LAW, LEGISLATION AND LIBERTY

A new statement of the liberal principles of justice and political economy

Volume 1
RULES AND ORDER

Volume 2
THE MIRAGE OF SOCIAL JUSTICE

Volume 3
THE POLITICAL ORDER OF A FREE PEOPLE

F. A. Hayek
So great is the uncertainty of merit, both from its natural obscurity, and from the self-conceit of each individual, that no determinate rule of conduct could ever follow from it.

David Hume*

Welfare, however, has no principle, neither for him who receives it, nor for him who distributes it (one will place it here and another there); because it depends on the material content of the will, which is dependent upon particular facts and therefore incapable of a general rule.

Immanuel Kant*

The concept of ‘social justice’

While in the preceding chapter I had to defend the conception of justice as the indispensable foundation and limitation of all law, I must now turn against an abuse of the word which threatens to destroy the conception of law which made it the safeguard of individual freedom. It is perhaps not surprising that men should have applied to the joint effects of the actions of many people, even where these were never foreseen or intended, the conception of justice which they had developed with respect to the conduct of individuals towards each other. ‘Social’ justice (or sometimes ‘economic’ justice) came to be regarded as an attribute which the ‘actions’ of society, or the ‘treatment’ of individuals and groups by society, ought to possess. As primitive thinking usually does when first noticing some regular processes, the results of the spontaneous ordering of the market were interpreted as if some thinking being deliberately directed them, or as if the particular benefits or harm different persons derived from them were determined by deliberate acts of will, and could therefore be guided by moral rules. This conception of ‘social’ justice is thus a direct consequence of that anthropomorphism or personification by which naive thinking tries
to account for all self-ordering processes. It is a sign of the immaturity of our minds that we have not yet outgrown these primitive concepts and still demand from an impersonal process which brings about a greater satisfaction of human desires than any deliberate human organization could achieve, that it conform to the moral precepts men have evolved for the guidance of their individual actions.¹

The use of the term 'social justice' in this sense is of comparatively recent date, apparently not much older than a hundred years. The expression was occasionally used earlier to describe the organized efforts to enforce the rules of just individual conduct,² and it is to the present day sometimes employed in learned discussion to evaluate the effects of the existing institutions of society.³ But the sense in which it is now generally used and constantly appealed to in public discussion, and in which it will be examined in this chapter, is essentially the same as that in which the expression 'distributive justice' had long been employed. It seems to have become generally current in this sense at the time when (and perhaps partly because) John Stuart Mill explicitly treated the two terms as equivalent in such statements as that

society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens should be made in the utmost degree to converge⁴

or that

it is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is perhaps the clearest and most emphatic form in which the idea of justice is conceived by the general mind. As it involves the idea of desert, the question arises of what constitutes desert.⁵

It is significant that the first of these two passages occurs in the description of one of five meanings of justice which Mill distinguishes, of which four refer to rules of just individual conduct while this one defines a factual state of affairs which may but need
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not have been brought about by deliberate human decision. Yet Mill appears to have been wholly unaware of the circumstance that in this meaning it refers to situations entirely different from those to which the four other meanings apply, or that this conception of 'social justice' leads straight to full-fledged socialism.

Such statements which explicitly connect 'social and distributive justice' with the 'treatment' by society of the individuals according to their 'deserts' bring out most clearly its difference from plain justice, and at the same time the cause of the vacuity of the concept: the demand for 'social justice' is addressed not to the individual but to society—yet society, in the strict sense in which it must be distinguished from the apparatus of government, is incapable of acting for a specific purpose, and the demand for 'social justice' therefore becomes a demand that the members of society should organize themselves in a manner which makes it possible to assign particular shares of the product of society to the different individuals or groups. The primary question then becomes whether there exists a moral duty to submit to a power which can co-ordinate the efforts of the members of society with the aim of achieving a particular pattern of distribution regarded as just.

If the existence of such a power is taken for granted, the question of how the available means for the satisfaction of needs ought to be shared out becomes indeed a question of justice—though not a question to which prevailing morals provide an answer. Even the assumption from which most of the modern theorists of 'social justice' start, namely that it would require equal shares for all in so far as special considerations do not demand a departure from this principle, would then appear to be justified. But the prior question is whether it is moral that men be subjected to the powers of direction that would have to be exercised in order that the benefits derived by the individuals could be meaningfully described as just or unjust.

It has of course to be admitted that the manner in which the benefits and burdens are apportioned by the market mechanism would in many instances have to be regarded as very unjust if it were the result of a deliberate allocation to particular people. But this is not the case. Those shares are the outcome of a process the effect of which on particular people was neither intended nor foreseen by anyone when the institutions first appeared— institutions which were then permitted to continue because it was found that they improve for all or most the prospects of having their needs
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satisfied. To demand justice from such a process is clearly absurd, and to single out some people in such a society as entitled to a particular share evidently unjust.

The conquest of public imagination by 'social justice'

The appeal to 'social justice' has nevertheless by now become the most widely used and most effective argument in political discussion. Almost every claim for government action on behalf of particular groups is advanced in its name, and if it can be made to appear that a certain measure is demanded by 'social justice', opposition to it will rapidly weaken. People may dispute whether or not the particular measure is required by 'social justice'. But that this is the standard which ought to guide political action, and that the expression has a definite meaning, is hardly ever questioned. In consequence, there are today probably no political movements or politicians who do not readily appeal to 'social justice' in support of the particular measures which they advocate.

It also can scarcely be denied that the demand for 'social justice' has already in a great measure transformed the social order and is continuing to transform it in a direction which those who called for it never foresaw. Though the phrase has undoubtedly helped occasionally to make the law more equal for all, whether the demand for justice in distribution has in any sense made society juster or reduced discontent must remain doubtful.

The expression of course described from the beginning the aspirations which were at the heart of socialism. Although classical socialism has usually been defined by its demand for the socialization of the means of production, this was for it chiefly a means thought to be essential in order to bring about a 'just' distribution of wealth; and since socialists have later discovered that this redistribution could in a great measure, and against less resistance, be brought about by taxation (and government services financed by it), and have in practice often shelved their earlier demands, the realization of 'social justice' has become their chief promise. It might indeed be said that the main difference between the order of society at which classical liberalism aimed and the sort of society into which it is now being transformed is that the former was governed by principles of just individual conduct while the new society is to satisfy the demands for 'social justice'—or, in other words, that the former demanded just action by the individuals while the latter
more and more places the duty of justice on authorities with power to command people what to do.

The phrase could exercise this effect because it has gradually been taken over from the socialist not only by all the other political movements but also by most teachers and preachers of morality. It seems in particular to have been embraced by a large section of the clergy of all Christian denominations, who, while increasingly losing their faith in a supernatural revelation, appear to have sought a refuge and consolation in a new 'social' religion which substitutes a temporal for a celestial promise of justice, and who hope that they can thus continue their striving to do good. The Roman Catholic church especially has made the aim of 'social justice' part of its official doctrine; but the ministers of most Christian denominations appear to vie with each other with such offers of more mundane aims—which also seem to provide the chief foundation for renewed ecumenical efforts.

The various modern authoritarian or dictatorial governments have of course no less proclaimed 'social justice' as their chief aim. We have it on the authority of Mr Andrei Sakharov that millions of men in Russia are the victims of a terror that 'attempts to conceal itself behind the slogan of social justice'.

The commitment to 'social justice' has in fact become the chief outlet for moral emotion, the distinguishing attribute of the good man, and the recognized sign of the possession of a moral conscience. Though people may occasionally be perplexed to say which of the conflicting claims advanced in its name are valid, scarcely anyone doubts that the expression has a definite meaning, describes a high ideal, and points to grave defects of the existing social order which urgently call for correction. Even though until recently one would have vainly sought in the extensive literature for an intelligible definition of the term, there still seems to exist little doubt, either among ordinary people or among the learned, that the expression has a definite and well understood sense.

But the near-universal acceptance of a belief does not prove that it is valid or even meaningful any more than the general belief in witches or ghosts proved the validity of these concepts. What we have to deal with in the case of 'social justice' is simply a quasi-religious superstition of the kind which we should respectfully leave in peace so long as it merely makes those happy who hold it, but which we must fight when it becomes the pretext of coercing other men. And the prevailing belief in 'social justice' is at present prob-
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ably the gravest threat to most other values of a free civilization.

Whether Edward Gibbon was wrong or not, there can be no
doubt that moral and religious beliefs can destroy a civilization and
that, where such doctrines prevail, not only the most cherished
beliefs but also the most revered moral leaders, sometimes saintly
figures whose unselfishness is beyond question, may become grave
dangers to the values which the same people regard as unshakeable.
Against this threat we can protect ourselves only by subjecting even
our dearest dreams of a better world to ruthless rational dissection.

It seems to be widely believed that ‘social justice’ is just a new
moral value which we must add to those that were recognized in the
past, and that it can be fitted within the existing framework of
moral rules. What is not sufficiently recognized is that in order to
give this phrase meaning a complete change of the whole character
of the social order will have to be effected, and that some of the
values which used to govern it will have to be sacrificed. It is such a
transformation of society into one of a fundamentally different type
which is currently occurring piecemeal and without awareness of
the outcome to which it must lead. It was in the belief that some-
thing like ‘social justice’ could thereby be achieved, that people
have placed in the hands of government powers which it can now
not refuse to employ in order to satisfy the claims of the ever
increasing number of special interests who have learnt to employ
the open sesame of ‘social justice’.

I believe that ‘social justice’ will ultimately be recognized as a
will-o’-the-wisp which has lured men to abandon many of the
values which in the past have inspired the development of civiliza-
tion—an attempt to satisfy a craving inherited from the traditions
of the small group but which is meaningless in the Great Society of
free men. Unfortunately, this vague desire which has become one
of the strongest bonds spurring people of good will to action, not
only is bound to be disappointed. This would be sad enough. But,
like most attempts to pursue an unattainable goal, the striving for
it will also produce highly undesirable consequences, and in par-
ticular lead to the destruction of the indispensable environment in
which the traditional moral values alone can flourish, namely
personal freedom.

The inapplicability of the concept of justice to the results of a
spontaneous process

It is now necessary clearly to distinguish between two wholly
different problems which the demand for 'social justice' raises in a
market order.

The first is whether within an economic order based on the
market the concept of 'social justice' has any meaning or content
whatever.

The second is whether it is possible to preserve a market order
while imposing upon it (in the name of 'social justice' or any other
pretext) some pattern of remuneration based on the assessment of
the performance or the needs of different individuals or groups by
an authority possessing the power to enforce it.

The answer to each of these questions is a clear no.

Yet it is the general belief in the validity of the concept of 'social
justice' which drives all contemporary societies into greater and
greater efforts of the second kind and which has a peculiar self-
accelerating tendency: the more dependent the position of the
individuals or groups is seen to become on the actions of govern-
ment, the more they will insist that the governments aim at some
recognizable scheme of distributive justice; and the more govern-
ments try to realize some preconceived pattern of desirable dis-
tribution, the more they must subject the position of the different
individuals and groups to their control. So long as the belief in
'social justice' governs political action, this process must progres-
sively approach nearer and nearer to a totalitarian system.

We shall at first concentrate on the problem of the meaning, or
rather lack of meaning, of the term 'social justice', and only later
consider the effects which the efforts to impose any preconceived
pattern of distribution must have on the structure of the society
subjected to them.

The contention that in a society of free men (as distinct from any
compulsory organization) the concept of social justice is strictly
empty and meaningless will probably appear as quite unbelievable
to most people. Are we not all constantly disquieted by watching
how unjustly life treats different people and by seeing the deserving
suffer and the unworthy prosper? And do we not all have a sense of
fitness, and watch it with satisfaction, when we recognize a reward
to be appropriate to effort or sacrifice?

The first insight which should shake this certainty is that we
experience the same feelings also with respect to differences in
human fates for which clearly no human agency is responsible and
which it would therefore clearly be absurd to call injustice. Yet we
do cry out against the injustice when a succession of calamities
befalls one family while another steadily prospers, when a meritorious effort is frustrated by some unforeseeable accident, and particularly if of many people whose endeavours seem equally great, some succeed brilliantly while others utterly fail. It is certainly tragic to see the failure of the most meritorious efforts of parents to bring up their children, of young men to build a career, or of an explorer or scientist pursuing a brilliant idea. And we will protest against such a fate although we do not know anyone who is to blame for it, or any way in which such disappointments can be prevented.

It is no different with regard to the general feeling of injustice about the distribution of material goods in a society of free men. Though we are in this case less ready to admit it, our complaints about the outcome of the market as unjust do not really assert that somebody has been unjust; and there is no answer to the question of who has been unjust. Society has simply become the new deity to which we complain and clamour for redress if it does not fulfil the expectations it has created. There is no individual and no cooperating group of people against which the sufferer would have a just complaint, and there are no conceivable rules of just individual conduct which would at the same time secure a functioning order and prevent such disappointments.

The only blame implicit in those complaints is that we tolerate a system in which each is allowed to choose his occupation and therefore nobody can have the power and the duty to see that the results correspond to our wishes. For in such a system in which each is allowed to use his knowledge for his own purposes⁹ the concept of ‘social justice’ is necessarily empty and meaningless, because in it nobody’s will can determine the relative incomes of the different people, or prevent that they be partly dependent on accident. ‘Social justice’ can be given a meaning only in a directed or ‘command’ economy (such as an army) in which the individuals are ordered what to do; and any particular conception of ‘social justice’ could be realized only in such a centrally directed system. It presupposes that people are guided by specific directions and not by rules of just individual conduct. Indeed, no system of rules of just individual conduct, and therefore no free action of the individuals, could produce results satisfying any principle of distributive justice.

We are of course not wrong in perceiving that the effects of the processes of a free society on the fates of the different individuals are not distributed according to some recognizable principle of
justice. Where we go wrong is in concluding from this that they are unjust and that somebody is to be blamed for this. In a free society in which the position of the different individuals and groups is not the result of anybody's design—or could, within such a society, be altered in accordance with a generally applicable principle—the differences in reward simply cannot meaningfully be described as just or unjust. There are, no doubt, many kinds of individual action which are aimed at affecting particular remunerations and which might be called just or unjust. But there are no principles of individual conduct which would produce a pattern of distribution which as such could be called just, and therefore also no possibility for the individual to know what he would have to do to secure a just remuneration of his fellows.

The rationale of the economic game in which only the conduct of the players but not the result can be just

We have seen earlier that justice is an attribute of human conduct which we have learnt to exact because a certain kind of conduct is required to secure the formation and maintenance of a beneficial order of actions. The attribute of justice may thus be predicated about the intended results of human action but not about circumstances which have not deliberately been brought about by men. Justice requires that in the 'treatment' of another person or persons, i.e. in the intentional actions affecting the well-being of other persons, certain uniform rules of conduct be observed. It clearly has no application to the manner in which the impersonal process of the market allocates command over goods and services to particular people: this can be neither just nor unjust, because the results are not intended or foreseen, and depend on a multitude of circumstances not known in their totality to anybody. The conduct of the individuals in that process may well be just or unjust; but since their wholly just actions will have consequences for others which were neither intended nor foreseen, these effects do not thereby become just or unjust.

The fact is simply that we consent to retain, and agree to enforce, uniform rules for a procedure which has greatly improved the chances of all to have their wants satisfied, but at the price of all individuals and groups incurring the risk of unmerited failure. With the acceptance of this procedure the recompense of different groups and individuals becomes exempt from deliberate control. It is the
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only procedure yet discovered in which information widely dispersed among millions of men can be effectively utilized for the benefit of all—and used by assuring to all an individual liberty desirable for itself on ethical grounds. It is a procedure which of course has never been 'designed' but which we have learnt gradually to improve after we had discovered how it increased the efficiency of men in the groups who had evolved it.

It is a procedure which, as Adam Smith (and apparently before him the ancient Stoics) understood,\(^1\) in all important respects (except that normally it is not pursued solely as a diversion) is wholly analogous to a game, namely a game partly of skill and partly of chance. We shall later describe it as the game of catallaxy. It proceeds, like all games, according to rules guiding the actions of individual participants whose aims, skills, and knowledge are different, with the consequence that the outcome will be unpredictable and that there will regularly be winners and losers. And while, as in a game, we are right in insisting that it be fair and that nobody cheat, it would be nonsensical to demand that the results for the different players be just. They will of necessity be determined partly by skill and partly by luck. Some of the circumstances which make the services of a person more or less valuable to his fellows, or which may make it desirable that he change the direction of his efforts, are not of human design or foreseeable by men.

We shall in the next chapter have to return to the rationale of the discovery procedure which the game of competition in a market in effect constitutes. Here we must content ourselves with emphasizing that the results for the different individuals and groups of a procedure for utilizing more information than any one person or agency can possess, must themselves be unpredictable, and must often be different from the hopes and intentions which determined the direction and intensity of their striving; and that we can make effective use of that dispersed knowledge only if (as Adam Smith was also one of the first to see clearly)\(^1\) we allow the principle of negative feedback to operate, which means that some must suffer unmerited disappointment.

We shall also see later that the importance for the functioning of the market order of particular prices or wages, and therefore of the incomes of the different groups and individuals, is not due chiefly to the effects of the prices on all of those who receive them, but to the effects of the prices on those for whom they act as signals to change the direction of their efforts. Their function is not so much
to reward people for what they *have* done as to tell them what in their own as well as in general interest they *ought* to do. We shall then also see that, to hold out a sufficient incentive for those movements which are required to maintain a market order, it will often be necessary that the return of people’s efforts do *not* correspond to recognizable merit, but should show that, in spite of the best efforts of which they were capable, and for reasons they could not have known, their efforts were either more or less successful than they had reason to expect. In a spontaneous order the question of whether or not someone has done the ‘right’ thing cannot always be a matter of merit, but must be determined independently of whether the persons concerned ought or could have known what was required.

The long and the short of it all is that men can be allowed to decide what work to do only if the remuneration they can expect to get for it corresponds to the value their services have to those of their fellows who receive them; and that *these values which their services will have to their fellows will often have no relations to their individual merits or needs.* Reward for merit earned and indication of what a person should do, both in his own and in his fellows’ interest, are different things. It is not good intentions or needs but doing what in fact most benefits others, irrespective of motive, which will secure the best reward. Among those who try to climb Mount Everest or to reach the Moon, we also honour not those who made the greatest efforts, but those who got there first.

The general failure to see that in this connection we cannot meaningfully speak of the justice or injustice of the results is partly due to the misleading use of the term ‘distribution’ which inevitably suggests a personal distributing agent whose will or choice determines the relative position of the different persons or groups.  

There is of course no such agent, and we use an impersonal process to determine the allocation of benefits precisely because through its operation we can bring about a structure of relative prices and remunerations that will determine a size and composition of the total output which assures that the real equivalent of each individual’s share that accident or skill assigns to him will be as large as we know to make it.

It would serve little purpose to enquire here at greater length into the relative importance of skill and luck in actually determining relative incomes. This will clearly differ a great deal between different trades, localities and times, and in particular between highly
competitive and less enterprising societies. I am on the whole inclined to believe that within any one trade or profession the correspondence between individual ability and industry is higher than is commonly admitted, but that the relative position of all the members of a particular trade or profession compared with others will more often be affected by circumstances beyond their control and knowledge. (This may also be one reason why what is called 'social' injustice is generally regarded as a graver fault of the existing order than the corresponding misfortunes of individuals.) But the decisive point is not that the price mechanism does on the whole bring it about that rewards are proportioned to skill and effort, but that even where it is clear to us that luck plays a great part, and we have no idea why some are regularly luckier in guessing than others, it is still in the general interest to proceed on the presumption that the past success of some people in picking winners makes it probable that they will also do so in the future, and that it is therefore worthwhile to induce them to continue their attempts.

The alleged necessity of a belief in the justice of rewards

It has been argued persuasively that people will tolerate major inequalities of the material positions only if they believe that the different individuals get on the whole what they deserve, that they did in fact support the market order only because (and so long as) they thought that the differences of remuneration corresponded roughly to differences of merit, and that in consequence the maintenance of a free society presupposes the belief that some sort of 'social justice' is being done. The market order, however, does not in fact owe its origin to such beliefs, nor was originally justified in this manner. This order could develop, after its earlier beginnings had decayed during the middle ages and to some extent been destroyed by the restrictions imposed by authority, when a thousand years of vain efforts to discover substantively just prices or wages were abandoned and the late schoolmen recognized them to be empty formulae and taught instead that the prices determined by just conduct of the parties in the market, i.e. the competitive prices arrived at without fraud, monopoly and violence, was all that justice required. It was from this tradition that John Locke and his contemporaries derived the classical liberal conception of justice for which, as has been rightly said, it was only 'the way in which
competition was carried on, not its results',\(^\text{16}\) that could be just or unjust.

It is unquestionably true that, particularly among those who were very successful in the market order, a belief in a much stronger moral justification of individual success developed, and that, long after the basic principles of such an order had been fully elaborated and approved by catholic moral philosophers, it had in the Anglo-Saxon world received strong support from Calvinist teaching. It certainly is important in the market order (or free enterprise society, misleadingly called 'capitalism') that the individuals believe that their well-being depends primarily on their own efforts and decisions. Indeed, few circumstances will do more to make a person energetic and efficient than the belief that it depends chiefly on him whether he will reach the goals he has set himself. For this reason this belief is often encouraged by education and governing opinion—it seems to me, generally much to the benefit of most of the members of the society in which it prevails, who will owe many important material and moral improvements to persons guided by it. But it leads no doubt also to an exaggerated confidence in the truth of this generalization which to those who regard themselves (and perhaps are) equally able but have failed must appear as a bitter irony and severe provocation.

It is probably a misfortune that, especially in the USA, popular writers like Samuel Smiles and Horatio Alger, and later the sociologist W. G. Sumner, have defended free enterprise on the ground that it regularly rewards the deserving, and it bodes ill for the future of the market order that this seems to have become the only defence of it which is understood by the general public. That it has largely become the basis of the self-esteem of the businessman often gives him an air of self-righteousness which does not make him more popular.

It is therefore a real dilemma to what extent we ought to encourage in the young the belief that when they really try they will succeed, or should rather emphasize that inevitably some unworthy will succeed and some worthy fail—whether we ought to allow the views of those groups to prevail with whom the over-confidence in the appropriate reward of the able and industrious is strong and who in consequence will do much that benefits the rest, and whether without such partly erroneous beliefs the large numbers will tolerate actual differences in rewards which will be based only partly on achievement and partly on mere chance.

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There is no 'value to society'

The futile medieval search for the just price and just wage, finally abandoned when it was recognized that only that 'natural' price could be regarded as just which would be arrived at in a competitive market where it would be determined not by any human laws or decrees but would depend on so many circumstances that it could be known beforehand only by God, was not the end of the search for that philosophers' stone. It was revived in modern times, not only by the general demand for 'social justice', but also by the long and equally abortive efforts to discover criteria of justice in connection with the procedures for reconciliation or arbitration in wage disputes. Nearly a century of endeavours by public spirited men and women in many parts of the world to discover principles by which just wage rates could be determined have, as more and more of them acknowledge, produced not a single rule which would do this. It is somewhat surprising in view of this when we find an experienced arbitrator like Lady Wootton, after admitting that arbitrators are 'engaged in the impossible task of attempting to do justice in an ethical vacuum', because 'nobody knows in this context what justice is', drawing from it the conclusion that the criteria should be determined by legislation, and explicitly demand a political determination of all wages and incomes. One can hardly carry any further the illusion that Parliament can determine what is just, and I don't suppose the writer would really wish to defend the atrocious principle implied that all rewards should be determined by political power.

Another source of the conception that the categories of just and unjust can be meaningfully applied to the remunerations determined by the market is the idea that the different services have a determined and ascertainable 'value to society', and that the actual remuneration frequently differs from the value. But though the conception of a 'value to society' is sometimes carelessly used even by economists, there is strictly no such thing and the expression implies the same sort of anthropomorphism or personification of society as the term 'social justice'. Services can have value only to particular people (or an organization), and any particular service will have very different values for different members of the same society. To regard them differently is to treat society not as a spontaneous order of free men but as an organization whose members are all made to serve a single hierarchy of ends. This would
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necessarily be a totalitarian system in which personal freedom would be absent.

Although it is tempting to speak of a 'value to society' instead of a man's value to his fellows, it is in fact highly misleading if we say, e.g., that a man who supplies matches to millions and thereby earns $200,000 a year is worth more 'to society' than a man who supplies great wisdom or exquisite pleasure to a few thousand and thereby earns $20,000 a year. Even the performance of a Beethoven sonata, a painting by Leonardo or a play by Shakespeare have no 'value to society' but a value only to those who know and appreciate them. And it has little meaning to assert that a boxer or a crooner is worth more to society than a violin virtuoso or a ballet dancer if the former renders services to millions and the latter to a much smaller group. The point is not that the true values are different, but that the values attached to the different services by different groups of people are incommensurable; all that these expressions mean is merely that one in fact receives a larger aggregate sum from a larger number of people than the other.20

Incomes earned in the market by different persons will normally not correspond to the relative values of their services to any one person. Although, in so far as any one of a given group of different commodities is consumed by any one person, he or she will buy so much of each that the relative values to them of the last units bought will correspond to their relative prices, many pairs of commodities will never be consumed by the same person: the relative price of articles consumed only by men and of articles consumed only by women will not correspond to the relative values of these articles to anybody.

The remunerations which the individuals and groups receive in the market are thus determined by what these services are worth to those who receive them (or, strictly speaking, to the last pressing demand for them which can still be satisfied by the available supply) and not by some fictitious 'value to society'.

Another source of the complaint about the alleged injustice of this principle of remuneration is that the remuneration thus determined will often be much higher than would be necessary to induce the recipient to render those services. This is perfectly true but necessary if all who render the same service are to receive the same remuneration, if the kind of service in question is to be increased so long as the price still exceeds costs, and if anyone who wishes to buy or sell it at the current price is to be able to do so.
The consequence must be that all but the marginal sellers make a gain in excess of what was necessary to induce them to render the services in question—just as all but the marginal buyers will get what they buy for less than they were prepared to pay. The remuneration of the market will therefore hardly ever seem just in the sense in which somebody might endeavour justly to compensate others for the efforts and sacrifice incurred for his benefit.

The consideration of the different attitudes which different groups will take to the remuneration of different services incidentally also shows that the large numbers by no means grudge all the incomes higher than theirs, but generally only those earned by activities the functions of which they do not understand or which they even regard as harmful. I have never known ordinary people grudge the very high earnings of the boxer or torero, the football idol or the cinema star or the jazz king—they seem often even to revel vicariously in the display of extreme luxury and waste of such figures compared with which those of industrial magnates or financial tycoons pale. It is where most people do not comprehend the usefulness of an activity, and frequently because they erroneously regard it as harmful (the 'speculator'—often combined with the belief that only dishonest activities can bring so much money), and especially where the large earnings are used to accumulate a fortune (again out of the erroneous belief that it would be desirable that it should be spent rather than invested) that the outcry about the injustice of it arises. Yet the complex structure of the modern Great Society would clearly not work if the remunerations of all the different activities were determined by the opinion which the majority holds of their value—or indeed if they were dependent on any one person's understanding or knowledge of the importance of all the different activities required for the functioning of the system.

The main point is not that the masses have in most instances no idea of the values which a man's activities have to his fellows, and that it is necessarily their prejudices which would determine the use of the government's power. It is that nobody knows except in so far as the market tells him. It is true enough that our esteem of particular activities often differs from the value given to them by the market; and we express this feeling by an outcry about the injustice of it. But when we ask what ought to be the relative remunerations of a nurse and a butcher, of a coal miner and a judge at a high court, of the deep sea diver or the cleaner of sewers, of the organizer of a new industry and a jockey, of the
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inspector of taxes and the inventor of a life-saving drug, of the jet pilot or the professor of mathematics, the appeal to 'social justice' does not give us the slightest help in deciding—and if we use it it is no more than an insinuation that the others ought to agree with our view without giving any reason for it.

It might be objected that, although we cannot give the term 'social justice' a precise meaning, this need not be a fatal objection because the position may be similar to that which I have earlier contended exists with regard to justice proper: we might not know what is 'socially just' yet know quite well what is 'socially unjust'; and by persistently eliminating 'social injustice' whenever we encounter it, gradually approach 'social justice'. This, however, does not provide a way out of the basic difficulty. There can be no test by which we can discover what is 'socially unjust' because there is no subject by which such an injustice can be committed, and there are no rules of individual conduct the observance of which in the market order would secure to the individuals and groups the position which as such (as distinguished from the procedure by which it is determined) would appear just to us. 21 It does not belong to the category of error but to that of nonsense, like the term 'a moral stone'.

The meaning of 'social'

One might hope to get some help in the search for the meaning of 'social justice' by examining the meaning of the attribute 'social'; but the attempt to do so soon leads into a quagmire of confusion nearly as bad as that which surrounds 'social justice' itself. 22 Originally 'social' had of course a clear meaning (analogous to formations like 'national', 'tribal', or 'organizational'), namely that of pertaining to, or characteristic of the structure and operations of society. In this sense justice clearly is a social phenomenon and the addition of 'social' to the noun a pleonasm 23 such as if we spoke of 'social language'—though in occasional early uses it might have been intended to distinguish the generally prevailing views of justice from that held by particular persons or groups.

But 'social justice' as used today is not 'social' in the sense of 'social norms', i.e. something which has developed as a practice of individual action in the course of social evolution, not a product of society or of a social process, but a conception to be imposed upon society. It was the reference of 'social' to the whole of society, or to
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the interests of all its members, which led to its gradually acquiring a predominant meaning of moral approbation. When it came into general use during the third quarter of the last century it was meant to convey an appeal to the still ruling classes to concern themselves more with the welfare of the much more numerous poor whose interests had not received adequate consideration.24 The 'social question' was posed as an appeal to the conscience of the upper classes to recognize their responsibility for the welfare of the neglected sections of society whose voices had till then carried little weight in the councils of government. 'Social policy' (or Social-politik in the language of the country then leading in the movement) became the order of the day, the chief concern of all progressive and good people, and 'social' came increasingly to displace such terms as 'ethical' or simply 'good'.

But from such an appeal to the conscience of the public to concern themselves with the unfortunate ones and recognize them as members of the same society, the conception gradually came to mean that 'society' ought to hold itself responsible for the particular material position of all its members, and for assuring that each received what was 'due' to him. It implied that the processes of society should be deliberately directed to particular results and, by personifying society, represented it as a subject endowed with a conscious mind, capable of being guided in its operation by moral principles.25 'Social' became more and more the description of the pre-eminent virtue, the attribute in which the good man excelled and the ideal by which communal action was to be guided.

But while this development indefinitely extended the field of application of the term 'social', it did not give it the required new meaning. It even so much deprived it of its original descriptive meaning that American sociologists have found it necessary to coin the new term 'societal' in its place. Indeed, it has produced a situation in which 'social' can be used to describe almost any action as publicly desirable and has at the same time the effect of depriving any terms with which it is combined of clear meaning. Not only 'social justice' but also 'social democracy', 'social market economy'26 or the 'social state of law' (or rule of law—in German sozialer Rechtsstaat) are expressions which, though justice, democracy, the market economy or the Rechtsstaat have by themselves perfectly good meanings, the addition of the adjective 'social' makes them capable of meaning almost anything one likes. The word has indeed become one of the chief sources of confusion of political discourse
and can probably no longer be reclaimed for a useful purpose.

There is apparently no end to the violence that will be done to language to further some ideal and the example of 'social justice' has recently given rise to the expression 'global justice'! Its negative, 'global injustice', was defined by an ecumenical gathering of American religious leaders as 'characterized by a dimension of sin in the economic, political, social, sexual, and class structures and systems of global society'! It would seem as if the conviction that one is arguing in a good cause produced more sloppy thinking and even intellectual dishonesty than perhaps any other cause.

'Social justice' and equality

The most common attempts to give meaning to the concept of 'social justice' resort to egalitarian considerations and argue that every departure from equality of material benefits enjoyed has to be justified by some recognizable common interest which these differences serve. This is based on a specious analogy with the situation in which some human agency has to distribute rewards, in which case indeed justice would require that these rewards be determined in accordance with some recognizable rule of general applicability. But earnings in a market system, though people tend to regard them as rewards, do not serve such a function. Their rationale (if one may use this term for a role which was not designed but developed because it assisted human endeavour without people understanding how), is rather to indicate to people what they ought to do if the order is to be maintained on which they all rely. The prices which must be paid in a market economy for different kinds of labour and other factors of production if individual efforts are to match, although they will be affected by effort, diligence, skill, need, etc., cannot conform to any one of these magnitudes; and considerations of justice just do not make sense with respect to the determination of a magnitude which does not depend on anyone's will or desire, but on circumstances which nobody knows in their totality.

The contention that all differences in earnings must be justified by some corresponding difference in deserts is one which would certainly not have been thought to be obvious in a community of farmers or merchants or artisans, that is, in a society in which success or failure were clearly seen to depend only in part on skill and industry, and in part on pure accident which might hit any-
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one—although even in such societies individuals were known to complain to God or fortune about the injustice of their fate. But, though people resent that their remuneration should in part depend on pure accident, that is in fact precisely what it must if the market order is to adjust itself promptly to the unavoidable and unforeseen changes in circumstances, and the individual is to be allowed to decide what to do. The now prevalent attitude could arise only in a society in which large numbers worked as members of organizations in which they were remunerated at stipulated rates for time worked. Such communities will not ascribe the different fortunes of its members to the operation of an impersonal mechanism which serves to guide the directions of efforts, but to some human power that ought to allocate shares according to merit.

The postulate of material equality would be a natural starting point only if it were a necessary circumstance that the shares of the different individuals or groups were in such a manner determined by deliberate human decision. In a society in which this were an unquestioned fact, justice would indeed demand that the allocation of the means for the satisfaction of human needs were effected according to some uniform principle such as merit or need (or some combination of these), and that, where the principle adopted did not justify a difference, the shares of the different individuals should be equal. The prevalent demand for material equality is probably often based on the belief that the existing inequalities are the effect of somebody’s decision—a belief which would be wholly mistaken in a genuine market order and has still only very limited validity in the highly interventionist ‘mixed’ economy existing in most countries today. This now prevalent form of economic order has in fact attained its character largely as a result of governmental measures aiming at what was thought to be required by ‘social justice’.

When the choice, however, is between a genuine market order, which does not and cannot achieve a distribution corresponding to any standard of material justice, and a system in which government uses its powers to put some such standard into effect, the question is not whether government ought to exercise, justly or unjustly, powers it must exercise in any case, but whether government should possess and exercise additional powers which can be used to determine the shares of the different members of society. The demand for ‘social justice’, in other words, does not merely require government to observe some principle of action according to
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uniform rules in those actions which it must perform in any case, but demands that it undertake additional activities, and thereby assume new responsibilities—tasks which are not necessary for maintaining law and order and providing for certain collective needs which the market could not satisfy.

The great problem is whether this new demand for equality does not conflict with the equality of the rules of conduct which government must enforce on all in a free society. There is, of course, a great difference between government treating all citizens according to the same rules in all the activities it undertakes for other purposes, and government doing what is required in order to place the different citizens in equal (or less unequal) material positions. Indeed, there may arise a sharp conflict between these two aims. Since people will differ in many attributes which government cannot alter, to secure for them the same material position would require that government treat them very differently. Indeed, to assure the same material position to people who differ greatly in strength, intelligence, skill, knowledge and perseverance as well as in their physical and social environment, government would clearly have to treat them very differently to compensate for those disadvantages and deficiencies it could not directly alter. Strict equality of those benefits which government could provide for all, on the other hand, would clearly lead to inequality of the material positions.

This, however, is not the only and not even the chief reason why a government aiming to secure for its citizens equal material positions (or any determined pattern of material welfare) would have to treat them very unequally. It would have to do so because under such a system it would have to undertake to tell people what to do. Once the rewards the individual can expect are no longer an appropriate indication of how to direct their efforts to where they are most needed, because these rewards correspond not to the value which their services have for their fellows, but to the moral merit or desert the persons are deemed to have earned, they lose the guiding function they have in the market order and would have to be replaced by the commands of the directing authority. A central planning office would, however, have to decide on the tasks to be allotted to the different groups or individuals wholly on grounds of expediency or efficiency and, in order to achieve its ends, would have to impose upon them very different duties and burdens. The individuals might be treated according to uniform rules so far as
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their rewards were concerned, but certainly not with respect to the different kinds of work they would have to be made to do. In assigning people to their different tasks, the central planning authority would have to be guided by considerations of efficiency and expediency and not by principles of justice or equality. No less than in the market order would the individuals in the common interest have to submit to great inequality—only these inequalities would be determined not by the interaction of individual skills in an impersonal process, but by the uncontradictable decision of authority.

As is becoming clear in ever increasing fields of welfare policy, an authority instructed to achieve particular results for the individuals must be given essentially arbitrary powers to make the individuals do what seems necessary to achieve the required result. Full equality for most cannot but mean the equal submission of the great masses under the command of some elite who manages their affairs. While an equality of rights under a limited government is possible and an essential condition of individual freedom, a claim for equality of material position can be met only by a government with totalitarian powers.  

We are of course not wrong when we perceive that the effects on the different individuals and groups of the economic processes of a free society are not distributed according to some recognizable principle of justice. Where we go wrong is in concluding from this that they are unjust and that somebody is responsible and to be blamed for this. In a free society in which the position of the different individuals and groups is not the result of anybody's design—or could within such a society not be altered in accordance with a principle of general applicability—the differences in rewards cannot meaningfully be described as just or unjust. There are, no doubt, many kinds of individual actions which are aimed at affecting particular remunerations and which might be regarded as unjust. But there are no principles of individual conduct which would produce a pattern of distribution which as such could be called just, and therefore also no possibility for the individual to know what he would have to do to secure a just remuneration of his fellows.

Our whole system of morals is a system of rules of individual conduct, and in a Great Society no conduct guided by such rules, or by decisions of the individuals guided by such rules, could produce for the individuals results which would appear to us as just
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in the sense in which we regard designed rewards as just or unjust: simply because in such a society nobody has the power or the knowledge which would enable him to ensure that those affected by his actions will get what he thinks right for them to get. Nor could anyone who is assured remuneration according to some principle which is accepted as constituting 'social justice' be allowed to decide what he is to do: remuneration indicating how urgent it was that a certain work should be done could not be just in this sense, because the need for work of a particular kind would often depend on unforeseeable accidents and certainly not on the good intentions or efforts of those able to perform it. And an authority that fixed remunerations with the intention of thereby reducing the kind and number of people thought necessary in each occupation could not make these remunerations 'just', i.e. proportionate to desert, or need, or the merits of any other claim of the persons concerned, but would have to offer what was necessary to attract or retain the number of people wanted in each kind of activity.

'Equality of opportunity'

It is of course not to be denied that in the existing market order not only the results but also the initial chances of different individuals are often very different; they are affected by circumstances of their physical and social environment which are beyond their control but in many particular respects might be altered by some governmental action. The demand for equality of opportunity or equal starting conditions (Startgerechtigkeit) appeals to, and has been supported by, many who in general favour the free market order. So far as this refers to such facilities and opportunities as are of necessity affected by governmental decisions (such as appointments to public office and the like), the demand was indeed one of the central points of classical liberalism, usually expressed by the French phrase 'la carrière ouverte aux talents'. There is also much to be said in favour of the government providing on an equal basis the means for the schooling of minors who are not yet fully responsible citizens, even though there are grave doubts whether we ought to allow government to administer them.

But all this would still be very far from creating real equality of opportunity, even for persons possessing the same abilities. To achieve this government would have to control the whole physical
and human environment of all persons, and have to endeavour to provide at least equivalent chances for each; and the more government succeeded in these endeavours, the stronger would become the legitimate demand that, on the same principle, any still remaining handicaps must be removed—or compensated for by putting extra burden on the still relatively favoured. This would have to go on until government literally controlled every circumstance which could affect any person’s well-being. Attractive as the phrase of equality of opportunity at first sounds, once the idea is extended beyond the facilities which for other reasons have to be provided by government, it becomes a wholly illusory ideal, and any attempt concretely to realize it apt to produce a nightmare.

'Social justice' and freedom under the law

The idea that men ought to be rewarded in accordance with the assessed merits or deserts of their services 'to society' presupposes an authority which not only distributes these rewards but also assigns to the individuals the tasks for the performance of which they will be rewarded. In other words, if 'social justice' is to be brought about, the individuals must be required to obey not merely general rules but specific demands directed to them only. The type of social order in which the individuals are directed to serve a single system of ends is the organization and not the spontaneous order of the market, that is, not a system in which the individual is free because bound only by general rules of just conduct, but a system in which all are subject to specific directions by authority.

It appears sometimes to be imagined that a mere alteration of the rules of individual conduct could bring about the realization of 'social justice'. But there can be no set of such rules, no principles by which the individuals could so govern their conduct that in a Great Society the joint effect of their activities would be a distribution of benefits which could be described as materially just, or any other specific and intended allocation of advantages and disadvantages among particular people or groups. In order to achieve any particular pattern of distribution through the market process, each producer would have to know, not only whom his efforts will benefit (or harm), but also how well off all the other people (actually or potentially) affected by his activities will be as the result of the services they are receiving from other members of the society. As we have seen earlier, appropriate rules of conduct can determine
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only the formal character of the order of activities that will form itself, but not the specific advantages particular groups or individuals will derive from it.

This rather obvious fact still needs to be stressed since even eminent jurists have contended that the substitution of 'social' or distributive for individual or commutative justice need not destroy the freedom under the law of the individual. Thus the distinguished German legal philosopher Gustav Radbruch explicitly maintained that 'the socialist community would also be a Rechtsstaat [i.e., the Rule of Law would prevail there], although a Rechtsstaat governed not by commutative but by distributive justice.'31 And of France it is reported that 'it has been suggested that some highly placed administrators should be given the permanent task of "pronouncing" on the distribution of national income, as judges pronounce on legal matters.'32 Such beliefs, however, overlook the fact that no specific pattern of distribution can be achieved by making the individuals obey rules of conduct, but that the achievement of such particular pre-determined results requires deliberate co-ordination of all the different activities in accordance with the concrete circumstances of time and place. It precludes, in other words, that the several individuals act on the basis of their own knowledge and in the service of their own ends, which is the essence of freedom, but requires that they be made to act in the manner which according to the knowledge of the directing authority is required for the realization of the ends chosen by that authority.

The distributive justice at which socialism aims is thus irreconcilable with the rule of law, and with that freedom under the law which the rule of law is intended to secure. The rules of distributive justice cannot be rules for the conduct towards equals, but must be rules for the conduct of superiors towards their subordinates. Yet though some socialists have long ago themselves drawn the inevitable conclusion that 'the fundamental principles of formal law by which every case must be judged according to general rational principles . . . obtains only for the competitive phase of capitalism',33 and the communists, so long as they took socialism seriously, had even proclaimed that 'communism means not the victory of socialist law, but the victory of socialism over any law, since with the abolition of classes with antagonistic interests, law will disappear altogether',34 when, more than thirty years ago, the present author made this the central point of a discussion of the political effects of socialist economic policies,35 it evoked great
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indignation and violent protests. But the crucial point is implied even in Radbruch's own emphasis on the fact that the transition from commutative to distributive justice means a progressive displacement of private by public law, since public law consists not of rules of conduct for private citizens but of rules of organization for public officials. It is, as Radbruch himself stresses, a law that subordinates the citizens to authority. Only if one understands by law not the general rules of just conduct only but any command issued by authority (or any authorization of such commands by a legislature), can the measures aimed at distributive justice be represented as compatible with the rule of law. But this concept is thereby made to mean mere legality and ceases to offer the protection of individual freedom which it was originally intended to serve.

There is no reason why in a free society government should not assure to all protection against severe deprivation in the form of an assured minimum income, or a floor below which nobody need to descend. To enter into such an insurance against extreme misfortune may well be in the interest of all; or it may be felt to be a clear moral duty of all to assist, within the organized community, those who cannot help themselves. So long as such a uniform minimum income is provided outside the market to all those who, for any reason, are unable to earn in the market an adequate maintenance, this need not lead to a restriction of freedom, or conflict with the Rule of Law. The problems with which we are here concerned arise only when the remuneration for services rendered is determined by authority, and the impersonal mechanism of the market which guides the direction of individual efforts is thus suspended.

Perhaps the acutest sense of grievance about injustice inflicted on one, not by particular persons but by the 'system', is that about being deprived of opportunities for developing one's abilities which others enjoy. For this any difference of environment, social or physical, may be responsible, and at least some of them may be unavoidable. The most important of these is clearly inseparable from the institution of the family. This not only satisfies a strong psychological need but in general serves as an instrument for the transmission of important cultural values. There can be no doubt that those who are either wholly deprived of this benefit, or grew up in unfavourable conditions, are gravely handicapped; and few will question that it would be desirable that some public institution so far as possible should assist such unfortunate children when
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relatives and neighbours fail. Yet few will seriously believe (although Plato did) that we can fully make up for such a deficiency, and I trust even fewer that, because this benefit cannot be assured to all, it should, in the interest of equality, be taken from those who now enjoy it. Nor does it seem to me that even material equality could compensate for those differences in the capacity of enjoyment and of experiencing a lively interest in the cultural surroundings which a suitable upbringing confers.

There are of course many other irremediable inequalities which must seem as unreasonable as economic inequalities but which are less resented than the latter only because they do not appear to be man-made or the consequence of institutions which could be altered.

The spatial range of 'social justice'

There can be little doubt that the moral feelings which express themselves in the demand for 'social justice' derive from an attitude which in more primitive conditions the individual developed towards the fellow members of the small group to which he belonged. Towards the personally known member of one's own group it may well have been a recognized duty to assist him and to adjust one's actions to his needs. This is made possible by the knowledge of his person and his circumstances. The situation is wholly different in the Great or Open Society. Here the products and services of each benefit mostly persons he does not know. The greater productivity of such a society rests on a division of labour extending far beyond the range any one person can survey. This extension of the process of exchange beyond relatively small groups, and including large numbers of persons not known to each other, has been made possible by conceding to the stranger and even the foreigner the same protection of rules of just conduct which apply to the relations to the known members of one's own small group.

This application of the same rules of just conduct to the relations to all other men is rightly regarded as one of the great achievements of a liberal society. What is usually not understood is that this extension of the same rules to the relations to all other men (beyond the most intimate group such as the family and personal friends) requires an attenuation at least of some of the rules which are enforced in the relations to other members of the smaller group. If the legal duties towards strangers or foreigners are to be the same
as those towards the neighbours or inhabitants of the same village or town, the latter duties will have to be reduced to such as can also be applied to the stranger. No doubt men will always wish to belong also to smaller groups and be willing voluntarily to assume greater obligations towards self-chosen friends or companions. But such moral obligations towards some can never become enforced duties in a system of freedom under the law, because in such a system the selection of those towards whom a man wishes to assume special moral obligations must be left to him and cannot be determined by law. A system of rules intended for an Open Society and, at least in principle, meant to be applicable to all others, must have a somewhat smaller content than one to be applied in a small group.

Especially a common agreement on what is the due status or material position of the different members is likely to develop only in the relatively small group in which the members will be familiar with the character and importance of each other’s activities. In such small communities the opinion about appropriate status will also still be associated with a feeling about what one self owes to the other, and not be merely a demand that somebody provide the appropriate reward. Demands for the realization of ‘social justice’ are usually as a matter of course, though often only tacitly, addressed to national governments as the agencies which possess the necessary powers. But it is doubtful whether in any but the smallest countries standards can be applied nationally which are derived from the condition of the particular locality with which the individual is familiar, and fairly certain that few men would be willing to concede to foreigners the same right to a particular income that they tend to recognize in their fellow citizens.

It is true that in recent years concern about the suffering of large numbers in the poor countries has induced the electorates of the wealthier nations to approve substantial material aid to the former; but it can hardly be said that in this considerations of justice played a significant role. It is indeed doubtful whether any substantial help would have been rendered if competing power groups had not striven to draw as many as possible of the developing countries into their orbit. And it deserves notice that the modern technology which has made such assistance possible could develop only because some countries were able to build up great wealth while most of the world saw little change.

Yet the chief point is that, if we look beyond the limits of our national states, and certainly if we go beyond the limits of what we
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regard as our civilization, we no longer even deceive ourselves that we know what would be 'socially just', and that those very groups within the existing states which are loudest in their demands for 'social justice', such as the trade unions, are regularly the first to reject such claims raised on behalf of foreigners. Applied to the international sphere, the complete lack of a recognized standard of 'social justice', or of any known principles on which such a standard could be based, becomes at once obvious; while on a national scale most people still think that what on the level of the face-to-face society is to them a familiar idea must also have some validity for national politics or the use of the powers of government. In fact, it becomes on this level a humbug—the effectiveness of which with well-meaning people the agents of organized interests have learnt successfully to exploit.

There is in this respect a fundamental difference between what is possible in the small group and in the Great Society. In the small group the individual can know the effects of his actions on his several fellows, and the rules may effectively forbid him to harm them in any manner and even require him to assist them in specific ways. In the Great Society many of the effects of a person's actions on various fellows must be unknown to him. It can, therefore, not be the specific effects in the particular case, but only rules which define kinds of actions as prohibited or required, which must serve as guides to the individual. In particular, he will often not know who the individual people will be who will benefit by what he does, and therefore not know whether he is satisfying a great need or adding to abundance. He cannot aim at just results if he does not know who will be affected.

Indeed the transition from the small group to the Great or Open Society—and the treatment of every other person as a human being rather than as either a known friend or an enemy—requires a reduction of the range of duties we owe to all others.

If a person's legal duties are to be the same towards all, including the stranger and even the foreigner (and greater only where he has voluntarily entered into obligations, or is connected by physical ties as between parents and children), the legally enforceable duties to neighbour and friend must not be more than those towards the stranger. That is, all those duties which are based on personal acquaintance and familiarity with individual circumstances must cease to be enforceable. The extension of the obligation to obey certain rules of just conduct to wider circles and ultimately to all
men must thus lead to an attenuation of the obligation towards fellow members of the same small group. Our inherited or perhaps in part even innate moral emotions are in part inapplicable to Open Society (which is an abstract society), and the kind of 'moral socialism' that is possible in the small group and often satisfies a deeply ingrained instinct may well be impossible in the Great Society. Some altruistic conduct aimed at the benefit of some known friend that in the small group might be highly desirable, need not be so in the Open Society, and may there even be harmful (as e.g. the requirement that members of the same trade refrain from competing with each other). 38

It may at first seem paradoxical that the advance of morals should lead to a reduction of specific obligations towards others: yet whoever believes that the principle of equal treatment of all men, which is probably the only chance for peace, is more important than special help to visible suffering, must wish it. It admittedly means that we make our rational insight dominate over our inherited instincts. But the great moral adventure on which modern man has embarked when he launched into the Open Society is threatened when he is required to apply to all his fellow-men rules which are appropriate only to the fellow members of a tribal group.

Claims for compensation for distasteful jobs

The reader will probably expect me now to examine in greater detail the particular claims usually justified by the appeal to 'social justice'. But this, as bitter experience has taught me, would be not only an endless but also a bootless task. After what has been said already, it should be obvious that there are no practicable standards of merit, deserts, or needs, on which in a market order the distribution of material benefits could be based, and still less any principle by which these different claims could be reconciled. I shall therefore confine myself to considering two arguments in which the appeal to 'social justice' is very commonly used. The first case is usually quoted in theoretical argument to illustrate the injustice of the distribution by the market process, though little is done about it in practice, while the second is probably the most frequent type of situation in which the appeal to social justice leads to government action.

The circumstance which is usually pointed out to demonstrate
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the injustice of the existing market order is that the most unpleasant jobs are commonly also the worst paid. In a just society, it is contended, those who have to dig coal underground or to clean chimneys or sewers, or who perform other unclean or menial tasks, should be remunerated more highly than those whose work is pleasurable.

It is of course true that it would be unjust if persons, although equally able as others to perform other tasks, were without special compensation assigned by a superior to such distasteful duties. If, e.g., in such an organization as an army, two men of equal capacity were made to perform different tasks, one of which was attractive and the other very unpleasant, justice would clearly require that the one who had regularly to perform the unpleasant duty should in some way be specially compensated for it.

The situation is entirely different, however, where people earn their living by selling their services to whoever pays best for them. Here the sacrifice brought by a particular person in rendering the service is wholly irrelevant and all that counts is the (marginal) value the services have to those to whom they are rendered. The reason for this is not only that the sacrifices different people bring in rendering the same kind of service will often be very different, or that it will not be possible to take account of the reason why some will be capable of rendering only less valuable services than others. But those whose aptitudes, and therefore also remunerations, will be small in the more attractive occupations will often find that they can earn more than they could otherwise by undertaking unpleasant tasks that are scorned by their more fortunate fellows. The very fact that the more unpleasant occupations will be avoided by those who can render services that are valued more highly by the buyers, will open to those whose skills are little valued opportunities to earn more than they otherwise could.

That those who have to offer to their fellows little that is valuable may have to incur more pain and effort to earn even a pittance than others who perhaps actually enjoy rendering services for which they are well paid, is a necessary concomitant of any system in which remuneration is based on the values the services have to the user and not on an assessment of merit earned. It must therefore prevail in any social order in which the individual is free to choose whatever occupation he can find and is not assigned to one by authority.

The only assumption on which it could be represented as just that the miner working underground, or the scavenger, or slaughter-
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house workers, should be paid more highly than those engaged in more pleasant occupations, would thus be that this was necessary to induce a sufficient number of persons to perform these tasks, or that they are by some human agency deliberately assigned to these tasks. But while in a market order it may be a misfortune to have been born and bred in a village where for most the only chance of making a living is fishing (or for the women the cleaning of fish), it does not make sense to describe this as unjust. Who is supposed to have been unjust?—especially when it is considered that, if these local opportunities had not existed, the people in question would probably never have been born at all, as most of the population of such a village will probably owe its existence to the opportunities which enabled their ancestors to produce and rear children.

The resentment of the loss of accustomed positions

The appeal to 'social justice' which in practice has probably had the greatest influence is not one which has been much considered in literary discussion. The considerations of a supposed 'social injustice' which have led to the most far-reaching interference with the functioning of the market order are based on the idea that people are to be protected against an unmerited descent from the material position to which they have become accustomed. No other consideration of 'social justice' has probably exercised as widespread an influence as the 'strong and almost universal belief that it is unjust to disappoint legitimate expectations of wealth. When differences of opinion arise, it is always on the question of what expectations are legitimate.' It is believed, as the same author says, 'that it is legitimate even for the largest classes to expect that no very great and sudden changes will be made to their detriment.'

The opinion that long established positions create a just expectation that they will continue serves often as a substitute for more substantial criteria of 'social justice'. Where expectations are disappointed, and in consequence the rewards of effort often disproportionate to the sacrifice incurred, this will be regarded as an injustice without any attempt to show that those affected had a claim in justice to the particular income which they expected. At least when a large group of people find their income reduced as a result of circumstances which they could not have altered or foreseen, this is commonly regarded as unjust.

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The frequent recurrence of such undeserved strokes of misfortune affecting some group is, however, an inseparable part of the steering mechanism of the market: it is the manner in which the cybernetic principle of negative feedback operates to maintain the order of the market. It is only through such changes which indicate that some activities ought to be reduced, that the efforts of all can be continuously adjusted to a greater variety of facts than can be known to any one person or agency, and that that utilization of dispersed knowledge is achieved on which the well-being of the Great Society rests. We cannot rely on a system in which the individuals are induced to respond to events of which they do not and cannot know without changes of the values of the services of different groups occurring which are wholly unrelated to the merits of their members. It is a necessary part of that process of constant adaptation to changing circumstances on which the mere maintenance of the existing level of wealth depends that some people should have to discover by bitter experience that they have misdirected their efforts and are forced to look elsewhere for a remunerative occupation. And the same applies to the resentment of the corresponding undeserved gains that will accrue to others for whom things have turned out better than they had reason to expect.

The sense of injury which people feel when an accustomed income is reduced or altogether lost is largely the result of a belief that they have morally deserved that income and that, therefore, so long as they work as industriously and honestly as they did before, they are in justice entitled to the continuance of that income. But the idea that we have morally deserved what we have honestly earned in the past is largely an illusion. What is true is only that it would have been unjust if anybody had taken from us what we have in fact acquired while observing the rules of the game.

It is precisely because in the cosmos of the market we all constantly receive benefits which we have not deserved in any moral sense that we are under an obligation also to accept equally undeserved diminutions of our incomes. Our only moral title to what the market gives us we have earned by submitting to those rules which makes the formation of the market order possible. These rules imply that nobody is under an obligation to supply us with a particular income unless he has specifically contracted to do so. If we were all to be consistently deprived, as the socialists propose to do, of all 'unearned benefits' which the market confers upon us, we would have to be deprived of most of the benefits of civilization.

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It is clearly meaningless to reply, as is often done, that, since we owe these benefits to 'society', 'society' should also be entitled to allocate these benefits to those who in its opinion deserve them. Society, once more, is not an acting person but an orderly structure of actions resulting from the observation of certain abstract rules by its members. We all owe the benefits we receive from the operation of this structure not to anyone's intention to confer them on us, but to the members of society generally obeying certain rules in the pursuit of their interests, rules which include the rule that nobody is to coerce others in order to secure for himself (or for third persons) a particular income. This imposes upon us the obligation to abide by the results of the market also when it turns against us.

The chance which any individual in our society has of earning an income approximating that which he has now is the consequence of most individuals obeying the rules which secure the formation of that order. And though this order provides for most good prospects for the successful employment of their skills, this success must remain dependent also on what from the point of view of the individual must appear as mere luck. The magnitude of the chances open to him are not of his making but the result of others submitting to the same rules of the game. To ask for protection again't being displaced from a position one has long enjoyed, by others who are now favoured by new circumstances, means to deny to them the chances to which one's own present position is due.

Any protection of an accustomed position is thus necessarily a privilege which cannot be granted to all and which, if it had always been recognized, would have prevented those who now claim it from ever reaching the position for which they now demand protection. There can, in particular, be no right to share equally in a general increase of incomes if this increase (or perhaps even their maintenance at the existing level) is dependent on the continuous adjustment of the whole structure of activities to new and unforeseen circumstances that will alter and often reduce the contributions some groups can make to the needs of their fellows. There can thus be in justice no such claims as, e.g., those of the American farmer for 'parity', or of any other group to the preservation of their relative or absolute position.

The satisfaction of such claims by particular groups would thus not be just but eminently unjust, because it would involve the denial to some of the chances to which those who make this claim owe their position. For this reason it has always been conceded only
to some powerfully organized groups who were in the position to enforce their demands. Much of what is today done in the name of 'social justice' is thus not only unjust but also highly unsocial in the true sense of the word: it amounts simply to the protection of entrenched interests. Though it has come to be regarded as a 'social problem' when sufficiently large numbers clamour for protection of their accustomed position, it becomes a serious problem chiefly because, camouflaged as a demand for 'social justice', it can engage the sympathy of the public. We shall see in volume 3 why, under the existing type of democratic institutions, it is in practice inevitable that legislatures with unlimited powers yield to such demands when made by sufficiently large groups. This does not alter the fact that to represent such measures as satisfying 'social justice' is little more than a pretext for making the interest of the particular groups prevail over the general interest of all. Though it is now usual to regard every claim of an organized group as a 'social problem', it would be more correct to say that, though the long run interests of the several individuals mostly agree with the general interest, the interests of the organized groups almost invariably are in conflict with it. Yet it is the latter which are commonly represented as 'social'.

Conclusions

The basic contention of this chapter, namely that in a society of free men whose members are allowed to use their own knowledge for their own purposes the term 'social justice' is wholly devoid of meaning or content, is one which by its very nature cannot be proved. A negative assertion never can. One may demonstrate for any number of particular instances that the appeal to 'social justice' in no way assists the choices we have to make. But the contention that in a society of free men the term has no meaning whatever can only be issued as a challenge which will make it necessary for others to reflect on the meaning of the words they use, and as an appeal not to use phrases the meaning of which they do not know.

So long as one assumes that a phrase so widely used must have some recognizable meaning one may endeavour to prove that attempts to enforce it in a society of free individuals must make that society unworkable. But such efforts become redundant once it is recognized that such a society lacks the fundamental precondition for the application of the concept of justice to the manner in which
material benefits are shared among its members, namely that this is determined by a human will—or that the determination of rewards by human will could produce a viable market order. One does not have to prove that something is impracticable which cannot exist.

What I hope to have made clear is that the phrase ‘social justice’ is not, as most people probably feel, an innocent expression of good will towards the less fortunate, but that it has become a dishonest insinuation that one ought to agree to a demand of some special interest which can give no real reason for it. If political discussion is to become honest it is necessary that people should recognize that the term is intellectually disreputable, the mark of demagogy or cheap journalism which responsible thinkers ought to be ashamed to use because, once its vacuity is recognized, its use is dishonest. I may, as a result of long endeavours to trace the destructive effect which the invocation of ‘social justice’ has had on our moral sensitivity, and of again and again finding even eminent thinkers thoughtlessly using the phrase, have become unduly allergic to it, but I have come to feel strongly that the greatest service I can still render to my fellow men would be that I could make the speakers and writers among them thoroughly ashamed ever again to employ the term ‘social justice’.

That in the present state of the discussion the continued use of the term is not only dishonest and the source of constant political confusion, but destructive of moral feeling, is shown by the fact that again and again thinkers, including distinguished philosophers, after rightly recognizing that the term justice in its now predominant meaning of distributive (or retributive) justice is meaningless, draw from this the conclusion that the concept of justice itself is empty, and who in consequence jettison one of the basic moral conceptions on which the working of a society of free men rests. But it is justice in this sense which courts of justice administer and which is the original meaning of justice and must govern men’s conduct if peaceful coexistence of free men is to be possible. While the appeal to ‘social justice’ is indeed merely an invitation to give moral approval to demands that have no moral justification, and which are in conflict with that basic rule of a free society that only such rules as can be applied equally to all should be enforced, justice in the sense of rules of just conduct is indispensable for the intercourse of free men.

We are touching here upon a problem which with all its ramifications is much too big to try to be examined here systematically, but
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which must at least be mentioned briefly. It is that we can't have any morals we like or dream of. Morals, to be viable, must satisfy certain requirements, requirements which we may not be able to specify but may only be able to find out by trial and error. What is required is not merely consistency, or compatibility of the rules as well as the acts demanded by them. A system of morals also must produce a functioning order, capable of maintaining the apparatus of civilization which it presupposes.

We are not familiar with the concept of non-viable systems of morals and certainly cannot observe them anywhere in practice since societies which try them rapidly disappear. But they are being preached, often by widely revered saintly figures, and the societies in decay which we can observe are often societies which have been listening to the teaching of such moral reformers and still revere the destroyers of their society as good men. More often, however, the gospel of 'social justice' aims at much more sordid sentiments: the dislike of people who are better off than oneself, or simply envy, that 'most anti-social and evil of all passions' as John Stuart Mill called it, that animosity towards great wealth which represents it as a 'scandal' that some should enjoy riches while others have basic needs unsatisfied, and camouflages under the name of justice what has nothing to do with justice. At least all those who wish to despoil the rich, not because they expect that some more deserving might enjoy that wealth, but because they regard the very existence of the rich as an outrage, not only cannot claim any moral justification for their demands, but indulge in a wholly irrational passion and in fact harm those to whose rapacious instincts they appeal.

There can be no moral claim to something that would not exist but for the decision of others to risk their resources on its creation. What those who attack great private wealth do not understand is that it is neither by physical effort nor by the mere act of saving and investing, but by directing resources to the most productive uses that wealth is chiefly created. And there can be no doubt that most of those who have built up great fortunes in the form of new industrial plants and the like have thereby benefited more people through creating opportunities for more rewarding employment than if they had given their superfluity away to the poor. The suggestion that in these cases those to whom in fact the workers are most indebted do wrong rather than greatly benefit them is an absurdity. Though there are undoubtedly also other and less meritorious ways of acquiring large fortunes (which we can hope to
control by improving the rules of the game), the most effective and important is by directing investment to points where they most enhance the productivity of labour—a task in which governments notoriously fail, for reasons inherent in non-competitive bureaucratic organizations.

But it is not only by encouraging malevolent and harmful prejudices that the cult of 'social justice' tends to destroy genuine moral feelings. It also comes, particularly in its more egalitarian forms, into constant conflict with some of the basic moral principles on which any community of free men must rest. This becomes evident when we reflect that the demand that we should equally esteem all our fellow men is irreconcilable with the fact that our whole moral code rests on the approval or disapproval of the conduct of others; and that similarly the traditional postulate that each capable adult is primarily responsible for his own and his dependants' welfare, meaning that he must not through his own fault become a charge to his friends or fellows, is incompatible with the idea that 'society' or government owes each person an appropriate income.

Though all these moral principles have also been seriously weakened by some pseudo-scientific fashions of our time which tend to destroy all morals—and with them the basis of individual freedom—the ubiquitous dependence on other people's power, which the enforcement of any image of 'social justice' creates, inevitably destroys that freedom of personal decisions on which all morals must rest. In fact, that systematic pursuit of the ignis fatuus of 'social justice' which we call socialism is based throughout on the atrocity idea that political power ought to determine the material position of the different individuals and groups—an idea defended by the false assertion that this must always be so and socialism merely wishes to transfer this power from the privileged to the most numerous class. It was the great merit of the market order as it has spread during the last two centuries that it deprived everyone of such power which can be used only in arbitrary fashion. It had indeed brought about the greatest reduction of arbitrary power ever achieved. This greatest triumph of personal freedom the seduction of 'social justice' threatens again to take from us. And it will not be long before the holders of the power to enforce 'social justice' will entrench themselves in their position by awarding the benefits of 'social justice' as the remuneration for the conferment of that power and in order to secure to themselves the support of a praetorian
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guard which will make it certain that their view of what is 'social justice' will prevail.

Before leaving the subject I want to point out once more that the recognition that in such combinations as 'social', 'economic', 'distributive' or 'retributive' justice the term 'justice' is wholly empty should not lead us to throw the baby out with the bath water. Not only as the basis of the legal rules of just conduct is the justice which the courts of justice administer exceedingly important; there unquestionably also exists a genuine problem of justice in connection with the deliberate design of political institutions, the problem to which Professor John Rawls has recently devoted an important book. The fact which I regret and regard as confusing is merely that in this connection he employs the term 'social justice'. But I have no basic quarrel with an author who, before he proceeds to that problem, acknowledges that the task of selecting specific systems or distributions of desired things as just must be 'abandoned as mistaken in principle, and it is, in any case, not capable of a definite answer. Rather, the principles of justice define the crucial constraints which institutions and joint activities must satisfy if persons engaging in them are to have no complaints against them. If these constraints are satisfied, the resulting distribution, whatever it is, may be accepted as just (or at least not unjust). '44 This is more or less what I have been trying to argue in this chapter.
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78 Cf. Maffeo Pantaleoni, *Erotemi di Economia* (Bari, 1925), vol. 1, p. 112. ‘Quella disposizione che crea un ordine, è la disposizione giusta; essa è quella che crea un stato di diritto. Ma, la creazione di un ordine, o di un ordinamento, è appunto ciò stesso che esclude il caso, l’arbitrio o il capriccio l’insaputo il mutevole senza regola.’ Also Ludwig von Mises. *Theory and History* (Yale 1957) p. 54: ‘The ultimate yardstick of justice is conduciveness to the preservation of social cooperation’; and Max Rheinstein, ‘The Relations of Morals and Law’, *Journal of Public Law*, I, 1952, p. 298: ‘The just law is that which reason shows us as being apt to facilitate, or at least not to impede, the achievement of and preservation of a peaceful order of society.’


* The first quotation is taken from David Hume, *An Enquiry Concerning the Principles of Morals*, sect. III, part II, *Works IV*, p. 187, and ought to be given here in its context: the most obvious thought would be, to assign the largest possessions to the most extensive virtue, and give every one the power of doing good proportioned to his inclination... But were mankind to execute such a law; so great is the uncertainty of merit, both from its natural obscurity, and from the self-conceit of each individual, that no determinate rule of conduct would ever follow from it; and the total dissolution of society must be the immediate consequence.

The second quotation is translated from Immanuel Kant (*Der Streit der Fakultäten* (1798), sect. 2, para. 6, note 2) and reads in the original: ‘Wohlfahrt aber hat kein Prinzip, weder für den der sie empfängt, noch für den der sie austellt (der eine setzt sie hierin, der andere darin); weil es dabei auf das Materiale des Willens ankommt, welches empirisch und so einer allgemeinen Regel unfähig ist.’ An English translation of this essay in which the passage is rendered somewhat differently will be found in *Kant’s Political Writings*, ed. H. Reiss, trs. H. B. Nisbett (Cambridge, 1970), p. 183, note.


2 Cf. G. del Vecchio, *Justice* (Edinburgh, 1952), p. 37. In the eighteenth century the expression ‘social justice’ was occasionally used to describe the enforcement of rules of just conduct within a given society, so e.g. by Edward Gibbon, *Decline and Fall of the Roman Empire*, chapter 41 (World’s Classics edn, vol. iv, p. 367).


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5 Ibid., pp. 66 and 208 respectively. Cf. also J. S. Mill’s review of F. W. Newman, Lectures on Political Economy, originally published in 1851 in the Westminster Review and republished in Collected Works, vol. v (Toronto and London, 1967), p. 444: ‘the distinction between rich and poor, so slightly connected as it is with merit and demerit, or even with exertion and want of exertion, is obviously unjust.’ Also Principles of Political Economy, book II, ch. 1, §, ed. W. J. Ashley (London, 1909), pp. 211ff.: ‘The proportioning of remuneration to work done is really just only in so far as the more or less of the work is a matter of choice: when it depends on natural differences of strength and capacity, this principle of remuneration is itself an injustice, it gives to those who have.’


7 Cf. especially the encyclicals Quadragesimo Anno (1931) and Divini Redemptoris (1937) and Johannes Messner, ‘Zum Begriff der sozialen Gerechtigkeit’ in the volume Die soziale Frage und der Katholizismus (Paderborn, 1931) issued to commemorate the fortieth anniversary of the encyclical Rerum Novarum.

8 The term ‘social justice’ (or rather its Italian equivalent) seems to have been first used in its modern sense by Luigi Taparelli-d’Anzeglio, Saggio teoretico di diritto naturale (Palermo, 1840) and to have been made more generally known by Antonio Rosmini-Serbati, La costituzione secondo la giustizia sociale (Milan, 1848). For more recent discussions cf. N. W. Willoughby, Social Justice (New York, 1909); Stephen Leacock, The Unsolved Riddle of Social Justice (London and New York, 1920); John A. Ryan, Distributive Justice (New York, 1916); L. T. Hobhouse, The Elements of Social Justice (London and New York, 1922); T. N. Carver, Essays in Social Justice (Harvard, 1922); W. Shields, Social Justice, The History and Meaning of the Term (Notre Dame Ind. 1941); Benevuto Donati ‘Che cosa è giustizia sociale?’, Archivio giuridico, vol. 134, 1947; C. de Pasquier, ‘La notion de justice sociale’, Zeitschrift für Schweizerisches Recht, 1952; P. Antoine, ‘Qu’est-ce la justice sociale?’, Archives de Philosophie, 24, 1961; For a more complete list of this literature see G. del Vecchio, op. cit., pp. 37–9.

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In spite of the abundance of writings on the subject, when about ten years ago I wrote the first draft of this chapter, I found it still very difficult to find any serious discussion of what people meant when they were using this term. But almost immediately afterwards a number of serious studies of the subject appeared, particularly the two works quoted in note 6 above as well as R. W. Baldwin, Social Justice (Oxford and London, 1966), and R. Rescher, Distributive Justice (Indianapolis, 1966). Much the most acute treatment of the subject is to be found in a German work by the Swiss economist Emil Küng, Wirtschaft und Gerechtigkeit (Tübingen, 1967) and many sensible comments in H. B. Acton, The Morals of the Market (London, 1971), particularly p. 71: ‘Poverty and misfortune are evils but not injustices’. Very important is also Bertrand de Jouvenel, The Ethics of Redistribution (Cambridge, 1951) as well as certain passages in his Sovereignty (London, 1957), two of which may here be quoted. P. 140: ‘The justice now recommended is a quality not of a man and a man’s actions, but of a certain configuration of things in social geometry, no matter by what means it is brought about. Justice is now something which exists independently of just men.’ P. 164: ‘No proposition is likelier to scandalise our contemporaries than this one: it is impossible to establish a just social order. Yet it flows logically from the very idea of justice, on which we have, not without difficulty, thrown light. To do justice is to apply, when making a share-out, the relevant serial order. But it is impossible for the human intelligence to establish a relevant serial order for all resources in all respects. Men have needs to satisfy, merits to reward, possibilities to actualize; even if we consider these three aspects only and assume that—what is not the case—there are precise indicia which we can apply to these aspects, we still could not weight correctly among themselves the three sets of indicia adopted.’

The at one time very famous and influential essay by Gustav Schmoller on ‘Die Gerechtigkeit in der Volkswirtschaft’ in that author’s Jahrbuch für Volkswirtschaft etc., vol. v, 1895 is intellectually most disappointing—a pretentious statement of the characteristic muddle of the do-gooder foreshadowing some unpleasant later developments. We know now what it means if the great decisions are to be left to the ‘jeweilige Volksbewusstsein nach der Ordnung der Zwecke, die im Augenblick als die richtige erscheint’!

9 Cf. note 7 to chapter VII above.

10 Cf. Adam Smith, The Theory of Moral Sentiments (London, 1801), vol. ii, part VII, sect. ii, ch. i, p. 198: ‘Human life the Stoics appear to have considered as a game of great skill, in which, however, there was a mixture of chance or of what is vulgarly understood to be chance.’ See also Adam Ferguson Principles of Moral and Political Science (Edinburgh 1792) vol. i p. 7: ‘The Stoics conceived of
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human life under the image of a Game, at which the entertainment and merit of the players consisted in playing attentively and well whether the stake was great or small.' In a note Ferguson refers to the *Discourses of Epictetus* preserved by Arrian, book II, ch. 5.

11 Cf. G. Hardin, *Nature and Man’s Fate* (New York, 1961), p. 55: ‘In a free market, says Smith in effect, prices are regulated by negative feedback.’ The much ridiculed ‘miracle’ that the pursuit of self-interest serves the general interest reduces to the self-evident proposition that an order in which the action of the elements is to be guided by effects of which they cannot know can be achieved only if they are induced to respond to signals reflecting the effects of those events. What was familiar to Adam Smith has belatedly been rediscovered by scientific fashion under the name of ‘self-organizing systems’.


13 Cf. W. G. Runciman, *op. cit.*, p. 274: ‘Claims for social justice are claims on behalf of a group, and the person relatively deprived within an individual category will, if he is the victim of an unjust inequality, be a victim only of individual injustice.’


15 Cf. J. Hoffner, *Wirtschaftsethik und Monopole im 15. und 16. Jahrhundert* (Jena, 1941) und ‘Der Wettbewerb in der Scholastik’, *Ordo*, V, 1953; also Max Weber, *On Law in Economy and Society*, ed. Max Rheinstein (Harvard, 1954) pp. 295ff., but on the latter also H. M. Robertson, *Aspects on the Rise of Economic Individualism* (Cambridge, 1933) and B. Groethuysen, *Origines de l’esprit bourgeois en France* (Paris, 1927). For the most important expositions of the conception of a just price by the late sixteenth century Spanish Jesuits see particularly L. Molina, *De iustitia et de iure*, vol. 2, *De Contractibus* (Cologne, 1594), disp. 347, no. 3 and especially disp. 348, no. 3, where the just price is defined as that which will form ‘quando absque fraude, monopolis, atque alis versuties, communiter res aliqua vendi consuevit pretio in aliqua regione, aut loco, it habendum est pro mensura et regula iudicandi pretium iustum rei illius in ea regione.’ About man’s inability to determine beforehand what a just price would be see also particularly Johannes de Salas, *Commentarii in*
Secundum Secundae D. Thomas de Contractibus (Lyon, 1617), Tr. de empt. et Vend. IV, n. 6, p. 9: ‘... quas exacte comprehendere, et ponderare Dei est, not hominum’; and J. de Lugo, Disputationes de Iustitia et Iure (Lyon, 1643), vol. II, d. 26, s. 4, n. 40; ‘pretium iustum matematicum, licet soli Deo notum.’ See also L. Molina, op. cit., disp. 365, no. 9: ‘omnesque rei publicae partes ius habent conscendendi ad gradum superiorem, si cuiusque sors id tulerit, neque cuiquam certus quidam gradus debitur, qui descendere et conscendere possit.’ It would seem that H. M. Robertson (op. cit., p. 164) hardly exaggerates when he writes ‘It would not be difficult to claim that the religion which favoured the spirit of capitalism was Jesuitry, not Calvinism.’

16 John W. Chapman, ‘Justice and Fairness’, Nomos VI, Justice (New York, 1963), p. 153. This Lockean conception has been preserved even by John Rawls, at least in his earlier work, ‘Constitutional Liberty and the Concept of Justice’, Nomos VI, Justice (New York, 1963), p. 117, note: ‘If one assumes that law and government effectively act to keep markets competitive, resources fully employed, property and wealth widely distributed over time, and maintains a reasonable social minimum, then, if there is equality of opportunity, the resulting distribution will be just or at least not unjust. It will have resulted from the working of a just system... a social minimum is simply a form of rational insurance and prudence.’

17 See passages quoted in note 15 above.
20 Surely Samuel Butler (Hudibras, II,1) was right when he wrote

For what is worth in any thing
But so much money as 'twill bring.

21 On the general problem of remuneration according to merit, apart from the passages by David Hume and Immanuel Kant placed at the head of this chapter, see chapter VI of my book The Constitution of Liberty (London and Chicago, 1960) and cf. also Maffeo Pantaleoni, ‘L’atto economico’ inErotemi di Economia (2 vols, Padua, 1963), vol. I, p. 101:

E tre sono le proposizioni che conviene comprendere bene:

La prima è che il merito è una parola vuota di senso.
La seconda è che il concetto di giustizia è un polisenso che si presta a quanti paralogismi si vogliono ex amphibologia.
La terza è che la remunerazione non può essere commisurata da una produttività (marginale) capace di determinazione isolamente,
cioè senza la simultanea determinazione della produttività degli altri fattori con i quali entra in una combinazione di complimentarità.


25 Characteristic for many discussions of the issue by social philosophers is W. A. Frankena, ‘The Concept of Social Justice’, in *Social Justice*, ed. R. B. Brandt (New York, 1962), p. 4, whose argument rests on the assumption that ‘society’ *acts* which is a meaningless term if applied to a spontaneous order. Yet this anthropomorphic interpretation of society seems to be one to which utilitarians are particularly prone, although this is not often as naively admitted as by J. W. Chapman in the statement quoted before in note 21 to chapter VII.

26 I regret this usage though by means of it some of my friends in Germany (and more recently also in England) have apparently succeeded in making palatable to wider circles the sort of social order for which I am pleading.

27 Cf. the ‘Statement of Conscience’ received by the ‘Aspen Consultation on Global Justice’, an ‘ecumenical gathering of American religious leaders’ at Aspen, Colorado, 4–7 June 1974, which recognized that ‘global injustice is characterised by a dimension of sin in the economic, political, social, racial, sexual and class structures and systems of global society.’ *Aspen Institute Quarterly* (New York), no. 7, third quarter, 1974, p. 4.

28 See particularly A. M. Honoré, *op. cit.* The absurdity of the contention that in a Great Society it needs moral justification if *A* has more than *B*, as if this were the result of some human artifice, becomes obvious when we consider not only the elaborate and complex apparatus of government which would be required to prevent this, but also that this apparatus would have to possess power to direct the
efforts of all citizens and to claim the products of those efforts.

29 One of the few modern philosophers to see this clearly and speak out plainly was R. G. Collingwood. See his essay on ‘Economics as a philosophical science,’ *Ethics* 36, 1926, esp. p. 74: ‘A just price, a just wage, a just rate of interest, is a contradiction in terms. The question of what a person ought to get in return for his goods and labour is a question absolutely devoid of meaning.’


34 P. J. Stuchka (President of the Soviet Supreme Court) in *Encyclopedia of State and Law* (in Russian, Moscow, 1927), quoted by V. Gsovski, *Soviet Civil Law* (Ann Arbor, Michigan, 1948), I, p. 70. The work of E. Paschukanis the Soviet author who has most consistently developed the idea of the disappearance of law under socialism, has been described by Karl Korsch in *Archiv sozialistischer Literatur*, III, (Frankfurt, 1966) as the only consistent development of the teaching of Karl Marx.


37 Radbruch's conceptions of these matters are concisely summed up by Roscoe Pound (in his introduction to R. H. Graves, *Status in the Common Law*, London, 1953, p. XI): Radbruch starts with a distinction between commutative justice, a correcting justice which gives back to one what has been taken away from him or gives him a substantial substitute, and distributive justice, a distribution of the goods of existence not equally but according to a scheme of values. Thus there is a contrast between co-ordinating law, which secures interests by reparation and the like, treating all individuals as equal, and subordinating law, which prefers some or the interests of some according to its measure of value. Public law, he says, is a law of subordination, subordinating individual to public interests but not the interests of other individuals with those public interests.


The small society, as the milieu in which man is first found, retains for him an infinite attraction; he undoubtedly goes to it to renew his strength; but... any attempt to graft the same features on a large society is utopian and leads to tyranny. With that admitted, it is clear that as social relations become wider and more various, the common good conceived as reciprocal trustfulness cannot be sought in methods which the model of the small, closed society inspires; such a model is, in the contrary, entirely misleading.


40 While one has become used to find the confused minds of social philosophers talking about 'social justice', it greatly pains me if I find a distinguished thinker like the historian Peter Geyl (*Encounters in History*, London, 1963, p. 358) thoughtlessly using the term. J. M. Keynes (*The Economic Consequences of Mr. Churchill*, London, 1925, *Collected Writings*, vol. IX, p. 223) also writes unhesitatingly that 'on grounds of social justice no case can be made for reducing the wages of the miners.'

41 Cf. e.g. Walter Kaufmann, *Without Guilt and Justice* (New York, 1973) who, after rightly rejecting the concepts of distributive and retributive justice, believes that this must lead him to reject the concept of justice altogether. But this is not surprising after even *The Times* (London) in a thoughtful leading article (1 March 1957) apropos the appearance of an English translation of Josef Pieper's
Justice (London, 1957) had observed that 'roughly, it may be said that in so far as the notion of justice continues to influence political thinking, it has been reduced to the meaning of the phrase "distributive justice" and that the idea of commutative justice has almost entirely ceased to influence our calculations except in so far it is embodied in laws and customs—in the maxims for instance of the Common Law—which are preserved from sheer conservatism.' Some contemporary social philosophers indeed beg the whole issue by so defining 'justice' that it includes only distributive justice. See e.g. Brian M. Barry, 'Justice and the Common Good', Analysis, 19, 1961, p. 80: 'although Hume uses the expression "rules of justice" to cover such things as property rules, "justice" is now analytically tied to "desert" and "need", so that one could quite properly say that some of what Hume calls "rules of justice" were unjust' (italics added). Cf. ibid., p. 89.


43 On the destruction of moral values by scientific error see my discussion in my inaugural lecture as Visiting Professor at the University of Salzburg, Die Irrtümer des Konstruktivismus und die Grundlagen legitimer Kritik gesellschaftlicher Gebilde (Munich, 1970, now reprinted for the Walter Eucken Institute at Freiburg i.Brg. by J. C. B. Mohr, Tübingen, 1975).

44 John Rawls, 'Constitutional Liberty and the Concept of Justice', Nomos IV, Justice (New York, 1963), p. 102, where the passage quoted is preceded by the statement that 'It is the system of institutions which has to be judged and judged from a general point of view.' I am not aware that Professor Rawls' later more widely read work A Theory of Justice (Harvard, 1971) contains a comparatively clear statement of the main point, which may explain why this work seems often, but as it appears to me wrongly, to have been interpreted as lending support to socialist demands, e.g. by Daniel Bell, 'On Meritocracy and Equality', Public Interest, Autumn 1972, p. 72, who describes Rawls' theory as 'the most comprehensive effort in modern philosophy to justify a socialistic ethic.'

APPENDIX TO CHAPTER NINE

This appendix has been published as an article in the 75th anniversary issue of the Norwegian journal Farmand (Oslo, 1966).


2 See the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is reprinted, and the intellectual background of this document can be