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Communal Ownership and Kant's Theory of Right

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Abstract

The article argues that Kant's argument for ownership entails a standard of *meaningful use* by which property regimes can be evaluated: a regime must make it possible for usable objects to be meaningfully used. A particular form of fully communal ownership can satisfy this standard. Further, this form of communal ownership is compatible with Kantian freedom more broadly. I conclude that, if this is so, there is a great deal of space for further consideration of the rightfulness of diverse regimes of ownership and exchange within a Kantian framework.

Keywords: communal ownership, property, freedom, rights, Kant

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] 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, citizens are predominantly bound to respect others' private control of external objects, and they can establish property rights through market exchange. The rampant economic inequality and environmental consequences of systems of this sort, 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 appears to many 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 a Kantian view of this sort, 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' (Ripstein 2009: 62). While Kant does emphasize private ownership, there are good reasons to think that his view is more nuanced than Ripstein's take might suggest.[2] In this article, though, I set aside interpretative questions concerning the nature of Kant's own views on this matter.

Instead, I argue that, despite Kant's own emphasis on private ownership, his theory of right and its fundamental principles are compatible with a specific democratic 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, by means of which Kant argues that ownership must be possible. I argue that Kant's argument on this point 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 this democratic sort can satisfy this standard. Finally, I argue that this form of communal ownership is compatible with key aspects of Kantian freedom understood more broadly.[3]

It is important to note from the outset that the democratic form of communal ownership I discuss differs fundamentally from historical examples of regimes that have self-identified as communist. Such autocratic and fascist regimes indisputably violate the Kantian right to freedom. We certainly must learn from the horrific human rights abuses that have been perpetrated in the name of communism. This should not prevent us, though, from considering alternative economic regimes, nor should it encourage us to ignore the ills of capitalism.

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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.

1. Communal and Private Ownership

Establishing a regime of ownership and exchange is a central role of government. When we put in place a regime of ownership and exchange, we structure our relationships to one another in two ways, First, we specify what sorts of rights individuals can have in relation to objects – rights, for example, to private or group control of objects, to use objects, to consume objects and so on. Second, we specify how individuals can acquire rights to objects – we specify the procedures or actions that will establish rightful relations with regard to external objects. Different regimes of private and communal ownership will structure these rightful relationships in different ways.

In this section, I will set the stage for the arguments that follow by distinguishing private ownership from communal ownership and by distinguishing one particular form of communal ownership from other forms of ownership that might be called communal.

1.1 Private Ownership

Ownership is often understood in the English common law tradition, as William Blackstone famously defines it (1765–9: 1:1), as 'that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe'. With this conception of ownership, to own an object is to have private and absolute control over that object.

On this view, the natural form of ownership is fee simple ownership, which denotes an absolute and perpetual individual right to an object. With this conception of ownership, rights to external objects are absolute – if a person has a right to an object, then she privately controls the use of that object and can do with it whatever she wills. Furthermore, on this

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view, rights to objects are transferred only when individuals wilfully alienate their rights, either through gift or exchange.

Another, more flexible conception of private ownership is the bundle of rights view. This influential view holds that ownership is best understood by analogy to a bundle of sticks.[4] On this view, there are many distinct property rights that an individual can have with regard to an object. While these rights are commonly held, or bundled, together, specific rights can be separated out from the bunch. An individual's property right to an object will thus consist in whichever specific rights that individual has with regard to that object. Like taking one stick out from the bundle, one can alienate particular rights to an object while retaining others.

The bundle of rights to ownership typically includes rights to use, consume, access, improve, transfer, rent and exclude others from objects. To see the way such rights can be bundled together and taken apart, consider the familiar example of renting an apartment. A property owner can lease an apartment out to a tenant, giving that tenant the right to use the apartment and exclude others from its use. In this situation, the property owner still retains rights such as the right to improve and the right to transfer that apartment.

Due to its greater flexibility, the bundle of rights conception is able to account for more nuanced forms of ownership: one person can have a particular personal right to an object while others have other rights to that same object. The bundle of rights view also opens the door to consideration of less 'private' systems of ownership, as the potential for separating the bundle of rights allows for more complicated sets of rights to objects.

1.2 Communal Ownership

Using the bundle of rights analogy, the specific form of communal ownership I focus on is characterized by certain rights in the bundle being held exclusively communally. The essential characteristic of this form of communal ownership is communal democratic control over the allocation of objects. With this form of communal ownership, rights such as the rights to transfer and exchange objects are separated out from the bundle and held exclusively communally. Other rights still may be held privately within such a system of communal ownership. One may, for example, still have the right to use an object, to exclude others from the use of that object and in many cases to consume that object.

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On this model, all members of a state, through their government, communally own all external objects within that state. They communally govern the allocation of objects to particular members (or groups of members) of that state. Objects can be allocated to particular members for limited or unlimited uses. For example, food would be allocated to individuals for destruction through consumption, while books could be allocated to individuals for reading. Items could also be allocated for limited or extended periods of time – residences, for example, might be allocated to individuals on a lifetime basis (or at least until one elects to change residences). 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 typical private ownership regime. In many ways, ownership under this form of communal ownership regime would look much the same as ownership under a contemporary capitalist system of private ownership. A capitalist system of private ownership, though, still differs fundamentally from this form of communal ownership, as communal democratic allocation is inconsistent with capitalist exchange.

This communal democratic control over the mechanisms of allocation is the characteristic feature of a communal ownership regime of this sort. Great debates continue to rage concerning the adequacy of different democratic mechanisms, and it is beyond the scope of my aims here to specify particular democratic mechanisms of allocation. Rules and procedures will be put in place to facilitate the allocation of assets, and those rules and procedures will be governed democratically. Regardless of the mechanisms used, 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 a system of communal ownership of this sort. Finally, as the example of the Soviet Union demonstrates, merely purporting to be democratic is not sufficient – robust mechanisms of democratic oversight of the distribution of resources are required.

1.3 Weaker and Stronger Senses of Communal Ownership

This form of communal ownership is distinct from a weaker sense in which property regimes might be described as communal. In any state with a democratic political system, citizens democratically govern their property and ownership regime. This communal political control is a necessary, but not sufficient, feature of the form of communal ownership I articulate.[5] For example, the United States has a (flawed) democratic system of government. To the extent that US citizens maintain their system of ownership and exchange through this democratic system, they

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exercise communal political authority over the ownership and exchange of objects. While this US system, insofar as it is democratic, is an exercise of communal political authority, it is not a system of communal ownership, as rights to transfer, exchange and earn rents from objects are privately held under the US system.

The form of communal ownership I describe can also be distinguished from a stronger sense of communal ownership. In some imagined regimes, such as that of Thomas More's *Utopia*, property is strictly communal, and no one has any right to the exclusive use of objects (More 2002: 59). This stronger sense of communal ownership goes far beyond the system of communal ownership I am advocating here, and potentially limits the right to freedom in ways that the system I advocate for does not.

Since the regime of communal ownership I advocate for is not strictly communal in this stronger sense and instead allows for the private control of objects, some might argue that this regime is better understood as a regime of private ownership. If so, it is still certainly quite far from Blackstonian private ownership as absolute despotic dominion. Furthermore, the rights to exchange and transfer objects are an essential aspect of a property system that can be compatible with a capitalist system of exchange. While a regime of communal ownership of the sort I imagine may be compatible with the exclusive use of objects, it is incompatible with capitalism, as it precludes private rights to exchange, transfer, and extract rents from one's property. So, regardless of whether one would choose to describe such a regime as a regime of private or communal ownership, either way it offers a significant alternative to a capitalist system of private ownership.

1.4 Imagining Communal Ownership

Imagining a system of democratic communal ownership presents a challenge even for the especially imaginative. The spectre of real-world autocratic regimes such as those in China and the Soviet Union looms over the consideration of other possible non-capitalist systems of ownership and exchange. Despite this challenge, there are still compelling examples to look to in imagining what a democratic system of communal ownership would look like.

In particular, the global cooperative movement is a compelling microcosm of what such a system could be. The celebrated Mondragon worker cooperative in the Basque region of Spain is owned and governed by the

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workers that constitute the cooperative. Similar to a smaller-scale example of the state-wide form of communal ownership I discuss here, the workers who are members of the cooperative democratically control the cooperative's production, job creation, working conditions and social environment.[6] Despite the pressures of a largely capitalist global economy, the Mondragon worker cooperative is a compelling example of how large-scale communal ownership could work.

On a smaller scale, residential co-ops can help us to envision this form of democratic communal ownership. In a residential co-op, the co-op property is owned collectively by all members of the co-op. All members decide collectively who may join the co-op. While each member is granted the exclusive use of a particular unit in the co-op, none of those units are privately owned. Further, while members are granted the exclusive use of particular units, what uses those members may subject those units to is governed collectively by all members. The residential co-op thus illuminates how communal ownership can be consistent with the exclusive use of objects.[7]

Beyond such real-world examples, theorists have imagined different large-scale theoretical models that may also be consistent with this form of communal ownership. For example, Robin Hahnel articulates a system of participatory economics where citizens govern ownership and the economy collectively.[8] Beyond participatory economics, many alternatives have been and continue to be explored, including alternatives with limited roles for markets.[9] Many have offered compelling visions of democratically controlled economic systems,[10] and there are undoubtedly many such systems yet to be imagined.[11]

In what follows, I argue that this form of communal ownership is consistent with the basic principles of Kant's theory of right.

2. The Postulate of Practical Reason with Regard to Rights

In explicating his theory of property, Kant distinguishes two forms of possession. He defines empirical possession as '*physical* possession' and contrasts it with intelligible possession, which he defines as 'a *merely rightful* possession of the same object' (*MM*, 6: 245). 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

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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 which holds 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 (*MM*, 6: 250).

Kant's argument here is puzzling. He 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.

What 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.

3. Meaningful Use

What could this richer sense of use be? We know that it 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. 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.[12] 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 (*MM*, 6: 247–8). Beyond this, however, the use of objects is not protected – one's right to an object terminates as soon as one sets it down. This system seems

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

Though this mere physical use is possible, its conditions 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.[13]

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.[14]

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 his postulate.

4. Meaningful Use and Freedom

Though we have identified the sense of use that Kant has in mind, it is a further task to show that Kantian freedom 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.

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4.1. Basic Principles of Kant's Theory of Right

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' (*MM*, 6: 237). I follow Ripstein (2009: 34) in understanding the innate right to freedom as protecting 'purposiveness – your capacity to choose the ends you will use your means to pursue'. The right to freedom secures the external exercise of this capacity from interference by others.

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' (*MM*, 6: 230). If an action or condition violates the freedom of others, it is wrong and prohibited; if it does not, it is right (*MM*, 6: 230).

4.2. Freedom and Meaningful Use

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' (4: 427). 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.

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

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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.[15] 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 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.[16]

5. Meaningful Use and Communal Ownership

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*' (*MM*, 6: 246; emphasis added), 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.[17] It is therefore understandable to interpret Kant as defending a regime of private property ownership.

There are good reasons to think that Kant held a more nuanced view of ownership than this interpretation suggests.[18] For example, Kant seems

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to acknowledge the possibility of rightful public ownership of land.[19] He also acknowledges a right of the state to expropriate lands[20] and levy taxes in certain situations.[21] Still, despite these interpretative complications, my goal here is not to dispute this interpretation of Kant.

Instead, I wish to argue that despite Kant's own focus on private ownership, the meaningful use standard is also compatible with communal ownership. A system of communal ownership can allow for the meaningful use of external objects of choice, and so is consistent with this demand of Kantian freedom. 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. In this section, I seek to establish only that a system of communal ownership allows for the meaningful use of external objects.

5.1 Communal Ownership and Meaningful Use

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 in nature to be privately owned. For example, it was held under Roman law that a law of nature made air, flowing water, oceans and the ocean shores common to all (Justinian 1928: 2.1.1–5). These objects are communally owned in the stronger sense discussed above, in that they are both used and governed collectively. 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 that certain rights of ownership, particularly the rights of transfer and exchange, are held exclusively communally. All citizens collectively own all external objects, including land and the means of production, and decide collectively how to allocate them for use. Rights to private and communal *use*, hence *control* of objects are possible within this system, as is use by smaller groups of varying sizes. When an object is allotted to a person or group, their exclusive use of that object is rightfully secured.

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

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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 use 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).

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. Again, objects such as residences might be allotted on a lifetime basis or at least until residents choose to change residences. 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.

5.2 Objections

One might argue that, to the contrary, communal ownership does preclude certain projects, thereby arbitrarily restricting freedom. Since this system of communal ownership is solely characterized by communal rights to transfer and exchange all external objects, one could argue that such a regime arbitrarily precludes market activities such as buying, selling and extracting rents. Kant himself, for example, views exchange as private – exchange occurs when one party relinquishes her right to an object while a second takes up that right (*MM*, 6: 272).

Such market activities would be precluded under a system of communal ownership of this sort. However, the criticism that putting such a system in place would thereby constitute an arbitrary restriction of freedom is misplaced. An essential function of government is to make determinate those rights, such as property rights, that are not fully determinate on their face. In order to coordinate our activities, we must put in place some regime or other of ownership and exchange. Whatever regime we select will preclude the specific activities that would take place under all alternative regimes. Just as a communal system will preclude capitalist exchange, capitalist exchange precludes communal allocation. Still, this essential function of social coordination must be carried out one way or another. The central right that is being made more determinate here is the

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right to secure the exclusive (and group) use of objects. Selecting a regime of communal ownership does not arbitrarily restrict freedom, as doing so is just carrying out the essential function of securing and making determinate this central right.

One might also argue that allocating objects to individuals for limited uses arbitrarily restricts freedom. According to this objection, limiting the uses individuals can subject particular objects to restricts 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 per se – 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 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.

6. 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.

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6.1 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 article. 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 article is on ownership rights, these questions are beyond its scope.

Of course, these questions must be answered to give a full Kantian account of socio-economic 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 objects in order to transfer the rights to them,

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one's 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.[22]

6.2 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.[23] 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 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. (*MM*, 6: 261)

Although Kant's argument regarding land involves some commitments that are puzzling,[24] the general principle underlying this argument is illuminating. If we are to govern the use of objects, we must take ourselves

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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),[25] we must take ourselves to have collective control of all external objects that the state legislates with regard to.[26] 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.

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 favour 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. Notably, Kant's own account of original acquisition seems to take it for granted that original acquisition must be private.[27] 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 (*MM*, 6: 258–9). 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 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.[28] 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? Labour on it? Or should I own an object when

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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. (*MM*, 6: 265)[29]

Labouring 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. 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 object for as long as that object is held, that relationship is an accident in exactly the same way that labouring 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 labouring on an object is labour 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.[30] 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 (*MM*, 6: 264). Since there is no omnilateral will in the absence of a state, conclusive property 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

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are established in the absence of a civil condition, and 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.[31] So provisional rights are not binding rights, and therefore the government 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 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 the determination and settling 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.[32] 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 (*MM*, 6: 307–8). So provisional rights do not necessitate a regime of private ownership.

6.3 Communal Ownership and Free Use

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

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formally, because having means subject to your choice is prior to using them for any particular purpose' (Ripstein 2009: 62). 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' (62). From these premises he concludes, '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' (62).

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.[33] 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 (2004: 9), 'If 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.' 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.[34]

To see the force of this objection, consider an example: suppose you would like to make yourself a mushroom omelette (Ripstein 2009: 91). To make yourself such an omelette, 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 omelette, 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' (2009: 91). To set a private end, then, one must have a right

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

Consider again the mushroom omelette. In a regime of communal ownership of the sort under consideration, the community can allocate the exclusive use of the materials necessary for the production of your mushroom omelette to you. You can make (and eat) your omelette 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 use of material objects of choice, it will be compatible with the setting of private ends. As noted in the first section, this right to individual use might lead some to characterize this regime of ownership as a private property regime. Regardless of whether we call this a system of private ownership, 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.

7. Conclusion

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

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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?[35] What restrictions are there on what we might choose? For example, which objects, such as the means of subsistence,[36] 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.[37]

Notes

1 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). References to Kant's work follow the standard Akademie pagination. I use the following abbreviations and translations: *G* = *Groundwork of the Metaphysics of Morals* (Kant 1996a); *MM* = *The Metaphysics of Morals* (Kant 1996c); TP = 'On the Common Saying: That may be Correct in Theory, But it is of No Use in Practice' (Kant 1996b).

2 James (2016) e.g. provides a thorough discussion of Kant's own views of ownership, convincingly arguing that Kant held a more nuanced view of ownership where there is a significant role for public ownership.

3 James (2016) reaches a similar conclusion, although by a different line of reasoning. Other prominent Kant scholars have also gestured at the compatibility of communal ownership with Kant's theory of right. See e.g. Korsgaard 2009: 238, n. 7; Williams 1983: 193–4; Hodgson 2010: 62; Herman 2007: 43.

4 Hohfeld (1917) famously articulates the rights that can be bundled into ownership. See also Honoré's (1961) further articulation of the incidents of ownership.

5 This way in which a wide range of regimes of ownership could be described as communal is similar to the sense in which Kant sees all ownership as at bottom communal, due to the 'innate *possession in common* of the surface of the earth and on a general will corresponding *a priori* to it, which permits *private possession* on it' (*MM*, 6: 250; see also 6: 267).

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6 For information on the self-governance of the Mondragon Corporation, see https://www.mondragon-corporation.com/en/about-us/governance/. For more on the Mondragon Corporation see Wolff 2012b.
7 I am grateful to an anonymous reviewer for this example.
8 Hahnel has written extensively about participatory economics over the last several decades. See e.g. Hahnel 2012.
9 The work of the Real Utopias Project is especially noteworthy. For a classic general discussion of alternatives to capitalism, see Wright 2010.
10 See e.g. Hahnel and Wright 2016; Wolff 2012a; Schweickart 1996.
11 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* (1974).
12 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.
13 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.
14 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.
15 As Hodgson (2010: 60) argues, a system of merely empirical possession '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'.
16 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.
17 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: 258–9).
18 James (2016) gives a thorough examination of Kant's own views of ownership, showing that Kant himself leaves much more space for alternative forms of ownership than some common interpretations suggest.
19 In discussing some casuistical questions regarding the ownership of land, Kant acknowledges the rightful consequences of possession that follow in what appears to be a system of public ownership of land (*MM*, 6: 265). 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' (6: 324).
20 E.g. Kant argues that, once belief in a particular church fades away, the state, 'with full right, takes control of the property the church has arrogated to itself, namely the land bestowed on it through bequests' (*MM*, 6: 369).
21 E.g. Kant argues that the state is authorized to tax to support the poor (*MM*, 6: 326). For another example, he argues that a war tax will be legitimate when the state judges that such a tax is indispensable (TP, 8: 297, n.).

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22 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.

23 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 (6: 325).

24 We might wonder e.g. 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 the material objects on that land. See e.g. *MM*, 6: 261–2.

25 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).

26 As Mulholland (1990: 273–4) argues, 'One 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.'

27 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 2009: 67, n. 14, citing *MM*, 6: 251).

28 As Rousseau (1997: 161) notes, 'The 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.'

29 Later, Kant further develops this criticism, arguing that 'The 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).

30 Kant makes some statements that suggest that he might hold such a view. E.g. 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.

31 As Kant puts it, 'Now, 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).

32 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).

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33 As Ripstein (2009: 66) 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'.

34 Lomasky (1987) 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.

35 For an interesting article that pushes into issues of justice in allocating objects and beyond from a novel Kantian perspective, see Julius 2016.

36 Kant himself discusses state provision of the means of subsistence to the poor (*MM*, 6: 325–6). In addition, many Kantians argue that within a Kantian rightful condition individuals must have access to the means of subsistence (or more). E.g. Wood (2008) makes such an argument, as do Ripstein (2009: 267–99) and many others.

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