

**Recursive Justification and Kant's Civil Condition: Some
Comments on Flikschuh's Account of Nomadic Rights**

*Justificación recursiva y la civil condición de Kant: algunos
comentarios sobre el planteamiento de Flikschuh sobre los
derechos de los nómadas*

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Abstract

Katrin Flikschuh presses Karl Amerik's notion of recursive justification into service with respect to the question whether nomads have an obligation to enter statehood. Flikschuh answers in the negative, and claims that nomads, who have not entered into the civil condition, cannot be expected to conform to the obligations of statehood. I agree with Flikschuh's claim, and provide further support through Kant's arguments in the Lectures on Logic that such obligations as statehood are objective criteria of judging, and require the raising of subjective claims to practical reality—a condition that cannot be met on the part of settlers alone.

Key Words

Kant, Katrin Flikschuh, Statehood, Civil Condition, Nomads, Recursive Justification, Lectures on Logic.

Katrin Flikschuh argues that the moral necessity of states is demonstrated in the demand for state entrance, which has the status of “unconditional moral validity” as it is a “reflective acknowledgement” of this necessity.¹ When we raise property claims against

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¹ Katrin Flikschuh, “The Moral Necessity of States,” 99.

each other, we are obliged to enter into the civil condition, and this obligation is “unconditionally binding.”² Of course, this does not apply to nomads, which seems to throw the property argument into dispute. Yet (and following Karl Ameriks) if Flikschuh is correct, the case of the nomads suggests an extension of Kant’s system that is rooted in an “alternative experiential starting point,” in which new experiences “will have to be accommodated within the system as they become philosophically pertinent.”³ Needless to say, Kant does not resolve the tension between the duty of state entrance and nomadic exemption, as he says nothing about the requirement of nomads to enter into the civil condition, once they have encountered settlers.⁴

Flikschuh’s conclusions depend on reading Kant’s objective duty of state entrance as recursive (with Ameriks) and as uncertain in regards moral necessity in its encounter with new experiences (nomads). While remaining objective, it applies only to those who have encounters with peoples not having entered into the civil condition. Thus, the ‘net’ of objectivity (the objective duty of state entrance) is not to be cast on the nomads, who have not entered into the civil condition. I agree with Flikschuh, regarding both her reading of the nomad passage and her denial of the extension of the duty of state entrance to nomadic peoples.⁵ I also think the recursive nature of Kant’s system applies to this case. But I also think a more straightforward accounting of Kant’s system (and here I have in mind Kant’s logic) results in a similar conclusion as Flikschuh’s regarding the situation of nomadic peoples. In what follows, I sketch an outline of this accounting. It has 3 components: the first consists in a brief review of Flikschuh’s stance on objective and subjective judging; the second consists in a return to Kant’s claims about subjective and objective judging in his *Lectures on Logic* and the *Critique of Pure Reason*.⁶ The final consists in bringing these findings to bear on the issue of intelligible possession and the civil condition.

Flikschuh on Judging

Flikschuh endorses a subjective reading of the objective duty of state entrance for settlers.⁷ This is a reading of the duty whereby the settlers, but not the nomads, are under obligation of treating peoples in a civil condition; the objective duty of state entrance therefore does not apply to the nomads. Because it applies to the settlers, they are under each and all of its

² Flikschuh, “The Moral Necessity of States,” 99.

³ Flikschuh, “The Moral Necessity of States,” 96.

⁴ Flikschuh, “The Moral Necessity of States,” 93-94.

⁵ Kant, *DR*, 6: 266.

⁶ I choose these two texts because they are of approximately the same time (1780-1781) and they complement each other stylistically.

⁷ Flikschuh, “The Moral Necessity of States,” 90. Following Arthur Ripstein, she claims “Rather, settlers ought to comport themselves towards nomads as they would towards civic peoples because it is their duty to do so as members of a civil condition themselves. Doing so is the only way in which citizen settlers are able to express their acknowledgement of nomad’s reciprocally equal juridical standing.”

obligations, including obligations respecting property rights. Settlers are to respect these obligations (they of course are familiar with these) and their “non-applicability to nomads, who raise no property claims against each other.”⁸ Settlers, in other words, know that nomads have no such obligations even as they understand they themselves are under the obligation of a civil condition.

For Flikschuh, nomads are free from the obligation of state entrance because they do not commit to the experiential premise: “In taking an object of my choice into my possession, I claim it to be rightfully mine.”⁹ Without this premise, nomads cannot go further towards what Flikschuh calls the “Subjectively necessary possibility condition: my claim to the object as rightfully mine presupposes the concept of intelligible possession,” and beyond this to the civil condition.¹⁰ In other words, without the experiential premise in place, nomads cannot ascend a step-wise argument leading from the taking of an object to be rightfully mine to entrance into the civil condition. For the settler, who ascends this argument in step-wise fashion, the duty is clear: enter into the civil condition. But this duty is tempered by the settlers’ knowledge that the nomads have not ascended this step-wise argument, for nomads have no experiential premise of rightful possession of objects. And settlers are to recognize this irrespective of the false issue of provisional possession (*pro tanto* property rights).¹¹

Flikschuh’s experiential premise is clearly a subjective claim—a judgment based in opinion. It is subjective, but not subjective a priori. Indeed, it is boldly conjectural. The second premise is also subjective, yet it is an a priori claim, for it abstracts to a (prior) condition: that condition being the concept of intelligible possession. There is a further abstraction to a third condition—that of practical possibility only in the civil condition. This in turn gives allowance to make claims in the practical, civil condition—claims against others regarding property that go beyond the merely intelligible domain of principles and ends, to actual situations and events. But only in the civil condition can these claims be made, and only under the condition of a civil society can these claims take place. This corresponds to the objective judgment that is synthetic a priori (both subjectively and objectively sufficient), for all parties subject to the civil condition are under obligation to make claims against another in respect of property. My claim is this: the recursive condition of raising intelligible possession to practical reality in the civil

⁸ Flikschuh, “The Moral Necessity of States,” 86.

⁹ Flikschuh, “The Moral Necessity of States,” 82.

¹⁰ Flikschuh, “The Moral Necessity of States,” 82.

¹¹ Flikschuh, “The Moral Necessity of States,” 79-80. Flikschuh, with Kant, rejects historical and temporal possession arguments (arguments based on prior occupation) but favours original possession arguments. See Katrin Flikschuh, *Kant and Modern Political Philosophy*, Cambridge: Cambridge University Press, 2010, 154; 157. The issue of communal ownership on the part of nomads, which has been canvassed by many scholars (e.g. Leslie Mulholland, *Kant’s System of Rights*, New York: Columbia University Press, 1990, 275) remains a fractious one. It is probably best not to consider this ownership at all, since this already seems to imply the conditions of intelligible possession and civility. Kant uses the term, “*Gemeinschaftlich*,” or “in common,” to denote the relationship between parties using land apart from contract and “*herrenlos*” (un-or as-yet claimed) to denote land belonging to no one. See Kant, *DR*, 6: 265.

condition resembles the movement from subjective claims (opinions, prejudices) to subjective a priori propositions (beliefs), to objective synthetic a priori propositions (knowledge). I shall demonstrate this in the following section.

Kant on the Way We Hold Our Judgments

In the Vienna Logic (1781) as elsewhere, Kant distinguishes amongst 3 modes of holding-to-be-true, and these in turn from truth. There is one grade of objective holding-to-be-true, or truth, which entails subjective sufficiency.¹² There are two grades of subjective holding-to-be-true, the first of which is opinion, the second conviction.¹³ Opining is a mere prejudice if it is taken as subjectively sufficient, i.e. as conviction.¹⁴ Opinions are therefore conjectural, in need of subjective or objective sufficiency, in order to be convincing. Nevertheless, they are willful, for they are a matter of our taking-an-interest-in; what Kant calls “an obscure foreseeing.”¹⁵ This, I argue, is the nature of the experiential premise that confronts settlers as they begin their entrance into the civil condition. The premise lacks conviction precisely because it is a mere—though bold—claim of rightful possession of the object of the settler’s choice. In the experiential premise, the settler selects an object of her liking (choice) and subjects this to the claim of rightful possession.

In opining, I make a claim toward knowledge (objective sufficiency).¹⁶ In belief, I judge assertorically and declare myself for the truth. The subjective nature of belief limits my claim to the condition in which I find myself.¹⁷ This is not to be taken as merely empirical, as if my condition was restricted to the environmental situation I was present in and of a part. It also concerns conditions of duty and obligation: if I am under certain obligations but not others owing to the juridical condition in which I find myself, I am limited to sufficiency of judgment in respect of that condition, but not others. In regards my practical belief, I have apodeictic certainty. But (and this is key), “If I am to make someone convinced of my belief, however, then it is presupposed that he has just such moral sentiments.”¹⁸ This, I argue, is the nature of Flikschuh’s subjectively necessary possibility condition—the condition in which the settler’s claim to the object as rightfully hers presupposes the concept of intelligible possession. The appeal here is to a concept or condition of intelligible possession, which is an assertoric judgment. Indeed, it is apodeictic as it is a practical belief in as much as the settler declares herself for the truth

¹² Kant, *VL*, 24: 849.

¹³ Kant, *VL*, 24: 849-850. Kant, *KrV*, B 850.

¹⁴ Kant, *VL*, 24: 850. Kant, *KrV*, B 851.

¹⁵ Kant, *VL*, 24: 850.

¹⁶ Kant, *VL*, 24: 850. Kant, *KrV*, B 851.

¹⁷ Kant, *VL*, 24: 851. Kant, *KrV*, B 851.

¹⁸ Kant, *VL*, 24: 851-852. And in the *KrV*, Kant claims, “Once an end is proposed, then the conditions for attaining it are hypothetically necessary. This necessity is subjectively but still only comparatively sufficient if I do not know of any other conditions at all under which the end could be attained, but it is sufficient absolutely and for everyone if I know with certainty that no one else can know of any other conditions that lead to the proposed end.” Kant, *KrV*, B 852.

under the condition of the concept. However, the claim that she is to make someone convinced of her belief remains hypothetical as it depends on the other sharing her moral sentiments, which is precisely what is lacking in the case of the nomad.¹⁹

In knowing, I obtain objective (and subjective) sufficiency. This of course is truth in its nominal definition.²⁰ The condition of truth is a matter for formal (general) logic and for transcendental logic. Formal conditions for truth are conditions of non-contradictoriness; transcendental conditions for truth are agreement with the object or appearance.²¹ At the very least, for formal and transcendental conditions of truth to be met (subjective and objective sufficiency), possibility in practical circumstances (in experience, *in actu*, in event) must take root. This possibility seems at least superficially compatible with what Flikschuh is calling the practical realisability condition, in which the intelligible possession of objects is made possible under a further rule, or civil condition. This gives rise to the corollary; the moral maxim that the settler ought to enter into the civil condition. In order for a subjective and objectively sufficient holding-to-be true, in other words, the settler must be able to extend the intelligible possession of objects (itself a condition of her rightful possession of objects) to a civil condition, in which all are able to participate in the intelligible possession of objects.

On the Non-Objective Sufficiency of Kant's Intelligible Possession and Civil Condition

It should be clear by now that I am not simply making a claim about the resemblance of Flikschuh's recursive justification to Kant's own claims about holding-to-be-true: *I am claiming that fully objective sufficiency in regards the civil condition can never be attained* and the case of the nomad proves this so. Kant's civil condition is a practical belief—apodeictic in terms of its status of settlers' judging—yet not objective in regards others. For while a settler can certainly make (and does make) the subjective claim that it holds necessarily for her, she cannot convince others of this without also presupposing that they have the same moral sentiment as her. She would have to convince the nomads on the basis of their shared moral sentiment regarding intelligible possession, the civil condition, and the duty of state entrance. But of course, and as Flikschuh carefully argues, this is precisely what is in contention.

Settlers have a subjective necessity to make claims for objects as rightfully theirs under the concept of intelligible condition, itself practically possible under the civil condition. Yet this necessity is only of comparative, not objective sufficiency. For the settler would have to know all of the conditions under which the end of both intelligible possession and the civil condition are or could be, had. And for this, she would have to canvass the opinions (themselves subjective) of all others. This means contact with all others that share distinct opinions from her and those belonging to the civil condition,

¹⁹ Kant underscores the importance of the 'me' in respect of holding a belief at *KrV* B 857. He says, "I must not even say "It is morally certain there is a God," etc., but rather **I am** morally certain, etc."

²⁰ Kant, *KrV*, B 82.

²¹ Kant, *KrV*, B 84.

which is to say, nomads. She would have to first glean and then render judgement upon the claims of nomads who are not in the civil condition to see if they have knowledge of other conditions than her that lead to her principle or end. The evidence required to adjudicate the claim such that it would be both subjectively and objectively sufficient requires an empirical undertaking—a canvassing of peoples everywhere across the globe to ascertain their knowledge of other conditions leading to the principle of the civil condition.

What, then, would count as subjectively and objectively sufficient justification for holding-to-be-true of intelligible possession and the civil condition? At a bare minimum, that peoples in non-civil conditions assent of their own volition (not through coercion) to their conditions leading to the end or principle of the civil condition. Here, of course, issues of the autonomy of peoples to make free decisions on the basis of their particular existential situations immediately arise. In the recursive justificatory enterprise of Ameriks and Flikschuh, settlers that put the question of property to nomads would have to accept the free decisions of the nomads on this (and no doubt other) basis. This suggests that the systematic nature of Kant's *Doctrine of Rights* is open-ended, as Ameriks and Flikschuh argue. *It also suggests that knowledge (as subjectively and objectively sufficient holding-to-be-true of the condition of intelligible possession and the civil condition to all peoples, irrespective of their opinions and beliefs about other conditions leading to these principles) is straightforwardly unobtainable in regards the practical belief of intelligible possession and the civil condition.* And this is exactly what we should expect: Kant's "objective" duty of state entrance applies only to those that recognize and assent of their own volition to conditions that lead to intelligible possession and the civil condition.

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