*Canadian Journal of Philosophy (2025), 55: 1, 53–67*
doi:10.1017/can.2025.10035

SYMPOSIUM

# Freedom, Democracy, and Economic Rights: A Kantian View

S. M. Love

Department of Philosophy, Georgia State University, Atlanta, GA, USA
Email: suzannemlove@gmail.com

**Abstract**
What economic system does a Kantian ideal of freedom entail? In *Living with the Invisible Hand*, Waheed Hussain argues it entails intermediated capitalism. Here, I investigate these arguments within the framework of a Kantian theory of right. I sketch a Kantian theory of equal democratic government where we have the right to make together through equal democratic processes decisions that structure our rightful relationships with one another. I argue that any plausible Kantian view of the natural determinacy of property rights justifies extensive government intervention in the economy, creating space to argue for alternative economic systems such as intermediated capitalism.

**Keywords:** Kant; freedom; democracy; property rights; economic democracy

## 1. Introduction

For a great many people, citizens and scholars alike, an ideal of freedom guides their views on how our economic system should be constituted. In *Living with the Invisible Hand: Markets, Corporations, and Human Freedom*, Waheed Hussain offers a novel view of how an economic system must be constituted in order to respect freedom. In developing his arguments, Hussain (2023, p. 89) relies on a Kantian ideal of freedom as mutual respect, where each of us is "entitled to guide her activities in light of her own practical judgments." Hussain (2023, p. 83) argues that an advanced market economy is a complex social institution that bypasses our rational judgments in governing our behavior, purportedly guiding us into an efficient pattern of production and distribution. Since on Hussain's view all social institutions must be compatible with the Kantian ideal of freedom, a judgment-bypassing coordination mechanism like an advanced market economy can only be compatible with people's freedom if it operates "as an extension of their rational capacities" by satisfying the requirements of "reason sensitivity," "transparency," and "trustworthiness" (Hussain, 2023, p. 104, 104–105). Hussain (2023, p. 201) concludes, contrary to the ubiquitous view that freedom entails a "free" market, that satisfying these requirements and so respecting freedom entails an intermediated capitalist system where democratic oversight of the economy is directly integrated into corporate governance.

However, Hussain's account suffers from two key foundational worries. First, it is unclear why we should have such an absolute commitment to freedom when freedom is, according to Hussain (2023, p. 29), just one "public value" among many. And second, even if we can justify this central commitment to freedom and show that a social institution governs our behavior, it does not follow that respecting freedom requires democratic governance of this institution. Whether we have the right to democratic governance of a social institution depends on the background rights that

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https://doi.org/10.1017/can.2025.10035 Published online by Cambridge University Press

institution depends on; for example, we do not have the right to democratically govern the social institution of dating (even if it is ethically deficient) since this institution emerges from particular choices that individuals have the exclusive right to make governing their own bodies and who they are willing to socially and physically connect with. So, whether democratic oversight or governance of our economic system is justified depends on the background rights this institution depends on. If there are robust natural rights to property, then economic decisions will be, like dating, appropriately beyond the realm of collective governance.

Here, I investigate whether Kantian freedom does indeed justify democratic governance or oversight of the economy in general and whether it can support Hussain's arguments for intermediated capitalism in particular. The framework of a Kantian theory of right resolves the first worry facing Hussain's account, as the foundation of this theory of right is the one innate right to freedom: each person has the right to direct their own will in the world so long as their doing so is consistent with others' right to do the same. I further argue that this Kantian framework can also address the second worry facing Hussain's account, as on any plausible Kantian view, significant government involvement in the economy will be justified.

It is important to note that my account here, like Hussain's, is not interpretive and differs considerably from Kant's own views in important ways. Both works are part of the larger project of using Kantian tools to argue for what we take to be compelling philosophical views. I hope to show here that the Kantian framework offers valuable insight into the appropriate relationship between government and the economy.

I begin in Section 2 by articulating in more detail the worries facing Hussain's account. In Section 3, I argue that the basic principles of the Kantian theory of right entail a right to equal democratic self-governance, and I explain which decisions we have the right to make democratically. In Section 4, I outline three different Kantian views of the natural determinacy of property rights and articulate the scope for government involvement in the economy on each view. I argue that on any plausible Kantian view, there is considerable room for government involvement in the economy and so arguably also potential compatibility with Hussain's vision of intermediated capitalism.

## 2. Hussain's Arguments for Intermediated Capitalism

Here, I will articulate in greater detail two foundational issues with Hussain's arguments for intermediated capitalism. The first issue concerns the ideal of freedom at the heart of these arguments. The foundation for Hussain's arguments in *Living with the Invisible Hand* is a "Kantian ideal of mutual respect": as "free persons," we each have "a fundamental dignity that entitles [us] to guide [our] activities in light of [our] own practical judgments" (Hussain, 2023, p. 29). Hussain argues that this ideal of freedom is "one of several that inform our thinking about freedom," and he derives this broadly Kantian ideal of freedom from varied sources, drawing inspiration not only from Kant but also from Rousseau, Marx, Habermas, Scanlon, and Cohen (Hussain, 2023, p. 29). A virtue of Hussain's account is thus that it is arguably compatible with a wide range of views, offering an argument for intermediated capitalism that could be reconciled with any view that is committed to this ideal of freedom.

But it is not obvious that Hussain's conclusions follow, even within moral frameworks that value freedom of this sort. To start, if this is just one among several ideals of freedom, it does not follow that, as Hussain claims (Hussain, 2023, p. 29), our institutional order "must be" consistent with this particular ideal. If ideals of freedom come into conflict, securing one form of freedom might mean failing to secure another form of freedom. No reason is given for thinking that this particular form of freedom must be secured above all others. Furthermore, on a great many views, not only will freedoms conflict, but freedom will also come into conflict with other important values beyond freedom, such as welfare and equality. On such views, the balance of these values could favor trading off some freedom for the sake of other values. As it stands, Hussain's argument rests not only on

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valuing this Kantian freedom, but also on assuming that, all things considered, we are morally obligated to—we *must*—act consistently with this ideal. A Kantian theory of right can justify assigning freedom this supreme priority, as within this framework, freedom is the one foundational right from which a full and coherent system of right is derived.

However, a second issue remains, as Hussain does not adequately address a central point of disagreement with his opponents concerning the status of property rights. Many who would argue against intermediated capitalism would do so on the grounds that collective government of the economy violates persons' private property rights. Hussain argues in Chapter 2 for his indifference thesis, which holds that the "liberal ideal of a sphere of freedom for private individuals" does not play the "important role in determining the structure of economic life" that so many people take it to play (Hussain, 2023, p. 49). To justify this, Hussain (2023, p. 50) argues that a Rawlsian fully adequate scheme of basic liberties is indifferent between a variety of economic systems, and that securing these basic liberties does not entail "the full range of institutional powers associated with private property and exchange in a market economy."

However, this argument does not get traction against the view it targets. Those who take the liberal ideal of a sphere of individual freedom to play a key role in structuring economic life typically do so because they take property rights to be within that private sphere. To show that they are wrong, it is not enough to demonstrate that we could take a Rawlsian view of a sphere of individual freedom that does not include these rights. Instead, one must argue that this sphere of freedom *ought not* include these rights. This is a point Hussain (2023, p. 54) touches on only briefly, asserting that it would be implausible to prioritize property rights (a Rawlsian nonbasic liberty) over other basic liberties such rights would come into conflict with. Again, this merely asserts rather than argues that property rights are not fundamental. Hussain does argue that robust "neo-Lockean" property rights would be inconsistent with basic features of the way our legal institutions are structured, such as the fair use doctrine and the power to form corporations (Hussain, 2023, p. 54, 80). However, this still does not get traction against the opposing view, as opponents could agree that respecting natural property rights would require changes to our economic system, yet not see this as an undesirable consequence of their view (just as Hussain is happy to recommend extensive changes to existing practices of corporate governance).

In what follows, I give a Kantian account that addresses these issues, arguing that a Kantian theory of right leaves considerable scope for government involvement in the economy.

## 3. The Kantian Right to Democracy

Here, I begin by laying out the foundations of a Kantian theory of right. I then give within this Kantian framework an account of why democracy is justified and which decisions we have the right to make democratically.

### 3.1. The right to freedom

The ground of Kantian moral theory, including the theory of right, is a fundamental respect for each person's humanity.[1,2] Our humanity is our rational agency: as rational beings, we have the capacity to set ends for ourselves and pursue these ends through action (MM 6:239). Respecting others'

[1]I provide citations to Kant's work referencing the volume and page number of the standard German work: MM = *The Metaphysics of Morals*, translated and edited by Mary Gregor, in *Practical Philosophy*, Cambridge: Cambridge University Press (Kant, 1996).

[2]For an explanation of Kant's use of "morality" as a term encompassing all of practical philosophy, which breaks down into duties of right and ethical duties, see (MM 6:379). For an insightful discussion of the relationship between morals, ethics, and right in Kant, see Tomassini (2023). Importantly, though it is part of a broader Kantian moral theory, the Kantian theory of right is not perfectionist (Pallikkathayil, 2016).

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rationality entails treating them as the rational beings they are by respecting their governance of their own wills.

The domain of right concerns our relationships with one another in the external world: as embodied beings who live on a shared earth, we can constrain the bodies and choices of others. Within the Kantian framework, for our actions to be rightful, we must choose to act in ways that are compatible with the humanity of others—with others' rights to govern their own wills.

The right to freedom is thus the one foundational innate right within the Kantian framework: "[*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). Importantly, this right is not a right to independence from the choices of others, understood as something like a negative liberty or noninterference right to act however we choose.[3] Instead, this right is a right to govern *only* your own will: your right to exercise your own free choice does not include the right to govern the wills of others. The right to freedom is thus *relational*, delineating the boundaries of our rightful relationships with one another. This right to freedom is also *universalizable*: since each person has a right to govern only their own will, each person's right to freedom is fully compatible with the right to freedom of all others. The governing principle of a Kantian theory of right, the universal principle of right, in turn commands that each person's right to freedom be respected (MM 6:230).

As the one innate right, this universalizable right to freedom serves as the foundation for a full and coherent system of rights, where rights are not in conflict with one another.[4] Many essential rights within this system are determinate in virtue of innate right alone. At the most basic level, having the right to freedom also means having foundational rights to equality and self-mastery. As Kant explains, in having the right to govern our own wills, each of us also has the right to "innate *equality*, that is, independence from being bound by others to more than one can in turn bind them" (MM 6:238). We are all bound to one another, as we are all equally bound to respect one another's rights to govern our own wills. If one person were disproportionately bound to obey another's will, if people were made unequal under law, this would be inconsistent with the right of each to govern their own will. We can also articulate this right in terms of the innate right to self-mastery: if one person had the power to disproportionately bind the wills of others, they would be to that extent these others' master, which is again inconsistent with the right of each to govern their own will (MM 6:238).

This right to freedom also protects our rational capacities: our abilities to deliberate and choose what we do. Innate bodily rights, in turn, flow directly from our innate right to freedom and the reality of our existence in the physical world as distinct and fragile embodied mortal beings with the power to restrain, injure, and kill one another. Through our actions, we can destroy or inhibit others' rational capacities, thereby violating their right to freedom.[5] Murder is a paradigmatic example of a wrongful action of this sort, as this action destroys another person's very capacity to make choices for themselves. Other actions, such as drugging or otherwise incapacitating others, violate the right to freedom by inhibiting these others' capacity to make decisions for themselves. And since we exist in our bodies, injuring or restraining others' bodies also violates their right to freedom by undermining their rights to decide for themselves what they do in the world and how they do it.[6]

However, many of our rights, particularly those concerning our relationships to one another in the external world, are not determinate in virtue of innate right alone. Since we exist in the world

[3]For a comprehensive philosophical comparison between the Kantian and negative liberty conceptions of political freedom, see Love (2025b). See also Kisilevsky (2016), Rostbøll (2016, esp. 795–797), James (2016, esp. 302–306), and Ripstein (2009, 33, 42–43). The Kantian conception of rightful freedom also differs importantly from Pettit's neo-republican conception of freedom as non-domination; on this point, see Love (2025a, 2023).

[4]As Kant puts it, "a *collision of duties* and obligations is inconceivable" (MM 6:224).

[5]See Arthur Ripstein's account of the destruction of agency as one of two ways that the right to freedom can be violated (Ripstein, 2009, 43–45).

[6]This is not to suggest that all rights regarding our bodies and their components must be entirely determinate in virtue of innate right alone; for more on the complexity of our bodily rights, see Pallikkathayil (2019).

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together, we have to find a way to coordinate our activities in the world and structure our rightful relations regarding the objects in it. These indeterminate rights must be made determinate.

### 3.2. The right to equal democratic citizenship

Here, I argue that while innate right does not tell us what the content of these rights should be, it does tell us how they should be made determinate: decisions that structure our rightful relationships with one another must be made through equal democratic processes. It also sets limits on how we structure these rights: our decisions to structure our rightful relations to one another regarding the external world must be compatible with the innate right to freedom.

While rights such as bodily rights have their content in virtue of innate right, many rights are not determinate in virtue of innate right alone. The rights that are determinate are largely those that concern our relationships to one another as embodied beings: we must exercise our choice in ways that are compatible with the free exercise of choice of others, and doing so requires respecting the bodily rights of others. But it is also a feature of our peculiar existence that we share a world. We must coordinate our activities in this world: we must have some system that arranges our activities sufficiently to allow us to form expectations of what others will do which in turn enables us to act in the world without colliding with others. Our rightful relationships to one another regarding objects in the external world must also be specified. We must interact with the external world and the objects in it to survive. At the same time, everything we do and everything we interact with in the world affects others and constrains their activities. We must have some system of rights that makes it possible for us to rightfully interact with the external world, and so we must have some system of rights that defines the boundaries of our rightful relationships with one another regarding the external world and the objects in it.

To the extent that these rights regarding the external world are not determinate, they must be made determinate. How, then, can these rightful relationships be made determinate in a way that is consistent with our innate right to freedom?

Within a Kantian framework, our rights cannot be structured unilaterally (MM 6:257). Imagine if I were to unilaterally determine that only I have the right to use a particular object. Since within the Kantian framework, rights are essentially relational and so a right is a rightful relationship between people, in determining that I have this right regarding this object, I am structuring all others' rights as well: establishing such a right determines how others can rightfully interact with this object. In unilaterally structuring the rights of others, I unilaterally bind their wills, making myself the master of others in making this decision. This unilateral mastery is inconsistent with others' right to freedom, which is the right of each of us to govern *only* our own wills.

We must instead make these indeterminate rights determinate through an omnilateral will, a will representing the united will of all who will be governed by it. Only if we structure these rights together through an omnilateral will, representing all of us and representing us equally, can the imposition of these rights be compatible with our right to freedom. On this view, the state is that mechanism through which our wills are formally united, making it possible to omnilaterally adjudicate our rights, enforce our rights, and make indeterminate rights determinate.[7]

As prominent Kantians have persuasively argued, this right to have decisions that structure our rights be determined through an omnilateral will further entails a right to equal democratic citizenship.[8] To be compatible with the right to freedom, decisions that structure our rights must

[7] As Kant writes, "the condition in which the will of all is actually united for giving law is the civil condition" (MM 6:264). On the necessity of the state for omnilateral lawgiving, see Ripstein (2009, 145–181), Stilz (2009, 27–56), and Hodgson (2010).

[8] While the argument I offer here is not interpretive, the interpretive question of whether Kant endorses procedural democracy is disputed. More commonly, scholars argue that Kant did not endorse procedural democracy; see, for example, Hanisch (2016). Others take a more democratic reading of Kant; see, for example, Maus (1992) and Marey (2018). While Kant himself may not have viewed procedural democracy as required by the right to freedom, many Kantians argue that the right to freedom does entail such a right, regardless of Kant's own views. See, for example, Hanisch (2016), Rostbøll (2016), and Stilz (2009).

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be made through equal democratic processes: our right to self-mastery necessitates that we each take part in deciding how to structure our indeterminate rights, and our right to equality necessitates that we each take an *equal* part in making these decisions. This justification for democratic decision-making thus defines the proper scope for democratic decision-making:

> *Scope of democracy*: decisions that structure our rightful relationships to one another must be made through equal democratic processes.

At the same time, this Kantian account of democracy also includes rightful limits on what can legitimately be decided through democratic processes:

> *Limits of democracy*: democratic lawgiving must be compatible with the innate right to freedom.

In the first instance, these limits entail a constitutional system (or comparable equivalent) where our already determinate innate rights are properly understood to be outside the scope of democratic decision-making. The right to freedom, when reconciled with our material circumstances, entails a set of human rights belonging to everyone in virtue of their humanity. Rights to freedom of thought and conscience, the right to freedom of expression, our bodily rights, the right of equal protection of the laws, the right to take an equal part in making those decisions that structure our rights—all of these and more are human rights that must be secured by any legitimate system of government.[9]

Beyond requiring that these basic rights be outside the scope of democratic decision-making, this account also entails that the democratic decisions we do make must be consistent with these basic rights. For example, democratic lawgiving can and must legitimately arrange a system through which we can coordinate our movement in the world, specifying how we can rightfully get from one place to another. While this decision is within the legitimate scope of democratic decision-making, it must also be decided in a way that is consistent with our basic innate rights. A legal system that would be incompatible with these innate rights, such as a system that would violate the right to innate equality by denying a racial class access to our shared spaces, would violate the right to freedom and would therefore be impermissible.

So, this Kantian account of democracy offers a justification for and right to equal democratic decision-making while at the same time articulating fundamental rights that limit which decisions can be made democratically and what we can rightfully decide when we make these decisions. This Kantian account of democracy is thus distinctive among accounts of democracy in that both its justification for and limits on democracy have the same normative foundation: the right to freedom.[10] The Kantian framework thus offers a unified, coherent, and comprehensive account of democracy, where the right to equal democratic decision-making is both fundamental and limited to its legitimate domain and so compatible with all other fundamental rights.

## 4. Democracy and Economic Rights within the Kantian Framework

As human beings, we live and act in the world. We also act *on* the world: in living our lives, we obtain materials in the world, use materials to produce things and to live our lives, consume and destroy things, and transfer material goods back and forth between us. Economic rights encompass our rights to act on the world in these ways. We have innate rights to govern ourselves and our bodies, as acting in these ways often involves choosing to associate and collaborate with others. But insofar as

[9]For a general Kantian account of human rights, see Gilabert (2018). For an explication of the human right to democracy in particular that is compatible with a Kantian framework, see Gilabert (2020).

[10]As Hanisch (2016, 87) puts it, "*both* the normative non-optionality of democratic procedures and the very limits to be imposed on them are "equiprimordial," that is, both have their fundamental justificatory rationale in the *same* normative entity (the one innate right of humanity)."

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these actions involve objects or money, the abstract representation of external value, these actions go beyond innate rights—they are interactions not only with others but with the external world. Economic rights are our rightful relationships with one another regarding the external world, including rights to occupy and move in space; control, use, consume, and destroy objects; rights to produce and transform objects; and rights to transfer or alienate objects.[11]

Here, I investigate whether decisions structuring our economic rights, including those governing our economic system, are the sorts of decisions that we have the right to make democratically within the Kantian framework. Whether this is so depends on whether these rights are determinate prior to lawgiving establishing them—whether there are natural rights to property. This is an issue on which Kantians are divided. In what follows, I outline three different Kantian accounts of the natural determinacy of these rights, exploring the scope each view leaves for government involvement in the economy and assessing whether each view can support Hussain's arguments for intermediated capitalism.

### 4.1. View 1: The conventional view

According to one Kantian view, property rights are inherently conventional and property rights have no determinate content prior to positive lawgiving establishing them. Within the Kantian framework, rights are boundaries in our relationships with one another, specifying when our freely chosen actions can be united with the free choice of all others. Because rights concern our relationships with one another, the idea of a direct right to an object is incoherent within the Kantian framework: insofar as material objects are not sentient, freely choosing beings, our rightful relationships cannot extend to them.[12] So, a key insight of the Kantian framework is that a right regarding an object is and can only be a boundary in our relationships with one another. On this view, to say that I have a right regarding an object is to say that others will undermine my freedom to govern my will in acting on that object.

Rights regarding things in the world thus depend on the structure of our rightful relationships with one another. If, as argued above, there must be some rightful way that we can relate to one another in and regarding the material world, this just means that we must have a system of property rights, broadly understood. On this conventional view, there can be no rights of intelligible possession of objects—rights regarding an object that persist even when one is not in physical contact with that object—until those rights are established through omnilateral lawgiving. Innate right does set limits on how we can interact in the world; for instance, choosing to run through space that another occupies will violate their bodily rights. But since there are no rightful relationships with objects themselves, and since rights cannot be established unilaterally (as argued above), rights regarding material objects in the world must be established through omnilateral lawgiving.[13]

This view carves out a broad scope for democratic lawgiving in creating and regulating economic rights. If, as argued above, equal democratic processes are required for omnilateral lawgiving, then our economic rights must be made determinate through these equal democratic processes. What rights we establish are largely up to us. This Kantian view thus resonates with other views of the conventionality of property rights, in that it emphasizes that these rights are our creation.[14] While certain relationships with objects might exist before democratic lawgiving, these relationships lack

[11]These are the rights traditionally encompassed within the domain of private law (the law of property, contract, and tort).

[12]As Kant puts it, 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)

[13]Alan Brudner (2011) interprets Kant as having something like this view of property and private law in general, but he sees this as a reason to reject the Kantian view; importantly, Brudner does not account for the limits innate right places on legitimate property rights exposited here. I begin to lay the groundwork for a Kantian account of conventional property rights in Love (2020a).

[14]See, for example, Murphy and Nagel (2002).

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rightful force for the reasons given above. And while the need to establish rightful boundaries in our relationships regarding a particular object gives us a rightful claim that these rightful boundaries be determined and adjudicated, a provisional right of this sort has no substantive content that precedes the content we determine through democratic lawgiving.

But this Kantian view is distinctive among arguments for the conventionality of property rights in that it also includes rightful limits on what property rights the democratic will can establish. Since we choose which regime of property rights to establish, this choice, like every other choice, must be compatible with each person's right to freedom. So, in determining our regime of economic rights, we cannot rightfully choose to deny people access to the material conditions of freedom, which include resources required for basic human agency as well as resources required for equal democratic citizenship (Love, 2020b, 150–51). We also cannot permit inequalities that are so extreme that they undermine equal democratic processes. Furthermore, since we have the right to make economic decisions democratically, an economic system that is incompatible with making these decisions democratically will be impermissible. Beyond the substantial limitations of innate right, the choice of what property rights we establish is up to us—this Kantian framework carries with it no presumption of a strict egalitarian distribution of property.

***The conventional view and intermediated capitalism:*** We can now investigate whether this conventional view can ground Hussain's arguments for intermediated capitalism. Again, Hussain (2023, p. 201) argues for an intermediated capitalist economic system where democratic oversight of the economy through regulation and legislation is supplemented by the incorporation of democratic governance into corporate governance. With this system, representatives of worker, consumer, and environmental groups take direct part in governing corporations from within, as with the German codetermination system, where 50% of corporations' supervisory boards are constituted by worker representatives (Hussain, 2023, p. 199).

To start, this conventional view does ground key foundational premises of Hussain's argument. The conventional view shares the understanding of an economic system as a "governance system," as our economic system is established by the state to structure our rights regarding the external world and thus the actions we can rightfully take in the world (Hussain, 2023, p. 191). Additionally, the conventional view can explain why we have the fundamental right to democratic governance of the economy, as rights regarding the external world must be structured omnilaterally rather than unilaterally.

However, this conventional view arguably gives us good reasons to disagree with where Hussain goes from there. For Hussain (2023, p. 104), actual democratic governance of the economy is not required, and a "judgment-bypassing" economic system can be compatible with persons' Kantian freedom if it "operate[s] as an extension of their rational capacities" by being reason-sensitive, transparent, and trustworthy. But even if such a system of governance approximates what people would decide democratically, the rights it establishes are not structured through democratic processes. If we have the right to do this, then such a system violates our rights.

Many, including Hussain (2023, p. 79, 104, 149), assume that thoroughgoing democratic alternatives to capitalism are not feasible. Importantly, Hussain's argument does not go through if these alternatives are deemed infeasible because they would not be as "efficient" as capitalism. Within the Kantian framework, right cannot be traded off for considerations of efficiency. We would have the right to economic democracy even if this meant significantly reduced material abundance. If infeasibility instead means impossibility, then intermediated capitalism might be justified as the most democratic economic system possible. However, the empirical claim that thoroughgoing democratic alternatives to capitalism are impossible is difficult to justify, especially without a thorough investigation of these alternatives, such as participatory economics.[15] Even if we view profit-driven markets as a necessary feature of any workable economic system, this conventional

[15]See, for example, Hahnel and Wright (2016).

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view would still require the most democratic system possible, be that market socialism or, at the very least, more robust social democracy.

But even if the conventional view supports economic democracy that is more robust than intermediated capitalism, Hussain still offers crucial insight into how economic democracy should be structured. A key insight of *Living with the Invisible Hand* is that legislative and regulative democratic oversight of the economy will always be inadequate, as these measures "lag far behind market developments, often taking years or decades to respond to changes" (Hussain, 2023, p. 126). This considerable lag results from epistemic limitations posed by lack of access to the corporate boardroom, anarchic innovation beyond regulative and legislative limits, the challenge of mobilizing political will for countless changes in the market, and "genie in a bottle" issues, where an innovation, once instituted, cannot be undone (e.g., GMO crops) (Hussain, 2023, p. 126–129). Since any economic system, including self-governing firms, will face these same issues, Hussain's argument arguably extends to any decentralized economic system where firm activity is driven by individuals' preferences, from market socialism to participatory economics. So, while there are tensions between the conventional view and Hussain's arguments for intermediated capitalism, there is also much to be learned from their interplay.

### 4.2. View 2: The semi-determinate view

Another Kantian view of the natural determinacy of property rights takes a middle path between the conventional view sketched above and the robust natural rights view that will follow.[16] This semi-determinate view shares key commitments with the conventional view: on both views, rights regarding things in the material world are indeterminate prior to lawgiving establishing these rights; and on both views, the lawgiving that establishes these rights must be omnilateral to be compatible with each person's right to freedom.

But this view also differs from the conventional view sketched above. Most importantly, on this view, a *provisional* right to an object is possible before omnilateral lawgiving, and this provisional right has some content that determines the presumptive shape our rights should take when they are rendered conclusive through omnilateral lawgiving.[17] On this view, which is arguably closest to Kant's own views, original acquisition consists naturally in unilaterally asserting one's private power over an object before the claims of others.[18] The process of acquisition can begin before the existence of the state, but it can only be concluded—rendered conclusive—in the civil condition (Hasan, 2018; Stone & Hasan, 2022). Since original acquisition is private, the regime of property rights that is established will also be largely private.[19]

But on this view, there are still substantial limitations on when original acquisition can generate provisional rights. In order to establish a provisional right regarding an object, this right has to be something that could become a right within the civil condition; it is possession "in anticipation of and preparation for the civil condition," which must be consistent with omnilateral lawgiving in the civil condition and "accord with the *possibility* of such a condition" (MM 6:256-7). If, as argued above, equal democratic citizenship is an integral part of a state that respects and renders determinate our right to freedom, the economic system we institute must be compatible with equal democratic citizenship. So, even with a regime of private property, these institutions "must be

[16]Key proponents of this view include Weinrib (1995) and Ripstein (2009). See Varden (2024) for a helpful discussion of the features setting an interpretive view of this sort apart from the robust natural rights reading that follows (Varden identifies these views respectively as the liberal republican and libertarian interpretations); see also Varden (2020, pp. 187–214).

[17]This account is developed here as a philosophical view rather than as an interpretation of Kant. For more on interpretive issues concerning Kant's discussion of provisional right, see Hasan (2018), Messina (2019), and Stone and Hasan (2022).

[18]As Stone and Hasan (2022, p. 94) put it, the concept of property is "dominion with respect to an object," and "first possession" is property's "intrinsic principle of acquisition." For Kant's own account of original acquisition, see (MM 6:258-9).

[19]Ripstein (2009, p. 62), for example, argues that "anything less than fully private rights of property, contract, and status would create a restriction on freedom that was illegitimate." But see Stone and Hasan (2022, p. 86).

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organized so that they do not systematically create a condition of dependence" (Ripstein, 2009, p. 272). To be provisional, a right must be compatible with and contingent on state redistributive measures required to preclude these conditions of dependence.[20]

Importantly, this view limits the legitimacy of redistributive measures to preclude these conditions of dependence.[21] Like the conventional view, this semi-determinate view does not entail an egalitarian distribution of material resources. However, while on the conventional view property rights beyond the requirements of innate right are up to us to determine democratically, on this semi-determinate view, these further rights are private rights determined via the principle of original acquisition. So, while the conventional view arguably entails thoroughgoing economic democracy, the semi-determinate view entails a regulated system of private ownership.

***The semi-determinate view and intermediated capitalism:*** We might suspect that this semi-determinate view would be incompatible with Hussain's arguments. This view denies a foundational premise of Hussain's arguments, as it does not entail a right to structure economic rights democratically. Instead, on this view, our property rights have determinate content before democratic lawgiving, and these rights constrain how our economic system can be structured. On this view, contra Hussain, respecting the right to freedom would entail respect for natural property rights.

But the two views have more in common than it might at first appear. To start, this semi-determinate view is more compatible with the capitalist element of intermediated capitalism than is the conventional view. Further, while this view does not support a right to fully determine the content of our economic rights democratically, all property rights must still be compatible with innate right. Again, innate right arguably requires that we have access to the material conditions of agency and the basic socioeconomic resources required for equal democratic citizenship, and it also precludes economic systems that undermine equal democratic processes, such as those that permit extreme inequalities. This semi-determinate view thus requires oversight of the economy to ensure that these rights are respected. Since, as Hussain argues, the market always grows far beyond its regulative and legislative bounds, ensuring innate rights are respected would arguably necessitate some form of intermediated capitalism. While the purpose of affected parties' involvement in corporate governance would be to ensure rights are respected rather than to approximate democratic lawgiving, the resulting corporate structure could look quite similar.

### 4.3. View 3: The natural rights view

Some Kantians reject both the conventional and semi-determinate views of property rights, holding instead that there are robust natural rights to property. Here, I first introduce this view. I then argue that this view is incompatible with basic Kantian principles. From there, I argue that even if there were such robust natural property rights, extensive government involvement in structuring property rights would still be required by right. Finally, I argue that this robust natural rights view could be compatible with Hussain's intermediated capitalism.

***The natural rights view:*** On this third view, property rights are determinate prior to any positive lawgiving establishing them. This view, like the semi-determinate view, holds that the principle governing the establishment of property rights is original acquisition. This view also holds, like the semi-determinate view, that property rights naturally consist in full dominion over an object, including all of the incidents of ownership, such as rights of control, use, transfer, and so on.[22]

[20]For related arguments, see, for example, Pinheiro Pinheiro Walla (2019), Holtman (2018), Allais (2015), Varden (2006), Holtman (2004), and Weinrib (2003).

[21]This Kantian view can explain why "such programs as universal public education and health care" are required by right while "a more thorough equalization of benefits and burdens in general" is not (Ripstein, 2009, p. 267).

[22]As B. Sharon Byrd (2010, p. 106) argues, if I rightfully possess an object, "I can use it in any way I choose": "I can use a physical thing by keeping it as an object of art, using it for the purpose for which it was designed, using it in any other imaginative way, giving it away, lending it to someone, selling it, transferring it to my heirs on my deathbed. In short, I have all of the rights associated with an ownership right as long as I keep the thing under my physical control."

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The key difference between the semi-determinate account and this natural property rights account is that on this view, property rights are fully naturally determinate prior to positive lawmaking establishing them. B. Sharon Byrd and Joachim Hruschka offer an account explaining how such robust rights regarding objects can come into existence naturally (Byrd, 2010; Byrd & Hruschka, 2006). On this view, we must have the a priori idea of an "original community" sharing the earth, each with the innate right to occupy space on that earth (Byrd, 2010, p. 108). To conceive of this original community as a united will, this common will must have a "common goal," which must be "the good of the community" (Byrd, 2010, p. 109). Because we are dependent on the use of the world, the good of the community must include the possibility of divided rights in the earth in order "to avoid constant confrontation" (Byrd, 2010, p. 110). In unilaterally acquiring an unowned piece of land, I am executing this a priori united will, which makes my unilateral will rightfully binding for others (Byrd, 2010, pp. 109–110).

If property rights are naturally determinate, the role of the state no longer includes structuring our rights regarding objects in the external world. Instead, "the role of the state is simply to secure these rights, rights we have in the state of nature" (Byrd, 2010, p. 110). On such a view, these natural rights limit legitimate state action in the same way that innate rights do.

As a consequence, a proponent of such a view could extend Byrd and Hruschka's arguments to argue further that these natural property rights place hard limits on state regulation of the economy and redistributive measures. Recall that on the earlier two views of the determinacy of property rights, how we structure property rights is understood as a choice, and like any other choice, it must be consistent with each person's right to freedom. In contrast, on this third view one could argue that since the state does not choose how property rights should be structured, if these rights are inconsistent with certain material conditions of agency or equal democratic citizenship, this is an unfortunate natural state of affairs rather than a violation of anyone's right to freedom. It might seem, then, that this third view leaves little to no scope for government involvement in the economy.

***Tension with the Kantian theory of right:*** There are multiple Kantian grounds for rejecting the third view, which argues for robust natural rights to property within the Kantian framework. While one might object to the third view on textual grounds, arguing that it is not a plausible interpretation of Kant's own view,[23] I focus instead on the tension between this view of property rights and the basic principles of a Kantian theory of right.

Problems begin with the notion of an original community and the purported common good of this community being invoked as a justification for the creation of natural property rights. To start, if the common good of all were legitimate grounds for structuring our rights, this notion would presumably justify far more than the necessity of natural property rights. The good of the community would presumably also include measures necessary to preserve the continued existence of the state, including redistributive measures. We could also easily suppose that the good of the community would include redistributive measures beyond this minimum to facilitate effective equal democratic citizenship. If so, then these measures necessary for the good of the community would constrain the structure of the natural property rights that could be acquired.

But there is a bigger Kantian problem with this view: the structure of our rights being determined based on the common good of the community conflicts with the relational nature of rights within the Kantian framework. A person's right to freedom is violated when others choose to act in ways that are inconsistent with their governing their own will. Within the Kantian framework, the purpose of law is to determine, adjudicate, and secure this relational right to freedom, not to enhance our welfare.

Again, right is a relationship between each person's choice and the choice of every other. We wrong others when we choose to act in ways that violate their right to govern their own wills. Innate right pertains to just this rightful relationship between people as embodied beings in a shared world

[23]See, for example, Stone and Hasan (2022).

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whose actions can affect one another. Innate right does entail some rightful limits on our conduct regarding the external world and the objects in it: we violate someone's rights if we decide to occupy the space they occupy in the world or take what they physically possess without their consent. In both of these cases, these actions transgress the boundaries of another person's physical existence, inconsistent with their right to freedom. So, while innate rights can extend to objects that we are in physical contact with, such as the apple I hold in my hand, the rights we have regarding these objects are rights we have simply in virtue of our innate bodily rights.

A right to an object another person does not physically possess by its nature extends beyond innate right, as it extends beyond our relationships with one another as embodied beings. If we are not in physical contact with objects, our bodily rights do not extend to them. While some views conceive of a property right as a direct relationship between a person and an object, this idea is incoherent within the Kantian framework.[24] Rights govern relationships between persons' free use of their choice, and a right regarding an object will be an extension of our rightful relationships with one another. Innate right governs our relationships with one another as embodied beings, and acquired right extends this relationship to include objects we do not physically possess. If I have a property right regarding an object, I have the right to govern the use of that object specified by that property right, and anyone who acts inconsistently with my doing so violates my right. While innate right governs only our relationships with one another as embodied beings, acquired right, including property right, brings external objects into our relationships with one another, making it the case that we can violate another's right to govern their own will in the world simply by interacting with an object.

These acquired rights that extend beyond innate right cannot be established unilaterally. If I have the power to unilaterally decide that an object is mine, I have the power to structure everyone's rights without their having any say in the matter. I bring an object into our rightful relationships with one another, and I determine if and how you can rightfully interact with that object. In unilaterally structuring all of our rights, I make myself the master of everyone whose rights I structure. As argued in Section 3, this violates their right to freedom: each person has the right to take an equal part in making decisions that structure their rights.

A shared premise of arguments for natural property rights is that an individual can, through interacting with an object, bring into existence a right to that object that extends beyond physical possession. However, as we have seen, this premise is incompatible with a Kantian theory of right. One person's interaction with an object cannot create a natural right that brings objects separate from our bodies into our rightful relationships with one another because rights are relationships between people, not between people and objects. The choice to establish a right to possess an object that extends beyond physical possession would be a unilateral choice to structure the rights of others, and rights cannot legitimately be structured unilaterally.

***Natural property rights in the real world:*** Here, I argue that even if there were robust natural property rights within the Kantian framework, taking natural property rights seriously in our actual world would still require massive government intervention in the economy.

The reasons for this are relatively simple. Property rights in the world today are overwhelmingly the result of actions that should be understood to violate robust natural property rights. Slavery, serfdom, forced displacement, conquest, and unjust appropriation are the historical foundations of the property rights that exist today.[25] If original acquisition is the legitimate basis for natural property rights, then nearly all currently recognized property rights are illegitimate.[26] For example,

[24]See note 12 above.

[25]For an overview of how these actions have shaped both the property rights that exist today and how the structure of property law was constructed to support these actions, see Park (2022).

[26]As legal theorist Joseph William Singer (2011, p. 766) puts it, "[f]rom a moral point of view, conquest puts all current land titles in doubt."

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"title to land in the United States rests on the forced taking of land from first possessors—the very opposite of respect for first possession" (Singer, 2011, p. 766).

Respecting the original property rights that were previously violated to establish the rights we have today would therefore require a complete overhaul of property systems. If the role of government is to enforce and adjudicate our property rights as the natural rights view suggests, this overhaul of existing property rights must then be carried out by the government. The government would therefore have a huge role to play in identifying and restructuring property rights, and government intervention in the economy would be ubiquitous.

Robert Nozick, arguably the most prominent recent proponent of natural property rights and minimal government, recognizes this in arguing that his historical property rights view would need to incorporate a "principle of rectification" (Nozick, 1974, p. 152) to correct past violations of property rights, which might "require a more extensive state in order to rectify them" (Nozick, 1974, p. 231).

However, those who argue against government intervention in the economy often largely ignore these historical complications. While there are certainly practical reasons why one might not desire a complete overhaul of existing property rights, these reasons are incompatible with the very foundations of the natural property rights account. Views of this sort hold that property rights are established in virtue of one person's original acquisition of an object, and they also hold that this natural right carries with it rights of disposition and testamentary rights (if natural property rights did not include these incidents of ownership, there would already be significant scope for government involvement in the economy at the termination of any property right). The more a natural property rights view ignores history or makes excuses for past injustices, the harder it is to take that view seriously as a defense of natural property rights, and the more it gives the impression of serving as ideology that supports existing class structures by reinforcing the status quo distribution of property rights.[27] This worry is especially pressing considering the historical ideological role natural property rights views played in justifying the property rights that were formed through colonization, conquest, slave labor, and other grievous past injustices.[28]

Within the Kantian framework in particular, no welfare-based considerations could justify ignoring our natural rights. If natural property rights were established through original acquisition within the Kantian framework, a complete overhaul of the economy would be required to rectify these injustices.

***The natural rights view and intermediated capitalism:*** At first glance, this robust natural property rights view seems straightforwardly incompatible with Hussain's arguments for intermediated capitalism. Like the semi-determinate view, this view denies Hussain's foundational premise that democratic governance of the economy, or the closest approximation of it, is morally required. Further, natural property rights exist before democratic lawgiving and constrain government action. There are also no rights of access to socioeconomic resources on this view: since the overall distribution of rights is not a choice, it cannot violate rights.

However, as we have seen, even with this robust commitment to natural property rights, extensive state action would still be required by right to rectify past violations of natural property rights. We might think that broad redistributive measures would be the best way to rectify these injustices. But again, as Hussain argues, legislative and regulative measures will always lag years and even decades behind market activity. If we are required by right to ensure that these rectifying measures succeed, we might then argue that these rights must be represented within the corporate

[27]For a recent explication of Marx's famous account of ideology (Marx, 1845-Marx & Engels, 1847), see Edwards and Leiter (2024, pp. 150–193). On the ideological development and current ideological function of property law in particular, see Park (2022). For a challenge of liberalism in general and Kant's liberalism in particular as ideology, see Mills (2012); see also Varden (2024, p. 421).

[28]Locke's theory of property, for example, actively served to justify colonizers' property rights in land and to deny slaves rights to the land they labored on. See, for example, Park (2022, pp. 1100–1120).

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governance structure. So, even with the commitment to robust natural property rights that Hussain eschews, there is still potential for developing a compelling argument for intermediated capitalism.

## 5. Conclusion

Many simply assume that securing freedom entails a market economy that is as unregulated—as "free"—as possible. But what Hussain makes clear in *Living with the Invisible Hand* is that we have good reason to believe that a lack of regulation actually makes us dramatically less free. An advanced market economy governs our behavior in a judgment-bypassing fashion, not taking into account our own reasoned judgments concerning what we would choose to do. If we are to govern ourselves, to guide our own actions in light of our own judgments—if we are to be *free*—then we must govern together this complex social institution that governs our activities. In Hussain's view, an intermediated capitalist market system, which incorporates democratic representation directly into corporate governance, can render market governance compatible with this ideal of freedom as self-governance.

What we learn from considering the relationship between democratic self-government and economic rights within the framework of a Kantian theory of right is that there is, of course, much more to be said to determine what the Kantian right to freedom entails in this domain. Whether we have the right to structure economic rights democratically depends on whether there are natural rights to property. On the conventional view, Kantian freedom is incompatible with natural property rights, as the only innate rights we have are relationships between people, not between people and objects. While this view justifies the democratic structuring of economic rights, it also gives us a potential reason to reject Hussain's arguments for intermediated capitalism, as that system is arguably not democratic enough. At the same time, while we might suspect views that support natural rights to property would be incompatible with Hussain's arguments as they do not justify the democratic structuring of economic rights, they are arguably still compatible with an intermediated capitalist system, as this system is arguably necessary to ensure rights are respected.

While there is much more to be said concerning the relationship between the right to freedom and the economy, carrying out this inquiry makes it even clearer that freedom does not simply entail an unregulated capitalist economic system. As I have argued here, even with a robust commitment to natural property rights, extensive government involvement in the economy would still be entailed by the right to freedom.

**Acknowledgments.** I am grateful for the helpful feedback I have received on this project. Thanks especially to Sol Kim, Jonathan Gingerich, Japa Pallikkathayil, Allen Wood, Shawn Standefer, and a helpful referee with the *Canadian Journal of Philosophy*. I am also grateful to Waheed Hussain for *Living with the Invisible Hand*. Though I never had the chance to know him personally, I feel that I have gotten to know him well through engaging so closely with his work. I hope that others take the opportunity to do the same.

**S.M. Love** is an Assistant Professor in the Department of Philosophy at Georgia State University. Love's research focuses on developing accounts of property rights and socioeconomic rights within the Kantian theory of right.

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**Cite this article:** Love, S. M. 2025. Freedom, Democracy, and Economic Rights: A Kantian View. *Canadian Journal of Philosophy* 55: 53–67, doi:10.1017/can.2025.10035

https://doi.org/10.1017/can.2025.10035 Published online by Cambridge University Press