

THE TENUOUS FOUNDATIONS OF THE SUFFICIENCY PROVISO

LAMONT RODGERS*

FABIAN WENDT PROPOSES combining libertarian foundations with a proviso that requires a just system of private property to ensure that everyone has a sufficient amount of resources to pursue projects. He calls this proviso a sufficiency proviso. This proviso is said to have advantages over all rival provisos “because it better coheres with the most plausible rationale for endorsing a libertarian theory of justice in the first place” (Wendt 2018b, 169). Given these advantages, he expresses surprise that no other libertarians have defended a sufficiency proviso. In section 1, I present the rationale for the proviso. In section 2, I show that Wendt relies on a consequentialist justification of private property rights. Wendt regards this consequentialist justification as the most plausible rationale for endorsing private property rights, but he never defends that justification. I argue that this consequentialist derivation of property rights makes it an open question whether individuals have any of the rights libertarians take them to have. In section 3, I identify the problems that stem from divorcing justice from rights, as Wendt does. In the fourth section, I show that his consequentialist position leads to a serious attenuation of self-ownership. Finally, in the fifth section, I demonstrate that the notion of a system of private property is antiquated. I cast doubt on whether there is any plausible conception of a system of private property that matches the systems in which people actually live in our global economy. One could thus understand my discussion as

*Lamont Rodgers is professor of philosophy at Houston Community College.

CITATION INFORMATION FOR THIS ARTICLE:

Lamont Rodgers. 2018. “The Tenuous Foundations of the Sufficiency Proviso.” *Libertarian Papers*. 10 (2): 141-157. ONLINE AT: libertarianpapers.org. THIS ARTICLE IS subject to a Creative Commons Attribution 3.0 License (creativecommons.org/licenses).

both an effort to explain why others have not defended a proviso such as Wendt's and as an attempt to show that the prospects of defending such a proviso are dim.

Before moving on, it is important to note my understanding of Wendt's project. I read Wendt as attempting to prove that his proviso, and more broadly his "moderate libertarianism," is what fits most comfortably with a very commonly accepted foundation of libertarian private property rights. I read him this way because of his explicit claims. However, he might actually mean something weaker; and indeed, he sometimes hints at this separate project. He might mean that there is a theory of rights and property that is broadly, but not quintessentially, libertarian and that, if one moves from a specific set of *nearly* libertarian assumptions, one can get to moderate libertarianism with a sufficiency proviso. In this paper, I read him only as pursuing the first project. The latter is not a problem for right-wing libertarians as it stands.¹ For it to be a problem, Wendt would need to show that the initial assumptions of that project are more plausible and less problematic than the assumptions right-wing libertarians actually make. That is a task Wendt never takes up.

1. The Rationale for a Sufficiency Proviso

Wendt seems to attempt to ground his proviso in a starting point ostensibly like that of many other libertarians. Wendt holds that the idea that persons are project pursuers is close to the starting point in the derivations of basic rights that one finds in Loren Lomasky and Eric Mack, for example. Wendt points to the general sort of derivation he accepts in the following passage:

One powerful... argument for libertarianism as a theory of justice builds on the idea of project pursuit. Persons are purposive beings and have the capacity to pursue all kinds of projects. Trivially, all projects require the use of one's body and mind, and so persons should be conceived as self-owners. But almost all such projects also require external resources, in one way or another, and they require being able to count on one's resources. Hence persons as project-pursuers also need the opportunity to acquire private property in external resources... Therefore, a libertarian theory of justice should combine self-ownership with a second natural right, the right to the practice of private property. Now if one accepts the project pursuit

¹ Henceforth, when I say "libertarian" or "libertarians," I should be taken to refer to right-wing libertarians.

rationale for a libertarian theory of justice, then one should also care that everyone actually has sufficient resources to live as a project pursuer. Without sufficient resources, one is simply unable to live a life as a project pursuer. That is why a libertarian theory of justice should somehow try to incorporate sufficientarian concerns. (Wendt 2018b, 170–71)

Wendt is clear that this argument is a very rough sketch (Wendt 2018b, 171). Nonetheless, he finds it sufficient to motivate the inclusion of his sufficiency proviso within a libertarian theory of justice. He repeats essentially this idea elsewhere when he writes the following:

The rationale for granting persons a Hohfeldian moral power to acquire property in external resources in accordance with conventional practices of private property is that it allows them to securely pursue personal projects... If caring about people as project pursuers is the rationale for advancing a libertarian theory of justice that allows people to acquire property in accordance with conventional practices, it must also require that people indeed have sufficient resources for project pursuit. (Wendt 2018b, 174)

The fact that some lack sufficient resources to live as project pursuers is problematic, as Wendt sees it, because the whole point of private property is to facilitate the pursuit of projects. When individuals lack such resources, it is, at least *prima facie*, a problem for the system of private property in question. Since the point of private property is to facilitate project pursuit, Wendt denies that responsibility matters when it comes to determining whether the proviso is satisfied:

The proviso does not ask about the reasons why someone is below the sufficiency threshold. It does not require showing, for example, that someone is below the sufficiency threshold without any fault of his own, or because a practice of private property is in place. From the perspective of the project pursuit rationale for libertarianism, someone not having enough to be a project pursuer is always a concern, no matter what its cause is. (Wendt 2018b, 174)

The idea here is that if what really matters is that everyone has resources to pursue projects, then we must be motivated to supply those resources when others lack them. Here, Wendt has us reacting to important facts about others. I said that this is close to the starting point that one finds in Lomasky and Mack, and Wendt himself seems to welcome this comparison. He characterizes Lomasky's derivation as follows:

He imagines a state of nature with project pursuers who care a lot about their own projects, but are also empathetic with the concerns of others, have some disposition to behave altruistically, and are able to recognize impersonal value. He tries to show that from such a

state of nature mutually acknowledged moral space will naturally emerge. (Wendt 2018a, 4)

Something like the idea that we can respond to impersonal value seems implicit in Wendt's suggestion that we should care about others as project pursuers. I do not wish to pin the belief in impersonal value on Wendt. He may well reject it. What matters is that his sketch of the rationale for the proviso clearly requires us to care enough about others not merely to leave them alone, but to furnish them with resources when doing so does not thwart the purpose of private property in the first place. This is why I said above that when individuals lack sufficient resources, it is a *prima facie* problem.

Wendt places an important limitation on the demands the proviso may place on property owners. He writes that "the sufficiency proviso cannot unconditionally require to bring everyone above the sufficiency threshold" (Wendt 2018b, 174). He holds that the proviso requires that a system of private property must be designed to bring everyone above the sufficiency threshold "if that is possible without undermining the point of the practice of private property in the first place" (Wendt 2018b, 174). The point of private property is to allow people to pursue their projects; if the demands of satisfying the proviso undermine that very point, then the system need not satisfy it.

Similarly, Wendt does not say that everyone must have sufficient resources to pursue any old project. Instead, the sufficiency proviso requires seeing that everyone's basic human needs are met. When possible, a just system of private property requires that everyone has "food, clothing shelter, etc." (Wendt 2018b, 175). Some people, such as the disabled, might need more than this. Again, the point is that if one cares about project pursuit, one must ensure that everyone has the resources to be able to pursue projects. In this vein, Wendt claims that survival itself is not to count as a "project" (Wendt 2018b, 175).

So far, I have sketched the rationale for the proviso. I have also pointed to two limitations Wendt places on it. There is one further limitation to note before moving on. Wendt applies his proviso not to original appropriations, but to systems of private property. There are two aspects of this claim. First, Wendt is not interested in offering an account of justice in original appropriation—at least not via the sufficiency proviso. He is pretty clear about this in several places.² Second, he writes that "what counts, from the point of view of the project pursuit rationale for libertarianism, is not that

² Wendt (2018b, 175; 2018a, 13).

everyone can initially acquire things, but that everyone can come to own and use sufficient things” (Wendt 2018b, 175). This justification of the sufficiency proviso is novel and provocative. If Wendt is correct, a much more extensive state than most libertarians are willing to tolerate could be justified. After all, someone has to fund, enact, and police the administration of the proviso. In the following section, I challenge the very foundations of Wendt’s rationale for private property rights.

2. A Consequentialist Justification of the Proviso

There is a subtle difference between Wendt’s characterization of the standard justification of rights, on the one hand, and that found in Nozick and Mack, on the other. Wendt writes the following:

The rationale for granting persons a Hohfeldian moral power to acquire property in external resources in accordance with conventional practices of private property is that it allows them to securely pursue personal projects. But without actually succeeding to have sufficient resources for pursuing projects beyond mere survival, this power is not of much help. (Wendt 2018b, 174)

The first sentence seems to say that rights *allow* people to try to secure personal objects. Wendt then proceeds to talk of *actually succeeding* at having sufficient resources. This is why Wendt feels it is necessary to have a sufficiency proviso. He takes the rationale for private property rights to be that they are the best way to ensure that everyone has enough to pursue projects. But this is not the same as holding that private property rights exist as a means of allowing people to attempt to pursue their projects. Wendt either does not notice this difference between his position and that of other libertarians or he thinks that the way the libertarians he targets argue is wrong. However, if the latter is the case, Wendt never shoulders the burden of arguing against their starting point.

Robert Nozick treats rights as side constraints. He then asks us why we should accept side constraints (Nozick 1974, 30). His answer is that side constraints reflect the idea that people are not mere means to be used for the purposes of others (Nozick 1974, 31). Now, as pertains to the present discussion, Nozick clearly rejects the consequentialist rationale for rights. Wendt needs to enter this discussion and show why Nozick is wrong.

Now, Wendt is right that libertarian theorists have to say that we can respond to facts about others. Mack, for example, holds that each of us can and should respond to the fact that others have their own ends to pursue, just as each of us has such ends. However, Mack and Nozick both seem to hold that the response that best fits with the fact that each individual has his

own ends to pursue is that each of us should not interfere with others to the greatest extent possible. This is usually the least costly manner of responding to important normative facts about others.

Cost also matters when it comes to Wendt's discussion of responsibility. As I mentioned above, when Wendt tries to insert sufficiency considerations into a theory of justice, he ignores part of the traditional rationale for mere rights of non-interference. Part of the rationale for rights is that deference is the least costly way of responding to the fact that others have their own projects to pursue. Once we must deliver goods or services to others, we bump up the cost. This departure is important because it allows Wendt to part ways with most libertarians in denying that responsibility matters in determining whether one should receive support vis-à-vis the proviso. This is a massive departure from the tradition in which Wendt is working. Indeed, some of the authors Wendt cites have spent a great deal of time exploring the role that responsibility plays in deciding whether libertarians should support a social safety net.

John Locke is clear that people who have sufficient *opportunities* should not complain because to do so would be to evince the desire "to benefit of another's pains" (Locke 1952, §34). While Locke is discussing original appropriations in this passage, there is no textual evidence that his view changes when it comes to systems of private property. Indeed, in his *Essay on the Poor Law*, Locke proposes implementing forced labor on those who refuse to make use of the opportunities available to them.³

Eric Mack argues that there may well be scenarios in which there is a libertarian-friendly rationale for taxation in order to aid people who are in dire straits. While he thinks that this road is "convoluted," he does think that it needs to be taken seriously by everyone, irrespective of their views of taxation. However, he is clear that this program would be aimed at aiding those who are living "faultlessly (or faultlessly enough)" (Mack 2006, 140).

These are just two examples among many. Within the libertarian tradition, it is common to hold that one's claim to aid from others *as a matter of justice* is contingent in part on the responsibility the recipient bears for his

³ This essay is available in *Political Essays*, ed. Mark Goldie (New York: Cambridge University Press, 1997), 182–98.

or her condition.⁴ One reason why libertarians hold this is that the cost of delivering goods and services to others is increased if the individual should receive those goods no matter why he or she needs them.

Wendt clearly does not think that focusing on cost is the right way to look at the matter. He believes that the attractiveness of rights is that they “enable everyone to actually live as a project pursuer” (Wendt 2018b, 171). This is a consequentialist justification of rights. If rights do not fulfill this purpose, they are unjustified. If there is a superior means of enabling people to live as project pursuers while eschewing or limiting rights, then *that* system would be superior to the system of rights libertarians tend to favor. If this is the view, then the argument for rights is subject to a purely empirical justification. Now, while it is wrong to see good derivations of rights as completely divorced from empirical concerns, it is also notoriously problematic to justify rights on entirely empirical grounds. Libertarians do not primarily oppose well-run European welfare states because they fail to allow everyone to live as a project pursuer. Libertarians oppose those states because they violate both bodily and private property rights, regardless of those states’ success in allowing individuals to live as project pursuers.

Wendt’s consequentialist justification of private property rights makes it an open question just how extensive the rights libertarians tend to endorse should be. This is true even of bodily rights. If rights are justified because they enable project pursuit, paternalism, for example, could be justified on the grounds that it sometimes does so too. But Wendt has not attempted to deal with paternalism and the challenge self-ownership poses to it—at least as far as I can tell. His claim that we show proper concern for others by seeing that they have sufficient resources is problematic in terms of cost. In the following section, I assess Wendt’s claim without considering cost. I argue that we can show that we care for others in ways that are not as demanding as Wendt’s proviso.

3. Justice and Care

The consequentialist justification of rights is actually at the heart of Wendt’s fundamental departure from a standard libertarian theory of justice. Wendt characterizes the libertarian position as conceiving “justice in terms of

⁴ There might be practical reasons for having a proviso that does not deal with responsibility. Perhaps the process of determining which claimants are responsible will be too unwieldy. For a discussion, see, among others, Zwolinski (2015). Wendt, though, is not offering a pragmatic case for his proviso.

private property” and holding “that persons are self-owners and have a moral power to acquire property rights in initially unowned external resources” (Wendt 2018b, 170). This seems right. However, Wendt is keen to argue that his proviso does not require assigning positive rights or welfare rights to persons (Wendt 2018b, 176). This is because the system of private property itself is unjustified if it fails to satisfy the rationale for private property in the first place. It is unfortunate that he does not say more about this, but it seems that there is no individual who has a claim right to reach the level of sufficiency. Instead, since the system is unjustified, the system should be reformed so as to make it justified (Wendt 2018b, 176).

Now, how Wendt sees these two ideas fitting together is unclear. Ostensibly, they are in conflict. Libertarianism defines justice in terms of rights; the sufficiency proviso says that a system of private property can be unjust even if no one’s rights are violated.⁵ It seems that Wendt agrees to a degree. He calls his theory “libertarian” in a sense distinct from that offered above: “I would insist that a theory should count as an overall ‘libertarian’ one when it gives considerable weight to self-ownership and the natural right to the practice of private property, even if it combines them with some additional principles of justice” (Wendt 2018b, 170).

Wendt is thus aware of this departure from the standard libertarian picture. Again, he has an argument to show that this departure is not merely permissible, but required. Part of the case for the sufficiency proviso is that it is more consistent with libertarian theory. For example, he rejects the egalitarian proviso found in the writings of left-wing libertarians such as Michael Otsuka and Peter Vallentyne. Wendt holds that an egalitarian proviso is not supported by libertarian considerations: “The rationale for a libertarian theory of justice does not speak in favor of an egalitarian proviso. In order to be able to securely pursue person projects, one need not have equal opportunities for welfare or natural resources. One needs to have sufficient opportunities and sufficient resources” (Wendt 2018b, 177).

Further, an egalitarian proviso “imposes unnecessarily harsh restrictions on legitimate project pursuit” (Wendt 2018b, 177). In this vein, he cites Loren Lomasky’s observation that for an egalitarian to “insist that all persons are morally obligated to bring about the equal allocations of material goods is to ignore that each person has primary reason to supply for himself those

⁵ Wendt mistakenly claims that Mack’s anti-paralysis postulate can be used to argue for Wendt’s proviso. But Mack’s anti-paralysis postulate protects rights. Wendt never claims to be protecting rights.

goods which are needed for the advancement of his own projects” (Wendt 2018b, 177, citing Lomasky 1987, 122).

The egalitarian proviso is to Wendt’s left, so to speak. It requires that people deliver much more to others than Wendt believes is defensible. But Wendt rejects at least two provisos to his right for reasons unrelated to rights.

First, he argues against Nozick’s proviso. Nozick’s requires that appropriations do not relevantly worsen the condition of others. Nozick seems to extend this proviso beyond mere appropriations to individual transactions, and possibly a system of private property itself.⁶ Whatever the case, Wendt takes this proviso to be too weak. He writes: “That one’s situation is not worsened by an appropriation or by the system allowing initial appropriation is simply not enough to grant the necessary external preconditions for living one’s life as a project pursuer” (Wendt 2018b, 179). Why is this a problem? Wendt writes that “if the rationale for a libertarian theory of justice is to enable persons to live as project pursuers, then Nozick’s proviso is too weak” (Wendt 2018b, 179).

What is his argument for the move from the antecedent to the consequent in this proposition? It seems to be this claim: “If one really cares about everyone being able to live as a project pursuer and regards this as the rationale to endorse libertarianism, then nothing less than the sufficiency proviso is adequate” (Wendt 2018b, 179). If one really cares that people live their lives as project pursuers, one must care that they have enough resources to do this. One must not only care, but form a program of private property rights so that those who lack enough to live as project pursuers see resources delivered to them.

Wendt says something similar about Eric Mack’s proviso. Given this thick conception of “care,” it is not surprising that Wendt rejects Mack’s proviso. Mack’s proviso requires that “persons not deploy their legitimate holdings, i.e., their extra personal property, in ways that severely, albeit non-invasively disable persons world-interactive powers” (Mack 1995, 187). The idea is that if we rightly attribute to others robust ownership, such as rights over their talents and faculties, then we must attribute to others not merely rights against invasive disablement, but also against non-invasive disablement. As Mack puts it, these world-interactive powers include the individual’s “capacities to affect extra-personal environment in accord with her purposes” (Mack 1995, 186). Since these powers are “essentially relational... [t]he presence of an extra-personal environment open to being affected by those

⁶ Nozick (1974, 179).

powers is an essential element of their existence” (Mack 1995, 187). The reason for attributing rights over talents and faculties to others in the first place is to allow them to “pursue their own good (or projects)” (Wendt 2018b, 180).

Wendt thinks that this proviso is too weak for two reasons. First, he writes that by requiring only that the uses of property do not disable the world-interactive powers of others, Mack “leaves out all cases where someone’s world-interactive powers are severely limited, but not due to other persons, or not due to their uses of their property. This is unfortunate if one cares about people actually being able to live their lives as project pursuers” (Wendt 2018b, 181). Second, “persons whose world interactive powers are not severely disabled can still lack sufficient resources for being able to live their lives as project pursuers” (Wendt 2018b, 181). If one really cares about project pursuit, one should not allow this to happen.

Those familiar with right-wing libertarianism will wonder about Wendt’s use of “care” in his justification of the sufficiency proviso. In particular, it is clear that Wendt fails on two fronts to justify employing this proposition in his argument: “If one accepts the project pursuit rationale for a libertarian theory of justice, then one should also care that everybody actually has sufficient resources to live as a project pursuer” (Wendt 2018b, 170–71).

The first front on which Wendt fails to justify this proposition is that he ignores other ways of showing concern for others. One way to see this is to consider how other provisos fail to get us to the consequent in the conditional proposition that ends the previous paragraph. Here are four stages one might move through before getting to Wendt’s proviso. First, Eric Mack’s proviso prohibits rendering nugatory the world-interactive powers of others (Mack 1995, 187–88). Mack specifically holds that if someone is culpably at a level of insufficient resources, that person is not entitled to redress (Mack 2006, 140–41). So imagine that I have the only fruit tree around. I enclose it with a fence. There is no other food in the area. Bob’s powers are disabled *because* I deny him access to the fruit. Mack’s proviso is violated. If I remove the fence and say that Bob may pick fruit, the proviso is not violated. This proviso requires mere deference.

Robert Nozick’s proviso seems to require not lowering anyone’s level of expected welfare. Return to the previous example of the fence around the tree. When I remove the barrier from the tree, I might satisfy Nozick’s proviso. Provided that Bob endures no loss of expected welfare, I have satisfied it. However, if Bob does endure a loss of expected welfare, I seem to have violated the proviso. I might also have to use some of the seeds to plant

more trees. After all, two of us are eating and not just one.⁷ This proviso ostensibly requires a little more from us than Mack's, but it does not reach the level that Wendt requires.

Now suppose that we strengthen Mack's and Nozick's provisos with the stipulation that if some people are unable to achieve some sufficient level of opportunities or welfare, then others must provide it. However, if some are culpably lacking sufficient opportunities or welfare, then it is impermissible to force others to provide it. This is still weaker than Wendt's proviso because it matters why a person lacks sufficient resources. The four stages, then, are Mack's proviso, Nozick's proviso, Mack's proviso with a requirement that we deliver resources to those who cannot help themselves, and Nozick's proviso with a requirement that we deliver resources to those who cannot help themselves.

Again, suppose that Bob refuses to pick fruit and demands that I deliver some fruit to him. Mack's proviso does not require me to do any such thing. Ex hypothesi Bob is perfectly capable of getting the fruit himself. I am not creating a barrier. So he has to get it himself. Wendt seems to hold that I do not really care about project pursuit. When I removed the barrier, I did not demonstrate that I really care. The justification of that claim requires an extraordinary argument, especially since Wendt introduces it into a tradition that clearly does not agree with his view about "really caring."⁸ Locke and Mack, for example, think that responsibility matters. My only claim here is that Wendt does not offer any sort of argument to show that they are wrong, let alone an extraordinary one.

Similarly, Nozick's proviso seems to require not lowering anyone's level of expected welfare. Suppose that I do not merely remove the fence, but plant some more trees. Under these conditions, we have enough fruit so that both of us are at the level of welfare we would have expected had the other not been around. If Bob refuses to harvest any apples, Wendt would have to say that I do not care about project pursuit. He would have to say this even though there are more apples precisely because I planted more to satisfy Nozick's proviso.

⁷ This is not obviously part of Nozick's proviso, but I insert it for the purposes of demonstration.

⁸ The story is to be constructed so that my ability to pursue projects is not undermined by Bob's demand. I can pursue my projects. The point is that we need to know why I do not care about project pursuit when I refuse to deliver fruit to Bob.

While I think most libertarian theorists hold that adjusting one's behavior to satisfy *any* of the four provisos mentioned above is indicative of *some* level of care, focus only on the two in which one would help those who cannot help themselves.⁹ Suppose that I ask Bob whether he is unable to collect the fruit. If he says that he is not, I would help him. If he says that he is but wishes not to collect it, I do not help him. Wendt seems to hold that I do not really care about project pursuit in either case. I hope that this seems intuitively implausible, because it is.

One final means of showing concern for others is to treat sufficientarian concerns as part of a theory of virtue. Imagine that I agree with Wendt that people who really care about project pursuit should also really care that others have enough resources to pursue projects—at least when this does not interfere with the purpose of private property in the first place. However, I say that this shows that there are virtue-based reasons to see that everyone has enough to pursue projects. Nobody has a right ensuring that others keep him or her at a level of sufficiency; Wendt himself says this. Since he is a libertarian, he “conceive[s]... justice in terms of property rights” (Wendt 2017, 1). Because I too do this, I hold that the reasons for keeping everyone at a level of sufficiency are not part of a theory of *justice*, but part of a theory of *virtue*. I am not holding that there is no way of blocking this way of looking at things. I am saying that Wendt has done nothing to block it.

It seems that Wendt is aware that he is asking for a great deal more care than most libertarians do, at least as it pertains to the demands of justice. To justify this departure, Wendt claims that “it is most convenient to see the sufficiency proviso as part of the natural right to the practice of private property” (Wendt 2018b, 176). The key idea is that the “Sufficiency Proviso co-determines what a ‘justifiable’ practice of private property is—namely a practice that satisfies the sufficiency proviso” (Wendt 2018b, 176). A system of private property is unjust if it fails to satisfy the proviso, precisely because a system is just only when it does so. He denies that the reasons why one is in need of aid matter; a system cannot be justified to people who suffer under that system, especially when seeing to it that they have sufficient resources would not undermine the point of private property in the first place. He says that “private property is justified because private property is necessary for project pursuit, but practices of private property should work for all” (Wendt 2018b, 179). Apparently, a practice of private property should “work” for those who refuse to work at all.

⁹ Some libertarians eschew a proviso entirely. See Rothbard (1998) and Machan (2009), among others. I am grateful to an anonymous reviewer for these examples.

Lurking behind my discussion up to this point has been self-ownership. The idea that individuals have a natural proprietorship over their bodies, talents, and faculties is both attractive and the hallmark of libertarianism. Self-ownership matters for many reasons, not the least of which is cost. If I own myself but owe you something—even mere deference—I endure a cost. The greater this cost, the more my ownership of myself is diminished. Wendt also accepts self-ownership. It is thus necessary to assess Wendt’s claims about his proviso and self-ownership.

4. Mitigating Self-Ownership

Wendt characterizes the libertarian position as conceiving “justice in terms of private property” and holding “that persons are self-owners and have a moral power to acquire property rights in initially unowned external resources” (Wendt 2018b, 170). Wendt seems to wish to preserve self-ownership. However, in an effort to avoid “merely formal” self-ownership, he requires individuals to reform a system of private property even if it violates no one’s rights.

Call self-ownership rights “merely formal” if they protect people against physically invasive actions but do nothing to prevent people from horrible non-invasive suffering at the hands of others. A standard case might look like this: Bob owns himself. Tom builds a wall around Bob, such that if Bob touches the wall, he will violate Tom’s property rights. Bob, on the other hand, will starve to death, even though Tom never touched him.

I think we would all agree that Tom has wronged Bob. Many libertarians agree as well (Mack 2002; Block 2016; Dominiak 2017). I think we would also agree that there are good reasons to believe that the wrong Bob suffered is a violation of his rights. Wendt, though, goes beyond this and says that if there is no wall and Bob is going to die because he refuses to go and get some food, the problem vis-à-vis justice lies with *the system of private property* and not Bob.

With regard to what this might mean in practice, Wendt’s treatment of this issue is perhaps intentionally vague. He writes that a system of private property should be reformed if some individual lacks sufficient resources to pursue projects, provided that doing so does not undermine the purpose of rights in the first place. He says also that this neither requires attributing positive rights to people nor delivering goods to others. However, it is obvious that “reforming” the practice can require work in order to see to it that others have sufficient resources. When one combines this possibility with Wendt’s judgment that it does not matter why someone lacks sufficient resources, self-ownership is obviously weakened. If one individual must take

the time to see to it that another has sufficient resources, his self-ownership rights are obviously weaker than if he did not have to do so. This is true even if, as Wendt says, no one must *deliver* resources to another.

Even if other individuals are kind enough to handle the delivery of those goods and services, the individual whose goods are taken must perform the labor of keeping records, making goods accessible, and so on. I am not arguing that there is no way of trimming away at the edges of self-ownership as Wendt is prepared to do. I am arguing that Wendt's proviso requires far more than Nozick's and Mack's provisos; and Wendt offers only a questionable conception of "care" and a consequentialist derivation of rights to justify doing so.

The worry about self-ownership is especially important in relation to Mack's proviso. Mack sees his proviso as improving on Nozick's because it puts the injustice in proviso violations back into a theory of rights (Mack 2002). Since Wendt sees libertarians as defining justice in terms of rights, Mack's proviso is more libertarian than Nozick's. But Wendt knocks the proviso right out of a theory of rights and back into a separate theory of justice. Once there is a theory of justice distinct from a theory of rights, the demands of that separate theory of justice mitigate self-ownership. The demands of satisfying that theory are costs; and they limit what individuals may do, even when their actions do not violate the rights of others. I take it as fairly obvious that this weakens self-ownership.

Wendt's efforts to avoid a merely formal conception of self-ownership amount to throwing the baby out with the bathwater. As long as people can pursue projects, Wendt denies that we need to factor in whether a needy individual is responsible for his or her lack of sufficient resources. But this allows—and welcomes—free riders to have a claim on the efforts of others.

I am sure that Wendt would respond here by holding that it simply is problematic for someone to have insufficient resources for project pursuit. That, after all, was his reason for rejecting Nozick's and Mack's provisos. The reason that lacking sufficient resources is *problematic* has to do with the foundations of rights, as Wendt sees it. Wendt's consequentialist justification of property rights subtends this response. I argued above that what Wendt says about both of those issues is problematic from a libertarian perspective. Unless he has a better argument up his sleeve than the care-based consequentialist rationale that he repeats throughout his writings on the issue, I contend that nothing he says is problematic for the libertarians in question.

5. The Bygone System of Private Property

Wendt follows Eric Mack in arguing that his proviso applies to a system of private property. The difference between the two is that Mack argues that it is unclear who has to do anything to help those who suffer a proviso violation. After all, no individual is doing anything that violates rights. Wendt argues that the whole system must be modified to see to it that those who suffer within it have sufficient resources, as long as doing so does not undermine the purpose of private property in the first place. I argue that Mack's judgment is far more reasonable than Wendt's because systems of private property in the real world are both inclusive and exclusive in ways that are problematic for Wendt's proviso.

Given the makeup of my family and our dietary habits, it is vastly more likely that we are more economically linked to workers in Maharashtra, India, than to the homeless in Muncie, Indiana. We buy goods produced by the former; I do not know how we might economically relate to the latter. The former cooperate with me in a system of private property insofar as I buy things from them. They are factually included in the system of private property within which I participate. The homeless in Muncie at least might not be.

The problem this example illustrates is that *systems* of private property are no longer local and easily identifiable. We can be involved in multiple systems that include far-flung and obscure individuals in some ways, but which exclude geographical neighbors in other ways. This makes it remarkably difficult to say which people's suffering is grounds for reforming any particular system of private property. The upshot is that it would be remarkably challenging to craft a system that aids those that it needs to aid. In this regard, Mack's judgment is superior to Wendt's. We do not know who is responsible for making changes to aid others.¹⁰

I have written thus far on the assumption that Wendt thinks that systems of private property are unjustified if people within them suffer because of the systems. My point is that individuals near me might not be part of the system of private property at all. A response to what I have said so far is that anyone subject to the laws of a system of private property is thereby an individual whose suffering can require an adjustment of the system. So, the local nonparticipants are still subject to the system. But this must also include the distant workers whose wares we buy. It also has to

¹⁰ The fact that Mack links the need for changing the system to rights violations is also superior.

include the people who are near those whose wares we buy and thus subject to the rules of the system of private property.

The obvious problem here is that our global economy seems to extend the notion of “a system of private property” to include just about everyone. This also makes it hard to amend the system to make sure that everyone has sufficient resources. One might think that national governments should do so, but even that is challenging for several reasons. First, some governments simply lack the resources to do so. Second, there is no obvious reason why the local nonparticipant should receive resources while the distant participant should not (if that distant participant lacks sufficient resources). Third, if wealthy nations must somehow orchestrate the delivery of goods to those in need elsewhere, this can be very costly. It might be so costly that the point of private property could be undermined. Now, it never is clear what Wendt thinks the point of private property is beyond project pursuit. Nonetheless, we could imagine that ensuring that everyone has sufficient resources is costly enough to lower the standard of living of many in wealthy nations, but not so costly that no one can pursue projects. Where Wendt draws the line is unclear. Fourth, many of those local governments may lack the moral authority to oversee the distribution of resources for other reasons. Perhaps some governments are engaged in human rights violations such that they have forfeited any claim to be the architects of private property systems.¹¹ The first three points are conceptual in nature; they apply to any global economy. The last one applies to actual governments. In that regard, it is less significant.

I do not know how to show that these problems are insurmountable. What is clear is that the difficulties raised here are problematic for Wendt, but not for Mack. Once the proviso is divorced from rights violations, the need to specify what counts as problematic suffering arises. The fact that systems of private property are no longer local and geographically contained is particularly difficult for positions such as Wendt’s.

If Wendt has a means of justifying either his consequentialist derivation of rights or his robust conception of “care,” then there are reasons for libertarians to take the sufficiency proviso seriously. As it stands, the foundations of Wendt’s proviso are weak in their own right and at odds with standard libertarian ideas.

¹¹ Litotes intentional.

References

- Block, W. E. 2016. "Forestalling, Positive Obligations and the Lockean and Blockian Provisos: Rejoinder to Stephan Kinsella." *Ekonomia-Wroclaw Economic Review* 22 (3): 27–41.
- Dominiak, Lukasz. 2017. "The Blockian Proviso and the Rationality of Private Property Rights." *Libertarian Papers* 9 (1): 114–28.
- Locke, John. 1952. *Second Treatise of Government*. New York: Macmillan.
- Locke, John. 1997. "Essay on the Poor Law." In *Political Essays*, edited by Mark Goldie, 182–98. New York: Cambridge University Press.
- Lomasky, Loren. 1987. *Persons, Rights, and the Moral Community*. New York: Oxford University Press.
- Machan, Tibor. 2009. "Self-Ownership and the Lockean Proviso" *Philosophy of the Social Sciences* 39 (1): 93–98.
- Mack, Eric. 1995. "The Self-Ownership Proviso: A New and Improved Lockean Proviso." *Social Philosophy & Policy* 12: 286–315.
- Mack, Eric. 2002. "Self-Ownership, Marxism, and Egalitarianism: Part I: Challenges to Historical Entitlement." *Politics, Philosophy and Economics* 1 (1): 75–108.
- Mack, Eric. 2002. "Self-Ownership, Marxism, and Egalitarianism (Part 2): Challenges to the Self-Ownership Thesis." *Politics, Philosophy, and Economics* 12: 83–84.
- Mack, Eric. 2006. "Non-Absolute Rights and Libertarian Taxation." *Social Philosophy and Policy* 23 (2): 109–41.
- Nozick, Robert. 1974. *Anarchy, State, and Utopia*. New York: Basic Books.
- Rothbard, Murray. 1998. *The Ethics of Liberty*. New York: New York University Press.
- Wendt, F. 2018a. "Three Types of Sufficiency Libertarianism." *Res Publica*. doi:10.1007/s11158-018-9400-y.
- Wendt, Fabian. 2018b. "The Sufficiency Proviso." In *Routledge Handbook of Libertarianism*, edited by J. Brennan, B. van der Vossen, and D. Schmidt, 169–83. Routledge: New York.
- Zwolinski, Matt. 2015. "Property, Coercion, and the Welfare State: The Libertarian Case for a Basic Income Guarantee for All." *Independent Review* 19, no. 4 (Spring): 515–29.

