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Dream Capitalism

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In *Free Market Fairness,* John Tomasi shows himself to be a man with both a map and a mission. The map shows a frozen sea with advocates of classical liberalism and contemporary libertarianism camped on one coast and (post-Rawlsian) 'high liberals' on the other. The two camps are within sight, but beyond the hearing, of each other and each group goes about its routine business, aware of but little interested in what happens on the other side of the intervening wasteland. Map in hand, Captain Tomasi's mission is to force his ice-breaker S.S. Market Democracy between the two camps (drawing in supporters as he may) with his compass set firmly upon reaching the higher moral ground of free market fairness that lies somewhere beyond; (even if it is a challenge to imagine an icebreaker occupying the high ground!). (Tomasi, 2012, 99-100).[1]

Tomasi finds himself drawn to what is good in both camps – and resistant to that which he sees as 'bad' - and he believes that these various strengths can be combined to provide us with an account of justice (in the case of the 'high' liberals, 'social' justice) which is superior to that offered by either of the contemporary orthodoxies. This is not to be achieved, however, by simply 'splitting the difference' between the two. Rather, Tomasi argues that we can and should (at least for now) pursue the account of social justice laid down in its essentials by John Rawls, but with this one crucial change – that the 'economic liberties' which Rawls excludes from his framework of basic liberties should be included on that list and be appropriately prioritised and protected.

Since I don't regard myself as either a Rawlsian or a libertarian – or indeed, in any very real sense, an endorser of the classical liberals – I am inclined to think that this may just be someone else's fight. And I am tempted to hold their coats and watch the fur fly. But I do have a good deal of sympathy with Rawls's view that a good society – here in the variant of his formulation favoured by Tomasi - is 'a fair system of cooperation among citizens committed to respecting one another as responsible self-authors' (88). And even if I don't agree with the way in which

[1] All subsequent page numbers refer to Tomasi, 2012 unless indicated otherwise.

both he and Tomasi got here, I do think it's worth defending Rawls against Tomasi's hybridization which, to anticipate just a little, I think is wrong.

There's plenty of substance to engage with in Tomasi's engaging book. Here I focus on just one aspect, but this probably the most crucial: that is the core claim that the Rawlsian framework of basic liberties needs to be completed by including a series of 'economic liberties'. We should begin by looking at the context of this claim. Those whom Tomasi labels the 'classic liberals' (Locke, Hume, Smith and, closer to our own time, Hayek) all recognised the centrality of private property (including productive private property) in securing a society that was dynamic, capable of economic growth and whose citizens were free; (for example, Locke, 1988[1689], 268-302, Hume, 2000[1739-40], 314-31, Smith, 1978 [1762-3], 16-32, 208, 459-60). But none of the classical liberals (including Hayek) saw these rights as 'absolute'. Taxation, even progressive taxation (within limits) was legitimate. Society has a duty to provide for those of its members who cannot provide for themselves and perhaps to support (publicly-funded) education (Hayek, 1973, 109, 121). This account was not always very coherent, Tomasi suggests, but it was fairly ubiquitous (4-11, 16-26). By contrast, libertarians tend to see the claims of property as 'absolute' and often grounded in some account of our 'self-ownership'. Indeed, rather than seeing property rights as balanced by other basic liberties, libertarians have a tendency to see all rights as (basically) the property rights of self-owning individuals (see, for example, Narveson, 1988, 66). Tomasi (87-122) rejects this 'absolutist' view in favour of something much closer to 'classical liberalism' – and it is this which draws him away from the libertarian camp (despite the many friends he has had to leave behind there).

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Tomasi grounds his own account of market democracy and free market fairness within a justificatory apparatus that is self-consciously Rawlsian. Having endorsed the judgement that society should be understood as a system of fair cooperation, he supports the idea that we must first establish those basic rights which have to be secured in such a society. This is the first (and lexically prior) of Rawls's two principles of justice:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all (Rawls, 2001, 42)

It is here that the breach with Rawls and all those 'high' liberals who have followed him down this path occurs. Rawls defines the basic liberties as these: the political liberty to vote and run for office, freedom of speech and assembly, liberty of conscience, freedom of personal property and freedom from arbitrary arrest (Rawls, 1991, 53). What is included in the 'freedom of personal property' is not fully developed (though it would include some forms of real property, certainly homes and gardens), but Rawls does explicitly *exclude* the following:

(i) The right to private property in natural resources and means of production generally, including rights of acquisition and bequest;

(Rawls, 2001, 114)

It is this qualification that Tomasi rejects. Indeed, Tomasi accuses all the 'high' liberals (in a lineage which he retraces to J.S. Mill) of practising a form of 'economic exceptionalism' – excluding 'economic' liberties from the status and protection that is afforded to the more recognisably 'political' liberties, including rights in our personal property (42/3). In doing so, he does not proceed from the bases most familiar in both 'classical liberal' and libertarian accounts (prominent among them, self-ownership and the natural law). Rather, he argues that a much more extensive (though not unlimited) basic right to private property is justified on the same basis as Rawls's other basic liberties: that is, that it is indispensable to securing the two moral powers – a sense of justice and a conception of the good – which Rawls has insisted are the *sine qua non* of a just political order: 'to exercise our powers in these ways is essential to us as free and equal citizens' (Rawls, 2001, 18-19, 45). 'Economic liberties', or as he calls them when he gets the bit between his teeth', 'capitalist economic liberties' should be among the basic liberties protected in any reasonable scheme of social justice.

Here we need to attend to a little more of the detail in Tomasi's account. His core claim is this: 'the same reasons 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' (76). So, Tomasi insists, if you allow a right to free occupational choice (as Rawls does), you must, by the same reasoning, allow 'freedom to sell, trade and donate one's labor' and this includes a (more or less) unregulated right to negotiate terms and conditions of employment. Similarly, if you allow (as 'high' liberals do) a right to the ownership of personal (non-productive) property, you must allow a much more extensive right to own *productive* property. Here, Tomasi's argument is that the same things that personal property gives us (in terms of security and identity) are also given by productive property (for example, the stocks and shares that will provide us with a pension). More than this, taking certain financial decisions (spend now or invest?) is a way for citizens to exercise the 'moral capacities they have as self-authors' (90). Upon this account, 'a thick conception of economic liberty is a *necessary condition* of responsible self-authorship' and hence morally required (98; emphasis added).

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It is important to see just how far 'bringing economic liberty back in' will take us. According to Tomasi, governments should confine their regulation of the workplace and incomes to preventing clearly hazardous production processes. Individuals should be free to negotiate labour contracts with employers; and conversely employers should be free to negotiate terms and conditions with employees as individuals. Anti-discrimination legislation should not generally apply within the private sector (where employers should feel free to discriminate on grounds of gender or race, for example) (241). Governments should provide a social safety net for the indigent - but not its own education or health services. These should be delivered in a lightly-regulated private sector, with the possibility of a voucher system for those who lack the resources to buy within these markets.[2] The extent of the inequality of incomes (even if profoundly unequal) is not a matter of legitimate concern and it is not a legitimate ambition of taxation to redistribute wealth. Market democracy is generally hostile to taxation of the transmission of resources within families across generations (256).

There is very much more in Tomasi's account - but this is, I hope, enough to give a sense of his hybrid order. In what follows, I want to focus upon an evaluation of his core claim which is that 'capitalist economic liberties' should be regarded as Rawlsian basic liberties - and therefore subject to special protection, not least a veto upon anything that might follow from the second principle of justice (fair equality of opportunity and the difference principle).

[2] Market democratic regimes will have, so Tomasi supposes, a commitment to secure for every citizen 'high quality health care and education as a matter of justice'. But as this is a part of the rubric of fair equality of opportunity (FEO) and hence of the *second* principle of justice, it is subordinate to securing the basic rights of the first schedule, including the capitalist economic liberties (241-2).

Back to Rawls

It will perhaps make sense to begin such an evaluation with Rawls himself. Why did *he* exclude the right to own productive capital from his list of basic rights? In fact, (in a passage Tomasi cites) Rawls's response in *A Theory of Justice* is pretty brief: 'the right to own certain kinds of property (e.g., means of production) and freedom of contract as understood by the doctrine of laissez-faire are not basic; and so they are not protected by the priority of the first principle' (Rawls, 1999, 54). In *A Theory of Justice* especially, Rawls is non-committal about whether a capitalist or socialist economic regime is to be preferred; this is a matter of historical contingency and not within the purview of the first principle of justice (1973, 258). However, in *Justice as Fairness* he does return to a survey of five kinds of regime: laissez-faire capitalism, welfare state-capitalism, state socialism with a command economy, property-owning democracy and liberal (democratic) socialism (Rawls, 2001, 136-). Here he judges that only two regimes - a property-owning democracy and liberal socialism - can fully satisfy the requirement of the two principles of justice. Of what he regards as the more benign of the two capitalist regimes (welfare-state capitalism), he writes 'it permits very large inequalities in the ownership of real property (productive assets and natural resources) *so that* the control of the economy and much of political life rests in few hands' (Rawls, 2001, 136-8; emphasis added). We know that Rawls is not hostile to property *per se* - clearly not, given that personal property is protected in his own list of basic liberties. But it also appears that he is not opposed to all forms of *productive* private property (as these would function in a property-owning democracy). He is hostile to large concentrations of wealth and to transmissions of this wealth between generations – and this, above all, because it will undermine 'the fair value of equal liberties' (Rawls, 2001, 137-8; see also O'Neill and Williamson, 2012; Freeman, 2013)

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Given this, it is strange that Tomasi does not devote more space to Rawls's reasons for endorsing a property-owning democracy; (it's discussed briefly at 114 and again at 222). Where he does discuss it this is largely to dismiss it as a state-heavy, tax-driven *dirigiste* regime – with nationalized health care and state funding of political parties. He suggests that this would 'concentrate economic decision making power in the hands of deliberative political bodies' (114); (it's not entirely clear if this means legislative assemblies or worker-managed cooperative enterprises). Elsewhere, he suggests that, in a Rawls-inspired economy, workers will find themselves in endless workplace meetings discussing how their business should be run - instead of making more (money) or sitting at home watching a ball game (188-92). In fact, there is much more to the market socialist tradition than Tomasi's rather cursory footnote suggests and many of its (somewhat idealised) forms have a quite limited role for the central state and varying forms of management, workplace representation and so on; (on which, see, for example, Miller 1989, Pierson, 1995).

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One of the things which Tomasi does not discuss in any detail is that which is surely the most important element in Rawls's argument against basic 'economic' liberties – and one which is remarkably simple. In Rawls's view, granting the extensive protection that being a basic right affords to the right to own and deploy productive capital will lead to an (unfair) concentration of economic power and, with it, an (illegitimate) concentration of effective political power. In a series of rather droll metaphors drawn from the board game Monopoly, Tomasi seems to acknowledge this challenge (33-4). Contrasting 'Classical Liberal Monopoly' to a more primitive forerunner (so-called 'Feudal Monopoly'!), he recognises that 'new liberals' or 'high liberals' object to the former on the grounds that applying the same rules to everyone irrespective of their initial stake is unfair. (More than this, the point is that even a quite minor starting-point disequilibrium - which could arise from faultlessly landing on one of life's 'penalty' squares – will tend to be self-reinforcing across time). And he seems to back this 'new liberal' judgement. Indeed, it is one of the reasons that he insists Tomasian liberals ought to reject the classical *grounds* of classical liberalism (and, still more so, libertarianism) in favour of a principled account of the just society *à la* Rawls. But, of course, the substantive content of the basic rights that Tomasi seeks to build into his revised framework for social justice is a much fuller set of rights to own and deploy productive private property. The case against this was made rather neatly some thirty years ago by Robert Dahl (1985, 75); 'We cannot leap from my entitlement to secure possession of the shirt on my back or the cash in my pocket to a fundamental moral right to acquire shares in IBM'.

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Here we might want to think about playing Monopoly 'in the real world'. As most people will know, Monopoly was originally developed not by a smart game-design entrepreneur but by Lizzie Magie, a follower of the radical property critic Henry George. The game was designed to show how a series of ‘free and equal exchanges’ between economic actors with unequal initial bundles of resources would tend to concentrate resources and power in the hands of an ever smaller elite.[3] The wider point - which I think is probably Rawls’s position - is that the free-play of capitalist economic liberties as basic will lead not to Jeffersonian, or even Jacksonian, democracy but to plutocracy.

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The American Dream and American Capitalism

At this point, with some trepidation (and after a short but significant detour), I think we have little alternative but to get out our maps and set off on a voyage of discovery to the ‘real world’. Of course, there are some who will refuse to embark on this journey from ‘political philosophy’ to ‘political theory’ (to use Tomasi’s own descriptors) – but he is not one of them (119-120). In fact, Tomasi writes about the tricky relationship between ‘ideal systems’ and the ‘real world’ with a good deal of common sense and a lightness of touch. He points out that it is both unfair (and common practice) to subject the recommendations of one’s opponents to withering criticism in terms of their feasibility in the ‘real world’, while protecting one’s own preferred options as ideal models for which such a test is inappropriate (207-15). And he resists the temptation to short-circuit the debate by pointing out (as I would see it, quite fairly) that no-one can show us a scaled-up working model of Rawls’s preferred regimes anywhere nor, indeed, identify any serious prospect of such a regime commanding the political support that would get it into play. If anything, the traffic is all moving in the opposite direction. In this generous spirit, Tomasi’s contrast between his own and the Rawlsian version of the two principles in Chapters 7 and 8 is conducted in the realm of ideal theory, ‘bracketing out’ the ‘elephant in the room’ which is that no-one thinks Rawls’s preferred scheme has a cat-in-hell’s chance of being instantiated in the ‘real world’.

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So it would be quite wrong to criticise Tomasi for setting up the terms of debate in such a way that his own solution will be favoured. And if we choose to criticise Tomasi’s schema in terms of its ‘real world’ implications, it is only right to say that at the outset that, in these terms, Rawls’s

[3] Even with Magie’s rather unworldly equal pay regime under which every player passing go collects $200 in ‘wages’!

preferences look politically pretty hopeless. Having said all of which, I don't think we can simply abstract Tomasi's argument from the 'real world'. After all, it is presented to us, in significant part, as a vindication of American capitalism. It is, in his own terms, a work of political theory rather than (just!) a work of political philosophy. Indeed, it is in part an appeal to restore the regime which existed before the New Deal – that is, at a time before the emergence of America's own half-baked welfare state. *Free Market Fairness* begins and ends with a celebration of the dynamism and vibrancy of both American society and the American economy – which Tomasi says he likes! (xii-xiii, 272) He argues (with some reason, I think) that 'real people', as opposed to ideal citizens, don't want to cashier the rich and famous – they want to join them! (62-3).

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But I also think that the classical liberal tradition (within which Tomasi places himself) has a 'special relationship' to the 'real world'. I want to suggest that, for the classical liberal argument to be secure, especially in the form in which Tomasi has presented it, the regime has really got to 'work'. Of course, one could argue that the 'economic liberties' are important because they increase the range of opportunities for individuals to exercise 'moral self-authorship' - and that this would be true, and that they would be valuable, even if the economic out-turn was catastrophic. But I don't think this is Tomasi's position. And, for reasons I'll identify, I think it can't really be the classical liberal position. Of course, Tomasi recognises (and celebrates) the tremendous increase in economic productivity that the unleashing of economic liberties generates. But this is *really* crucial to the classical liberal position, because in the end it is this (perhaps, it is *only* this) which justifies the actual allocation of private property holdings; (another question which Tomasi does *not* discuss).

At a strategic point in the book – at the start of Chapter 3, where Tomasi invites us to 'think the unthinkable' - he makes great play of the fantastic productivity of the American economy. Although a significant part of his argument here is that as people become more affluent they do not lose their interest in material goods (*contra* Mills and Keynes, as Tomasi sees it), prior to this there is a celebration of the enormous economic growth achieved by twentieth-century American capitalism. Of course, Tomasi is not the first to notice this dynamic tendency in capitalism. It is a phenomenon reported in extravagant terms in the first part of the *Commmunist Manifesto*, for example, and in Schumpeter's (1942) *Capitalism, Socialism and Democracy* (Schumpeter, 1976). But, for Tomasi, here following Deirdre McCloskey (2010), it is the 'Great Fact'. And I think it really *is* important because, if it is to do the work required of it, the classical liberal argument (at least as Tomasi defends it) is profoundly consequentialist. *None* of the classical liberal arguments for

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private property (self-ownership, natural law, first occupation, labour and - if one includes Kant, which Tomasi doesn't - mutual self-respect) really does the work that would be required of it, if it were to offer a secure basis for present private property holdings. To take just the most celebrated case, while there is plenty of diversity and disagreement in the vast Locke industry, almost no-one (with the possible exception of John A. Simmons and Murray Rothbard) holds that Locke's account of creating property through 'mixing one's labour' works (Simmons, 1983; 2001; Rothbard, 1970; for a comprehensive survey of the Locke literature, see Pierson ,2013). It is important to see that giving up the classical and or libertarian account of natural right or self-ownership also problematizes the allocation of particular holdings of property – and all of the transactions that follow on from these. (The most radical alternative is Kropotkin's: *all* production is indivisibly social and so we cannot attribute an *individual* property claim to anyone; Kropotkin (1990[1892/1906]).

This is where David Hume comes in. The *best* argument for the existing property regime in the classical liberal tradition is Hume's: it works. Who can legitimately lay claim to be the owner of what had been an intellectual problem at least since the time of the Stoics. It rumbled on as a dispute between princes and popes throughout the middle ages. And from time to time dissidents (like the Franciscans of the fourteenth century) came back with the alarming answer: no-one. Hume cut through all of this. Property (like justice) is necessary, but it is an artifice. Society has adopted a system of private property ownership because it has been found to be the very best way in which to encourage both social peace and economic prosperity. The origins of property are lost in the mists of time. They were almost certainly the product of force and fraud. But, Hume says, that doesn't matter. What does matter is that it works (to deliver social stability and prosperity). (Hume (1998[1751]; 2000[1739/40]; for an extended commentary, see Pierson, 2013)

This was an elegant and, on the face of it, deeply conservative solution; (though it does throw overboard *all* previous arguments about the just *origins* of property, undermining virtually the entire libertarian tradition of arguments for private property). But at the same time, it meant that property was *artificial*, it was a societal creation (not a natural right) and its *justification* was that it worked. So long as one judged that it was working (whatever that meant), this was a conservative position. As soon as one judges that it is *not* working (again whatever *that* might mean), it is potentially deeply corrosive of the established property order.

If we cast forward a generation to the classical utilitarians (and to Bentham rather than J.S. Mill), we can see that the Humean view is acutely vulnerable to an egalitarian reading.

> In an arrangement intended to give to every man the greatest possible amount of happiness, no reason can be assigned why the law should seek to give one man more than another.

Given the logic of marginal utility, there is a presumption that the most good would be done (the greatest utility realised) by an equal distribution of property.

> Each portion of wealth is connected with a corresponding portion of happiness.
>
> .. The excess of happiness on the part of the most wealthy will not be so great as the excess of his wealth.
>
> .. The more nearly the actual proportion approaches to equality, the greater will be the total mass of happiness.
>
> (Bentham, 1843, Part One, Chapters 6-8)

Of course, in Bentham's account, this assumption is immediately trumped by the claims of security. Bentham seems at least as convinced as Hume that no-one should lay a finger on the present allocation of property (though this is itself entirely a creature of the man-made law), for fear that the slightest intervention would bring down the entire house of cards. But, above all else, what justifies a regime of unequal property is the consequence it has in encouraging economic growth. Security is important because it forms the necessary incentive basis for economic growth. If it didn't, it is not clear what would justify it. If all of this were true, it follows that (the only defendable version of) the classical liberal argument for economic liberties is *not* their capacity to promote moral self-authorship but rather their capacity to put 'a chicken in every pot and a car in every garage'.[4] And whether that happens is an empirical question.

[4] A phrase apparently mis-attributed to Herbert Hoover in the presidential campaign of 1928

This means (I think) that the 'Great Fact' of economic growth is actually crucial to Tomasi's case. Of course, there are questions (both domestically and globally) about who has created this wealth and what has been the role of government; (always a dead weight?). Still, I think it would be insane to deny the transformation in people's lives that have been made possible by the growth of Western capitalist economies over the past 250 years. But what work should we understand the 'great fact' to do in justifying America's current property regime? The U.S. economy has doubled in size since 1980. By contrast, the economy of the People's Republic of China is about thirty-five times as large now as it was in 1980.[5] Of course, some will argue that this just shows what a good dose of 'capitalism' can do in even the most unpromising of circumstances. But it might also make us want to pause before moving too quickly from the fact of rapid economic growth to the justification of a society's basic structure.

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In any case, for the moment, I want to concentrate on two other questions that are raised by Tomasi's celebration of the American economy: distribution and timing. While Tomasi observes that there has been an eightfold growth in the *average* income of Americans since 1900, he does not say anything about the (changing) distribution of this enormous growth. In part, this may be because (unlike 'mainstream' Rawlsians), he does not see inequality (even very pronounced inequality) as a problem *in itself*. And the absolute standard of living for those at the bottom of the pile undoubtedly grew through most of the twentieth century. (Who in the bottom quintile could afford to go to Macdonalds and own a mobile phone in 1900?)

There are hints of this concern in Tomasi's account. He does not, he insists, subscribe to the view that a rising tide lifts all boats or that wealth will 'trickle down'; (how could he?) But he does insist that the 'new economy' (heavy on services and self-employment) means more opportunities and that (somehow) unemployment is not quite what is used to be. (In contrast to the last great recession, he suggests, unemployment now may mean not being able to send your kids to summer camp; Tomasi, 2012, 58). Tomasi celebrates the emergence of a new more flexible, more creative, more person-focused workplace. He even suggests that, after the dehumanizing experience of classical (industrial) capitalist growth, 'the personalized economy

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[5] http://www.imf.org/external/country/chn/index.htm?type=9998

reverts to the long-term Western trend of advancing wealth and freedom together'; (the quotation is taken from Koch and Smith, 2007, 106).

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This is surely an empirical claim – and, in so far as it is, it just doesn't seem right. While labour processes will undoubtedly have become more flexible for many, this does not always represent an advance in human freedom. (Think of the technologies of supervision in the average call centre or the fact that the smart phone means that the office is always with you!) Flexibility often means working irregular hours for low wages. No-one working in a university could possibly imagine that the last thirty years have seen a growth in autonomy for academic workers. And, while much discussed, the growth of self-employment just seems not to have happened. As a proportion of the workforce, self-employment has been falling since the 1960s and has flat-lined since 2000; (U.S. Bureau of Labor Statistics: w.bls.gov/opub/mlr/2010/09/art2full.pdf).

Commented [DS16]: Much seems to turn here on these empirical claims. Is it possible to bolster the information and references? THESE ARE U.S. GOVERNMENT STATISTICS. WHAT ELSE MIGHT BE NEEDED HERE?

Once we turn to the data on *distribution* and *changes across time*, the unanswerable case for American capitalism as a model of free market *fairness* looks even less compelling. If we think of the past thirty years as broadly deregulating – a period in which individual economic liberties have been enhanced through the process of de-unionization and an assault on established welfare rights - we find that distributional outcomes have become more unequal; indeed, much more unequal. Since the mid-1970s the proportion of pre-tax income going to the top 1% of earners in the U.S. has increased from around 9% to around 24%. Average hourly wages rose steadily throughout the twentieth century until 1970, since when they have almost flat-lined. In the same period, real family income has risen for the top 5% by 70%, while for the bottom 20% it has *fallen* by more than 7% (in real terms). (See Charts 1-3 below).

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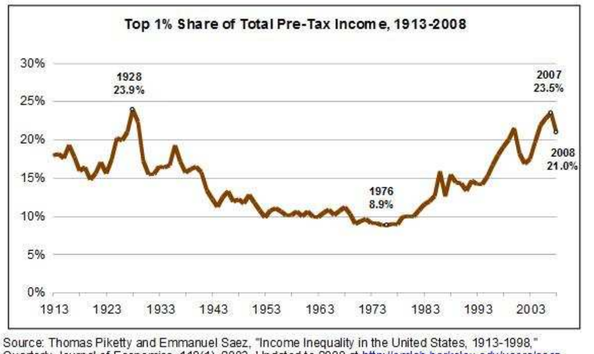
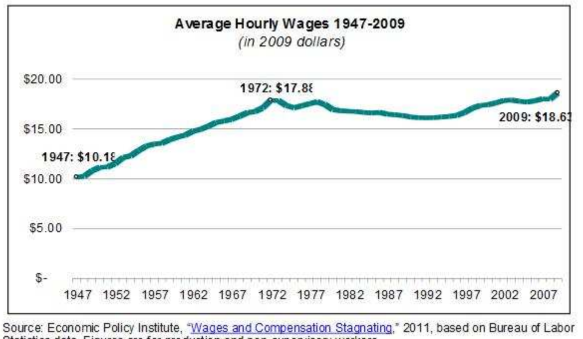
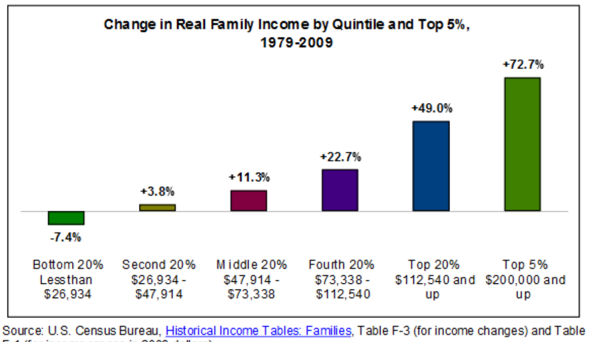


Source: Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States, 1913-1998," Quarterly Journal of Economics, 118(1), 2003. Updated to 2008 at http://emlab.berkeley.edu/users/saez.



Source: Economic Policy Institute, "Wages and Compensation Stagnating," 2011, based on Bureau of Labor Statistics data. Figures are for production and non-supervisory workers.



Source: U.S. Census Bureau, Historical Income Tables: Families, Table F-3 (for income changes) and Table F-1 (for income ranges in 2009 dollars).

Of course, for those who think that even extreme inequality is unimportant these numbers may not seem consequential – but the rest of us will be looking closely to see just how great are the gains which entrenching economic liberties as basic liberties might be expected to bring us, especially in terms of delivering 'fairness'.

Here, the evidence is underwhelming. Tomasi's illustrations of the case for a protected range of 'economic liberties' tend to be very homely and anecdotal - like his celebration of the start-up small business, Amy's Pup-in-a-Tub, or the middle income family choosing to have packed lunches all week so that they can afford to take in a movie at the weekend (66, 79). But the truth is that these examples have almost nothing to do with the ownership of productive capital. The principal beneficiary of such an entrenchment would not be a class of start-up entrepreneurs or hungry movie-goers but corporate capital, and finance capital above all. Nor is it clear that undermining collective provision or the regulation of labour contracts will make those affected 'less free'. (This was, in essence, the argument of mine-owners and factory owners in the early nineteenth century,,famously endorsed by Herbert Spencer; Spencer, (1994*a*[1884]). Or think of the contrast that Tomasi draws between the 'freed-up' workers in the U.S. and workers living in the doll's houses of European welfare states (113). Europe's workers, as he describes them, are secure and may be comfortable – but they lack the capacity and opportunity for self-direction. As it happens, I think this is a largely fictional account of Europe's welfare states past and (especially) present. But, for now, it is another point that I have in mind. Are we to believe that Swedish workers – with high levels of unionization, free tertiary education, good public services, adequate pensions and high taxes - are really less 'free' – that is lack a capacity for self-direction or 'moral self-authorship' – compared to insecure, non-unionised, casual workers with no pension entitlement and no health care, working in the U.S.? To take another example, should we look upon the decline in statutory occupational pension entitlements for workers in the U.K. (and elsewhere) as an advance in their freedom: leaving them 'free to choose'?

I have managed to get this far without mentioning the bankers. Nonetheless, it does seem like an extraordinary time to come forward with an argument that greater 'capitalist economic liberties' will enhance societal fairness. In the years down to 2008, a number of rapaciously greedy (and already wealthy) people came close to driving the great juggernaut of western capitalism over the cliff. They (and it) were only saved by a colossal injection of taxpayers' money. The suggestion that one of the benefits of private ownership is that it has made of successful investment bankers 'diligent researchers, creative analysts, and fiercely independent

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Commented [DS19]: any refs?

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Commented [DS21]: I think Tomasi has done something recently on the Scandinavian countries and the free market origins of their current social provision and the move back away from it. Might be worth a look. COULDN'T FIND THIS ("contrarian") thinkers' would be funny if Tomasi didn't mean it (79). For the most part, they are still there but many of the small players, from Amy's Pup-in-a-Tub to beachside cafes on the Greek islands - not to mention the core fabric of Europe's welfare states - are definitely all gone. The cost is being borne every day by ordinary taxpayers: workers, would-be workers, pensioners and small businesses across the Western world and beyond (see Otker-Robe and Podpiera, 2013). Many people would like to change *this* architecture – but they can't, not because the 'economic liberties' of the key players are too weak but because they are too strong: too big to fail and too big to bail (Blyth, 2013).

Commented [DS22]: Can you cite some studies here?

The existing property order is one that we have produced and reproduce on a daily basis. I agree with Tomasi that it is good to see people controlling their own lives and making their own choices in work and in their economic lives more generally. Whether we think this is best done by further entrenching 'capitalist economic rights' is, I think, in the end, an empirical question about which we can (and do) disagree. The empirical question is this: would people be 'freer' and would we have a market order which was more 'fair' if we had more entrenched 'capitalist economic liberties'? I think the answer is no. The real problem as I see it is that the political prospects for the sort of alternative regimes that Rawls favoured look so bleak. Given that, I am not sure what we can do. But, as the first rule of being in an unwelcome hole is to stop digging, the very least we can do is to stop digging.

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