

POLITICAL PHILOSOPHY NOW

Politics and Metaphysics in Kant

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UNIVERSITY OF WALES PRESS • CARDIFF • 2011

5 • One Community or Many? From Logic to Juridical Law via Metaphysics

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There are, I believe, at least five ‘core’ notions of community in Kant’s mature work that are all modelled on the category of community, introduced as the third category of relation in the first *Critique*. In the Third Analogy and the *Metaphysical Foundations of Natural Science*, Kant develops an account of physical interaction. In his pre-critical writings and the cosmology sections of his metaphysics lectures he provides an analysis of the metaphysical idea of a ‘World’ understood as a community of individuals in interaction. In his ethical works we find the ideal of a realm of ends understood to be an ideal moral community, and in his political writings the ideal of a political community governed by juridical laws. Finally, we find the theological ideal of a community of holy beings, which Kant sometimes calls ‘the kingdom of heaven’. In addition we find a number of other senses of community whose relation to the category of community are less clear, for example the notion of ethical community presented in religion and the notion of a *sensus communis* in the *Critique of Judgement*. The five ‘core’ notions of community, then, are:

1. The *scientific* notion of interaction. This concept is introduced in the *Third Analogy* and developed in the *Metaphysical Foundations of Natural Science*.¹
2. A *metaphysical* idea. The idea of a world of individuals (monads) in interaction. This idea was developed in Kant’s pre-critical period and can be found in his metaphysics lectures.
3. A *moral* ideal. The idea of a realm of ends.
4. A *political* ideal. The idea of a juridical community (or community of communities) governed by juridical laws.
5. A *theological* ideal. What Kant calls ‘the kingdom of heaven’, and which can be thought of as a community of holy beings, or angels.

In this paper I will examine the relationship between the first, second and fourth of these notions. My argument is that Kant's notion of a juridical community governed by juridical laws is modelled on the metaphysical idea of the world. This metaphysical idea of a world is, in turn, modelled on the category of community introduced in the first *Critique* and developed in his logic lectures. As far as I am aware, Kant himself does not use the phrase 'juridical community'. The *Metaphysics of Morals* is divided into a Doctrine of Right and a Doctrine of Virtue. The Doctrine of Right is itself divided into sections on Private Right and Public Right. The main topic in the Private Right is Kant's account of the metaphysics of property and the nature of what I call juridical laws. Public Right on the other hand has to do with those laws that are necessary for bringing about a condition of Private Right, or what Kant sometimes calls 'the rightful condition'.² For human beings the existence of Public Right is a necessary condition for the possibility of Private Right, but it would seem that we could conceive of a community, say a community of angels, where there was Private Right but no need for Public Right. What I call a juridical community is the idea of a community governed by Private Right, abstracting from what is needed to bring such a community into existence. The notion of a juridical community as employed in this paper, then, is more abstract than the notion of a human political community that involves the idea of a state and laws governing the nature of the state and relations between states.

A central aspect of my interpretation has to do with explaining what Kant means by *juridical* laws. By juridical laws, I mean those laws that are part of what Kant calls private, as opposed to public, right.³ Kant claims that juridical laws are necessarily coercive, and this is often taken to mean that such laws are essentially enforceable through the use of force – either actual force or the threat of force (punishment).⁴ Although this is the standard reading of what Kant means by coercion, I believe such an account is clearly mistaken, since for Kant juridical laws are coercive in the sense that they necessitate or obligate. Thus in talking about 'powers of coercion' in his ethics lectures, Kant explains perfect obligation as 'an obligation where the agent can be necessitated to an act of duty by another's choice' (*V-Eth/Vigil* 27: 289). Such laws could even govern a community of angels. For example, if in an ideal community governed by juridical law one individual lends another individual

a particular object and then asks for it back, the second individual is *necessitated*, or *coerced*, to return it. The threat of punishment is not needed for a law to be coercive in this sense. It is in this sense that (ideal) juridical laws are coercive. A similar criticism of the standard reading of ‘coercion’ in Kant has been offered by Arthur Ripstein, who points out that Kant’s ‘initial, and indeed, paradigmatic, example of coercion is the right of a creditor to demand payment from a debtor, a right to compel payment, not a right to punish nonpayment’.⁵ My claim about the relationship between Kant’s metaphysics and his politics is that it is the existence of laws that are coercive in this sense that allows for real metaphysical interaction in a juridical community: for interaction, understood metaphysically, requires that the agent be able to ‘determin[e] the active power of the substance being acted upon’ (V-MP/Mron 29: 823), and the existence of coercive juridical laws enables me to ‘determine another’s choice by my choice’ (MS 6: 271).

Before presenting my argument in more detail, let me first say a few words about Kant’s understanding of metaphysics. My claim is that Kant’s idea of a political community is not essentially a practical idea but a theoretical one, namely the idea of a community of individuals in interaction, an idea that Kant refers to in his theoretical works as the idea of a world, or ‘the intelligible world’. The development of this idea was originally part of Kant’s monadology and meant to solve a theoretical problem that Leibniz had been unable to solve. Kant began his philosophical career as an unorthodox Leibnizian, and he spent much of the 1750s and 1760s trying to develop a monadology. Unlike Leibniz, Kant was committed to the position that monads can really interact, and he believed that any adequate monadology must be able to explain how a set of monads could constitute a ‘world’ in any meaningful sense. In particular, like many eighteenth-century German metaphysicians he believed that the idea of a world is the idea of a composite, and so that any adequate monadology must be able to explain the possibility of monadic composition, a possibility Leibniz had been unable to explain.

The problem of monadic composition, for both Leibniz and Kant, is to explain how a number of independent individuals can come together and form one thing. For both of them, this is a metaphysical problem. Ultimately, Leibniz was unable to explain adequately how a substantial composite was possible and bequeathed this problem to Kant. Kant’s solution to Leibniz’s

problem of composition was inspired by Rousseau. A set of independent individuals can only form a true composite substance if each member of the composite is responsible for the laws that provide the composite with its unity. That is, in a composite substance, each member of the composite must be autonomous. Kant names our idea of such a composite substance an ‘intelligible world’ or a realm of ends (*Reich der Zwecke*).

Although in the 1750s and 1760s Kant, like Leibniz, believed that the purpose of metaphysical speculation was to provide us with a true account of the way the world actually is, over time his attitude to metaphysical speculation diverged from that of Leibniz. He came to see that such speculation cannot give us insight into the way things are; it cannot provide us with objective knowledge. For the critical Kant, metaphysical speculation involves an analysis of our ideas of pure reason and is not able (or intended) to provide us with knowledge of the putative objects of such ideas. However, although such metaphysical speculation cannot provide us with any knowledge of the way the world is, it can provide us with an ‘image’ of the way the world could and should be. The idea of a world of individuals in interaction (the idea of a community governed by juridical laws) is not a possible object of our faculty of intuition (and, as a result, is not a possible object of cognition); it *is*, however, a possible object of our faculty of desire, that is to say it is a possible object of choice, for we can choose to be a member of such a world. Indeed, Kant believes that it is simply a fact that this theoretical idea, the idea of being an autonomous member of a community, presents itself to our faculty of desire as something of immeasurable value.⁶

This paper has three main sections. In the first I examine the category of community as presented in the first *Critique*, and in the second the idea of a world discussed in his metaphysics lectures. In the final section I show how these logical and metaphysical conceptions of community play an important role in his conception of a juridical community.

1. The category of community in the *Critique of Pure Reason*

In the *Critique of Pure Reason*, Kant introduces the category of community as the third category of relation. The structure of the

table of categories is derived from the table of judgements, and this table is divided into four classes, into judgements of quantity, of quality, of relation and of modality. The categories of the third class, then, are derived from the judgements of relation. According to Kant there are three types of relational judgement: categorical judgements (A is B), hypothetical judgements (if p then q) and disjunctive judgments (p or q or r). The categories of substance and accident are derived from the categorical form of judgement, the categories of cause and effect from the hypothetical form of judgement and the category of community, which either is or involves the idea of reciprocal influence, from the disjunctive form of judgement.⁷

Kant believes that the category of community (and as a result the notion of interaction) is to be sharply distinguished from that of cause and effect, for they are derived from different forms of judgement. We understand the importance of this claim by considering an alternative way of conceptualizing interaction. Defenders of such an alternative conception of interaction would argue that we can fully capture what is involved in interaction in the following terms: when two entities, say x and y , interact, x has a causal relation to y and y has a causal relation to x . Kant does not deny that this partially captures what is involved in the relation of interaction,⁸ but he does not believe that it is the full story, for he believes that when a number of entities interact they (1) constitute a whole and (2) mutually exclude one another. These two factors are essential to the relation of interaction and cannot be captured by appealing to the ideas of ground and consequence or to the hypothetical form of judgement. Thus in his commentary to the table of categories in the *Critique of Pure Reason*, Kant compares the causal relation to the relation of interaction with community and points out that in the case of simple causation the relation is one of subordination, whereas in the case of interaction the relation is one of coordination (*KrV* B112). What he means by this is that in a causal relation the consequence is subordinated to the ground. For this reason the ground-consequence relation is the principle of the series, for the relation of ground and consequence can provide us with a well-ordered chain of causes and effects. The relation of community, on the other hand, cannot be understood in terms of the idea of subordination, for when a number of entities are members of a community they are not subordinated to

one another but are coordinated with one another. The concept of coordination cannot be understood in terms of mutual subordination. When entities are coordinated with one another they are parts of a whole and mutually exclude one another. Thus Kant explains that the relation of community or interaction

is an entirely different kind of connection from that which is to be found in the mere relation of cause to effect (of ground to consequence), in which the consequence does not reciprocally determine the ground and therefore does not constitute a whole with the latter (as the world-creator with the world). The understanding follows the same procedure when it represents the divided sphere of a concept as when it thinks of a thing as divisible, and just as in the first case the members of the division exclude each other and yet are connected in one sphere, so in the later case the parts are represented as ones to which existence (as substances) pertains to each exclusively of the others, and which are yet connected in one whole. (*KrV* B113)

In the first sentence of this passage Kant distinguishes the concept of causation from that of interaction, and focuses on the fact that in the case of interaction the entities in interaction ‘constitute a whole’.⁹ To understand the second sentence of this passage it is necessary to have a closer look at Kant’s account of the disjunctive form of judgement. A disjunctive judgement has the form: ‘*x* is A or B or C’. Kant explains this form of judgement in the *Critique of Pure Reason* in the following terms: ‘in all disjunctive judgments the sphere (the multitude of everything that is contained under it) is represented as a whole divided into parts (the subordinate concepts)’ (*KrV* B112). He makes his point a little more clearly in his logic lectures. In his *Jäsche Logic*, for example, he explains that ‘disjunctive judgments represent various judgments as in the community of a sphere and produce each judgment only through the restriction of the others in regard to the whole sphere’ (*LogJäsche* 9: 107). A disjunctive judgement, then, is a judgement in which a number of judgements somehow restrict one another and fill up a (logical) sphere.

It is, then, from the disjunctive form of judgement that we get the concept of ‘exclusion’. Kant makes this clear in his commentary to the table of categories. In this section he compares the disjunctive form of judgement with the hypothetical (if . . . then) form of judgement, and argues that

in all disjunctive judgments the sphere (the multitude of everything that is contained under it) is represented as a whole divided into parts (the subordinate concepts), and since none of these can be contained under any other, they are thought of as coordinated with one another, not subordinated, so that they do not determine each other unilaterally, as in a series, but reciprocally, as in an aggregate (if one member of the division is posited, all the rest are excluded, and *vice versa*). (*KrV* B112)

Earlier in his commentary on the table of categories, Kant explains that the categories he has listed do not provide a complete list of the a priori concepts of the understanding, for there are also derivative concepts, which Kant calls ‘predicables’, that can be derived from the categories.¹⁰ Under the category of community Kant lists two ‘derivative concepts’ or predicables: presence and resistance (*KrV* A82/B108). The reason why resistance is a predicable of the category of community is because our (pure, unschematized) concept of resistance is to be understood in terms of exclusion, and we understand the notion of exclusion a priori through our grasp of the disjunctive form of judgement. What we mean if we claim that one thing resists another is that if (or in so far as) the thing is posited all the rest are excluded. As we shall see, the fact that resistance is a predicable of the category of community has important implications for Kant’s account of interaction, for he conceives of interaction in terms of the withdrawal of resistance, which given his analysis of community implies that only members of a community can interact.

The category of community, then, allows us to understand the notion of a number of impenetrable individuals (concepts) filling a conceptual space (another concept) and excluding other individuals (concepts) from their part of the conceptual space, without any appeal to the space of intuition. The fact that Kant believes the concept of resistance to be a predicable of the category of community will play an important role later in this paper, because Kant believes that the only way to conceive intelligibly of interaction is in terms of the withdrawal of resistance. And, as we shall see, this conception of interaction as the withdrawal of resistance is also to be found in his political writings, where Kant explains the possibility of the transfer of property in terms of the withdrawal of resistance.

It is also worth remembering that in the Third Analogy, Kant argues that the application of the category of community to experience is necessary for us to make judgements of simultaneity. He

argues that ‘things are simultaneous if in empirical intuition the perception of one can follow the perception of the other reciprocally’ (*KrV* A211/B256–7). Indeed, the notion of simultaneity is so closely connected to the category of community that Kant changed the title of the Third Analogy from ‘The Principle of Community’ (*KrV* A211) in the first edition to ‘The Principle of Simultaneity, According to the Law of Interaction, or Community’ (*KrV* B256) in the second. The notion of simultaneity also plays an important role in Kant’s account of the exchange of property in the Doctrine of Right in the *Metaphysics of Morals*. Here Kant explains that the exchange of property ‘is possible only through a common will by means of which the object is always under control of one or the other’ and he repeatedly stresses that this act of exchange must be simultaneous. Thus, for example, he argues that the acts of promise and acceptance ‘cannot be represented as following one upon another . . . but as proceeding from a single common will (this is expressed by the word simultaneously) (*MS* 6: 273). The language here makes it clear that Kant is quite self-consciously conceiving of the exchange of property in terms of the category of community presented in the first *Critique*.

2. Community in Kant’s metaphysics lectures

Let us now turn to Kant’s discussion of community and interaction in his metaphysical writings. My main claim in this section is that the idea of a world of individuals in interaction (an intelligible world) can only be the idea of a community of autonomous individuals governed by laws that they have given themselves, that create resistance and that hence allow the agents to ‘determine the active power’ of patients. The reasons for this are that (1) a community of individuals can only really be unified if each individual member of the community is the source of the laws that provide the community with its unity (that is, each member must be autonomous) and (2) these laws must be laws that create resistance because, in Kant’s view, the only way of conceiving of interaction is in terms of the withdrawal of resistance by the agent that allows a dead power in the patient to become a living power. In the following section we will see that juridical laws are laws that introduce precisely such resistance.

(1) I will begin by defending the claim that for Kant only autonomous individuals can truly interact and be real members of a world or community. For Kant our idea of a world is the idea of a substantial composite.¹¹ He makes his commitment to this clear in the cosmology sections of his metaphysics lectures. The first point he makes is that our idea of a world is the idea of a whole. Thus he argues that ‘a multitude of substances without connection makes no world. One must thus not define world: the universe of substances, but rather the whole of them’ (V-MP/Dohna 28: 657). However, he also argues that for substances to constitute a world they must form what he calls a *real* as opposed to an *ideal* whole. Kant believes that any composite must have both a form and matter, and hence there are two conditions that distinguish a real from an ideal whole, a material condition and a formal condition. (a) The material condition for existence of a real whole is that the parts of a real whole must be true individuals. This condition, which Kant sometimes posits in terms of the proposition that the world must be a substantial whole, implies – he believes – that spatial wholes, for example, are merely ideal wholes.¹² This material condition for real wholeness is a major motivation for Kant’s claim that space is ideal. (b) The formal condition is that the unity of the whole must be ‘real’ rather than ‘ideal’, and the guarantee of the reality of the unity is the existence of ‘real’ connection(s). What is most significant here is Kant’s account of this formal condition, for when we are thinking of a world of monads it is assumed that the material condition is met: the matter of the world is composed of the individuals that make up the world. In explaining this condition he writes that ‘substances are the matter of the world, the formal aspect of the world consists in their connection (*nexus*) and indeed in a real connection (*nexu reali*). The world is thus a real whole (*totum reale*), not ideal’ (V-MP-L2/Pölitz 28: 581). Our idea of a world is the idea of a *real* as opposed to an *ideal* whole in this sense.¹³

Elsewhere, Kant is a bit more explicit about this distinction. He argues that

the connection (*nexus*) is ideal if I merely think the substances together, and real if the substances actually stand in interaction (*commercio*).
 // The form of the world is a real connection (*nexus realis*) because it is a real whole (*totum reale*) . . . Isolated substances, however, never

constitute a whole (*totum*), then they must also be a real whole (*totum reale*). For were they ideal, then surely they could be represented in thought as a whole (*totum*), or the representations of them would constitute a whole (*totum*); but things in themselves would still not constitute a whole on this account. (V-MP/Mron 29: 851)

An ideal whole is a whole that can be ‘represented in thought’ as a whole. In such a whole the unity only exists in the mind of the observer. In a real whole, in contrast, the unity must be intrinsic to the whole. Although Kant himself does not explicitly make this claim, I suggest that what this means is that the individuals that constitute the whole must be responsible for the unity of the whole. Now, if we believe that laws are exactly the sort of thing that can supply unity to a group of individuals, then a real whole will be one in which the individuals that make up the whole are the source of the laws that provide the whole with its unity. That is, a real whole will be a realm of ends and the only way of being a member of such a whole is to be an autonomous being, that is, a being that is the giver or source of the laws that provide the whole with its unity.

(2) I will now defend the claim that Kant thought that interaction is only possible if there are laws that ‘allow the agent to determine the active power of the patient’. This will be important for my discussion of Kant’s account of juridical community as this is exactly what coercive juridical laws make possible, and in the following section I will show how this model lies behind his account of the transferral of property in his political writings.

The problem with conceptualizing interaction is fairly simple. Following Leibniz, Kant thinks that the idea of an individual (substance) is the idea of something essentially active. There is, however, a problem in explaining how two essentially active beings can act upon one another, for we must be able to give an account of how an essentially active substance can suffer or be passive. Kant himself addresses this problem in his metaphysics lectures, explaining that ‘that substance suffers ([is] passive) whose accidents inhere through another power’. He then asks ‘how is this passion possible, since it was said earlier that it [i.e. the passive/suffering substance] is active insofar as its accidents inhere’. (V-MP/Mron 29: 823)

The problem is not merely that Kant conceives of individual substances as essentially active, but that following Leibniz he is

committed to the view that an accident (or more generally what Kant refers to as a ‘determination’) can only truly inhere in or belong to a substance if the substance is the active cause or ground of the accident. I name this doctrine the Principle of Active Inherence.¹⁴ It is Leibniz’s acceptance of this principle that lies behind his claim that monads are windowless and it also lies behind Kant’s rejection of ‘physical influence’: the view, popular in the early eighteenth century, that action should be understood in terms of determinations flowing from the agent into the patient.¹⁵ If we accept the Principle of Active Inherence, though, it is not clear how one individual can ever be the cause of any change in another individual. If a determination can only be a determination of individual *b* if *b* is the active ground or cause of the determination, how can another substance ever be the cause of a change in *b*? Leibniz’s solution was to admit defeat and conclude that one substance cannot be the cause of a change in another.

Kant’s solution to this problem would be to claim that we can understand the idea of an individual being acted upon without appealing to the untenable notion of accidents flowing from one individual into another, in terms of the agent ‘determining the active power of the substance being acted upon’ (V-MP/Mron 29: 823).¹⁶ This account of action does not violate the Principle of Active Inherence, because the patient’s determination inheres in the patient due to the patient’s own power. This power, however, has been determined by the agent. And Kant explains the notion of one agent ‘determining the power’ of another in terms of the withdrawal of resistance.¹⁷ On this model, one individual substance (the agent) is the ‘cause’ of a change in another individual substance (the patient) if the change in the patient is the result of the agent withdrawing its resistance. The patient remains, however, essentially active, for the determination is the result of its power.

3. Political/judicial community

I will now briefly outline Kant’s account of Private Right in the *Metaphysics of Morals* and explain how his analysis of a community of property owners is modelled on the category of community and the account of interaction in his metaphysics lectures.¹⁸

Because we own things it seems natural to assume that ownership should be understood as a relationship between an individual and an object. For Kant, however, this is a fundamentally mistaken way of conceiving of property, for to *own* something is to have a (legitimate) right to it, and to have a legitimate right to something is not to be understood in terms of the relationship between an individual and a thing owned, but instead in terms of the owner's relation to other agents. To claim a right is to claim that others should recognize your possession and not interfere with your use of the object. It is to claim that others should not *resist* your use of an object, and Kant believes that such a claim can only be made against others who have commonly willed the same set of juridical laws. To have a property right ultimately involves an intelligible relationship,¹⁹ and such intelligible rights are only possible in the civil condition. Such a condition, which for Kant is an ideal that can never be realized but only approached asymptotically, is only possible if the juridical laws are willed by all members of the community. Thus Kant explains that

A unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon the freedom in accordance with universal laws. So it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance. (*MS 6*: 256)

In an ideal juridical community each member consents to the laws of the community, and it is the existence of these laws that makes us all members of the same community; indeed, it is only the existence of such commonly willed laws that makes (fully legitimate) property rights possible.²⁰ The existence of juridical rights, then, presupposes the existence of juridical laws, and it is the existence of such laws that allows us to act upon one another in an intelligible juridical way. Thus, as the start of his discussion of Contract Right Kant explains that

My possession of another's choice, in the sense of my capacity to determine it by my own choice to a certain deed in accordance with laws of freedom (what is externally mine or yours with respect to the causality of another), is a right (of which I can have several against the

same person or against others); but there is only a single sum (system of laws), contract right, in accordance with which I can be in this sort of possession. (MS 6:271)

Here Kant defines a (contractual) right in terms of ‘the possession of another’s choice’. The language here is very similar to the language he uses to explain action in his metaphysics lectures. There, he argued that the agent must have a capacity to ‘determin[e] the active power’ of the patient. Here, he claims that to have a right is to possess ‘a capacity to determine the choice of another’. And he argues that an individual can only possess such a capacity if there is a system of juridical laws and others (a) recognize and (b) affirm these laws. These laws are not physical laws but juridical laws, the existence of which depends upon them being freely taken up by each individual member of the community. Kant explains that ‘my capacity to determine another’s choice by my own choices’ is called a right and that it is the existence of juridical laws that makes rights possible and, consequently, allows one individual to act upon (‘determine the choice of’) another. Laws that assign rights are called juridical (or coercive) laws. Such laws make interaction possible because they are the basis of resistance between individuals. Kant repeatedly stresses the relationship between juridical laws and the notion of resistance. For example, in his ethics lectures he argues that

The universal law of reason can alone be the determining ground of action, but this is the law of universal freedom; everyone has the right to promote this, even though he effects it by *resisting* the opposing freedom of another, in such a way that he seeks to prevent an *obstruction*, and thus to further an intent . . . The other, however, *obstructs* the action by his freedom; the latter I can curtail and *offer resistance* to, insofar as this is in accordance with the laws of coercion; so *eo ipso* I must thereby *obstruct* universal freedom by the use of my own. From this it follows that . . . the right to coerce the other consists in *restricting* his use of freedom, insofar as it cannot co-exist with universal freedom according to universal law; and this is the right of coercion. . . // Since nobody can exercise a right to coerce, who has not obtained a right thereto from a higher ground, which consists, however, in one’s own freedom and its congruence with the freedom of everyone according to universal law, it is clear that the right to coerce can only be derived from the idea of law itself. (*V-Eth/Vigil* 27: 523; my emphasis)

We should read such passages bearing in mind Kant's account of action in his metaphysical work, for he believes that all action should be understood in terms of the withdrawal of resistance. Here Kant argues that that the right to coerce 'consists in' (legitimately) resisting the freedom of others, and that such a right (that is, the possibility of resistance) can only be derived from the 'idea of law itself'. In other words, Kant is suggesting in this passage that it is juridical laws that make resistance, and hence interaction (understood in terms of the withdrawal of resistance), possible.

Only if such a community (or civil condition) exists can an individual really own property and 'transfer' her/his property to another. In so doing individuals are able to act upon one another through mutual consent. The activity of the agent (giver) is the withdrawal of an impediment, the activity of the patient (receiver) is an active uptake. In the transferral of property, then, a property right does not flow from the giver to the receiver. Rather, in the context of a commonly willed set of property laws, one party renounces a right while the other party simultaneously actively takes up the right. As previously noted, Kant's stress on simultaneity here should make it clear that he is modelling his account of the transferral of property on the category of community. Kant is very careful to make it clear that in the 'transferral' of property there has to be more than merely the 'abandoning' or 'renouncing' of a right by the giver. I suggest that Kant's reason for stressing this is his metaphysical commitment to the Principle of Active Inherence. For the receiver really to possess a right (s)he has to be the active ground of the right. Thus Kant explains that transferral of property 'is only possible through a common will by means of which the object is always under the control of one or the other, since as one gives up his share in the common undertaking [*Gemeinschaft*] the object becomes the other's through his acceptance of it (and so by a positive act of choice)' (MS 6: 271).

Just as, in general, a determination can only belong to a substance if the substance is the active ground of the determination, property can only belong to an individual if the individual is the active ground of the right. In an act of exchange, then, it is not as if the donor actively gives and the recipient passively receives. Instead, the receiver must be actively asserting a claim to an object and the donor merely withdrawing her/his (legitimate) claim to it, withdrawing resistance to the recipient's claim. This is why Kant

stresses that the recipient must accept the property ‘by a positive act of choice’. Acquiring a right to property is not something that can occur passively; instead, the recipient must actively assert a claim, even in the case of receiving a gift. Such considerations lie behind Kant’s claim that in the legal sense, strictly speaking all commissive acts are really omissive. Thus he argues that

all coercive or juridical laws are prohibitive, and rely on the principle of not withholding from the other what belongs to him (*neminem laede*). (For the fact that both commissive and omissive actions are equally necessary for the performance of actions in a physical sense, makes no difference, since all commissive actions are omissive, *in sensu juris*.) (*V-Eth/Vigil* 27: 512)

Thus although on the phenomenal level an act such as paying a debt may appear to be an action on the part of the debtor,²¹ on the legal level all that is happening is that the debtor is allowing his creditor to use what is legally hers. In paying back the loan, the debtor has not really given his creditor anything. Kant believes that such an analysis can be applied to all property transactions and not merely to cases of repaying a debt. Thus he explains that ‘I cannot give the other anything – he already has what belongs to him; . . . you are to leave the other his own, take nothing, abstain from all actions whereby you would detract from his rights’ (*V-Eth/Vigil* 27: 512).

To conclude: I have argued that Kant’s account of juridical community, the idea of a community of property owners, is modelled on the category of community introduced in the first *Critique* and his account of interaction found in his metaphysics lectures. At the very least, I hope I have shown that there are interesting parallels between Kant’s political philosophy and his metaphysics of community and interaction, and that a study of Kant’s logic and metaphysics can help us understand key aspects of his Doctrine of Right.

Notes

- ¹ Examining the relation between the scientific account of interaction and Kant’s account of a juridical community is beyond the scope of

- this paper, although Kant himself notes their relationship in the *Metaphysics of Morals*, arguing that '[t]he law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, as it were, the *construction* of that concept, that is, the presentation of it in pure intuition a priori, by analogy with presenting the possibility of bodies moving freely under the law of the *equality of action and reaction*' (MS 6: 232).
- 2 Thus, in the first sentence of Public Right, Kant explains that 'the sum of all laws which need to be promulgated generally in order to bring about rightful conditions is *public right*' (MS 6: 311).
 - 3 This usage of 'juridical' is not entirely consistent with Kant's usage of 'juridical' as he seems to use this term to apply to the whole of the Doctrine of Right, both Private Right and Public Right.
 - 4 Thus, for example, Allen D. Rosen argues in *Kant's Theory of Justice* (Ithaca, NY: Cornell University Press, 1993), p. 83, that '[e]nforceability through coercion is therefore the essence of a juridical duty or law':.
 - 5 Arthur Ripstein, 'Authority and coercion', *Philosophy and Public Affairs*, 32/1 (2004), 2–35. See also Ripstein, 'Kant's legal and political philosophy', in T. Hill (ed.), *A Companion to Kant's Ethics* (Oxford: Blackwell, forthcoming).
 - 6 Thus, Kant explains that the civil condition 'is that condition which reason, *by a categorical imperative*, makes it obligatory to strive after' (MS 6: 318). For a fuller discussion of this see Thorpe, 'What's the point of studying ethics according to Kant?', *Journal of Value Inquiry*, 40 (2006), 461–74.
 - 7 Kant's account of the disjunctive form of judgement has received rather a bad press in the contemporary literature. Thus Paul Guyer, for example, writes in *Kant and the Claims of Knowledge* (Cambridge: Cambridge University Press, 1987), p. 452, that '[a]s is often pointed out, Kant's connection of the real relation of reciprocal influence with the logical notion of exclusive disjunction is the most tenuous piece of his metaphysical deduction of the categories'.
 - 8 '[T]he third category always arises from the combination of the first two in its class' (KrV B110). In the case of the category of community, which is the third category of relation, the first and second categories are substance and causation. So community involves substances in causal relations, but cannot be reduced to the notion of mutual causation.
 - 9 This is not the case in the ground-consequence relation. Kant appeals to the example of God, the 'world-creator'. God is the ground or cause of the world, but God and the world do not constitute a whole. If God were thought of as interacting with the world, however, God and the world would constitute a whole. Here I disagree with Schneewind, who

- argues that Kant advocates the ‘astonishing claim . . . that God and we share membership in a single moral community only if we all equally legislate the law we are to obey’: Jerome B. Schneewind, *The Invention of Autonomy: a History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998), p. 513; see also p. 554.
- ¹⁰ Thus, Kant explains that ‘the categories, as the true ancestral concepts of pure understanding, also have their equally pure derivative concepts’ (*KrV* A81–2/B107)
- ¹¹ Kant calls our idea of a world ‘the intelligible world’. Kant makes this clear in the *Critique of Pure Reason* where he claims that ‘the *mundus intelligibilis* is nothing but the concept of a world in general, abstracting from all conditions of intuiting it’ (*KrV* A433/B461). He makes a similar point in his metaphysics lectures from the same period when he claims that ‘a foreigner called it fantasy to speak of the intelligible world (*mundo intelligibili*). But this is just the opposite, for one understands by it not another world, but rather this world as I think of it through the understanding’ (*V-MP/Mron* 29: 850).
- ¹² ‘The world is thus a substantial whole (*totum substantiale*), hence not merely ideal. We can think of diverse ideal wholes (*tota idealia*), but they do not constitute a world, e.g., I can represent to myself a syllogistic whole (*totum syllogismorum*), an accidental whole (*totum accidentale*), or a whole in space, etc.; but these are mere ideal wholes (*tota idealia*), which consist of concepts. But the world is a real whole (*totum reale*), which consists of concepts’ (*V-MP/Mron* 29: 851).
- ¹³ He frequently makes similar points. See, for example, *Metaphysik* L2 (*V-MP-L2/Pölitz* 28: 196) and *Metaphysik Dohna* (*V-MP/Dohna* 28: 657).
- ¹⁴ Thus Kant claims that ‘[w]e can never be merely passive, but rather every passion is at the same time action . . . Every substance is self-active, otherwise it could not be substance . . . The substance being acted upon (*substantia patiens*) is acting in itself (*eo ipso agens*), for the accident would not inhere if the substance had no power through which it inhered in it, hence it also acts’ (*V-MP/Mron* 29: 823).
- ¹⁵ For a more detailed account of this, see Thorpe, ‘Is Kant’s realm of ends a *unum per se*? Aquinas, Suárez, Leibniz and Kant on composition’, *The British Journal for the History of Philosophy* (forthcoming).
- ¹⁶ Here Kant writes: ‘What then is genuine passivity? The acting substance (*substantia agens*) determines the power of the substance being acted upon (*substantiae patientis*) in order to produce this accident, therefore all passivity (*passio*) is nothing more than the determination of the power of the suffering substance by an outer power’ (*V-MP/Mron* 29: 823).
- ¹⁷ Thus Kant explains that one individual ‘determines the power’ of another when it removes an impediment which allows what he calls a ‘dead

power' to become a 'living power'. For example, in *Metaphysics L2* he argues that 'with a faculty we imagine only the possibility of power. Between faculty and power lies the concept of endeavor (*conatus*; *Bestrebung*). When the determining ground for an effect is internally sufficient, then it is a dead power. But when it is internally and externally sufficient, then it is a living power. Power which is merely internally sufficient, without being able to produce the effect, is always opposed to an opposing power which hinders its effect, an impediment (*impedimentum*). Thus as soon as the impediment (*impedimentum*) is removed, the dead power becomes living. (*V-MP-L2/Pölitz* 28: 565).

- ¹⁸ See also Howard Williams's paper in this volume which supports my view that according to Kant property has a metaphysical character.
- ¹⁹ Thus Kant talks of 'intelligible possession (*possessio noumenon*)', and explains that property relations are 'purely intellectual' (*MS* 6: 273).
- ²⁰ This idea of a juridical community is, of course, an ideal. In Kant's language, such a community is intelligible. The laws that actually exist have not actually been (and given their unjust nature, especially when regarded from a cosmopolitan perspective, could not be) commonly willed by the whole human race. This is why Kant believes that all property rights as they exist in the phenomenal world are provisional.
- ²¹ 'In terms of physical forces [i.e. on the phenomenal level], the payment of a debt is nothing else but an action *commissiva*' (*V-Eth/Vigil* 27: 512).

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