

Jakob Huber

Cosmopolitanism for Earth dwellers: Kant on the right to be somewhere

**Article (Accepted version)
(Refereed)**

Original citation:

Huber, Jakob (2017) *Cosmopolitanism for Earth dwellers: Kant on the right to be somewhere*. *Kantian Review*, 22 (1). pp. 1-25. ISSN 1369-4154

DOI: [10.1017/S1369415416000340](https://doi.org/10.1017/S1369415416000340)

© 2017 Kantian Review

This version available at: <http://eprints.lse.ac.uk/69536/>

Available in LSE Research Online: February 2017

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

Cosmopolitanism for Earth Dwellers: Kant on the Right to be Somewhere

JAKOB HUBER

[London School of Economics and Political Science]

[j.huber@lse.ac.uk]

Abstract

The paper provides a systematic account of Kant's 'right to be somewhere' as introduced in the Doctrine of Right. My claim is that Kant's concern with the concurrent existence of a plurality of corporeal agents on the earth's surface (to which the right speaks) occupies a rarely appreciated conceptual space in his mature political philosophy. In grounding a particular kind of moral relation that is 'external' (as located in bounded space) but not property-mediated, it provides us with a fundamentally new perspective on Kant's cosmopolitanism, which I construe as a cosmopolitanism for 'earth dwellers'.

Keywords: [Kant, Cosmopolitanism, Rights, Original Common Possession]

Introduction

In one of the most enigmatic yet fascinating passages of the Doctrine of Right, Kant ascribes to all human beings a 'right to be wherever nature or chance (apart from their will) has placed them' (DoR 6: 262).¹ Interpreters have rarely explored the systematic role of this right to be somewhere within the wider structure of Kant's political philosophy or assigned it much prominence, usually focusing instead on the antecedent property argument and its relation to the (ensuing) duty of state entrance, or the details of Kant's account of public right and its institutional implications both domestically and internationally.² In the present paper, I aim to make up for this neglect. My claim is that systematic reflection on the right to be somewhere offers a vital insight into the structural significance of embodied agency under conditions of spatial constraint in the

Doctrine of Right. Kant's concern with the concurrent existence of a plurality of corporeal agents on the spherical surface of the earth occupies a conceptual space that is insufficiently appreciated by interpreters of his mature political philosophy. I will argue that it grounds a particular kind of moral relation that is 'external' (as located in time and space), but not property-mediated.³ Awareness of this moral relation also provides us with a fundamentally new perspective on Kant's cosmopolitanism, which I construe as a cosmopolitanism for 'earth dwellers'.

The argument proceeds as follows: I start with a sketch of the right to be somewhere as introduced in the Doctrine of Right's section on private right. Section 2 points out the difficulty of making sense of this right within the broader architectonic of the work, given that it eludes classification with regard to Kant's vital characterization of all rights as either 'innate' or 'acquired'. Section 3 develops a novel reading of the conceptual foundation of Kant's global thinking based on this reconstruction: his cosmopolitanism is neither one of 'noumenal' beings united in their shared humanity, nor of legal-institutional membership in a shared polity, but one of physical beings that act and affect one another in virtue of inhabiting one (limited) space.

1. Original Acquisition of Land and the Right to be Somewhere

One of the reasons why the right to be somewhere may have largely slipped interpreters' attention is its somewhat marginal position in the text. Kant introduces it only *after* the famously obscure property argument (DoR 6: 245-57), the details of which I want to bracket here despite the fact that it has recently taken centre stage in exegetical disputes about the Doctrine of Right as a whole.⁴ Having opened the section on 'private right' with reflections on the conditions of having something external as one's own – in a nutshell, it is (conclusively) possible only in a civil condition (DoR 6:

255) – Kant turns to the question how objects can be rightfully *acquired* (DoR 6: 258). In particular, he is interested in the possibility of acquiring something originally, as opposed to deriving it from what belongs to someone else (through a contractual exchange). It is in this context that Kant makes the crucial claim that

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

We need to take a closer look at the more immediate context in which this passage occurs. The preceding paragraph provides a first hint why Kant would talk about something like a right to a place on earth in the context of his discussion of rightful acquisition. There he asserts that ‘first acquisition of a thing can only be acquisition of land’ (DoR 6: 261). This claim is no less puzzling. Is he saying that I need to own the land in order to possess something that is placed *on* it? That would be odd – while there may be a sense in which stable *enjoyment* of my property right in my car may depend on my ability to park it on a ground that I have secure access to, my ownership right in itself cannot be contingent on that. Yet, note that Kant is not talking here about ownership in the sense of private property (something which I can claim as mine regardless of whether I am physically connected to it) at all, but about mere physical possession or occupation. Consequently, he is not referring to land in the sense of a fenced-in plot of territory – described as ‘residence (*sedes*), a chosen and therefore an acquired *lasting* possession’ – but merely as ‘habitable ground’ (DoR 6: 261). I want to suggest that what Kant is doing here is reflecting on the circumstances of embodied agency. An embodied agent I take to be a morally accountable corporeal being capable

of acting in time and space. As beings of that kind, humans inevitably make a particular kind of seizure: the piece of land that they take up in virtue of the very fact that they are spatially extended. Without a place on earth, we couldn't act and hold others morally accountable for their actions, let alone claim objects as 'ours'. Cases like that of refugees or stateless persons illustrate how failing to have one's place on earth secured, and hence being vulnerable to the arbitrary choices of others, essentially deprives humans of their moral agency (Ypi 2014: 294-5, Flikschuh 2000: 156-7). So it is the very nature of human existence that entails that people's relationship to the land precedes their relationship to other external things.

This gives us a sense why reflection on the circumstances of human agency might lead to something like the idea of a right to be somewhere. And it also provides a possible explanation for the right's puzzling position in the text: Kant can be read to regress from reflections on the possibility of property rights to the more fundamental condition of raising anything like a claim to an object as 'ours' in the first place: being acknowledged a place on earth is a necessary presupposition of claiming rights in things. Yet, reading on from the pertinent passage, the picture gets more complicated. Kant goes on to introduce another fundamental material factor – besides our own embodiment – that conditions human existence: the earth's spherical surface. The finitude of the globe, he explains

unites all places on its surface, for if its surface were an unbounded plane, people could be so dispersed on it that they would not come into any community with one another, and community would not then be a necessary result of their existence on the earth. – The possession by all human beings on the earth which

precedes any acts of theirs that would establish rights (as constituted by nature itself) is an *original possession in common*... (DoR 6: 262)

Humans do not act in empty space, Kant reminds us here, but on the earth's spherical surface. This makes it impossible for them to get out of each other's ways once and for all.⁵ Instead they stand, from the beginning, in a relation of 'possible physical interaction' (DoR 6: 352) with everyone else globally: where and how *we* pursue our ends necessarily impacts where and how *others* can do so. This leaves Kant in a puzzling situation: on the one hand, there is a sense in which original acquisition of land is, qua unavoidability, 'blameless': unlike any other acquisition, acquisition of a place on earth occurs without individual act or fault but merely by virtue of one's physical entrance into the world (cf. Flikschuh 2000: 157). We just are the kinds of beings that, in virtue of pursuing projects and holding each other morally accountable within time and space, need to be somewhere. On the other hand, while entering the world itself is not something we choose to do, the very fact that we enter the world *with* the capacity for choice and action has normative implications: it implies that 'the choice of one is unavoidably opposed by nature to that of another' (DoR 6: 267). And what it is to be an embodied *agent* – not just a physical entity taking up space – is to be able to grasp, and account for, the normative implications of this fact.

Kant resolves this dilemma, I want to claim, by attaching strings to the right to be somewhere, namely, to conceive of our own legitimate possession of a place as a 'possession in common' (DoR 6: 262) with all others. To think of the earth's surface as possessed in common, that is to say, is an *a priori* necessary condition of the unavoidable act of first acquisition in virtue of one's coming into the world as an embodied agent. While we have a right to be somewhere (otherwise we could not act),

we also need to take into account that the piece of space we take up at every particular point in time cannot be taken up by any other person. And given that, as Kant explains elsewhere, ‘originally no one had more right than another to be on a place on the earth’ (PP 8: 358), we can do so only by thinking of the earth’s surface as commonly owned. Kant thus employs the idea of original common possession of the earth in order to visually express what it means to exist as an embodied moral agent, together with other such agents, within limited space, namely, to acknowledge that the corollary of one’s own right to be somewhere is one’s acknowledgement of others’ equal right.

While I will return to the notion of original common possession in the last section, let us take stock of this section’s attempt to get a first grasp of the right to be somewhere. Despite our exclusive focus on a close textual engagement with the relevant passage, we can already identify two ways in which it seems to be of broader significance for Kant’s mature political philosophy as a whole. First, the right to be somewhere provides us with a crucial insight into a fundamental problem that the Doctrine of Right is concerned with: corporeal agents that have to share the earth in common with a plurality of agents of the same kinds. At this level, we may say, Kant’s political thinking is concerned with humans qua ‘earth dwellers’ (Byrd 2009: 107). Unlike lions, rabbits and bees, earth dwellers are able to grasp the normative implications of their concurrent existence. This insight suggests, second, that the right to be somewhere plays a significant role for Kant’s cosmopolitanism. We saw that the mere fact that embodied agents can affect and constrain each other with their choices unites them in a community with all those who jointly inhabit a bounded territory, the earth. The pertinent community of original common possession (whatever its precise nature) is global in scope.

In order to make good on my claim that the right to be somewhere is of more fundamental importance to the Doctrine of Right than is usually granted, we now need to go beyond the immediate analysis of the relevant passage and explore its systematic role within the broader architectonic of the text. This is what I shall turn to in the following section.

2. Embodied Agency between Innate and Acquired Right

So far we have tried to make sense of the right to be somewhere within the narrow confines of a few crucial paragraphs. I will now turn to the bigger picture of Kant's political philosophy and try to relate it to a distinction generally deemed of vital importance to the Doctrine of Right's argumentative structure: that between innate right and acquired right. It is not only Kant himself who, by introducing it at earliest stages of the text (DoR 6: 237) points us to the distinction's significance for what is to follow; recent interpretative debates on Kant's political philosophy have confirmed its crucial significance for how to understand the Doctrine of Right as a whole.⁶ In this section I will seek to fit the right to be somewhere into either of these categories and conclude that these attempts are doomed to fail. Yet, as I will show subsequently, this failure proves instructive by virtue of throwing a new light on Kant's cosmopolitanism.

But let us take a step back first. For the concern with embodied agency under circumstances of spatial constraint does not appear for the first time in the published version of the Doctrine of Right. It is instructive indeed to observe how Kant struggles with it already in the preparatory works. At this stage, he seems to be aware of the conundrum emerging from the insight that the space I occupy is, on the one hand, 'inseparable from my existence' (VRL 23: 237) but on the other hand a claim to something external to me that has normative implications for others. In the face of the

strange conceptual ambiguity that hence accrues to a right to be somewhere, Kant dithers noticeably and seems unsure how to fit it into the overall architectonic he envisions for his mature political philosophy. Ultimately, he provisionally characterizes it as an ‘innate but nevertheless established [*entstandenes*] right to a thing which should not be conceived as acquired because it is connected to my existence’ (VRL 23: 237).

Surprisingly, in the Doctrine of Right’s published version this ambivalence disappears completely – Kant apparently takes himself to have solved the problem. Indeed, the distinction between innate right and acquired right is introduced as exhaustive. As he explains in a short section called ‘general division of rights’ (DoR 6: 237) that is part of (or, possibly, follows upon) the appendix to the Introduction to the Doctrine of Right:

The highest division of rights, as (moral) *capacities* for putting others under obligations (i.e., as a lawful basis, *titulum*, for doing so), is the division into *innate* and *acquired* right. An innate right is that which belongs to everyone by nature, independently of any act that would establish a right; an acquired right is that for which such an act is required. What is innately mine or yours can also be called what is *internally* mine or yours (*meum vel tuum internum*); for what is externally mine or yours must always be acquired.

Every right, we are told, belongs to either of two categories: either it is innate, thus belonging ‘to everyone by nature, independently of any act that would establish a right’ (following a Roman law term that Kant takes up here, it belongs to us ‘internally’), or it is acquired, that is it requires an act to be established. Kant goes on to explain that there is only one innate right: a right to ‘freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law’ (DoR 6: 237). Surprisingly, the innate right is then, immediately

after its introduction and without being further unpacked, ‘put in the prolegomena’ (DoR 6: 238) and not taken up again. The main body of the following text goes straight into the domain of acquired right (what is ‘externally mine or yours’), i.e. property rights broadly construed.

Note that a particular significance of this distinction lies in the different scope of inclusion of the two moral domains that the categories respectively ground. On the one hand, the innate right is something all free and finite beings have ‘in virtue of [our] humanity’. In contrast, acquired rights (as Kant will argue in subsequent sections) are possible only in the ‘civil condition’, that is under a general will that makes coercive public laws valid for everyone (e.g. DoR 6: 255). The pertinent kind of property relations are thus relations among co-citizens sharing membership in an empirical institution that embodies such a will. Acquired right is not only more momentous in its implications (ultimately yielding state entrance), the conditions of its possibility are also much more challenging to vindicate and require Kant to engage in a complicated deduction (DoR 6: 249). Given the architectural momentousness of the distinction between the two categories of rights, we would of course like to know how Kant has solved the puzzle that caused him so much headache in drafting the work: is the right to be somewhere an acquired or an innate right?

The Right to be Somewhere as an Acquired Right?

The intuitively most plausible answer is of course to classify the right to be somewhere as an acquired right. At least this is what Kant’s own placement of the notion in the text seems to unequivocally suggest. As seen in the first section, it is introduced in the Doctrine of Right’s section on private right, more specifically in the part that is concerned with the question ‘how to acquire something external’ (DoR 6: 258).

Moreover, this reading seems to be in line with Kant's conceptual map as just outlined. Recall that, as we were told earlier, rights in external objects require an act to be established. The definitional point was to distinguish acquired rights from that which is ours innately or, in Kant-speak, 'internally'. It seems to follow that anything external to me that I claim as mine must fall under the category of acquired right. My place on earth, as occupied by my physical self, is of course external to me. And there is surely a sense in which I 'acquire' a place on earth in virtue of being born. Yet three reasons strongly speak against treating the right to be somewhere as an acquired right.

First, as I have already briefly mentioned, the category of acquired right is concerned with our claims to objects as 'ours'. What Kant deems interesting when it comes to control over external objects is *not* the possibility of 'holding' an object – that there is a sense in which I can legitimately call an object 'mine' as long as I have it under actual physical control (in my 'empirical possession') Kant takes as given, but also not very interesting. The actual normative challenge is to show the possibility of calling something 'mine' 'even though I am not in possession of it' (DoR 6: 246). It is what Kant calls 'intelligible possession', possession of an object *without holding it*, that the category of acquired right is primarily concerned with and the possibility of which the section on private right aims to prove. Such a non-empirical (intelligible) connection between my capacity for choice and action and an object of my choice (ultimately parasitic on the possibility of the pertinent relation between persons) amounts to a synthetic *a priori* judgment that requires a deduction in order to be vindicated (DoR 6: 249).⁷ Importantly, however, the right to be somewhere is limited to physical possession, or occupation. It is not a right to this or that specific place (that we could claim even in our absence), but a right to be granted a place *somewhere* on the earth such that the conditions of embodied agency are fulfilled. Consequently, Kant specifies

in a footnote, ‘merely physical possession of land (holding it) is already a right to a thing, though certainly not of itself sufficient for regarding it as mine’ (DoR 6: 251). Hence, he continues, the right to be somewhere is ‘consistent with the principle of outer freedom’ (ibid.) and does not require a deduction in order to be vindicated – notably unlike acquired rights, from which it must thus be systematically distinct.

Second, while acquired rights require an act to be established, it is highly questionable whether our coming into the world is to be considered an act in the relevant sense. In a passage of the Introduction to the *Metaphysics of Morals*, Kant defines an action of legal relevance (a *factum* or ‘deed’) as one whose author can be considered to have freely caused it, that is if ‘the agent is regarded as the *author* of its effect, and this, together with the action itself, can be *imputed* to him’ (DoR 6: 223). Moreover, this ability to bring about imputable actions (to be a ‘*causa libera*’) is precisely what constitutes moral personality for Kant (DoR 6: 227). Note that, on this definition, a deed is the contrary of both a coerced act *and* of one that causes an unintended chain of events (Kersting 1984: 3). So if in falling off my bike I knock you over, your potential injuries cannot be imputed on me. Now Kant seems unsure how to evaluate our coming into the world in this respect. As he notes in the preparatory works to the Doctrine of Right, my ‘existence is not yet a *deed* and hence not unjust [*injustum*]’ (VRL 23: 279). On the other hand, there is of course a sense in which I have seized a piece of land in virtue of being born (*ihn einmal gleichsam apprehendiert habe durch Geburt* (VRL 23: 237) and our physical presence does have an impact on others. Even if we do not enter the world *at will*, we do so *with a will* and there is even a sense in which we ‘claim entitlement to the land [we] occupy’ (Flikschuh 2000: 158) as a presupposition to act in the stricter sense. While this means that on some level and in some way we can be held to account even for something we have never set out to do, what does nevertheless seem

clear is that this cannot be the same as the way in which we are held to account for consciously and actively apprehending and claiming things as ours. For notice that the obligation we incur in virtue of appropriating objects is indeed far-reaching: property-acquisition effectively come with a duty of state entrance. The normative implications of the ‘sheer facticity of our placement, willy-nilly, on the surface of the earth’ (Shell 1996: 150), in contrast, do not seem to be that consequential.

This leads me directly to my third point, which requires a look at the larger structure of the Doctrine of Right. We have seen that Kant construes a strong connection between acquired right and statehood: the kind of moral relation that would render the exclusion of others from objects of one’s choice permissible is possible only under territorially organized political authority. Now if the right to be somewhere *were* an acquired right, we would expect a universal duty to enter the state to hold among all agents, who, in virtue of their embodiment, ‘acquire’ a place on earth (cf. Niesen and Eberl 2011: 261). This duty could take one of two forms. First, Kant could vindicate a global polity. Yet, in contrast to the powerful cosmopolitan metaphors we know from other works of the critical period,⁸ the political philosophy appears hesitant in vindicating global institutions that in any sense resemble the modern state:⁹ the sphere of inter-state relations is restricted to a loose, voluntary alliance of states ‘that must be renewed from time to time’ (DoR 6: 345). Furthermore, ‘cosmopolitan right’ is restricted to a so-called hospitality right (the ‘right of a foreigner not to be treated with hostility because he has arrived on the land of another’, PP 8: 357). Or alternatively, rather than a duty to enter a global state, Kant could prescribe a universal duty to enter *a* state.¹⁰ I take it that, in this regard, the evidence is at least inconclusive. While there are of course passages where Kant remarks that it is ‘wrong in the highest degree’ to remain in a condition that is not rightful (DoR 6: 307-8), he is also highly sceptical of any attempt at forcing

communities that do *not* live under state-like political institutions into states.¹¹ In both *Perpetual Peace* (PP 8: 358) and the *Doctrine of Right* (DoR 6: 266), he fiercely condemns European states' colonial practice at the time, whose malicious attempt at conquering foreign lands under the false pretext of mere visiting he decries as 'inhospitable behaviour' (PP 8: 358). It seems that in these passages Kant does not only want to say that peoples who fail to organize themselves in states cannot be compelled to do so, but even to deny that they are committing a wrong in the first place (see also Muthu 2003: 199). This textual ambiguity, however, need not undermine our primary negative conclusion. For the least we can say is that Kant is very hesitant to suggest anything like an analytical connection between the general circumstances of human agency and modern statehood, which would indeed leave the latter as a uniquely possible living arrangement. Yet given the strong connection, throughout the *Doctrine of Right*, between acquired right and statehood, this is precisely what we would expect if the right to be somewhere was meant to be included in the former category.

The Right to be Somewhere as an Innate Right?

So while Kant himself introduces the right to be somewhere in the section on acquired right, it is hard to make sense of this placement on a systematic level. Authors who have approached the notion in more depth have generally agreed with this assessment and tended to classify it as somehow contained in the innate right (e.g. Byrd and Hruschka 2010: 126ff.; Kleingeld 1998: 79, 2012: 84; Benhabib 2004: 25-48). A conclusive rejection of this move would require us to develop and defend a comprehensive interpretation of the innate right itself, an endeavour which goes beyond the scope of this paper. What I want to do instead is to show that on both of the two dominant contemporary readings of the innate right, which I will call the *relational* and the *foundational* views, the right to be somewhere cannot possibly be part of it. To start

with, we can register a simple yet indubitable fact as to the pertinent set of rights holders: from a table (DoR 6: 240) and a taxonomy (DoR 6: 240) Kant provides, it seems clear that ‘humans [*Menschen*]’ are the subjects of the innate right. Note however that this descriptive specification – whosoever can be identified as a member of the human species must be accorded an innate right to freedom – leaves open the crucial normative question concerning the *grounds* of the right: what feature of human beings precisely gives rise to it? Textually speaking, we need to understand the claim that the innate right belongs ‘to every man by virtue of his humanity [*Kraft seiner Menschheit*]’ (DoR 6: 237). Due to their different accounts on this level, *relational* and *foundational* views end up ascribing different *content* to the innate right, i.e. specifications of what the innate right is a right *to*. Yet I want to show that, on either construal, the empirical circumstances of our concurrent corporeal existence (constituted by the spherical surface of the earth) transcend the purview of the innate right. The right to be somewhere thus cannot be part of it.

The first, *relational* reading (Ludwig 1988: 92-106; Flikschuh 2009: 434-9; 2011b), understands the notion of humanity (as grounding the innate right) very much in line with that concept’s more familiar meaning in the *Groundwork* (e.g. Gr 4: 429). There it refers to human beings’ noumenal status as expressed in their capacity for morality, i.e. to act from pure principles of practical reason alone. While the innate right pertains to our capacity for choice, what matters morally is the way in which, in choosing and acting, we affect and constrain others. It is with regard to this relation of reciprocal influence that the innate right ascribes to every person a certain standing, namely one of juridical equality. Accordingly, in terms of content, the innate right describes an *a priori*, formal entitlement affirming the equal validity of everyone’s reciprocal claim to be recognized as an agent with full legal status: each has the same moral power to ‘put

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

Further evidence for the reading of innate right as a formal and reciprocal claim to juridical equality is taken from the various 'authorizations' (DoR 6: 237) Kant attaches to it: innate equality, original innocence and strict reciprocity of juridical obligation. For these constitutive features of innate right, which are 'not really distinct from it', are all specified in strictly relational terms, invoking treatment that each person can rightfully expect from all others independently of any acts of theirs. Consequently, on the *relational* reading the main function of the innate right is to deliver a normative criterion for legitimate laws of any kind – most importantly, on Kant's view, those regulating relations of acquired right. However, Flikschuh's (2009: 438) more radical claim that the innate right itself gives us no substantive rights entitlements at all does not seem to be a necessary implication of this view. Even if the immediate *content* of the innate right is limited to the relationally specified authorizations, the pertinent status may *entail* substantive rights that merely spell out the pertinent status, yet can indeed

figure as direct objects of external law-making: Kant mentions the right to freely communicate one's thoughts to others as an example (DoR 6: 238). What is indeed clear instead is that the innate right, understood as a purely relational and *a priori* moral claim to a certain moral standing vis-à-vis others, cannot possibly give us a right to anything 'external' in the sense of a material right *to* something located in time and space – such as the right to be somewhere.

A second, *foundational* reading (Ripstein 2009, Hodgson 2010, Stilz 2011, Byrd and Hruschka 2010: Ch. 3) grounds the innate right not relationally in moral accountability, but foundationally in the capacity of each to set and pursue ends.¹² Rather than in the way persons reciprocally relate to one other as acting agents, the source of innate right is located in a higher order capacity of each person respectively. What motivates this view is an understanding of the notion of 'humanity' as referring to the normative, though morally neutral, capacity for free choice. Consequently, the innate right is taken to endow everyone with an equal right to set and pursue ends (to exercise 'external freedom') independently of the wills of other people. People have this right '*because they are persons capable of setting their own purposes*' (Ripstein 2009: 17, my emphasis).¹³ Note that on the foundational reading, the normativity of choice is thus construed not via its effect on others, but from the value it has for the agent exercising it. This shift in emphasis has significant implications concerning the content of the innate right, as it turns the focus on the conditions of purposiveness itself. The thought is that, since the only way in which individuals can act in the external world is through their bodies – 'having control over my body is essential to my ability to set and pursue ends' (Hodgson 2010: 811) – the innate right at its core describes a right 'to your own person' (Ripstein 2009: 57). This right to your own person is understood in an explicitly physical sense, endowing its subjects with basic powers of bodily self-control. While a

more extreme version of this claim almost likens the innate right to a kind of property right in one's body (e.g. Hodgson 2010), Ripstein's (2009: 68) more moderate version cautions that 'I do not have property in my own person; I just am my own person'. These nuances notwithstanding, what proponents of the foundational reading (in contrast to the relational view) agree on is that the innate right includes a material right to something 'external' in time and space: our bodies. From this assumption, an additional step suggests itself that *further* extends this right: for given that we do not act in empty space but on the earth's surface, a right to not have my body interfered with by others should include a right to the place on earth that I occupy – the space our bodies occupy is necessarily space on the earth's surface (cf. Ripstein 2009: 372)! Under conditions where space is scarce, the right to a place on earth thus just comes with the innate right. As Byrd and Hruschka (2010: 128) have it, the right that nobody 'throw me against my will into the ocean or rocket me into the universe' is supposed to be entailed by the 'the *internal* (in contrast to the *external*) mine and thine'.

While I have no problem with the idea that the subjects of innate right are corporeal beings who set their ends using their bodies, it is this further step (from a right to control one's body to a right to be somewhere) that I want to block. Note that if it went through, proponents of the foundational reading would have successfully shown that we should treat the right to be somewhere as part of the innate right. In order to see why this is not the case, we need to have a closer look at the Introduction to the Doctrine of Right, where we encounter the innate right. I have already mentioned that it is introduced only in (or even after) an 'appendix' (DoR 6: 233), attached at the very end – the bulk of the Introduction serves to set out the conceptual contours of the domain of right more generally as the object of the entire investigation to follow. Kant starts (in §B) with the moral concept of right. It is defined as the 'sum of the conditions under

which the choice of one can be united with the choice of another in accordance with a universal law of freedom' (DoR 6: 230) and explicated as pertaining to the formal external relation between the power of choice of two or more persons. It is crucial to understand what is going on at this stage. Some interpreters (Höffe 1999: 47-50; Kersting 2004: 14, 17) take Kant to be developing the concept of right by applying the general concept of morality to the basic empirical fact of the coexistence of embodied rational beings within limited space. A peculiar kind of anthropology of right (Höffe 2013: 117ff.) is said to set out the relevant 'conditions of application' that make right necessary in the first place. Yet notice that there just is no reference to the empirical circumstances of human coexistence on the earth in the relevant passage. Neither the limited space circumscribed by the spherical surface of the earth, nor the normative implications this yields in the face of our own corporeal existence, plays any constitutive role in Kant's development of the moral concept of right. As we have seen, these aspects are first mentioned far into the section on private right. Kant's argument in §B is an entirely analytical answer to the question, posed in the antecedent paragraph, regarding the necessary and sufficient conditions of legitimacy for any actual body of positive laws (Ludwig 1988: 92).

This is not to say that there is not a sense in which time and space *in general* matter already for Kant's development of the concept of right: as a matter of definition, rightful relations are concerned with external actions, i.e. actions that can be intuited in time and space (Ludwig 1988: 86). Yet the particular conditions of *bounded* space as crucial to the right to be somewhere are not in view at this stage of the argument. This becomes particularly clear in a memorable yet puzzling statement in §E of the Introduction:

The law of a reciprocal coercion necessarily in accord with the freedom of

everyone under the principle of universal freedom is, as it were, the *construction* of that concept, that is, the presentation of it in pure intuition a priori, by analogy with presenting the possibility of bodies moving freely under the law of the *equality of action and reaction*. (DoR 6:232/3)

What I would like to focus on is Kant's claim that we get the law of reciprocal coercion (that he had developed in the prior paragraph from the moral concept of right) by constructing the moral concept of right 'in pure intuition *a priori*'. What does it mean to construct a concept? In a well-known passage of the first *Critique* (A713/B741), Kant explains that the construction of concepts is characteristic for mathematical reasoning (cf. Shabel 2014). When we construct a concept we 'exhibit the *a priori* intuition corresponding to it' (A713/B741). Kant's pertinent case for concept construction understood in this technical sense is geometry: all we need to do in order to prove that two sides of a triangle are together longer than the third side is to 'construct' or represent such a three-sided figure – whether on paper or in the imagination – in *a priori* space. This is why, as Kant had argued much earlier in the first *Critique*, geometrical cognition is synthetic *a priori*: it rests on propositions that include an extension of cognition independently of all experience (B40). So in the present passage, Kant likens juridical space (the form in which we relate to one another externally) and geometrical space (the form in which objects appear as outer),¹⁴ emphasizing that the concept of right is constructed with 'mathematical exactitude' (DoR 6: 233) in non-empirical, unbounded space. In analogy to the first *Critique*'s denomination of space as an *a priori* necessary framework within which it first becomes possible to perceive particular objects, here *a priori* space figures as a formal condition of the construction of anything like rights relations in the first place.

To sum up: the moral concept of right is modelled on pure intuition *a priori* – it is unbounded *a priori* space that constitutes a formal condition for the construction of something like a general schema of rights relations. It is not until the section on acquired right that we move from a vision of rights relations as essentially unbounded (extending across possible persons in space indefinitely) to bounded (empirical) space and hence the conditions under which these relations play out on the spherical surface of the earth. Only once ‘the *a priori* construction of rights relations [is mapped] onto empirical space’ (Flikschuh 2011a: 145) is a possible world in which ‘people could be so dispersed on it that they would not come into community with one another’ (DoR 6: 262) off the table. This is why the empirical circumstances under which rightful relations play out on the earth – the concurrent existence of a plurality of corporeal agents on the surface of a bounded sphere – are not covered by the moral concepts (most importantly, the innate right) introduced by Kant in the Introduction to the Doctrine of Right. Even if we follow the proponents of the *foundational* reading in insisting on the corporeality of the agents of right, the right to be somewhere cannot be included in the innate right.

Bringing this section to a close, the right to be somewhere seems to be a rather recalcitrant notion. Our systematic reflections have shown that it cannot be made to fit either of the categories of innate or acquired right. My aim was not to question the usefulness of this distinction as an overall organizing principle for the Doctrine of Right, but to cast some doubt upon its exhaustiveness. I have pointed out that the moral relation that emanates from insight into the normative implications of our concurrent existence, as embodied agents, on the earth displays features of both categories and ultimately eludes classification. Relations among earth dwellers can be neither accounted for by the status that innate right (however specified) endows us with, nor

can it be reduced to membership in man-made political institutions like the modern state. That there is such a conceptual space is occasionally even acknowledged in passing by interpreters. Herb and Ludwig (1993: 294) for instance remark that human beings enter the world as ‘beings who are subject to obligations which are neither innate nor freely assumed through an act that establishes an obligation’. The implications of this puzzling insight, however, are rarely systematically explored. The main reason for this is the general likening in the literature – admittedly following Kant’s own presentation – of external relations to property relations. Given its marginal position in the text, the fact that relations among earth dwellers are external but *not* property-mediated easily slips attention. Yet it constitutes an essential concern of Kant’s throughout the mature political philosophy that, as I hope to show in the next section, is particularly crucial for his cosmopolitanism.

3. Earth Dwellers and Cosmopolitan Right

In the last section, I have argued that the right to be somewhere proves unwieldy with regard to a conceptual distinction central to Kant’s political philosophy: that between innate and acquired right. It endows agents with a moral status that occupies a conceptual space *in between* the (innate) right all free and finite beings have, and the (acquired) rights propertied citizens have against each other under a public authority issuing coercive laws valid for all. The community of what I have called earth dwellers is one among embodied moral agents in direct physical confrontation with each other. And, as Kant hastens to add, it is distinctly global: the fact that human beings take up space unites everybody in a way that requires us to think of the earth as possessed in common. In this section, I will further follow up on this remark and show that the right to be somewhere, together with our insight into its peculiar conceptual position,

provides us with a new perspective on Kant's cosmopolitanism, which I reconstruct as a *cosmopolitanism for earth dwellers*.

The crucial question when it comes to interpreting Kant's cosmopolitanism concerns the very nature of global community: what is it (according to Kant) that unites us with everyone else globally? Interestingly, the two most prominent interpretative approaches can be read to take their cue from the categories of innate and acquired right respectively. Some construe Kant's cosmopolitanism as depicting a moral community among all rational beings qua shared humanity, constituting a 'kingdom of ends'. On this view of Kant as a moral cosmopolitan,¹⁵ human beings have universal rights and obligations in virtue of being joint members of a 'supersensible world' (Kleingeld 1999: 509; see also Benhabib 2004). Others (briefly discussed in section 2) ascribe to Kant a distinctly political cosmopolitanism of shared membership in some kind of global polity.¹⁶ This reading takes the notion of 'world citizenship' literally, aiming at a worldwide legal and political order that unites all human individuals in one political body. In contrast to both these dominant approaches, I want to suggest that it is the right to be somewhere on which Kant's global community is modelled. In order to make good on that claim, we need to get a better grip on the moral status that actually pertains to humans qua earth dwellers. In which way precisely does the spatial or territorial dimension of human agency shape our coexistence and what does it mean to account for this fact? Is there an identifiable set of entitlements connected to our status as earth dwellers?

Unfortunately, the sparse passages on 'private right' that we have focused on so far offer little guidance in this regard. Following Peter Niesen, it is rather the section on cosmopolitan right that provides important insights concerning the question what the

right to be somewhere is a right *to* (Niesen 2007 and forthcoming; Niesen and Eberl 2011: 329). And indeed, Kant there essentially repeats the argument now well-known to us: in virtue of the fact that ‘nature has enclosed [us] all together within determinate limits (by the spherical shape of the place they live in, a *globus terraquaeus*)’, we stand ‘originally in a community of land’, which is a ‘community of possible physical interaction’ (DoR 6: 352). More specifically, cosmopolitan right is then equated with a right to hospitality, that is ‘the right of a foreigner not to be treated with hostility because he has arrived on the land of another’ (PP 8: 357).¹⁷ This right entitles a visitor of foreign territory to be dealt with justly for the duration of her (temporary) stay and to seek what Kant calls ‘commerce’ (broadly understood as including a broad range of cultural, economic or political exchange). What hospitality does explicitly *not* contain is a right to remain permanently on the land of a foreign country or even settle there (DoR 6: 353). In order to get a better grip on this right, Niesen (2007) suggests a closer look at the two examples Kant discusses in this context. On the one hand, the negative dimension of the right to hospitality figures prominently in his condemnation of European states’ colonial practice at the time, whose attempts at conquering foreign lands with recourse to misleading claims to hospitality he decries as ‘inhospitable behaviour’ (PP 8: 358). Newly ‘discovered’ lands may not be appropriated without the consent of those who have already settled in the region. The second group of cases Kant considers are those where people end up at some place through no fault or responsibility of their own, but merely due to unfavourable circumstances. In a preliminary draft for *Perpetual Peace* (VPP 23:173), Kant discusses the victims of a shipwreck washed ashore, as well as sailors seeking refuge from a storm in a foreign harbour (cf. Kleingeld 1998: 76). Both, he argues, can legitimately claim hospitality rights to remain on the

host lands and cannot be returned to the sea or their homeland if this would in any way endanger them (PP 8: 358).

What Niesen takes to be the common denominator in these two examples is an affirmation of the fact that ‘we need to be somewhere rather than nowhere, and that we need to use and appropriate territory and territorially based stuff’ (Niesen forthcoming: 20). The right to be somewhere, Niesen thus concludes, includes a substantive set of entitlements that account for the ‘territory-based nature of human lives’ (ibid.), or as he calls it, our ‘earth citizenship’. The idea of territory-based entitlements is meant quite literally: through mere reflection upon our concurrent existence on the earth, Niesen hopes to assemble a ‘substantive list of human rights like the one articulated in ... the Universal Declaration’ (21), including far-reaching entitlements like a transnational right to freedom of communication. Yet Niesen’s account of the right to be somewhere in terms of ‘earth citizenship’ raises a number of questions that cast doubt on whether Kant’s account does actually lend itself to such a list: is his right to be somewhere a general right to just *any*, or to some particular place that, through ‘nature or chance’, I happen to occupy? While the case of the shipwrecked person only seems to give us the former, Kant’s discussion of non-state peoples points beyond that, to the latter. More importantly, how much space do I have a right to? Sure, given that human agency is at stake, someone who is locked up in a suitcase fails to have a place on earth in the relevant sense.¹⁸ But beyond that? Why do the relative small nomadic communities have a right to occupy the ‘great open regions’ they traverse (DoR 6: 353) – disallowing other people, to whom the land might be equally useful, to even settle in the proximity of these lands?

I think these questions will ultimately have to remain unanswered and point to the limits of Kant's practical philosophy: taking its cue from the fundamental (yet highly controversial) distinction between 'noumena' and 'phenomena', it construes moral relations as formal and *a priori*. We have seen in the last section that, in line with this general outlook, his political philosophy is concerned with the reciprocal relation between the choices of free and finite embodied reasoners. Contra Niesen, our empirical existence as vulnerable beings with bodily needs cannot have direct rights-grounding justificatory force, such that their very structure might be taken to equip us with substantive entitlements, for instance when it comes to the distribution of resources and land. This is why I think Niesen's analysis of the right to be somewhere in terms of 'earth citizenship' ultimately overestimates the extent to which we can actually get anything as substantive as a set of territory-based entitlements out of it.¹⁹

In the remainder of this section, I will thus contrast Niesen's substantial reading of the right to be somewhere with a more formal or relational one that suggests a different way of accounting for the territorial nature of human existence. On my reading, the right to be somewhere grounds a kind of cosmopolitanism that does not come with a substantive list of pre-political entitlements that people bring to bear in their interactions, but describes a certain *quality* of interaction: how we ought to deal with one another globally. Vindicating this claim requires me to get at the bottom of Kant's characterization of the community of earth dwellers as one of 'original common possession'. In particular, we need to understand just how different the outlook is underlying Kant's invocation of this concept as compared to the natural law tradition, with which it naturally evokes associations and against the background of which Kant himself developed it. Thinkers in the natural law tradition like Grotius (2005) provide an (idealized) historical account of how a common stock of resources and space that

God gave to humankind for the satisfaction of their needs is, partly by necessity and partly by convention, gradually divided up between individuals and nations. Within that narrative, the idea of an original community of ownership figures as a continuing constraint on the legitimacy of positive property rules and existing boundaries. In contrast, for Kant to characterize global community as one of common possession is not to suggest that we should think of its members as jointly *owning* the planet in any straightforward sense. What he wants to say, instead, is that it constitutes the basis of people's possible physical interaction. In his own words, original common possession is not 'a relation to the land (as an external thing) but to other humans in so far as they are simultaneously on the same surface' (VRL 23: 323). The 'spherical surface' (DoR 6: 262) of the earth that Kant makes so much of is not (primarily) significant as a resource repository for satisfaction of everybody's needs, but constitutes the unavoidable condition of human social relations.

Kant thus replaces the *material*, needs-based principle for the division of the common stock of resources and land that he inherits from the natural law tradition with a *formal* argument pointing out systematic relations of interdependence that obtain among individuals globally just in virtue of their unavoidable coexistence on the earth. This conception of course does not lend itself to substantive implications such as the ones we can get out of a more Grotian understanding of common ownership, where natural law already contains a principle for the just distribution of resources and land: the principle of need as determined by human nature and discerned by reason.²⁰ Yet the fact that Kant provides us with a deeply relational (instead of material) conception of original common possession does not make it any less interesting, or indeed devoid of normative implications. The essential purpose of characterizing the community of earth dwellers as one of 'common possession', I want to suggest, is to point out that the political

problematic is fundamentally and irreducibly global for Kant – that humans both need to and are able to get to grips with the fact that they have to share the earth in common. They *need* to do so because of the systematic interdependence that obtains among individuals globally just in virtue of the reciprocal relation between their choices and the ensuing ‘unavoidable unity’ of all places on the earth. Moreover, they are *capable* of critically relating to their own respective standpoints and normatively structuring the common space they share.

Against this background, we can re-read the section on cosmopolitan right with a focus on the *mode* of interaction among embodied agents it prescribes. It is not so much prior entitlements that individuals bring to bear in their encounters with each other and other states or peoples, but it is a certain way *to be dealt with* that they can claim. As guests, they may ‘present themselves for community’ (PP 8: 358) or at least offer to engage in (not demand!) cultural, economic or political exchange (‘commerce’, DoR 6: 352). Guests may pass through, but – unless refusal involves their ‘destruction’ – not stay against the will of the inhabitants; that is the case even if the inhabitants fail to accord with their view of what it is to make proper use of territory. A good example is the case of non-state peoples, where Kant prescribes to representatives of European states that want to settle on the territory of nomadic peoples to deal with the native inhabitants on a contractual basis (DoR 6: 353). That is, they must treat the claims of all those involved in the exchange with strict equality and refrain from making deceptive or fraudulent offers or persuade them into selling the lands on which they live. It is this requirement to interact on the basis of strict reciprocity, as illustrated through the model of a contractual relation, that I take to be at the normative core of cosmopolitan right. Kant’s cosmopolitanism for earth dwellers is – in line with the relationalism characterizing his

practical philosophy more generally – concerned with the quality of human interactions, not the quality of matter.

Let me end this section with a reminder that we should be wary of reducing Kant's global thinking to what he says in the Doctrine of Right's section on 'cosmopolitan right', on which I have focused in this section.²¹ Following the argument developed in this paper, his cosmopolitanism constitutes a fundamental element and argumentative thread that lies at the very root of his political thinking and pervades it throughout. Yet as I hope to have shown in this section, reflections on cosmopolitan right do confirm a reading of the latter according to which the community of earth dwellers is not one of humanity in the abstract, but in direct physical confrontation with each other. Thus the right to be somewhere, as the notion upon which I have constructed this reading, does not contain a substantive set of entitlements, but speaks to the global nature of Kant's theorizing more generally: it provides earth dwellers with something like a global standpoint from which to negotiate the terms of their coexistence (cf. Milstein 2013). To think of oneself as an earth dweller is to think of oneself as participant in a cosmopolitan community of individuals whose fates are, in an important sense, inevitably bound up with one another but who at the same time have the capacity to critically relate to one another and the contingent institutions, boundaries and loyalties that separate them.

Conclusion

The aim of this essay was to clarify the status, and indeed bring out the conceptual importance, of the right to be somewhere in Kant's political philosophy. My claim was not only that sustained analysis of the notion provides a crucial insight into an underappreciated concern (working out the normative implications of the coexistence of

corporeal agents on the earth's spherical surface), but furthermore that it comes with a novel perspective on his global thinking. On the emerging picture, Kant's cosmopolitanism is neither one of noumenal beings united in their shared humanity, nor of actual world citizens sharing a global polity. Instead, it is a cosmopolitanism of earth dwellers: embodied rational agents in direct physical confrontation with other such agents, with which they have to share the globe in common. This is a cosmopolitanism that does not in itself offer effortless institutional guidance for a just world, but rather provides agents with something like a global standpoint from which to think and act. This shift of focus away from concrete prescriptive recommendations for a global political order, to a certain way of framing the problem, goes against the grain of how Kant's political thought tends to be read nowadays: it is the former that interpreters typically look for in essays such as *Perpetual Peace*. But it is the latter, I hope to have shown, that is both most appealing about Kant's cosmopolitanism, and has so far remained largely underexplored.²²

Notes

¹ Volume and page numbers refer to the Prussian Academy edition of Kant's writings (Kant 1900 -). Abbreviations used are DoR (Doctrine of Right), Gr (*Groundwork of the Metaphysics of Morals*), PP (*Towards Perpetual Peace*), for translations from which I have used those of Mary Gregor (Kant 1996); also: VRL (*Vorarbeiten zur Rechtslehre*), VPP (*Vorarbeiten zu Zum Ewigen Frieden*). Citation of the *Critique of Pure Reason* is in standard A/B format, using the Guyer and Wood translation (Kant 1999).

² This absence is notable for instance in the edited volumes by Timmons (2002) and Denis (2009); an exception is Byrd and Hruschka (2010: 126-9).

³ Through much of this paper, I will equate the category of acquired right with that of property rights, thus neglecting the further titles of contract and status. I take it that property has a kind of conceptual priority in the sense of constituting a ‘paradigm case’ that most clearly illustrates what Kant considers problematic about ‘having external objects as one’s own’ (DoR 6: 245) in general. Most importantly, the corresponding kind of acquisition (DoR 6: 260) – by deed, as opposed to by agreement (contract) and as required by law (status) – is uniquely problematic in putting (unaffected) others under an obligation through a unilateral act. This priority relation notwithstanding, let me also emphasize that the two other instances of acquired right share with property the two crucial features that my discussion will focus on: on the one hand, they are material rights to something external located in time and space – a right to ‘another's choice’ (DoR 6: 270) and to ‘a person akin to a right to a thing’ (DoR 6:260). Second, the pertinent rights require acts to be established – an act that brings a contract into existence, or one that brings people into the respective fiduciary relation (e.g. marrying or begetting a child). Hence, regardless of how one stands to the claim from conceptual priority, my exclusive focus on property does not actually change the substance of my discussion. I would like to thank an anonymous reviewer for urging me to clarify this.

⁴ See for instance Byrd and Hruschka 2010, Flikschuh 2000, Ripstein 2009.

⁵ Kant notably also thinks that more anthropological factors like humans’ predisposition for sociality and their commercial spirit will necessarily drive them towards each other (see e.g. Muthu 2003: 172-209).

⁶ As an example, consider the exchange between Flikschuh (2011b) and Ripstein (2011).

⁷ The details of this deduction are obscure and perennially contested. Given that the textual order seems to partly break down at the relevant passage it is not even clear

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

⁸ See the pertinent notions from the ‘moral world’ in the *Critique of Pure Reason*, through the ‘realm of ends’ in the *Groundwork*, to the moral cosmopolitan community in the *Religion* (cf. Kleingeld 2011: 161-4).

⁹ This has traditionally bothered Kantians with strongly cosmopolitan inclinations, who have argued that were Kant to have taken seriously his own moral universalism, he should have embraced more ambitious ideals like world citizenship and global democracy (e.g. Held 1995), or even a full-blown world state (recently Hodgson 2012).

¹⁰ I am grateful to an anonymous reviewer for urging me to consider this additional option.

¹¹ See for instance the contributions by Kleingeld, Niesen, and Stilz in Ypi and Flikschuh (2014).

¹² Ripstein is indeed ambivalent between the foundational and the relational readings. While sometimes he talks about innate right as according a relational entitlement ‘within a system of reciprocal limits of freedom’ (Ripstein 2009: 34), his prevalent talk of purposiveness, bodily self-control and self-mastery as normatively basic (e.g. 24) makes his account at least ambivalent between the two. See also Flikschuh 2011b.

¹³ The present reading is foundational not only in this, but also in the further sense that the innate right is then taken as the ‘axiomatic’ (Byrd and Hruschka 2010: 77) and most basic right from which all other rights – most importantly acquired rights – are derived.

¹⁴ I borrow the useful term ‘juridical space’ from Moggach 2000.

¹⁵ On the distinction between moral and political cosmopolitanism in wider debates about global justice, see Kleingeld and Brown 2014.

¹⁶ This has been a widespread view particularly since interpreters rediscovered Kant's essay on Perpetual Peace in the 1990s, see e.g. Habermas 1997.

¹⁷ Cosmopolitan right itself has only recently received increased attention in the literature, with different motivations: Benhabib (2004) makes it fruitful as a way to think about refugee and asylum rights; Byrd and Hruschka (2010: 205-11) take it to be dealing with rights to engage in international trade; Niesen (2007: 90–108) stresses its role within Kant's critique of colonial occupation.

¹⁸ Thanks to Markus Willaschek for this example.

¹⁹ An anonymous reviewer has suggested to me yet another (though equally substantive) reading, according to which the right to be somewhere obliges us to acknowledge the acquired rights of others without a duty to jointly proceed into the civil condition. However, this would imply that objects could be conclusively acquired prior to the pertinent cosmopolitan encounter, which I deem impossible due to the reasons set out in this section. This motivates my procedural solution, according to which the right to be somewhere does not anticipate any full-blown material rights but endows individuals with certain procedural entitlements that they can bring to bear in (unavoidable) interactions.

²⁰ Grotius for instance famously envisions a right of necessity that sanctions the revival of what he construes as a primitive use right (thus licensing the needy's taking from the surplus of property holders) in cases of extreme and unavoidable hardship.

²¹ I agree with Niesen's (2007) reconstruction of cosmopolitan right as – partly – emerging out of Kant's concerns with European colonialism at the time.

²² Earlier versions of this paper have been presented at the LSE Political Philosophy Workshop and the Princeton Political Theory Graduate Conference. I am grateful to the audiences at these events for helpful questions and comments, as well as to Katrin Flikschuh, Louis-Philippe Hodgson, Ben Hoffmann, Karoline Reinhardt, Arthur Ripstein, Annie Stilz and Lea Ypi for feedback at various stages as well as two anonymous reviewers of this journal for their insightful comments. My views on the issues treated here have benefitted immensely from a number of conversations with Peter Niesen.

References

- Benhabib, Seyla (2004) *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge: Cambridge University Press.
- Byrd, Sharon (2009) 'Intelligible possession of objects of choice'. In Lara Denis (ed.), *Kant's 'Metaphysics of Morals': A Critical Guide* (Cambridge: Cambridge University Press), pp. 93-111.
- Byrd, Sharon and Hruschka, Joachim (2010) *Kant's Doctrine of Right: A Commentary*. Cambridge: Cambridge University Press.
- Denis, Lara (ed.) (2009) *Kant's 'Metaphysics of Morals': A Critical Guide*. Cambridge: Cambridge University Press.
- Flikschuh, Katrin (2000) *Kant and modern political philosophy*. Cambridge: Cambridge University Press.
- _____ (2009) 'Kant's Non-Individualist Cosmopolitanism'. In Heiner Klemme (ed.), *Die Zukunft der Europäischen Aufklärung* (Berlin: De Gruyter), pp. 425-48.

- _____ (2011a) 'Political Obligation: property, trade, peace'. In Will Dudley and Kristina Engelhard (eds.), *Immanuel Kant: Key Concepts* (Durham: Durham University Press), pp. 136-55.
- _____ (2011b) 'Innate Right and Acquired Right in Arthur Ripstein's *Force and Freedom*', *Jurisprudence*, 1(2), 295-304.
- Grotius, Hugo (2005) *The Rights of War and Peace [De Jure Belli ac Pacis]*. Ed. Richard Tuck. Indianapolis: Liberty Fund.
- Habermas, Jürgen (1997) 'Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight'. In James Bohman and Matthias Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press), pp. 113–53.
- Held, David (1995) *Democracy and the Global Order. From the Modern State to Cosmopolitan Governance*. Stanford, CA: Stanford University Press.
- Herb, Karlfriedrich and Ludwig, Bernd (1993) 'Naturzustand, Eigentum und Staat', *Kant-Studien*, 84, 283-316.
- Hodgson, Louis-Philippe (2010) 'Kant on the right to freedom: a defense'. *Ethics*, 120, 791-819.
- _____ (2012) 'Realising External Freedom: The Kantian Argument for A World State'. In Elisabeth Ellis (ed.), *Kant's Political Theory: Interpretations and Applications* (University Park, PA: Pennsylvania State University Press), pp. 101-34.
- Höffe, Otfried (1999) 'Der Kategorische Rechtsimperativ - "Einleitung in die Rechtslehre"'. In Otfried Höffe (ed.), *Immanuel Kant: Metaphysische Anfangsgründe der Rechtslehre* (Berlin: Akademie Verlag), pp. 41-63.

- _____ (2013) 'Anthropology and Metaphysics in Kant's Categorical Imperative of Law'. In Sorin Baiasu and Mark Timmons (eds), *Kant on Practical Justification: Interpretive Essays* (Oxford: Oxford University Press), pp. 110-24.
- Kant, Immanuel (1900 -) *Kant's gesammelte Schriften*. Ed. Kgl. Pr. Akademie der Wissenschaften. Berlin: De Gruyter.
- _____ (1996) *Practical Philosophy*. Tr. and ed. Mary J. Gregor. Cambridge: Cambridge University Press.
- _____ (1999) *Critique of Pure Reason*. Tr. and ed. Paul Guyer and Allen Wood. Cambridge: Cambridge University Press.
- Kersting, Wolfgang (1984) *Wohlgeordnete Freiheit*. Berlin: De Gruyter.
- _____ (2004) *Kant über Recht*. Paderborn: Mentis.
- Kleingeld, Pauline (1998) 'Kant's Cosmopolitan Law: World Citizenship for a Global Order'. *Kantian Review*, 2, 72-90.
- _____ (1999) 'Six Varieties of Cosmopolitanism in Late Eighteenth-Century Germany'. *Journal of the History of Ideas*, 60, 505-524.
- _____ (2011) *Kant and Cosmopolitanism. The Philosophical Ideal of World Citizenship*. Cambridge: Cambridge University Press.
- Kleingeld, Pauline and Brown, Eric (2014) 'Cosmopolitanism'. In Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*. Online: <http://plato.stanford.edu/archives/fall2014/entries/cosmopolitanism> (accessed 01.11.2015).
- Ludwig, Bernd (1988) *Kant's Rechtslehre*. Berlin: F. Meiner.
- Milstein, Brian (2013) 'Kantian Cosmopolitanism beyond "Perpetual Peace": Commercium, Critique, and the Cosmopolitan Problematic'. *European Journal of Philosophy*, 21, 118-43.

- Moggach, Douglas (2000) 'The construction of juridical space'. *The Proceedings of the Twentieth World Congress of Philosophy*, 7, 201-9.
- Muthu, Sankar (2003) *Enlightenment Against Empire*. Princeton, NJ: Princeton University Press.
- Niesen, Peter (2007) 'Colonialism and Hospitality'. *Journal of International Political Theory*, 3, 90-108.
- _____ (forthcoming) 'Cosmopolitanism in One Country: A Right to Free Transnational Communication'. In Peter Niesen and David Owen (eds), *Cosmopolitanism in One Country*.
- Niesen, Peter and Eberl, Oliver (2011) *Kommentar zu Immanuel Kant: 'Zum Ewigen Frieden'*. Frankfurt: Suhrkamp.
- Ripstein, Arthur (2009) *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge, MA: Harvard University Press.
- _____ (2011) 'Reply to Flikschuh and Pavlakos'. *Jurisprudence*, 1, 317-24.
- Shell, Susan (1996) *The Embodiment of Reason. Kant on Spirit, Generation, and Community*. Chicago: University of Chicago Press.
- Stilz, Anna (2011) *Liberal loyalty*. Princeton, NJ: Princeton University Press.
- Ypi, Lea (2014) 'A Permissive Theory of Territorial Rights'. *European Journal of Philosophy*, 22, 288–312.
- Ypi, Lea and Flikschuh, Katrin (eds) (2014) *Kant and Colonialism*. Oxford: Oxford University Press.