

5

KANT AND CLIMATE CHANGE

A Territorial Rights Approach

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Kant and Climate Ethics

Anthropogenic climate change poses a considerable threat to human life on planet Earth. Extreme weather, water stress, crop failure and the spread of diseases are among the effects of climate change that are already being felt around the globe. However, climate change does not pose a threat to *all* life: nature can certainly adapt to new conditions. The question is if *we* can adapt. Since global warming is already a reality and can no longer be averted, addressing climate change involves two types of measures: *mitigation* (attempts to curb and regulate greenhouse gas emissions and restrain individual consumer lifestyles) and *adaptation* to new living conditions (financially supporting farmers affected by droughts, relocating residents threatened by rising sea levels, addressing new epidemics and climate migration). Sadly, experience shows that the more vulnerable the population affected by the adverse effects of climate change, and the greater the danger to their subsistence and physical integrity, the less the political will to support them.

Kant's ethical theory provides normative guidance concerning our duties to others and to ourselves. It is no surprise that climate ethics has also turned to Kant and to Kantian inspired theories in search of normative principles for dealing with the challenges of climate change and spelling out what we owe to each other in this regard. While I do not dispute that there are important individual ethical duties in regard to climate change, the problem is that the focus on individual virtue and individual agency seems inadequate in the face of the urgency to mitigate the impact of climate change. Although I propose in this article a Kantian approach to climate change, I will start by explaining the limitations of applying Kant's *ethical* theory to the problem of climate change. Climate change is a global problem that calls for urgent collective action not only at the domestic level but

also at the international level. Therefore, applying a theory of individual duties to a collective, global problem is problematic. Either individuals are expected to *compensate* for the lack of juridical-political institutions with individual virtuous conduct¹ or we are applying a theory of individual ethics to political institutions. In fact, the application of Kant's ethics to political problems has been the rule in Kantian political philosophy, since Anglophone Kantians were barely acquainted with Kant's legal-political thought.²

After a brief sketch of the main tenets of Kant's ethical theory, I will analyse an interpretation of the categorical imperative as a principle of sustainability that could be applied to the issue of climate change. However, I refute this interpretation due to its problematic understanding of the universalisation procedure expressed by the categorical imperative. I then argue that using Kant's legal theory is more promising for addressing climate change due to its ability to justify externally enforceable duties and its focus on political-judicial institutions. Next, I explain how climate change can constitute a hindrance to external freedom from the perspective of Kant's legal philosophy. Because all persons have an equal original right to be somewhere on the Earth, territorial rights and border control are only permissible if those excluded have somewhere else to be. Climate change, however, poses a threat to the livelihoods and existence of the most vulnerable in the planet, who are then prevented from relocating due to the world's configuration into territorial nation states. This gives rise to specific duties of territorial states to address climate change at a global level. Finally, I conclude by making the case for securing the territorial rights of indigenous peoples for the purpose of environmental preservation and providing an alternative model for future generations.

The Categorical Imperative as a Principle of Sustainability

Kant's moral theory seems attractive for accounting for our duties to others in regard to anthropogenic climate change. Kant's moral theory is a duty based morality, meaning that obligations (rather than rights) are the fundamental ethical category.³ Further, it is principle based: according to Kant, the categorical imperative is the principle underlying all our (sincere) moral judgements, whether we are aware of this principle or not.⁴

Kant's categorical imperative principle arises from the idea that morality can only be binding if its fundamental principle can be conceived as arising from the agent's own will. If the will is free, so Kant's argument goes, then it must not be determined by external forces; but if the will is also a *causality in the world*, it must also operate in accordance with laws. From this Kant concludes that a free will must be the *source* of its own fundamental law. Kant then shows why the categorical imperative, a formal principle imposing constraints on our subjective principles of actions, which he calls *maxims*, is the only principle compatible with a free will. Action on the basis of inclinations presupposes principles that are normative *only* because they serve pre-existing inclinations of the agent. Kant calls

these conditional rational principles “hypothetical imperatives.” In contrast, the moral law must be normative regardless of what we happen to want and desire at a given moment. This view of morality is also in line with our non-philosophical, everyday understanding of *duty*; that is, the view that certain actions are morally necessary regardless of our inclinations (GMS IV: 397–401). Only conduct that is properly motivated by respect for the moral law is strictly speaking *moral* (and consequently *free*). A moral theory that does not recognise the autonomy of the will as the source of morality would necessarily conceive moral requirements as being *external* to the agent’s will. But this, Kant argues, would be incompatible with the idea that our will is free and that morality is the very expression of the freedom of the will. Therefore, morality must be conceived as arising from the autonomy of the will and its law must be purely *formal*: a requirement that our maxims (our subjective principles of volition) must have certain formal properties. Although maxims themselves are subjective principles expressing what we are setting ourselves to do and involving an implicit conception of the context and particular circumstances in which we are situated as agents, morality requires that maxims be nevertheless *fit* to become universal laws. That is, in order to be morally permissible, our maxims must be such as to be conceivable and willed as universal principles. “Act only according to that maxim through which you can at the same time will that it become a universal law” (GMS IV: 421).

Kant also offers other formulations of the categorical imperative, which are supposed to be equivalent to the first “universal law of nature” formulation (GMS IV: 421). The second formulation, prohibiting the instrumentalisation of rational agents (GMS IV: 427–428), is particularly famous for expressing the Kantian idea of respect for persons, often associated with the concept of dignity.⁵

How can the categorical imperative be applied to the problem of climate change? Martin Schönfeld proposed a naturalistic interpretation of the categorical imperative, according to which moral values mirror natural facts about the world and human nature. He argues that the categorical imperative expresses a requirement of universality that is similar to the idea of *sustainability*; just as universal lying would undermine communication, ultimately rendering particular instances of lying impossible, environmentally unsustainable maxims necessarily undermine themselves. This is why the categorical imperative can be regarded as the “naturalistic blueprint of sustainable activities” (Schönfeld, 2008, 50). According to Schönfeld, the requirement to universalise one’s maxims has the same inner logic of environmental systems: an action is rationally defensible if others can imitate it without creating a situation which would preclude future action: “as a rule, an action is wrong if its replication entails the end of replication” (Ibid., 56). It follows that morally permissible action is universalisable by virtue of being self-sustaining. A maxim of unrestrained consumption of the Earth’s resources would undermine itself and therefore be impermissible.

While this naturalistic interpretation seems at first to be only compatible with the first formulation of the categorical imperative (the so called “formula of law

of nature”), Schönfeld also applies it to the two other formulations. The second formula, commanding respect for humanity as an end in itself, is interpreted as requiring that persons be treated in accordance with their natural constitution, that is, their autonomous nature. Schönfeld argues that people naturally grow up to be independent and autonomous, and that to treat persons as ends in themselves is none other than treating them “as they are,” that is, as “potentials in time.” Moral values thus reflect natural facts about persons, not only facts and regularities in the world.

If we conceive each self-legislating agent as determining her own volition in accordance with a universal law, it is possible to think of a resulting systematic connection among all rational beings. Schönfeld sees in the third formulation of the categorical imperative (autonomy in a kingdom of ends) a future-oriented aspect of Kant’s universalisation requirement:

By a kingdom [...] I understand the systematic union of several rational beings through common laws. Now, since laws determine ends according to their universal validity, it is possible — if one abstracts from the personal differences among rational beings, and likewise from all content of their private ends — to conceive a whole of all ends (of rational beings as ends in themselves, as well as the ends of its own that each of them may set for itself) in systematic connection, i.e., a kingdom of ends, which is possible according to the above principles.

GMS IV: 433

A kingdom of ends would be *possible* if our maxims satisfy the formal requirements of the categorical imperative. Schönfeld concludes that the kingdom of ends formulation must also include future generations and requires us not to discount against the future (Schönfeld, 2008, 58).

Despite the parallels between the idea of sustainability and the categorical imperative’s universalisation requirement, Schönfeld’s interpretation is problematic. First, one can question the naturalistic interpretation of the categorical imperative. Second, Kant’s moral theory is about individual willing; that is, the quality of the agent’s maxims. One may question whether the focus on individual morality is helpful when it comes to influencing the climate system. This latter objection is not restricted to Schönfeld’s account, but would apply to any application of Kant’s *ethical* theory to climate change.⁶

How should we understand the universalisation requirement expressed by the categorical imperative? There is a tendency to interpret the categorical imperative as asking a question of the form “I want to ϕ , but what would happen if everybody ϕ -ed?”⁷ This simplistic interpretation has given rise to many misunderstandings of the universalisation procedure such as the objection that wanting to become a doctor or going through a door before someone else would fail the categorical imperative test although intuitively these are not necessarily immoral maxims.

I will argue that Kant understood universalisation as a requirement of *principle consistency*. The rationale of the requirement is not to show that I would not be able to act on my maxim if everybody did the same. Why should the thought of everybody acting like me deter me, since this is only an imaginary universalisation scenario? Instead, Kant's universalisation test reveals that the agent is making an *exception* for herself from a principle she must necessarily want others to adopt; in fact, general compliance with the principle is what makes her rule breaking possible. The procedure thus exposes the agent's *double standards*: all others should abide by the principle while I make an exception for myself. Therefore, Kant's point is not that I will not be able to get what I want if my maxim cannot be universalised. As immoral agents know well, immoral conduct such as deceiving, cheating, manipulating and so on are often the easiest and most efficient means to quick results. Kant's point is that making an exception for yourself from a principle you must want all others to respect is *immoral*. Why? Because *it violates reciprocity*. It shows that I want others to be bound by a principle I am not willing to bind myself to. I am making an exception for myself while everyone else should play by the rules. And *that* is immoral.

Kant identifies two ways in which a maxim can fail to be universalised. The first and more straightforward way is illustrated by the lying promise. The contradiction in that case is known as "contradiction in conception" because I cannot even *think* of my action as being possible in a world in which my maxim were universalised. If lying promises were the rule, I would never be able to help myself with such a strategy, since no one would believe me in the first place. But as Kant concedes, there are maxims that can very well be conceived as universal laws without undermining themselves and are nevertheless immoral. These maxims would be "sustainable" but not compatible with a substantive ideal of rational agency. Kant's example of a sustainable but immoral maxim is indifference to the plight of others. Imagine someone who adopts a maxim not to violate any rights, but not to help others either (with the willingness not to be helped in return). The agent is not free riding on the good will of others or making exceptions for herself; she doesn't help anyone but claims no one's help. This may sound like a fair deal as a form of reciprocity in a *negative sense*; I don't do anything for you and you don't need to do anything for me. The universalisation of my maxim of indifference would not undermine the possibility of ignoring the needs of others. My maxim would not undermine its own realisation when universalised. Why is it then immoral?

A maxim like this is not compatible with *rational agency as such*. It is not that it would be silly or dangerous to deprive myself of the help of others when I am in need (this would be a maxim of *prudence* rather than morality); the idea is that no rational agent could possibly *want* to voluntarily deny herself the possibility of being helped by others as a matter of principle, in return for not having to care about anyone else. This second type of contradiction, known as "contradiction in the will," is more controversial than the first "contradiction in conception"

because it does not rely on a requirement of reciprocity, but on a substantive conception of rational agency. Rational agency is about setting oneself ends and pursuing them; therefore, it cannot be rational to *choose* to deprive oneself of the possibility of achieving one's ends. Adopting a maxim of beneficence towards others is a duty because the opposite maxim is impermissible (GMS IV: 423).

Schönfeld interprets the categorical imperative as a requirement of *prudential* consistency: if I want my action to be possible in the future, I must adopt only environmentally sustainable maxims. If I want to be able to use this resource in the future, I must not deplete it. This interpretation can only give rise to what Kant called "hypothetical imperatives;" that is, imperatives of the form "if you want x, then take the necessary means y." Hypothetical imperatives presuppose that we are already committed to the end in question (because we happen to desire or want it) and command us merely to take the necessary means to that end's realization. This might work in the case of environmental policies if we are *already* motivated and committed to pursue environmental goals. But it cannot command us to adopt the end *categorically*, if we do not care about it. And this is precisely the advantage of the categorical imperative, as Kant understands it: it is a principle that commands unconditionally, regardless of one's desires and interests because ~~one is obligated:~~ "it imposes obligations that are unconditionally binding"

Another problem with Schönfeld's interpretation is that such a requirement only yields the intended results if every individual is *equally committed* to the adoption of sustainable maxims. If I am the only person adopting sustainable maxims while everyone else is polluting and exhausting natural resources, I can hardly make a difference. In contrast, the bindingness of Kantian duties does not depend on the compliance of others; even if no one else is acting morally, it is still the case that the moral law is binding for me. While ineffectiveness is no argument against moral obligation, it is questionable when it comes to tackling climate change. After all, we do want to change the world in this regard. I conclude that sustainability is a metaphor for a deeper moral intuition in Kant's moral theory, and not a moral requirement *per se*.

One could argue that the greatest limitation of Kant's ethical theory in regard to climate ethics is that it is *anthropocentric*. It is based on respect for rational nature in our person and in the person of others and therefore excludes the possibility of *direct* obligations towards the environment. However, Kant's ethical theory does not leave us with a deontological "vacuum" in regard to the environment. He accounts for duties towards non-human animals and nature in general as *indirect duties* to oneself (MS VI: 442). Cruelty to animals and wanton destruction of nature not only have a bad influence on one's moral character but they also reveal an immoral disposition. Insensitivity to beauty in nature and to the destruction of the environment reveals something very deep about oneself. A person who is cruel to animals is hardened against suffering in general. Although Kant's argument here seems to be that she poses a danger to other human beings (and this is what's bad about cruelty to animals), Kant suggests a point about moral psychology: our dispositions must be *consistent* in regard to all sentient beings. Our

I see Kant as suggesting...

emotional responses to recognition of suffering play an important role for moral judgement and moral character. Drawing a sharp line of concern between rational and non-rational sentient beings would lead to an inconsistency in our emotional responses. Although it is our duty in regard to non-human animals to refrain from cruelty and even to express *gratitude* to old domestic animals for their services (MS VI: 442), the *justification* of the duty lies ultimately in the agent herself, in her rational nature. We must thus distinguish between our attitude towards the beneficiaries of the duty, including our responsiveness to suffering in general, and the justification of the duty in rational nature. The way Kant justifies obligation as based in reason does not preclude concern for non-rational sentient beings; on the contrary, it suggests that our relation to non-human beings is the very *locus* for the development of those emotional responses, since this can be done without the danger of paternalism and unintentionally humiliating the other.⁸

Nevertheless, I will argue that the problem with applying Kant's moral theory to climate change is the *nature* of the obligations which arise within the context of climate change. Climate change affects livelihoods and ~~some~~ people, who in turn become dependent on the assistance of others in order to readapt to the new circumstances. This is not to say that individuals do not have ethical duties to do their share in mitigating climate change and to assist those in need. Therefore, my claim is not that applying Kant's moral theory to climate change leads us to wrong conclusions. Instead, the problem is that ethical duties are not externally enforceable and therefore are fully dependent on the good will of individual agents. **IMPACTS**

Since climate change ~~impacts~~ impacts people across the globe and calls for urgent collective action, it is questionable whether focusing solely on individual virtue is an adequate approach to the challenge in question. Since not everyone can be expected to fulfil their obligations, we also need to reflect about the limitations of a purely ethical, individual approach to a collective, global problem and what individuals and collective agents can be rightfully *coerced to do*. This reflection, I believe, is provided by Kant himself, when he introduced a distinction between the domain of individual virtue and the domain of coercible juridical obligations in his late work *The Metaphysics of Morals* (1797). This distinction was not yet present in Kant's earlier, foundational ethical works, the *Groundwork* and *The Critique of Practical Reason*.⁹ As Kant explains in the introduction to *The Metaphysics of Morals*, the difference between the domain of Ethics or Virtue (*Tugend*) and the domain of Right (*Ius, Recht*) lies in their respective kind of *lawgiving* (*Gesetzgebung*). Ethics and Right connect different incentives to the law:

That lawgiving which makes an action a duty and also makes this duty the incentive is called *ethical*. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is *juridical*.

MS VI: 218

The incentive in ethics must be *respect* for the moral law. The constraint in this case must be self-imposed and thus *internal*: it does not make sense to coerce someone to be moral, since moral motivation is something that only the agent herself can do. One can only be coerced to external actions, not to *willing* a principle. In contrast, the domain of Right does not require ethical motivation: mere external compliance with laws is sufficient. Since Right does not require ethical motivation, it is possible to coerce and provide external incentives for compliance with juridical laws (for instance, sanctions).¹⁰

Climate change is a global phenomenon involving the actions of many individuals and affecting many others. Addressing climate change will thus require external regulation and coordination at global level. This calls for more than individual will: collective, that is, *political* action. Climate change thus raises the question of what kinds of actions we can *impose* on others externally, rather than merely appealing to their conscience. Actions that can be externally coerced are the object of Kant's legal theory.¹¹

Kant's Legal Theory and Climate Change

Kant's legal theory is concerned with the regulation of external interactions between persons, so that individual spheres of external freedom and subjective rights are mutually compatible and protected. While ethics has to do with internal freedom, that is, with the *quality* of the agent's willing, external freedom concerns the possibility of physical interaction between embodied persons in space. A person's choices have an external impact on the choices of others. The task of Right (*Recht*)¹² is to make these choices compatible with each other. As Kant puts it, Right "is the sum of the conditions under which the choice (*Willkür*) of one can be united with the choice of another in accordance with a universal law of freedom" (MS 6: 230).

One may think that, from a Kantian perspective, morality fully answers the question of which actions we can impose on others. "Treat others as ends in themselves and never as mere means" would be all the guidance we need in our relations with others. However, Kant's legal theory reveals a more complex picture. Not everything one does to others *externally* is in accordance with Right, even if one's underlying intentions are morally good. To use an explanation offered by Hart, one must imagine each person as having an equal sphere of freedom (Hart, 1995). Our task is to regulate the relations among those equal spheres of freedom, thereby integrating them in a coordinated *system*. Moral motivation alone cannot secure this coordination, since the task at hand requires more than the quality of my volition. Having a plurality of well-meaning drivers does not secure a well-coordinated traffic system. It is not a matter of individual character or good will, but of external regulation.

Since we share the planet with each other, interaction is unavoidable; sooner or later the impact of our actions will be felt by others. Climate change perfectly

illustrates the fundamental problem of Right: actions on one part of the planet are affecting persons in other locations. But this impact must be understood in terms of *external freedom*, or precisely as a ~~constraint~~ of external freedom. Since one can easily trespass on the sphere of external freedom of another person, our interactions must be regulated to preserve each person's equal sphere of freedom. As Hart puts it, we must maintain an "equal distribution of restrictions and so of freedom" among persons (Ibid., 191). For this, Kant proposes a formal principle requiring that our capacity to impose an obligation on each other be *symmetric*. Normatively speaking, I am unable to bind you in a way you could not bind me in return. Otherwise we would not be equals in ~~external freedom~~; one of us would be free and the other a slave. A slave is someone who has no say in regard to her external freedom; that is, she cannot *bind* other persons to respect her external freedom.

Violation

jurisical status

However, one may also choose to restrict one's own sphere of freedom, such as in contracts. You may acquire a claim to a certain action or performance of mine that I do not have on you. I would be binding myself to you in a way you are not bound in return. The reason this is still compatible with *Recht* is that I *chose* to enter a contract with you. It would be problematic if your interference on my sphere of freedom has nothing to do with my consent, which is required since I am the one with the *authority* to decide over my own sphere of freedom. But there are things one may impose on me, whether I want it or not. The central idea of Kant's legal philosophy is that reason can provide the principles that will ensure that nothing is externally imposed on others *arbitrarily*, that is, without the *authority* to do so. This fundamental principle of reason is the principle of right. "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" (MS 6: 231).

It is important to note that Kant is talking about *Willkür* (usually translated as "choice") and not about *Wille*, as in his moral theory. This is a significant point, since Kant associates *Wille* with the noumenal self and transcendental freedom and *Willkür* with the phenomenal self, that is, ourselves as appearances in time and space. Since we are regarding ourselves as phenomena, as embodied beings in space, the internal quality of one's maxim is *secondary*; what is important is that one's action can coexist externally with the equal freedom of choice of another; that is, *we do not violate another's authority over her own domain of external freedom*. Imagine I took away your coat to give to someone who needs it more. After all, you have many coats and don't even seem to care about that one. However, my good intention, the greater need of another person, and your abundance of resources do not allow me to take away your coat, which is your property; that is, something belonging to your sphere of external freedom.

This may sound terribly wrong. How can one defend the right to private property while allowing the more fundamental needs of others to be neglected, especially when the property in question seems such a trifle to its wealthy owner?

It seems morally intuitive that private property should be conditional on moral considerations permitting or forbidding the control of a certain resource or object depending on the circumstances. But this is not the point. The idea is that, formally speaking, I am imposing something on you I have no *authority* to do, even if I have the best moral reasons on my side. I am transgressing into your sphere of external freedom. This does not mean that private property is absolute. For instance, Kant argues that the state has the *right* to tax the wealthy to maintain those unable to provide for themselves. As an individual I have no authority to impose this on you, but the state, as a public institution, does have this authority:

The wealthy have acquired an obligation to the commonwealth since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens.

MS VI: 326

The state has the *authority* to redistribute (taxing the wealthy) while individuals living together in a civil condition cannot impose this on each other. The question is thus not whether property rights are absolute but *what* can be externally imposed and *who* has the authority to impose it. Kant observes that if an action violates external freedom, hindering that action would be compatible with right (MS VI: 231–232). The possibility of coercion is thus implicit in the very concept of a right. An action that cancels a violation of external freedom would actually be right (“a hindrance of a hindrance to freedom”). But this does not mean that whoever *has a right* also has the authority to enforce that right. One also needs the *authority* to coerce. One may agree with Locke that anyone who “is in the right” has such an authority. Kant denies that individuals have the authority to coerce each other externally even though their rights are violated. This follows from their radical equality. Making justice with one’s own hands is indeed inevitable in the state of nature. The state of nature is a situation in which individuals must follow their private judgements about rights (and their own conscience, as in ethics). But even if we assumed that individuals will act in their best moral knowledge and conscientiously, they are acting *unilaterally*. As *private persons* individuals lack the authority to coerce. For this we need political representation and public institutions. We thus have a duty to leave the state of nature and are exceptionally authorised to coerce others for that purpose (MS VI: 307; Pinheiro Walla, 2014).

Climate change is caused by the *externalities* of our current lifestyles. Whether these actions were *intentionally* harmful is irrelevant to *Right*. What is significant is whether they impact on the external freedom of other persons in a way that is incompatible with their equal external freedom. I have argued that Kant’s legal theory is more promising than his ethical theory when it comes to climate change because it is concerned with duties that can be externally coerced and does not

require virtuous motivation from agents. However, one may wonder if Kant's legal theory is truly helpful when it comes to climate change policy and regulations. Since external freedom is at the core of Kant's legal theory, one would have to show that environmentally harmful practices are incompatible with external freedom. However, changes to the environment *per se* do not seem to count as violations of external freedom (Ataner, 2012, 142). Arthur Ripstein notes that if a person acquires one object ahead of another, say, the last quart of milk available at the supermarket, she is not violating the right of the person who came later and was left empty-handed. This is because the person who came after her had no claim to that last quart of milk. There was no interference with her capacity to exercise external freedom (Ripstein, 2009, 16). Are the climate conditions we are now generating to be understood in the same way as Ripstein's last quart of milk scenario, namely, as a change in the environment that does not amount to an interference with one's capacity to exercise external freedom?

First we must ask ourselves what counts as an interference with one's capacity to exercise external freedom, in other words, what amounts to a violation of right from the perspective of Kant's legal philosophy. External freedom can only be restricted by some form of external hindrance. But not all forms of external hindrances are unlawful; in fact, coercion may be justified if it protects external freedom from arbitrary interference (MS VI: 231). Further, Kant's legal theory is *relational*. A state of affairs that constrains the scope of my choices is *per se* not necessarily an unjustified interference of my external freedom. A violation of external freedom is the result of another's exercise of external freedom overstepping the boundaries of reciprocal external relations. In other words: someone must be violating another's equal entitlement to freedom from interference in such a way that she is imposing a constraint on another that she is herself not subjected to. She is therefore violating the reciprocity requirement that is fundamental for legal relations; that is, negating another person's equal juridical standing. For my argument, I need to show that climate change amounts to an unlawful restriction of external freedom in the relevant sense, that is, climate change does not merely impact on people's freedom but is incompatible with the equal juridical standing of all persons as members of a global community.

Elsewhere I have argued that Kant based both the territorial rights of states as well as the right to be admitted in a foreign territory in case of necessity on the same principle, namely, original community of land (*communio fundi originaria*) (Pinheiro Walla, 2016). According to Kant, persons have an original right to be wherever nature or chance (*apart from their will*) has placed them (MS VI: 262, my emphasis). Originally, no one had more right than another to be on a place on the Earth (ZeF VIII: 358). Although one can acquire a right to control territory due to prolonged possession of land, this right is not absolute. While host countries maintain the right to refuse *voluntary* interactions under the condition that they do not treat peaceful visitors with hostility, they have no right to refuse those whose interaction is *involuntary*. If all persons have an equal original right to exist on the

planet, and no one has the authority to bind others in a way others could not bind her in return, one cannot be obligated to respect the occupation of space of others when this entails her being deprived of a place in which she can exist.

Depletion and destruction of specific natural resources can amount to a direct violation of external freedom. For instance, when irresponsible exploitation of natural resources by a mining company leads to the poisoning of a local community's water sources and soil. The violation in this case consists not only of a negligent destruction of the community's means of survival within the territory they occupy, but is also a violation of their physical integrity, given the threat the pollution poses to their health, wellbeing and livelihoods. However, arguing that climate change *in general* amounts to a violation of external freedom is more complex, since identifying perpetrators and quantifying their specific impact on those adversely affected on other parts of the globe is difficult, if not impossible. It is certain, however, that the livelihoods of communities from poorer areas of the planet are being threatened by climate change. Where adaptation costs cannot be met locally, migration may be the only viable solution. This is where territory becomes relevant to the philosophical debate on climate change.

Borders impose constraints on the mobility of individuals and limit their access to opportunities. In some cases, even the basic ability of affected persons to provide for themselves may be compromised if they are prevented from trying their luck elsewhere. The "negative" answer to the threat of climate change would be thus unrestricted global freedom of movement for climate change refugees. This would enable a geographical redistribution of the Earth's population away from areas rendered inhabitable, inhospitable or with no adaptation resources. The problem with the negative solution is that today's global configuration in territorial states does not allow such global mobility to the world's poor, even less global mobility *en masse*. A "positive" alternative, provided by wealthier states bilaterally in order to avoid mass migration is financial aid for adaptation within the affected territory.¹³

Therefore, while climate change is not a *direct* violation of external freedom, closing off adaptation possibilities to climate change refugees is. This is because of the asymmetry in the way restrictions to external freedom are distributed. Those most severely affected by climate change are also most restricted in their possibility to adapt. Occupying territory is permissible under the assumption that other people have somewhere else to be and will not be under life threat if denied entrance. The natural conclusion would be that climate change would require states to open their borders to those affected by climate change, allowing a geographic redistribution of the Earth's population for the purpose of adaptation to the new global conditions. But states are *unwilling* to admit foreigners into their territory. It follows that territorial statehood gives rise to special obligations towards those affected by climate change, especially climate change refugees and climate change migrants *by virtue of their territorial rights*. The global community of states has thus a special duty to provide a satisfactory alternative arrangement

to unrestricted global mobility. This would involve not only a duty to mitigate climate change, but also a duty to provide assistance to those affected by climate change to adapt to the new global conditions.

Indigenous Territorial Rights: Preservation and Imagination

I argued that states have a juridical duty to implement global regulations to address climate change by virtue of their control of territory and restriction of the global mobility required for climate change adaptation. But is this helpful, given the urgency of the problem and the slow pace of international action? Despite the warnings of scientists and activists, states are too slow and reluctant to take action. In this final section, I will suggest one possible way to address climate change which seems more feasible in the face of international political inaction, because it is *conservative*.

Much of the climate change discussion in ethics is focused on the moral justification for curbing carbon emissions and the fair distribution of the costs of climate change mitigation and adaptation (Broome 2012; Caney 2009). This approach takes for granted our current lifestyles and conception of what land is and how to relate to it. The question is how to keep climate change under control and distribute burdens and costs between differently situated global actors. In the meantime, indigenous groups in different parts of the globe are struggling to protect their ancestral lands against allegedly more urgent energy and economic needs. Indigenous peoples' territories cover around 24% of all land worldwide and hosts 80% of the planet's biodiversity (UNPFII factsheet, no date). And yet, because their lands are resource rich and they often suffer discrimination within their respective legal systems, indigenous peoples are being systematically dispossessed and murdered. Indigenous women are particularly at risk (Permanent Forum on Indigenous Issues, 2019).

Securing indigenous land rights would be a way to preserve the remaining biodiversity of the planet, provided indigenous groups remain committed to land stewardship and sustainability. Therefore, environmental regulations should also apply to their use of the land. Since this is a conservative strategy, it is arguably less demanding than setting up still inexistent international institutions with adequate coercive powers or even getting global actors to agree to take action, although it is not meant to *replace* these measures either. Indigenous peoples can also provide an invaluable contribution to the climate change debates and policies. As Krushil Watene and Many Yap argued, focusing on Māori and Aboriginal peoples, indigenous peoples can significantly contribute to sustainable development goals with their traditional knowledge in the management of land, water and natural resources, and even with their specific cultural values, but are rarely included in such discussions. They also stress the need of indigenous self-determination for the possibility of such contributions (Watene and Yap, 2015, 51–55).

The existence of indigenous peoples and groups who relate to land in non-exploitative, respectful and sustainable ways is for all nations on the Earth and for future generations both an important alternative model and an ideal for long-term change. This is because being aware of the possibility of relating to land otherwise, that is, with emotional attachment, local knowledge and respect (where these relations to land still exist) enables us to question and in the long term revise the way we relate to the planet, which otherwise may be taken for granted. This is in fact a Kantian idea. Kant argues that in certain cases radical political reform may be too hasty (ZcF VIII: 347). This may be because the people's mentality is not ready for change or for other pragmatic reasons. In this case, we should not attempt to implement change at any costs, since this could undermine the end we are trying to promote. It is therefore permissible to postpone reforms provided the end *is not made impossible* in the future.¹⁴ In the same vein, although it is unrealistic to expect a radical change in our present relation to land, the existence of alternative models can help us reflect deeper about own ways and *keeps open* the possibility of change, especially for future generations.

In this chapter, I explained why applying Kant's ethics to climate change has limitations. I proposed applying Kant's legal-political philosophy and considering the territorial aspect of the problem of climate change for understanding our global duties in regard to climate change. I suggested that respecting the territorial rights of indigenous peoples would be a possible way to protect areas which are still untouched by environmental destruction, and that it would also provide an alternative ideal for possible long-term change.

Since the institutions able to enforce climate regulations and effectively protect indigenous territorial rights are still nonexistent and we still depend on the willingness of states to put them in place, we must rely on individuals to put pressure on their national governments and call for their implementation. In other words, we are still addressing rights violations as matters of individual virtue. But this does not mean that our duties to each other in the face of global warming are only duties of virtue. I argued that the territorial character of nation states and their desire to protect borders and prevent global migration as a means to climate change adaptation give rise to stringent duties of right to mitigate climate change and provide adequate support to those worst affected by it. Addressing the global issue of climate change is thus required by the equal juridical status of all persons in a world of hard borders and territorial states.¹⁵

Notes

- 1 This would also explain why trying to tackle climate change individually (by radically changing one's lifestyle and perhaps engaging in activism) could become extremely demanding for the individual in question, depending on the external circumstances. The source of moral demandingness arises in this case from the fact that individuals would be compensating for the lack of political institutions with their personal conduct. On the other hand, one could argue that individuals have a duty to implement and promote juridical-political institutions.

- 2 This “applied ethics” approach was famously adopted by John Rawls. Given the growing number of scholarly works on Kant’s legal-political thought in the last twenty years, this area of Kant’s practical philosophy has been receiving more attention in political philosophy (see for instance Byrd and Hruschka, 2010; Ellis, 2005; Ripstein, 2009; Flikschuh, 2000).
- 3 Kant’s works are cited in accordance with the volume and page numbers of the standard edition of Kant’s works (*Akademieausgabe*). I use Jens Timmermann’s facing-page edition of the *Groundwork* and his revised version of Mary Gregor’s (1996) English translation. All other translations are from *The Cambridge Edition of Kant’s Works*, published by Cambridge University Press. I use the following abbreviations:

GMS *Groundwork of the Metaphysics of Morals*
 MS *The Metaphysics of Morals*
 ZeF *Towards Perpetual Peace*

- 4 It is not Kant’s intention to provide a new principle for morality. The categorical imperative is supposed to be the formulation implicit in everyday moral reasoning, but in obscure form (GMS IV: 403–404). See also Timmermann (2007, xii).
- 5 It is noteworthy that the concept of dignity actually appears for the first time in the *Groundwork* in connection with the third formula, “Autonomy in a Kingdom of Ends,” and not with the “Humanity as an end in itself” formula. See GMS IV: 433–34.
- 6 As I will explain later, Kant distinguished between the ethical and the juridical domain in his later works. While his ethics has to do with individual duties of virtue, the juridical domain covers duties that are externally enforceable. I will argue that Kant’s legal-political philosophy may be a more promising aspect of his theory for addressing climate change than an application of his ethical theory.
- 7 This oversimplified understanding of the rationale of the categorical imperative procedure is the basis of the famous Morgenbesser Kant anecdote:

[Morgenbesser] was smoking in the subway. A transit cop came up to Professor Morgenbesser and demanded that he put out his pipe. “What if everyone smoked?” the cop said, reprovingly. “Who are you—Kant?” the irritated professor asked, whereupon the policeman, misunderstanding “Kant” as something else, hauled Sidney Morgenbesser off to the precinct house.

Denby, 1996, 250

- 8 When discharging our duties towards other persons, especially meritorious duties or duties of virtue, it is particularly important to avoid humiliating the beneficiary, who is put in a situation of indebtedness to the benefactor (MS VI: 453, §31). Also, when helping others, it is important to take into account their permissible ends and not attempt to make them happy against their wishes and conception of happiness (MS VI: 388). This worry does not arise in regard to animals, although we must bear in mind their species-specific wellbeing.
- 9 For an account of the development of Kant’s practical philosophy, see Wood (2002).
- 10 Kant notes that although the juridical domain does not require it, it is still possible to comply with juridical duties with ethical motivation:

It is no duty of virtue to keep one’s promises but a duty of right, to which one can be coerced. But it is still a virtuous action (a proof of virtue) to do it even

where no coercion may be *applied*. The doctrine of right and the doctrine of virtue are therefore distinguished not so much by their different duties as by the difference in their lawgiving which connects one incentive or the other with the law.

MS VI: 220

- 11 One could argue that it is the ethical duty of individuals to create the institutions which will uphold and enforce our duties to others (for instance, the duty to support those who cannot provide for themselves). Individuals would thus transfer at least some of their ethical duties to more efficient institutions, which would also help to take the burden off each individual's shoulders. But there is a question we are forgetting to ask: what can institutions *impose* on people? Certainly not the enforcement of ethical duties *qua ethical duties*. This would amount to paternalism from a Kantian perspective. Institutions can only externally impose what is compatible with the external freedom of individuals. This is the view I develop in the next section.
- 12 I will be using the awkward term "Right" as a translation of the German "Recht" for lack of a better term. *Recht* is closer in meaning to the idea of rule of law than to justice or law.
- 13 This has been US policy in Central America. For instance, financial aid has been provided to coffee farmers in Guatemala in the hope of curbing immigration to the US (Semple, 2019).
- 14 This also applies to Kant's theory of peace. Even though peace may not be achievable in our lifetime, it is important to preserve the conditions under which a future peace would not be precluded. Kant provides principles for the achievement of peace in the form of articles in *Towards Perpetual Peace*.
- 15 I would like to thank Ben Eggleston and Dale Miller for their invaluable feedback on earlier versions of this article and audiences at Tel Aviv University, Heinrich-Heine University of Düsseldorf, and at the University of Oslo for very helpful discussions.

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