COLLECTIVE OWNERSHIP AND FREEDOM

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ABSTRACT

Critics of capitalism often argue that private property limits the freedom of non-owners. I agree. But this does not mean that we ought to opt for collective property. This requires a comparative judgment about how well collective property promotes freedom relative to private property. This paper seeks to make progress on this comparison. I argue that freedom-based proponents of collective ownership face a dilemma. Either collective property takes the form of an open-access commons running into tragedy of the commons dynamics, or it takes the form of closed-access communes which require significant social controls restricting personal freedom. Collective property does not always face this dilemma, but understanding how and when will bring to light the importance of taking a more piecemeal approach to freedom and property.

I.

An old canard is that only a capitalist society can be a free society because only a capitalist society protects the private property rights of individuals. A number of philosophers and political theorists have rightly laid unsophisticated forms of this claim to rest with a simple observation: Private property rights involve coercion against non-owners in their enforcement (e.g. Cohen, 2011: 147-199; Ryan 1977; Gourevitch, 2015). To the extent that coercion involves a limit on freedom, so then do private property rights. Any claim to the contrary is an exercise in good old-fashioned ideological mystification. As G. A. Cohen puts it, private property “is treated as so given that the obstacles it puts on freedom are not perceived, while any private property itself is immediately noticed” (2011: 152).

While an advance over unsophisticated claims about the relationship between property and freedom, this victory for
advocates of alternative modes of ownership only begins the conversation. It does not end it. The question of private property and freedom becomes comparative in nature. We must ask now how does private property do by the lights of freedom in relation to other possible regimes of property. Because of this, we must investigate more generally the question of property and freedom. While these previous discussions have brought to light the character of how private property relates to freedom, fewer have touched on the important comparison case: collective ownership and freedom. This paper seeks to provide an initial foray into this topic.

Those who bring up the freedom-limiting character of private property often describe collective property regimes as involving an expansion of freedom relative to private ownership (Cohen, 2011: 155; Ryan, 1977: 137-140; Gourevitch, 2015: 374-376). This is intuitively easy to see. Consider the public beach in contrast with the private one. Many are free to enjoy the pleasures of a public beach – only the owner of the private beach has the freedom to enjoy her beach. However, much like the crude capitalist story about private property and freedom, I believe this simple picture involves its own mystifications.

Similar to what socialist critics did for private property, I intend to reveal how the very structure of common property includes freedom-limiting features. I argue that freedom-based proponents of collective ownership face a dilemma. Either collective property takes the form of an open-access commons or it takes the form of closed communal ownership. If they take the first horn of the dilemma, collective ownership will induce a tragedy of the commons, leading to a depletion of the property in question. I will argue this undermines the very grounds on which collective property purports to have an advantage over private property in regards to freedom. If they take the second horn, that of opting for a closed communal ownership, they avoid a tragedy of the commons situation. However, such communes end up making the individual’s business the business of others, and also make the business of others the business of the individual. To the extent this is true, closed communal property solve the
tragedy of commons at a significant cost to personal freedom through introducing a set of strict social controls.

To be clear, I do not intend these criticisms of collective property to be a decisive move in favor of private property. Indeed, there are likely very good reasons to utilize common property schemes in certain circumstances, as I will acknowledge in later sections of this paper. Think of the importance of public sidewalks to city living. My purpose is much more modest. Much like socialist critics seek to clarify the freedom-based costs of private ownership, I seek to clarify the freedom-based costs of common property. To make the comparison, we need the costs (as well as the benefits!) of both regimes on the table. I am only contributing a particular piece of this more general task.

I suggest that once we have a better grasp on the costs and benefits, the question no longer is either private property or collective property. Instead, the question is when private property and when collective property. I hope for this paper to bring to light a better understanding of why this is ought to be our focus, and also provide an account of what considerations are relevant for this more piecemeal approach to freedom and property.

II.

It is a useful cliché to begin with the observation that property is not one right, but a bundle of rights. While Antony Honoré (1961) famously provides eleven incidents involved in full ownership, I need not assume property requires anything like full ownership for the following analysis. Instead, I can limit myself to a general feature of property. Following David Schmidt, let me say that property involves a right of exclusion (2008: 193). Having ownership gives owners a right to say no to non-owners.

If property rights involve the right to say no, the distinction between private property and common property might seem easy. To put the distinction simply, a private property regime gives an individual the right to exclude. A common ownership scheme gives a collective the right to exclude.
This basic taxonomy is too simple. For one, private property often involves multiple individuals rather than just one. For example, take the case of a family living in a private residence (Ellickson, 1993: 1394-1397). The house certainly is private property. But much of what goes on within a family home does not appear to involve divisions of private property. Many of a house’s rooms and contents are often treated more as collective property than private. But we can simplify the private property case to only involving one individual for the sake of argument. More important is that the idea of collective property is too coarse-grained (see also Schmidtz, 2008: 200-201). I will need more a fine-grained account to capture a distinction within types of collective property that will become relevant as my argument develops.

A collective is a group of variable size. At a minimum, we can say that a collective is a group of more than one. At a maximum, we can say that a collective is a group including the whole human race. There is an important difference between these two limits. The minimum case involves an identifiable group of owners versus non-owners. I will call these cases of collective ownership communal property, as these cases involve ownership by an identifiable community. The maximum case identifies all of us as owners in a way – the category “non-owners” refers to an empty set. I will call this maximally inclusive case an open-access commons. What follows will discuss both these sorts of collective ownership schemes, as they involve unique structures that generate different freedom-based costs and benefits.

III.

The language of property rights often misleads in ordinary discourse. When we talk about property, we often speak of having right to some thing out there in the external world. This is my bike. This is my house. Etc. The use of possessive pronouns implies a relationship between person and thing. But this way of putting it occludes the basic fact that property is not about the relationship between an owner and a thing. Or, at least, not solely about that relationship. Importantly, property structures the relationship between persons regarding that thing (Christman, 1994: 16). Focusing on the
right to exclude as I do lays this fact bare. A right to exclude only makes sense in reference to other persons.

But, as critics since at least Rousseau have pointed out, once we see that property involves a social relation, it is quite easy to see how private property involves a distribution of freedom and, importantly, unfreedom. To use G. A. Cohen’s example, I am not free to pitch a tent in your backyard in a very straightforward sense (2011: 150). Your ownership right over your backyard gives you the right to exclude me. Further, this right is not merely formal in a capitalist system, but involves the very real power of the state in enforcing it.¹ You can call people with guns to come and prevent me from pitching a tent in your backyard should I even try. Thus, to the extent that property rights involve interference in their enforcement, property rights involve a restriction of the freedom of non-owners.

As noted in the introduction, this is an important corrective to sloppy linkages of private property to freedom. But the argument cannot stop here if it is to be interesting in an action-guiding way. Pointing out there is a problem in an institution is of limited use if there are no other alternatives. Thus, if private property schemes involve a distribution of freedom and unfreedom, we will want to know how this distribution fares relative to possible alternative schemes. In this way, realizing that private property involves a limit on freedom turns the question of property and freedom into a comparative one. If private property schemes involve a superior distribution of freedom compared to the alternative possibilities, there will be no freedom-based reason to abandon private property in favor of the alternatives. Fortunately, critics of private property have not stopped here.

Cohen suggests that collective ownership schemes may involve an improvement in the distribution freedom relative to private ones. To illustrate this, Cohen uses the following “homespun example” which is worth quoting at length:

¹ As Ian Carter points out, this commitment to enforcement of private property makes it a mistake to say that laissez-faire liberals are committed to “merely” formal freedom (2011: 487-492).
Neighbors A and B own sets of household tools. Each has some tools which the other lacks. If A needs a tool of a kind which only B has, then, private property being what it is, he is not free to take B’s one for a while, even if B does not need it during that while. Now imagine that the following rule is imposed... each may take and use a tool belonging to the other without permission provided that the other is not using it and that he returns it when he no longer needs it, or when the other needs it, whichever comes first. Things being what they are... the communizing rule would, I contend, increase tool-using freedom, on any reasonable view (Cohen, 2011: 155).

Less homespun, Cheyney Ryan uses the historical example of the enclosure of the English commons to suggest how communal property involves increased property. In Ryan’s words, “For the vast majority of people living in England during this period of enclosure, the extension of (modern) rights of ownership meant the abolition of rights they previously enjoyed, a significant diminishing of their freedom of access to the land, the freedom to use its soil, water, etc” (Ryan, 1977: 138).

Similarly, Alex Gourevitch suggests that abolishing private ownership in productive assets may actually increase overall freedom (2015: 375-376). True, Gourevitch acknowledges, individuals lose the freedom to own productive assets privately. However, by granting workers a share of collective decision-making in how to use productive assets, this grants everyone the freedom from legal restrictions to control productive assets. In contrast, private ownership limits this freedom to only those few who own productive assets.

All these cases involve more qualitative and intuitive judgments about degrees of freedom. To see the underlying structure of how collective ownership can expand freedom relative to private ownership, we may need to turn to a more quantitative approach.
Adapting an example and analysis by Ian Carter, imagine there are 10 chairs (1999: 259-261). If I am the only person in the room, I am free to sit in 10 chairs. However, let us assume there are two people in the room now. If we divide the chairs evenly between us, each of us now owns 5 chairs, and is individually free to sit in 5 chairs. Following Carter, we can measure group freedom by adding together the overall freedom (or aggregate freedoms) of each individual member in the group (1999: 258-259). Under an arrangement of equal division, the two of us has 10 freedoms as a group (my 5 freedoms plus your 5). Now imagine if we collectively owned the chairs rather than apportioning them out as private property. That is, the two of us could sit in any chair we liked so long as the other was not sitting in it. What this means is that, I am free to sit in 9 chairs (10 minus whatever chair you choose). Similarly, you also have freedom to sit in 9 chairs (10 minus whatever chair I choose). Notice now that the group freedom is 18 freedoms (My 9 freedoms plus your 9 freedoms) – greater than that of the equal division scheme (18 freedoms vs. 10 freedoms). It is important to stress this greater group freedom is a result of each individual having more overall freedom under a collective property regime than under the private regime.

These various discussions show how it is plausible that collective property advances individual freedom relative to private property in a straightforward way. There is no need to refer to any controversial conception of freedom as self-governance or freedom as inherent within the group. These arguments rest on a modest account of freedom as non-interference. This is because these cases show how collective property regimes can expand the number of non-interfered options an individual has relative to private property regimes.

In a wide-ranging article against Cohen on capitalism, John Gray argues that, conceptually speaking, socialist property regimes involves their own sets of unfreedom (1988). For example, Gray points out that, if we collectively own a canoe, I am not free to exclusively use the canoe (1988: 80). The socialist, however, can fully grant this. The socialist does not

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2 To be clear, Carter is not here advocating for a socialist system of property, but explaining how it might be that collective property advances individual freedom over a private scheme.
argue that collective regimes involve no restrictions on freedom, only that collective regimes do better than private ones by the lights of freedom (see also Gourevitch, 2015: 375-376). For this reason, I wish to advance a slightly stronger claim than Gray’s. I am not advancing a conceptual claim about the nature of collective property regimes. Instead, I am advancing a substantive claim about how the structure of collective property limits individual freedom.

As noted in the introduction, my argument over the next few sections takes the form of a dilemma. Either advocates of collective property regimes advocate for an open-access commons, in which case tragedy of the commons dynamics undermine the very basis on which collective ownership supposedly expands individual freedom relative to private property. Or advocates opt for a closed-access commune, which depends on severe norms of monitoring to successfully avert the tragedy of the commons. However, such norms involve a significant cost to personal freedom. The next section sets out the first horn of the dilemma, while the section after that sets out the second horn. I will say a bit more in later sections on when we might expect collective regimes to do better by the lights of freedom. But for now, I will focus on the dilemma.

IV.

Recall Carter’s quantification of how collective property expands freedom. The basic modeling involves positing a discrete amount of some good, and then showing how sharing among individual agents increases individual freedom measured in terms of the opportunity to use that discrete amount in contrast to private property. Admittedly, collective ownership will only do better than private ownership on the modeling when the amount of the good in question is greater than the number of possible owners (more on this soon). But, so long as that condition is met, the model suggests that collective ownership outperforms private ownership.

There is a significant problem with this model of how property relates to freedom. The issue is that the modeling involves a static relation between the players and the
opportunities afforded by the property in question. That is, it takes for granted that the amount of opportunities is fixed, and not dependent on the property scheme we pick. The problem is that, while this might be true for things such as chairs in a single room, this is not often true of property more generally. The amount of stuff in the world available for use is not exogenous to the property scheme we adopt, but endogenous. To put this point another way: the phenomenon we are modeling is dynamic, not static (Schmidtz, 2016).

Let us begin with an open-access commons to see how a dynamic approach works. Recall that the idea of an open-access commons is that no one is excluded from its use. Such property regimes suffer from a well-known problem: the tragedy of the commons (Hardin, 1968).

The basic idea of the tragedy of the commons is that shared resources can collapse where individuals do not pay the full cost of their exploiting a resource. This is because others bare the costs of individual use in a shared scheme, whereas in a private scheme the cost of individual use is borne solely by the owner. For example, suppose we share a common fishing stock. If we limit fishing, we can allow the stock to retain its numbers over time. However, each of us is individually situated such that we can fish more than that limit. So long as just only one (or some number below a threshold) individual exploits the fishing stock, there is no risk of collapse. But, the issue is that each of us is in this position. More importantly, each of us knows that all of us are in the same boat. I know that if I do not overfish, you have an incentive to do so. Mutatis mutandis, the same is true for you. Thus, each of us, even if we want to preserve the fishing stock for future generations, is unable to do so unilaterally. Either the individual limits his fishing while others deplete the common resource, or the

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3 This might grant too much. For example, suppose it was the case that people knew that the chairs in the room were open access and not privately owned. This may lead more people to enter the room, changing the calculus of freedom.

4 This is not the first time Cohen has improperly used static modeling for a dynamic problem. I have argued elsewhere this is true of his approach to incentives (Frye, 2017a: 375-377).

5 Assuming that the use in question does not have effects beyond private boundaries, as is the case with events such as pollution.
individual overfshes while others deplete the common resource.

Because of tragedy of the commons dynamics, I argue that an unregulated commons limits each individual’s option-set over time. Following Andreas Schmidt, we can think of freedom over time as a way of measuring point freedom (2017, 1418). An agent’s point freedom is the overall freedom available to him/her at any given point of time T. Freedom over time will focus on one’s point freedom over time. One thing to note about point freedom is that there are cases where the point freedom an agent has depends on how that agent exercises his/her previous point freedoms. So, today I might have some amount of point freedom, but tomorrow I might have a different amount of point freedom dependent on what actions I perform today. For example, today I have the option of fixing my car or not fixing my car. If I do not fix my car (assume this is my only transit option), I severely limit the number of options I have tomorrow.

There is much more to say about the idea of freedom over time, but this is enough to proceed. Recall the case of a fishing stock. Let us compare two ways of assigning property rights in the fishing stock: collective ownership and private ownership. To simplify, let us grant that at T0 each agent a choice between fishing in such a way as to sustain the stock and fishing in such a way as to deplete the stock. Let us assume that, in a private ownership game, how an individual agent exercises this choice has influence on what choices that agent will have in the future. This is because, under private ownership, the agent alone is responsible for what occurs to the fishing stock, as that agent is the only one with access to it.6 If the agent chooses to deplete the stock at T0, the game is over as there is no more stock to consider. But, if the agent chooses to sustain the stock, then the agent faces the same choice at T1, deplete or sustain. Under private property, then, the agent faces a potentially indefinite set of options over time at T0. Contrast this case with a collective ownership regime. Each agent has the same set of choices at T0, deplete or sustain. The problem is that, given the tragedy of the common

6 To be fair, this is a simplification. There are such things as negative externalities, but I need not introduce this complication for the comparison to work.
dynamics discussed earlier, an agent’s choice in isolation does not effect the choices that agent has in the future. Whether an agent depletes or sustains, the game is over after others erode the commons. One’s point freedom is limited to one point in time: $T_0$. Thus, we see how a dynamic approach helps us understand how an open-access commons can limit freedom over time relative to private property. I have visually represented this difference between collective ownership and private ownership in point freedom over time I have described here in Figure 1 below.

![Figure 1](image-url)

This result is not a mere theoretical artifact, but occurs in real life situations involving open-access commons. Take, for example, the case of bleach fishing in the Phillipine and Tongan islands. As David Schmidtz describes it, bleach fishing involves dumping bleach into a coral reef (2008: 197). Rather than fish one at a time, bleach fishing kills all the fish
at once, which in turn float to the surface for easy collection. A consequence of bleach fishing is that the coral reefs supporting the fish die, thus ending the fish stock in that area. Such a fishing stock is not owned privately, but in common. In response to the suggestion that the fishermen should preserve the reefs, Schmidtz responds:

Under the circumstances, [the fishermen] are not at liberty to not destroy the reef themselves, they are not at liberty to do what is necessary to save the reef for their children. To save the reef for their children, fishermen must have the power to restrict access to the reef. They must claim a right to exclude blast-fishers (2008: 197).

Schmidtz’s response here roughly corresponds to the point I am making. An open-access commons reduces one’s point freedom over time because of tragedy of the commons dynamics. Where such dynamics exist, no individual can preserve her future options on her own. Those options are taken out of an agent’s hands.

I suggest this discussion reveals a structural problem for the proponent of collective property as open-access commons: Tragedy of the commons dynamics vitiate the very condition on which the freedom-promoting character of collective property depends upon. Recall that collective property expands freedom only when the number of options in the opportunity set is larger than the number of people with access to the good. When tragedy of the commons dynamics occur, however, this affects the amount of property available to distribute. Thus, a commons may start off with more property-based opportunities than agents, but end up with fewer property-based opportunities due to the relevant dynamics. For example, if we measure the grass up on the commons by lot and find ten units, we can say that so long as there is less than one farmer for each unit a collective regime maximizes freedom relative to private property. But, after some time, due to the incentives facing each farmer to overgraze, we end up with no units of grass – this is a major loss to freedom relative to a private property system. Thus, an open-access commons can undermine the very basis on which such property regimes are purported to provide more freedom over private property.
An opens-access commons is not the only mode of collective property. In the Schmidtz quote above regarding bleach fishing, all that is required to avoid tragedy of the commons dynamics is a right of exclusion. As Schmidtz notes afterwards, whether that right of exclusion be privately or collectively held is a different question (2008: 197). It is this question I turn to next.

V.

I noted earlier that we could see collective ownership as coming in two varieties: open-access commons and communal ownership. The previous section focused on how the very structure of an open-access commons vitiates the basis upon which it purports to expand freedom, at least under certain circumstances (more on this in the next section). A natural response for the proponent of collective ownership is to suggest, while this is true for open-access commons, this is not true for communal ownership. By incorporating a right of exclusion, communal ownership solves the tragedy of the commons while allowing for collective ownership. In this way, it might be thought, communal ownership capitalizes on the advantages of both private and commons-based ownership.

In this section, I will suggest this shift to communal ownership comes with more freedom-based costs than suggested. Prior to this, it is worth saying a bit more about what I mean by communal ownership, and how it might advance freedom relative to both open-access commons and private property.

Simply put, the distinction between an open-access commons and communal ownership is that in the latter the collective is restricted to a definitive group whereas in the former the collective includes everyone. The idea of limiting access to a defined collective allows people to get out of tragedy of commons dynamics. The basic idea is that having a right to exclude allows “sustainers” to exclude “depleters,” to use the language adopted in the last section. There is more to be said
about how communes solve tragedy of the commons problems compared to private property, but I will get to that soon enough. First, I want to show how collective property might expand freedom relative to private property in the face of an obvious objection.

One might think that the comparison between private and collective property is over once we shift from open-access commons to communal property. Many of the initial examples in favor of collective ownership rest on denying a right to exclude (e.g. Ryan’s discussion of the English commons). But, communal ownership involves a right to exclude. The only difference between communal ownership and private ownership is that the former gives that right to a collective as opposed to an individual, as in the latter case. Thus, unlike the case of an open-access commons, both private property and communal property mark out a distinction between owners and non-owners. If the problem with private property is that it uses coercion to protect the freedom of owners against non-owners, then this seems just as true of communal ownership. Thus, it might appear that retreating to communal ownership places private property and collective property on even footing as far as freedom goes.

This objection is fine as far as it goes, as it is certainly true that both private and communal ownership involve coercion of non-owners. But the basic argument in favor of how collective ownership schemes expand freedom remains intact even in light of this. Take Cohen’s example of neighbors sharing tools as discussed in section II. If we add some neighbor C who has access to neither A’s or B’s tools, it does not change the basic comparison. It is true, for both communal and private property versions of the case, C’s options are limited to the same extent. But, when we refer to A & B, the cases involve different amounts of freedom. So while the choice between communal and private makes no difference to the freedom of non-owners, it does make a difference to the freedom of owners. To the extent we care about aggregate freedom, this makes a difference to our evaluation of either system. Because of this, we must ask more fine-grained questions about the differences between communal and private regimes.

As noted, communal property regimes share with private property regimes a right to exclude. Nonetheless, because
communal property points to a group of owners rather than an individual, the dynamics of maintenance and depletion are different. Private property regimes avoid tragedy of the commons situations by internalizing the costs of use. If it is my piece of land, I alone pay the cost of depleting it. It is true that I have to also prevent non-owners from depleting it, but this is relatively cheap (depending on the good in question). Often times, it is enough to put up a fence or buy a dog (Ellickson, 1993: 1328-1329). For a communal regime, however, costs are not internalized to the individual. There is group of owners across which such costs are dispersed. Because communal regimes do disperse costs, and we know that such dispersed costs can lead to collapse, we must ask: How do communal regimes avoid tragedy of the commons dynamics despite dispersing costs? Answering this question requires looking at a few actual communes.

Following a helpful discussion in an important paper by Robert Ellickson, let me describe the case of the Hutterites and the Israeli kibbutz (Ellickson, 1993: 1346-1348). The Hutterites have established and run agricultural communes since the 1500’s, starting in central Europe and expanding to the Americas in the 1800’s. As the Hutterites have run communal ownership regimes for hundreds of years, their example can illuminate how communes successfully avoid tragedy of the commons dynamics.

The Hutterites are a Christian sect bound by strict set of rules and ritual. These include evening church services, communal dining, and the proscription of radio and television. Of importance among these rules is a commitment to strict equality of ownership in conjunction with an unequal hierarchical social structure that denies women a voice in how the commune is run (Ellickson, 1993: 1346-1347). This equality involves leveling-down in the distribution of goods: Either everyone has a given good, or no one does (Ellickson, 1993: 1351). Each commune involves a strict population limit of 120. Reaching beyond this cap triggers the creation of another Hutterite commune. Finally, exit is extremely costly: Individuals who leave forfeit any property claims (Ellickson, 1993: 1346-1347).

7 If you want to see the ways distributional equality and relational equality come apart, you probably cannot do much better than look at these sorts of communes.
1993: 1351-1352). Mind you, this individual will have spent all his or her life contributing to the property he or she will leave behind.

We might also briefly consider the Israeli kibbutz as another example of a successful commune (Ellickson, 1993: 1347-1348). A much younger development starting in at the turn of the 20th century, the kibbutz is a product of a secular ideology rather than a religious one: specifically, socialism. However, contemporary kibbutzim often involve a religious belief-system. Kibbutzim share with Hutterite colonies many features: a commitment to strict material equality (though with variation across communes), leaving involves forfeit of property, etc. A significant difference is a commitment to gender equality in kibbutzim and more democratic governance system.

Based on these examples, I suggest the cost of avoiding the tragedy of the commons in a communal setting involves setting severe limits on personal freedom relative to schemes of private property. As Ellickson observes, “Once begun, a commune must maintain homogeneity of interests, establish systematic internal social controls, and stem exodus by controlling information about the outside world and penalizing those who leave” (Ellickson, 1993: 1361). Let me expand on this gesture to a variety of specific ways successful communal property regimes encroach on freedom.

First, membership in a commune involves becoming subject to norms surrounding personal dress, behavior, worship, and the like. Violation of such norms exposes one to social sanctions and shame, a form of interference. It is true that these sorts of norms do not involve coercion in the sense of violent threats. No one in a Hutterite community is calling the police for a dress code faux pas. Nonetheless, we must not trivialize the very real force informal social sanctions have on our lives. After all, it was “the moral coercion of public opinion” that drove J. S. Mill to pen his defense of liberty, not the threat of state-based coercion (Mill, 2015: 12). Thus, I suggest the informal norms that make communal property regimes run constitute a constraint on personal freedom lacking in private property regimes.
Second, and relatedly, these norms make up a system of intense monitoring. All schemes of property that are not open-access commons involve monitoring. Whether it be privately owned or communally owned, a piece of land needs to be patrolled to keep out non-owners. As noted, this tends to be relatively low cost. A dog or fence will do the trick. What communes add to this is the monitoring of owners as well as non-owners. This is because communes not only need to keep out non-owners, but also need to prevent present individual owners from free riding off of one another. Monitoring, in contrast with social sanction, does not involve a direct interference in action. But, to take on a Foucauldian theme, decentralized forms of monitoring involve their own forms of control and discipline. Social norms disperse responsibility to enforce throughout a population. With this enforcement comes the prying eyes of others. This decentralized monitoring can stunt personal choices by prompting individuals see their own actions through the eyes of others, putting one on alert for the potential of social sanction and judgment.

Third, communal regimes reduce freedom by making it difficult for members to leave. The explicit mechanism of controlling exit is requiring a forfeiture of property rights. But it is also the case that exit is costly because members of especially small religious communes such as the Hutterites have limited education and exposure to outside world (Schmidtz, 2008: 207). There is a difficult question about how we connect the cost of an option to its freedom. Setting those issues aside, there is an intuitive way in which limiting exit options reduces overall freedom. Part of why theorists think the state faces a high justificatory burden relative to other associations is that the high costs to exiting the state make the case for voluntary consent relatively weak. As Hume famously put it:

Can we seriously say, that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, but the small wages

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8 This is not always a bad thing. Sometimes it is desirable to opt for decentralized modes of enforcement as a way of minimizing the risk of corruption (Frye, 2017b: 11-13).
which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves (Hume, 1994: 475).

So too for the Hutterites.

Finally, the commitment to strict egalitarianism that helps keep communal property working can lead to less freedom. As Joseph Raz points out, strict egalitarianism can lead to waste when a given good cannot be distributed equally among all parties (1986: 227). For example, if there exists only one good to share between two agents, equality would seem to dictate that no one should get the good (cf. Christiano, 2008: 37-38). Whether or not egalitarianism as a theory of distributive justice is committed to such leveling down, these real-life communes are. Leveling down, by limiting the total amount of goods available to agents, can lead to situations where private property arrangements would do better. Just take the previous example. If we just give the one good to one of the parties, this means higher aggregate freedom even if it is unequal freedom.

I have not intended this to be an exhaustive list of the ways communal regimes tend to limit freedom. The general point could be put like as follows: Communal property makes my business the business of others. Likewise, communal property makes the business of others my business. This is not so true of private property regimes. As Gerald Gaus points out, part of the function of private property is to set jurisdictions for individual decision makers (2011: 374-375). This is just another way of saying when my business is my business and not yours. One reason for private property’s success at jurisdictional setting is partly because private property schemes do not require so many bells and whistles (both metaphorically and figuratively) to monitor usage and avoid tragedy of the commons dynamics. All that is required is the ability to monitor the borders.

It is worth taking note of the limits of the argument so far. I have only been concerned with the relationship of freedom and property. Even if I am right, there may be reasons of, say,
community or solidarity to opt for collective arrangements over private ones. These reasons would have to outweigh the freedom-based reasons we have to avoid collective regimes. However, there are circumstances under which collective property may fare better than private property by the metric of freedom. This is the subject I turn to next.

VI.

It is time to take stock. At this point, I have completed my main argument, and so it is time to take stock. In the question of property and freedom, my argument has been that proponents of collective property face dilemma. Either they opt for an open-access commons or they opt for a restricted-access communal regime. If the former, the proponent of collective property confronts tragedy of the commons dynamics. These dynamics vitiate the very basis on which collective property purportedly enjoys an advantage over private property in expanding freedom by depleting the goods held in common. If the latter, the proponent of collective property no longer faces tragedy of the commons dynamics, but instead faces a wide-range of intrusive social rules that solve these dynamics at the cost of personal freedom. A private property regime faces neither of these issues.

You may have noticed a limitation to my argument. The dilemma I have posed does not follow logically from the structure of collective property regimes. That is, it is not built into the very concept of collective property that these sorts of regimes have the freedom-limiting features discussed in this paper. The dilemma is contingent on certain background features of how we ordinarily deal with one another. For example, tragedy of the commons dynamics occur given a certain model of rationality. Among angels who knew each other to be angels, perhaps there would be no tragedy of the commons. Thus, the dilemma I pose is not as robust as might be desired.

I have two responses to this worry. The first will take up less time to second.
The first response is that the worry from robustness also applies to the arguments that purport to show private property involves a limit on freedom. Recall that those arguments depend on the claim that private property involves exclusion of non-owners, and such exclusion is backed up by coercive force. The coercive force used to enforce private property rights is not strictly speaking necessary. We could imagine a possible world where private property is respected without recourse to enforcement because each individual just voluntarily abides by the boundaries set by property. We could say individuals in such a world abide by a “propertarian ethos” somewhat similar to G. A. Cohen’s egalitarian ethos (Cohen, 2008). Under these circumstances, there is no interference tied up with private property. Another way to make the same point is imagine a world that has private property rules, but simply lacks enforcement of those rules. In this sort of world, property rights would be merely formal, and so you could pitch a tent in my backyard without facing interference. Because of this, the freedom-based criticism of private property is not as robust as it might seem as it depends on certain background conditions. Given that my intention is to advance similar arguments against collective property that proponents advance against private property, it is not so worrisome that my own arguments do not involve an a priori truth.

The second response is that the conditional nature of my argument is a feature and not a bug. My purpose is not to argue that collective property never does better than private property by the lights of freedom. Nor would this be a reasonable goal. The point is the modest one of getting on the table some of the freedom-based costs of collective ownership schemes in order to better situate ourselves in making comparisons with private property schemes. I do not intend to engage in such a full comparison here. Nonetheless, I want to in the rest of this section say more about the limits of my arguments. When do we expect collective ownership regimes to avoid the sorts of freedom-based costs I describe, and how might this speak in favor of them under at least certain circumstances? In this way, I hope to move towards a more piecemeal approach to thinking about the relation of property and freedom.
Fortunately, I need not start from scratch on setting out these conditions. As a first cut, consider “the circumstances of justice” as laid out by Hume. On a common reading, these circumstances of justice lay out those background conditions that render justice necessary. In Hume’s words, “that ‘tis only from the selfishness and confin’d generosity of men, along with scanty provision nature has made for its wants, that justice derives its origin” (1978: 3.2.2, 495). There is some dispute as to whether or not we ought to follow Rawls and think these conditions apply to contemporary discussions of distributive justice. This need not hold us up here. My focus is not so broad as distributive justice more generally, but instead narrowly on property and freedom. And, as Hume’s conception of justice just is respect for rules of private property (as well as promise-keeping and respect for rules of transfer), Hume’s circumstances of justice seem well-suited to thinking through the question of when we ought to expect private property to do better than collective property in expanding freedom.

Starting with Hume’s latter condition, situations of abundance seem like an obvious first case where collective property outdoes private property in regards to freedom. One of the major causes of collective property’s woes in regards to freedom just is scarcity – no scarcity, no tragedy of the commons dynamic. No tragedy of the commons dynamic, no dilemma. Thus, situations where the good in question is abundant seems to be a case where collective property does better than private property in providing opportunities. In particular, it seems like an open-access commons will do the job of expanding freedom much better than private property. Take, for example, the case of breathing air. It makes no sense to portion out oxygen to individuals. Not just because of enforcement issues (how does one fence one’s portion of the breathing atmosphere?), but also because there is no problem created by an open-access commons in breathing air. It is only when air pollution comes onto the scene when we need to introduce restrictions. But this is because air for polluting is scarce in a way that air for breathing (sans air pollution) is not.

Beyond the case of air, there are historical cases of open-access commons that have worked in providing people opportunities without spiraling into tragedy of the commons
dynamics. Harold Demsetz discusses the hunting practices of the indigenous people of the Labrador Peninsula in Canada as not involving assigning private property rights, at least initially (1968: 325-351; see also Schmidtz, 2008: 200-201). Hunters treated game as an open-access commons. It was only with the introduction of the fur trade that tragedy of the commons dynamics precipitated the introduction of private property rights. As with air, abundance is not strictly about the amount of the good in questions, but about the amount of the good in question relative to demand. The need for fur outstrips the supply where hunters do not internalize the costs of the hunt. Nonetheless, this case, like air, provides a general lesson: Where opportunities are abundant such to be robust against tragedy of the commons dynamics, collective property appears to maximize freedom.

What about Hume’s first circumstance, that of limited beneficence? In another work, G. A. Cohen seems to suggest that were people more communal, the mechanism of private property would be unnecessary (Cohen, 2009). To illustrate this, he uses the example of a camping trip among friends. Just like the case of the neighborly tools, Cohen suggests a camping trip where we share goods and their upkeep in the spirit of friendship involves more freedom than one organized according to principles of private property (2009, 6). It is important to note that, unlike the communes surveyed above, such a camping trip does not rely on modes of invasive social control to keep in check less altruistic motives, but instead depends on care for others.

I do not think increasing beneficence would be sufficient for avoiding tragedy of the commons dynamics. When discussing these issues earlier, I made a point to stress that it is not the selfishness of the players that generate such dynamics. Rather, it is the fact they are placed in a strategic situation with other agents that might be selfish (Vanderschraaf, 2006: 325-329). Lacking common knowledge of motives and character, even a communally-oriented agent would be tempted to deplete rather than sustain. Not because they want to take advantage of others, but because they do not want to be taken advantage of by others. To paraphrase Hobbes, there is no duty to make one’s self prey.
One way to understand the social controls put in place by communes is that they provide the assurance necessary that everyone is playing by the rules. It is not that such controls are required to keep at bay people’s weak impulses (though they may do that), but rather that they assure everyone that everyone else is doing their fair share. Such social controls provide for the common knowledge condition. However, they do so at the cost of private freedom, noted above. Thus, I do not see much promise for collective property advancing freedom under different conditions of beneficence.

There are a few cases outside the traditional circumstances of justice framework where collective property appears to involve an improvement in freedom over private property. I opened up this paper with the example of public beaches. Public beaches do not appear to involve abundance, nor common knowledge of beneficence. We could also include parks, sidewalks, transit, and the like. And yet, having these sorts of collectively owned spaces intuitively appear to be advantageous by the lights of freedom. I draw two lessons from these shared spaces.

First, such publicly shared spaces give opportunities to the least advantaged to experience goods they might not otherwise have access to, and to this extent. To the extent we agree with Rawls that a system of rights ought to be justified to those least benefited by it, this freedom is not to be scoffed at (Gaus, 2000: 41-42). Beyond considerations of justification, we might take into consideration the distribution of freedom in addition to its aggregation. Public spaces might better satisfy prioritarian principles of distributing freedom, even if it might involve less aggregate freedom.

Second, publicly shared spaces give opportunities to engage in joint activities that private spaces may not allow. Consider activities such as the flash mob, where a group suddenly appears in a public space to engage in some coordinated performative action. One striking case is Improv Everywhere’s Frozen Grand Central in 2008, where 200 actors froze themselves at exactly the same time in the middle of New York City’s Grand Central Station. Such shared aesthetic activities are made possible by having shared spaces - thus presenting a kind of increase in freedom (Riggle, 2017: 174-178).
It is important to note that these particular examples of public spaces increasing freedom appear in a broader context where private property rules are the norm. Such public spaces work *alongside* private property regimes. They act almost as a supplement. And this makes sense. The kinds of freedoms they offer are not intended to replace those offered by private property, but instead add to them. The introduction of public spaces in a primarily private system attempts to capitalize on the purported advantage of collective regimes to freedom without falling prey to the difficulties such regimes pose.

Beyond the value of public space to enabling certain kinds of freedom, there are situations where collective ownership just does better than private ownership at securing freedom. Earlier, I noted that private property makes monitoring cheaper than collective property does. Private property only requires monitoring of the border. However, there are times where this is expensive and inefficient relative to a collective regime. David Schmidtz and Elizabeth Willott discuss the case of how a number of hunting reserves in South Africa merged their private reserves to form a collective scheme (Schmidtz, 2008: 212-213). The reason for the merger is two-fold. First, it takes less fence to annex one large property than many small ones and is thus less expensive. Second, you get “shopping-mall” effects where placing a number of stores next to each other can be a boon to all. With the right set of conditions, the efficiency gains of binding together will outweigh keeping property private.

To summarize, private property regimes do not always outperform collective property regimes. There are at least three conditions under which collective property is able to avoid the dilemma posed in earlier sections of this paper:

1. When the good in question is abundant.
2. As a supplement to private property (2.1) to provide freedoms to the least advantaged and (2.2) to make possible actions that are only available in public spaces.
3. When collective property is simply more efficient than private property.
It is true that private property involves a limitation on freedom. An enforceable right to exclude limits the freedom of those excluded. But if we are interested in promoting freedom, we must understand different how regimes of property limit freedom. Only then can we make the relevant comparisons between private property and its alternatives.

I have attempted in this paper to begin this task. I have argued that collective property limits freedom by way of a dilemma. Either collective property takes the form of an open-access commons, running into tragedy of the commons dynamics, or it takes the form of communal property, utilizing strict social controls that impinge on freedom to avoid the issues of an open-access commons. Either horn bode poorly for our freedom. Nonetheless, I have acknowledged that collective property does not always face this dilemma, gesturing towards some of the conditions under which collective property may, in fact, do better than private property.

The question of property and freedom is not one that admits of easy answer. There is no decisive victory to be found for the hard-core capitalist, seeing only private property as a means to individual freedom, nor for hard-core socialist, who sees only collective property as respecting the freedom of all. What we are stuck with is the difficult question of knowing when and where different property regimes are most effective at expanding freedom. What I have hoped to have accomplished in this paper is offer some provisional answers to this question. Nonetheless, any answers will have to take seriously the potential costs to freedom of various collective regimes. Private property may restrict freedom, but the alternative may be worse.

REFERENCES


