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“Social Justice” or “Justice for the Society”. A Hayek-inspired discussion on the problems of justice and welfare state

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Abstract

The essay discusses and critically examines the relationship between the concepts of (social) justice and welfare state and the adjoining political agendas, thereby introducing and restating some of the major arguments of Friedrich August von Hayek. The central questions address the possible purposes of welfare state, the type of relationship these might have to justice and whether pursuing “social justice” may count among them or not. The author concludes that the idea of public welfare as such does not necessarily represent a problem for a free society, but rather its very common association with the goals of “social justice.”

Keywords: Justice, Welfare state, Society, Liberty, Hayek
“SOCIAL JUSTICE” OR “JUSTICE FOR THE SOCIETY”?

A Hayek-inspired discussion on problems of justice and welfare state

Oskar Mulej

This paper aims to tackle two distinct subjects of which one may be treated as a rather unclear, yet plausible concept representing a potentially realistic political goal and the other belonging rather to the realm of utopia, being however a very often coined political phrase. The first is „welfare state“ and the other „social justice.”

With welfare systems in Western liberal democracies undergoing deepening crisis a general discussion on the basic rationales and purposes of welfare state - as well as its viability - appears quite pertinent. Since in the prevailing public discourse the goals of welfare state are quite often implicitly or explicitly associated with (social) justice, I find it however especially relevant to critically examine the relationship between the two concepts and the adjoining political agendas. The central questions to be pursued in this essay shall thus be which might be the purposes of welfare state, in what kind of relationship might they stand to (social) justice and whether pursuing the goals of “social justice” may count among them or not.

The main source of inspiration in tackling these questions will be the political philosophy of Friedrich August von Hayek, who devoted major attention to the topics to be addressed in this essay. A scholar of an extraordinary intellectual broadness Hayek in his work masterfully joined knowledge from a variety of scientific disciplines. His political thought is distinguished by rigorous contemplation of philosophical concepts and general principles, at the same time combined with high sensitivity for particular empirical facts and concrete issues of political life.¹ This is perhaps its greatest merit and also the main reason that has led me to make Hayek’s ideas the central reference for this essay.

¹ In this respect his work presents an important challenge to contemporary liberal theory, which has, for much of the past thirty years, been locked in abstract discussions of liberalism’s moral foundations and has neglected to relate these questions to institutional issues.” (Chandran Kukathas, “Hayek and Liberalism” in: The Cambridge Companion to Hayek, Edward Feser ed. (Cambridge: Cambridge University Press, 2006), p. 202.)
The first part of the essay will focus on the notion of justice. Through a close reading and restatement of some of Hayek's major arguments, I will try to present and discuss Hayek's views on the concept of „social justice“ and its relevance in politics.

The second part will turn to the problems of welfare state, its purposes, its merits, as well as its possible reform. Again, some of Hayek's views will be put forward, joined by some broader and more up-to-date considerations. My aim thereby will be to roughly delineate a legitimate sphere of action for welfare state that might be treated as compatible with a free market order and rule of law. Due to the broadness of the subject and the limited format of the paper, the discussion will remain at a high level of generality and abstraction and will not delve into details regarding specific cases of welfare systems.

I.

Society as a spontaneous order

Before proceeding to the questions of justice let us first briefly turn our attention to the concept of society and the adjoining adjective social.

I must stress that I will be employing the notion “society” strictly in the sense of a broader order of co-operation between people or – in Hayek’s terminology – the Great Society, and not in the sense of smaller societies of people, where terms such as “company,” “group” or “community” could express the roughly same meanings. The Great or – to use the words of Karl Popper – the Open Society is in Hayek’s thought conceived as an order of interpersonal relations that emerged and has evolved spontaneously. When referring to the society Hayek thus also often employs notions such as abstract order, spontaneous order and extended order (of co-operation).

The (Great) society is a general term for a complex network of relationships and interactions between multiple individuals and associations, which these individuals have created with the goal of fulfilling their own ends in accordance with the knowledge that they possess. As opposed to any intentionally created organizations, including the government, the society is neither rationally designed, nor guided, and does not have any set purposes, but is distinguished by self-regulating processes than no one may control.
Despite the substantial differences between particular individuals the order of Great Society enables peaceful coexistence and cooperation.\(^2\) The institutions of individual freedom and property thereby facilitate the full utilization of knowledge that is otherwise dispersed. In this way the social wealth and prosperity are being formed.

For the macro-order of this "Great Society" as opposed to various micro-orders (deliberately created organizations, smaller spontaneously grown orders such as archaic human societies or smaller orders within the Great Society such as families) – the following main features are characteristic:

- Great diversity of elements (individuals and groups);
- Dispersion of knowledge;
- Multitude of different goals;
- Constant change (circulation of elements in the spontaneous order);
- Abstract nature – it is possible to contemplate it only in certain general traits that may be rationally reconstructed.\(^3\)

Society may of course be conceptualized in various ways and its fundamental essence may be located differently – for instance as “concerted action” or “co-operation,” best expressed in operations of the market\(^4\) or primarily embodied in the institutions and moral values.\(^5\) In any case however two things need to be stressed. Firstly, society is to be treated as something essentially distinct from the state, understood as the whole of government apparatus and thus representing an example of an organization. Secondly, whichever meaningful conception of society we may adopt - even if we understood it solely as a sum of individuals - it should be clear that, unless speaking in a strictly metonymical sense, society may not be conceived as an acting agent to which a will, deliberation and thus also responsibility may be attributed.

Justice is social

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“Justice, like liberty and coercion, is a concept which, for the sake of clarity, ought to be confined to the deliberate treatment of men by other men. It is an aspect of the intentional determination of those conditions of people's lives that are subject to such control.”


Along with liberty, the concept of justice stands in the core of Hayek’s political philosophy. In the introduction to the first part of his trilogy Law, Legislation and Liberty, he stressed the need for restatement and explanation of the fundamental principles of liberal constitutionalism, whose main deficiencies he saw closely connected to the disappearance of the general belief that justice was something independent of partial interests. For that reason any attempt of justifying liberalism in his view had to focus on the defense of the liberal principles of justice.

In Hayek’s conception justice is something necessarily linked to human conduct and the rules according to which men behave and act. Obeying these rules is necessary for the development and maintenance of social relationships and interactions whose long-term results on the macro level are beneficial and desirable for the whole of society. Here three basic emphases may be pointed out:

1.) Just conduct is conduct towards other individuals that is in accordance with certain rules.
2.) These rules must themselves be just and apply same standards to everyone.
3.) Acting in accordance with such rules enables a beneficial order of actions.

Rules of justice – or “rules of just conduct” as Hayek refers to them - are general, objective and abstract in the sense that they are applicable to an infinite number of cases and do not contain any references to particular facts. In the great majority of cases they do not prescribe positive acts but rather delimit the sphere of legitimate action.

The rules of just conduct reside within the moral traditions of each society and provide the unwritten basis for legal systems. Like the spontaneous order itself, also the rules of justice develop through a process of continuous adaptation to new circumstances and unknown facts. Being part of traditions as carriers of abstract common knowledge that has been developed through centuries by numerous generations, quite often these rules are not yet formulated in words and need to be “discovered” by jurists as the need arises

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6 Cf. Hayek, Rules and Order, 2.
7 Mack, Hayek on Justice, 260.
and - if necessary - codified into written laws. The model of such “grown law” that Hayek points out is the English common law. Justice is thus something that may not be “created” but rather “found.”

Direct consequences of the application of these rules may not be predicted or – to quote Hayek: “It is our ignorance of the effects of the application of rules on particular people which makes justice possible in a spontaneous order of free men.”

Impartial justice, independent of individual ends, as a means of coping with our ignorance is necessary for the preservation and further development of society. Rules of justice in the long term allow for the development of best possible results under the condition of dispersed knowledge at different times and under diverse circumstances. They prevent clashes between coexisting interests and intentions, whereby they themselves do not set any specific goals. In this way they enable individuals to freely pursue their own goals and seek their fortunes, within the boundaries that these rules establish. To the limited human reason, unable to calculate in advance all the possible consequences of one's actions, they serve as an indispensable navigating device.

In their essence the rules of justice thus primarily prohibit unjust action – that is direct offenses against persons, their liberty and property, as well as violations of contracts between individuals. In this way these rules secure a sphere of free action, as well as certain legitimate expectations, which they themselves define „and which the rules of law may sometimes have created in the first instance.”

Abstract rules of justice, enabling co-existence and co-operation for infinite number of individuals, groups and organizations, provide a foundation for all law. It may thus be concluded that justice (without the added adjective social) is something in itself social - both in the sense that it belongs to the basic social institutions having developed through the social process and even more since it provides a necessary condition and a basic constitutive element for any kind of functioning society.

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9 Ibid., 127.
11 Mack, Hayek on Justice, 259.
12 Ibid., 37.
Justice as a political concept

“Justice does require that those conditions of people's lives that are determined by government be provided equally for all. But equality of those conditions must lead to inequality of results.”


Justice may be conceptualized in various ways and on different levels. Whereas various possible conceptions of justice may be valid, only some of them are relevant in the strictly political sense as directly pertaining to the questions of good political order and governance.

As every other organization also the political authority must subordinate itself to the rules of justice and act according to them. The same rules and standards delimiting legitimate means of action need to be applied to all the entities within the spontaneous order including the government.

Nevertheless the government occupies a special place, being the only organization which is authorized to exercise coercion in order to fulfill its duty of enforcing the common interest. The latter however does not entail any positively defined common goals, but is contained rather in conditions for peaceful coexistence and cooperation of individuals that have different individual goals. The principal task of political authority is thus to protect certain abstract properties of spontaneous order through which the rules of just conduct reflect. For that reason at least some of these rules need to be enforced by the government.

In the political sense, justice thus essentially entails the demand for political activity to be framed by the rules of just conduct and for political power to be limited by them. It is closely connected to the principles of limited government, rule of law, equality before law and liberty under the law. In Hayek's view this implies “sovereignty of the law” in the sense of *nomos* – that is abstract and general rules applicable to all - instead of “popular sovereignty” which in reality usually translates into sovereignty of representative bodies.\(^\text{13}\)

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By the law which the government has the task of enforcing, primarily the general and abstract rules of just conduct are meant and only secondarily various legal acts and lawful prescriptions that may be purpose-dependent, refer to concrete circumstances, but must at the same time not stand in conflict with the law in the primary sense.
Justice may also be approached from other perspectives and thus conceptualized differently. It is thus logically possible to discuss just states of affairs, just outcomes, as well as justice in terms of a personal virtue. All these contentions are valid. However, since they are impossible to be defined objectively, being dependent on knowledge of particular facts, they are also not applicable on the macro-level of society. For that reason - however important these outlooks may be on the micro-level - they are useless as far as political arrangements are concerned.

Strictly speaking the attributes of „just“ and „unjust“ may be attributed only to human conduct towards others. Justness of certain state of affairs is only derivative insofar it was brought about through human agency and as a result of guided action – in most cases also consciously and deliberately. It may thus be concluded that, whereas many types of situations in which individuals or groups of them may find themselves may be rightfully considered as undesirable, unfortunate, bad, perhaps even horrible. Only some of them however can also be treated as unjust, which depends on the means by which they have arisen.

Just conduct pertains to acts of individuals and organizations - including government - and their treatment of others. For this reason the undesired and unintentional results of acting in accordance to the rules of just conduct or – on the macro-level – the outcomes of social process can not be just, nor can they be unjust. Hayek thus also rejects the belief in justness of results generated by the (free) market in which he differs from the “Manchester liberals,” some of whom believed that the market actually produced just results. 14 It is clear that in free market order the most virtuous individuals do not always necessarily enjoy the highest rewards. The results of market process or, in Hayek's language, the game of catallaxy are not foreseeable. “Determined partly by skill and partly by luck”15 they are from the moral viewpoint arbitrary, as nobody could have foreseen or intentionally caused them.

Which brings us to the question of distributive justice and its political applicability in a free society. Hayek's bold statement that states of affairs, including social positions of individuals are not matter of justice might after all rightfully be challenged. It is namely quite hard to think of a moral system that would lack the notions of merit, desert and thus also certain sense of just distribution of – if not material goods – at least honors.


15 Hayek, The Mirage, 71.
The famous Aristotelean distinction between two types or facets of justice – commutative and distributive – is adopted also by Hayek, whereby he sees merely the first as politically relevant in the circumstances of the Great Society. Distributive justice, on the other hand, he accepts as meaningful only on the micro-level. It can indeed be an important aspect of individual conduct based on personal knowledge and moral conscience and may be relevant especially within closely-knit groups of individuals such as families, close friends or professional colleagues distinguished by a high unity of values and ends. Elements of distributive justice might as well be very beneficial in various organizations, especially those that are based upon or have the goal of fostering meritocracy or \textit{esprit de corps} (e.g. education, military).

Distributive justice is however inapplicable for the society at large, as due to the plurality of values and dispersion of knowledge there can be neither any general criteria, nor enough information at hand for their implementation. For this reason enforcing any pattern of distributive justice may also not be a legitimate end for the government, which is entrusted with the right to coerce exclusively in the execution of general and abstract rules, which are defined negatively.\footnote{Cf. Ibid., 33: “...in the Aristotelian terms (...) liberalism aims at commutative justice and socialism at distributive justice. (...) distributive justice is irreconcilable with freedom in the choice of one's activities: it is the justice of a hierarchic organization, not of a free society.”}

On the macro-level it is namely impossible for any central authority to determine the merit of any particular individual effort, or to use Hayek’s words: “The \textit{possibility of a true judgement of merit thus depends on the presence of precisely those conditions whose general absence is the main argument for liberty}.”\footnote{F. A. Hayek, \textit{The Constitution of Liberty} (Chicago: Chicago University Press, 1960), p, 95. Cf. F. A. Hayek, \textit{Studies in Philosophy, Politics and Economics} (London: Routledge, 1967/69), p. 116: “There can be no rules for rewarding merit, or no rules of distributive justice, because there are no circumstances which may not affect merit, while rules always single out some circumstances as the only relevant ones.”}

Serious and consistent efforts by the government to enforce a certain pattern of distributive justice would inevitably lead away from a free society. It would require the domain of governmental intervention to spread far into the social one by extending its discretionary field into matters that by our current standards belong to the private sphere. The government would need both to gather information on every individual's private circumstances, as well as to use coercion to enforce the (re-)distribution of rewards.\footnote{Cf. Ibid., 100, 231-232.}

If the government expanded its internal organizational, end-dependent rules to the whole society would the latter cease to exist as a spontaneous order determined by end-independent rules. Everything would – so to speak - “become the state.” A consistent fulfillment of the ideal of distributive justice would namely
require an omnipotent and exuberant government. For this reason, distributive justice is incompatible with the principles of limited government, rule of law, equality before law and freedom under the law.\textsuperscript{19}

The efforts of enforcing distributive justice (even if for the sake of them any general principle would be invented and acted upon) in conjunction with the sovereignty of representative bodies, lead towards an ever increasing extent of government involvement in spontaneous, self-ordering processes of abstract order and result in their curtailment. The latter in turn leads to an even stronger tendency of the authorities to regulate and guide these processes.

**The mirage of “social justice”**

“*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.*”

(Friedrich August Hayek, *The Mirage of Social Justice*, p. 69.)

„Social justice“ is a term that was first coined in the mid-19\textsuperscript{th} century in the context of Catholic social teaching. In the politics of the last 100 years the appeals to “social justice” have however most often translated into demands for the government to enforce a certain model of distributive justice.\textsuperscript{20} Moreover, what is meant to be (re-)distributed at least in theory suddenly encompasses entire wealth of a given society.

\textsuperscript{19} Cf. Hayek, The Mirage, 86-87: »The rules of distributive justice cannot be rules for the conduct towards equals, but must be rules for conduct of superiors towards their subordinates. (...) 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.”

Hayek devoted a whole volume of his famous trilogy *Law, Legislation and Liberty* to what he called “The Mirage of Social Justice” and provided perhaps the most comprehensive and persuasive critique of that concept. His verdict was that the phrase “social justice” “meant nothing at all” in the final instance being “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 we must fight when it becomes the pretext of coercing other men.”

Despite being quite often employed in a manner as if it were taken for granted that everybody clearly knew to what it referred, the term “social justice” comes to designate a virtually infinite variety of things with no clear consensus on the limits of its reasonable application. Regardless of what it might actually stand for it is quite clear however what it does not. It is supposed to signify something radically different from the common conception of justice.

The adjective „social“ added to „justice“ hints that a special kind of justice might be in question, presumably very different to the general understanding of that idea. Indeed, the apparent need to add the adjective „social“ gives an impression, as if it were implied that the justice in the „ordinary“ sense was not something „social.“ The question that poses itself automatically is of course whether justice in such „ordinary“ sense is something „asocial“ or even „anti-social“ then?

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24 This is even more relevant since it is possible to trace the adjective „social“ in all kinds of combinations, as Hayek nicely demonstrated in *The Fatal Conceit* (See: Hayek, The Fatal, 114-117.)
For distributive justice, it has already been said that it may never represent a serious goal of the government in a free society. Some of the objections have already been raised. With “social justice,” despite referring to more or less the same thing when put forward as a political demand, the problem is however more far-reaching and concerns both the language and the sense of justice in a given society.

In case of “social justice” we can namely observe not merely a term signifying a certain idea being substituted with another term but a significant transfer of meaning occurring with the adjective “social.” Instead of referring to the characteristics of a certain society or products of a certain social process it began to express something that should be imposed on the society as its “goal” or “purpose.” It tells us not about the ways society is, but about how it should be.

And the answer to the question which power should be given the mandate to make the society more “social,” is quite often implicitly taken for granted – the government. Thus the boundary between state and society becomes increasingly blurred at the society’s expense. The latter may thus become a playground for “social” planning, regulating, constructing and engineering, as Western societies have already been increasingly witnessing in the past 100 years.

Most strikingly, in the phrase “social justice” society becomes personified, creating an impression as if it were not a spontaneous order but an organization with set goals that are to be reached by some kind of unified will. “The society” is suddenly perceived as an agent that may “act” justly or unjustly or “treat” individuals or groups in such manner. The appeal to “social justice” thus anthropomorphizes the impersonal market processes.

The path towards blaming “the capital” for all the misfortunes is thus open. Implying conscious agency and demanding “just” results from impersonal processes, harbors the seeds for a dangerous outlook that an abstract collectivity of people, however large, diverse and heterogeneous it might be, has or should have its own “goals,” “responsibilities,” “missions,” etc. Outlooks of this kinds have proven disastrous during the 20th century when they provided foundations for totalitarian ideologies.

And even in more “benign” cases, the all-pervasive dependence on the will and power of other people, as the main result of implementing the ideas of “social justice” in political practice, significantly undermines the freedom of making individual choices as a necessary underpinning of any kind of morality.

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26 Cf., Ibid., 78.
27 Ibid., 62.
force and attraction of “mirage of social justice” strengthens, wanes the power of the idea of individual responsibility. Things which were once attributed to misfortune or for which forces outside of anyone’s power such as “fate” were to “blame” thus become conceived as faults of “society.”

A long-term consequence of the vanishing sense of personal responsibility on one hand and corruption of language on the other, whose most striking feature is that not merely “society” but above all the notion of “justice” becomes increasingly devoid of meaning, is a widespread mentality of entitlement.

The latter reflects very nicely in the language of rights. This important moral and legal concept is also directly affected by the corruption of language, as the „rights“ become increasingly confounded with entitlements and outright privileges. In this way rights - as special positive legal provisions codified in order to express the most sacred common values related to personal dignity, liberty and moral equality of all human beings and to additionally secure their active protection by means of political power - turn from something inalienable and sacred to something trivial and subject to bargaining and endless extensions sometimes based on nothing more than wishful thinking.

The *International Covenant on Economic, Social and Cultural Rights* for instance among other includes „the right of everyone to adequate standard of living.“ There is no clear definition at hand however on what such standard should entail and by whom and which means is it supposed to be provided. All the good things of this world that may legitimately be wished for can not automatically become rights and thus a matter of justice.

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30 Hayek nicely illustrated the unpredictability of individual destinies for which no one bears the responsibility – and the least so the “society“ - with the following passage: “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 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?” (Ibid., 93.)


A very concrete example of a governmental program framed in the language of rights was the „right to affordable housing“ in the USA that is often cited among the main causes for the world economic crisis of 2008 (See for instance: Johan Norberg, “How the Right to ‘Affordable Housing’ Created the Bubble that Crashed the World Economy” in: *After the Welfare State*, Tom Palmer ed. (Ottawa (IL): Jameson Books, 2012), pp. 97-108.)

33 What makes such declarations problematic are certainly not the noble aims that they are meant to express but the fact that these are not formulated as wishes or perhaps desirable long-term ends but as „rights.“ In a world in which the most basic human rights are massively breached on a daily basis the discourse in this way becomes completely alienated from the reality.
A possible objection against the dismissal of „social justice“ could claim that appeals for its political implementation mostly pertain to the frameworks of specific nation states and that it is thus misleading to apply the argument against them based on the notions of abstract society or „extended order."

This argument is however problematic as it degrades the principles of justice to something secondary to the existence of the nation states (or other territorial administrative units) and thus dependent on specific interests and also not equally applicable to all men.

The aims of equalizing the prospects of citizens within a given political community or redistributing wealth from some of them to the other – especially if implemented by means of governmental coercion – may be referred to by various terms,\(^{34}\) perhaps even „national egoism“ to borrow a phrase from the *fin-de-siecle* Polish radical nationalist Roman Dmowski, but very hardly with the dignified concept of justice. Unless, as said, we are to degrade it to an expression of partial interests. If we were to take seriously the concept of distributive (or „social“) justice – what would then legitimize the fact that people in Sweden are entitled to a variety of generous transfers from the government, whereas in Zimbabwe many people regardless of their efforts and hard work are still threatened by starvation?

How could a circumstance based merely on matters of national borders and citizenship be perceived as just? It would be a valid (although not necessarily a true) argument if the Swedish government stated that it was in its „national interest“ to provide for every Swede a certain standard of living. It could claim also that it is a *good thing* for all the Swedes that nobody falls under certain instituted line of poverty or even that the living standard for Swedes be incomparably better than the one for the large majority of Zimbabweans. It would however be much different to claim that such difference was a matter of *justice* and therefore morally-founded.

For this reason, it might be wise for the sake of coherence (and some more utopianism) – to follow Thomas Sowell’s proposal and instead of „social justice“ speak about „cosmic justice,“\(^{35}\) whereby it is completely clear that it extends beyond national borders and includes the whole of humankind (if not all the rational beings). If we do that and bring „social justice“ to its logical conclusion, we may also turn the previous argument around and ask whether it would then be just if, for the sake of „cosmic justice,“ the Swedes were required to turn over 90 or 95 percent of their income in order to help out Zimbabweans and pay for

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\(^{34}\) They may for instance be framed as matters of „national interest,“ „national solidarity,“ „state socialism“ and even „*Staatsräson*“ to name just a few real examples.

the latter government’s corruption? It is very much doubtful whether many Swedes would perceive such an arrangement as appropriate, not to say just.

II.

Let us now abandon the international level and confine ourselves into the borders of individual nation states, where it is quite clear that the provisions included in the bundles of so-called „social rights“ are meant to be fulfilled by their governments. This is also the point where the welfare state steps in.

With help of Hayek we have already seen that ideals of distributive justice may not be successfully pursued in the framework of a free society and by a limited government. Let us illustrate this once again with a simple case:

Person „A“ provides service „z“, investing a given amount of time, energy and material resources. In a given period of time the person gets remunerated for the provided service with an amount of wealth „x“. Is this just? If yes, may such a remuneration for such service perhaps be considered by that person as a right and therefore something that the government should guarantee in future? Which authority and by what standards could decide on that?

Since justice is something independent of particular ends and the ideal of distributive justice is not politically applicable in a free society, the purpose of welfare state can not be justice but something else. Most certainly it is not „social justice,“ unless we allow for complete arbitrariness not only in political governance but in „governance“ of our language as well.

Let us look for some additional proof in the history of welfare states and their performance.

Important, if not crucial part of the systems that later came to be encompassed under the joint term „welfare state“ were first introduced and developed in the German Empire during 1880s. Chancellor Otto von Bismarck enacted a range of compulsory insurances that were in the following decades widely copied by other Western countries as well. Perhaps the most famous of these systems that is the still widespread but in the circumstances of declining population growth unsustainable, is the PAYGO system of insurance for old-age.

“SOCIAL JUSTICE“ OR “JUSTICE FOR THE SOCIETY”?  [page -18 -]
The core rationales and original justifications for introducing welfare systems slightly varied between countries, as do the historical explanations of principal reasons that motivated the rulers to establish them. In the German case for instance it was the projects of expanding the power of the central government and building a strong nation state by creating „a dependent population imbued with an ideology of national collectivism”\textsuperscript{36}, as well as neutralising the threat of Social Democracy and its more radical demands for social reform.\textsuperscript{37} Generally a number of considerations were important for development of welfare states – from assuring social stability and peace to battling poverty and want. A connection with more ambitious projects of ending the „class struggle” by establishing a „concord” between „labor” and „capital” or through \textit{enbourgeoiseiment} of the working classes may also be discerned, especially from WWI on.

What is quite clear in any case is that it was not justice but rather other ideas and aims that provided the founding stone for welfare states and that fostered their developments. It could also be claimed, that whatever the goals might be, it is the principle of \textit{efficiency} and not justice that stands in the core of welfare state.

Let us now turn back to the hypothetical case of person “A” and imagine that the remuneration “\(x\)” for the work does not provide enough for that person to live a decent life (according to the most basic standards of the particular society in which that person lives). This can be seen as a gross misfortune. And there might be very legitimate grounds for it to be alleviated or even from the very outset prevented from happening. Most of the people would probably agree that a person in such a situation ought to be assisted. Some would also want to delegate this duty to the state. However, whatever the impulse – be it primarily altruism, benevolence and instinct of solidarity or primarily the rational self-interest of individuals who would themselves wish to be insured against becoming destitute - it is again not justice that would make them wish to alleviate the misfortune of a person they might not know at all.

In an affluent society there might indeed exist a general consensus on the desirability or need for eliminating the possibility for anyone to fall victim to severe deprivation. Still it is a consensus regarding an utilitarian- or humanitarian- inspired practical measure and not a matter of justice.


Do the existing welfare states serve such utilitarian or humanitarian considerations well? Do they fulfill their basic purposes and are they efficient?

Nowadays we may clearly observe both the non-sustainability of existing welfare systems, as well as long-term detrimental effects of decades of welfare state on the social fabric. An average EU government consumes above 52 percent of the national GDP, whereby 42 percent of all state spending in the EU goes for social welfare programs. At the same time even those European countries, deemed to be most economically prosperous and stable such as Germany, are faced by considerable budget deficits and staggering public debt, reaching numbers close to or even over 100 percent of national GDP. The figures for the latter thereby do not include the unfounded liabilities of state pension systems and social security, which increase the actual total debt for five and in certain cases such as the USA for 9 times. It is clear that the present welfare spending is unsustainable, not to mention the whole edifice of PAYGO retirement systems that are in some countries already being partly funded directly from tax money instead of contributions for the pension system.

And even if the welfare states were sustainable, they would still be very costly, as reflected in the extents of taxation needed to maintain them. These costs have been increasingly growing through the past 100 years, as has the apparatus of welfare states, whereas the same pace could hardly be attributed to the actual benefits. And even if we were to accept the high costs in return for the desired results, are the present welfare systems mostly not able to fulfill their high promises.

As systems „of patronage and clientelism“ they cause dependency and often discourage people from acting in a responsible, economically rational and proactive way. With minimum wage laws they also contribute to higher levels of unemployment. At the same time forced „solidarity“ undermines the genuine one, as people get used to look towards „the state“ to solve their neighbor's misfortunes, resulting in detrimental long-term social effects.

The systems often mostly other ends than the stated ones. They do not so much fight poverty as they typically shuffle „the great bulk of the transfer payments among the 'haves,'“ whereby major part of the funds are actually consumed by the system itself and do not reach the society's weakest members.

39 See: Ibid., 91-93.
40 Palmer, The Bismarck's, 47.
41 Ibid., 34.
Quite often the welfare state does not improve the social mobility of less fortunate but contributes to a more rigid social structure.\textsuperscript{42}

As a concept, closely connected to the one of protectionist nation state, welfare state is also becoming increasingly insecure in the age of mass migrations. On one hand immigration is needed due to the aging population. On the other the welfare systems not only often attract other type of immigrants than those wishing to seek fortune by hard work and integration into the host societies, but very often discriminate against and prevent the latter kind from pursuing their goals by means of various protectionist measures.

Last but not least, I find it simply outrageous and beyond any justification that in the welfare states of the developed West there are still people living under severe deprivation. Before accusing me of sentimentalist reasoning or even utopianism, let me state my case by listing the following grounds for my claim: a) Amounts of taxes and contributions paid to the government to finance the welfare state - supposedly for helping the poorest; b) The widespread network of various kinds of welfare programs, state institutions entrusted with the tasks of fostering welfare, as well as numerous officially „non-governmental organizations“, that however rely mainly on state funding; c) Promises of “social rights” as parts of valid legislation; d) And - last but not least – the unfortunate fact that all this is quite often not even funded by taxes but by deficits. In short – if, under the circumstances described and with promises much more ambitious, the welfare state is not up to the most basic task of eliminating absolute poverty, then we may treat it as an utter failure.\textsuperscript{43}

We have already established that whatever the raison d'etre of welfare systems might be, it is certainly not justice. This does not however imply that justice is not relevant in this regard. On the contrary – as with any other part of government must the legitimate sphere of action for welfare systems and the permissible means for pursuing their goals be limited by rules of justice. What most certainly counts a matter of justice in is the manner in which the funds for financing welfare programs are gathered and by which principles they are to be handled.

\textsuperscript{42} Cf. Ibid., 45: “The welfare state is not merely a collection of discrete and unconnected income transfer programs; it is a coherent political strategy, entailing harmful restrictions on the ability of the poor to improve their lot (to protect privileged groups from having to compete with them), coupled with income subsidies to partially compensate the poor for those grievous harms.”

\textsuperscript{43} The numerous homeless people with little chance of escaping the vicious circle of absolute poverty – even on the streets of cities that at the same time invest millions of taxpayers’ money into public housing – may serve as a prime indication of this failure.

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In this respect an additional objection against the existing systems of welfare may be raised to the ones based on efficiency and discussed earlier. As regards the justness of their functioning the performance of welfare states is to a broad extent marked by arbitrariness, disproportional division of burdens, as well as outright coercion. The latter does not happen merely in the form of (disproportionate) taxation but also in forms of intruding into family life, interfering with “unconventional” lifestyles or other private affairs of citizens.

The central question to pursue should therefore not be whether welfare state can serve as a tool for securing „social justice,“ but rather whether it may at all be compatible with general rules of justice and - if so - in which form and under which conditions.

Is it possible to make the welfare state compatible with requirements of justice?

„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.“ (F. A. Hayek, The Mirage of Social Justice, p. 87.)

The existing welfare systems prove inefficient also in case we limit their purpose to the basic task of preventing absolute poverty. Leaving aside the question, whether welfare state as such should be dismissed completely and substituted by purely voluntary and private initiatives, there is however in my view still a case for a certain form of welfare state that may be treated as compatible with rule of law and a free economy.

First of all such a welfare state ought to be very conservative and very clear in its stated goals and promises. Such an end could be battling absolute poverty and the means for it could be a general insurance scheme against severe deprivation or a „safety net“ that would prevent anyone from involuntarily finding oneself without basic means of survival.

Although generally agreeing with Hayek that needs, likewise as merit are variable and dependent on specific circumstances, I would however still argue that there are certain objectively determinable basic human needs. They encompass all the things a person needs for bare survival and are absolute in the sense
that when unfulfilled the very conditions of possibility for an individual to live a decent life and be able to seek fortune are absent. If limited to the lowest possible minimum they include at least food, drinking water and any kind of warm shelter – things therefore the absence of which constitutes a phenomenon commonly referred to by the term “absolute poverty.” It is thus possible to talk speak about a condition of absolute want for which quite clear and objective criteria are available.

We may also state that a state of absolute poverty due to any kind of misfortune, despite not being unjust, may still be perceived as something generally undesirable and a condition against which any rational human being would want to be protected.

Protection against absolute poverty or securing that no one is ever involuntarily homeless, hungry or without access to basic medical care – a much more modest goal than the promises of existing welfare programs – may indeed represent a matter of common good.44 Due to the uncertainty of fortune and success in the market order, it represents an insurance against a risk to which everybody, including the most affluent, are subjected.45

In addition to the protection against absolute poverty I would also argue along with Hayek and contrary to the various conceptions of „minimal state“ that it is desirable and entirely compatible with the rule of law if some additional services are also provided by the government. The range of these may be broad and include all those goods that are in the circumstances of the complex order of modern mass societies indispensable and whose provision may sometimes not be most effectively secured by the forces of free market. Such publicly provided collective and civilizational goods may among other include public roads and transportation system, education system, environmental protection and protection against natural catastrophes.

The crucial difference between these additional tasks of government and its basic function of securing law and order is that unlike in latter case there is no reason for the government to be given a monopoly in offering these services. Many publicly funded services may be better provided by private businesses competing in the market and not directly by the state whose task is primarily to gather and provide funds for them. Regardless of whether we still call such a modest provision of a basic safety net and certain public goods welfare state or not,46 it may present a viable alternative to the existing systems. For those countries that may afford it such simple system of welfare could be instituted in a way compatible with a rule of law.

46 Cf. Palmer, The Bismarck’s, 34.
and limited government. In short, the welfare state may be conceived as compatible with the rule of law and free market economy given that:

1. In fulfilling its welfare-related tasks the government does not interfere with the rule of law – most importantly by not allowing the administration to spread its coercive powers beyond the constitutionally defined limits.
2. The welfare programs do not interfere with the more basic functions of government. That the welfare agendas and the legislation enacted to implement them do not interfere with more fundamental rules of justice and breach the principles of equality before law and liberty under the law.
3. That the extent of services provided by the welfare state and the pool of funds allocated for them is limited on the basis of the agreed extent of maximum taxation – and not vice versa. And that taxation is based on the principle of proportionality (e.g. a general flat tax rate).
4. That the provision of public services and goods such as health care and education is not a state monopoly.
5. That the mechanisms of protecting against absolute poverty are simple and transparent in contrast to the present systems based on a variety of social transfers, subsidies and tax deductions.
6. That the other types of insurances, apart from the general insurance against absolute poverty, such as the old-age and health insurances, be completely voluntary and market-based.

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In my essay I tried to demonstrate how „social justice,“ being itself more or less an empty phrase, and welfare state are two concepts that do not have much in common. The quite frequent but deeply erroneous belief that welfare state is a matter of “social justice” represents a twofold problem. Firstly any attempt to reform the existing welfare systems is made harder as those defending the status quo may always resort to appealing to justice. Secondly, and much more alarmingly, the concept of justice itself becomes subverted and increasingly devalued by such use, not standing anymore for end-independent rules but rather for arbitrary action for the sake of random goals deemed to be desirable. Instead of fostering the belief that justice is primarily about distinguishing between legitimate and illegitimate means in achieving individual or collective ends, “social justice” fosters the belief that the ends justify the means.

The line of argumentation developed by Hayek which has been presented and to a major extent advocated in this essay in essence claims that - best intentions and moral intuitions notwithstanding – it is futile and counterproductive if not outright dangerous to try consistently enforcing any model of distributive justice in the conditions of developed modern societies. There has however been another common line of reasoning, not at all limited to socialists and other statists and dating back to the time of original invention

of the term „social justice,” arguing that exactly the high level of complexity of social relations, the disintegration of traditional social bonds in urban environments and social atomization require certain measures of „correction.“ Both these lines beyond doubt have a good case.

The question, however, is how to reconcile the aspirations for securing public welfare and social stability with liberty, justice and the rule of law on one and the demand for long-term economic sustainability on the other. In order to preserve any kind of state welfare system within the political framework of liberal democracy certainly both of these requirements will need to be met.

Contrary to some of the free-market based approaches that reject any kind of government-based initiative in such direction, I argue jointly with Hayek that elimination of absolute poverty may represent a common interest and that assuring a minimum material standard under which no one should fall can be treated as part of the common good and thus a legitimate aim of government. It must however be guaranteed that its more basic tasks of securing the existence of spontaneous processes by facilitating free competition and protecting citizens' liberty and property not be hindered and that the government stays within the confines of its legally-defined limits.

Even if these conditions are met, the other question arising is which particular countries could in present circumstances afford such basic welfare state and for what cost. This is however a topic for a different essay.

What I am however most certain about is that it is not the idea of state-provided welfare alone but its attachment to the mirage of “social justice,” that is harmful in the long run for both welfare and justice – not to mention liberty. Friends of liberty should therefore perhaps primarily direct their intellectual energies on exposing and countering this dangerous delusion.
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