## Advocacy

#### I affirm, resolved: The appropriation of outer space by private entities is unjust.

#### Appropriation:

Merriam Webster No Date Merriam Webster, dictionary, "Definition of APPROPRIATION,” no date, Merriam Webster, accessed 26 December 2021, pg. 1, https://www.merriam-webster.com/dictionary/appropriation

an act or instance of appropriating something

#### **And to appropriate:**

Merriam Webster No Date Merriam Webster, dictionary, "Definition of APPROPRIATE,” no date, Merriam Webster, accessed 26 December 2021, pg. 1, https://www.merriam-webster.com/dictionary/appropriate

to take exclusive possession of

#### Outer space:

Oxford Languages No Date Oxford Languages, dictionary, “outer space,” no date, Google, accessed 27 December 2021, pg. 1, <https://www.google.com/search?q=define+outer+space&rlz=1C1CHBF_enUS909US909&oq=define+outer+space&aqs=chrome.0.69i59j0i22i30l6j0i390l3.1588j0j7&sourceid=chrome&ie=UTF-8>

the physical universe beyond the earth's atmosphere.

## Framework

#### First, the value is justice as per the resolution.

Miller 17 David Miller, Professor of Political Theory and Senior Research Fellow at the University of Oxford, "Justice," 26 June 2017, Stanford Encyclopedia of Philosophy, accessed 26 December 2021, pg. 1, <https://plato.stanford.edu/entries/justice/#UtilJust> ~ST~ brackets for gender

‘Justice’ has sometimes been used in a way that makes it virtually indistinguishable from rightness in general. Aristotle, for example, distinguished between ‘universal’ justice that corresponded to ‘virtue as a whole’ and ‘particular’ justice which had a narrower scope (Aristotle, Nicomachean Ethics, Book V, chs. 1–2). The wide sense may have been more evident in classical Greek than in modern English. But Aristotle also noted that when justice was identified with ‘complete virtue’, this was always ‘in relation to another person’. In other words, if justice is to be identified with morality as such, it must be morality in the sense of ‘what we owe to each other’ (see Scanlon 1998). But it is anyway questionable whether justice should be understood so widely. At the level of individual ethics, justice is often contrasted with charity on the one hand, and mercy on the other, and these too are other-regarding virtues. At the level of public policy, reasons of justice are distinct from, and often compete with, reasons of other kinds, for example economic efficiency or environmental value.

As this article will endeavour to show, justice takes on different meanings in different practical contexts, and to understand it fully we have to grapple with this diversity. But it is nevertheless worth asking whether we find a core concept that runs through all these various uses, or whether it is better regarded as a family resemblance idea according to which different combinations of features are expected to appear on each occasion of use. The most plausible candidate for a core definition comes from the Institutes of Justinian, a codification of Roman Law from the sixth century AD, where justice is defined as ‘the constant and perpetual will to render to each ~~his~~ [their] due’. This is of course quite abstract until further specified, but it does throw light upon four important aspects of justice.

#### There are 4 necessary distinctions, the subsets of which are requirements of justice:

#### [1] Conservative and ideal – what agents are due given current practices vs. what agents would be due with the establishment of an ideal standard.

#### [2] Corrective and distributive – what treatment wrongdoers should receive vs. the distribution of dues throughout society.

#### [3] Procedural and substantive – the method in which dues are allocated vs. the results of the allocation.

#### [4] Comparative and non-comparative – justice in comparison to other agents vs. justice in a vacuum.

#### These are all relevant features constitutive to just action – they coexist without contradiction.

#### Now, on ethics.

**The metaethic is non-naturalism.**

**[1] Is-ought gap – we only perceive what is, not what ought to be. We can’t derive prescriptive obligation from descriptive premises.**

**[2] Transcendental idealism – we see our representations of reality – only a priori knowledge is a lane to truth. If we remove the subject, constitution would disappear as objects exist only in us and are unknown abstracted from sensibility.**

**[3] Uncertainty – a posteriori ethics is subject to uncertainty. We could be dreaming, hallucinating, or being deceived by an evil demon. Infinitely outweighs because it would be escapable and therefore pointless.**

**Next, ethics must begin with practical reason.**

**[1] Action theory – action is infinitely divisible. For example, the action of brewing tea could be broken into many small actions. The actions can’t be moral or immoral since it would be infinitely divisible, but intention to brew tea unifies action.**

**[2] Bindingness – experience is subjective; only practical reason unifies and creates a moral theory.**

**[3] Epistemology – all arguments appeal to reason; otherwise, they are baseless, so reason is a constraint on evaluating their arguments.**

**[4] Infinite regress – we can always ask “why should I follow this framework,” leading to infinite regress, but asking for a reason for reason concedes its authority. Only self-justified frameworks are epistemically sound.**

**That entails universal maxims.**

**[1] Arbitrariness – absent universal ethics, morality is arbitrary and can’t guide action, making it useless.**

**[2] Non-contradiction – there is no world in which p and ~p are both true. Acting recognizes the validity of others to take the action, which makes universal maxims a logical side constraint to other frameworks.**

**[3] Reason implies universalizability.**

Korsgaard 85 Christine M. Korsgaard, professor of philosophy at Harvard University, “Kant's Formula of Universal Law,” 1985, Pacific Philosophical Quarterly 66, no. 1-2: 24-47, accessed 6 September 2021, pg. 1, https://dash.harvard.edu/bitstream/handle/1/3201869/Korsgaard\_KantForumulaUniversalLaw.pdf?sequence=2&isAllowed=y //ACCS JM recut

A few lines later, Kant says that this is equivalent to acting as though your maxim were by your will to become a law of nature, and he uses this latter formulation in his examples of how the imperative is to be applied. Elsewhere, Kant specifies that the test is whether you could will the universalization for a system of nature "of which you yourself were a part" (C2 69/72); and in one place he characterizes the moral agent as asking "what sort of world he would create under the guidance of practical reason, . . . a world into which, moreover, he would place himself as a member." 2 But how do you determine whether or not you can will a given maxim as a law of nature? **Since the will is practical reason, and since everyone must arrive at the same conclusions in matters of duty, it cannot be the case that what you are able to will is a matter of personal taste, or relative to your individual desires. Rather, the question of what you can will is a question of what you can will without contradiction.**

**Thus, the standard is consistency with universal maxims.**

**Prefer additionally:**

**[1] Performativity – freedom is key to argumentation. Abiding by their ethical theory presupposes we own ourselves, making it incoherent to justify a standard without first willing ours.**

**[2] Only Korsgaard applies to justice.**

Miller 17 David Miller, Professor of Political Theory and Senior Research Fellow at the University of Oxford, "Justice," 26 June 2017, Stanford Encyclopedia of Philosophy, accessed 26 December 2021, pg. 1, <https://plato.stanford.edu/entries/justice/#UtilJust> ~ST~

The third aspect of justice to which Justinian’s definition draws our attention is the connection between justice and the impartial and consistent application of rules – that is what the ‘constant and perpetual will’ part of the definition conveys. Justice is the opposite of arbitrariness. It requires that where two cases are relevantly alike, they should be treated in the same way (We discuss below the special case of justice and lotteries). Following a rule that specifies what is due to a person who has features X, Y, Z whenever such a person is encountered ensures this. And although the rule need not be unchangeable – perpetual in the literal sense – it must be relatively stable. This explains why justice is exemplified in the rule of law, where laws are understood as general rules impartially applied over time. Outside of the law itself, individuals and institutions that want to behave justly must mimic the law in certain ways (for instance, gathering reliable information about individual claimants, allowing for appeals against decisions).

**[3] Other frameworks collapse – they contain conditional obligations which derive authority from the categorical imperative.**

Korsgaard 96 Christine M. Korsgaard, professor of philosophy at Harvard University, introduction to “Groundwork of the Metaphysics of Morals,” 1996, Cambridge University Press, accessed 6 September 2021 pg. xvii-xviii, https://cpb-us-w2.wpmucdn.com/blog.nus.edu.sg/dist/c/1868/files/2012/12/Kant-Groundwork-ng0pby.pdf AG recut

This is the sort of thing that makes even practiced readers of Kant gnash their teeth. A rough translation might go like this: the categorical imperative is a law, to which our maxims must conform. But the reason they must do so cannot be that there is some further condition they must meet, or some other law to which they must conform. For instance, **suppose someone proposed that one must keep one's promises because it is the will of God that one should do so - the law would then "contain the condition" that our maxims should conform to the will of God**. This would yield only a conditional requirement to keep one's promises — if you would obey the will of God, then you must keep your promises - whereas the categorical imperative must give us an unconditional requirement. Since there can be no such condition, all that remains is that the categorical imperative should tell us that our maxims themselves must be laws - that is, that they must be universal, that being the characteristic of laws. There is a simpler way to make this point. What could make it true that we must keep our promises because it is the will of God? **That would be true only if it were true that we must indeed obey the will of God, that is, if "obey the will of God" were itself a categorical imperative. Conditional requirements give rise to a regress; if there are unconditional requirements, we must at some point arrive at principles on which we are required to act, not because we are commanded to do so by some yet higher law, but because they are laws in themselves. The categorical imperative, in the most general sense, tells us to act on those principles**, principles which are themselves laws. Kant continues:

#### [4] Actor spec and real-life applicability – states abide by inviolable side-constraints in their constitutions – Germany proves.

Ripstein 09 Arthur Ripstein, Professor of Law and Philosophy at the University of Toronto, “Force and Freedom,” 15 October 2009, Harvard University Press, accessed 1 January 2022, Pg. 221, <https://www.jstor.org/stable/j.ctt13x0hb0> / recut ~ST~

Strictly speaking, the right to dignity is not an enumerated right in the German Basic Law, but the organizing principle under which all enumerated rights—ranging from life and security of the person through freedom of expression, movement, association, and employment and the right to a fair trial to equality before the law—are organized. It appears as Art. I.1: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.” Art. I.3 explains that the enumerated rights follow: “The following basic rights shall bind the legislature, the executive, and the judiciary as directly applicable law.” Other, enumerated rights are subject to proportionality analysis, through which they can be restricted in light of each other so as to give effect to a consistent system of rights. The right to dignity is the basis of the state’s power to legislate and so is not subject to any limitation, even in light of the enumerated rights falling under it, because—to put it in explicitly Kantian terms—citizens could not give themselves a law that turned them into mere objects.

## Offense

#### [1] Private entities are bound by the Outer Space Treaty, which bans appropriation.

Van Eijk 20 Cristian Van Eijk, BA cum laude in International Justice and an LLM in Public International Law from Leiden University, “Sorry, Elon: Mars is not a legal vacuum – and it’s not yours, either,” 11 May 2020, Völkerrechtsblog, accessed 27 December 2021, Pg. 1, [https://voelkerrechtsblog.org/sorry-elon-mars-is-not-a-legal-vacuum-and-its-not-yours-either](https://voelkerrechtsblog.org/sorry-elon-mars-is-not-a-legal-vacuum-and-its-not-yours-either%20) TDI recut

OST article II: “Outer space, including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”

OST article III: “States… shall carry on activities in the exploration and use of outer space, including (…) celestial bodies, in accordance with international law”.

SpaceX is a private entity, and is not bound by the Outer Space Treaty – but that does not mean it can opt out. Its actions in space could have consequences for the United States in three ways. First, the US, as SpaceX’s launch state, bears fault-based liability for injury or damage SpaceX’s space objects cause to other states’ persons or property (OST article VII, Liability Convention articles I, III). Second, the US, as SpaceX’s state of registry, is the sole state that retains jurisdiction and control over SpaceX objects (OST article VIII, Registration Convention article II). Both refer to objects in space and are irrelevant.

According to article VI OST, States “bear international responsibility for national activities in outer space”, including Mars, including those by “non-governmental entities”. The US, as SpaceX’s state of incorporation, must authorise and continuously supervise SpaceX’s actions in space to ensure compliance with the OST (OST article VI) and international law (OST article III). In practice, this task is done by the US Federal Communications Commission, which licenses and regulates SpaceX.

Article VI OST sets a specific rule of attribution, supplementing the customary rules of state responsibility (Stubbe 2017, pp. 85-104). SpaceX acts with US authorisation, and its conduct in space within and beyond that authorisation is attributable to the US (ARSIWA articles 5, 7). In the absence of circumstances precluding wrongfulness, the result is straightforward. If SpaceX breaches a US obligation under international law, the US bears responsibility for an internationally wrongful act.

The principle of non-appropriation

SpaceX risks breaching OST article II, the “cardinal rule” of space law (Tronchetti, 2007). This principle is a jus cogens norm (Hobe et al. 2009, pp. 255-6) establishing Mars as res communis, rather than terra nullius. I must acknowledge, with tongue firmly in cheek, that SpaceX is partly correct – states have no sovereignty on Mars. But that does not leave Mars a “free planet” up for grabs – SpaceX has no sovereignty either.

On plain reading, article II OST lacks clarity on two key points: i) whose claims are prohibited, and ii) what exactly constitutes a ‘claim of sovereignty’. The first has been answered; per the then-customary interpretative rules and travaux préparatoires, there is quite broad academic consensus (Hobe, et al. 2017; Tronchetti, 2007; Pershing, 2019; Cheney, 2009) that sovereign claims include those by private entities. This is consistent with OST article VI; private entities act in space with state authorisation, and thus state authority. It also accords with the law of state responsibility, wherein conduct of entities exercising state authority is attributable to the state, even if ultra vires (ARSIWA articles 5, 7).

The second issue is more complex. Much has been written on whether claims to space resources or space property (Nemitz v United States) are sovereign. In this case, the territorial claim is less clear; is establishing a jurisdiction a sovereign claim “by other means”? SpaceX purports not to create law horizontally via contract, but to establish the only law on Mars – a vertical structure endemic to sovereign legal orders. International caselaw on territorial acquisition agrees; sovereign acts include “legislative, administrative and quasi-judicial acts” (Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia), para 148; Decision regarding delimitation of the border between Eritrea and Ethiopia, para. 3.29) with the exercise of jurisdiction and local administration having “particular, probative value” (Minquiers and Ecrehos (France v. UK), p. 22). Also relevant are attempts to exclude other states’ jurisdiction (Island of Palmas (USA v. Netherlands), pp. 838-9). An attempt by SpaceX to prescribe its own jurisdiction on Mars would constitute a sovereign claim in breach of OST article II, and entail US responsibility for an internationally wrongful act.

#### Violating international contracts is non-universalizable.

Davis 91 Kevin R. Davis, researcher at East Central University, “Kantian ‘Publicity’ And Political Justice,” October 1991, History of Philosophy Quarterly, accessed 27 December 2021, Pg. 417, <https://www.jstor.org/stable/27743995> TDI recut

Kant also gives examples from international politics to illustrate the application of the publicity principle. In these cases states themselves are conceived as rational agents who would object to unequal restrictions on their freedom. The first case involves the issue of promise-keeping between states. What if a state promises something to another state, but finds that the preservation of its own existence depends on not keeping the promise? Is it permitted to break the promise?

Again Kant answers -No. If a state (or its chief) publicizes this maxim, others would naturally avoid entering an alliance with it, or ally themselves with others so as to resist such pretensions. This proves that politics with all its cunning would defeat its purpose by candor; therefore, that maxim must be illegitimate.

The announcement is not publicly proclaimable because by so doing the state would make it impossible for its intention to be carried out. The agreement would never have been made had the other state known in advance that the first had no intention of keeping it. At least this is how the ideal rational agents must be thought to respond in Kant’s examples.

#### [2] Intelligible possession cannot be justified – the ability to prevent others’ usage of property is intrinsic to appropriation and violates their freedom since empirical possession is sufficient. For clarification, intelligible possession is exclusion of others’ usage even absent the current use of the owner, and empirical, or narrow, possession is exclusion only when the owner is using it.

Westphal 97 Kenneth R. Westphal, Professor of Philosophy at Boðaziçi Üniversitesi, PhD in Philosophy from Wisco, “Do Kant’s Principles Justify Property or Usufruct?,” 1997, Jahrbuch für Recht und Ethik 5, accessed 28 December 2021, Pg. 144-160, <https://www.jstor.org/stable/43593592> RE recut

The compatibility of possession with the freedom of everyone according to universal laws is not a trivial assumption even for the case of detention or “empirical” possession. Under conditions of extreme scarcity, anyone’s use of some vital thing precludes someone else’s equally vital use of that thing or of anything of its kind (given the condition of extreme relative scarcity). This is not quite to agree with Hume, that conditions of justice exclude both extreme scarcity and superabundance.32 But it is to recognize that he came close to an important insight: legitimate action requires sufficient abundance so that one person’s use (benefit) is not (at least not directly) someone else’s vital injury (deprivation). This is not merely to say that property is psychologically impossible in extreme scarcity because no one could respect it (per Hume); the point is that possession and perhaps even use are not, at least not obviously, legitimate under such conditions. (How Kant would propose to resolve the conflicting grounds of obligation in such circumstances, the duty to self-preservation versus the duty not to harm others’ life or liberty, I do not understand.)

The assumption that possession is compatible with the freedom of everyone according to universal laws [5] is even less trivial for the case of “intelligible” or “noumenal” possession, that is, possession without physical detention. The compatibility of intelligible possession with the freedom of everyone according to universal laws requires both sufficient resources so that the free use of something by one person is not as such the infringement of like freedom of another, and it requires that mere empirical or physical possession does not suffice to secure the innate right to freedom of overt (äußere) action. If physical possession did suffice to secure the innate right to overt action, Kant’s main ground of proof would entail no conclusion stronger than that rights of physical possession (detention) are legitimate. Furthermore, by assuming that noumenal possession is compatible with the freedom of everyone according to universal laws [5], Kant assumes rather than proves that possession without detention is permissible. However, this is precisely the point that needs to be proven! This issue remains central throughout the remainder of §2 and is addressed again in §3 below.

2.2.6 The previous section raises a very serious question about Kant’s justification of intelligible rights to possess and use (possessio). The questions about Kant’s supposed justification of property rights, the possibility of having things as one’s own (Eigentum, dominium), are even more acute. To derive such strong rights from Kant’s argument requires at least one of three assumptions. The first assumption would be that the sole relevant condition of use is proprietary ownership of things (cf. RL §1 ¶1); this assumption requires interpreting “Besitz” broadly. The second assumption would involve conflating the ownership of a right – viz., a right to use – with a right to property ownership. However, the legitimacy of neither of these assumptions is demonstrated by Kant’s argument in RL §2. Or it may be assumed, third, that Kant’s argument in §2 aims to prove, not merely rights to possession, but rights to property, insofar as it aims to prove a right to “arbitrary” (beliebigen) use, that is, the right to do whatever one pleases with something ([10]; cf. RL §7, 253.25–27), where this can include any of the rights involved in the further incidents of proprietary ownership. Reading Kant’s text in this way assimilates possessio to dominium by stressing Kant’s term “beliebigen”. So far as Kant’s literal statement is concerned, it is equally plausible to stress Kant’s term “Gebrauch” (use), which would restrict Kant’s argument to justifying possessio. Kant’s reductio ad absurdum argument assumes the contrapositive thesis that [it is not] altogether ... rightly in my power, i.e. it [is] not ... compatible with the freedom of everyone according to a universal law ([it is] wrong), to make use of [something which is physically within my power to use]. ([2], [1])

His argument then purports to derive a contradiction from this assumption. From this contradiction follows the negation of this assumption by disjunctive syllogism. Strictly speaking, what Kant’s argument (at best) proves is that it is indeed rightful to make use of things which in principle are within one’s power, provided (“obgleich ...”) that one ’s use is compatible with the freedom of everyone in accord with a universal law [5]. As mentioned, Kant’s argument assumes rather than proves that this assumption is correct. Kant must prove that this assumption is correct in order to prove his conclusion. This requires showing that possession and use of things (in their narrow, strict senses) is consistent with the freedom of everyone in accord with universal laws. That would justify rights to possessio. To justify the stronger rights to dominium requires showing that holding things in accord with the rights involved in the further incidents of property ownership is also consistent with the freedom of everyone in accord with universal laws. Because the rights involved in property ownership are not analytically, indeed are not necessarily, related, justifying dominium requires separate justification of each component right. But it also requires more than this. Insofar as these rights are supposed to be proven as a matter of natural right, these further rights cannot be instituted solely by convention. However, there are alternative packages of rights, both for kinds of property as well as for various weaker sets of rights to use, any of which can be formulated in ways that are consistent with the like freedom of everyone according to universal laws. Consequently, merely demonstrating the consistency of one or another of these sets of rights with the freedom of everyone according to universal laws suffices only to justify the permissibility of that set of rights.

It does not suffice to justify the obligation to respect that set of rights instead of any other such set of rights. This is to say, once alternative sets of rights are possible or permissible because they meet the sine qua non of consistency with the like freedom of everyone according to universal laws [5], Kant’s natural law grounds of proof do not suffice to justify an obligation to respect one particular set of rights among the range of possible, permissible alternatives. Consequently, interpreting Kant’s statement [10] by stressing “beliebigen”, using it to specify the scope of “Gebrauch”, can only lead to fallacious, question-begging interpretations of Kant’s argument. Consequently, it is strongly preferable to interpret Kant’s statement by stressing “Gebrauch”, and using it in its strict, narrow sense to specify the scope of “beliebigen”. (This parallels the case for interpreting “Besitz” narrowly instead of broadly.)

In sum, to use something legitimately it suffices to have a right to use it. That, in brief, is “possession” strictly speaking; in the narrow sense of the term, “possession” involves only the right of a qualified chose in possession. Since this condition suffices to fulfill the condition specified by Kant’s reductio argument, no stronger condition follows from Kant’s argument. One can have or “own” a right to use something without, of course, having property in that thing. Recall Honoré’s point that possession involves two claims: being in exclusive control and remaining in control by being free of unpermitted interference of others. Insofar as possession persists despite subsequent and continuing disuse, Kant’s proof does not demonstrate even a narrow right to possession. (This is why I speak of qualified choses in possession; one key qualification justified by Kant’s argument is that one’s right to use persists only so long as one’s legitimate need to use and regular use continue.) Moreover, aside from the prohibition on harmful use, Kant’s argument does not even address the other incidents of property ownership. If Kant’s primary assumption [5] can be justified, then Kant’s proof demonstrates at most three important conclusions: one has the right to use things one currently detains, one has the right to use any usable thing not previously (and hence currently) detained by others (provided one’s use does not infringe the like freedom of others), and one has the right to continue to use things so long as one’s need to use them and actions of using them continue. These are not trivial theses! However, because it does not prove the indefinite duration of possession, in the narrow sense, Kant’s proof of the (first version of the) Postulate of Practical Reason regarding Right is unsound. Kant’s further considerations in RL §6 suffer analogous weaknesses (see §§2.4f.).

#### [3] The rightful condition does not exist in space because the omnilateral will is unable to hinder a hinderance.

Rauscher 07 Frederick Rauscher, Professor of Philosophy at Michigan State University, "Kant’s Social and Political,” 24 July 2007, Stanford Encyclopedia of Philosophy, accessed 28 December 2021, Pg. 1, <https://plato.stanford.edu/entries/kant-social-political/> ~ST~

The very existence of a state might seem to some as a limitation of freedom, since a state possesses power to control the external freedom of individual citizens through force. This is the basic claim of anarchism. Kant holds in contrast that the state is not an impediment to freedom but is the means for freedom. State action that is a hindrance to freedom can, when properly directed, support and maintain freedom if the state action is aimed at hindering actions that themselves would hinder the freedom of others. Given a subject’s action that would limit the freedom of another subject, the state may hinder the first subject to defend the second by “hindering a hindrance to freedom”. Such state coercion is compatible with the maximal freedom demanded in the principle of right because it does not reduce freedom but instead provides the necessary background conditions needed to secure freedom. The amount of freedom lost by the first subject through direct state coercion is equal to the amount gained by the second subject through lifting the hindrance to actions. State action sustains the maximal amount of freedom consistent with identical freedom for all without reducing it.

Freedom is not the only basis for principles underlying the state. In “Theory and Practice” Kant makes freedom the first of three principles (8:290):

The freedom of every member of the state as a human being.

The equality of each with every other as a subject.

The independence of every member of a commonwealth as a citizen.

Freedom as discussed in “Theory and Practice” stresses the autonomous right of all individuals to conceive of happiness in their own way. Interference with another’s freedom is understood as coercing the other to be happy as the former sees fit. The direct link to action comes when pursuing that autonomously chosen conception of happiness. Each may pursue happiness as they see fit provided that their pursuit does not infringe upon others’ similar pursuits.

Equality is not substantive but formal. Each member of the state is equal to every other member of the state before the law. Each has equal coercive right, that is, the right to invoke the power of the state to enforce the laws on one’s behalf. (Kant exempts the head of state from this equality, since the head of state cannot be coerced by anyone else). This formal equality is perfectly compatible with the inequality of members of the state in income, physical power, mental ability, possessions, etc. Further, this equality supports an equality of opportunity: every office or rank in the political structure must be open to all subjects without regard for any hereditary or similar restrictions.

#### Appropriation is unjust without the rightful condition – property is fundamentally social recognition.

Williams 77 Howard Williams, Professor of Law and Politics at Cardiff University, “Kant’s Concept of Property,” 1977, Oxford University Press, accessed 29 December 2021, Pg. 33-34, <https://www.jstor.org/stable/2218926> ~ST~ brackets for clarity

Kant is making a sound point here. In saying that property is noumenal what he means is that it is not a fact accessible to empirical discovery. This is sound because the proposition that this is mine cannot be established in the same way as the proposition that this is green. Empirical observation, however systematic, would do little to clear up the problem. Kant perhaps senses here that property is not an object, but an institution which depends for its functioning on the observance of a certain system of rules. An individual cannot of himself establish a right to a thing, because a right consists of the public recognition of an existing or desired future state of affairs. Rights, and in particular property rights, must hold for others as well as oneself, or else they are not rights. Kant is remarkably clear on this point. Unfortunately, however, it is a point which he does not pursue at any length as he is more concerned to show how noumenal possession is possible than he is to discover in what it consists.

Now if such a proposition permitting noumenal possession were possible, Kant argues, taking possession of a certain part of the earth’s surface would be an act of arbitrary will (Willkur) without being an usurpation. The possessor would base[d] his act, Kant argues, on our innate common possession of the earth’s surface and on the a priori General Will corresponding to that common possession (359/57) permitting private property. But although this meant that the use of the earth would be open to all (without distinction) it did not mean that it had been so from nature or originally. It is Kant’s view, therefore, that private ownership cannot be free of, or prior to, all legal acts.