

**Tomasi, John. *Free Market Fairness*. Princeton: Princeton University Press, 2012. Xxvii + 348 \$35.00 (cloth). ISBN: 9780691144467.**

John Tomasi's book is valuable and important not because it concludes an academic conversation about justice in the liberal tradition but because it starts one. This conversation should be of interest to a wide readership, not only specialists in political philosophy. In an academic but extremely accessible way, Tomasi discusses justice in contemporary Western society: what principles should organize society's political, economic, and cultural institutions so as to secure and preserve its citizens' individual rights while simultaneously working for the social good? Every reader who lives in a liberal democracy such as the United States, and who has witnessed the tug of war between apparently polar ideologies, between one major political party and the other, between Tea Party and Occupy Wall Street, will find this of interest.

The Brown University professor is drawn to aspects of both classical liberalism (including libertarianism) and high, or left, liberalism. Tomasi intends for his monograph to inaugurate a broader research program into a genuine hybrid framework for conceiving and then ultimately practicing liberal justice. His primary concern is with political philosophy (identifying the moral standard for evaluating society's institutions and the range of permissible regime types) and political theory (advocating a regime type among all candidates that may best satisfy the moral standard). Public policy is much less extensively discussed. Tomasi hopes that the ensuing conversation will help to chart a path through the ideological impasse that currently characterizes U.S. politics, something in which everyone has a stake. This research program may also facilitate more open, regular, and robust teaching and writing about liberalism in all its pluriformity than typically occurs on college campuses.

## I.

Tomasi's book is well-written, well-organized, and well-argued. Following an introduction are chapters on the two major branches of liberalism to which Tomasi regularly refers: classical liberalism (chapter 1) and high, or left, liberalism (chapter 2). This survey is helpful for its conceptual descriptions, historical profiles, and terminological clarifications, particularly for those readers less familiar than others with political philosophy. More important, however, is the historical arc that Tomasi maps: "how the currently dominant left-liberal paradigm displaced the earlier classical liberal one" (xxv), an unbalanced situation with which Tomasi is dissatisfied and that occasions this book. Chapter 3 offers some reasons why the present cultural moment in the United States may be ripe for a reconsideration of liberalism as a whole. In chapter 4 (87–122), Tomasi explains how market democracy and free market fairness as its guiding moral standard meet this challenge. The remainder of the book anticipates and responds to potential objections by classical liberals and libertarians, on the one hand (chapters 5–6), and by high liberals, on the other (chapters 7–8). These chapters crystallize the justification that Tomasi adduces in offering

free market fairness as a morally superior political theory to schemes of justice in both major liberal branches.

That, ultimately, is the heart of Tomasi's argument. For all of his learned and necessary theoretical nuance, he defends a simple normative claim: the genuine, liberal hybrid of market democracy is *morally* superior as a political philosophy to both classical liberalism and libertarianism, on the one side, and to high liberalism, on the other. It is not a forced harmonization or compromise. He offers a self-contained and distinctive conception of liberal justice that blends the chief strengths of these two major alternatives.

Specifically, Tomasi gravitates to four key philosophical ideas, two from each major branch of liberalism: "(1) capitalistic economic freedoms as vital aspects of liberty, (2) society as a spontaneous order, (3) just and legitimate political institutions as acceptable to all who make their lives among them, (4) social justice as the ultimate standard of political evaluation" (xv). The first two are from the classical liberal and libertarian branch; the third and fourth are key to the high liberal tradition. Demonstrating how these elements, often perceived as irreconcilable, may cooperate in a viable, standalone system is the aim of this initial study. Market democracy is the result: "a *deliberative form* of liberalism that is sensitive to the *moral insights of libertarianism*" (xv; my emphasis). Tomasi's concision in this summary may conceal the significant and controversial nature of his two-part thesis. Some unpacking is needed.

By "deliberative," Tomasi means democratic, and this in the sense that the legitimacy of the institutions and their actions is based on principles that can be endorsed by all citizens in that social regime (see: 74, 88, 102, 173–74, 267). Society, he affirms, is "a fair system of social cooperation" (xv). The deliberative or democratic characteristic is foundational to forms of liberalism that are committed foremost to the idea that "each person has an equal claim to a fully adequate scheme of basic rights and liberties" (180). High liberals in particular view justice as requiring more than formal equality. Society properly ordered according to this liberty principle, in other words, will therefore be based also on some kind of reciprocity among citizens who initially occupy different (i.e., unequal) positions.

Reciprocity, on the common high liberal understanding, leads to distributional exchanges to secure various outcomes fairer than would otherwise obtain. The reciprocity principle and the exchange process are commonly referred to as social justice. Social justice provides each citizen an equal and actual, not merely formal, claim to the basket of basic rights that form the fundamental structure of society. These basic rights are prerequisite for a well-ordered society to function as a fair system of cooperation. The basic liberties combine with the reciprocity principle to shape what John Rawls, for instance, refers to as the "basic structure of society": "the basic structure is the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time" (Rawls 2001, 10). With the reciprocity principle operating in the context of this institutional background justice, citizens may thereby enjoy a *fair*, not just formal, equality of opportunity to realize fully their capacity as moral, self-governing persons across generations. Rawls advances one such

powerful left liberal theory. There are others. For the most part, the family of high liberalism – represented by Rawls in Tomasi’s account—holds to an egalitarian view of social justice. “We benefit the poor,” as Tomasi fairly summarizes egalitarianism, “by working toward institutions that make the holdings, opportunities, and statuses across society more equal [. . .] equality itself [is seen] as a value” (xviii; see: 226–37).

Such an approach that emphasizes this sort of reciprocity-based fairness, and particularly status, typically subordinates private economic liberty to other liberties deemed more basic or more important for the achievement of moral self-agency. Private economic liberty, a central concept for Tomasi, refers to the range of freedoms that involve human working and owning. In explaining what he means by the recurring phrase “thick conception of economic liberty,” Tomasi borrows four categories from James Nickel: *labor* (employing one’s body and time in accepted arrangements), *transacting* (managing one’s household and professional economic activity), *holding* (acquiring, owning, developing, and transacting personal and commercial productive property), and *using* (decision-making about consuming and producing) (see: 22–23, 89).

Left liberal regime systems such as those that Rawls endorses may permit degrees of these sorts of economic liberty. Property-owning democracy, for example, allows but limits personal economic liberty; however, it permits more economic liberty than liberal socialism, which greatly restricts private ownership of productive property. These high liberal, or specifically social democratic, systems, however, do not protect a *thick* view of economic liberty in the way Tomasi thinks of it, because they tend to view the differences that ensue from the real-life exercise of such wide liberties as justice-destroying, not justice-enabling. For instance, wouldn’t protected economic freedoms as basic liberties support price collusion in business, or prevent democratic control of the workplace, and so create unjust hierarchies? For high liberals, either robust economic liberty does not hold the same place and weight as other basic rights (like freedoms of conscience, association, and expression) within the basic structure of society, or a thick view of personal economic liberty is not deemed necessary to the effective exercise of all citizens’ moral powers and the realization of the aims of justice in a fair system of cooperation. Tomasi disagrees.

We are now positioned to see clearly the innovative and controversial aspect of Tomasi’s argument: social justice *and* a thick conception of private economic liberty. “The distinctive characteristic of market democracy, in all its variations,” Tomasi insists, “is that it affirms a thick conception of private economic liberty while being committed to a distributive ideal of social justice” (264). How can this be? An answer emerges by understanding Tomasi’s view of social justice.

Tomasi follows theorists who wish to benefit all members of society, and benefit the least advantaged to the largest degree. These theorists also recognize that greater equality in people’s holdings may result in everyone’s having cumulatively *less* than each might otherwise have had. “We benefit the poor,” he writes, “by choosing social institutions that generate the largest possible bundle of goods under their personal control (even if, in doing so, some other citizens

may personally control still larger bundles of goods” (xviii; see: 8, 234–36). This view of social justice is *humanitarian* (or *prioritarian*), not *egalitarian*. Just the same, this humanitarian approach envisions a society’s *institutions* as oriented to reciprocity, as working for the greatest benefit of the least advantaged: “The basic rights of all citizens in place, social institutions should be designed so that the members of the poorest class personally control the largest possible bundle of goods (say, wealth and income)” (xviii). Envisioned is a form of Pareto superiority. Most basically, and broadly, however, social justice for Tomasi “is not a property of particular distributions, but of social institutions taken as a whole” (xvii).

Like Rawls, Tomasi views a primary aim of political justice as promoting the free and fair exercise of people’s capacities as moral self-authors: “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 and that also displays the respect that they have for their fellow citizens as responsible self-authors” (82). Therefore, market democracy condemns (and would harshly punish) price collusion and fraud as unconscionably disrespectful of fellow citizens as responsible self-authors. Democratic control of the workplace is one way to experience economic liberty, but so is determining other terms of willing employment. Tomasi’s argument is that “private economic liberties have a special role in protecting citizens as they develop and exercise these moral capacities. The platform of economic exceptionalism [i.e., subordinating private economic liberties to other liberties deemed more basic] renders high liberalism a morally impoverished view” (82). Why? Because personal agency—whether exercised as a partner in the solution to the problem of poverty (236), or as a social participant with equal political autonomy (183), or as freely having this independent capacity to exercise responsibly along with one’s fellows (232–33)—is basic to the flowering and fulfillment of individual self-authorship which high liberalism affirms. Agency, and not merely status, is a good in a just society. The economy is a domain of agency. Full personal economic agency is required as one of the social bases for the self-respect that institutions in a just, liberal society are supposed to organize.

Private economic liberty is therefore an essential ingredient *in the basic structure of society* for the attainment of justice: “[M]arket democracy affirms capitalistic economic liberties as first-order requirements of social justice” (xv). Indeed, for Tomasi market democracy occupies the highest moral position as a genus of liberalism *because* it enlarges and protects private economic freedom, properly understood, as a first-order, basic liberty that, *along and on par with other basic rights*, promotes personal self-authorship, and it does so in conjunction with something like Rawls’s reciprocity, or difference, principle (see: 121, 184–92).

Private economic liberty for Tomasi is not (simply) instrumental to economic efficiency or distributional ideals, as in classical liberalism. No Adam Smith. Neither does market democracy privilege or exalt as supreme economic liberty above other basic rights, as in orthodox libertarianism. No Robert Nozick. “Instead, market democracy affirms the moral importance of private economic liberty primarily on *deliberative* grounds: market democracy sees the affirmation of private economic liberty as a requirement of democratic legitimacy itself” (xv).

Without private economic liberty, the basic basket of rights in a political system is deficient; this liberty therefore is equally a requirement of real social justice (172). Free market fairness—an intentional riff on John Rawls’s justice as fairness program—is, Tomasi contends, the morally best theory of justice that should guide all market democratic regimes (174–76).

## II.

Although the foregoing accurately represents the main lines of Tomasi’s well-researched, boldly conceived, and clearly presented argument, it does not replicate the richness of it. Tomasi’s broad and deep working knowledge of classical liberal, libertarian, and high liberal figures is impressive. His novel reading of Friedrich Hayek on the place of social justice within the spontaneous order not only grounds market democracy’s institutional rather than legislative approach to the basic structure; it will also challenge specialists and non-specialists who read Hayek’s explicit (and popularly reproduced) denials of social justice per se out of their conceptual context. Readers of Tomasi’s monograph will be treated both to a comprehensible discussion of political philosophy’s liberal contours and to a book-side seat of a first-rate theorist’s honestly and civilly practicing the trade.

*Free Market Fairness* invites critical evaluation. Indeed, a number of questions arise. Most basically, a reader should ask: Is market democracy a legitimate hybrid theory of justice? To answer this, one must explore at least two objections: from one side, that market democracy and free market fairness are internally inconsistent; and from the other, that they are, unlike left liberal schemes such as Rawls’s, unrealistic. I want to discuss briefly these two objections before introducing a few others and returning to the question of hybridity. Along the way I believe we will see why this book will be of interest to diverse groups of readers.

First, is it the case, as classical liberals might object, that “social justice, as a concept, is incompatible with the ideal of a society of free individuals” because it “corrodes the spontaneous order upon which a free society depends” (141)? Tomasi labels this inflamed reaction to, or disease with, the concept of social justice “social justicitis.” His antidote is to point out the “distributional adequacy condition” for any version of liberalism. The condition is that “the institutions being endorsed are deemed likely to bring about some desired distribution of material and social goods” (126). Many classical liberal and libertarian writers, he convincingly demonstrates, have included not an egalitarian version of this condition but a sufficientarian version of it in their theories: every citizen or class of citizen must come to hold some target bundle of real goods regardless of the proportion of that bundle of goods to another’s.

Much of chapter 5 is devoted to cataloguing this idea in prominent figures from Locke to Epstein. The rest of the chapter defends the concept of social justice by showing readers how Hayek advocates an indirect method of securing a social order that is still “cosmoic” (a spontaneous order that forms independently of human intentionality about achieving a unified goal) rather than “taxitic” (humans organized within a structure, typically centrally planned, to realize an identifiable, unified goal [146]). Hayek embraced cosmoic social orders and

energetically rejected taxitic ones. Tomasi, in other words, shows by a close reading of many historical texts how one (read: Tomasi) can maintain one's classical liberal credentials—as solid as Hayek's—while supporting what goes by the name social justice in a sufficientarian sense.

Tomasi explains the indirect method of shaping the social order that Hayek approved by quoting him at length: “*A spontaneous order may rest in part on regularities which are not spontaneous but imposed. [ . . . ] For policy purposes, there results thus the alternative whether it is preferable to secure the formation of an order by a strategy of indirect approach, or by directly assigning a place for each element and describing its function in detail*” (in Tomasi 2012,155; my emphasis). The path to providing social justice while still being taxitic is, for Tomasi, by putting in place the right institutional framework that will “support a society that is both distributively fair and economically free” (226; see: 159–60). For example, to reduce or remove the “corrupting influence of money in politics” and to provide fair political equality, market democracies would constitutionally “restrict the range of economic issues that are allowed on the political agenda,” rather than “seeking to equalize political influence by constructing elaborate [legislative] programs that seek to equalize wealth across society” (252–53).

Tomasi's well-documented reading of Hayek is undisputedly a minority report, but there is something to it, something that rings true. For political theorists, it is worth pursuing and revisiting Hayek himself, who so greatly influenced Margaret Thatcher and serves as a gateway for many libertarians to the Austrian economic school. If fully appreciated, this insight about regularities imposed indirectly on a spontaneous order will also be a helpful corrective to the oversimplified everyday political caricatures that frequently occur in debates about classical liberalism and free market society. Teachers and students of Locke, Smith, Madison, and others, moreover, may read them with increased sensitivity to their socio-political complexity, and to the readers' presuppositions in approaching them.

Second, is a market democratic interpretation of justice as fairness—what Tomasi calls free market fairness—realistic? Is it able to realize justice as fairness? Throughout the book, John Rawls is Tomasi's major conversation partner. This is because Tomasi himself believes that Rawls's theory of justice as fairness is, once corrected along market democratic lines, the most compelling liberal scheme on offer (175). I might add that Rawls's is perhaps both the most tightly argued and the most pervasively assumed, and pursued, high liberal theory of justice in at least the United States. This does not mean that people with similar political and moral views explicitly credit them to Rawls. It is, rather, that his theory is in the air that U.S. citizens breathe both on campuses of higher education and in much mainstream media. Persuasively arguing that market democracy *meets* Rawls's core criteria of justice as fairness *and exceeds it* in granting moral self-agency to citizens would be a philosophical coup (see: 227–28).

Does Tomasi succeed? In chapters 7–8 (especially, 203–15), he explains what ideal theory is and meticulously shows how both Rawls's and his respective proposals realize justice as fairness—on their own preferred social democratic and market democratic interpretations. By and large Tomasi argues his case convincingly.

This section on ideal theory, or feasible aspirational standards, is the most conceptually abstract in the book and will test the patience of the non-specialist. It is also the most important for understanding how free market fairness, like Rawls's influential justice as fairness view, is realistically utopian.

What does it mean to be realistically utopian? "For a candidate regime type to achieve this, it must aim to satisfy [its] standard of justice by means of institutional arrangements that even if unlikely to fully achieve justice if adopted by an actual society are not utterly utopian with respect to that aspiration" (264–65). Rawls used ideal theory to help him identify the desired goal of justice in society, which might not be fully instantiated now but which might under more favorable conditions later be secured. That is, in ideal theory a regime type realizes justice as fairness (or free market fairness) if it pursues that moral standard with arrangements that are sociologically realistic under the most auspicious historical, cultural, and economic conditions (see especially: 222–25).

Here Tomasi is compelling. He does not appear to commit any fallacies in his analogical *modus ponens* reasoning: If Rawls's justice as fairness theory is sociologically realistic on the most favorable conditions (ideal theory), then it realizes justice; Rawls's justice as fairness theory is sociologically realistic; therefore, it realizes justice. The same is true, *mutatis mutandis*, of market democracy and free market fairness. This is logically valid.

Where readers may object most is to the further moral superiority conclusion that Tomasi draws. This is the inference that free market fairness is morally better as an ideal regime—it offers a "more inspiring [moral] ideal" (265)—than justice as fairness because free market fairness (a) equally realizes social justice within the institutional arrangements of ideal theory *and also* (b) provides a fuller basket of, and greater protection to, basic rights and liberties (including a thick conception of personal economic liberty). (Tomasi makes a similar argument that high liberalism's reasons for affirming thin property rights should lead to affirmation of market democracy's thick view [76–79].)

Readers may demur because they dispute practical feasibility. These doubts should be raised but must be considered in terms of (and then may be much alleviated by) ideal theory (see especially: 227–47). Readers may also affirm the ultimate value of securing self-authorship for citizens but protest the empirical claim (see: 182–84) that increased control of goods and wealth augments the value that individuals place on agency, in addition to status, in a justice-realizing regime. Or they may question whether thick economic liberties can or should be *basic* liberties. The challenge for high liberals would be to provide "a moral explanation of how any such narrowing of private economic liberty enhances the status of persons as responsible self-authors" (82). Tomasi suggests that readers who are attracted to the Rawlsian vision of justice as fairness but who resist his vision of free market fairness bear the burden of proof: if both systems realize social justice, why is Rawls's ideal, with fewer constitutional guarantees of basic liberties, morally better than Tomasi's ideal, which provides them?

This is a powerful *a fortiori* argument. It invites responses. That is precisely the conversation that Tomasi desires. One line of critical reply is that Tomasi understands social justice differently

than do left liberals, but he seems to claim that because he uses the same criterion for evaluating just institutions as left liberals his view is morally superior to theirs. He would be guilty of equivocation, using polyvalence to his argumentative advantage. Is the difference between Tomasi's humanitarian (or sufficientarian) and Rawls's egalitarian conceptions of social justice sufficiently minor as to admit of this type of reasoning?

I think the differences do admit this reasoning for Tomasi's stated purposes. He is unequivocal in applying to market democracy Rawls's difference principle: that differences in goods among social members must work to the greatest benefit to the least advantaged. This is a sufficient point of contact for the common pursuit of social justice on Rawls's and his preferred interpretation of it. The divergence lies in the primary paths taken to achieve social justice: legislative (for social democratic regime types) vs. constitutional (for market democratic ones [see: 252]). Tomasi acknowledges that someone who affirms an egalitarian view of social justice will be unhappy with market democracy. His aim, however, is to carve out a legitimate place for the pursuit of social justice in a way that does not require the institutions and procedures of left liberalism (see: 271; also: 269, 85).

Not all will be convinced that this *is* legitimate. Not all readers will concede that it will be publicly valuable to improve conditions for the least advantaged by “a strategy of wide private economic liberty, limited government, rapid economic growth, and by guarding the space within which a vibrant civil society might develop and grow” (230). Nor will they agree that “the system that most benefits the poor is the one that best encourages the production of goods, opportunities and experiences that those citizens find valuable,” including enlarged economic agency for moral self-authorship (231). Nor still will they grant the deliberative point that “the public affirmation of a system of commercial exchange that aims at raising the [personally controlled] income of the least well-off is a profoundly democratic expression of reciprocity” (231). Tomasi is undeterred.

Anticipating this reaction, he clarifies that market democracy is not a trickle-down theory and that it does not claim that “market distributions define social justice” (231). Ultimately, his argument, and hope, is that many readers will reconsider the value of moral self-authorship as a social goal, the fullest ability “to conceive of and carry out their distinctive life plans” within a fair system of equal opportunity—not for the poor or least advantaged only but for everyone generally, whether in wealth, education, health care, or the like. This is a fair system that secures social justice through institutional arrangements which maximize the bundle of goods under each person's personal control *and* “protects every citizen from domination in the formulation of the rules and policies that are to govern cooperative life” (249; see: 251–52, 267).

So then, is market democracy a true hybrid theory of liberalism that respects (i) society as a spontaneous order, (ii) private economic liberty, (iii) deliberative legitimacy, and (iv) social justice as the institutional evaluative standard? Probably the best answer is itself a hybrid: yes, if you grant ideal theory; no, if you don't.

Answering “yes” does not entail acceptance of Tomasi's central thesis. It merely acknowledges that his thesis cannot be easily dismissed. In seeking to make room for free market



fairness at the table of liberal theories of justice, Tomasi has given citizens and scholars alike much to consider. He has produced an incisive account of a genuine hybrid form of liberalism that deserves a wide readership and equally wide discussion.

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### **Work Cited**

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