

The Fair Value of Economic Liberty

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Abstract In *Free Market Fairness*, John Tomasi tries to show that ‘thick’ economic liberties, including the right to own productive property, are basic liberties. According to Tomasi, the policy-level consequences of protecting economic liberty as basic are essentially libertarian in character. I argue that if economic liberties are basic, just societies must guarantee their fair value to all citizens. And in order to secure the fair value of economic liberty, states must guarantee that citizens of roughly similar dispositions and talents are roughly equally able to use their economic liberties to develop and pursue a conception of the good. This, I will argue, is a very demanding standard that requires aggressive taxation and redistribution.

Keywords Economic liberty · Basic liberty · Rawls · Distributive justice

Introduction

Most liberals, and indeed most people who think about politics today, operate on the assumption that questions of personal liberty are one thing, while questions of economics are quite another. According to the prevailing view, which has deep roots in the work of Mill (e.g. Mill 1879, p. 169), individual liberty, at least of the sort worth enshrining as basic, pertains solely to such non-economic (or at least not essentially economic) activities as thought, expression, religion, association, and voting. John Rawls is perhaps the best-known recent defender of the view that economic liberty is not basic liberty (Rawls 1971, 2001). Rawls argues that the institutions of well-ordered societies are structured by two principles of justice. The first principle requires equal

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basic liberty for all persons, where liberty includes freedoms of thought, speech, and association, the right to hold limited personal property (but not productive property, like firms and financial instruments), and freedoms pertaining to the integrity of the person and political participation (Rawls 2001, p. 44).¹ All questions of the size of personal properties and of productive property fall under the second principle of justice, which requires that access to wealth and other advantage be subject to fair equality of opportunity, and that inequalities be to the advantage of the worst off. The first principle of justice is lexically prior to the second, which means that no tradeoffs between liberty and other goods are permitted.

In *Free Market Fairness*, Tomasi (2012) tries to show that although the structure of Rawls's theory is right, 'thick' economic liberties, including the right to own and grow productive property (e.g. firms), should count as basic liberties.² According to Tomasi, thick economic liberty (henceforth simply 'economic liberty') is basic for precisely the reason political, expressive, and associative liberties are basic: it is a necessary condition of a society in which all citizens can adequately develop their two moral powers. These powers are (1) a sense of justice, and (2) the 'capacity to have, to revise, and rationally to pursue a conception of the good' (Rawls 2001, p. 19). By Tomasi's lights, we need economic liberty especially to develop the second of these powers; unless persons are free to creatively author productive economic lives for themselves, there are many reasonable conceptions of the good that they will be unable to pursue. Now, Rawls argues, and Tomasi accepts, that the basic liberties must be lexically prior to distributive considerations about who should possess what levels of wealth and other scarce goods. This means that it is never permissible for a society's institutions to allow tradeoffs of basic liberties for gains in economic output or economic equality. Thus, just societies should afford all citizens economic liberty, even if this would result in greater economic inequality than might accompany regimes less protective of such liberty. According to Tomasi, the policy-level consequences of protecting economic liberty as basic are essentially libertarian in character, albeit with the possible inclusion of a safety net for the badly off (Tomasi 2012, p. 230).

My aim in this essay is not to take issue with Tomasi's inclusion of economic liberty among the basic liberties. In fact, I believe that he is right to include it, and that Rawls was wrong to exclude it.³ Rather, my purpose here is to show that including economic liberty among the basic liberties does not have libertarian policy implications, but rather has highly redistributive policy implications. This is because if economic liberties are basic, just societies must guarantee their fair value to all citizens. And in order to secure the fair value of economic liberty, states must guarantee that citizens of roughly similar dispositions and talents are roughly equally able to use their economic liberties to develop and pursue a conception of

¹ I will, for the most part, rely upon Rawls's final statement of his views. I will do so in order to present his position as it had developed in response to many years of discussion and criticism.

² Economic liberty, like any other sort of liberty, can be understood either as a class of freedoms, in which case it makes sense to use the singular form 'economic liberty,' or as a plurality of freedoms grouped together as a class, in which case it makes sense to use the plural form 'economic liberties.' I will use these two forms interchangeably unless otherwise specified.

³ My approach is thus quite different from that of Arnold (2013), who argues that Tomasi is wrong even in this basic respect.

the good. This, I will argue, is a very demanding standard that requires aggressive taxation and redistribution.

My argument will proceed as follows. First, I will reconstruct Rawls's argument for the priority and membership of the basic liberties in greater detail and explain why Rawls (reasonably, I think) singles out the political liberties for fair value protection. Second, I will further elaborate Tomasi's argument for basic economic liberty. Third, I will show that the reasons for protecting the fair value of political liberties apply to economic liberties, and I will take up some objections. Fourth, I will draw out the implications of basic economic liberties for public policy, considering some objections along the way. Fifth, and finally, I will suggest that if economic liberties are basic, the first principle of justice swallows up the second, leaving equal liberty as the sole principle of justice.

Rawls on Basic Liberty and Fair Value

As I noted at the outset, the Rawlsian basic liberties include all and only those liberties necessary for people to adequately develop their two moral powers (Rawls 2001, p. 45). This relationship between the basic liberties and the two moral powers also lexically prioritizes the basic liberties (Rawls 2001, pp. 104–106). For people in the original position (Rawls's imaginary scenario in which people without knowledge of personal details such as wealth, social position, and religion select principles of justice that will bind them all) would not countenance tradeoffs between the capacity to adequately develop those powers and other sorts of benefits.⁴ This is because the parties to the original position understand themselves first and foremost as free and equal moral persons whose moral personhood flows from the two moral powers. From this perspective, the value of other kinds of goods depends on their fitting into a life in which the moral powers can be adequately developed.

Rawls does not offer an argument for each of the liberties he counts as basic. Nor does he explain in detail why the liberties he does not count as basic fail to make the cut. Rather, he simply asks us to consider, for any particular liberty, whether someone who understands herself as a free and equal moral person would be willing, in advance of knowing what her actual conception of the good will be, to sacrifice any degree of that liberty for other gains (Rawls 2001, pp. 104–106). He believes that when we reflect in this way on the liberties with which we are familiar, we arrive at a list of basic liberties. Rawls writes:

The equal basic liberties...are specified by a list as follows: freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the liberty and integrity (physical and

⁴ Rawls (2001, p. 48) holds that the raising of the veil actually occurs through two distinct phases of increasingly specific and fact-dependent decision making, namely the constitutional phase and the legislative phase. We need not be concerned with this here, though.

psychological) of the person; and finally, the rights and liberties covered by the rule of law. (Rawls 2001, p. 44)

It is important to note that a basic liberty does not need to be one that every person outside of the original position will find valuable. Rather, all that is necessary is that persons in the original position be unwilling to risk having to sacrifice some degree of that liberty for non-liberty gains (Rawls 2001, pp. 104–105). Take, for instance, religious liberty, which is covered by the basic liberties of thought and association. There are many actual people for whom the liberty to practice the religion of their choice is not valuable at all, as they have a conception of the good according to which religion is unimportant or even nefarious.⁵ Nevertheless, it is plausible that persons in the original position would make sure to choose a scheme of basic liberties that included religious liberties as basic. For they would understand that if their conception of the good should turn out to feature religion, no amount of non-liberty gains would be worth any diminution of religious liberty.

You will notice that, as I mentioned earlier, economic liberties of the sort Tomasi embraces do not appear in this list. Rawls's considered view is that there are no basic liberties concerning property or its exchange other than a 'basic right...to hold and have the exclusive use of personal property,' a right that does not cover property in natural resources, inheritance, or, crucially, means of production (Rawls 2001, p. 114).⁶ To the contrary, questions surrounding productive property and its uses fall entirely within the sphere of the second, lexically posterior principle of justice. Here is Rawls's final statement of the second principle of justice, which has two parts, the first of which (fair equality of opportunity) is to be secured before the second (the difference principle):

Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (Rawls 2001, pp. 42–43)

Let us pause for a moment over fair equality of opportunity, as its structure is closely analogous to that of the fair value of liberty. When Rawls says that wealth must be attached to positions governed by fair equality of opportunity, he means that those positions must be roughly equally available to persons of similar talents and dispositions, regardless of their social or economic standing. So, for instance, a

⁵ An anonymous reviewer for this journal reminds me that the right to refrain altogether from religious activity is likely to be very valuable for non-religious persons. I grant this point.

⁶ In early work, Rawls (1971, p. 61) explicitly includes the right to hold personal property as a basic liberty. But in his final statement of his position, Rawls does not include such a right to personal property in his official list of basic liberties. However, since he does state that there is a right of personal property, since he calls it 'basic,' and since his treatment of it appears within a discussion of the basic liberties, I take him to mean that this right falls within the scope of the basic liberties. It is also worth noting that Rawls (1971, p. 272) endorses a right to pursue (though not, of course, to succeed at) any occupation that is permissible within the constitutional structure one's society has erected within the scope of the two principles. However, as Cohen (2008, pp. 197–198) notes, the exact status of this right in relation to the basic liberties is not altogether clear.

just society must have institutions that do not render top management positions in large companies accessible only to those born in the highest socio-economic echelons. If this condition is not met, the second principle of justice is unfulfilled, even if inequalities of wealth benefit the least advantaged.

According to Rawls, then, questions of economic justice occupy a domain that is distinct from, and distinctly secondary to, questions of liberty. Property (other than, perhaps, a limited range of non-productive property) and its uses matter to fairness, but not to citizens' capacity to develop their moral powers as free and equal moral persons.

Before turning to Tomasi's treatment of economic liberty, we need to consider Rawls's view that the political liberties require fair value protection. Of all the basic liberties, Rawls singles out only the political liberties for fair value protection (Rawls 2001, pp. 148–152). This means that in addition to guaranteeing each citizen equal freedom to take part in the political process by running for office, voting, raising referenda, and so forth, justice requires that each citizen enjoy the fair value of these liberties. By the value of these liberties, Rawls means citizens' capacity to use the mechanisms of democratic procedure to wield political influence. Citizens enjoy that value in a fair way to the extent that persons with roughly equal talents and dispositions have a roughly equal chance of holding office, making a difference in elections and referenda, and so forth, regardless of their economic or social resources (Rawls 2001, p. 46). In this way, fair value protection is structurally identical to the fair equality of opportunity norm included within the second principle.

Some philosophers have urged that Rawls singles out the political liberties for fair value protection because he takes these liberties to be more important than the other basic liberties (e.g. Wall 2006).⁷ This interpretation is odd, because Rawls explicitly denies that the political liberties are more important than the other basic liberties (Rawls 1995, p. 163). Moreover, Rawls (2001, pp. 148, 150) offers a different explanation that is both straightforward and reasonable: unlike the other basic liberties, the extent to which it is possible for citizens to make use of the political liberties in the course of developing their two moral powers will, in the absence of fair value protections, depend on contingencies of economic and social power. We may usefully describe the value political liberty as being subject to competition in a way that the other basic liberties are not (Tomasi 2012, p. 248).⁸

⁷ Wall (2006, p. 264) is unconvinced that political liberties are basic at all, let alone worthy of special protection. Brennan (2012) has argued that political liberties are not very valuable for most people, and although he does not directly draw the inference, this would call into question the plausibility of Rawls's claim that parties to the original position would select them as basic. I remain unconvinced by their arguments against the significance of the political liberties. However, my argument here does not depend on replying to them, as both hold that economic liberties *are* among the most valuable liberties.

⁸ Tomasi (2012, p. 248) describes the value of political liberties as having 'zero-sum characteristics'. For two reasons, this description is not entirely felicitous. First, there is no reason to suppose that when one person's economic or social power gives her political sway that prevents another person from having nearly as much political influence, there is not usually an increase in the absolute amount of political influence exerted. Second, the problem fair value protection seeks to address does not depend on there being only a static amount of political influence to go around, but rather only on some people having much less of it because others have more of it.

Rawls's idea is that powerful people might, in the absence of fair value protection, be able to exert much more influence than others through political mechanisms, thus deriving more value from their (equal) political liberties than is available to others.⁹ By contrast, a person's capacity to make use of her liberties of religion, speech, or association in the course of developing her moral powers is unlikely to hinge on wealth or social position. Consequently, there is no need for equal value protections for the non-political liberties even though there is such a need for the political liberties.

It should be clear from what I have said in this section about the fair value of political liberty that if any other basic liberty should turn out to require fair value protection in order for citizens to reliably enjoy its fair value, then justice requires social institutions to provide fair value protection for that basic liberty. This raises a question: if economic liberties are basic, do they require fair value protection? By way of approach to this question, let us now consider Tomasi's view in greater detail.

Tomasi on Economic Liberty

Tomasi's principal claim is that by Rawls's standards for basic liberty, economic liberties are basic and should be governed by the first principle. I believe that Tomasi does a more than adequate job of defending this claim, so I will allow the reader to consult his book for the full version of his argument. But in order to set the stage for the course I will pursue, I will briefly indicate its general shape.

Many people have conceptions of the good that centrally include building and maintaining firms and other kinds of capital, for their own private purposes, through market exchange. Tomasi asks us to imagine the case of a woman who structures her life around her pet grooming business. As she understands her good, it is inextricable from the pursuit of success in her business. He writes:

Imagine a college dropout named Amy who has an entry-level job as a pet groomer. Dreaming of owning a business of her own, Amy saves her money, builds a sterling credit rating, wins a bank loan, and finally opens her own pet shop (Amy's Pub-in-the-Tub). What does it mean to Amy to walk into her own shop each morning or, when leaving after a particularly long day, to look back and read her name up on the sign? (Tomasi 2012, p. 66)

Amy, Tomasi urges, is in no way unreasonable or even unusual. But she cannot adequately develop and pursue her conception of the good without economic liberty that encompasses the right to own and control her own productive property. Consequently, it is only reasonable to count as basic the sort of economic liberty so important to Amy.¹⁰

⁹ I follow Freeman (2007, p. 225) in my reading of Rawls on this point.

¹⁰ von Platz (2014) reads Tomasi as relying on a maximizing standard according to which a liberty should count as basic if it is necessary for maximizing the successful pursuit and development of one or both moral powers. He points out that the Rawlsian system instead utilizes a satisficing standard, according to which we should count as basic all and only those liberties that are necessary in order to

It is, I think, at least very plausible that people like Amy are neither uncommon nor unreasonable. Moreover, it is important to keep firmly in mind that in order to count as basic, a liberty need not be valuable to everyone. This was the lesson we learned from religious liberties, which are uncontroversially basic, but which are of little or no value to atheists. In order for a liberty to count as basic, it need only be the case that a party to the original position, who knows she will have a conception of the good but does not yet know what that conception will be, would not put that liberty at risk for non-liberty gain. Now, to be sure, many people value their economic liberties only instrumentally or not at all, just as many people could not care less about religious practice or its attendant liberties. But given the significant role we know self-direction in the economic realm plays in a wide range of conceptions of the good, it makes sense to count it as basic for exactly the same reasons it makes sense to count religious liberty as basic. If persons in the original position would not sacrifice any degree of protection for even the most unusual peculiarities of religious conscience, expression, and association, surely they would not sacrifice the standing to control productive property in the course of pursuing and developing a conception of the good.

I find Tomasi's reasoning in support of including economic liberties as basic to be convincing, and in what follows, I will proceed on the assumption that economic liberties are indeed basic. However, two notes are in order. The first is that the only feature of Tomasi's view I will assume is right is the inclusion of economic liberties in the lineup of basic liberties. Tomasi says many other things in his book, and I do not intend to endorse any claims other than the one singled out here. Second, I invite those who remain unconvinced to read this paper as an answer to the following two conditional questions. One of these is: if there are basic economic liberties, do they require fair value protection? The other is: if they do require fair value protection, what are the implications of this demand for justice in our economic institutions? I will argue that including economic liberties as basic has radically redistributive implications. This is very much opposed to the institutional implications Tomasi draws from his argument, which are broadly libertarian and, I think, *prima facie* plausible. After all, if economic liberty is basic, it is not permissible for the state to sacrifice it to support social goals other than the protection of one or more of the basic liberties; this is what it means for the basic liberties to be basic. And it is not unreasonable to think that insofar as the state engages in anything beyond the most minimal redistribution, this is exactly what it is doing. However, my goal here is to

Footnote 10 continued

adequately pursue and develop one or both moral powers, and he argues that there is good reason to stick with the satisficing standard instead of moving to a maximizing standard. I agree with von Platz about how to read Rawls on this point, and I agree that we should not opt for a maximizing standard instead. However, I think it is unnecessarily uncharitable to read Tomasi as relying on a maximizing standard. Although he does sometimes offer remarks suggestive of such a standard, he frequently employs satisficing language in this context as well; it seems most likely to me that Tomasi was simply less careful on this point than perhaps he should have been. Furthermore, even if Tomasi did mean to use a maximizing standard, he could have used a satisficing standard without altering any of his other views. For according to Tomasi, when our theory of justice fails to include economic liberties, we are not even close to dealing adequately with the essential role that economic liberty can and often does play in citizens' development and pursuit of their conceptions of the good.

show that these conclusions are incorrect despite their plausibility. The reason for this hinges on the fair value of the economic liberties. Let us turn to this fair value now.

The Fair Value of Economic Liberty

As I noted earlier in setting out Rawls's position, each of the basic liberties is distinct from its value. A liberty is itself simply what Hohfeld (1978) calls a privilege. My space of religious liberty, for instance, is my space of privilege to act and think as I see fit insofar as religion is concerned. The value of my religious liberty, by contrast, is that liberty's usefulness to me as a free and equal moral agent looking to develop my two moral powers. Now, in the case of the religious liberties, there is no gap, so to speak, between the liberties themselves and their value. But this is not true of all liberties. Political liberties, we saw, have competitive characteristics that create a gap between them and their value; it is possible (and common) to possess equal political liberty but to lack the power to exert much influence with it. What I want to show in this section is that basic economic liberties are more like basic political liberties in this respect than they are like basic religious liberties. Their value is competitive, which means they require fair value protection. Here is my argument:

Fair Value Protection for the Economic Liberties

- (1) If citizens' capacity to make use of a particular basic liberty to adequately develop one or both of the two moral powers depends on their economic power in relation to others, that basic liberty requires fair value protection.
- (2) Citizens' capacity to make use of the economic liberties to adequately develop the moral power of developing and pursuing a conception of the good depends on how effectively they are able to acquire property and use it according to their own conceptions of the good.
- (3) The degree to which citizens can effectively acquire property and use it according to their own conceptions of the good depends on their economic power in relation to others.
- (4) (From 2 and 3) Citizens' capacity to make use of the economic liberties to adequately develop one or both of the two moral powers depends on their economic power in relation to others.

Therefore,

- (5) The basic economic liberties require fair value protection.

Let us consider the premises. (1) follows directly from the conclusion of the first section. We saw there that political liberties merit fair value protection not because they are especially important relative to the other basic liberties, but because their

fair value is vulnerable to contingencies of social and economic power. If we class economic liberties as basic, and if their fair value is likewise vulnerable, then they too demand fair value protection.

(2) is not, I think, especially controversial. But just to check it against our intuitions, let us recall to mind Tomasi's story about Amy. In order for Amy's economic liberty to have any positive relationship to her pursuit and development of her conception of the good, she has to be able to actually make use of that liberty to own and operate such a business with some reasonable chance of making a go of it (assuming, of course, that she develops an adequate business plan, reinvests in her company, etc.). If social and economic obstacles beyond Amy's control prevent her from effectively using her economic liberty regardless of her dispositions and talents, her liberty remains merely formal. And a merely formal liberty cannot play a positive role in helping her develop or pursue a conception of the good.

I suspect that (3) is likeliest to invite controversy. By way of approach, let us return for a moment to the political liberties. We saw earlier that the value of the political liberties is competitive, which is to say that the value of some people's political liberties can come at the cost of the value of others' political liberties. The value of political liberty hinges on people's power to exert political influence by exercising those liberties, and if some people are able to wield their fortunes or social cache to reliably direct political mechanisms, others will be accordingly less able to influence the direction of those mechanisms. With these thoughts in mind, let us return to the economic liberties. It will be useful at this point to complicate somewhat the story of Amy and her pet grooming business. Suppose that Amy is joined in her community by Andy, who has dispositions and talents very similar to Amy's. Both Amy and Andy have conceptions of the good that centrally involve owning and cultivating pet grooming businesses, and both are about the same in terms of intelligence, drive, and creditworthiness. But Amy comes from a lower middle class family, while Andy comes from a very rich family and has inherited an investment portfolio worth several million dollars. While Amy is diligently working a low-end job and saving money to invest in her dream, Andy opens and lavishly funds a chain of gleaming and luxurious pet spas. These quickly corner the market, leaving Amy much less likely to be able to use her liberty to own and grow private capital to pursue her conception of the good, at least at anything close to the costs she would have faced if Andy had not been so lucky. In this scenario, Amy's and Andy's economic liberties are identical; each is free to take on and pursue whatever economic projects and risks he or she likes. However, Andy's economic liberties are worth far more to him than are Amy's to her, as he is much better positioned to make use of them in pursuit of his conception of the good than she is to make use of them in pursuit of her conception of the good. Moreover, the relatively low quality of Amy's economic liberty is a consequence of the relatively high quality of Andy's economic liberty.

Now, you might object that if Andy's use of his greater economic clout to crowd Amy from the pet grooming market constitutes a fair value violation, then so too is there such a violation when one person's use of any basic liberty in any way blocks another person from exercising that liberty in the same way or to the same extent. For instance, it might seem that if someone occupies an especially desirable public

corner during the most important afternoon of election season, thereby preventing others from doing the same, this must be a fair value violation. But whether such a case is analogous to that of Andy and Amy depends on how that person came to secure the desirable corner. If she was able to buy or coerce her way to the corner using resources unrelated to the practice of political participation (e.g. physical strength, connections to highly placed people, family money), then her capacity to make better use of her liberty of political speech constitutes a fair value violation. But if she was able to secure the corner by winning a public lottery, or arriving a week early to wait in line, or even by being voted most compelling speaker by her fellow citizens, then her success, which does indeed come at the cost of others' success, does not constitute a fair value violation. For as we saw, fair value does not require that access to the value of a liberty be absolutely identical for all in every respect, but rather only that the practice of taking part in that liberty not be rigged in anyone's favor.

The point of the foregoing discussion is straightforward: the value of one person's economic liberty can come at the expense of the quality of others' economic liberty. In this respect, economic liberty is more like political liberty than such liberties as religion and assembly, the value of which is unlikely to depend on what other people do with their liberty in the pertinent domains. Indeed, since the value of one's economic liberty is simply a function of how much one can do with it, and since what one can do in economic markets depends on what others do in those markets, the competitive character of the value of economic liberty is even clearer than the competitive character of political liberty.

Claims (4) and (5) follow from (1) to (3), so there is no need to pay them individual attention. If I am right about the first three premises, the argument goes through. There are, however, a number of objections that might arise at this point. Let us consider them now.

First, someone might reply that the competitive character of the value of economic liberties just goes to show that economic liberties cannot be basic. But this does not follow any more than it follows from the competitive character of the value of political liberties that political liberties cannot be basic. If it is not reasonable to reject political liberties as basic because they require fair value protection, it is not reasonable to reject economic liberties on these grounds either.

Second, someone might object that even if Andy's enjoyment of his economic liberties crowds Amy out of a particular market (e.g. dog grooming), she can still pursue some other line of business. This may be true, but this does not mean that Andy's economic power does not adversely affect the value of Amy's economic liberties. For insofar as Andy enters the economic game with significantly more capital than Amy, Andy is able to block for Amy, or at least render more costly for Amy, whatever portion of the market he sees fit. Thus, Amy's use of her economic liberties *tout court*, and not just in the particular pursuit she in fact values, is more constrained than it would be if Andy's economic liberties were less well-funded from the outset. Once again, we see that, at least to a considerable degree, the high value of Andy's economic liberty comes at the expense of the value of Amy's

economic liberty.¹¹ Andy's high-value economic liberty renders Amy's economic liberty *less valuable* even if it does not make it *worthless*.

Another possible objection is that fair value protection for the basic economic liberties is unnecessary on account of the second principle of justice. As you will recall, the second principle requires institutions to be arranged so that (1) wealth is attached to positions subject to fair equality of opportunity, and (2) inequalities in wealth are to the advantage of the worst off. Someone might urge that so long as these conditions are met, situations like that of Andy and Amy cannot arise, as Amy could never wind up in so negative a position relative to Andy.

There are, I think, two problems with this line of thought. The first is that if we assume that economic liberties are basic, it is not clear that the second principle has the standing to be of any comfort to Amy. This is because the first principle of justice, which governs the basic liberties, is lexically prior to the second principle; inequalities in wealth must benefit the least advantaged and be attached to positions according to fair equality of opportunity, *but only if such an arrangement does not come at the expense of any basic liberties*. If there is a basic liberty to own and operate property according to one's own conception of the good, institutions limiting Andy's use of his property in order to make sure that inequality benefits the least advantaged would be unjust. Indeed, they would be unjust for exactly the same reasons that institutions limiting religious freedom in order to make sure inequality benefits the least advantaged would be unjust. The whole point of the lexical priority of the basic liberties is to prevent such tradeoffs. So if there are basic economic liberties, the second principle can only operate to govern distributions and access to wealth in whatever space is left once the basic liberties, including basic economic liberties, are secure.

The second problem is this: even if we assume, incorrectly, that the second principle is not lexically posterior to economic liberty, this still does not adequately address the problem for which I have proposed fair value protection as a solution. For an economic state of affairs in which the value of some people's economic liberty comes at the cost of the value of others' economic liberty might nonetheless meet the demands of the second principle. To see that this is so, consider each of the two parts of the second principle in turn, starting with the difference principle. The difference principle does not place any limits on the size of economic inequalities. It merely requires any inequalities to benefit the worst off. Now, there is no reason why a state of affairs in which one person is unable adequately to pursue her conception of the good by economic means cannot be a state of affairs in which the absolute economic position of the worst off is as high as it can go. And if that position is as high as it can go, the difference principle is satisfied (as long as those at the top do not climb still higher while those at the bottom stay put). Fair equality of opportunity is no help, either. For even if highly salaried positions are fairly open to all, not everyone can occupy them, and those who do not might still lack the fair value of their economic liberties.

I submit, then, that if there are basic economic liberties, they require fair value protection. Moreover, Tomasi's reasons to think that there are basic economic

¹¹ I thank John Lawless for bring to my attention the need to clarify this point.

liberties are compelling. Therefore, we should accept that there are basic economic liberties that require fair value protection.

Institutional Consequences

Let us grant (at least for the sake of argument, if you remain unconvinced) that economic liberty is basic and demands fair value protection. In light of these conclusions, I believe that just societies must guarantee, through redistribution backed by the coercive power of the state, that all individuals of similar capabilities and dispositions have a similar chance of successfully using their economic liberties to develop and pursue a conception of the good. In order to achieve this primary goal, an adequate redistributive scheme must guarantee that no individual is able to command so much capital that those with less enjoy substantially less valuable economic liberty.

Unlike the problem of absolute wealth, for which markets are (at least very plausibly) the best remedy, the problem of relative wealth is unlikely to be amenable to non-state solutions. For although it may be true that a capitalistic rising tide lifts all boats, it is unlikely to lift them to equal heights. Indeed, I take it to be an uncontroversial point of economic history that while absolute poverty may (or may not) be sharply in decline, inequality, at least within particular societies, has grown more or less continuously in the absence of fairly aggressive redistribution.¹² Some argue that this trend of (at least intra-national) inequality is not especially bad, or that its badness is outweighed by the rising standards of living (or narrowing worldwide inequality) it precipitates.¹³ But nearly everyone seems to agree that it is real. If there are basic economic liberties, we have a definite reason to condemn large inequalities: they militate against the fair value of the economic liberties. Therefore, governments in just societies must tax and redistribute wealth to whatever extent is necessary in order to guarantee that individuals of roughly equal talents and dispositions have a roughly equal chance at successfully pursuing and developing a conception of the good via their economic liberties. Although I cannot give precise figures here, it seems clear that the level of redistribution needed to achieve this goal would be very substantial, certainly higher than current US levels.

Someone might grant that although natural economic development is unlikely to do much in the way of equalizing economic status, it might nonetheless reach a point at which the fair value of economic liberty is secure *even though* there is very significant economic inequality. Given that the fair value of economic liberty requires roughly equal access to the value of economic liberty for persons of roughly similar talents and dispositions, and not just an adequate degree of access to that value for all, it seems very close to impossible for fair value to obtain where people set upon their economic projects with very disparate economic power. After all, to have greater power in the market *just is* to have the capacity to make more of

¹² For recent and influential support of this point, see Piketty (2014), esp. pp. 271–303.

¹³ Cowen (2014) grants that intra-societal inequality is on the rise, but urges that worldwide inequality is falling and that this is more important.

one's talents and dispositions in the market. But one might grant this while offering a more fundamental challenge as follows: it is implausible that justice should require *fair* value of economic liberty for all rather than *adequate* value of economic liberty for all. For what is so great about greater equality with respect to the value of economic liberty if everyone already enjoys economic liberty of a quality sufficient for adequately developing the two moral powers? Economic arrangements capable of securing the adequate value of economic liberty might be much less demanding, and much less egalitarian, than those necessary to secure their fair value. In particular, it is much more plausible that the market might be able to secure adequate value of economic liberty for all, more or less on its own, than it is that the market might be able to secure fair value of economic liberty for all, more or less on its own. Or so goes the line of thought I have in mind.

I am not unsympathetic to the suggestion that a standard of adequate value for economic liberty (and indeed for any basic liberty) is more reasonable than a standard of fair value. But even if we go with this standard, there is still a demand for state action much more robust than Tomasi envisions. To see this, we need to distinguish between (1) a state of affairs in which all citizens are in fact able employ economic liberty adequately to pursue their conceptions of the good, and (2) a state of affairs in which people are able to employ economic liberty adequately to pursue their conceptions of the good *regardless of the preferences of other people in the market*.¹⁴ I grant that economies might naturally secure the first sort of adequacy, but I do not think they can secure the second kind of adequacy without state intervention. And crucially, it is the second kind of adequacy that expresses the moral equality of all citizens as free and equal moral persons.

It is not terribly difficult to imagine a laissez-faire market society that has developed so that each person enjoys the value of her economic liberty to an extent sufficient for her adequately to develop her conception of the good. Perhaps those on the top end of large economic inequalities, freed from constraints generated by prior, less bountiful economies, have internalized values of cooperation and solidarity. They prefer to use their economic power in ways that not only allow all others to pursue and develop the conceptions of the good they in fact possess, but also to enjoy as wide a range of options for altering and experimenting with their conceptions of the good as any state action could provide. I suspect it is part of Tomasi's view that society would move in precisely this direction if his suggestions were implemented. But even if we grant that such a happy state of affairs could obtain, it would still be objectionable without further, non-market based securities. This is because those with less power in such a scenario would enjoy their space of economic action and choice only insofar as it suited the preferences of the powerful. The problem with this dependence on the preferences of others is not a function of any likelihood that those preferences would change; we can suppose that the preferences in question are as stable as we like. The problem is that such

¹⁴ As readers of Philip Pettit will no doubt recognize, this concern about others' preferences is heavily indebted to his conception of liberty as freedom from arbitrary power. For up-to-date statements of Pettit's views, see his [2011](#) and [2012](#).

dependence offends against the bedrock equality of all citizens as free and equal moral persons.

In order to bring to light and render plausible the point just made, it will be useful to engage in some imaginative alternative history. Suppose for a moment that slavery in the United States had never been abolished. Imagine instead that it evolved in a rather surprising and positive direction. As the slave economy flourished, slavers began to allow their slaves to keep very substantial portions of the product of their labor and to allow them to use that product to pursue whatever economic projects they liked, signing off on investments made by the slaves, no questions asked. Finally, suppose that due to the combined bounty of the twenty-first century slave economy and the beneficent preferences of the slavers, this arrangement secured more and better economic options for the slaves than any other feasible arrangement could have done, including arrangements based on state intervention. It seems clear to me that far from securing all citizens in their liberty to develop the moral powers as free and equal citizens via economic means, this arrangement would be an outrageous affront to free and equal citizenship and all that it is supposed to support within the liberal tradition.

Someone might press further: would not the regime of benevolent slavery be all right so long as the state stood ready to intervene in the event that the slavers developed preferences less conducive to slaves' economic liberty and the value thereof? I think that such a state of affairs would still offend, because some people would be doubly dependent (primarily on their masters and secondarily on the watchful state) for the existence and value of their liberty, while others (the masters) would be, at most, somewhat dependent on the state (insofar as the state might tax away some portion of their resources). This imbalance of dependence would fail to express the moral equality of all citizens, a per se evil that would also undercut the social bases of self-respect.¹⁵ Furthermore, assuming that all of the parties involved in the scenario are human beings and not prescient creatures of some sort, slaves whose masters acted up would have to suffer under their yoke (perhaps losing all or most of the value of their economic projects) while waiting on the state to set matters aright. Masters, by contrast, would not face this risk.

I conclude, then, that whether we interpret the standard applicable to the value of economic liberty as strict fair value or as a less demanding standard of adequate value, we end up with a call for a much more redistributive state than Tomasi envisions. For although spontaneous order within markets can secure economic growth and a number of associated goods, it can secure neither rough equality of economic liberty's value (as demanded on the fair value interpretation) nor security against changes in preferences of the more powerful (as demanded on both the fair value interpretation and the adequate value interpretation).

¹⁵ As Pettit (2012, p. 182) suggests, justice would require public structures of non-domination even for the holy members of Kant's kingdom of ends, whose maxims accord fully with the demands of practical reason. For the absence of such structures would fail to accord proper respect to persons.

Conclusion: Justice in One Principle

I would like to close by considering an important implication of basic economic liberties for the Rawlsian project: including economic liberties among the basic liberties collapses the two principles of justice into a single principle of justice. In particular, the second principle collapses into the first, leaving us with only the basic liberties. I gestured towards this implication in my earlier discussion of the second principle, but now I want to bring it out into the open.

My argument for the collapse of the second principle has two parts, one for each of the two parts of the second principle of justice, namely fair equality of opportunity and the difference principle. The first part of my argument, which concerns the difference principle, takes the form of a dilemma: either the measures necessary to secure the fair value of economic liberties meet the demands of the difference principle, or they do not. If the former is true in a given society, then that society secures the greatest economic well-being for the worst off without looking beyond the first principle of justice. For the first principle, suitably augmented by the basic economic liberties and, crucially, regard for their fair value, itself demands such a distribution in order to secure the basic liberties' fair value. But if it turns out that the basic liberties' fair value requires less extensive redistribution than the difference principle would demand, so much the worse for the difference principle. For tradeoffs between the basic liberties and other kinds of gain are impermissible, and taxing or regulating property in order to secure economic equality beyond the demands of fair value would, assuming that economic liberties are basic, constitute just such a tradeoff. Thus, if there are basic economic liberties, there is no room for the difference principle.

Now let us consider fair equality of opportunity. As we have already noted, fair value protection for basic liberties is structurally identical to fair equality of opportunity. While fair equality of opportunity requires that positions be roughly equally open to people of roughly similar talents and dispositions, the fair value of a basic liberty requires institutions to be structured so that people of roughly similar talents and dispositions have roughly similar chances of enjoying the value of that liberty. Now, how much a person can do with her economic liberties, and so how valuable they are to her, depends on the positions she is able to occupy within the employment market and other markets. And these positions are precisely the ones Rawls subjects to fair equality of opportunity.

You might object that even if basic economic liberty leaves little for the second principle to do with respect to distributing wealth or positions, this does not account for the social bases of self-respect, which also constitute a primary good. Do we not need the difference principle to fairly secure everyone in the social bases of self-respect? Rawls (2001, p. 59) defines the social bases of self-respect as 'those aspects of basic institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence'. If all citizens enjoy equal basic liberty—including basic economic liberty—and its fair value, it would seem that everyone is indeed securely able to have a lively sense of her self-worth and to advance her ends with confidence. However, you might press

further: is not it at least possible for there to be cases in which (1) the fair value of all basic liberties, including economic liberty, is secure, but (2) the bases of self-respect for the least advantaged are less extensive than they could be? I strongly suspect, although I cannot definitively show here, that if all persons enjoyed the fair value of the entire lineup of equal basic liberties, including economic liberties and political liberties, the social bases of self-respect for the least advantaged would be at least as extensive as they would be if governed by the difference principle. For as I have argued, both political and economic avenues for advancing one's conception of the good are properly subject to the rigorous protection of a fair value guarantee. If a person's social or economic standing may not influence her ability to derive value from her economic, political, and other liberties, it is hard to see how she might be less secure in her capacities to develop her sense of self-worth and to advance her ends than she would be if those capacities were governed by the difference principle.

I suggest, then, that if (as Tomasi and I agree) there are basic economic liberties, and if (as I have argued) the basic economic liberties require fair value protection, the second principle of justice is otiose. We are left with a picture of justice grounded in liberty alone, albeit one that incorporates economic rights into its scope.

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