

CARING ABOUT PROJECTS, RESPONSIBILITY, AND RIGHTS: A RESPONSE TO RODGERS

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I THANK LAMONT RODGERS for critically discussing my work and giving me the chance to clarify and elaborate a couple of points about the sufficiency proviso and moderate libertarianism in general. I hope this exchange will help us better understand where the main points of disagreement lie.

My response to Rodgers has six sections. After a very brief summary of what moderate libertarianism and the sufficiency proviso are (section 1), I try to answer his main allegations: that I advance a problematically “consequentialist derivation of rights” (section 2) and a questionably “robust conception of ‘care’” (section 3). Both allegations invoke a good deal of misunderstandings, as I will explain. I then discuss the role of personal responsibility (section 4) and whether self-ownership rights are mitigated in a problematic way (section 5) and thereby try to refute arguments against my view that many not-so-moderate libertarians will be inclined to make. The last section provides a short discussion of an issue I did not take up earlier: how practices of private property are to be individuated (section 6).

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CITATION INFORMATION FOR THIS ARTICLE:

Fabian Wendt. 2018. “Caring about Projects, Responsibility, and Rights: A Response to Rodgers.” *Libertarian Papers*. 10 (2): 161-174. ONLINE AT: libertarianpapers.org. THIS ARTICLE IS subject to a Creative Commons Attribution 3.0 License (creativecommons.org/licenses).

1. A Very Brief Sketch of the View

Moderate libertarianism (see Wendt 2017, 2018) is a theory of justice. It starts with the idea that people should be able to live as project pursuers. Because people should be able to live as project pursuers, we should conceive them as endowed with self-ownership rights and a right to acquire external resources in line with justifiable conventional practices of private property. To be justifiable, a practice of private property has to satisfy the so-called “sufficiency proviso,” among other things. The sufficiency proviso 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. The point of practices of private property is to allow people to live as project pursuers.

That people are to be able to live as project pursuers is thus an idea that has three functions: it grounds self-ownership and the right to acquire external resources in line with justifiable conventional practices of private property, it co-determines what a justifiable practice of private property is, and it serves as a telos for practices of private property (it specifies what their point is and allows us to evaluate different practices as better or worse).¹

The view is a *moderate* version of libertarianism above all because it endorses the sufficiency proviso, which is weaker than the egalitarian proviso advocated by left-libertarians such as Hillel Steiner (1994) but stronger than the provisos advocated by Robert Nozick (1974) and Eric Mack (1995). It is also moderate in that it conceives practices of private property as conventional,² takes rights to be stringent, but not maximally stringent, and holds that rights do not exhaust political morality. But the main focus of my discussion will be on the sufficiency proviso.

2. A Consequentialist Justification of Rights?

In the last paragraph of his piece, Rodgers writes: “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” (2018, 158). I take him to imply that I do not

¹ I emphasize the point about the telos of practices of private property in a work-in-progress paper.

² One could say that it is as Humean as a Lockean view could be (or the other way around).

have such a means. So let me begin my reply (in this and the next section) with these (allegedly) “tenuous foundations” of my view.

I am surprised that my (so far admittedly sketchy) justification of rights was read as a consequentialist justification.³ I believe that self-ownership rights and the right to the practice of private property have a point and that this point is to enable everyone to live as a project pursuer. Why is this consequentialist? At least it does not seem more consequentialist than any other theory about the point of rights—be it to protect interests, to protect choices or autonomy, or to create spheres of jurisdiction.

Be that as it may, let us focus on why Rodgers regards my “consequentialist” justification of rights as *problematic*. He does not say very much, but one thing he suggests in this context and with reference to Nozick is that rights function as side-constraints (2018, 147). Yet I agree that rights function as side-constraints, albeit not as maximally stringent side-constraints. Rights can sometimes give way to other moral considerations, as even Nozick admits (1974, 30n). I do not see a reason why the project pursuit–based justification of rights should stand in the way of their functioning as side-constraints.⁴

A second problem with my justification of rights seems to be that it is, well, different from what some other libertarians would be prepared to say with regard to rights and project pursuit, namely that “private property rights exist as a means of allowing people to attempt to pursue their projects” (Rodgers 2018, 147). This is indeed different from what I say since being allowed to live as a project pursuer is compatible with not being able to live as a project pursuer. Now while I do not understand why this alternative justification of rights is supposed to be any less “consequentialist” than my own justification, I am happy to “[shoulder] the burden of arguing against [this alternative] starting point” (Rodgers 2018, 147).⁵

³ Rodgers also writes that I give a “purely empirical” justification of rights (2018, 149), which puzzles me even more. The view is based on the axiological (i.e., non-empirical) idea that it is a good thing if people are enabled to live as project pursuers.

⁴ Or at least why it should be any less compatible with conceiving rights as side-constraints than other accounts that spell out what the alleged point of rights is. *Any* such theory will have to deal with what is sometimes called the “paradox of deontology” (see Scheffler 1985; McMahon 1991; also Nozick 1974, 30–33), but this is by no means a problem that is specific to a project pursuit–based defense of rights as side-constraints.

⁵ Relatedly, Rodgers says that if moderate libertarianism started from other assumptions than right-wing libertarianism, then I would need to show that my

As I pointed out before (Wendt 2017, 175), 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. That is why a theory of rights should not be based on the claim that people should be formally allowed to live as project pursuers, but on the claim that people should be able to live as project pursuers. Rodgers does not give us a reason to think otherwise.

A final note: In the introduction to his text, Rodgers writes that he will read me as attempting to prove that moderate libertarianism and the sufficiency proviso are “what fits most comfortably with a very commonly accepted foundation of libertarian private property rights” (2018, 144), which he apparently takes to be the claim that people are to be formally allowed to live as project pursuers. He says that he reads me this way because of “my explicit claims” (2018, 144). I do not know what he is referring to. In my 2017 piece, I argue that moderate libertarianism “better coheres with the most plausible rationale for endorsing a libertarian theory of justice in the first place” (2017, 169), but “most plausible” is certainly not the same as “commonly accepted.” Moreover, I am not sure how “commonly accepted” the foundational claim that people are to be formally allowed to live as project pursuers really is. I do hope, though, that my sketchy project-pursuit rationale for moderate libertarianism does not sound completely alien to libertarian ears. In any case, if Rodgers wants to confine himself to showing that moderate libertarianism cannot be derived from the claim that people are to be formally allowed to live as project pursuers, then he is pushing at an open door. I am very willing to admit that moderate libertarianism—of course—cannot be derived from that claim. Luckily, for the most part Rodgers does not seem to read me the way he claims to read me.

3. A Robust Conception of Care

This brings me to Rodgers’s worries about my questionably “robust conception of care.” Rodgers quotes me saying that “[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” (2018, 151). Why is this false? According to Rodgers, I “fail to [justify] this proposition” because I ignore other ways of showing concern for others (2018, 152). What are these other ways? Maybe we care enough about people’s ability to pursue projects by respecting the provisos

assumptions “are more plausible and less problematic than the assumptions right-wing libertarians actually make” (2018, 144).

advocated by Nozick or Mack (or variations of them).⁶ Now luckily I discussed Nozick's and Mack's provisos extensively (2017, 176–80), and I think one can demonstrate that they are too weak if one accepts my starting point—that is, the idea that people should be able to live as project pursuers. As explained in the last section, being merely allowed to live as a project pursuer is not of much value if one is actually unable to live as a project pursuer; therefore a theorist who “really cares” about people's ability to pursue projects should accept the sufficiency proviso and nothing weaker. This is the thought.

Rodgers goes on to apply four relatively weak provisos—among them Nozick's and Mack's—and the sufficiency proviso to a case in which a person named Bob refuses to pick fruits himself and instead wants them freely delivered by someone else, maybe us, suggesting that it is not so clear that we do not “care” sufficiently about project pursuit if we opt for a proviso that is weaker than the sufficiency proviso and allows us to refuse to give our nice fruits to Bob (2018, 152–54).

But all this is misguided in two respects. Most importantly, my proviso works differently from the provisos of Mack and Nozick. My sufficiency proviso is a proviso regarding the justifiability of practices of private property, while Mack's proviso is a proviso on how to exercise one's property rights and Nozick's proviso is a proviso that concerns acts of initial appropriation and, as a historical shadow, transfers of property.⁷ Thus only Mack's proviso and, in a different way, Nozick's proviso apply to the case of Bob. Second, the sufficiency proviso is not to make sure that everyone gets whatever they want or is able to succeed with any particular project they might fancy. It is to enable them to live as project pursuers—that is, to have the resources that are necessary to live as someone who is in a position to pursue projects and is not forced to struggle for survival every day. That ability is not at stake in the case of Bob. If he merely refuses to pick fruits, but could easily do it (or just eat the quinoa salad he bought at the grocery store instead), then he is able to live as a project pursuer.

I conclude, then, that while my “caring” about people's ability to pursue projects may be considered robust, Rodgers does not give us a reason to find it questionable.

⁶ Rodgers also proposes that it may be considered virtuous to care about other people's ability to pursue projects (2018, 154). I do not disagree, but this certainly does not undermine the case for the sufficiency proviso.

⁷ Nozick also seems to accept a proviso that applies to practices of private property as a whole (1974, 177), next to his proviso on acts of initial appropriation.

4. The Role of Personal Responsibility

One important issue raised by Rodgers is the issue of personal responsibility. In one of my articles Rodgers is referring to, I say: “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” (2017, 173–74). Rodgers replies that “denying that responsibility matters in determining whether one should receive support vis-à-vis the proviso” is a “massive departure” from the libertarian tradition (2018, 148), and, quite clearly, he takes the libertarian tradition to be correct on this point.

In response, it is important to get clear *for what* personal responsibility is to matter or not to matter. In my view, it does not matter for the assessment of the justice of practices of private property in one specific sense: a practice of private property should, if possible, be designed such that everybody has sufficient resources to live as a project pursuer, even people who do not have sufficient resources because of faults of their own, at least if they did not violate other people’s rights and thus deserve punishment.⁸ But what *institutions* are justifiable, from that point of view, is a separate issue.⁹ As I put it in my earlier piece: “Considerations about responsibility are certainly important for designing the institutions that are to implement the proviso, but they do not matter at the level of a theory of justice” (2017, 174). Relevant institutions are all property-related laws and social norms as well as organizations, in particular organizations that are entitled to change, enact, or enforce property-related laws or social norms (possibly including state institutions).

Thus if responsibility-*insensitive* institutions of welfare provision—such as a state-provided basic income—would undermine the point of having a practice of private property in the first place, then moderate libertarianism would *not* support such institutions. Likewise, if responsibility-insensitive institutions of welfare provision would work so poorly that they would fail to live up to the sufficiency proviso, then moderate libertarianism would again *not* support such institutions. Why might either of these be the case? Maybe because such institutions would incentivize people to free ride on the efforts

⁸ Rodgers says that, according to my view, if “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” (2018, 155). I disagree, because if Bob just refuses to go and get food, even though he easily could, then he is perfectly able to live as a project pursuer.

⁹ This sharp distinction between principles of justice on the one hand and the institutions that are to realize principles of justice on the other is also common among Rawls-inspired libertarians or classical liberals (see Tomasi 2012).

of others, as Rodgers puts it (2018, 156).¹⁰ It is *possible* that the sufficiency proviso, although unconditionally demanding sufficient resources for everyone, is not satisfied by institutions that are designed to unconditionally provide everyone with sufficient resources (or that it is satisfied by them, but at the price of undermining the point of having a practice of private property in the first place). It is more plausible, though, that responsibility-insensitive institutions of welfare provision will usually meet the proviso (and not undermine the point of having a practice of private property in the first place), bad-incentive effects notwithstanding.

But that a certain set of institutions satisfies the sufficiency proviso does not imply that they are *required* by the sufficiency proviso. After all, it could be that both responsibility-sensitive and responsibility-insensitive institutions of welfare provision satisfy the sufficiency proviso (and do not undermine the point of having a practice of private property in the first place). What moderate libertarianism recommends, in the end, will depend on which of these institutions better lives up to the telos of practices of private property—that is, does a better job at enabling everyone to live as a project pursuer by creating clear-cut spheres of non-interference. As Rodgers acknowledges, some libertarians have advocated a basic income or a negative income tax already (Friedman 1962; Hayek 2012; Zwolinski 2015),¹¹ but moderate libertarianism is also compatible with advocating responsibility-sensitive institutions of welfare provision.

It should be noted that it is also possible that market anarchism—that is, a set of institutions that does not include *any* state-run provision of welfare—satisfies the sufficiency proviso and scores highest from the point of view of the telos of practices of private property. This is not my view, but it is a view that is compatible with moderate libertarianism.

Once one distinguishes the level of principles of justice and the level of institutions, it becomes clear that responsibility-related objections have to target the former, not the latter, if they are to target moderate libertarianism. So what could be objected against the view that, if possible, a *just* practice of private property has to be designed in a way such that everybody has

¹⁰ Relatedly, David Schmidtz writes: “Our need for food, clothing, and shelter is beyond question; our need for guaranteed provision is not. Nor is guaranteed provision guaranteed to make people better off. After all, the guarantee does not mean the goods are free. What it means is someone else has to pay. It means people have to pay for other people’s needs and other people’s mistakes instead of their own” (1998, 9).

¹¹ For an overview, see Zwolinski (2017); for a critical discussion, see Rodgers and Rodgers (2016).

sufficient resources to live as a project pursuer, even people who do not have sufficient resources due to faults of their own, at least if they did not violate other people's rights and thus (arguably) deserve punishment?

One possibility would be to argue that people deserve to suffer when they lack sufficient resources because of faults of their own (even if they did not violate other people's rights). But this seems not quite congenial to what hopefully is the spirit of libertarianism. Libertarianism should be supportive of human flourishing and happiness (I think).

Another possibility would be to argue that justice cannot require taking from some to give to others, because the former have *property rights* over these resources and justice cannot sanction a violation of these property rights. It should first be noted, though, that this argument does not have much to do with personal responsibility. If it is wrong to take from some in order to give to others, then this arguably applies irrespectively of whether those on the receiving end need resources because of faults of their own or because of bad luck. Second, the argument is *based on* a rejection of the sufficiency proviso and is therefore unsuited to serve as a refutation of the sufficiency proviso. Why is it based on a rejection of the sufficiency proviso? Because it refers to property rights that are claimed to be violated by the sufficiency proviso. Yet according to moderate libertarianism, what property rights people have is to be determined by reference to justifiable practices of private property, and the sufficiency proviso co-determines what a justifiable practice of private property is.

To sum up: Responsibility-based objections can be accommodated by moderate libertarianism when they target institutions, not principles of justice. When they target principles of justice, they are either unconvincing or question-begging.

5. The Natural Duty of Justice and Mitigated Self-Ownership Rights

Rodgers worries that the sufficiency proviso leads to a multiplication of duties and hence to a problematically weakened conception of self-ownership (2018, 155–56). How so? He rightly notes that no individual has a *right* to reach the sufficiency threshold, according to moderate libertarianism (2018, 150). This, among other things, distinguishes my view from Loren Lomasky's view, in which modest welfare rights play a prominent role (1987; see Wendt 2018). The sufficiency proviso simply sets a standard that co-determines whether a practice of private property is justifiable. Nothing more or less. So duties to satisfy sufficiency-related *rights* are not the problem.

Yet moderate libertarianism is compatible with the assumption that people have a *natural duty of justice* to help bring about just institutions, even though it is *also* compatible with denying that there is such a duty (see Wendt 2018). A duty of justice would be a positive duty (i.e., a duty to *do* something), albeit not a duty that correlates with rights. Rodgers, in any case, worries that such a duty would mean that self-ownership rights are mitigated since “‘reforming’ the practice can require work in order to see to it that others have sufficient resources” (2018, 155).

A first reply is to concede the point but insist that nothing in moderate libertarianism and the sufficiency proviso forces us to accept that there is such a duty of justice. But I tend to think that in fact there is such a duty, so I am not quite happy with this first reply. It is arguably not a duty to work harder, though, but a duty to—in one way or other—help reform institutions in the direction of what justice requires. Of course this does not imply that this duty of justice is enforceable and should be enshrined as a *legal* duty.

A second reply is to again concede the point but deny that it is a worry if self-ownership is slightly weakened. After all, *all* moral duties limit self-ownership by specifying limits to what one may permissibly do. This holds for the negative duties to respect other people’s self-ownership rights, it holds for duties that result from one’s promises and contracts, and so on. So the mere fact that a duty of justice to help reform an unjustifiable practice of private property *is* a duty and therefore sets limits to self-ownership rights is not enough to discredit the assumption that there is such a duty.

A third reply is that the duty of justice would arguably not be an enforceable duty, and so it would limit self-ownership rights only in setting limits to what one may permissibly do, but it would not give others greater discretion to interfere with what one does.

Maybe the real objection is that duties and rights have to be *compossible* (see, e.g., Nozick 1974, 238; Rothbard 1998, 99–100; Narveson 1988, 127; Steiner 1994, 88).¹² Negative duties that correlate with other people’s rights can be exercised simply by sitting at home, doing nothing. Fulfilling them cannot require the violation of other people’s rights. Positive duties that are voluntarily incurred by way of promises or contracts—such as duties to help someone revising a manuscript—also cannot violate negative rights, simply because they are voluntarily incurred. And if someone should dare to promise to violate another person’s negative rights, this promise would not be valid and thus would not generate positive duties to begin with. To fulfill positive

¹² For a recent discussion of compossibility, see Christmas (2019).

duties that are *not* voluntarily incurred, on the other hand, it can be necessary to infringe other people's negative rights. The only way to fulfil a duty to help to feed others may be to violate property rights, for example. That is why we should reject the existence of positive duties that are not voluntarily incurred, including the alleged duty of justice to help reform practices of private property that are not justifiable.

My first reply to this is the same as above: Concede the point, but insist that nothing in moderate libertarianism and the sufficiency proviso forces us to accept positive duties. But, again, since I think there is a positive duty of justice, I do not want to rely on this response.

A second reply is to claim that the positive duty of justice is not stringent enough to ever outweigh negative rights. This is certainly plausible for self-ownership rights; but what about the legal property rights that are constituted by an unjustifiable practice of private property? One could hold that practices of private property may only be reformed by legal means, such that the duty of justice never legitimizes the violation of legal property rights.¹³ It seems to me that there is a good amount of truth to this, but I am skeptical that it is never ever possible for the duty of justice (or other positive duties) to outweigh negative rights, and so I will not rely on this reply either.

The third (and best) reply is to simply reject the claim that duties and rights have to be compossible. Consider that even negative rights and duties can get into indirect conflicts. Amartya Sen tells the (here slightly altered) story of A, who is about to be killed by B if we do not break into C's office to get to a telephone and warn him (1988). (This is obviously before the time of cell phones.) Only negative rights are at stake: A's self-ownership rights are in danger of being violated by B, and C's (or her bosses') ownership rights in the office are in danger of being violated by us. Now, in ideal circumstances—that is, without B's desire to kill—of course both A's and C's negative rights could easily be respected. But in the non-ideal circumstances in which B is about to violate A's negative rights, it seems permissible to infringe C's negative rights in the name of protecting A's more important negative rights. If that is right, even negative rights are not compossible in an important sense.

Now if that is right, then why should it not also be permissible, under certain circumstances, to infringe a person's negative rights for other reasons

¹³ Violating legal property rights may be regarded as unjust even within unjustifiable practices of private property. But this is an issue that would deserve a deeper discussion than I can provide here.

(e.g., because of a positive duty)? Judith Thomson presents a case in which A has a drug in a locked box on his back porch and is out of town. Unfortunately right now a child needs exactly this drug to survive, and we would be in a position to give A's drug to the child (1981, 133). (We cannot contact A to ask for permission; again, no cell phones.) There is no indirect conflict of negative rights, since only A's negative property rights are at stake. Thomson writes: "But surely it is plain as day that property rights are not infinitely stringent. I suppose it hardly needs argument to show they are not. In any case, the fact that it is morally permissible for us to go ahead in [the case of the child] would show... that they are not" (1981, 138).

In the examples of Sen and Thomson, it is permissible to infringe property rights in external resources. But the same can happen to self-ownership rights. If the only way to get the drug to the child is by way of tickling someone gently, but against her will, for one minute (you can make up the background story yourself), then this certainly is permissible. Generally speaking, libertarians rightly emphasize the importance of negative rights and duties, but to claim that justice consists in a system of perfectly compossible rights and duties that never generates any conflicts—and thus never allows any permissible infringements of rights—is simply implausible.¹⁴

I conclude that one should not worry too much about the duty of justice to help bring about just institutions. But, recall, moderate libertarianism is compatible with a rejection of that duty anyway. So if you are skeptical about that duty, just accept moderate libertarianism without it.

6. Individuating Practices of Private Property

A final question raised by Rodgers is how practices of private property are to be individuated (2018, 157–58). The sufficiency proviso, recall, requires practices of private property to enable everyone to live as a project pursuer, if that is possible without undermining the point of having a practice of private property in the first place. To find out whether a practice of private property is justifiable, we thus have to *individuate* practices of private property. We need

¹⁴ With regard to self-ownership rights, Rodgers also worries about paternalism (2018, 149), but since this has not much to do with the sufficiency proviso, I will only give a very brief answer. The hope is that the project-pursuit argument grounds self-ownership rights that are stringent enough to prohibit most instances of paternalism, while on the other hand permitting some forms of soft paternalism, such as saving someone's life by pushing him out of the way of a deadly threat (when he cannot be warned).

a criterion where one practice ends and another starts, so to speak. Rodgers writes that “*systems* of private property are no longer local and easily identifiable” (2018, 157) and that maybe in our globalized world there is just one system of private property that is to include just about everyone (2018, 158).¹⁵

This is not supposed to be a knock-down argument, I suppose, but it certainly requires some kind of answer. Here is what seems most plausible to me: What counts as an individual practice of private property should basically track *law*. The basic guideline should be that we have an individual practice of private property in a geographical area that is united by a common property law. Now sometimes there are several levels of law applying to the same geographical area. In a particular region in Europe, for example, there may at the same time apply local laws, federal laws, and EU laws. Since international law also legislates property issues, it can often be considered the top layer. One can ask the question whether a practice of private property is justifiable with regard to each of these levels and thereby count each level as one individual practice of private property. But one can also assess several levels together for a particular geographical region, when the region is united by a common property law at least on one level, and thus count the whole as *one* practice of private property. I do not think one has to decide between these two ways of individuating practices of private property. In any case, one can make a good case for the view that there are practices of private property below the level of the global economic system.

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¹⁵ He also points out that governments may lack the authority to oversee the distribution of resources (2018, 158). This is true, but it points at much more general worries about political authority that I cannot begin to discuss here.

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