

Libertarianism, Utility and Economic Competition

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Abstract

Libertarianism is defined both by its foundations and by the institutions to which it typically is said to give rise. In this paper it is argued that while a system of economic competition can be defended on consequentialist grounds, such arguments are not available to deontological libertarians. Thus it is concluded that deontological libertarians cannot provide a foundation for the type of economic system they favour.

Libertarianism, Utility and Economic Competition

Introduction

Section 1: Libertarianism and Economic Competition

Libertarianism is commonly characterised both by its institutions and by its foundations. Institutionally it is associated with the idea of a minimal state,¹ restricted to the narrow functions of protecting citizens from each other and from non-citizens, and providing enforcement of private contracts. Typically libertarians assume that alongside this comes the economic institutions of a pure form of capitalism, including strong private property rights, low or no taxation, and free competition among potential producers of goods and services.

Foundationally, libertarianism, in its deontological form, is variously claimed to be based on individual rights to self-ownership, or to liberty. There are, of course, also consequentialist versions of libertarianism, or, at least, versions of libertarianism with a consequentialist strand. One sees something like this view in the writings, for example, of Milton Friedman.² Often advocates of such views are less theoretically self-conscious than their deontological colleagues, appealing to various considerations without investigating the relations between them or the further consequences of adopting the doctrines in question. Consequentialist libertarianism, whether consequentialist in whole or part, thus offers a hostage to fortune, and is open to lines of criticism based on the calculation of consequences. So, for example, if a new version of market

¹ Nozickian libertarianism, of course, allows people voluntarily to contract into a more than minimal state, if that is what they wish to do. For present purposes I ignore the 'left-libertarianism' of Steiner, Vallentyne, Otsuka and others. See ...

socialism could be devised which had all the benefits of capitalism and some others beside, fully consequentialist libertarians would seem bound, in theory at least, to reject capitalism in favour of this alternative theory. Those holding a hybrid view would have to decide where their loyalties lie. Thus to those of a certain cast of mind, deontological libertarianism, with its austere ontology of moral premises, appears the more rigorous, appealing, and defensible version. My aim here is very simple. It is to argue that deontological libertarianism cannot unproblematically deliver the defence of capitalism to which it aspires, or at least not in a way that avoids begging the question. The case of economic competition will be used to attempt to demonstrate this.

1. Economic Competition.

Free economic competition is essentially equivalent to the idea of 'no entry barriers'. Anyone may, in principle, may offer for sale any good or service. Of course financial constraints may make it, in practice, impossible for someone to compete in particular areas, but a system of free competition places no legal restrictions on individuals producing or offering for sale any good or service. In any developed economy economic competition takes a number of forms. H.B. Acton usefully distinguished four spheres of economic competition in a capitalist economy: for contracts; between 'suppliers of labour'; between employers of labour; and to sell to consumers.³ Quite likely this is not an exhaustive (or indeed, exclusive) classification, but it will serve to illustrate the scope of competition.

² Capitalism and Freedom, Free to Choose

³ H.B. Acton, *The Morals of Markets and Related Essays*, edd J. Shearmur and D Gordon (Indianapolis: Liberty Fund, 1993), pp. 71-79 (First published 1971)

Economic competition is, of course, celebrated for a number of reasons. One set of considerations derive from ideas of freedom; simply the freedom to produce, buy and sell what one wishes. Those who, for some reason, are prohibited from one or more of these activities may feel deeply frustrated. As Nozick famously puts it 'a socialist society would have to ban capitalistic acts between consenting adults'. This thought can be taken in a number of directions: as a complaint against the suppression of liberty; or, perhaps, as a complaint against the violation of rights. But in sum the freedom arguments for competition focus on the rights and liberties of producers and sellers of goods.

A second set of considerations points to the economic advantages of competition. Free competition is the enemy of complacency. In a competitive environment there is no opportunity to relax, for this may allow one's competitors to innovate by either producing a better product or finding a cheaper way of producing or selling existing products. Producers and retailers are kept on their toes. The need for economic survival against competition keeps prices down and quality up. This, quite obviously, is to the advantage of the consumer, and provides a very powerful consequentialist argument for competition.

Yet despite the common lauding of economic competition, historically the arguments have not all been one way. Economic competition, and competitive behaviour in general, has been the object of moral concern for many reasons, although I think we can divide them into four main groups:

- a) That the competitive individual displays an unattractive character.
- b) That social relations in a competitive society are in some way impoverished.
- c) That competition involves treating people as means.
- d) That competition harms those who take part, and in particular those who lose.

For the purposes of this paper I want to discuss only the last of these categories.⁴ Here the general point is familiar. Economic competition will have at least three types of losers: producers who find they can no longer sell their goods;⁵ workers who lose their jobs owing to business failure or through direct or indirect competition with other workers (perhaps in low wage economies);⁶ and, in different cases, consumers who find themselves ‘priced out of the market’ (e.g. the housing market).

Of these, the second group has been, historically and for very good reason, of the most concern. Thus, Bentham, for example, when advocating the introduction of the printing press in Tripoli and Greece, warned ‘care should be taken that the employment given to it should not be such as to throw out of employment any of the existing scribes, except in so far as other employment not

⁴ Acton competently argues that the alleged harms of the first two types are not significant (pp. 67-71, 96-98) although there is much to be said on the other side. Acton does not discuss the third type. Elsewhere I have argued that economic competition can involve a form of exploitation: exploitation by consumers/voters of those engaged in competition, see my ‘The Ethics of Economic Competition’ in *The Legal and Moral Aspects of International Trade, Freedom and Trade*, volume III ed. A. Qureshi, G. Parry, and H. Steiner (London, Routledge 1998), pp. 82-96, republished in revised form as ‘Economic Competition: Should We Care About the Losers?’ in H. La Follette (ed) *Ethics in Practice* 2nd Edition (Oxford: Blackwell Publishers, 2002), 551-599.

⁵ This would also include retailers who find themselves holding stock they cannot sell.

⁶ Direct competition is to compete for the same jobs; indirect is to offer oneself as a worker to a business that will eventually destroy the jobs of others through successful competition. It is possible that different moral considerations apply in these cases but I will not pursue that here.

less advantageous is found for them'.⁷ For Bentham, care needs to be taken both to avoid the distress caused to the potentially unemployed, and the likely hostility to innovation consequent on such distress.

Presumably Bentham was thinking of scribes working in government service. But consider a private individual, running a copying service, employing scribes. Imagine now that another individual has access to greater funds and decides to set up a printing press, in competition. At a stroke, let us suppose, this will destroy the hand copying business. In the economic 'survival of the fittest' this business will die out, possibly with the consequent financial ruin of its proprietor, in addition to the unemployment of the scribes. Like Bentham we will be concerned about the scribes. But in addition, what, morally, should our attitude be to the loss, or even ruin, of the proprietor?

Some will say that this is simply a fact of economic life. This could mean one of at least two things. First it could be that there is no alternative to an economic system with effects of this nature. This seems to me highly doubtful (as I shall illustrate below), but in any case it is something that needs to be shown, rather than assumed. Second it could mean that this is simply a natural consequence of the economic rules we happen to have. But while true, the question is whether we should have those rules. Thus the 'fact of economic life' defence takes us nowhere.

No one can reasonably doubt that when a business fails people suffer harm, often of a serious kind. Considering similar cases Acton admits that while the idea of the survival of the fittest applies to economic life as well as to evolutionary biology, there is an important disanalogy, which makes it less

⁷ Jeremy Bentham, *Securities Against Misrule and Other Constitutional Writings for Tripoli and Greece* ed. Philip Schofield (Oxford: Clarendon Press, 1990) (written 1828) p. 38. I thank Philip Schofield for drawing my attention to this text, and other writings of Bentham on competition.

serious in economics. Losers in the biological struggle for survival face a drastic end, but when a form of economic life comes to an end it does not necessarily involve the ending of life. Rather it merely the 'cessation of some groupings and activities and the assumption and organisation of new ones.'⁸

However calm and reassuring this may sound one cannot help feel that Acton has evaded the main theoretical question. When the printing press is introduced, those who run businesses using earlier forms of technology, and do not convert to the new technologies, will cease trading, and perhaps face financial ruin. Thus their financial interests are destroyed, just as surely as they would have been had a rival businessman burned down the premises,⁹ or if an employee disappeared with the year's takings, or if an agent fraudulent diverted revenue into her own back account. Thus loss by competition, arson, theft and fraud can, in principle, involve the same level and type of loss, at least from the point of view of the person who loses. This is a point that is easily overlooked. We have somehow come to believe that a financial loss caused by fraud, theft or arson is morally unacceptable, but a financial loss of the same magnitude resulting from economic competition is merely unfortunate.¹⁰

⁸ Although he concedes that it can lead to suicide and death by hunger (p. 73).

⁹ Here I ignore any issues of insurance or redress. In the case of arson even if insurance or compensation is paid out, this does not show that arson is morally permissible.

¹⁰ It might be suggested that losses in economic competition differ in that the risks are voluntarily taken, whereas this is not the case for fraud, theft and arson. Thus those who draw a line between chance and choice and consequently hold individuals responsible for the effects of their choices may suppose they can explain the asymmetry. There may be some plausibility to this, although one possible reply is that the plausibility of such a distinction depends on falsely assimilating many different types of risk (see Michael Otsuka Liberty, Equality,

Under capitalism one is given rights against loss by fraud theft or arson, but not against loss by competition. This cries out for explanation. The fact that no-one need die hardly goes to explain why, in one case the loss is considered a normal part of life, but not in the other three cases. No one need die in ordinary cases of fraud, theft and arson (although they might, especially in the last), and the fact that people normally manage to carry on with some or other form of economic activity after suffering competitive losses, hardly shows that these losses are not of significant moral concern. After all, fraud, theft and arson do not bring the economy to a halt either.

2. The Liberty Argument

Probably the most common attempted defence of free competition, from a liberal or deontological libertarian perspective, is to say that the right to engage in economic competition is a simple implication of the right to liberty. The right to liberty gives people a right to trade; to buy and sell as they wish. Hence it is entirely unproblematic.

It should already be clear, though, what it is wrong with this argument. The right to liberty is never a right to act in all ways you wish to, including ways that harm others. My right to liberty does not give me the right to choose exactly

Envy, and Abstraction', in Justine Burley, ed., *Dworkin and His Critics* (Blackwells, 2004), pp. 70-78, and Kasper Lippert-Rasmussen, K., 2001, "Equality, Option Luck, and Responsibility", *Ethics* 111, 548-579). But aside from that, this proposal does not seem to cut cases the right way. A person who knowingly moves to a high-crime area to take advantage of the lower property prices still has rights against theft; the businessman who, perhaps reasonably in the circumstances, fails to anticipate shifting technologies, does not thereby gain rights of protection.

how I will use my automatic machine gun, or even my petrol and matches. There is, in general, no liberty to act in ways that are harmful to others. So if economic competition does harm people, as John Stuart Mill argued, then no simple appeal to liberty will explain why it is to be permitted. In sum, the liberty argument works only if it can be shown that damage suffered in economic competition is not harm. But as Mill pointed out, it looks very much like harm, and so if this move is made some deeper explanation is needed.

3. The Consequentialist Argument

No doubt the blindingly obvious thing to say is that we allow economic competition on consequentialist grounds, and indeed this is Mill's own argument. The sad financial loss of those running an obsolete or inefficient business is the downside of a system with a lot of good to it, as outlined in the first section of this paper. This is a reason for allowing competition: the economic analogue of the 'best of all possible worlds' defence to the problem of evil. Whether those who lose out should be given compensation, or some sort of safety net, or nothing at all, will depend on further features of the consequentialist theory one holds, together with a calculation of the consequences. But giving people rights to be protected against economic competition (as distinct from rights to be given relief from the worst effects of economic competition) will be bound to be inefficient in important ways, and thus is not a candidate option for a consequentialist.

My first main point can now easily be appreciated. We are owed an explanation of why contemporary capitalism provides rights against fraud, theft and arson, but not rights against economic competition. Standard arguments, appealing to considerations such as the advantages of economic efficiency are available only to those who have availed themselves of those arguments. This will include almost everyone except the pure deontological libertarian. This, I

hope, is a surprising conclusion: those who (apparently) speak most in favour of the free market and free competition are, *prima facie*, in the worst possible position to defend it. It thus remains unclear, at this point, whether libertarians can even allow pure capitalism, still less that it provides a defence for it.

What else might be said to reconnect deontological libertarianism and capitalism? The only direct discussion of any relevance to the issue I have seen, is by Richard Arneson. In a discussion of Lockean Self-Ownership Arneson is interested in the Lockean understanding of the concept of 'harm to others', noting a number of nuances in the view. One such is 'hurts that come about by fair competition do not qualify as harms'.¹¹ This is exactly the doctrine that deontological libertarianism needs. (The consequentialist can, of course, allow that economic competition causes harm, but argue that this harm is outweighed. The deontological libertarian cannot.) To defend this doctrine Arneson points out that, in the absence of long term contracts, customers have a right to withdraw custom for any reason or none. Now it is not clear from the context whether Arneson thinks this is a good defence, but it is also not entirely clear how this is supposed to function as a defence. Consider the case of the hand-copying business. Here the businessman complains that the printing press has harmed him by luring away customers. To this it is replied that the customers could have left for other reasons if they had wanted to. Now this may be true, but it is far from clear that it is relevant. After all, it is not being claimed that the customers did leave for other reasons; merely that they could have legitimately done so if they wanted. But this does not answer the point that, in the circumstances as they are, harm has been caused by another person setting up a competing business.

Perhaps the argument is a different one: the operative claim would be that one cannot complain about the damage caused by economic competition,

¹¹ Richard J. Arneson, 'Lockean Self-Ownership: Towards a Demolition', *Political Studies* 1991, 36-54, p. 39.

because the damage is exactly equivalent to a damage that could have been caused by a means that is already acknowledged to be perfectly legitimate: customers withdrawing their trade on a whim. Now there are two types of reply to this argument. The first is that it is double edged; perhaps we should investigate whether it really should be legitimate for customers to withdraw their business just because they feel like it (certainly some people feel a moral obligation not to do so, especially, say, with regard to vulnerable small businesses). But we need not go down that road, for the second reply is already implicit in arguments already given. Consider the employee who absconds with the year's profits. It is hardly a good defence to point out that exactly similar damage would have been caused had all customers legitimately withdrawn their business this year. So it remains unclear how this argument shows that hurts caused by fair economic competition are not harms. So far it appears that we will make no progress on this without appeal to consequentialist considerations: competition causes harm which are not different in kind to different sources of harm. Rather it is different in its consequences and it is these consequences which serve as its justification. If this is right then deontological libertarianism is in serious trouble.

4. The Self-Ownership Argument

Arneson's discussion of self-ownership, although critical in intent, nevertheless gives the libertarian a clue about how to develop an alternative approach. If a consequentialist libertarian appeals to beneficial consequences then a deontological libertarian ought to appeal to rights; specifically rights of self-ownership. Any form of deontological libertarianism needs a foundational set of rights if it is to be able to set out a theory of what counts as acceptable and unacceptable behaviour. Some rights seem naturally to fall out of the libertarian concern for individual sovereignty, such as rights to life and to freedom against

coercion by others. However it appears that a libertarian may set out his or her own catalogue of the rights which constitute self-ownership, and so, it seems, in principle there is no reason why this catalogue should not contain a right to engage in economic competition and no right to be protected against it.

Now formally there may appear to be one strong reason against this suggestion. Typically libertarian rights of self-ownership are formulated as negative rights of non-interference: the right not to be assaulted, or not to have one's property taken with consent (unless it has been forfeited through acts that interfere with other people's rights), or not to have one's freedom of thought limited. The question is whether the freedom to enter any branch of economic activity can be seen in the same way. The concern is that it is a positive right. This generates two, perhaps related, problems. The first is simply that it is out of philosophical character for a libertarian to appeal to positive rights, or positive liberties. The second is that the great danger of positive rights and liberties is that they may clash with negative rights or liberties of others, and within deontological libertarianism there seems to be no way of adjudicating such disputes.

It may seem, on the face of it, that both problems have a ready answer. The libertarian objects to these positive rights which create positive duties for others. The right to engage in any branch of economic activity is not of this sort. Indeed it may be better conceived as the right not to be stopped from engaging in any branch of economic activity, and thereby in essence is a negative right. Formally, then, it seems possible to overcome the first objection. Yet this does not solve the second problem. As we saw, the exercise of such economic freedom commonly does do harm to others by diminishing their financial prospects. Is this not, then, a paradigm of the type of interference to which the libertarian objects? But of course the same appeal to a catalogue of rights constituting self-ownership which sanctions free economic activity provides the answer: there never was a right to be protected against the effects of economic competition. So

there is no right with which this permission (conceived, we saw, as a prohibition on people stopping me) will conflict. Any potential conflict is resolved in favour of the economic innovator – the new competitor – at the ground floor level of defining the rights of self-ownership.

Although setting rules for philosophical debate is always difficult, and can seem a rather arrogant pretension, nevertheless this proposal, it seems to me, has all the benefits of theft over honest toil, to use Bertrand Russell's famous phrase. In this case the theft is from consequentialism. How remarkable it is that a deontological libertarian should, through the exercise of pure reason, derive a set of rights which, in their approval of the free market, coincides with that his or her consequentialist colleagues can defend on the basis of actual arguments! The proposal to encode or embed an acceptance of free competition into the foundational rights of self-ownership looks like the smuggling of consequentialist considerations into the very foundations of deontological libertarianism.

My argument then, is not that I can refute the thesis that the rights of self-ownership automatically include the right to engage in economic competition, but rather that this is a somewhat disreputable claim, made in an purely ad hoc way, to make deontological libertarianism appear far more 'capitalism friendly' than it really is. Rather than answering the challenge of this paper, the self-ownership defence simply defines it out of existence. It simply fails to engage with the problem.

5. The No-Alternative Response.

Somehow, nevertheless, I doubt that those who favour deontological libertarianism will feel much exercised by the arguments so far. In reply to the last argument they may well say that any theory needs some undefended

foundational assumptions, and these are the ones most suitable for deontological libertarianism (although I hope that they will have the grace to feel at least a little embarrassed in making this reply). But furthermore, they may say, what is the alternative to free competition except a centrally planned economy, in which spheres of economic activity are centrally allocated? And if this is the only choice it should not be too difficult to find deontological libertarian reasons, of a perfectly ordinary and non-question begging form, for favouring free competition over planning.

There is, of course, a question of whether this is an adequate defence even if it is true that there are deontological liberal reasons that speak in favour of free competition over central planning. But as a preliminary we can note that it is simply not true that these are the only two alternatives. We can motivate a third alternative by considering how libertarians argue that property should be distributed.

Any theory of justice which does not suppose everything is commonly owned must answer the question of how property is to be placed in individual hands; this is the issue of first appropriation or initial acquisition of private property. Once more a deontological libertarian will have a more restricted set of options than those who are prepared to accept consequentialist reasoning. There are various libertarian proposals, but it seems to me that at the core of a number of 'right-libertarian' schemes is essentially a single, simple idea: the right of the first claimant, hedged, perhaps, by some other necessary conditions. Now if libertarians are prepared to distribute land in this way, why not distribute forms of economic activity this way too? That is, whoever is the first to produce goods of a certain kind should have an exclusive right to do so, just as the first person to work a piece of land is given the exclusive right to determine how that land is to be used.

On this model one of the rights to non-interference enforced by the minimal state is the right not to have other people encroach on one's economic

activity. This is a system little discussed in contemporary political philosophy, but well-known to historians. It is called 'feudalism'. I don't, of course, mean serfdom, but the system of monopoly, by which the right to produce a certain type of good is protected.¹² This form of feudalism violates one of the key assumptions of the model of the perfectly competitive economy – no entry barriers. Indeed, it replaces it with its opposite: full entry barriers. Admittedly, in practice the point of such monopolies was to raise revenue for the King, or Feudal Lord, and so were granted only to those prepared to pay for the privilege, but this does not detract the main point: that it is perfectly possible to have a system where spheres of economic activity are granted to the first to claim them.¹³ Indeed we see vestiges of this in patent systems, to which we will return very shortly, as well as the granting of special licences for such things as telecom bandwidth, casinos, postal services, regulated professions, and so.

Clearly there will be disadvantages with this system, when generalised over the whole economy, especially from the point of view of the consumer; this, no doubt, is why feudalism died out. But whether these are disadvantages that

¹² cf Christopher Hill, *The Century of Revolution 1603-1714* (Wokingham: Van Nostrand Reinhold (UK) Co. Ltd, Second Edition, 1980), p. 25-6. Hill writes 'It is difficult for us to picture to ourselves the life of a man living in a house built with monopoly bricks, with windows (if any) of monopoly glass; heated by monopoly coal (in Ireland monopoly timber), burning in a grate made of monopoly iron. His walls were lined with monopoly tapestries. He slept on monopoly feathers, did his hair with monopoly brushes and combs... .' Hill's list goes on and on, incorporating soap, buttons, lobsters, lute-strings, candles, books, mousetraps and many other items. He notes that in 1621 there were said to be 700 such monopolies in England.

¹³ Clearly some means of distinguishing spheres of economic activity will be necessary, but there is no reason to think that this is an insuperable difficulty.

can be based on reasons available to the pure deontological libertarian is a further question. Certainly, to repeat a point already made several times, for such a libertarian nothing starting from premises based on efficiency or utility can be used.

So I am not pretending that feudalism is a superior scheme to free competition. It is, however, interesting to note that it is in certain ways consonant with libertarian ideas, and with some strands of current economic practice. Note, though, there are two quite different ways in which a monopoly can be granted, and both are used in contemporary economic systems: patent systems and a pure monopoly. A patent system gives the owner the right to licence others to produce that good, whereas a pure monopoly is not assignable. Both protect the monopoly holder from economic competition, but a patent system is consistent with competition between those who are licensed by the patent holder, at the discretion of the patent holder.

Consequently we need to consider two alternatives to the free market and the centrally planned economy: feudalism of patents and feudalism of pure monopoly. Such schemes have some intellectual attraction. If one thinks of the designer of a new scheme of economic activity as an inventor then it may seem entirely appropriate to think that they should have some sort of intellectual property right over what one has devised. If one can stake a claim at the land frontier, should not a libertarian allow one to stake one's claim at the frontier of ideas? Indeed if anything the case looks stronger for intellectual property. In the case of land something must change its status from no-one's property to someone's property; a notoriously difficult transition. But for intellectual property no similar transition is needed.

There are vexed issues here. One need only look at the discussion of gene-patenting to see this. Mixed in are issues of public utility, incentives, rights of discoverers, rights of possessors and rights of others engaged in similar work. Nevertheless the idea of intrinsic intellectual property rights is part of the

discussion and there seems some sort of natural justice to the idea that those who have made a discovery have a greater claim to exploit it than others. Or, at least, if anyone should say this then a deontological libertarian should. And having said that, it is hard to see, for such a libertarian, what arguments there might be on the other side.

To recap, I have argued that the deontological libertarian owes an explanation of why we should have rights to be protected against theft and arson, but not to protection against similar damage caused by economic competition. No appeal can be made to consequentialist, efficiency, or, for that matter, social justice, grounds. No simple appeal to liberty will help. And it cannot be said that we cannot imagine a system which embodies such protections, for a system either of pure monopoly or of permanent patents would do the trick. And I have further suggested that such a system seems to comport well with a libertarian view of private property. So we have the intermediate conclusion that deontological libertarians should have argued for a form of feudalism, rather than capitalism. This may seem absurd. But that is not my problem.

6. The Lockean Proviso Response

However, the libertarian still has at least one promising reply to this argument. Remember that the libertarian view of property, at least in Nozick's hands, is not merely the right of the first claimant. Some version of the Lockean proviso is also necessary. The counter argument, then, will be that the type of feudal monopoly under consideration violates the Lockean proviso in its effects on those who do not find themselves with a lucrative monopoly, and if this is so libertarianism is not consistent with the form of protected monopoly as discussed in this paper. It is easy to see how the argument goes. While individual private property in land

meets the Lockean proviso, individual private property in a sphere of economic activity fails to meet the proviso, and so arguments for monopoly cannot be modelled on arguments for land.

Clearly it is important to investigate this in detail. The key question is whether the Lockean proviso can be formulated in such a way as to bring out this disanalogy. Now the Lockean proviso comes in various strengths and forms. Its strongest Lockean formulation, which may be stronger than even Locke intended, suggests that appropriation is only acceptable if each act of appropriation leaves 'enough and as good' for others to appropriate. However, given that such a strong form will be very rarely satisfied, especially on a strict reading of 'as good' where geographical location such as proximity to markets is included as a factor, then a weaker interpretation is needed if the proviso is not to backfire and rule out private property.

The most common response is to weaken the proviso so that it refers, ultimately, to the idea that appropriation must not make non-appropriators worse off. This leads us to the notorious problem of the baseline 'worse off than what?' Now, much discussion of this looks at the issue of whether it is possible to defend an account of the baseline which appears to be fair to non-appropriators. However, given that for the present purposes I am engaged in exploring whether libertarian arguments can deliver libertarian institutions, external considerations of fairness are not the issue. Rather we need to see if there is a version of the proviso which will protect the type of property rights libertarians generally favour. Hence we need to explore how libertarians can understand what it means to obey the proviso that people are to be made 'no worse off'. This proviso is not violated merely by the fact that there is no land left to appropriate. It could be, for example, that the new opportunity to work as a day labourer leaves me no worse off.

But still, we need to know 'worse off than what?' and here the salient point is that there are two ways of understanding this comparison: what we

could call the 'local' and the 'global'. The local reading is that each individual appropriation must leave everyone else no worse off than they would have been without that particular appropriation. If I am a farmer relying on a path over common land to take my goods to market then I will be made worse off if part of this common land is appropriated and I now have to go the long way round.¹⁴ So the local reading provides a heavy burden, and may well be unlikely to be met. Anyone's appropriation is likely to make at least one person worse off in an uncompensated way. The global reading, by contrast, is that each person must be no worse off than they would have been had there been no system of individual appropriation at all. In this case the first farmer can hardly complain, receiving great benefits from the system of private property. Hence if the Lockean proviso is not to rule out most, if not all, private property claims it has to be interpreted in global fashion. The test is simply whether I am worse off for the general system of appropriation of land than I would have been without it. If I am worse off, then I have a justified complaint.¹⁵

Accordingly, we need to exercise some care in applying the proviso to the case of monopoly of economic sphere. Suppose I am the first person to work out how to cure leather, and so thereby acquire a monopoly right over this activity. Would that violate the proviso? Applying the local proviso may render this problematic. Where there is a monopoly prices will be higher than otherwise, and this will also frustrate those who wish to cure and sell leather. Hence the local proviso will be violated. Yet, as we have already seen, the local proviso cannot be the correct one to apply, as it would also rule out private property. We must, therefore, explore whether the global version is also violated. That is, I am justified in my complaint against the system of monopoly if I am worse off with

¹⁴ For the purposes of this argument I ignore the point that competition with a second farmer might cut into my revenue.

¹⁵ For defence of this as a reading of Nozick see my *Robert Nozick: Property, Justice and the Minimal State* (Cambridge: Polity Press, 1991), pp. 112.

it than I would have been without it. Thus a libertarian may claim that, as many will be worse off for the existence of monopoly, as against free entry to trade, the Lockean proviso is violated. Furthermore as compensation would be so broadly required and expensive, the only solution is to abolish monopolies altogether.

The opponent of libertarianism might respond that this is a dangerous argument for the libertarian to use. For what goes for professions must also go for land too. If the Lockean proviso rules out monopolising trade, then surely it must rule out monopolising land. So if I am worse off for being excluded from all occupied professions, then it seems likely that I will be worse off for being excluded from all occupied land. Conversely, then, if the libertarian tells the landless to work for the landed can we not say the same to those who are not permitted to trade in their own right: can go and work for someone else.¹⁶ Thus, it will be said, it is hard to see why the issues of land ownership and sphere-of-economic-activity ownership should not run in parallel.

But the libertarian may well have a response. The efficiency argument for individual private property can be used as an argument to show that it will make the worst off better off. But in the case of monopolies of professions, it will be claimed, the efficiency considerations work the other way round: that is, efficiency speaks against monopolising professions. Now, this is a hard argument to assess. No one would now argue that a feudal system is more efficient in utilitarian terms than free competition, but that argument is not available to the deontological libertarian. The only question is whether a system of monopoly production makes the worst off worse off than they would be without it. How would they be without it? We cannot say: in a system of free

¹⁶ This assumes, of course, that 'selling unskilled labour' is not a sphere of economic activity to which one person can claim an exclusive licence. This general permissibility would seem derivable from rights of self-ownership. Highly skilled, or differentiated, labour may be a different case.

trade. This is because free trade involves economic competition, and economic competition harms the interests of those who lose. Therefore we have come full circle. A system of free-trade is not a neutral baseline for comparison. We cannot use the system involving economic competition as the baseline against which we judge whether monopoly makes people worse off, when we lack any justification for economic competition. Hence it is simply unclear whether feudalism – monopoly production - follows from libertarian assumptions, or is ruled out by them.

But let us suppose that the libertarian is right that monopoly production is ruled out. Where does this leave us? I have argued that the libertarian has to show that the damage caused by economic competition is permissible: that it is not real harm. This, I suggested, could not be done without appeal to consequentialist reasoning. Nevertheless, I suggested that the libertarian will not be much exercised by this, thinking that the only two alternatives are capitalism and central planning, and the latter can easily be ruled out on libertarian grounds. I provisionally suggested that this was a mistake: there is a third alternative, feudalism, which appeared to comport well with libertarianism. But we have now seen that it may well be that feudalism can also be ruled out on libertarian grounds. Does this mean, then, that the link between libertarianism and capitalism is re-established?

A moment's reflection makes clear that this is not the case. If libertarianism rules out central planning and feudalism, it does not follow that this shows that it is consistent with free market capitalism. We have already seen, right from the beginning, that it is not: it has no resources for explaining why one type of damage is to be protected by law and another is not. So deontological libertarianism is not consistent with any sort of economy that we know of: even if, as is unclear, it can rescue itself from entanglement with feudalism does not reconcile it with capitalism.

Remember the key issue is to explain why we should not have rights to be protected from the losses consequent on economic competition. I have not found any explanation on which a deontological libertarian can draw. Perhaps there are arguments I have missed. If so, I would like to see them. But in their absence I must conclude that deontological libertarians are unable to justify the libertarian institution of the free market (unless they dishonestly smuggle in consequentialist considerations into the definition of rights of self-ownership). Libertarian rights form a foundation for no known economic system.¹⁷

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