

Kant on Welfare: Five Unsuccessful Defences

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Abstract

This paper discusses five attempts at justifying the provision of welfare on Kantian grounds. I argue that none of the five proposals is satisfactory. Each faces a serious challenge on textual or systematic grounds. The conclusion to draw from this is not that a Kantian cannot defend the provision of welfare. Rather, the conclusion to draw is simply that the task of defending the provision welfare on Kantian grounds is a difficult one, whose success we should not take for granted.

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1. Introduction

Can a Kantian defend a right to the provision of welfare? The answer to this question is both important and elusive. It is important because, in the wake of recent interest in Kant's political philosophy, whether such a right can be accommodated will feature strongly in the competitiveness of the Kantian view over other theories of justice. Or at least, if a Kantian is not able to coherently defend a right to the provision of at least basic welfare, that will speak against adopting a Kantian position. The answer to the question is elusive because Kant grounds his political philosophy on the equal freedom of all, but the provision of welfare by means of coercive taxation appears to violate the freedom of those who are taxed.

Commentators writing on Kant on welfare often focus on the following passage from the 'Public Right' section of the Doctrine of Right:¹

To the supreme commander there belongs *indirectly*, that is, insofar as he has taken over the duty of the people, the right to impose taxes to support organisations providing for the *poor, foundling homes, and church organisations*, usually called charitable or pious institutions.

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. For the sake of the state [*Von Staatswegen*] the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens. (DR 6: 325-6)²

The strategy of focusing on this passage makes sense. Not only is the passage an explicit statement of support for some form of welfare provision, but, to my knowledge, it is the only one that appears in Kant's political writings. But there is reason to doubt the usefulness of this passage. Kant claims that coercive taxation in order to provide welfare is justified 'for the sake of the state'. He elsewhere uses the same phrase when discussing the forced relapse of a person who has gained civil maturity into a state of civil immaturity due to poor handling of their estate (Anth 7: 210). This seems to indicate that the state may take away the status of independence from a person who is legally mature (*mündig*) on instrumental grounds; namely, because another would better handle the management of their estate. Thus, we might worry that Kant's appeal to

coercive redistribution ‘for the sake of the state’ indicates an instrumental concern and not a justification based on his account of right (see also LeBar 1999). This raises the worry that the rights of some will be violated on instrumental grounds, and this is not consistent with the general principles of Kant's political philosophy. If this is so, the place of the DR 6: 325-6 passage is at least questionable. With this in mind, I believe that what we can get out of that passage is limited.

There are two further worries we might have for any attempt to defend the provision of welfare on Kantian grounds. This is because, in addition to concerns over the consistency of the DR 6: 325-6 passage with Kant's basic political commitments, there are also two features of Kant's political philosophy that actively speak against the provision of welfare. First, he tells us that people have rights provisionally in the state of nature, and that provisional acquisition is true acquisition. While provisional rights are insecure, they nevertheless amount to entitlements on the part of the right-bearer.³ On Kant's account, the transition to the civil condition is only necessary for the security of those rights.⁴ This creates a problem for those wishing to justify welfare on Kantian grounds because coercive taxation appears to violate the property rights of those being taxed. Second, Kant believes that all duties of right are ‘just duties of omission. The whole of law contains merely negative duties’ (Eth-MronII 29: 632; see also Eth-Vigil 27: 512, 587). Duties to redistribute resources are commonly thought of as positive duties. Kant's belief that there are no positive duties of right thus makes the problem of defending the provision of welfare especially difficult.⁵

Thus there are three problems that attend thinking about Kant on the provision of welfare: (i) there seems to be no positive textual basis, consistent with Kant's basic commitments, for defending such a provision; (ii) it seems that the state would violate the rights of some of its

members by coercively redistributing wealth (or any other resources); (iii) Kant believes that all duties of right are negative, but the right to the provision of welfare is normally thought of as a positive duty.

It is worth considering whether we can develop a faithfully Kantian defence of the provision of welfare. Despite recent literature supporting such a provision, I am not sure that we can. This paper discusses five attempts at justifying the provision of welfare on Kantian grounds. The first states that welfare is the legal institutionalization of each citizen's ethical duty to be beneficent. The second states that state legitimacy requires democracy, and that democracy requires the provision of welfare. The third states that welfare is necessary for the alleviation of a form of wrongful dependence. The fourth states that the legitimacy of any system of property depends on that system being rationally acceptable to all who are a part of it and that the provision of welfare is a necessary condition for rational acceptability. The fifth argues for welfare provision on proto-left-libertarian grounds. None of these five proposals is satisfactory. Each faces serious challenges on textual or systematic grounds. The conclusion to draw from this is not that a Kantian cannot defend the provision of welfare. Such a conclusion would require a demonstration of the impossibility of such a defence, and that is not my purpose here. Rather, the conclusion to draw is simply that the task of defending the provision welfare on Kantian grounds is a difficult one; one whose success we should not take for granted. This paper makes it clear just how difficult this task is, and in doing so clears the ground for further discussion.

2. Enforced Charity

In his ethical writings, Kant claims that individuals have a duty to be beneficent (see G 4: 423, DV 6: 394-5). We each have an (imperfect, wide) obligation to help others. Due to this, one

might view the provision of welfare as a form of enforced charity.⁶ There are two significant problems with this view.

First, ethical duties cannot be externally enforced.⁷ Ethical duties for Kant are concerned in the first instance with a person's maxims. But a person cannot be compelled to adopt a particular maxim. This strongly speaks against the view that the state could take over its citizens' duty of beneficence. The state is able (though perhaps not permitted) to coercively redistribute wealth. However, because the duty of beneficence requires that agents adopt particular maxims, coercive taxation cannot be a way of fulfilling the duty to be beneficent.⁸ In light of this difficulty, one might claim that the state is entitled to coercively redistribute in order to bring about the same *effects* as would be brought about had all its citizens not violated their ethical duties. But this alternate justification depends on the view that the state has a right (and perhaps even an obligation) to bring about certain outcomes. This is incompatible with Kant's formal understanding of right. Moreover, beneficence is a wide duty. It permits latitude in its execution. This means that the duty does not specify whom one should help or the form this help should take. (It does not even specify that help should involve giving up one's property – lending something or volunteering one's time are also ways of helping). So, even if the state were permitted to coercively redistribute wealth in order to bring about certain outcomes, there would be no way of telling how much (if any) wealth should be redistributed or where it should go.⁹ The latitude in the duty of beneficence means that there is no principled way in which the state could bring about the same effects as would be brought about if none of its citizens violated their ethical duties.

Second, even if ethical duties were externally enforceable, and even if the state could determine which people and needs would be helped were those duties not violated, that still would not

explain why the state would be entitled to coercively tax its citizens. That is, it would not explain why the external enforcement of the duty was *rightful*. We do not believe that all ethical duties are suitable candidates for external lawgiving. If they were, then the state would be permitted, for example, to coerce us to go to the gym. But this sort of coercion is not acceptable. Thus we need some justification for why this ethical duty permits rightful coercion when other imperfect, wide duties do not. However, it is difficult to imagine how such a justification might proceed given the difficulties just outlined.

These two objections are fatal to the enforced charity view of the provision of welfare.

3. Welfare and Democracy

According to a second view, a necessary condition for legitimacy in the Kantian state is democracy, and democracy requires that each person's basic needs are satisfied. Thus coercive redistribution for the purposes of satisfying each person's basic needs is a necessary condition for state legitimacy.¹⁰

The central worry for this view is that it is not clear that democracy is necessary for state legitimacy on Kant's view. Proponents of the democratic legitimacy reading of Kant might point to the following passage for support: 'Any true republic is and can only be a *system representing* the people, in order to protect its rights in its name, by all the citizens united and acting through their delegates (deputies)' (DR 6: 341). Here Kant claims that a true republic must be a system representing the people. Since he believes that all states must be republican (see TPP 8: 349), we can infer that all states must represent the people. The question for this view is whether this representation requires democratic institutions. I am not sure that it does. One reason for this is Kant's claim that a state needs only to be ruled in a republican manner and that this can be done

without any form of citizen participation (see TPP 8: 372). Actual consent in the form of voting is not necessary. A ruler need only pass laws that *could* have been consented to by her subjects.

Here is a representative passage on this point:

[I]f a public law is so constituted that a whole people *could not possibly* give its consent to it ... it is unjust; but if it is *only possible* that a people *could* agree to it, it is a duty to consider the law just, even if the people is at present in such a situation or frame of mind that, if consulted about it, it would probably refuse its consent. (TP 8: 298, my emphasis; see also WIE 8: 39, L-NR 27: 1382)

This passage supports the view that Kant was not concerned with democratic institutions. Rather than acting on actual consent, a ruler need only ask whether the people could have consented to a law. If they could have, then the law is just and the citizens are bound to obey.

Kleingeld (2018) argues that the passages quoted above do not represent Kant's mature views. While Kant believed democratic participation was not necessary at the time of the 1784 lectures on natural right or 1793's 'Theory and Practice', his mind had changed by the time of the 1797 Doctrine of Right. Kleingeld cites the DR 6: 341 passage quoted above as evidence of her view. This is because that passage no longer uses the language that citizens 'could have' consented to a law. Since Kant had consistently used this language previously, it is not unreasonable to suspect that a change in language corresponds to a change in belief. However, the passage on its own is inconclusive. This is because it is compatible with the view that, while the people must be represented, they do not decide who represents them. On this reading, what Kant says in the Doctrine of Right is also consistent with his earlier writings. Moreover, in the 1798 *Conflict of*

the Faculties, Kant makes claims similar to those found in the lectures on natural right and ‘Theory and Practice’. He says:

The constitution may be republican either in its political form or only in its manner of government, in having the state ruled through the unity of the sovereign by analogy with the laws that a nation would provide itself in accordance with the universal principles of legality. (CF 7: 88)

Here Kant says that sovereign may rule in a way analogous to the way a people would rule itself. The people itself does not need to rule. *Conflict of the Faculties* was published one year after the Doctrine of Right. Thus, even in his later works of political philosophy, Kant is not committed to actual democratic institutions. This, I believe, casts considerable doubt on Kleingeld’s reading. Kant’s work around the same time as the Doctrine of Right continues to affirm the position of the lectures on natural right and ‘Theory and Practice’, and there is nothing in the Doctrine of Right that speaks conclusively against that position. It therefore seems reasonable to believe that Kant’s position on the matter remained unchanged.

Might we argue on Kantian grounds that a right to the provision of welfare is *conditional* on the state being democratic? I think not. In order to defend a right to the provision of welfare in the Kantian state on democratic grounds, we need a robust conception of democracy and democratic engagement. However, given Kant’s ambivalent attitude towards democratic institutions, it is unclear that such a conception is forthcoming. A democratic defence of the provision of welfare would thus require the introduction of non-Kantian democratic commitments in order to generate a substantive account of the value of democracy. However, this would raise the difficult question of the compatibility of those additional commitments with Kant’s own, and how, if at all, we can

reconcile them. For these reasons, we can leave aside the democratic welfare view as a *Kantian* strategy for defending the provision of welfare.

4. Wrongful Dependence

According to a third view, a wrongful form of dependence exists between the wealthy and the destitute. This is because the destitute rely on the charity of the wealthy in order to survive. The provision of welfare is meant to alleviate this wrongful dependence.¹¹ Ripstein is the most influential proponent of this view. I begin by focusing on his arguments.

Ripstein begins by appealing to an argument for the necessity of public space. In his discussion of public space, he asks us to consider a case in which all land is owned and all ownership is private. We can imagine that each plot of land stops where the next one begins, and so there is no public space.¹² In this scenario, those who own no land would always need the permission of those with land merely to occupy space. Absent public spaces, Ripstein maintains, the mere physical existence of those without property would be wrong without the permission of others. This would clearly violate the innate right to freedom of those without land. Here is Ripstein on this point:

If private owners are entitled to exclude from their land ... the poor could find themselves with no place to go, in the sense that they would do wrong simply by being wherever they happened to be. They would be entirely subject to the choice of those who owned land. ... The person who is entirely dependent on the grace of another to occupy space, or to use physical objects, is not merely lacking in self-determination, or somehow on the losing end of the bargain that makes up the social contract. ... Instead, the person who can only occupy space with the permission of others has no capacity to set and

pursue his own purposes. As such, the person in need is like a slave, and the contract creating such a situation is, like a slave contract, incoherent. (2009: 280)

Being permitted to occupy space is a basic condition for the exercise of one's external freedom. Without this permission a person is unable to perform any action rightfully. Her mere existence counts as a wrong. On Ripstein's view, public space is necessary in a civil condition because a system of wholly private property would create a wrongful system of dependence between those who have land and those who do not. Those with land would be able to decide whether the very existence of those without land was permissible. The importance of this for our purposes is that Ripstein believes that the poor in a society occupy exactly the same position as the landless in the case described above. He says:

The spatial version of the problem illuminates actual cases of poverty and need because the juridical significance of biological survival is that it consists in a person's keeping control of his or her own person. ... But if another person is entitled to determine whether you will maintain control of your own person, you are subject to that person's choice *in exactly the same way* as the person who cannot occupy space except through the choice of another. Each is entirely subject to the choice of another. (2009: 280; my emphasis)

Ripstein here argues that just as the landless are dependent on land owners for their survival (when all land is owned), so too the poor are dependent on the wealthy. This is because the poor depend on the charity of the wealthy in order to survive. Importantly, Ripstein believes biological survival is juridically significant. It is a necessary condition for a person's control of her own body. So to say that the poor are dependent on the wealthy for their biological survival is to say that they are dependent on the wealthy for remaining in control of their own body. But,

Ripstein believes, your right to be in control of your body just is the innate right to freedom.

Thus the satisfaction of the innate right to freedom of the poor is dependent on the charity of the wealthy. This dependence is wrongful because the wealthy have discretion over the recipients, and amount, of their charitable donations. If correct, this proposal would tell us why the state is entitled to coerce the wealthy in order to provide for the poor. The relation that holds between the poor and the wealthy is one that is not rightful, and so coercion (in the form of taxation) is both permissible and necessary.

We can question the similarity between the two cases Ripstein describes, and, on this basis, his wrongful dependence strategy. The crux of the difference is the following: the person with no land (when all land is owned) is dependent on others for the permission to use what she has –her body. Her very existence is wrong without another’s permission. The poverty-stricken person, to the contrary, has permission to use the means at her disposal (i.e. her body and what little she owns), but those means are meagre. What she depends on is not the permission to use what means are available to her, but the material resources to increase her means so that she can satisfy her ends. Put another way, we might say that it is true that the poverty-stricken person depends on the wealthy for the continued use of her means, but it does not follow (and it is not true) that she therefore depends on the wealthy for the *rightful* use of her means. This, I think, presents a serious difficulty for Ripstein’s wrongful dependence view. Ripstein’s view requires that the *rightful* use of one’s means be at stake in order to justify state intervention, but this is not an accurate characterization of the relation between the destitute and the wealthy.

Hasan (2018a) offers a more expansive account of the wrongful dependence view. He believes that Ripstein is wrong to characterize all forms of wrongful dependence in terms of the position occupied by a slave (or those purportedly subject to a slavery contract). Hasan takes Kant’s

description of passive citizens as his central example to explain this view. Passive citizens have discretionary control over at least some of their means, and so are not in a normatively identical position to slaves. Thus, demonstrating that passive citizens are in a wrongful relation of dependence would constitute a successful expansion of the wrongful dependence view. For this reason, it might do better than Ripstein's view.

Kant characterizes passive citizens as those who depend on another private person for their 'existence and preservation' (DR 6: 314). Given the fact that Kant also tells us that the innate right to freedom entitles each person to 'independence from being constrained by another's choice' (DR 6: 237), Hasan claims that passive citizens are dominated by those who hire them. This makes sense. The innate right entitles us to independence from the necessitating choice of others, but passive citizens appear to be subject to just such a choice. Moreover, the systems of private property and labour to which passive citizens are subject in the civil condition restrict the choice available to them such that they must choose either freedom-violating private employment or theft as a means of self-preservation. Neither of these options is consistent with equal external freedom under universal law. Thus passive citizens are dominated both by their employers and by the structural conditions that prevent them from achieving the status of active citizens (2018a: 11). Hasan's remedy for this is coercive redistribution for the purpose of relieving passive citizens from their state of dependence.

The difficulty with Hasan's view is that it is not clear that passive citizens lack external freedom in the way he describes. This is because the independence (*Unabhängigkeit*) under discussion in the innate right is not identical to civil self-sufficiency (*bürgerliche Selbstständigkeit*), which is under consideration in Kant's account of citizenship. Innate independence is the entitlement to be free from the necessitating choice of another. Civil self-sufficiency is the attribute of members of

a state who are not under the authority of a private person or group.¹³ Failing to distinguish between independence and civil self-sufficiency would require us to believe that Kant is flatly contradicting himself when he claims that passive citizens (who are civilly dependent) are nevertheless both innately free and equal members of a state (see DR 6: 315, VATP 23: 136). With these terms distinguished, it appears that passive citizens are not in the bind that Hasan describes. Private employment does not constitute a violation of the innate right of passive citizens.¹⁴

Now Hasan might want to accept this. He might concede that private employment is compatible with innate freedom, but still maintain that there is something wrong with a condition in which some depend on others for their maintenance.¹⁵ The difficulty is then to explain precisely the nature of this wrong in Kantian terms. Ultimately, Hasan characterizes the wrong of passive citizenship in terms of an asymmetry in the possession of social power. He claims that Kant's political philosophy 'directs us to concretize or actualize the formal idea of *equal influence or symmetrical control*' (2018a: 13). It is unclear what justifies this characterization. Kant's political philosophy is concerned with external freedom, and this is not identical to equal control or influence over one's social/political environment. Moreover, given that innate independence is compatible with conditions of private employment, Hasan's strategy for extending considerations of external freedom to social/political control or influence is severely limited. There is no wrong to which turning to these broader structures is a solution, and Hasan's concern with them therefore remains unmotivated. Thus more needs to be said in defence of the wrongful dependence view in order for it to offer a consistent Kantian defence of the provision of welfare.

5. Right and Reasonableness

According to Guyer, any system of property must be rationally consented to by all. Moreover, a system of property that does not provide for those who cannot maintain themselves cannot be rationally consented to. Thus any system of property must include some provision of welfare.¹⁶

Guyer's argument begins with the claim that, for Kant, the only unconditional value for human beings is the freedom of human choice and action. This includes the external action relevant to Kant's political philosophy, 'the freedom of human beings to move their own bodies and to exercise them upon other objects ... in accord with their own choices to the extent compatible with a like freedom for all other human beings' (2000: 237). At least initially, our external freedom only extends to our use of our bodies. The extension of external freedom to objects external to us – the acquisition of property – requires an act of acquisition on our part (DR 6: 237). However, Guyer claims, any such act 'inherently impinges upon the like freedom of others who might otherwise be able to control or use the object' (2000: 238). It impinges upon the like freedom of others because our innate equality makes it the case that no individual has the authority to make decisions about right for others in the state of nature. Since an act of acquisition impinges upon the freedom of others, external objects of choice can only be acquired through the deference of those others. This deference takes the form of consenting to the system of property of which the act of acquisition is a part.

Under what conditions is a person able to rationally consent to a system of property? On Guyer's account, a necessary condition for rational consent to a system of property is that the person is made no worse off by the implementation of that system than they would be in the state of nature. The means of self-preservation available in the state of nature cannot (rightfully) be absent in the civil condition. Guyer sees his view as bolstered by Kant's claim that the state of

nature is one in which the world is possessed in common. Each has a liberty to occupy various places on the surface of the earth, and an equal opportunity to maintain themselves. A condition for the legitimacy of any system of property is thus that it does not make any person worse off (understood in terms of their ability to maintain themselves) than in a condition in which the world is owned in common (2000: 254, 258). If some were made worse off in this way by the enforcement of a system of property, then they could not have (rationally) consented to that system and thus its enforcement would wrong them. Thus, for Guyer, the provision of (at least the opportunity for) welfare is a necessary condition for the legitimacy of state enforcement of a system of property.

Guyer's view relies on a recognition of the problem of unilateral choice. If acquiring external objects of choice did not wrong others, then the deference of those others would not be necessary. If deference is not necessary, then neither is the consent of all others to any act of acquisition. However, it is not clear to me that Kant was concerned with unilateral acquisition. Since this view runs contrary to much of the literature discussing Kant's state of nature, it is worth elaborating on why I think this is so.

A first point to note is that Kant's comments are not as clear as one might hope, and they do not speak conclusively in favour of seeing the problem of unilateral choice in his view. As already mentioned, Kant tells us that the rightful condition merely secures but does not settle or determine one's rights (see DR 6: 256). This claim sits uneasily with the view of those who see the problem of unilateral choice in Kant.¹⁷ Kant also tells us that the principle justifying acquisition of external objects – the postulate of practical reason with regard to rights – is an *a priori* extension of practical reason (DR 6: 247). This seems to indicate that it does not require any positive act in order to take effect. This affirms the view that we are entitled to make claims

of right against others regarding external objects of choice in the state of nature. This reading of the postulate is supported by Kant's claim that there is a general will united *a priori* that grounds possession of external objects of choice. He says:

The possessor bases his act on 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. ... By being the first to take possession he originally acquires a definite piece of land and resists with right anyone else who would prevent him from making private use of it. Yet since he is in a state of nature, he cannot do so by legal proceedings because there does not exist any public law in this state. (DR 6: 246n; see also VADR 23: 219)

Here, Kant clearly states both that he is concerned with the acquisition of external objects of choice in the state of nature, and that such acquisition is justified by appeal to the general will that corresponds *a priori* to the innate possession of the earth in common. Rather than requiring the move to a civil condition for the acquisition of external objects of choice this passage states that the united will already exists in the state of nature. This does not conclusively demonstrate that Kant was not concerned with unilateral choice. However, it does suggest that the text alone will not resolve the issue.

Philosophical difficulties also arise regarding the problem of unilateral choice. For example, if unilateral acquisition is wrong because it restricts the freedom of others, then acts of procreation must also be considered wrong. Like acts of acquisition, acts of procreation unilaterally restrict what others can do. For instance, acts of procreation restrict the space that others are permitted to occupy. No one is permitted to occupy the space now being occupied by the child who results from the procreative act.¹⁸ In this regard, the act of procreation creates a restriction that is similar

to the restriction created by an act of acquisition of land. Due to the fact that the mere existence of the child means that there is now another place on the surface of the earth that it is impermissible to occupy, procreation creates a new instance of a duty that restricts the choice of others in a way it was not restricted before.¹⁹ Of course, this does not constitute a knock-down argument against those who see Kant as concerned with the problem of unilateral choice. They may concede that the choice to have a child in the state of nature wrongs others because it unilaterally imposes a restriction on their freedom. However, the choice to have a child is not normally considered a way of wronging others. Moreover, there appears to be no salient asymmetry between acquisition and procreation such that procreation can remain permissible once acquisition is ruled out.

Another difficulty with attributing the problem of unilateral choice to Kant is that it would rule out both the acquisition of property and the mere holding of external objects of choice (what Kant calls ‘empirical possession’) in the state of nature. Imagine that I, a rock enthusiast, am in the state of nature. In pursuit of my hobby, I pick up and examine rocks. I do not seek to acquire the rocks that I examine and so do not satisfy a necessary condition for acts of *acquisition* (i.e. giving a sign, see DR 6: 258-9). I simply examine the rocks and then leave them where I found them. If we see in this the problem of unilateral choice, then even this kind of action wrongs others. This is because, for the time that I am holding the rock, I have unilaterally restricted the choice of others with regard to it. If acts of acquisition are wrong, mere holding must also be wrong. Similar consequences arise when a person makes an external object of choice unavailable to another even without holding it. For example, if instead of picking up the rock, I simply cup my hands around where it lies without touching it. In this case, I restrict the actions another person can perform with respect to an external object of choice without touching that object

myself. Each of these actions (mere holding and blocking) change the normative situation of others just as acquisition does. I believe it is implausible to say that these actions constitute wrongful interference with the external freedom of others. That it is implausible is a good reason to not ascribe this view to Kant if we can avoid it.

One might object that holding and blocking do not create a new obligation in others, and so are not problematic. This is because, on the assumption that no acquisition has taken place, interference with the rock would have to be explained by my innate right. Thus no new obligation is introduced. However, this response misses the fact that the actions of holding and blocking unilaterally make the use of particular external objects of choice impermissible for all others. The rock is no longer a possible object of choice for others. So, even if the wrong of interfering with it is explained by my innate right, holding or blocking the rock still constitutes a unilateral restriction of your choice. For this reason, it is problematic for those who see the problem of unilateral choice in Kant.

Thus, for both textual and philosophical reasons, it is plausible to believe that Kant was not concerned with the problem of unilateral choice. This strongly speaks against Guyer's view that the rational consent of all is necessary for the state to put in place a system of property. This is because claims to external objects of choice already exist in the state of nature. Guyer's view, as it is stated, fails. Guyer might accept these considerations. Rather than relying on the state to institute a system of property to which all could consent, he might claim that there is a standard of acquisition in the state of nature. This standard would only permit those acts of acquisition to which others could consent. Let us turn to this kind of view now.

6. Kantian Left-Libertarianism

On a fifth view, Kant's claims about the original possession of the earth in common generate a standard against which we measure acts of acquisition.²⁰ Coercive taxation for the purposes of redistribution is justified on the grounds that some have acquired more than they are entitled to according to that standard. The provision of welfare is thus not a positive duty of aid, but a redress for a wrong.²¹ To my knowledge, amongst Kantians there are no advocates of this view. However, it is able to make sense of a number of Kant's claims, and deserves consideration for that reason.

This section is divided into three parts. In the first, I discuss Kant's claims about common ownership as a standard against which individual acts of acquisition are to be judged. In the second, I sketch the implications that this standard has for welfare in the Kantian state. In the third, I raise some difficulties with the view.

Common ownership: a standard for acquisition

Kant says that the world is owned originally in common by all those who occupy its surface.

While this is not possession in terms of a property right, it does form the backdrop against which all individual acts of acquisition take place. As Kant tells us: 'The possessor [of an external object of choice] bases his act on 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' (DR 6: 246n; see also VADR 23: 219).

Acts of acquisition must be in accordance with the general will that corresponds to innate possession of the earth in common. For this reason, we might think that the idea of the community of those who occupy the surface of the earth provides us with a standard against which we limit our acquisition. Kant does not provide a detailed picture of innate possession of

the earth in common in the *Doctrine of Right*. However, we may appeal to his lectures and notes to help develop the picture. For example, he says:

On seeing, therefore, that the provision is universal, I have obligations to limit my consumption, and to bear in mind that nature has made these arrangements for everyone. (Eth-Collins 27: 414)

One actually has a right to coerce others, that by means of maintaining their own lives they at least minimally also maintain ours [*daß sie mit Erhaltung ihres Lebens zugleich das unsrige nothdürftigst erhalten*], because property is only a share in the communal endowment of nature. (Refl 1793, 19: 268, my translation)

The first passage says that we have to limit our acquisition because nature has made arrangements for everyone. The second says that a person has the right to coerce others to maintain herself because property is just a share in the common endowment of nature. Neither of these passages allow for a knock-down argument for the view that Kant thought that innate common possession of the earth sets a standard for acquisition. The first passage makes an appeal to teleology mostly missing in Kant's later works of political philosophy. The second passage appears to suggest that one can only coerce another person in order to make use of the ways in which that person is already maintaining herself.

Nevertheless, in conjunction with Kant's claim in his published work that individual acts of acquisition occur against the backdrop of possession of the world in common, the passages do indicate that Kant believed there was *some* standard governing acquisition of external objects of choice. The thought behind this is simple enough. Due to the fact that we have to share the common endowment of nature, there is a limit to what each person is permitted to acquire. No

person may take more than their fair share of the communal endowment of nature because each is beholden to the standard provided by the original community of possession. How should we understand this original community? Kant is explicit that it should not be understood as joint positive possession of the land and everything on it. This is what he calls a ‘primitive community’, which would need to be *instituted* by a contract in which each gave up private possession. However, a community is original when no act is necessary to bring it about. Thus, a primitive community cannot be original in Kant’s sense (DR 6: 251). We should instead understand Kant’s original possession of the earth in a way similar to (though perhaps not exactly like) what Simmons has called ‘divisible positive community’. In such a community,

each person has a (claim) right to a share of the earth and its products equal to that of every other person. Each may take an equal share independent of the decisions of the other commoners; each has property in the sense of a claim on an equal share (but not possession of or a claim on any particular share). (Simmons 1992: 238)

In a divisible positive community, each person is entitled to acquire external objects from the commons without the express consent of others.²² However, the amount that each person can acquire is limited by the fact that every other person is also entitled to an (equal) share. This does not mean that shares are somehow allotted in advance. No one is entitled to any particular object or piece of land. Rather, each person is entitled to some share of the earth’s products or land. Simmons claims that divisible positive community is characterized by each having an *equal* share of the earth and its products (see Steiner 1977). Should we attribute this strong claim to Kant? His writings do not appear to suggest such a view.²³ However it is plausible to believe that each is entitled to at least that share of the common endowment of nature that they need to survive. This minimal entitlement is sufficient to set a limit on rightful acquisition.

Welfare in the Kantian state

If we believe there is a limit set on the acquisition of external objects in the state of nature, we can exploit that in order to defend the provision of welfare. Due to the fact that each person has a claim to at least those resources necessary to survive in the state of nature, they must have such a claim in the state as well. This justifies coercive redistribution on the part of the state.

This proposal does not conflict with the requirements that the provision of welfare (i) not violate the rights of those being taxed or (ii) be the result of a positive duty. Let me explain why. In the state of nature, if a person has exceeded the limit on acquisition, one does not wrong her by taking those objects in her control that exceed what she is permitted to own.²⁴ Since she is not entitled to the additional resources she has in her control, her freedom is not violated when those resources are taken away. This is the case whether it is the state or an individual who executes the coercion. So, state coercion would not violate the freedom of those being taxed.

At this point we might ask why individuals may not simply take those additional resources to which the others have no entitlement. (Indeed, this seems to be the consequence of the passage from Kant's reflections quoted above). This option is not available. Once the move to civil society has been made the possibility of coercing another person in order to meet one's basic needs no longer exists. This is due to the fact that the state coercively enforces the rights of each. However, the extent of what we control does not necessarily line up with what we are entitled to. Since the state has no special means of determining whether one is entitled to what one has in one's possession (relative to the standard set by original common possession), it will end up coercing on the basis of possession and not right. This means that those of us who have too little in the state of nature will still have too little once the move to the civil condition has been made, and those of us with too much will still have too much. Moreover, because the state enforces the

rights of each on the basis of possession, individual coercion will no longer be available as an option for those who cannot maintain themselves. This introduces a wrongful state of affairs in which the state coercively protects what is in each person's control regardless of the status of their entitlements.

Coercive taxation in order to provide for basic welfare is a remedy for this wrong. It enforces the obligation that each has not to acquire more than they are entitled to, and secures a means of preservation for those who cannot maintain themselves. It does this, moreover, while taking seriously Kant's claims that (i) the civil condition merely secures rights and (ii) all duties of right are negative. This view, it seems to me, does better than those already considered. It is in keeping with Kant's claims and to my mind also quite plausible. However, it is not without problems.

Worry 1: Unilateral action

Kant was concerned with unilateral choice. He says, for example: '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' (DR 6: 256; see also DR 6:263). As we have seen, claims such as this are often taken as claims about political authority. Kant, it is said, claims that a unilateral will does not have the authority to impose duties on others.²⁵ Contemporary commentators point to this worry in their discussions of the necessity of the state. Only the state, constituted by public, coercive institutions is properly representative of the general will. Thus it is only in the state that acquisition becomes rightful (rather than merely presumptive). On the view under consideration, the original community of

possession provides a standard against which acts of acquisition are judged. This permits true acquisition in the state of nature.²⁶ Thus this reading of Kant's account of acquisition leaves us with a gap to fill. Some explanation of Kant's concern with unilateral choice needs to be given.

I believe we should think about unilateral choice in this context as that action that violates *a priori* principles of right. Such actions are those that make illicit use of coercive force. We act unilaterally when we act in a way that the united will could not endorse. What exactly this means is of course a difficult question. And the level of abstraction at which Kant casts his political philosophy does not help matters. However, it does allow us to make sense of the fact that Kant was concerned with unilateral action without thinking that that such a concern rules out the acquisition of external objects of choice in the state of nature.

Worry 2: How is the limit on acquisition violated?

We might also ask how the limit on acquisition set by each person's claim to a share of the common endowment of nature is transgressed. Consider first a simple example. Imagine two people who live on an island with a limited amount of food. One person walks around the island collecting all the food for themselves claiming everything they can see as their own and leaving nothing for the other person. In this extreme case, the person collecting the food has surely transgressed the limit on acquisition. They have left the other person with no food. This does not mean that they have *wronged* the other person.²⁷ Rather, the act of acquisition simply does not amount to a property right in the food. For this reason, interference with the food will not wrong the person who has attempted to take it into their possession. But this is just a simple case. Imagine another. What if there are 100 people on the island, and one person claims 75 percent of the island's resources for herself. The remaining 99 people have enough to get by, but only just. What should we say now? This is more difficult to determine.

This example also raises an important question. Namely, can an individual alone violate the limit on acquisition (in normal circumstances)? What would this look like? Imagine another island case. Now there are 10 people. Divided evenly, there are enough resources for each person to maintain themselves. One person takes 20 percent of the resources. Would this person's protection of what they have in their control wrong any of the other inhabitants of the island? If the answer is yes in the case in which the remaining 80 percent has also been acquired (leaving one with nothing), is it also yes when nothing else has been acquired? Given the circumstances, it seems the person has already violated the limit on acquisition. But we are also supposing that 80 percent of the resources of the island have not been acquired by this point.

These are all difficult questions. Questions that a full account of the picture I have sketched would need to fill out. They are also questions for which I do not have answers. However, in order to mitigate the challenge that this presents to the view under consideration, we can note that those who subscribe to something like Locke's proviso are similarly situated. The difficulties presented by these questions are not unique to this view. Thus, while it seems that a Kantian left-libertarian picture (as I have been characterising it) does not do better than others with respect to this, it also does no worse.

Worry 3: Who is entitled to receive welfare?

A final problem, and to my mind the most difficult one, concerns determining who is entitled to welfare on this account. A simple answer would be 'those who do not have enough to survive'. But this moves too quickly. Not everyone who is unable to maintain themselves will be in that position because they have not had access to their fair share of the earth's resources. Some people may simply have squandered their share.²⁸ Thus the mere existence of a person who is unable to maintain herself is not evidence that some have acquired too much. However, all we

have to go on is whether or not a person has enough to survive. Since this on its own is insufficient to determine whether those people are entitled to be the beneficiaries of welfare, the view faces a serious epistemic problem.²⁹

I am not sure that a good response to this worry can be given. It points to a serious epistemic limitation in implementing this view. Moreover, the centrality of securing rights to Kant's political philosophy makes this worry especially pressing. To get the wrong answer is to violate the rights of those being taxed. Again, we might point to other views that suffer a similar problem. For example, serious epistemic difficulties arise for luck-egalitarianism since it must determine which actions of an agent were the result of genuine choice and which were not.³⁰ This is, however, unsatisfactory. Rather than conclude that this saves the left-libertarian reading of Kant, we might simply say that it provides grounds for also rejecting luck-egalitarianism. Thus, while I believe that this way of defending Kant's claims about welfare fares better than some of the others that we have seen, it is also deeply unsatisfactory.

6. Conclusion

This paper has introduced five ways in which we might defend the provision of welfare on Kantian grounds: (i) the enforced charity view, (ii) the democratic welfare view, (iii) the wrongful dependence view, (iv) the rational consent view, and (v) the left-libertarian view. I have argued that each faces serious difficulties. From this we should not (and are not entitled to) conclude that there is no way to defend the provision of welfare on a Kantian account. There has been no argument put forward in this paper to suggest that such a defence is impossible, only that it is significantly more difficult than recent literature has allowed. Perhaps, given the conditions on a successful Kantian defence that we started with, an account of welfare is not forthcoming. If this is so, then those of us committed to Kant's political philosophy shall have to decide whether

any of the commitments that block such an account can be dropped without also losing what we find to be interesting and distinctive about his approach.³¹

Notes

¹ See, for just a few examples, Baiasu (2014), Rosen (1993), Walla (2015), and Weinrib (2003).

² References to Kant's works refer to volume and page numbers of the German Academy text.

Translations are from the *Cambridge Edition of the Works of Immanuel Kant*, unless otherwise indicated. Abbreviations are the following: Anth=Anthropology from a Pragmatic Point of View, WIE=What is Enlightenment?, TPP=Toward Perpetual Peace, TP=Theory and Practice, G=Groundwork for the Metaphysics of Morals, L-NR=Feyerabend Lectures on Natural Right, DR=Doctrine of Right, DV=Doctrine of Virtue, Refl=Reflections, CF=Conflict of the Faculties, Eth-MronII=Mrongrovious Lectures on Ethics II, Eth-Vigil=Vigilantius Lectures on Ethics, VATP=Preparatory Notes for Theory and Practice, VADR=Preparatory Notes for the Doctrine of Right, Eth-Collins=Collins Lectures on Ethics.

³ We must therefore disagree with Kaufman (1999: 11) who claims that the state need not protect any specific allocation of property. Since we can have rights entitlements in the state of nature, the state must protect the distribution of property that obtained in that state (assuming such distribution was rightful).

The view that, according to Kant, we can have entitlements to particular objects in the state of nature runs contrary to a widely held belief in contemporary scholarship concerning the status of acquired right in that state (though see Byrd and Hruschka 2006 and 2010 for a notable exception). According to many recent commentators, the acquisition of an unowned object in the state of nature constitutes a wrongful imposition of one's unilateral will on others. This is called the problem of unilateral choice. According to these commentators, an act of acquisition in the

state of nature does not generate an entitlement on the part of the person who acquired the object. The state therefore does not violate the rights of its members by coercively redistributing resources, since there was no entitlement to those resources absent state institutions. The problem of unilateral choice is discussed in, among other places, Brudner (2011), Flikschuh (2000), Hasan (2018b), Pallikkathayil (2010), Ripstein (2009), Sinclair (2018) and Stilz (2011). While these authors spell out the problem in slightly different terms, each shares the view that acquisition of external objects of choice in the state of nature constitutes a violation of the freedom of others.

The significance of the problem of unilateral choice for defending the provision of welfare on Kantian grounds should be clear (see Hasan 2018b for discussion). Coercive redistribution for the purpose of welfare provision appears more compatible with a view according to which the acquisition of property is only authorized in the civil condition. I am sceptical that Kant incurs the problem of unilateral choice. Given this fact, I am also inclined to accept Kant's claim that the state merely secures, but does not settle or determine, rights (see note 4). I defend my rejection of the problem of unilateral choice in more detail in section 5. It is perhaps worth mentioning that the absence of the problem of unilateral choice does not entail that there are full-blown property rights in the state of nature. This is because there are other normative defects in the state of nature (related to assurance and indeterminacy) which result in claims remaining provisional. Thus a denial of the problem of unilateral choice does not amount to a denial that the Kantian state is morally necessary. Thanks to an anonymous reviewer for pressing me to clarify this departure from the standard reading of Kant.

⁴ See DR 6: 256: 'For a civil constitution is just the rightful condition, by which what belongs to each is only secured, but not actually settled or determined.'

⁵ Indeed, many commentators believe that Kant is unable to provide a consistent account of the provision of welfare. See: Aune (1979: 156–9), Byrd and Hruschka (2010), LeBar (1999: 248), Murphy (1994: 123–5), Williams (1983: 195–8) and Kersting (1992b: 153). Williams and Kersting seem to revise their positions in Williams (2013) and Kersting (1992a), respectively. See Riley (1983: 111–13) for concerns over the fact that Kant was not more attentive to inequalities of wealth.

⁶ This is the view that Rosen (1993: 179) develops (with the DR 6: 326 passage in mind): ‘Kant says that rulers take over a duty from the people. Presumably, the duty he has in mind is benevolence; no other duty fits the description.’ For a similar view, see Williams (1983: 198).

⁷ This objection is raised by van der Linden (1988: 203) and Walla (2015: 40).

⁸ This is perhaps why Rosen believes that the state’s duty of benevolence must be ‘derived from, without reducing or eliminating, private citizens’ duties of benevolence’ (1993: 179).

⁹ See Moran (2016).

¹⁰ I know of no commentators explicitly defending this view. However, it is worth discussing since something like it has been defended in non-Kantian contexts (see Rawls 1971 for one example).

¹¹ For versions of this second view, see Allais (2015), Davies (2014), Ripstein (2009), Varden (2009) and Weinrib (2003).

¹² Ripstein’s own example includes public highways that connect privately owned pieces of land but cannot be lived on. Nothing is lost in leaving this out as public highways are not candidates for spaces that a person without land could rightfully occupy.

¹³ Both Gregor's translation and almost all secondary literature on Kant's account of citizenship elide the distinction between *Selbstständigkeit* and *Unabhängigkeit*. Shell (2016) is a notable exception to this.

¹⁴ Of course not all employment is incompatible with innate freedom. However, in those cases in which it is, Kant's account of civil equality demands that the employee be able to seek redress through the law (see TP 8: 291-2). On my view, civil equality does not add any additional resources to our thinking about equality than those already contained in the innate right. However, while the innate right is concerned with the relationship between individuals, civil equality is concerned with the relationship between individuals and legal institutions (see also Weinrib 2003: 809).

¹⁵ Kant himself says both that passive citizenship seems to contradict the concept of a citizen as such, and that anyone should be able to work up to the status of an active citizen (DR 6: 314-5). However, the former comment is compatible with the view that what is wrong is calling passive members of the state *citizens* and not the condition of passive citizens as such. The latter comment can be read as an implication of Kant's account of formal equality of opportunity.

¹⁶ An anonymous reviewer has suggested that this is a form of wrongful dependence view. I am not sure about this. On my reading, Guyer's view is not about identifying and remedying a certain form of dependence but the conditions under which we legitimately transition from the state of nature to civil society. Either way, Guyer's view is certainly distinct from the suggestions made by Ripstein and Hasan and for this reason it requires a separate treatment.

¹⁷ We can also add that the passage often cited in favour of ascribing the problem of unilateral choice to Kant, 'a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external...' (DR 6: 256), appears in the context of a discussion of reciprocal

assurance. Thus at least one textually plausible reading of this passage would focus on the impossibility of the unilateral provision of assurance that each will respect the rights of others (see Bader n.d.).

¹⁸ Thanks to Ralf Bader suggesting this to me.

¹⁹ An anonymous reviewer has suggested to me that this objection fails since the child who results from the procreative act does not *acquire* space, it *is* the space that it occupies. However, my claim is not that the child acquires the land it is on. Rather, my claim is that the existence of the child results in a restriction of the choice of others in a way that is similar to the restriction caused by the acquisition of land. Thus the parents wrong others by unilaterally restricting the spaces that those others may occupy as a result of their choice to have a child.

²⁰ It is the centrality of these claims that justify the ‘left-libertarian’ label. But this should not be taken to mean that Kant is a left-libertarian as that is understood now (see Williams 2013). For instance, he denied that we are self-owners (see DR 6: 270, Eth-Collins 27: 386), and this belief conflicts with the left-libertarian view that ‘agents own themselves in just the same way that they can have maximal private ownership in a thing’ (Vallentyne 1998; also see Cohen 1995). However, Kant does endorse strong claims about self-*mastery* combined with claims about the common ownership of the earth.

²¹ In response to Nozick, Waldron (2005) makes a similar claim about the possibility of coercive redistribution on a Lockean account.

²² For a different understanding of Kant’s account of original possession in common, see Weinrib (2003: 821-8). Weinrib understands original possession in terms of a negative community of ownership, similar to the view advocated by Pufendorf. According to this view,

objects in the state of nature are available for use but there is no ownership (see Simmons 1992: 238).

²³ It is worth mentioning that Kant does sometimes speak as though each has an equal entitlement to the earth's resources as every other (Eth-Collins 27: 416). This speaks in favour of the 'divisible positive community' reading (thanks to Jens Timmermann for bringing my attention to this). However, Kant does not thematize this kind of community in his writings, and so it is reasonable to assume that he is at least ambivalent about holding such a strong position. Whether he believed that we are entitled to an equal share of the world's resources or simply just a share does not matter to the arguments above.

²⁴ Assume that we agree that a person has more than she is entitled to. What is it appropriate to take from her? Must one take those objects that pushed her over what is permitted? Can we take anything? These are among the many questions I will leave aside.

²⁵ I do not have the space here to discuss all passages in which Kant discusses unilateral willing. It is worth mentioning that there is a passage at DR 6: 264 that sits uneasily with my view. There Kant says that the rational title of acquisition requires the idea of a united will. However, he parenthetically remarks that this is a will 'necessarily *to be* united' (my emphasis). This does not fit with my view that the united will exists already in the state of nature, and so speaks in favour of endorsing the problem of unilateral choice. However, in light of the passages quoted and arguments given in section 5 above, I am happy to be revisionist with respect to this remark. Especially since, to my knowledge, Kant nowhere else repeats this elaboration. See Byrd and Hruschka (2006: 264-8) for a defence of a reading of unilateral willing that is very close to my own.

²⁶ Though see my qualification in note 3.

²⁷ Wronging only occurs if the person hinders others from accessing what she has taken into her control. If we stick with the example above, if the person who has collected all the food beats up anyone who attempts to take some, then they have wronged that person. There are other ways of making it impossible for people to access common resources that are more difficult to deal with. What if the person eats all the food as they walk around the island? In this case, they have not coercively stopped others from getting the food themselves, they have just made that action impossible. Has a wrong occurred in this case? If so, when?

²⁸ Kant himself worried that the provision of welfare might ‘make poverty a means of acquisition for the lazy’ (DR 6: 326).

²⁹ Thanks to Thomas Sinclair for pointing out this concern.

³⁰ See Cohen (1999: 934) and Miller (2014: 142).

³¹ I am grateful to Ralf Bader, Ralph Walker, Jens Timmermann, Louis-Philippe Hodgson, an anonymous referee and attendees of the St. Andrews Kant colloquium for comments on earlier drafts of this paper. I am also especially grateful to Thomas Sinclair for his suggestions made over many discussions on this topic.

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