

Excerpt from “Poverty as External Unfreedom”

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IV

I have argued that the prevailing conceptions of poverty not only in the philosophical, but also in the social scientific and policy literatures face significant limitations. The welfarist view cannot redeem the thought that poverty is fundamentally a problem of frustrated basic wellbeing. The capability view, it is true, represents a significant advance over the welfarist. By taking its guidance from the thought that poverty is fundamentally a problem of frustrated wellbeing freedom, it allows us to see how freedom could be essential rather than accidental to what poverty is and why it is troubling. But it nevertheless fails, I think, to give us an adequate account of poverty. I have argued that this failure is ultimately rooted in a failure to recognize the distinctively social nature and significance of the phenomenon.

In the remainder of the paper, I develop a conception of poverty that addresses the limitations of the prevailing views while building on some of their insights. The inspiration for this view has been the recent revival of scholarly interest in Kant’s political philosophy, particularly in the *Doctrine of Right*, the first part of his *Metaphysics of Morals*.¹ Those who have studied that text systematically have offered us some alternative ways of interpreting Kant’s conception of poverty.²

My aim in this and the following section will not be exegetical. I will draw from Kant and Kant’s interpreters to develop a view of the nature and normative significance of poverty that can overcome the limitations of the welfarist and capability views. But I will also argue that there is a way in which the Kantian view is too narrow. The view I will ultimately defend in section VI is thus Kantian in inspiration, but far from true to the letter of Kant’s writings or to any interpretation thereof on which I will be relying.³

¹ No single work has done more to encourage this revival than Arthur Ripstein, *Force and Freedom: Kant’s Legal and Political Philosophy* (Cambridge: Harvard University Press, 2009). For another recent and influential commentary on the *Doctrine of Right*, see B. Sharon Byrd and Joachim Hruschka, *Kant’s Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010). The references below are to Immanuel Kant, *The Metaphysics of Morals*, in *Practical Philosophy*, trans. and ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 354-603. I follow the convention of providing volume and page numbers to the *Akademie* edition of Kant’s works rather than to the translation.

² Though I differ from them in some important ways (discussed below), the interpretation of Kant’s conception of poverty I offer in this and the next section relies substantially on Ripstein, *Force and Freedom*, 267-86 and Helga Varden, “Kant and Dependency Relations: Kant on the State’s Right to Redistribute Resources to Protect the Rights of Dependents,” *Dialogue* 45, no. 2 (2006): 257-84 and “Patriotism, Poverty, and Global Justice: A Kantian Engagement with Pauline Kleingeld’s *Kant and Cosmopolitanism*,” *Kantian Review* 19, no. 2 (2014): 251-66. I have learned a great deal about the limitations of this school of interpretation from Rafeeq Hasan, “Freedom and Poverty in The Kantian State,” *European Journal of Philosophy* 26, no. 3 (2018): 911-31.

³ The sort of view I develop on the basis of Kant’s political philosophy could also be developed on the basis of a Philip Pettit’s competing republican theory. In scattered passages in *On the People’s Terms*, Pettit suggests that we could understand poverty, on his view, as a kind of domination. But even more so than Kant and his interpreters, he does not attempt to develop a precise conception of poverty on the basis of that insight, or to defend its merits against competing conceptions. See

Kant's central insight is that poverty has to do, not so much with facts about our material circumstances, but rather with facts about how social norms structure our material circumstances. For Kant, to be poor is fundamentally to stand in certain norm-governed relationships. According to this approach, absent systems of social norms governing the use of material resources, there is no poverty, though there can well be material deprivation, and, as a result, wellbeing or capability deprivation. It is the same with being poor as it is with being "offside" in soccer. A person can stand in a certain position on a soccer pitch relative to others, but that, as such, does not make her offside. Only in the context of an ongoing game of soccer can a player, by standing in such a position relative to other players, be offside. Similarly, a player who is offside in the context of an ongoing game is not prevented from physically receiving the ball and kicking it into the goal. But if she is officially offside, what she does fails to count as scoring a goal.

For Kant, the norm-governed social context that first makes poverty possible is the legal institution of property.⁴ Before we can see what the connection between poverty and property is, on the Kantian view, we first have to understand something about the nature of the latter. Property appears, at first sight, as a relationship between individuals and external objects.⁵ To say that I own an external object is, typically, to say that I have an exclusive right to use it in permissible ways. But this just means that I am entitled to prevent everyone else from using it without my permission. Or, more precisely, I am entitled to call upon the state to prevent others from using my external objects in ways I have not authorized. So property is not a relation between individuals and external objects after all. It is rather a norm-governed relation between people with regard to the use of external objects.⁶

According to Kant, the connection between poverty and property is this: Poverty is possible because a certain sort of property regime is actual. To specify relevant class of property regimes, it helps to begin by imagining what I will call a 'pure' regime of private property. This would be a legal system in which it would be permissible for every external object to be privately owned, and in which no one has any legal obligation to exchange anything she owns or to allow anyone else to use it.⁷

Now suppose that every external object in a pure regime of private property is in fact owned. In this case, it is only possible to acquire an external object from someone who already owns it, either through gift or exchange. Similarly, it is legally permissible to use an external object one does not own only with the consent of its rightful owner. But many of the resources necessary to achieving basic capabilities are external objects. So, if it is possible for every external object to be privately

Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), 87, 112.

⁴ See Varden, "Kant and Dependency Relations," 270 and Ripstein, *Force and Freedom*, 282. I understand 'property' in a capacious sense here. Included are not only arrangements in which a single individual may enjoy the exclusive right to use and otherwise administer external objects ("private property"), but also arrangements in which groups (e.g. worker cooperatives, municipalities, states) may enjoy such a right ("collective property").

⁵ For our purposes, an 'external object' is any physical object that is not a person. For example, it could be something movable, like a chair, or it could be something immovable, like land. Kant uses this and related terms to refer more broadly not only to physical objects, but also to performances by other persons, and to one person's status in relation another (see Kant, *Metaphysics of Morals*, 6:245-8). These further senses of the term need not concern us.

⁶ Kant, *Metaphysics of Morals*, 6:260-1.

⁷ See Ripstein, *Force and Freedom*, 243-4.

owned, it is possible for someone to fail to have access, within the bounds of the law, to a sufficient share of those resources. How exactly this comes to happen is not important for our purposes.⁸ What is important is that, in a pure regime of private property, whether or not those who lack ownership in a sufficient bundle of resources can achieve basic capabilities while remaining in full compliance with the law depends entirely on the good will of other private persons.

This crucial feature of a pure regime of private property is not unique to it. The possibility that compliance with the law will render an individual dependent on the good will of others can also arise in a system of collective ownership, so long as it is possible within that system for individuals to come to lack personal property or usufruct rights over a sufficient bundle of resources. What is essential for the Kantian view is not that resources can be owned privately *by* individuals but rather that individuals can fail to have legal entitlements to sufficient resources and thereby come to depend on the private will of an individual or group.⁹

For Kant, poverty just is the actualization of this possibility.¹⁰ We can state his view in the following way:

An individual is in poverty just in case (i) she is in a context in which the use of material resources is regulated by a property regime and, (ii) in that context, she cannot both legally and independently achieve basic capabilities to minimally adequate levels because she lacks legal entitlements to a sufficient bundle of assets.

Two clarifications about the Kantian conception are in order. First, Kant thinks of poverty in terms of what he calls individuals' "most necessary natural needs,"¹¹ suggesting perhaps that he would characterize the normative threshold in terms of the satisfaction of basic needs rather than the achievement of basic capabilities. But his criticisms of poorhouses and support for a poverty remediation policy of cash transfers¹² suggest that the normative threshold for him is not merely the legal entitlement to the satisfaction of one's basic needs, but rather sufficient legal independence with regard to whether and how to exercise the ability to satisfy one's basic needs. His view is therefore best understood as having absorbed the lesson that *the Ascetic* is meant to teach us and which Sen has rightly emphasized.

Second, contrary to what his interpreters sometimes suggest,¹³ Kant could not plausibly insist on the currency of poverty being a direct legal entitlement to a sufficient bundle of material resources. That would entail that every person with a sizable savings account who runs out of food has suddenly fallen into poverty. Kant therefore needs a currency that is further removed from the normative threshold. We have seen that sometimes money is proposed as the currency, but this is not a plausible further currency to settle on. As one of the proponents of this choice of currency recognizes, ownership over other non-monetary assets would sometimes be sufficient to secure

⁸ Though it may, for all I have said, be relevant to answering questions about responsibility for poverty remediation.

⁹ I thank one of the Associate Editors of *Philosophy & Public Affairs* for pressing me to make this feature of the Kantian view explicit.

¹⁰ Cf. Ripstein, *Force and Freedom*, 274 and Varden, "Kant and Dependency Relations," 270. Neither Ripstein nor Varden provide a precise Kantian theory of the nature of poverty. What follows is my attempt to offer such a theory in accordance with the schema I defended in section I.

¹¹ Kant, *Metaphysics of Morals*, 6:326.

¹² Kant, *Metaphysics of Morals*, 6:367.

¹³ See, for instance, Varden, "Patriotism, Poverty, and Global Justice," 260, 265 (en. 6).

access (e.g. through barter) to a sufficient bundle of material resources.¹⁴ So we need a more general currency than money. Assets, I think, exhibit the right level of generality. They can encompass things like land or cattle, but also more abstract financial instruments like stocks or bonds. As I use it here, the term should also be understood to encompass what economists call “human capital.”

The Kantian conception of poverty gets the right verdicts in all the cases we have considered so far. Luis Alejandro, the castaway, is not poor, because he does not meet the first condition. He is not in a context in which the use of material resources is regulated by a regime of private property. He is like a person standing in an “offside” position when there is no soccer game taking place. Gilberto, the kidnap victim, is also not poor, because he fails the second condition. He is in the right sort of norm-governed context, but his inability to achieve basic capabilities to minimally adequate levels is not attributable to his failure to own a sufficient bundle of assets. It is behavior by others in contravention of existing legal norms, and not behavior that is perfectly consistent with them, that gives rise to his situation. For similar reasons Sunny, the ascetic, is also not poor. She owns a more than sufficient share of material resources, even if she chooses not to avail herself of them. Finally, Thaddeus, the subsistence farmer, is poor because he meets both conditions. He is in a context in which the use of material resources is regulated by a regime of private property, and, in that context, he lacks ownership of sufficient assets to achieve basic capabilities both legally and independently. If he manages to escape basic capability deprivation, and, consequently, basic wellbeing deprivation, it is either (in the standard case) because legal access to the additional resources he needs is afforded to him by the generosity of their owners, the Millers, or (in the modified case) because he is adept enough at stealing them without detection or reprisal.

V

The Kantian conception of poverty does not just outperform its competitors in terms of empirical adequacy. It is also driven by a compelling account of the normative significance of poverty. In contrast to the welfarist and capability views, that account offers us an adequate explanation of the fact that people living in poverty identify dependence, powerlessness, and voicelessness as core features of their condition. It also explains the indignation characteristically felt by those living in poverty.

According to Kant, each of us has an innate right to external freedom. To be externally free is to be independent of the choices of others with regard to the projects we pursue in the world.¹⁵ But dependence on the choices of others is unavoidable for embodied beings like us. The projects we pursue in the world require interaction with external objects and with other people. If my project is to sit alone on a park bench, I am dependent upon the choices of anyone whose project is to sit on that very bench. If my project is to throw a dinner party, I am dependent upon the choices of those whom I have invited. For this reason, the innate right to freedom does not afford each of us unlimited independence from the choices of others with regard to the projects we pursue in the world. That would be impossible. Rather, it affords us whatever independence from the choices of others is consistent with the same independence being afforded to all. Kant calls this constraint the “universal principle of right.”¹⁶

My park bench and dinner party examples hopefully show that there is nothing problematic as

¹⁴ Cohen, “Freedom and Money,” 181-4.

¹⁵ Kant, *Metaphysics of Morals*, 6:237. For discussion, see Ripstein, *Force and Freedom*, 31-9 and Varden, “Kant and Dependency Relations,” 261-2.

¹⁶ Kant, *Metaphysics of Morals*, 6:230-1.

such with depending on the choices of others with regard to our projects. What is problematic are circumstances in which some individuals are dependent on the *arbitrary* choices of others. This happens whenever legal norms make me dependent on your choices in a way in which you are not, in turn, dependent on my choices.¹⁷ When this happens, the external freedom afforded to you in those circumstances is not consistent with the same external freedom being afforded to me. In other words, such circumstances violate the universal principle of right.

Suppose we were in a context in which there are no legal institutions whatsoever, and thus no laws governing the use of external objects. Kant calls this a “state of nature.”¹⁸ In a state of nature, each of us would be dependent on the choices of everyone else with regard to the pursuit of almost any project that involves the use of an external object. We can see this by expanding one of Kant’s examples.

Suppose Leonardo is in a state of nature, and he plucks an apple from a tree. So long as he has his hand around the apple, no one may permissibly take it from him. The reason is that, in order to do that, they would have to move his body. But the universal principle of right guarantees each of us, at a minimum, the right to stop anyone from interfering with our bodies.¹⁹ So no one can be entitled to use an individual’s body in the pursuit of projects to which that individual does not consent. For that reason, no one is entitled to interfere with Leonardo’s eating the apple, for instance, since doing so would require interfering with his body.

But now suppose that, instead of eating the apple, Leonardo wants to pursue a more complex project, like making a painting of it. His pursuit of this sort of project makes him dependent on the choices of everyone else. The reason is that, in order to paint the apple, he has to put it down somewhere. But, as soon as he puts it down, anyone else is entitled to take it. After all, there is no property in the state of nature, and taking it will not interfere with Leonardo’s body. So, in order to paint the apple, Leonardo has to hope that no one has a project involving that apple that conflicts with his.

Everyone in the state of nature is in the same position as Leonardo. Each depends on the choices of others to be able to pursue any project involving the use of external objects. But the satisfaction of most, if not all, of our basic needs is just such a project.²⁰ It follows that, in a state of nature, our achievement of basic capabilities is dependent upon the choices of others, but our dependence in this regard is reciprocal.

Matters are very different if, instead of living in a state of nature, Leonardo is a member of a state that guarantees him the possibility of property rights in external objects. In this context, Leonardo may own (or have usufruct in) the apple he wants to paint. He would then be entitled to prevent others from interfering with his permissible projects, like painting. Owning the apple thus

¹⁷ Kant, *Metaphysics of Morals*, 6:237-8. I here follow Varden’s conception of arbitrary dependence. See “Kant and Dependency Relations,” 263.

¹⁸ Kant, *Metaphysics of Morals*, 6:306. In this and the following two paragraphs, I follow the interpretation in Kyla Ebels-Duggan, “Moral Community: Escaping the Ethical State of Nature,” *Philosopher’s Imprint* 9, no. 8 (2009): 2-4.

¹⁹ Kant, *Metaphysics of Morals*, 6:247-8. Innate rights are those we have us by nature, independently of any deed we have performed (6:237). It follows that we have innate rights in our natural means for setting and pursuing ends—our mental and physical powers. See Ripstein, *Force and Freedom*, 176-7.

²⁰ Not all the means to satisfying our basic needs are external objects. But the means to satisfying some of our core basic needs are, especially those pertaining to nutrition, hydration, and shelter. Furthermore, the means to satisfying basic needs like literacy typically require the use of external objects.

affords Leonardo a space wherein to pursue certain projects that involve the use of external objects, free from dependence on the choices of others. In particular, if Leonardo owns a bundle of assets sufficient for being able to satisfy his basic needs, he is independent from the choices of others with regard to achieving basic capabilities.²¹

Kant's insight is that not everyone in a property regime would be in the same position as Leonardo. For ease of illustration, consider again what I earlier called a 'pure' regime of private property. As we have seen, this social arrangement makes it possible for some to fail to own a sufficient bundle of assets. When this possibility is actualized, compliance with the law makes these people dependent on the choices of others with regard to their ability to satisfy their basic needs.

Unlike in a state of nature, dependence is not reciprocal in this case. If, in a pure regime of private property, I want to fell my apple tree but own no axe, I am dependent on the choices of axe owners in order to pursue my project. But they, too, are dependent on my choices for the pursuit of any project requiring anything I own.²² But if I own nothing and you own the external resources I need to be able to satisfy my basic needs, I am *intolerably* dependent on your choices,²³ since almost

²¹ Owning external resources sufficient for legally and independently achieving basic capabilities does not entail that Leonardo will, in fact, achieve those capabilities. He might, like Gilberto, the kidnap victim, fail to do so on account of the illegal actions of others. But it is important to emphasize that the existence of legal norms guaranteeing individuals the ability to pursue certain projects cannot radically come apart from those individual's effective ability to pursue those projects, at least where the interference of others is concerned. Where there is no generalized compliance with a putative norm there is no actual norm in place (cf. Hart, *The Concept of Law*, 55). It follows that if there is an actual legal norm in place, then an individual's ability to do whatever the law permits is not generally constrained by the actual or expected interference of others.

²² This reveals the importance of assets to the understanding of poverty. Barring extremely monopolistic market contexts, if I own sufficient money and you own more bread than you need, I am roughly as dependent on you for the bread as you are on me for the money. Similarly, if I have desirable skills and you and your partners' productive venture requires them, you are roughly as dependent on me for my services as I am on you and your partner for the income. The economic ideal of competitive markets is seldom, if ever, achieved, but if it were it would constitute what Hegel called a "system of needs": a normative order in which each market participant depends reciprocally on the others for the ability to satisfy his or her needs (*Philosophy of Right*, §§188-9).

The market contexts with which people in poverty must contend are seldom, however, competitive—one of the reasons it has frequently been noted that it is "expensive to be poor." Moreover, in many contexts (certainly not just in the developing world), having no capital and low skills makes individuals vulnerable to laboring for "poverty wages." This helps explain, I think, why, as the authors of *Voices of the Poor* report, in defining poverty, "poor people speak extensively about assets and much less about income" (Narayan et al., *Voices of the Poor*, 51).

²³ Ripstein says that the poor person is "entirely subject to the choice of another" (*Force and Freedom*, 279). Similarly, Varden claims that the poor person is "absolutely subjected to the choices of the rich" ("Kant and Dependency Relations," 280, n. 22). Both, I think, wrongly imply that the Kantian view would exclude many cases we would, pretheoretically, regard as clear instances of poverty.

It is true that, as Ripstein claims, in a pure regime of private property, the person who lacks a legal right to be somewhere would be completely dependent upon the choices of others (*Force and Freedom*, 280). There is no project she could physically pursue that does not involve either staying in place or moving about. If she has no right to be somewhere, she depends completely upon the owner of the space she necessarily inhabits or moves into.

any project I might undertake is conditional on the ongoing project of satisfying my basic needs.²⁴ The external freedom afforded to property owners in these circumstances violates the universal principle of right, for it is not consistent with affording the reciprocal external freedom to all. The fundamental problem with poverty is thus that it is a form of external unfreedom to which our nature as embodied, needy beings makes us vulnerable.

Notice that this problem does not necessarily arise in every property regime. It would not arise, for example, in one that guaranteed each individual a minimum share of property sufficient for achieving basic capabilities. Such a regime would rule out the possibility that anyone could become dependent on the arbitrary choices of others on account of her basic needs.²⁵

Unlike the welfarist and the capability views, the Kantian view can account directly for what is problematic about the condition Thaddeus, the subsistence farmer, finds himself in. Recall that Thaddeus does not lack basic wellbeing nor fail to achieve basic capabilities. The goodwill of the Millers ensures that he has access to the resources he needs to be able to supplement his diet and cover other basic needs. But Thaddeus is poor, and his situation is troubling. The reason is that he is dependent upon the arbitrary choices of the Millers. The generosity of his neighbors is the only legal way he has for gaining access to additional resources he needs to achieve basic capabilities to adequate levels. Thaddeus is, for this reason, externally unfree in a way no person ought to be.

If we understand the normative significance of Thaddeus's poverty in this way, it should not be

It might even be true that, unless, in addition to a right to be somewhere I own at least some external object or other, I will be dependent upon the arbitrary choices of others in a way that they are not dependent upon my choices. Otherwise, as Varden suggests, there would be a class of projects with regard to which I depend on others (projects involving the use of external objects) but they do not in turn depend upon me ("Kant and Dependency Relations," 270).

But this is simply too low a level at which to set the normative threshold for poverty (on this point, cf. Hasan, "Freedom and Poverty," 919). Any legal system that afforded all individuals a legal entitlement to property in 5 square feet of land and a lollipop would, on this view, prevent poverty from ever arising. But that, I submit, is an absurd conclusion. What this shows is that, just as much as the welfarist and capability views, the Kantian view must rely on expert judgment, democratic decision, or some other means in order to determine the exact operational level of the normative threshold. A philosophical argument will not do that for us, and that is as it should be.

²⁴ Some projects, such as the ascetic's, involve depriving oneself of the satisfaction of one's basic needs. But rightfully pursuing this project in a pure regime of private property would require ownership of resources. One cannot not count as depriving oneself of that to which one has no access. Starving and fasting are not, as Sen reminds us, the same thing ("Capability and Well-Being," 40).

²⁵ More work needs to be done to specify the class of property regimes that would, on the Kantian view, afford the requisite level of independence to individuals with regards to the achievement of basic capabilities. What should we say, for instance, about legal systems that leave welfare entitlements to the vagaries of ordinary politics rather than incorporating them as basic constitutional guarantees? I believe that the Kantian view ought to exclude such regimes from the relevant class. But saying exactly why that is requires defending an interpretation of the crucial, though far from transparent distinction Kant makes between the *private* will of individuals or groups and the *public* (or "omnilateral") will embodied by the assemblage of legal norms and official powers capable of establishing a regime of equal freedom among members of the legal order (i.e. the "state"). See Kant, *Metaphysics of Morals*, 6:263, 301. I thank one of the Associate Editors of *Philosophy & Public Affairs* for pressing me to flag the importance of this difficult issue to the present discussion.

surprising to us, as it was to the authors of *Voices of the Poor*, that people in poverty single out dependence, powerlessness, and voicelessness as core elements of their condition. That it is exactly what we should expect. It should also not be surprising to us that poverty is characteristically met with indignation by those suffering from it. The basic normative intuition underlying the universal principle of right is that each of us has an innate right to be his or her own master.²⁶ A system of norms governing the use of material resources which is consistent with poverty declares that some are, very often through no fault of their own, to be the servants of others. The appropriate reaction to finding oneself in this situation is to feel indignation, even if as a matter of fact one manages somehow to secure access to the needed resources.

VI

I have argued that the Kantian conception of poverty overcomes the problems that plague its welfarist and capability counterparts. It adequately captures the distinctively social nature of the phenomenon and gets all the right verdicts about the cases that we have examined so far. But, more importantly, it is driven by a more compelling account of the normative significance of poverty, one that can explain why the subsistence farmer's poverty is troubling, why dependence, powerlessness, and voicelessness are at the forefront of poor people's thinking about the condition they face, and why indignation is one of their characteristic and appropriate reactions to that condition.

Despite these strengths, the Kantian conception has limitations of its own. To show this, I articulate a counterexample to the view. I then argue that the Kantian conception can absorb the lesson of this counterexample by broadening the scope of norms governing the use of resources that it takes to be material to the existence and significance of poverty.

Let me begin, then, with the counterexample:

The Scion. Eric is the adult child of a wealthy businessman. Content to live off his father's wealth, he has never pursued a career of his own or acquired any independent wealth at all. As a result, every luxury apartment he sleeps in, every Michelin star restaurant meal he has, every medical treatment he undergoes, and so on, either belongs to or is paid for by his father. It is by staying in his father's good graces that he is able to achieve basic capabilities to adequate levels, not to mention maintain his lavish lifestyle.²⁷

Eric, it would seem, meets both of the conditions of the Kantian account of poverty. He is in a context in which the use of material resources is governed by a regime private property. Moreover, though he achieves basic capabilities to more than adequate levels, he cannot do so independently because he lacks property in a sufficient bundle of assets. As far as the legal entitlements are concerned, he depends on the good will of his father in order to make use of resources he does not own. It seems, therefore, that a partisan of the Kantian account must conclude that Eric is living in poverty. But Eric, it seems, is not poor.

A defender of the Kantian view can push back against this sort of counterexample. Her response, as I imagine it, goes something like this. *The Scion*, the defender claims, is underdescribed. Once we supply the adequate level of description, she assures us, we will conclude that either of two

²⁶ Kant, *Metaphysics of Morals*, 6:237-8. See Ripstein, *Force and Freedom*, 35-6.

²⁷ This particular counterexample was suggested to me by XXX. A counterexample in the same vein had earlier been suggested to me by XXX. I thank both of them, and XXX, for pressing me to think through the limitations of the Kantian conception I develop in sections IV and V.

things is the case: that Eric is in fact poor, or that the Kantian view does not imply that he is.

The description of the scion's situation is thin on details about the sort of social context he inhabits. If Eric inhabits a pure regime of private property, then his situation is perhaps not so different in the relevant respects from that in which Thaddeus, the subsistence farmer, finds himself. Were Eric to fall from his father's graces, he would not be able to both legally and independently achieve basic capabilities to adequate levels, the same fate that awaits Thaddeus could he no longer count on the good will of the Millers. But then, the defender of the Kantian view urges, it is not so clear that Eric is not poor.²⁸ By analogy, the person who is evicted and must crash for a few days at a coworker's house remains homeless, no matter how luxurious the coworker's house happens to be.

Alternatively, we might imagine that Eric inhabits an industrial society with a modern welfare state. In that case, it is not implausible to think that he is legally entitled to housing assistance, income support, and other basic resources merely as a matter of his membership in good standing in his legal order. But then the Kantian view does not entail that Eric is poor. If Eric's welfare entitlements may be counted among his assets,²⁹ and if (perhaps too optimistically) we are imagining these to be sufficient, then we were imagining him in a context in which his assets allow him to achieve basic capabilities with a sufficient degree of legal independence.³⁰

The Kantian's analysis of *the Scion* is, I think, unresponsive to the intuition that drives the critic. What she misses is the fact that its force as a counterexample is not meant to be predicated on a disanalogy between the Eric's and Thaddeus's legal contexts. Rather, it is meant to be predicated on a disanalogy between Eric and Thaddeus's broader social contexts—contexts that are constituted not only by legal norms, but also by non-legal ones.

To appreciate the force of the counterexample, we have to appreciate that non-legal social norms govern our use of resources not only alongside, but sometimes even in tension with, legal ones.³¹ As an example, consider the "parking dibs" practice in Chicago and other American cities. According to this practice, individuals who shovel out a snowed in parking spot on a public street directly in front of their house have what we might call a 'social entitlement' to exclusive use ("dibs") over that parking spot so long as the street remains snowy. Though shoveling out the spot gives nobody an exclusive legal right of this sort, in some neighborhoods parking dibs is a robust social practice, one that is enforced in a decentralized way by means of informal sanctions, some legal, some not so much.³² The claim that I have dibs in this spot I have just shoveled out is thus not

²⁸ Indeed, in a way he might be in deeper poverty than Thaddeus, who manages to legally and independently achieve at least some level of basic capabilities by toiling on land that he owns.

²⁹ In *Poverty and Famines*, Sen argues that welfare entitlements ought to be counted as part of what he calls an individual's "exchange entitlements" (6-7).

³⁰ Between a pure regime of private property and a regime of private property with sufficient and publicly guaranteed welfare entitlements there are, of course, a number of possibilities, including many actual legal systems. The proponent of the Kantian view need not deny this. Her strategy, as I imagine it, is rather to weaken our confidence in the judgment elicited by the counterexample by relying on Weberian ideal types to which actual cases might be assimilated.

³¹ For a classic study of this phenomenon, see Robert C. Ellickson, *Order Without Law: How Neighbors Settle Disputes* (Cambridge: Harvard University Press, 1991). Carol Stack offers a rich ethnographic description of how social norms governing the use of material resources operate within and help constitute kinship networks within a poor urban community in the American Midwest. See Carol Stack, *All Our Kin* (New York: Basic Books, 1974), esp. 32-44.

³² "Life, Liberty and the Pursuit of Parking," *The Economist*, February 24, 2018, 24, <https://www.economist.com/united-states/2018/02/22/life-liberty-and-the-pursuit-of-parking>.

a mere normative judgment with no social force: it is the application, to my situation, of something that bears all the distinctive marks of a Hartian duty-imposing social norm.³³

I propose that the reason we judge that Thaddeus is living in poverty, while we judge that Eric is not, has to do with non-legal social norms of this kind. By stipulation, there is no social norm in Thaddeus's context giving him a social entitlement to some of his neighbor's property whenever his legal assets are insufficient for him to achieve basic capabilities. Were such norms to exist, it is arguable that Thaddeus would not be intolerably dependent on the arbitrary wills of the Millers. The non-legal norms would afford him social independence, even though the legal norms would leave him dependent in a situation in which they were operating in isolation from other norms. As things stand in the actual case, however, whether to provide Thaddeus with access to the needed resources is normatively—both legally and otherwise—completely up to the Millers.³⁴

We judge Eric not to be poor because his context is unlike Thaddeus's in precisely this respect. Whereas neither legal nor non-legal social norms afford Thaddeus the requisite level of independence from the choices of others with regard to his achievement of basic capabilities, Eric can plausibly be thought to enjoy the protection of robust non-legal norms governing the distribution of resources among parents and their children. To wield arbitrary power over one's son—even one's admittedly lazy son—and to allow others to do so as well by denying him access to the means required to achieve basic capabilities would, in many social contexts, be met with reproach and other informal sanctions. Eric therefore enjoys a sufficient measure of social, even if not legal, independence with regard to the achievement of basic capabilities in a way Thaddeus does not.³⁵

My diagnosis of *the Scion* will, I hope, have a familiar ring to social scientists specializing on poverty measurement. As mentioned in section I, poverty measurement has standardly taken the household³⁶ as the unit of analysis, even when it is individual poverty that is being investigated.³⁷ One important assumption underlying inferences from households to individuals in research that

³³ Hart, *The Concept of Law*, 85-8.

³⁴ Of course, there might well be social contexts in which neighbors have such an obligation, under threat of reputational and other informal (but not, for that reason, any less effective) sanctions. Such a context attains among members of kin-based networks residing in the urban community Stack describes. She says that “despite the relatively high cost of rent and food in urban black communities, the collective power within kin-based exchange networks keeps people from going hungry.” These exchange networks, in turn, are constituted not by repeated acts of generosity, but by duty-imposing social norms that carry significant sanctions. According to Stack, “a person who gives something which the receiver needs or desires, gives under a voluntary guise. But the offering is essentially obligatory, and in *The Flats*, the obligation to repay carries kin and community sanctions.” See Stack, *All Our Kin*, 32, 34. Thaddeus and the Millers could well inhabit a social context like *The Flats*, but I am stipulating that they do not.

³⁵ It is important to mark the distinction here between such power as Eric's father and others might wield over Eric on account of his need to achieve basic capabilities, and such power as they might wield over him on account of his penchant for luxury cars or expensive vacations. While there might exist groups among which social norms protect Eric's independence from his father's arbitrary will even in the second sort of case, I am only claiming that it is the first sort of social norm that we plausibly imagine to be in place in *The Scion*.

³⁶ Households and families are, of course, not the same thing, but this does not vitiate the point I am making in this paragraph.

³⁷ Pogge and Wisor, “Measuring Poverty.”

relies on such measures has been that there exist equitable informal norms of intra-household distribution.³⁸ If this were indeed the case, it would be perfectly fine to infer from the fact that the household as a whole is above a poverty threshold defined for the household's size and composition that none of its members is experiencing poverty. But, as feminist critics of this body of research have pointed out, the assumption of equitable distribution is frequently unwarranted. Sexist social norms prevailing within certain communities often do not afford sufficient social entitlements to household resources to each member, especially to women and girls.³⁹ So what can appear by virtue of the household's legal assets to be situation in which the relevant individuals are avoiding poverty is, in many cases, in fact be a situation in which, by virtue of informal social norms, some household members are trapped in it.

Kant recognized that social norms governing family and other sorts of relationships can exist independently of the existence of legal systems.⁴⁰ No doubt the same is true of duty-imposing social norms governing the use of resources. Broadening the scope of the Kantian view to include the totality of social norms governing our use of resources not only allows that view to absorb the lesson *the Scion* is meant to teach us. It also allows it to avoid the undesirable implication that individuals living in societies without law cannot be afflicted by poverty. Poverty may be a distinctively social phenomenon, but a legal system is not the only kind of social context in which poverty can arise. Where non-legal norms govern the use of resources, and where these allow some to become dependent on the arbitrary choices of others on account of their nature as embodied, needy beings, there can be poverty.

We can broaden the Kantian view to absorb these lessons in the following way:

An individual is in poverty just in case (i) she is in a context in which the use of material resources is regulated by duty-imposing social norms and, (ii) in that context, she cannot with sufficient independence achieve basic capabilities because she lacks a sufficient bundle of entitlements, legal or otherwise.

This broader view is motivated by the same normative intuition that drives the Kantian view. We are, all of us, embodied beings whose material needs make us vulnerable to dependence on the arbitrary choices of others in contexts in which norms govern the use of resources. But we are also, all of us, moral beings with an innate right to be our own masters. Therefore, when the norms that govern our common use of resources make some of us insufficiently independent from the arbitrary choices of others, their legitimacy is called into question.⁴¹

³⁸ See Stephen P. Jenkins, "Poverty Measurement and the Within-Household Distribution: Agenda for Action," *Journal of Social Policy* 20, no. 4 (1991): 457-60.

³⁹ For a review of these criticisms, see Jenkins, "Poverty Measurement," 460-8.

⁴⁰ Kant, *Metaphysics of Morals*, 6:242, 306.

⁴¹ Ripstein and Varden both argue that no state based on a regime of private property compatible with the existence of poverty, as understood by the Kantian view, could be legitimate. See Ripstein, *Force and Freedom*, 283 and Varden, "Patriotism, Poverty, and Global Justice," 259. I endorse the analogue of this claim for my view about the nature of poverty, but do not argue for it here. I am content to have argued that if, as seems plausible, each of us has a right to be his or her own master, then we have reason to doubt the legitimacy of any system of social norms governing the use of material resources that is consistent with the existence of poverty.