

THE STILL TENUOUS FOUNDATIONS OF A SUFFICIENCY PROVISO: A REJOINDER TO WENDT

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I AM GRATEFUL TO FABIAN WENDT for responding to my evaluation of his work on Moderate Libertarianism. Wendt's efforts are important because they focus on foundational issues of justice and there is a dearth of quality work on those issues these days. Due to lack of space, the most productive way to structure this brief rejoinder is to focus on two general issues before touching on one smaller point. First, I explain why Wendt offers something like an empirical justification of libertarianism. Here I will be clearer than I originally was about why this is a problem that Wendt needs to address better than he has. It is my hope that this initial discussion paves the way for me to demonstrate my second point—namely, that Wendt's statement of his own argument for the proviso is either question-begging or unsurprising. I conclude by saying a little bit about Wendt's discussion of positive obligations.

1. Contingent Libertarianism and Why it Matters

Wendt is surprised that I characterize his position as consequentialist (Wendt 2018c, 163). Perhaps it is more useful to call his position “Strongly

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Contingent Libertarianism” and explain what I mean by that.¹ Imagine an anarcho-capitalist regime that satisfies Mack’s proviso, but not Wendt’s. This regime requires no incursions into the available set of people’s self-ownership rights to satisfy the proviso. Imagine that the only way to satisfy Nozick’s stronger proviso is to move to a version of classical liberalism, say, where some ‘public goods’ are funded via taxation. This regime requires some incursions into people’s self-ownership rights to satisfy the proviso. Yet, imagine that this does not satisfy *Wendt’s* proviso. To do that, pretend that we must move to something like a modern welfare state. This requires substantial incursions into people’s rights but does not undermine the point of private property in the first place. Wendt not only lacks the theoretical resources to block this sort of political arrangement—his position requires it.² Wendt knows this and seems to accept it (Wendt 2018c, 167).

It is important to see that Wendt’s requirement that individuals are able to live as project pursuers even shapes the nature of rights (Wendt 2018c, 162). So, if we have individuals who can live as project pursuers only if they receive forced blood donations, Wendt’s starting point seems to require that too (as long as those forced to donate blood can live as project pursuers).³

Why does it matter that Wendt has no principled commitment to what most of us would see as a libertarian regime? Wendt canvasses three potential reasons (Wendt 2018c, 163-64). However, he ignores what I take to be the gravamen of my discussion. I very clearly identify cost as *a* problem for Wendt’s discussion of justice and responsibility (Rodgers 2018, 147-148). The problem is not, as Wendt suggests, that his starting point is *different* from that of other libertarians. The problem is that Wendt must show us why he is right about the *telos* of a system of private property. Wendt thinks he has an answer to this challenge and I think it is not a very good one.

Wendt responds to my challenge as follows: “the alternative starting point is not very attractive because being formally allowed to live as a project pursuer is not of much value if you are not actually able to live as a project pursuer” (Wendt 2018c, 164). Why is this not much of an answer to concerns

¹ Wendt does not see how his position is more consequentialist than rivals, but surely there is an obvious difference between his endorsement of a political system based on whether it facilitates project pursuit and a position that says we must simply leave others alone (Wendt 163, n4).

² He could, of course, block it on empirical grounds. That is because his endorsement of libertarianism *as a political system* rests on those empirical questions.

³ Wendt might say that this obligation should not be enforced (Wendt 2018c, 169). Still, the possibility seems like a serious problem, especially vis-à-vis cost.

about cost? The issue of cost is introduced to question whether the *telos* of private property can be shown to be what Wendt says it is.⁴ He is right that being able to live only as a formal project pursuer is unattractive. However, the fact that a position is unattractive is distinct from the question of whether we can derive an alternative—especially if the effort to avoid the position itself comes with unattractive implications. So Wendt is wrong about how much mileage he can get out of the observation that being formally allowed to live as a project pursuer is unattractive.

As the move through the political institutions that might satisfy the proviso demonstrates, satisfying Wendt's proviso could justify significant incursions into people's lives. And it is possible that this would mark an incursion into people's lives that may well be costlier and more unattractive *to them* than the failure to satisfy the sufficiency proviso.⁵ This is important because Wendt must show that such individuals are guilty of an error. He cannot accomplish that task by reiterating what he takes the *telos* of a system of private property to be. This is question-begging. Nor can he accomplish this by reminding us that a "theorist who "really cares" about people's ability to pursue projects should accept the sufficiency proviso and nothing weaker" (Wendt 2018c, 165). What I am trying to challenge here is the very *telos* of a system of private property. Perhaps I was not clear enough about that in my initial paper.

2. Method

Wendt begins his discussion by citing arguments about justice from Nozick, Lomasky, and Mack. Those authors share roughly the same starting point: individuals are mutually disinterested and enjoy a prerogative to pursue their own ends. The challenge for a theory of justice that takes seriously the moral separateness of persons is to show how mutually disinterested individuals may properly be shown to have good reasons to constrain their behavior toward each other. This challenge arises because individuals properly pursue their own ends. So, we need an argument to bridge the gap between an agent's prerogative to pursue her own ends and the claim that she should not do this in ways that thwart the ends of others (in certain ways). If one thinks one can go beyond mere deference, one needs an argument for

⁴ Alternatively, one could use cost to question whether the path to Wendt's proviso is as smooth and linear as he seems to think.

⁵ Loren Lomasky grapples with this issue in Lomasky (1987), in particular pp. 80-83. David Gauthier seems willing to bite some serious bullets (Gauthier, 1986, pp. 285-286).

that conclusion too. One can see people like Lomasky, in particular, struggling to deliver just such an argument.

I read Wendt to be offering a means of bridging this gap.⁶ It seems he is not attempting to bridge it (Wendt 2018c, 164).⁷ He is up to a decidedly different task. Part of the reason I read Wendt the way I did is that in his response to me, his own characterization of his argument for the proviso makes his project seem either overtly question-begging or not particularly surprising. Wendt argues for a proviso that holds “that a practice of private property has to be designed in a way such that everyone has sufficient resources to live as a project pursuer, if this is possible without undermining the point of having a practice of private property in the first place” (Wendt 2018c, 162). How does he get to that proviso? He “starts with the idea that people should be able to live as project pursuers” (Wendt 2018c, 162). Once one accepts *that* stating point, it is all downhill to the Sufficiency Proviso. If we start with a position logically incompatible with other provisos, then those provisos look unattractive. This is certainly true. However, even as a mere justifying explanation for the proviso, Wendt’s conclusion is not exactly startling.⁸ There are questions about what we can show the *telos* of a system of private property to be. Wendt ignores them almost entirely. The *telos*, in short, is not an uncontroversial starting point.

3. Positive Obligations

Wendt suggests that my resistance to positive obligations might come from concerns of compossibility (Wendt 2018c, 169). However, I never mention the issue. Still, I wish to discuss some of what Wendt says. Wendt argues that there are good reasons to give up on compossibility. He adduces a series of thought experiments to show that rights sometimes give way to positive obligations. I think he is correct, but not in a way that helps him

⁶ I think that anyone exercising something like the principle of charity would have read my arguments as an effort to show that Wendt fails to overcome this crucial gap. They would have remembered my very clear statement about how I read Wendt. Wendt ignores my initial statement in his rejoinder, save to say that I seem not to read him as I say I do (Wendt 2018, 164).

⁷ If one reads him as attempting to bridge the gap, then he accomplishes the task in a manner that is entirely too easy. He simply fattens up the initial concerns that agents must have so that they really care about what Wendt does and, voila, he is across the gap. This is what my initial response attempted to say.

⁸ Wendt mentions a work in progress that I have yet to read. Perhaps he addresses some of the challenges I raise in that piece (Wendt 2018c, 162 n1).

show what he must show. I think Wendt needs to argue that we may weaken self-ownership in a way that is not so costly that it gives us good reasons to doubt that he can defend his view of *telos* of a system of private property.

When Nozick discusses cases in which rights are overridden, he treats those rights as liability rules.⁹ If you may break into my house to steal a drug that will save a child, you owe me compensation. Wendt might disagree with this, but he has not argued against it. He has only shown that we may sometimes not *fully* respect the rights of others. However, if even in (most of) those cases, we owe compensation, his argument does not go far enough. Nobody is compensated for being forced to uphold Wendt's proviso. Wendt must address this issue.

He suggests that those who oppose positive obligations may simply say that the proviso is unenforceable. However, this takes the teeth out of the argument for the proviso. If what matters is that not being able to live as a project pursuer is unattractive, then holding that this is precisely what might happen is required is at least problematic. Thus, I do not see how this move is available. If one finds positive obligations problematic—say, because they are costly—then one should be suspicious of the Sufficiency Proviso.

I hope these brief remarks clarify both my initial assessment of Wendt's proviso and some of the challenges I still think he faces in defending it.

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⁹ Nozick does this both directly and indirectly. The argument in chapter 4 of Nozick 1974 directly employs liability rules. He also refers the reader to work on liability rules and rights. See Nozick, 1974, 338n6. Wendt is correct to note that Nozick does not know what to do in *some* cases of moral catastrophe, but we must not ignore the entire chapter in which he discusses cases in which rights become liability rules.

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