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Politics Philosophy Economics published online 15 April 2013

DOI: 10.1177/1470594X13483466

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Are economic liberties basic rights?

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Abstract

In this essay I discuss a powerful challenge to high-liberalism: the challenge presented by neoclassical liberals that the high-liberal assumptions and values imply that the full range of economic liberties are basic rights. If the claim is true, then the high-liberal road from ideals of democracy and democratic citizenship to left-liberal institutions is blocked. Indeed, in that case the high-liberal is committed to an institutional scheme more along the lines of *laissez-faire* capitalism than property-owning democracy. To present and discuss this challenge, I let John Rawls represent the high-liberal argument that only a narrow range of economic liberties are basic rights and John Tomasi represent the neoclassical liberal argument that the full range of economic liberties are basic rights. I show that Rawls's argument is inadequate, but also that Tomasi's argument fails. I thus conclude that high-liberalism is in a precarious situation, but is not yet undone by the neoclassical liberal challenge.

Keywords

Liberalism, liberty, rights, economic liberties, economic rights, John Rawls, John Tomasi, Samuel Freeman

Introduction

This essay is about one of the more divisive political issues of our time: whether economic liberties are basic rights.

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At issue is not merely whether economic liberties are basic rights, but how considerations of distributive justice, efficiency, and other social values may legitimately inform democratic legislation: the wider the range of basic economic rights, the narrower is the range of issues subject to democratic authority. If the full range of economic liberties are basic rights, then the activities of economic agency should be regulated only to secure basic rights. If only a narrow range of economic liberties are basic rights, then the activities of economic agency may be regulated for the sake of other social goods, such as equality of opportunity or to secure a fair and efficient distribution of income and wealth among the members of society. More concretely, I suspect that a number of current political disagreements are really disagreements about whether economic liberties are basic rights: disagreements about the justice of taxing income, inheritance, and bequests, about whether a democracy legitimately can legislate a minimum wage, mandate decent working conditions, mandate provisions for health-care or retirement savings, and so on.

Until recently there were three main camps in the debate about the status of economic liberties: classical liberalism, libertarianism, and high-liberalism.¹ Classical liberals and libertarians agree that the full range of economic liberties are basic rights, but offer different arguments for this conclusion. Libertarians argue that individuals have basic natural rights and that these include or entail the economic liberties.² Classical liberals defend the economic liberties by the consequentialist argument that the economic liberties are necessary to maximize productive output and protect happy and productive living.³ High-liberals, by contrast, understand justice in terms of the principles of reciprocity and fairness proper to the democratic idea(l) of society as a system of social cooperation between free and equal citizens.⁴ High-liberals argue from the ideals of democratic society and citizenship to the conclusion that only a narrow range of economic liberties are basic rights. Since classical liberals, libertarians, and high-liberals proceed from different views of the nature of justice, neither camp has made much headway in persuading its opponents. Even so, the high-liberal camp is often viewed as occupying the higher ground (hence the flattering name), presumably because it proceeds from an attractive view of democracy and citizenship that carries a minimum of questionable commitments.

However, there is a new kid on the block – neoclassical liberalism.⁵ Neoclassical liberalism upsets the debate about the status of economic liberties. On one hand, neoclassical liberals accept the high-liberal view of the nature of justice and therefore reject the classical liberal and libertarian arguments. On the other hand, neoclassical liberals argue that the high-liberal view of justice implies that the full range of economic liberties are basic rights.

In this essay I discuss the neoclassical liberal argument that the high-liberal view of justice implies that the full range of economic liberties are basic rights. To focus the discussion I take John Rawls to represent the high-liberal position and John Tomasi to represent the neoclassical liberal position. I proceed as follows. First, I articulate what the disagreement is about (the second and third sections). Next, I present Rawls's theory of basic liberties and his argument that only a narrow range of economic liberties are basic rights (the fourth and fifth sections). I then present and discuss Tomasi's argument that Rawls and like-minded high-liberals should include the full range of economic liberties on the list of basic rights (the sixth to ninth sections). I conclude that, although

Rawls's argument is lacking, Tomasi's argument falls short of establishing that more than a narrow range of economic liberties are basic rights.

What are basic rights?

Basic rights are liberties or entitlements that must be *respected* and *protected* by democratic legislation under (almost) any circumstances. Basic rights are not absolute in the sense that they cannot be regulated. Rather, a basic right can *only* be regulated for the sake of securing equal basic rights for all, and so cannot be regulated to secure other social values, such as equality of opportunity, distributive justice, or efficiency. Non-basic rights, by contrast, are liberties or entitlements that may or may not be protected and respected by democratic legislation. Whether or not to protect a non-basic right can be decided by democratic procedures in light of other social values.

So, basic rights determine necessary limits and ends of democratic legislation. The limiting requirement is clear enough: the scheme of basic rights delineates the space wherein democratic legislation is authoritative. There is more controversy about the positive requirement, that is, about what it takes to protect and secure that basic rights are enjoyed by all citizens. Socialist critics of liberal democracy have, for example, argued that protecting formal rights falls short of justice, since access to wealth and opportunities determines the value of these rights—without the means needed to exercise a liberty the protection it offers is of little worth.⁶ A socialist might, therefore, argue that the norm of equal liberty implies an egalitarian principle of distributive justice. In light of this criticism, Rawls and others have argued that, with the exception of the political liberties, the equal worth of liberties is not a requirement of justice. Instead, the worth of liberties can be dealt with by securing that all have adequate means for exercising their liberties and that inequalities in material resources are fair (cf. Rawls, 1996: 324–331; 2001a: 148–150).

What are economic liberties?

Economic liberties are liberties of the citizen as an economic agent. Abstractly speaking, we can identify four categories of economic liberties (following Nickel, 2000: 156–157):

1. Liberties of working (of the person as laborer): liberties to employ one's body, time, and mind in productive activities of one's choice and according to the terms one has freely consented to (e.g. to donate, sell, trade, and buy labor);
2. Liberties of transacting (of the person as entrepreneur): liberties to engage in economic activities, to manage one's own affairs, to buy and sell goods, to save and invest, to start, run, and close a commercial enterprise, such as a business or farm, and to engage in the activities of running such an enterprise: to hire workers, buy and use land, display, advertise, and sell one's products or services;
3. Liberties of holding property (of the person as owner): liberties of acquisition, holding, and transfer of property (whether personal or productive), of using and developing one's property for commercial and productive purposes, to bequest, sell, trade, and invest one's property;

4. Liberties of using property (of the person as consumer): liberties to buy, use, consume, destroy, or otherwise do as one pleases with one's goods, resources, and services.

So, the questions of this essay are whether, which, and why these liberties are basic rights that must be respected and protected by the constitution and laws of society.

Rawls on economic rights

By his own admission, Rawls's discussion of the basic liberties and their priority in *A Theory of Justice* was inadequate (Rawls, 1996: Lecture VIII; 2001a: sections 13 & 32). In *A Theory of Justice* Rawls defended the following as first principle of justice: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." (1971: 302). Rawls further argued that this principle should have priority over the second principle, which requires fair equality of opportunity and that inequalities in income and wealth are to the advantage of the least well off (Rawls, 1996: 294–299; 1971: sections 39, 46; 2001a: section 30). Hart (1973) criticized Rawls's discussion of liberty on three grounds: firstly, it is unclear whether Rawls's first principle is about liberty or liberties; secondly, Rawls fails to explain why the parties in the original position adopt the first principle and its priority; and, thirdly, Rawls fails to explain how we are to specify the basic liberties and weigh them against one another at the constitutional and legislative stages.

In his reply to Hart, Rawls explains that he did not mean for the first principle to be about liberty as such, but about a list or scheme of liberties, and he retracts the idea⁷ that there is a scheme of equal liberties that should be maximized (Rawls, 1996: 291–293). Instead, what is required is an *adequate scheme* of equal basic liberties. Rawls, accordingly, changes the first principle of justice to: "Each person is to have an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all." (1996: 5, 291).

Adequate to what? The answer is: adequate to the development and exercise of the two moral powers (Rawls, 1996: 292–293; 2001a: 45, 112–113). These moral powers are the capacity to offer and abide by fair terms of social cooperation and the capacity to form, revise, and pursue a conception of the good. Thus, according to Rawls, the basic liberties are all and the only protections necessary to ensure for all citizens the social conditions essential for the adequate development and the full and informed exercise of the two moral powers (1996: 74, 187, 293, 308, 325; 1999: xii; 2001a: 45, 112, 169).

The grounding relation between liberties, moral powers, and basic rights has a complex modal structure: a basic right is a liberty *necessary* for the *adequate* development and *full* exercise of the moral powers. Below I look more closely at how we should understand "necessary" and "adequate", but I want to straightaway clarify two aspects of this relation. First "full exercise" does not indicate a maximizing modality of the grounding relation between liberties, moral powers, and basic rights. By "full exercise" we should understand exercise in the central cases that are to offer and abide by fair terms of social cooperation and to devise, revise, and pursue a determinate conception

of the good.⁸ Second a liberty is a basic right if it is necessary for the adequate development and exercise of either moral power – it need not be necessary for both.⁹

We can, accordingly, restate the grounding relation: a basic right is a liberty, the protection of which is necessary for the adequate development and exercise of one of the two moral powers. There are, accordingly, three different groups of basic rights (Rawls, 1996: 310–324, 409–419; 2001a: 45, 112–113):¹⁰

1. A liberty is a basic right if it is necessary to adequately develop and exercise the sense of justice. Rawls thinks that the political liberties (and their fair value) and liberties of thought and speech are justified on this ground.
2. A liberty is a basic right if it is necessary to adequately develop and exercise the capacity for a conception of the good. Rawls thinks that liberty of conscience and freedom of association are justified on this ground.
3. Thirdly, a liberty is a basic right if it is necessary for guaranteeing any of the liberties immediately necessary for the development and exercise of one of the moral powers (i.e. for securing one of the liberties established as basic rights by 1 or 2). Rawls thinks that liberty and integrity of the person, the rights and liberties covered by the rule of law, rights of privacy, rights to hold personal property, and freedom of occupation are justified in this mediate manner.

If a liberty is not necessary for the adequate development and exercise of the two moral powers in one of these three ways, then it is not a basic right.

What about the economic liberties? Rawls argues that only two categories of economic liberties satisfy any of the three conditions (Rawls, 1971: 42, 43, 82; 1996: 228, 232, 298, 335, 338, 363; 2001a: 114): first, the right to hold and have exclusive use of personal property. Rawls suggests that this right is justified by its necessity for the adequate development and exercise of both moral powers. It is easiest to see how this right is presupposed by the demands raised by the second moral power: it is hard to imagine how persons can be secure and independent without rights of personal property. Second, freedom of occupation is required by freedom of association and in general for the adequate exercise of the second moral power.¹¹ Apart from these two, Rawls thinks that the scheme of economic rights that a society should provide should be determined by reference to realizing the fair value of political liberties, equality of opportunity, and a fair distribution of income and wealth.

Unfortunately, Rawls does not say much about why the other economic liberties are not basic. In general, his argument must be that they are *not* necessary for the adequate development and exercise of the two moral powers (cf. Rawls, 1996: 298; 2001a: 114). However, the details of this argument are, I think, unclear – in part because it is unclear what it means for a scheme of liberties to be necessary for the adequate development of the two moral powers.

So, Rawls's argument leaves some questions unanswered: How, exactly, should we understand the requirement to provide the scheme of liberties necessary for the adequate development and exercise of the two moral powers? In what sense *necessary*? In what sense *adequate*? And, why are the economic liberties not in the scheme of basic rights? In the sixth to ninth sections I discuss these questions. Firstly, however, it will be helpful

to present an overview of how those who disagree with Rawls might argue that the economic liberties are basic rights.

How to argue that the economic liberties are basic rights

The general form of Rawls's argument that only a few economic liberties are basic is that:

1. A liberty is a basic right if and only if it is *necessary* for the *adequate* development and exercise of the two moral powers;
2. Only a few economic liberties are necessary for the adequate development and exercise of the two moral powers.
3. Thus, only these few economic liberties are basic.

In this section I identify the main strategies for rejecting this argument.

A way to reject Rawls's argument is to reject the idea that the basic liberties are tied to the development and exercise of the two moral powers. Such rejection is not the topic of this essay.

Assuming that the basic liberties are grounded in the two moral powers, there are four general strategies for rejecting Rawls's conclusion that only a narrow range of economic liberties are basic.

The first two strategies target the modalities of the first premise of Rawls's argument: Rawls argues that the basic liberties are *necessary* for the *adequate* development of the two moral powers, and we might reject either of these modalities. So, the first way to reject Rawls's argument is to reject the modality of necessity. Instead one might argue that the basic liberties are protections that are conducive to or promote the development and exercise of the two moral powers. It is easier to show that the economic liberties are conducive to the development and exercise of the moral powers than to show that they are necessary.

Note that necessity does not imply universality: it may be that protecting a liberty is necessary for some but not all, members of society to develop and exercise their two moral powers. Rawls is, I think, committed to allow for this possibility. If general facts about human nature and sociology imply that a liberty is necessary for some group of members of society to develop and exercise their moral powers, then this liberty is in the scheme of basic rights. If, for example, reproductive rights are necessary for women to adequately develop and exercise their moral powers, then reproductive rights are basic.

The second strategy is to challenge the modality of adequacy. Instead one might argue that the basic liberties are the protections necessary to secure the full or maximum development and exercise of the two moral powers. Since more is required by a maximizing than a satisficing reading of this modality, this change of modality would make it easier to argue that the economic liberties are basic rights.

A third way to reject Rawls's argument would be to reject his interpretation of the moral powers. If one rejects Rawls's interpretation of the two moral powers, then the road is open for a new argument that a wide range of economic liberties are necessary for their adequate development and exercise.

Finally, even if we accept Rawls's modalities and understanding of the two moral powers, it might still be argued that a wide range of economic liberties are in fact *necessary* for the *adequate* development of the two moral powers, as Rawls understands these.

Tomasi's charge

Tomasi accepts Rawls's idea of society as a system of social cooperation between free and equal citizens and Rawls's argument from this idea to the two principles of justice and their priority rules. However, Tomasi rejects Rawls's interpretation of the two principles. Most importantly, Tomasi argues that democratic legitimacy requires that the full range of economic liberties are protected as basic rights and as such can be restricted only for the sake of securing an adequate scheme of equal basic rights for all. Accordingly, the scope of legitimate laws that can be enacted in the pursuit of the second principle is limited. So, institutionally Tomasi defends *laissez-faire* capitalism or democratic limited government against Rawls's favored market socialism or property-owning democracy.¹² If Tomasi's argument succeeds, it shows that the ideals and values that high-liberals thought supported left-liberal conclusions and institutions really support the conclusions and institutions of their right-liberal foes.

Tomasi's main criticism of Rawls is a charge of unjustified exceptionalism: that the reasons Rawls offers for including other liberties on the list of basic rights apply equally to the full range of economic liberties.¹³ However, the exact character of Tomasi's argument is hard to pin down, perhaps because Rawls was not too clear on the modalities at work in his argument. In the following I disentangle and discuss Tomasi's arguments in light of the strategies identified in the previous section.

Shifting modalities

One way to argue that Rawls's list of liberties is too narrow is to change the first modal operator from necessity to conduciveness: if the basic liberties are the protections conducive to the development and exercise of the two moral powers, then the list of basic liberties would expand, and it would be more likely that the full range of economic liberties would be on the list.

It seems clear that "conduciveness" is the wrong modality: it would expand the list of basic rights to include every protection that can serve to develop and exercise the moral powers and just about any protection we can think of could be thus justified. In addition, it is clear that Rawls worked with necessity, not conduciveness. Tomasi would, I think, agree; his argument is that "a thick conception of economic liberty is a *necessary* condition of responsible self-authorship."¹⁴ – Responsible self-authorship is Tomasi's term for the two moral powers: "the capacity people have to become responsible authors of their own lives, along with their capacity to recognize their fellow citizens as responsible self-authors." (2012a: 88). So far, then, I think Tomasi's argument is true to his claim that he follows Rawls's assumptions and that his choice of outer modality is the right one. Not so for the second modality.

Rawls, again, argues that the basic rights are the protections necessary for the *adequate* development and exercise of the two moral powers. A second way to show that

Rawls's list of basic rights is too short to challenge this satisficing modality: if the basic rights are those necessary for the full, complete, or maximum accessible development and exercise of the two moral powers, then it is more likely that the economic liberties are on the list of basic rights, since more is necessary to reach the maximum development and exercise than to reach some threshold below the maximum.

Tomasi pursues this strategy. There are times where Tomasi affirms the satisficing modality of adequacy; he says, for example, that the economic liberties together with the other basic rights function "as a fully adequate scheme of rights and liberties" (2012a: 90). However, these are exceptions. Tomasi's general line of argument is that the basic rights are those liberties the protection of which is necessary for the full, complete, or maximum development and exercise of the two moral powers and that the economic liberties are so necessary. Here are some passages that indicate Tomasi's shift in modality (respectively, 2012a: 76, 76, 82, 82; my emphases):

... the imperative to create a social world in which the moral powers of citizens can be fully developed is a requirement of legitimacy.

... high-liberals claim that some forms of independent economic activity must be protected if people are fully to develop and exercise their moral powers, while other aspects of personal economic freedom need not be so protected.

In seeking the most appropriate specification of the basic rights and liberties, we seek the specification that most fully allows citizens to develop themselves as responsible self-authors.

... [high-liberals] owe us a moral explanation of how any [...] narrowing of private economic liberty enhances the status of persons as responsible self-authors.

More significant than these passages is how Tomasi's charge of unjustified exceptionalism relies on the maximizing modality.

Firstly, in defending that the *liberties of working* are basic rights, Tomasi argues that Rawls's argument that freedom of occupation is a basic right applies equally to the other liberties of working. According to Tomasi, Rawls argues that freedom of occupation is protected as a basic liberty, since our choice of occupation expresses who we are and thus serves as part of what it is to develop and exercise our moral powers: "by choosing which occupation to pursue, we express our values." (Tomasi, 2012a: 77). Tomasi claims that this argument applies equally to the other liberties of working:

If the freedom to choose an occupation is essential to the development of the moral powers, the freedom to sell, trade, and donate one's labor looks equally essential for the same reasons. After all, one is defined by one's workplace experience not simply by *what* profession one pursues. One is also defined by *where* one chooses to work, by the *terms* that one seeks and accepts for one's work, by the *number of hours* that one devotes to one's work, and much more besides. (2012a: 77)

So, a society that does not protect the freedoms of working as basic rights allows legislation that limits the possibilities for citizens to realize their powers of responsible self-ownership: "A society that denied individuals the right to make decisions regarding

those aspects of their working experience would truncate the ability of those people to be responsible authors of their own lives.” (2012a: 77).

Tomasi’s argument that the *economic liberties of holding property* are basic rights follows a parallel path. According to Tomasi, Rawls argues that the right to personal property is a basic right, because ownership in personal property provides for personal security, expresses the identity of persons, and is necessary to meet basic needs. Tomasi then charges Rawls with unjustified exceptionalism, since ownership of means of production has many of the same features and benefits as personal property: it too provides security, can serve as a means to express who we are, to secure independence, and so on:

[F]or many people the ownership of productive property plays a profound role in the formation and maintenance of self-authored lives. [...] Societies that protect the private ownership of productive property as a basic right increase the range of projects, and the forms of economic relationships, that are available to citizens. Such societies broaden the evaluative horizons of citizens. The economic liberties make it possible for citizens with diverse values and interests to more fully develop and exercise the powers they have as responsible self-authors. (2012a: 78–79)

The claim, then, is that the economic rights of ownership can serve to promote and expand the evaluative horizons of citizens and that a society that protects these as basic rights, therefore, provides for a fuller or more complete development and exercise of the two moral powers than a society that does not. Thus, Tomasi concludes that a society that permits restrictions of economic liberties: “thereby diminishes the capacity of citizens to become fully responsible and independent agents. [...] and] creates social conditions in which the moral powers of citizens can be exercised and developed in only a stunted way.” (2012a: 81).

Yet, even if it is true that the economic liberties expand the possibilities for developing and exercising the two moral powers, this does not justify the conclusion that these liberties are basic rights. The implicit premise needed to go from the claim that these allow for a fuller development and exercise of the moral powers to the conclusion that these liberties are basic rights, is that basic rights are those protections necessary to secure a full (or the most fully accessible) development and exercise of the two moral powers.

Roughly speaking, there are two problems with Tomasi’s argument as a charge of unjustified exceptionalism: it is wrong in the specifics and it is wrong in general. That is, Tomasi’s interpretation of why Rawls affirms freedom of occupation and the right to hold personal property as basic rights is wrong, as is his general claim that Rawls maintains that the basic liberties are those necessary to secure the full or maximum development and exercise of the two moral powers.

Firstly, Rawls did not, as Tomasi suggests, argue that free choice of occupation and the right to personal property are immediately necessary for the adequate development and exercise of the two moral powers, since they are necessary to secure access to the fullest range of options for individual life-plans. Recall that Rawls identifies three kinds of basic rights: the first two are the basic rights that are immediately necessary for the development and exercise of each of the moral powers, the third kind are those that are

necessary to secure the rights that are immediately necessary – this third type of right is thus only mediately necessary for the development and exercise of the moral powers. The right to free choice of occupation and to hold personal property are of this third kind: Rawls argues that unless these are protected, we cannot be secure in the basic liberties established by the two fundamental cases (Rawls, 1996: 298, 308, 335, 338; 2001a: 114, 138).¹⁵ That these liberties are only mediately basic does not affect their weight – they are equal members of the scheme of basic rights. However, it shows that Tomasi’s charge of unjustified exceptionalism via Rawls’s endorsement of these liberties is a tad too quick: Tomasi argues that the other economic liberties are important for independence, broaden the evaluative horizons, and increase the life-options of citizens; however, Rawls’s argument was not from the breadth of evaluative horizons or the range of available life-options, but from the necessity of protecting these liberties in order to secure the basic liberties immediately necessary for the development and exercise of the moral powers.

Moving on to Tomasi’s general assumption that Rawls maintains that the basic liberties are those necessary for the full or maximum development of the two moral powers: Tomasi is mistaken to read Rawls’s argument as working with such a maximizing modality. In his reply to Hart, Rawls explicitly rejected that the basic liberties are those necessary for maximizing moral powers or evaluative horizons or anything like that: “the scheme of basic liberties is not drawn up so as to maximize anything, and, in particular, not the development and exercise of the moral powers.” (Rawls, 1996: 332).¹⁶ The modality of the grounding relation in Rawls’s argument is satisficing: the basic liberties are the protections necessary for reaching the threshold of an adequate, the “minimum requisite degree” (Rawls, 1996: 19, 74, 106, 302) of development and exercise of the two moral powers.

Why does Rawls adopt the satisficing rather than the maximizing modality? Rawls provides two reasons. The first is that, given what the moral powers are and why they are significant, we have no coherent notion of what could be maximized:

We cannot maximize the development and exercise of the two moral powers at once. And how could we maximize the development of either power by itself? [...] [W]e have no notion of the maximum development of these powers. What we do have is a conception of a well-ordered society with certain general features and certain basic institutions. Given this conception, we form the notion of the development and exercise of these powers which is adequate and full relative to the two fundamental cases. (Rawls, 1996: 333)

The second reason is that “the two moral powers do not exhaust the person, for persons also have a determinate conception of the good.” (Rawls, 1996: 333). The point is that the good of a person is not that she develops and exercises her moral powers, even less that she develops and exercises these to some full or maximum extent: the good of a person is her determinate conception of the good, which may require some degree of development and exercise of the moral powers.¹⁷

This relation between the moral powers and determinate conceptions of the good is brought out by the interests of the parties in the original position. The parties in the original position care for the development and exercise of the moral powers only insofar as

they deem their development and exercise necessary for those they represent to pursue their determinate conceptions of the good, whatever they are. The parties find that for this purpose, they want all members of society to develop and exercise a sufficiently effective sense of justice to secure stability, self-respect, and that society can serve as a “social union of social unions” (see Rawls, 1996: 315–324). However, the parties have no interest in aiming for a “more full” development and exercise of the sense of justice, even less in the maximum development and exercise of the sense of justice, for there is no reason to assume that such a development and exercise would serve the determinate conception of the good of those they represent (nor is it easy to imagine what a more full development and exercise of the sense of justice would be). So, from the perspective of the parties in the original position, the target and cut-off point of their interest in the development of the sense of justice is the point at which the members of society are able to offer and abide by fair terms of social cooperation. This target defines the *adequate* development and exercise of this moral power. The basic liberties that are immediately or mediately grounded in this moral power are those (and only those) necessary to reach this target.

Matters are a bit more complex for the second moral power, the capacity for developing, revising, and pursuing a conception of the good. The development and exercise of this moral power is not merely instrumentally valuable. Since a determinate conception of the good must be endorsed as one’s own, the capacity to develop and revise one’s conception of the good is itself ingredient in the determinate conceptions of the good of members of society (Rawls, 1996: 313–314). So, the parties in the original position take an interest in the development and exercise of this moral power both instrumentally and as an end in itself. In addition, this dual interest makes it harder to identify the target that defines what it is to adequately develop and exercise this moral power: the instrumental interest dictates that the adequate development and exercise of this moral power is when the capacity is sufficiently developed for persons to develop, revise, and pursue conceptions of the good. This target presents a satisficing requirement. Yet, it is less clear that there is a target and cut-off point when the development and exercise of this moral power is taken as an end in itself. Why not think that when this moral power is part of determinate conceptions of the good, what counts is the fullest possible development? The answer that Rawls suggests (1996: 314) is that this moral power is an end in itself and part of determinate conceptions of the good only because having this moral power is necessary to freely develop and endorse one’s determinate conception of the good as one’s own. So, the target presented by this moral power taken as an end in itself is the development and exercise sufficient to develop and exercise a determinate conception of the good – and this target is the same measure of adequacy as that provided by the instrumental value.

In this manner, the target that defines “adequate” in “necessary to adequately develop and exercise” can be identified for each of the moral powers (Rawls was not entirely clear about this part of his argument): relative to the moral power that is the capacity for a sense of justice, “adequate” means sufficient to offer and abide by fair terms of social cooperation; relative to the moral power that is a capacity for a conception of the good, “adequate” means sufficient to freely devise, revise, and pursue a determinate conception of the good.

The discussion has showed that Tomasi's argument for the claim that Rawls engages in unjustified exceptionalism rests on a misinterpretation of Rawls's position: Rawls leaves the majority of economic liberties off the list of basic rights, because he believes that these, by contrast with the liberties he includes on the list, are not necessary for the adequate development and exercise of the moral powers, so Tomasi's argument that the economic liberties are necessary for the full or maximum development and exercise of the moral powers is not to the point.

However, even if Rawls does not engage in unjustified exceptionalism of the kind Tomasi alleges, Tomasi might be correct in either of two important respects: firstly, it may be that we should use the maximizing modality of the grounding relation between liberties, moral powers, and basic rights. Secondly, even if the satisficing modality is the right one, it may still be that Rawls engages in unjustified exceptionalism – but if so, we need a different argument for this charge than the one discussed above. In the following section I discuss the first of these issues in light of Tomasi's interpretation of the two moral powers in terms of responsible self-authorship. In the ninth section I turn to the second issue of whether Tomasi might still have an argument that Rawls engages in unjustified exceptionalism.

A different interpretation of the two moral powers

The moral powers are capacities for realizing an ideal of moral personality. For Rawls, this ideal is the ideal of free and equal citizenship. For Tomasi it is the ideal of responsible self-authorship.¹⁸

At first, the difference between Rawls's and Tomasi's interpretations of the moral powers looks superficial. However, there is a real difference in why and how Rawls and Tomasi think that the development and exercise of the moral powers is a concern of justice. Tomasi expresses this difference in terms of a difference in foci: where Rawls's focus is on securing the status of citizens as "free equals", Tomasi's focus is on the agency of persons; on what they do as "equally free" (Tomasi, 2012a: 304). According to Tomasi, what matters is not merely the relational status of equal citizenship, but rather "what citizens *choose to do* as responsible independent agents" (2012a: 193).

There is a substantial difference between Rawls and Tomasi here. For Rawls, the moral powers are capacities for free and equal citizenship: free in that one has and pursues one's own determinate conception of the good; equal in that one does so with the rights and duties of equal citizenship. From the standpoint of justice, the development and exercise of the moral powers that matters is the realization of this potential for free and equal citizenship, and this defines what their adequate development is and explains the satisficing interpretation of the modality of the relation between moral powers and basic rights. For Tomasi, by contrast, the moral powers are the capacities for responsible self-authorship and what matters from the standpoint of justice is the realization of responsible self-authorship. The ideal of responsible self-authorship is open-ended; it is an ideal that is realized *to the extent that* a person's decisions are her own. So, where Rawls claims that the moral powers are sufficiently realized when a person is able to offer and abide by fair terms of social cooperation and to devise and pursue a determinate conception of the good, for Tomasi the moral powers are realized *to the extent that* a

person achieves responsible self-authorship.¹⁹ So, where the ideal behind the moral powers in Rawls's theory is an ideal realized by some threshold development and exercise of the moral powers, the ideal behind the moral powers in Tomasi's theory *is* the full or complete realization of the moral powers. On Tomasi's interpretation, then, there "is no natural limit" (Tomasi, 2012a: 194) to the development and exercise of the two moral powers, no target or threshold of adequacy, and so Tomasi's ideal does not define such a target or measure of adequacy, but supports a maximizing interpretation.

Tomasi's argument for why the *economic liberties of transaction* and of *using property* are basic illustrates how his understanding of the ideal implied by the moral powers differs from Rawls's:

Many people define themselves by the financial decisions they make for themselves and their families. [...] Such decisions require that people assess their most basic values and, in light of that assessment, to set themselves on a course of life that is their own. Economic liberty protects these important aspects of responsible self-authorship. Indeed, among the most important protections needed by responsible self-authors are those that empower individuals to act and to make decisions about the economic aspects of their lives. (Tomasi, 2012a: 79–80)

Economic liberties expand the sphere of decisions where persons decide on their own what types of lives to lead. By narrowing the sphere in which persons are subjected to democratic authority, the sphere of responsible self-authorship is expanded:

For many people, independent economic activity is an essential, ongoing part of a well-lived life. This is why market democracy sees private economic liberty as a requirement of political autonomy. For many productive citizens, it is not enough merely to know that the ones they love live well. It is also important to such people that they be the visible *cause* of that state of affairs. (Tomasi, 2012a: 183–184)

Tomasi illustrates the value of the economic liberties for expanding the sphere of self-determination by contrasting a European "social democratic" model that restricts economic liberties to provide a social safety net with an idealized American "market democratic" model where economic liberties are basic rights. According to Tomasi, the European model undermines the responsible self-authorship of citizens: "by insulating people from economic risks, the European model denies ordinary citizens opportunities to feel the special sense that they have done something genuinely important with their lives. The material benefits of social democracies come with a moral opportunity cost." (Tomasi, 2012a: 80). Borrowing an example from Murray (2009), Tomasi imagines a janitor that supports her family to draw out the difference: in the American system of economic liberty the janitor should experience self-respect and be respected by the community; in the European system, the bases of (self-)respect are absent: "If those same persons lived under a system in which they were heavily insulated from economic risks [...] then that status goes away [...] The experience of risk seems to be an essential precondition of the sort of self-respect that liberals value." (Tomasi, 2012a: 80).

I am not sure that Tomasi's contrast is fortunate. Tomasi suggests that the European janitor is less of a responsible self-author than an American janitor, since she faces a lesser risk of social disaster. However, it is unclear why we should accept the assumption that there is less self-authorship involved in pursuing one's conception of the good in the absence than in the presence of risk of social disaster. Moreover, risks materialize, so the American janitor might succeed in providing for her family, but if she does so in a risky environment, presumably some other persons fail to provide for their families. If so, the argument implies that there in the American system are children that are not taken care of by their parents. I am not sure who will be taking care of them. In addition, I do not see why it is preferable to have a system where parents fail and the children are then helped rather than a system where parents are protected from failing.

More to the point, perhaps, Tomasi's argument that the economic liberties of transaction and using property are basic illustrates how he departs from Rawls's understanding of what it means to develop and exercise the two moral powers. Tomasi's argument works from an ideal of self-authorship, where the moral powers are developed and exercised to the extent that persons are the causes of how they fare in life, in control of the decisions by which they define and pursue their conception of the good life. The economic liberties are basic rights, because restricting the economic liberties limits the responsible self-authorship of persons.

If this interpretation is correct, the disagreement between Rawls and Tomasi boils down to a disagreement about the nature of justice. Rawls tries to articulate the theory of justice best suited to the liberal democratic ideal of society as a system of social cooperation between free and equal citizens. Although Tomasi claims to work from the same ideal, his vision of the just society is the society that best guarantees for the members the resources and opportunities of responsible self-authorship consistent with equal opportunities for all. Or, the short version, Tomasi's first principle of justice is: promote responsible self-authorship.²⁰

"Promote responsible self-authorship" is not a bad principle of justice – indeed, Kant and Mill can be said to affirm it. (Kant, 1996; Mill, 1989) However, it is not Rawls's. In addition, if I am right that this is a basic disagreement, then Tomasi's attempt to ground the economic liberties in Rawlsian assumptions and values has failed.

In the end, then, I think that Tomasi's argument for why the economic liberties are basic rights is that restricting them hinders responsible self-authorship. Rawls would allow that this is a reason for not restricting them, but not that this shows that they are basic rights. To show that they are basic rights, we have to show that they are necessary for the adequate development of the moral powers. In the following section I look at this option.

Economic liberties as requirements of democratic legitimacy

I have defended two claims: first, that Tomasi's charge of unjustified exceptionalism relies on Rawls using a maximizing modality of the relation between moral powers and basic rights, whereas Rawls relies on a satisficing modality. Second I reconstructed what I think is Tomasi's argument for why we should go with the maximizing modality: that justice requires the conditions that best serve responsible self-authorship. I did not discuss this principle except to note that taking this principle as basic amounts to a rejection

of basic assumptions of Rawls's theory of justice, wherefore Tomasi cannot both rely on this principle and claim to work from assumptions that Rawls shares. So, the charge of unjustified exceptionalism fails.

Tomasi might be unimpressed. True, he uses the vocabulary of maximizing when he says that a system with basic economic liberties would serve the "full", "more full", or "most full" development and exercise of the moral powers and that a system that restricts the economic liberties "diminishes", "stunts", or "truncates" the development and exercise of the moral powers, but his position can be restated as satisficing, so that "full" means "full enough" or "adequate to reach the threshold", and "diminishes", "truncates", and so on means "hinders the development and exercise of the moral powers to the degree that some citizens cannot reach the threshold". Thus restated, the previous discussion leaves untouched Tomasi's charge of unjustified exceptionalism: the charge of unjustified exceptionalism is that the full range of economic liberties are as necessary as the other basic liberties for the adequate development and exercise of the two moral powers as Rawls understands them.

I am not sure that the argument thus restated coheres with Tomasi's discussion of the moral powers and why we should care about their development and exercise that I outlined above. Leaving that aside, the restated charge of unjustified exceptionalism works if, firstly, Rawls provides insufficient reason for excluding the economic liberties from the list of basic rights, and, secondly, Tomasi shows that there are good Rawlsian reasons for including them.

So, our first question is: Does Rawls provide a persuasive argument that the economic liberties are not necessary for the adequate development and exercise of the moral powers? The answer is that he does not. There is a troubling lacuna in Rawls's argument: Rawls does not show that *all* and *only* the liberties he includes on the list of basic rights belong there. Rawls exemplifies the argument for including a liberty on the list with discussions of liberty of conscience, freedom of speech, and the fair value of the political liberties. However, he does not provide similar arguments for the other liberties. Even worse, he provides no argument to the effect that other liberties are not on the list of basic rights. This lacuna is troubling, since the requirements of the first principle of justice and the legislation that can be enacted in pursuit of other social values vary dramatically with variations in the list of basic liberties. The problem is especially grave with regard to the economic liberties: leaving the economic liberties off the list of basic rights allows a comparatively wide sphere of legislative authority; including them on the list would, as neoclassical liberals argue, limit the reach of legislative authority.

Can we construct an argument on behalf of Rawls? Samuel Freeman (2007a: 58; 2011: 30–35, 52–55) suggests the following argument: instituting the full range of economic liberties as basic rights would make it very hard for some members of society to achieve economic independence and enjoy income and wealth adequate to pursue a wide range of reasonable plans of life and so would make it hard or even impossible for some members of society to adequately develop their two moral powers. We should, therefore, only protect a narrow range of economic liberties as basic rights.

Alas, Freeman's suggested argument slips between liberty and the worth of liberty and overlooks how economic liberties would belong in a scheme of basic rights.

Firstly, Freeman's suggested argument can be restated as the claim that if we take the full range of economic liberties as basic, then the worth of liberties would be lessened for some members of society. Freeman does not give an argument for this claim, but it seems plausible that it will be harder to secure fair equality of opportunity in a system where the economic liberties are basic, since, for example, such a system would have limited authority to impose anti-discriminatory laws or tax inheritance and bequests. In addition, it might also be true that the least well off members would be less well off if there can be no regulation of minimum wage, working conditions, or mandatory schemes for health or retirement benefits. However, there is a problem with this argument: the scheme of basic rights is determined independently of considerations of the worth of this scheme. Whether the economic liberties are in the scheme of basic rights depends on whether they are necessary for the adequate development and exercise of the two moral powers, and this question is prior to and independent of questions about the worth of the scheme of liberties. If the neoclassical liberal argument is correct, we ought to secure the worth of the economic liberties as much as any other (non-political) basic liberty.²¹

Secondly, Freeman might reply that the problem is not merely that the worth of liberties is lessened if the full range of economic liberties are basic rights, but that their worth is lessened to the point where some members cannot adequately develop and exercise their moral powers. This suggestion is worrying: if some liberties are necessary for some members to adequately develop and exercise their moral powers, but protecting them would make it impossible for some members to develop and exercise their moral powers, then the situation is tragic; in that case it is impossible to provide a scheme of rights that is adequate for all. Fortunately, we do not have to embrace this conclusion. Freeman's claim is that "[u]nregulated economic liberties render practically impossible many persons' adequate development of their moral powers" (Freeman, 2007: 58), but no one suggested that the economic liberties should be unregulated. The challenge to Rawls is not that the economic liberties should be unregulated, but that they are basic and so should be regulated only for the sake of providing an adequate scheme of equal rights to all. Even if we take the economic liberties as basic rights they can and should be regulated when doing so is necessary to provide equally to all a scheme of rights adequate for the development and exercise of the moral powers. So, Freeman's suggested argument does not work. Alas, I am not sure I see a better alternative.

Since Rawls does not provide an adequate argument that the economic liberties are not basic rights, the road is clear for Tomasi. So, our second question is: Does Tomasi offer an argument that the economic liberties are necessary for adequate development and exercise of the moral powers as Rawls understands them? The answer is yes, but it is not persuasive.

Tomasi's argument is the following: treating citizens as free and equal requires respecting the liberal principle of legitimacy, that "the use of political coercion is legitimate only if that coercion is conducted on the basis of principles that can be endorsed by the people subject to that coercion." (Tomasi, 2012a: 74). Citizens can only assess and endorse these principles if they are "free to exercise and develop their two moral powers." (Tomasi, 2012a: 75). Since the basic liberties are the protections that are necessary to develop and exercise the two moral powers, it follows that the "basic rights are requirements of democratic legitimacy." (Tomasi, 2012a: 75–76).

Tomasi then argues that the economic liberties are necessary to adequately develop and exercise the moral powers needed to assess and endorse the principles of political authority. It follows that taking the economic liberties as basic rights is a requirement of democratic legitimacy.²²

Thus reconstructed, Tomasi's argument is not so much a rejection or revision of Rawls's assumptions, as it adds an apparently missing piece to these: where Rawls left it unclear what ties the basic rights to democratic legitimacy, Tomasi suggests that the basic rights are tied to democratic legitimacy via the idea that citizens must be capable of assessing and endorsing the laws to which they are subject. Moreover, the capacity to assess and endorse is plausibly constructed as a threshold concept, so this argument avoids the temptation to endorse a principle of maximizing responsible self-authorship.

I do not think that Rawls understood the relation between moral powers, basic rights, and democratic legitimacy in terms of the powers of assessment and endorsement. However, Tomasi does not and need not claim that it is a correct interpretation. High-liberals are committed to the principle of legitimacy that Tomasi relies on, so if Tomasi shows that the economic liberties are necessary for democratic legitimacy in the suggested manner, then high-liberals should embrace the conclusion that the economic liberties are basic rights, no matter what Rawls did or might say about it. So, our question is whether the economic liberties are truly necessary for citizens to adequately assess and endorse the laws of society. Unfortunately, I see no reason to agree that they are.

The problem can be presented as a dilemma: either Tomasi claims that the basic rights are all and only those rights grounded in democratic legitimacy, because they are necessary to develop the powers to assess and endorse the laws of society, or he claims that some basic rights are grounded in democratic legitimacy in the suggested manner, while others have a different grounding. The first claim is implausible. The reason we care about freedom of religion, the integrity of the person, or the right to choose whom to marry is not that these rights protect activities necessary to assess and endorse the laws of society, but that they protect activities that are necessary to freely develop and pursue a conception of the good. In addition, the reason we care about the capacity to develop and pursue a determinate conception of the good is that we care about having and pursuing a determinate conception of the good – not because developing it is necessary to assess and endorse the laws of society. The second claim is more plausible, but it does not support the needed conclusion: the political rights, freedom of speech, and whatever rights necessary to protect these are feasibly constructed as requirements of democratic legitimacy in the sense suggested by Tomasi. So, we might welcome Tomasi's suggestion as an elaboration of why we should protect the liberties immediately or mediately grounded in the sense of justice. Yet, it is a strange stretch to ground the economic liberties – the liberties of the person as laborer, producer, owner, and entrepreneur – in the sense of justice. Freedom of contract, rights of ownership, and so on are like freedom of religion and the integrity of the person in that they protect activities that are part of the development and exercise of the conception of the good. More concretely, I do not see how legislating a minimum wage, mandating savings for retirement, or taxing inheritance and bequest for the sake of securing equality of opportunity can be construed as truncating or stunting the capacity of citizens to assess and endorse the laws of society. In short, the activities of economic agency are part of our development and exercise of

the capacity for a conception of the good and are, as such, not well grounded in the powers of assessment and endorsement needed to secure democratic legitimacy.

So, I do not think that the reconstructed argument from democratic legitimacy to the conclusion that the economic liberties are basic rights works. If the economic liberties are basic rights, it is because protecting them is mediately or immediately necessary for the adequate development and exercise of the moral power that is a capacity for a conception of the good.

The result of this section is a sort of stalemate. Rawls provides insufficient reason that the economic liberties are not basic rights. Tomasi provides insufficient reason that they are basic rights. Even so, there is a constructive outcome of this section in that we have identified the main question: whether the economic liberties are basic rights will depend on whether the activities of economic agency are mediately or immediately necessary for the adequate development or exercise of the capacity for a conception of the good. How to answer that question is a topic for another essay.

Conclusion

I have discussed a powerful challenge to high-liberalism: the neoclassical liberal challenge that the high-liberal ideals of democracy and democratic citizenship support the conclusion that the full range of economic liberties are basic rights. To discuss this challenge, I presented and assessed Tomasi's charge that Rawls engages in unjustified exceptionalism, since the full range economic liberties are as necessary as the other basic rights for the development and exercise of the powers of moral personality. I showed how Tomasi's argument relies on a mischaracterization of the modality of the relation between moral powers, liberties, and basic rights: where Tomasi relies on a maximizing relation, Rawls's argument relies on a satisficing relation. I further indicated that Tomasi's argument could be defended by the principle that institutions are just to the extent that they protect and promote responsible self-authorship, but that this principle departs from the high-liberal view of justice. I then discussed and found wanting Tomasi's attempt to tie ground economic liberties in the principle of democratic legitimacy. I also acknowledged that Rawls offers no satisfactory argument for his claim that the economic liberties are not basic. So, although Tomasi fails to show that the economic liberties are basic rights, Rawls fails to show that the economic liberties are not basic rights.

Two further conclusions are suggested by the argument of this essay. First, that if we want to ground the basic rights in the powers of moral personality, then we should work with a satisficing interpretation of the relation between moral powers and basic rights. Secondly, that the question about whether the economic liberties are basic rights should be restated in terms of the relation between the economic liberties and the adequate development of the capacity for a conception of the good; the test of whether the economic liberties are basic rights is whether these liberties are necessary for the adequate development and exercise of the capacity for a conception of the good. The burden of proof is on neoclassical liberals to establish this claim and they have yet to carry this burden. Thus, although high-liberalism is in a precarious situation, it is not yet undone by the neoclassical liberal challenge.

Acknowledgements

I am grateful to Corey Brettschneider, David Estlund, Samuel Freeman, Alex Gourevitch, Javier Hidalgo, Sharon Krause, Ryan Muldoon, Doug Paletta, John Tomasi, Kevin Vallier and to the members of the Political Philosophy Workshop at Brown University for comments on earlier drafts of this essay. I am especially grateful to John Tomasi - though critical, I hope this essay also shows my respect and admiration for John and his work.

Funding

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Notes

1. I owe this way of drawing the distinction between classical liberalism, high-liberalism, and libertarianism to Samuel Freeman (2005, see Tomasi and Brennan, 2012).
2. Varieties of libertarianism are provided by Nozick (1974), Narveson (1988), and Rothbard (2006).
3. Adam Smith (1982), Hayek (1978), Epstein (1998), and Friedman (2002) offer varieties of classical liberalism.
4. High-liberals include Rawls (1996, 1999), Nagel (1991), Scheffler (2010), Joshua Cohen (2010), and Samuel Freeman (2007b).
5. Neoclassical liberalism is a relatively new movement. Amongst its members I would include Gaus, Tomasi, Brennan, and Nickel. Nickel (2000) was one of the first to defend economic liberties along neoclassical lines. More systematic defenses of neoclassical liberalism are offered by Gaus (2007, 2010a, 2010b) and Tomasi (2012a, 2012b).
6. Thus, Anatole France's famous quip: "How noble the law, in its majestic equality, that both the rich and poor are equally prohibited from peeing in the streets, sleeping under bridges, and stealing bread!"
7. Suggested by passages like this one: "Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice." (Rawls, 1999: 179).
8. Which explains why Rawls sometimes omits "full" (e.g. Rawls, 2001b: 366).
9. An additional wrinkle is that the conjunction in "development and exercise" is really an inclusive disjunct, so that a liberty is a basic right if it is necessary for the adequate development *or* exercise of either of the two moral powers. This wrinkle does not affect the argument of this essay.
10. At times Rawls includes freedom of movement as one of the liberties justified in the second manner, but at times he places it outside of the category of basic rights (e.g. 1996: 228).
11. Notably, most often free choice of occupation is not included amongst the basic liberties in the list of primary goods (cf. Rawls, 1996: 181, 308; 2001b: 362).
12. Tomasi also defends these institutional schemes in light of different interpretations of the second principle, but I cannot in this essay go into this part of Tomasi's argument.
13. Tomasi at times restricts the charge to economic liberties, so that "the same reasons that high-liberals offer in support of their preferred economic liberties apply with at least as much force to the aspects of economic freedom they wish to exclude." (2012a: 76).

14. Rawls (2012a: 98), my emphasis. There are exceptions, for example: “Even if people in such a society acquiesced to these restrictions on their liberty, they would not be in position to endorse the rules of their society in anything like a full or robust manner. Freedom of labor, and to use labor in production, is an essential aspect of a social world that encourages citizens to develop and exercise their moral powers of responsible self-authorship.” (2012a: 77–78; my emphasis).
15. Note also that the right to own personal property and freedom of occupation are not always included in the list of basic liberties, indeed, in “Kantian Constructivism” and in “Social Unity and Primary Goods” Rawls places free choice of occupation together with freedom of movement in a distinct category of primary goods (2001b: 362, 366; 2001c: 313–314; see also Rawls, 1996: 227–230).
16. This clarifies the statement made in *A Theory of Justice* that “these rights are assigned to fulfill the principles of cooperation that citizens would acknowledge when each is fairly represented as a moral person. The conception defined by these principles is not that of maximizing anything, except in the vacuous sense of best meeting the requirements of justice, all things considered.” (Rawls, 1999: 185rev.).
17. This claim simplifies Rawls’s argument and disregards how his ideas developed via Kantian constructivism. In Kantian constructivism, the development of the two moral powers is in the highest-order interests of persons and is seen as such by the parties in the original position (cf. 2001b: 365; 2001c: 312–313; see also Rawls, 1996: 73–74).
18. The capacities of responsible self-authorship are, firstly, corresponding to Rawls’s conception of the good, the capacity: to assess one’s options, set standards for a way of life one finds worth living, and pursue this way of life; secondly, corresponding to Rawls’s sense of justice, the moral power to recognize and respect one’s fellow citizens as equal self-authors (cf. Tomasi, 2012a: 40–41, 74–75; 2012b: 65–66).
19. In other words, for Rawls what matters from the standpoint of justice is that the moral powers are realized to some threshold level whereas for Tomasi what matters is the degree to which persons are responsible self-authors – compare the discussion of the basis of equality in *A Theory of Justice*, section 77.
20. I am inclined to think that “responsible” does little work here, since interpersonal consistency is implied by maximization, but there is an aggregation/distribution wrinkle that I do not want to iron here.
21. Another problem is that Freeman’s argument relies on the possibility of ranking the worth of different schemes of liberty: the claim is that the scheme that includes economic liberties is of significantly lesser worth than those that do not include them. However, it seems conceptually confused to rank the worth of different schemes of liberties. The worth of a scheme of liberty varies according to the means available to the members of society. However, worth is always the worth of one particular scheme of liberties and so cannot be compared with the worth of another scheme.
22. In conversations, Tomasi has suggested that this is his main argument. The centrality of assessment and endorsement is brought out more clearly in Tomasi’s “Democratic Legitimacy and Economic Liberty” than in *Free Market Fairness*.

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