yet say whether the agent is under no duty not to act in that way. A power may exist even where its exercise is impermissible.

This point matters because the permissive-law readings just considered move too quickly from one issue to the other. They take the fact that the Postulate gives agents the capacity to acquire external objects as theirs to show that acquisition is, in the relevant sense, permissible. But this does not follow. If that distinction is kept in view, then the Postulate may indeed make acquisition possible by conferring a power while still leaving open whether the unilateral exercise of that power is permissible.

2.3. Distinguishing power and liberty

At this point a Hohfeldian reconstruction becomes useful, not as a digression from Kant's argument, but as a way of stating more precisely what is already at stake in it. Hohfeld matters here because he provides an analytic vocabulary for disentangling two normative incidents that Kant's interpreters have repeatedly

[149] These readings appear to rely on both directions of an unwarranted inference. They assume not only that if an agent has the power unilaterally to acquire, the exercise of that power must also be permissible, but also conversely that without such permissibility no such power could exist in the first place. In other words, possibility is taken to entail permissibility, and permissibility to be a condition of possibility. The argument of this chapter rejects both assumptions. A power to effect a juridical change and a liberty to exercise that power are distinct normative incidents and must not be conflated.

run together: the capacity to effect a juridical change and the permissibility of exercising that capacity.

Hohfeld's central achievement was to show that the term "right" covers several distinct normative relations that must be carefully distinguished.[150] In the present context, the relevant distinction is between power and liberty. A power is the normative ability to alter juridical relations: by acting in certain ways, an agent can change what rights, duties, liabilities, or claims obtain. A liberty, by contrast, is the absence of a duty not to act. These are distinct incidents, and the presence of one does not logically entail the presence of the other. As Brinkmann and Vorland Wibye put it, powers "grant the right holder a capacity to change the normative status of themself or others," but "the liberty to disperse protesters" does not follow from the possession of such a power, nor does "the presence of a power to legislate entail a liberty to use that power." Most importantly, they insist that "powers must be distinguished from the liberty to exercise them."[151]

Hohfeld's own treatment of ownership already shows why this distinction matters. In his analysis of Blackacre, he insists that ownership is not one undifferentiated "right," but an aggregate of distinct jural incidents. The owner has, among other things, "privilege-no-right" relations and "power-liability" relations, and Hohfeld stresses that these different classes of relation "should not be loosely confused with one another." Thus the owner has privileges of entering and using the land, but also the legal power to alienate the interest, to create a life estate, or to create in another a privilege of entry by giving leave and license. The significance of these examples is that they separate two different normative questions: whether an agent is in a position to alter juridical relations at all, and what liberties or duties attach to that agent's own conduct. The capacity to effect a juridical change is one incident; the absence of a duty not to act is another. Once this is seen, it becomes clear that possession of a power does not by itself settle whether one is at liberty to exercise it.[152]

This is exactly the distinction needed here. If the Postulate gives agents the power to acquire rights over external objects, it does not yet follow that they are at liberty to exercise that power unilaterally. The first claim concerns the juridical possibility of acquisition: whether an act of taking possession can alter normative

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[150] Hohfeld (1919).

[151] Brinkmann and Vorland Wibye (2023, 503).

[152] See (Hohfeld 1919, 747–48), where ownership is analyzed into distinct "privilege-no-right" and "power-liability" relations that "should not be loosely confused," and (Hohfeld 1919, 757) for examples of powers that divest one person's rights and create corresponding rights in another. (Brinkmann and Vorland Wibye 2023, 503) mention the case of a thief who may have the power to transfer ownership of stolen goods to a third party without having the liberty to make that transfer. The significance of the example lies not in its legal details, but in the normative structure it reveals. One question is whether the act effects a juridical change. Another is whether the agent is under a duty not to perform it. These are different questions, and they need not receive the same answer. A slightly different example is this. A promises B to do something, although A had already promised C not to make such a promise. A thereby incurs an obligation toward B, even though A was not at liberty to undertake that obligation, since doing so was precluded by the prior promise to C.

relations at all. The second concerns its juridical permissibility: whether an individual may exercise that capacity in a way consistent with the equal freedom of all. Once these incidents are separated, the central claim of this chapter becomes intelligible. The Postulate may confer a power of acquisition without thereby conferring the liberty to exercise that power under unilateral conditions.

Kant's own formulation makes this distinction especially apt. On the one hand, the Postulate gives an "authorization" to place others under obligations they otherwise would not have. On the other hand, Kant denies that a "unilateral will" can itself serve "as a coercive law for everyone." The first claim points to a capacity to effect a juridical change. The second denies that the unilateral exercise of that capacity is yet normatively licensed in the public sense required for conclusiveness. Hohfeld therefore does not import an alien structure into Kant's argument. It simply helps state more exactly a distinction that Kant's own text already forces upon us.

2.4. Application of the distinction

Once this distinction is brought to bear on Kant's argument, the shape of the Provisionality Thesis becomes much clearer. The Postulate, as lex permissiva, can be read as conferring on agents the power to acquire external property. It gives them the normative capacity to alter juridical relations by taking external objects into intelligible possession. Without such a power, no one could ever be the owner of an external thing, and external freedom would remain structurally dependent on others' discretionary choices.

This is confirmed by the transition from §8 to §9 of the Doctrine of Right. After insisting in §8 that only a public, omnilateral will can make something external mine or yours conclusively, Kant immediately adds in §9 that "something external can actually be mine or yours but only provisionally." He explains that prior to a civil constitution, external objects "must therefore be assumed to be possible" as mine or yours, and that possession "in anticipation of and preparation for the civil condition" is "provisionally rightful possession." Read together, these claims are highly significant. Kant does not move from the insufficiency of unilateral will to the conclusion that there is no acquisition before the civil condition. He moves instead to the conclusion that there is acquisition, but acquisition whose juridical standing is provisional rather than conclusive.

What does not follow from this, however, is that agents are at liberty to exercise that power unilaterally. The Postulate secures the possibility of acquisition. It does not yet settle whether a unilateral act of acquisition may permissibly bind all others. That further question is exactly the one Kant raises when he says that a unilateral will cannot serve as a coercive law for everyone with regard to external possession, and that only a collective general will can provide the necessary assurance. The Postulate confers the power; the permissibility of

exercising that power depends on whether its exercise is authorized in a way consistent with universal freedom.

This reconstruction preserves what is right in the preceding interpretations without inheriting what is wrong in them. Stone and Hasan are right that the Provisionality Thesis does not introduce a special half-right. Weinrib and Flikschuh are right that there must nevertheless be genuine acquisition in the state of nature if external freedom is to be possible at all. Byrd and Hruschka are right that the lex permissiva is a power-conferring norm. What must be rejected is only the additional assumption that the conferral of a power is already sufficient to make its unilateral exercise permissible.

2.5. Omnilateral authorization

Why, then, is a power not enough? Why should the liberty to exercise it require something further?

Kant's reason is built into his account of acquisition itself. To take something external as mine is not merely to stand in a new relation to an object. It is to claim that everyone else is now under an obligation to refrain from using it. Acquisition is therefore not merely an act whose effects happen to reach others. It alters, through a unilateral choice, the juridical situation of everyone else by placing them under a duty of non-use with respect to the object.[153] Precisely for that reason, the liberty to exercise the power of acquisition cannot arise from a private will alone. If it did, one individual would be at liberty unilaterally to impose obligations on all others merely by choosing to do so. But this is exactly what Kant denies.

This diagnosis is not peculiar to the present interpretation. It is, in different ways, already visible in the most careful recent attempts to explain why unilateral acquisition is normatively problematic. Weinrib emphasizes that unilateral acquisition "puts others under an obligation that they would not otherwise have" and thereby seems to subordinate them to the acquirer's private will in a way inconsistent with innate equality. He further connects this to coercion: because a right to an external object carries with it a title to exclude, unilateral acquisition would otherwise allow a private will to function as a coercive law for everyone.

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[153] The point can be put in terms of the distinction between duty-activation and duty-creation. Many acts affect others in ways that trigger or activate duties they already have independently of the act in question. If I step into your path, for example, this may activate pre-existing duties of care or restraint. Acquisition is different. It does not merely alter the circumstances under which already existing duties apply. Rather, it purports to create a new duty in others, namely a duty of non-use with respect to the object acquired. The problem of unilateral acquisition therefore does not arise from mere other-affectingness as such, but from the claim of a private act to generate new obligations for all others. For the distinction between duty-creation, duty-activation, and duty-alteration, compare (Van Der Vossen 2015). Van der Vossen, however, deploys the distinction against the Kantian objection: he argues that original appropriation is not a case of duty-creation, but of duty-alteration, because appropriation merely triggers pre-existing conditional duties correlative to a natural conditional right to own property.

Flikschuh presses a closely related point from the side of the Universal Principle of Right. On her reading, the problem is that a merely unilateral empirical act purports to establish a claim of right against all others, even though such an act is not by itself sufficient to ground legitimate exclusive possession. What is common to both accounts is the underlying diagnosis: the difficulty with acquisition in the state of nature is not merely that it lacks security or finality, but that it purports unilaterally to place everyone else under a new obligation of non-use. In that respect, the impermissibility of unilateral acquisition is built into the very structure of what acquisition claims to do.[154]

This convergence matters because it shows why the conferral of a power to acquire does not yet yield the liberty to exercise that power. The Postulate may well be necessary if the possibility of external freedom is not to collapse. But once acquisition is understood as an act that purports to bind all others, the mere existence of a juridical power cannot by itself settle whether one may exercise that power consistently with universal freedom. For what is at issue is not simply a new relation between an agent and an object, but a new normative relation between that agent and everyone else. A private act that claims to bind all others therefore requires more than intelligibility or efficacy: it requires authorization. And that is precisely what a merely unilateral will lacks in the state of nature.

This is why omnilateral authorization is required. The problem with unilateral acquisition is not that it fails to bring about any juridical change whatever. The problem is that, insofar as it purports to bind all others, its exercise lacks the public authorization that alone could make such a change consistent with the equal freedom of all. Omnilateral authorization is therefore required, not

[154] Weinrib and Flikschuh agree on the initial diagnosis, but diverge in how they resolve it. Weinrib argues that unilateral acquisition would otherwise be impermissible because it places others under obligations they would not otherwise have and thereby conflicts with innate equality; yet he also insists that one cannot simply cancel this phase without nullifying the possibility of external freedom, and therefore treats the lex permissiva as permitting what is otherwise impermissible pending completion in public right (Weinrib 2003, 807–9). Flikschuh likewise treats unilateral acquisition as normatively problematic because it authorizes one person, through a merely unilateral empirical act, to put others under an obligation, and she says that this "amounts to a violation of the Universal Principle of Right on both counts" and is, "strictly speaking," prohibited; she therefore interprets the lex permissiva as provisionally counting as permissible what is otherwise prohibited (Flikschuh 2000a, 135–39, see esp. 136, 139, also 144-5). I agree with both on the basic observation that unilateral acquisition is problematic because it involves private duty-imposition inconsistent with equal freedom. But I cannot follow Flikschuh in the stronger claim that the Postulate provisionally licenses what is, strictly speaking, a violation of the Universal Principle of Right. For on the view defended here, the Postulate must preserve the possibility of external possession if external freedom is not to be undermined; it therefore cannot simply function as a temporary permission to violate right. What it confers is a power whose unilateral exercise remains impermissible until omnilateral authorization is present. Weinrib is closer to this view insofar as he also insists that the possibility of external freedom cannot be sacrificed, though he too finally resolves the difficulty by appealing to provisional permission.

because no juridical change is at stake, but precisely because the change at stake reaches beyond the acting subject to everyone else.[155]

The liberty to exercise the power of acquisition can arise only where the act of acquisition no longer rests on a unilateral will, but on a public will that can bind all because it is the will of all. Only then can the exercise of the power be compatible with the freedom of everyone under a universal law. Omnilaterality does not create the power from nothing. The power is already given by the Postulate. What omnilaterality adds is the liberty to exercise that power permissibly.

This also explains why conclusive right belongs only to the civil condition. In the civil condition, the power to acquire is no longer exercised merely privately. It is exercised under public conditions of lawgiving, adjudication, and assurance. The right acquired there is therefore both possible and permissible: possible because the Postulate makes acquisition thinkable at all, and permissible because the public condition supplies the authorization without which its exercise would remain a unilateral imposition.

2.6. Lack of liberty

In the state of nature, by contrast, this omnilateral authorization is absent. Individuals may have the power to acquire rights over external objects, but they still exercise that power unilaterally. That is precisely why Kant insists that their acquisition cannot be conclusive. The difficulty does not lie in the absence of a power. If there were no power at all, the state of nature would contain no juridical acquisition, and the possibility of external freedom would disappear. The difficulty lies instead in the absence of a liberty to exercise that power in a way that can bind all others as a matter of right.

Kant states this with unusual clarity in §15. "Original acquisition," he says, "can be only provisional. – Conclusive acquisition takes place only in the civil condition." But he immediately adds: "Still, that provisional acquisition is true

[155] This diagnosis is not uncontested. Bader argues that the Postulate of Private Right is not concerned with rendering impermissible acquisition permissible. On his view, if principles of right did not yet apply to the outer, then there would be no impermissibility with respect to the outer in the first place; any objection would have to derive from innate right, yet innate right is not violated by another's appropriation as such. He further argues that it is difficult to make sense of unilateral duty-imposition as both possible and impermissible: if the problem is that a merely unilateral will lacks the authority to impose obligations on others, then the better conclusion is not that such imposition is impermissible but that it is impossible. For that reason, Bader interprets the lex permissiva not as a provisional permission for an otherwise forbidden act, but as explaining the possibility of acquisition through the extension of principles of right to the outer, thereby transforming the outer from a domain of lawless liberty into one of rightful freedom. I agree with Bader that the Postulate must preserve the possibility of acquisition and cannot simply be read as suspending right. But I do not follow him in treating the alternative as one between provisional permission and impossibility. The view defended here instead distinguishes the power to acquire from the liberty to exercise that power permissibly: unilateral acquisition can be juridically possible even though its exercise remains impermissible under merely unilateral conditions (Bader 2025, 8–9, 11–12).

acquisition." He grounds this claim in "the postulate of practical reason with regard to rights," which secures "the possibility of acquiring something external in whatever condition people may live together (and so also in a state of nature)." This passage is exceptionally important. It shows that provisionality does not mean mere appearance, rhetorical anticipation, or juridical emptiness. Something normatively real is already achieved in the state of nature, even though it falls short of conclusiveness.

This is what makes acquisition in the state of nature both possible and impermissible. It is possible because the Postulate has already conferred the normative power to acquire external objects as one's own. It is impermissible because the exercise of that power remains unilateral, and a unilateral will cannot permissibly impose obligations on all others. The state of nature therefore need not be described either as a realm without rights or as a realm in which acquisition is provisionally permitted. It is enough to say that the power exists while the liberty to exercise it permissibly does not.

Seen in this way, the apparent contradiction at the heart of the Provisionality Thesis becomes intelligible. Kant can deny that unilateral acquisition is permissible because its exercise lacks omnilateral authorization. And he can insist that acquisition is nevertheless possible because the Postulate has already conferred the power that makes intelligible possession possible. What is provisional about rights in the state of nature is not that they belong to a special weakened species, nor that their acquisition has been temporarily rendered permissible. What is provisional is that the power of acquisition can be exercised there only without the liberty that would make its exercise fully rightful.

2.7. The Provisionality Thesis restated

The Provisionality Thesis can therefore be restated as follows. In the state of nature, acquisition is possible because the Postulate, as lex permissiva, confers on agents the normative power to acquire external objects as theirs. Kant's own retrospective formulation makes the point explicit. If "no acquisition were cognized as rightful even in a provisional way prior to entering the civil condition," he says, "the civil condition itself would be impossible." A civil constitution "only secured" what belongs to each; it does not create ex nihilo the very possibility of mine and thine. Any guarantee already presupposes that there is something that belongs to someone and can therefore be secured.

But provisional acquisition is not yet permissible, because the exercise of that power remains unilateral and lacks the omnilateral authorization required to bind all others as a matter of public right. Provisionality therefore does not identify a weaker kind of right, nor a preliminary permission. It identifies the juridical condition in which acquisition can occur through a power whose exercise is not yet at liberty.

This also allows us to preserve the textual claims that generated the problem in the first place. It explains why Kant can say that if no acquisition were cognized as rightful prior to the civil condition, the civil condition itself would be impossible: the power of acquisition is already there, and with it the possibility of external mine and thine. It explains why he can call provisional acquisition "true acquisition": the act genuinely alters juridical relations because the power to do so exists. And it explains why he can nevertheless deny that unilateral acquisition is conclusive or fully rightful: the liberty to exercise the power permissibly belongs only to a public condition.

2.8. Conclusion

If this reconstruction is correct, it has three immediate consequences for the debate.

First, it shows why the earlier attempt to construe provisionality in terms of a weaker or qualified right was misguided. The problem was never to identify what sort of diminished right provisional right is. The real issue was how unilateral acquisition can have juridical significance at all. Once possibility and permissibility are separated by way of the distinction between power and liberty, there is no need to posit a special intermediate right-status.

Second, it shows why the more austere reading is both right and wrong. Stone and Hasan are right that the Provisionality Thesis does not introduce a distinct half-right. But they are wrong to conclude that provisionality denotes no positive normative status at all. There is already a genuine juridical status in the state of nature: agents possess the power to acquire rights over external objects. What is absent is not juridical significance as such, but the liberty to exercise that power permissibly.

This matters not merely as an exegetical detail, but for the systematic coherence of Kant's view. Kant explicitly says both that provisional acquisition is "true acquisition" and that if no acquisition were cognized as rightful in a provisional way before the civil condition, the civil condition itself would be impossible. These claims are hard to reconcile with the thought that the state of nature contains no positive juridical status at all. What they support instead is the more restrained claim defended here: that prior to the civil condition there is already a genuine juridical possibility of acquisition, even though its unilateral exercise still lacks the public authorization needed for conclusiveness.

Third, it shows why Weinrib and Flikschuh, though much closer to the truth, still concede too much. They rightly preserve the thought that external freedom requires the genuine possibility of acquisition in the state of nature. But they move too quickly from the conferral of a power to the permissibility of exercising it. Once the distinction between power and liberty is kept in view, that inference is no longer necessary. The Postulate can confer the power of acquisition without thereby rendering unilateral acquisition permissible.

The Provisionality Thesis should therefore be understood as marking a space in which acquisition is possible despite being impermissible. This, I suggest, is its deepest significance. It breaks with the assumption that juridical possibility depends on prior permissibility and thereby allows Kant to hold together what otherwise appears contradictory: that unilateral acquisition cannot be rightful as a law-giving act for all, and that rights to external objects must nevertheless already be possible if the civil condition, and with it external freedom, is to be possible at all.

3. An objection

At this point, an obvious objection arises. The claim that the possibility and permissibility of acquisition can come apart will naturally seem troubling. For if unilateral acquisition is impermissible, in what sense can it nevertheless be possible? Does this not amount to saying that individuals can acquire rights by doing what they ought not to do?

This objection should be taken seriously. It identifies a genuine pressure point in the present account. If unilateral acquisition is said to be both juridically efficacious and yet impermissible, then one wants to know how these two claims are related. The worry is not, or at least not primarily, that the present view covertly transforms the impermissible into the permissible. The deeper worry is more basic: if the act is one the agent is under a duty not to perform, why does that defect not deprive the act of juridical significance altogether? Why is the act not simply void?

The crucial issue, I suggest, is whether the impermissibility of unilateral acquisition is understood as internal or external to its juridical possibility. An objection is internal to the possibility of an act when it shows that the act cannot produce the very juridical effect it purports to produce. In that case, the defect is constitutive: because the act is normatively defective, it is null or void. An objection is external to the possibility of an act when it does not cancel the act's juridical efficacy, but instead shows that the agent was under a duty not to perform it. In that case, the act is wrongful, but not therefore normatively inert. The objection against the present view succeeds only if the impermissibility of unilateral acquisition is taken to be internal in the first sense. For then an impermissible unilateral act could not count as acquisition at all. But that is precisely what the present interpretation denies.

On the view defended here, the Postulate of Private Right supplies the constitutive condition under which unilateral acquisition can have juridical significance at all. It makes possible a change in normative relations with respect to external objects by conferring the power to acquire them as one's own. Without that power, no unilateral act could even purport to establish a juridical relation of mine and thine. The defect of the state of nature therefore cannot lie in the absence of all juridical possibility. If it did, the entire argument of the

previous chapter would collapse: freedom would not merely fail to secure property conclusively, but would fail to make property possible at all. What the Postulate excludes is precisely that conclusion.

At the same time, however, the Postulate does not by itself provide the omnilateral authorization that would make the exercise of this power fully rightful. A unilateral act of acquisition still purports to place all others under a duty of non-use, and in that respect it still exceeds what a merely private will may permissibly impose. The impermissibility therefore remains. But it remains as an objection external to the provisional juridical effect of the act, not as an objection internal to its possibility. The act can be acquisition without yet being a conclusively rightful mode of acquisition. This is why the distinction between possibility and permissibility matters. The point is not that the act is somehow both permitted and forbidden. It is that the act can have juridical significance while still being performed under conditions in which the agent is not at liberty to perform it conclusively.

The force of this reply can be brought out in another way. The Postulate does not tell us that a private will may already legislate for all. What it tells us is that external objects can be the subject matter of rights at all. Once that much is granted, the further question is whether a merely unilateral will may exercise this power in a way consistent with the equal freedom of all. The answer given in this chapter is no. The absence of omnilateral authorization does not show that the act is incapable of effecting any juridical change; it shows only that the change cannot yet be fully rightful or conclusive. The wrongfulness is therefore external to the provisional efficacy of the act, though internal to any claim of conclusiveness.

This also explains why the distinction between power and liberty, though indispensable, is not by itself sufficient to answer the objection. The power/liberty distinction states the structure of the present view: a power can exist even where the liberty to exercise it is absent. But the present objection asks why that structure is not contradictory. The answer is not merely that power and liberty are different incidents. It is that the absence of liberty need not be constitutive of the absence of power. An act may therefore be wrongful in the sense that the agent ought not to perform it, while still being efficacious in virtue of a power the system of right has already made available.

Waldron's discussion of a "right to do wrong" is helpful up to a point here, because it shows that rights-talk and wrongness-talk do not automatically collapse into one another. His central claim is that rights protect choices, whereas the wider morality of rightness and wrongness guides and criticizes them; for that reason, there is no contradiction in saying that an action is wrong while others nevertheless have reasons not to interfere with it.[156] Rights, on this view, do not primarily provide reasons for acting; rather, they generate reasons

[156] (Waldron 1981, 29–31, 37).

for non-interference on the part of others. That is an important reminder, because it blocks the crude assumption that juridical status and moral permissibility must always coincide.

But Waldron's point is only partially helpful for present purposes. My claim is not that unilateral acquirers in the state of nature have a right to do wrong in Waldron's sense. I am not arguing that they possess a liberty protected against interference, still less that others are already under a fully determinate duty to respect their choice simply because it is theirs. That would go beyond what the present reconstruction requires. The claim defended here is narrower. It attributes only a power whose exercise has provisional juridical significance without yet being accompanied by the liberty that would make its unilateral exercise rightful. Waldron therefore helps only to the extent that he shows that juridical status and wrongness are not conceptually inseparable. He does not by himself settle the more specific question whether a wrongful act may be juridically efficacious in the sense at issue here.

Seen from this angle, the present interpretation differs sharply from the permissive-law readings advanced by Weinrib and Flikschuh. On those readings, the same feature that makes unilateral acquisition objectionable is treated as something that must be overcome by provisional permission. Weinrib explicitly says that the lex permissiva "permits what is otherwise impermissible."[157] Flikschuh likewise says that the lex permissiva "provisionally counts as permissible an action that is strictly speaking prohibited."[158] In both cases, the defect in unilateral acquisition is treated as internal to its juridical status: absent special permission, the act would be contrary to right in a way that blocks its standing as rightful acquisition.

That is not the route taken here. On the present interpretation, the Postulate itself already secures the juridical possibility of acquisition by conferring the relevant power. No further provisional license is needed to explain how unilateral acts can have juridical significance at all. What remains absent is not power, but permissive authorization. The defect of unilateral acquisition therefore does not nullify the act's provisional juridical effect; it prevents only its claim to conclusive rightfulness. This is why the objection, though real, has greater force against the permissive-law readings than against the account defended here. Those views must explain how something otherwise contrary to right can become permissible through a provisional exception. My own account need only explain how wrongfulness can remain external to provisional juridical efficacy.

The significance of this point is that it allows both sides of Kant's position to be preserved without forcing either into the mold of the other. On the one hand, Kant can insist that if no acquisition were already possible in some juridical sense

[157] (Weinrib 2003, 809).
[158] (Flikschuh 2000b, 139).

prior to the civil condition, then the civil condition itself would be impossible. On the other hand, he can also insist that a merely unilateral will cannot yet impose obligations on all others in a way that is fully rightful. These claims do not contradict one another unless one assumes that the defect of unilaterality is internal to all juridical efficacy whatsoever. Once that assumption is rejected, the paradox takes on a different shape. The question is no longer how the impermissible can become permissible. It is how a wrongful but efficacious unilateral act can stand in need of public completion.

The answer, on the present account, is that provisionality names exactly this condition. It is the condition in which the act of acquisition is already juridically possible in virtue of the power conferred by the Postulate, but not yet conclusively rightful because omnilateral authorization is absent. Provisionality therefore marks neither a weakened right nor a provisional permission. It marks a juridical condition in which a unilateral act can produce a provisional relation of mine and thine even though the agent lacks the liberty to perform that act as a conclusive lawgiving act for all.

The objection should therefore be answered as follows. The present view does not say that agents are permitted to do what is impermissible. Nor does it say that right validates wrongdoing. It says that the impermissibility of unilateral acquisition is external to its provisional juridical possibility. The Postulate makes acquisition possible by conferring the relevant power; the absence of omnilateral authorization leaves the unilateral exercise of that power impermissible and non-conclusive. If the objection were that the present account licenses wrongdoing, it would miss the mark. But if the objection is that juridical efficacy and permissibility cannot come apart, then that is precisely the claim at issue—and it is the claim that the distinction between internal and external defects allows us to reject.

4. Conclusion

This chapter has completed the argument of Part II. Chapter 1 showed that prevailing interpretations of the Provisionality Thesis misdescribe the structure of the problem when they construe provisionality as a weaker, thinner, conditional, or otherwise qualified species of right. Chapter 2 has argued that the correct response is not to deny all juridical significance to acquisition in the state of nature, nor to render unilateral acquisition straightforwardly permissible. Rather, the Provisionality Thesis should be understood by distinguishing the juridical possibility of acquisition from the permissibility or conclusiveness of its unilateral exercise.

The central claim of Part II has been that Kant's Provisionality Thesis is best understood neither as introducing a special species of right nor as provisionally permitting what would otherwise be forbidden. The prevailing interpretations in the literature, I have argued, are unsatisfactory for opposite but related reasons.

Views that construe provisional right as a weaker, thinner, or otherwise qualified kind of right misdescribe the structure of the problem. They try to resolve Kant's apparent contradiction by inserting an intermediate juridical status between no right and conclusive right. But this strategy is unstable. The more such views weaken provisional right in order to distinguish it from conclusive right, the less clear it becomes that any right remains. The more they preserve its juridical force, the more difficult it becomes to explain why unilateral acquisition should be any less problematic than conclusive acquisition.

The more austere response associated with Stone and Hasan rightly rejects this strategy. They are correct, in my view, to insist that provisionality should not be reified into a peculiar half-right standing between no right and full right. But their further conclusion goes too far. If provisionality were to denote no positive normative status at all, it would become difficult to make sense of Kant's insistence that, unless acquisition were already cognized as rightful in some sense prior to the civil condition, the civil condition itself would be impossible. It would also sit uneasily with Kant's claim that provisional acquisition is "true acquisition." What must therefore be preserved is both sides of Kant's position at once: that unilateral acquisition is not yet fully rightful, and that there is nevertheless already something genuinely juridical at stake in the state of nature.

I have argued that this can be done only if one separates two questions that are often run together: whether acquisition is juridically possible at all, and whether the unilateral exercise of that possibility is juridically permissible. Once this distinction is drawn, the apparent contradiction in Kant's text can be dissolved. The Postulate of Private Right, understood as a power-conferring norm, secures the possibility of intelligible possession by conferring on agents the normative power to acquire external objects as theirs. Without such a power, nothing external could ever become mine or yours, and the very possibility of external freedom would collapse. But the existence of such a power does not by itself establish a liberty to exercise it. The liberty to exercise the power of acquisition permissibly requires omnilateral authorization, because acquisition is not merely a relation to an object but an act that purports to place everyone else under an obligation. That further authorization is absent in the state of nature and is supplied only in the civil condition.

The significance of provisionality can therefore now be stated more precisely. What is provisional in the state of nature is not the existence of a strange attenuated right, nor a temporary permission to do what right would otherwise forbid. What is provisional is the juridical condition in which the power of acquisition is already present while the liberty to exercise it permissibly is still absent. Provisional acquisition is thus true acquisition, because it genuinely alters juridical relations; but it is not yet conclusive acquisition, because its unilateral exercise lacks the public authorization that alone can make it fully rightful. In this sense, the civil condition does not create property ex nihilo. It completes, secures, and publicly authorizes a possibility of acquisition that must already be

present if external freedom, and with it the duty to leave the state of nature, is to be intelligible at all.

This reconstruction also clarifies the broader shape of Kant's position within the history of political philosophy. Kant is neither Hobbesian nor Lockean, but not because he posits an intermediate species of right between no property and natural property. He departs from Hobbes because he insists that rights to external objects must already be possible prior to public right. He departs from Locke because he denies that unilateral acquisition in the state of nature is already fully rightful or conclusive. What distinguishes Kant is not a doctrine of weaker rights, but a more complex account of acquisition itself: an account on which the possibility of acquiring external objects precedes the public conditions under which such acquisition can become fully rightful. The Provisionality Thesis should therefore be understood, not as a doctrine of diminished right, but as a doctrine about the structure of juridical acquisition under unilateral conditions.

The upshot is that Kant's theory of property in the state of nature is neither paradoxical nor incoherent once its underlying normative structure is properly identified. The contradiction disappears once one sees that Kant's two claims concern different questions. His insistence that something external can be mine or yours prior to the civil condition concerns the existence of a juridical power of acquisition. His insistence that only a civil condition can make something conclusively mine or yours concerns the absence, prior to that condition, of the liberty to exercise that power in a way that can bind all others as a matter of right. Provisionality names the relation between these two claims. It marks the point at which juridical possibility outruns juridical permissibility, and thereby makes intelligible how property can be possible before it becomes conclusive. That, I suggest, is the deepest significance of Kant's Provisionality Thesis.

Part III: The Principle of Proximity in Kant's Doctrine of Right

In Part II of this thesis, I addressed an apparent contradiction in Kant's account of property: Kant claims that there are property rights in the state of nature, but at the same time, it seemed that he is also committed to the view that there cannot be property rights in the state of nature, because acquisition in the state of nature would involve unilateral imposition of obligations on others. Thus Kant appears to hold both the view that there can be property rights in the state of nature and the view that there cannot; both the view that acquisition is possible and the view that it is not. I argued that Kant resolves the apparent contradiction in his account of property through the Provisionality Thesis according to which "in a state of nature something external can be mine or yours only provisionally."[159] On the interpretation I defended there, this did not mean that Kant introduces a special class of provisional rights distinct from conclusive property rights. Rather, it explains how acquisition in the state of nature can be possible even though it remains impermissible as a unilateral mode of acquisition—that is, it is not yet fully rightful, for it lacks omnilateral authorization.

However, if property rights can be acquired in the state of nature even though such acquisition is impermissible, then the state of nature contains a defect that needs to be overcome. As Kant writes:

> "It is true that the state of nature need not, just because it is natural, be a state of injustice (iniustus), of dealing with one another only in terms of the degree of force each has. But it would still be a state devoid of justice (status iustitia vacuus), in which when rights are in dispute (ius controversum), there would be no judge competent to render a verdict having rightful force. Hence each may impel the other by force to leave this state and enter into a rightful condition; for although each can acquire something external by taking control of it or by contract in accordance with its concepts of right, this acquisition is still only provisional as long as it does not yet have the sanction of public law, since it is not determined by public (distributive) justice and secured by an authority putting this right into effect."[160]

Precisely because provisional acquisition is possible despite being impermissible, it gives rise to—or at least brings into view—a series of problems, which I described in Part II as downstream problems, such as the lack of assurance, indeterminacy, insecurity, and disagreement, and thus points beyond itself to the need for a civil condition in which rights can become conclusive under an

[159] (6: 256).
[160] (6: 312).

omnilateral will.[161] The possibility of property in the state of nature is therefore not an alternative to the civil condition. It is what makes the civil condition necessary.[162] Individuals have a duty to leave the state of nature and enter the civil condition, where unilateral acquisition is replaced by conclusive acquisition that is omnilaterally authorized: "By willing to be and to remain in a condition that is not rightful" individuals "do wrong in the highest degree."[163] So long as individuals remain in the state of nature, they remain in a condition in which they can acquire property rights unilaterally, without the authorisation needed to justify such acquisition to others. Thus, the state of nature must be left behind.[164]

The duty to leave the state of nature which follows as a corollary from the possibility of property rights is captured in Kant's Postulate of Public Right: "From private right in the state of nature there proceeds the Postulate of Public Right: when you cannot avoid living side by side with others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice."[165] The argument of this chapter begins from

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[161] I use "downstream problems" here in the restricted sense introduced in Part II. The point there was not to provide a full account of assurance, determinacy, security, adjudication, or disagreement as independent explanations of provisionality. Rather, these problems were treated as arising only once some juridical claim to an external object is already in view. They therefore presuppose the more basic, upstream problem addressed by the Provisionality Thesis: how a unilateral act of acquisition can have any juridical significance at all. On the reading defended in Part II, provisionality is explained by the unilateral mode of acquisition itself: acquisition in the state of nature is juridically possible, because the Postulate confers the normative power to acquire, but it is not yet permissible or conclusive, because the exercise of that power lacks omnilateral authorization. The downstream problems mark defects that follow from this provisional status, or become salient because of it; they do not themselves explain that status. I leave their precise nature aside here.

[162] Strictly speaking, this formulation may slightly overstate the role of property rights. It need not be the possibility of provisional property alone that makes the civil condition necessary; other rights in the state of nature may also suffer from defects that point beyond that condition. I set this broader issue aside here. The narrower point is only that provisional property cannot be understood as a stable alternative to the civil condition.

[163] (6: 307-8). It should be noted that interpretations of the Provisionality Thesis according to which it introduces a distinct kind of right, namely a provisional right, cannot explain this claim as easily. For if provisional rights are understood as a separate class of rights, it does not follow as directly that individuals wrong one another by remaining in a condition in which the acquisition of such rights is possible. The force of Kant's claim is easier to understand if provisionality is taken not to mark a distinct species of right, but to express the defect of a condition in which acquisition is possible only without the authorisation required for its rightful exercise.

[164] Kant makes the same point again when he writes that, however well-disposed human beings may be, "before a public lawful condition is established individual human beings, peoples, and states can never be secure against violence from one another," since each follows its own judgment concerning what is right and good. Unless they are to give up the very concept of right, they must therefore leave the state of nature, unite with those with whom they cannot avoid interacting, subject themselves to public coercive law, and enter a civil condition (6: 312).

[165] (6: 307). The function of the Provisionality Thesis is thus in fact twofold. It explains not only why individuals have a duty to leave the state of nature, but also why the civil condition is possible at all. If no acquisition were possible, there would be nothing to lead us out of the state of nature. But because acquisition is possible there only in an impermissible way, individuals have a duty to leave that condition and enter one in which acquisition can be rightful. Kant must allow for at least this much because, as he writes, "if no acquisition were cognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible." Property must be possible in the state of nature, for the civil condition does not

that claim. Yet once the duty to leave the state of nature has been established, a further question arises. With whom must one enter a civil condition? Or, put differently, how is the scope of public right to be specified? I call this the Particularity Question.[166]

Kant's answer to the Particularity Question appears to depend on what Waldron has called the Principle of Proximity.[167] The duty to leave the state of nature arises among those who "cannot avoid living side by side" with one another, that is, among those who stand in relations of "unavoidable interaction."[168] The thought seems to be that where individuals are exposed to one another in this way, they must enter a rightful condition where provisionally acquired right can receive the public authorization required for conclusive right.[169] Since the civil condition is introduced in order to overcome the problems arising from the unilateral character of rights-claims in the state of nature, the scope of political authority must somehow be related to the persons whose interaction makes such a public authority necessary in the first place.

Yet this immediately gives rise to a difficulty. Patterns of unavoidable interaction do not typically fall into neatly bounded and clearly separated units. On the contrary, in a world such as ours they appear to extend outward in continuous and overlapping ways. If so, the Principle of Proximity seems unable by itself to explain why political authority should be divided into distinct states with separate jurisdictions, or to determine uniquely where the boundary of one authority should fall rather than another. The problem, then, is not that Kant cannot explain why a civil condition is necessary at all. It is that the Principle of Proximity seems unable to explain the scope of public right without either expanding toward a single global jurisdiction or leaving the boundaries between distinct jurisdictions underdetermined. In contemporary terms, this is the

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create the very possibility of mine and thine out of nothing. Rather, it presupposes that individuals can already stand in relations of external possession and makes those relations conclusive through omnilateral authorisation. If acquisition were impossible prior to the civil condition, there would be nothing for the civil condition to make conclusive. In that case, the transition to public right would lack any intelligible basis (6: 312). This point is difficult to explain on interpretations that deny that individuals can acquire any kind of property right in the state of nature under the Provisionality Thesis. For if no acquisition is possible prior to the civil condition, it becomes unclear how the Postulate of Public Right could proceed from private right in the state of nature at all.

As mentioned above, I should nevertheless qualify here that I do not claim that property rights are the *only* reason why individuals must leave the state of nature. Kant says the Postulate of Public Right follows from private right, which potentially involves more than just property rights. Albeit note the following passage with specific reference to property rights: "if it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution" (6: 256).

166 I borrow the term from Simmons's formulation of the "particularity problem." In the present context, I take the corresponding issue to arise as the boundary problem: if there is a duty to enter a rightful condition with others, the question remains with which others this condition must be established.

167 See (Waldron 2003, 2009, 2011) which will be discussed in detail below.

168 (6: 307).

169 (6: 256).

boundary problem: the problem of explaining why political authority extends over some persons and territories rather than others.[170]

In this final part of the thesis, I argue that the Principle of Proximity has often been asked to do the wrong kind of work. It cannot serve as a de jure boundary-drawing principle: it cannot by itself identify the rightful boundaries of political authority. But it is not therefore empty. I distinguish three possible readings of the principle. On the strongest reading, proximity is supposed to determine who must belong to the same state; this reading must be rejected because it faces a dilemma. If proximity is treated as sufficient for common statehood, it tends toward a world state; if it is treated merely as necessary, it leaves boundaries underdetermined. On the weakest reading, proximity merely explains why persons who cannot avoid interacting may not remain in a state of nature with respect to one another; this reading is correct but incomplete. I defend an intermediate reading. Proximity identifies relations of unavoidable interaction through which candidate political communities come into view. These communities are not already rightful states, and their boundaries are not already de jure boundaries. Yet this does not make them normatively irrelevant. The underdetermination that is fatal to proximity as a de jure boundary-drawing principle is not fatal at the de facto stage, because proximity is not yet being asked to settle the rightful boundary. Its task is to identify the candidate communities whose claims to self-determination and public right must then be assessed.

Part III proceeds in two chapters. Chapter 1 examines the Principle of Proximity as a possible de jure boundary principle. It begins by introducing the textual basis of the principle in Kant's Doctrine of Right (section 1), before distinguishing three possible readings of it (section 2). It then reconstructs the boundary-drawing interpretation, according to which proximity is supposed to determine the scope of political authority (section 3). The chapter argues that this interpretation faces a dilemma. If proximity is treated as sufficient for common statehood, it tends toward a world state (section 4). If it is treated merely as necessary, it avoids that implication only by leaving boundaries underdetermined (section 5). Section 6 asks whether this underdetermination is itself objectionable by distinguishing principled underdetermination from arbitrary or wrongful determination. The chapter concludes that the problem is not simply that proximity fails to identify one uniquely correct boundary, but that it does not yet explain how acceptable boundary specification can be distinguished from wrongful boundary-making.

Chapter 2 takes up this deeper problem. It first turns to Simmons's demand for substantive boundary criteria and argues that annexation is the decisive test case for a weakened proximity view (section 1). The reference to the necessity of the civil condition cannot resolve this problem, because it does not explain why one

[170] See (Simmons 2013, 2016, 59–90).

proximity-compatible political order has a better claim than another. This motivates the turn to self-determination as a response to the annexation problem (section 2). Yet self-determination cannot simply replace proximity, since it reintroduces the Particularity Question: it must still be asked which community counts as the relevant self (section 3). Nationalism and voluntarism offer possible ways of answering this question, but both are problematic from within the Kantian framework developed here. The final section therefore returns to proximity in a more modest role: not as a principle that determines rightful boundaries, but as a principle that identifies candidate political communities whose claims to self-determination and public right can then be assessed (section 4). The conclusion draws together this staged account (section 5).

Chapter 1 Proximity as a de jure principle

1. From public right to the Principle of Proximity

The Principle of Proximity is not formulated by Kant under this name. It must be extracted from the Postulate of Public Right and from the surrounding discussion of the transition from private to public right. This section reconstructs that sequence in three steps. First, it shows that Kant's state of nature is not a condition without rights, but a condition in which rights remain under merely unilateral conditions and therefore lack the public, omnilateral form required for conclusiveness. Second, it explains why this defect gives rise to the Postulate of Public Right. Third, it isolates the proximity component of that Postulate: the claim that the duty to enter a rightful condition arises with those with whom one cannot avoid standing in external relations.

The central textual basis for this argument is §41 of the Doctrine of Right, "Transition from the State of Nature to the Juridical State." Kant there defines the juridical state as "the relationship among human beings which contains the conditions solely under which everyone can enjoy his rights." He then contrasts this condition not with social life as such, but with a condition lacking public determination of right:

> "The non-juridical state, i.e. the state in which there is no distributive justice, is called the state of nature (status naturalis). The state of nature is not contrasted to the social state […] but rather to the civil state (status civilis) of a society under distributive justice, because in the state of nature there can be lawful societies (e.g. marriage, parental, household in general, and countless others) […]."[171]

This matters because the proximity question does not arise against a background of complete lawlessness, but against a background of already possible private right. In the present context, the relevant case is property. As Part I argued, external objects must be capable of being mine or yours; as Part II argued, such rights can already arise in the state of nature, even if only provisionally. Property rights are therefore not created ex nihilo by the civil condition. The problem with the state of nature is rather that such rights remain under merely unilateral conditions: they lack the public, omnilateral form required for conclusiveness. More generally, then, the state of nature is defective not because no juridical relations exist at all, but because there is no public authority competent to determine and secure claims of right in a way binding on all.

This also explains why the transition to public right is not a transition from a condition without rights to a condition with wholly new rights. Kant explicitly denies that public law adds a new substance of duties:

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[171] (6: 305-6)

> "Public law contains no additional or different duties for human beings in relation to each other than can be conceived in the state of private law. The substance of private law is the same in both."[172]

This point is crucial for the argument that follows. If public right added wholly new duties, the proximity question would concern the creation of a new juridical order. But if public right changes the form rather than the substance of right, then the question becomes more precise: with whom must already possible but merely provisional relations of right be brought under public right? In the state of nature, claims of right remain dependent on private judgment; in the juridical state, they are determined publicly. The transition to public right is therefore a transition from unilateral and merely provisional right to public and conclusive right.

This is why the juridical state is necessary. If claims of right are to have rightful force, they must not remain dependent on each person's private judgment. They must be determined under public law. Kant formulates this requirement in the passage immediately following §41, where he introduces the Postulate of Public Right:

> "From private right in the state of nature there proceeds the postulate of public right: when you cannot avoid living side by side with others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice.—The ground of this postulate can be explicated analytically from the concept of right in external relations, in contrast with violence (violentia)."[173]

The Postulate of Public Right contains two distinct elements. The first is the public-right component: private right in the state of nature requires transition to a rightful condition. The second is the proximity component: this transition is required with those with whom one cannot avoid living side by side. The first component explains why public right is necessary. The second appears to specify with whom public right must be established.

It is this second component that gives rise to what I call, following Waldron, the Principle of Proximity. The principle begins from Kant's claim that the duty to leave the state of nature arises among those who "cannot avoid living side by side"[174] with one another. But the significance of this claim is not yet clear. It might be read as a boundary principle, as a weak condition of juridical interaction, or as something between the two.

Kant elsewhere connects this condition with "naturally unavoidable conflict between the choice of one with that of another."[175] The relevant point is not actual conflict, but the possibility of conflicting claims of right arising from

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[172] (6: 306).
[173] (6: 307).
[174] (6: 307).
[175] (6: 267).

unavoidable external interaction. The basic thought is that when persons' external freedom and claims of right unavoidably bear on one another, they may not remain in a condition in which each determines right according to private judgment.

The problem is not that others may happen to be hostile. The problem is that, in the state of nature, each person acts according to their own private judgment of right. Even well-disposed persons would remain in a non-rightful condition if there were no public authority competent to determine claims in a way binding on all. Kant makes this explicit when he writes:

> "it is not experience from which we learn of human beings' maxim of violence and of their malevolent tendency to attack one another before external legislation endowed with power appears. It is therefore not some fact that makes coercion through public law necessary. On the contrary, however well-disposed and law-abiding men might be, it still lies a priori in the rational idea of such a condition […] that before a public lawful condition is established individual human beings, peoples, and states can never be secure against violence from one another, since each has its own right to do what seems right and good to it and not to be dependent upon another's opinion about this."[176]

This passage explains Kant's claim that the Postulate of Public Right can be explicated "analytically" from the concept of right in external relations.[177] As argued in Part II, the difficulty with unilateral acquisition is not that it is juridically unintelligible. A unilateral act of acquisition can have juridical significance because the Postulate of Private Right confers the power to acquire. The difficulty is rather that such an act purports to bind others: to claim something external as mine is not merely to describe my relation to an object, but to claim that others are under an obligation to refrain from using it. For that reason, the unilateral exercise of the power to acquire cannot by itself be permissible or conclusive. It requires omnilateral authorization. If I coerce others to respect my claim in the state of nature, my coercion is therefore not yet authorized by a public will. It remains the imposition of a private judgment.

The defect of the state of nature is therefore not primarily empirical violence, but the absence of public determination. In such a condition, even rightful claims remain dependent on each person's private judgment, and there is no

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[176] (6: 312).

[177] The reference to analytic explication may seem surprising in light of Part I, where I argued that the Postulate of Private Right is synthetic. There is no contradiction, however, because the two Postulates occupy different positions in Kant's argument. The Postulate of Private Right is synthetic because it extends right beyond empirical possession to intelligible possession: it makes possible the claim that an external object can be mine even when I am not physically holding it. The Postulate of Public Right, by contrast, does not introduce a new substance of right. It presupposes private right in the state of nature and draws out what is required if such rights are to be made conclusive under conditions of unavoidable external interaction. In this sense, its ground can be explicated analytically from the concept of right in external relations, even though the possibility of acquired right itself depends on the synthetic Postulate of Private Right.

public authority competent to determine the matter with rightful force. If persons cannot avoid standing in external relations with one another, the very idea of rightful coercion requires a public condition in which claims of right are determined by law rather than by private judgment.

This also clarifies how the proximity component of the argument should be understood. The Principle of Proximity should not be read as a principle of mere physical nearness. Kant's point is not that spatial closeness as such has moral or juridical significance. Rather, proximity matters insofar as it makes interaction unavoidable. This is suggested by Kant's appeal to the spherical surface of the earth:

> "because the spherical surface of the earth unites all the 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."[178]

The relevant proximity is therefore not mere spatial nearness. Physical closeness matters only insofar as it makes persons' external freedom and claims of right unavoidably bear on one another. Conversely, distance does not by itself exclude juridical interaction. Kant's appeal to the spherical surface of the earth should therefore not be read as a claim that mere physical co-presence is sufficient for common statehood. Its point is rather that, because the earth is finite, complete juridical isolation is impossible: persons cannot avoid coming into practical relations with one another. What matters for Kant's argument is not proximity as such, but unavoidable practical relation in the use of external freedom.

We should therefore distinguish two claims in Kant's argument. The first is the general public-right claim: where external rights are claimed, a merely unilateral condition is defective and must be replaced by public law. The second is the particularity claim: the duty to enter public right arises with those with whom one cannot avoid standing in external relations. The first claim explains why public right is necessary. The second appears to tell us with whom public right must be established. It is this second claim that gives rise to the Principle of Proximity considered in this chapter.

This gives the Principle of Proximity its initial plausibility. If the reason public right is necessary is that unilateral claims of right cannot be made consistent with the equal freedom of others, then the duty to enter a rightful condition seems to arise among those whose external freedom is unavoidably entangled. But it remains unclear what follows from this. Does proximity determine who must belong to the same state? Does it merely identify the circumstances under which public right becomes necessary? Or does it play a different role, by explaining

[178] (6: 262). See also later at (6: 355).

how candidate political communities arise? These are the three interpretations to which I now turn.

2. Three readings of the Principle of Proximity

The preceding section showed that the Principle of Proximity has its textual basis in Kant's claim that those who "cannot avoid living side by side" must leave the state of nature and enter a rightful condition. But it is not yet clear what function this principle is supposed to perform in Kant's argument. I distinguish three possible readings.

On the strongest reading, the Principle of Proximity is a de jure boundary-drawing principle. By a de jure boundary, I mean a boundary that possesses normative standing: it marks the rightful scope of political authority. A de jure boundary tells us where one political authority is entitled to rule, where its jurisdiction ends, and why those subject to it are rightly subject to this authority rather than another. To treat the Principle of Proximity as a de jure boundary-drawing principle is therefore to claim that proximity can identify the rightful limits of political authority. On this interpretation, proximity is supposed to determine who must belong to the same state or civil condition.

The claim can be stated as follows:

De jure boundary-drawing reading: persons who stand in relations of unavoidable proximity ought, for that reason, to belong to the same political authority.

On this reading, the Principle of Proximity does not merely explain why public right is necessary. It also explains how the boundaries of public right should be drawn. It answers the Particularity Question directly: one must enter the civil condition with those with whom one stands in unavoidable proximity. The boundaries of the state should therefore track the scope of such unavoidable interaction.

On the second and weakest reading, the Principle of Proximity is not a boundary-drawing principle at all. It does not tell us who must belong to the same state, nor where the boundaries of political authority should fall. Rather, it identifies the circumstances under which persons may no longer remain in the state of nature.

The claim can be stated as follows:

Juridical-threshold reading: persons who stand in relations of unavoidable proximity may not remain in a state of nature with respect to one another.

On this reading, proximity explains why public right becomes necessary where persons cannot avoid interacting. Where persons' external freedom and claims of right unavoidably bear on one another, they may not remain in a condition in

which each determines and enforces right according to private judgment. The Principle of Proximity therefore identifies the condition under which the defect of unilateral right becomes juridically salient: unavoidable interaction among persons whose claims of right may conflict. It therefore gives proximity only a threshold function. It identifies when remaining in the state of nature is no longer permissible, but it does not yet identify a bounded political community, a determinate jurisdiction, or the institutional form through which public right is to be established.

The third reading occupies an intermediate position. On this reading, the Principle of Proximity is not a de jure boundary-drawing principle: it does not identify the rightful borders of the state. But neither is it merely a general impetus to leave the state of nature. Rather, it explains how certain persons come to form a candidate political community in the first place. In this sense, proximity has a de facto role. By "de facto," I do not mean normatively irrelevant. I mean that proximity identifies relations through which a candidate political community comes into view, even though its boundaries are not yet justified as rightful and its claims still require public-right assessment.

The claim can be stated as follows:

De facto community-formation reading: persons who stand in a relation of unavoidable interaction form a candidate political community, though the boundaries of that community are not yet justified as rightful.

On this interpretation, proximity identifies relations of juridical salience. Persons who stand in a relation of unavoidable interaction may come to stand in a de facto political relation to one another. Their interactions generate a common need for public determination and may give rise to institutions, practices, and expectations that mark them out as a candidate political community.

This reading therefore gives the Principle of Proximity a more substantial role than the juridical-threshold reading. The threshold reading identifies only when public right is required; the intermediate reading also helps identify the relations of interaction through which candidate political communities emerge. At the same time, it falls short of the ambition of the de jure boundary-drawing interpretation. A de facto political community is not already a rightful state. If its boundaries are to acquire de jure standing, they must be assessed through further principles.

In what follows, I begin by reconstructing and then critically assessing the strongest reading of the Principle of Proximity.

3. The Principle of Proximity as a boundary-drawing principle

The strongest interpretation of the Principle of Proximity treats it as a de jure boundary-drawing principle. On this reading, proximity is not supposed merely

to explain why public right is necessary. It is rather meant to explain where public right must be established and who must be included within the same public authority, that is, where the rightful boundaries of political authority ought to fall. The attraction of this reading is that the Principle of Proximity would allow Kant to answer the Particularity Question. If the state is needed to resolve the juridical problems generated by unavoidable interaction, then the boundaries of the state should track the scope of that interaction. Political authority should extend over those whose external freedom, use of resources, and claims of right are sufficiently entangled to require one common legal order.

This reading can be reconstructed most strongly through Waldron's account of proximity. Waldron's starting point is the need for a principle that explains the formation of separate political communities. The question is not merely why there should be political authority at all, but why political authority should be divided into distinct jurisdictions, and why these persons and territories should belong together rather than others. History alone cannot answer this question. History has allocated persons and territory into states, but it has done so through conquest, settlement, secession, dynastic inheritance, purchase, nationalist ideology, colonial administration, and many other contingent processes. These facts may explain how existing states came about, but they do not by themselves supply a principle for thinking about the rightful basis of political community. What is needed is a principle of particularisation: a principle that explains why a civil condition should be established among these persons rather than others.[179]

To motivate the reading of the Principle of Proximity as a de jure boundary-drawing principle, Waldron contrasts proximity with what he calls affinity views. Affinity views hold that political community should be formed among those who share "ethnic, cultural, religious or linguistic connection."[180] In other words, states should be formed among those who already share some pre-political bond: nationality, language, ethnicity, religion, culture, common sympathies, or mutual trust. Political community is then understood as the institutional expression of an already existing people. The state gives legal form to a community that is already united by identity or fellow-feeling. The proximity view rejects this starting point. The purpose of the state is not to institutionalise pre-existing affinity, but to establish a common juridical order among persons whose external freedom is unavoidably entangled. It therefore offers a non-affinity-based answer to the Particularity Question: the relevant question is not who already belongs together by virtue of culture or identity, but among whom the juridical

[179] Waldron states that his topic is "the basis on which we form separate political communities" and asks how we should correlate persons, land, cultures, languages, and ethnicities into distinct political communities. He also notes that history has allocated persons and territory into states "ambiguously and contestably" and with the assistance of principles and ideologies. See (Waldron 2011, 2–3, 2009, 2–3).

[180] (Waldron 2011, 3–5). Waldron introduces proximity as an alternative to forming political community with those one "like[s]," those who are "like" oneself, or those who share "affinity or trust based on culture, language, religion, or ethnicity." See (Waldron 2009, 1)

problem of public right arises. Instead of grounding political community in likeness, trust, or shared identity, it grounds political community in the need to resolve the conflicts that arise among persons whose external freedom is unavoidably entangled. One does not choose one's political associates by asking who is culturally similar or nationally connected. One finds oneself in juridical relations with those whose use of external freedom affects one's own. The state should therefore be formed where the problem of public right arises.

The mechanism by which proximity becomes jurisdictionally significant is straightforward. Human beings occupy space and use external objects. They cultivate land, build dwellings, use roads, claim water, organise work, trade, move, contract, and form expectations about what belongs to whom. Where persons live in one another's vicinity, these activities do not remain isolated. A person who claims a plot of land, a water source, a path, or some other external object does not merely describe a private relation to that object. She also makes a claim against others: that they ought to abstain from interference, recognise her use, or coordinate their conduct with hers. Others may deny the claim, assert a rival claim, or act according to a different view of rightful use. Proximity matters because it transforms external freedom into a common juridical problem. It identifies the relations in which claims of right cannot be exercised independently of one another.[181]

This is why the proximity model is Kantian rather than merely Hobbesian. The problem is not simply that persons may threaten one another's security. Nor is it merely that conflict is inconvenient. The deeper problem is that private judgment cannot settle claims of right in a way that binds all. In the state of nature, each person may act according to what seems right to her. Even if each person acts sincerely, their judgments may conflict. One person may take herself to acquire a piece of land permissibly; another may deny that acquisition or defend a rival principle of distribution. If each enforces her own judgment, force is deployed in the same social space according to competing principles. Such unilateral enforcement cannot generate the reciprocity and consistency required for rightful coercion. What is needed is a shared juridical framework in which claims are determined in the name of all.[182]

The decisive step in the strong reading is the move from juridical conflict to common jurisdiction. It is not enough to say that proximity generates conflict. If proximity is to function as a boundary-drawing principle, it must show why the persons involved in such conflict ought to be subject to the same public

[181] Waldron's Kantian reconstruction begins from the thought that persons living in one another's vicinity will want to take possession of material resources and may come into conflict with others who want the same resource or hold a different theory of distribution. See (Waldron 2009, 6–7, 2011, 6–7).

[182] Waldron writes that "The categorical imperative won't do it" because private moral judgment may lead different persons to act righteously on different principles. He concludes that "We need a shared juridical framework" and that without it force is deployed in the same setting on the basis of competing arrays of principles. See (Waldron 2009, 7, 2011, 7).

authority. The answer is that the relevant conflicts are not isolated. They are dense, repeated, and mutually entangled. A dispute over land may connect to disputes over water, access, labour, environmental harm, contract, family relations, policing, or public goods. The resolution of one dispute affects the background against which others are resolved. In such circumstances, piecemeal settlement is insufficient. The point is not merely that each dispute needs an answer. The point is that these disputes form one field of juridical interaction and therefore require one coherent public framework.[183]

This is also why the proximity model distinguishes between the need for law and the need for a state. Persons may have dealings across great distances. They may trade, contract, communicate, or enter occasional disputes with people elsewhere. Such relations may require legal regulation, but they do not necessarily require shared statehood. Long-distance trade disputes, for example, may be governed by transnational law or commercial practices. What calls for state-like political authority is the specific kind of juridical field created by dense and entangled interaction among persons living together. Where disputes are frequent, varied, repeated, and mutually affecting, there must be standing arrangements capable of applying in case after case and of ensuring that the solutions cohere. The proximity view therefore treats statehood as the appropriate response not to interaction as such, but to a dense field of interdependent rights-claims.[184]

The state is suited to this task because it is not merely an ad hoc mechanism of dispute resolution. It is a relatively centralised legal order capable of maintaining an integrated system of norms. A state can organise property, contract, tort, family law, environmental regulation, criminal law, public goods, and constitutional authority within one coherent institutional structure. This matters because, in a densely entangled field of interaction, legal questions do not arise as isolated episodes. They form a whole structure of social cooperation and conflict. Someone, or some institution, must take responsibility for the coherence of the legal order as a whole. The state is the institutional form that can take responsibility for this "big picture."[185]

This is the point at which proximity begins to look like a de jure boundary-drawing principle. If the state is justified by the need to provide one coherent public framework for a dense and entangled field of disputes, then the scope of

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[183] Waldron identifies "frequency, density, variety, and entanglement" as the features of disputes that arise among those who live unavoidably side by side and that make piecemeal conflict resolution insufficient. See (Waldron 2009, 12, 2011, 12).

[184] Waldron explicitly distinguishes "the need for law" from "the need for a state," arguing that many long-distance disputes may be handled by transnational law, whereas "dense entangled thickets of disputes" require political community and state-like legal order. See (Waldron 2011, 12–13).

[185] Waldron describes the state, following Kelsen, as a "relatively centralized legal order" and argues that where conflict is endemic and entangled, "Someone or some entity must take responsibility for the coherence of what emerges as an integrated body of law." See (Waldron 2011, 13–14).

the state should be fixed by the scope of that field. Those whose disputes form one juridical field should be under one public authority. Those whose relations are more occasional, external, or transnational may require law, but not necessarily common statehood. The boundary of the state is therefore supposed to track the boundary between one field of dense juridical interaction and another. This is why proximity appears capable of answering the Particularity Question. If the state exists to transform unilateral claims of right into publicly determined rights, then its rightful scope should extend over the persons whose claims form one interconnected problem of public determination.

In this respect, the proximity model is particularist without being nationalist. It does not dissolve political community into abstract humanity, but neither does it reduce political association to shared identity. The relevant persons are these persons here, whose claims, uses, conflicts, and expectations confront one another in a concrete juridical setting. They become juridically salient to one another not because they share nationality, religion, language, or culture, but because their external freedom is actually and unavoidably entangled.[186]

The strong proximity model can therefore be summarised as follows. Human beings settle in particular places, often around resources and opportunities. Their lives become structured by repeated dealings, shared expectations, and overlapping uses of external objects. These relations generate disputes that are not isolated, but dense and mutually entangled. Such disputes require more than individual conscience and more than piecemeal conflict resolution. They require a standing, coherent, and publicly responsible legal order. The proper political community is therefore the community formed among those whose lives generate this need for shared public law. In this way, the Principle of Proximity appears to explain the formation of particular states without relying on affinity, nationality, or cultural homogeneity.[187]

This presents the Principle of Proximity in its strongest form. It appears to answer the Particularity Question by tying the scope of political authority to the scope of the dense and entangled disputes for which a coherent common legal order is required. Yet this raises a further question about how exactly the connection between proximity and the drawing of de jure boundaries is to be understood. One possibility is to read proximity as a sufficient condition: where persons stand in the relevant relation of proximity, they ought to belong to the same state. Another possibility is to read proximity as a necessary condition: persons may belong to the same state only where some relevant relation of

[186] In "Who Is My Neighbor?", Waldron argues that the Good Samaritan parable turns on "actual proximity" and that those present are bound to the person in need because "They are there and that makes them his neighbors." In other words, proximity can make another person morally salient independently of communal identity. See (Waldron 2003, 347–348).

[187] Waldron summarises the proximity model as follows: human beings cluster in particular areas; endemic and entangled disputes arise in those areas; and, for reasons of efficiency, integrity, and justice, these disputes should be addressed by a political community responsible for the centralised legal arrangements of a state. See (Waldron 2009, 14, 2011, 14).

proximity obtains. Waldron does not explicitly formulate the view in these terms, nor does he explicitly choose between a sufficient-condition and necessary-condition formulation. Yet, it seems that the positive model he develops is best reconstructed in sufficiency-style terms: where proximity generates a sufficiently dense, repeated, and entangled field of interaction, those involved ought to form a common political community. The necessary-condition reading is better understood not as Waldron's own view, but as a possible repair once the sufficiency-style reading encounters difficulties. The next two sections consider these possibilities in turn.

4. Proximity as sufficient

I begin with the sufficient-condition reading, since it captures the strongest version of the proximity model and is the reading closest to Waldron's positive account. Section 4.1 formulates this reading in more detail. Section 4.2 argues that, once proximity is treated as sufficient for common statehood, the argument appears to extend beyond any particular state and to point toward a world state. Section 4.3 then explains why this implication is problematic for Kant, who rejects a world state as the appropriate institutional form of public right.

4.1. The sufficient-condition reading

The first way to understand the connection between proximity and political authority is to read proximity as a sufficient condition for common public authority. On this reading, if persons stand in the relevant relation of unavoidable proximity, then they ought to belong to the same political authority. More precisely, where persons are involved in dense, repeated, and unavoidable relations of external interaction, such that their claims of right form one entangled juridical field, this is sufficient to require a common public legal order.

This reading should not be understood as the claim that every interaction requires common statehood. Persons may trade, communicate, or enter into occasional disputes across great distances without thereby belonging to the same state. Rather, the sufficiency reading concerns a stronger form of interaction: relations in which persons' uses of external freedom are so frequent, overlapping, and mutually affecting that their claims cannot be settled coherently by separate or merely piecemeal legal orders. The sufficiency reading therefore concerns not interaction as such, but a dense field of interdependent rights-claims.

Understood in this way, the Principle of Proximity can be stated as follows:

Sufficiency reading: if persons stand in dense, repeated, and unavoidable relations of external interaction, such that their claims of right form one entangled juridical field, then they ought to belong to the same political authority.

The important point is that this reading gives proximity genuine boundary-drawing force. It does not merely say that persons in unavoidable interaction must leave the state of nature in some unspecified way. It says that they must leave it together, under a common political authority. The boundary of the civil condition should therefore track the scope of the relevant juridical field. In this way, the sufficiency reading is attractive because it gives the Principle of Proximity a direct answer to the Particularity Question. If the problem of the state of nature is that persons make and enforce claims of right unilaterally, then public right is needed among those whose claims cannot be coherently determined apart from one another.

This is why the sufficiency reading is the natural continuation of the strong boundary-drawing interpretation. If proximity identifies the persons among whom the juridical problem of public right arises, then it seems plausible to conclude that these persons should be subject to the same public authority.

The appeal of the sufficiency reading is therefore that it connects the scope of the state to the very reason the state is necessary. It does not introduce an independent principle of nationality, consent, historical entitlement, or affinity in order to determine who belongs together. Rather, it derives the scope of political authority from the juridical function of public right itself. Public authority is needed to replace unilateral judgment with public determination; accordingly, it should include those among whom unilateral judgment creates one shared juridical problem.

4.2. The world-state implication

The difficulty is that the sufficiency reading seems unable to explain why the demand for common political authority should stop at the boundaries of a plurality of states. If dense, repeated, and unavoidable interaction is sufficient for common political authority, then wherever such interaction occurs, those involved ought to belong to the same civil condition. But relations of interaction do not usually fall into discrete and naturally bounded units. They extend outward in overlapping and continuous ways. If A stands in sufficiently dense interaction with B, and B stands in sufficiently dense interaction with C, and C stands in sufficiently dense interaction with D, then the requirement of common political authority seems to expand along the chain. The point is not that every person directly interacts with every other person. It is that the relations that generate the need for public right are not naturally confined within the borders of existing states.

This is especially problematic because, even if proximity itself is not strictly transitive, common membership in a state is. If A's relation to B is sufficient for shared political authority, and B's relation to C is sufficient for shared political authority, then the logic of common authority seems to require a political unit including A, B, and C. Whenever the juridical field extends beyond an existing

boundary, the same reason that originally justified common statehood reappears at the new boundary. If interaction across that boundary is dense enough to create conflicting claims of right, then the boundary itself becomes unstable. The principle then requires expansion to include the next set of persons whose external freedom is sufficiently entangled.

This is not a merely abstract possibility. It would be different if human beings were naturally distributed into sharply separated pockets of interaction. Miller notes that the proximity criterion might yield determinate results in a hypothetical world composed of "small islands each capable of supporting human life but separated by wide expanses of sea." In such a world, it might be clear with whom one must enter the civil condition. But, as Miller points out, "in general our world is not like that": human populations and economies are "naturally continuous with one another," and where they are not, this is often the result rather than the cause of political boundary-drawing.[188]

The sufficiency reading therefore faces the following pressure. If the relevant relation is dense and unavoidable interaction, and if such interaction extends continuously across space, then the Principle of Proximity seems to press toward ever larger political units. Existing boundaries cannot be treated as fixed stopping points, since interaction is likely to occur across them as well. Miller puts the worry directly: Kant must explain "why the state's jurisdiction should not be universal—why there should not be a single world state," since "there is, after all, likely to be some interaction between people across state boundaries wherever these are drawn."[189]

A further version of the same pressure arises once the territorial dimension of state authority is taken into account. On Kant's account, the state does not merely regulate interactions among persons. It also claims jurisdiction over a territory. But a state's claim to jurisdiction over territory restricts the freedom of outsiders: it renders that territory unavailable for their use except on terms set by the state. Miller therefore suggests that the moral reason Kant gives for entering the civil condition may apply "reiteratively" to the state's own territorial claim. Just as an individual's unilateral claim to an external object requires public authorization, so too a state's unilateral claim to territorial jurisdiction may require a further public juridical relation with outsiders.[190] If that is right, the logic of the Postulate of Public Right does not stop at the domestic state. It

[188] (Miller 2016, 861–62).

[189] (Miller 2016, 862). This expansionary pressure is structurally similar to the one Goodin identifies in democratic theory. If all those affected by collective decisions ought to have a say in making them, then the demos cannot be simply assumed to coincide with existing territorial boundaries. Existing boundaries may function only as rough proxies for deeper relations of affectedness. Goodin's concern is democratic inclusion rather than Kantian public right, but the analogy is useful: once a theory grounds political membership in relational affectedness rather than inherited boundaries, it faces pressure toward increasingly inclusive, potentially global, constituencies. See (Goodin 2007, 40–42, 48–52, 52–68).

[190] (Miller 2016, 862)

extends outward to relations among states and, potentially, toward a single universal jurisdiction.

Waldron's own model acknowledges a similar pressure. The proximity account begins with "little pockets of human settlement" that might each require a distinct political community. But as these communities expand and populations become more evenly distributed, boundaries may begin to seem arbitrary from the perspective of the original model. Waldron even concedes that there may come a time when "the world is so globally interactive" that there is little sense in continuing to think in terms of distinct local pockets at all; in that case, one might imagine the circle "without the boundaries."[191]

The sufficiency reading therefore pushes toward a world state. It gives the Principle of Proximity enough force to explain why those in dense and unavoidable interaction must belong to the same civil condition. But once the relevant patterns of interaction are continuous and overlapping, the principle has no obvious internal stopping point. In a globally interconnected world, it seems to require the expansion of political authority until all persons whose external freedom is connected through such relations are brought under one civil condition. If a world state is not an acceptable conclusion for Kant, then the sufficiency reading gives proximity more boundary-drawing force than it can bear. This is the issue to which the next section turns.

4.3. Against the world-state

The world-state implication is problematic because Kant appears to reject, or at least strongly resist, the idea that a rightful global order should take the form of a single sovereign authority. This point must be stated carefully. Kant does not reject the need for juridical relations beyond the state. On the contrary, he insists that domestic right, international right, and cosmopolitan right are all necessary parts of a complete system of right. Kant's position is not "either cosmopolitan Right, or state sovereignty," but rather "if cosmopolitan Right, then the morality of sovereign states."[192] The point is therefore not that Kant denies the need for global juridical order. The point is that he does not identify such order with a single global state.

This matters because Kant's account of public right is structurally differentiated. Domestic right governs relations among citizens within a state; international right governs relations among states; cosmopolitan right governs certain relations among citizens of different states. These are not simply three applications of domestic right at different scales. Rather, they are functionally distinct forms of public right.[193] If the sufficiency reading of proximity entails

[191] (Waldron 2011, 14–15).
[192] (Flikschuh 2010, 469).
[193] As Flikschuh puts it, "Cosmopolitan Right is not domestic Right writ large." See (Flikschuh 2010, 476).

that all persons connected through relations of unavoidable interaction must belong to one civil condition, then it threatens to collapse this differentiated structure. Domestic right would expand until it absorbed international and cosmopolitan right into a single global jurisdiction.

Kant's own remarks in Toward Perpetual Peace also suggest that a global sovereign state is conceptually and morally problematic. He rejects the idea of a "state of states," arguing that a state involves a relation of superior and inferior, legislator and subject, whereas a plurality of states under one state would no longer remain a plurality of states but would be transformed into one people.[194] Flikschuh interprets this not merely as a pragmatic hesitation, but as part of Kant's sovereignty dilemma: states, unlike individuals in the state of nature, already have an internal rightful constitution and therefore have "outgrown the constraint of others" to bring them under a more extended coercive constitution.[195] On this interpretation, a world state would not simply extend domestic right; it would undermine the moral status of states as juridically sovereign agents.

Kant also has practical-political reasons for resisting a universal state. He worries that as government expands over an ever greater territory, "the laws progressively lose their impact as the government increases its range."[196] A universal state risks becoming a "universal despotism" and the "graveyard of freedom."[197] Kant therefore does not propose a global sovereign state as the institutional form of international right. His preferred solution is instead some form of league or federation of states, designed to overcome the lawless condition among states without absorbing them into one coercive global state.[198]

This creates a difficulty for the sufficiency reading of the Principle of Proximity. If proximity is sufficient for common statehood, and if proximity relations extend outward in continuous and overlapping ways, then the principle appears to push toward a single global civil condition. But this is precisely the institutional conclusion Kant seems unwilling to accept. The problem is not that Kant denies the need for right beyond the state. The problem is that the sufficiency reading seems to transform the requirement of right beyond the state into a requirement for one global state. In this respect, the Principle of Proximity would over-generate: it would not merely explain why local civil conditions are necessary, but would undermine the plurality of states that Kant's account of international and cosmopolitan right presupposes. This is the first horn of the dilemma.

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194 (8: 354).
195 (Flikschuh 2010, 480–81); (8: 355–356).
196 (8: 367).
197 (8: 28; 8: 367).
198 (8: 354–357).

5. Proximity as necessary

A possible response to the world-state challenge is to weaken the connection between proximity and political authority. Instead of treating proximity as a sufficient condition for common statehood, one might treat it only as a necessary condition. On this reading, the fact that persons stand in relations of unavoidable proximity does not by itself show that they must belong to the same state. It shows only that common political authority is justified only where some relevant relation of proximity obtains. Section 5.1 formulates this necessary-condition reading in more detail. Section 5.2 explains how it avoids the world-state implication. Section 5.3 then argues that this advantage comes at a cost: the reading leaves political boundaries underdetermined, and so raises the worry that they are arbitrary.

5.1. The necessary-condition reading

The necessary-condition reading can therefore be stated as follows:

Necessary-condition reading: persons may belong to the same civil condition only if they stand in some relevant relation of unavoidable proximity, such that common public determination has a juridical basis.

This reading reverses the direction of the sufficiency reading. The sufficiency reading says: if persons stand in the relevant relation of proximity, then they ought to belong to the same civil condition. The necessary-condition reading says: persons may belong to the same civil condition only if they stand in some relevant relation of proximity. Proximity is no longer what directly generates common statehood. It is instead a limiting condition on the legitimate scope of statehood.

On this interpretation, the Principle of Proximity does not require political authority to expand wherever relations of interaction are found. Rather, it rules out political authority where no relevant relation of proximity exists. A state may not simply incorporate persons or territories with which it has no meaningful juridical connection. Political authority must have some basis in the actual relations of external interaction among those subject to it.

5.2. Avoiding the world-state implication

This gives the necessary-condition reading its initial appeal: it preserves the anti-affinity and anti-imperial force of proximity without requiring the expansion of political authority wherever interaction extends.

The necessary-condition reading avoids the world-state implication because proximity no longer functions as a trigger for common statehood. On the sufficiency reading, wherever dense and unavoidable interaction is found, common political authority is required. If such interaction extends outward in

continuous and overlapping chains, the requirement of common authority expands with it. This is what generated the pressure toward a single global civil condition.

The necessary-condition reading blocks this inference. It does not say that all persons who stand in relations of unavoidable interaction must belong to one state. It says only that persons may rightly belong to one state only if they stand in some relevant relation of interaction. The existence of interaction between A and B does not by itself require A and B to share a state. Nor does the fact that A interacts with B, B with C, and C with D automatically imply that A, B, C, and D must all be brought under one political authority.

This allows the Principle of Proximity to be compatible with a plurality of states. Different political communities may each satisfy the proximity condition without the condition requiring their unification. The fact that interaction occurs across their boundaries may show that some juridical relation is required between them, perhaps under international or cosmopolitan right. But it does not by itself show that their boundaries must be dissolved or that they must be incorporated into one global state.

The necessary-condition reading therefore seems to preserve the main Kantian advantage that the sufficiency reading lacked. It can acknowledge that relations of external interaction extend beyond state borders without immediately converting those relations into a demand for global statehood. It thereby leaves room for a differentiated system of right: domestic right within states, international right among states, and cosmopolitan right among persons across state boundaries.[199]

5.3. The worry of arbitrariness

While the necessary-condition reading avoids the world-state implication, it does so at a cost. Once proximity is no longer sufficient for common political authority, it no longer tells us which persons must enter one civil condition together. It only tells us that those who are subject to one political authority must stand in some relevant relation of proximity. The Principle of Proximity then ceases to function as a determinative boundary-drawing principle. It may rule out some political arrangements as too disconnected from actual relations of interaction, but it does not identify which proximity-compatible arrangement ought to be chosen.

Simmons formulates this worry sharply. In a world in which population is "virtually continuous over the face of the earth," there are "indefinitely many ways" of drawing boundaries that satisfy the requirement to group individuals with those with whom they are "side by side." Respecting proximity, he

[199] The necessity-condition reading is of course still *compatible* with a world state. However, it no longer *entails* a world state.

emphasizes, "in no way determines that the only acceptable result will be the one at which convention/law has in fact arrived."[200] Boundary lines would therefore have to be drawn in "more-or-less arbitrary ways," since the underlying rationale of unavoidable interaction does not by itself yield a uniquely determinate result.[201]

The problem is easy to see. Suppose a population occupies a continuous region and that interaction is dense throughout it. On the necessary-condition reading, many different divisions may satisfy the proximity condition. The boundary could be drawn further east or further west, around one cluster rather than another, along one river rather than another, or by including one set of towns rather than a neighbouring set. So long as those included within each political unit stand in some relevant relation of interaction, the necessary condition is met. But the principle does not explain why this line, rather than some other nearby line, should be treated as the boundary of political authority.

Waldron's own discussion points in the same direction. The proximity model is easiest to imagine when human beings live in relatively separate pockets of settlement. In such a case, the scope of each political community might appear to track a naturally distinct field of interaction. But once populations expand and become more evenly distributed, that picture becomes harder to sustain. The lines separating one political community from another begin to look increasingly arbitrary from the standpoint of proximity itself. The original idea was that political communities should be formed among those who are unavoidably side by side. But if many persons are side by side with many others across continuous space, the principle no longer identifies one determinate boundary. Under such conditions, political boundaries may come to seem "pretty arbitrary," since they no longer track any clear discontinuity in mutual impact or reciprocal influence. What initially motivates the move to public authority thus ceases to provide a determinate guide to its scope.[202]

Taken together, these objections converge on a common thought. Under conditions of continuous interaction, the Principle of Proximity read as a

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[200] This already points to the stronger objection discussed in the subsequent section.

[201] Simmons (2013, 332, 335).

[202] Waldron (2011, 15). Miller presses the same point in a more explicitly critical form. In a world in which human populations, economic relations, and social interactions are continuous rather than neatly segmented, the political relationships Kant seeks to justify appear "arbitrarily constituted." Kant can explain why persons must enter some civil condition. But once proximity is weakened into a necessary condition, it becomes much harder to explain why they must enter or remain in a civil condition with this group rather than with some wider, narrower, or differently composed group. See Miller (2016, 862).
Waldron's acknowledgment of this worry suggests that his account should not be read as straightforwardly committed to either a pure sufficiency reading or a pure necessary-condition reading. His positive reconstruction of proximity gives the principle considerable boundary-drawing force and therefore appears closest to the sufficiency reading. Yet his recognition that boundaries become difficult to justify once interaction is continuous shows that he is also sensitive to the pressure that motivates a weaker, necessary-condition interpretation. In this sense, Waldron's account seems to move between the two readings rather than settling unambiguously on either.

necessary condition appears unable to establish the personal and territorial scope of political authority in a non-arbitrary way. The worry is therefore that the Principle of Proximity can no longer explain political boundaries without leaving them arbitrary.[203]

The result is the second horn of the dilemma. The full dilemma, then, is this: if proximity is read as a sufficient condition, it seems to over-generate and push toward a world state. If it is read only as a necessary condition, it avoids that implication, but appears unable to determine the boundaries of political authority in a non-arbitrary way. Many different boundary arrangements may be compatible with the requirement that persons stand in relations of unavoidable proximity. The worry is therefore that the final specification of boundaries must be made in a more-or-less arbitrary manner. But it remains to be seen whether this is itself a decisive objection. Perhaps a boundary-drawing principle need not identify one uniquely correct boundary in every case. It may be enough for it to constrain the range of permissible arrangements, while leaving the final specification of boundaries to political or legal settlement. To assess this possibility, we must distinguish between different senses in which boundaries may be called arbitrary.

6. Underdetermination and arbitrariness

The previous section argued that the necessary-condition reading of the Principle of Proximity avoids the world-state implication only by weakening the principle's boundary-drawing force. If proximity is merely necessary for common political authority, then many different boundary arrangements may be compatible with it. This is what gives rise to the worry of arbitrariness: if proximity does not select one boundary rather than another, it may seem that the final boundary must be drawn arbitrarily. But this inference requires closer examination. The fact that a principle underdetermines an outcome does not by itself show that the outcome is arbitrary in an objectionable sense. Perhaps a boundary-drawing principle need not identify one uniquely correct boundary in every case. Perhaps it is enough for it to constrain the range of permissible

[203] A related version of the arbitrariness worry arises in discussions of political membership. As Stilz notes, the particularity assumption—that political obligations attach to a specific political community rather than to any community satisfying the relevant moral criteria—can seem to depend on "morally arbitrary facts about our birth," echoing Carens's claim that citizenship is "the modern equivalent of feudal privilege." The concern is that individuals' subjection to particular states depends on contingencies, such as birthplace, that lack independent moral justification. This mirrors the boundary problem. If membership in a political community is fixed by territorial boundaries, then the arbitrariness of those boundaries is reflected in the arbitrariness of membership: the difficulty of explaining why authority extends over this territory rather than that one reappears as the difficulty of explaining why these individuals are subject to this political authority rather than another. See (Stilz 2009, 10) with reference to (Carens 1987, 252). This formulation captures the worry at its most basic level. It does not yet exhaust the stronger concerns raised in the literature. As will become clear below, Simmons's objection is not merely that boundaries may be arbitrary, but that actual processes of boundary formation have often been worse than arbitrary, involving conquest, domination, or wrongful imposition.

arrangements, while leaving the final specification of boundaries to political or legal settlement.

To assess this possibility, it is important to distinguish two senses in which boundaries may be called arbitrary. In the first sense, arbitrariness means principled underdetermination. This occurs when the relevant reasons constrain the range of acceptable outcomes without uniquely selecting one of them. In the second sense, arbitrariness means unprincipled determination. This occurs when an outcome is fixed by considerations that are irrelevant or hostile to the reasons that are supposed to justify it: force, domination, conquest, bias, whim, or considerations such as mere administrative convenience or historical accident when detached from any justificatory principle. Arbitrariness in the first sense is not necessarily objectionable. Arbitrariness in the second sense is.

This distinction is familiar from other contexts of practical reasoning. Suppose a community must settle on a rule for which side of the road to drive on. The relevant reasons clearly constrain the choice: everyone must drive on the same side if collisions are to be avoided and coordination secured. But those reasons do not uniquely determine whether the correct rule is to drive on the right or on the left. Either arrangement may satisfy the relevant purpose, provided it is generally followed. The rule is arbitrary in one sense, because either option could have been chosen. But it is not arbitrary in the objectionable sense, provided the choice is publicly settled, reciprocal, and responsive to the reasons that make a common rule necessary in the first place.

This suggests a possible defence of the Principle of Proximity. One might argue that proximity underdetermines boundaries only in the benign sense. On this view, the principle does not identify one uniquely correct boundary, but it still supplies a substantive constraint: political authority must be connected to relations of unavoidable interaction. The boundary may be drawn in more than one way, but not in just any way. Some arrangements may be excluded because they fail to track the relations that make public right necessary. The fact that the principle leaves a plurality of options open would therefore not show that it fails as a boundary-drawing principle. It would show only that boundary drawing involves precisely the underdetermination identified in the previous section.

This defence is initially attractive because it avoids an excessively demanding view of boundary justification. It would be implausible to require a theory of political authority to identify one uniquely correct line in every case. Many legal and political questions are not uniquely settled by the relevant principles, but they are not therefore unprincipled. If the Principle of Proximity could identify a range of permissible boundaries, then its failure to determine one unique boundary would not be fatal.

The difficulty is that this defence is unstable. For underdetermination to be principled, the principle must do more than leave several outcomes open. It must also explain why the open outcomes are permissible and why others are not. The

driving-side example works because the underlying reasons are clear: safety, coordination, publicity, and reciprocity. These reasons explain why both driving on the left and driving on the right may be acceptable, but also why having no common rule, or allowing each person to choose independently, is unacceptable. The underdetermination is therefore constrained by the very reasons that justify the rule.

The Principle of Proximity, on the necessary-condition reading, does not seem to provide this kind of constraint. It says that persons may belong to one civil condition only if they stand in some relevant relation of proximity. But once that condition is satisfied, it does not tell us which proximity-compatible boundary should be chosen. Nor does it explain why one such boundary is permissible while another is impermissible. A wider state, a narrower state, a shifted border, a federal arrangement, a secession, or even an annexation may all be presented as compatible with some relation of interaction. The principle excludes wholly disconnected authority, but it does not provide sufficient criteria for deciding among the many connected arrangements.

This is why the arbitrariness generated by the necessary-condition reading cannot confidently be described as merely benign. The problem is not simply that proximity fails to select one unique boundary. That alone would not be decisive. The problem is that proximity does not show that the plurality of boundaries it leaves open is a plurality of permissible boundaries. It underdetermines the boundary without supplying the further standards needed to distinguish acceptable specification from wrongful imposition. Its underdetermination therefore risks becoming arbitrariness in the pejorative sense.

This point also shows why the final specification of a boundary cannot simply be left to convention, historical settlement, or institutional practice without further argument. Such factors may legitimately specify an underdetermined boundary, but only if they operate within a morally constrained range. Historical settlement may stabilise a boundary; it may also be the product of conquest, exclusion, colonial imposition, ethnic cleansing, or annexation. Convention may solve a coordination problem; it may also entrench domination. Institutional practice may provide continuity; it may also reflect illegitimate subjection. The mere fact that a boundary is settled does not show that it is rightfully settled.

The result is therefore more damaging to the Principle of Proximity than the initial defence allowed. If proximity merely underdetermined a range of permissible options, then its lack of unique determinacy would not be a serious objection. But proximity itself does not seem able to identify that permissible range. It tells us that political authority should be connected to relations of unavoidable interaction, but not which such connections generate rightful authority, which are morally irrelevant, and which are themselves produced by domination or coercion.

The problem, then, is not that a de jure boundary-drawing principle must eliminate all indeterminacy. That would be too strong. The problem is that such a principle must at least provide substantive criteria for distinguishing acceptable from unacceptable boundary settlements. The Principle of Proximity, once weakened into a necessary condition, does not appear to do this. It can explain why some relation of interaction matters, but not why a particular boundary is rightful rather than merely settled. This prepares the deeper form of the objection: a theory of political authority must explain why authority extends over this people and this territory rather than another. Chapter 2 turns to Simmons's formulation of that demand.

7. Conclusion

This chapter examined the strongest version of the Principle of Proximity: the claim that proximity can function as a de jure boundary-drawing principle. The attraction of this reading is clear. It promises to answer the Particularity Question from within Kant's own account of public right: if the civil condition is needed because unilateral claims of right cannot be made conclusive under private judgment, then the scope of political authority should track the relations within which that problem arises. Waldron's proximity model gives this thought its most powerful formulation.

The difficulty is that the de jure reading faces a dilemma. If proximity is treated as sufficient for common statehood, it seems to push beyond a plurality of states toward a world state, a conclusion Kant resists. If proximity is weakened into a necessary condition, it avoids that implication, but no longer determines which proximity-compatible boundary has rightful standing. This underdetermination is not automatically fatal: a boundary principle need not identify one uniquely correct line in every case. But the problem remains that proximity, once weakened in this way, does not itself supply the criteria needed to distinguish acceptable boundary specification from wrongful boundary-making.

The necessary-condition reading therefore avoids the world-state implication only by giving up much of what made the de jure boundary-drawing interpretation attractive. It no longer tells us who must belong together under one political authority. It tells us only that political authority must have some basis in relations of unavoidable interaction. In this respect, the attempted repair of the de jure reading begins to approach the juridical-threshold reading: proximity still explains why remaining in the state of nature is impermissible where persons unavoidably interact, but it no longer supplies a positive account of the rightful boundaries of public authority. This does not make proximity irrelevant. It shows instead that if proximity is to remain significant, it must play a different, intermediate role.

The result is that proximity cannot, by itself, do the work of a de jure boundary-drawing principle. Chapter 2 takes up the problem this leaves unresolved: how

Kant's theory can distinguish permissible boundary variation from wrongful imposition. Simmons's objection brings this issue into focus, especially through the problem of annexation.

Chapter 2 Proximity as a de facto principle

1. From underdetermination to wrongful boundary-making

Chapter 1 showed that the Principle of Proximity cannot, by itself, determine the de jure boundaries of political authority. This chapter begins by sharpening the problem that remains. The issue is not merely that proximity fails to identify one uniquely correct boundary. The deeper problem is whether it can distinguish permissible boundary specification from wrongful boundary-making. Section 1.1 reconstructs Simmons's formulation of this demand. Section 1.2 argues that the demand for "correct" boundaries should not be understood as requiring one uniquely correct boundary, but as requiring criteria that distinguish permissible from impermissible boundary arrangements. Section 1.3 then shows why annexation is the decisive test case for this demand. Sections 1.4 and 1.5 consider a possible necessity-based response and argue that it fails because it cannot explain why the existing political authority has a better claim than the annexing one. Section 1.6 draws the interim conclusion: proximity, even when supplemented by necessity, cannot by itself distinguish acceptable boundary variation from wrongful imposition.

1.1. Simmons's objection

Simmons formulates this point through what he calls the boundary problem. A theory of political authority must explain why "all and only" those who are properly members of a political society are bound to that society, and why the boundaries of obligation, authority, and territorial sovereignty are drawn in the "correct place."[204] The point is not merely that a theory must show that political authority is needed. Nor is it enough to show that a particular state performs the morally necessary functions of political authority. A de jure boundary-drawing principle must explain why this authority has jurisdiction over these persons and this territory, rather than over some wider, narrower, or differently composed domain.

This creates a direct problem for the Principle of Proximity. On the strong sufficiency reading, proximity seemed to have the required determinacy: where persons stand in the relevant relation of unavoidable interaction, they must belong to the same civil condition. But that reading over-generated and pushed toward a world state. The necessary-condition reading avoids that result by saying only that common political authority requires some relevant relation of proximity. Yet this weaker reading now seems unable to satisfy Simmons's demand. It tells us that political authority must not be wholly disconnected from

[204] (Simmons 2013, 329, 2016, 62). What "correct" means will need to be qualified. But at minimum, Simmons's point is that a theory of political authority must be able to distinguish boundaries that are rightfully drawn from those that merely happen to be legally or historically settled.

the persons over whom it rules, but it does not tell us where the boundary of that authority should fall. In this respect, it begins to look less like a de jure boundary-drawing principle than like a juridical-threshold principle: it identifies a condition under which public right is required, but not the rightful scope of the authority that is to provide it. It tells us that a political authority must not be wholly disconnected from the persons over whom it rules, but it does not tell us where the boundary of that authority should fall.

Simmons presses this objection explicitly against the proximity argument. The Kantian appeal to proximity appears to localise the duty to leave the state of nature: one must enter a civil condition with those with whom one is "side by side." But in a world in which population is continuous across the earth, Simmons argues, there will be "indefinitely many ways" to draw boundaries while still grouping persons with others near them. Respecting proximity therefore does not determine that the only acceptable result is the one convention or law has in fact produced.[205] The worry is not that proximity gives no guidance at all. It is that it gives too little guidance to determine why one proximity-compatible boundary is the rightful one rather than another.

The point can also be put in terms of under- and over-inclusiveness. A boundary may be drawn too narrowly, leaving under separate authorities persons whose claims of right are deeply entangled. Or it may be drawn too widely, bringing persons under a political authority when they could equally have formed or remained within a different political community. The difficulty is that the necessary-condition reading does not give us criteria for deciding when either error has occurred. Because many arrangements may satisfy the proximity condition, the principle seems unable to explain why a given state includes exactly these persons and excludes those others.

Simmons's deeper concern is therefore not merely that proximity fails to identify one uniquely correct boundary. It is that, once proximity is weakened into a necessary condition, it no longer seems able to distinguish rightful from wrongful particularisation. The principle can say that some relation of interaction must obtain between a state and those subject to it. But it cannot tell us why this particular grouping is the one to which authority rightly applies. For Simmons, this is exactly what a theory of political authority must be able to explain. Otherwise, the state's claim to rule over a particular population and territory risks resting on convention, law, or coercive success rather than on a moral principle that places authority in the correct domain.

This is why Simmons thinks the Kantian argument is vulnerable. If the argument shows only that persons must live under some justice-administering authority, it does not yet explain why they must live under this one. Simmons makes this point by distinguishing the first-stage Kantian argument, which purports to establish the moral necessity of the state, from the second-stage boundary

[205] (Simmons 2013, 335, 2016, 66).

question, which asks which state one is obligated to enter.[206] The Principle of Proximity would have to answer that second-stage question if it were to function as a de jure boundary-drawing principle. But once interpreted merely as a necessary condition, it seems unable to do so.

Simmons's objection can therefore be stated as follows. If proximity is necessary but not sufficient for common political authority, then many possible boundaries may satisfy it. But a de jure boundary-drawing principle must do more than identify possible boundaries. It must provide substantive criteria for distinguishing acceptable from unacceptable boundary arrangements. The necessary-condition reading of proximity appears unable to provide such criteria. It therefore leaves open the deeper question that Chapter 2 must address: how can Kant's theory distinguish permissible boundary specification from wrongful boundary-making?

1.2. Correct boundaries without unique boundaries

Simmons's demand that a theory of political authority must draw the boundaries of political obligation and authority in the "correct place" can be understood in two ways. Simmons's demand that a theory of political authority must draw the boundaries of political obligation and authority in the "correct place" can be understood in two ways. On the strong correctness thesis, a theory must identify one uniquely correct boundary for each political community. On this view, for any given political community, there is one determinate answer to the question where its rightful jurisdiction begins and ends. A successful boundary principle would therefore have to identify that boundary and explain why all alternative boundary arrangements are incorrect.

This strong correctness thesis should be rejected. First, it is not clear that Simmons himself understands the challenge in this way. His central complaint is not that the Kantian theory fails to identify one uniquely correct territorial line. His complaint is that it fails to explain why this state has authority over this population and territory rather than another. The examples he uses make this clear. His concern is with cases in which authority is plainly over-inclusive or wrongful: Germany cannot acquire authority over France simply by framing institutions for both; a club cannot acquire authority over a kidnapped outsider simply by giving him voting rights; and a state cannot acquire authority over annexed territory simply by administering justice effectively. These examples do not require the claim that there is always one uniquely correct boundary. They require only the weaker claim that some boundary arrangements are impermissible.

Second, the strong correctness thesis is independently too demanding. Boundary drawing is not the kind of problem for which we should generally expect one

[206] (Simmons 2013, 332–33, 2016, 63–64).

uniquely correct answer. Even if all relevant moral considerations are taken into account—proximity, history, self-determination, existing legal institutions, patterns of settlement, and the avoidance of domination—there may still be several defensible ways of drawing a boundary. A river, a mountain range, an existing administrative line, or a negotiated settlement might each provide a permissible way of specifying jurisdiction, even if none is uniquely required by morality. The fact that more than one arrangement is permissible does not by itself show that boundary drawing is arbitrary in a morally objectionable sense.

Third, the strong reading would prove too much. If a theory of political authority had to identify one uniquely correct boundary in every case, then almost all plausible theories of territorial authority would fail. Historical theories, consent theories, nationalist theories, self-determination theories, and Kantian theories all face hard cases in which the exact line remains underdetermined. The relevant question should therefore not be whether a theory can eliminate all indeterminacy. The relevant question is whether it can provide substantive criteria that constrain boundary drawing and rule out impermissible forms of political inclusion, exclusion, annexation, or domination.

Simmons's objection is therefore better understood in a weaker but more plausible form. A boundary-drawing principle need not identify one uniquely correct boundary. It must instead explain why some boundary arrangements are permissible and others are not. On this weak correctness thesis, there may be several acceptable ways of specifying the scope of political authority, but not every way is acceptable. Boundaries need not be uniquely correct in order to be subject to moral assessment.

The weak correctness thesis captures the real force of Simmons's objection. The problem with the necessary-condition reading of the Principle of Proximity is not simply that it fails to identify one uniquely correct boundary. That may not be a reasonable demand. The problem is that it seems unable to distinguish permissible boundary specification from impermissible boundary-making. If many different arrangements are compatible with proximity, then proximity alone does not explain why some are acceptable while others—such as conquest, annexation, coercive incorporation, or arbitrary domination—are not. In this sense, Simmons's objection remains forceful even after the strong correctness thesis is rejected.

The force of this objection becomes clearest in cases of annexation. Annexation tests whether the Principle of Proximity can distinguish a permissible specification of political boundaries from a wrongful extension of political authority. If proximity merely requires some relation of interaction between a political authority and those subject to it, then a state may seem able to justify absorbing a neighbouring political community by appealing to the very relations of proximity that were supposed to ground public right. The question is whether the Principle of Proximity can by itself explain why such unilateral incorporation is impermissible.

1.3. Annexation

The preceding section argued that, if the Principle of Proximity is interpreted as a necessary condition of boundary-drawing, it underdetermines boundaries and cannot, by itself, distinguish permissible from impermissible boundary settlements. This difficulty becomes most visible in the case of annexation. Annexation tests whether the principle can explain not merely why political authority must exist, but why one political authority may not unilaterally extend its jurisdiction over a neighbouring political community. If the Principle of Proximity cannot rule out annexation, then its failure is not only that it leaves exact boundary lines underdetermined. It is that it cannot exclude a paradigmatic case of wrongful boundary-making.

The worry follows directly from the logic of proximity. If political authority is justified by the need to bring relations of unavoidable external interaction under a public juridical order, and if such interaction extends across existing boundaries, then the same considerations that justify a state's authority over its present members may also appear to justify the extension of that authority beyond its current limits. The population of one state may stand in relations of unavoidable interaction with the people of a neighbouring state. If proximity is the relevant boundary-drawing principle, it is not clear why such relations could not be invoked to justify incorporating that population into the state's jurisdiction. The boundary would then be unstable: it could be shifted outward whenever a state could point to sufficiently significant relations of interaction across it.

This is the annexation challenge. The Principle of Proximity seems to explain why persons who cannot avoid interacting should not remain in the state of nature. But it does not yet explain why an already existing political authority must stop at its present boundary rather than extend over further persons with whom it also stands in relations of interaction. If many different boundary configurations are compatible with proximity, then annexation may appear to be just another way of specifying the scope of public right. The problem is not merely that the boundary could have been drawn differently at the outset. It is that, if proximity alone fixes the scope of political authority, it is unclear what prevents a state from redrawing that boundary unilaterally.

Simmons's example of the United States and Mexico brings out the force of the worry. He asks us to imagine that the United States moves its southern border several miles further south, declares the newly enclosed territory to be part of the United States, administers justice effectively and fairly there, and grants full citizenship rights to the former Mexican residents. Mexico objects, but cannot prevent the new arrangement from becoming stable and successful.[207] The example is deliberately demanding because it brackets many of the familiar

[207] (Simmons 2013, 340–41, 2016, 75–76)

wrong-making features of actual annexation. The annexing state is not assumed to govern tyrannically, deny rights, or exclude the annexed population from citizenship. On the contrary, it is assumed to maintain an effective and reasonably just civil condition.

Yet the annexation still appears wrongful. Simmons argues that the unilateral coercive seizure of the acknowledged territory of another sovereign state and the forcible incorporation of its members who are forcibly incorporated. This remains true even if some of the newly incorporated persons welcome their new status, and even if the annexing state's institutions remain reasonably just. The wrong lies in the inclusion of those persons within a political community and legal system that has no rightful claim to impose itself on them.

This directly challenges the Principle of Proximity as a de jure boundary-drawing principle. If the relevant standard is only that persons be brought under an effective public juridical order capable of administering justice, then the annexing state seems able to satisfy that standard. It can claim to replace indeterminacy with public law, to regulate interactions that cross the previous boundary, and to include the annexed population within a functioning civil condition. Simmons's point is that this cannot be enough. The fact that a state can administer justice over a territory does not show that it has the authority to incorporate that territory. Nor does the fact that the annexed population can be brought into a legal order show that they are rightly made members of that political community.[208]

The annexation worry therefore gives concrete form to the problem identified in the previous section. A boundary-drawing principle must be able to distinguish permissible specification from wrongful boundary-making. Annexation is precisely the case in which that distinction matters. If the Principle of Proximity only requires that political authority be connected to relations of interaction, then an annexing state may claim that the requirement is satisfied. If it only requires that persons be brought under public right, then the annexing state may claim to do that as well. What the principle does not yet explain is why the existing political community has a claim against unilateral incorporation, or why the annexing state lacks authority to absorb it.

The problem is therefore not simply that annexation often involves violence, oppression, or violations of individual rights. Those familiar wrongs may make actual annexations easy to condemn. The sharper challenge brackets them. Even where the annexing state governs effectively, protects rights, and extends

[208] Miller presses the same difficulty, arguing that in this case it remains unclear what is wrong with "involuntary annexation, whereby one state simply absorbs part of the territory that previously belonged to another and governs it as its own." (Miller 2016, 858–59). If all that matters is that those who cannot avoid interacting may be compelled to enter a civil condition, and state authority is justified insofar as it replaces a condition "devoid of justice" with a rightful condition, then it is unclear why a state that can establish or maintain such a condition over additional persons and territory may not do so. See (Miller 2016, 860).

citizenship, the unilateral displacement of one political authority by another still seems wrongful. The question is whether the Principle of Proximity can explain that wrong on its own. If it cannot, then it fails Simmons's weaker correctness demand: it cannot distinguish an acceptable boundary settlement from an impermissible extension of political authority.

This is why annexation is the decisive test case for the Principle of Proximity. The principle was supposed to explain the de jure scope of political authority by appeal to relations of unavoidable interaction. But annexation shows that interaction alone does not determine where authority must stop. A state may stand in real relations of proximity with neighbouring persons and territories, yet it does not follow that it may incorporate them. If the Principle of Proximity cannot explain why, then it cannot serve as a complete de jure boundary-drawing principle.

1.4. The necessity response

A possible response to the annexation challenge is to deny that the underdetermination left by the Principle of Proximity licenses unilateral boundary change. This response follows directly from the Kantian logic of the Postulate of Public Right. Public authority is justified because it is necessary to overcome a condition in which persons who cannot avoid interacting remain subject to unilateral judgment in the determination and enforcement of right. But if necessity is what grounds public authority, then necessity also limits it. A state may exercise authority only for purposes required by the function that justifies public authority in the first place. Annexation is impermissible, on this response, because the unilateral extension of jurisdiction is not necessary for that function.[209]

The structure of the response is as follows. The state is not authorized to expand wherever it can govern well. Its authority is justified by the need to establish and maintain a public legal order in which claims of right are no longer determined by private judgment. In the absence of public legislative, adjudicative, and executive institutions, there is no common standpoint from which the boundary between mine and yours can be determined with rightful force, and no public authority capable of enforcing rights in a way that is not itself merely unilateral. The state is justified because it provides the institutional conditions under which persons can interact on terms of equal independence.[210]

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[209] This reconstruction draws on Koch Mikalsen's response to the annexation challenge to functionalist theories of territorial jurisdiction. His argument is not directed exclusively at Kant's Principle of Proximity, but it can be recast as a response to the problem considered here. See (Koch Mikalsen 2020), especially the passages (Koch Mikalsen 2020, 293–94, 298–301).

[210] Koch Mikalsen begins from the Kantian idea that political authority is necessary because rightful interaction among persons is impossible without public legal institutions. In the absence of public legislative, adjudicative, and executive institutions, claims of right remain subject to private judgment. There is no common standpoint from which the boundary between mine and yours can be determined with rightful force, and no public authority capable of enforcing rights

This justification is also territorial. Persons who interact within the same territorial field must be subject to a common legal order; otherwise they would answer to different authorities applying potentially divergent rules to the same field of interaction. They would then lack a common and final authority capable of determining the rightful limits of their freedom. In this sense, the necessity of public right can justify territorial jurisdiction: one public authority must determine and enforce right within the relevant territorial field if persons are not to remain dependent on one another's unilateral judgment.[211]

But the same necessity that justifies territorial jurisdiction also limits it. A state may maintain and improve itself as a public legal order, but it is not authorized to pursue any end it happens to adopt. Individuals may set ends for themselves, provided they do not subject others to arbitrary choice. States are different. Their coercive powers are justified only by the public function they perform. A state may therefore exercise power only for purposes required by the maintenance of a rightful condition. Annexation is not such a purpose. A state can maintain itself as a public legal order without extending the geographical scope of its jurisdiction. Territorial expansion is therefore not necessary for the function that justifies state authority.[212]

This explains why an annexing state cannot justify its action simply by claiming that it would govern the annexed territory well, or even better than the prior state. Such claims do not establish standing. In relation to another political community, the annexing state is not a public authority but a unilateral will. Its judgment that it can secure rights more effectively, administer justice better, or make better use of a territory has no binding force on those outside its jurisdiction. In this respect, the annexing state's claim is structurally similar to a private claim in the state of nature: it may be substantively plausible, but it cannot generate an enforceable right by itself. To impose it unilaterally is to subject others to arbitrary power.[213]

The same point applies even when annexation follows a defensive war. A state may have standing to repel aggression, and defensive force may be necessary for self-preservation. But it does not follow that the victorious state acquires standing to incorporate the defeated population into its own jurisdiction. Defensive force may be necessary; annexation is not. Bringing the citizens of another political community under one's own authority is not required for maintaining one's own state as a public legal order. The unilateral alteration of jurisdiction therefore exceeds the necessity that grounds political authority.[214]

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in a way that is not itself merely unilateral. The state is therefore justified as a "freedom-enabling institutional structure": it establishes the public conditions under which persons can interact on terms of equal independence. See (Koch Mikalsen 2020, 295–97).

[211] (Koch Mikalsen 2020, 297–98).

[212] (Koch Mikalsen 2020, 299–301).

[213] (Koch Mikalsen 2020, 298–99).

[214] (Koch Mikalsen 2020, 300–301).

This argument appears to answer the annexation version of Simmons's boundary challenge. The Principle of Proximity may leave the exact boundaries of political authority underdetermined. But it does not follow that any proximity-compatible boundary change is permissible. Annexation is not merely another specification of an underdetermined boundary. It is a unilateral extension of jurisdiction by an already existing state. Such an extension is justified only if it is necessary for the purpose that grounds political authority. But where a functioning civil condition already exists, annexation is not necessary to replace unilateral judgment with public right. Public right already exists there.

The necessity response therefore offers a possible defence of the Principle of Proximity. Proximity may not identify one uniquely correct boundary, but existing boundaries are not for that reason open to unilateral revision. Once a civil condition exists, the rationale for imposing public authority has already been satisfied. Another state cannot invoke that same rationale in order to displace it. Annexation is therefore ruled out not because the existing boundary is uniquely selected by proximity, but because the annexing state lacks the necessity-based standing required to alter it unilaterally.

If successful, this would blunt the annexation objection. The objection claimed that, because the Principle of Proximity underdetermines boundaries, it cannot distinguish acceptable boundary settlements from wrongful annexation. The necessity response replies that annexation is not simply one more proximity-compatible settlement. It is a unilateral act of jurisdictional expansion, and such an act is justified only if necessary. Since annexation is not necessary for maintaining a public legal order where a civil condition is already in place, it is impermissible. The Principle of Proximity would then survive the annexation test when supplemented by a necessity constraint internal to the justification of public authority itself.

The next question, however, is whether this necessity response can really do the work required of it. In particular, it remains to be seen whether necessity can privilege the existing state over the annexing state without appealing to some further principle. That question is taken up in the next section.

1.5. The symmetry problem

The necessity response is attractive because it appears to block annexation without appealing to any principle external to the justification of public right. Annexation is not ruled out because the existing boundary is uniquely selected by proximity, nor because the annexed population has consented to the existing state, nor because the state represents a pre-political nation. It is ruled out because annexation is not necessary. Where a civil condition already exists, the purpose for which political authority is required has already been achieved. Another state may be able to govern the territory effectively, perhaps even better, but that is beside the point. The relevant necessity is not the necessity of

maximizing good governance. It is the necessity of replacing unilateral judgment with public right.

It is, however, questionable whether this response succeeds. The difficulty concerns the exact content of the necessity claim. The necessity response rests on the thought that rightful interaction among individuals would be impossible without a public authority vested with exclusive jurisdiction over a territory. Since the state's authority is grounded in that freedom-enabling function, its powers extend only to what is required by the performance of that function. Annexation is then ruled out because it is unnecessary for the state's maintenance and improvement as a public legal order. This is the central move in the necessity response. But once the claim is applied to annexation, it can be understood in two different ways.

On the first reading, the necessity claim states that some public authority is necessary. Call this the generic reading. On this reading, rightful interaction requires that persons living together under conditions of unavoidable interaction be subject to a public legal order. What is necessary is that there be a civil condition, not that one particular state rather than another exercise jurisdiction. This reading captures the core Kantian thought behind the Postulate of Public Right. Persons may not remain in a condition in which each determines and enforces right according to private judgment. They must enter a condition in which rights are determined publicly and enforced by an omnilateral will. In this sense, public authority is necessary.

The generic reading can explain why a territory may not remain outside public right. It can also explain why two competing authorities may not simultaneously claim final jurisdiction over the same persons and territory. But it does not explain why this authority rather than that authority is entitled to rule. If what is necessary is only that there be one public legal order, then the current state and the annexing state may both satisfy the requirement. In Simmons's example, Mexico already provides a civil condition for the territory in question. But the United States could also provide one after annexation. If the relevant necessity is simply the necessity of public authority as such, then both arrangements satisfy the same condition. The generic necessity claim therefore rules out the absence of public authority, but it does not identify which public authority must rule.

This is the point at which the annexation challenge reappears. The necessity response says that annexation is unnecessary because a civil condition already exists. But this shows only that a second civil condition is unnecessary given the first. It does not show that the first is necessary rather than the second. The same reasoning can be reversed. If U.S. annexation is unnecessary because Mexican rule already secures a civil condition, then Mexican rule is also not necessary in the strict sense, since U.S. rule could also secure a civil condition. The generic reading therefore cannot break the symmetry between the existing state and the annexing state. It shows that some state must govern, but not why the existing state has a claim against being displaced.

On the second reading, the necessity claim states that this particular state is necessary. Call this the particular reading. On this reading, the existing state is not merely one possible provider of public right among others. Its continued rule is necessary for the maintenance of the rightful condition that already exists. Annexation is therefore wrong because it does not merely establish a civil condition where none existed; it replaces an already existing civil condition with another. The annexing state lacks standing because it unilaterally displaces a public legal order that already performs the relevant function. This reading seems to capture the intuitive asymmetry between the current state and the annexing state: the current state maintains public right, whereas the annexing state disrupts it.

But this reading faces the opposite problem. If the existing state's rule is said to be necessary, the relevant sense of necessity must be explained. It cannot mean merely that the existing state is in fact ruling. That would collapse the necessity argument into a status quo argument. Nor can it mean merely that the existing state rules legitimately. The annexing state, by hypothesis, may also be capable of ruling legitimately. The particular reading must therefore explain why the existing state has a special claim to continue ruling this territory, such that its rule counts as maintenance whereas the annexing state's rule counts as usurpation.

This is precisely what the Principle of Proximity, read as a necessary condition, cannot explain. Proximity can explain why political authority must be connected to relations of interaction. It can explain why a wholly disconnected state lacks a claim to rule. But in the annexation case, the annexing state may also stand in relations of interaction with the territory and population it seeks to incorporate. The problem is not that there is no proximity relation. The problem is that proximity does not explain why one proximity-compatible authority has the right to remain while another proximity-compatible authority is barred from taking its place.

The particular reading therefore succeeds only by presupposing the very asymmetry that needs to be justified. It assumes that the existing state already has a right to maintain jurisdiction over this territory, while the annexing state lacks the right to extend jurisdiction over it. But the boundary problem asks precisely why that is so. If the answer is that the existing state is already there, then the argument rests on de facto possession or institutional continuity. If the answer is that the annexed population already belongs to a political community that may not be absorbed against its will, then the argument appeals to a principle of collective self-determination or political autonomy. In either case, necessity alone is no longer doing the decisive work.

The deeper problem is therefore a symmetry between the current state and the annexing state. Both can claim to be capable of providing a civil condition. Both can claim to organize public institutions under which rights are determined and enforced. Both can claim to rule in a way compatible with equal freedom. If

necessity is understood generically, both satisfy it. If necessity is understood particularly, the asymmetry between them must already have been established by some further principle. The necessity response therefore faces a dilemma. Either necessity refers to the need for some public authority, in which case it cannot distinguish the current state from the annexing state; or it refers to the need for this particular public authority, in which case it presupposes a prior account of why this state, rather than another, has the right to rule this territory.

This does not mean that the necessity response is without force. It successfully blocks one version of the annexation argument. It shows that annexation cannot be justified merely by appeal to superior performance. A state is not entitled to expand simply because it could govern better, protect rights more effectively, or administer justice more competently. The state's authority is not a mandate to maximize good governance wherever it can. It is limited by the function that justifies it.[215]

But this does not yet solve the annexation problem as a boundary problem. The difficulty is not whether a state may annex simply because it would perform well. The difficulty is whether the Principle of Proximity, supplemented only by necessity, can explain why the existing state has the right to continue ruling against another state that could also perform the relevant public function. The answer appears to be no. Necessity can explain why a civil condition is required, why unilateral private judgment must be overcome, and why public authority must be exclusive within a territory. But it cannot by itself identify which public authority has the right to rule that territory.

The implication is important for the present argument. The annexation challenge cannot be answered merely by saying that annexation is unnecessary. That claim depends on an unstated assumption: that the existing state's rule is the relevant baseline against which necessity is assessed. But the annexing state contests precisely that baseline. It claims that its rule could also provide public right. To answer that claim, one needs a principle that explains why the existing political community has a claim against unilateral incorporation. Necessity does not supply that principle. It tells us that there must be public authority; it does not tell us which public authority has the right to remain.[216]

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[215] In that respect, Koch Mikalsen is right to reject the idea that functionalism straightforwardly licenses annexation.

[216] A further response to the annexation challenge is offered by Taylor, who argues that functionalism need not license "ideal takeovers" if territorial jurisdiction is understood through a liability model. On this view, a state's failure to perform its morally required functions may make it liable to some interference, but only to a proportionate degree; it does not thereby lose all rights against interference in its jurisdiction. Thus a state may be liable to sanctions, assistance, or limited intervention without being liable to annexation. Taylor also adds a necessity condition: even where takeover would improve justice, it is impermissible if the relevant end could be achieved by less intrusive means. This allows functionalism to explain why annexation is often disproportionate or unnecessary, even where the annexing state would govern justly (Taylor 2024, 91–96). Taylor further argues that wrongful takeover can generate continuing duties of return, compensation, apology, and repair, so that a usurper state does not immediately acquire

1.6. Conclusion

The discussion of annexation sharpens the problem left open by Chapter 1. The issue is not merely that the Principle of Proximity, once weakened into a necessary condition, leaves several possible boundaries open. The deeper problem is that it cannot by itself distinguish permissible boundary specification from wrongful boundary-making. Annexation makes this difficulty explicit. If a neighbouring state stands in relations of interaction with the territory and population it seeks to incorporate, proximity alone does not explain why its unilateral extension of authority is impermissible.

The necessity response offered the most promising internal reply. It argued that annexation is not merely another proximity-compatible specification of an underdetermined boundary, because a state may exercise authority only where this is necessary for the function that justifies public right. This response shows something important: annexation cannot be justified merely by pointing to the annexing state's capacity to govern well or even better. Political authority is not a mandate to maximize good governance wherever possible.

Yet necessity does not solve the boundary problem. If the relevant claim is only that some public authority is necessary, then both the existing state and the annexing state may satisfy it. If the claim is that this particular public authority is necessary, then the argument already presupposes a further explanation of why this state has the right to rule this territory. What is needed, then, is a principle that can explain why an existing political community has a claim against unilateral incorporation. The next section argues that the most plausible candidate is self-determination.

What is needed, then, is a principle that can explain why an existing political community has a claim against unilateral incorporation. The next section argues that the most plausible candidate is self-determination. But, as the later argument will show, the need for self-determination does not make proximity irrelevant; it changes the role proximity can play.

2. Self-determination

The previous section showed why the annexation problem cannot be solved by appeal to necessity alone. Necessity can explain why public authority is required, but it cannot by itself explain why this political community, rather than another,

full territorial jurisdiction merely by governing well (Taylor 2024, 105–7). I cannot assess this response fully here. It is important, however, that Taylor's account relies on a broader theory of liability, proportionality, and remedial obligation, rather than on the Principle of Proximity itself. Moreover, insofar as the view explains why a political community may reject unwanted incorporation, it appears to appeal to a residual jurisdictional right, coordination-compatible discretion, or a right to political independence (Taylor 2024, 96–104). It therefore supports the conclusion reached in the main text: proximity alone cannot rule out annexation; some further principle is required.

has the right to determine the political status of a given territory and population. If both the existing state and the annexing state are capable of maintaining a civil condition, then a further principle is needed to break the symmetry between them.

Self-determination is the most plausible candidate for this role. In its most basic form, it holds that a political community has a claim to determine its political status for itself. It may not be absorbed into another political order merely because that other order could also provide public right, or even because it could do so effectively and justly. Section 2.1 explains how self-determination can break the symmetry between the existing political community and the annexing state. Section 2.2 then anchors the right to self-determination in Kant's theory.

2.1. Breaking the symmetry

The symmetry problem arises because good governance alone cannot explain why one political authority, rather than another, has the right to rule a given territory and population. If both the existing state and the annexing state are capable of maintaining a civil condition, then both appear to satisfy the requirement of necessity. What is needed is a further distinction between being governed well and being governed by institutions that can count as one's own. Self-determination supplies this distinction. A political community has an interest not only in being subject to rights-protecting and justice-administering institutions, but also in standing in an appropriate relation of political authorship to the institutions that rule it.[217]

This distinction explains why annexation remains wrongful even when the annexing state governs well. The annexing state may protect rights, administer justice, and grant citizenship. In that sense, it may satisfy the standard of good governance. But it fails with respect to political authorship. The annexed population is no longer ruled through institutions that reflect its own political agency. Its political status has been determined by another state's unilateral act. The wrong of annexation therefore does not lie only in oppression, exclusion, or administrative failure. It lies in alien rule: the imposition of a political order that does not arise from the political agency of those subjected to it.

On this view, a legitimate state must reflect the shared political will of those it governs: their judgment about "how, and by whom, they are to be ruled."[218] This need not mean that all citizens agree on substantive policies. Nor does it require unanimity about the direction of political life. A shared political will may consist more minimally in a willingness to associate politically with one another and to

[217] I draw here on Stilz's account of political autonomy and especially on her distinction between the "taker" and "maker" dimensions of legitimacy. The former concerns whether institutions are good for those subject to them; the latter concerns whether those subject to institutions can regard themselves as authors or co-authors of the political order that rules them. Stilz grounds collective self-determination in this "maker" interest in political authorship. See (Stilz 2019, 94).
[218] (Stilz 2019, 90).

support common institutions. Ordinary political disagreement is therefore compatible with self-determination. What matters is not agreement on policy, but the existence of a political relation in which members can regard the institutions that rule them as their own.[219]

This gives self-determination its tie-breaking role. In Simmons's example, the United States and Mexico may both be capable of maintaining a civil condition over the disputed territory. From the standpoint of necessity alone, this generates the symmetry identified above. But from the standpoint of self-determination, the two claims are not symmetrical. Mexican rule preserves the existing political status of those who are already members of the Mexican political community. U.S. annexation unilaterally transforms that status. It makes them members of another political order without their authorization. Even if the new order is just, it is not theirs in the relevant sense.[220]

Self-determination therefore explains what necessity could not. Necessity shows why persons must live under some public legal order. It does not show why they must remain under one political order rather than another. Self-determination supplies the missing asymmetry: a political community that is already organized as a self-determining agent has a claim not to have its political status unilaterally redefined by outsiders. The annexing state cannot answer this claim by saying that it would govern well. The point is not only whether the annexed territory would be governed justly, but whether its people are governed through a political order that reflects their own collective agency.

The tie-breaker should therefore be understood precisely. Self-determination does not show that existing boundaries are uniquely fixed by proximity. Nor does it show that an existing state is privileged simply because it happens to be in possession. Rather, it explains why unilateral incorporation is wrongful when it overrides the political agency of a community that has a claim to decide its own political status. This is the feature that proximity and necessity could not supply. Proximity can show that political authority must be connected to relations of unavoidable interaction. Necessity can show that some public authority is required. But self-determination explains why one political community may not simply be absorbed into another.

The next question is how this self-determination principle should be understood within a Kantian framework. If self-determination is to serve as the tie-breaker in a Kantian argument about public right, it cannot appear as an external value

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[219] (Stilz 2019, 94–95).

[220] The same point applies to Stilz's example of post-war Germany. Suppose that, after 1945, the United States had not restored political independence to its zone of occupation, but had instead annexed it and incorporated it into the United States. Even if the United States had governed the territory reasonably justly, protected basic rights, and granted democratic participation, Stilz argues that the Germans would still have had a morally significant complaint. The complaint is not that they are governed badly, but that they are denied political self-rule. Occupation may have been justified as a temporary response to war, but permanent annexation would replace the Germans' political agency with the will of another state. See (Stilz 2019, 91–93).

added after the failure of proximity. It must be connected to Kant's own concern with unilateralism, omnilateral lawgiving, and the idea that a political community is not an object to be acquired by another state.

2.2. Kantian foundations of self-determination

The appeal to self-determination should not be understood as an external principle added to Kant's theory after the failure of proximity. Kant does not offer a modern theory of national self-determination. He does not claim that every nation, cultural group, or linguistic community has a right to its own state. Nor does he provide a general account of which peoples are entitled to self-determination. Nevertheless, there are clear resources in Kant's political philosophy for a juridical principle of self-determination. The relevant principle is minimal but important: a political community may not be treated as an object to be acquired, transferred, absorbed, or reorganized by another state's unilateral will.

This Kantian basis for self-determination can be seen in at least three places. First, it appears most explicitly in Kant's rejection of acquisition and interference in Toward Perpetual Peace. Second, it follows from the structure of public right in the Doctrine of Right, especially Kant's account of personality, the united legislative will of the people, and the rejection of subjugation. Third, it is presupposed by Kant's rejection of a world state and his insistence on a juridical order among distinct states rather than their absorption into a single global sovereign.

Before developing these three sources, however, a clarification is needed. The following argument is not meant to show that Kant already possesses a complete and uncontroversial doctrine of collective self-determination. Nor is it meant to vindicate every claim Kant makes in the passages considered below. Kant's remarks on state personality, non-intervention, revolution, and the right of nations are difficult, and they can be interpreted in different ways. The claim is more modest: Kant's theory contains juridical materials from which a limited right to self-determination can be reconstructed, namely a right of a political community not to be treated as a thing, not to be acquired as property, and not to have its constitution or political existence determined by another state's unilateral will.

The aim is thus not to introduce self-determination as a fully independent doctrine and then attach it externally to Kant's account. Nor is it to claim that Kant's own texts settle all the problems that later theories of self-determination must address. The aim is rather to show that the appeal to self-determination is not ad hoc. Once the Principle of Proximity and the necessity response fail to distinguish the current state from the annexing state, we need a principle that explains why a political community has standing against unilateral incorporation.

Kant's own writings provide significant support for such a principle, even if they do not provide a complete theory of its scope.

2.2.1. Perpetual Peace

The most direct textual basis for the right to self-determination is found in the second preliminary article of Toward Perpetual Peace: "No state having an independent existence—whether it be great or small—shall be acquired by another through inheritance, exchange, purchase or donation."[221] Kant's reason is not merely that such acquisitions destabilize international politics. His reason is that a state is not a piece of property. A state is "not a property (*patrimonium*), as may be the ground on which its people are settled." It is "a society of human beings over whom no one but itself has the right to rule and to dispose."[222]

This passage gives the clearest Kantian expression of the self-determination idea. A political community is not a transferable object. It cannot be inherited, exchanged, bought, donated, or otherwise disposed of by another will. To incorporate such a community into another state is, Kant says, like grafting the trunk of a tree onto another: it "do[es] away with its existence as a moral person" and makes it into a thing.[223] Kant does not say merely that acquisition of a state is imprudent or destabilizing. He says that it contradicts the status of the state as a moral person. The wrong consists in treating a political community as something that can be disposed of by another, rather than as a juridical subject.

This is precisely the point needed to answer the annexation challenge. Annexation treats the annexed political community as an object of the annexing state's choice. The annexing state decides that the territory and population will now belong to it. Even if it governs well after annexation, the act by which it incorporates the other political community is unilateral. It does not respect that community as a moral person whose political status cannot be determined by another. In this respect, Article 2 provides a direct Kantian basis for the claim that a political community has a right against unilateral incorporation.

The fifth preliminary article reinforces this point: "No state shall violently interfere with the constitution and administration of another."[224] Kant asks what could justify such interference. The fact that another state gives a bad example is not enough; a bad example is not an injury. He allows that where a state has dissolved into anarchy and split into two parts, each claiming the whole, assistance to one faction may no longer count as interference with the constitution of another state. But so long as the internal conflict has not reached

[221] (8: 344).
[222] (8: 344).
[223] (8: 344).
[224] (8: 346).

that point, intervention violates "the rights of an independent nation" and makes "the autonomy of all states insecure."[225]

Article 5 therefore adds a second element. Article 2 denies that a state may be acquired as a thing. Article 5 denies that another state may violently determine its constitution and administration from outside. Together, the two articles can be read as supporting a juridical self-determination principle. A political community has a claim against being acquired, absorbed, or constitutionally reorganized by another state's unilateral will. The claim is not absolute in every imaginable circumstance, since Kant recognizes cases of internal dissolution. But the general rule is clear: the political status and internal constitution of an independent people may not be determined by foreign coercion.

This matters for the annexation case. Simmons's annexing state does not merely regulate cross-border interaction. It takes control of a territory and incorporates its inhabitants into another political order. Kant's Articles 2 and 5 explain why that is wrongful. The annexing state treats the political community as available for acquisition and determines its constitution from outside. That is incompatible with the idea that the community is a moral person over whom "no one but itself" has the right to rule and dispose.

2.2.2. The Doctrine of Right

The same thought can be derived from the internal structure of Kant's Doctrine of Right. Kant defines a person as "a subject whose actions can be imputed to him," and says that moral personality is "the freedom of a rational being under moral laws." From this, he concludes that "a person is subject to no other laws than those he gives to himself (either alone or at least along with others)."[226] By contrast, a thing is that "to which nothing can be imputed" and which lacks freedom.[227] This distinction between person and thing underlies Kant's objection to the acquisition of states. To treat a political community as something another state may acquire is to treat it as a thing rather than as a juridical person, or at least as a collective subject of right.

Kant's account of innate right to external freedom points in the same direction. As we have seen in the previous parts of this thesis, the only innate right is freedom, understood as "independence from being constrained by another's choice," insofar as it can coexist with the freedom of all under universal law.[228] This includes innate equality and the status of being one's own master, sui iuris.[229] At the individual level, the point is that no person is naturally subject to the private choice of another. At the political level, the same structure helps

[225] (8: 346).
[226] (6: 233).
[227] (6: 233).
[228] (6: 237).
[229] (6: 237-8).

explain the wrong of alien rule. If the laws that bind a political community are imposed by another state's unilateral choice, then the community is subordinated to an external will. It is not treated as sui iuris.

This does not mean that Kantian right is simply voluntarist. Individuals do not escape the duty to enter a rightful condition merely by refusing to consent. Kant's point is rather that rightful coercion must not be the act of a merely unilateral will. In his account of property, Kant states the general principle: "a unilateral will cannot serve as a coercive law for everyone" with respect to external possession; only a "collective general (common) and powerful will" can provide the assurance required for conclusive right.[230] The problem with unilateralism is not that the unilateral judgment must be false. The problem is that a private will, by itself, lacks the standing to bind others conclusively.

This principle becomes explicitly political in Kant's account of legislative authority. In § 46 of the Doctrine of Right, Kant writes: "The legislative authority can belong only to the united will of the people."[231] His reason is that all right must proceed from the legislative will, and one who makes arrangements about another may always wrong him. By contrast, one cannot wrong oneself in what one decides with regard to oneself. Therefore, "only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative."[232] Kant immediately adds that citizens possess "lawful freedom," which consists in "obeying no other law than that to which he has given his consent."[233]

This passage is central for grounding self-determination within Kant's theory. Legitimate public law is not merely effective coercive ordering. It must be lawgiving through a united will. Of course, Kant does not mean that every law must be actually approved by every individual citizen. The united will is an idea of public right, not a requirement of empirical unanimity. But it does mean that the authority to legislate for a people must be representable as the authority of that people's united will, not as the unilateral choice of an external ruler. Annexation violates this condition. It displaces a public will and subjects the annexed population to the unilateral will of another state. The annexed population is no longer subject to a political order that can be represented as its own; it is made subject to the will of another state.

Kant's remarks on the right of nations make the same point even more directly. He denies that the sovereign may treat subjects as property. Kant considers an argument according to which, because the state helps produce the abundance and security of its population, the sovereign may use subjects for war as if they were his own product. Kant rejects this: such an argument may apply to animals, which can be property, but "it simply cannot be applied to human beings,

[230] (6: 256).
[231] (6: 313).
[232] (6: 313-4).
[233] (6: 314).

especially as citizens of a state."[234] Citizens are not things belonging to the sovereign. They cannot be used and disposed of as instruments of state purposes.

This anti-proprietary view of persons and peoples also underlies Kant's rejection of wars of subjugation. In the right of nations, Kant says that no war among independent states can be a punitive war, because punishment presupposes a relation of superior to subject, and states do not stand in that relation to one another.[235] He then adds that war may not be a war of extermination or subjugation, since such a war would amount to the "moral annihilation of a state." The defeated people would either be merged "in one mass with that of the conqueror" or reduced to servitude.[236] This is a direct rejection of annexation understood as absorption of one political community into another.

Kant's treatment of the unjust enemy confirms this. Even where a state has acted unjustly in a way that threatens the possibility of peace, other states are not entitled to divide its territory among themselves or make the state "disappear from the earth." That would be "an injustice against its people," because the people "cannot lose its original right to unite itself into a commonwealth," even if it may be required to adopt a new constitution less favourable to war.[237] This is perhaps the strongest passage in the Doctrine of Right for present purposes. Even grave wrongdoing by a state does not extinguish the people's claim to political existence. The people may be constrained to reform its constitution, but it may not be deprived of its original right to constitute itself politically.

The Doctrine of Right therefore further supports the self-determination principle from several directions. Persons are not things; they are subject only to laws they give to themselves, alone or with others. Public law must proceed from a united legislative will, not a unilateral private will. Citizens may not be treated as property of the sovereign. States may not be morally annihilated through subjugation. Even an unjust people retains the original right to unite itself into a commonwealth. These claims do not amount to a full modern theory of self-determination. But they do establish the core Kantian point needed here: a political community may not be absorbed, disposed of, or reorganized by another state's unilateral choice.

2.2.3. The world-state motivation

A third Kantian basis for self-determination emerges from the problem considered earlier in this Part: the world-state implication. If the Principle of Proximity were read as sufficient for common political authority, then the continuous and overlapping character of interaction would seem to push toward

[234] (6: 345).
[235] (6: 347).
[236] (6: 347).
[237] (6: 350).

a single global civil condition. Kant resists this result. He does not deny that right must be established beyond the state. On the contrary, he holds that domestic right, international right, and cosmopolitan right are all necessary parts of a complete juridical order. But he does not conclude that the solution is a single global state.

This is visible in the Doctrine of Right. Kant says that states in relation to one another are by nature in a non-rightful condition, and that this condition is one they are obligated to leave.[238] But the juridical form by which they leave it is not a global sovereign. Kant says that a league of nations is necessary "not in order to meddle in one another's internal dissensions but to protect against attacks from without." He immediately adds that this alliance must involve "no sovereign authority (as in a civil constitution), but only an association (federation)."[239] The point is not that states may remain in a lawless condition. The point is that the lawful condition among states must not take the form of their absorption into one coercive state.

The same idea appears in Toward Perpetual Peace. Kant distinguishes a league of peoples from a state of peoples, and rejects the latter because a state involves a relation between superior and inferior, legislator and subject. A state of peoples would therefore transform a plurality of peoples into one people and would destroy the separate standing of states.[240] His alternative is a federation or league that secures the freedom of states without acquiring the coercive power of a state over them.[241]

This is important for the present argument because Kant's rejection of a world state is difficult to understand unless distinct political communities have juridical standing. If the only relevant consideration were the establishment of public right as such, then a single global authority might seem to be the most direct solution. Kant's differentiated system of domestic, international, and cosmopolitan right suggests otherwise. The rightful condition beyond the state must be established in a way that preserves the status of distinct political communities rather than erasing them. International right is not domestic right expanded without limit. It is a juridical relation among political communities that retain their own standing.

This provides a further route to the limited self-determination principle defended here. If states and peoples may not simply be merged into one global sovereign for the sake of juridical order, then political communities must have some claim against being absorbed into larger political units without authorization. Otherwise, the rejection of a world state would be difficult to explain: a world state would appear to be merely the most comprehensive

238 (6: 344).
239 (6: 344).
240 (8: 354)
241 (8: 356)

extension of public authority. Kant's resistance to that conclusion indicates that juridical order must respect the political standing of distinct peoples.

This point also connects back to the annexation problem. Annexation is the local version of the world-state problem. In both cases, the issue is whether the need for public right licenses the absorption of one political community into a larger authority. Kant's answer, at least in the cases considered here, appears to be that is does not. The requirement to leave the state of nature does not authorize the erasure of existing political communities. It requires a juridical order compatible with their freedom. In international right, this takes the form of a federation rather than a global sovereign. In the annexation case, it means that a state may not incorporate another political community merely because it can also provide public right.

Taken together, these three sources show how the right to self-determination can be anchored in the Kantian theory. Article 2 of Perpetual Peace denies that a state may be acquired as property; Article 5 denies that another state may violently determine its constitution and administration. The Doctrine of Right grounds the same idea in Kant's distinction between persons and things, his requirement that lawgiving proceed from the united will of the people, and his rejection of subjugation and moral annihilation. Finally, Kant's rejection of a world state shows that the demand for public right must be satisfied without dissolving distinct political communities into a single coercive authority.[242]

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[242] A further source of insight, though not the central one for present purposes, is Kant's discussion of revolution. Kant famously denies a right to revolution, and this denial is itself controversial. It should therefore not be invoked uncritically. Still, the structure of the argument is instructive. Kant's worry is that revolution involves a unilateral attempt to replace the existing juridical order by force. For a people to judge the supreme authority with rightful force, it would already have to be united under a public legislative will; but the very question at issue is who may speak for that will. Revolution therefore threatens to dissolve the civil condition and return the people to a state of nature (6: 318–323; 8: 299). Korsgaard captures this point by arguing that, for Kant, revolution would have to accord with the general will, yet the government is the institutional voice of that general will; where that voice is rejected, the people lack a duly constituted public way to speak as a people (Korsgaard 2008, 249–54).
This has an analogy with annexation. The annexing state, like the revolutionary actor, claims the standing to judge that the existing political order should be displaced and to impose a new juridical arrangement by force. In both cases, the problem is not simply that the new order may be substantively worse. The problem is that the replacement is carried out unilaterally, without the authorization of the political community whose juridical status is being transformed. Kant's rejection of revolution therefore helps to illuminate a more general thought: public right cannot be secured by actors who simply take the law into their own hands and substitute their private judgment for an existing public order.
The analogy should not be overstated. Revolution is an internal challenge by subjects against their own state, whereas annexation is an external challenge by one state against another political community. Moreover, Kant's denial of a right to revolution is not best read as a blanket defence of every regime that happens to call itself a state. Byrd and Hruschka, for example, argue that Kant's prohibition on revolution applies to a juridical state, not to a mere "den of thieves" or despotic structure that fails to constitute a rightful condition at all (Byrd and Hruschka 2010, 181–85). That qualification is important here too. The self-determination claim reconstructed below is not a claim that every de facto regime, however tyrannical, enjoys an unconditional right against external interference. It is a claim that where a political community has juridical standing, its political status may not be unilaterally determined by another state.

The self-determination principle needed here should therefore be understood in a specifically Kantian sense. It is a juridical claim against unilateral alien rule. A political community that can count as a collective subject of public right may not be treated as a thing, absorbed by another state, or deprived of its political existence by foreign will. This is why self-determination can serve as the tie-breaker that proximity and necessity could not supply. It explains why the annexing state's ability to govern well is not enough. The question is not merely whether public right will be provided, but whether it will be provided through a political order that can count as the community's own.

2.3. Conclusion

Self-determination appears to provide the tie-breaker that proximity and necessity could not supply. Proximity can show that political authority must be connected to relations of unavoidable interaction, but it cannot explain why one proximity-compatible boundary is rightful while another is not. Necessity can show that annexation is not justified merely by the annexing state's ability to provide public right, but it cannot break the symmetry between the current state and the annexing state. Self-determination supplies the missing asymmetry: the political status of a community may not be unilaterally determined by another state.

Yet this answer only takes us so far. While self-determination helps break the symmetry in the annexation case, and thereby seems to supply the resources needed to distinguish permissible from wrongful boundaries, it does not fully solve the original Particularity Question; it reintroduces it in a new form. The initial Particularity Question was: with whom must one enter the civil condition? The Principle of Proximity seemed to answer this question by identifying those with whom one stands in unavoidable relations of external interaction. Once proximity failed as a de jure boundary-drawing principle, self-determination was introduced as a tie-breaker. But self-determination now raises a structurally similar question: who is the relevant self-determining subject?

This question cannot be avoided. To say that a people has a right to determine its political status is not yet to say which people count for this purpose. Self-determination can explain why a political community may not be annexed, but only once we know which community is entitled to make that claim. Without such an account, the appeal to self-determination risks shifting the Particularity Question rather than resolving it.

The next section therefore turns to the problem of identifying the self-determining community. This is where the original Particularity Question returns at a deeper level. The issue is no longer simply with whom one must enter the civil condition, but who can count as the collective subject whose political status may not be determined by another state.

3. The circularity problem

The appeal to self-determination answers one problem but reintroduces another. More precisely, it explains why annexation is wrongful once a self-determining political community has been identified; but it does not yet explain how that community is to be identified. This section examines that difficulty in three steps. Section 3.1 formulates the circularity worry: self-determination cannot justify boundaries if the relevant self is identified by reference to boundaries already assumed to be rightful. Section 3.2 considers the shared political-cooperation answer, according to which the self-determining subject is identified through shared political will and institutional cooperation. Section 3.3 argues that two apparent exits from the circularity problem—nationalism and voluntarism—are unavailable within the Kantian framework developed here. This prepares the return of the Principle of Proximity as a de facto community-formation principle.

3.1. The Particularity Question reappears

The difficulty is that self-determination works only once the relevant political community has been identified. If the relevant community is already given, self-determination can explain why annexation is wrongful: Canada may not be absorbed into the United States; Mexico may not have part of its territory unilaterally incorporated by the United States; post-war Germany may not be permanently annexed by an occupying power. In each case, the wrong consists in replacing the political agency of one community with the will of another. But this presupposes that we already know which community is entitled to make the self-determination claim.

This question cannot be answered merely by invoking "the people." To say that a people has a right to determine its political status is not yet to say which people count for this purpose. Is the relevant people the population within the existing state? The population of the annexed territory? The inhabitants of a region? A historically constituted political community? A nation? Or those who subjectively affirm a common political project? Without an answer to this question, self-determination cannot complete the response to the present challenge. It can explain why a people may not be annexed, but only once the relevant people has been identified.

The danger is that self-determination may become circular. If the relevant self-determining group is identified by reference to already rightful boundaries, then self-determination cannot also be used to justify those boundaries. The argument would move from de jure boundaries to de jure boundaries: the people within these boundaries have a right to determine their political status because these are already the rightful boundaries of the people. That leaves the Particularity Question unanswered. It assumes the very boundaries that self-determination was introduced to help explain.

The challenge, then, is to identify the self-determining community without presupposing the de jure boundaries at issue. This problem becomes especially clear in the political-cooperation answer considered next. That answer appears particularly well suited to a Kantian framework because it identifies peoplehood through shared political agency and participation in public institutions. Yet it also shows why the appeal to self-determination remains incomplete unless the relevant political community can be identified independently of the rightful boundaries that self-determination is meant to help explain.

3.2. The political-cooperation answer

A promising answer identifies the self-determining subject through shared political cooperation. On this view, the relevant self is not simply a population enclosed by a boundary, but a group whose members participate in a shared political project and whose institutions reflect their common political agency. The right-holder is therefore identified politically: by reference to shared political will, common institutions, and cooperation in sustaining a public legal order.[243]

This answer has an obvious attraction in the present context. It does not treat the people as a merely given aggregate of residents, nor does it identify the self-determining subject simply by the fact of being ruled. Rather, it asks whether there is a political relation in which persons can regard the institutions that govern them as their own. Political autonomy explains why this matters: the point is not only that persons should be governed by institutions that protect their rights, but that they should be governed through institutions that reflect their shared political agency.

The relevant political relation is therefore moralized. The cooperators who constitute the self-determining subject are not simply those who happen to act together, or those who happen to prefer the same institutions. They must be capable of sustaining a public legal order compatible with basic justice. The self-determining subject is therefore neither a mere aggregate of preferences nor a merely factual association. It is a group capable of establishing and maintaining a scheme of public right through a shared political will.[244]

The self-determining people is therefore a politically constituted group: persons who participate in a cooperative political relation, affirm that relation in the relevant sense, and support particular institutions as the means through which they establish justice together. The group is not prior to all political relations. Its

[243] This reconstruction draws on Stilz's political-autonomy account. Stilz interprets Kant's omnilateral will as an "actual popular will" and argues that legitimate jurisdiction requires a correspondence between the shared political will of a significant majority of cooperators and the institutions that govern them. See (Stilz 2019, 94–95).

[244] Stilz emphasizes that the relevant cooperators are those willing to recognize others as bearers of claims to private independence and to coordinate in political institutions that protect those claims. The account is therefore not merely preference-based; it is constrained by basic justice. See (Stilz 2019, 112–13).

claim to self-determination arises because its institutions are not merely imposed from outside, but reflect a shared political project in which its members participate.

The most sophisticated version of this answer need not be limited to already existing states. A political subject may also be brought into being through institutional reconfiguration, where a group is capable of sustaining just institutions and its members are willing to cooperate politically together. This is important because it avoids a simple status-quo view: existing states are not the only possible bearers of self-determination. Peoplehood is mutable and institutionally shaped, rather than fixed once and for all.[245]

This is the strongest version of the political-cooperation answer. It identifies the self neither by existing statehood alone nor by a political identity wholly independent of institutions. It starts from cooperation, shared will, institutional capacity, and the possibility of a public legal order that can be affirmed as one's own. In this respect, it seems to offer exactly what is needed: a way of identifying the subject of self-determination without simply appealing to the existing state as such.

The difficulty is that the account still appears to require some prior specification of the political unit whose will and cooperation are at issue. To ask whether institutions reflect the shared political will of cooperators, one must already know who the relevant cooperators are. Whose shared will is to be counted? Which institutions are theirs? Which territorial population is the relevant one? Without some prior answer to these questions, the account cannot determine the bearer of the right to self-determination.[246]

If the answer is that the relevant cooperators are those already participating in the existing state's institutions, then the view risks circularity. The existing state supplies the boundaries of the people, and the people's political agency then justifies the existing state's claim. That moves from institutionally presupposed boundaries to a de jure claim of self-determination. It explains why an already identified political community may have a claim against interference, but it does not yet explain why this community, rather than another possible grouping, is the relevant self-determining subject.

If the answer is widened to include possible or emerging political subjects, the difficulty takes a different form. The view no longer simply privileges existing

[245] Stilz develops this point through the idea of "proto-peoples." Such groups are not simply peoples waiting to be recognized, but possible political subjects that may be brought into being through institutional reconfiguration where doing so would reduce alienation and facilitate willing participation. See (Stilz 2019, 127–28). She explicitly rejects a fixed pre-political answer to the question "Who are the people?" and treats peoplehood as mutable and institutionally shaped.

[246] This is the worry pressed by Miller: if the account privileges existing or recent state-formed peoples, it risks status-quo bias; but if it widens the class of possible self-determining subjects too far, it risks sliding toward voluntarism. See (Miller 2016, 868–71).

state-formed peoples, but it must still explain how candidate political subjects are to be identified. Several possible groupings may claim to cooperate politically, to be alienated from existing institutions, or to be capable of sustaining just institutions. Without further criteria, the appeal to shared political cooperation does not yet explain why this grouping, rather than another, is the relevant candidate for self-determination.[247]

The problem, then, is not that political autonomy is the wrong value. The problem is that shared political cooperation does not yet supply the required account of individuation. To ask whether a group has a shared political will, whether it has cooperated politically, or whether institutions reflect its agency, we must already have some way of identifying the group. The idea of possible or emerging peoples partly recognizes this difficulty, since it treats peoplehood as mutable and institutionally constituted rather than prepolitically fixed. But the question remains how candidate peoples are to be identified in the first place, especially where several possible groupings could plausibly claim to cooperate politically or to be capable of sustaining just institutions.

The circularity worry can therefore be stated sharply. Self-determination is supposed to explain why a political community has a claim to determine its own status. But the political-cooperation answer identifies that community through shared political cooperation and institutions that reflect a common will. Unless the relevant unit of cooperation can be identified independently of already rightful boundaries, the account risks presupposing the very political unit whose standing is at issue. It tells us what makes rule non-alien once the "we" has been identified, but it does not yet tell us how the relevant "we" is identified.

This creates pressure in two directions. One might avoid circularity by identifying the relevant "we" through nationality, culture, history, or shared identity. Or one might avoid it by identifying the "we" through the subjective affirmation of those who wish to cooperate politically together. The first route moves toward nationalism; the second moves toward voluntarism. Both avoid the simple de jure circle, but both are problematic from the standpoint of the Kantian argument developed here. The next subsection explains why.

3.3. Two false exits: nationalism and voluntarism

The circularity problem creates pressure toward two alternative ways of identifying the self-determining subject. If the relevant "we" cannot simply be identified by existing rightful boundaries, then perhaps it must be identified either by pre-institutional identity or by political will. The first route is

[247] This corresponds to Stilz's discussion of "proto-peoples." I return below to the significance of this idea for the constructive account. For present purposes, the point is limited: the appeal to possible or emerging peoples avoids a purely statist view of self-determination, but it does not yet explain how candidate peoples are to be individuated where several possible groupings could claim political agency or institutional capacity.

nationalist. The second is voluntarist. Both routes avoid the immediate circularity of deriving the self-determining people from already rightful boundaries. But neither provides the kind of answer needed here.

The nationalist route identifies the self-determining subject through nationality, culture, history, language, religion, shared identity, or attachment to a homeland. This strategy has the advantage of identifying the people independently of existing state boundaries. It can therefore explain why a group may have a claim to self-determination even when it does not already possess a state, and why annexation or colonial rule may wrong a people even if the imposed institutions function effectively. This creates pressure toward an account of peoplehood that resembles nationalism.[248]

But this route is not available for the present argument. The Principle of Proximity was attractive precisely because it offered a non-affinity-based answer to the Particularity Question. It did not begin from shared language, religion, ethnicity, culture, or national identity. It began from the juridical problem that arises among persons whose external freedom and claims of right unavoidably affect one another. To identify the self-determining subject by nationality would therefore abandon one of the central motivations of the Kantian proximity view. It would make political community depend on prior affinity rather than on the need for public right among persons who must coexist under conditions of possible conflict.

The nationalist route also sits uneasily with the juridical focus of Kant's Doctrine of Right. Kant's question there is not how a group can preserve its language, culture, religion, national character, or way of life. It is how the external freedom of each can coexist with the freedom of all under universal law. The civil condition is needed because unilateral claims of right must be transformed into public and omnilateral determination. National identity may matter sociologically. It may help explain how political communities form, how trust is sustained, or how citizens understand themselves. But it is not, by itself, a juridical ground of political authority. To make nationality the criterion of self-determination would shift the argument from public right to the political expression of a collective identity.

The voluntarist route faces the opposite problem. Instead of identifying the self by shared culture or history, it identifies the self by political affirmation, choice, or will. On this view, the relevant group is composed of those who wish to cooperate politically together, who affirm a common political project, or who reject the political order under which they currently live. This route also avoids the simple de jure circle, because the group is not identified by already rightful

[248] Thus Miller argues that if neo-Kantian reject a purely statist account theories, they may not be able to avoid appeal to political identities of the kind they often seek to repudiate. See (Miller 2016, 871–74).

boundaries. It is identified by its members' will to constitute or reconstitute themselves politically.

But this route is also unavailable for a Kantian account. Kant's duty to enter a rightful condition is not grounded in actual consent. Persons who cannot avoid interacting may be required to leave the state of nature and enter a civil condition together. The point of public right is precisely that external freedom cannot be left to each person's unilateral choice. If the self-determining subject were identified simply by subjective affirmation or collective preference, then the account would sit uneasily with Kant's anti-voluntarism. It would become difficult to explain why persons must enter and uphold a rightful condition with those with whom they unavoidably interact, rather than choosing the political association they prefer.

The same problem appears in affirmation-based versions of the political-cooperation answer. If alienated, territorially concentrated groups may claim self-determination whenever they no longer affirm the existing political relationship and could sustain an alternative one, the view risks sliding toward voluntarism. The line between a valid self-determination claim and a collective preference for a different political arrangement becomes unstable. For present purposes, the problem is not that affirmation is irrelevant. A political community cannot be fully self-determining if its members experience its institutions as alien. The problem is that affirmation alone cannot identify the relevant self-determining subject.[249]

The result is a dilemma. To avoid circularity, the political-cooperation answer must identify the relevant self independently of already rightful boundaries. But if it does so by appeal to nationality, it reintroduces the affinity model that the Kantian proximity argument was meant to avoid. If it does so by appeal to subjective affirmation, it moves too close to voluntarism and conflicts with Kant's claim that the duty to enter the civil condition is not based on consent. Neither route gives the needed answer.

What is needed is a third possibility. The relevant self must be identifiable prior to full de jure justification, but not by nationality and not by mere will. It must be identifiable, at least initially, as a de facto political community: a group whose members are already bound together by relations of interaction, institutional dependence, shared legal expectations, and common problems of public right. Such a community is not yet rightful merely because it exists. But it may be the candidate subject whose claim to self-determination can then be assessed. This is where the Principle of Proximity returns.

[249] (Miller 2016, 870–71).

4. The return of proximity: from de facto community to de jure claim

The preceding discussion reveals a deeper structural problem. Kant's theory of public right requires a civil condition in which claims of right are publicly determined rather than left to unilateral judgment. But a civil condition must have some scope. It must be established among some persons and within some territorial field rather than another. If that scope must already be de jure justified before the civil condition is established, then the argument becomes circular. Public right would presuppose the very juridical determinacy that it is meant to make possible. Yet if the scope of the civil condition is merely arbitrary, the boundary problem returns. The challenge is therefore to explain how a civil condition can have a determinate starting point without presupposing fully rightful boundaries.

This is the deeper form of the Particularity Question. Public right must be instituted by some public; but the rightful identity and boundaries of that public cannot themselves be fully settled prior to public right. The question is how to identify the candidate public without already assuming the de jure boundaries that the theory is supposed to justify.

Kant's own account of property suggests the form of the answer. In the state of nature, external acquisition is possible but only provisional. It is not fully rightful because it lacks public, omnilateral authorization. But it is not nothing. It has enough juridical significance to structure the transition to the civil condition. The civil condition does not begin from a blank slate. It takes up provisional claims and transforms them, where possible, into conclusive rights under public law. This is why Kant can say that the way to have something external as one's own in the state of nature has in its favour the rightful presumption that it will be made rightful through being united with the will of all in public legislation.[250]

The same structure can be applied to the boundary problem. A Kantian account need not begin with fully rightful pre-political boundaries. Indeed, it cannot. If the boundaries of the civil condition had to be conclusively justified before the civil condition existed, the transition to public right would be impossible. What is needed instead is a form of provisional particularity: a way of identifying candidate political communities before their territorial and personal boundaries have acquired full de jure standing.

This point also clarifies what is misleading about the demand for "correct" boundaries if that demand is understood too strongly. A Kantian theory of public right need not identify a fully rightful boundary prior to the establishment of public right. Indeed, it cannot do so without circularity. Public right is required because claims of right cannot be conclusively determined under merely unilateral conditions; but the boundaries of the public that is to determine those claims cannot themselves already be fully conclusive before public right exists.

[250] (6: 257).

The relevant starting point must therefore be neither a pre-political people whose boundaries are already correct, nor an arbitrary aggregation of individuals. It must be a provisional public: a de facto political community whose claims are sufficiently salient to require assessment, but whose boundaries are not yet justified as rightful.

This does not mean that de facto boundaries are already rightful. Nor does it mean that existing states should simply be taken as morally authoritative because they exist. The point is more limited. Certain historical and social formations may have provisional juridical significance. They may identify the persons among whom a public legal order has in fact developed, or among whom a common problem of public right has arisen, even though the justice of that order and the rightfulness of its boundaries remain open to assessment. De facto political communities can therefore be candidate subjects of self-determination without already possessing conclusive de jure authority.[251]

This provides the key to the circularity problem. The mistake is to think that the only alternatives are de jure boundaries or arbitrary facts. There is a third possibility: provisional de facto political communities. These communities are not rightful merely because they exist. But they are also not normatively irrelevant. They may constitute the candidate publics whose self-determination claims must be assessed. The argument therefore need not move from de jure boundaries to de jure boundaries. It can move from de facto political community to possible de jure claim.

This is where the Principle of Proximity returns. It failed as a de jure boundary-drawing principle because it could not identify which proximity-compatible boundary was rightful. But it can still serve as a de facto community-identification principle. The task is different. A de jure boundary principle must justify the rightful scope of political authority. A de facto community-identification principle need only explain why certain persons form a sufficiently salient field of interaction, dependence, institutional life, and juridical conflict to count as a candidate subject of political assessment.

The Principle of Proximity is well suited to this more limited task. It identifies the relations through which persons' external freedom becomes practically and juridically entangled: shared use of land and resources, repeated interaction, institutional dependence, common legal expectations, patterns of cooperation and conflict, exposure to common coercive structures, and the need for public

[251] Ypi's permissive theory of territorial rights is helpful here, even though her project is different from the one pursued in this Part. Ypi argues that states' territorial claims are not conclusively justified by history, present legitimacy, or nationality. They are conditional and provisional. Existing boundaries have often emerged through arbitrary, unilateral, and morally compromised processes, but this does not mean that they may be arbitrarily dissolved or redrawn. Their provisional standing must be assessed in light of the ongoing obligation to overcome unilateralism through rightful political relations. See (Ypi 2014, 3–4, 14–16, 17–20). The important point for present purposes is the structure of the claim: territorial arrangements may be normatively significant without being conclusive.

determination of rights. These relations do not by themselves justify a state's boundaries. But they can explain why a group is not a random aggregate. They show why certain persons stand in a relation that makes a shared political project intelligible.

This preserves Waldron's rejection of affinity views while avoiding the emptiness of a purely threshold reading of proximity. The de facto community identified by proximity is not an "already existing people" in the affinity sense. It is not a nation, culture, ethnicity, or community of fellow-feeling that the state merely expresses in legal form. It is already existing only in a different sense: as a field of external interaction, institutional dependence, shared expectations, and juridical conflict. Its existence gives it provisional standing, not conclusive authority. Proximity therefore does not return us to the affinity model. It identifies a candidate public without treating that public as already rightful.

This also explains why the earlier objections to proximity do not reappear in the same form. The world-state objection arose because proximity was read as a sufficient condition for common statehood. If all persons in sufficiently dense interaction must belong to one state, then continuous and overlapping interaction threatens to push toward a world state. But the de facto reading does not infer common sovereign statehood from interaction. It infers only juridical salience. Where interaction is unavoidable, there is a candidate field of public-right problems. That field may require domestic institutions, federal arrangements, international legal relations, cosmopolitan norms, or other forms of public ordering. It does not automatically require one state.

Nor is underdetermination fatal at the de facto stage. Proximity may identify overlapping or competing candidate communities. A region may be integrated into a wider state while also possessing distinctive local institutions and political agency. Border populations may stand in significant relations with communities on both sides. Transnational problems may generate forms of juridical interdependence that exceed any one state. This underdetermination would be fatal if proximity were supposed to identify the one rightful boundary. But it is not fatal if proximity identifies candidate communities whose claims require further assessment. The purpose of the de facto stage is not to settle the final boundary. It is to identify the relevant formations whose claims cannot be ignored.

Self-determination then enters at the next stage. It does not identify the self-determining subject all by itself. That was the circularity problem. But once a candidate political community has been identified through de facto relations of proximity, self-determination explains why that community may not be unilaterally absorbed or reorganized by another. The claim is not that every de facto community has an unconditional right to statehood. Nor is it that every existing state has a conclusive right to its present borders. The claim is that where persons are organized through a de facto political community, their political status cannot be treated as an object for another state to determine unilaterally.

The structure of the argument is therefore staged. Proximity identifies candidate political communities at the de facto level. Self-determination explains why such communities have a claim against alien incorporation and unilateral reorganization. Public right then assesses whether, and under what conditions, their territorial claims can acquire de jure standing. This staged structure breaks the circle. We do not identify the people by first assuming rightful boundaries. Nor do we let subjective affirmation alone determine political membership. Instead, we begin with de facto relations of interaction, institutional dependence, and shared juridical problems.

The result is that the Principle of Proximity can still perform significant work, but not the work that the de jure boundary-drawing interpretation assigned to it. It does not tell us where the rightful boundary is. It tells us where a candidate political community has formed. It does not by itself rule out annexation as a wrongful boundary. It identifies the community whose unilateral absorption may then be condemned by appeal to self-determination. It does not provide final de jure justification. It supplies provisional particularity. The standards for de facto identification are therefore lower than the standards for de jure justification. A de jure boundary principle must explain why a boundary has rightful authority. A de facto community-identification principle need only explain why a group is a relevant candidate for such assessment. It may identify overlapping, incomplete, or historically compromised communities without thereby claiming that their boundaries are rightful.

This also clarifies why the view is not status quo conservatism. De facto political communities may be unjust, exclusionary, colonial, internally oppressive, or products of domination. Their existence does not settle their legitimacy. But their existence matters because they are the political formations through which persons' external freedom has in fact been organized, contested, and made subject to public institutions. To treat them as normatively irrelevant would miss the way public right actually emerges from historical and social relations. To treat them as already rightful would be to collapse de facto into de jure. The correct view is intermediate: de facto political communities have provisional standing.

The central claim of Part III can now be stated more precisely. The Principle of Proximity is not a de jure boundary-drawing principle. It cannot identify rightful borders by itself. But neither is it merely a weak moral impetus to leave the state of nature. It is a principle of de facto political community formation. It explains how candidate publics arise through unavoidable interaction, shared institutions, and common problems of right. Those publics are not thereby rightful, but they are the subjects whose claims to self-determination and public right must be assessed. In this sense, proximity remains indispensable, not because it solves the Particularity Question alone, but because it identifies the provisional starting points from which any Kantian answer to that question must begin.

5. Conclusion

This Part began from the Particularity Question. Kant's argument for the civil condition explains why persons may not remain in a state of nature when their external freedom and claims of right unavoidably affect one another. But once the duty to enter a rightful condition has been established, a further question arises: with whom must one enter it? Or, put differently, how is the personal and territorial scope of public right to be specified?

The Principle of Proximity initially appeared to answer this question. If the reason public authority is necessary is that persons' claims of right are unavoidably entangled, then the scope of political authority should seem to track the scope of that entanglement. Political community would then be formed among those who cannot avoid living side by side, in the juridically relevant sense. This made proximity attractive as a de jure boundary-drawing principle. It promised to identify the rightful scope of the civil condition from within Kant's own account of public right, without appealing to nationality, affinity, consent, or historical accident.

The argument of this Part has been that proximity cannot sustain this role. If proximity is read as a sufficient condition for common statehood, it over-generates. Since relations of interaction are continuous and overlapping, the sufficiency reading threatens to push toward ever wider political units and ultimately toward a world state. This sits uneasily with Kant's differentiated account of domestic, international, and cosmopolitan right. If proximity is weakened into a necessary condition, it avoids the world-state implication, but at the cost of underdetermination. It can say that political authority must be connected to relations of interaction, but it cannot explain why this proximity-compatible boundary is rightful while another is not.

Simmons's boundary challenge brought out the force of this objection. The problem is not that a boundary principle must identify one uniquely correct boundary in every case. That would be too demanding. The problem is that it must at least distinguish acceptable from unacceptable boundary-making. Annexation made this difficulty explicit. If proximity merely requires some relation of interaction, then an annexing state may also satisfy the condition. If necessity is added, the annexing state may be told that its rule is unnecessary because a civil condition already exists. But necessity cannot break the symmetry between the current state and the annexing state. It can explain why some public authority is required, but not why this public authority has the right to rule rather than another.

This is why self-determination was introduced. Self-determination explains what proximity and necessity could not: why a political community may not have its political status determined unilaterally by another state. Annexation is wrong not merely because the annexing state governs badly, and not merely because it is

unnecessary, but because it overrides the political agency of the annexed community. Kant's own writings provide resources for this thought: a state is not a thing to be acquired; no state may violently interfere with the constitution and administration of another; public law must be connected to the united will of the people; and juridical order beyond the state must not take the form of absorption into a single global sovereign.

Yet self-determination also generated a further problem. To say that a people has a right to determine its political status is not yet to say which people count for this purpose. If the relevant self-determining group is identified by reference to already rightful boundaries, the argument becomes circular. It uses de jure boundaries to identify the people whose self-determination is then supposed to justify those same boundaries. The Particularity Question therefore reappears at a deeper level: not now as the question with whom one must enter the civil condition, but as the question who counts as the collective subject of self-determination.

The solution defended here is to distinguish de facto community identification from de jure boundary justification. The mistake is to assume that the relevant political community must be identified either by already rightful boundaries or by wholly arbitrary facts. There is a third possibility. De facto political communities may have provisional juridical significance. They are not rightful merely because they exist, but neither are they normatively irrelevant. They may identify the candidate publics whose claims to self-determination and public right must be assessed.

This is where the Principle of Proximity returns. It does not return as a de jure boundary-drawing principle. It does not tell us where the rightful boundary is. Rather, it identifies the relations through which candidate political communities are formed: repeated interaction, institutional dependence, common legal expectations, shared coercive structures, and common problems of public right. These relations explain why certain persons form a juridically salient field of interaction rather than a random aggregate. They help identify the candidate "we" whose political status is at stake.

The final account is therefore staged. Proximity identifies candidate political communities at the de facto level. Self-determination explains why such communities may not be unilaterally absorbed, annexed, or reorganized by another state. Public right then assesses whether, and under what conditions, their territorial claims can acquire de jure standing. This structure avoids the circle. It does not infer the people from already rightful boundaries. Nor does it allow political membership to be determined merely by preference or subjective affirmation. It begins with de facto relations of interaction and dependence, and then asks whether the claims arising from those relations can be justified as rightful.

The conclusion is therefore neither that the Principle of Proximity solves the boundary problem by itself nor that it collapses into the weakest juridical-threshold reading. It cannot serve as a complete de jure boundary-drawing principle. It cannot identify rightful borders on its own. But it also does more than state that persons in unavoidable interaction must leave the state of nature. It performs an intermediate role. It helps bring into view the de facto political communities from which claims to self-determination and de jure territorial authority may arise. In this sense, the Principle of Proximity remains indispensable, but only once its role is properly limited. It is not the principle that makes boundaries rightful. It is the principle that identifies the provisional starting points from which the justification of boundaries must begin.

Conclusion

This thesis began with a puzzle concerning the relation between property rights and freedom. Property rights appear to make freedom effective in the external world. They allow persons to use objects, return to them, plan with them, and exclude others from interfering with them. Yet property rights also necessarily restrict the freedom of others. If an object is mine, others are not at liberty to use it without my authorization, even when they could do so without interfering with my body. Property rights therefore seem both to support freedom and to limit it. More precisely, they structure freedom by assigning powers of control to some and duties of non-use to others. The guiding question of the thesis has been how such a structure can itself be justified from the standpoint of freedom.

Kant's theory of property in the Doctrine of Right is especially well placed to address this question because it begins from the innate right to external freedom as the only original right. Property rights must therefore be connected to freedom, but they must also be limited by freedom: no claim over an external object can be rightful unless it can coexist with the freedom of everyone under a universal law. The thesis has argued that Kant's account is best understood as a staged response to this problem. It moves from the possibility of property, to the provisionality of acquisition, to the scope of the civil condition in which rights can become conclusive.

Part I examined the first and most basic question: why Kant is entitled to claim that property rights are possible at all. It took as its point of departure Kant's Postulate of Private Right, according to which "it is possible to have any external object of choice as mine." The difficulty was to explain this claim in a way that connects property to freedom without reducing property to the innate right itself. Part I reconstructed two influential ways of explaining the Postulate. The first, which I called the Descriptive Argument, explains the possibility of property by appeal to the conditions under which finite agents set and pursue ends through external means. The second, which I called the Normative Argument, explains property in terms of juridical independence and the extension of right to the outer.

I argued that each approach captures an important aspect of Kant's view, but that neither is sufficient on its own. The Descriptive Argument explains why the impossibility of property matters for finite agents who act through external objects, but it risks moving too quickly from the possibility of property to the need for actual, stable holdings. The Normative Argument better preserves the juridical structure of Kant's view, but risks becoming too formal to explain why the possibility of property matters for freedom. The conclusion of Part I was therefore that these approaches must be brought into a more stable relation. Property rights are best understood as a juridical extension of right to the outer, whose practical significance becomes visible because finite agents exercise

freedom through external objects. This explains why property rights must be possible without making actual ownership constitutive of freedom.

Part II turned from the possibility of property rights to their status in the state of nature. Even if external objects can be mine or yours, a further problem arises because acquisition in the state of nature is unilateral. When I claim an object as mine, I purport to place others under an obligation not to use it; yet such an obligation cannot be conclusively imposed by my private will alone. Kant addresses this difficulty through the Provisionality Thesis, according to which "in a state of nature something external can be mine or yours but only provisionally."

Part II argued against the recurrent interpretation of this thesis according to which provisionality names a weaker, incomplete, or conditional species of right, distinct from the conclusive rights that obtain in the civil condition. That strategy, I argued, misidentifies the problem. Provisionality does not concern a special kind of right that falls between no right and full right. Rather, it concerns the mode and conditions under which property is acquired in the state of nature. More specifically, Part II located provisionality in the unilateral mode of acquisition. Acquisition before the civil condition is juridically possible, but because it is unilateral, it is not yet conclusive. This explains how Kant can maintain both that property must be possible before the civil condition and that it can become conclusive only within it.

Part III then turned to the problem of public right. If rights acquired under unilateral conditions can become conclusive only in a civil condition, a further question arises: with whom must individuals enter such a condition? Part III addressed this question through what I called the Principle of Proximity. Kant holds that the duty to leave the state of nature arises among those who "cannot avoid living side by side" with one another, that is, among those who stand in relations of unavoidable reciprocal interaction.

The contribution of Part III was to defend an intermediate reading of the Principle of Proximity that neither presents the principle as a de jure boundary drawing principle, nor as a mere juridical threshold that makes the need for a civil condition salient. It identifies de facto political communities: candidate publics formed through unavoidable interaction, institutional dependence, shared legal expectations, and common problems of public right. These communities are not already rightful states, but they are the provisional starting points whose claims to self-determination and de jure territorial authority must be assessed.

The three parts of the thesis therefore form a single argumentative sequence. Part I established why property rights must be possible within a theory that begins from the innate right to external freedom. Once this possibility is explained, the question arises how such rights can be acquired in the state of nature, where acquisition is unilateral and not yet authorized by a public will.

This is the problem addressed in Part II. Once provisional acquisition is clarified, the question shifts again: if rights acquired under unilateral conditions can become conclusive only in a civil condition, then it must be asked with whom individuals are required to enter such a condition. This is the Particularity Question addressed in Part III. The thesis has thus moved from the possibility of property, to the provisionality of acquisition, to the scope of public right.

The central result is that Kant's theory of property should not be read as a self-contained doctrine of ownership. It is better understood as part of a broader account of how external freedom becomes juridically ordered. Property rights are possible because the external use of objects cannot remain a matter of lawless liberty. They are provisional in the state of nature because acquisition under unilateral conditions cannot yet conclusively bind everyone. And they point beyond private right to public right because conclusive rights require a civil condition. The theory of property therefore leads beyond the question of objects themselves to the question of the public order within which rights over objects can be made determinate, authoritative, and conclusive.

At the same time, the thesis has not offered a complete Kantian theory of property. It has focused on three prior questions: the possibility of property rights, their provisional status under unilateral conditions, and the scope of the civil condition required for rights to become conclusive. Several further questions remain open.

First, the thesis has worked with a relatively thin conception of property, focusing primarily on the right to exclude. This was appropriate for the argument because exclusion is the feature of property that most directly raises the freedom puzzle: if an object is mine, others are under an obligation not to use it without my authorization. But property rights may also include further incidents, such as rights of use, transfer, alteration, destruction, management, or alienation. Whether Kant's account can justify these further incidents, and whether it can justify them equally with respect to land, natural resources, artifacts, and manufactured goods, remains a further question.

Second, the thesis has not provided a full account of the limits of property rights. Such limits may be qualitative or quantitative. Qualitative limits concern what an owner may do with what is hers: whether, for example, ownership includes a right to destroy, waste, or leave unused. Quantitative limits concern how much one may own, especially under conditions of scarcity. These questions are particularly important because Kant does not straightforwardly rely on a fair-use proviso of the kind associated with some other theories of property. Whether limits on property can be derived from the freedom of others, from the structure of public right, or even from duties to oneself remains an important question for further inquiry.

Third, the thesis has not settled the distributive implications of Kant's theory of property. If property rights must be made conclusive only within a civil

condition, then questions arise about what kind of distributive order such a condition must establish. A Kantian theory of property may be read in more entitlement-oriented or more patterned directions, depending on how one understands the relation between acquisition, public authorization, and the rightful condition. The present thesis has clarified the conditions under which property rights are possible and conclusive, but it has not determined what distributive principles a rightful property regime must satisfy.

Fourth, the thesis has set aside the detailed rules of acquisition. It has argued that property rights must be possible and that acquisition in the state of nature can be juridically significant without yet being conclusive. But it has not explained exactly how a particular object becomes someone's own. Further work is therefore needed on the acts through which acquisition occurs: whether a declaration of choice is sufficient, whether physical taking or marking is required, and how such acts must be publicly recognizable if they are to generate determinate claims.

These limitations do not undermine the argument of the thesis. Rather, they indicate its place within a larger Kantian theory of property and public right. Before one can determine the full content of property rights, their limits, their distributive implications, or the detailed rules of acquisition, one must first explain why property rights are possible at all, what status they have under unilateral conditions, and how they point toward a civil condition. These are the questions this thesis has addressed. Its conclusion is that Kant's theory contains the resources to answer them, but only if property is understood as one stage in the broader juridical ordering of external freedom.

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