

BEATI POSSIDENTES?
KANT ON POSSESSION AND INEQUALITY

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ABSTRACT

The paper starts from an expression used by Kant in the *Doctrine of Right: Beati possidentes*. It then discusses Kant's arguments for justifying the possession of land by individuals and by political community. Its main hypothesis is the following: If we consider unacceptable the application of the *Beati possidentes* principle on a global level, then we have a good reason to reject it also on the domestic level. It reaches this conclusion not by pointing out the undesirable consequences of the principle, for this would be an empirical argument resulting from a consequentialist approach. Rather, it chooses a procedimental approach, showing that the way in which land was initially distributed was neither rightful on the domestic nor on the global level.

Keywords: Kant. Doctrine of Right. Private Right. Land possession. Inequality

In the annotation to paragraph 9 of the *Doctrine of Right*, while discussing the origin of land possession, Kant uses an expression that might mystify his reader: *Beati possidentes*, i.e. "Happy are they who are in possession." (06: 257; 410 [translation modified]).² The reason for the perplexity has to do with the fact that apparently Kant is claiming that the present distribution of land may not be questioned, no matter how arbitrary its concrete origins were.

In this paper I shall first present Kant's argument, but I shall not discuss it in a critical way.³ Rather, I shall accept it in its prima facie validity and apply it to the global dimension of the possession of natural resources. In doing so, I aim to take the analogy between individuals and states that Kant establishes in his philosophy of international law to its last consequences. My strategy is very plain: if we consider the application of what I shall call the *Beati possidentes* principle to be unacceptable on a global level, then we might have good reason to reject it also on the domestic level. In a sense, instead of recurring to an argument from domestic analogy, as many have done with regard to other thinkers, e.g. to Rawls (cf. Pogge 1989), I am inverting it into an argument from global analogy.

What motivates me to discuss this topic is the fact that it touches on a relevant aspect of our everyday life, namely, individuals' unequal social opportunities due to their socio-economic family backgrounds. This inequality, which defies and ultimately proves false the dominant rhetoric of individual merit, tends to be justified with arguments that basically adopt the *beati possidentes* principle defended by Kant.

1. Rightful presumptions for possession

First of all we should consider the context of § 9. Kant is discussing the possibility of having “something external as one’s own”, as the title of chapter I of the *Doctrine of Right* states (06: 245; 401; see Fulda 1999). Through this discussion, he arrives at the conclusion that, as § 8 claims, “it is possible to have something external as one’s own only in a rightful condition, under an authority giving laws publicly, that is, in a civil condition” (06: 255; 409). However, this appears in the section on Private Right, prior to the establishment of the State and of Public Right. We are therefore still in a state of nature in which “something external can actually be mine or yours but only provisionally”, as the title of § 9 states.

Kant starts from the remark that, while “an a priori proposition about right with regard to empirical possession is analytic, [...] a proposition about the possibility of possessing a thing external to myself [...] is synthetic” (06: 250; 404). In other words, while from the existence of my possession of something it follows analytically that I have a right to it (a right that others may not violate), I have to prove first that it is possible to own something external at all, independently of “any condition of empirical possession in space and time”, i.e., independently of the fact that I hold empirically something in my hands. The possibility of owning something external is not given within the very concept of right, since I can hold something external without being its legitimate possessor (note that Kant does not use the words “owner” and “ownership” very often in the *Doctrine of Right*).⁴ What, then, makes the holder of something its legitimate possessor? How does the mere fact of *holding* something become *possessing* something even though it is still an empirical possession, a *possessio phaenomenon* and not yet a *possessio noumenon*?

Kant introduces what he calls “a postulate of practical reason with regard to rights,” which states that “it is possible for me to have any external object of my choice as mine” and that it is “contrary to rights” [*rechtswidrig*] that “an object of choice” [*Gegenstand der Willkür*] remains *res nullius* and has “to belong to no one” (06: 250; 404f.). Kant’s justification for this is that in order to exert my freedom I need to possess something, and that nothing can be excluded a

priori from my possession but those things that are already owned by others. Otherwise, one would put “usable objects beyond any possibility of being used” and this would be tantamount to annihilating them “in a practical respect” (idem; 405). Reason postulates not so much the possibility of possessing something external, rather the necessity of it: it is unacceptable that something remains *res nullius*, ergo it must be owned by someone. Since it is demanded that every object of choice be owned, I am therefore allowed to own something external to me. For this reason, Kant says that “this postulate can be called a permissive law of practical reason,” which gives us the authorization “to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice *because we have been the first to take them into our possession*” (06: 247; 406, emphasis added).⁵ “We” indicates here the abovementioned *beati possidentes*, who are happy in their possession just because they *happened* to be the first to take certain things into their possession.

In § 8 Kant explains that in order to own something external it is not enough that we hold it in our hands, nor that we express our will to own it, since “a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent.” Hence the necessity of a will that puts “everyone under obligation,” that is, of “a collective general (common) and powerful will,” capable of a general external lawgiving. This will is the will of the State and, therefore, “only in a civil condition can something external be mine or yours” (06: 256; 409). But we are still in a pre-civil condition, i.e. in a state of nature, as § 9 reminds us. In such a condition, possession is possible “only provisionally” (ibidem), but it nevertheless gives to the individual the right to resist those “who want to interfere with his present possession,” no matter how arbitrary its origins may be. Although it is the result of a unilateral will, “the will of all others” is also unilateral, “and hence it has as little lawful force in denying him possession *as he has in asserting it*” (06: 257; 410 – emphasis added). The reason Kant offers for preferring the unilateral will of the possessor over the unilateral will of all others is that the former can hold the “rightful presumption” that his physical possession “will be made into rightful possession” in the civil condition (idem). What kind of presumption is this?

In the remark to the paragraph, in which Kant introduces the *beati possidentes* principle, he grounds the presumption on the abovementioned postulate of practical reason, which, however, just states that I may have an external object of my choice as mine, not that I may arbitrarily take possession of any possible object of choice with a unilateral act of my will. *Having* possession of something and *taking* possession of something are two different things, and the postulate allows me to *have* possession, not to *take* possession. While I can make a

“rightful presumption” that my provisional possession has become peremptory, i.e. definitive, in a civic condition, it is not clear whether I can presume rightfully that this possession has to include precisely the objects of choice I took possession of unilaterally, or whether the collective general will shall grant me possession of only some of those objects or of different objects altogether. As we know, Kant rejects this possibility, but this rejection cannot be justified by appealing to the postulate of practical reason.

One reason for not admitting the possibility of redistribution can be found in Kant’s translation of the pseudo-Ulpian’s *Suum cuique tribue*, which is actually a redefinition of this rule. Literally, the maxim means “give (or: assign) to each one what is his;” it remains open though how one should understand the pronoun *suum*. If one sees it as meaning “what is due to him,” that could imply a redistribution of goods; if it is understood as “what one already has,” then the imperative *tribue*, i.e. “give,” makes no sense. The latter position is defended by Kant, who ‘translates’ the formula as “enter into a society with [others] in which each one can keep what is his,” and then observes that if the formula “were translated ‘Give to each what is his,’ what it says would be absurd, since once cannot give anyone something he already has” (06: 237; 392f.). In this passage, Kant connects the formula to a *lex iustitiae*, which however is neither formulated, nor discussed here. The next reference to this law is in § 16, when the *lex iustitiae distributivae* (note the appearance of the adjective!) is presented as “the law which is to determine for each what land is mine or yours” and is said to proceed “only from a will that is united originally and a priori” (06: 267; 418). We shall return to this passage later. Further mentions of *iustitia distributiva* (06: 297, 303, 306 and 317) put it in connection with tribunals and their decisions, strengthening the idea that this kind of justice concerns the defense of private rights. In § 49, for instance, Kant writes:

For a verdict (a sentence) is an individual act of public justice (*iustitiae distributivae*) performed by an administrator of the state (a judge or court) upon a subject, that is, upon someone belonging to the people; and so this act is invested with *no authority to assign* (allot) to a subject what is his. [...] But once the facts in a lawsuit have been established, the court has judicial authority to apply the law, and to *render* to each what is his with the help of the executive authority. (06: 317; 460f., emphasis added)

Once more, Kant claims that distributive justice consists in defending one’s right of possession viz. in giving back to a person what has been illegitimately taken from him. It has nothing to do with giving some good to someone who did not have it in the first place. Here Kant is following Cicero, whose influence on his practical philosophy in general can never be

underestimated. In *De officiis* (II, 78-80) the Roman author claims that “it is the peculiar function of the state and the city to guarantee to every man the free and undisturbed control of his own particular property” and wonders whether it can be seen as corresponding to justice “that a man who never had any property should take possession of lands that had been occupied for many years or even generations, and that he who had them before should lose possession of them” (Cicero 1913, 255). Accordingly, not only does justice not require that we allot someone some good he did not possess before, but this act would also be unjust when performed at cost of others’ possession. Now, since according to Kant all land has already been distributed in the state of nature (in which, as we saw, a private right arises that establishes what is mine or yours externally), the redistribution could only happen at the expense of the existing relations of ownership – and that would be unjust.

2. The global analogy

In this section I shall try to develop what I previously called the global analogy, i.e. the idea that the *beati possidentes* principle applies also on the global level, i.e. to the possession of those vast pieces of land we call countries and of the natural resources they contain. Kant himself makes this analogy in the remark to § 15, while discussing the question, “how far does authorization to take possession of a piece of land extend?” Differently from Locke (*Second Treatise on Government*, § 27 and 32), who had set a limit to individual possession of land according to one man’s capacity of working it (Locke 1988, 288 and 290), Kant uses as a criterion “the capacity for controlling it,” which he understands as the capacity to defend it against aggressors. His answer however concerns not only possession by individuals, but also by states, as shown by his example of the cannon shot: “This is how the dispute over whether the sea is free or closed also has to be decided; for example, as far as a cannon shot can reach, no one may fish, haul up amber from the ocean floor, and so forth, along the coast of a territory that *already belongs to a certain state*” (06: 265; 416f., emphasis added).

In this same remark Kant rejects the “Jesuitism” that had served to justify the violent colonization of the Americas and of Africa under the pretext that the local inhabitants were savages who refused to enter a civil union with the Europeans and who left their territories uninhabited and uncultivated. The *beati possidentes* argument receives an interesting twist here: it is used against the traditional defense of colonialism, according to which the Europeans were acting rightfully by seizing land from the local populations since they were leaving them fallow and fruitless – an argument used among others by Locke (Locke 1988, 294). Having rejected

Locke's idea that ownership is justified through work, Kant can easily dismiss the argument in favor of colonialism by appealing to the rightful claim of the first owners – in this case, of the indigenous populations. However, Kant's own argument leads to serious problems when applied to European or Asian history, which can be seen as a succession of consecutive invasions, making it impossible to determine the first owner of a specific territory.⁶ Kant seems to be aware of these and similar difficulties when he acknowledges that “the indeterminacy, with respect to quantity as well as quality, of the external object that can be acquired makes this problem (of the sole, original external acquisition) the hardest of all to solve.” Kant is convinced that a solution is possible, but is also aware that “even if it is solved through the original contract, such acquisition will always remain only provisional unless this contract extends to the entire human race” (06: 266; 418). While on the domestic level land possession is made peremptory through the imagined intervention of a ‘collective general and powerful will,’ there is no such will on the global level, according to Kant, who on this point follows Rousseau against Diderot. While the latter had envisioned a general will common to mankind (Diderot 1992, 20), the former had insisted that one can speak of a general will only with regard to a people (Rousseau 2008, 7). Hence the necessity of a contract to secure ownership on the global level, while on the domestic level the contract is nothing but an idea that allows us to establish the legitimacy of political power.

This last point needs to be stressed in order to understand what differentiates the realm of international relations and of the law of peoples from the realm of internal jurisdiction and of public right. It is not through a social contract among individuals that the State arises. Kant's starting point is not the private interest of individuals who seek State protection to secure life and property; rather, it is practical reason itself that demands that we create a civic condition and found State power in order to give peremptory character to the provisional right established in the state of nature. In § 47 Kant claims that the “original contract” is “properly speaking [...] only the idea of this act,” that we need in order to “think of the legitimacy of a state” (06: 315; 459). However, the three authorities of the State, namely legislative, executive and judiciary power, are “only the three relations of the united will of the people, which is derived a priori from reason” and not from a contract among individuals (06: 338; 479). It is not individuals who unite to form a society, but “the general will of the people” itself, as Kant claims in General Remark C (06: 326; 468). In this remarkable passage Kant writes: “The general will of the people has united itself into a society which is to maintain itself perpetually.”⁷ On the domestic level, society is grounded not on a voluntary contract among individuals, but on the general will of the people, which is derived a priori from reason. One could expect the same to apply on the

global level: practical reason should demand that individual states establish a world state, grounded on the general will of mankind. As we know, though, this is not Kant's position, since he prefers a loose league of states to a global institution that might result in a global despotism (an empirical argument that does not fit very well in a book on *metaphysical* principles of right). This voluntary union of states is expected to play the role of the contract that should guarantee the possession of land on the global level – a position that closely resembles the idea of international acknowledgment of state boundaries and of territorial waters.

The *beati possidentes* principle offers us a criterion for solving international territorial disputes not only among states, but even among people whose society is not organized in a State form such as those mentioned by Kant (06: 266; 417), namely “the American Indians, the Hottentots and the inhabitants of New Holland,” i.e. of Australia. In order to be effective on a global level, this principle should probably be implemented through binding treaties, but Kant does not specify anything with regard to this practical point. Nor is it clear, due to the absence of a global state, which instance should have the authority and the power to enforce these treaties and to punish their violation. Nevertheless it seems that Kant's view on territorial matters on the global level is quite clear: the people which first occupied a territory is also its legitimate owner, and its right ought to be respected notwithstanding its level of civilization or its capacity or willingness to use the land (e.g. by cultivating it). This would also justify the fact that a certain state may control a huge uninhabited territory, while its neighbors may suffer overcrowding – just as happens on the domestic level, where some rich landowners possess large estates that they leave partially fallow, while their poorer neighbors, with their tiny parcels of land, struggle to extract what they need for their families' subsistence. Or why some states have bountiful natural resources while others own only vast stretches of desert or mountains, just as some private landowners possess acres of fertile soil, while others own rocky patches of sterile land. The real question here is: how can practical reason want that such an evidently unequal and unreasonable distribution of land not only remain untouched, but be considered altogether untouchable? Can the *beati possidentes* principle really represent the ultimate answer to this question?

One could object that putting into question the present situation of land possession would represent a remedy worse than the disease it is supposed to cure. Who should decide on the abovementioned problem of indeterminacy regarding the quality and quantity of the external objects to be possessed, i.e. of the land to be redistributed? In the absence of a reasonable solution to this problem, it is better to maintain the status quo and to hope for future improvements. However, while redistribution would undeniably pose difficult problems, one

could quote Kant himself and claim that “this problem cannot be abandoned as insoluble and intrinsically impossible” (06: 266; 418). Furthermore, an imperfect territorial redistribution should always be preferred to an arbitrary and unilateral appropriation of land that results in an unequal, inefficient and even pernicious distribution of natural resources. Kant would probably consider this ultimately consequentialist argument to be too empirical for his taste and for the metaphysical character of his *Doctrine of Right*. Furthermore, by criticizing the distribution of land that resulted from its original appropriation through reference to its empirical consequences, one is recurring to a counterfactual argument which claims that with a different distribution of land more people would have been better off. Finally, even if we could ascertain that the present distribution of land harms a large number of individuals, we should still prove that this harm is a wrong, i.e. that it is *unjust*. Therefore, we should try to show that the *beati possidentes* principle practically infringes or theoretically contradicts some higher moral principle or is self-contradictory. The global analogy should help us in this attempt.

3. Global analogy and the invalidation of *possessio noumenon*

The international situation shows the limits of the appeal to the right of first occupation, since it is almost always impossible to ascertain who the first occupiers of a specific territory were. Even in the case of the American Indian, of the Hottentots and of the Australian aboriginals it is not clear whether they really were the first owners or whether they just seized their territories from preexisting inhabitants. In the impossibility of going back in time to establish who arrived first, one has to draw an arbitrary temporal line and establish the status quo of that specific moment as the starting point for any territorial claim. After that moment, any seizure of a territory that is already owned by some people would be considered illegitimate and unlawful. Nowadays this idea has received some juridical reality after the foundation of the United Nations and the promulgation of its Charter, which states the inviolability of national borders. However, this has not removed the possibility of territorial claims, and there are still many disputes of this kind, including among major countries like India and China. It also does not guarantee that the rights of the first owners are acknowledged: Brazil, for instance, claims to be the legitimate owner of the Amazon, and hereby it does not fully recognize the claims of the indigenous people who still live there and whom the Brazilian state has declared, without ever asking them, simply to be its citizens.

From this point of view, a central question that many interpreters have tried to answer is the following: are we really supposed to consider boundaries as being untouchable, no matter how arbitrarily they have been drawn, and no matter how unequal the distribution of natural resources they generate? How can Kant possibly think that freezing the status quo would contribute to establishing a perpetual peace, since conflicts have always been primarily about the control of natural resources? As I have said, this question has been widely discussed both among Kantian scholars and on a more general level (see e.g. O'Neill 2016), and it is not my intention to start the discussion anew. Rather, I shall point out a specific aspect that is relevant for my purpose. If there are good reasons for doubting the rightful character of the present distribution of land among states, i.e. the rightful character of state territories, then there may be good reasons for doubting the distribution of land possession also on the domestic level.

In the third section of the Public Right, which he dedicates to what he calls Cosmopolitan Right, Kant makes a relevant remark concerning the possession of Earth, which is a limited space that human beings must share, whether they like it or not. I shall quote it in its integrity:

And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations stand *originally* in a community of land, though not 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 of *offering to engage in commerce* with any other (06: 352; 489).

Why do nations not stand in a rightful community of possession of the Earth's surface? On the domestic level, we have the *communio originaria*, the original community of land, which is based on principles (06: 258; 411). Why does this situation not appear on the global level?

Kant states that even a “condition of community (*communio*) of what is mine and yours can never be thought to be original but must be acquired” (06: 258; 411). Now, original acquisition occurs through three acts: 1) “apprehension of an object that belongs to no one,” 2) “giving a sign (*declaratio*) of my possession of this object and of my act of choice to exclude everyone else from it,” and 3) “appropriation (*appropriatio*), as the act of a general will (in idea) giving an external law through which everyone is bound to agree with my choice” (06: 258f.; 411). In the case of peoples or nations claiming a territory as their own, the third act is impossible without assuming the existence of a general will belonging to humankind, even though it would be a will in idea and not a real one. In other words, one has to accept Diderot's version of the general will as the common will of humankind, but Kant rejects it in favor of

Rousseau's version as the common will of a single people. This is why he says that "all nations stand originally in a community of land," but not in "a *rightful* community of possession" (06: 352; 489). From this point of view, the distribution of the originally common land among peoples or nations does not fulfill the legal condition required for being a rightful possession, a *possessio noumenon*, as Kant calls it (06: 259; 412). A people apprehends a territory and declares it its own, excluding everyone else from it, but it cannot appropriate it rightfully in the absence of a general will of humankind providing the corresponding external law.

On the other side, land possession on the domestic level receives its rightful character precisely through the general will of a specific people that provides an external law through which everyone is bound to agree with the choice of the first landowner. However, in doing so, this general will is actually distributing among the individual landowners something that it does not own rightfully, thereby invalidating the law through which it recognizes the unilateral appropriation of land by individuals. Individuals grab a piece of land, declare it their own and seek recognition from the *general* will of their *specific* political body; this body gives its legal recognition, but it has itself no legal title whatsoever to do so, since it does not own the land rightfully. This should invalidate the whole process through which possession by right (*possessio noumenon*) is established. What remains is just *possessio phaenomenon*, i.e. the mere apprehension of land by a certain people, first, and by certain individuals, second. In other words, in the absence of a general will, which is united and a priori and, most importantly, *common to all humankind*, rightful possession of land becomes problematic both on a global and on a domestic level, both for states and individuals. All one has is a unilateral act of apprehension of a piece of land followed by a declared will of being the exclusive owner and by an acknowledgment of this claim by a collective will, which however has no legal entitlement to the land itself.

Seen in this light, the *beati possidentes* principle ends up just sanctioning a unilateral act of apprehension of land by individuals – an act that has no rightful character, since the instance that should give this character to the act has no legal authority to do so, for it is not the rightful possessor of the land in the first place. To put it slightly differently, the *beati possidentes* principle ends up being precisely what appears to be *prima facie*, that is, a principle that justifies the status quo not by recurring to some higher metaphysical principle of reason, but by recurring to the pedestrian principle of "first come, first served."

Of course it is possible to give a different foundation to the rightful possession of land by interpreting the concept of "a general will (in idea)" in a different way. Kenneth Westphal (2002, 103) goes in this direction when he suggests that "Kant's justification of right to

possession involves no unilateral unjust obligation of others because, in obligating others to respect our possessions, we also obligate ourselves to respect their possession.” Reciprocity is actually a central element of right, as stated in § B on the “Introduction to the doctrine of right,” in which Kant defines “what is right” (06: 230; 387). Also when he discusses external freedom, he defines one of its core elements, equality, as the capacity for reciprocal obligation (06: 237f.; 393f.). However, when discussing the foundation of possession, Kant does not recur to reciprocity but to the idea of a general will (06: 256; 409) which is united and a priori (06: 267; 418). If we understand this will simply as the sum of individual wills, which recognize reciprocally their individual rights to possession, then we make of Kant the contractarian he is not.

4. Original possession and present inequality

What are the consequences of all this for the distribution of land on the domestic level, which is what interests us in this context? (Of course I am referring not to empirical, contingent consequences, but to the logical consequences that result unavoidably from the *beati possidentes* principle.) First of all, the inequality resulting from the original distribution of land, which favors the *beati possidentes*, seems to stand on unstable legal grounding. This inequality has serious legal consequences, since it establishes a differentiation and separation between active and passive citizens that threatens the legal equality implied by the concept of external freedom (cf. Pinzani & Sanchez 2016). As we have seen, this equality consists in the capacity for reciprocal legal obligation. However, since only active citizens have the right to participate in the lawgiving process, they can impose an obligation on the passive citizens, while the latter lack this power with regard to the former. Since Kant does not say that legal equality consists in the fact that all citizens are equally under the obligation of obeying the law, but in the capacity of equally obliging all others, the introduction of the distinction between active and passive citizens makes legal equality impossible. The *beati possidentes* are twice happy: they enjoy their unilaterally acquired possession, and they can unilaterally impose obligations on all other citizens. This is an interesting logical consequence that finds its empirical counterpart in the circumstance that in almost every society economic inequality has resulted and still results in an asymmetry of political power. Even in advanced democracies, the interests of the economically more powerful citizens are privileged over those of the economically disadvantaged, as shown also by empirical studies (e.g. Gilens & Page 2014). But – once again

– this is just an empirical remark and as such it does not claim to invalidate the *beati possidentes* principle.

The lack of possession also makes some individuals dependent on others for their survival. Since they do not possess land, but only their capacity to work (a term Kant does not use, of course), they are forced to sell it to the landowners for a wage. Thus they stand under the constant threat of losing their jobs and being deprived of the means for survival, for instance, if their master is not pleased with their performance or simply does not need them anymore. They are only nominally masters of themselves, since they depend on the choices of another. Kant partially recognizes this when he speaks of “rights to persons akin to rights to things” (06: 276; 426). Although they are not things, by engaging in contracts through which they sell their services to an economically independent possessor of land and head of a family, “servants are included in what belongs to the head of a household and, as far as the form (the *way of his being in possession* [*Besitzstand*]) is concerned, they are his by a right that is like a right to a thing; for if they run away from him he can bring them back in his control by his unilateral choice,” (06: 283; 431) like they were “domestic animals that have gone astray” (06: 282; 430).

Finally, economic inequality leads to poverty. Although this might seem to be an empirical claim, it is in fact an unavoidable consequence of the application of the *beati possidentes* principle in reality and to *homines phenomena*, who all live with specific conditions that include aging, death and proneness to diseases etc. Those who possess only their capacity to work depend on this ability in order to survive, and if they lose it due to age or sickness or (in the case of wives and children) because of the death of the male breadwinner, they become unable to guarantee their own survival. It is not by chance that Kant mentions only widows, orphans, and elderly and sick people as qualifying for State assistance. All others are supposed to be able to provide for themselves and do not have a right to State assistance. One could reproach Kant in that he evidently does not know anything about economic crises, the fluctuation of seasonal work etc., but this would indeed be an empirical, though correct, claim.. From a metaphysical point of view, people become unemployed either because they are not able or because they are not *willing* to work, and the latter deserve no public help.

On the other hand, Kant recognizes that economically independent persons gain more from being under the protection of the State and its law than poor people or than individuals who depend on others for their survival (also in this case, this is not an empirical claim, but a logical consequence of Kant’s argumentation). Furthermore he thinks that for this reason the *possidentes* should be obliged to pay taxes so that the State may guarantee that its poorest

citizens can survive. Here is the relevant passage from the General Remark C, which I quoted partially above:

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. For reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. (06: 326; 468)

I am not interested in the practical conclusion that Kant draws from this circumstance, i.e. the fact that the State has a right to levy taxes to help the poor and to force the rich to pay them. Rather, I would like to stress that the State has an interest in its own survival, and that this entails the survival of its members, including the weaker ones. Of course, from an empirical point of view the latter claim is not true: a State could well survive the death of its weakest citizens. It is therefore a metaphysical claim: it is the general will of the people that has united itself and this will cannot accept some citizens being sacrificed or left behind because they are unable to maintain themselves.

This raises a relevant query. If the State does not arise from a contract among individuals, and if its goal is not protecting the material interests of private citizens, but just their survival as members of the political community, then one should question the necessity for the State to safeguard the unilateral act through which some individuals came into possession of a specific piece of land. If the possession of land is necessary for survival, then *every* citizen should possess a piece of land, and this would imply a redistribution of land in favor of those who were not swift enough to take possession during the first round of unilateral appropriation. If it is *not* necessary for survival, then the State should have no duty to give a peremptory character to the provisional right of land possessors. And if, as many interpreters claim, the possession of land is a way of realizing concretely one's external freedom, then one should ask whether and to what extent it might violate the external freedom of others by excluding them from the possession of something which has only been appropriated through a unilateral individual act that cannot be rightfully acknowledged by the State, as we have seen. In all these cases it is very difficult to defend the validity of the *beati possidentes* principle. This puts into question the whole process of appropriating land simply by seizing it and declaring it one's exclusive possession. From a metaphysical point of view, no corresponding right can be grounded on this act. In other words: from a Kantian point of view, the possession of specific pieces of land (be it private parcels or state territories) results from an act that has

no rightful character. As such it brings about a situation of material and legal inequality that has no real juridical basis.

A possible escape from this impasse could be offered by the idea of supersession, as presented by among others Jeremy Waldron, precisely in relation to states' claims concerning land property. To quote Waldron, "it seems possible that an act which counted as an injustice when it was committed in circumstances C_1 may be transformed, so far as its ongoing effect is concerned, into a just situation if circumstances change in the meantime from C_1 to C_2 . When this happens, I shall say the injustice has been superseded" (Waldron 1992, 24; see also Waldron 2002). This is not tantamount to denying the original injustice; rather, Waldron warns that in addressing past injustices we should be careful not to neglect the cost that land redistribution would possibly impose on innocent parties such as the descendants of those who first took unjust possession of the land. On the other hand, one could question whether circumstances have really changed and whether the present possessors are so innocent after all. They surely have committed no injustice, but their present condition of advantage over the descendants of those who did not seize anything during the first round of land appropriation is based on the unilateral act committed by their ancestors. In this sense, appealing to a change in circumstances becomes problematic once the present generation of haves and of have-nots can be seen as occupying their respective positions as a consequence of the original distribution of land. This is not an empirical claim. Rather it refers to a logical consequence of the initial appropriation of land. Due to this act, in T_1 individuals occupy specific social positions (as landowners or as laborers, as heads of a household or as servants, as active or as passive citizens) that unavoidably affect their position in $T_2, T_3... T_n$ (with T indicating a specific moment in time). This applies also to their children, whose initial social position is determined by the position of their parents, and so on, throughout all subsequent generations. Of course, it is possible for individuals to change their position, both by ascending and by descending the social ladder. However, they never start the race from the same position and this happens because of an original act with no rightful character. Under this condition, the wealthy owe much more than their mere subsistence to the commonwealth, as Kant states in General Remark C (06: 326; 468). They also owe it the fact that they have entered society in an illegitimately advantaged position, and in doing so they have violated and are violating the rights of other, more disadvantaged, citizens. If one follows Kant's reconstruction of the rise of land possession, the wealth of some implies the poverty of all others, since land is a limited resource (contrarily to other forms of wealth). Due to its lack of rightful character, the harm the land possessors are inflicting on others is a wrong, and as such it must be corrected either by land

redistribution or by the establishment of some form of common utilization of land (although not necessarily of all the land). However Kant rejects both possibilities, thereby violating the basic metaphysical principles of right exposed in the introduction to the *Doctrine of Right*. Once again, we have reached this conclusion not by pointing out the undesirable consequences of the principle, for this would be an empirical argument resulting from a consequentialist approach. Rather, we chose a procedimental approach, showing that the way in which land was initially distributed is not rightful, on the domestic as well as on the global level. It remains to be seen whether this implies the necessity of land redistribution also on the global level, but I shall not consider this point in the present context.

Notes

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² Kant's works are quoted, as usual, with reference to volume and page number of the Akademie Ausgabe (e.g.: 06: 257 means page 257 of the sixth volume). With regard to the English translations of the quotations, I indicate the page number from the following edition: Kant, Immanuel. *Practical Philosophy*, ed. by M. Gregor and A. Wood, Cambridge: Cambridge (MA), 1996

³ Kant's theory of possession has been neglected for a very long time. Till the last decades of the 20th century the only relevant work on the topic appears to have been Buchda 1929. Things changed with the publication of Saage 1973 and Brandt 1974. The discussions generated by these monographs led to a renewed interest in the topic (see e.g. Kühl 1984, Brocker 1987, Fulda 1999, Kühl 1999, Zotta 2000, Byrd and Hruschka 2010, Hruschka 2015)

⁴ This point is often overseen by commentators, who talk of property or of *Eigentum* (German for property). See e.g. Saage 1973 and Zotta 2000.

⁵ This permissive law (*Erlaubnisgesetz*) is one of the most discussed conceptual constructs in the whole *Doctrine of Right*. See for different interpretations Struck 1987 and Hruschka 2015, 89ff.

⁶ This is an argument advanced by Cicero in the third book of the *De Republica*, where the author claims that all people can be accused to have stolen the land they live in with the possible exceptions of the Arcadians and Athenians (who claimed to have "sprung directly from the Earth") (Cicero 1928, 205).

⁷ We shall see that Kant connect this aspect to the State's duty to care for the poor as well as to its right to levy taxes for this end.

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