

REVIEW

A libertarian perspective on distributive justice and justice as fairness¹

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A libertarian perspective on politics involves very clear and distinct definitions of what liberty and justice are as well as how one might define libertarianism itself. This study adheres to the main writers and debates surrounding the vacuity of non-democratic states, the dangers that surround the notion of the meanings of capitalism, and what it means to be alive in a democracy in late modernity.

Keywords: late modernity, capitalism, libertarianism, justice, distributive justice, fairness, the state

Introduction

While am not at liberty to reveal why I am not a member of any political party in Singapore, I can state the reasons why I am not a libertarian. I am not a libertarian because I love myself too much. However, libertarianism does appear to pose a very attractive theoretical position to adopt for several compelling reasons as provided by the political theorists in the ensuing debate on the notion of the individual, the state, and the concept of justice as fairness as libertarianism. But we begin with the simplistic case of Singapore and its laws to protect individuals (but mainly the state) from online falsehoods. It does make for interesting reading why any entity, person, or organization would dare question the moral, legal, and legitimate position of the Singapore government.

The reality is that people who make comments from afar, outside the country like Phil Robertson, can afford to be smug because they do not live and work inside Singapore and hence do not have to withstand any negative consequences that might arise, including legal proceedings. On the contrary, to be fair to coward like Robertson, if what he is saying is true, then why did not the Singapore government take issue with him and sue him wherever he might be located? Does this also mean that the Singapore government under Lee Hsien Loong does not disagree with Robertson's view that "the Singapore government's knee-jerk reaction is to harass or

prosecute anyone for expressing disagreeable opinions rather than engaging with its critics" such as Richard Branson of Virgin fame?

Another colleague asked if it was correct for people without training in political science to claim to be political scientists. I answered the second question first because it was obvious to me at least that it was not so much a question of right or wrong but a question of ethics. Unethical social scientists exist everywhere in the world, not only in Singapore. For example, there are sociologists in Singapore with no political science training who claim to be political scientists. And there are those who are trained in 3 or 4 criminology courses overseas who claim to be criminologists. So it comes to no surprise that there are many fake social scientists and other fake professionals posing as authentic purveyors of genuine information. This is how it is linked to the current discourse on false and fake information.

So in a world of fake news, how does the libertarian choose? For the libertarian, the consumer can ideally choose from an efficient range of goods and services. However, in reality, such choices do not always exist because of the liars and cheaters of the world. In Singapore, for example, many (young) women are driven by vanity to become slim

¹ This paper is dedicated to Dorothy Kwek, PhD (JHU) WissenschaftlicherMitarbeiterin at Universität Konstanz and Lecturer in Political Theory (Cardiff University).

or to remain slim and resort to starvation, extreme diets, extreme exercises, or a combination of all these. A simple and dangerous way to maintain one's slim and lithe appearance is to resort to consuming slimming tablets. Unfortunately, these made-in-China or made-in-India tablets are often poisonous. For example, the unfortunate Singapore actor "Pierre Png donated part of his liver to his then-fiancée and now-wife, Andrea De Cruz when she suffered liver failure after taking slimming pills *Slim 10*."² Unfortunately, the POFMA law was not formulated back when the Eurasian De Cruz was duped by slimming pills while motivated by her own vanity as most television stars are likely to do. On February 6, 2023, Michelle Chong, a popular actress "warned her followers in multiple posts that she did not endorse the dubious brand's product. "They are a scam" Chong wrote in a *Facebook* post in all caps on Jan 31st 2023 "They photoshopped my pictures and if you order, you will get nothing because there is no real product. Your money will be gone," she said" (*New Paper*, February 6, 2023). Another case was seen more recently when "Two fake advertisements that try to pass off as *Facebook* posts by *The Straits Times* have surfaced on the social media platform. When a user clicks on the advertisements, he is directed to genuine ST articles which seem related to the advertisements at first glance. But the ST stories are actually not related to the text and images used in the fake advertisements. One of the advertisements shows a photo of actress Zoe Tay and an image of someone holding what looks like a microchip" (*Straits Times*, November 2, 2019).

POFMA remains too bureaucratic for the business savvy and those conscious about how one's corporate image is treated in social media, and hence many resort to blocking these websites on their own at cost.³ Within the liberal worldview, a libertarian theorist would argue that there should not be any paternalistic legislation, of which POFMA is indirectly one example of a type of paternalistic legislation. Laws that protect one from oneself, such as a compulsory seatbelt law or a compulsory helmet law for motorcyclists, are hence another example of paternalistic legislation. This can be seen in the case of the Singapore Consumer Protection (Fair Trading) Act,⁴ which is part of CASE, supposedly a consumer watchdog. Libertarians are against such paternalistic laws. Wearing or not wearing seatbelts is purely up to the consumer, say the libertarians.⁵

This is why the libertarian view was particularly insightful when some Singaporean complainants tried to get help

and were told by the CASE customer agents that they had to become members and pay for consultation, as seen in Diagram A below. However, nothing is free, and when advertisers state that something is available for a small fee but do not mention how much that fee is, then something is amiss. Advertising fads and shortcuts are often long and dangerous routes with negative and sometimes fatal consequences; yet consumers buy into these falsehoods and scams every day. They are motivated by greed, avarice, desire for material wealth, or simply succumb to pressure sales tactics. The famous Harvard political scientist Michael Sandel cautioned that the state has no business coercing the consumers (Michael Sandel, "On Justice," Harvard University, 2015).

Many states also try to promote a certain set of virtues. These are usually states that have many Christians or Muslims among their citizens. Libertarianism, argues Sandel, is against morals' legislation or the promotion of laws that seek to promulgate certain religious and other values.

More on libertarian theory

Libertarian theory also argues that there must not be any form of legislation where there is a redistribution of wealth or income from the rich to the poor. This is because redistribution is coercion, as well as a kind of theft, in a democracy. But a liberal such as John Locke would disagree. In Locke's view, a democratically elected government has the right to impose taxes on individuals, corporations, and property. However, a libertarian such as Robert Nozick would only allow for the kind of taxation associated with national defense, policing of laws, public utilities, judicial systems, and property rights. In Nozick's view, no other form of taxation is acceptable. This comes close to what Karen Johnson described as the Antipolitical philosophy of Robert Nozick. But her use of the concept of antipolitical for Nozick's work did not catch on, and her work was left unimpactful, as it has been since the 1970s, when compared to writers such as John Rodman, Christopher John Nock, J.S. Coleman, and others.⁶

This contrasts with Locke's view that once an individual joins a given liberal society, he or she accepts an *a priori* consent supported by the majority; a set of pre-existing obligations that the new individual who joins that liberal society must accept and comply with. This, Sandel says, raises the question of the value and sanctity of the self. Can the government violate the right to individual life through-for example-a compulsory draft to fight a war? This, Sandel says, raises the question of self-ownership. Does not such an *a priori* set of obligations to join a certain liberal society violate the concept of self-ownership? Does it not violate

² "Pierre Png's Wife Andrea De Cruz Aces Health Check-up 19 Years After Liver Transplant" Today Online updated August 31, 2022.

³ See also, "Fake ST, Zaobao and CNA news sites that promote gambling detected and blocked" <https://www.straitstimes.com/singapore/fake-st-zaobao-and-cna-news-sites-that-promote-gambling-detected-and-blocked>

⁴ <https://asas.org.sg/Resources/CPFTA>

⁵ See also, Robert F. Ladenson, "Nozick on Law and the State: A Critique." *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, vol. 34, no. 4, 1978, pp. 437–39.

⁶ Karen Johnson, "Government by Insurance Company: The Antipolitical Philosophy of Robert Nozick." *Western Political Quarterly*, vol. 29, no. 2, 1976, pp. 177–88.

the concept of self-possession? Do we own ourselves one wonders; or does the government own us? If we accept entry into a society, do we similarly accept all the policies prescribed by the pre-existing (and democratically elected) government of the majority of that society's individuals? For Locke, it is not so much that the political or military authority decides but that such decisions are not made arbitrarily. Rules are rules in Locke's case. This is why Sandel reminds us that while a general can order a soldier to die in the face of the enemy or at the enemy's hands while facing a cannon, what the general cannot do is to take a single cent of the soldier's wages. But for the libertarian Nozick, when a society taxes away a portion of what Bill Gates or Michael Jordan earns, what they are effectively doing, says Sandel, is using society as a means of taxing what is a result of their talents and their abilities, and hence it would be morally wrong for society to tax away what was rightfully produced by any given individual. The basis of libertarian societies, says Nozick, is to attain liberty as justice by forestalling coercion. This is because underlying the libertarian's case about the minimalist state is a worry, says Sandel, about coercion. But what is wrong with coercion, asks Sandel? Apparently, the fundamental moral situation of self-possession or self-ownership, which Nozick would also argue, cannot be questioned or put on trial simply because it would be used as a proxy for attaining the wealth created by a wealthy individual through his or her talents. The libertarian view of justice as fairness begins with the fact that we own ourselves in terms of an *a priori* situation, a distinction that is *de facto* morally correct, although not necessarily *de jure* morally sanctioned.

Objections to libertarianism

There are many reasons why people object to the libertarian position. First, the poor need the money more than the rich. Second, when a person is taxed, it is not enslavement; this is because, in a democratic society, there are no slavers or slave holders but Congress. Hence, taxation with consent is not coercion, it is not forced slavery. Third, as Sandel explains, those who are successful, such as Bill Gates and Michael Jordan, owe a debt to society. Why is this the case? I say this is the case because the wealthy people of today did not grow up in isolation away from other people. They grew up depending on others: their parents, friends, teachers, university professors, employers, and even policymakers. All these other people directly or indirectly played a part in their success. This is why those who grow up in society and do well are somehow morally obligated to that society and morally obligated to pay back something to that society. Another way is for such fortunate individuals to pay their taxes. All of which of course is objected to or would be objected to by the libertarian. Sandel mentions a fourth objection to libertarianism, which is that wealth also depends on a lot of luck and so it is not morally deserved.

Locke on justice, liberty, and natural rights

Locke knows that it is critical for all individuals to understand the arguments made in terms of classical liberty, justice, and natural rights. Ron Replogle makes an interesting set of explanations of the relationship between natural rights and the notion of distributive justice (that was popularized by John Rawls).

Sandel also claims that Nozick does not himself develop the libertarian view of self-possession but instead draws upon the work of John Locke to make his (Nozick's) libertarian argument. This is because Locke argued that self-possession and self-ownership arose out of self-propriety. According to Michael Sandel, Locke is an erstwhile ally of libertarianism because there are certain rights and liberties that are so fundamental to being human that even a democratically elected government, a genuinely representative government, cannot take away from individuals. Recall that it is John Locke who argued for the existence of a natural right to both life and liberty, as well as to property. This makes him a classical liberal in a basic sense as well. It is *via* this right to the ownership of property that is so supreme that this right to the ownership of property is necessarily pre-political. It is thus a kind of right that arose before politics itself. It is a natural right that comes before parliaments and representative governments and all forms of other political governance, arising before legislatures appear to enact laws or to define what is right and what is wrong. Therefore, before laws were enacted, says Locke, there was something called the state of nature where I have argued elsewhere, individuals are genuinely free, unencumbered, and equal, and there is no natural or artificial hierarchy or class or social distinction. Locke says that there is perfect equality in the state of nature, which is of course different from another kind of state that is known as the state of license. Locke seems to contradict himself when he refers to the perfection of the state of nature because even in the state of nature, he argues, there is a law known as the law of nature, the natural law that constrains our freedom and our will. There is only one law, and the law of nature is that whatever rights we might have we cannot give up, transfer, or give away. We cannot give up our natural rights in the state of nature. Note that Locke's version of the state of nature is vastly different from Thomas Hobbes' notion of the state of nature where he claims that life is solitary, brutish, nasty, and short.⁷

Therefore, in Locke's state of nature, the individual is not free to take their own life. This also means that one cannot sell oneself into slavery. Neither can one give to someone else arbitrary and absolute power over oneself. Locke says that we

⁷ Ron Replogle, "Natural Rights and Distributive Justice: Nozick and the Classical Contractarians." *Canadian Journal of Political Science/Revue Canadienne de Science Politique*, vol. 17, no. 1, 1984, pp. 65–86.

are all creations of an omnipotent (i.e., Christian) God, and hence we have no prior claim to ourselves. We belong to God but not vice versa. A particularly intuitive graduate student of mine once asked what about the state of death? Who owns death? Does God own death or do we own death? I asked to raise that question at my funeral, for which I intend to be as tardy as possible. But what about those who do not believe in God? If we reflect on what it means to be free, it implies that we cannot do whatever we want—only “reason” as part of the “law of nature”—states that our rights are inalienable. They cannot be given, traded, or sold off. In this sense, it makes it less fully mine (e.g., to give away for example) yet, on the contrary, makes it more profoundly mine, and my own. So these are the rights that exist in the state of nature, before any form of government, before political communities existed, where individuals possess rights that are so essentially part of life that they cannot be given away without losing one’s entire life, says Rappa (*Globalization* (Part II), ISEAS Press, 2011).

So it is not as if that one cannot commit suicide. It is also the case that one cannot take their own life or commit suicide or sell oneself into slavery or have someone exercise absolute power over me, I also cannot take some other person’s life, kill them, sell them into slavery, or exercise absolute power over them. As a natural rights theorist, and beginning with Hobbes’ state of nature⁸, Nozick claims that the *Leviathan* is obligated to protect the individuals under such a social contract to the extent of going to war if necessary to protect the individual citizens’ rights. Therefore, the *Leviathan* state is motivated by a set of rational, self-interested individuals who are interested in preventing anarchy (chaos) within a specific territory, an area that is part of what Nozick (rather than Hobbes) identifies as a Dominant Protective Association that was partially explained by Theo Papaioannou and others, for example.⁹ Nozick adopts a similar approach when it comes to the concept of distributive justice after Rawls in the latter’s famous but problematic book *A Theory of Justice* (Harvard Belknap Press, 1971). It is so problematic that Nozick offers his definition of what a proper theory of justice ought to be in terms of “entitlements.” Nozick argues that such a theory would consist of the following three parts: (i) a person who adheres to a proper theory of justice and acquires holdings is entitled to those holdings; (ii) a person who adheres to justice in the transfer of holdings is also entitled to those holdings; and (iii) in the case of rectification of injustice, a person may only be entitled to holdings if either (i) or (ii) is satisfied and not in any other manner.¹⁰ This is

why—in a parallel universe—there remains a huge difference in pay between what Justice Sandra Day O’Connor (for example) earns as a Supreme Court justice (US\$200,000) and what Judge Judy earns as a day time television judge (US\$2 million) (for example), or why the superpower of the world, US President Joe Biden, only earns (US\$400,000) when the tiny city-state of Singapore’s prime minister earns S\$2.4 million per annum. Therein lies the answer as to why some are multi-millionaires while others live in poverty.

Conclusion

We have seen in this study that a libertarian approach to politics raises critical questions over the discursive nature of mature and democratic states versus immature, authoritarian, and non-democratic ones. If modernity is about answering questions concerning what it means to be alive today, then surely there are as many answers to problems as there remain problems themselves. This is part of the reason why modernity and consumption can conceptually be better distilled from economic *laissez-faire* hypotheses inasmuch as libertarian ones. There is a higher chance of understanding the meaning of Hegemonic Masculinity Theory and hedonistic theory through the lens of libertarianism.

Author contributions

The author confirms being the sole contributor of this work and has approved it for publication.

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⁸ J. H. Bogart, “Lockean Provisos and State of Nature Theories.” *Ethics*, vol. 95, no. 4, 1985, pp. 828–36.

⁹ Coleman, James S., et al. “Robert Nozick’s Anarchy, State, and Utopia.” *Theory and Society*, vol. 3, no. 3, 1976, pp. 437–58; see also, Papaioannou, Theo. “Nozick Revisited: The Formation of the Right-Based Dimension of His Political Theory.” *International Political Science Review* vol. 29, no. 3, 2008, pp. 261–80.

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