

# *Capitalism and Morality*

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## “A CRITIQUE OF LIBERTARIAN JUSTICE”

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Aristotle, perhaps the greatest human mind ever to ponder the actions and affairs of men, asked, “What is justice?” Similarly, Plato dedicated one of his most august works to the discovery of a comprehensive idea of justice. So paramount an issue, justice and the conceptions thereof definitively mark political systems and positions as well as many economic theories. While many consider tyranny the absence of justice and democracy the pinnacle, few explicitly agree on a comprehensive definition of that justice. Given the general disagreement and variation of position, distinct ideas of justice mark each democratic political position and are generally in accord with the basic principles held by that position. Of the political and economic positions, libertarianism subscribes to a conception of justice intrinsically interlaced with natural and negative rights, individualism and charitable interdependency, personal responsibility, and the limited, minimal state<sup>1</sup>. While holding individuals to high standards of personal behavior, the libertarian notion of justice is often criticized as both too economic and too individualized. As it is so individualized, such justice is often predisposed to moral relativism, particularly its notion of charity. Conclusively, libertarian justice is held as utopian.

Of principle importance to the libertarian understanding of justice is an understanding of the libertarian notion of human flourishing or eudaimonia. One can be said to flourish or to self-perfect when he fully actualizes his potentials, talents, abilities, and virtues. This is not to say that man may become perfect in the same sense as God is perfect, but rather that he may fully actualize or perfect his abilities and potentials on earth. As personal flourishing is the actualization and consummation of human capabilities, it is inherently moral<sup>2</sup>.

For the libertarian, personal flourishing possesses characteristics both common and specific to each person as its properties are intrinsically linked with universal human nature and individual talents and capabilities. While human flourishing is the end which encompasses all ends, making it universal, it is also highly individualized and context specific. The goals and activities that lead man toward personal flourishing are determined by man’s reason. Since man must live rationally in order to achieve eudaimonia, man must live in reality and must deal directly with reality. Reason can be used to determine the virtues and values necessary for the individual’s own unique self-actualizations, which will ultimately lead to flourishing. Furthermore, self-actualization occurs, and properly should, in a social context. A person’s relationships with others greatly determine which potentialities will be actualized and it is his responsibility to enter into relationships that will allow him to flourish socially, intellectually, and morally. Charity and other benevolent acts, performed for others, lead toward a person’s self perfection, and therefore, should be relished.<sup>3</sup> This conception of charity is diametrically opposed to the Kantian view of charity, but necessary for the employment of a libertarian justice system.<sup>4</sup> The Kantian view of charity, which is integral to a proper critique of libertarian charity and, for Kant, derived from pure reason, requires that the person act solely out of duty and self-sacrifice in order to truly act charitably. If the person derives any form of pleasure or happiness, or engages in the

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<sup>1</sup> Edward W. Younkens, *Capitalism and Commerce* (Lanham: Lexington, 2002), 136-138.

<sup>2</sup> Edward W. Younkens, *Capitalism and Commerce* (Lanham: Lexington, 2002), 43.

<sup>3</sup> Edward W. Younkens, *Capitalism and Commerce* (Lanham: Lexington, 2002), 43-48.

<sup>4</sup>Edward W. Younkens, *Capitalism and Commerce* (Lanham: Lexington, 2002), 26-27.

act to better himself or increase his virtue, Kant claims that the act is not charitable, but rather selfish.<sup>5</sup> Libertarian charity, however, claims to be one of the driving forces that push people to supplant roles usually taken by the welfare state, such as providing for those who are incapable to provide for themselves. For the libertarian it is the benefit the individual receives that encourages him to act charitably and it is such charity that allows the minimal state to function justly.<sup>6</sup> Clearly, the distinct conceptions are very much at odds.

Integral to this conception of personal flourishing is an environment in which freedom and autonomy are cherished: the minimal state. In order for man to flourish, he must be free to choose his own particular methods and ends of self-actualization. This freedom is definitively rooted in natural law and the natural rights therein contained. Freedom and liberty serve to prevent infringements upon man's autonomy or self-directedness. This right to autonomy, or liberty, provides that no one or no political institution may encroach upon an individual's right to self-direct so long as the individual does not encroach upon or harm anyone else's liberty. This right is guaranteed by the minimal state that should intervene only in instances of force, fraud, or theft. Because the state functions only to provide the framework in which man may flourish, it does not guarantee man will flourish. It does not concern itself with an individual's personal flourishing and therefore, does not replace the constituent virtues so necessary for personal flourishing.<sup>7</sup> This freedom leaves man accountable and responsible for his actions.

Given the nature of the minimal state, its relation to natural rights, law, and liberty, and the importance of autonomous self-directedness and personal flourishing, it is not surprising that the libertarian conception of justice, at least in relation to the minimal state, is metanormative. This distinction between metanormative and normative justice is key to the governance of the minimal state and the behavior of the individual in his virtuous attempts toward eudaimonia.

Justice, in a metanormative sense, is the justice with which the minimal state is concerned. Metanormative justice provides the basic framework through which persons are free to act justly and morally. Metanormative justice is not based on any set of specific values, but is rather open-ended so as to allow for the personal flourishing of all. It is based on the universal and non-specific relationship of any human with any other human and aims to provide a governmental structure through which the state may act to prevent persons from encroaching upon others' natural rights. It provides the basis for law. Any law which does not conflict with any person's natural rights is, therefore, just, as is any law which serves to remedy situations in which there is a violation of natural rights. This requires that in order for laws to be just, the application thereof must be consistent. An interesting point is that this implies that mercy is not compatible with metanormative justice in that it would mean that the law would not be applied completely consistently. If mercy were in accord with justice, then it should be exercised in every situation.<sup>8</sup>

Essentially, metanormative justice respects and upholds the individual's right to autonomous free choice and liberty. It accomplishes its ends by protecting against force, fraud, theft, and violations of natural rights. It respects an individual's right to hold property, transfer property, freely contract, and enjoy the fruits of his labor. Furthermore, as metanormative justice is very economic in nature, it upholds the Lockean right of first possession and subsequent property rights. It requires that if a person's natural rights are violated, that person deserves compensation, as granted by the right of reparation and that a person has the right to defend oneself by force in instances in which natural rights are threatened. Also, this restitution may be collected by force so long as the force does not exceed that necessary to gain compensation. Justice is based on deserts and deserved punishment, although there is controversy as to what punishment is proportionate to what crime,<sup>9</sup> which is why some libertarians support capital punishment while others do not. Ultimately, metanormative justice provides the foundation for the rule of law, not the rule of man.

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<sup>5</sup> Immanuel Kant, *The Metaphysical Elements of Ethics*, trans. Thomas Kingsmill Abbott (1780), <http://philosophy.eserver.org/kant/metaphys-elements-of-ethics.txt>.

<sup>6</sup> Edward W. Younkins, *Capitalism and Commerce* (Lanham: Lexington, 2002), 26-27.

<sup>7</sup> Edward W. Younkins, *Individual Happiness and the Minimal State*. *The Freeman* 46, no. 10 (October, 1996), <http://www.fee.org/Publications/the-Freeman/article.asp?aid=4411>.

<sup>8</sup> Edward W. Younkins, *Capitalism and Commerce* (Lanham: Lexington, 2002), 136-137.

<sup>9</sup> Edward W. Younkins, *Capitalism and Commerce* (Lanham: Lexington, 2002), 137-138.

While metanormative justice is concerned with universal or “cosmopolitan”<sup>10</sup> relationships, normative justice is concerned with the specific, personal relationships through which people may act justly and morally and through which they may flourish. Integral to an understanding of normative justice is the specific and personal nature of the situation. Given this consideration, justice does not prescribe a set of actions for each personal situation. To act justly, in a normative sense, requires that one employ his practical wisdom in determining a course of action. As Douglas Rasmussen and Douglas Den Uyl state in *Norms of Liberty*, “The proper course of conduct is not prescribed by some ethical recipe.”<sup>11</sup> The particularities of the situation, including the relationship and the circumstance of the other person, along with the employment of practical wisdom dictate the proper course of action.<sup>12</sup> While, for the libertarian, justice is a constituent virtue, it is not the only constituent virtue; therefore a person must act in manner which allows justice to coincide with other virtues that contribute to his personal flourishing. Since these values will vary from person to person, no set course of conduct is necessarily correct for all people in various situations.<sup>13</sup>

Furthermore, justice is not suggested as being of more value than other goods such as knowledge, wealth, beauty, etc. While some goods are dependent upon other goods, particular goods are not inherently of more value, i.e. justice is not inherently of more value than knowledge. Because this is so, justice, in a normative sense must be individualized and must accord with those goods valued by the individual. Also, an issue of practicality argues for the individualized notion of justice. If justice were the paramount issue, then would not everyone be obliged to participate in every just cause? The libertarian understanding of normative justice allows man to order his virtues in such a way as to maximize personal flourishing.<sup>14</sup>

Also of importance to a libertarian conception of justice, as it is very concerned with economic justice, is the entitlement theory of distributive justice as asserted by Robert Nozick which serves as argument against the modern Rawlsian concept of distributive justice. Rather than assuming an “original position” in which the founders of civil society operated behind a “veil of ignorance” taking the desired positions of those least favored, Nozick advances a theory of distributive justice based on the principles of just acquisition, just transfer, and rectification. To expound, the acquisition of an item is just if the item was not owned prior to the acquisition and that the acquisition does not deprive everyone of that resource. A transfer is just if the transfer is voluntary. Rectification, or an attempt thereof, is necessary when an item is unjustly possessed. Nozick upholds natural rights and the Kantian categorical imperative by respecting an individual’s freedom, liberty, and equality as ends in and of themselves. In addition, he also upholds the Lockean idea of self-ownership which, when combined with the outside world, results in property ownership.<sup>15</sup>

This theory of distributive justice is inherently at odds with the popular concept of Rawlsian justice in that Rawlsian justice requires that the state treat individuals as unequal. If this was not so, then the Rawlsian state would have no need to re-distribute wealth. Rather, at the pinnacle of Nozick’s entitlement theory is the person’s equality before the law, in that each person is equally free to better his situation through the acquisition and transfer of goods. Furthermore, the redistribution of wealth is unjust in and of itself given the value of property rights and the right to one’s labor and productivity.<sup>16</sup>

Highly economic and individualized, libertarian conceptions of justice are often critiqued for being just that, economic and individualized. In response to the critique that libertarian justice ignores social justice by focusing on economic issues, it must be remembered that libertarianism is, indeed, an economic concept. Because the libertarian

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<sup>10</sup>Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty* (University Park: Pennsylvania State University, 2005), 162.

<sup>11</sup> Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty* (University Park: Pennsylvania State University, 2005), 162.

<sup>12</sup> Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty* (University Park: Pennsylvania State University, 2005), 162.

<sup>13</sup> Douglas B. Rasmussen and Douglas J. Den Uyl, *Norms of Liberty* (University Park: Pennsylvania State University, 2005), 163.

<sup>14</sup> Douglas J. Den Uyl, *The Virtue of Prudence* (New York: Peter Lang, 1991), 194-196.

<sup>15</sup> Edward W. Younkens, *Capitalism and Commerce* (Lanham: Lexington, 2002), 130-136.

<sup>16</sup> Edward W. Younkens, *Capitalism and Commerce* (Lanham: Lexington, 2002), 135.

concept of justice and the extremely minimal state are imperatively linked, the libertarian concept is at odds with the trends of social justice and welfare rights. While social justice and welfare rights to the extreme, i.e. the redistribution of wealth, the ability to live off of tax-payer's money without any productive input, are indeed, unjust, foster low productivity, and essentially rob the productive of both their incentive to work and the fruits of their labor, some interference of the government is necessary to remedy certain situations. This interference is not permitted in the libertarian conception because that position relies on the assumption that individuals, driven by their desire to flourish, will act charitably in order to aid those in the most destitute positions. Some people, either by nature, i.e. physical deformities and the lack of a caregiver, or by circumstance, i.e. an injury, are unable to be productive members of society. While it is undoubtedly true that some people would charitably donate to allow such individuals to subsist, it is doubtful that enough people would donate their time and money to help every incapable or injured individual. Granted, the government, through its various programs, does not reach everyone, but such systems are beneficial despite the infringements, i.e. taxes, upon property rights.

Furthermore, because libertarian theory assumes that people will act charitably in order to advance their own personal flourishing, the very nature of such charity must be questioned. The aforementioned Kantian notion of self-sacrifice provides that charity must be done out of duty and for charity's sake alone, not for the betterment of the individual performing the act. Kant has, indeed, taken his analysis of charity a bit far in that he completely denies the beneficence of any act performed for the betterment of others that also provides happiness for the performer. Libertarians are, however, guilty of the same: going too far. If a person is truly virtuous and truly moral, he will undoubtedly derive happiness from helping another person because the virtuous and moral person values human life and, in acts of charity, he is bettering or preserving the quality of life for another individual. This would undoubtedly cause joy as he is preserving something that he loves. Kant, however, denies man's inherent emotional nature and leaves him only with reason and duty as substitutes. God endowed man with the ability to feel and, ultimately, with the command to love. Therefore, when we act out of love for another individual, we are fulfilling God's command which will and surely should, make us happy. The libertarian conception of charity is more open to this idea as it allows the individual to derive joy and pleasure from charitable acts. However, while Kantian charity is too closed, libertarian charity is too open. While not every libertarian believes that the only motivation of charitable action is the betterment of the individual who performs the act, it is easy to see how often the libertarian could act out of self-interest alone, rather than out of love and respect for human life.

Also, while normative justice should, to a certain extent, be individualized and practical and courses of action should vary from circumstance to circumstance, the libertarian concept of normative justice is too relative. Obviously libertarians do not, by any means, espouse that one can murder, which would be to act unjustly, if that person believes that murder is the practical alternative. Furthermore, libertarians do not believe that, for instance, armed robbery is acceptable if an individual values wealth more so than justice. However, because libertarians do not necessarily value justice over wealth, or other, more carnal goods, it seems as though it would be easy to fall into such vices as greed and lust, which would then lead to even more sinful vices. While it makes sense that one cannot dedicate oneself to every noble cause, it allows too much room for individualized choice. A conception of justice must be at least slightly prescriptive, otherwise it would provide a slippery slope leading toward the pits of relativism. Moreover, as libertarian theory is pro-choice on all issues of morality, a libertarian state would never enact restrictions on such practices as euthanasia and abortion, no matter how unjust. While individual libertarians may support or disdain such practices, because they are unwilling to openly judge the actions of others, they can greatly contribute tacit support to a great number of unjust practices, such as euthanasia and abortion. The individual may decide that abortion is wrong, however he will certainly never push for the enactment of laws prohibiting such a behavior. While libertarians are not necessarily moral relativists, their open-ended concept of justice and their unwillingness to legislate on "moral" issues, certainly provide an example of how easy it would be to fall into the falsehoods of moral relativism, particularly in a post-modern world.

Ultimately, libertarianism is critiqued as being utopian and relying on individuals to act as they should. It is said to take for granted that all will pursue personal flourishing rightly understood, rather than pursue a deformation of happiness through such avenues as base sexual pleasure or ignorant foolishness. Because humans do not always, or even almost always, act as they should, this understanding of justice is purported to be inapplicable because it requires that people understand and pursue eudaimonia in order to prevent and remedy injustice. However, is not justice, in its truest form, utopian? And, is not justice, in its truest form, reserved for the ultimate utopia, the Kingdom of God? While humans, as they should, try to act justly and to institute just political frameworks, it is utopian for any political position or ideology to attempt to institute a system of justice. Justice by its very nature

strives towards perfection, toward a society where everyone will act as they should. However, we all know that no place exists. For any system of justice to truly work as it should, even the distributive justice of Rawls, the people must act rightly in every situation. Because people are not perfect and are marred by the predisposition to sin, a system of absolute justice, indubitably, will never be achieved on earth.

Rather than criticizing such libertarian justice for being utopian, we should perhaps criticize ourselves for not properly employing justice. It is man who, in this case, is flawed and by our very nature justice is doomed to a certain degree of failure. However, is it not noble to enact a system of justice in which people are held to highest standards of behavior? The answer is, most assuredly, yes, it is noble. However, perhaps the pertinent question is, is it practical to do so and is justice, by its very nature, practical?

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