LIBERTIES AND MARKETS

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INTRODUCTION

I am handicapped in replying to Professor Wolff's essay by the fact that I agree with his principal conclusion: namely, that deontological libertarianism lacks the resources to defend the kind of free market, competitive economic system favored by mainstream right-libertarians.[1] Indeed, I not only agree with Wolff's conclusion, but would cheerfully go further and argue that *any* theory we should be inclined to describe as a version of libertarianism lacks the normative resources for such a defense. That is, there are no plausible normative foundations for libertarianism that will recommend or require the institutional arrangements most centrally associated with libertarianism. It is unclear to me whether or not Wolff would be willing to go so far. Various remarks in his essay suggest that he sees consequentialist libertarians as perhaps better positioned than their deontological cohorts to defend unconstrained economic competition, given their ability—denied to the deontologists—to appeal to the consequential or utilitarian advantages of competitive markets.[2]

If this is in fact Wolff's view, I think he is mistaken for at least two reasons. First, it seems essential to the kind of economic system favored by libertarians that there be in place and enforced a set of institutional *rights* with respect to property and contract (along with their correlative duties) and that these rights possess the kind of *independent* (i.e., not merely circumstantial) normative weight that would require them to be taken very seriously, both by

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[1] See Jonathan Wolff, Libertarianism, Utility and Economic Competition, 92 Va. L. Rev. 1605, 1606 (2006).

[2] See id. at 1614 ("Thus far, it appears that we will make no progress on this without appeal to consequentialist considerations: competition causes harm that is not different in kind to other sources of harm. Rather, it is different in its consequences, and it is these consequences that serve as its justification. If this is right, then deontological libertarianism is in serious trouble.").

citizens and by the officials charged with enforcing them. "Consequentialist libertarianism," then, would have to consist (in part) of a consequentialist defense of a scheme involving respect for, and coercive enforcement of, such independently "weighty" institutional market rights.[3] But, of course, no *pure* consequentialism can defend the idea of independent, non-consequential normative weight. While a pure consequentialist theory can certainly defend the establishment of optimal institutional rules and their entailed institutional "entitlements," it can provide no reasons why either citizens or officials should treat those "entitlements" as doing anything but adding new direct consequential considerations (i.e., new expectations and new sanctions) to weigh in their practical calculi. The consequential values appealed to in justifying the establishment of the rules can hardly be consistently ignored by agents where those values can be more effectively promoted by conduct contrary to the rules or by official non-enforcement of the rules. The mere establishment of an optimal scheme of institutional entitlements adds nothing of *independent* normative weight to proper determinations of how a consequentialist agent ought (morally *or* legally) to act.[4] Entitlements that must in this way yield to direct consequentialist calculation are not the kinds of normatively weighty rights that give the libertarian economic ideal its distinctive character. So the problem is not simply the one mentioned in passing by Wolff—that some form of socialism might yield greater expected consequential advantages than capitalism.[5] Even if circumstances were to remain such that capitalist institutions were reliably optimific, this fact would be inadequate for the libertarian's argumentative needs.

In my view, then, all libertarians might as well be deontologists. They lose nothing in declining to employ the consequentialist ar-

[3] Since there are *anarchist* libertarians, who do not believe that states or political societies should coercively enforce such market rights, consequentialist libertarians might alternatively simply defend the existence of independently weighty *moral* or *natural* rights to property and contract. Such a defense would still face the same problems discussed below.

[4] Rights, properly understood, exist only where the requirement of respecting them outweighs at least the good of merely marginal consequential gains to be had by violating them. See David Lyons, Rights, Welfare, and Mill's Moral Theory 150, 157–58, 163–64 (1994).

[5] Wolff, supra note 1, at 1606.

guments for free market competition to which Wolff refers. That, of course, might suggest that Wolff's conclusion is even more important than he makes it seem, since it dismisses the only plausible form of libertarianism (namely, deontological libertarianism). Or, at least, so it would appear, were it not for a second reason to be unhappy with Wolff's apparently greater tolerance for consequentialist brands of libertarianism. I referred above to what a "pure" consequentialism can say about the normative weight of institutional (and moral) rights. But by "pure" consequentialism, I meant only what most would characterize as consequentialism *simpliciter* (or "value teleology"). Consequentialism, thus understood, is simply the view that the rightness or wrongness of actions (policies, institutions) is a function exclusively of the goodness or badness of their consequences. Deontology, by contrast, can only be usefully defined in terms of the simple denial of consequentialism's defining claim.[6] The rightness of actions does not turn solely on their consequences; something else—perhaps *only* something else, such as the intrinsic moral character of certain actions—is necessary for an action's rightness.

Deontological theories can thus be either what Wolff at one point calls "pure deontological" views[7]—that regard the consequences of actions or policies as entirely irrelevant to their rightness—*or* what we can, by contrast, call "mixed" deontologies, which are deontological views that regard the consequences of actions as relevant to, but not all that is relevant to, their rightness. When Wolff argues that deontological libertarians simply cannot appeal to the consequential advantages of economic competition in trying to justify it, he means—and actually says—"pure" deontological libertarians.[8] As far as I can tell, though, the vast majority of moral theorists we would be inclined to call deontologists have in fact been only "mixed" deontologists—moral theorists who take the consequences of actions (policies, institutions) to be nonexclusively relevant to their rightness. And libertarians of such a

[6] My criteria for a "useful definition" here are only that the definition both respect the normal disciplinary paradigms of the deontological and maintain contact with the meanings intended by those who invented and popularized the term. See, e.g., John Rawls, A Theory of Justice 26 (rev. ed. 1999).

[7] Wolff, supra note 1, at 1612.

[8] Id.

deontological stripe could, of course, defend competition as at least partly justified by its consequences.

It may well be that few actual deontological libertarians would in the end be willing to embrace an "impure" form of deontology, preferring "purer" appeals to rights—rights of liberty, self-ownership, or self-government—to any appeals to the consequential advantages of free, competitive markets. It might also be true that mixed forms of deontology will in the end have to be rejected as objectionably intuitionistic in form. But surely none of this is *obviously* true, which must lead us to regard the actual force of Wolff's arguments as correspondingly weaker than his claims suggest. That, in turn, might suggest that deontological libertarianism can, after all, make a case for unconstrained economic competition, perhaps by appealing both to its consequential advantages and to certain purely deontological considerations—like moral rights to liberty or property with a weight that stands up to direct consequentialist calculation.

I. DEONTOLOGICAL LIBERTARIANISM AND FOUNDATIONAL RIGHTS

The real problem with deontological libertarianism, though, is not that it is unable to consistently utilize consequentialist arguments in favor of economic competition. It is rather, in my view, that even if we *grant* the existence of the moral or natural rights that deontological libertarians appeal to in defending their economic ideal—rights that could stand as substantial normative barriers to direct consequentialist calculation—these rights cannot be characterized in any plausible fashion that does not imply the existence of *other* rights that would have to be violated by that very economic ideal. Here I have in mind not so much the rights of persons that lose their jobs to economic innovation or competition (centrally considered by Wolff[9]), but rather the rights of those who cannot compete at all, or whose best competitive efforts can earn for them only menial, unrewarding, or degrading occupations and minimal shares of property. I have never seen, nor can I imagine, a non-question-begging characterization of foundational rights to liberty or self-ownership that does not appear to directly imply the

[9] See id. at 1608–09.

existence of rights to economic opportunity and to a decent level of material well being. These latter rights, then, would have to stand alongside and limit any rights to obtain property or to engage in economic competition that could also be derived from those foundational rights. It is thus deontological libertarianism's inability to take seriously the justifications and implications of the foundational rights it favors that in the end must undermine it. Libertarians' defense of their economic ideal founders on appeals to justice—either to some *right-based* conception of justice (like Locke's[10]), on which justice consists of satisfying pre-existing rights, or to some *right-generating* conception of justice (like Rawls's[11]), according to which, in the absence of pre-existing rights, some independently-defended standard of justice generates rights to just institutional arrangements.

In this complaint about libertarianism, I suspect that Wolff and I probably agree, for he specifically allows that the problems that he points out are not the only, or even "the most serious," problems the libertarian faces.[12] Perhaps he would also agree with my view that libertarianism ought to be more focused on its defense of individual consent as the source of legitimation of any of a wide range of possible economic arrangements, rather than on its characteristic affirmation of minimalism in political and economic arrangements.[13] In the real world, of course, where unanimous consent to coercive institutions is never achieved, the most a libertarian can hope to defend as legitimate are arrangements that respect *all* of each individuals' pre-existing rights[14]—which will include rights to opportunities and to a decent minimum level of wealth or resources, along with and limiting rights to make and exchange property.

[10] See A. John Simmons, The Lockean Theory of Rights 318–21 (1992).

[11] See Rawls, supra note 6, at 10–12, 273–75.

[12] Wolff, supra note 1, at 1606.

[13] See A. John Simmons, Consent Theory for Libertarians, 22 Social Phil. & Pol'y 330, 339 (2005).

[14] Technically, in my view, in the absence of unanimous consent, coercive institutional arrangements can never be fully legitimate, since they necessarily deprive individuals (without their consent) of their rights to *enforce* their own (and others') rights.

II. LOSSES FROM COMPETITION

Wolff, however, finds other, more specific, holes in the deontological libertarians' arguments, and it is to those alleged problems that I will turn now. Libertarians can, in fact, do a better job of answering Wolff's particular objections than he allows—though, to repeat, I agree with Wolff that the deontological libertarian ultimately fails to make the case for unfettered competition. Consider, for instance, how a libertarian is likely to reply to Wolff's major concern—that "[w]e [along with libertarians] 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."[15] How can a libertarian explain treating these similar harms so differently, Wolff asks, unless he is prepared—openly or illicitly—to appeal (in a fashion inconsistent with pure deontology) to the overriding consequential advantages of economic competition (and to the consequential disadvantages of theft and fraud)?

Wolff considers and rejects some possible answers. But surely no libertarian philosopher would be particularly taken aback by this question. Harms of similar magnitudes, as libertarians regularly and correctly stress, are plainly not all of a kind, morally speaking, and no sensible libertarian (or non-libertarian, for that matter) would argue for a general right not to be harmed. While all harms may be equally "setbacks to interests,"[16] such setbacks can be brought about in a variety of fashions, only some of which are wrongful. On no moral theory, deontological or otherwise, are the harms we suffer from shark attacks and lightning strikes the moral equivalents of those we suffer from slashers and arsonists, even if the harms are otherwise the same in kind and in magnitude. Some harms involve deliberate infliction of injury on others by particular moral agents, and these harms are morally proscribed in deontological accounts because of the manner in which the harms are brought about.[17] The harms suffered by losers in economic compe-

[15] Wolff, supra note 1, at 1610.

[16] See Joel Feinberg, Harm to Others 31–64 (1984) (describing the author's influential account of harm as such "setbacks to interests").

[17] Wolff criticizes an imagined attempt to morally distinguish loss by theft from loss by competition by appealing to the voluntary acceptance of risks of loss in the latter case. See Wolff, supra note 1, at 1610. As I suggest here, however, libertarians can

tition are, at least on the face of things, typically brought about neither deliberately nor coercively. Indeed, they may not even be predictable by those who cause them. While we can try to defend a theory of coercion or wrongdoing, according to which losses from economic competition look much more like those from fraud than they do at first blush, deontological libertarians can hardly be fairly accused of "theft" from consequentialism[18] for appealing to the intuitive, commonsense, and perfectly non-consequentialist differences between the two.

I think that we may, however, fairly accuse many libertarians of failing even to defend their assumption that our current practices—involving virtually absolute property rights—are "natural" or morally unassailable. The decision to institutionally enforce that system of property and contract rights that underlies capitalist economic competition is just that: a societal decision, not a "continuation" of the only natural or morally defensible economic arrangements. Thus, the losses flowing from theft—say, theft by the impoverished of the surplus property of the better-off—may after all be no better candidates for moral proscription than are the losses that flow to losers in free economic competition. That, I take it, is also part of what Wolff intends to call to our attention. When libertarians employ what Wolff calls "The No-Alternative Response,"[19] however, they are generally not, I think, just displaying an astonishing lack of imagination. It is, rather, more often an indication of their belief that there is no alternative economic arrangement that is at all natural (as opposed to "contrived" or "planned") or at all consonant with basic principles of human psychology.

III. FEUDALISM, CONSTRAINED MARKET ECONOMIES, AND THE LOCKEAN PROVISO

In that light, however, it seems clearer what we should say about the economic alternatives to the free market discussed by Wolff—namely, feudalisms of patents or pure monopolies.[20] These alterna-

much more plausibly stress as the source of the moral difference between the two kinds of loss the apparent absence in the latter case of both wrongful intention and direct coercion by those who "impose" the losses.

[18] Id. at 1615.

[19] Id. at 1616–19.

[20] Id. at 1617.

tives are presented by Wolff in response to the imagined libertarian assertion that the only alternative to free competition is a "centrally planned economy."[21] The idea of a special sort of "centrally planned economy," of course, is not exactly pellucid, since all economic arrangements backed by a coercive system of government and law (which invariably lack the unanimous consent of those subject to the system's requirements) count as "centrally planned" in at least one clear sense: dictating either patterns of holdings or forms of economic interaction. That aside, however, it is unclear how Wolff's proposed feudalisms of patents or monopolies could hope to escape the charge of "central planning," given the centralized governmental granting of those patents or monopolies.

If feudalism *can* escape that charge, however, then so can a variety of far more obvious alternatives to free competition—namely, any of the range of *constrained* market economies that would allow for free competition only within the constraints of a guaranteed decent social minimum (or "safety net") and guaranteed freedom of economic opportunity. This fact seems significant, for it is precisely toward alternatives like these—and not toward feudalism—that the right-based arguments employed by deontological libertarians most naturally seem to point. Constrained market economies can reasonably claim to protect not only the rights to liberty, property, and contract emphasized by libertarians, but also rights to fair opportunity and to a decent level of material well being. So libertarians seem to owe us not so much an explanation of why they refuse to embrace feudalism, but an explanation of why their theories of rights are not most naturally characterized as yielding the guiding principles of constrained economic competition.

Wolff's reason for concentrating instead on the alternative of feudalism appears to be that he thinks that its basic organizing principle is too close to that of free market capitalism to be easily dismissed by the deontological libertarian: the free market distributes property according to a principle dictating the "right of the first claimant," while feudalism distributes "spheres of economic activity" to those that first claim *them* (or, perhaps more accurately, to those whose claims are first acknowledged by the powers

[21] Id. at 1616.

that be).[22] Just as we may have well-motivated rules designed to protect us from theft and fraud, we may (and to a limited extent already do) have well-motivated rules designed to protect us from economic competition. The libertarians' favored rights of first claimants to real property "at the land frontier" seem no better motivated than do Wolff's proposed rights of first claimants at the frontiers of ideas or spheres of economic activity.[23]

According to Wolff, deontological libertarians' best response to this point appears to be to follow the lead of the philosopher they often (and often wrongly) take themselves to be following on the subject of property: John Locke.[24] As Locke saw clearly, the principle of "first-come, first-served," taken as a principle governing the rightful acquisition of land or other external resources, can be reasonably defended only for certain kinds of circumstances. Most importantly, the principle only seems morally compelling when a similar quality and quantity of comparable goods remains available (after one's taking) for the subsequent appropriation of any others that desire to make properties—only when, in Locke's famous phrase, "enough, and as good" is left in common for others.[25] When this "Lockean proviso" is satisfied, Locke argues, the first appropriator "does as good as take nothing at all,"[26] so that nobody can claim to be injured by such an appropriation.[27]

Wolff imagines the libertarian embracing the Lockean proviso as a condition on first claimant rights with respect to property, and then arguing that Wolff's feudalism "violates the Lockean proviso in its adverse effects on those who do not find themselves with a lucrative monopoly"[28]—hence a principled reason for preferring free competition to feudalism. Wolff responds that there is no plausible version of the Lockean proviso that will permit a deonto-

[22] Id. at 1616–17.
[23] Id. at 1618.
[24] Id. at 1619–1622.
[25] John Locke, Two Treatises of Government 291 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).
[26] Id.
[27] Since acquisition of property for Locke requires an investment of labor in the acquired goods, there is good reason to leave that property in the hands of the first laborer (it having been incorporated by labor into that particular person's productive activities), rather than assigning to him one of the equally good shares that remains unaltered by someone's labor. Id. at 287–88.
[28] Wolff, supra note 1, at 1619.

logical libertarian to make this argumentative move.[29] In my view, however, Wolff too hastily dismisses the most natural and defensible version of the proviso, the one actually employed by Locke.[30] Wolff claims that requiring that each act of appropriation leave "enough, and as good" for others is so strong a requirement that it "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"; indeed, the proviso thus understood may "rule out private property" altogether.[31] Wolff accordingly moves on to weaker versions of the proviso, which dictate, more simply, that "appropriation must not make non-appropriators worse off."[32]

But here Wolff moves far too quickly. The stronger proviso seems to me far better motivated, not only within theories like Locke's own—where division of the world into equal shares, making similar appropriations possible for all, is a natural strategy for dealing with God's gift of the world to all persons in common—but also within any more *libertarian* theory that takes seriously the importance of autonomy or self-government. For the equal right of self-government is most naturally fleshed out in terms of equal opportunities to employ those goods that are necessary for or important to self-government, such as land and natural resources, at least in those cases (like that of the general relation of humankind to the earth) where nobody begins with any better claim to those goods than any other. Thus, one arrives at the Lockean idea that each may appropriate by labor only a share that leaves equally good shares available to others.

Now why would we think, along with Wolff, that this strong Lockean proviso is *too* strong; so strong, that is, that it will be im-

[29] Id. at 1620.

[30] Wolff thinks this version "may be stronger than even Locke intended . . . ." Id. at 1619. I do not. See Simmons, supra note 10, at 278–98 (providing a defense of this reading).

[31] Wolff, supra note 1, at 1619–20.

[32] Id. at 1620. Here, the problems involve not only finding a neutral "baseline" for comparison—the problem discussed by Wolff—but also specifying in what ways the appropriator may be made "worse off." Id. Nobody, I trust, thinks that my having plowed and planted the unowned field that you had been dreaming of cultivating makes my acquisition illegitimate, when an identical unowned field sits available for you next to mine. But my actions may nonetheless have made you "worse off" in some recognizable sense, if, say, you are emotionally crushed by my acquisition, having just set your heart (for no very good reason) on the field I chose.

possible to satisfy? Surely the fact that the land I choose to cultivate is closer to appropriate markets (or to water, or to *us*) than other available land is unlikely, at least in conditions of relative abundance, to *preclude* your finding land with compensating advantages (such as soil quality, size, etc.). But if my appropriation *does* preclude this—as Locke freely admits may be the case where goods cannot be fairly divided into useful shares[33]—then the proviso rules out such appropriation. In general, though, in conditions of relative abundance, it seems bizarre to imagine that Locke's strong proviso could rule out all private property in land or natural resources. We can, of course, be silly about this, as Locke plainly was when he used the availability of land in America to argue that European land appropriations satisfied the proviso.[34] It is obviously hard to imagine what compensating qualities unowned land on the American frontier in the 1680s could have to make it "as good as" European land for a European. But such silliness hardly impugns the theory at issue. Surely it is the issue of scarcity, especially contemporary scarcity, and not the issue of judging shares with different properties to be of equal quality, that makes the strong Lockean proviso look perhaps *too* strong.

Of course the proviso *seems* impossible to satisfy if we take the position of would-be appropriators *today*, when nothing is available for appropriation at all, let alone something that would leave "enough, and as good" for others. But that appearance is doubly misleading. First, most of the property claims made today are simply not *legitimate* according to Lockean requirements for rights to property, which require legitimate transfers running back to an initial acquisition by labor within the proviso's restrictions. Second, today's property claims could only even *seem* legitimate if we took the Lockean proviso to govern only takings and not also holdings, and if we took the "others" for whom equal shares must be left by appropriators to refer only to those others who happened to exist at the precise moment of the first acquisition. But if the motivation for embracing the proviso in the first place involves the recognition that all persons are equally bearers of rights to liberty and self-

[33] See Locke, supra note 25, at 292 (noting the case of the contemporary English common).

[34] See id. at 292–93.

government, then there is no reason at all to think the proviso should be applied in generational steps, leaving nothing for those persons foolish enough to be born late in the game. The proviso, in short, points naturally to requirements of downsizing even previously legitimate property claims in order to accommodate the rights of new generations to their shares.[35] This is not very libertarian-sounding, to be sure, but it is a long way indeed from the proviso ruling out private property altogether.

IV. THE LIMITS OF THE FIRST CLAIMANT PRINCIPLE

None of this is to say, however, that a plausible Lockean proviso can in fact be employed in a successful defense of the libertarian's economic ideal. We can see a different route than Wolff's to the libertarian's problems here by first asking why a libertarian would be inclined to accept the Lockean proviso as a condition on the rights of first claimants in the first place. Why not simply say that the first laborer owns it, having by labor brought it into the sphere of his legitimate self-governing projects? Who cares how others are affected, provided that the harm they suffer is not the product of coercion? The answer to these questions is no doubt complex, but surely part of the response must be that libertarians who take seriously the Lockean proviso, for example, Nozick,[36] are searching for a principle of property acquisition that seems *fair* to all, and which takes seriously the equally strong claims to liberty and self-government of those whose prospects are adversely affected by the acquisition. Once that is acknowledged, though, it is easy to see why a libertarian might take himself to have a principled reason for accepting the first claimant principle for rights in land (or other abundant natural resources) while rejecting a first claimant principle for rights to spheres of economic activity (or, slightly less obviously, for rights to ideas).

There simply *is* no naturally abundant supply of "spheres of economic activity" (or even of ideas) that permits all to select at will from equally good alternatives to those monopolized by first claimants in Wolff's feudalism. If each person were free to choose

[35] See generally A. John Simmons, Historical Rights and Fair Shares, *in* Justification and Legitimacy 222, 222–48 (2001) (providing an extended defense of these claims).

[36] See Robert Nozick, Anarchy, State, and Utopia 174–82 (1974).

from a roster of equally good monopolies or patents, then there might be reason to favor a distributive principle of "first-come, first-served."[37] But since there is no such roster, first claimants on spheres of economic activity may be simply precluding similar opportunities for others. While the same *might* be true of land or abundant natural resources, in circumstances where demand eventually overwhelms supply (a problem to which we will turn momentarily), the supply of spheres of economic activity seems certain by its very nature to fall far short of the demand. So, with this understanding, the libertarian might conclude that the first claimant principle looks *fair to all* as a principle for the distribution of property, but utterly unfair as a principle for distributing spheres of economic activity. Hence, the libertarian's support for free economic competition but concurrent rejection of Wolff's feudalism.

Any appearance of sound argument here is deceiving, however, for in fact the reasons available for rejecting the first claimant principle—even when this principle is qualified by the requirement that "enough, and as good" be left in common for others—are the same in the case of land as in the case of spheres of economic activity (or ideas). In the case of the feudal first claimant principle, the problem is not just that spheres of economic activity are in inherently short supply; far worse is the obvious problem that even if the supply were endless, many could never manage to be the first claimant of any share of this bounty. Many people simply lack the wherewithal, intellectual or otherwise, to produce the inventions, new ideas, creative marketing techniques, etc., that would be required to establish a "first claim." This obvious bias of the principle in favor of the clever and the creative cannot be made to sit comfortably with the libertarian's foundation of rights for all to self-government or liberty.

Precisely the same thing, however, can be said of the first claimant principle for property, even where land and natural resources are sufficiently bountiful as to be always available for appropriation by productive use. Some persons are incapable of making productive use of external resources at all, no matter how available these might be, due to their physical or mental limitations. Others

[37] Though even then, to be fair, mere choice seems to lack the justified-claiming credentials of invested labor (as on Locke's account).

are capable of appropriating by labor only shares of property too modest to supply their needs. Once again, the principle's bias seems plain.

Locke recognized this problem, and allowed the first claimant principle for land and external goods to operate only within the constraints set by strong rights to charity: the rights of the needy to claim the unneeded property ("surplusage") of others.[38] So constrained, the first claimant principle at least looks as if it might be consistent with the equal rights of all to liberty and self-government. But that kind of constraint, of course, is antithetical to the positions defended by most libertarians.

The deontological libertarian's real problem with the Lockean proviso, then, is not the one noted by Wolff—that any plausible version of the Lockean proviso accepted by the deontological libertarian, in order to rule out feudalism, would not in fact supply him with an argument in favor of economic competition. It is rather that any reason the libertarian has for worrying about the Lockean proviso in the first place—and, as I have suggested, there are certainly good reasons for the libertarian to so worry—will in fact motivate restrictions on economic competition that are inconsistent with the libertarian ideal. Nor will appeals to the consequentialist advantages of free competition save the day, given the inability of such appeals to ground the strong rights claims essential to that economic ideal.

The libertarian's best option, in my view, is retreat—retreat from that principled politico-economic minimalism that sits ill with any of the normative foundational theories to which the libertarian might subscribe. Such a retreat from minimalism need not, however, be viewed as a simple surrender of all that libertarians hold dear. Retreat from minimalism is perfectly consistent with libertarianism's continued defense of economic and political voluntarism, a strand of libertarian thought that is as distinctive and influential as its minimalist strand. In its voluntarism, not its minimalism, lies libertarianism's best prospects.

[38] See Locke, supra note 25, at 170. Despite the fact that Locke's clearest claims about charity rights appear in the *First Treatise*, they are plausibly incorporated, in my view, into the best reading of Locke's overall moral and political philosophy. See Simmons, supra note 10, at 327–36.