Theorising from the Global Standpoint: Kant and Grotius on Original Common Possession of the Earth[*]

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Abstract: The paper contrasts Kant's conception of original common possession of the earth with Hugo Grotius's superficially similar notion. The aim is not only to elucidate how much Kant departs from his natural law predecessors - given that Grotius's needs-based framework very much lines in with contemporary theorist's tendency to reduce issues of global concern to questions of how to divide the world up, it also seeks to advocate Kant's global thinking as an alternative for current debates. Crucially, it is Kant's radical shift in perspective - from an Archimedean 'view from nowhere', to a first-personal standpoint through which agents reflexively recognise their systematic interdependence in a world of limited space - that provides him with the more thorough and ultimately convincing global standpoint. This standpoint does not come with ready-made solutions to shared global problems, but provides a promising perspective from which to theorise them.

Despite political theorists' increasing attention to questions of global concern over the last couple of decades, more systematic reflections on what it would *mean* to theorise globally remain the exception rather than the rule. In an intellectual climate where the focus of much work often remains firmly on the possible extension and application of values, concepts and principles originally developed from within and for the nation-state to the world at large, global justice theorists tend to rush to substantive conclusions in terms of distributive justice, robust lists of human rights, and blueprints for a global institutional order. The aim of this paper is to urge us to step back and ask a more fundamental question concerning the way in which individuals relate to one another globally. Central to this framework is Kant's conception of original common possession of the earth that I

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reconstruct in conversation with Hugo Grotius's (superficially similar) notion. The aim of this comparison is not only to elucidate how much Kant departs from his natural law predecessors. Given that Grotius's needs-based framework very much lines in with contemporary theorist's tendency to reduce issues of global concern to questions of how to divide the world up, it also illustrates how appealing an alternative Kant's global thinking is even for current debates.

The argument proceeds as follows. I start with a sketch of Grotius's conception of common ownership. Bringing in Mathias Risse's recent adaption of this framework, I show how its exclusive concern with legitimate distribution – how parts of the global common can be privatised by individuals and states – speaks to the 'distributive paradigm' predominant in current global justice theorising. This clears the way for my turn, in the second section, to Kant's conception of original common possession of the earth, as introduced in the *Doctrine of Right*. His characterisation of common possession as 'disjunctive' requires, in the third section, a detour into the *Critique of Pure Reason*, where a view on the 'disjunctive' form of logical judgment and the category of community it yields elucidates Kant's global standpoint. This will allow us, in the final section, to draw together how Kant's understanding of original common possession differs from the kind of natural law reasoning that I take much of current global justice theorising to resonate with. It is Kant's radical shift in perspective – from an Archimedean 'view from nowhere', to a first-personal standpoint through which agents reflexively recognise their systematic interdependence with other agents in a world of limited space – that provides him with the more thorough and ultimately convincing global standpoint. This standpoint does not come with ready-made solutions to shared global problems, but provides a novel and promising perspective from which to theorise them.

1. Grotius, Risse and the Distributive Paradigm

The idea of humanity's original common ownership of the earth – ultimately of biblical origin – has a long pedigree in the history of political thought. While, starting with Aquinas, the notion was invoked by a large array of theorists from diverse traditions, it received its most systematic development in the work of early modern thinkers from Grotius to Pufendorf and Hobbes. Particularly Hugo Grotius's conception of original common ownership as laid out in *De Jure Praedae* and *De Jure Belli ac Pacis* turned out seminal not only for the natural law tradition but in fact much of the early modern discourse on property (cf. Buckle 1991). It is his account, together with Mathias Risse's recent adoption of it, that I want to sketch in this section.

Like his 17th century contemporaries, Grotius employs the notion of original common ownership in order to justify property rights and state boundaries, which he does by presenting them as the result of an (idealised) historical process that saw the division of an initially common stock. He starts with the assumption that God gave the earth to humans in common for the satisfaction of their needs (Grotius 2005: II.2.2.1). This original community though is not one of actual *joint* ownership, but rather a 'negative community' where nothing belongs to anyone (Araujo 2009: 256). As part of a natural right to their 'life, limbs and liberty' (Grotius 2005: I.1.12.1), people are free to take possession of things and use them for the satisfaction of their needs. But this restricted right to use what is owned in common does not authorise anyone to accumulate objects or exclude others from similar use before or after physical possession (Salter 2001: 539). The lawful use of things is confined to the immediate usage or consumption of what people find growing on the common, grounded in a right of self-preservation.

Much of Grotius's account is then concerned with telling a story of how this initial, universal use-right was gradually transformed into a scheme of property rights and territorial boundaries. This narrative is pervaded by a fundamental ambiguity that arises from Grotius's notorious

combination of what he calls 'a priori' and 'a posteriori' methods (Grotius 2005: I.1.12.1). While, on the one hand, he offers a narrative of (idealised) historical developments drawing on a number of philosophical, literary and theological sources, he does so against the assumption that the acknowledged facts of human history are not arbitrary or accidental, but necessary. Given that human nature so drastically constrains possible solutions to given problems that the particular outcomes can be seen to be inevitable, history reveals the logic of a distinctively human situation. Grotius wants to show that history 'proofs the existence' (Grotius 2005: §40) of the independently valid laws of nature. In inferring the a priori from the a posteriori, the rational history of property becomes its justification – what happened ought to have happened.

The emergence of rights in property and territory figures as part of a wider account of the evolution of society. In the course of time, people start to grow discontent with a way of life that merely allows them 'to feed on the spontaneous product of the earth, to dwell in caves, to have the body either naked or clothed with the bark of trees or skins of wild animals' (Grotius 2005: II.2.2.4). In the process of leaving this relatively simple life, they treat more and more objects as if they were bound up with their purposes of consumption and thus limited in re-usability. With this transition thus emerge more extended forms of exclusion and abstinence – the primitive form of use-right is no longer feasible (Salter 2001: 544). As soon as community members (publicly) start to recognise this fact, an elementary form of private property is underway. The initial act of seizure to satisfy bodily needs is treated as grounding a right to recover possession after usage. Hence, the need for private ownership arises as a natural response to circumstances generated when human beings abandoned their original life of primitive simplicity, proceeding through an extension of a right to use unclaimed things.

The earlier *De Jurae Praedae* describes this transition from mere use to the institutional fact of legitimate property rather vaguely as a mental act that is 'produced by reason' and 'retained in mind' of all parties involved

(Grotius 2006: Chapter 2 Section 102, see also Araujo 2009: 361/2) leaving it unclear who exactly has to recognise the validity of property or how they do so. In *De Jure Belli ac Pacis*, Grotius is more explicit that ownership arises 'by a kind of agreement, either expressed, as by division, or implied, as by occupation' (Grotius 2005: II.2.2.5). That is not to say that there was once an explicit original agreement about the division of the common stock. Rather, private property arises gradually out of a series of many explicit and tacit contractual steps between consenting parties. Absent visible objections 'it is to be supposed that all agreed, that whatever each one had taken possession of should be his property' (Grotius 2005: II.2.2.5). The division of movable objects (like cattle) is followed by immovable property (like land), eventually leading to the drawing of territorial boundaries and the formation of states. Yet, even after division, rights in property and territory retain a close connection to the original purpose of basic needs satisfaction, as expressed in a right of necessity that sanctions the revival of the primitive use right (i.e. taking from the surpluses of property holders) in cases of extreme and unavoidable hardship (Grotius 2005: II.2.6.1-4). The rightfulness of each co-owner's share of resources, and each state's share of space, of what was originally a common stock remains conditional upon everyone else's equal ability to satisfy their basic needs.

The rough outlines of Grotius's account of humanity's original common ownership of the earth at hand, I now want to look at Mathias Risse's recent revival of the concept (Risse 2012, 2013, 2015), which had fallen out of fashion in political philosophy for quite some while. The turn to Risse at this point is motivated by the observation that it is in his work that we see Grotius's notion of original common ownership explicitly employed as a fundamental conceptual pillar of a theory of *global* justice.[1] Notice that, quite strikingly, Grotius himself is not overly interested in questions of genuinely global concern, but in justifying particular property holdings and state boundaries. Risse instead explicitly identifies a 'universally acceptable,

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[1] Strictly speaking, the idea of common ownership only provides one of five grounds of justice that Risse appeals to in the course of *On Global Justice,* but without doubts it figures crucially in its overall argument and is developed at length.

non-parochial standpoint' (Risse 2013: 22) in Grotius's needs-based framework, a standpoint he takes to be ideally suited to adjudicate an array of issues of global concern – including questions of resources, territory, immigration and environment. Very much in line with the sentiment of contemporary global justice debates, the need to theorise from such a standpoint is said to arise from a twofold empirical development: humanity is, in a globalised economy, increasingly interconnected, while at the same time confronting more and more problems that 'concern our way of dealing with the earth as a whole' (Risse 2015: 84). Risse's revival thus allows us to connect the Grotian framework to contemporary global justice theorising and to show that the former is, in certain regards, very much in line with the gist of the latter.

Risse adopts the overall outlook of the Grotian framework as just outlined to a large extent, modifying it in two important respects. First, he de-historicises the account. His talk of 'original' common ownership does not aim at an originally actual state of affairs, but seeks to highlight the – exclusively normative – sense in which resources and spaces that exist independently of human activities might be taken to be owned in a way that is prior to the moral claims that individuals or groups have to these resources based on, for instance, occupancy or invested labour (Risse 2013: 8). Second, he secularises Grotius's account by replacing the appeal to God (and His 'divine gift') with intuition-based natural rights talk. Risse's aim is to 'make maximally uncontroversial claims that lead to a universally acceptable, non-parochial standpoint to adjudicate question of global reach' (Risse 2013: 8). More specifically, his notion of original common ownership draws on the intuitive plausibility of three separate claims (Risse 2012: 113/4): first, the fact that resources and space are valuable and necessary for all human activities to unfold. Second, the (normative) claim that the satisfaction of human needs matters morally. And finally, the assumption that – given that resources and space have come to exist without human interference or achievement – nobody has a claim to them based on contribution or personal achievement. These three claims in conjunction

are supposed to warrant the theoretical starting point that 'all human beings, no matter when and where they were born, are in some sense symmetrically located with regard to the earth's resources and space' (Risse 2015: 88) – in a nutshell, they originally own the earth in common.

There are a number of normative criticisms to be made of Risse's view – most importantly, the fundamental status quo bias towards existing entitlements and boundaries inherent to the account, which would above all consolidate existing boundaries and distributive patterns. Yet, I want to bracket these well-rehearsed arguments here,[2] and open up our perspective to the broader picture. What this reveals is that Risse's Grotian framework is not so much an outlier rather than indeed representative for much global justice theorising on offer today.[3] For, it resonates with the tendency to reduce questions of global concern to distributive questions of legitimate shares and holdings. The critique of the 'distributive paradigm' in justice theorising, as prioritizing the recipient-oriented question of 'who gets what' over a concern with intersubjective relations and structures, is well-rehearsed with regard to the domestic realm (see e.g. Anderson 1999, Scheffler 2003, Young 1990: Ch.1). That it is less familiar from global justice debates is surprising,[4] given that precisely in this context it seems most urgent to attend to those issues that may *emanate* from substantial inequalities of control over biophysical space and resources, but at their core are, and need to be theorised qua, deplorable *social* relations of domination and exploitation that they give rise to. The worry is that the distributive paradigm is not only oblivious to the power relations underlying a particular allocations of goods, but also profoundly *unpolitical*: rather than treating individuals as agents of justice with the authority to raise claims and the capacity to create mutually justifiable relations, it tends to view them as passive recipients of goods.

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[2] See the recent symposium in *Ethics and International Affairs* 28(4) as well as Abizadeh 2013.
[3] A good overview over the current state of the debate I am referring to here is provided by Wollner 2013.
[4] Notable exceptions are Forst 2013, Young 2006, Ypi 2012: 88/89.

In the Grotian framework this tendency is reflected in a notion of original common ownership as expressing a relation between individuals and the earth's resources. This understanding turns the focus *away* from genuine questions of global reach – how individuals relate to each other – to questions of legitimate particularization: the conditions under which parts of the global common can be privatised and rights to rule over (and to exclude other people from entering into) a specific territory allocated. The aim inherent to the Grotian framework is to *overcome* original common ownership, while doing so in the right way: in line with and under maintenance of the relevant background conditions that allow for continued needs-satisfaction of all. Questions of global justice are thus essentially truncated to matters of proportionate usage of resources and land. For instance, if a country is 'underusing' the natural resources located on its territory – i.e. its inhabitants have access to more valuable 'biophysical space' than they would be entitled to according to global average – then this country is obliged to accept more immigrants, until it reaches a point where its inhabitants are using these resources at the appropriate level (Risse 2012: Ch.8). Yet, beyond that, any private person can legitimately claim objects as theirs and any state can legitimately claim a territory as subject to its control.

The exclusive focus on the 'usefulness for human purposes of three-dimensional spaces' (Risse 2015: 91) thus leaves the Grotian framework prone to overlook – or unable to theorise – the ways in which we relate to each other independently or at least derivatively of how each our respective holdings contributes to our needs satisfaction.[5] In putting at the centre stage 'our relationship with the planet as a whole' (Risse 2013: 11) rather than our interactions with other individuals, it speaks to a way of theorising that reduces questions of global justice to questions of legitimate distribution. This leaves us with an impoverished and overly limited vision of global relations – a vision that is not only immanent to the Grotian framework, but

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[5] As Stilz (2014:509) points out, on Risse's account a poor subsistence farmer in the global south would have no claim (beyond a threshold of basic needs) upon a rich citizen of a western democracy – regardless of any economic interdependencies and power imbalances.

also dominant in the contemporary global justice literature. What I am after, instead, is a non-parochial standpoint that *actually* enables us to find mutually justifiable solutions for shared problems. This requires, to put it in Risse's (2012: x) own words, that we take global theorising seriously as a genuinely 'philosophical problem'. It is with this aim in mind that I turn to Kant.

2. Kant on original common possession

In the last section, I introduced Grotius's notion of original common ownership and raised some doubts regarding its suitability to serve as a truly global standpoint of justification. Now, at first sight it is not clear at all why and how Kant's superficially similar concept should do any better in this regard. It is first introduced in his reflections on the possibility of property rights in the *Doctrine of Right*'s section on 'private right', more specifically in a part that deals with the rightful *acquisition* of external objects. Kant starts by explaining that to acquire something means to 'bring it about [...] that it becomes *mine*' (DoR 6:258).[6] At this point he repeats a crucial distinction introduced at the very beginning of the text: all rights, Kant had claimed there, are either innate ('that which belongs to everyone by nature, independently of any act that would establish a right', DoR 6:237) or acquired (those rights which I acquire in virtue of an 'action whereby I make something mine', DoR 6:237). Focusing on the latter, he now further explicates that there are two ways of acquiring an object: either by deriving it from what belongs to someone else (through an exchange like a contract), or – and this will be Kant's main concern here – by acquiring it originally. He then goes on to specify, first, that what is acquired originally is never acquisition of what does not belong to anyone (a *res nullius*), because

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[6] All citations refer to volume and page numbers of the Prussian Academy Edition of *Kant's gesammelte Schriften*. Where available, I have used translations from the Cambridge Edition of Kant's works, published by Cambridge University Press under the general editorship of Paul Guyer and Allen Wood. Abbreviations used are DoR (*Doctrine of Right*), PP (*Towards Perpetual Peace*), CPR (*Critique of Pure Reason*), Preparatory DoR (*Preparatory works to the Doctrine of Right*), WOT (*What is Orientation in Thinking?*), CJ (*Critique of Judgment*).

'possession of an external object can originally be only possession in common' (DoR 6:258).

Up to this point – what Kant has essentially done in this opening paragraph is to provide a condensed version of his account of original common possession – the concept is very reminiscent of the natural law tradition indeed: introducing it within the context of a justification of property rights, Kant seems to suggest that individual acquisition must somehow be thought of as derived from what is originally possessed in common. It is even more surprising then that we see Kant – apparently aware of the resemblance – immediately distancing his own notion from that of a 'primitive community (*communio primaeva*), which is supposed to be instituted in the earliest *time* of relations of rights among human beings and cannot be based on principles but only on history' (DoR 6:258). It remains to be seen how, in developing his own conception over the subsequent paragraphs, Kant substantiates this delimitation that is clearly addressed at Grotius (cf. Edwards 1998: 127).

Tracing the argumentative steps that follow, we quickly notice that indeed something very different must be going on here. Kant starts his subsequent analysis of acquisition with a puzzling claim: The 'first acquisition of a thing', he claims, 'can only be acquisition of land' (DoR 6:261).[7] 'Land', which refers to 'all inhabitable ground', is the 'substance' upon which all movable external objects depend 'as inherence'. Hence, he follows,

> all human beings are originally (i.e. prior to any act of choice that establishes a right) in 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)

Kant specifies two features about this idea of original acquisition of land. First, the kind of possession he has in mind is not ownership in the sense of private property (something which I can claim as mine regardless of

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[7] I explore the concept of original acquisition of land and the ensuing 'right to be somewhere' in more depth in my 'Cosmopolitanism for Earth Dwellers: Kant on the Right to be Somewhere', forthcoming in *Kantian Review* 22(1), 2017.

whether I am physically connected to it), but mere physical possession or occupation. Hence, 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). Second and more importantly, Kant hastens to add that this kind of possession is a 'possession in common' (DoR 6:262). This is the case, we are told, because

> the spherical surface of the earth 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. (DoR 6:262)

Two aspects of this puzzling line of argument are striking. First, while Kant articulates a concern that arises from human beings' embodied nature, this concern seems to be very different to that of Grotius: Kant's concern is with the kind of systematic interdependence relations that persist among embodied agents just in virtue of the fact that they act and coexist in finite space. Such agents of course need to be somewhere – they need a place on earth in order to act at all. Yet, they are very different from (Grotian) needy beings that share a world of limited resources with beings that have similar needs, for the satisfaction of which they have to use, occupy and appropriate goods. After all, and in line with the nature of Kant's practical philosophy as a whole, the moral domain of 'right' sets out to provide a formal account of the 'external and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other' (DoR 6:230).

Second, Kant seems to reverse the argumentative sequence as we know it from the natural law tradition (Flikschuh 2000: 153, 163). While we saw Grotius (and following him, Risse) starting with the idea of a common stock in order to subsequently divide it up in accordance with a predetermined distributive principle, the *Doctrine of Right* proceeds *from* unilateral acquisition of land *to* the idea of original possession in common.

Original common possession is not an argumentative starting point, but the conclusion of the argument: something like a normative implication of the fact of individuals' acquisition of land under circumstances of spatial constraint constituted by the earth's spherical surface.

To sum up, Kant introduces original common possession in order to illustrate the way in which embodied agents that jointly inhabit a bounded territory are united in an original community. Yet beyond that, the pertinent passage does not lead us very far in elucidating the concept. It remains mysterious of what kind precisely this community is, or why it is presented as the argument's conclusion rather than its starting point. What does indeed come across is that Kant operates with a more formal notion than the natural law tradition: the sense in which the original community takes the form of an 'original community of land' (DoR 6:262) is not that of a resource repository for everybody's needs satisfaction – what he is saying is that the earth's spherical surface constitutes the unavoidable conditions of (potential) interaction. Kant is less interested in rightful entitlements to this or that piece of land, resource, or object. Instead, he is interested in the way in which human beings stand, from the beginning, in a relation of '*possible* physical interaction' (DoR 6:352) with everyone else globally given that, as physically embodied beings, they are constrained to occupy a portion of space on the earth (which cannot simultaneously be occupied by anyone else). In line with this thought, he repeatedly calls his conception of original common possession 'disjunctive' (Preparatory DoR AA23:321, 322, 323). It is this notion of 'disjunction', I want to claim, which is key to understanding the precise nature of Kant's original community of possession.[8] Given that it is a term with structural significance in Kant's philosophical system, its further elucidation requires a detour to his theoretical philosophy.

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[8] The similarity between disjunctive community and the disjunctive judgment has also been explicated by Milstein (2013), whose work has been of great use to me.

3. Disjunctive judgment and original community

In the last section, we got a first impression of Kant's conception of original common possession as laid out in the context of the *Doctrine of Right*'s passage on 'original acquisition of land'. The present section seeks to further deepen our understanding, drawing on Kant's characterisation of original community as 'disjunctive'. The notion of a 'disjunctive community' is a technical term that Kant develops in the *Critique of Pure Reason*, where it is introduced in the course of a wider (and perennially contested) argument about the nature of space, objects, temporal relations and the unity of experience. While it would go well beyond the scope of this paper to try to elucidate every single claim that Kant makes in this context, we do need to keep in mind one of the most important tenets of the *Critique of Pure Reason* as a whole: human beings' knowledge of the world depends on a system of fundamental categories or what he calls "pure concepts of the understanding". Controversially, Kant thinks that he can develop these categories from nothing more than logical forms of judgment expressed in a systematic 'table' (CPR A70/B95). After all, that is what the human intellect fundamentally is for Kant: a capacity to form judgments (CPR A69/B94, A81/B106).

One of these forms of judgment is the 'disjunctive judgment', the exclusionary 'either...or' (CPR A73/B99). In a disjunctive judgment one divides a concept A into its mutually exclusive specifications B, C, and D. The assertion of any of these specifications of A is then considered a sufficient condition for negating the others (if A is B, it cannot be C or D), and conversely the negation of all but one is a sufficient condition for asserting the remaining one. What is important to understand here is that the disjunctive form of judgment divides a logical space (the extension of a concept) into mutually exclusive *and* jointly exhaustive spheres. The known constituents mutually exclude each other (they are logically opposed to one another) but *together* exhaust all of the logical possibility, i.e. they 'determine in their totality the true knowledge' (CPR A74, see also Watkins 2011: 44). Thus, there is a sense in which the state of each is bound to the

others: the affirmation of one member implies the negation of the others, and the negation of all members but one implies the affirmation of the remaining member. A disjunctive judgement, that is to say, relates all concept subordination to a unified logical space within which concepts reciprocally delimit each other's sphere and meaning.

As already mentioned, the logical forms of judgment then ground categories or 'pure concepts of the understanding'. The idea is that the same acts of mind that generate the forms of judgment also generate the synthesis of spatiotemporal manifolds under concepts.[9] The disjunctive judgment yields the category of 'community' as the third category of 'relation', alongside 'substance' and 'causality' (CPR A80/B106, B110-11). Just as in a disjunctive judgment, the argument goes, a concept is divided up into its constituent components (bringing them into a relation of mutual determination *and* exclusion), so in a material whole, things mutually determine one another in an object or body considered as a whole (CPR B112/3). In both, members are represented as reciprocally coordinated with one another as parts that come together to constitute a whole. Just as two logically opposing propositions exclude each other, so two objects cannot occupy the same spatial position (at the same time). And just as the constituents of a disjunctive judgment, taken together, include the entire sphere of knowledge in that particular domain, so substances, in order to be an object of experience, must stand in a unified space, a whole that is the product of its various constituents. Consequently, the category of community has two names: 'Reciprocity' (with an emphasis is on the relation of causal interaction) and 'Community' (with an the emphasis on objects' being part of one space).

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[9] It is perennially contested among interpreters what kind of connection between forms of judgment and categories Kant has exactly in mind there. Longuenesse (2005: 194ff). emphasises that in order to avoid the Leibnizean rationalism that he rejects in the 'Amphiboly' section, Kant cannot *assimilate* a logical relation between concepts and a material relation between things. Watkins (2005) agrees that when Kant talks about 'the same procedure of the understanding' (CPR B113) that underlies judgment and the use of categories, he does not in any straightforward way derive one from the other but merely points out a similarity among the respective mental acts.

In order to elucidate this surprising connection that Kant stipulates, between the understanding's representation of relations among concepts and empirically given things in space, we need to have a closer look at the first *Critique's* section on the 'Analogies' (CPR A 177-218, B 218-265). There, Kant tries to show how precisely the categories of relation provide the human understanding with 'schemata' through which we synthesize the manifold of appearances into an intelligible horizon of spatiotemporality. Each Analogy looks into how a specific category constitutes the condition of a particular type of temporal experience. In the third Analogy (CPR A211/B257), Kant claims that we can only experience appearances as co-existing *simultaneously* by applying the concept of community.[10] This, in turn, is to suppose that the objects are in relations of mutual interaction – they 'reciprocally contain the ground of the determination' of the other (CPR B258).

But why would that be the case? It seems that I can just look at my chair, then look at the table standing next to it and I simply know without further ado that they co-exist simultaneously. Yet, Kant does not think it is that easy, for while we always apprehend objects successively (we see one object first, then the other) we have no given (absolute) temporal framework within which we might locate events and states of affairs in time. Hence, we need the help of the categories that relate the perception of objects in time 'prior to all experience, and indeed make it possible' (CPR A177/B219). For instance, if we look at the desk first and then at the chair, we can only judge that they exist simultaneously (instead of being two perceptions following onto each other) if we could *reverse* the perception, that is look at the chair first and then at the table (CPR A211). But we can only make *that* judgment under the supposition that each object occupies part of a larger unified space. So the sense in which simultaneously existing objects stand in 'dynamical community' (CPR A213) and determine certain

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[10] For extensive treatments of the third Analogy (which was for a long time neglected in Kant scholarship), see Watkins 2005: 217-229, Longuenesse 2005: Ch.7, and Shell: 1996: Ch.6.

features of each other is in fact spatial:[11] one substance is thought to be the cause of certain determinations in another and vice-versa insofar as each is in some sense responsible for the spatial position of the other. If two things exist simultaneously, they mutually exclude each other, as each object has its place by virtue of the place of everything else. And as only spatially separated objects are capable of coexisting simultaneously, spatial positions condition temporal positions. To sum up, we cannot locate particular objects vis-à-vis one another without first being able to comprehend them as coordinate participants in a unified horizon of possible experience.

This enlightening comparison already leads us some way in understanding what Kant seeks to suggest by calling the original community of possession 'disjunctive'. His original community describes a system of mutual exclusion where persons stand in a relation of 'possible physical interaction' in virtue of occupying different parts of the earth. Just as a disjunctive judgement relates mutually exclusive concepts to a unified logical space, so the idea of a disjunctive community elucidates how in virtue of sharing the earth in common, we each affect one another. Yet, in order to fully exploit and appreciate the significance of the notion of disjunction and the pertinent category, we have to go a step further. Following Beatrice Longuenesse (1998: 375-394, 2005: 183-211), we need to notice that what makes the category of community so interesting and indeed unique among the categories: the perception of spatiotemporal simultaneity does not merely require us to perceive interaction among the things we observe – it also requires us to posit *ourselves* within that interaction as phenomenal bodies that coexist among them. Kant takes our body to mediate our perception of the simultaneous existence of other substances: we can only experience substances as standing in relations of community under the condition of experiencing them as coexisting with our own body (CPR A213/B260, see also Longuenesse 1998: 391). A change of our own location is only noticeable through its altered relation to other objects (and the other way round).

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[11] The spatial dimension of the third Analogy is emphasised by Morrison 1998.

Kant illustrates this idea particularly nicely in his (little-known) essay *What is Orientation in Thinking.* There, he develops his stance with regard to the wider philosophical issue of 'orientation in thinking' (pertaining to the scope of reason and the existence of God) by way of a comparison with two more familiar and seemingly manageable forms of orientation. First, he reflects on the possibility of geographical orientation (WOT 8:134/5). At first sight, it may look as though we are able to orient ourselves in a landscape by drawing on certain objects or fixed points – the altitude of the sun, the position of the stars or a compass. Yet, Kant thinks the idea that we could merely orient ourselves drawing on external things misleading. Instead, the most immediate (and important) point of orientation is in fact our own subjective feeling of left and right, which we (implicitly) rely on when distinguishing South, North, East and West. Without this 'feeling of a difference in my own subject' (WOT 8:134) we would be ignorant of the relation in which we ourselves stand to the world surrounding us and thus remain entirely disoriented. This becomes even clearer when we imagine ourselves attempting to find our way around in a pitch-dark room (WOT 8: 136/7). Given that we are familiar with the room's general lay-out, all we require in order to spatially locate all items in the room is knowledge of the position of one piece of furniture together with – importantly – our feeling for left and right. If instead somebody had rearranged the furniture, we would be completely lost. In both examples, it is a subjective feeling that serves as a relevant point of orientation in space. More specifically, it is my body – its location in space – that provides the necessary reference point: the subjective feeling of left and right is nothing else than a 'feeling of a difference between my two sides' (WOT 8:137). We can only grasp space through our own position in it.

Now, Longuenesse argues that by requiring us to locate ourselves in the world, the category of community provides us with what she calls a 'standpoint on the whole': a reflexive standpoint from which we locate and situate ourselves in interaction with the world surrounding us. It is this standpoint on the whole, I want to suggest, that can be read as providing

the template for Kant's global standpoint.[12] In order to see this, notice that Kant takes reasoning in general to be an inherently *shared* task (O'Neill 1989: 9). To use one's reason 'means no more than to ask oneself, whenever one is supposed to assume something, whether one could find it feasible to make the ground or the rule on which one assumes it into a universal principle for the use of reason' (WOT 8:146 fn.). One of the core principles of enlightenment, Kant repeatedly tells us, is to think for oneself while also 'putting [oneself] into the standpoint of others' (CJ 5:295).[13] Importantly, to reflect on one's own judgment from such a universal standpoint does *not* mean to take up some Archimedean view 'from nowhere' – a standpoint that is, from the perspective of Kant's critical philosophy, constitutively unavailable and philosophically futile. It means, instead, to shift one's own ground to the standpoint of the others and make it accessible and thus oneself accountable to them. Absent a transcendent standard, reasoned thinking can only discipline *itself* (CPR A738/B766, see also O'Neill 1989: 57) – not only by genuinely attempting to judge for itself (i.e. regarding oneself as the author of one's thoughts), but also by exposing one's judgments to the 'collective reason of mankind' (CJ 5:293). In the *Critique of Judgment* (CJ 5:293), Kant calls this capacity to think from the standpoint of everyone else our 'communal sense' (*Gemeinsinn*): the capacity to use our understanding in order to develop a *common* standpoint on the whole, but one that is premised on each of the particular (yet reflexive) standpoints we initially hold.

Of course, we need to keep in mind that 'thinking' in line with the idea of a disjunctive interpretation of the earth's surface is not completely identical with 'theorising' from a global standpoint.[14] It would be implausible and unhelpful to suggest that orientation and theory fall together. Rather, to theorise from the global standpoint is to employ the idea of disjunctive community as a model, and to do so with a critical

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[12] Here I follow Milstein (2013: 124).
[13] In a similar vein we can read Kant's invocation of a genuine *public* use of reason as seeking to address all 'citizens of the world' (WOT 8:37).
[14] I would like to thank an anonymous referee for urging me to clarify this.

intent: to reflect on (the validity of) ways of orienting and their conditions of possibility.

4. Theorising from the global standpoint: Kant vs. Grotius

With our analysis of Kant's original community as 'disjunctive' at hand, we can now sharpen the contrast with the Grotian framework. I will start by carving out what distinguishes the two conceptions on a substantive level, subsequently turning to their role in the respective broader argumentative structure. This contrast will provide us with the contours of an alternative model of theorising based on Kant's conception of original common possession.

On a conceptual level, an essential contrast has emerged over the last three sections between Grotius's *material*, needs-based principle for the division of the common stock of resources and land on the one hand, and Kant's *formal* argument pointing out relations of interdependence that obtain among individuals globally in virtue of their unavoidable coexistence on the earth, on the other hand. In both arguments, human physicality grounds the idea of original common possession, yet in very different ways. Grotius seeks to provide a legitimacy criterion for rightful appropriation of land and resources grounded in the satisfaction human bodily needs. In Kant, embodiment comes in as a mere precondition for a particular kind of moral agency ('Willkür', i.e. our capacity for choice and action), a formal account of which the *Doctrine of Right* sets out to provide.

The ensuing contrast is nicely elucidated by drawing a distinction between Grotian *relations of ownership* and a Kantian *relation of wills* of individuals, a difference Kant himself most clearly articulates in the preparatory works for the *Doctrine of Right*: there, he clarifies that the relation between original common owners 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' (Preparatory DoR AA23:322). This of course makes for

a stark contrast to the Grotian model, which Risse takes to provide an explicitly 'nonrelational' (Risse 2012: 89) ground of justice. For Kant instead, to say that the earth constitutes the basis of possible physical interaction *just is* to make a claim about how individuals relate to one another globally. Of course, this is a 'relationalism' in the thinnest possible sense, based on a mere relation of 'possible physical interaction' (DoR 6:352).[15] There remains a non-trivial contrast, however, between what are fundamentally different ways of conceiving of the idea of original common possession as capturing either a relation between human agents and the external world, or a relation *among* human agents.

Of course, in depicting a mere form of relations of choices between subjects, such a conception does not lend itself to substantive implications of the kind we can get out of the Grotian understanding of common ownership. Following the latter, natural law already inheres a principle of just distribution: the principle of need as determined by human nature and discerned by reason. On the Kantian picture in contrast it is, in a way, all up to humans: it is them who have to come to terms with the fact that they have to share the earth in common, by negotiating terms of coexistence. What the idea of original common possession points out is the fact that, and the way in which, their fates are inevitable bound up with one another. It merely provides a standpoint from which individuals can think and act globally in order to find shared solution for shared problems.

With regard to the broader argumentative structure, we have already noticed that original common ownership occupies contrasting places in the respective justificatory sequence. Grotius *starts* with original community conceived of as a historically real state of affairs and proceeds from there – embedded within a wider account of societal evolution – via distribution in accordance with a principle that derives its validity from the structure of human nature, to individual property and territorial boundaries. Risse

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[15] I concede that Risse operates with a more substantive, distinctly practical 'relationalism', according to which what I vindicate here as Kant's conception may be categorised by Risse as a 'non-relational' principle, i.e. one that 'appl[ies] among all human beings regardless of what relations they share' (Risse 2012: 7). I am grateful to an anonymous referee for pressing me on this.

replaces the historical narrative with an appeal to secularized natural rights reasoning. What renders the assumption of humanity's collective ownership of the earth intuitively plausible is the mere insight that that there is something all humans need (space and resources) but which none of them can make a prior claim to, for instance based on individual achievement or labour. Yet, he does abide by Grotius's argumentative sequence: original common ownership figures as a conceptual starting point from which a distributive rationale unfolds.

We saw Kant turning this sequence upside down: he *starts* from the insight into the conundrum of original acquisition of land, from which the need to think of the earth as possessed in common follows as a normative implication (Flikschuh 2000: 168). The reason original acquisition of land *does* pose a conundrum for Kant is that, despite the fact that we cannot be blamed for the 'sheer facticity of our placement, willy-nilly, on the surface of the earth' (Shell 1996: 150), it is not without normative consequences. For, given that the earth's spherical surface makes it physically impossible for human beings to get out of each other's ways once and for all, where and how *we* pursue our ends necessarily impacts where and how *others* can do so – quite simply because the space we take up at every particular point in time cannot be taken up by another person (recall my analysis of original community as a system of mutual exclusion). Hence, our own right to a place on earth comes with strings attached: to conceive of our own legitimate possession of a place as a 'possession in common' (DoR 6:258) with all others. To think of the earth as possessed in common, that is to say, is an a priori necessary condition of the unavoidable first acquisition due to one's coming into the world as an embodied agent. Kant employs the idea of original common possession of the earth to visually express what it means to exist as an embodied moral agent, together with other such agents, within limited space. But it would be a misnomer to say that this fact just *makes it the case* that we possess the earth in common. Rather, original common possession is something we *judge* to be the case, reflexively acknowledging the need, and at the same time our ability, to

come to terms with the plurality of perspectives that humans bring to bear on each other on the earth's spherical surface.

It should now be plainly in sight that Kant wants to ask a more basic question than Grotius. The aim of the Grotian framework – and this is where it colludes with much of contemporary global justice theorising – is to explain or vindicate the individual distribution of what was originally given to all in common. Above, I have voiced my worries about the way in which this focus on questions of legitimate privatization are prone to losing sight of vital questions of genuinely global concern. Kant is not primarily interested in how to divide up the world. He uses the idea of original common possession in order to explore the most fundamental way in which individuals relate to one another globally – independent or at least derivative of the ways in which each of us relate to biophysical space. In bringing together some of the main points of my discussion, let me close by highlighting two ways in which Kant's conception of original common possession can actually inform (and to some extent, transform) the way in which we theorise globally, even without providing ready-made principles or institutional blueprints for the regulation of global coexistence.

The reflexive function. I have reconstructed the disjunctive community of original possession as elucidating how we each affect one another while being able to reflexively relate to the 'whole' of human beings. The shift in perspective underlying this model is radical indeed: Kant's global standpoint is not a pre-established view from nowhere, a god's-eye perspective from which goods are allocated. Rather it is a reflexive, first-personal standpoint the thinker constructs by shifting her ground to the standpoint of the other. To think of the earth as possessed in common illustrates the requirement, directed at each particular agent, to take a reflexive stance towards their own existence as an embodied agent in a world of limited space. It is a standpoint *through* which we acknowledge our ability to locate ourselves vis-à-vis everyone else, and *from which* we act and interact with others with the aim of negotiating justifiable terms of coexistence. Rather than treating them as passive recipient of goods, this

model empowers individuals to see themselves and each other as agents of justice that can come together in order to settle the terms of interaction as free and rational beings. What it articulates is a specific task, namely to come to terms with their unavoidable coexistence on the earth by transforming the disjunctive community of possession into to a self-determining community of mutual participation. While Kant's notion of original common possession, as I have presented it, is thus first and foremost an attempt in fundamentally reconceiving the nature of a problem, it does constrain possible solutions.

The critical function. Kant's model not only encapsulates an original way of framing the question or challenge of global coexistence. As I have intimated at the end of the preceding section, it also functions as a critical tool – a standpoint, that is to say, from which we can assess and critically reflect upon *existing* institutions and terms of interaction that govern relations among individuals and communities, and work towards modifying them. In order to illustrate this point, let me go back once more to the third Analogy. In the course of discussing the category of community, Kant identifies an ambiguity in the word community (*Gemeinschaft*) as used in common language, which he seeks to resolve with a distinction between the two Latin terms 'communio' and 'commercium' (CPR A213/B260). 'Communio' describes what Kant calls a 'local community' (CPR A213/B260), a set of items that belong together under some given criterion of commonality that demarcates those who belong from those who do not (cf. Milstein 2013: 122). The category of community, instead, is defined as 'commercium', a community characterised by mere interaction and reciprocal influence. Kant makes it clear that community as 'communio' presupposes community as 'commercium' (CPR A214/B261): without the dynamic reciprocal influence of substances in 'commercium' there could be no empirical relation of co-existence or 'communio'. For, in line with our reconstruction in the preceding section, we can only mentally divide a larger entity into smaller units thanks to our ability to experience all the

constituent parts as coming to us already interconnected in a unified horizon of possible experience.

In the *Doctrine of Right*, Kant takes up this distinction: when the idea of original common possession is first introduced (and equated with 'commercium'),[16] he cautions that 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' (DoR 6:258). Similarly, in the section on cosmopolitan right, we are told that the members of the original community of land do *not* stand in a relation of '*rightful* community of possession (*communio*) and so of use of it, or of property in it; instead they stand in a community of possible physical *interaction (commercium),* that is, in a thoroughgoing relation of each to all the others [...]' (DoR 6:352).

What Kant seems to argue in these passages is that the global community arising from the unavoidable conditions of our existence on earth has some kind of priority over contingent, man-made communities of right-holders or co-owners linked by juridical relations. Of course, he is not suggesting that we should do away with all kinds of particular relations, commitments and institutions.[17] Rather, original common possession is normatively primordial in the sense that even under conditions where they are members of separate political communities, 'participants still remain "originally" participants in "commercium" to the extent that they still retain the reflexive capacities to build upon, critique, or revise the terms on which they coexist and interact with one another' (Milstein 2013: 125). What motivates Kant's inversion of the sequence of Grotius's argument is precisely the latter's tendency to *obliterate* the global standpoint by essentially consolidating existing holdings and borders rather than questioning them. Kant's own model, in contrast, is supposed to provide a

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[16] This raises the question why, earlier, Kant talks about his conception of original common possession as *communio fundi originaria.* I agree with Byrd and Hruschka's (2010: 131 fn.45) explanation that he possibly uses *communio* here in order to emphasise the contrast to the Grotian notion of *communio primaeva* that he wants to replace.
[17] Compare, for instance, Kant's reluctance to embrace anything like a world state solution.

standpoint from which we can critically reflect on relations of property, territory or sovereignty that we have inherited. It allows us to ask in how far existing institutions affirm our ability to think ourselves as joint makers of the world around us – most importantly, by allowing us to recognize their own contingency such that we can take ownership of them – or whether they curtail this ability by delimiting possible interaction as well as entrenching and naturalising existing separations. To sum up, Kant's global standpoint allows individuals to see themselves as agents of justice that can collectively structure and transform their shared social world rather than putting up with those terms of interaction that they find themselves in.

Conclusion

In a recent 'progress report', Samuel Scheffler (2014) takes stock of three decades of global justice theorising. The narrow set of questions, arguments and authors that this field proves to centre around somewhat turns the inventory into a confession to conceptual and theoretical stasis in the pertinent debates. The aim of this article was to offer a fundamentally different and more systematic way of global theorising, which I take to be embodied in Kant's notion of original common possession. The contrast I developed with Grotius's related notion was not only supposed to illustrate Kant's departure from the natural law tradition, but also how much current debates are still caught up in a way of thinking that tends to reduce questions of global concern to questions of how to divide the world up. The main Kantian challenge to this framework arises from the change in perspective from which we think globally: away from the Archimedean observer that distributes global shares, to a reflexive first-personal standpoint through which agents recognise their unavoidable interdependence. This global standpoint does not come with ready-made solutions to shared global problems, but provides an alternative perspective from which to theorise and negotiate them. What is most appealing about the Kantian outlook is its unique and interesting way of framing the

question how individuals relate to one another globally – emanating from a shift in the perspective from which this question arises in the first place.

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