

THE MATERIAL CONDITIONS OF FREEDOM

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Submitted to the Graduate Faculty of
the Dietrich School of Arts and Sciences in partial fulfillment
of the requirements for the degree of
PhD in Philosophy

University of Pittsburgh

2018

UNIVERSITY OF PITTSBURGH
DIETRICH SCHOOL OF ARTS AND SCIENCES

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University of Pittsburgh, 2018

Freedom is constantly invoked in arguments for the free market and against socioeconomic rights. Contrary to this common view, I argue that respecting freedom requires both robust socioeconomic rights and the rejection of capitalism. In making these arguments, I rely on Kant's conception of the right to freedom as the right to direct one's own will in the external world consistently with others' rights to do the same. Although Kant himself might seem to take private ownership and capitalist exchange for granted, I argue that Kantian freedom entails neither. We must rethink what it takes for our choice of a regime of ownership and exchange to be compatible with the right to freedom. I argue that this right is violated whenever we institute or maintain regimes that deny to some the material resources required for agency or equal citizenship. Further, I argue that capitalism undermines the right to democratic self-government entailed by the right to freedom. The free market, then, is inconsistent with freedom.

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INTRODUCTION

Imagine that you are an alien living on a Planet orbiting Alpha Centauri. You spend your days cultivating harmony with the natural environment and expanding your knowledge. One day, you discover that an object has entered your solar system. Unbeknownst to you, this object happens to be the Tesla roadster with its mannequin driver, dubbed “Starman,” that Elon Musk sent into deep space following the launch of his Falcon Heavy rocket on February 6, 2018.¹ You travel through your solar system and retrieve the object, taking it back to your Planet for study. What will you make of this strange object? What will you take it to signify about the creatures who sent it into space? Will you comprehend the branding purpose for which it was launched? Will you travel to Earth to purchase a Tesla?

At our own point in space and time, the opportunities available to the wealthy are nearly unfathomable. Jeff Bezos, the ubiquitous founder and CEO of Amazon, is currently worth the mind-boggling sum of 130 billion dollars. Not only can these ultra-wealthy individuals launch whatever brands they might like, they can launch them into space! At the same time, many Americans, most notably the employees of these extraordinarily wealthy people, struggle to get by.²

¹ It is worth noting that it is extremely unlikely that this rocket will ever go to Alpha Centauri—apparently, it’s much more likely to crash back into Earth. Sarah Kaplan, “Elon Musk’s space Tesla just might crash into Earth in the next million years,” *Washington Post*, February 16, 2018; available at https://www.washingtonpost.com/news/speaking-of-science/wp/2018/02/16/elon-musks-space-tesla-just-might-crash-into-earth-in-the-next-million-years/?utm_term=.824e394f378e.

² As Bernie Sanders points out in “Let’s Wrench Power Back from the Billionaires,” *The Guardian*, January 14, 2018; available at <https://www.theguardian.com/commentisfree/2018/jan/14/power-billionaires-bernie-sanders-poverty-life-expectancy-climate-change>.

These conditions of extraordinary inequality, coupled with persistent poverty, give us compelling reason to take a closer look at our systems of ownership and exchange, and to think deeply about our responsibility for them.

At the same time, many of our fellow citizens believe that even in the face of these dystopian conditions, we have very good reasons not to place the heavy restrictions on the market that would be required in order to address these issues. Often, such beliefs are founded on the value of freedom: scholars and ordinary citizens alike continually invoke freedom in arguing for the free market and against socioeconomic rights.

According to one such argument, heavily taxing Jeff Bezos, for example, in order eliminate conditions of extreme inequality and extreme poverty restricts his freedom. Taxing him takes away what is his and prevents him from doing what he wants to with his property.

According to a related argument, the market is an essential sphere of individual autonomy, where consumers freely choose what they wish to buy and sell and what form and extent of labor they will engage in. In making these choices, these individuals freely choose what projects they will pursue and what their lives will be. On this view, restricting the freedom of the market, then, restricts individual freedom. While some who espouse this view might view some restrictions on the market as justified, these restrictions and the benefits they bring come at the cost of limiting freedom.

Contrary to this rhetoric, I argue in in the articles that follow that respecting freedom entails rights to access basic material resources as well as to resources such as education and

information. I also argue that respecting freedom also entails rejecting capitalism—the appearance of freedom within the capitalist system is an illusion that distracts us from the project of deciding together how society should be organized.

In making these arguments, I rely on Kant’s conception of the right to freedom as a right to direct one’s own will in the external world *consistently with others’ rights to do the same*. With this Kantian conception, the right to freedom is not a right to direct my will however I please. While I have a right to direct my own will in the world, I do not have a right to direct anyone else’s; so, my right to freedom ends where each other person’s begins.

That I choose to rely on Kantian principles in making these arguments might surprise those who are familiar with Kant’s political philosophy. Kant seemed to hold views that are inconsistent with the arguments I make here, even asserting that citizens’ freedom is “quite consistent with the greatest inequality in terms of the quantity and degree of their possessions.”³ ⁴ Kant also seems to take for granted the rightfulness of private ownership and market exchange.⁵ Furthermore, Kantian principles have often been invoked to support

³ In this introduction, I provide citations to Kant’s work referencing the volume and page number of the standard German work. I will refer to Kant’s work as follows:

MM = *The Metaphysics of Morals*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

TP = *On the Common Saying: That May be Correct in Theory, but it is of No Use in Practice*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

⁴ TP 8:291–2.

⁵ For example, in arguing for his postulate of practical reason with regard to rights, he asserts that we must treat any object “as something which could be objectively *mine or yours*,”⁵ a turn of phrase he uses repeatedly and which suggests that he thinks of ownership as exclusively private. MM 6:246, emphasis added. His account of legitimate original acquisition also suggests that he has only private acquisition in mind. MM 6:258–259.

libertarian economic systems: notably, Kantian principles are invoked by F.A. Hayek to justify his capitalist criticism of the welfare state.⁶

Setting aside issues of textual interpretation, I argue that whatever Kant's own views may have been, Kant's theory of right offers fertile soil for grounding both arguments for robust socioeconomic rights and arguments against capitalism.

Although Kant himself might seem to take private ownership and capitalist exchange for granted, I first argue in "Communal Ownership and Kant's Theory of Right," that Kantian freedom entails neither. One might think that under a market that is "unfree" or a property regime that is not exclusively private, projects that do not violate the rights of others would be precluded—that freedom would be arbitrarily and so wrongfully restricted. But allocating objects collectively does not in itself restrict the range of projects that can be pursued. Objects can be subjected to the same uses under such a system as they could under a "free" system; only the way one goes about securing the right to make use of an object will differ. An alternative system of ownership and exchange, then, can be compatible with Kantian freedom.

In the second, third, and fourth articles featured here, I argue that instead of taking these systems for granted, we must think through what it takes for a regime of ownership and exchange to be compatible with the right to freedom. We, through the state, institute and maintain our regime of ownership and exchange, and we are responsible for the

⁶ Hayek interprets Kant as holding that 'juridical laws [must] abstract altogether from our ends, they are essentially negative and limiting principles which merely restrict our exercise of freedom,' which in turn inspires Hayek's criticism of the welfare state F. A. Hayek, *Law, Legislation and Liberty. ii. The Mirage of Social Justice*. Chicago: Chicago University Press (1976), 43.

consequences of this choice. If our system undermines freedom, we have a duty to change it. I focus on two ways a system of ownership and exchange can undermine freedom: first, this system can undermine individuals' capacity for freedom itself; second, this system can undermine the right to democratic self-governance required by the right to freedom.

In the second article featured here, "The Material Conditions of Freedom," I argue that the right to freedom is violated when we institute or maintain a system that undermines individuals' capacity for external freedom itself—their ability to direct their wills in the external world. Without access to certain basic socioeconomic resources, this capacity is impaired or destroyed. If our system of ownership and exchange generates extreme poverty of this sort when it could be avoided, we are responsible for this consequence of our choice of system. I argue that our choice to institute or maintain such a system thus violates the right to freedom.

The right to freedom is also violated when we institute or maintain a system that undermines the right to democratic self-governance. This right to democratic self-governance is, I argue, entailed by the right to freedom: part of what it is to have the right to direct one's own will is to have the equal right to participate in societal decision-making. Without equal democratic governance, some citizens hold disproportionate authority to direct the wills of others, in violation of the right to freedom.

In the third article featured here, "Inequality and Citizenship in the Kantian State," I argue that in order to ensure that this right to democratic self-governance is respected, the state must secure access for each citizen to those socioeconomic resources that are required for

true participation in the legislative process. Beyond basic resources, I argue that citizens must have access to resources such as education, information, and free time. Furthermore, it is a commonplace that extreme inequalities can undermine the functioning of democratic processes, as control of society's economic resources translates into political control. I argue that inequalities that extreme enough to undermine equal citizenship thereby violate the right to freedom and so must be prohibited.

This right to democratic self-governance will also be undermined if the nature of our system of ownership and exchange is inconsistent with this right. In the last article featured here, "Freedom from the Market," I argue that if we take a Marxian understanding of capitalism, instituting or maintaining a capitalist system violates the right to freedom. As Marx argues, the capitalist system drives inevitably towards the growth of capital—towards profit. I further argue that Marx gives us compelling reason to understand capitalism as a system that direct and sustains itself: when we put in place a capitalist system, the market forces it generates direct human production and human lives to the pursuit of profit. From the capitalist perspective, it might seem natural for this system to direct our activities. We cannot take this perspective for granted, however. Instead, we must decide for ourselves how society should be organized by directing our own economic production. We must put in place a system of ownership and exchange that is compatible with democratic self-governance. Freedom, then, does not require a free market. On the contrary, our freedom must be protected from the market.

In what follows, I aim to accomplish two principal overarching goals. First, I hope to contribute to rehabilitating Kant's theory of right. Marx severely criticizes moral theories

such as Kant's that make arguments based on ideals such as liberty and equality, arguing that these ideas merely represent the interests of the bourgeoisie ruling class and serve to reinforce their hold over society.⁷ Furthermore, this criticism may plausibly appear to be well founded in the case of Kant's discussion of property and economic systems. Kant's discussion of these systems is brief, and as discussed above, what little he does say seems to take for granted a system of private ownership and free exchange. My arguments here aim to show that Kantian freedom can be a powerful tool in criticizing rather than reinforcing our current problematic economic system.

Second, and more importantly, I set out to show that freedom can also be a powerful tool for dismantling rather than reinforcing current problematic economic arrangements. Freedom-based arguments for the free market and against socioeconomic rights often rely on a conception of freedom as negative liberty, where one is free whenever one can do whatever one wants without interference from others, and one is unfree whenever one's actions are interfered with. As Isaiah Berlin famously put it, "if I am prevented by others from doing what I could otherwise do, I am to that degree unfree."⁸ On this view, any taxation or limitation of the market will be a restriction of agents' freedom.

The Kantian framework offers a richer conception of freedom: while my right to freedom is a right to direct my own will in the world, it gives me no right to direct the wills of others.

⁷ As Marx puts it, 'each new class which puts itself in the place of the one ruling before it, is compelled, merely in order to carry through its aim, to represent its interest as the common interest of all the members of society, that is, expressed in ideal form: it has to give its ideas the form of universality, and represent them as the only rational, universally valid ones.' Karl Marx, *The German Ideology*, as excerpted in *The Marx-Engels Reader*, Second Edition, Edited by Robert C. Tucker. New York: W.W. Norton & Company, Inc. (1978), 174.

⁸ Isaiah Berlin, "Two Concepts of Liberty," reprinted in *Liberty*, edited by Henry Hardy. Oxford: Oxford University Press (2002), 169.

Prohibiting me from violating others' rights to freedom thus does not restrict my right to freedom—it simply secures theirs.

For example, this Kantian conception of freedom is able to explain why taxation does not restrict freedom. While taxing Jeff Bezos does involve placing a restriction on his activity, this restriction is not in violation of his right to freedom. When certain people come to control so many resources that they undermine equal democratic citizenship, they come to hold authority over their fellow citizens that is not equal and not reciprocal. Having disproportionate authority over others violates their freedom. Taxing a billionaire, then, does not violate the billionaire's right to freedom. Instead, taxing the billionaire merely prevents the billionaire from violating the freedom of others.

So, beyond clearing space within the Kantian framework for broader discussions of socioeconomic justice, I hope to show that Kantian freedom offers a substantial contribution to debates concerning economic institutions and socioeconomic rights.

COMMUNAL OWNERSHIP AND KANT'S THEORY OF RIGHT

Immanuel Kant's theory of property picks out a fundamental feature of property rights: when we as a society specify rights with regard to external objects, we do not create rightful relationships to the objects themselves.^{1 2} Instead, when we specify these rights, we structure our rightful relationships to one another.

Putting in place a regime of ownership and exchange structures our relationships to one another in two principal ways. First, when we put in place such a regime, we specify the forms of relationships between individuals and external objects that others can be bound to respect. Second, when we put in place such a regime, we specify which actions of society as a whole or interactions between individuals or groups will rightfully result in the establishment of property rights—we specify how property can be acquired.

Different systems of ownership and exchange will result in different relationships with one another. For example, in a system such as that of the United States, we are predominantly bound to respect others' private control of external objects, and we can establish property

¹ Here, I provide citations to Kant's work referencing the volume and page number of the standard German work. I will refer to Kant's work as follows:

MM = Immanuel Kant, *The Metaphysics of Morals*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

GW = Immanuel Kant, *Groundwork of the Metaphysics of Morals*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

² Kant argues that it would be "absurd to think of an obligation of a person to things or the reverse," as doing so involves thinking "of my right as if it were a *guardian spirit* accompanying the thing, always pointing me out to whoever else wanted to take possession of it and protecting it against incursions by them." MM 6:260.

rights through market exchange. The rampant economic inequality of this system, though, might lead one to hope that an alternative system of ownership and exchange could be rightfully possible.

Kant's own theory of property as expressed in his *Doctrine of Right* seems to take it for granted that a just legal order (as Kant puts it, a rightful condition) would include a regime of private ownership, which would seem to preclude many such possible alternative regimes of ownership and exchange. Notably, Arthur Ripstein has defended Kant's view, arguing that "anything less than fully private rights of property, contract, and status would create a restriction on freedom that was illegitimate because based on something other than freedom."³

Despite Kant's own emphasis on private ownership, I argue here that Kant's theory of right and its fundamental principles are compatible with a certain form of communal ownership. As a first step toward establishing this conclusion, I will distinguish private and communal ownership. Next, I will present Kant's postulate of practical reason with regard to rights, which argues that ownership must be possible. I argue that Kant's argument gives rise to a standard by which property regimes can be evaluated: property regimes must secure the possibility of the *meaningful use* of external objects. I then argue that communal ownership regimes of a particular type can satisfy this standard. Finally, I argue that this form of communal ownership is compatible with key aspects of Kantian freedom understood more broadly.⁴

³ Arthur Ripstein, *Force and Freedom*. (Cambridge: Harvard University Press, 2009), 62.

⁴ David James reaches a similar conclusion, although by a different line of reasoning in David James, "Independence and Property in Kant's *Rechtslehre*," *British Journal for the History of Philosophy*, 24:2

I hope to establish that a particular form of communal ownership is compatible with Kantian freedom. This is not an argument *for* communal ownership, nor is it an argument *against* private ownership or capitalist systems. In answering the preliminary questions I answer here, though, I do aim to lay the groundwork for further exploration and evaluation of the rightfulness of diverse economic and property systems within a Kantian framework, thereby enriching Kant's theory of right. And once the ground has been cleared within the Kantian framework for consideration of these issues, the powerful conceptual resources of Kant's theory of right can begin to expand and enrich the broader debate concerning the justice of economic and property systems.

I. COMMUNAL AND PRIVATE OWNERSHIP

In this section, I will distinguish private and communal ownership regimes. In doing so, I will isolate the particular form of communal ownership I will discuss throughout this paper.

Again, when we institute a regime of ownership and exchange, we structure our relationships to one another in two ways. First, when we institute a regime of ownership and exchange, we specify which relationships between individuals and external objects others are bound to respect—we specify how individuals can rightfully control objects. This control could be private or communal. A car that I have the right to the exclusive use of is under my private

(2016) 302-322. Other prominent Kant scholars have also gestured at the compatibility of communal ownership with Kant's theory of right. See Christine Korsgaard, "Taking the Law into Our Own Hands: Kant on the Right to Revolution," in *The Constitution of Agency: Essays on Practical Reason and Moral Psychology*. (Oxford: Oxford University Press, 2009), 238 fn 7. See also Louis-Philippe Hodgson, "Kant on Property Rights and the State," *Kantian Review* 15-1 (2010) 57-87, 62; Barbara Herman, *Moral Literacy*, (Cambridge: Harvard University Press, 2007), 43 ("Kant's argument for an institution of property is not an argument for any particular system of property, private or communal."); and Howard Williams, (*Kant's Political Philosophy*. Oxford: Oxford University Press, 1983), 193-4.

control, while a public city park is under the communal control of citizens of that city. This sense in which external objects can be communally *controlled* is not a defining feature of communal ownership of the form I am discussing here. Under regimes of both private and communal *ownership*, both private and communal *control* are possible.

Second, when we institute a regime of ownership and exchange, we specify what actions or interactions with each other will suffice to establish rightful relationships with regard to external objects. Communal ownership as I define it here is exclusively communal only in this second sense—all rights to external objects are allocated via the will of the community as a whole. In contrast, a private ownership regime leaves matters of allocation to be settled between individuals or groups of individuals—for example, individuals might be able to buy and sell objects in such a regime.

This is a rough and abstract distinction that leaves a great deal of detail to be filled out. For example, how can a community collectively allocate all rights to objects? It would be impossible for a community of any substantial size to do something like meet and vote on every single question of allocation. Rules and mechanisms would need to be put in place to decide categories of questions. What sorts of mechanisms, then, can be put in place such that despite the use of these mechanisms, it is still true that questions of allocation are settled by the general will of the community as a whole? Given the abstract conception of communal ownership I am relying on in this paper, I do not aim to provide a full answer to this question here. Still, we can say that if control over allocation is permanently delegated to private individuals or to independent mechanisms such as a free market, such a regime will no longer be communal. The characteristic feature of communal ownership as I define it

here is the intentional control of all of the mechanisms of allocation by the people as a whole. As soon as the community as a whole no longer has this control, a regime is no longer fully communal.

It is also worth noting that any realistic view of private ownership also includes a significant number of communal restrictions on private ownership. Even Blackstone's classic definition of private property includes space for communal restriction of private ownership: according to Blackstone, private ownership consists in an individual's "free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, *save only by the laws of the land.*"⁵ Many of the late-capitalist regimes present in the world today clearly exhibit some communal control over the mechanisms of allocation—for instance, by placing restrictions on the market, or deciding together how certain resources of particular importance or general concern might be used. Still, while these regimes of ownership and exchange have communal elements, they are not fully communal, as the question of who gets what has in many cases been delegated to private individuals and corporations, as well as to a market that is largely independent of communal control.

So, for my purposes here, a communal ownership regime is characterized only by the communal control of all mechanisms of allocation. The community decides who gets what. There need be no difference between the uses that objects can be subjected to under this sort of communal ownership regime and the uses that objects can be subjected to under a

⁵ William Blackstone, *Commentaries on the Laws of England*, (Oxford: Clarendon Press 1765-1769) 1:134-35, 140-41 (emphasis added). At the time, "the laws of the land" included considerable restrictions on private ownership.

typical private ownership regime. The communal ownership regime I imagine here includes the possibility of both private and communal *control* of external objects.⁶

No stretch of the imagination is required in order to envision a regime of private ownership, as the world is full of property regimes that we identify as private. Envisioning communal ownership, however, does require imagination, especially in light of the historical instances of defective regimes that have been identified as communal. The sense of communal ownership I outline here is abstract, as it is meant to be compatible with a wide range of possible communal ownership regimes, including those that are currently beyond the limits of our imagination.

Still, it is worth pointing out some examples of imagined regimes similar to the regime of communal ownership outlined here.⁷ In a brief but fecund footnote, Christine Korsgaard gestures toward a non-capitalist system of ownership using the public library system as a model:

library books are reserved to particular patrons for specified amounts of time. Your right to the exclusive use of a book, for reading only, and for a certain length of time, still counts as a form of ‘property’ in Kant’s sense. In the same way, the means of production might be communally owned and ‘lent out’ to particular users.⁸

⁶ Though I do not, one might use the term communal ownership to refer to regimes of ownership and exchange that preclude the private control of external objects. See, for example, Thomas More’s *Utopia*. Thomas More, *Utopia*, ed. George M. Logan. Cambridge: Cambridge University Press (2002), 59. Such regimes are potentially problematic in a way that the regime of communal ownership I describe here need not be.

⁷ Works of fiction can also provide powerful models for what alternatives to capitalist regimes of private ownership might look like. For example, see Ursula K. Le Guin’s *The Dispossessed*. New York: Harper and Row (1974).

⁸ Korsgaard, “Taking the Law into Our Own Hands: Kant on the Right to Revolution,” 238 fn 7.

While this brief note does not provide us with a full picture of what a communal regime would look like, it does provide us with an inchoate idea of what such a system could be.

For another example, late in his career John Rawls outlined a system of property-owning democracy, where ownership of societal resources is widely dispersed.⁹ Scholars have taken up this compelling idea and developed it further.¹⁰ While Rawls refers to this system as a system of private ownership, presumably because it involves the private control of external objects, the terminology used is not important. Whether one would choose to describe this regime (or, for that matter, a regime of communal ownership of the sort under consideration in this paper) as a regime of private or communal ownership, either way it offers a significant potential alternative to a capitalist system of private ownership.

In what follows, I argue that communal ownership can be compatible with Kantian freedom. Importantly, though, I will not argue that communal allocation of external objects itself must always be rightful, nor will I argue that market allocation associated with private ownership cannot be rightful.¹¹ My aim here is to lay the groundwork for exploring these issues: once we have established that the nature of ownership in a Kantian theory of right does not preclude communal ownership, we can focus on determining what rightful allocation must look like.

⁹ John Rawls, "Institutions of a Just Basic Structure," in *Justice as Fairness: A Restatement*, ed. Erin Kelly, Cambridge: Harvard University Press (2001), 134-179.

¹⁰ *Property-Owning Democracy: Rawls and Beyond*, ed. Martin O'Neill and Thad Williamson, Malden, MA: Wiley-Blackwell (2012).

¹¹ For an interesting article that pushes into issues of justice in allocating objects and beyond from a novel Kantian perspective, see A.J. Julius, "Independent People." In S. Kisilevsky and M. Stone (eds.), *Freedom and Force: Essays on Kant's Legal Philosophy*, Oxford: Hart Publishing (2016).

II. THE POSTULATE OF PRACTICAL REASON WITH REGARD TO RIGHTS

In explicating his theory of property, Kant distinguishes two forms of possession. Kant defines empirical possession as “*physical* possession,” and contrasts it with intelligible possession, which he defines as “a *merely rightful* possession of the same object.”¹² When a person intelligibly possesses a thing, she retains her right to it even when she does not physically possess it—an object remains hers even when she sets it down.

Kant argues that rightful ownership (intelligible possession) of objects must be possible. He identifies this conclusion as his postulate of practical reason with regard to rights. In support of this postulate, Kant first argues that the choice to use objects is formally consistent with others’ freedom—there is nothing inherent in the use of objects that is necessarily inconsistent with others’ freedom. Kant then argues that this possibility of rightful use is inconsistent with a hypothetical law of freedom holding that no one may rightfully own anything. So, since rightful use is possible, rightful ownership must be possible—usable objects must not be put beyond the possibility of being used.¹³

Kant’s argument here is puzzling. Kant argues that rightful use must be possible, and so concludes that rightful ownership must be possible. Why, though, should we think that rightful use could not be possible without rightful ownership? Intuitively, it seems that such use would be possible: people could rightfully use any objects not currently being used by others, even though they would lose all claim to those objects as soon as they put them down. In other words, it seems that people could rightfully use objects in a condition of merely empirical (physical) possession.

¹² MM 6:245.

¹³ MM 6:250.

What, then, could Kant have been up to in claiming that rightful use is not possible without intelligible possession? We might think that he was just confused and did not envision this obvious possibility, which seems unlikely. Instead, we might think that Kant understood rightful use to be more than mere physical use, and it is this richer sense of use that is impossible without intelligible possession.

III. MEANINGFUL USE

What could this richer sense of use be? We know that this richer sense of use is the sense of use that is made possible by intelligible possession. Here, I will first describe a condition of merely empirical possession and the possibility of use in this condition. Then, I will contrast this condition with a condition that includes intelligible possession. This contrast illuminates the sense of use made possible by intelligible possession, allowing us to understand Kant's argument for his postulate. My aim in this section is only to describe this richer sense of use. In the next section, I will articulate the connection between this richer sense of use and freedom.

In a condition of merely empirical possession, no one has a right to any object other than those she physically possesses.¹⁴ If someone physically possesses an object, her right to use it is protected insofar as my interfering with her use of it would interfere with her person.¹⁵ Beyond this, however, the use of objects is not protected—one's right to an object terminates as soon as she sets it down. This system seems to straightforwardly allow for the

¹⁴ This condition is similar to a regime of usufruct. While these regimes might differ in some ways, a system of usufruct includes the same essential flaw exhibited by the condition of merely empirical possession.

¹⁵ MM 6:247-48.

possibility of using objects: one can pick up and make use of any object that is not currently physically possessed by others.

Though mere physical use is possible, the conditions of this use are extremely restricted. Aside from continuous physical possession of an object, one cannot initiate a rightful relationship regarding an object such that that object will rightfully be available for use in the future. So, whether one will be able to carry out any project involving objects at any time will necessarily be dependent on others' whims. Any time you set an object down, you could lose it for good.

Human projects have the potential for great complexity. We can set complex ends involving the intermittent or delayed use of external objects of choice. Even our mundane actions, such as cooking dinner, often exhibit this complexity. In a condition of merely empirical possession, the range and complexity of human projects one can rightfully undertake is severely limited.¹⁶

Adding the possibility of intelligible possession eliminates this restriction on the complexity of the projects that one can engage in. If a person can have a right to an object even when she sets it down, then she can engage in complex projects involving those objects she has a right to, secure in her continued right to use those objects.¹⁷

¹⁶ One could imagine beings who have no inclination to set objects down, such as kangaroo-like beings with giant pouches in which they carry all objects they wish to use in life. So long as they are capable of setting objects down, though, the range of projects they can engage in is still rightfully restricted.

¹⁷ Natural contingencies could still make the continued use of those objects impossible; for example, a crack could open up in the earth and swallow up my gourmet dinner. However, such natural contingencies are not governed by right, which governs relationships of choice between people.

So, intelligible possession secures the possibility of *meaningful use*: a continued right to an object gives one the opportunity to use that object for one's projects, whatever and however complex they may be. When we can intelligibly possess external objects of choice, we can bear relationships to these external objects that extend beyond our ability to physically possess them. Meaningful use, then, is the richer sense of use made possible by intelligible possession that Kant presupposes in his argument for the postulate.

IV. MEANINGFUL USE AND FREEDOM

It still must be shown that right actually does require that this richer sense of use be possible. While presumably few would deny that some use of objects must be possible, many might be content to stop there. So long as physical use is possible, we have objects available for our purposes. Why would anything more than merely physical use be necessary? Here, I set about answering this question.

The foundation of Kant's theory of right is the innate right to freedom, from which all other rights are derived: "[f]reedom (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, is the only original right belonging to every man by virtue of his humanity."¹⁸ I follow Ripstein in understanding the innate right to freedom as protecting "purposiveness—your capacity to choose the ends you will use your means to pursue."¹⁹ The right to freedom secures the external exercise of this capacity from interference by others.

¹⁸ MM 6:237.

¹⁹ Ripstein, *Force and Freedom*, 34.

The fundamental principle of Kant's theory of right is his 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."²⁰ Kant's theory exhaustively divides all actions into the categories of right and wrong: if an action or condition violates the freedom of others, it is wrong and prohibited; if it does not, it is right.²¹

I argue that restricting the rightful possession of objects to merely empirical possession would constitute an unjustifiable restriction of freedom. In such a condition, no one could secure the right to use objects for any project where she would need to set them down. As a factual matter, this would seemingly severely restrict the range of human projects and activities. More importantly from a Kantian perspective, though, this condition would arbitrarily restrict freedom.

In general, as rational beings who must set ends for ourselves in the world, we take ourselves to be related to the means to those ends such that those ends could be carried out. As Kant writes in the *Groundwork*, a means contains "the ground of the possibility of an action the effect of which is an end."²² Fundamentally, we take ourselves to be related to the means to our ends intelligibly: for a person to conceive of certain things as her means is for her to see herself as related to those means such that she can use them to pursue her end. This relationship extends beyond a person's physical relationship with an object.

²⁰ MM 6:230.

²¹ Ibid.

²² GW 4:427.

In the sphere of right, we use our external freedom to pursue projects. To undertake particular projects, we seek to use external objects to carry out those projects. To have a right to use an object to pursue a given project just is to have a secure right to the use of that object sufficient to allow that project to be carried out. As in the ethical sphere, this relationship we must bear to external objects is essentially intelligible rather than physical: to have a right to use an object is to have a right to use it to carry out projects.

In a condition of merely empirical possession, we can secure the right to pursue only those projects that do not require setting down the objects we are using to pursue them. While we could attempt to pursue other projects, we cannot secure a right to pursue them—our pursuit of them will necessarily be dependent on the contingent choices of others. Because of the relationship we fundamentally conceive of ourselves as being in with regard to those objects we would use to pursue our projects, this condition restricts the range of projects that we can rightfully undertake to those projects that do not require setting objects down. One cannot secure a right to use objects to pursue any other project.

This restriction of the range of projects that can be undertaken is an unjustifiable restriction of freedom.²³ Since the universal principle of right prohibits only those actions that constrain the freedom of others, the only rightful limitation on the range of projects we can rightfully undertake is the prohibition of pursuing projects that constrain the freedom of others.

Projects that involve setting objects down do not necessarily constrain the freedom of

²³ As Louis-Phillippe Hodgson puts it, “a system of mere empirical possession makes my (eminently restricted) ability to occupy space and to hold objects the measure of my ability to make objects into my means, and thus to set and pursue ends for myself. This unjustifiably restricts my external freedom, because there is no reason why my having only two hands (to name only one obvious physical limitation) should determine what means I can rightfully secure for myself.” Hodgson, “Kant on Property Rights and the State,” 60.

others. Since this is so, it should be possible for one to rightfully engage in such projects. So, *meaningful use* must be possible: it must be possible for external objects to be rightfully used in one's projects, even those projects that require setting objects down and picking them up again. No project that is consistent with the freedom of others can be rightfully precluded.²⁴

V. MEANINGFUL USE AND COMMUNAL OWNERSHIP

I have argued that Kant's argument for his postulate gives rise to a standard of *meaningful use*: external objects must be available for use in our projects, whatever those projects may be. Any property system that does not secure this possibility will arbitrarily restrict our freedom to engage in our projects. So, if a regime of ownership does not secure the possibility of meaningful use, it will be inconsistent with freedom.

Throughout his discussion of property rights, Kant focuses almost exclusively on private ownership. For example, in arguing for his postulate of practical reason with regard to rights, he asserts that we must treat any object "as something which could be objectively *mine or yours*,"²⁵ a turn of phrase he uses repeatedly and which suggests that he thinks of ownership as exclusively private. His account of legitimate original acquisition also suggests that he has only private acquisition in mind.²⁶ It is therefore understandable to interpret Kant as defending a regime of private property ownership.

²⁴ This is not to say, of course, that all rightful projects must be made *actually* possible—that individuals must have the opportunity to carry out any and all projects they want to carry out.

²⁵ MM 6:246, emphasis added.

²⁶ Kant's account of original acquisition has three aspects: first, a person must apprehend an object (take physical possession of it); second, that person must give a sign that she has taken control of that object and of her 'act of choice to exclude everyone else from it'; third, the general will must give a law that appropriates that object to that individual. MM 6:258-59.

While there are some indications that Kant viewed some more encompassing forms of communal ownership as rightful,²⁷ again, my goal here is not to dispute this interpretation of Kant.²⁸ Instead, I wish to argue that despite Kant's own focus on private ownership, the argument that Kant gives for his postulate is also compatible with communal ownership. A system of communal ownership can allow for the meaningful use of external objects of choice, and so can satisfy the standard that arises from Kant's argument for the postulate. Of course, there might be other reasons to question the compatibility of communal ownership with Kant's theory of right. I will respond to such concerns later on. Here, I seek to establish only that a system of communal ownership allows for the meaningful use of external objects.

At first glance, this might not seem to be a controversial claim. Jurisprudence is replete with examples of things that are thought to be "too 'public' to be parceled out into private ownership."²⁹ For example, under Roman law, it was held that a law of nature made air, flowing water, oceans, and the ocean shores common to all.³⁰ These objects are both

²⁷ For instance, Kant seems to acknowledge the possibility of rightful communal ownership of the land. In discussing some casuistical questions regarding the ownership of land, Kant asks, "can anyone have a thing as his own on land no part of which belongs to someone? Yes, as in Mongolia where, since all the land belongs to the people, the use of it belongs to each individual, so that anyone can leave his pack lying on it or recover possession of his horse if it runs away, since it is his." MM 6:265. Here, Kant acknowledges the rightful consequences of possession that follow in what appears to be a system of communal ownership of land. Furthermore, in discussing the duties of the sovereign as the supreme proprietor of the land, Kant asserts that "[a]ll land belongs only to the people (and indeed to the people taken distributively, not collectively), except in the case of a nomadic people under a sovereign, with whom there is no private ownership of land." MM 6:324. While this passage illustrates Kant's focus on the private ownership of land, it also suggests that a system of non-private land ownership can be rightful.

²⁸ For a more in depth discussion of how many Kant's own stated views concerning property relate to the conclusions I draw here, see David James' illuminating alternative argument for the conclusion that Kantian principles of right do not necessitate private ownership. James, "Independence and Property in Kant's *Rechtslehre*."

²⁹ Thomas W. Merrill and Henry E. Smith, *Property: Principles and Policies*. New York: Foundation Press (2007), 308.

³⁰ Justinian, "Institutiones." In P. Krueger and T. Mommsen (eds.), *Corpus Iuris Civilis*. (1928), 2.1.1-5.

communally controlled and governed communally. My claim here, though, is not merely that the communal ownership of *some* objects can be rightful. Instead, I argue that a *fully* communal system of property rights can be rightful with respect to the meaningful use standard.

Again, in making this claim I am relying on the specific understanding of communal ownership described above. This regime is a regime of communal ownership in the sense that all citizens govern together the allocation of all external objects. They collectively own all external objects, including land and the means of production, and so decide collectively how to allocate them for use. Private and communal *control* of objects is possible within this system, as is control by smaller groups of varying sizes. When an object is allotted to a person or group, the entity's use of that object is rightfully protected and others are not permitted to interfere.

I argue that the meaningful use of objects is possible under such a regime of communal ownership. The meaningful use standard requires that it be possible for external objects to be available for all rightful projects: projects that do not violate the freedom of others cannot be rightfully precluded. All rightful projects will be possible under a communal ownership regime of this sort. As just noted, private control is possible within this system: objects that are owned by the community can be allocated to individuals for their exclusive possession and use. Since private, group, and fully communal control of objects can be rightfully secured within this system, any project of any complexity could in principle be undertaken (provided, of course, that the project does not violate the rights of others).

Introducing the element of communal ownership does not restrict the uses that objects could be subjected to. Even though property is communally owned, objects such as food and other consumables would frequently be allotted to individuals for destruction through use. Furthermore, communal ownership does not entail that the possession of objects be limited in time. We could imagine, for example, that objects such as residences might be allotted on a lifetime basis, or at least that your right to your residence would persist until you decide to leave it. And when an object is allotted to a given person, that use will be secured from the interference of others. So, the possibility of meaningful use is secured, as one can secure the right to intelligibly possess objects that are required to undertake any rightful project.

One might argue that not all rightful projects are rightfully possible under such a regime, and so such a communal ownership regime would violate the meaningful use standard and therefore arbitrarily restrict freedom. Specifically, one might note that a regime where all allocation is communal would preclude the buying and selling (market transfer) of external objects and argue that this would constitute an arbitrary restriction of citizens' choice. However, any property regime must specify rightful methods of acquiring objects. The choice of one method (or combination of methods) will inevitably preclude the adoption of any other possible method of acquiring objects. So, that communal ownership precludes a certain form of exchange does not entail a violation of freedom. Under this regime of communal ownership, the allocation of objects is controlled via collective governance, and buying and selling may not be possible. However, under a regime of private ownership, collective governance of the allocation of resources will be precluded. Neither choice constitutes, for this reason at least, an unjustifiable restriction of freedom.

One might further argue that a regime of communal ownership could allocate specific objects to particular individuals for specific uses. One might then object that if it did so, such a regime would restrict the choice of those individuals to use those objects for whatever purposes they see fit, thereby violating their freedom as well as the meaningful use standard.

This objection depends on the assumption that rights must be held with regard to external objects as such—that if one is to have a right to an object, then anything less than unlimited control of that object will violate one’s freedom of choice with regard to it. Even if it were true that control of external objects rightfully must consist in unlimited control of those objects as such, this could still be consistent with the form of communal ownership at issue here. This sort of regime does not necessarily entail the allocation of objects only for specific uses for limited periods of time. If the control of objects must be total, the allocation of these objects could still be carried out communally. Though the question of whether unlimited (or, for that matter, limited) control of objects must be possible remains open, either answer will be compatible with communal ownership as it is defined here.

Furthermore, it is worth noting that limited rights of this sort are not a distinguishing feature of communal ownership regimes. For example, under a private property regime, I might lease an apartment and so obtain a right to live in that apartment, but not a right to paint its walls or demolish it. Further, this lease might be limited to the term of one year. This is an example of just this sort of limited right—a right to use a specific object only for specific purposes and for a limited period of time.

VI. COMMUNAL OWNERSHIP AND FREEDOM

I have argued that communal ownership is compatible with the standard of meaningful use that arises out of Kant's argument for his postulate, a standard that I argued is grounded in the innate right to freedom. Even if communal ownership is consistent with this demand of freedom, however, one might still argue that it is inconsistent with the innate right to freedom for other reasons. In this section, I will present and respond to objections of this sort.

i. Communal Allocation and Freedom

One might argue that certain ways of allocating objects restrict citizens' freedom. The operative intuition here might be that the choice of the community itself in deciding whether or not to allocate objects could be arbitrary, and so the community's decision will violate my freedom. One might argue that when I am subject to the will of the community in order to secure the rights to any objects that I wish to acquire, the community's decision not to provide me with those objects arbitrarily restricts my choice to pursue those projects that I would have used those objects to pursue.

This objection undeniably raises issues of great importance: Who should determine who gets what, and how should this determination be made? Are there any objects we should each have a right to access, making any interference with this access wrongful? All of these issues, though, are beyond the scope of this paper. This objection concerns access to objects that individuals do not own. One's ownership rights are not violated when one is denied access to objects that one does not own, as those objects are per se objects that one does not have

such a right to. Just as in a private ownership system my ownership rights are not violated when no one wants to sell me a particular car, my ownership rights are not violated in a communal ownership system when the community does not allocate a particular car to me. Though freedom may for other reasons require that individuals have access to certain objects or to all objects on certain terms, these answers do not follow from the nature of ownership itself. As the focus of this paper is on ownership rights, these questions are beyond this scope.

Of course, these questions must be answered to give a full Kantian account of socioeconomic justice. Here, I have set these issues aside to focus on determining whether the nature of ownership itself precludes communal ownership. I argue that it does not. In making this argument, I aim to clear space within Kant's theory of right for consideration of these further questions. I do not presuppose any answers to these further questions here.

Finally, though for the reasons given above I cannot address the issue fully here, it is worth noting that private ownership systems will face a challenge analogous to the objection above: under a regime of private ownership, my choice does not determine who gets what. Presumably, such regimes will be accompanied by a system of market transfer. When one must buy and sell her objects in order to transfer the rights to them, her choice is dependent on the wills of others who must choose whether to sell or buy those objects. In addition, her choices are also dependent on market forces. Insofar as a person's ability to acquire objects is dependent on such forces and the choices of others to buy and sell, such a system will not

involve self-government of access to objects. Furthermore, communal ownership may offer a possible solution to this problem that private ownership cannot.³¹

ii. Communal Ownership and Acquisition

One might also argue that issues relating to original ownership render communal ownership incompatible with freedom. Here, I will consider two categories of objections of this sort.

Communal Authority

In order for communal ownership as I have imagined it to be rightful, the community must have the authority to control the allocation of all objects that are taken to be a part of the community. So, even if such a system of communal ownership would secure the possibility of meaningful use, such a system will fail to be rightful unless the community does possess this authority.

I argue that Kant's discussion of the sovereign as supreme proprietor of the land provides a good model for understanding why the state must take itself to have this authority.³² On this view, if we are to establish property rights that specify how land can rightfully be acquired and owned, then we must take ourselves to have the authority to control the use of the land

³¹ It is true that under a communal property regime, others will have input into what objects I have access to. However, others do not have complete control over this access—as a citizen, I also have an equal voice in governing which objects I have access to and in governing which objects all others can access. Thus, a communal property regime involves self-government of access to objects.

³² According to Kant, acquired rights to the “possession and use” of objects “must be derived from the sovereign as...the supreme proprietor” of the land. MM 6:323. This idea of the sovereign as the supreme proprietor of the land is “an idea of the civil union” that allows us to represent “the necessary union of the private property of everyone within the people under a general public possessor.” MM 6:323. The sovereign as supreme proprietor of the land embodies this general public possession and derives from it the authority to legislate concerning the possession and use of objects, as well as the right to tax private ownership. MM 6:325.

we are legislating with regard to—we must take ourselves to collectively own that land, as having the right to control the use of an object is just to own that object. Kant discusses the necessity of innate common possession when he argues that

a right to a thing is a right to the private use of a thing of which I am in (original or instituted) possession in common with all others. For this possession in common is the only condition under which it is possible for me to exclude every other possessor from the private use of a thing... By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the united choice of all who possess it in common.³³

Although Kant's argument regarding land involves some commitments that are puzzling³⁴, the general principle underlying this argument is illuminating. If we are to govern the use of objects, we must take ourselves to have the right to do so. Since establishing laws that govern the use of objects in the entire state can only be made by the state collectively (understood as embodying the general will of the people),³⁵ we must take ourselves to have collective control of all external objects that the state legislates with regard to.³⁶ So, this authority that we must take ourselves to have is the authority to govern the use and ownership of objects collectively, which is just the authority needed to put in place a regime of communal ownership.³⁷

³³ MM 6:261.

³⁴ We might wonder, for example, whether we must really take the state to necessarily have territory in the form of land. We might also be puzzled by Kant's thoughts on the connection between ownership of the land and ownership of all of the material objects on that land. See, for example, MM 6:261-62.

³⁵ According to Kant, we cannot be bound unilaterally—one person cannot impose obligations unilaterally on others. Instead, we can only be bound by an omnilateral will—the combined will of all. MM 6:263.

³⁶ As Leslie Mulholland argues, “[o]ne of the main features of innate common possession, especially for a theory of social justice, is that it demonstrates that all private ownership presupposes collective ownership of land and all particular claims to (private) acquired rights must be derived from collective possession through a general will.” Leslie A. Mulholland, *Kant's System of Rights*. New York: Columbia University Press (1990), 273-4.

³⁷ Note that in this sense, all ownership regimes set up within a Kantian system, whether private or communal, will involve this element of communal control. Importantly, my argument here is not simply that communal ownership in this very weak original sense is rightful within a Kantian system.

Presumption of Private Ownership?

One might argue, though, that even if we as a society do have the authority required for the establishment of a communal ownership regime to be rightful, there are other reasons to think that there should be a presumption in favor of private ownership. Here, I will discuss two related concerns of this sort.

First, one might argue that original acquisition must be private, and so property rights must include private property rights. Prominently, Kant's own account of original acquisition seems to take it for granted that original acquisition must be private.³⁸ He sets out a three-step process of original acquisition: first, one must apprehend an object, meaning she must take physical possession of it; second, that person must give a sign that she has taken control of that object and so has acted to exclude everyone else from it; and third, the general will must give laws that bind everyone to this individual's choice.³⁹ On this view, original acquisition is private, and it may seem that when an individual completes the first two steps of acquisition, the community is bound to make laws that make such an individual's presumptive acquisition rightful.

I argue, though, that any such account of original acquisition rests on a fundamental error: such accounts fail to recognize that ownership relationships are necessarily legally constructed by society and so are not *natural* in the way such accounts seem to assume they

Instead, I argue here that it is rightful to use this original communal authority to establish a fully communal property regime of the sort described above.

³⁸ Ripstein, in interpreting Kant's theory of property, also argues that shared ownership must be a "derivative case, because it presupposes the idea of exclusive ownership." Ripstein, *Force and Freedom*, 67 fn 14, citing MM 6:251.

³⁹ MM 6:258-59.

must be. Granted, physical (empirical) possession does naturally establish a relationship of right that others must not interfere with: if you disrupt my rightful physical possession of an object, you interfere with my innate right to my own body. However, no individual's interaction with an object can establish *intelligible* (merely rightful) possession of an object. Any natural law account that specifies a certain interaction with an object as naturally establishing ownership of that object will necessarily be arbitrary.⁴⁰ Why privilege one interaction with an object over any other as the one form of interaction that naturally establishes ownership? Should I own an object when I look at it? Name it? Get close to it? Touch it? Labor on it? Or should I own an object when I physically possess it and then give a sign that I intend to exclude all others from it? No such relationship with an object of this sort suffices to create any natural metaphysical connection to an object sufficient to ground a claim of natural ownership.

Kant himself seems to recognize this when he criticizes the arbitrariness of a Lockean account of acquisition:

Moreover, in order to acquire land is it necessary to develop it (build on it, cultivate it, drain it, and so on)? No. For since these forms (of specification) are only accidents, they make no object of direct possession and can belong to what the subject possesses only insofar as the substance is already recognized as his.⁴¹

Laboring on land is an “accident”—it is something that one can do with land, but it is morally arbitrary and does not establish a rightful relationship of ownership to an object.

⁴⁰ As Rousseau notes, “[t]he first man who, having enclosed a piece of ground, to whom it occurred to say *this is mine*, and found people sufficiently simple to believe him, was the true founder of civil society.” Jean-Jacques Rousseau, *Rousseau: The Discourses and Other Early Political Writings*. Trans. and ed. Victor Gourevitch, Cambridge: Cambridge University Press (1997), 161.

⁴¹ MM 6:265. Later, Kant further develops this criticism, arguing that “[t]he first working, enclosing, or, in general, *transforming* of a piece of land can furnish no title of acquisition to it; that is, possession of an accident can provide no basis for rightful possession of the substance.” MM 6:268.

Although Kant understands the mistake Locke makes, he fails to recognize that a similar criticism applies to the account of acquisition he sets out. Although possession does establish a relationship regarding an object⁴² for as long as that object is held, that relationship is an accident in exactly the same way that laboring on an object is. A relationship of temporary physical possession does not naturally transform itself into a relationship of intelligible possession that persists after the physical relationship ends. Just as laboring on an object is labor wasted unless that object is already yours, physical possession is incidental to whether a relationship of intelligible possession exists.

The relationship of rightful acquisition must be specified by society, and that relationship has rightful consequences because society has made it so. As a result, acquisition need not be private unless society decides to make it so.

A second objection, though, relates to this first: one might argue that provisional rights must be private, and since this is so, society should create a regime of private ownership to be consistent with these provisional rights.⁴³ For Kant, a provisional right is the relationship an individual can bear to others regarding external objects of choice in the absence of a civil condition.⁴⁴ Since there is no omnilateral will in the absence of a state, conclusive property

⁴² Again, on Kant's theory of property, property rights are relationships between people regarding objects rather than relationships between people and objects themselves. In this way, Kant's view is importantly different from Locke's. Still, an analogous criticism goes through: the accident of empirical possession of an object will not naturally create a property right between citizens regarding that object.

⁴³ Kant makes some statements that suggest that he might hold such a view. For example, he asserts that "the way to have something as one's own in a state of nature is physical possession which has in its favor the rightful *presumption* that it will be made into rightful possession through being united with the will of all in a public lawgiving, and in anticipation of this hold *comparatively* as rightful possession." MM 6:257. Insofar as Kant himself does endorse such a picture of provisional rights, I think this view is mistaken for the reasons I discuss in rejecting this objection.

⁴⁴ MM 6:264.

rights cannot be established, and those property rights that would be conclusive if there were a state can only be provisional. According to this objection, provisional rights are established in the absence of a civil condition; since there is no omnilateral willing in the absence of a civil condition, there can only be private rights in such a condition; so, in order for a society to establish a regime of property law that is consistent with these provisional rights, it must establish a regime of private ownership.

This objection rests on a misunderstanding of the nature of provisional rights. On this view, a provisional right is akin to a weak natural right regarding an object: if I have a provisional right to a particular apple, I have a presumptive private property right concerning that apple that need only be approved by society to become a conclusive right. Provisional rights, however, cannot be weak natural rights to objects. Because there is no omnilateral will in the state of nature, attempts to impose a property right to an object on others could only be unilaterally willed. And unilateral wills cannot bind others. Unilateral imposition of obligations on others would violate those others' freedom: one person cannot unilaterally decide for all others that new obligations for them come into being, as to do so would be to impose her will on others and restrict their choice without their consent.⁴⁵ So, provisional rights are not binding rights, and the government therefore will not violate any binding rights when it establishes a communal ownership regime.

Instead of thinking of provisional rights as weak natural rights, provisional rights are more appropriately thought of as claims to adjudication with regard to particular objects. For the

⁴⁵ As Kant puts it, “[n]ow, a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws.” MM 6:256.

reasons given above, a provisional right cannot be a claim right to a particular object—such a unilateral imposition would violate others’ freedom. Instead, provisional rights are akin to claims to determination and settlement of rights with regard to particular objects. If I take control of an object in the absence of a state, no one can take that object from me rightfully until there is intervention by the state—the only way we can settle the question of which objects belong to whom is to enter into a rightful condition and establish property laws.⁴⁶ Since ownership must be rightfully possible, we have a claim against all others that they enter with us into the state so that this determination can occur.⁴⁷ So, provisional rights do not necessitate a regime of private ownership.

iii. Communal Ownership and Free Use

In *Force and Freedom*, Ripstein argues that freedom requires private ownership. To establish this conclusion, he argues that it follows from Kant’s argument for the postulate “that the only way that a person could have an entitlement to an external object of choice is if that person had the entitlement formally, because having means subject to your choice is prior to using them for any particular purpose.”⁴⁸ He then argues that “the exercise of acquired rights is consistent with the freedom of others, because it never deprives another person of something that person already has.”⁴⁹ From these premises he concludes, “anything less than

⁴⁶ Kant suggests such a line of argument when he argues that “the possibility of acquiring something external in whatever condition people may live together (and so also in a state of nature) is a principle of private right, in accordance with which each is justified in using that coercion which is necessary if people are to leave the state of nature and enter into the civil condition, which alone can make acquisition conclusive” MM 6:264.

⁴⁷ MM 6:307-08.

⁴⁸ Ripstein, *Force and Freedom*, 62.

⁴⁹ *Ibid.*

fully private rights of property, contract, and status would create a restriction on freedom that was illegitimate because based on something other than freedom.”⁵⁰

Since Ripstein’s intent here is not to give an argument for private ownership as opposed to communal ownership, the grounds for his objection to communal ownership are somewhat difficult to discern. I believe the key to understanding the force of Ripstein’s objection to communal ownership lies in the connection between property rights and individual autonomy. In order for an individual to be able to set an end for herself, she must take herself to have available the means to pursue that end.⁵¹ For a person to be able to set private ends for herself, then, she must have private control over the means to those ends. A regime of communal ownership could be understood as preventing the setting of private ends—if all objects are communally owned, then I am always dependent on the contingent choices of all other members of the community in order to be able to carry out my private ends. As Ripstein asserts, “[i]f I am to be the one who sets ends for myself, I must have means fully at my disposal, so that I am the one who decides which purposes to use them for.”⁵² According to this objection, communal ownership precludes the possibility of setting private ends—only communal ends can be carried out without dependence on the choices of others. Communal ownership, then, involves an unjustifiable restriction of freedom as it formally restricts the set of ends that can be pursued to exclude private ends.⁵³

⁵⁰ Ibid.

⁵¹ As Ripstein asserts, “[i]n order to set an end for yourself, that is, to take it up as an end that you pursue, you must take yourself to have the power to achieve it; so, ‘whether you can adopt a particular end will depend upon the powers and means you have at your disposal.’” Ripstein, *Force and Freedom*, 66.

⁵² Arthur Ripstein, “Authority and Coercion,” *Philosophy & Public Affairs* 32 (2004): 2-35, 9.

⁵³ Loren Lomasky makes a similar claim, arguing that private property ownership is required for individuals to be able to pursue their private projects, which he takes to be of fundamental value.

To see the force of this objection, consider an example: suppose you would like to make yourself a mushroom omelet.⁵⁴ To make yourself such an omelet, you will need multiple ingredients. Let us further suppose that you lack the dexterity necessary to physically possess all of these ingredients and tools at the same time—during the making of your omelet, you will need to set some of them down. As Ripstein argues, if you did not have a private right to the possession of these ingredients, “someone else would be entitled to take the eggs you had gathered while you were sautéing the mushrooms, and you would not be entitled to do anything to stop her. Your entitlement to set and pursue purposes would thus depend on the particular choices made by another.”⁵⁵ To set a private end, then, one must have a right to the means necessary for the pursuit of that end. On this view, if private ownership is impossible, then so is the setting of private ends.

This objection holds considerable force and does seem to constitute legitimate grounds for rejecting many conceivable regimes of property ownership that could in some sense be described as communal. To formally restrict the ends that could be rightfully set to exclusively public ends would constitute an unjustifiable restriction of freedom. However, the communal ownership regime that I have described here is structured in such a way that it is compatible with the setting of private ends. To set private ends, I merely require the rightful private control of the objects necessary for the pursuit of that end. This is possible within the communal ownership regime I have described: so long as the rightful use of

Loren E. Lomasky, “Property Rights Within a Liberal Order,” in *Persons, Rights, and the Moral Community*. Oxford: Oxford University Press (1987), 111-151.

⁵⁴ Ripstein, *Force and Freedom*, 91.

⁵⁵ *Ibid.*

objects can be securely allocated to particular individuals for given periods of time, the pursuit of private ends will be possible.⁵⁶

Consider again the mushroom omelet. In a regime of communal ownership of the sort under consideration, the community can allocate the exclusive control of the materials necessary for the production of your mushroom omelet to you. You can make (and eat) your omelet rightfully free from the interference of the contingent choices of others. So long as a regime of communal ownership is structured to permit the individual control of material objects of choice, it will be compatible with the setting of private ends. As noted in the first section, this level of individual control might lead some to characterize this regime of ownership as a private property regime. Regardless of whether we call this a system of property private, if such a system is consistent with Kantian freedom, this will certainly constitute an important expansion of the class of possible rightful ownership regimes within a Kantian framework.

VII. CONCLUSION

Here, I have argued that a regime of fully communal ownership is consistent both with the meaningful use standard that arises from Kant's argument for his postulate and with the innate right to freedom more generally. I further argued that communal ownership is consistent with Kantian views on original acquisition and provisional rights. Contrary to Kant's own apparent presumptions, these Kantian principles do not preclude the rightful

⁵⁶ This seems to be what Christine Korsgaard has in mind when she argues that Kant's view "does not establish the necessity of 'private property' in any controversial sense; it establishes only that the means of production and action must be reserved to the exclusive use of certain individuals in certain times and places... [T]he means of production might be communally owned and 'lent out' to particular users." Korsgaard, "Taking the Law into Our Own Hands: Kant on the Right to Revolution," 238 fn 7.

possibility of communal ownership. Further exploration of the rightful possibility of such a communal ownership regime can and should be undertaken.

And the rewards of such exploration could be considerable—the possibility of communal ownership brings with it the possibility of a wide range of social and economic regimes. Questions concerning what justice requires with regard to who gets what and on what terms they should get it can now be posed within a Kantian framework: What level of control are we as citizens rightfully required to have over the mechanisms of allocation? Which systems of exchange are compatible with Kantian freedom, and how should we choose between acceptable alternatives? What restrictions are there on what we might choose? For example, which objects, such as the means of subsistence⁵⁷, must citizens have a right to access? Though some of these questions have received substantial attention from Kantians, recognizing the compatibility of Kantian freedom with alternative regimes of ownership and exchange opens up space for more creative consideration of these issues.

Beyond inviting further consideration of these issues within a Kantian framework, this Kantian perspective can provide a meaningful contribution to consideration of these issues generally. Whether these economic and property regimes unjustifiably restrict freedom is a question of undeniable importance. The Kantian idea of freedom can help us answer it.

⁵⁷ Kant himself discusses state provision of the means of subsistence to the poor. MM 6:325-326. In addition, many Kantians argue that within a Kantian rightful condition individuals must have access to the means of subsistence (or more). For example, Allen Wood makes such an argument, as do Arthur Ripstein, Onora O'Neill, and many others. See Allen Wood, *Kantian Ethics*, Cambridge: Cambridge University Press (2007), 193-205; Ripstein, *Force and Freedom*, 267-299; Onora O'Neill, *Faces of Hunger: An Essay on Poverty, Justice and Development*, London: Allen & Unwin (1986); Onora O'Neill, "The Great Maxims of Justice and Charity," in *Constructions of Reason*, Cambridge: Cambridge University Press (1989), 219–233.

THE MATERIAL CONDITIONS OF FREEDOM

Though many believe we have a right to be free of conditions of extreme poverty wherein we lack basic resources required for subsistence, articulating the source and nature of such a right has presented a lasting and confounding challenge. Many different accounts of the source of such a right have been given. Some, for example, base a duty to support the poor on a concern for their welfare. Others argue that respecting the freedom of the poor involves ensuring that they have the capabilities to live good human lives. In giving any such account of a right to subsistence, scholars and advocates face considerable difficulty in convincingly arguing for a solid foundation for such a right. A charitable obligation to improve the welfare of others, for example, would seem to give rise to an ethical duty to help those in need, but not a right to demand this help. Persistent issues of this sort provide ample ground for skeptics to question whether there can be any real right to subsistence.

Here, I offer a novel Kantian account of a duty to provide citizens, when possible, with what I will refer to as the material conditions of freedom—the basic resources required for unimpaired human agency. This duty is possessed by the state, understood as representing the general united will of all citizens of a given society. At first glance, Immanuel Kant’s philosophy might be thought to be an unlikely source of a robust duty of right to provide for the poor. Kant’s theory of right is centered on the innate right to freedom, and coercive

action taken by the state is only justified when it is required to protect freedom.^{1 2} Since improving the welfare of citizens can never be a legitimate ground for state action, Kant's theory is inconsistent with any right to subsistence based on a concern for the welfare of the poor.^{3 4} However, while welfare concerns cannot ground a Kantian duty to support the poor, I argue here that freedom can: choosing a property and economic system that generates extreme poverty when that poverty could be avoided violates the freedom of the very poor.

As I will argue, certain basic material resources are required for human agency. Further, societies choose to put in place or keep in place particular regimes of ownership and exchange and are responsible for the material consequences of this choice. Here, material consequences are understood as the relationships, generated by these regimes, that individuals have to material objects. If a regime of ownership and exchange generates extreme poverty, we are responsible for this material consequence of our choice. Since extreme poverty is understood here as a condition where the impoverished lack access to the basic resources required for agency, I conclude that putting in place such a regime of ownership and exchange violates the freedom of the very poor and cannot be permitted.

¹ Here, I provide citations to Kant's work referencing the volume and page number of the standard German work. I will refer to Kant's different works as follows:

LE = *Lectures on Ethics*, translated by Peter Heath, edited by Peter Heath and J. B. Schneewind. Cambridge: Cambridge University Press (1997). These are students' notes from Kant's courses in ethics.

MM = *The Metaphysics of Morals*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

TP = *On the Common Saying: That May be Correct in Theory, but it is of No Use in Practice*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

² MM 6:230-31.

³ MM 6:318. See also TP 8:282-283.

⁴ Notably, F.A. Hayek interprets Kant as holding that "juridical laws [must] abstract altogether from our ends, they are essentially negative and limiting principles which merely restrict our exercise of freedom," which in turn inspires Hayek's criticism of the welfare state. F. A. Hayek, *Law, Legislation and Liberty. ii. The Mirage of Social Justice*. Chicago: Chicago University Press (1976), 43.

This Kantian account offers a significant contribution to the discourse of subsistence rights. It provides a strong foundation for the right to basic resources: the right to freedom. In this way, this account is able to reconcile freedom with such a right, undermining the rhetoric of those who claim that respecting freedom precludes rights to basic resources. Furthermore, this account provides a concrete specification of who bears the duty corresponding to this right: if through our government, we, the citizens of a state, put in place a property and exchange system which generates poverty when it could be avoided, in doing so we wrong those who are impoverished. This account also explains why poverty is more than just an unfortunate and regrettable circumstance befalling the poor. We institute and maintain the economic and property systems that create extreme poverty, and when we do, we wrong the poor.

It is important to emphasize at the outset that the account offered here is a novel Kantian account. Kant himself provides an argument that the state is authorized to tax the wealthy to provide support for the poor⁵ and briefly comments at various other points on the injustice of poverty.⁶ My aim here is not to reconstruct or interpret Kant's own views, a task many Kantians have previously undertaken.⁷ In addition, it is important to note that my

⁵ Kant argues, in brief and somewhat obscure fashion, that the state is authorized to tax to support the poor. He asserts that since the general will has bound itself to a state to "maintain itself perpetually," the general will has given the state authority to "maintain those members of society who are unable to maintain themselves." MM 6:326. Kant then argues that the state has the right to constrain the wealthy to "provide the means of sustenance to those who are unable to provide for even their most necessary natural needs." MM 6:326. Taxation of the wealthy for this purpose is legitimate, since the wealthy "owe their existence" to the protection and care of the commonwealth. MM 6:326.

⁶ See, for example, MM 6:454 and LE 27:432.

⁷ As Jeffrie Murphy notes, "it is very difficult to see what Kant is up to" in making his main argument for the state's authorization to tax to support the poor, and debate has persisted concerning its nature and proper interpretation. Jeffrie Murphy, *Kant: The Philosophy of Right*. London: Macmillan, 1970,

account here is compatible with alternative Kantian arguments for socioeconomic rights that have been developed and could be developed in the future.⁸ My aim here is not to develop a full Kantian account of socioeconomic justice. Instead, it is only to provide one important piece of such an account.

I. KANT'S THEORY OF RIGHT

The foundation of Kant's theory of right is the one innate right to freedom: "[f]reedom (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, is the only original right belonging to every man by virtue of his humanity."⁹ I follow Arthur Ripstein in

145. Some Kantians have provided enhanced interpretations of Kant's own argument. See, for example, Murphy, *Kant: The Philosophy of Right*, 146; Mary Gregor, "Kant on Welfare Legislation," *Logos* 6 (1985): 49-59; and most recently, Arthur Ripstein, *Force and Freedom*. Cambridge: Harvard University Press (2009), 267-299.

⁸ See, for example, Allen Wood's fecund Fichte-inspired Kantian account. Allen Wood, *Kantian Ethics*. Cambridge: Cambridge University Press (2008), 193-205. See also, Alexander Kaufman, *Welfare in the Kantian State*. Oxford: Oxford University Press (1999); Sarah Williams Holtman, "Kantian Justice and Poverty Relief," *Kant-Studien* 95 (2004): 86-106; and Helga Varden, "Kant and Dependency Relations: Kant on the State's Right to Redistribute Resources to Protect the Rights of Dependents," *Dialogue* 45 (2006): 257-284, 274-275.

Notably, some have tried to justify welfare legislation by articulating a state duty of beneficence. Onora O'Neill has argued that the state is an effective coordinator of our ethical duties of beneficence, and so we can assign this ethical duty to the state for fulfillment. Onora O'Neill, *Faces of Hunger: An Essay on Poverty, Justice and Development*. London: Allen & Unwin 1986; Onora O'Neill, "The Great Maxims of Justice and Charity," in *Constructions of Reason*. Cambridge: Cambridge University Press 1989, 219-233. In addition, Allen Rosen argues that the state has a duty of beneficence grounded in the principle of publicity. Allen D. Rosen, "Justice and Social Welfare," in *Kant's Theory of Justice*. Ithaca: Cornell University Press (1993), 173-208.

Such beneficence-based arguments, however, are incompatible with Kant's theory of right. As Allen Wood argues, Kant "views the aim of human happiness, including duties of beneficence to be performed by the well-off on behalf of the less fortunate, as a concern exclusively of the ethical sphere, not at all the proper business of the state." Wood, *Kantian Ethics*, 193. For an extended explanation of why beneficence cannot provide a state duty to support the poor within a Kantian framework, see LeBar, "Kant on Welfare." Ethical duties, like the duty of beneficence, cannot be coercively enforced. MM 6: 219. In order for an ethical duty to be fulfilled, the motive for the ethical action must be duty itself. Such a motive must be supplied internally and cannot be provided by coercion. As Kant writes, "[e]thical lawgiving (even if the duties might be external) is that which cannot be external; juridical lawgiving is that which can also be external." MM 6:220.

⁹ MM 6:237.

understanding the innate right to freedom as protecting “purposiveness—your capacity to choose the ends you will use your means to pursue.”¹⁰ Our humanity consists in the ability to decide for ourselves what to do, and our right to freedom is the right that this ability be protected—that others be prohibited from exercising their choice in the external world in ways that conflict with our purposiveness.

The fundamental principle of Kant’s theory of right, the universal principle of right, commands that the innate right to freedom be protected: “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.”¹¹ Any action that does not violate the freedom of others, then, is right and should be legally permitted.¹² All and only those actions that violate the freedom of others must be prohibited by the state.

In the first instance, the innate right to freedom protects the capacity to set ends itself—it protects agency. While the innate right to freedom does protect your body and your right to control your body, it first and foremost protects your capacity to set ends for yourself—your deliberative capacities and ability to decide for yourself what you will do.¹³ Beyond protecting the mere capacity to set ends, the innate right to freedom protects the exercise of this capacity: so long as your actions do not violate the freedom of others, you can choose to do

¹⁰ Ripstein, *Force and Freedom*, 34.

¹¹ MM 6:230.

¹² Of course, many actions will be right in this juridical sense and still be morally wrong. Their legal permissibility does not entail moral permissibility.

¹³ As Leslie Mulholland puts it, the innate right to freedom involves an innate right to “personal freedom,” which is “not a merely formal right, but a right to possess, and thus use, one’s body and other faculties.” Leslie A. Mulholland, *Kant’s System of Rights*. New York: Columbia University Press (1990), 214. These “other faculties” are our mental faculties, including the ability to reason.

whatever you want to do. You can set your own ends and pursue them as you will. As Kant says, the innate right to freedom contains the right to be one's own master—to direct one's own will.¹⁴

Some actions destroy the capacity for self-determination and thereby violate the innate right to freedom. If I murder someone, I eliminate her capacity for self-determination. Many actions will inhibit the capacity for self-determination, thereby violating the innate right to freedom. If I drug someone, I can inhibit her ability to rationally decide for herself what she will do. So, both actions that destroy this capacity for choice and actions that inhibit this capacity for choice will violate the innate right to freedom. Beyond these cases of directly destroying or inhibiting agency, one can violate the innate right to freedom by either damaging another's physical and mental capacities or attempting to usurp control of them—one can, for example, injure or coerce another.¹⁵

In order for actions to violate the innate right to freedom, they must be freely chosen.¹⁶ The innate right to freedom governs relationships between agents' choice, and prohibits us from acting in ways that restrict others' freedom. Acts and happenings that are not the result of choice will not violate freedom, even if they do restrict agency. For example, if a tornado were to pick me up and whack someone on the head with me, the agency of the victim whose head was whacked would be restricted but her freedom would not be. Importantly,

¹⁴ MM 6:238. As Ripstein puts it, the right to be your own master means that “[y]ou are sovereign as against others not because you get to decide about the things that matter to you most, but because *nobody else* gets to tell you what purposes to pursue; you would be their subject if they did.” Ripstein, *Force and Freedom*, 34.

¹⁵ This distinction parallels Ripstein's distinction between usurpation and destruction of one's powers as the two ways of violating innate right. Ripstein, *Force and Freedom*, 43.

¹⁶ This is consistent with imputing to agents actions that are done with varying degrees of agency, including reckless actions, negligent actions, etc.

this is not to say that all actions that restrict the range of *options* available to an agent will violate that agent's innate right to freedom—whatever you do and whatever space you occupy will limit what I can do. Mere limitations as such are not violations of freedom.¹⁷

This Kantian idea of freedom is importantly different from classical liberal ideas of freedom as “negative liberty,” where one is free whenever one can do whatever one wants without interference from others, and one is unfree whenever one's actions are interfered with.¹⁸ With a Kantian conception, the right to freedom is not a right to direct my will however I please; instead, it is a right to direct my own will in the world *consistently with others' rights to do the same*. I am not free to direct the wills of others, and interference with my doing so does not constitute unfreedom. This Kantian idea of freedom is also importantly different from positive conceptions of freedom such as Amartya Sen's conception of well-being freedom, which is understood as “the freedom to achieve well-being.”¹⁹ Kantian freedom involves a right to self-mastery rather than a right to a certain quality of life. Still, as I will argue in this paper, this right to self-mastery can involve a right to have access to certain basic material resources. Kantian freedom is also somewhat different from conceptions of freedom as non-domination, although the concepts of freedom are similar. While views of freedom as non-

¹⁷ For more discussion of this issue, see Ripstein's effort to distinguish between actions that restrict an agent's choice and those that merely change the context in which she acts. Ripstein, *Force and Freedom*, esp. 48-51.

¹⁸ This conception of “negative liberty” was definitively characterized by Isaiah Berlin. As Berlin puts it, “I am normally said to be free to the degree to which no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree.” Isaiah Berlin, “Two Concepts of Liberty,” reprinted in *Liberty*, edited by Henry Hardy. Oxford: Oxford University Press (2002), 169.

¹⁹ Amartya Sen, “Well-being, Agency and Freedom: The Dewey Lectures 1984,” *Journal of Philosophy*, 82: 4 (1985), 169–221, 201.

domination emphasize the “absence of mastery by others,”²⁰ the Kantian idea of freedom emphasizes the right to be one’s one master,²¹ from which the right to be free from mastery by others derives.

Kant’s focus on freedom might lead one to suspect that this system would justify a libertarian, night-watchman form of government. Since citizens’ actions can only be restricted insofar as they conflict with freedom, no other ground can justify coercion. This liberal focus is reaffirmed by Kant’s emphatic rejection of principles of welfare and happiness as grounds for law.²² Furthermore, he makes it clear that desires and even needs can provide no basis for law, at least in themselves; according to Kant, the concept of right “does not signify a relation of one’s choice to the mere wish (hence also to the mere need) of the other, as in actions of beneficence or callousness, but only a relation to the other’s *choice*.”²³ The state may only exercise its coercive authority and interfere with its citizens in order to secure the freedom of those citizens. An aim directly toward improving the lives of its citizens can never provide the state with a sufficient basis for law. Such a view seems necessarily opposed to any state duty to support the poor where such a duty is thought of as a duty to enhance the welfare of the poor.

²⁰ Philip Pettit, *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press (1997), 22. This idea of freedom as non-domination has also been developed explored by other proponents of republicanism. See Quentin Skinner, “The Republican Idea of Political Liberty,” in Gisela Bock et. al. (eds.) *Machiavelli and Republicanism*. Oxford: Oxford University Press (1990), 293-309. See also Frederick Neuhouser’s Rousseauian idea of freedom as non-domination developed in Frederick Neuhouser, *Rousseau’s Critique of Inequality: Reconstructing the Second Discourse*. Cambridge: Cambridge University Press (2014).

²¹ The innate right to freedom involves “a human being’s quality of being *his own master (sui iurus)*.” MM 6:238.

²² Kant asserts that “the well-being of a state must not be understood as the *welfare* of its citizens and their *happiness*; for happiness can perhaps come to them more easily and as they would like it to in a state of nature...or even under a despotic government.” MM 6:318. See also TP 8:282-283.

²³ MM 6:230.

A Kantian duty to provide the poor with access to the basic means of subsistence, then, cannot be based on the welfare of the poor. Since the role of the government is to secure citizens' freedom, if there is to be such a duty, it must be based on freedom. If it is, then taxation to fulfill this duty will be legitimate: since property rights must be consistent with freedom, private property rights must be contingent on the state's right to tax when freedom requires it.²⁴

In what follows, I will argue for such a freedom-based Kantian duty to secure for each citizen access to the material conditions of freedom. Again, the material conditions of freedom are those basic resources that are required for unimpaired human agency. In order to demonstrate that a government's failure to secure access to the material conditions of freedom violates the innate right to freedom of those who lack them, I will first explain how the lack of these basic resources undermines agency. I will then argue that conditions of extreme poverty result from our societal decision to set up and maintain systems of ownership and exchange that create these conditions. Finally, I will conclude that since this decision undermines the purposiveness of those who lack the material conditions of freedom, it violates their innate right to freedom.

II. THE EFFECTS OF EXTREME POVERTY ON HUMAN AGENCY

The first step, then, is to give an account of how a lack of material resources can restrict an agent's purposiveness. Humans are mortal, embodied beings. As beings of this sort, our

²⁴ Kant asserts that taxation is legitimate when done to secure freedom. He makes this claim when arguing for a duty to support the poor, asserting that the sovereign has "the right to impose taxes on the people for its own preservation." MM 6:325-6. He also asserts such a right to tax when he argues that citizens must comply with the state's levy of a war tax on the state's judgment that this tax is indispensable. TP 8:297n.

survival and the adequate functioning of our agency are dependent on material resources that are external to us. Our bodies are fragile and vulnerable, and their functioning depends on the continuing use and consumption of these external objects. Our minds are also fragile and vulnerable—if certain external conditions are not met, their ability to function will degrade. So, if we lack these external objects that our mental and physical capacities depend on, our agency will be impaired or destroyed. Agency is understood throughout in a Kantian sense as the ability to reason practically: to set ends and use means to pursue them.²⁵ It is this sense of agency, or purposiveness, that the innate right to freedom protects.

In this section, I will argue first, and least controversially, that an extreme lack of material resources can result in death or insanity, destroying a human being's capacity to set and pursue ends. Second, I will argue that a somewhat less extreme lack of material resources can impair the functioning of rational agency.

It is worth noting at the outset that I will not be making use of a third sense²⁶ in which a lack of material resources could be said to affect agency: I will not be arguing that conditions of

²⁵ This account contrasts with other accounts of agency given in discussions of poverty's impact on agency that go beyond autonomy. See, for example, Ann Cudd's argument that extreme poverty undermines "normative agency," which involves "the ability to be part of the creation and maintenance of social norms, and to hold oneself and others to account for those norms." Ann E. Cudd, "Agency and Intervention: How (Not) to Fight Global Poverty," in *Poverty, Agency, and Human Rights*, Diana Meyers, ed., Oxford: Oxford University Press (2014), 197-222, 204. See also Serene J. Khader, "Empowerment through Self-Subordination?: Microcredit and Women's Agency," in *Poverty, Agency, and Human Rights*, Diana Meyers, ed., Oxford: Oxford University Press (2014), 223-248, 224 (distinguishes "'welfare agency' (the ability to enhance one's welfare) from 'feminist agency' (the ability to identify and change sexist norms)").

²⁶ This distinction borrows from Alan Wertheimer's similar distinction between "three senses of involuntariness:" first, involuntary movements that are divorced from one's will (which involve the "absence" of volition); second, acts that proceed from an actor's will "where the will is 'impaired' or 'overborne' by some external condition" (which involve "a defect of volition"); and third, cases of "constrained volition," "where the agent is confronted with unwanted alternatives, but is quite capable

material deprivation can result in the establishment of relations of dependence or coercion that are inconsistent with right. Such arguments rely on considerations that go beyond the literal destruction and impairment of agency,²⁷ and so are beyond the scope of this paper. Still, these arguments are compatible with, and an important complement to, the arguments advanced here.²⁸

i. Destruction

First, poverty can straightforwardly destroy an agent's agency. If we have literally nothing, it is obvious how our agency will be affected: we will die. A complete lack of material resources, then, results in the destruction of agency.²⁹ If someone unilaterally chooses to destroy the agency of another, she will straightforwardly violate that person's innate right to freedom.

of making rational choices among them.” Alan Wertheimer, *Coercion*. Princeton: Princeton University Press (1989), 9.

²⁷ In the case of coercion, though economic deprivation may put a great deal of psychological pressure on the poor to enter into certain agreements, psychological pressure alone does not constitute wrongful coercion. For instance, one may be in an extremely high-pressure situation where one has only one reasonable choice, such as when one has a serious illness with only one treatment. The pressure imposed by this situation does not make entering into legally valid agreements impossible. As Wertheimer notes, “the fact that [a person's] *circumstances* leave her with only one reasonable option is simply *not* the sort of duress or coercion of which the law will take note.” Wertheimer, *Coercion* 63. While wage agreements entered into by the poor may be unacceptably coercive, the establishment of this claim requires further argument—if society is not independently obligated to alleviate conditions of poverty, then it is difficult to see why poverty would not just be seen as a morally unproblematic background condition.

²⁸ Arthur Ripstein sets out what he describes as an interpretation of Kant's own argument for a duty to support the poor where Ripstein argues that conditions of private dependence undermine the conditions of public lawgiving. Ripstein, *Force and Freedom*, 267-99.

²⁹ Allen Wood reaches a similar conclusion, arguing that “[i]f we wonder how the state's concern with the physical survival of its individual members can be reconciled with its fundamental task of protecting their external freedom, then we should reflect on the obvious fact that physical survival is a necessary condition for any human being to exercise free agency.” Wood, *Kantian Ethics*, 196.

Furthermore, even if an agent has access to some material resources, a lack of material resources sufficient to ensure her survival will still quite obviously result in the destruction of her agency. In order for our bodies to remain alive, we must have food, water, and shelter from the elements.³⁰ And even if we have adequate access to these resources, our mental capacities can still break down under certain conditions, resulting in psychological collapse or even death. In order for our mental faculties to function, we require human interaction, a certain amount of privacy and space, and sleep.³¹ For example, if we are subjected to constant exposure to light and extremely loud noises, we will be unable to sleep. This sleep deprivation can in turn result in the complete breakdown of mental functioning or death. The absence of these material conditions required for our continued survival, then, will also result in the destruction of one's purposiveness. So, if the lack of these material conditions is the result of choice, this choice will violate the innate right to freedom of those who are subjected to these conditions.

ii. Impairment

Less extreme conditions of poverty can impair our agency without destroying it. Without sufficient material resources, an individual's ability to reason can become impaired, which would straightforwardly limit her ability to set and pursue her own ends. By impaired agency, I am referring to conditions where an agent still has some ability to reason and deliberate,

³⁰ This list of basic needs is similar to Abraham Maslow's influential theory of a hierarchy of needs. He identifies these and other basic needs as physiological needs—those resources needed for our survival. See Abraham H. Maslow, *Toward a Psychology of Being, 3rd Edition*, New York: John Wiley & Sons (1968).

³¹ Sleep and rest are also listed as physiological needs by Maslow's influential theory. Maslow, *Toward a Psychology of Being*, 33.

but her ability to do so is debilitated—it is weakened compared with its normal state.³² Consider the case of an individual who is drugged such that she is still conscious and minimally alert and able to interact with others. In such a case, this agent is still able to reason, but she is not reasoning well.

So, even if we have enough of the material resources listed above to survive, it takes still more of those material resources to be able to reason without impairment. For example, if I have just enough food to survive, I may well continue to live and yet have an extreme deliberative impairment. I may get just enough sleep to maintain some sanity, but not enough to be able to set and pursue ends normally. In these cases, though the person survives, the functioning of her mental faculties is debilitated by the lack of adequate resources.

In addition, we might also think that one's agency could be impaired by the overwhelming desire to pursue those basic resources that one has insufficient access to. One's will might literally be overcome by conditions of poverty such that one's actions are dictated by one's biological drives rather than one's own will. Here, I am imagining cases where one's will is literally temporarily overborne by conditions such as temporary insanity, uncontrollable urges, and perhaps even by extreme fear.³³ Although such conditions might not necessarily

³² This account presupposes that there is some baseline of normal reasoning, either for individuals or for humans in general, below which an individual's ability to reason can be considered impaired. I make no specific argument here as to what exactly this baseline is; it suffices for my argument that some such baseline is taken to exist. The existence of such a baseline prevents it from being the case that the government would have a perpetual duty to improve the conditions of human agency so that its citizens' ability to reason would be continually improved.

³³ Wertheimer, *Coercion* 9.

be temporally extended in the way that the effects of long-term hunger and sleep deprivation are, they are still defective agency.

An extreme lack of material resources, then, can destroy or impair agency. If a person or group is responsible for another's extreme lack of material resources, then, they will violate that other's innate right to freedom.

III. CHOOSING POVERTY

In this section, I argue that in deciding through our government to structure our property and economic systems in a way that generates conditions of extreme poverty, we violate the freedom of the very poor. First, I will give an account of how extreme poverty results from the decision to establish or maintain a property and economic system that creates it. Second, I will argue that this decision violates the freedom of the very poor, as it results in conditions that undermine their agency, as explained in the previous section. In order for a property and economic system to be consistent with citizens' freedom, that system must at a minimum secure access to the basic resources for all citizens. So, citizens have a right to have access to these basic resources when it is possible for the government to provide access to them. I conclude by giving an account of the duty corresponding to this right: all citizens of a given society, who through the state create and maintain together the system of ownership and exchange, have a duty to structure the system of ownership and exchange so that it does not generate conditions where citizens lack access to basic resources.

Before proceeding, I emphasize that my argument here is meant to apply only to situations where sufficient material resources are available such that a society could choose to eliminate

conditions of extreme poverty within their state. If adequate material resources are not available to eliminate poverty and the government cannot feasibly change this condition, then we have no choice but to select a regime of ownership that fails to provide access to the material conditions of agency. Such a regime would not violate the innate right to freedom of citizens living in poverty.

i. Selecting a Regime of Ownership and Exchange

Each society must have a regime of ownership and exchange: a body of laws that specifies who owns what and how owners may transfer that which they own to others. Such a regime will specify the forms of relationships between individuals and external objects that others can be bound to respect. In addition, such a regime will specify which actions of society as a whole or interactions between individuals or groups will rightfully result in the establishment of property rights—it will specify how property can be acquired.

Here, I first argue that society has the authority and the obligation to put in place a regime of ownership and exchange that is compatible with the innate right to freedom. I will then argue that among the range of permissible regimes of ownership and exchange, there are some options where these institutions do not generate conditions of extreme poverty. Finally, I explain how deciding to institute and maintain a particular economic and property system makes us responsible for the material consequences this system generates, including extreme poverty.

The Authority to Choose

My argument depends on holding a society responsible for their decision to institute and maintain one regime of ownership and exchange rather than another. Criticism of this sort will only be well founded if that society has, through its government, the rightful authority to make such a decision.

I argue that the state, understood as embodying the general will of all citizens, must take itself to have this authority. Kant's discussion of the sovereign as the supreme proprietor of the land provides a good model for understanding why this is so.³⁴ On this view, if we are to establish property rights that specify how land can rightfully be acquired and owned, then we must take ourselves to have the collective authority to control the use of the land we are legislating with regard to—we must take ourselves to collectively own that land, as having the right to control the use of an object is just to own that object.

Although Kant's argument regarding land involves some commitments that are puzzling³⁵, the general principle underlying this argument is illuminating. If we are to govern the use of objects, we must take ourselves to have the right to do so. Since establishing laws that govern the use of objects in the entire state can only be done by the state collectively

³⁴ According to Kant, acquired rights to the "possession and use" of objects "must be derived from the sovereign as...the supreme proprietor" of the land. MM 6:323. This idea of the sovereign as the supreme proprietor of the land is "an idea of the civil union" that allows us to represent "the necessary union of the private property of everyone within the people under a general public possessor." MM 6:323. The sovereign as supreme proprietor of the land embodies this general public possession, and derives from it the authority to legislate concerning the possession and use of objects, as well as the right to tax private ownership. MM 6:325.

³⁵ We might wonder, for example, whether we must really take the state to necessarily have territory in the form of land. We might also be puzzled by Kant's thoughts on the connection between ownership of the land and ownership of all of the material objects on that land. See, for example, MM 6:261-62.

(understood as embodying the general will of the people),³⁶ we must take ourselves to have collective control of all external objects that the state legislates with regard to.³⁷ So, when we choose regimes of ownership and exchange, we are collectively responsible for this choice.

Of course, society will not have an unlimited authority to put in place whatever regime of ownership and exchange it chooses. Instead, the choice must be from among those regimes that are compatible with external freedom.

Available Choices

My argument also depends on there being rightful alternative regimes of ownership and exchange that do not generate extreme poverty. If instead private ownership and laissez-faire capitalism were required by right, criticism of a society for putting in place or maintaining such a regime would be unfounded.

I argue, though, that Kant's theory of right does not entail a regime of laissez-faire capitalism and exclusively private ownership. Kant himself took the legitimacy of private property rights to be contingent on other rights—a war tax, for example, will be legitimate when the state judges that such a tax is indispensable.^{38,39} Furthermore, although Kant himself may

³⁶ According to Kant, we cannot be bound unilaterally—one person cannot impose obligations unilaterally on others. Instead, we can only be bound by an omnilateral will—the combined will of all: “For a unilateral will (and a bilateral but still *particular* will is still unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is *omnilateral*, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving.” MM 6:263.

³⁷ As Mulholland argues, “[o]ne of the main features of innate common possession, especially for a theory of social justice, is that it demonstrates that all private ownership presupposes collective ownership of land and all particular claims to (private) acquired rights must be derived from collective possession through a general will.” Mulholland, *Kant's System of Rights*, 273-4.

³⁸ TP 8:297n.

have emphasized private ownership, the innate structure of property rights does not necessitate private ownership of the form involved in a laissez-faire capitalist system of exchange.⁴⁰ One might think that under a market that is “unfree” or a property regime that is not exclusively private, projects that do not violate the rights of others would be precluded—that freedom would be arbitrarily and so wrongfully restricted. But allocating objects collectively does not in itself restrict the range of projects that can be pursued. Objects can be subjected to the same uses under such a system as they could under a “free” system; only the way one goes about securing the right to make use of an object will differ. An alternative system of ownership and exchange, then, can be compatible with Kantian freedom.

This does not entail, of course, that every property regime that does not generate extreme poverty will be acceptable. Again, the choice of a regime of ownership and exchange must still be compatible with external freedom in all ways. It is enough for my purposes at this stage of the argument that some regimes of ownership and exchange that do not generate extreme poverty are among the range of permissible options. In what follows, I will argue that *only* those regimes that do not generate extreme poverty can be permissible options.

³⁹ As Mulholland puts it, this passage indicates that “the requirements of a just distribution of property can override anyone’s private claim to a piece of land.” Mulholland, *Kant’s System of Rights*, 294.

⁴⁰ Many Kantians take such a position. For example, Mulholland argues that “Kant is not necessarily committed to the institution of private property as it exists, say, in feudalism or capitalism.” Mulholland, *Kant’s System of Rights*, 294. For an extended argument that communal ownership and other regimes of property that are not fully private are consistent with Kant’s theory of right, see David James, “Independence and Property in Kant’s *Rechtslehre*,” *British Journal for the History of Philosophy*, 24:2 (2016) 302-322. See also Christine Korsgaard, “Taking the Law into Our Own Hands: Kant on the Right to Revolution,” in *The Constitution of Agency: Essays on Practical Reason and Moral Psychology*. Oxford: Oxford University Press (2009), 238 fn 7; Louis-Philippe Hodgson, “Kant on Property Rights and the State,” *Kantian Review* 15-1 (2010), 57-87, 62; Howard Williams, *Kant’s Political Philosophy*. Oxford: Oxford University Press (1983), 193-4.

Making the Choice

In the preceding two sections, I argued that society has the choice to select and maintain a regime of ownership and exchange that precludes extreme poverty. If extreme poverty is created when it could be avoided, then, this is a result of our decision to maintain a system that creates it.

As discussed briefly above, the choice of a particular regime of ownership structures our lives in two important ways. First, it specifies the rightful relationships we can bear to external objects of choice. For example, it can specify that we can have rights to the exclusive use of objects, as well as shared rights to use other objects. Second, it specifies how we can come to establish those rights with regard to objects. We could, for example, have a laissez-faire capitalist regime of exchange or a regime where goods are allocated collectively.

In specifying how we can establish rights to objects, the regime of ownership and exchange structures our relationships with one another such that certain material consequences follow from an agent's actions or her possession of certain characteristics.⁴¹ In other words, the legal system of ownership and exchange generates rights to material goods (or denies rights to material goods) in response to members of that system performing (or failing to perform) certain actions or being in certain conditions. For example, a regime that allocates objects collectively might allocate certain goods to people who are deemed to be importantly contributing to the common good, and a capitalist regime might specify that people will gain rights to objects when they can offer others resources sufficient to convince those others to

⁴¹ In a similar vein, Liam Murphy and Thomas Nagel emphasize the conventionality of property rights, arguing that "individual citizens don't own anything except through laws that are enacted and enforced by the state." Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice*. Oxford: Oxford University Press (2002), 176.

sell them those objects. A hybrid regime might operate on some combination of principles; for example, a regime might allow market transfer to govern the assignment of rights to objects contingent on the basic needs of citizens being met.

When we select a regime of ownership and exchange that results in extreme poverty, this extreme poverty is a material consequence that our property and economic system generates in response to people engaging in particular actions or patterns of behavior or people possessing certain characteristics. The system of ownership and exchange might generate these consequences in a seemingly autonomous manner. In such cases, this apparent self-regulation obscures societal responsibility for these consequences flowing from the choice to institute and maintain the system of ownership and exchange that generates them.

Societal responsibility for extreme poverty is most apparent if a regime of ownership and exchange is in place where society assigns such material consequences directly. Consider a straightforward case: a regime where all resources are allocated via collective decision-making where certain people are allocated no resources in virtue of their possessing a particular characteristic. Since all resources are under collective control, such people will have no way to access resources and will not survive.

More frequently, society's responsibility for extreme poverty is less visible. For example, we might institute a regime of ownership and exchange where it is possible that certain people will lack access to basic resources. In such a case, we identify or allow another mechanism, such as the market, to identify particular characteristics and patterns of behavior such that people who have these characteristics or behave in these ways lack access to basic resources.

While there need not be people who possess these characteristics or engage in these behaviors, if there are, they will lack access to basic resources.

In such cases, it is easy to ignore the original societal choice to institute the regime of ownership and exchange, and to focus instead on the choices of individuals within the system that resulted in the system denying them access to basic resources. I will return to this issue below. For now, we must remind ourselves in these cases that we chose the system that generates extreme poverty, and we are responsible for the consequences it creates.

Furthermore, the choice to have an economic and property system that generates these conditions does not occur only when we establish a regime of ownership and exchange. Instead, this choice continually recurs as we continually enforce that regime. It is readily apparent in the United States, for example, that our system of ownership and exchange often results in extreme poverty. When we continually enforce and maintain such a system, we cannot be said to be ignorant of these material consequences it generates. When we choose to keep this system in place, we choose to keep in place the consequences it generates, including extreme poverty.

ii. Choosing Poverty as a Violation of the Innate Right to Freedom

I have argued that through our establishment and enforcement of a regime of ownership and exchange, we structure a system that generates particular material consequences in response to particular actions and conditions. Extreme poverty, understood as a lack of access to basic resources, is a material consequence that is generated by this system. The basic resources that individuals in extreme poverty lack access to are required for agency: if individuals lack

access to sufficient basic resources, their ability to reason and deliberate will be impaired or destroyed. The choice to create and maintain a system that puts people in extreme poverty is a choice that violates their freedom: with this system, we create these conditions of extreme poverty.

While our property and economic system may not have been created with the primary goal of denying individuals access to basic resources, this is nonetheless what the system does, and we know it. While some might wish to dispute whether society could be accurately described as choosing to put people in poverty, this need not be the case in order for society's choice to be wrongful. At the very least, society can be described as negligent or reckless in instituting and maintaining a system that generates these conditions of extreme poverty. Consider the distinction between murder, where the killer has the intention to kill, and involuntary manslaughter, where the unintentional killing results from recklessness or negligence: causing another's death can be wrongful without being committed with the explicit intention of murdering that person. Similarly, destroying or impairing the agency of the very poor can be wrongful without the action causing this damage being done with the direct intention of causing that damage. When we uphold our system of ownership and exchange, we create conditions of extreme poverty, undermining the agency of the very poor and thus violating their innate right to freedom.

So, citizens have a right to have access to the material conditions of freedom—they have a right to be free of conditions of extreme poverty when this poverty can be avoided. Society, through the state which represents the general united will of all citizens, has a corresponding

duty to provide citizens with the access to the material conditions of freedom when it is possible to do so.

In order for the selection of a regime of ownership and exchange to be consistent with the innate right to freedom, then, that regime must provide access to these material conditions of freedom when possible. It is not immediately obvious, though, what constitutes providing access to these resources.

For individuals who cannot work, the only way to provide them with access to these resources is to provide them directly. To fail to provide them with the basic resources would be to identify a characteristic they possess (their inability to work) and to deny them access to the basic resources because they possess this characteristic. Prima facie, this would violate their innate right to freedom for the reasons discussed above: this choice restricts the agency of those who cannot work. One might think that denying such individuals access to basic resources would be justified, as these individuals are unable to contribute to societal wealth and so do not deserve to partake of it. Access to the basic resources, though, is owed as a matter of right, not as a matter of desert based on one's societal contribution. As Allen Wood writes, "no one can ever *deserve* to lose their freedom through economic vulnerability."⁴²

One might further think that all individuals, regardless of ability or willingness to work, must be provided with the basic resources directly. In the case of those who are not willing to work, to deny them the basic resources would be to identify their unwillingness to work as a

⁴² Allen Wood, *The Free Development of Each: Studies on Freedom, Right, and Ethics in Classical German Philosophy*. Oxford: Oxford University Press (2014), 313.

characteristic meriting the denial of these resources. This case, however, is importantly different from the case of those who cannot work, as unwillingness to work is potentially morally problematic in a way that inability to work is not. One might think that for those who can work, ensuring that each individual has an opportunity to earn a living wage constitutes sufficient access to the basic resources.

Such debates are largely beyond the scope of my argument here. For the sake of argument, I argue that at a minimum those who can work must be provided with the opportunity to do so or be provided with the basic resources directly.⁴³ Still, it is important to note that individuals must always have access to the basic resources, and so an adequate opportunity to work must always be present and must not be contingent on the possession of particular characteristics. An adequate opportunity to work must be more than the mere possibility that one could gain employment if she were able to change in certain ways or if circumstances were to become more favorable. Furthermore, our obligation to secure work is not diminished when an individual would have had the opportunity to work now had she done things differently in the past. If an individual does not currently have the opportunity to work, then she does not have access to the basic resources. To deny her access to the basic resources violates her innate right to freedom.

iii. Clarifying the Nature of the Duty

Since we as a society are responsible for instituting and maintaining a property and economic system that generates extreme poverty, it is we as a society who wrong the extremely poor

⁴³ Certainly, good philosophical arguments can be made for a universal basic income, though such arguments are beyond the scope of this article. For an enlightening vision of a “postwork” society, see Kathi Weeks, *The Problem with Work: Feminism, Marxism, Antwork Politics, and Postwork Imaginaries*. Durham: Duke University Press (2010).

when we do so. The state, representing the general united will of all citizens, has a duty not to put in place or maintain a system that creates these conditions. If a system that generates extreme poverty is in place, then the state and all citizens of the state have the obligation, when possible, either to replace that system or to change it so that it no longer generates extreme poverty.⁴⁴ If a system generates extreme poverty when it could avoid doing so, then that system is unjust and must be changed.⁴⁵ Those who make the laws must change the laws, and we bear general societal responsibility for making this happen. This general duty of all citizens does not devolve into a duty of charity that falls upon individual citizens, although a duty of beneficence exists independently within a Kantian system.⁴⁶ This duty is a general societal duty, and it can only be fulfilled through the changing of the legal structures that generate conditions of extreme poverty.

This account, then, gives a clear picture of who bears the duty, in the first instance, to eradicate avoidable poverty within a given state, a task that has been notoriously difficult to complete in discussions of subsistence rights. Kant himself runs into this difficulty, as he characterizes extreme poverty as a “general injustice,” which results not from any particular wrong by an assignable individual (from no particular injustice), but through the general conditions of society.^{47 48} On Kant’s picture, the impoverished person is wronged by general

⁴⁴ I do not mean to claim here that states must ensure that all individuals actually have all of the basic resources they need for unimpaired agency. It may be rightful, for example, for individuals with access to the basic resources to refuse those resources.

⁴⁵ Imagine, by way of analogy, a situation where a state has a massively unjust criminal justice system (which, in the United States, does not require much imagination). The citizens of that state would bear the general responsibility of changing that system, and so the lawmakers and voters of that state would have the duty to change it.

⁴⁶ MM 6:220.

⁴⁷ As Kant asserts, “one can participate in the general injustice even if one does no injustice according to the civil laws and institutions. Now if one shows beneficence to a wretch, then one has not given him anything gratuitously, but has given him only what one had earlier helped to take from him through the general injustice.” LE 27:416. See also MM 6:454.

societal conditions, despite those conditions seeming to result from, as Allen Wood puts it, “a series of economic transactions, none of which in particular involves a violation of anyone’s right.”⁴⁹ My Kantian view transforms this general injustice from a wrong that can be assigned to no one to a wrong that is properly attributed to all citizens. In explaining that we wrong the impoverished in establishing and maintaining the legal regimes that create poverty, this view resolves the mystery of how a poor individual can be wronged even if all of the actors in a given society are complying with the laws.

Another important feature of this account is that it does *not* attribute responsibility for poverty within a state to the citizens of that state when that poverty cannot be avoided, as citizens are not wronged when the poverty they face is not the result of choice. This sort of explanation is much more difficult to give on an account where an individual has a basic right to be free from extreme poverty “irrespective of citizenship or territorial legislation.”⁵⁰ A view that holds that an individual is wronged simply by being in a condition of poverty will seem to run afoul of ought implies can in those instances where this poverty cannot be avoided, or else have no one at all to assign that wrong to.

Furthermore, despite its emphasis on the responsibility of citizens of a state for conditions of poverty within that state, this view still leaves room for global responsibility or responsibility of the Global North for conditions of poverty in the Global South. On this account, responsibility for conditions of extreme poverty flows from membership in law and

⁴⁸ See Allen Wood’s discussion of poverty as a general injustice. Wood, *The Free Development of Each*, 83-89.

⁴⁹ Wood, *The Free Development of Each*, 85.

⁵⁰ Amartya Sen, “Elements of a Theory of Human Rights,” *Philosophy & Public Affairs*, 32:4 (2004): 315–56, 315.

policy-making institutions. Although in the first instance legislative responsibility for poverty is the responsibility of the state, if empirical evidence shows that global institutions like the World Bank and the IMF put in place policies that benefit the Global North at the expense of perpetuating poverty in the Global South, the members of these global institutions would be committing wrongs analogous in nature to those committed by the policies of a single state. Just as citizens are responsible for the conditions of extreme poverty made possible in their state by their systems of ownership and exchange, so members of global institutions become responsible for the conditions of poverty that result from their policies and the structures they put in place, even if that poverty occurs in a different state.⁵¹

Finally, this Kantian account also provides an important complement to John Rawls' similar account. The two accounts share a focus on agency: Rawls, taking inspiration from Kant, sets out principles of justice that are meant to ensure, to the extent that it is possible to do so, that conditions are in place that foster individual agency—in Rawls' terms, conditions

⁵¹ Something, then, like Thomas Pogge's institutional account of responsibility for poverty in the Global South might be a natural extension of the state-focused Kantian view developed here. Thomas Pogge, *World Poverty and Human Rights*, 2nd ed., Cambridge: Polity Press (2008). But again, this Kantian view has more to offer here.

On Pogge's view, states have no obligation to enter into new global institutions. Pogge argues that his "minimal standard of justice does not require us to *create* an institutional order with people whose human rights are unfulfilled." Thomas Pogge, "Severe Poverty as a Violation of Negative Duties," *Ethics and International Affairs* 19: 55-83, 60.

In contrast, on a Kantian view there is an unconditional obligation to form a world republic. As Kant argues, without a world government, states exist in a state of nature with one another—in "a lawless state of savagery." Immanuel Kant, "Idea for a Universal History with a Cosmopolitan Purpose," in *Political Writings*, H. B. Nisbet (trans.), Hans Reiss (ed.), 2nd ed., Cambridge: Cambridge University Press (1991), 41–53, 47. By existing together in a state of nature, we do each other and ourselves wrong in the "highest degree," as in doing so we "remain in a condition that is not rightful," as rights are not settled and not secured. MM 6:307-308. So, we ought to leave this "state of nature among nations" and enter into a federation of states. MM 6:350. Such an obligation to enter into a global federation gives the Global North an obligation to establish institutional relationships that would hold them accountable to the Global South for the poverty their policies create there.

that encourage the development of the two highest-order moral powers.⁵² From these principles, Rawls argues that meeting citizens' basic needs must be a "constitutional essential."⁵³

This Kantian account, though, is able to reconnect the right to basic resources to the fundamental right to freedom. H.L.A. Hart famously objected to the priority given to liberty in Rawls' theory of justice as fairness, arguing that liberty is not a self-limiting principle and instead that we must always choose to favor some liberties over others in setting policies.^{54 55}

Rawls, in responding to Hart, asserted that in his account "no priority is assigned to liberty as such, as if the exercise of something called 'liberty' has a preeminent value and is the main if not the sole end of political and social justice."⁵⁶

Kant's theory of right is able to reaffirm the fundamental right to freedom, from which all other rights derive. Here, it is again worth emphasizing the difference between the conception of freedom as negative liberty and the Kantian idea of freedom. With Kantian freedom, there is no question of trading off freedoms. Each person has a complete right to freedom, understood as a right to direct her will in the external world consistently with others' right to do the same. This freedom does not include, as the idea of freedom as

⁵² Rawls argues that principles are adopted that "encourage the development and allow for the full and informed exercise of the two moral powers." John Rawls, *Political Liberalism: Expanded Edition*, New York: Columbia University Press (2005), 324.

⁵³ John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly, Cambridge: Harvard University Press, (2001), 47-48.

⁵⁴ H.L.A. Hart, "Rawls on Liberty and Its Priority," *University of Chicago Law Review*, 40(3) (1973) 534-555, 551-555.

⁵⁵ Ripstein gives an account of this objection and the many instances it has been raised by various thinkers over the recent history of political philosophy. Ripstein, *Force and Freedom*, 31-33.

⁵⁶ Rawls, *Political Liberalism*, 291-292.

negative liberty that Hart presupposes does, a right to direct others' wills as I wish.⁵⁷ On a Kantian account, there is no conflict of freedoms that would preclude viewing freedom as the one foundation of all rights.

Furthermore, in reconnecting the right to access the basic material resources required for agency to the innate right to freedom, this Kantian account is able to assert the fundamental importance of this right. While Rawls argues that a social minimum must be a constitutional essential, his argument for this is based on the difference principle.⁵⁸ Within Rawls' account, the first principle of justice, which pertains to the basic liberties, takes priority over the second principle of justice, which includes the difference principle. While there are strong indications that Rawls attributes greater priority to the right to basic material resources⁵⁹, he does not provide an argument for this view. This Kantian account complements Rawls' account by justifying the fundamental nature of this right: since putting in place a system that denies citizens access to basic resources violates these citizens' innate right to freedom, the right to access these resources is essential and of no less importance than other basic liberties. As a consequence, this Kantian account has the potential to explain why access to these resources should be understood as a fundamental human right.

⁵⁷ As Ripstein argues in response to this objection, "a system of equal freedom is one in which each person is free to use his or her own powers, individually or cooperatively, to set his or her own purposes, and no one is allowed to compel others to use their powers in a way designed to advance or accommodate any other person's purposes." Ripstein, *Force and Freedom*, 33.

⁵⁸ As Rawls puts it, it is "obvious that the difference principle is rather blatantly violated when that minimum is not guaranteed." Rawls, *Justice as Fairness: A Restatement*, 162.

⁵⁹ For instance, Rawls states that "the first principle covering the equal basic rights and liberties may easily be preceded by a lexically prior principle requiring that citizens' basic needs be met, at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties." Rawls, *Political Liberalism*, 7.

IV. OBJECTIONS

I have argued that in putting in place a regime of ownership and exchange that generates conditions of extreme poverty within our state, we violate the innate right to freedom of those who are impoverished. This conclusion might seem to be in tension with some basic ideas it is easy to take for granted in societies like the United States. Here, I will first respond to the objection that this argument fails to account for the responsibility of the poor in bringing about their own poverty through the choices they make. I will then respond to the objection that my argument leads to unacceptable conclusions, as it is inconsistent with taking risks like those we take when we permit citizens to drive.

i. The Choices of the Poor

One might argue that the argument offered here fails to account for the responsibility of the very poor in bringing about their poverty through their own actions. According to this argument, if the poor had done certain things differently (for example, if they had worked harder, worked smarter, or become better qualified), they could have avoided being poor. The poor are not forbidden from working; they are unqualified for employment because of the choices that they have made. If they had acted differently, they could have possessed characteristics adequate to secure employment. So, since their condition is the result of their choice, they are responsible for the material deprivation that results from their unemployment. As such, according to this objection, it would be inappropriate to hold society responsible for their lack of basic resources.

Rhetoric of this sort has a long history in the United States and is still prevalent.⁶⁰ This objection, though, is fundamentally flawed: it takes the background conditions in which these actions take place for granted. Even if the poor are responsible for the actions that they perform within an economic system, this responsibility does not entail responsibility for the material consequences that we as a society have assigned to follow from those actions. As argued above, when we establish and enforce a regime of ownership and exchange, we assign the material consequences to follow from actions, conditions, and patterns of behavior. Since it is this choice that creates these conditions of extreme deprivation, it is we who are collectively responsible for these conditions.

It is often implicit in the view that the poor are responsible for their poverty that poverty will naturally result from either certain choices that individuals make or simply from misfortune. And since on this view poverty is a natural effect of these causes, we as a society cannot be held responsible for it. If, in a freak accident, lightning strikes a tree and it falls on someone, society cannot be held responsible for the natural destruction of this person's agency. Similarly, on this view, society cannot be held responsible for the impairment or destruction of an individual's agency due to conditions of extreme poverty, as this poverty is simply a natural consequence of that individual's actions, personal characteristics, and misfortune.

⁶⁰ This rhetoric has also led to an ineffective focus on reforming the behavior of the poor rather than reforming societal institutions as a strategy for poverty reduction. Alice O'Connor traces the history of this rhetoric and its impact in her enlightening work: Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth Century U.S. History*, Princeton: Princeton University Press (2001).

It is unsurprising that many would make this assumption, as the effects of the rhetoric of capitalism are as ubiquitous and powerful as they are insidious. The naturalization of capitalism is deeply ingrained in the minds of citizens of a capitalist system. According to this rhetoric, the capitalist system is the natural way for society to be organized, as within this system individuals get what they work for and so deserve what they get.⁶¹ So, poverty is understood as a natural consequence of certain conditions and actions.⁶² According to this rhetoric, just as in a state of nature minimal attempts to obtain food for oneself will likely be rewarded with starvation, so too do such consequences naturally follow within a capitalist system.

Despite this rhetoric, our relationship to material resources is necessarily one that we as a society construct. We are not in a state of nature and have no obligation to preserve any dynamic, such as the survival of the fittest, that might be thought to exist there. Again, in establishing and enforcing a system of ownership and exchange, we assign the material consequences for actions, conditions, and patterns of behavior. If extreme poverty results, this is a result of our choice rather than any natural dynamic. We create the system, and we are responsible for the consequences it generates.

Consider, by way of analogy, the criminal justice system. Our criminal laws specify that certain actions are crimes and specify punishments for those crimes. While individuals are

⁶¹ As Murphy and Nagel point out, “the unreflective ideas that we have unqualified moral entitlement to what we earn in the market and that higher market returns are in some sense deserved as a reward arise naturally within the everyday outlook of participants in a capitalist economy.” Murphy and Nagel, *The Myth of Ownership*, 36.

⁶² As Wood puts it, “[t]hose who are comfortable, resigned, afraid of change, afraid of freedom, are persuaded by the formalism of ‘the free market’ that the wealth people have is always something they have earned, and that whatever hardships or impoverishment people incur they must deserve.” Wood, *The Free Development of Each*, 312.

responsible for the crimes that they commit, it is we who are responsible for punishing them. An individual's punishment does not naturally follow from her commission of a crime—instead, it follows as a matter of law and through the workings of the criminal justice system. So, for any crime, we can always question whether the punishment given and the system that assigns it are just.

Analogously, our system of ownership and exchange is also a body of law that assigns consequences to certain actions. While individuals are responsible for their actions, they are not responsible for material consequences that we assign to those actions. For any action, we can question whether the material consequences that follow from it and the system that assigns those consequences are just. And in the case of conditions of extreme poverty where individuals are denied access to the basic resources required for agency, these material consequences are not just, as they destroy or impair the agency of the extremely poor. One might argue that, like the punishment meted out by the criminal justice system, the denial of basic resources is justified in certain cases. However, as I have argued throughout this work, securing access to the basic resources is required by the innate right to freedom—it is not a matter of moral desert or distributive justice.

Even in the cases of natural disasters and disabilities, the material consequences faced by individuals after such natural occurrences are still consequences that we as a society put in place through our regime of ownership and exchange. In the case of a natural disaster, the disaster itself is of course natural. But so long as society has the resources to prevent the impoverishment of those whose possessions are destroyed by this disaster, no impoverishment need result from it. If it does, it is because we have put in place a system

that denies access to basic resources in these circumstances. In the case of disabled citizens, even if their disabilities would make procuring basic resources difficult in a society like today's United States, poverty is not a natural consequence of this disability.⁶³ We construct citizens' relationships with material goods, and given sufficient resources, we can choose whether or not to put in place a property and economic system that secures all citizens' access to basic resources. If we choose not to provide the disabled with basic resources, their lack results from our choice, not nature.

ii. Taking Risks

One might object to my argument here on the grounds that my reasoning leads to unacceptable conclusions. According to this objection, we establish a system of ownership and exchange that creates a risk of poverty to obtain desirable effects that follow from this system. We risk the impairment and destruction of our agency for the sake of these effects. Taking risks to achieve benefits is something we do all the time. For example, we have a traffic system where individuals are allowed to drive automobiles, an activity that risks the destruction and impairment of agency of drivers and non-drivers alike. If we cannot risk extreme poverty, it seems that we cannot risk driving either, which is intuitively unacceptable.

Superficially, these cases appear similar. In both cases, we as a society choose to risk certain individual and societal negative consequences for the sake of individual and societal positive benefits. In the case of driving, we gain convenience and efficiency; in the case of extreme

⁶³ See Elizabeth Barnes' illuminating account of disability, where she argues that "[h]aving a disability is something that makes you different, but not something that by itself makes you worse off because of that difference." Elizabeth Barnes, *The Minority Body: A Theory of Disability*, Oxford: Oxford University Press (2016), 78.

poverty, one might think that we gain the potential for great individual wealth or greater societal economic productivity. Let us assume for the sake of argument that there is no important disanalogy in the importance of the benefits in question. Similarly, the difference between the cases is not the severity or importance of the risk in question: in both cases, the most severe consequences are at risk—death and injury.

Instead, the key difference lies in the nature of the systems in question. In the driving case, a system is put in place to control a natural risk. As embodied beings who are subject to physical injury, when we move around in the world there is always the chance that we will collide in ways that will result in injury or death. These consequences naturally follow from our actions—if we collide, our injuries follow directly from our collision. Our laws governing our ambulation in the world specify the level of risk we as a society are willing to take in order to get around.⁶⁴

In the case of risking extreme poverty, however, the risk in question is artificial: it is an avoidable risk that we are responsible for creating. While death and impairment do naturally result from the lack of basic resources, the lack of basic resources itself does not naturally result from any action, characteristic, or pattern of behavior. Again, when we establish and enforce such a system, we make it the case that particular material consequences follow from particular actions and conditions. So long as conditions of extreme poverty are avoidable, when we institute and enforce a system that makes these conditions possible we create the risk that this possibility will obtain.

⁶⁴ As technology becomes more sophisticated (for example, as self-driving cars become a reality) one might think that this natural risk becomes eliminable. If this is so, permitting driving might become more problematic.

Again, if we accept the naturalization of capitalism, the risk of extreme poverty can appear to be a natural risk. On this view, if you do not work hard or effectively enough, you will naturally lack access to the resources required for agency. Contrary to this rhetoric, though, material consequences do not follow naturally from our actions and conditions. Instead, these material consequences must be instituted by society.⁶⁵ When an individual is in a condition of extreme poverty, it is the enforcement of property laws and not a natural lack of resources that is responsible for her condition. When we deny such individuals available public resources and when we prosecute subsistence crimes we make it the case that they are at risk of death or impaired agency. If we do not secure for each citizen genuine access to the basic resources, we create the risk that they will fall into conditions of extreme poverty. And when they do fall into such conditions that they cannot work their way out of, our enforcement of our economic system keeps them there.

V. CONCLUSION

Here, I have argued that the state has a duty to secure the material conditions of freedom for all citizens. Where this is possible, to choose to do otherwise violates the innate right to freedom of the extremely poor. The broad structure of this Kantian argument is simple: lack of access to basic resources restricts the agency of those who lack them, and we as a society are responsible, through our institution and maintenance of our property and economic

⁶⁵ The case of instituting a system of ownership and exchange is less like the driving case and more like a case of creating a contract where your agency will be destroyed if you fail to live up to one of the terms of the contract. Such a contract is clearly unenforceable within a Kantian system—no one has a right to kill you against your will even if you had previously tried to give that person the authority to do so: the duty of rightful honor precludes you from making yourself a mere means in this way. MM 6:236. Even if we were all to agree that we wanted to take a chance on a capitalist system with a risk of extreme poverty, the system that resulted would still be unjust—we cannot be forced to starve to death even if we have previously agreed that we would.

system, for the existence of these conditions of extreme poverty. So, this failure to secure the material conditions of freedom violates the innate right to freedom of those who lack access to these basic resources. We as a society thus have a duty to do better: we must put in place a regime of ownership and exchange that secures access to the basic resources for all citizens.

Again, the argument I have offered here is not intended to be a full Kantian picture of socioeconomic rights. The Kantian framework has much more to offer in arguing for a right to education, a right to be free from extreme inequalities, and a right to the material resources required for citizenship, among many other possible socioeconomic rights. This duty to provide citizens with the material conditions of freedom, though, is an important piece of this broader Kantian picture of socioeconomic justice. And it is my hope that the arguments I have developed here demonstrate that this Kantian framework offers considerable resources in arguing for socioeconomic rights. In grounding these rights on the innate right to freedom, the Kantian framework can help to explain how failing to provide citizens with these resources is not just a matter of being uncharitable or insufficiently concerned with the welfare of others. Failing to provide access to these resources violates the freedom of those who are denied them.

INEQUALITY AND CITIZENSHIP IN THE KANTIAN STATE

We live in a time where ultra-wealthy individuals and corporations have untold opportunities. While in the past going to the moon was a step for all mankind, today space travel is a Tesla branding experience.⁶⁶ At the same time, many people, most notably the employees of these extraordinarily wealthy people, struggle to get by. For example, Jeff Bezos, the omnipresent founder and CEO of Amazon, recently decided to spend 42 million dollars building a clock inside of a mountain while many of his Amazon warehouse employees struggle to get by.⁶⁷

We are in a national and global crisis of inequality. In the United States, these conditions of extreme inequality pose a grave threat to our democracy, as more and more power continues to slide into the hands of the wealthy few.⁶⁸ Here, I argue that these socioeconomic conditions and the corresponding deterioration of our democratic institutions violate our fundamental right to freedom.

⁶⁶ This branding, it seems has been successful—you can track the progress of the Tesla roadster with its mannequin driver, dubbed “Starman,” that Elon Musk sent into deep space following the launch of his Falcon Heavy rocket on February 6, 2018, at <http://wherisroadster.com>.

⁶⁷ A contrast Bernie Sanders highlights in “Let’s Wrench Power Back from the Billionaires,” *The Guardian*, January 14, 2018; available at <https://www.theguardian.com/commentisfree/2018/jan/14/power-billionaires-bernie-sanders-poverty-life-expectancy-climate-change>.

⁶⁸ Bernie Sanders repeatedly emphasizes the threat inequality poses to our democracy. See “The corporate media ignores the rise of oligarchy. The rest of us shouldn’t,” *The Guardian*, March 16, 2018; available at <https://www.theguardian.com/commentisfree/2018/mar/16/corporate-media-oligarchy-bernie-sanders>.

In making this argument, I will rely on a Kantian conception of the right to freedom. In his *Doctrine of Right*, Immanuel Kant develops a conception of freedom as each person's innate right to direct her will in the external world consistently with others right to do the same.⁶⁹ After presenting this Kantian right to freedom, I will argue that this right entails an inalienable right to equal democratic citizenship. I will then argue that this right entails a right to the material resources required for citizenship. Finally, I will argue that the right to democratic citizenship also entails a right to be free of socioeconomic inequalities that are so extreme that they undermine equal democratic citizenship.

The choice to build this argument on the foundation of Kantian freedom may be surprising to those who are familiar with Kant's political philosophy. Kant seemed to hold views that are inconsistent with the argument I make here,⁷⁰ and Kantian principles have often been invoked to support libertarian economic systems.⁷¹ Regardless of Kant's own views, though, I argue that the fundamental principles of Kant's political philosophy do entail robust socioeconomic rights.

⁶⁹ Here, I provide citations to Kant's work referencing the volume and page number of the standard German work. I will refer to Kant's work as follows:

GW = *Groundwork of the Metaphysics of Morals*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

MM = *The Metaphysics of Morals*, translated and edited by Mary Gregor, in the Cambridge Texts in the History of Philosophy series. Cambridge: Cambridge University Press (1996).

TP = *On the Common Saying: That May be Correct in Theory, but it is of No Use in Practice*, translated and edited by Mary Gregor, in the Cambridge Texts in the History of Philosophy series. Cambridge: Cambridge University Press (1996).

⁷⁰ For example, Kant wrote that individuals' freedom is "quite consistent with the greatest inequality in terms of the quantity and degree of their possessions." TP 8:291–2.

⁷¹ Notably, F.A. Hayek interprets Kant as holding that "juridical laws [must] abstract altogether from our ends, they are essentially negative and limiting principles which merely restrict our exercise of freedom," which in turn inspires Hayek's criticism of the welfare state. F. A. Hayek, *Law, Legislation and Liberty. ii. The Mirage of Social Justice*. Chicago: Chicago University Press (1976), 43.

Furthermore, making this argument from a freedom-centric Kantian perspective is even more important given the way freedom has been invoked in debates concerning socioeconomic rights. Arguments against placing restrictions on the market and against taxing heavily so as to diminish inequalities overwhelmingly rely on rhetoric of freedom. On one very common line of argument, taxing Jeff Bezos violates his freedom, as it takes away what it is. So, people who hold this view argue either that we do not have a right to tax Jeff Bezos, or that when we do tax Bezos, we are limiting his freedom for the sake of something else we value more, like equality.⁷²

The Kantian account I offer here shows that freedom, rather than providing a basis for criticizing socioeconomic rights, provides a solid foundation for these rights. Furthermore, on this account, there is no tension between freedom and equality. Citizens have a right to freedom, and so they have a right to be equal democratic citizens. Securing the conditions of this equal democratic citizenship, then, does not violate freedom. Instead, doing so is required in order to secure freedom.

I. THE KANTIAN RIGHT TO FREEDOM

In this section, I will lay the foundation for the rest of my argument by giving an account of the Kantian right to freedom. I will begin by giving an overview of the Kantian right to freedom. Next, I will contrast Kantian freedom with the conception of freedom as negative liberty. Finally, I will spell out the Kantian right to freedom in further detail, highlighting aspects of the right to freedom that help to ground the right to equal democratic citizenship.

⁷² The supposed tension between freedom and equality was famously emphasized by Alexis de Tocqueville. See Alexis de Tocqueville, *Democracy in America*, vol. 1, in *Democracy in America and Two Essays on America*. London: Penguin (2003).

i. The Kantian Right to Freedom

Kant argues that each person has the innate right to freedom: “[f]reedom (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, is the only original right belonging to every man by virtue of his humanity.”⁷³ The idea of freedom invoked here is importantly different from the well-known idea of freedom as autonomy that is prevalent throughout Kant’s ethical theory. Freedom in Kant’s ethical works entails determining one’s own will to act morally for the right reasons—in this way, this type of freedom is internal freedom, or freedom from being determined by one’s inclinations.⁷⁴ In contrast, Kant’s theory of right focuses on external freedom—with the free exercise of one’s will in the external world. Having the right to freedom means that each person has the right to direct her own will in the external world *consistently with others rights to do the same*. This last aspect of the right to freedom is extremely important, as it means that my right to freedom does not include a right to act in ways that violate the freedom of others. In this sense, the right to freedom is universalizable.

ii. Kantian Freedom Contrasted with Freedom as Negative Liberty

This universalizability is what sets Kantian freedom apart from the conception of freedom as negative liberty, the conception of freedom that so often underlies arguments against socioeconomic rights. With the conception of freedom as negative liberty, a right to freedom is a right to non-interference. On this conception, I am free insofar as I can do whatever it is that I choose to do without interference from others. As Isaiah Berlin famously put it, “if I

⁷³ MM 6:237.

⁷⁴ GW 4:399-400.

am prevented by others from doing what I could otherwise do, I am to that degree unfree.”⁷⁵ Every restriction placed on a person’s activity, then, is viewed as a restriction on her freedom.

Further, with this conception of the right to freedom, freedoms necessarily come into conflict. On this picture, political decision-making is viewed as making choices to trade off some freedoms for the sake of others. Consider, for example, the case of assault. With the conception of freedom as negative liberty, prohibiting a person from assaulting others restricts that person’s freedom. When we put in place laws that prohibit assault, then, we choose to restrict the would-be assaulter’s freedom to assault in order to secure the would-be victim’s freedom from assault. We trade off one freedom for the sake of another that we value more.

The Kantian framework yields a much different analysis of the assault case. In the case of assault, there is no tradeoff of one freedom for another. Again, on the Kantian picture, a person’s right to freedom does not include a right to violate anyone else’s freedom. So, I have no right to violate another person’s freedom by assaulting her. The other person, my would-be victim, has the right to direct her own will in the external world. When I attack her, I violate that right. Prohibiting me from attacking her does not restrict or curtail my right to freedom, then, it simply secures hers.

This is the sense in which Kantian freedom is universalizable: each person’s freedom is consistent with every other person’s freedom, so freedoms will never come into conflict. My

⁷⁵ Isaiah Berlin, “Two Concepts of Liberty,” reprinted in *Liberty*, edited by Henry Hardy. Oxford: Oxford University Press (2002), 169.

right to freedom is a right to direct only my own will in the external world, and it gives me no right to direct the wills of others. On this picture, there is no conflict between different individuals' right to freedom, nor is there any conflict between the different particular rights that the right to freedom entails.

Furthermore, since on this picture freedom is the one innate right from which all others flow, it can never legitimately be traded off for the sake of anything else. The Kantian right to freedom is in this sense an absolute, inviolable right. The conception of freedom as negative liberty cannot give rise to an absolute right of this sort, for the simple reason that a right that inevitably conflicts with itself cannot be an absolute right.

iii. Freedom as Innate Equality and Being One's Own Master

Before moving on to give a Kantian argument for a right to equal democratic citizenship, I will present some further details of the right to freedom that will help to ground this argument. Kant elucidates the right to freedom, asserting that the right to freedom involves certain authorizations.⁷⁶ These authorizations are not distinct from the right to freedom, but rather are part of what it means to have the right to freedom.⁷⁷ Two of these authorizations are key to developing a Kantian justification for equal democratic citizenship.

The first authorization he sets out is “innate *equality*, that is, independence from being bound by others to more than one can in turn bind them.”⁷⁸ Each person has the innate right to freedom—the innate right to direct her own will in the external world. This fundamental

⁷⁶ MM 6:237.

⁷⁷ As Kant puts it, these authorizations are “not really distinct from” the right to freedom. MM 6:237.

⁷⁸ MM 6:238.

right is the same for everyone, and all other rights flow from this right. The specific rights a given individual has, then, will be those rights that the one innate right to freedom gives rise to in the circumstances in which that individual finds herself. Different people in the same circumstances, then, will always have the same rights. In the eyes of the law, we must be equal. So, we are all bound to respect one another equally. If others are bound to respect me more than I am in turn bound to respect them, this inequality tells us that something has gone wrong here. Either others are being bound to respect me more than my right to freedom demands, or I am not being bound respect as others as much as their freedom demands.

The second authorization is “a human being’s quality of being *his own master*.”⁷⁹ Part of what it means to have the innate right to direct my own will in the external world is to have the right to be the master of my own will. I have the right to decide what I will do, so long as I do not violate this same right in others. We are all equally bound to respect each other’s innate right to freedom, which means that we are all equally bound to respect each other’s rights to be our own masters. If one person is bound more to another than that other is in turn bound to her, the person who is disproportionately bound is to that extent subjugated to the other’s will.

Kant’s theory of right is built on the foundation of this innate right to freedom. The fundamental principle of Kant’s theory of right, the universal principle of right, commands that the innate right to freedom be protected: as Kant puts it, “Any action is *right* if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the

⁷⁹ MM 6:238.

freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."⁸⁰ Actions that violate anyone's freedom must be prohibited by the state. Importantly, though, this universal principle of right does not bear only on the actions of individuals. Kant points out that it is also possible that one's "condition generally" can also violate the right to freedom of others.⁸¹ The key insight I take from this thought is that while individuals must be prohibited from violating one another's rights, more importantly for my purposes here, we also must not allow our system of government to violate the rights of the people.

II. A KANTIAN ARGUMENT FOR EQUAL DEMOCRATIC CITIZENSHIP

Having the innate right to freedom means, then, that each person is fundamentally equal to all others, and that each person has a right to be her own master. In this section, I argue that these aspects of the right to freedom entail a right to equal democratic citizenship, which means that each person must have equal democratic lawmaking authority. Furthermore, I argue that this right to democratic self-governance entails that central societal decisions must be made through the democratic process.

i. The Core Argument for Equal Democratic Citizenship

On this Kantian picture, the task of government is to secure the right to freedom. In the first instance, this means the government must secure our personal, bodily rights. We all have the same right to freedom, which means that we all have the right to direct our wills in the external world. This means that each person has the right to control her own body, and this

⁸⁰ MM 6:230.

⁸¹ MM 6:230.

right is the same for all of us. So, we are all equally and reciprocally bound to respect one another's bodily rights.

Securing individuals freedom, though, requires more than simply securing individuals personal and bodily rights. We, the members of a given state, have to make decisions concerning how our society will be structured and organized. Our government is the institution through which we do this. In ensuring that these decisions are binding over all citizens, the government exercises control over us. Take, for example, the relatively simple case of traffic laws. We have to pick a side of the road that people will drive on, among other things. Decisions such as these have to be made, and some people, or groups of people, have to make them. And, in order to be effective, these decisions must be binding over all of us.

This governmental authority over us might seem to be in tension with the right we all have to be our own masters.⁸² I argue, though, that this exercise of governmental authority over us can be consistent with our right to self-mastery: if this authority is an exercise of our self-mastery, then when we are subject to this authority, we are the masters of ourselves. This is, of course, a Rousseauian idea that Kant takes up when he argues that “the legislative authority can belong only to the united will of the people.”⁸³ Since we must be our own masters, if laws are to legitimately bind all of us, they must be made by all of us—they must

⁸² Robert Paul Wolff makes this point when he argues that the “defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled. It would seem, then, that there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state. Robert Paul Wolff, *In Defense of Anarchism*, Berkeley: University of California Press (1998), 18.

⁸³ MM 6:313.

be the product of what Kant refers to as an omnilateral will, which is a general united will composed of the wills of all individual citizens.⁸⁴

Despite statements like these, there is a fair amount of evidence that Kant himself only endorsed what Cristoph Hanisch refers to as a “substantive criterion of republican legitimacy.”⁸⁵ Rather than argue that citizens must give laws to themselves to democratic procedures, Kant seems to argue only that the laws must be such that citizens *could have* given these laws to themselves.⁸⁶ Here, though, I set these interpretive questions aside. I argue that despite what Kant’s own views may have been, the innate right to freedom entails citizens must actually give laws to themselves through democratic procedures.

In order for our laws to be the product of our general united will, it must in fact be the case that these laws are the product of our wills. Each person has a right to be her own master. Imagine a situation where an individual person, acting as sovereign, governs “in a republican way,” choosing only those laws that citizens could give to themselves or perhaps even those laws that citizens would give to themselves. Even in this (highly unrealistic) scenario, the citizens who are governed by the laws still are not in truth giving those laws to themselves. Their wills are subordinated to the will of the sovereign—they are nonreciprocally bound to

⁸⁴ As Kant argues, we cannot be bound unilaterally—one person cannot impose obligations unilaterally on others. Instead, we can only be bound by an omnilateral will—the combined will of all: “For a unilateral will (and a bilateral but still *particular* will is still unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is *omnilateral*, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving.” MM 6:263.

⁸⁵ Cristoph Hanisch, “Kant on Democracy” *Kant-Studien* 107:1 (2016): 64-88, 83.

⁸⁶ Kant seems to suggest that it is legitimate for a ruler to “*govern* autocratically and yet in a republican way, that is, in the spirit of republicanism and on an analogy with it.” CF 7:87.

respect the will of the sovereign. This condition, then, is inconsistent with the innate equality of all citizens.

Each person has the fundamental right to freedom. This right to freedom is the same for each person, which renders us fundamentally equal. Part of what it means to have this right to freedom is have the right to be one's own master—to direct one's own will in the world. Governmental authority is binding over all of us. If we are to govern our own wills, then governmental authority must be able to be understood flowing from our own wills. Since we are all fundamentally equal in virtue of our possession of the innate right to freedom, governmental authority must be consistent with this equality. Lawmaking authority, then, cannot be distributed unequally, as when it is so distributed certain individuals are granted more authority than the right to freedom entails.

Anytime any one person or group of people has disproportionate lawmaking over others, then, the right to freedom will be violated. In order for laws to be consistent with our right to self-mastery, we must all give these laws to ourselves, and in order for laws to be consistent with our innate equality, we must all take an equal part in giving these laws to ourselves.⁸⁷

⁸⁷ Since this Kantian justification for democracy is based on equality, it is similar to that offered by Niko Kolodny, who argues that “democracy is a particularly important constituent of a society in which people are related to one another as social equals, as opposed to social inferiors or superiors.” Niko Kolodny, “Rule Over None II: Social Equality and the Justification of Democracy,” *Philosophy Public Affairs* 42:4 (2014), 287-236, 287. The Kantian approach offers a significant contribution to justifications of this sort, though, as while Kolodny's justification is grounded in an “interest in social equality,” the Kantian justification relies on a fundamental right to equality, which is derived from the fundamental right to freedom. Kolodny, “Rule Over None II,” 325. The Kantian justification rules out conflict with other rights and interests that we may have in a way that Kolodny's account cannot.

ii. Substantive Limits on Democratic Procedures

On this Kantian picture, though, not every law that is the product of an equal democratic lawmaking process will be legitimate. The right to freedom places substantive limitations on what we can legitimately decide via our democratic procedures. Any law that is inconsistent with the particular rights that flow from the right to freedom will be illegitimate.

It is beyond the scope of my project here to identify and give a full account of all of the rights that flow from the fundamental right to freedom. Still, to make this idea more concrete, it is worth considering an example that illustrates how a law can be illegitimate because it infringes on fundamental rights. Up until 1993, it was legal in some parts of the United States for men to rape their wives. Permitting violations of bodily integrity of this sort constitutes a prime example of a law that is inconsistent with the right to freedom and so cannot be legitimate.⁸⁸ The right to freedom entails a republican state where fundamental freedoms are insulated from the whims of the people whether constitutionally or otherwise.⁸⁹

iii. Democratic Procedures

The argument above tells us that all citizens have a right to participate equally in democratic lawmaking procedures. Although it goes beyond the scope of my argument here to provide a

⁸⁸ As the New York Court of Appeals put it, “a marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body as does an unmarried woman.” *People v. Liberta*, 64 N.Y.2d 152, 164 (1984).

⁸⁹ Cristoph Hanisch argues that it is a strength of a Kantian justification for democracy that this justification is able to give an account where “*both* the normative non-optionality of democratic procedures and the very limits imposed on them are ‘equiprimordial,’ i.e. both have their fundamental justificatory rationale in the *same* normative entity (the one innate right of humanity).” Hanisch, “Kant on Democracy,” 87. As a consequence, this Kantian argument for democracy does not face the same difficulties that other arguments for democracy face in justifying the right to participate in democratic procedures while at the same time providing a non-instrumental justification for the individual rights and liberties that limit democratic procedures, as all rights are grounded in the one innate right to freedom.

full Kantian account of just democratic institutions, there are some key things we can say about what these institutions would need to look like in order to be fully consistent with citizens' innate right to freedom. If we are to each have a part in making laws, then there must be some sort of democratic process by which we exercise this right—a system with some form of voting. And, if we are all to have an equal part in this process, then all votes must be weighted equally.⁹⁰

Of course, a great deal remains to be determined concerning the nature of rightful democratic procedures. For example, the persistent concern over the tyranny of the majority still persists—how can a person be said to be governing herself if she is continually a member of a minority group whose interests are always subordinated to the interests of the majority?⁹¹ Perhaps, as W.E.B. DuBois suggests, a democratic system of proportional representation would resolve this problem.⁹² Or perhaps, for reasons such as this, direct democracy may be the only legitimate democratic lawmaking procedure, as Robert Paul Wolff argues.⁹³ Beyond the question of whether representative democracy can be legitimate,

⁹⁰ The argument I give here is inconsistent with election by lot. If representatives are selected by lot, then there is a sense in which all citizens are equal—they all have an equal chance of governing. The innate right to freedom, though, demands more than mere equality—citizens must also be their own masters. This right to self-mastery entails that each citizen must have an equal part in governing or electing representatives, where no one's authority is greater than or less than any other's. This is not the case in a system where representatives are elected by lot. For an argument for selection of representatives by lot, see Alexander A. Guerrero, "Against Elections: The Lottocratic Alternative," *Philosophy & Public Affairs* 42:2 (2014). There still might be a place for citizens selected by lot to participate in the democratic process, though. Many cases of participatory budgeting, for example, seem compatible with the arguments I make here. See, for example, Nicholas Reece, "Experiment pays off: Melbourne People's Panel produces quality policy," *The Age*, June 28, 2015; available at <https://www.theage.com.au/opinion/experiment-pays-off-melbourne-peoples-panel-produces-robust-policy-20150628-ghzoz4.html>.

⁹¹ John Stuart Mill expresses his concern with potential tyranny of the majority. John Stuart Mill, *On Liberty*, in *On Liberty and The Subjection of Women*. London: Penguin Classics (2006).

⁹² W.E.B. DuBois, "Of the Ruling of Men," in *Darkwater: Voices from Within the Veil*, Oxford: Oxford University Press (2007), 65-76.

⁹³ Wolff, *In Defense of Anarchism*.

there is the further question of what the nature of the democratic process should be. People who argue for deliberative democracy, for example, might think that we need to deliberate about issues in a particular way before making our democratic decisions.⁹⁴ And beyond this, we still have to determine whether a legitimate republican democracy requires particular branches of government, what the roles of those branches should be, and how we should insulate their powers from one another.

For my purposes here, though, I am setting these issues aside. Whatever the answers to these specific questions may be, the argument above entails that there must be some democratic lawmaking process and that all citizens have the right to an equal part in it.

iv. What Must We Decide via the Democratic Process?

Beyond these questions of what the democratic process should look like and what republication limitations fundamental rights place this process, there remains the essential question of what issues the government should decide via the democratic process.

If we accept that there is a right to equal democratic citizenship, there seems to be something wrong with a system of democratic governance where very little is decided via this democratic process. For example, while traffic issues are important issues that we need to settle collectively, it would seem quite odd if a country's democratic process settled only traffic issues. This traffic example, though, highlights an important feature of those decisions that we must make together through the democratic process. The issue of which side of the road to drive on is an issue that affects us all, and in order for a decision on the issue to

⁹⁴ See, for example, Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?*, Princeton: Princeton University Press (2004).

solve the problem it sets out to, this decision must be binding on all of us. It is important that this decision be made through the democratic process for reasons beyond the coordination problem this decision solves, however. Since this decision binds all of us, in order for this decision to be consistent with each person's right to self-mastery, we must make this decision together through our democratic process.

For this reason, I argue we must make central societal decisions together through our democratic process. Central societal decisions are those decisions concerning issues that are important to all of us, individually and collectively. These include decisions about how our society should be organized and which among the many pressing issues facing us should be addressed. For example, beyond setting up our traffic system, we must also decide together how to set up our system of education and address the many issues that arise with it. Since collective societal decisions are of core importance to all of us and our decisions concerning them will bind all of us, we must make these decisions together.

III. SOCIOECONOMIC RESOURCES REQUIRED FOR EQUAL DEMOCRATIC CITIZENSHIP

Among these central societal decisions are decisions we make in setting up and maintaining our systems of property ownership and economic exchange. Like any other aspect of government, our system of ownership and exchange must be compatible with the right to freedom, including the right to equal democratic citizenship that follows from it. In this section, I argue that we violate citizens' right to freedom when we put in place or maintain a system of ownership and exchange where some lack access to the socioeconomic resources required for equal democratic citizenship.

Intuitively, many might think that how we structure our property and economic system and how we allocate socioeconomic resources is outside the realm of what we should exercise political control over. From this perspective, the capitalist economic system is seen as the natural way for an economic system to be organized. On this view, this natural system is governed by its own natural laws—most prominently, some version of survival of the fittest. So, on this view, it is up to each of us to secure our own access to the resources required for survival and citizenship, and if we do not succeed in doing so, this is our responsibility. No one else, then, can rightfully be held accountable for our lack of resources. On this view, deciding who gets access to these resources is beyond the appropriate role of government.

With the perspective that we in the United States have from within our capitalist economic system, this intuition is pervasive.⁹⁵ This intuition, though, obscures our responsibility for our economic and property systems. We create and maintain our systems of ownership and exchange. When we create a state, we together take control over the material resources in that state.⁹⁶ The government must create and structure a regime of ownership and exchange, which is a body of laws that specifies who owns what and how owners may transfer what they own to others. In order for our legal regime of ownership and exchange to be legitimate, like any other law, it has to be created by an omnilateral will—we have to make

⁹⁵ Marx gives a classic treatment of the way in which the ideology in a given society tends to reinforce the productive system of that society. See Karl Marx, *The German Ideology*, as excerpted in *The Marx-Engels Reader*, Second Edition, edited by Robert C. Tucker. New York: W.W. Norton & Company, Inc. (1978)

⁹⁶ Kant's discussion of the sovereign as the supreme proprietor of the land provides a good model for understanding why this is so. On this view, if we are to establish property rights that specify how land can rightfully be acquired and owned, then we must take ourselves to have the collective authority to control the use of the land we are legislating with regard to—we must take ourselves to collectively own that land, as having the right to control the use of an object is just to own that object. MM 6:323-25.

these laws together.⁹⁷ So, our system of ownership and exchange must be something that we create and we maintain together.

Further, as I have argued in depth elsewhere, we have options in setting up this regime of ownership and exchange.⁹⁸ We make a choice in setting up our regime of ownership and exchange, and this choice has to be compatible with the right to freedom. We have to recognize that we already have created and continue to maintain a legal regime that determines who gets what. We are responsible for the socioeconomic consequences our economic system generates, so we have to make sure these consequences are compatible with our fundamental rights.

If, as I have argued, the right to freedom entails a right to equal democratic citizenship, then we cannot, through our government, put in place or maintain a socioeconomic system where certain citizens lack access to the socioeconomic resources required for citizenship. When we put in place such a system, we subordinate the wills of those citizens who lack these resources to the wills of those who do not. This condition is inconsistent with the right to freedom, as it is inconsistent with equal democratic citizenship. So, we, through our

⁹⁷ MM 6:263.

⁹⁸ See S.M. Love, “Communal Ownership and Kant’s Theory of Right, unpublished manuscript. Many other Kantians argue, in varying levels of detail, that despite Kant’s own emphasis on private property, the innate right to freedom does not entail a system of private ownership. See, for example, David James’ argument to this effect in David James, “Independence and Property in Kant’s *Rechtslehre*,” *British Journal for the History of Philosophy*, 24:2 (2016) 302-322. See also Christine Korsgaard, “Taking the Law into Our Own Hands: Kant on the Right to Revolution,” in *The Constitution of Agency: Essays on Practical Reason and Moral Psychology*. Oxford: Oxford University Press (2009), 238 fn 7. See also Louis-Philippe Hodgson, “Kant on Property Rights and the State,” *Kantian Review* 15-1 (2010) 57-87, 62; Barbara Herman, *Moral Literacy*, Cambridge: Harvard University Press (2007), 43 (“Kant’s argument for an institution of property is not an argument for any particular system of property, private or communal.”); and Howard Williams, *Kant’s Political Philosophy*. Oxford: Oxford University Press (1983), 193-4.

government, must make sure citizens have access to the socioeconomic resources required for equal democratic citizenship, whatever they may be.

Before moving on to discuss inequality, it is worth detailing some specific rights that follow from this right to the socioeconomic resources required for citizenship. The examples that follow are by no means intended to be an exhaustive list of the socioeconomic resources required for citizenship. Still, I hope to show by means of these examples how rights of this sort fit within the Kantian framework.

i. Education

It's fairly straightforward that a person has to have some amount of education in order to participate in any legislative process in a way that is informed and autonomous.⁹⁹ What education is required for citizenship in a given state is going to vary relative to the particular nature of that state. In a general sense, at a minimum a person has to have a basic level of education, whatever amount of training in basic skills like reading, writing, mathematics, or whatever else is required for participation in that society. In the United States today, for example, citizens need to be taught how to read in order to effectively participate in our system of government.¹⁰⁰ We can imagine a different sort of state, though, where this is not true—perhaps a state focused on subsistence farming with a town hall system of government. In such a state, teaching people how to read might not be necessary or even possible.

⁹⁹ I mean autonomous here in the normal use of that word, not in any fancy Kantian sense.

¹⁰⁰ This is not to say that we should not allow those who lack these skills to vote; instead, we have an obligation to provide them with access to the education they need.

Beyond a basic level of general education, people of a particular state also have to be taught the specific skills that are required for participating in that state's legislative process. Another Kantian, Sarah Holtman, puts this point well in the case of a system like today's United States. She writes that citizens must be taught

those capacities or characteristics that make possible appreciation of, commitment to, and wise choice within the constraints of the dictates of justice. Evidently among these are access to and ability to evaluate empirical facts, the capacity to reason well regarding the relationship between relevant facts and requirements of justice, and a full understanding of, commitment to, and ability to exercise good judgment regarding the basic demands of justice.¹⁰¹

I agree with Holtman that effective participation in the legislative process requires the development of these reasoning and deliberative capacities. We do not need to be able to understand everything, but we do need to be able to do things like evaluate the expertise of others who are presenting us with information. To make decisions concerning climate change, for example, we need to understand the basics of the science, but we also need to discern when and how we should trust scientific expertise on the subject.

ii. Information

In addition to education, we have a right to information. Most obviously, our government cannot legitimately deny us the information we need to exercise our votes in an informed manner. Beyond this, though, we also need to have a press that is free from the control of government, which is able to tell us what is going on in our state and around the world, and which is able to vigorously and without bias investigate issues that we as a society should be concerned with.

¹⁰¹ Holtman, "Kantian Justice and Poverty Relief," 98.

In order to make decisions about what we should do, what issues our government should address, and how they should address them, we need to know about these issues. If the state or particular citizens control what information other citizens have access to regarding a particular issue, the citizens that control the information control those other citizens' opinions. They decide how others will look at that issue, because they control what information others see. The right to have access to information, then, includes a right to be free of propaganda. This right is of increasing significance in today's United States, in light of, among other things, Cambridge Analytica's effect on the 2016 presidential election.¹⁰²

This right to information will also bear on issues such as the current debate we are having in the United States concerning net neutrality. If corporations control what information we can see, they control our perspective on the issues our nation faces. We are each supposed to be making our own free, autonomous decisions about what we think our country should do, and we cannot make our own choices on these issues if someone else is in control of what information we have.

iii. Resources Required for Voting

To wrap up this section, I want to focus on the resources that are required for the act of voting. What do we need to vote? We need access to voting facilities--we need to be able to

¹⁰² For a very interesting perspective on Cambridge Analytica, see Carole Cadwalladr, "I made Steve Bannon's psychological warfare tool: meet the data war whistleblower," *The Guardian*, March 18, 2018; available at <https://www.theguardian.com/news/2018/mar/17/data-war-whistleblower-christopher-wylie-faceook-nix-bannon-trump>. Consider also the recent Sinclair Broadcasting scandal; see Paul Farhi, "Sinclair faces fallout from viewers and democratic candidates over 'fake news' promos," *The Washington Post*, April 5, 2018; available at https://www.washingtonpost.com/lifestyle/style/sinclair-faces-fallout-from-viewers-and-democratic-candidates-over-fake-news-promos/2018/04/05/dccb8d1a-377f-11e8-acd5-35eac230e514_story.html?utm_term=.fcf2a16ad199.

get to the polls, and we need to be able to take the time off to get to the polls without jeopardizing our subsistence. For example, one could not be said to have access to voting facilities if those voting facilities were located at peak of the nearest tall mountain. Beyond these resources, we also need some amount of free time where we can actually consider the issues that we're supposed to be making decisions about.

I wanted to conclude this section with the discussion of these resources because it seems to me that we are most likely to think it is not society's responsibility if citizens lack access to many of these resources. If someone does not have a way to get to the polls or does not have enough time off to get there, we might think it is only that person who is responsible for solving this problem. Here, I want to emphasize again that we create and maintain our economic system. If we have put in place a system where people are so poorly off that they cannot get to the polls, this situation is generated by the system we keep in place and it is our responsibility. We do not have a right to maintain a system where some will not be able to take their part in the legislative process.

IV. INEQUALITY

I have argued that each citizen has a right to equal democratic citizenship. If this is so, then we cannot put in place or maintain an economic system that permits inequalities of socioeconomic resources that are so extreme that they undermine equal democratic citizenship.

There are, of course, many ways that those who have more power or more money are able to gain legal privileges not available to others and have influence on the law that others do

not have. Those who have considerable socioeconomic resources at their disposal are able to evade the equal and impartial application of the law to their judicial cases. Those who have more are also in many cases able to evade any enforcement of the law at all. Here, though, I want to focus specifically on the way in which extreme inequalities of wealth can undermine the democratic lawmaking process itself.

There are innumerable ways this might happen in different societies and in different eras. To keep this discussion concrete, I am going to discuss specifically the United States system of government and the effects inequalities in wealth have on our democratic legislative process. In the United States, there are many ways money controls the outcome of our democratic processes. Money has a huge effect not only on who gets elected to office, but also on who gets nominated in the first place. Money also has a huge effect on the decisions our representatives make, through campaign contributions and through lobbying. Money also plays a huge role in shaping administrative law, and though this issue is less visible it is just as important.

i. Safeguarding the Legislative Process

Though inequalities in wealth have a huge impact on our legislative process, we might not think that this means we need to eliminate these inequalities. We might think instead that what we have to do is put safeguards in place that shield the democratic process from the effects of extreme disparities in wealth. The most obvious safeguard that we might think should be put in place is strict campaign finance regulation. Perhaps inequalities of wealth would not have such a profound effect on our elections if we heavily limited campaign contributions or funded our elections through the state.

Beyond campaign finance regulation, we might also think that we should get rid of the practice of lobbying altogether, or perhaps just get rid of professional lobbying and make it the case that only unpaid private citizens or nonprofit organizations may lobby. And beyond measures that we might take in the future, there are other ways we in the United States already safeguard our legislative process from the effects of inequality. We have secret ballots, and we prohibit the buying of votes. We might also come up with additional safeguards that could further safeguard our democratic legislative process in the future.

ii. Is This Possible?

We might wonder, though, whether we can really put and keep in place meaningful safeguards in the face of such persistent and extreme inequalities. I think we have good reason to doubt whether this is possible. Whenever so few control so much, their wealth always seems to find a way to get around whatever restrictions we try to put on it.

To make this worry more concrete, consider the example of campaign finance regulation and the Supreme Court's famous decision in *Citizens United*.¹⁰³ Before that decision, money indisputably had an influence on who was nominated, who got elected, and the agenda they set when they were elected. This influence affected our presidential election, just as it did every other election. Our president then nominated justices to the Supreme Court whose ideology reflected his own agenda, an agenda, again, that was shaped by the interests of the wealthy. These justices then substantially weakened campaign finance regulations with their decision in *Citizens United*. Since this decision, wealth is now permitted to have an even

¹⁰³ *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

greater influence on who gets nominated, who gets elected, and the agendas they set after they are elected. It has thus become more likely, as this cycle continues, that the remaining restrictions on campaign financing will be further weakened in the future.¹⁰⁴

The question of when inequalities become so extreme that it is no longer possible to insulate the legislative process from them is an empirical question. If we are to respect citizens' rights to equal democratic citizenship, though, we have a critical obligation to figure out the empirical answer to this question.

iii. Even If This Is Possible, Is It Enough?

It is difficult, and perhaps even incoherent, to imagine that these safeguards could remain in place even in the face of inequalities as extreme as those we face today in the United States. But let us assume for the moment that we might be able to put them in place and that they might remain in place. Even if this were possible, I argue that there is still good reason to doubt whether these inequalities could then be compatible with equal democratic citizenship.

In the United States today, central societal decision-making has been privatized.¹⁰⁵ If we were to safeguard the legislative process from the influence of inequality, citizens would have formal political equality and an equal part in the democratic legislative process. They would

¹⁰⁴ Consider, for example, the massive 2017 tax cut and the Koch brothers' subsequent decision to spend \$400 million on Republican candidates in the 2018 midterm elections. See James Blue, "Koch brothers network planning massive spending increase for 2018 midterms," *PBS*, January 29, 2018; available at <https://www.pbs.org/newshour/politics/koch-brothers-network-planning-massive-spending-increase-for-2018-midterms>.

¹⁰⁵ As Pope Francis, a prominent critic of inequality, put it in a speech he gave at the Vatican in 2013, we are ruled by a "dictatorship of an economy which is faceless and lacking any truly humane goal." Lizzy Davies, "Pope Francis attacks 'cult of money' in reform call," *The Guardian*, May 16, 2013; available at <https://www.theguardian.com/world/2013/may/17/pope-francis-attacks-cult-money>.

not, though, truly be equal democratic citizens. In the face of inequalities so extreme, important societal decisions are no longer being made through the democratic process. In conditions of inequality so extreme as those that we face, the wealthy few decide the direction of our economy and direct our societal production. As a consequence, they also decide to a large extent which among the very many pressing social issues facing our society will be addressed.

In these conditions of extraordinary inequality, some people have come to possess such a disproportionate share of society's wealth that they can make decisions of national and even global significance on their own, and these decisions bind all of us. Examples abound of the super-rich making such central societal decisions. Elon Musk, for example, has decided that the most pressing issue facing our civilization is malevolent artificial intelligence, and has dedicated a billion dollars to addressing this issue.¹⁰⁶ I personally recently rewatched *Battlestar Galactica* for the third time, so I can relate to this concern. But no single individual, especially not one with such a questionable maturity level (as evidenced by Musk's penchant for flamethrowers¹⁰⁷ and naming Tesla models after sex¹⁰⁸) should be deciding whether this issue is more pressing than others, like, say, climate change—an issue that remains tragically unaddressed since addressing it clashes so strongly with corporate interests.

¹⁰⁶ Maureen Dowd, "Elon Musk's Billion-Dollar Crusade to Stop the A.I. Apocalypse," *Vanity Fair*, April 2017; available at <https://www.vanityfair.com/news/2017/03/elon-musk-billion-dollar-crusade-to-stop-ai-space-x>.

¹⁰⁷ Samuel Gibbs, "Elon Musk sells all 20,000 Boring Company 'flamethrowers,'" *The Guardian*, February 1, 2018; available at <https://www.theguardian.com/technology/2018/feb/01/elon-musk-sells-out-boring-company-flamethrowers-fire>.

¹⁰⁸ Sean O'Kane, "Elon Musk should stop making that stupid sex joke about Tesla's car names," *The Verge*, July 30, 2017; available at <https://www.theverge.com/2017/7/30/16061540/elon-musk-model-3-names-joke>.

And Jeff Bezos, the founder and CEO of Amazon now worth \$130 billion, is taking on societal decisions left and right. We are lucky enough that Bezos seems to have an appreciation for democracy. He has so much money that he was able to simply purchase the *Washington Post*, and since he likes democracy, the *Post's* masthead now reads “Democracy Dies in the Darkness.” Imagine, though if he did not like democracy as much as he does—imagine the influence he could have on the information we see concerning the issues we face. And though Bezos in general seems to be well-intentioned, his decision to spend \$42 million building a clock inside a mountain is certainly questionable.¹⁰⁹ I can think of a few things that we may need more than a \$42 million clock, like, for example, food and shelter for starving people.

Still, it is not entirely Bezos' fault that he has the power to address issues of such central societal importance on his own. For example, Bezos, along with a couple of other billionaires, recently committed himself to tackling the issue of healthcare in the United States.¹¹⁰ We have a system in place currently where he is pretty much the only agent that *can* address issues such as this, and I certainly hope he manages to address them well. Jeff Bezos, though, should not be deciding on his own which societal issues get addressed or how they should be addressed. We have the right to be making these central societal decisions together through the democratic process.

¹⁰⁹ Paulina Dedaj, “Jeff Bezos is building a gigantic \$42M clock inside a mountain,” *New York Post*, February 21, 2018; available at <https://nypost.com/2018/02/21/jeff-bezos-is-building-a-gigantic-42m-clock-inside-a-mountain/>.

¹¹⁰ Chris Isidore, “Jeff Bezos, Warren Buffett and Jamie Dimon want to fix health care,” *CNN*, January 30, 2018; available at <http://money.cnn.com/2018/01/30/news/companies/amazon-berkshire-jpmorgan-health-insurance/index.html>.

Formal democratic decision-making processes cannot ensure equal democratic citizenship if societal decisions, central decisions concerning what our society should be and how it should be organized, are made by individuals and corporations rather than through democratic processes. We must, then, eliminate inequalities of wealth that are this extreme.

Where exactly the line is for when economic inequalities are so extreme that the wealthy few are making societal decisions on their own is again an empirical question. And again, we have a duty to figure out the empirical answer to this question. More importantly, though, we have a duty, through our government, to eliminate inequalities that are clearly well beyond this line.

iv. Taxation and freedom

We can now return to the worry highlighted early on here—if we are to eliminate these inequalities, we will need to *heavily* tax certain wealthy members of our society. Taxing these individuals might seem to violate their freedom, as it takes away their property and prevents them from doing with it what they would.

In responding to this worry I first want to emphasize again that our economic and property is system is our creation. Jeff Bezos does not have a fundamental natural right to the material resources that an unregulated capitalist economy would allocate to him.¹¹¹ If placing restrictions on the market is required in order to secure citizens' fundamental rights, then we must put these restrictions in place.

¹¹¹ For a further informative discussion of the conventionality of property rights, see Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice*. Oxford: Oxford University Press (2002).

And while we are placing a restriction on Jeff Bezos' activity, this restriction is not in violation of his right to freedom. Again, with the picture of freedom as negative liberty outlined earlier, this restriction would be viewed as a limitation of Jeff Bezos' freedom. What the view of freedom as negative liberty can't make sense of, though, is that the right to freedom does not include a right to violate others' freedom. When certain people come to control so many resources that they undermine equal democratic citizenship, they come to hold authority over their fellow citizens that is not equal and not reciprocal. Having disproportionate authority over others violates their freedom. Taxing a billionaire, then, does not violate the billionaire's right to freedom. Instead, taxing the billionaire merely prevents the billionaire from violating the freedom of others.

V. CONCLUSION

Here, I argued that the Kantian innate right to freedom entails a right to equal democratic citizenship. I then argued that this right to equal democratic citizenship entails both that all citizens must have access to the socioeconomic resources required for equal democratic citizenship, and that inequalities that are so extreme that they undermine equal democratic citizenship must be precluded.

To conclude, it is worth noting that this Kantian account I offer here is not strictly egalitarian—we do not have to all have the same stuff or all start out with the same basic resources. While this view is concerned with the right to equal citizenship, it is able to offer an alternative, non-egalitarian justification for robust socioeconomic rights. Robust socioeconomic rights, then, can be compatible with diverse distributions of socioeconomic resources, leaving us with a great deal of discretion in how we choose to organize

our economic and property systems. This Kantian view, then, can greatly enrich debates concerning how we should think about socioeconomic rights.

FREEDOM FROM THE MARKET

In arguments for the free market, no justification is more widespread or harder to refute than arguments based on freedom. Proponents of the capitalist system argue that the market is an essential sphere of individual autonomy, where consumers freely choose what they wish to buy and sell and what form and extent of labor they will engage in. In making these choices, these individuals freely choose what projects they will pursue and what their lives will be. On this view, restricting the freedom of the market, then, restricts individual freedom. While some who espouse this view might view some restrictions on the market as justified, these restrictions and the benefits they bring come at the cost of limiting freedom.

Contrary to this rhetoric, I argue here that if we take a certain view of the capitalist system, it becomes apparent that the capitalist system is in fact inconsistent with individual freedom. To begin, I will present Karl Marx's explication of the nature of capital: according to Marx, the capitalist system is a self-directing system which drives inevitably towards the built-in end of the valorization and growth of capital and wealth. This system will subject everything it can, including the lives of human beings, to this end. Rather than being a realm of individual freedom, the capitalist system governs individuals' choices and lives.

I argue that Immanuel Kant's theory of right provides a robust normative foundation for this Marxian critique of capital. First, I argue that the Kantian innate right to freedom

grounds an inalienable right to self-government: the only way for governmental authority over us to be consistent with our right to self-mastery is for it to be an exercise of our self-mastery—we must make the laws that bind us together. I then argue that a capitalist productive system as Marx describes it is incompatible with this right to self-government. Since the capitalist system is a self-directing system with its own built-in end, such a system will generate outcomes to central societal decisions concerning societal production so that they are in line with this end. When we let capital make these central societal decisions for us, we unacceptably forfeit our freedom to make these decisions ourselves. Capitalism, then, is inconsistent with the innate right to freedom.

There are certainly many important points of opposition between the political philosophies of Marx and Kant that might lead one to question such an approach. Marx eschews moral argumentation, which he views as providing ideological support for the productive system of a given era.¹¹² Kant could be viewed as a prototypical example of the sort of moral philosopher Marx criticizes: while stressing the importance of formal political freedom, Kant asserts that citizens' freedom is "quite consistent with the greatest inequality in terms of the quantity and degree of their possessions."¹¹³ ¹¹⁴ Kant also seems to take for granted the

¹¹² To preserve its power, the ruling class of each epoch must "represent its interest as the common interest of all the members of society"—it must "give its ideas the form of universality, and represent them as the only rational, universally valid ones." Karl Marx, *The German Ideology*, as excerpted in *The Marx-Engels Reader*, Second Edition, Edited by Robert C. Tucker. New York: W.W. Norton & Company, Inc. (1978), 174. According to Marx, the ideas of freedom and equality are notions that serve to reinforce the capitalist productive system and the power of the bourgeoisie. Marx, *The German Ideology*, 173.

¹¹³ In this paper, I provide citations to Kant's work referencing the volume and page number of the standard German work. I will refer to Kant's work as follows:

MM = *The Metaphysics of Morals*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

TP = *On the Common Saying: That May be Correct in Theory, but it is of No Use in Practice*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

rightfulness of private ownership and market exchange,¹¹⁵ which stands in sharp contrast with the incredible amount of attention Marx devotes to understanding the complexities of socioeconomic systems and its relationship to political power under capitalism.

Despite this opposition between their stated views, much can be gained from bringing their thought together.¹¹⁶ While Marx may not have wanted a normative foundation to be provided for his critique of capital,¹¹⁷ a Kantian normative foundation gives us a powerful tool for arguing against the capitalist system. Though Marx saw the communist revolution as historically determined, as G.A. Cohen puts it, “history has shredded” such predictions.¹¹⁸ In a world where a transition away from capitalism seems far from inevitable, the robust normative framework of Kant’s theory of right offers a new path toward change for the Marxian tradition. Furthermore, Marx’s acute understanding of systems of ownership and exchange can greatly enrich the Kantian tradition, which lacks this sophisticated understanding. The critique of capitalism presented here, then, offers a promising way forward for both the Kantian and Marxian traditions.

PP = *Toward Perpetual Peace*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (1996).

¹¹⁴ TP 8:291–2.

¹¹⁵ For example, in arguing for his postulate of practical reason with regard to rights, he asserts that we must treat any object “as something which could be objectively *mine or yours*,”¹¹⁵ a turn of phrase he uses repeatedly and which suggests that he thinks of ownership as exclusively private. MM 6:246, emphasis added. His account of legitimate original acquisition also suggests that he has only private acquisition in mind. MM 6:258–259.

¹¹⁶ For an extended discussion of how bringing the political philosophies of Marx and Kant together can benefit both the Kantian and Marxian traditions, see S.M. Love, “Kant After Marx,” *Kantian Review*, 22:4 (2017), 579–598.

¹¹⁷ Many Marxists would still oppose providing a normative foundation for Marx’s criticisms of capital. See, for example, Brian Leiter, “Why Marxism Still Does Not Need Normative Theory,” *Analyse & Kritik*, 37, 23–50.

¹¹⁸ G.A. Cohen, *Self-Ownership, Freedom, and Equality*. Cambridge: Cambridge University Press (1995), 7.

I. MARX ON CAPITAL

Karl Marx famously criticizes capitalism throughout his works. Marx is thorough in his elucidation of capital's exploitative nature: capitalism extracts surplus labor from workers by making this surplus labor a condition of these workers' receipt of the basic means of subsistence. Marx also gives an illuminating account of the way in which the capitalist productive system alienates workers from their labor: within the capitalist productive system, the division of labor forces individuals into stultifying roles in the process of production. These powerful arguments have inspired generations of critics of capitalism. While these forceful arguments merit the attention they have received thus far, my aim here is to focus on an as-yet underappreciated, but fundamentally important, Marxian critique of capital.

Throughout his works, Marx elucidates the nature of the capitalist system as whole. In this section, I will present Marx's account of capitalism as a self-perpetuating system with a built-in end: the valorization and accumulation of wealth. Since capitalism drives inevitably toward this end, it will subject everything it can to the pursuit of this end, including human lives. Under a capitalist system, then, individuals are subject to the dictates of capital. In this way, the capitalist system restricts the freedom of those who are subject to it.

i. Capitalist Exchange

Before discussing the nature of capitalist exchange, let us first examine simple exchange. In the first instance of simple exchange, one commodity is exchanged for another of a different sort. This relationship is represented as follows:

$$C - C'$$

Here, one exchanges one commodity for another so as to obtain the use-value of the second commodity. The first commodity is qualitatively different from the second: the first commodity can be used for purposes that the second cannot, and vice versa. Consider a simple example: I have extra vegetables but no blankets. My friend has extra blankets but no vegetables. We exchange our commodities in order to use them to satisfy our natural human need to subsist—to eat healthily enough to live and stay warm enough to live.

On the story Marx gives of the way in which simple exchange is transformed into capitalist exchange, simple exchange next develops to involve money. To be able to transact with a larger number of people in a larger number of circumstances, we create a symbolic representative of value which serves as an intermediary between the exchange of commodities. This relationship can be represented as follows:

$$C - M - C'$$

In this relationship, as with the first instance of simple exchange, a commodity is exchanged for the purpose of obtaining a different commodity with a qualitatively different use-value. As Marx explains, “[t]he simple circulation of commodities – selling in order to buy – is a means to a final goal which lies outside circulation, namely the appropriation of use-values, the satisfaction of needs.”¹¹⁹ I sell my vegetables, obtaining a certain amount of money for them. I then use that money to purchase a blanket. In this case, the exchange of commodities still takes place to serve natural human needs: I have sold my commodity and purchased a new one for its use-value—because I need something to keep me warm and do not need my extra vegetables.

¹¹⁹ Karl Marx, *Capital: A Critique of Political Economy, Volume 1*, translated by Ben Fowkes. London: Penguin Classics (1990), 253.

On a societal level, in a system of simple exchange the circulation of commodities is driven by individuals' needs for goods with different use-values. The goods at either end of the transaction "have the same economic form:" they are "commodities of equal value," but with different use-values.¹²⁰ So, the "exchange of products, the interchange carried out between the different materials in which social labor is embodied, forms here the content of the movement."¹²¹ Goods are produced and exchanged so that they can be consumed—so that human needs can be satisfied.

The nature of money, however, permits exchange of another sort taking place—capitalist exchange. Money is a universal and impersonal representative of exchange value: it is "precisely the converted form of commodities, in which their particular use-values have been extinguished."¹²² As such, it can be accumulated: one can purchase or produce a commodity so as to sell it for a profit—for more money than one purchased it for or spent in producing it.

Capitalist exchange, then, consists in the exchange of commodities for the sake of accumulation of wealth. Instead of selling in order to buy so as to obtain a commodity with a qualitatively different use-value, one buys in order to sell at a price greater than one bought. In its most basic instance, this relationship can be represented as follows:

$$M - C - M'$$

This relationship is the inversion of the $C - M - C'$ relationship detailed above. In contrast with $C - M - C'$, the $M - C - M'$ relationship "proceeds from the extreme of money and

¹²⁰ Marx, *Capital*, Vol. 1, 250.

¹²¹ Marx, *Capital*, Vol. 1, 250.

¹²² Marx, *Capital*, Vol. 1, 251.

finally returns to that same extreme. Its driving and motivating force, its determining purpose, is therefore exchange-value.”¹²³ A commodity is purchased so that one can sell it for a quantity of money greater than the original purchase price. For example, let us say I purchase blankets so that I can sell them to others for a greater price, thereby increasing my monetary wealth. Here, I seek a quantitative gain: I want more money. I do not seek a qualitatively different good—no good with a different use-value is sought.¹²⁴ This exchange does not take place to serve any natural need that I have—I did not need or use the blankets purchased, and increased wealth in itself satisfies no natural human need.

On a societal level, in a system of capitalist exchange circulation is driven by the perpetual accumulation of capital. In exchange of this sort, money is exchanged for money. A greater quantity of money is sought, as a transaction of this form would be absurd if the two quantities of money were equal. As Marx puts it, with buying in order to sell, “the end and the beginning are the same, money or exchange-value and this very fact makes the movement an endless one.”¹²⁵ As the capitalist exchange ends with exchange value (money), it can immediately begin again. Since it is not tied to human needs or any other finite standard, “the circulation of money as capital is an end in itself, for the valorization of value takes place only within this constantly renewed movement. The movement of capital is

¹²³ Marx, *Capital*, Vol. 1, 250.

¹²⁴ This is also evident in the case of usury (moneylending), represented as follows:

$$M - M'$$

Here, a quantity of money is given to an individual who is in need of money. In exchange, that individual must then provide her moneylender with an increased quantity of money. In this case, the purpose of the transaction is profit: money is exchanged for a greater quantity of money. Thus, there is a quantitative rather than qualitative difference in value in that which is exchanged.

¹²⁵ Marx, *Capital*, Vol. 1, 252.

therefore limitless.”¹²⁶ Since any particular quantity of money necessarily has a limited purchasing power, capital continually drives towards “the Sisyphean task: accumulation.”¹²⁷

The perpetual accumulation of wealth is thus by definition the end of capitalism. The accumulation of surplus value, value over and above the original exchange-value possessed, is capital’s “*destiny*, its inner law, its tendency:” a quantity of money, x , should be transformed into $x + \Delta x$, where Δx is the addition of surplus value.¹²⁸ Since money and the drive to accumulate money are limitless, capital will subsume all that it can to its limitless goal. Since production takes place for the sake of this limitless process of accumulation, capital will encourage as much production as is possible. If capital is allowed to run its course, it will subsume all natural resources that it can, both material¹²⁹ and human¹³⁰, to its end. In every case, it will encourage the greatest production of surplus value possible. The division of labor as well as the concentration and centralization of wealth thus follow from capitalist production.

ii. Human Production Under Capitalism

Capital, then, involves a limitless drive to reproduce itself. This drive will thus reduce everything that it can to means towards this end of increasing wealth. Human beings are not excluded from capital’s all-consuming appetite. If permitted to, capital will subject as much of human production as it can to its end. As part of this process, capital, if it is permitted to,

¹²⁶ Marx, *Capital*, Vol. 1, 253.

¹²⁷ Marx, *Capital*, Vol. 1, 231.

¹²⁸ Marx, *Capital*, Vol. 1, 976.

¹²⁹ “Like the *products*, and as *their ingredients*, the *conditions of production* are indeed themselves products and they too are thus reduced to *commodities*.” Marx, *Capital*, Vol. 1, 952.

¹³⁰ Workers are part of the capitalist production process. According to Marx, with the advent of capitalism, peasants were transformed into workers and thus into “material elements of variable capital.” Marx, *Capital*, Vol. 1, 908-909.

will dictate the ends of society: it will replace all goals and purposes a society might aim towards with its aim of increasing itself. Capital displaces the collective setting of societal ends by dictating the purposes of human production. Consider the following representation of capitalist production¹³¹¹³²:

$$M - C \left\{ \begin{array}{l} MP \\ LP \end{array} \right. \dots P \dots C' - M'$$

Here, a quantity of money (M) is used to purchase a commodity (C). This first purchase is then transformed into a second commodity (C'). This second commodity is then sold for a greater quantity of money (M'). A detailed examination of the process of the transformation of C into C' reveals how capital subjects human production to its end. C, the initial purchase, consists first in the purchase of the means of production (MP): those materials (including machines, developed resources, and natural resources) that will be used to produce C'. The initial purchase, C, also consists in the purchase of labor power (LP), the human labor power that will be required to transform MP into C'. This purchased labor power is then put to use, yielding the process of human production (P) that eventually produces C'.

Within a capitalist system, human production occurs for the sake of increasing capital. It is subsumed within the process of transforming M into M'. The expansion of capital organizes and distributes labor according to its needs. In dictating human production, capital will take

¹³¹ Marx discusses capital's inversion of the C – M – M – C relationship into the M – C – C – M relationship in the *Grundrisse*. Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy*, translated by Martin Nicolaus. London: Penguin Classics (1993), 295.

¹³² Marx sets out this “formula for the circuit of money capital” in Karl Marx, *Capital: A Critique of Political Economy, Volume 2*, translated by David Fernbach. London: Penguin Classics (1992), 109. He expands the first stage of the formula at Marx, *Capital Vol. 2*, 110.

into account neither the health nor the well-being of the worker unless it is forced to do so.¹³³

Even human self-reproduction is subjugated to the capitalist process—it is an accidental rather than a necessary consequence of this process.¹³⁴ If, for example, there comes to be too great a surplus of workers in a given capitalist society, capital will be opposed to the reproduction of these human lives. In such a case, such workers would become unemployed and a capitalist system would cease to provide them with the basic means of subsistence.¹³⁵ Instead of human production being directed at serving the needs and well-being of these human beings, it is directed toward the growth of capital.¹³⁶

It is important to note that it is not only workers who are subjected to the whim of capital: although it might be counterintuitive, capitalists are also controlled by capital. The capitalist must obey capital's categorical command: "Accumulate, accumulate!"¹³⁷ If he¹³⁸ does not, then the laws of capital will force him out of the capitalist class, and he will be subjected to its demands as a worker. In this way, the condition of the worker "does not depend on the

¹³³ "Capital therefore takes no account of the health and the length of life of the worker, unless society forces it to do so." Marx, *Capital, Vol. 1*, 381.

¹³⁴ The means of human life (food, water, shelter, etc.) serve as means to the "life of private property—labor and conversion into capital." Marx, *1844 Manuscripts*, 87.

¹³⁵ In a capitalist system, whether you work is determined by whether your work is necessary to reproduce capital. Necessary labor "is necessary only to the extent that it is the condition for the realization of capital;" since capital tends toward a continual decrease in the amount of necessary labor it requires, it results in a "surplus population" who must then fall "out of the conditions of the relation of apparent exchange and apparent independence." Marx, *Grundrisse*, 609.

¹³⁶ "It is no longer the worker who employs the means of production, but the means of production which employ the worker. Instead of being consumed by him as material elements of his productive activity, they consume him as the ferment necessary to their own life-process, and the life-process of capital consists solely in its own motion as self-valorizing value." Marx, *Capital, Vol. 1*, 425.

¹³⁷ Marx, *Capital, Vol. 1*, 742.

¹³⁸ Please excuse my (and Marx's) use of universalized male pronouns. I echo him here when failing to do so would render my writing confusing.

will, either good or bad, of the individual capitalist. Under free competition, the immanent laws of capitalist production confront the individual capitalist as a coercive force external to him.”¹³⁹ Although the capitalist may consciously adopt the end of increasing wealth that is given to him by capital,

what appears in the miser as the mania of an individual is in the capitalist the effect of a social mechanism in which he is merely a cog. Moreover, the development of capitalist production makes it necessary constantly to increase the amount of capital laid out in a given industrial undertaking, and competition subordinates every individual capitalist to the immanent laws of capitalist production, as external and coercive laws. It compels him to keep extending his capital, so as to preserve it, and he can only extend it by means of progressive accumulation.¹⁴⁰

The capitalist must play his assigned role; if he does not, he will be unable to withstand the competition he must face. Since this is so, “the capitalist is just as enslaved by the relationships of capitalism as is his opposite pole, the worker, albeit in quite a different manner.”¹⁴¹

iii. The Appearance of Freedom Within the Capitalist System

In his earlier work, Marx argues that this self-directed nature of capital makes the capitalist system inconsistent with what he referred to as our species being, our natural constitution as members of the human species. He identifies “free, conscious activity” as the species character of human beings.¹⁴² Since capitalism directs our productive activity and our lives generally to its own end, it is inconsistent with our nature as free beings who consciously set ends for ourselves.

¹³⁹ Marx, *Capital*, Vol. 1, 381.

¹⁴⁰ Marx, *Capital*, Vol. 1, 739.

¹⁴¹ Marx, *Capital*, Vol. 1, 990.

¹⁴² Marx, *1844 Manuscripts*, 76.

It may seem to some, though, that the capitalist system does allow for freedom of choice of this kind. Within the capitalist system, we can choose amongst the available options what work we will do and how much we will work. We then choose how to spend the money that we earn from this work. When I choose to purchase a particular item, I choose it for the sake of an end that I have set for myself—for example, when I purchase fresh vegetables, I do so because I think that eating them will contribute to my overall health. This is an end I have set for myself, and the capitalist system gives me the freedom to set and pursue this end as I see fit. Marx acknowledges that choice within the capitalist system could be described as free in this respect. The worker chooses who to work for¹⁴³ and how hard to work,¹⁴⁴ and chooses how exactly she will spend her wages.¹⁴⁵ In this respect, the worker “acts as a free agent.”¹⁴⁶

Though these choices can be viewed as free when we consider them in isolation, when we consider these choices in light of the capitalist system “as a connected whole,”¹⁴⁷ we can come to appreciate that there is an essential sense in which they are unfree. Though the worker has a range of free choice in maintaining herself, within the capitalist system, human production takes place and human lives exist insofar as they suit the end of capital. Capitalist production aims at turning a quantity of money into a greater quantity of money (changing M into M'). Within a capitalist system, human production and human life assume a role in

¹⁴³ The worker “within certain limitations may choose to sell himself to whomever he wishes; and he may also change his master.” Marx, *Capital, Vol. 1*, 1032.

¹⁴⁴ Since “the size of [the worker’s] wage packet appears to vary in keeping with the results of his own work and its individual quality,” the worker may choose to work harder to obtain more wages. Marx, *Capital, Vol. 1*, 1032.

¹⁴⁵ “It is the worker himself who converts the money into whatever use-values he desires; it is he who buys commodities as he wishes.” Marx, *Capital, Vol. 1*, 1033.

¹⁴⁶ Marx, *Capital, Vol. 1*, 1033.

¹⁴⁷ Marx, *Capital, Vol. 1*, 711.

this process. As Marx puts it, “perpetuation of the worker... is the absolutely necessary condition for capitalist production.”¹⁴⁸ In order for goods to be produced in order to be sold, there have to be human beings around to do the work that is required to produce these goods. Even if individual workers desire of their own accord the items that they consume for their own maintenance and well-being, this does not make these choices any less compelled. As Marx puts it, “[t]he consumption of food by a beast of burden does not become any less a necessary aspect of the production process because the beast enjoys what it eats.”¹⁴⁹ Even the limited freedoms workers enjoy exist because they further the end of capital.¹⁵⁰ And if certain workers are no longer required in order to produce goods, they will be dispensed with. Again, as argued above, even workers’ lives are contingent on the whims of capital—if certain workers are no longer required by the capitalist system, they will lose their wages and so the means to sustain their lives.

As Marx argues, things look very different if rather than considering individual actions within the capitalist system, we instead consider “capitalist production in full swing, and on its actual social scale.”¹⁵¹ When we view the structure of the capitalist system as a whole, we can grasp the limited nature of the individual freedoms available within the capitalist system.

Furthermore, Marx calls our attention to the special role ideas of freedom and equality play in reinforcing the capitalist productive system. In propagating such ideas of freedom,

¹⁴⁸ Marx, *Capital, Vol. 1*, 716. See also Marx, *Capital, Vol. 1*, 718.

¹⁴⁹ Marx, *Capital, Vol. 1*, 718.

¹⁵⁰ As Marx explains, the ability of the worker to earn more by harder work motivates that worker to work harder, a motivation that is lacking the case of a slave. Marx, *Capital, Vol. 1*, 1032. Furthermore, in being responsible for the specific choices of how to maintain herself, the worker must become her own master—she must learn to control herself, as only she is responsible for her continued survival (again, this contrasts with the case of the slave). Marx, *Capital, Vol. 1*, 1033.

¹⁵¹ Marx, *Capital, Vol. 1*, 717.

whether by capitalists' ideological design or without any conscious will to do so, the capitalist system convinces workers that they have all the rights they are entitled to and that they are being treated as they deserve to be treated. Marx argues that the ideas that reinforce the dominance of the ruling class under each productive system will be given "the form of universality," and will be represented "as the only rational, universally valid ones."¹⁵² Under a capitalist system, the ideas of freedom and equality are dominant:¹⁵³ since citizens are formally free and equal and they make the choices discussed above freely within the capitalist system, they have the opportunity to make of themselves what they will. If they find themselves impoverished, then, this is a result of their choices and misfortune, and they deserve no more than this—they deserve no more than what they have done with the circumstances they find themselves in.¹⁵⁴ As I will argue below, this view fails to account for our responsibility in instituting and maintaining the capitalist system. We must be skeptical of such rhetoric of freedom invoked to legitimize the capitalist system, and we must work towards being able to recognize and dispute ideology of this sort.

II. FREEDOM AND THE RIGHT TO EQUAL DEMOCRATIC CITIZENSHIP

In this section, I will first give an overview of the Kantian innate right to freedom and the principles that follow from it. I will then argue that this right to freedom entails a right to equal democratic citizenship. If we have the right to direct our own wills in the world, the laws that bind us must be consistent with this right to self-direction. Importantly, having a

¹⁵² Marx, *The German Ideology*, 174.

¹⁵³ Marx, *The German Ideology*, 173.

¹⁵⁴ Rhetoric of this sort is pervasive in the United States and has led to an ineffective focus on reforming the behavior of the poor rather than reforming societal institutions as a strategy for poverty reduction. Alice O'Connor traces the history of this rhetoric and its impact in her enlightening work: Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth Century U.S. History*, Princeton: Princeton University Press (2001).

right to democratic self-governance means more than just that there must be a democratic process by which we can make laws together. Beyond this, we must actually make central societal decisions, societal decisions that bind all of us, through this democratic process.

i. The Right to Freedom

Kant argues that each person has the innate right to freedom: “[f]reedom (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, is the only original right belonging to every man by virtue of his humanity.”¹⁵⁵ The idea of freedom invoked here is importantly different from the well-known idea of freedom as autonomy that is prevalent throughout Kant’s ethical theory. Freedom in Kant’s ethical works entails determining one’s own will to act morally for the right reasons—in this way, this type of freedom is internal freedom, or freedom from being determined by one’s inclinations.¹⁵⁶ In contrast, Kant’s theory of right focuses on external freedom—the free exercise of one’s will in the external world. Having the right to freedom means that each person has the right to direct her own will in the external world *consistently with others rights to do the same*. This last aspect of the right to freedom is extremely important, as it means that my right to freedom does not include a right to act in ways that violate the freedom of others. In this sense, the right to freedom is universalizable, as each person’s freedom is consistent with the freedom of every other.

This conception of freedom is importantly different from a conception of freedom as non-interference. With a conception of a freedom as non-interference (or “negative liberty”), I am free insofar as I can do whatever I want to do without interference, and I am unfree

¹⁵⁵ MM 6:237.

¹⁵⁶ GW 4:399-400.

whenever I am prevented from doing whatever it is that I want to do.¹⁵⁷ With this conception, every restriction on what a person does constitutes a limitation on her freedom, and so all political decision-making represents a choice to trade off some freedoms for others. With a Kantian conception, the right to freedom is not a right to direct my will however I please; instead, it is a right to direct my own will in the world *consistently with others' rights to do the same*. While I have a right to direct my own will in the world, I do not have a right to direct anyone else's; so, my right to freedom ends where each other person's begins.

Before moving on to give a Kantian argument for a right to equal democratic citizenship, I will present some further details of the right to freedom that will help to ground this argument. Kant elucidates the right to freedom, asserting that the right to freedom involves certain authorizations.¹⁵⁸ These authorizations are not distinct from the right to freedom, but rather are part of what it means to have the right to freedom.¹⁵⁹ Two of these authorizations are key to developing a Kantian justification for equal democratic citizenship.

The first authorization he sets out is “innate *equality*, that is, independence from being bound by others to more than one can in turn bind them.”¹⁶⁰ Each person has the innate right to freedom—the innate right to direct her own will in the external world. This fundamental right is the same for everyone, and all other rights flow from this right. The specific rights a

¹⁵⁷ This conception of “negative liberty” was definitively characterized by Isaiah Berlin. As Berlin puts it, “I am normally said to be free to the degree to which no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others. If I am prevented by others from doing what I could otherwise do, I am to that degree unfree.” Isaiah Berlin, “Two Concepts of Liberty,” reprinted in *Liberty*, edited by Henry Hardy. Oxford: Oxford University Press (2002), 169.

¹⁵⁸ MM 6:237.

¹⁵⁹ As Kant puts it, these authorizations are “not really distinct from” the right to freedom. MM 6:237.

¹⁶⁰ MM 6:238.

given individual has, then, will be those rights that the one innate right to freedom gives rise to in the circumstances in which that individual finds herself. Different people in the same circumstances, then, will always have the same rights. In the eyes of the law, we must be equal. So, we are all bound to respect one another equally. If others are bound to respect me more than I am in turn bound to respect them, this inequality tells us that something has gone wrong here. Either others are being bound to respect me more than my right to freedom demands, or I am not being bound respect as others as much as their freedom demands.

The second authorization is “a human being’s quality of being *bis own master*.”¹⁶¹ Part of what it means to have the innate right to direct my own will in the external world is to have the right to be the master of my own will. I have the right to decide what I will do, so long as I do not violate this same right in others. We are all equally bound to respect each other’s innate right to freedom, which means that we are all equally bound to respect each other’s rights to be our own masters. If one person is bound more to another than that other is in turn bound to her, the person who is disproportionately bound is to that extent subjugated to the other’s will.

Kant’s theory of right is built on the foundation of this innate right to freedom. The fundamental principle of Kant’s theory of right, the universal principle of right, commands that the innate right to freedom be protected: as Kant puts it, “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

¹⁶¹ MM 6:238.

universal law.”¹⁶² Actions that violate anyone’s freedom must be prohibited by the state. Importantly, though, this universal principle of right does not bear only on the actions of individuals. Kant points out that it is also possible that one’s “condition generally” can also violate the right to freedom of others.¹⁶³ The key insight I take from this thought is that while individuals must be prohibited from violating one another’s rights, more importantly for my purposes here, we also must not allow our system of government to violate the rights of the people.

ii. The Right to Equal Democratic Citizenship

On this Kantian picture, the task of government is to secure the right to freedom. In the first instance, this means the government must secure our personal, bodily rights. Securing individuals freedom, though, requires more than simply securing individuals personal and bodily rights. We, the members of a given state, have to make decisions concerning how our society will be structured and organized. Our government is the institution through which we do this. In ensuring that these decisions are binding over all citizens, the government exercises control over us. Take, for example, the relatively simple case of traffic laws. We have to pick a side of the road that people will drive on, among other things. Decisions such as these have to be made, and some people, or groups of people, have to make them. And, in order to be effective, these decisions must be binding over all of us.

¹⁶² MM 6:230.

¹⁶³ MM 6:230.

This governmental authority over us might seem to be in tension with the right we all have to be our own masters.¹⁶⁴ I argue, though, that this exercise of governmental authority over us can be consistent with our right to self-mastery: if this authority is an exercise of our self-mastery, then when we are subject to this authority we are the masters of ourselves. This is, of course, a Rousseauian idea that Kant takes up when he argues that “the legislative authority can belong only to the united will of the people.”¹⁶⁵ Since we must be our own masters, if laws are to legitimately bind all of us, they must be made by all of us—they must be the product of what Kant refers to as an omnilateral will, which is a general united will composed of the wills of all individual citizens.¹⁶⁶

Despite statements like these, there is a fair amount of evidence that Kant himself only endorsed what Cristoph Hanisch refers to as a “substantive criterion of republican legitimacy.”¹⁶⁷ Rather than argue that citizens must give laws to themselves to democratic procedures, Kant seems to argue only that the laws must be such that citizens *could have* given these laws to themselves.¹⁶⁸ Here, though, I set these interpretive questions aside, I argue that despite what Kant’s own views may have been, the innate right to freedom entails citizens must actually give laws to themselves through democratic procedures.

¹⁶⁴ Robert Paul Wolff makes this point when he argues that the “defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled. It would seem, then, that there can be no resolution of the conflict between the autonomy of the individual and the putative authority of the state. Robert Paul Wolff, *In Defense of Anarchism*, Berkeley: University of California Press (1998), 18.

¹⁶⁵ MM 6:313.

¹⁶⁶ As Kant argues, we cannot be bound unilaterally—one person cannot impose obligations unilaterally on others. Instead, we can only be bound by an omnilateral will—the combined will of all: “For a unilateral will (and a bilateral but still *particular* will is still unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is *omnilateral*, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving.” MM 6:263.

¹⁶⁷ Cristoph Hanisch, “Kant on Democracy” *Kant-Studien* 107(1): 64-88, 83.

¹⁶⁸ Kant seems to suggest that it is legitimate for a ruler to “*govern* autocratically and yet in a republican way, that is, in the spirit of republicanism and on an analogy with it.” CF 7:87.

In order for our laws to be a product of our general united will, it must in fact be the case that these laws are the product of our wills. Each person has a right to be her own master. Imagine a situation where an individual person, acting as sovereign, governs “in a republican way,” choosing only those laws that citizens could give to themselves or perhaps even those laws that citizens would give to themselves. Even in this (highly unrealistic) scenario, the citizens who are governed by the laws still are not in truth giving those laws to themselves. Their wills are subordinated to the will of the sovereign—they are nonreciprocally bound to respect the will of the sovereign. This condition, then, is inconsistent with the innate equality of all citizens.

Each person has the fundamental right to freedom. This right to freedom is the same for each person, which renders us fundamentally equal. Part of what it means to have this right to freedom is have the right to be one’s own master—to direct one’s own will in the world. Governmental authority is binding over all of us. If we are to govern our own wills, then governmental authority must be able to be understood flowing from our own wills. Since we are all fundamentally equal in virtue of our possession of the innate right to freedom, governmental authority must be consistent with this equality. Lawmaking authority, then, cannot be distributed unequally, as when it is so distributed certain individuals are granted more authority than the right to freedom entails.

Anytime any one person or group of people has disproportionate lawmaking over others, then, the right to freedom will be violated. In order for laws to be consistent with our right to self-mastery, we must all give these laws to ourselves, and in order for laws to be

consistent with our innate equality, we must all take an equal part in giving these laws to ourselves.¹⁶⁹

A great many details remain to be settled before a full account of a Kantian right to equal democratic citizenship can be given. Is representative democracy acceptable, or is true self-mastery only possible with a direct democracy? If representative democracy can legitimate, must representation be proportional? What must the democratic decision-making process be like—must there be some process of public deliberation before a vote can legitimately held?

I set these questions aside here. It suffices for my purposes that we have a right to participate in a legitimate democratic process, whatever that might look like. From the argument above, though, we can identify some basic necessary features of this process. If we are to govern ourselves through the legislative process, then the lawmaking process must involve our wills in the process of making laws—there must be some form of voting. And, if we are all to have an equal part in this process, then all votes must be weighted equally.

It is important to note, though, that on this Kantian picture, not every law that is the product of an equal democratic lawmaking process will be legitimate. The right to freedom places substantive limitations on what we can legitimately decide via our democratic

¹⁶⁹ Since this Kantian justification for democracy is based on equality, it is similar to that offered by Niko Kolodny, who argues that “democracy is a particularly important constituent of a society in which people are related to one another as social equals, as opposed to social inferiors or superiors.” Niko Kolodny, “Rule Over None II: Social Equality and the Justification of Democracy,” *Philosophy Public Affairs* 42:4 (2014), 287-236, 287. The Kantian approach offers a significant contribution to justifications of this sort, though, as while Kolodny’s justification is grounded in an “interest in social equality,” the Kantian justification relies on a fundamental right to equality, which is derived from the fundamental right to freedom. Kolodny, “Rule Over None II,” 325. The Kantian justification rules out conflict with other rights and interests that we may have in a way that Kolodny’s account cannot.

procedures, as fundamental rights that flow from the right to freedom must be secured. These fundamental rights are appropriately beyond the reach of the democratic process: the right to bodily integrity, the right to equal citizenship (including rights to be free from discrimination on the basis of race, sex, and religion, among others), and the right to participate in the democratic process itself all place substantive limits on the legislative process.¹⁷⁰ For example, the right to freedom entails personal bodily rights, so no law that would seek to permit violations of bodily integrity could ever be legitimate.¹⁷¹

iii. What Decisions Must We Make Through the Democratic Process?

Fundamental rights, then, place substantive limits on the democratic process. We know something, then, of what decisions we cannot make through the democratic process. The question of which decisions we *must* make through the democratic process, though, is rarely addressed directly despite its essential importance.¹⁷² In this subsection, I argue that the right to equal democratic citizenship entails more than the right to equal participation in a democratic process described above. Beyond this, I argue that we have a right to make central societal decisions together through the democratic process.

¹⁷⁰ Rights of the sort picked out in constitutional documents such as the United States' Bill of Rights offer numerous well-thought-out examples of rights we might think to be fundamental in this sense.

¹⁷¹ For example, up until 1993, it was legal in some parts of the United States for men to rape their wives. Permitting violations of bodily integrity of this sort constitutes a prime example of a law that is inconsistent with the right to freedom and so cannot be legitimate. As the New York Court of Appeals put it in finding such a law unconstitutional, "a marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body as does an unmarried woman." *People v. Liberta*, 64 N.Y.2d 152, 164 (1984).

¹⁷² A related question, though, is addressed by constitutional legal theorists in debates concerning whether and when judicial review of legislative decisions is appropriate. See, for example, John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review*, Cambridge: Harvard University Press (1980).

Central societal decisions, as I understand them, are decisions that bind all members of society, in the sense that they determine the specific rights all members of society possess. In order for decisions that bind all of us to be consistent with our right to self-mastery, we must make these decisions together. Because central societal decisions do bind all of us, we must then make these decisions together through the democratic process. Furthermore, these central societal decisions must bind us all in order to solve the problems they set out to or address the issues they seek to. In order to elucidate this abstract concept, I will briefly detail three categories of central societal decisions.

First, central societal decisions include decisions we must make to structure and organize our society. These decisions affect and bind us all because of their society-wide nature, and they must bind us all in order to achieve the regulatory aim they are designed for. In the first instance, this involves deciding how our democratic process itself as well as our broader government will be structured. The right to freedom will place substantive limits on these decisions, but it will not in itself yield a full, determinate picture of what our government must look like. We must fill in these details ourselves, together. This first category also encompasses decisions concerning collective action issues. We must decide, for example, on a regime of traffic laws, how to set up our educational system, and on a system of zoning ordinances.

Second, central societal decisions include decisions concerning how we will address the issues that face our society collectively. These are decisions to address issues that cannot be addressed unless we put in place laws that bind all of us. This category includes decisions to address environmental issues, such as climate change. It also encompasses decisions to

address public health issues, such as the current opioid addiction epidemic in the United States. While some individual action can be taken to address these issues, these systematic issues require systematic frameworks to be put in place to address them, which cannot be done on the individual level.

Third, central societal decisions include decisions concerning what we produce together. This includes the decisions we make in structuring our property and economic systems. It also involves decisions to make things together that we could not make without social cooperation. This latter category involves decisions concerning societal infrastructure, for example, power plants and roads. It also involves dedicating resources to scientific and technological advance to pursue goals such as space travel. This third category also involves large-scale, resource-intensive production such as that required for the construction of military units. Beyond this, a great deal more fits into this category of decisions we make of what to produce together, as extensive social cooperation is required to produce relatively mundane goods, such as cars.

We cannot avoid making central societal decisions—we must constitute our system of government, we must address the issues that face us, and we must decide what we will produce together. Furthermore, these decisions bind all of us—they constitute the rightful structure of our society and so determine the framework in which we act. Since these decisions bind all of us, like all decisions that bind all of us, we must make them together through an equal democratic legislative process.

III. DEMOCRACY AND CAPITALISM

Here, I argue that if we understand capitalism as Marx describes it, then capitalism is inconsistent with the right to equal democratic citizenship articulated above. First, despite intuitions many have that our economic system is beyond the realm of legitimate governmental control, I argue that structuring our economic system is one of those central societal decisions that we must inevitably make. From there, I argue that putting in place or maintaining a capitalist economic system involves turning over central societal decisions to the capitalist system. When we do this, we fail to make those decisions together through the democratic process. Since we have an inalienable right to make these decisions together, I argue that putting in place or maintaining a capitalist economic system is inconsistent with the right to democratic self-government that follows from the right to freedom.

i. Instituting Our Economic System

Intuitively, many might think that our economic system is appropriately beyond the realm of governmental control. On this view, restricting the market interferes with individuals' free choices to live their own lives as they see fit. While the government may need to regulate these private interactions in some instances to ensure the stability and adequate functioning of the state, such restrictions should be as limited as possible.

This view, though, takes for granted the naturalization of capitalism. Within a capitalist system, it can often seem as if market transactions are naturally occurring phenomena—as if people naturally relate to each other through market exchange. Similarly, the socioeconomic consequences that result from the market may appear to follow as a result of a natural law: just as in a state of nature minimal efforts to acquire food will result in a lack of food, so

under capitalism will minimal or insufficient efforts to acquire wealth result in impoverishment. From the perspective internal to the capitalist system, it can appear as if these socioeconomic consequences are the direct and natural results of agents' behavior.¹⁷³

Despite these appearances, though, the capitalist system is not a natural phenomenon that exists independently of the state. Instead, we create and maintain our systems of ownership and exchange. When we create a state, we together take control over the material resources in that state.¹⁷⁴ The government must create and structure a regime of ownership and exchange, which is a body of laws that specifies who owns what and how owners may transfer what they own to others. In order for our legal regime of ownership and exchange to be legitimate, like any other law, it has to be created by an omnilateral will—we have to make these laws together.¹⁷⁵ So, our system of ownership and exchange must be something that we create and we maintain together.

When we structure our regime of ownership and exchange, this regime then generates material consequences in response to individuals' actions and patterns of behavior. We are no longer in the state of nature, and no natural dynamic that could be said to exist there exists any longer. Though capitalist ideology would have us believe that the dynamics of

¹⁷³ As Liam Murphy and Thomas Nagel point out, “the unreflective ideas that we have unqualified moral entitlement to what we earn in the market and that higher market returns are in some sense deserved as a reward arise naturally within the everyday outlook of participants in a capitalist economy.” Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice*. Oxford: Oxford University Press (2002), 36.

¹⁷⁴ Kant's discussion of the sovereign as the supreme proprietor of the land provides a good model for understanding why this is so. On this view, if we are to establish property rights that specify how land can rightfully be acquired and owned, then we must take ourselves to have the collective authority to control the use of the land we are legislating with regard to—we must take ourselves to collectively own that land, as having the right to control the use of an object is just to own that object. MM 6:323-25.

¹⁷⁵ MM 6:263.

capitalism are “eternal law,”¹⁷⁶ these dynamics in fact result from our institution and maintenance of our legal regimes of ownership and exchange. That we relate to one another through market exchange is a direct result of the constraints placed on us by our regime of ownership and exchange, which we are responsible for. Whatever system of ownership and exchange we put in place will structure the ways in which we can acquire objects and the relationships we can have with regard to those objects. The capitalist system is one choice among many ways to do this.¹⁷⁷ Rather than being appropriately beyond the realm of government control, capitalist systems are created and maintained by governments.

ii. Central Societal Decisions Under Capitalism

Again, as Marx understands it, the capitalist system is a self-directed system that subjects everything within its grasp to its constituent end of reproducing capital and increasing profit. When it governs the economic sphere, it will direct everything it can, including all human productive activities, toward this end. Because of this innate tendency to increase capital, the capitalist system will continually subsume more and more to the pursuit of this end—activities that were previously not commercial become commercial, and things that were previously not commodities become commodities.¹⁷⁸

¹⁷⁶ Marx, *The German Ideology*, 173.

¹⁷⁷ For an extended argument that Kantian freedom does not entail a free market and corresponding system of private ownership, see S.M. Love, “Communal Ownership and Kant’s Theory of Right,” unpublished manuscript. David James reaches a similar conclusion, although by different reasoning. David James, “Independence and Property in Kant’s *Rechtslehre*,” *British Journal for the History of Philosophy*, 24:2 (2016) 302-322. Other Kantians have also argued more briefly that Kant’s theory of right is compatible with alternative systems of ownership and exchange. See, for example, Louis-Philippe Hodgson, “Kant on Property Rights and the State,” *Kantian Review* 15-1 (2010) 57-87, 62; Barbara Herman, *Moral Literacy*, Cambridge: Harvard University Press (2007), 43; and Howard Williams, *Kant’s Political Philosophy*, 193-4.

¹⁷⁸ For insightful contemporary discussions of the spread of the market and the moral limits of this spread, see Debra Satz, *Why Some Things Should Not Be for Sale: The Moral Limits of Markets*. Oxford: Oxford University Press (2010); and Elizabeth Anderson, *Value in Ethics and Economics*, Cambridge: Harvard University Press (1993). For an illuminating discussion of the process of privatization which

On this understanding of capitalism, when we put in place a capitalist economic system, it directs societal production to the pursuit of its end. Under a capitalist system, then, central societal decisions concerning what we produce together are made (in a non-agential sense) by the capitalist system. Under capitalism, those who most effectively pursue the aim of increasing wealth and profit come to control the means of societal production. These capitalists, then, come to possess the means to make central societal decisions concerning societal production on their own. As capitalism progresses, fewer and fewer of these central societal decisions will be made through the democratic process.

In the United States today, examples abound of capitalists making these central societal decisions. For example, Jeff Bezos, the ubiquitous founder and CEO of Amazon, has recently decided, along with two other billionaires, to tackle the issue of healthcare in the United States.¹⁷⁹ And while space travel was once the pursuit of nations and humanity as a whole, it is now a Tesla branding experience.¹⁸⁰

The resources available to these wealthy few are an extreme example of the way in which capitalism determines societal production more generally. While capitalists may make central societal decisions in particular instances, even they are still controlled by the capitalist system. On the understanding of capitalism developed above, in a capitalist system, the

has narrowed the scope of democracy in the United Kingdom, see Colin Leys, *Market-Driven Politics: Neoliberal Democracy and the Public Interest*. London: Verso (2001).

¹⁷⁹ Chris Isidore, “Jeff Bezos, Warren Buffett and Jamie Dimon want to fix health care,” *CNN*, January 30, 2018; available at <http://money.cnn.com/2018/01/30/news/companies/amazon-berkshire-jpmorgan-health-insurance/index.html>.

¹⁸⁰ This branding, it seems has been successful—you can track the progress of the Tesla roadster with its mannequin driver, dubbed “Starman,” that Elon Musk sent into deep space following the launch of his Falcon Heavy rocket on February 6, 2018, at <http://whereisroadster.com>.

capitalists as well as the workers are subject to the demands of capital. Capitalists are compelled by the demands of the market to be profitable: if their ventures are not profitable, they will not remain part of the capitalist class, and will be replaced by those whose ventures are profitable. Market forces control the direction of societal production, and these market forces are out of our control, as the global financial crisis of 2007 to 2008 forcefully reminded us.

iii. Capitalism Is Inconsistent with Democratic Self-governance

When we put in place or keep in place a capitalist system, then, we turn over central societal decisions concerning societal production to the capitalist system. It determines what issues we address and how we address them: since addressing climate change, for example, conflicts so strongly with capitalism's end of increasing wealth and production, it remains tragically unaddressed. It also determines what we produce together: those goods that are profitable will be produced, regardless of their social value. Services will be provided in the most profitable or cost-effective fashion, regardless of the social consequences. Goods and services that do not cohere with capital's inner law will be forced out of the market.

These central societal decisions bind all of us. Jeff Bezos' decisions with regard to healthcare, for example, could largely determine what access each of us has to these essential services. Elon Musk's decision to go to the stars directs extensive societal resources toward this end, whether or not we might want him to. And though no specific individual is responsible for climate change remaining unaddressed, the continuing lack of a solution to this problem will greatly determine the nature of our society in the years ahead as well as the very existence of future generations.

In order to be consistent with our right to self-mastery and equality, central societal decisions that bind all of us must be made through the democratic process. Putting in place a capitalist system that makes these decisions for us thus violates our right to equal democratic self-governance.

There are many reasons we might wish to forfeit this right to democratic self-governance in this case. We might think, for example, that life will be much easier and societal production much more efficient if we turn these decisions over to the capitalist system. We might desire the wealth that capitalism is aimed towards producing. However, even if we decided democratically to forfeit the right to make these decisions, this decision cannot be legitimate. As discussed above, the right to freedom places substantive limitations on what we can decide via the democratic process. Whether we like it or not, we cannot alienate the right to freedom, nor can we alienate the rights that flow from it.¹⁸¹ Decisions that bind us all cannot be consistent with our rights to equality and self-mastery unless we make these decisions together through an equal democratic process.

One might object, though, that when the government can exercise control over a capitalist system, this possibility turns capitalism's decisions into our decisions. On this view, if we supervise the system and have the possibility of correcting it via the democratic process, then the decisions that follow from it reflect our wills.

¹⁸¹ The Kantian duty of rightful honor precludes individuals from making themselves mere means for others and requires us to assert our worth as human beings. MM 6:236. This duty precludes, for example, the enforceability of slave contracts or contracts where your agency will be destroyed if you fail to live up to the terms of the contract.

However, while the decision to turn these decisions over to the capitalist system might be the product of our wills, the outcomes generated by this system are not. The system directs itself towards its own end, and while we might endorse the outcomes it generates, it generates them on its own. Though it may direct societal production in a manner that we like, we are not directing societal production. As discussed above, a government where a sovereign makes decisions for us can never be consistent with our right to self-mastery, even if the sovereign were to make the decisions we would make for ourselves. The control the capitalist system exercises over us is inconsistent with this same right. Of course, in the capitalist case, we have the option to exercise democratic control over the capitalist system. This democratic control is the product of our wills. To the extent that the market is uncontrolled, though, the results it generates are not the product of our wills and cannot be consistent with our right to self-mastery.

If capitalism is as Marx understands it, then, establishing or maintaining a capitalist system violates the right to equal democratic citizenship, thereby violating the fundamental right to freedom. So, we must not put in place a capitalist economic system of this sort. Instead, we must put in place an economic system where we make central societal decisions concerning societal production together through the democratic process.

It is important to note, though, that it might very well be consistent with the right to freedom to utilize non-capitalist market systems within a broader economic system where we make central societal decisions democratically. We might, for example, decide to use a market to produce a certain good without permitting it to generate the outcome to any central societal decisions beyond that good. Whether or not markets can be constrained so

that we are in control of them rather than being controlled by them is an open question. Exploring empirical questions like whether or not this is possible is an important part of figuring out what a just economic system could look like.

iv. Choice Without the Market

Many might worry, though, that without a capitalist system, space for individual autonomy will be lost. While many central societal decisions are not made democratically within a capitalist system, we do seem to decide for ourselves what we want to do with our own lives. Even though we are restricted by the capitalist system in what we may choose to do, within the options available we are able to pick which projects to pursue undertake those projects privately. If we lose the capitalist system, then, many might worry that we would lose this realm of private choice.

This worry captures an important insight: each individual being her own master requires that she be in charge of what she will do in the world. This involves choosing for herself which projects she will pursue in her own life. However, respecting individual choice in this way is not exclusively possible within a capitalist system. Alternative regimes of ownership and exchange can also accommodate a respect for the choices of individuals in deciding what their individual lives will be and which projects they will pursue. While central societal decisions must be made by society as a whole through democratic processes, respecting individuals' control over their own lives may necessarily involve respecting their choices of which ends they will participate in. If sufficient resources are available, individuals might be able to join together with other individuals to pursue particular projects that they all wish to pursue—a particular scientific study, art project, or philosophical inquiry, for example. If a

realm of private choice must be protected, this requirement can be accommodated within a productive system where central societal decisions are made democratically.

IV. CONCLUSION: ENVISIONING SELF-GOVERNMENT OF PRODUCTION

Thus far, I have presented Marx's account of capital as driving inevitably toward the valorization and growth of wealth and profit. I further argued that given this understanding of capital, putting in place or maintaining a capitalist productive system violates the Kantian innate right to freedom. If capitalism is unacceptable, it still remains to discover an alternative to capitalism that would be compatible with freedom.

In order for a system of production, ownership, and exchange to be compatible with the Kantian innate right to freedom, it must involve self-government. Marx himself told us that true communism would involve "the control and conscious mastery" of our productive powers, which "have till now overawed and governed men as powers completely alien to them."¹⁸² Explaining how such a society might be organized, though, has always been the difficult part. Certainly none of the actual regimes that have been called communist up to this point in history would satisfy the self-government requirement. We must use our imaginations, then, to envision what such a society must be.

Of course, self-government of societal production, ownership, and exchange does not entail that we may decide to structure these institutions however we might choose. As was made clear in the case of a choice to put in place a capitalist system, only those systems that are compatible with the innate right to freedom are rightfully possible. So, any rightful system

¹⁸² Marx, *The German Ideology*, 164.

must satisfy the demands of freedom. For example, socioeconomic rights such as the right to the basic material resources required for agency and the right to the material conditions of citizenship must be secured.¹⁸³

Beyond this, though, we must determine what self-government of production could and should look like. Some scholars have begun to envision such potential alternatives. For example, John Rawls outlines a system of property-owning democracy as a non-capitalistic alternative.¹⁸⁴ Other scholars from a variety of disciplines have picked up this idea of property-owning democracy and explored it further.¹⁸⁵ For another example, Christine Korsgaard gestures toward a non-capitalist system of ownership using the public library system as a model:

library books are reserved to particular patrons for specified amounts of time. Your right to the exclusive use of a book, for reading only, and for a certain length of time, still counts as a form of “property” in Kant’s sense. In the same way, the means of production might be communally owned and “lent out” to particular users.¹⁸⁶

With the requirements of the innate right to freedom in mind, we can begin to determine whether alternatives such as these might satisfy the demands of right.

¹⁸³ For an argument that individuals must have access to the basic resources required for agency as a matter of innate right, see S.M. Love, “The Material Conditions of Freedom,” *unpublished manuscript*. Sarah Holtman gives an illuminating Kantian argument that citizens must receive education that develops in them the capacities required for citizenship. Sarah Williams Holtman, “Kantian Justice and Poverty Relief,” *Kant-Studien* 95 (2004): 86-106. Helga Varden makes a similar point in arguing that the state must “enable participation in public reason,” which requires providing citizens with education. Helga Varden, “Kant and Dependency Relations: Kant on the State’s Right to Redistribute Resources to Protect the Rights of Dependents,” *Dialogue* 45 (2006): 257-284, 274-275.

¹⁸⁴ John Rawls, “Institutions of a Just Basic Structure,” in *Justice as Fairness: A Restatement*, ed. Erin Kelly, Cambridge: Harvard University Press, (2001), 134-179.

¹⁸⁵ *Property-Owning Democracy: Rawls and Beyond*, ed. Martin O’Neill and Thad Williamson, Malden, MA: Wiley-Blackwell (2012).

¹⁸⁶ Christine Korsgaard, “Taking the Law into Our Own Hands: Kant on the Right to Revolution,” in *The Constitution of Agency: Essays on Practical Reason and Moral Psychology*. Oxford: Oxford University Press (2009), 238 fn 7.

Clearly, much work remains to be done before we can fully envision a real alternative to capitalism. If what I have argued here is true, though, we have an obligation to continue this process.

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