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*A Kantian Argument for Sustainable Property Use*

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**Abstract**

The paper lays the foundations for a duty of sustainable property use based on Kant’s *Doctrine of Right*. In doing so, it contributes to the project of extending the application of Kant’s philosophy to environmental issues so as to include his legal-political philosophy. After providing some context, focusing in particular on Kant’s property argument, I present and critically evaluate a recent argument for a duty of sustainable property use, put forward by Attila Ataner. Then, I draw on Reinhard Brandt’s and Katrin Flikschuh’s interpretation of Kant’s permissive law in order to develop my own argument. According to my account, the duty of sustainable property use is rooted in Kant’s property argument, it is best construed in terms of interpersonal freedom, and it has a structure resembling that of duties of distributive justice. Unlike Ataner’s, my argument proceeds entirely within the domain of interpersonal freedom; it focuses clearly on the normative sense of usability; it does not overgenerate obligations; and it categorises the duty of sustainable property use within Kant’s taxonomy of duties. It thus constitutes a promising starting point to further investigate the connection between sustainability, Kant’s property argument and its use of a permissive law, and the Universal Principle of Right.

**Introduction**

Usually, when it comes to addressing environmental issues, Kant’s philosophy is not considered a primary theoretical option, mainly due to its anthropocentrism and its failure to establish direct obligations toward animals and the environment. Its status within this debate has gradually changed thanks to the work of many Kantian scholars, who showed that Kant’s philosophy can contribute significantly to the discussion, and of authors who adopted a Kantian approach to address environmental issues.[[1]](#footnote-1)

It was only very recently that the focus has come to include Kant’s legal-political philosophy.[[2]](#footnote-2) The latter’s appeal, particularly compared to Kant’s ethics, consists in its being concerned not with what individuals ought to do as a matter of virtue, as a result of their inner morally good disposition, but rather with what they can be legitimately *forced* to do.[[3]](#footnote-3) For example, Alice Pinheiro Walla writes 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».[[4]](#footnote-4) The reasoning is that due to the urgency to effect large-scale changes we cannot afford to rely on the good will of individuals. While this is reasonable, it should also be highlighted that the efforts of considering environmental issues from the perspective of Kant’s legal-political philosophy are meant to *complement*, rather than replace, the contributions in other fields, especially in ethics.

This paper contributes to the project of applying Kant’s legal-political philosophy to environmental issues. My goal is to argue that Kant’s property argument in the *Doctrine of Right,* suitably construed, can be used to establish a duty that property be used sustainably (i.e. a duty of sustainable property use).[[5]](#footnote-5) My main concern in doing so is not exegetical: my argument is, rather, that we can (and should) use Kant’s theory to establish such a duty. At the same time, I do not aim to provide a full account of how to establish a duty of sustainable property use, or a complete defence of it: I will have achieved my goal if the reader considers my argument a promising basis for doing both.

In the first section, I provide some context by introducing the relevant elements of Kant’s legal-political philosophy, particularly his property argument with its appeal to a permissive law. In the second section, I present a recent attempt to establish a Kantian duty for sustainable property use, put forward by Attila Ataner.[[6]](#footnote-6) In the third section, I raise four points concerning Ataner’s argument: that it overlooks a gap between the ‘arelational’ sense of freedom it introduces and the deeply relational protectionist duties it advocates; that it equivocates between factual and normative senses of usability; that it overgenerates obligations; and that it does not sufficiently clarify to whom the duty at issue is owed. In the fourth section, I introduce the main resource for my own argument, namely the interpretation of Kant’s permissive law put forward by Reinhard Brandt and Katrin Flikschuh.[[7]](#footnote-7) According to this interpretation, Kant’s property argument introduces a unique and exceptional kind of practical justification, through which the dimension of *time* enters his legal-political philosophy. In the fifth section, I use this interpretation to argue that Kant’s property argument can plausibly generate a duty of sustainable property use, and assess my proposal in light of the points raised in section three. In the sixth and last section, I suggest that unsustainable property use is best characterised as a formal wrong, and briefly outline the rationale for sanctioning it.

**1. Context: Right and Kant’s Property Argument**

In this section, I provide the context to my discussion by introducing some basic elements of Kant’s legal-political philosophy and his property argument. These constitute the background both of my argument for a duty of sustainable property use and of Ataner’s argument to the same effect (which I discuss in the next two sections).

In the introduction to the Doctrine of Right, Kant defines Right as «the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom» (*RL*, AA VI 230), and introduces the Universal 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» (*RL*, AA VI 230). Both Kant’s definition of Right and the Universal Principle of Right involve the idea that the freedom of individuals must be be reciprocally compatible.[[8]](#footnote-8) The freedom at issue here, and in the Doctrine of Right more generally, is external freedom, which has to do «merely [with] external actions» (*MS*, AA VI 214). The relevant moral laws in this sphere refer to freedom «in the external use of choice [*Willkür*]» (*MS*, AA VI 214), and choice is to be contrasted with mere wish, «on the grounds that to choose something, a person must take himself to have the means available to achieve it».[[9]](#footnote-9) Moreover, unlike ethics, Right is about how individuals «can be forced to interact»:[[10]](#footnote-10) a right just is the authorisation to coerce others to comply with it (*RL*, AA VI 232).

A state of nature is a condition in which «each has its own *right* to do what seems right and good to it, and not to be dependent upon another’s opinion about this» (*RL*, AA VI 312, emphases modified). In such a condition, individuals have a right to freedom, which is original in that it «belongs to everyone by nature, independently of any act that would establish a right» (*RL*, AA VI 237). This is a right to «Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law» (*RL*, AA VI 237). Such a right contains several «authorisations» that are «not really distinct from it (as if they were members of the division of some higher concept of a right)» (*RL*, AA VI 238), such as innate equality.[[11]](#footnote-11) Moreover, by virtue of the original or innate right to freedom, individuals in the state of nature are entitled to their bodily integrity and to the use of external objects. Such a use falls under «physical», «sensible», or «empirical» possession (*RL*, AA VI 245; *RL*, AA VI 248; emphases removed): if someone were to wrest an apple from me, they would be wronging me just as if they infringed on my bodily rights (*RL*, AA VI 247). However, at this stage, individuals lack rights to property in external objects, which involve «intelligible possession», namely «possession of an object without holding it» (*RL*, AA VI 245, emphasis removed). Establishing property rights is the main goal of Kant’s property argument.[[12]](#footnote-12)

Kant’s property argument seeks to overcome a tension. On the one hand, one’s unilateral acquisition of some object violates everyone else’s innate right to freedom. It modifies others’ normative situation by unilaterally imposing on them a previously non-existing obligation to refrain from using that object without one’s consent. This is incompatible with the requirement, enshrined in the Universal Principle of Right, that everyone’s spheres of freedom be compossible. On the other hand, if everyone were to refrain from acquiring external objects, Reason would have to give up, as impossible, the extension of its principles to a sphere of potential application. Put succinctly, then, an act of unilateral acquisition is both a violation of the Universal Principle of Right and necessary for the possibility of property rights.

Kant solves this problem by introducing the «Postulate of practical reason with regard to rights» (*RL*, AA VI 246):

It is possible to have any external object of my choice as mine, that is [:] a maxim by which, if it were to become a law, an object would in itself (objectively) have to belong to no one (res nullius) is contrary to right. (*RL*, AA VI 246, emphases removed)

Kant calls the postulate a «permissive law*»* (*RL*, AA VI 247), explaining that it

gives us an authorisation that could not be got from mere concepts of Right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession. Reason wills that this hold as a principle, and it does this as *practical* reason, which extends itself a priori by this postulate of reason. (*RL*, AA VI 247)

The authorisation to unilaterally impose obligations on others makes provisional property rights possible in the state of nature, but it does so only *in view of* exiting the state of nature and entering a rightful condition.[[13]](#footnote-13) A unilateral claim to property involves «acknowledging that I in turn am under obligation to every other to refrain from using what is externally his» (*RL*, AA VI 255). However, in order for this reciprocal obligation to be legitimately coercible, individuals need assurance from a sufficiently powerful third party that their rights vis-à-vis each other will be respected, and from this follows the duty to exit the state of nature.[[14]](#footnote-14)

For present purposes, the most important element of Kant’s property argument is its forward-looking, prospective nature, namely the fact that it provisionally justifies property rights on the basis of a future establishment of full, peremptory relations of Right. I return to Kant’s property argument, and particularly to its temporal dimension, in section four. In the next two sections, I present and critically discuss a recent argument for a Kantian duty of sustainable property use.

**2. A Recent Argument for a Kantian Duty of Sustainable Property Use**

In his *Kant on Freedom, Property Right, and Environmental Protection*, Attila Ataner argues that «owners of finite natural resources … owe duties of forbearance with respect to their holdings, i.e., duties not to destroy or dissipate (or use non-sustainably) such resources».[[15]](#footnote-15) In doing so, he rejects what he calls the «absolutist» conception of property, according to which one’s entitlement with regard to property is per se absolute, and in particular includes a right of disposal (*jus abutendi*) which allows the squandering and wasting of the property in question.[[16]](#footnote-16) Such a conception is at odds with sustainability as a necessary condition for the survival of the human species on the planet: although, that is, one should not squander natural resources as a matter of virtue, according to this conception in doing so one does not wrong anyone. Any external interference with that activity would prevent one from treating one’s property as one sees fit, and, as such, would be unwarranted.

Ataner’s argument against this conception and in favour of «preservationist duties»[[17]](#footnote-17) with regard to property covers a lot of ground. In what follows, I limit myself to the essential steps for my subsequent discussion. Ataner begins by introducing Kant’s property argument in the *Doctrine of Right*, which I summarised in the previous section. After doing so, he argues that freedom in the sphere of Right cannot be reduced to a merely interpersonal, contrastive matter. His main target here is Arthur Ripstein’s influential republican interpretation of freedom in the sphere of Right. According to the latter, the right to freedom as independence is a right to be «[one’s] own master» (RL, AA VI 238) in the «contrastive and interpersonal» sense of having «no other master».[[18]](#footnote-18) According to Ataner, instead, there is a prior, and essentially *material* aspect to freedom in the sphere of Right, which has important implications on the relation between individuals and the environment. The individual’s freedom, that is, is expressed first in an absolute possibility of dominion over anything that is non-human – entities that are unfree and, as such, unable per se to have duties and rights.[[19]](#footnote-19)

It is on the basis of this interpretation of freedom that Ataner develops his subsequent argument:

Kant … insists that property ownership must be possible as a matter of Right; otherwise our freedom, *our capacity to act effectively in the world*, would be radically inhibited. This simply follows from the Juridical Postulate, pursuant to which any unowned object (res nullius) must be available for acquisition. But if property is so utterly crucial to freedom, if the rightful use of evidently usable things is so very vital to *our ability to have actual presence and effective agency in the world*, then the destruction of evidently usable things (even where they are already owned) would appear to contradict the core logic, the underlying rationale, of property, for the simple reason that destruction renders usable things no longer usable. The logic of freedom (the “laws of freedom”) as applied to property rights suggests that ownership of things is supposed to enhance the freedom of owners. (ATANER, *Kant on Freedom*, pp. 119-120, emphases added)

According to Kant, the authorisation of an act of first acquisition via a permissive law makes property possible *in view of* the establishment of a civil condition. However, Ataner adds, the rationale for introducing a permissive law (enabling freedom) also generates a duty against the unsustainable use of property. Freedom, even prior to its interpersonal meaning, consists in the affirmation of the human will over unfree nature. Property over things is the paradigmatic instance of such a process. From this, Ataner concludes, the destruction of one’s property is a negation of freedom – more precisely, of the «material (pre)conditions of freedom»,[[20]](#footnote-20) and indeed runs counter the rationale for invoking a permissive law in the first place:

[T]he destruction of one’s own finite, non-renewable resources is patently self-contradictory: for example, it is simply not rational for a land-owner to destroy (for example, to permanently poison or flood or irradiate) the land he inhabits. Would not such a land-owner, to use Kant’s own language, “be putting usable objects [namely his own land] beyond any possibility of being used” and would he not, in other words, “annihilate [it, the land] in a practical respect and make them into res nullius”? (ATANER, *Kant on Freedom*, p. 120)

This section outlined Ataner’s argument for preservationist duties with regard to property. In the next section, I raise four objections against it, before introducing some further preliminaries to my argument for a duty of sustainable property use in section four, and then developing it in section five.

**3. Objections to Ataner’s argument**

The first objection concerns Ataner’s interpretation of freedom in the sphere of Right.[[21]](#footnote-21) As we have seen, Ataner argues that there is a sense of freedom which manifests itself prior to interpersonal relations of external freedom. However, it is unclear how he moves from this arelational[[22]](#footnote-22) sense of freedom to a deeply relational grounding of protectionist duties. Ultimately, Ataner does see these duties as owed to «humanity in general»,[[23]](#footnote-23) rather than to specific individuals (see below in this section). But, his argument to establish such duties involves a reference to other free wills just as much as Kant’s original property argument does.[[24]](#footnote-24)

The second objection is that Ataner equivocates between a factual and a normative meaning of the notion of usability in his analysis of Kant’s argument. For example, consider the last quotation in the previous section. There, Ataner seems to overlook that Kant’s focus is on the annihilation of objects «in a practical respect [*in praktischer Rücksicht*]» (*RL*, AA VI 250). Kant, I believe, is not concerned with the factual usability of things, but rather with whether property can be had consistently with the Universal Principle of Right. Although Ataner’s main goal is not exegetical, this has philosophical implications on his subsequent argument: save for, perhaps, his appeal to the alleged ‘material conditions of freedom’, there seems to be no (non-interpersonal) reason why the destruction of one’s property would not fall under the prerogatives of the owner, and thus conform to the Universal Principle of Right.[[25]](#footnote-25)

The third objection is that Ataner’s account overgenerates prohibitions. For one thing, he often uses terms such as ‘destroy’, and ‘use non-sustainably’ as if they were synonymous. Furthermore, phrases such as «property holdings, especially … finite depletable resources»[[26]](#footnote-26) invite the question whether, on his account, one is entitled to ‘destroy’ anything one owns at all. At this point, we might say, the line between *destroying* and merely *consuming* becomes blurred. Nor can Ataner appeal to the intentions behind acts to distinguish between the two: at least in this case, doing so would seem to point to an ethical duty, rather than a duty of Right. My third objection is also prompted by a lack of clarity on Ataner’s part between the usability of resources *de re* and *de dicto*. At points, that is, Ataner seems to argue against the destruction of a specific, self-same object, whereas, I believe, his actual target is meant to be the destruction of objects *de dicto*.[[27]](#footnote-27) The reason is that only the latter preserves the possibility of *replacing* a certain object (*de re*), which falls precisely under the heading of sustainable use (think about, for example, reforestation). In other words, we should be using Kant to argue clearly for the *sustainable use* of property, as I shall do in the next section.[[28]](#footnote-28)

A final objection is that Ataner does not elaborate on *to whom* his preservationist duties are owed. Ataner does compare them to various duties in Kant’s theory (most importantly, the duty of truthfulness),[[29]](#footnote-29) mentioning how their violation might be a wrong against «humanity in general».[[30]](#footnote-30) However, he does not attempt a categorisation of the duties in question within Kant’s system of duties. Doing so is important for systematic reasons, primarily to assign the duty of sustainable property use to the sphere of Right as opposed to ethics.[[31]](#footnote-31) But it is also important for pragmatic reasons: think, for example, about whether sanctions may be incurred in upon violation of the duty (I return to this in section six).[[32]](#footnote-32)

**4. Back to Kant’s Permissive Law**

As a preliminary element for the argument in the next section, I would like to go back to the forward-looking, prospective aspect of Kant’s property argument invoking a permissive law.[[33]](#footnote-33) Earlier we saw that a permissive law authorises unilateral acquisition of objects only *in view of* exiting the state of nature and entering a civil condition. Building on Reinhardt Brandt’s interpretation, Katrin Flikschuh characterises the acknowledgment that, upon my act of first acquisition, «I in turn am under obligation to every other to refrain from using what is externally his» (*RL*, AA VI 255), as a «reflective acknowledgement of the fact that any exercise of … freedom of choice and action entails obligations of justice towards others».[[34]](#footnote-34) Such reciprocal obligations do not arise out of the good will of individuals, nor does the permissive law «concede authority to individuals’ unilateral wills».[[35]](#footnote-35) Rather,

the authority behind the postulate’s special authorisation is grounded in reason itself: *reason* wills that the postulate hold as a principle of pure practical reason. But if it is *reason* which authorises this special permission, then those whom the *lex permissiva* authorises to take into possession external objects of their choice must be acting within the constraints of reason. (FLIKSCHUH, *Kant and Modern Political Philosophy*, p. 141)

As argued by both Brandt and Flikschuh, through the forward-looking, prospective aspect of Kant’s property argument, a *temporal* dimension enters the structure of Kant’s *Doctrine of Right*. More specifically, the permissive law at work in the property argument effectively amounts to a special kind of justification. It makes possible the extension of rational principles to outer objects by permitting an act that is in itself impermissible.[[36]](#footnote-36) However, with such a permission comes the acknowledgment on the part of individuals of the necessity to enter a civil condition, and more generally to establish full relations of Right. As Flikschuh explains, «Unilateral acts count as provisionally rightful so long as they are committed ‘in anticipation of and in preparation for’ a condition of peremptory Right».[[37]](#footnote-37)

In principle, claims to property are provisional without reference to such a realisation in the future:

Das Erlaubnisgesetz … führt zu einer Zeitwende in der Legitimation von … Eigentum: nicht in der Vergangenheit ist der Rechtstitel fundiert, sondern in der Zukunft. … von wirklichen [Eigentumsrechten] nur gesprochen werden kann, wenn man den positiven Rechtsanspruch als provisorischen interpretiert und auf das Programm einer Rechtsrealisierung im ganzen bezieht. Jedes bestehende [Eigentumsrecht] ist aufgrund der ungesetzlichen Gewalt, der es seine Entstehung verdankt, an sich nichtig; nur die Beziehung auf die Zukunft rettet den Gegenwartsanspruch. (BRANDT, *Das Erlaubnisgesetz*, pp. 268-9)

Now, whether such an interpretation implies a commitment to duties of distributive justice in the contemporary sense[[38]](#footnote-38) is a controversial issue.[[39]](#footnote-39) What matters most for the project of this paper is the reference to the future embedded into Kant’s property argument, which, in that context, functions as a reminder of the precariousness of current legal claims. The full justification of such claims is no longer to be sought in the past, in their origin, but rather in the realisation of progressively more just legal-political arrangements (whatever these may consist in exactly).

**5. A Kantian Argument for Sustainable Property**

In this section, I introduce my Kantian argument for a duty of sustainable property use. In doing so, I am sympathetic to Ataner’s own approach in two respects. Firstly, even if Kantian philosophy is often criticised for not being able to prohibit certain environmentally undesirable behaviours *for the right reasons*, given the urgency to take action Kantians can rest content merely with being able to establish such prohibition on Kantian grounds. Secondly, I do not intend to claim that my argument is to be found in Kant’s own texts: rather, it is an argument that Kant could have advanced had he lived today, facing the environmental crisis that we face.

My suggestion is the following: instead of premising a duty of sustainable property use upon the necessity to preserve some alleged ‘material conditions of freedom’, we can ground the duty on the requirement that individuals’ spheres of freedom be compossible, enshrined in the Universal Principle of Right. The context in which this requirement becomes salient for our purposes is Kant’s property argument. As we have seen, Kant’s own argument involves the possibility to perform an act of unilateral acquisition, in itself prohibited, in order to make property possible and, consequently, in view of the establishment of full and peremptory relations of Right. But this argument need not be interpreted in terms of Ataner’s ‘material conditions of freedom’ at all. We can simply read it as introducing a permissive law directly on the basis of considerations concerning individuals’ freedom and their reciprocal obligations vis-à-vis each other in relation to external objects. On this basis, we can then borrow the forward-looking, prospective nature of Kant’s property argument and, instead of applying it to consideration of distributive justice, reinterpret it as also tied to our environmental concerns – notably, for present purposes, the *desideratum* of a duty that property be used sustainably.

According to the present argument, then, one’s act of unilateral acquisition does come with an acknowledgment concerning the possibility that other individuals are able to effect acts of acquisition themselves, and ultimately, are able to have property. In this sense, my argument is similar to Ataner’s. However – and this is the crucial difference – the duty of sustainable property use I advocate is not based on the necessity that each individual, taken in isolation, must see some ‘material conditions’ satisfied in order to be free (in order to, as it were, first impose her will onto the external world, in a moment that is prior to its relation to *other wills*). Instead, the duty is simply based on the idea that, other things being equal, my use of property can potentially diminish the chances that others have property of their own – which it does, if it is unsustainable.[[40]](#footnote-40) The duty is thus grounded in the same reciprocal acknowledgment that one’s exercise of freedom entails obligations toward others at play in Kant’s own property argument, and ultimately in the requirement that individuals’ spheres of freedom be compossible enshrined in the Universal Principle of Right.[[41]](#footnote-41)

In this way, the duty of sustainable property use arises at the very moment of unilateral acquisition: the sustainability requirement becomes embedded in the very idea of (legitimate) property. It is important to note that this is *not* akin to the Lockean proviso, as it does *not* concern excessive appropriation of resources.[[42]](#footnote-42) It is a much more modest requirement that, however much one appropriates (which may well regulated by other principles), one must then use sustainably.

In order to further clarify my proposal, it will be helpful to compare it with Ataner’s against the objections I raised in section three. Firstly, like Ataner’s argument, my case for a duty of sustainable property use is premised on Kant’s use of a permissive law in the property argument. However, my approach does not require a commitment to a novel interpretation of Kantian freedom,[[43]](#footnote-43) including the idea of ‘material conditions of freedom’, and so it is at least more economical. Furthermore, since the duty of sustainable property use arises at the same time as the institution of property itself, and through the acknowledgment of other people’s free wills, the argument is consistent with Kant’s characterisation of property as essentially a relation between wills.[[44]](#footnote-44)

As to the second objection, my account focuses solely on the normative sense of usability. By using an object one may well let it become unusable, but this per se does not mean that one has violated the duty of sustainable property use. So long as this use is compatible with everyone else’s having the possibility to have property,[[45]](#footnote-45) it is protected by one’s property right to the object in question. In the same vein, the duty of sustainable property use I introduced targets the unsustainable use of objects *de dicto*, so that, for example, it unequivocally allows for (and indeed demands) actions of compensation such as, for example, reforestation.

This brings me to the third objection. My account does not overgenerate prohibitions. One may permissibly consume resources, even non-replaceable ones, so long as this is compatible with other individuals (present and future) having property. To make another example, use of fossil fuels can and should be offset by compensating for emissions and contributing to the enablement of green energy use.

Moving on to the last objection, I would characterise the duty against unsustainable property as a *formal duty*.[[46]](#footnote-46) Because this characterisation requires the introduction of further Kantian elements, and has implications for the sanctionability of the violation of the duty of sustainable property use, I treat it separately in the next section.

**6. Sustainable Property Use as a Formal Duty**

Ataner is right, I believe, in mentioning the duty of truthfulness at the centre of Kant’s *On a Supposed Right to Lie* in order to liken it to the duty to use property sustainably.[[47]](#footnote-47) However, by his own admission he does not discuss the details of this analogy. In this section, I characterise the duty of sustainable property use as a formal duty, and explore the implications of such a characterisation. This requires some context.

In *On a Supposed Right to Lie*, Kant introduces a third, formal-juridical duty of truthfulness, alongside an ethical one and a material-juridical one.[[48]](#footnote-48) Lying in the ethical sense is a violation of a duty to oneself, and in this sense it only concerns the «worthlessness» of the liar, as opposed to the possible wronging of another (*VRL*, AA VIII 426 n.).Roughly, it is a fundamental moral self-deception closely connected to Kant’s doctrine of radical evil.[[49]](#footnote-49) The two juridical senses of lying are distinguished from the ethical one according to at least two criteria. Firstly, their scope is restricted to communication with others (*VRL*, AA VIII 426)*.* Secondly, they focus on the wrong to another brought about by a lie (*VRL*, AA VIII 426 n.; *TL*, AA VI 403). The second sense of lying is the material-juridical sense, or lying «in the jurist’s sense» (*VRL*, AA VIII 426). It is an untruthful statement that wrongs another specific individual or group of individuals. Just as any other violation of individuals’ rights, it deprives them of what is rightfully theirs.[[50]](#footnote-50) The paradigmatic example is a fraudulent contract.

Lying in the formal-juridical sense, the one we are interested in here, does not constitute a wrong to a specific individual or group. As Kant argues, «an intentionally untrue declaration towards another human being» *always* wrongs «humanity as such [*Menschheit überhaupt*]» (*VRL*, AA VIII 426, tr. altered), and such a wrong occurs independently of whether a violation of the rights of a specific individual or group has also been brought about by the lie (Kant’s famous example is that of lying to someone inquiring about the whereabouts of one’s friend, whom she intends to murder). The specific wrong-making feature of lying in the third sense is that it is in some sense at odds with the very possibility of a rightful condition.

This last claim has been interpreted in various ways.[[51]](#footnote-51) However, for my purpose the exact interpretation of the wrongness of lying in the formal-juridical sense is not crucial. What matters is that this sense of lying offers a clear example of a *formal* wrong – an act that is legally wrong despite not necessarily wronging anyone in particular and only by virtue of wronging humanity as such. In order to explore this notion further and apply it to the duty of sustainable property use, it is helpful to first consider Marie Newhouse’s elegant interpretation of the Universal Principle of Right.

According to Newhouse, the Universal Principle of Right articulates the standards for formal and material wrongs, which exhaust the sphere of wrong action in Kant.[[52]](#footnote-52) She reformulates it as follows:

Any action A is right (1) if A can coexist with everyone’s freedom in accordance with a universal law, or (2) if the legality of actions on A’s maxim can coexist with everyone’s freedom in accordance with a universal law. (NEWHOUSE, *Two Types of Legal Wrongdoing*, p. 62)

These are the standards (in inverse form) for material wrong (1) and formal wrong (2).[[53]](#footnote-53) Material wrongs are «actions that are physically incompatible with the rights of one or more individuals».[[54]](#footnote-54) An intention to wrong is neither necessary nor sufficient in order for a material wrong to take place. Formal wrongs are «not, per se, wrongs against other individuals, although they may also involve material wrongdoing».[[55]](#footnote-55) According to Newhouse, a formal wrong occurs if and only if «the concept of a legal action in accordance with [one’s] maxim logically contradicts the concept of a rightful condition»,[[56]](#footnote-56) where the concept of a rightful condition is that of everyone’s freedom in accordance with a universal law (captured by (2) in her reformulation of the Universal Principle of Right above).

I suggest that the duty of sustainable property use can plausibly be characterised as a formal duty, in the sense that its transgression constitutes a formal wrong. While using property unsustainably is not a material wrong (i.e. it does not violate the rights of specific individuals or groups), it always is a formal wrong, namely, it always wrongs humanity as such. In other words, the duty of sustainable property use is owed to humanity as such.[[57]](#footnote-57)

To clarify a possible misunderstanding concerning the duty of sustainable property use as a formal duty, it is helpful to briefly consider Kant’s remarks on legal imputation in his *On a Supposed Right to Lie*. (In so doing, I set aside questions concerning the independent plausibility of his assessment of the ‘inquiring murderer’ case). There, Kant famously argues that

if you have *by a lie* prevented someone just now bent on murder from committing the deed, then you are legally accountable for all the consequences that might arise from it. But if you have kept strictly to the truth, then public justice can hold nothing against you, whatever the unforeseen consequences might be. (*VRL*, AA VIII 427)

In his essay, Kant considers three possibilities: that one answers truthfully to the inquiring murderer and the friend is not murdered (in which case one faces no legal repercussions *simpliciter*), that one answers truthfully but the friend is murdered (in which case one faces no legal repercussions *on account of one’s truthfulness*),[[58]](#footnote-58) and that one lies but the friend is murdered anyway (in which case one can be held legally accountable as accomplice to the murder). However, Kant does not seem to consider a fourth possibility, which has not received much attention in the literature. In this case, which we might call *Lucky Liar*, one does lie to the inquiring murderer, but the lie saves one’s friend. While Kant does not comment on this possibility, I believe it is reasonable to think (within Kant’s philosophical framework, at any rate) that the liar *would be* sanctioned for the mere act of lying, insofar as it is, regardless of any harm that might ensue from it, a formal wrong.[[59]](#footnote-59)

What does this imply for the duty of sustainable property use? If the conjecture I have just suggested is correct, then we can reject the idea that one’s unsustainable conduct, while always wrong, is not sanctioned unless it produces harmful consequences.[[60]](#footnote-60) Instead, unsustainable property use is always sanctionable merely in virtue of being a formal wrong (in addition to enabling imputability for any harmful consequences that may arise from it).

This allows me to add a final element to the discussion of the duty of sustainable property use. In virtue of its legal-political nature, the duty of sustainable property use generates a duty *of political institutions* to discourage and sanction unsustainable property use. In the first section, I mentioned how individuals need assurance that their rights will be respected in order for their obligations to have full validity. This lack of assurance is only one of the problems characterising the state of nature (see n. 14 above), but what matters for my purpose here is only that the solution to all the problems characterising the state of nature is entrance in a civil condition – minimally, the establishment of a state. The duty of political institutions to discourage and sanction unsustainable property use, I contend, simply follows from the fact that political institutions are the solution to the problems in the state of nature. If individuals have a duty of Right to use property in a sustainable way, as I have argued, then the state’s role with regard to it will be the same as its role with regard to any other duty of Right – first and foremost, disincentivise noncompliance with it and sanction its transgression.[[61]](#footnote-61)

**Concluding Remarks**

In this paper, I argued for a Kantian duty of sustainable property use. According to my account, such a duty is still rooted in Kant’s property argument, however it is best construed in terms of interpersonal freedom, and it has a structure resembling that of duties of distributive justice. I articulated the main strengths of my argument vis-à-vis Ataner’s: proceeding entirely within the domain of interpersonal freedom; focusing clearly on the normative sense of usability; not overgenerating obligations; and offering a categorisation of the duty within Kant’s taxonomy of duties. More work needs to be done to further clarify the contours of the duty of sustainable property use. However, insofar as the connection between sustainability, Kant’s property argument with its use of a permissive law, and the Universal Principle of Right are concerned, I believe that the account I provided constitutes a promising starting point.[[62]](#footnote-62)

1. Examples of the latter are R.F. HOUSMAN, *A Kantian Approach to Trade and the Environment,* «Washington and Lee Law Review», XLIX, 2018, pp. 1373-1388; M. GREAKER ET AL. *A Kantian Approach to Sustainable Development Indicators for Climate Change*,«Ecological Economics», IX, 2013, pp. 10-18; M. HENNLOCK ET AL. *Emissions Trading Subject to Kantian Preferences*, working paper, available at <http://hdl.handle.net/2077/55031>; R. ROBINSON, N. SHAH, *Business’ Environmental Obligations and Reasoned Public Discourse: A Kantian Foundation for Analysis*, «Journal of Business», CLIX, 4, 2019, pp. 1181-1198. For the most part, Kantian contributions in the field of environmental studies have been limited to Kant’s ethics (with some additions from his aesthetics and from his philosophy of biology). See M.C. ALTMAN, *Kant’s Strategic Importance for Environmental Ethics*, in ID., *Kant and Applied Ethics: The Uses and Limits of Kant’s Practical Philosophy*, Oxford, Wiley-Blackwell, 2011, pp. 45-70; L. ALLAIS, J.J. CALLANAN (eds.), *Kant and Animals*, New York, Oxford University Press, 2020; Z.T VEREB, *The Case for the Green Kant: A Defense and Application of a Kantian Approach to Environmental Ethics*, PhD thesis at University of South Florida, 2019, available at <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=9177&context=etd>; M. SCHÖNFELD, *The Green Kant: Environmental Dynamics and Sustainable Policies*, in *Environmental Ethics: Readings in Theory and Application*, 5th edition, ed. by L.P. Pojman and P. Pojman, Belmont, Thomson Wadsworth, 2008, pp. 49-60. For discussion and further references, including on non-anthropocentric readings of Kant’s philosophy, see A. ATANER, *Kant on Freedom, Property Rights, and Environmental Protection*, MA thesis at McMaster University, 2012, available at <http://hdl.handle.net/11375/12678>, pp. 33f. [↑](#footnote-ref-1)
2. See ATANER, *Kant on Freedom*; A. BREITENBACH, *Kant Goes Fishing: Kant and the Right to Property in Environmental Resources*, «Studies in History and Philosophy of Biological and Biomedical Sciences», XXXVI, 3, 2005, pp. 488-512; A. PINHEIRO WALLA, *Kant and Climate Change: A Territorial Rights Approach*, in *Moral Theory and Climate Change*, ed. by B. Eggleston, D. Miller, London, Routledge, 2020, pp. 99-115. In this paper I largely set aside Breitenbach’s and Pinheiro Walla’s arguments. Breitenbach argues that Kant’s conception of property rights is promising with regard to defining property rights in environmental resources prone to overexploitation insofar as it does not commit to a specific property system, it involves a triadic relation (between right-holder, duty-bearer, and object), and establishes universally valid property rights. Pinheiro Walla’s argument uses the Kantian original right of individuals “to be wherever nature or chance (apart from their will) has placed them” (*RL*, AA VI 262; quotations from Kant in English are from the Cambridge edition of his works) to argue that the territorial rights of states generate duties of Right of states to address climate change and to provide assistance to those most affected by climate change, particularly climate change refugees and climate change migrants.  [↑](#footnote-ref-2)
3. See A. RIPSTEIN, *Force and Freedom: Kant’s Legal and Political Philosophy*, Cambridge, Harvard University Press, 2009, p. 14; K. FLIKSCHUH, *A Regime of Equal Private Freedom? Individual Rights and Public Law in Ripstein’s Force and Freedom*, in *Freedom and Force: Essays on Kant’s Legal Philosophy*, ed. by S. Kisilevsky, M.J. Stone, Oxford-Portland, Bloomsbury Publishing, 2017, pp. 55-76: 71. [↑](#footnote-ref-3)
4. PINHEIRO WALLA, *Kant and Climate Change,* pp. 108-9. [↑](#footnote-ref-4)
5. An anonymous reviewer rightly noted that the expression ‘property use’ is infelicitous in a Kantian context insofar as, for Kant, property is a rights relation and not a resource. This can be partially mitigated by noting that property in Kant does involve a reference to the object owned, although, admittedly, such a reference is indirect and of no normative import. (The triadic nature of Kantian property rights is highlighted by Breitenbach, who, however, also argues that considerations concerning the objects are relevant to whether a property regime is just. See BREITENBACH, *Kant Goes Fishing*, p. 503; and n. 2 above). At any rate, I chose to keep the expression ‘property use’ and related ones in this paper to avoid more cumbersome expressions. the e it in this paper only to avoid more cumbersome expressions. Moreover, of argument.rmal wrong. e it clarifies to whom the [↑](#footnote-ref-5)
6. My goal is essentially the same as Ataner’s, but I hope to reach it via an argumentative route which is more firmly grounded in Kant’s philosophy and less susceptible to objections. On the basis on personal conversations with Ataner, my understanding is that he is currently working on developing his own argument further. [↑](#footnote-ref-6)
7. R. BRANDT, *Das Erlaubnisgesetz, oder: Vernunft und Geschichte in Kants Rechtslehre*, in *Rechtsphilosophie der Aufklärung: Symposium Wolfenbüttel 1981*, ed. by R. Brandt, Berlin-Oxford, de Gruyter, 1982, pp. 233-285; K. FLIKSCHUH, *Kant and Modern Political Philosophy*, Cambridge, Cambridge University Press, 2000, ch. 4. [↑](#footnote-ref-7)
8. See O. HÖFFE, *Categorical Principles of Law: A Counterpoint to Modernity*, trans. M. Migotti, University Park, Pennsylvania State University Press, 1990, p. 93. [↑](#footnote-ref-8)
9. RIPSTEIN, *Force and Freedom,* p. 14; see *MS*, AA VI 213. [↑](#footnote-ref-9)
10. RIPSTEIN, *Force and Freedom*, p. 14. [↑](#footnote-ref-10)
11. Kant’s remark targets Gottfried Achenwall’s distinction of several innate rights, which are effectively paralleled by Kant’s authorisations. See B.S. BYRD, J. HRUSCHKA, *Kant’s Doctrine of Right: A Commentary,* Cambridge, Cambridge University Press, 2010, pp. 81-4. [↑](#footnote-ref-11)
12. For discussions of Kant’s goal and the success of his argument (particularly, whether it establishes a right to private ownership or to usufruct), see K. WESTPHAL, *Do Kant’s Principles Justify Property or Usufruct?*, «Jahrbuch für Recht Und Ethik», V, 1997, pp. 141-194; more recently, J.P. MESSINA, *The Postulate of Private Right and Kant’s Semi-Historical Principles of Property*, «British Journal for the History of Philosophy», XXIX, 1, 2021, pp. 64-83; M.J. STONE, R. HASAN, *What is Provisional Right?*, «The Philosophical Review», CXXXI, 1, 2022, pp. 51-98. [↑](#footnote-ref-12)
13. The state of nature is a «pure system of private right» where interaction among individuals is «morally incoherent» (RIPSTEIN, *Force and Freedom*, p. 183; see also D. SUSSMAN, *On the Supposed Duty of Truthfulness*. *The Philosophy of Deception*, ed. by C. Martin, New York, Oxford University Press, 2009, pp. 225-243; H. VARDEN, *Kant's Non-Voluntarist Conception of Political Obligations: Why Justice is Impossible in the State of Nature*, «Kantian Review», XIII, 2, 2008, pp. 1-45). The reason is that «nobody is under any obligation to defer to the deeds, claims, or judgments of others» (RIPSTEIN, *Force and Freedom,* p. 147). As a result, rights in the state of nature are only provisional. Individuals in such a conditions «do *one another* no wrong at all when they feud among themselves», and yet «they do *wrong in the highest degree* by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence» (*RL*, AA VI 307-8, emphases altered). [↑](#footnote-ref-13)
14. This is only a partial outline of Kant’s diagnosis of what is problematic in a state of nature. For more comprehensive and detailed discussions, see references in the last footnote, as well as BYRD, HRUSCHKA, *Kant’s Doctrine of Right*; K. EBELS-DUGGAN, *Kant’s Political Philosophy,* «Philosophy Compass», VII, 12, 2012, pp. 896-909; A. PINHEIRO WALLA, *Human Nature and the Right to Coerce in Kant’s Doctrine of Right,* «Archiv für Geschichte der Philosophie»*,* XCVI, 1, 2014, pp. 126-139;R.B. PIPPIN, *Dividing and Deriving in Kant’s Rechtslehre*. *Metaphysische Anfangsgründe der Rechtslehre*, ed. by O. Höffe, Berlin, De Gruyter, 1999, pp. 53-85; T. SINCLAIR, *The Power of Public Positions: Official Roles in Kantian Legitimacy*. *Oxford Studies in Political Philosophy, Volume 4,* ed. by S. Sobel, P. Vallentyne, S. Wall, Oxford, Oxford University Press, 2018, pp. 28-51; H. VARDEN, *Kant’s Non-Absolutist Conception of Political Legitimacy – How Public Right ‘Concludes’ Private Right in the “Doctrine of Right”,* «Kant-Studien», CI, 3, 2010, 331-351; J. WALDRON, *Kant’s Legal Positivism*, «Harvard Law Review», CIX, 7, 1996, 1535-1566; J. WEINRIB, *Sovereignty as a Right and as a Duty: Kant’s Theory of the State*, in *Sovereignty and the New Executive Authority*, ed. by C. Finkelstein, M. Skerker, New York, Oxford University Press, 2019, pp. 22-46. Moreover, my account of Kant’s property argument and of its implications does not go into the details of Kant’s antinomy of Right (*RL*, AA VI 255; see FLIKSCHUH, *Kant and Modern Political Philosophy*, pp. 121f); nor does it include two important notions emerging at the transition from state of nature to civil condition, namely the general united will and original possession in common of the Earth (see FLIKSCHUH, *Kant and Modern Political Philosophy*, ch. 5). The latter notion in particular could be integrated in my argument or used to advance a different argument for a duty of sustainable property use (Pinheiro Walla uses it in her broader argument in PINHEIRO WALLA, *Kant and Climate Change*; see n. 2 above. See also ATANER, *Kant on Freedom*, §10). I should thank an anonymous reviewer for alerting me to the potential relevance of this notion in this context. [↑](#footnote-ref-14)
15. ATANER, *Kant on Freedom*, p. iii. [↑](#footnote-ref-15)
16. ATANER, *Kant on Freedom,* p. 47. As noted by Ataner, this right is part of traditional accounts of property: for example, as a «right of destroying or injuring [one’s property] if one likes» or «to consume, waste or destroy the whole or part of [one’s property]» (respectively, R. POUND, *The Law of Property and Recent Juristic Thought*, «American Bar Association Journal», XXV, 1939, pp. 993-998; A.M. HONORÉ, *Ownership,* in *Oxford Essays in Jurisprudence*, ed. by A.G. Guest, Oxford, Clarendon University Press, 1961, pp. 107-128; both cited in ATANER, *Kant on Freedom*, p. 51). [↑](#footnote-ref-16)
17. ATANER, *Kant on Freedom,* p. 59. [↑](#footnote-ref-17)
18. RIPSTEIN, *Force and Freedom*, p. 36 [↑](#footnote-ref-18)
19. It might be worth noting that Ataner draws from both Kant and Hegel at this point (see ATANER, *Kant on Freedom*, pp. 105f.). [↑](#footnote-ref-19)
20. ATANER, *Kant on Freedom,* p. 74, emphasis removed. [↑](#footnote-ref-20)
21. I believe Ataner has the merit of addressing the question of *why*, for Kant, objects cannot in principle belong to no one, and of doing so without invoking instrumental or prudential reasons.Having said that, it not entirely clear why the mere use of objects (without property rights in them) would be insufficient to ‘enable our freedom’ (on this, see references in n. 12 above). Moreover, one cannot help noticing that the textual support Ataner offers for attributing his reading to Kant is rather tenuous (*V-MS/Vigil*, AA XXVII 346, introduced at ATANER, *Kant on Freedom*, pp. 118-9). The latter might not be a problem, though, given that Ataner’s aim is not exegetical. [↑](#footnote-ref-21)
22. Here, as elsewhere in the paper, I use ‘arelational’ slightly imprecisely, to mean ‘not involving a relation *between free wills*’. Ataner’s ‘primordial’ freedom, as we might also call it, relates the single individual to unfree things. [↑](#footnote-ref-22)
23. ATANER, *Kant on Freedom,* p. 81. [↑](#footnote-ref-23)
24. At this point, Ataner might want to simply deny that his argument involves some relation between free wills at such an early stage. One might then object that the resulting duty would be an ethical duty, rather than a duty of Right. However, Ataner could insist that this begs the question relative to the correct characterisation of freedom in the sphere of Right. Since it strikes me that Ataner’s argument *does* involve a relation between wills, I didn’t present this objection in the form of a dilemma, and focused instead on the move from ‘primordial’ freedom to interpersonal duty. [↑](#footnote-ref-24)
25. In fact, Ataner’s reference to self-contradiction might point to a possible ‘contradiction in conception’ test on a maxim of unsustainable use of property: «if a right to destroy were included among [property] rights, then the property system itself would in principle allow the total dissipation of the finite resource through continued non-sustainable use; the system itself would permit a previously available resource to become entirely unavailable» (ATANER, *Kant on Freedom,* p. 121). This would be an interesting direction to pursue, however since it is unlikely to establish a duty of Right, I set it aside. [↑](#footnote-ref-25)
26. ATANER, *Kant on Freedom,* pp. 119-120. [↑](#footnote-ref-26)
27. «Kant’s core tenet regarding the necessity of property acquisition as a function of our extended freedom in the world *dictates that the character of usable things as usable* … *must be maintained in perpetuity*. Otherwise, freedom would be systematically depriving itself of the use of objects of choice» (ATANER, *Kant on Freedom*, p. 121, emphasis added). The expression italicised is at best infelicitous, as it seems to point to some metaphysical property of usability that belongs to (*de re*) things, which are to be maintained in order to preserve that property. [↑](#footnote-ref-27)
28. To be fair, as Ataner pointed out to me in conversation, at points he *does* explain his project in this way (e.g. ATANER, *Kant on Freedom*, p. 5), and also presents more clearly a distinction between destroying and using non-sustainably, and one between renewable and non-renewable resources (ATANER, *Kant on Freedom*, p. 14). However, insofar as Ataner’s work considered in this paper is concerned, I think that my objection stands at least as one of lack of clarity. [↑](#footnote-ref-28)
29. As we will see in section six, this is the formal-juridical duty of truthfulness introduced for the first time in print in Kant’s *On a Supposed Right to Lie from Love of Humanity.* [↑](#footnote-ref-29)
30. ATANER, *Kant on Freedom,* p. 81. [↑](#footnote-ref-30)
31. Since the duty at issue is meant to be a duty of Right, it is particularly important to clarify to whom it is owed. This bolsters my fourth objection insofar as Ataner intends to establish a duty of Right (but see n. 24 and n. 25 above). I should thank an anonymous reviewer for suggesting this point to me. [↑](#footnote-ref-31)
32. As far as I can see, Ataner only offers some tentative and underdeveloped remarks on this issue (ATANER, *Kant on Freedom,* p. 122). [↑](#footnote-ref-32)
33. See section 1 above. I draw on Brandt’s and Flikschuh’s interpretations (see n. 7 above), which are in continuity. However, Kant’s permissive law is a highly intricate matter. For a recent overview, see H.M. ROFF, *Global Justice, Kant and the Responsibility to Protect: A Provisional Duty*, New York-Abingdon, Routledge, 2013, ch. 3; for further literature, see J. HRUSCHKA, *The Permissive Law of Practical Reason in Kant’s Metaphysics of Morals*, «Law and Philosophy», XXIII, 1, 2014, pp. 45-72: 46 n. 6. [↑](#footnote-ref-33)
34. FLIKSCHUH, *Kant and Modern Political Philosophy*, p. 144. [↑](#footnote-ref-34)
35. FLIKSCHUH, *Kant and Modern Political Philosophy*, p. 141. [↑](#footnote-ref-35)
36. Permissive laws are, according to Brandt and Flikschuh, «laws that provisionally authorise actions the commission of which are [*sic*], strictly speaking, *prohibited*» (FLIKSCHUH, *Kant and Modern Political Philosophy*, p. 117, emphasis added). This *justificatory* reading of permissive laws is controversial, but my argument need not commit to it. Hruschka famously rejects such a reading, arguing that, technically speaking, permissive laws apply to actions that are *neither required nor prohibited* (HRUSCHKA, *The Permissive Law*, pp. 48-53). However, firstly, Hruschka seems to agree with Brandt that, at least with regard to the duty to exit the state of nature, Kant «makes an exception from the prohibition against coercing others» (Hruschka simply refuses to characterise this as a permissive law; HRUSCHKA, *The Permissive Law*, p. 52 n. 20); secondly, Hruschka refers to «prior tempore, potior iure» (*RL*, AA VI 259) as the «second aspect» of permissive laws (HRUSCHKA, *The Permissive Law*, p. 67 n. 65); thirdly, he, too, emphasises the temporal dimension of permissive laws (HRUSCHKA, *The Permissive Law*, pp. 70-1). For further critical discussion, see ROFF, *Global Justice*, pp. 69-70. [↑](#footnote-ref-36)
37. FLIKSCHUH, *Kant and Modern Political Philosophy*, pp. 179-180. See *RL*, AA VI 257. [↑](#footnote-ref-37)
38. A rightful condition for Kant is a condition of distributive justice in his technical sense, namely one «in which what belongs to each can be secured to him against everyone else» (*RL*, AA VI 237), and in which alone each can «enjoy his rights» (*RL*, AA VI 305-306). [↑](#footnote-ref-38)
39. Flikschuh suggests that it ultimately does, focusing in particular on global distributive justice (FLIKSCHUH, *Kant and Modern Political Philosophy*, esp. ch. 6). See also P. GUYER, *Kant on Freedom, Law, and Happiness*, Cambridge: Cambridge University Press, 2000, chs. 7-8; B.J. SHAW, *Rawls, Kant’s Doctrine of Right, and Global Distributive Justice*, «The Journal of Politics», LXVII, 1, 2005, pp. 220-249; S. LORIAUX, *Kant on International Distributive Justice*, «Journal of Global Ethics», III, 3, 2007, pp. 281-301. For a recent overview of attempts to justify the provision of welfare on Kantian grounds, see L. DAVIES, *Kant on Welfare: Five Unsuccessful Defences*, «Kantian Review», XXV, 1, 2020, pp. 1-25; see also R. HASAN, *The Provisionality of Property Rights in Kant’s Doctrine of Right*, «Canadian Journal of Philosophy», XLVIII, 3, 2018, pp. 850-876, pp. 868-869. I remain neutral on whether Kant’s employment of a permissive law in his property argument actually implies anything with regard to redistribution in a civil condition: when I say that the duty of sustainable property use has a structure resembling that of duties of distributive justice (in the contemporary sense), I only mean that it is based on the same considerations of reciprocity and the same forward-looking aspect of Kant’s argument that (*for the sake of argument*) ground such duties. [↑](#footnote-ref-39)
40. And if the resource in question is scarce, or at least finite. Note that this is not a consequentialist argument, nor a ‘contradiction in conception’ argument (on which see n. 25 above). As should become clear in the next section, the idea is rather that the legality of unsustainable property use would contradict the concept of a rightful condition. [↑](#footnote-ref-40)
41. On which see, respectively, section 4 and section 1 above. [↑](#footnote-ref-41)
42. Although, as noted by Ataner, an argument of this kind could be construed as a secular version of Locke’s neglected *second* proviso (ATANER, *Kant on Freedom,* p. 6). [↑](#footnote-ref-42)
43. With this I do not mean to imply that, instead, Ripstein’s construal of Kantian freedom within Right is uncontroversial. For example, see the debate between Ripstein and Flikschuh (K. FLIKSCHUH, *Innate Right and Acquired Right in Arthur Ripstein’s Force and Freedom*, «Jurisprudence», I, 2, 2010, pp. 295-304; A. RIPSTEIN, *Reply to Flikschuh and Pavlakos*, «Jurisprudence», I, 2, 2010, pp. 317-324; FLIKSCHUH, *A Regime of Equal Private Freedom?*; A. RIPSTEIN, *Embodied Free Beings under Public Law: A Reply*, in *Freedom and Force: Essays on Kant’s Legal Philosophy*, ed. by S. Kisilevsky, M.J. Stone, Oxford-Portland, Bloomsbury Publishing, 2017, pp. 183-218). [↑](#footnote-ref-43)
44. *RL*, AA VI 268-9. See n. 2 and n. 5 above. [↑](#footnote-ref-44)
45. One might object that this condition sets the bar too low (incidentally, a similar objection has been raised against Ripstein concerning distributive justice: see V. TADROS, *Independence Without Interests?,* «Oxford Journal of Legal Studies», XXXI, 1, 2011, pp. 193-213: 205). I don’t think it does. But even if it did, Ataner’s account is open to the same objection. More generally, recall that the goal of this paper is only to lay the foundations for a duty of sustainable property use. The objection just mentioned, even if legitimate and important, becomes salient only if this preliminary project succeeds. [↑](#footnote-ref-45)
46. As far as I am aware, Kant uses this expression only once (*VRL*, AA VIII 426.14-15). Here, by it I only mean a duty of Right whose violation constitutes a formal wrong. [↑](#footnote-ref-46)
47. See ATANER, *Kant on Freedom,* pp. 80f. [↑](#footnote-ref-47)
48. I should thank Jens Timmermann for letting me borrow his labels for the three duties (J. TIMMERMANN, *Kant’s “Supposed Right to Lie”,* manuscript). On the duties, see also J.E. MAHON, *The Truth About Kant on Lies*, in *The Philosophy of Deception*, ed. by C. Martin, New York, Oxford University Press, 2009, pp. 201-224. [↑](#footnote-ref-48)
49. See *RGV*, AA VI 28; *RGV*, AA 42 n.; *TL*, AA VI 431; and see S. BACIN, *The Perfect Duty to Oneself Merely as a Moral Being (TL 6:428–437)*, in *Kant’s “Tugendlehre”: A Comprehensive Commentary*, ed. by A. Trampota, O. Sensen, J. Timmermann, Berlin-Boston, de Gruyter, 2013, pp. 245-268. [↑](#footnote-ref-49)
50. H. VARDEN, *A Kantian Conception of Free Speech*, in *Freedom of Expression in a Diverse World (Vol. 3)*, ed. by D. Golash, Dordrecht, Springer, 2010, pp. 39-55: 40; J.E. MAHON, *The Truth About Kant on Lies*, p. 218. [↑](#footnote-ref-50)
51. For example, see S. LORIAUX, *Deception, Right, and International Relations: A Kantian Reading*, «European Journal of Political Theory», XIII, 2, 2014, pp. 199-217; J. WEINRIB, *The Juridical Significance of Kant’s ‘Supposed Right to Lie’*, «Kantian Review», XIII, 1, 2008, pp. 141-170; M.E. NEWHOUSE, *Kant’s Typo, and the Limits of the Law,* PhD thesis at Harvard University, 2013, available at <https://dash.harvard.edu/handle/1/11158257>, pp. 57f; MAHON, *The Truth about Kant on Lies*, pp. 211-213. [↑](#footnote-ref-51)
52. NEWHOUSE, *Kant’s Typo*, p. 94. See also M.E. NEWHOUSE, *Two Types of Legal Wrongdoing*, «Legal Theory», XXII, 1, 2016, pp. 59-75. [↑](#footnote-ref-52)
53. NEWHOUSE, *Two Types of Legal Wrongdoing*, p. 62. [↑](#footnote-ref-53)
54. NEWHOUSE, *Two Types of Legal Wrongdoing*, p. 63. [↑](#footnote-ref-54)
55. NEWHOUSE, *Two Types of Legal Wrongdoing*, p. 64. [↑](#footnote-ref-55)
56. NEWHOUSE, *Kant’s Typo*, p. 61. [↑](#footnote-ref-56)
57. At this point, one might wonder why the duty of sustainable property use could not be based solely on the Universal Principle of Right. Its transgression, that is, could be a wrong simply because the legality of actions on a maxim of unsustainable property use is incompatible with a rightful condition. Insofar as the Universal Principle of Right is a standard for rightness and wrongness, I think this is correct. However, specifying that the violation of the duty is always a wrong to humanity as such is important because it clarifies to whom the duty is owed. Moreover, it is worth noting that the argument to establish the duty of sustainable property use requires the additional resources offered by Kant’s property argument (which provides an a priori synthetic extension of the Universal Principle of Right; *RL*, AA VI 249; *RL*, AA VI 255). I should thank an anonymous referee for urging me to clarify these points. [↑](#footnote-ref-57)
58. On this controversial point, see WEINRIB, *The Juridical Significance*, p. 62; W. SCHWARZ, *Kant’s Refutation of Charitable Lies*, «Ethics», LXXXI, 1, 1970, pp. 62-67. [↑](#footnote-ref-58)
59. As far as I can see, this fourth case has been discussed only by John Atwell (J.E. ATWELL, *Ends and Principles in Kant’s Moral Thought*, Dordrecht, Martinus Nijhoff, 1986, p. 200), who, however, draws different conclusions by connecting the case with the famous «right of necessity» (*RL*, AA VI 235).On Kant’s rather obscure phrasing in *On a Supposed Right to Lie* («Diese gutmüthige Lüge kann aber auch durch einen Zufall (*casus*) straftbar werden, nach bürgerlichen Gesetzen; was aber bloß durch den Zufall der Staffälligkeit entgeht, kann auch nach äußeren Gesetzen als Unrecht abgeurtheilt werden»; *VRL*, AA VIII 426.31-427.2), see NEWHOUSE, *Kant’s Typo*, pp. 55-6; and cf. SCHWARZ, *Kant’s Refutation of Charitable Lies*, p. 65, as well as the translation in the Cambridge edition of Kant’s works. Kant’s theory of imputability would deserve a separate discussion, which I cannot undertake here (see *MS*, AA VI 227-228; *V-MS/Vigil*, AA XXVII 558-573; *V-Mo/Collins*, AA XXVII 288-298). For discussions of Kant’s theory from a non-legal perspective, see T.E. HILL, *Kant on Responsibility for Consequences*, «Jahrbuch für Recht Und Ethik», II, 1994, pp. 159-176; and A. REATH, *Agency and the Imputation of Consequences in Kant’s*, «Jahrbuch für Recht Und Ethik», II, 1994, pp. 269-281. Hruschka (J. HRUSCHKA, *Imputation*, «Brigham Young University Law Review», III, 1986, pp. 669-710) develops his own, taking much of Kant’s onboard, but also distancing himself from him significantly (for a discussion of Hruschka’s theory, see M. ORLANDI, *Una Riscoperta della “Teoria dell'Imputazione”. La Dottrina Penale di Joachim Hruschka*, PhD thesis at Università degli studi di Padova, 2015, available at <http://paduaresearch.cab.unipd.it/7580/>); but see also BYRD, HRUSCHKA, *Kant’s Doctrine of Right*, pp. 298-308. [↑](#footnote-ref-59)
60. In a previous version of the paper, I argued that the formal wrong of unsustainable property use is also always sanctionable because it always produces bad consequences (at least in light of the environmental crisis we are facing). I should thank an anonymous reviewer for convincing me to abandon that line of argument. [↑](#footnote-ref-60)
61. A. RIPSTEIN, *Authority and Coercion*, «Philosophy & Public Affairs», XXXII, 1, 2004, pp. 2-35. Kant does not seem to think that it is the business of political institutions to positively incentivise individuals to abide by laws (*MS*, AA VI 219). This is a problem for any proposal for a duty of Right along the lines of the one I have introduced, at least insofar as we want to follow Kant on this point (which we might well not). [↑](#footnote-ref-61)
62. I would like to thank Attila Ataner, Luke Davies, Zachary Vereb, and the journal’s anonymous reviewers for their helpful comments and suggestions on earlier drafts of this paper. I would also like to thank attendees of the 2021 General Conference of the European Consortium for Political Research, the IX Multilateral Kant Colloquium, and the Open Sessions of the 2022 Joint Session of the Aristotelian Society and the Mind Association.

 [↑](#footnote-ref-62)