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IMMANUEL KANT

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*Practical philosophy*

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CAMBRIDGE  
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS  
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press  
32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org  
Information on this title: www.cambridge.org/9780521654081

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First published 1996  
First paperback edition 1999  
12th printing 2008

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Kant, Immanuel, 1724–1804  
[Selections, English, 1996]

Practical philosophy / Immanuel Kant ; edited by Mary J. Gregor.  
p. cm. – (The Cambridge edition of the works of  
Immanuel Kant)

Includes bibliographical references and index.

Contents: Review of Schulz's Attempt at an introduction to a  
doctrine of morals for all human beings regardless of different  
religions – An answer to the question, what is enlightenment? – On  
the wrongfulness of unauthorized publication of books – Groundwork  
of the metaphysics of morals – Kraus' review of Ulrich's  
Eleutheriology – Critique of practical reason – On the common  
saying, that may be correct in theory, but is of no use in  
practice – Toward perpetual peace – The metaphysics of morals.  
On a supposed right to lie from philanthropy.

I. Ethics, Modern – 18th century. I. Gregor, Mary J. II. Title.

III. Series: Kant, Immanuel, 1724–1804. Works. English. 1992.

B27358.G74 1996

170 – dc20

95 – 9656  
CIP

ISBN 978-0-521-37103-2 hardback  
ISBN 978-0-521-65408-1 paperback

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*The universal doctrine of right*  
*Part I*  
*Private right*  
*Concerning what is externally mine or yours<sup>k</sup>*  
*in general*

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Chapter I

How to have something external as one's own.

§ 1.

That is *rightfully mine* (*meum iuris*) with which I am so connected that another's use of it without my consent would wrong me. The subjective condition of any possible use is *possession*.

But something *external* would be mine only if I may assume that I could be wronged by another's use of a thing even *though I am not in possession of it*. – So it would be self-contradictory to say that I have something external as my own if the concept of possession could not have different meanings, namely *sensible* possession and *intelligible* possession, and by the former could be understood *physical* possession but by the latter a *merely rightful* possession of the same object.

But the expression “an object is *external to me*” can mean either that it is an object merely *distinct* from me (the subject) or else that it is also to be found in *another location* (*positus*) in space or time. Only if it is taken in the first sense can possession be thought of as rational possession; if taken in the second sense it would have to be called empirical possession. – *Intelligible* possession (if this is possible) is possession of an object *without holding it* (*detentio*).

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§ 3.<sup>l</sup>

Whoever wants to assert that he has a thing as his own must be in possession of an object, since otherwise he could not be wronged<sup>m</sup> by

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<sup>k</sup> In the translation of the phrase *Mein und Dein* (*meum et tuum*), “and” has been changed to “or.”

<sup>l</sup> § 2 is omitted here but replaces a portion of the text of § 6. See above, Translator's Note.  
<sup>m</sup> *lädiert*. In 6:249 Kant gives *Abbruch an meiner Freiheit* . . . as a parenthetical explanation of *Läsion*.

another's use of it without his consent. For if something outside this object which is not connected with it by rights affects it, it would not be able to affect himself (the subject) and do him any wrong.

§ 4. Exposition of the concept of external objects that are yours or mine.

There can be only three external objects of my choice: 1) a (corporeal) thing external to me; 2) another's choice to perform a specific deed (*praestatio*); 3) another's status<sup>n</sup> in relation to me. These are objects of my choice in terms of the categories of *substance*, *causality*, and *community* between myself and external objects in accordance with laws of freedom.

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- a) I cannot call an object in *space* (a corporeal thing) mine unless, *even though I am not in physical possession of it*, I can still assert that I am actually in some other (hence not physical) possession of it. – So I shall not call an apple mine because I have it in my hand (possess it physically), but only if I can say that I possess it even though I have put it down, no matter where. In the same way, I shall not be able to say that the land on which I have lain down is mine because I am on it, but only if I can assert that it still remains in my possession even though I have left the place. For someone who tried in the first case (of empirical possession) to wrest the apple from my hand or to drag me away from my resting place would indeed wrong me with regard to what is *internally* mine (freedom); but he would not wrong me with regard to what is externally mine unless I could assert that I am in possession of the object even without holding it. I could not then call these objects (the apple and the resting place) mine.
- b) I cannot call the *performance* of something by another's choice mine if all I can say is that it came into my possession *at the same time* that he promised it (*pactum re initum*),<sup>o</sup> but only if I can assert that I am in possession of the other's choice (to determine him to perform it) even though the time for his performing it is still to come. The other's promise is therefore included in my belongings and goods (*obligatio activa*), and I can count it as mine not merely if (as in the first case) I already have *what was promised* in my possession, but even though I do not possess it yet. So I must be able to think that I am in possession of this object independently of being limited by temporal conditions, and so independently of empirical possession.
- c) I cannot call a *wife*, a *child*, a *servant*, or, in general, another person mine because I am now in charge of them as members of my household or have them within my restraining walls and in my

<sup>n</sup> Zustand

<sup>o</sup> having undertaken a compact regarding a thing

control and possession, but only if, although they have withdrawn from such constraint and I do not possess them (empirically), I can still say that I possess them merely by my will, hence *merely rightfully*, as long as they exist somewhere or at some time. Only if and insofar as I can assert this are they included in my belongings.

§ 5. Definition of the concept of external objects that are mine or yours.

The *nominal definition*<sup>p</sup> of what is externally mine – that which suffices only to *distinguish* the object from all others and arises from a complete and determinate *exposition* of the concept – would be: that outside me is externally mine which it could be a wrong (an infringement upon my freedom which can coexist with the freedom of everyone in accordance with a universal law) to prevent me from using as I please. – But the *real definition*<sup>q</sup> of this concept – that which also suffices for the *deduction* of it (cognition of the possibility of the object) – goes like this: something external is mine if I would be wronged by being disturbed in my use of it *even though I am not in possession of it* (not holding the object). – I must be in some sort of possession of an external object if it is to be called *mine*, for otherwise someone who affected this object against my will would not also affect me and so would not wrong me. So, in consequence of 4, *intelligible possession* (*possessio noumenon*) must be assumed to be possible if something external is to be mine or yours. Empirical possession (holding) is then only possession in *appearance* (*possessio phaenomenon*), although the *object* itself that I possess is not here treated, as it was in the *Transcendental Analytic*, as an appearance but as a thing in itself; for there reason was concerned with theoretical cognition of the nature of things and how far it could extend, but here it is concerned with the practical determination of choice in accordance with laws of *freedom*, whether the object can be cognized through the senses or through the pure understanding alone, and *right* is a pure practical *rational concept* of choice under laws of freedom.

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For the same reason it is not appropriate to speak of possessing a right to this or that object but rather of possessing it *merely rightfully*; for a right is already an intellectual possession of an object and it would make no sense to speak of possessing a possession.

§ 6. Deduction of the concept of merely rightful possession of an external object (*possessio noumenon*).

The question: how is it possible for *something external to be mine or yours?* resolves itself into the question: how is *merely rightful* (intelligible) *posses-*

<sup>p</sup> Namenerklärung

<sup>q</sup> Sacherklärung

sion possible? and this, in turn, into the third question: how is a *synthetic* a priori proposition about right possible?

6:250 All propositions about right<sup>7</sup> are a priori propositions, since they are laws of reason (*dictamina rationis*). An a priori proposition about right with regard to *empirical possession* is *analytic*, for it says nothing more than what follows from empirical possession in accordance with the principle of contradiction, namely, that if I am holding a thing (and so physically connected with it), someone who affects it without my consent (e.g., snatches an apple from my hand) affects and diminishes what is internally mine (my freedom), so that his maxim is in direct contradiction with the axiom of right.<sup>17</sup> So the proposition about empirical possession in conformity with rights does not go beyond the right of a person with regard to himself.

On the other hand, a proposition about the possibility of possessing a thing *external to myself*, which puts aside any conditions of empirical possession in space and time (and hence presupposes the possibility of *possessio noumenon*), goes beyond those limiting conditions; and since it affirms possession of something even without holding it, as necessary for the concept of something external that is mine or yours, *it is synthetic*. Reason has then the task of showing how such a proposition, which goes beyond the concept of empirical possession, is possible a priori.<sup>18</sup>

*Postulate of practical reason with regard to rights.*<sup>19</sup>

It is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice would

<sup>7</sup> *Rechtssätze*

<sup>17</sup> The next three paragraphs originally numbered § 2, replace the following passage from AK:

In this way, for example, taking possession of a separate piece of land is an act of private choice, without being *unsanctioned* [*ohne doch eigenmächtig zu sein*]. The possessor bases his act on an innate *possession in common* [*Gemeinbesitze*] of the surface of the earth and on a general will corresponding *a priori* to it, which permits *private possession* on it (otherwise, unoccupied things would in themselves and in accordance with a law be made things that belong to no one). By being the first to take possession he originally acquires a definite piece of land [*bestimmten Boden*] and resists with right (*iure*) anyone else who would prevent him from making private use of it. Yet since he is in a state of nature, he cannot do so by legal proceedings [*von rechtswegen*] (*de iure*) because there does not exist any public law in this state.

Even if a piece of land were considered or declared to be *free*, that is, open to anyone's use, one could still not say that it is free by nature or *originally* free, prior to any act establishing a right; for that would again be a relation to things, namely to the land, which would refuse possession of itself to anyone; instead one would say that this land is free because of a prohibition on everyone to make use of it, and for this, possession of it in common is required, which cannot take place without a contract. But land that can be free only in this way must really be in the possession of all those (joined together) who forbid or suspend one another's use of it.

*in itself* (objectively) have to *belong to no one* (*res nullius*) is contrary to rights."

For an object of my choice is something that I have the *physical* power to use. If it were nevertheless absolutely not within my *rightful* power to make use of it, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (would be wrong), then freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting *usable* objects beyond any possibility of being *used*; in other words, it would annihilate them in a practical respect and make them into *res nullius*, even though in the use of things choice was formally consistent with everyone's outer freedom in accordance with universal laws. – But since pure practical reason lays down only formal laws as the basis for using choice and thus abstracts from its matter, that is, from other properties of the object *provided only that it is an object of choice*, it can contain no absolute prohibition against using such an object, since this would be a contradiction of outer freedom with itself. – But an object of my *choice* is that which I have the physical capacity<sup>19</sup> to use as I please, that whose

This *original* community of land, and with it of things upon it (*communio fundi originaria*), is an idea that has objective (rightfully practical) reality. This kind of community must be sharply distinguished from a *private community* (*communio primaeva*), which is a fiction;<sup>19</sup> for a primitive community would have to be one that was *instituted* and arose from a contract by which everyone gave up private possessions and, by uniting his possessions with those of everyone else, transformed them into a collective possession [*Gesammitbesitz*]; and history would have to give us proof of such a contract. But it is contradictory to claim that such a procedure is an *original* taking possession and that each human being could and should have based his separate possession upon it.

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*Residing* [*Sitz*] on land (*sedes*) is to be distinguished from being in possession (*possessio*) of it, and *settling* or making a settlement [*Niederlassung, Ansiedelung*] (*incolatus*), which is a lasting private possession of a place dependent upon the presence of the subject on it, is to be distinguished from taking possession of land with the intention of some day acquiring it. I am not talking here about settling as a second act to establish a right, which can either follow upon taking possession or not take place at all; for settling of this kind would not be original possession but would be possession derived from others' consent.

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. Relative to others, since (as far as one knows) it is first possession, it is consistent with the principle of outer freedom and is also involved in original possession in common, which provides a priori the basis on which any private possession is possible. Accordingly, to interfere with the use of a piece of land by the first occupant of it is to wrong him. Taking first possession has therefore a rightful basis (*titulus possessionis*), which is original possession in common; and the saying "Happy are those who are in possession" (*beati possidentes*), because none is bound to certify his possession, is a basic principle of natural right, which lays down taking first possession as a rightful basis for acquisition on which every first possessor can rely.

<sup>19</sup> *Rechtliches Postulat*. On the translation of *rechtlich*, see Translator's Introduction.

<sup>18</sup> *rechtswidrig*. On the translation of *rechtswidrig* and its opposite, *rechtmässig*, see Translator's Introduction.

<sup>19</sup> *Vermögen*

use lies within my *power*<sup>19</sup> (*potentia*). This must be distinguished from having the same object under my control<sup>20</sup> (*in potestatem meam redactum*), which presupposes not merely a *capacity* but also an *act* of choice. But in order to *think of* something simply as an object of my choice it is sufficient for me to be conscious of having it within my power. – It is therefore an a priori presupposition of practical reason to regard and treat any object of my choice as something which could objectively be mine or yours.

6:247 This postulate can be called a permissive law (*lex permissiva*) of practical reason, which gives us an authorization that could not be got from mere concepts of right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession. Reason wills that this hold as a principle, and it does this as *practical* reason, which extends itself a priori by this postulate of reason.<sup>21</sup>

6:251 In an a priori *theoretical* principle, namely, an a priori intuition would have to underlie the given concept (as was established in the *Critique of Pure Reason*); and so something would have to be *added to* the concept of possession of an object. But with this practical principle the opposite procedure is followed and all conditions of intuition which establish empirical possession must be *removed* (disregarded), in order to *extend* the concept of possession beyond empirical possession and to be able to say: it is possible for any external object of my choice to be reckoned as rightfully mine if I have control of it (and only insofar as I have control of it) without being in possession of it.

The possibility of this kind of possession, and so the deduction of the concept of nonempirical possession, is based on the postulate of practical reason with regard to rights: “that it is a duty of right to act towards others so that what is external (usable) could also become someone’s,” together with the exposition of the concept of an external object that belongs to someone, since that concept rests simply on that of *nonphysical* possession. There is, however, no way of proving of itself the possibility of nonphysical possession or of having any insight into it (just because it is a rational concept for which no corresponding intuition can be given); its possibility is instead an immediate consequence of the postulate referred to. For if it is necessary to act in accordance with that principle of right, its intelligible condition (a merely rightful possession) must then also be possible. – No one need be surprised that *theoretical* principles about external objects that are mine or yours get lost in the intelligible and represent no extension of cognition, since no theoretical deduction can be given for the possibility of the concept of freedom on which they are based. It can only be inferred

<sup>19</sup> *in meiner Macht*

<sup>20</sup> *in meiner Gewalt*

<sup>21</sup> The text cited in note 5 replaces text originally found here.

from the practical law of reason (the categorical imperative), as a fact of reason.

§ 7. *Application to objects of experience of the principle that it is possible for something external to be mine or yours.*

The concept of merely rightful possession is not an empirical concept (dependent upon conditions of space and time) and yet it has practical reality, that is, it must be applicable to objects of experience, cognition of which is dependent upon those conditions. – The way to proceed with the concept of a right with respect to such objects, so that they can be external objects which are mine or yours, is the following. Since the concept of a right is simply a rational concept, it cannot be applied *directly* to objects of experience and to the concept of empirical *possession*, but must first be applied to the understanding’s pure concept of *possession* in general. So the concept to which the concept of a right is directly applied is not that of *holding* (*detentio*), which is an empirical way of thinking of possession, but rather the concept of *having*,<sup>22</sup> in which abstraction is made from all spatial and temporal conditions and the object is thought of only as *under my control* (*in potestate mea positum esse*). So too the expression *external* does not mean existing in a *place other* than where I am, or that my decision and acceptance are occurring at a different time from the making of the offer; it means only an object *distinct* from me. Now, practical reason requires me, by its law of right, to apply mine or yours to objects not in accordance with sensible conditions but in abstraction from them, since it has to do with a determination of choice in accordance with laws of freedom, and it also requires me to think of possession of them in this way, since only a *concept of the understanding* can be subsumed under concepts of right. I shall therefore say that I possess a field even though it is in a place quite different from where I actually am. For we are speaking here only of an intellectual relation to an object, insofar as I have it *under my control* (the understanding’s concept of possession independent of spatial determinations), and the object is *mine* because my will to use it as I please does not conflict with the law of outer freedom. Here practical reason requires us to think of possession *apart from* possession of this object of my choice in appearance (holding it), to think of it not in terms of empirical concepts but of concepts of the understanding, those that can contain a priori conditions of empirical concepts. Upon this is based the validity of such a concept of possession (*possessio noumenon*), as a *giving of law* that holds for everyone; for such lawgiving is involved in the expression “this external object is *mine*,” since by it an obligation is laid upon all others, which they would not otherwise have, to refrain from using the object.

So the way to have something external as what is mine consists in a merely rightful connection of the subject’s will with that object in accor-

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dance with the concept of intelligible possession, independently of any relation to it in space and time. – It is not because I occupy a place on the earth with my body that this place is something external which is mine (for that concerns only my outer *freedom*, hence only possession of myself, not a thing external to me, so that it is only an internal right). It is mine if I still possess it even though I have left it for another place; only then is my external right involved. And anyone who wants to make my continuous occupation of this place by my person the condition of my having it as mine must either assert that it is not at all possible to have something external as mine (and this conflicts with the postulate 2) or else require that in order to have it as mine I be in two places at once. Since this amounts to saying that I am to be in a place and also not be in it, he contradicts himself.

This can also be applied to the case of my having accepted a promise. For my having and possession in what was promised is not annulled by the promisor's saying at one time "this thing is to be yours" and then at a later time saying of the same thing "I now will that it not be yours." For in such intellectual relations it is as if the promisor had said, without any time between the two declarations of his will, "this is to be yours" and also "this is not to be yours," which is self-contradictory.

The same holds of the concept of rightful possession of a person, as included in the subject's belongings (his wife, child, servant). This domestic community and the possession of their respective status vis-à-vis one another by all its members is not annulled by their being authorized to separate from one another and go to different *places*; for what connects them is a relation *in terms of rights*, and what is externally mine or yours here is based, as in the preceding cases, entirely on the assumption that purely rational possession without holding each other is possible.

6:255 Rightfully practical reason is forced into a critique of itself in the concept of something external which is mine or yours, and this by an antinomy of propositions concerning the possibility of such a concept; that is, only by an unavoidable dialectic in which both thesis and antithesis make equal claims to the validity of two conditions that are inconsistent with each other is reason forced, even in its practical use (having to do with rights), to make a distinction between possession as appearance and possession that is thinkable merely by the understanding.

The *thesis* says: *It is possible* to have something external as mine even though I am not in possession of it.

The *antithesis* says: *It is not possible* to have something external as mine unless I am in possession of it.

*Solution*: Both propositions are true, the first if I understand, by the word "possession", empirical possession (*possessio phaenomenon*), the second if I understand by it purely intelligible possession (*possessio*

*noumenon*). – But we cannot see how intelligible possession is possible and so how it is possible for something external to be mine or yours, but must infer it from the postulate of practical reason. With regard to this postulate it is particularly noteworthy that practical reason *extends* itself without intuitions and without even needing any that are a priori, merely by *leaving out* empirical conditions, as it is justified in doing by the law of freedom. In this way it can lay down *synthetic* a priori propositions about right, the proof of which (as will soon be shown) can afterwards be adduced, in a practical respect, in an analytic way.

§ 8. *It is possible to have something external as one's own only in a rightful condition, under an authority giving laws publicly, that is, in a civil condition.*

When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right. This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for the obligation here arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine. This assurance does not require a special act to establish a right, but is already contained in the concept of an obligation corresponding to an external right, since the universality, and with it the reciprocity, of obligation arises from a universal rule. – Now, a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. So it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance. – But the condition of being under a general external (i.e., public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours.

*Corollary*: If it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution.

§ 9. *In a state of nature something external can actually be mine or yours but only provisionally.*

When people are under a civil constitution, the statutory laws obtaining in this condition cannot infringe upon *natural right*, (i.e., that right which can be derived from a priori principles for a civil constitution); and so the

rightful principle “whoever acts on a maxim by which it becomes impossible to have an object of my choice as mine wrongs me,” remains in force. For a civil constitution is just the rightful condition, by which what belongs to each is only secured, but not actually settled and determined.<sup>2</sup> – Any guarantee, then, already presupposes what belongs to someone (to whom it secures it). Prior to a civil constitution (or in *abstraction* from it) external objects that are mine or yours must therefore be assumed to be possible, and with them a right to constrain everyone with whom we could have any dealings to enter with us into a constitution in which external objects can be secured as mine or yours. – Possession in anticipation of and preparation for the civil condition, which can be based only on a law of a common will, possession which therefore accords with the *possibility* of such a condition, is *provisionally rightful* possession, whereas possession found in an *actual* civil condition would be *conclusive* possession. – Prior to entering such a condition, a subject who is ready for it resists with right those who are not willing to submit to it and who want to interfere with his present possession; for the will of all others except for himself, which proposes to put him under obligation to give up a certain possession, is merely *unilateral*, and hence has as little lawful force in denying him possession as he has in asserting it (since this can be found only in a general will), whereas he at least has the advantage of being compatible with the introduction and establishment of a civil condition. – In summary, the way to have something external as one’s own *in a state of nature* is physical possession which has in its favor the rightful *presumption* that it will be made into rightful possession through being united with the will of all in a public lawgiving, and in anticipation of this holds *comparatively* as rightful possession.

In accordance with the formula *Happy is he who is in possession (beati possedentes)*, this prerogative of right arising from empirical possession does not consist in its being unnecessary for the possessor, since he is presumed to be an *honest man*, to furnish proof that his possession is in conformity with right (for this holds only in disputes about rights). This prerogative arises, instead, from the capacity<sup>4</sup> anyone has, by the postulate of practical reason, to have an external object of his choice as his own. Consequently, any holding of an external object is a condition whose conformity with right is based on that postulate by a previous act of will; and so long as this condition does not conflict with another’s earlier possession of the same object he is provisionally justified, in accordance with the law of outer freedom, in preventing anyone who does not want to enter with him into a condition of public lawful

<sup>2</sup> *eigentlich aber nicht ausgemacht und bestimmt wird*

<sup>4</sup> *Vermögen*

freedom from usurping the use of that object, in order to put to his own use, in conformity with the postulate of reason, a thing that would otherwise be annihilated practically.

## Chapter II.

### How to acquire something external.

#### § 10. *General principle of external acquisition.*

I acquire something when I bring it about (*efficio*) that it becomes *mine*. – Something external is originally mine which is mine without any act that establishes a right to it. But that *acquisition* is original which is not derived from what is another’s.

Nothing external is originally mine, but it can indeed be *acquired* originally, that is, without being derived from what is another’s. – A condition of community (*communio*) of what is mine and yours can never be thought to be original but must be acquired (by an act that establishes an external right), although possession of an external object can originally be only possession in common. Even if one thinks (problematically) of an *original* community (*communio mei et tui originaria*), it must still be distinguished from a *primitive* community (*communio primaeva*), which is supposed to have been instituted in the earliest *time* of relations of rights among human beings and cannot be based, like the former, on principles but only on history. Although primitive, it would always have to be thought to be acquired and derived (*communio derivata*).

The principle of external acquisition is as follows: that is mine which I bring under my *control* (in accordance with the law of outer *freedom*); which, as an object of my choice, is something that I have the capacity to use (in accordance with the postulate of practical reason); and which, finally, I *will* to be mine (in conformity with the idea of a possible united *will*).

The aspects,<sup>b</sup> (*attendenda*) of *original* acquisition are therefore: 1) *Apprehension* of an object that belongs to no one; otherwise it would conflict with another’s freedom in accordance with universal laws. This *apprehension* is taking possession of an object of choice in space and time, so that the possession in which I put myself is *possessio phaenomenon*. 2) *Giving a sign (declaratio)* of my possession of this object and of my act of choice to exclude everyone else from it. 3) *Appropriation (appropriatio)*, as the act of a general will (in idea) giving an external law through which everyone is bound to agree with my choice. – The validity of this last aspect of acquisition, on which rests the conclusion “this external object is *mine*,” that is,

<sup>b</sup> *Momente*



the conclusion that my possession holds as possession *merely by right* (*possessio noumenon*), is based on this: since all these acts *have to do with a right* and so proceed from practical reason, in the question of what is laid down as right abstraction can be made from the empirical conditions of possession, so that the conclusion, "the external object is mine," is correctly drawn from sensible to intelligible possession.

Original acquisition of an external object of choice is called *taking control*<sup>c</sup> of it (*occupatio*), and only corporeal things (substances) can be acquired originally. When it takes place, what it requires as the condition of empirical possession is priority in time to anyone else who wants to take control of the object (*qui prior tempore potior iure*).<sup>d</sup> As original, it is only the result of a *unilateral* choice, for if it required a bilateral choice the acquisition would be derived from the contract of two (or more) persons and so from what is another's. – It is not easy to see how an act of choice of that kind could establish what belongs to someone. – However, if an acquisition is *first* it is not therefore *original*. For the acquisition of a public rightful condition by the union of the will of all for giving universal law would be an acquisition such that none could precede it, yet it would be derived from the particular wills of each and would be *omnilateral*, whereas original acquisition can proceed only from a unilateral will.

*Division of the acquisition of something external that is mine or yours.*

1. In terms of the *matter* (the object), I acquire either a corporeal *thing* (substance), or another's *performance* (causality), or another *person* himself, that is the status of that person, insofar as I get a right to make arrangements about him<sup>e</sup> (deal with him).
- 6:260 2. In terms of the *form* (the kind of acquisition), it is either a *right to a thing*<sup>f</sup> (*ius reale*), or a *right against a person*<sup>g</sup> (*ius personale*), or a *right to a person akin to a right to a thing*<sup>h</sup> (*ius realiter personale*), that is, possession (though not use) of another person as a thing.
3. In terms of the *basis* of the acquisition *in right*<sup>i</sup> (*titulus*), something external is acquired through the act of a *unilateral, bilateral or omnilateral* choice (*facto, pacto, lege*). Although this is not, strictly

<sup>c</sup> *Bemächtigung*. In the case of land, "occupying it" would be the appropriate translation. However, Kant also uses *Bemächtigung* in the context of rights to things generally and of rights against persons akin to rights to things.

<sup>d</sup> who is first in time has the stronger right

<sup>e</sup> *über denselben zu verfügen*. *Verfügung* is used in 6:314, and the phrase *über . . . verfügen* is used in 6:313 and again in 6:330, where it is followed by (*disponieren*).

<sup>f</sup> *Sachenrecht*

<sup>g</sup> *persönliches Recht*

<sup>h</sup> *dinglich-persönliches Recht*

<sup>i</sup> *Rechtsgründe*

speaking, a special member of the division of rights, it is still an aspect of the way acquisition is carried out.

SECTION I  
ON PROPERTY RIGHT.<sup>j</sup>

§ 11. *What is a right to a thing?*<sup>k</sup>

The usual exposition of a *right to a thing* (*ius reale, ius in re*), that "it is a right *against every possessor of it*," is a correct nominal definition. – But what is it that enables me to recover an external object from anyone who is holding it and to constrain him (*per vindicationem*) to put me in possession of it again? Could this external rightful relation of my choice be a *direct* relation to a corporeal thing? Someone who thinks that his right is a direct relation to things rather than to persons would have to think (though only obscurely) that since there corresponds to a right on one side a duty on the other, an external thing always remains *under obligation* to the first possessor even though it has left his hands; that, because it is already under obligation to him, it rejects anyone else who pretends to be the possessor of it. So he would think of my right as if it were a *guardian spirit* accompanying the thing, always pointing me out to whoever else wanted to take possession of it and protecting it against any incursions by them. It is therefore absurd to think of an obligation of a person to things or the reverse, even though it may be permissible, if need be, to make this rightful relation perceptible by picturing it and expressing it in this way.

So the real definition would have to go like this: *a right to a thing* is a right to the private use of a thing of which I am in (original or instituted) possession in common<sup>l</sup> with all others. For this possession in common is the only condition under which it is possible for me to exclude every other possessor from the private use of a thing (*ius contra quemlibet huius rei possessorem*)<sup>m</sup> since, unless such a possession in common is assumed, it is inconceivable how I, who am not in possession of the thing, could still be wronged by others who are in possession of it and are using it. – By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the united choice of all who possess it in common. Otherwise I would have to think of a right to a thing as if the thing had an obligation to me, from which my right against every other possessor of it is then derived; and this is an absurd way of representing it.

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<sup>j</sup> *Sachenrecht*. Kant introduces the term "property" (*Eigentum, dominium*), a full right to a thing, in his concluding remark to this section, 6:270.

<sup>k</sup> *Sachenrecht*

<sup>l</sup> *Gesamtbetitz*

<sup>m</sup> right against whoever is possessor of the thing

## *Public right*

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### Section I.

#### The right of a state.

##### § 43.

The sum of the laws which need to be promulgated generally in order to bring about a rightful condition is *public right*. – *Public right is therefore a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution (constitutio), so that they may enjoy what is laid down as right.* – This condition of the individuals within a people in relation to one another is called a *civil condition (status civilis)*, and the whole of individuals in a rightful condition, in relation to its own members is called a *state (civitas)*. Because of its form, by which all are united through their common interest in being in a rightful condition, a state is called a *commonwealth (res publica latius sic dicta)*.<sup>b</sup> In relation to other peoples, however, a state is called simply a *power (potentia)* (hence the word *potentate*). Because the union of the members is (presumed to be) one they inherited, a state is also called a *nation (gens)*. Hence, under the general concept of public right we are led to think not only of the right of a state but also of a *right of nations (ius gentium)*.<sup>c</sup> Since the earth's surface is not unlimited but closed, the concepts of the right of a state and of a right of nations lead inevitably to the idea of a *right for a state of nations (ius gentium)* or *cosmopolitan right (ius cosmopoliticum)*. So if the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse.

##### § 44.

It is not experience from which we learn of the maxim of violence in human beings and of their malevolent tendency to attack one another before external legislation<sup>d</sup> endowed with power appears, thus it is not

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<sup>b</sup> republic in the broad sense

<sup>c</sup> The English terms "municipal law" and "international law" might be used here, if it were kept in mind that Kant's concern is only with a priori principles. However, given the meaning of *Recht* specified in AK 6: 229, it seems preferable to continue using this term throughout: *das öffentliche Recht* or "public right."

<sup>d</sup> Although Kant continues to use *Gesetzgebung* and *Gesetzgeber*, which were translated in Private Right as "lawgiving" and "lawgiver," he is now discussing a condition in which there are positive laws. Hence "legislation" and "legislator" seem appropriate.

some deed' that makes coercion through public law necessary. On the contrary, however well disposed and law-abiding human beings might be, it still lies a priori in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples and states can never be secure against violence from one another, since each has its own right to do *what seems right and good to it* and not to be dependent upon another's opinion about this. So, unless it wants to renounce any concepts of right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own judgment, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to it is determined *by law* and is allotted to it by adequate *power* (not its own but an external power); that is, it ought above all else to enter a civil condition.

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

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

## § 45.

A *state (civitas)* is a union of a multitude of human beings under laws of right. Insofar as these are a priori necessary as laws, that is, insofar as they

<sup>6</sup> Factum

follow of themselves from concepts of external right as such (are not statutory), its form is the form of a state as such, that is, of *the state in idea*, as it ought to be in accordance with pure principles of right. This idea serves as a norm (*norma*) for every actual union into a commonwealth (hence serves as a norm for its internal constitution).<sup>f</sup>

Every state contains three *authorities* within it,<sup>g</sup> that is, the general united will consists of three persons (*trias politica*): the *sovereign authority* (sovereignty)<sup>h</sup> in the person of the legislator; the *executive authority* in the person of the ruler (in conformity to law); and the *judicial authority* (to award to each what is his in accordance with the law) in the person of the judge (*potestas legislativa, rectoria et iudiciaria*). These are like the three propositions in a practical syllogism: the major premise, which contains the *law* of that will; the minor premise, which contains the *command* to behave in accordance with the law, that is, the principle of subsumption under the law; and the conclusion, which contains the *verdict* (sentence), what is laid down as right in the case at hand.

## § 46.

The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it *cannot* do anyone wrong by its law. Now when someone makes arrangements about *another*, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for *volenti non fit iniuria*).<sup>i</sup> Therefore only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative.

The members of such a society who are united for giving law (*societas civilis*), that is, the members of a state, are called *citizens of a state (cives)*. In terms of rights, the attributes of a citizen, inseparable from his essence (as a citizen), are: lawful *freedom*, the attribute of obeying no other law than that to which he has given his consent; civil *equality*, that of not recogniz-

<sup>f</sup> (also *im Inneren*)

<sup>g</sup> Or "powers" [*Gewalten*]. In §43 and §44 Kant used *Macht (potentia)*, which was translated as "power." He now begins to use *Gewalt (potestas)*. But once he distinguishes the three "powers" or "authorities" within a state, it is only the executive authority that has "power" in one sense, i.e., it is the authority which exercises coercion.

<sup>h</sup> *Herrschergewalt (Souveränität)*. In this initial distinction of the three authorities within a state Kant specifies that "sovereignty" belongs to the legislative authority. Subsequently he introduces, without explanation, such a variety of terms that it is not always clear which of the three authorities is under discussion. I have used "sovereign," without noting the word used, only when Kant specifies *Souverän*. When "sovereign" is used for *Herrscher* or *Beherrscher*, a note is provided. Otherwise I have used the more general "head of state," except for passages that might indicate that one (physical) person has both legislative and executive authority.

<sup>i</sup> no wrong is done to someone who consents