Kant's Deduction of Merely Rightful Possession: Putting the Postulate in its Proper Place

Abstract: In 1982, Bernd Ludwig claimed that the order of the sections in Kant's Doctrine of Right needed to be changed. Ludwig's suggested rearrangement of the text has subsequently spread due to its incorporation in the 1996 Cambridge Edition of Kant's *Practical Philosophy*, which has served as the standard since its publication. In this paper I argue that the order of the sections should not have been changed. The surrounding exegetical evidence indicates that Kant was both aware of and intended the section order which appeared originally. More troublesome, however, is that Ludwig's reading of Kant suggests a view in which property right is merely postulated, and not actually argued for. I propose that we turn to Kant's original argument with fresh eyes, to see how he allows the physical process of using objects to guide his deduction of the possibility of possessing them rightfully.

It is not news to philosophers that a small change in the order of an argument can have a considerable effect on the conclusions that can be drawn from it. In this paper, I identify the source of a prevalent but unsatisfying interpretation of Kant's deduction of merely rightful possession in Bernd Ludwig's 1982 reorganization of its sections. In that year, Ludwig argued that the original order of the sections in the first chapter of the *Rechtslehre* was not the one that Kant intended, and was instead the result of a mis-

take at the hands of the printer.[1] On the basis of conjecture about the historical situation of the printing, as well as the presupposition that the argument does not make sense in its original order, Ludwig maintained that the second section of the chapter should be moved to the middle of the sixth.[2]

In this paper I will argue against the validity of Ludwig's text revisions, as well as the reading of Kant's deduction which they engender. I will begin by examining textual evidence to show that Kant was both aware of and untroubled by the order of his argument as it appeared in the 1797 printing. I will then address Ludwig's other main objection to the original order of the sections: that the deduction they produce does not make any sense. I respond to this claim by presenting a straightforward interpretation of Kant's deduction with the sections in their original order, and suggest that the success of this endeavor removes the argumentative ground for reordering the text. Finally, I will point out the presupposition which led to Ludwig's philosophical complaints against Kant's deduction, and show that it is actually the argument which results from the incorporation of that unwarranted premise which makes no sense. From this, I conclude that we cannot accept Bernd Ludwig's text revisions to the first chapter. The order in which the sections were originally presented is both the proper and the intended one.

1.

In 1982, Bernd Ludwig proposed that the order of the sections in the first chapter of the *Rechtslehre* be changed so that the second section (the 'jurisprudential postulate of practical reason') appeared in the middle of the sixth ('the deduction of merely rightful possession'). Ludwig's support for this relocation lay in historical accounts of the printing process of the *Rechtslehre*, as well as the belief that the deduction did not make sense in its original order. This claim of a printing mistake in the *Rechtslehre* was not without precedent: in 1929, Gerhard Buchda suggested that four paragraphs in the middle of section six in the same chapter were the

[1] Kant's *Rechtslehre* [MS AK 6:229-356; Appendix 6:356-373]. All references to Kant's works are to the Royal Prussian Academy edition (Immanuel Kant (1907). *Metaphysik der Sitten*. Ed. by Paul Natorp. Band VI von der ersten Abteilung (Werke) in Kants gesammelte Schriften. Berlin: Georg Reimer.) References will include the volume, the title of the work (abbreviated), and the page number.

[2] Ludwig 1982

result of an accidental insertion, and not part of Kant's argument.[3] These paragraphs have been removed from the main text in almost all modern editions of the *Rechtslehre*.[4] Bernd Ludwig's proposed revision was first incorporated in a 1986 reedition of the *Metaphysische Anfangsgründe von der Rechtslehre* published by Felix Meiner, for which he served as editor.[5] It was then included in the 1996 Cambridge Edition of the Metaphysics of Morals (translated by Mary Gregor), which has served as the English standard since its publication.[6]

[3]This conclusion was reinforced by Friedrich Tenbruck's independent discovery of the same problem in 1949. While Buchda argued that paragraphs four through eight be moved to the end of the first chapter, Tenbruck argued that the paragraphs ought to be removed entirely, a suggestion which has been incorporated in most modern editions of the *Rechtslehre*. (Tenbruck 1949, p. 217)

[4]Given the longstanding philosophical consensus on the accuracy of this revision and constraints on space, I will proceed in accordance with Buchda and Tenbruck in this paper.

[5]The 1986 reedition includes fourteen major text revisions (all introduced by Ludwig), including reordering the sections of the introduction, removal of section three from the first chapter entirely, insertion of title pages where there were previously none, &c. For a more detailed description of the changes, see Ludwig 1986, pp. *xxvii-xl*.

[6]The 1996 translation of the Metaphysics of Morals (which appears in the Practical Philosophy volume of 'The Cambridge Edition of the Works of Immanuel Kant', eds. Paul Guyer and Allen Wood) is actually a revised version of Gregor's 1991 standalone translation, also published by Cambridge. Gregor did not incorporate Ludwig's suggested relocation of the second section in the 1991 work. This is of particular note, because in 1988 Gregor authored a review of the Felix Meiner re-edition of the *Rechtslehre* which focused almost entirely on Ludwig's revisions— hence their absence three years later cannot be attributed to lack of awareness.(Gregor 1988b) The only explanation for the subsequent incorporation of Ludwig's changes came in Gregor's introduction to the 1996 translation, where she states that "the present translation follows the Academy edition text except for two points, regarding which, after consultation with the General Editors of the Cambridge edition, Ludwig's emendations have been adopted." (Kant 1996, p. 357) One of these points is, of course, the relocation to the second section to the middle of the sixth.

Although the fact that section two now appears in a different location is occasionally footnoted in English Kant scholarship, the closest thing to critical engagement with Ludwig's justifications for the transposition is Mary Gregor's short review of the reedition. In a later work on Kant's theory of property, Gregor also mentions the 'corruptness' of the text of the first chapter, but accepts Ludwig's revisions as a solution to this, and directs the reader to Ludwig's own explanation in the introduction to the Felix Meiner reedition.(Gregor 1988a, pp. 761-762n10) The relocation of section two and some of the related German discussion are also mentioned briefly by Katrin Flikschuh in her book *Kant and Modern Political Philosophy*, but she explicitly states that she

In his 1988 book (where he explains his text revisions in greatest detail), Ludwig claimed, on the basis of circumstantial textual and historical evidence, that a mistake could have been made in the initial printing process of the *Rechtslehre*. Ludwig noted of thirteen defects in the text (ranging from 'minor' to 'serious') to argue that the editing and printing of the *Rechtslehre* was rushed and poorly supervised.[7] He took the existence of these mistakes to show that Kant was allowed only a cursory review of the text prior to its printing, which would have been consistent with eighteenth-century printing practices (which generally removed proofreading from the author's control.) Although Kant's publisher Nicolovius was located in Königsberg, the *Rechtslehre* was proofed and printed in Leipzig, where it had to be sent in multiple packages that could have been accidentally misarranged.[8]

Ludwig's excavation of Kant's text does reveal defects. It is clear that typographical errors made it into the first printing of the *Rechtslehre*, and Ludwig makes a compelling case that at least some of these errors were at the hands of printers, and not Kant himself. However, review of Kant's own claims in the *Rechtslehre* and its 1798 appendix reveal that these mistakes do not extend to rearrangement of his deduction.

In 1988, Burkhard Tuschling identified several key points in the *Rechtslehre* which indicate that Kant was aware that the jurisprudential postulate of practical reason was printed in section two.[9] Kant refers back to the postulate at several later points in the *Rechtslehre*, and consistently notes its appearance in section two.[10] Additionally, Tuschling noted that in the 1798 appendix to the first edition of the *Rechtslehre*, Kant referred to several sections of the first half of the work (*Privatrecht*) by page and

will not discuss the relocation there and will proceed according to Ludwig's suggestions.(Flikschuh 2000, pp. 9, 116)

[7]For a full list and explanation of the defects identified, see Ludwig 1988, pp. 30–31.

[8]Ludwig 1988, pp. 33–34

[9]Tuschling 1988. "Das „rechtliche Postulat der Praktischen Vernunft": seine Stellung und Bedeutung in Kants „Rechtslehre"".

[10]At MS AK 6:254, while Kant is discussing the possibility of continuous possession, he claims that "anyone…must either assert that it is not at all possible to have something external as mine (and this conflicts with the postulate of §2)…" and then again at MS AK 6:262, while discussing acquisition of land, Kant states that "[t]he first proposition [that land can be acquired originally] rests on the postulate of practical reason (§2)"

section number.[11] Kant would have had to look up these citations in his earlier text, and it seems exceedingly unlikely that in that process he would have neither noticed nor commented on a major organizational mistake in the first chapter.[12]

Tuschling's citations strongly suggest that Kant did not intend the second section to be in a different place, and that the original order of the first chapter is not the result of an unnoticed mistake at the hands of the printer. Accordingly, Bernd Ludwig's remaining case lies in the alleged argumentative deficiency of the argument in its original order. Ludwig suggests that, in its original order, the deduction of the possibility of merely rightful possession simply does not make sense, and cannot actually generate that possibility.[13]

As a rebuttal to this claim, in the following sections I will offer a reconstruction of Kant's deduction of the possibility of merely rightful possession proceeding through the sections in their original order. I will begin by situating the deduction in Kant's *Rechtslehre* and his larger system of private right. I will then draw attention to the schema which directs the progress of the deduction and explain its role in Kant's particular project. Finally, I will proceed through Kant's deduction of merely rightful possession in accordance with that schema, drawing particular attention to the

[11]The sections cited in the appendix come a little later in Kant's discussion of property, and concern disagreements in more specific cases like breaking a lease, inheriting, etc. c.f. [MS AK 6:361, 363, and 365].

[12]Tuschling 1988, p. 275. It is worth noting here that these textual points do not exhaust Tuschling's objections to Ludwig's edits, and the paper where he makes these points is actually primarily concerned with the *argumentative* failure of the reconstructed first section of the *Rechtslehre*. This paper falls into a somewhat larger discussion of the relocation which took place in the German scholarly community in the period between Ludwig's first suggestion of the relocation in 1982 and about 1996. This back-and-forth unfortunately did not get taken up in the contemporaneous English Kant scholarship, with the single exception being Mary Gregor's review of the Felix Meiner re-edition of the *Rechtslehre* in 1988. I also don't include the details of this discussion here, since a great deal of it is concerned with the way that parts of the text succeed or fail in matching Kant's description of them (e.g. whether or not a given result counts as 'immediate,' or as an 'extension' of practical reason), which I do not take to be the major bone of contention in understanding this chapter. For more information, see Saito 1996a, Saito 1996b, Hartmann 1994, in addition to the Tuschling and Ludwig texts already mentioned. Interestingly, the only explicit rejection of the relocation of section two I have found in the English literature is in Westphal 2002, p. 94n10, where he cites the same textual reasons, although doesn't refer to Tuschling.

[13]Ludwig 1982, pp. 60–62

role that the postulate of practical reason plays.

2.

In the introduction to the *Rechtslehre*, Kant explains that "[t]he sum of those laws for which an external lawgiving is possible is called the *Doctrine of Right* (*Ius*)."[14] The principle in accordance with which this external lawgiving is executed is the universal principle of right (UPR), which states that

> Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.[15]

As a result, it is the general freedom of all which serves as the limiting factor on all possible external actions. Kant has already discussed the concept of freedom in the introduction to the *Metaphysics of Morals*, where he informs the reader that "we know freedom…only as a *negative* property in us, namely that of not being *necessitated* to act through any sensible determining grounds."[16] Freedom therefore consists in a kind of independent determination of action for the individual. Since the *Rechtslehre* is concerned only with the external relations of humans, the sensible determining grounds at issue will be those coercive forces that one person can apply to another. Putting all of these elements together, rightful actions are those which can coexist with (do not infringe on) others' independence of action in accordance with a universal law.

Since actions which can coexist with everyone's freedom in accordance with a universal law are right, we are permitted to perform them: they are actions to which we *have* a right. And if we have a right to perform an action, another person's interfering with our doing so is inconsistent with the freedom of all, and therefore wrong. Since another's interference with my rightful action is a restriction of my freedom, it is consistent with the freedom of all for me to hinder that interfering action. Coercive action which would otherwise violate someone's rights (by interfering, for

[14] [MS AK 6:229]
[15] [MS AK 6:230]
[16] [MS AK 6:226]

example, with their bodies) can therefore nevertheless be consistent with right, when the action hindered was itself wrong.[17]

Kant's idea of freedom is quite distinct from many other liberal accounts. Kant does not define freedom, for example, in terms of the *number* of ends available to a given agent, or the means available to achieve them. Accordingly, he does not define 'right' as maximizing or equalizing these. Instead, our freedom is defined negatively, as the capacity to act without the physical coercion of others around us. The person who independently chooses between two ends and the person who chooses between twenty can therefore count as making equally free choices.

The aim of the *Rechtslehre* is to identify all of those conditions, both permissions and obligations, under which "the choice of one can be united with the choice of another in accordance with a universal law of freedom."[18] The first of these conditions, Kant explains, is each person's innate right to freedom. This is the right that each has intrinsically, to "independence from being constrained by another's choice."[19] In external, person-to-person relations, however, the way that one person can control another's choice of action is by means of his body. No one has direct access to the internal, decision-making apparatus of another, so external interference must come from physical interventions.[20] A right to independence from this kind of constraint is therefore a right to a kind of bodily freedom to perform those actions which are themselves consistent with the freedom of everyone else.

In chapter one, Kant turns his focus from actions which involve only my body to ones which also incorporate external objects. Humans are the kinds of beings that have the physical capacity to use objects entirely distinct from them as a means to their ends. From the material given in the introduction to the *Rechtslehre*, however, it is not yet apparent how these external objects fit into the system of actions which could be united with

[17] [MS AK 6:231]
[18] [MS AK 6:230]
[19] [MS AK 6:237]
[20] People are "authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it— such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere…for it is entirely up to them whether they want to believe him or not." [MS AK 6:238] Kant follows this with a footnote giving more detail on the way that lying to others affects them externally.

the freedom of others in accordance with a universal law. To determine how they might fit in to such a system, Kant uses the first chapter to give a deduction of "merely rightful possession." This deduction of the rightful use of objects proceeds in accordance with the way that humans physically use objects. In particular, Kant distinguishes three major steps in the process of coming to use an object, which he then evaluates in accordance with the universal principle of right. In this way, his answers to the questions of *how* humans use external objects and *whether* such use is consistent with the freedom of others unfold in parallel.

3.

Kant begins the first chapter of the *Rechtslehre* ('How to have something external as one's own') by stating that "[t]he subjective condition of any possible use is *possession*."[21] An answer to the question about the possibility of *possessing* objects should therefore begin with an examination of the possibility of *using* objects. Human beings use objects as a means to their ends; as tools they select in order to accomplish some aim. Humans make external objects into tools for themselves (into things they could use as means) by making physical contact with those objects. In particular, for humans to use external objects with any proficiency, they take them into their hands to hold them.[22]

It is when I am in physical contact with an object that I am able to directly affect and therefore choose to use it. Kant explains that

> Insofar as [the faculty of desire] is joined with one's consciousness of the ability to bring about its object by one's action, it is called *choice*;[23] if it is not joined with this consciousness this act is called a *wish*.[24]

Only when I am conscious of my capacity to affect an object can it be possible for me to choose to use that object— otherwise I can only wish

[21] [MS AK 6:245]

[22] "[T]he soul is analogous to the hand; for as the hand is a tool of tools, so the mind is the form of forms and sense the form of sensible things." (*De Anima* 432a2)

[23] *Willkür*

[24] *Wunsch* [MS AK 6:213]. Kant reiterates and slightly expands on this point in *Kritik der Urtheilskraft* AK 5:177-179, although the topic under discussion there (whether a wish should be counted as an act of the faculty of desire) is slightly tangential to the discussion here. For a more in-depth take on the subject, see Kohl 2015, pp. 691–694.

to do so. When I hold an apple in my hand, however, I am conscious of the ways that I can affect it, based on previous experiences with my hand and with apples. I am conscious of my ability to use the apple as a means to achieving certain ends, a consciousness which is rooted in my ability to affect external objects by means of physically interacting with them.

Accordingly, Kant calls an external object which I am holding an 'object of my choice': "something that I have the *physical* power to use," or something "whose use lies within my *power* (*potentia*)."[25] An external object is an object of choice when a subject (the holder) can choose to do something with that object, hence is in a condition of possible use of that object. The holder of an object can therefore be said to have physical possession of it, since it is the physical connection between him and his external object of choice which makes any use of it possible.

The object of my choice is one which is *available* for me to use, and which I therefore *could* make a choice to use. This is distinct from an object which I have already made a choice to use, which is "under my control…which presupposes not only a capacity but also an act of choice."[26] By picking an apple from a tree, I make it my object of choice. When I then choose to eat the apple (as opposed to smelling or throwing it), it becomes an object which is under my control. In order to choose to use an external object, it must first be made available for use: I must make it an object of choice. To make an object an object of choice, I must take it into my physical possession, so that I have some means of affecting the object. Hence the condition under which it is possible for me to make use of my object is my physical possession of it.

Kant addresses the *rightfulness* of using an external object with the introduction of the jurisprudential postulate of practical reason, in the second section.[27] This postulate states that

> [i]t is possible to have any outer object of my choice as that which is mine; that is, a maxim according to which, if it were law, an object of my choice must in itself (objectively) be

[25] [MS AK 6:246]
[26] [MS AK 6:245]
[27] '*Rechtliches Postulat der praktischen Vernunft*'

ownerless (*res nullius*) is contrary to right.[28]

In other words, it could be consistent with the freedom of others for me to use an external object which I have physically connected myself with.[29] A law which unconditionally prohibited the use of these kinds of objects would therefore be inconsistent with the freedom of all.

Since I take an object of choice to be one which I am physically connected to, I take the postulate of practical reason to be referring only to objects in my physical possession. This reading of the postulate, as referring only to external objects which the user is physically connected to, is actually a rather rare one. Almost all modern interpreters accept that the postulate refers not only to objects in my grasp, but also those which I am not physically connected to at all. In addition to being textually unjustified, this majority interpretation interpretation makes supporting the postulate very difficult. A slightly more theoretical question commonly taken up in this literature concerns where the postulate of practical reason fits in the larger structure of the laws given in the *Rechtslehre*. Since Kant later refers to the postulate as a "permissive law (*lex permissiva*) of

[28] [MS AK 6:246], *translation mine*.

[29] Kant is explicit throughout the text that an object in my physical (sometimes 'empirical') possession is one which I am *physically* connected to. Some examples: "[s]o I shall not call an apple mine because I have it in my hand (possess it physically…" [MS AK 6:247]; "Empirical possession (holding) is then only possession in *appearance*…" [MS AK 6:249]; "An a priori proposition about right with regard to *empirical possession* is analytic, for it says nothing more than…that if I am holding a thing (and so physically connected with it), someone who affects it…affects…what is internally mine." [MS AK 6:250]; "Since the concept of right is simply a rational concept, it cannot be applied to objects of experience and to the concept of empirical *possession*…So the concept to which the concept of 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*…" [MS AK 6:253]; "Here practical reason requires us to think of possession *apart from* possession of this object of my choice in appearance (holding it)…" [MS AK 6:253]; "This prerogative arises…from the capacity anyone has, by the postulate of practical reason, to have any 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 the postulate…" [MS AK 6:257]; "The only condition under which *taking possession* (*apprehension*), beginning to hold (*possessions physicae*) a corporeal thing in space, conforms with the law…" [MS AK 6:263]; "The *empirical title* of acquisition was taking physical possession (*apprehension physica*)…" [MS AK 6:264] In all of the above quotes (and in general), Kant uses '*Inhabung*' for 'holding.'

practical reason"[30], there is a discussion of what a means for a postulate to be *lex permissiva*.[31] I have tried to remain agnostic with regard to the nature of *leges permissivae* in this paper, since I take this question to be orthogonal to the one I am trying to answer here. Since Kant calls the postulate a *lex permissiva*, I am inclined to think that it is one, but make no further claim as to what that entails.

Kant follows the jurisprudential postulate of practical reason with a kind of *reductio* argument in support of it. The *reductio* demonstrates the truthfulness of the postulate by identifying the contradiction implied by its negation. While I will interchangeably refer to this *reductio* as 'support', 'argumentation for', or 'proof of' the jurisprudential postulate of practical reason, I do this only casually. There is a large secondary literature about Kant's views on postulates and, in particular, the possibility of their being subject to proof.[32] For the purpose of this paper, I don't think it necessary to take a stand on this. I maintain only that the *reductio* holds some kind of proof-like explanatory relationship to the postulate (at least that things which cannot hold according to the *reductio* cannot be true of the postulate), but don't mean to claim that postulates in general are the kinds of things which can be subject to or require proof.

The following is a more formal representation of the argument which is given in paragraph form immediately following the postulate.

[30][MS AK 6:247]

[31]c.f. Brandt 1982, pp. 255–256, Flikschuh 2000, pp. 134–143, and Hruschka 2004.

[32]c.f. Kuehn 2001, p. 398, Guyer 2002, and Flikschuh 2007

Indirect proof of the juridical postulate of practical reason by *reductio*:

1. **Indirect Assumption:** It is *not* possible for my to have any external object of my choice as mine.
   (a) That is, my use of an object could not coexist with the freedom of everyone in accordance with a universal law.
2. An object of my choice is something in my physical power to use.
3. If (1) holds, then freedom would be depriving itself of the use of its choice with regard to an object of its choice.
   (a) Freedom would be putting usable objects beyond any possibility of being used (and would thereby annihilate them in a practical respect and make them into *res nullius*.)
4. But formally, choice was consistent with outer freedom in accordance with universal laws.

Conclusion: Pure practical reason can contain no absolute prohibition against using an object of my choice, since this would be a contradiction of freedom with itself.[33]

Premise (1) is our antithesis: a direct negation of the postulate. Its explanation in (1a) clarifies what is contained in the use of 'mine,' i.e. that it would not be possible for me to *rightfully* make use of an object of my choice (since we are not concerned here with the *physical* capacity to make use of objects.) Something about making use of an object of my choice would have to be inconsistent with the freedom of everyone in accordance with a universal law for it not to be possible to have an external object of

[33] [MS AK 6:247]; In his 1997 paper, *Do Kant's Principles Justify Property or Usufruct?*, Kenneth Westphal also formalizes the *reductio* in a way that relies on premises which are quite different from the ones I identify above, and also arrives at a markedly different conclusion. In particular, he maintains that the *reductio* argument clearly refers to non-physical possession of objects, which is the exact opposite of the conclusion I come to. c.f. Westphal 1997, pp. 152–156.

my choice as mine.

In premise (2), Kant draws attention to the special feature of an object of my choice which makes it potentially subject to my choice: that it is an object which I am physically connected to, hence capable of affecting. The question about rightful use of external objects of my choice is therefore one about objects which are in my physical possession.

In premise (3), Kant begins to tease apart the mechanisms which stand behind the claim in (1a.) Since the negation of the postulate (1) claims that making use of an object is inconsistent with the freedom of others, it is their freedom which restricts the possibility of my making rightful use of an object of my choice. This means that my action of taking an object into my physical possession in order to make use of it would wrong those around me. If the freedom of others restricts the possibility of making rightful use of an object of my choice, it restricts the possibility of using external objects at all (since all external objects must be objects of my choice before I can make use of them.) Were we not able to use external objects at all, as a class of things they would become '*res nullius*' (ownerless) since there could be no possible possession of them. Hence the freedom of others would be what was responsible for the total prohibition on taking objects into our physical possession and then choosing to use them.

If we could independently determine that our use of objects of choice was consistent with the freedom of others and therefore did them no wrong, then the negation of the postulate would make a rather peculiar claim. The antithesis asserts that the freedom of others is what prevents us from making rightful use of an object of our choice (freedom as a limiting factor). Our independent determination about using objects would show that using an object *was* consistent with the freedom of others (freedom as a permission). Put together, the negation of the postulate claims that it is the freedom of others which limits our ability to perform an action which was independently determined to be permitted by the freedom of others. Freedom would thereby be depriving *itself* of the choice to use an object.

Is using an object of my choice consistent with the freedom of others? When I take an object, out in the world and connected to no one, into my grasp, does this affect others around me? An object of my choice is an object which I *could* choose to use, but for which I have not yet settled on

any specific choice. The specific use to which I eventually put my object of choice couldn't be what made using an object of choice inconsistent with the freedom of others since, when it is only an object of choice, no such use yet exists. If it couldn't be the specific use I put my object of choice to which made doing so inconsistent with the freedom of others, then the source of possible wrongfulness must instead lie in the object. There would have to be something about objects of choice *in themselves* which made their use inconsistent with the freedom of others. If this were the case, then external objects of choice would, as a class of objects, become unavailable for rightful use. While we could still have, for example, spatial relationships with these objects, we could not rightfully incorporate them into our available practical means—hence they would be 'annihilated' in a practical respect.

We must therefore turn to external objects of choice themselves: objects which we have taken into our physical possession. Is there something intrinsic to these objects which would make their use inconsistent with the freedom of others? Others' freedom consists in their independence from being determined to act and, at this point in the *Rechtslehre*, Kant has only introduced one way that others can externally interfere our actions: by interfering with our bodies. We can certainly imagine individual cases where using an object of choice is inconsistent with others' free bodily activity: using an object to hit someone, or restrain someone, or otherwise make unwelcome physical contact with them. But in these cases, the innate right of others is violated as a result of the specific use the objects of choice have been put to, and not an intrinsic feature of the objects of choice themselves.

The question of whether external objects of choice carry some feature which makes their use inconsistent with the freedom of others is a question about what external objects of choice are like. Since these are physical objects we hold or connect to ourselves, they are easily subject to direct observation. And direct observation of a physical object I have connected myself to reveals that there is nothing about the object *per se* which would make using it inconsistent with the freedom of others. Because objects of choice are not themselves free nor necessarily connected to free beings, they carry no intrinsic feature which necessarily affects the freedom of anyone else at all.

A fact about a given object of choice which would seem to bear on

whether our use of it affects the freedom of others is the possibility of it having a preexisting connection with someone else. If an object were already in someone else's physical possession, it might seem as though there *was* a fact about that object which made my attempting to use it inconsistent with the freedom of another. But this presupposes the possibility that someone *else* could have already rightfully connected themselves to an object of choice. This possibility requires that external objects be the kinds of things we could rightfully choose to use. The question at hand is whether external objects can be taken into our physical possession and made subject to our choices, or whether there is some intrinsic feature of these objects which would make attempts to form a practical relationship with them necessarily violate the freedom of others.

So, Kant points out that

> [w]hoever 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 by another's use of it without his consent. For if something outside this object which is not connected with him by rights affects it [the object], it [the affecter] would not be able to affect himself (the subject) and do him any wrong.[34]

In order for some third party to be affected by someone else's use of an object, that party must have *already* connected themselves to that object (by taking it into their grasp and choosing to use it.) We are not necessarily affected by others' use of objects which we are not connected with, and therefore are not necessarily wronged by such use.

The determination that there is no feature of physical objects which prevents us from rightfully using them leads naturally into the final claim of the *reductio*, (4). Here, Kant asserts that using an object of choice can be consistent with the freedom of others. This confirms the antecedent in the conditional from (3): if using an object of my choice actually is consistent with the freedom of others, then the negation of the postulate would restrict an action which was consistent with freedom on the basis of its not being consistent with freedom. The negation of the postulate thereby entails a contradictory conclusion and cannot be an accurate description of the possibility of rightful use of external objects. Instead,

[34] [MS AK 6:247]

we can accept the postulate of practical reason itself as true and see that it really can be consistent with the freedom of all for us to take into our grasp and use physical objects.

4.

Up until this point, I have only been considering physical objects which are used by being physically directed in some manner. However, in section five, Kant points out that "[e]mpirical possession (holding) is…only possession in *appearance* (*possessio phaenomenon*)"[35] The real definition of merely rightful possession is a relationship such that "I would be wronged by being disturbed in my use of it [the object]*even though I am not in possession of it* (not holding the object)."[36] An object is my merely rightful possession just in case I am connected to it in such a way that others restrict my freedom by using it without permission, even when I am no longer physically connected to it.

Since we have determined that it can be consistent with the freedom of others (right) for me to use an object in my physical possession, when someone interferes with that object, they interfere with a rightful use of my body and therefore violate my innate right. The wrong that they do me does not imply any special relationship with an object at all: the wrong would be the same whether or not there was some other physical object involved. Kant confirms that my right with regard to empirical possession can be analytically derived from the Universal Principle of Right— it is just an instance of my innate right. The transition away from mere innate right must therefore be a transition away from my physical person. What happens if the use I want to put my object to involves detaching it from my person?

In sections four and five of the first chapter, Kant adds more detail to a concept of possession which does not rely on physical connection with its object. In particular, he shows how removing consideration of our physical relationship to objects broadens the range of things we can use as means to our ends. In addition to the more familiar case of corporeal objects, Kant identifies two other classes of possession in the concept of external objects that could be mine.

In section four, Kant introduces the possibility of possessing another's

[35][MS AK 6:249]
[36][MS AK 6:249]

choice to perform some action.[37] Because humans are able to alienate certain choices, those choices can come to be means to others' ends. Kant calls the transfer of a choice to perform some action a contract for that choice. Were people only able to possess things by having them in their empirical possession, he maintains, we could only say that we are in "possession" of another's choice at the moment when the good or service is being transferred or performed. This means we couldn't contract for *future* choices. The possibility of possession which is independent of my empirical relationship to the object (non-physical possession), however, allows for me to contract for a service to be performed at a later time, and in the interim still be able to say that the choice *belongs* to me.[38]

Following his discussion of contracts, Kant introduces an entirely new class of possession: the right to a person akin to a right to a thing.[39] This right is to the general status of others in one's household: spouse, children, and servants. The possibility of this kind of possession certainly requires more than what is been argued for in the *reductio*, since it couldn't be the case that these kinds of relationships require me to keep others in my physical possession at all times.[40]

In section five, Kant unites these three classes of possession under the single idea of 'that which is externally mine or yours.' Kant reiterates that for corporeal objects, the choices of others, and the status of others to be mine *merely rightfully*, it must be the case that "I would be wronged in my use of [them]…*even though I am not in possession of* [them] (not holding the object.)"[41] Sections four and five dramatically expand the concept of possession being used in the argument. A statement about possession which follows this expansion, therefore must be able to account for all three classes of possession (corporeal objects, choices, and the status of others). In particular, when the postulate of practical reason appears in section two, it does not refer to the latter two classes; when it appears in

[37] [MS AK 6:248]

[38] [MS AK 6:248]

[39] '*Von dem dingliche Art persönlichen Recht.*' Also sometimes translated as 'the right to a person of a 'thing-ly' kind.' [MS AK 6:248 & 6:276]

[40] Kant's category of 'rights to persons akin to rights to things' is one of his entirely original contributions to political philosophy, and hence takes much more space to discuss than can be offered in this paper. For two enlightening and interrelated accounts of this kind of property, see Ripstein 2009, pp. 70–77 and Pallikkathayil 2017.

[41] [MS AK 6:249]

section six, it does. Ludwig's relocation of the postulate therefore changes its meaning, and in particular makes it accountable for a much broader use of the word 'mine' than when it appears earlier.

In order for me to be wronged by someone else's use of my object even when I am not physically connected to it, there must be some other relationship I can have with that object through which what affects it also affects me. The key to deducing the concept of merely rightful possession lies in identifying this new, non-physical relationship which I can have with my object— a relationship which Kant calls "intelligible possession."[42]

Kant opens the deduction of merely rightful possession at the beginning of section six with three questions that guide the progress of the argument to come. He explains that "[t]he question: how is it possible for *something external to be mine or yours*? resolves itself into the question: how is merely *rightful* (intelligible) possession possible? and this, in turn, into the third question: how is a *synthetic* a priori proposition about right possible?"[43] These questions narrow the target of inquiry: for merely rightful possession to be possible, there must be a kind of intelligible possession which ties us to objects independent of our physical relationship to them. And for intelligible possession to be possible, we must be able to find some kind of proposition about right which is simultaneously synthetic and a priori.

Why does Kant introduce a question about synthetic, a priori propositions? In the second paragraph of section six, Kant explains that "all propositions about right are a priori propositions, since they are laws of reason (*dictamina rationis*)."[44] He goes on to explain that a proposition about right which referred only to empirical possession (as the postulate does) could be analytically derived from the concepts of right given earlier in the *Rechtslehre*. However, "a proposition about the possibility of possessing a thing *external to myself*, which puts aside any conditions of…space and time…is synthetic."[45] That is, a proposition of right about possessing an object I am not physically connected to requires something in *addition*

[42] [MS AK 6:249]
[43] [MS AK 6:249]
[44] [MS AK 6:249-250] Note that not every proposition which refers to right will itself be about right— hence propositions which merely do the former can be a posteriori.
[45] [MS AK 6:250]

to the concepts we have already gotten in the introduction of the *Rechtslehre* and the earlier parts of the chapter. This new synthetic concept is one which puts aside the empirical conditions of merely physical possession and thereby extends our concept of right.[46]

According to Kant's descriptions, then, it seems as though the deduction of the possibility of merely rightful possession begins with finding a proposition about possessing objects, which does not take spatiotemporal facts under consideration. By producing such a proposition, we can begin to locate the possibility of intelligible possession and, in turn, merely rightful possession.

Consider a proposition about physical possession which we can determine (analytically) to be true. For example, it seems that certain kinds of uses of an apple (ones which don't interfere with the freedom of anyone else) can be right. We might, perhaps, pick an apple from a tree on a piece of unclaimed land in order to eat it. We can see that this activity is consistent with the freedom of others through the kind of analysis already practiced in the *reductio*: in particular, we look to the apple in our physical grasp and see that choosing to use it could be consistent with the innate right of others, since there is no feature of physical objects *in themselves* which make our using them affect others. Accordingly, it seems like we could say that it was right for me to eat the apple I have taken into my grasp. I am physically connected to the apple while I eat it, and so another person's interference with that activity would violate my innate right and wrong me. Eating the apple is consistent with the freedom of everyone

[46]How could a proposition about an object which is 'external to me' also set aside conditions of space and time? At the beginning of the first chapter, Kant actually gives us two ways of conceiving of an object's "being external to me." The first kind of externality is of an object that is "found in *another location* (*positus*) in space" from me.[MS AK 6:245] Up to this point, we have taken this distinction in spatial location between us and our external object of choice for granted. But Kant also maintains that there is another sense of an object's being external to me, in which the object is "merely *distinct* from me (the subject)."[MS AK 6:245] This kind of externality is captured in the distinction between myself and an object which results from my perceiving it as not included in my own subjectivity. Since certain kinds of metacognition are not subject to the a priori intuition of space (such as apperception), it is possible for me to conceive of an object's being distinct from me in this way, without having to evoke empirical considerations. This is the kind of externality which is invoked in the concept of merely rightful intelligible possession.

else, so I am permitted to hinder another person's attempt to interfere with my body while I do so.

In addition to being physically connected to the apple of my choice, I am also connected to it via my choice to use it as a means. When someone grabs the apple out of my hand, they interfere with my plan to eat it, in addition to my free exercise of my body. When the apple is being wrestled from me, I can no longer use it as a means to my end: I am prevented from performing the action of bringing the apple to my mouth to take a bite of it. In addition to affecting my body, the apple-grabber affects my ability to realize the choice I have made with my apple. This double-interference results from a double-connection to the object. I am physically connected to the object by attaching it to my person, and I am *intelligibly* connected to the object by attaching it to my will.

To form an intelligible connection with my object, I must incorporate it into my practical reasoning. I do this by choosing to employ it as a means to achieve some end; by taking the object under my control. In order for me to choose to use an object (take it under my control), that object must first be *available* for me to use: it must be an object of my choice. For an object to be an object of choice, it must be possible for me to affect that object. The way humans can affect objects is through physical interaction with them. An object must be in my physical possession for it to be an object of my choice which I could then take under my control and form an intelligible connection with by choosing to use it. Hence intelligible connection and intelligible possession of an object will only be possible *after* I have taken it into my physical possession.

After I have taken an object into my physical possession and started to use it, my choice to *continue* using that object is not necessarily dependent on my continued physical possession of it. My intelligible connection with the object is based on my using it as a means to my ends, and though that process must be initiated by physical connection to the object, there are many ends I could continue to use the object as a means toward which do not depend on the continuation of that connection. Once I have grabbed my apple and decided to eat it, I may set it down while I get a knife to cut it. Despite the disruption in my physical relationship with the apple, I am able to continue my intelligible relationship with the apple so long as I continue to conceive of it as a means to my end. I could even choose to use my apple in a way that *requires* my physical separation

from it: for example, storing it to use at a later time. Since I continue to conceive of my apple as a means, it remains in my intelligible possession. This intelligible possession is subject to disturbance when someone interferes with the apple, even if such an action does not affect my physical relationship with it.

The possibility that I can be *disturbed* in my use of an object, even when not physically connected to it, is not identical to the possibility of someone *wronging* me by using my object, even when I am not physically connected to it. The question remains whether my intelligible use of an object (use which can include but does not rely on physical connection with the object) is consistent with the freedom of others in accordance with a universal law. Hence the final step of the deduction of merely rightful possession is evaluation of the way one person's intelligible possession of an object interacts with the freedom of everyone else.

Let's turn to a specific case: I grab an apple off of a tree, and choose to eat it. The jurisprudential postulate of practical reason says that it is possible for me to have a object of choice as mine, and therefore rightfully use it. Grabbing an apple off of a tree in order to eat it can therefore be right. More specifically, choosing to use the apple, when that choice co-occurs with my physical possession of the apple, can be right. In order to eat the apple, I set it down to get a knife and cut it. I continue to plan to use the apple, and hence hold it in my intelligible possession, even as it leaves my physical possession. Can this merely intelligible possession of the apple be consistent with the freedom of others?

The question is how the act of letting something out of my physical possession could transform the status of the intelligible possession which persists. For the status of my choice to use the apple to change, it would have to be the case that letting something out of my physical possession interfered with the freedom of others (and so made an action which was previously right, wrong). But there is no reason to think that letting something out of my physical possession is the kind of action which need affect others at all. The mere act of letting my apple out of my physical possession is not sufficient to transform my choice from one which was consistent with the freedom of others to one that interfered with the freedom of others. Since my choice to use the apple when it was in my physical possession was right, and letting the apple out of my physical

possession doesn't transform the status of that choice, my use of the apple when it is *out* of my physical possession is still right. When I continue to use my apple even after I have set it down, I hold it in my intelligible possession. Hence intelligible possession of my apple can be consistent with the freedom of others, and therefore right.

The case above can be broken down in the terms Kant himself uses. We begin with an object in our empirical possession, the rightfulness of which is determined by the postulate. We then remove the spatiotemporal conditions of empirical possession (holding the object) in order to identify the intelligible possession present in the case. We then extend the ruling of the postulate of practical reason to the case of intelligible possession of our object by determining that the intelligible possession of the object continues to be consistent with the freedom of others. As a result, we are able to isolate a kind of possession which occurs independent of the individual's physical relationship with the object, and determine that that possession can be consistent with the freedom of others and therefore right. Our end product is, then, merely rightful possession.

While the jurisprudential postulate of practical reason plays an important role in the deduction of merely rightful possession, it and its *reductio* occur quite early in the process. The postulate makes a claim about a specific use of a specific object, which is then used as a foothold when the time comes to answer questions about intelligible possession. The early role of the postulate is mirrored by its early presence in the first chapter. The argument here not only uses the sections in their original order but *depends* on their being in the original order. I take the existence of such an argument to cast doubt on Bernd Ludwig's claim that sense cannot be made of the first chapter when the jurisprudential postulate of practical reason occurs second, and to assert the opposite: that sense of the argument can *only* be made in the original order.

5.

Bernd Ludwig argued that Kant's deduction did not make sense in its original order because he believed that the postulate played a very different role than the one I assign it. In the last part of this paper, I will turn to Ludwig's reconstruction of Kant's argument. I will identify an underlying (false) presupposition in his reconstruction which explains why he maintained that the deduction of the possibility of merely rightful

possession is not completed in the sixth section unless the postulate of practical reason is moved there. Finally, in order to show why Ludwig's presupposition cannot be a part of an accurate reconstruction of the first chapter, I will turn to a highly influential modern interpretation of Kant's argument which also relies on this premise. This interpretation is especially enlightening, because it takes as its source material the 1996 Cambridge Edition, which incorporated the rearrangement of the first chapter.

Ludwig's claim that the second section of Kant's deduction should be moved to the middle of the sixth section is grounded in his presupposition that the postulate of practical reason is the *product* of that deduction—that it is a statement of the possibility of merely rightful possession. If the postulate is the product of the deduction of merely rightful possession, then it doesn't make much sense for it to appear four sections before the completion of the deduction which ought to produce it. It would make even less sense because, as Ludwig correctly noted, Kant continues to speak as though the deduction of merely rightful possession has not yet been completed in sections three, four, and five.

The relocation of the second section to the middle of the sixth therefore serves to support and encourage a reading of Kant's argument in which the postulate of practical reason is the product of the first chapter's deduction. Since this reading suggests that the postulate of practical reason is equivalent to the possibility of merely rightful possession, I will refer to it as an 'equivalence' view of Kant's deduction. In his arguments for the reorganization of the first chapter, Ludwig consistently cites the ways that the original order doesn't seem to fit (or even make sense with) an equivalence view reading of Kant's deduction.

It is therefore no surprise that a reconstruction based on Ludwig's revised text would also embrace an equivalence view of Kant's deduction. One of the most prominent and well-developed examples of an equivalence view reading of Kant's deduction based on post-revision text is given by Arthur Ripstein in his 2009 book *Force and Freedom.* Because of the great detail given to the argument there, it is to this text that I will now turn in order to provide a more thorough examination of the mechanisms of the equivalence view. After reviewing Ripstein's argument, I will suggest that there are strong textual as well as argumentative reasons to think that neither it, nor the equivalence view in general, could be an accurate

reconstruction of Kant's deduction.

In *Force and Freedom*, Ripstein begins his reconstruction of Kant's deduction of merely rightful possession by identifying the need for a new kind of right, beyond just innate right. He notes that Kant's claims in the introduction to the *Rechtslehre* about the right to bodily freedom are silent with regard to external objects humans might use.[47] The right to bodily freedom alone will therefore be insufficient to determine the rights surrounding the use of objects. Accordingly, Ripstein argues, we require a further principle about rights which extends rights beyond our body to external, 'acquired' rights (rights that require some extra act of acquisition to be realized, of which rightful possession is paradigmatic.) Ripstein calls this principle the "principle of acquired rights."[48]

According to Ripstein, the introduction of new rights regarding external objects, however, creates new ways "in which my choice and yours with respect to some object can be incompatible." "The potential incompatibilities," he continues, "are introduced by acquired rights…in addition to the constraints of innate right."[49] So Ripstein identifies the problem associated with having external objects as our own as one of negotiating between one person's possession of an object, and the freedom of everyone else.[50]

Ripstein does not see the establishment of the 'principle of acquired rights' as the central activity of Kant's argument, because he takes that principle to be postulated directly. He claims that Kant postulates this principle of acquired rights so that moral concepts regarding right can be extended to address external objects. Further, the principle must be postulated, because it cannot be proven by facts about external objects in the world, or the concept of right itself.[51] Ripstein claims that we must presuppose that there is a principle of acquired rights which makes it possible for rights to be extended beyond the body to external objects. This postulated principle of rights appears, according to Ripstein, under the name 'the postulate of practical reason.'[52]

[47]Ripstein 2009, p. 55.
[48]Ripstein 2009, p. 58.
[49]Ripstein 2009, p. 60.
[50]Ripstein 2009, p. 58.
[51]Ripstein 2009, p. 58.
[52]Ripstein 2009, p. 363.

Ripstein points out that because the principle of acquired right is postulated, its validity can be assumed without the requirement of proof. However, he does offer a 'normative argument' in support of the principle; an argument which suggests that if people really *are* able to incorporate external objects into their means, then the way that they do so must be consistent with right.[53] Rights to the exclusive use of external objects would only threaten the freedom of others if they somehow deprived them of something that they already have. But external objects in the world, Ripstein claims, are not the kinds of things which people have intrinsically. Instead, they are merely "parts of the context in which they choose." To restrict the possibility of being able to use such objects rightfully would thereby limit possible free action on the basis of something other than the freedom of all.[54]

According to Ripstein, however, with the postulation of a principle of acquired rights comes a new possibility of conflict. "[T]he distinctive feature of acquired rights," Ripstein explains, is that "unlike your own body, the object of an acquired right could, in principle, belong as a matter of right to someone else."[55] This is captured in Kant's characterization of objects we can use as those which could be mine or yours.[56] Ripstein points out that this 'could be mine or yours' structure does not apply to bodily rights: "your right to your own person…could not, as a matter of right, belong to anyone other than you."[57] Rights to objects, on the other hand, *could* be mine or yours.

If an object is my possession, then it seems like I should be able to prevent others from using it. But, Ripstein notes, since those around me have the physical capacity to use my object, it seems as though my preventing them from doing so might be a restriction of their freedom. Our commensurate capacities to use objects in the world thereby set up "a potential further incompatibility between my deeds and your rights."[58] Since external objects could be mine or yours, it is possible for either one of us to make them ours. When I take an object into my possession,

[53]Ripstein 2009, p. 61.
[54]Ripstein 2009, pp. 63–64.
[55]Ripstein 2009, p. 59.
[56]Ripstein 2009, pp. 58–59; [MS AK 6:246]
[57]Ripstein 2009, p. 59.
[58]Ripstein 2009, p. 61.

I can thereby prevent you from using it— which seems to subtract a genuine possibility for you (namely, that you would make the object your possession and thereby prevent me from using it.)

How can this potential incompatibility be resolved? Ripstein claims that Kant answers this question in his "systematic account of the structure of the rightful relationship."[59] In this system, Kant shows how questions about who has the right to an object are answered by historical facts about actions taken with regard to the object.[60] In particular, the person who acts first to take an object into their possession is the one who gains a right to it and can prevent others from using it. Because an acquired right could be mine or yours, something is required beyond its mere possibility: the right "must be established through an affirmative act…[s]o long as the object of the right is something that can be acquired rightfully, and it has not already been acquired by another…"[61] The possible incompatibility of rights is resolved through the introduction of the acquisitive act: the action I take to use an object, when that object is the kind of thing that can be acquired rightfully.

In his analysis, Ripstein claims that the questions about objects in Kant's deduction of merely rightful possession are ones about coordination of use. Once it is determined that people could have rightful possession of object, new problems arise about which person can use what object rightfully, and when. The coordination discussion, however, relies on the possibility of merely rightful possession having already been established— or, as Ripstein sees it, having already been postulated. Ripstein takes the 'principle of acquired rights,' or the principle asserting the possibility of rightful possession, to be postulated in the jurisprudential postulate of practical reason. Hence, his reading of Kant's argument is an equivalence view.

There are two connected reasons why I think we should reject Ripstein's reading of Kant's argument, and the equivalence view more generally. The first is textual: throughout the first chapter, Kant repeatedly characterizes merely rightful possession in ways which diverge from the postulate of practical reason. The second reason is argumentative: Kant characterizes the concept of merely rightful possession in ways that are

[59]Ripstein 2009, p. 59.
[60]Ripstein 2009, p. 59.
[61]Ripstein 2009, p. 60.

distinct from the postulate because the claim made in the postulate has a much smaller scope than the concept of merely rightful possession.

At the beginning of the deduction of merely rightful possession in section six, Kant tells us that

> The possibility of this kind of possession [merely rightful], and so the deduction of the concept of nonempirical possession, is based on the postulate of practical reason with regard to rights…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.[62]

But the postulate of practical reason cannot be both the conclusion of our deduction and also the basis of it; that would be no deduction at all. Since Kant refers to the postulate *by name* in section six,[63] there is no question that he takes the postulate to be the beginning of the deduction of the concept of merely rightful possession, and therefore not the end.

Kant's quote also brings into question the role of nonphysical (or intelligible) possession in Ripstein's equivalence view. If merely rightful possession and the postulate of practical reason are identical, then one of two things must be true. Either the concept of nonphysical possession is some kind of non-entity (and hence adds nothing to the postulate when combined) or the concept of nonphysical possession is somehow implicitly contained in the postulate of practical reason itself (hence there is a sense in which nonphysical possession served as partial basis of the deduction of merely rightful possession.)

Neither of these options seem particularly appealing. The claim that non-physical possession doesn't add anything in the deduction of merely rightful possession is clearly a non-starter. This leaves us with the claim that the concept of nonphysical possession is somehow implicitly contained within the jurisprudential postulate of practical reason (which I take to

[62] [MS AK 6:252]

[63] „*Die Möglichkeit eines solchen Besitz, mithin die Deduktion des Begriffs eines nichtempirischen Besitzes gründet sich auf dem* ***rechtlichen Postulat der praktischen Vernunft****…*“ [MS AK 6:252]

be Ripstein's actual view). This position is also difficult to accept in light of Kant's quote: if the concept of nonphysical possession is implicitly contained in the postulate of practical reason, it is not clear why it would have to be brought together with the postulate in order to serve as the basis of the deduction. Even without Kant's explicit claim, however, review of the postulate of practical reason, its *reductio*, and the concept of intelligible possession reveal that the postulate *cannot* contain the concept of nonphysical possession.

According to Ripstein, the postulate of practical reason claims that it is possible for a person to have a right to some object such that another person can wrong him by interfering with it, even when the possessor isn't holding it. Although Ripstein takes the postulate to be 'incapable of further proof,' he also claims that

> The impossibility of further proof does not mean that Kant gives no argument for the postulate or reduces it to a stipulation. The normative argument is supposed to show that acquired rights are the only possible extension of the Universal Principle of Right to the situation in which there are external things that can be used by free persons in setting and pursuing ends.[64]

He argues that

> [T]he exercise of acquired rights is consistent with the freedom of others, because it never deprives another person of something that person already has. So anything less than fully private rights of property, contract, and status would create a restriction on freedom that was illegitimate because based on something other than freedom.[65]

Because external objects in the world are not the kinds of things that people are necessarily connected to (as they are their bodies), use of those objects doesn't deprive anyone of something that they 'already had.' Instead, other's rightful possessions (and their associated restrictions on our own actions) are just the *context* in which we make our own decisions. Restricting the possibility of possessing external objects would therefore have to be

[64]Ripstein 2009, p. 61.
[65]Ripstein 2009, p. 62.

done on the basis of something other than the freedom of others. This restriction would be arbitrary, and therefore illegitimate.

In section three of this paper, I argued that we can make an independent determination that the use of external objects can be consistent with the universal principle of rights by means of direct observation. In Ripstein's language, these objects are, perhaps, just part of the context in which everyone acts. I suggested that through direct observation of these objects, we can see that there is no feature intrinsic to them which makes their use inconsistent with the freedom of others.

In addition to addressing corporeal objects, however, Ripstein wants to make a similar kind of determination about Kant's two other classes of acquired right: contracts and status. He must do this, because Kant claims that the possibility of merely rightful possession *includes* possible ownership of these things. If the postulate is supposed to exhaust the possibility of merely rightful possession, it must also address the cases of contract and status. Since Ripstein's support for the postulate relies on the determination that use of a certain kind of object is consistent with the freedom of others, such a determination will need to be extended to contracts and the status of others.

The only way others can interfere with our freedom, Ripstein explains, "is by interfering with either the capacity to set or the capacity to pursue [our] ends."[66] If the objects we seek to possess are neither the capacity to set nor the capacity to pursue ends, our possessing them need not affect the freedom of others nor deprive them of what was already theirs at all. But Ripstein *does* want the range of possible objects to include others' capacity to set and pursue their ends— these capacities are just what we use when we contract with them or acquire their status. It is not entirely clear, then, whether using others' choices or status would be consistent with the freedom of others, and, in particular, consistent with the freedom of the individual in which such status or choices were instantiated.[67] After all, if our own choices and our body are not part of our capacity to choose or set ends, then what is?[68]

[66]Ripstein 2009, p. 77.

[67]Kant himself thinks that it is not possible for us to directly evaluate the use of the choices or status of others, due to the epistemic opacity of the freedom on which they are based.[MS AK 6:252] I think, however, that this claim is intuitive even without reference to Kant's larger metaphysics.

[68]I am not the first person to point out that the argument which supports the pos-

This problem for Ripstein is a problem for the equivalence view more generally. If the postulate of practical reason is to capture merely rightful possession, it must speak about contracts and status, in addition to physical objects. If merely rightful possession is to be deduced and not merely stipulated, the argument in the first chapter needs to support it. However, a key element of that argument is the independent determination that having something as mine does not intrude on the freedom of others. Not only is there no way to form this kind of determination about the status and choices of others, but actually the *opposite* of this claim seems true: that having another's status or choice as our possession is just the kind of thing that would affect their freedom.[69]

The discovery that the support for the postulate cannot address all the elements of merely rightful possession need not, however, distress us. The fact that the postulate might fall short makes space for a substantive

tulate of practical reason is insufficient to support the property classes of contract and status. For example, both Westphal 1997 and Mulholland 1990 observe that the independent determination that the choices and status of others can be had rightfully actually requires the presupposition of the possibility of merely rightful possession. Neither of these authors, however, take this as grounds to change the scope of the postulate (as I have.)

[69]Some proponents of the equivalence view take the independent assertion of consistency with the freedom of others from a different source. They maintain that Kant's later claims in sections eight and nine suggest that it is the entrance into a civil union with others that independently makes it possible for our use of the status and choices of others (and also physical objects) consistent with the freedom of others. According to this argument, if it is the common will of all which asserts an individual's right to use some object or choice or person, they aren't violating the freedom of anyone by doing so. Interestingly, Tuschling also seems to hold a view like this, not because he takes the postulate to be equivalent to the possibility of merely rightful possession, but rather because he takes the former to be analytically contained in the latter, and hence a synthetic proposition remains in need of an additional element.(Tuschling 1988, pp. 286–288) I am not certain if this argument works or not. However, in this paper I am looking at the deduction of the concept of merely rightful possession as it occurs in section six. A basic assumption that I make in order to progress is that Kant's own description of his section is accurate: that he actually deduces the concept in section six. Accordingly, the resources available to complete the deduction are only those which come before section six, which do not include the idea of the civil union or the common will. It also strikes me as strange that Kant would discuss the "[a]pplication to objects of experience of the principle that it is possible for something external to be mine or yours" in section seven, if he didn't finish deducing that principle until section nine. For some examples of an argument which appeal to the creation of the civil union, c.f. Guyer 2002 and Hasan 2018.

contribution from the concept of nonphysical possession. And this is consistent with Kant's own account of how the deduction of merely rightful possession goes, because if the postulate can't address the entire range of things that merely rightful possession does, it is natural that a deduction based on it would require that something else be added.

Since there is insufficient textual ground to justify the relocation of the postulate of practical reason, and since the philosophical view which supports such a relocation (the equivalence view) is not the one Kant seemed to hold, we lose all reason to accept Ludwig's change. Instead, the reordering of the first chapter seems to only obfuscate Kant's actual deduction, which can only occasionally peek out from behind the equivalence view.

6.

Bernd Ludwig's relocation of section two into the middle of section six clearly encourages an equivalence view reading of Kant's deduction of merely rightful possession. After all, it was Ludwig's own acceptance of the equivalence view which served as a major motivation for his relocation in the first place. But, as I have argued in this paper, the equivalence view is not an accurate reconstruction of Kant's own deduction. Kant states clearly that he takes the postulate of practical reason to be a basis of the possibility of merely rightful possession, which rules out the possibility that it could be *equivalent* to it. Since the preponderance of exegetical evidence verifies the 1797 (consecutive) order of the first chapter, there is no remaining case available for the relocation.

When section two comes in its original location, between sections one and three, the scope of the claim in the postulate is reduced. It is only later (in sections four and five) that Kant brings the choices of others and their status into the realm of possible property. In the second section of the chapter, the reader does not expect the *reductio* to address anything other than the most straightforward use of an object. When the scope of the postulate's claim is reduced to physical possession of empirical objects, we then have sufficient resources to make a *reductio* argument in support of it. This reduction in the scope of the postulate of practical reason makes space for work to be done by a concept of intelligible possession. It is the postulate in combination with the concept of intelligible possession which extends the application of right to cases where the object of choice

is not in our physical possession. The combination of these elements produces a synthetic, a priori principle according to which "any external object of my choice can be reckoned as rightfully mine if I have control of it."[70]

[70] [MS AK 6:252]

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