The Rise and Fall of Economic Justice and Other Papers

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CHAPTER 1

The Rise and Fall of Economic Justice

This chapter is an enquiry into the probable future of the concept of economic justice. Any such enquiry must be speculative, but the speculation will not be wholly random if it is grounded in history: more precisely, grounded in some analysis of the relation, down to the present, between the changing fortunes of the concept and changes in prevailing economic and social relations. I shall show that the concept arose rather late in the history of human society, that it fell virtually to extinction a few centuries ago, and that it has revived somewhat in our century.

As we trace that rise and fall and revival, some correlations between them and certain clearly discernible changes in the society and the economy will appear. And there will be reason to think that those relations are not merely empirical correlations, but also causal relations: it will appear that social and economic changes sometimes compelled, and sometimes were compelled by, a change in the status of the concept. It may even appear that there is a dialectical relation between them: at least, there is some reason to think that the social forces which produced the present revival of the concept were a necessary outcome of the economic changes which produced the previous fall of the concept. However that may be, a look at the history of the concept should help us with our main question: whether or not the presently revived concept is likely to have a long life. I shall suggest, not.

I shall begin by arguing:

(a) that the idea of economic justice arose only when market-determined systems of production and distribution encroached on politically determined ones, which is to say, long after the emergence of private property, class division, and the state;

(b) that it arose then as a defensive action against the encroachment of the market on traditional political society;

(c) that when, in the seventeenth and eighteenth centuries, the market triumphed in our Western societies, the very idea of economic justice was consigned to oblivion by the mainstream political thinkers as being
incompatible with market determination of values and entitlements, and from then till the mid-nineteenth century survived only in a handful of radical thinkers and working-class movements; and

(d) that intermittent attempts of liberal thinkers from the mid-nineteenth century to the present to revive the concept of economic justice have been unable to establish a theoretical foothold for it because they have still relied on the allocative market whose supremacy the concept was designed to prevent.

I shall then notice that, in spite of this, the concept is widely used in the political practice of the Western liberal democracies in the twentieth century, and shall enquire what forces brought about that practical revival, and whether they are likely to sustain it.

1. Definition

Let me begin by offering a provisional definition of the concept of economic justice, sufficient to distinguish it from justice in general and to set out its bare essentials. Something like that seems necessary, for one cannot simply point to the most evident examples of the concept, which are classical and medieval, and say: look at Aristotle and Aquinas if you want to know what the concept is. That would still leave the question, what is to count as a concept of economic justice at any later time? We need to know this if we are to look at its prospects in our own time.

One obvious requirement of a concept of economic justice is that it be about economic relations, that is, relations into which people enter, in any society, in their capacities as producers or owners or exchangers of valuable goods or services. And if economic justice is to be treated as a distinct branch of justice, economic relations must be seen as having become something distinct from social and political relations in general, that is, as something no longer automatically given by, or engulfed in, a prevailing social or political order.

A second requirement, no less evident I think, is that a concept of economic justice always asserts a claim to regulate economic relations in the light of some ethical principle. Economic justice, like justice in general, is nothing if not a value-laden concept.

Provisionally then, I define the concept of economic justice by two stipulations: (1) it treats economic relations as having become distinct from social relations in general, and now governing principles more specific than those of justice in general; and (2) it seeks to impose on economic relations some ethical principle deduced from natural law (or divine law) or from a supposed social nature of man. Notice that I do not say from any supposed nature of man but only from a supposed social nature of man. For a theory which, like Hobbes's or the social Darwinists', starts from a postulate of an essentially unsocial nature of man, is left without any ethical principle that could override the economic behaviour logically required of unsocial man, i.e. pure individual maximizing behaviour, either in the market or by open force.

It may be objected that my second stipulation is too narrow. Why, it may be asked, should we rule out (as that stipulation does) Hobbes's concept of justice in economic relations as simply the keeping of contracts 'in buying, and selling; hiring and letting to hire; lending, and borrowing; exchanging, bartering, and other acts of contract'? I defend my stipulation, with its exclusion of such a concept from the category of economic justice, on the ground that such a concept puts economic relations out of the control of any purposeful human agency, and removes them from any possibility of being judged by any ethical criterion.

2. The Late Arrival of Economic Justice

The earliest societies about which there is documentary evidence (to say nothing of still earlier societies, of which we have only debatable anthropological speculation) show no signs of having had a concept of economic justice. The Mosaic Law (c.15th cent. BC), was formulated for a pastoral and simple agricultural society where there was already private property in land and its produce, and in houses, flocks, cattle, draft animals, and bond-servants, and some use of gold and silver as money. The Mosaic Law prohibited theft, covetousness, and false weights and measures; prescribed fair treatment of hired servants, and protection for escaped bond servants; and regulated debts and usury; but in all this there was nothing that we should recognize as a concept of economic justice. The high civilizations of the Middle Eastern empires and kingdoms in the third and second millennia BC, which were based on settled agriculture and which sustained extensive commerce and a substantial merchant class, had more elaborate legal codes, such as the Code of Hammurabi (Babylon, c.1750 BC) with its detailed laws concerning contracts of sale, lease, mortgage, etc., but also lacked any recognizable notion of economic justice. Any contracts were just, if freely entered into.

In both cases the reason is evident. What we now call economic relations, and think of as something separate from all the other relations that make up a society, were not then seen as separate. Who should get what of the material means of life, and who should contribute what labour to their production, were both determined by one's place in the tribal or imperial society. One's place in the productive process was simply given by one's place in the society. The relations of production were the political relations of the society. Both were given by the level of felt wants and the level of techniques available to meet them. No one separated out the productive (and exchange) arrangements from the social and political arrangements. The relations of production and exchange were encompassed in the overriding social and political relations.

Thus we cannot, on the record, locate the emergence of a distinct idea of economic justice as far back in time as the appearance of private property and slavery or the appearance, in addition to that, of extensive commerce, markets, money, and a merchant class. The early markets, extensive as they were, were subsidiary to the main sinews of the society and state. And what is more important, they were controlled by the state, for the purposes and designs of the state: they were thus sufficiently governed by custom or by legal codes imposed by the authority of a mouthpiece of the gods or God (as in the Hebrew scriptures) or by a god-king (as in the Middle Eastern empires and kingdoms). The markets did not determine prices: trade was carried on at prices or equivalencies fixed by the state.

The turning-point is not the emergence of markets and merchants, much less of private property and slavery. It is the achievement by merchants and markets of a relative autonomy or independence from the state. Only then did upholders of the values of customary societies have to begin to fight back against the inroads of money and markets on an older way of life. Only when those inroads could be seen to be dissolving the old ways was it necessary to mount an ideological defensive action. And the only way to mount it was to look at the new economic order as something threatening to, and hence separate from, the traditional order sanctified by tribal or community custom or imperial customary law. To do this required, for the first time in history, a concept of economic justice distinct from the general notion of justice.

The turning-point did not come for many centuries. When the Bronze Age gave way to the Iron Age (from about 1200 BC) a way was opened for a significant change in the relations of production and exchange. As knowledge of iron-smelting spread, there was a much enlarged class of craftsmen making everyday tools for the primary producers, a consequent growth of production of these commodities for the market rather than the household or the village community or the palace, leading to the replacement of the village commune by aggregations of independent commodity producers for an impersonal market, and of course, to the growth of money transactions, which now began to permeate local, as they had previously permeated long-distance, trade.

But the pace of change in those centuries was slower than we are used to, and the rise and fall of empires alternating with simpler societies leaves us no straight line of evolution. However, the change to an increasingly impersonal market economy was bound to have a dissolvent effect on either an imperial or a simpler society.

The first record we have of such an invasion of an old order by mercantile markets is in classical Greece, at the period when, with merchants' wealth increasing, the poorer primary producers were impoverished and sold up, the merchant class sought to take control of the state from the old ruling class, and a menaced or impoverished peasantry became a threat to any social order. This is the classic status or endemic civil war of which we read in Plato and Aristotle. It appeared first in the sixth century BC, where Solon's reforms were designed, but failed, to remedy it. This is still far from what we know as capitalist relations of production: money capital had not yet seized on the whole productive process by turning the primary producer's labour, as well as their produce, into a market commodity. But the accumulative monetary market system had gone far enough by Solon's time to demand counteraction. And the rot had set in far enough that the counteraction had to be ideological as well as political. It called for a concept of economic justice, comprising principles both of fair exchange of commodities and of fair distribution of the society's whole product.

The concept of economic justice gets its first clear presentation in the fourth century BC, by Aristotle. In the time scale of human societies, the fourth century BC is distinctly at the modern end. But it was only then that the idea of economic justice as a problem requiring separate attention arose. The more ancient civilizations, in which the market had not been, or even threatened to be, an autonomous organizing mechanism of production and exchange, had not needed any such concept. There is no record of any speculation, in the Bronze Age empires and kingdoms, of any such notions of economic justice.

Aristotle was the first to make the distinction between, on the one hand the household or simple market economy in which production and
exchange were for use, and on the other hand a more advanced market economy in which exchange was initiated by the merchant using his money capital to buy in order to sell at a profit and thus to increase his wealth, a system in which 'money is the starting-point and the goal of exchange.' He saw that his own society had moved well along the road from the simple to the advanced market economy. And he made a strong ethical case that the latter was destructive of the good life. He called it unnatural, on three grounds: it makes acquisition the goal instead of merely a means of the good life; the accumulation process is without limit whereas the good life requires only limited material wealth; and it is a means by which some men gain at the expense of others, which is unjust.

There are also in Aristotle's doctrine the beginnings of the two branches of the concept of economic justice that were more fully developed in medieval Europe, i.e. commutative and distributive justice. Commutative justice—justice in acts of exchange—requires that they be at a 'just price'. This was not too clearly defined, but seems to have been that which is not disruptive of traditional standards which hold society together. The just price is that which yields to the producer of each commodity a return proportionate to the status customarily enjoyed by a person of his occupation or skill. The ratios, that is to say the prices, were to be socially determined, not left to the determination of the market. The concern was with how much produce, i.e. how much of the material means of life, each exchanger got in return for his produce or labour.

Distributive justice—justice in the distribution of society's whole product among the citizens, required at least that every household should have the moderate income needed for the good life, the amount that enabled each to combine temperance with liberality. Distributive, like commutative, justice was concerned with the outcome of the new relations of exchange brought by the rise of merchant capital: the relations of production, whether by slave labour or by free peasants and craftsmen, were taken as given. Aristotle's concern with the accumulation of wealth by the merchants, was because it altered the relations of exchange and hence the distribution of income: it imperilled the livelihood, the material means of consumption, of the free citizens.

In all this, Aristotle can be seen to be applying, to a fairly advanced market society, moral standards drawn from an earlier traditional society. He failed to persuade the rulers or the citizens to turn away from the accumulative market, but no clearer case for their doing so could have been made. He was quite right in seeing that the root of the difficulties of the Greek city-states was that the market had got free from customary social bonds, and it was a reasonable inference that the best chance of holding off a market takeover, i.e. a takeover by a commercial class and a commercial morality, and holding onto traditional society, was to create and press an idea of specifically economic justice. To the extent that the growth of market behaviour had separated the economy from the society it was necessary to set up a separate concept of justice in the economy.

When Aristotle's writings were rediscovered in Western Europe in the twelfth century AD, the then established European feudal society was already under the same sort, though not yet the same degree, of pressure from market encroachments as his society had been in his time. So it is not surprising that the outstanding theorist of the thirteenth century—St. Thomas Aquinas—devoted explicit attention to problems of economic justice and produced a quite similar doctrine. Commutative justice required that things exchanged should be of equal value, otherwise one party to the exchange was cheated. The just price was that which gave each producer a return for his labour appropriate to his rank and skill. On the justice of merchants' gain from selling at a higher price than buying, Aquinas was seemingly more lenient than Aristotle. Trade for gain was allowed as just if the gain did not exceed a suitable return for the merchant's labour, the risks he took, and the costs of transportation. But it is significant that the ground on which this was allowed was that such trade might be beneficial to the household and to the community. The justice of trading for gain depended on the gain being moderate by customary standards and on the trade being potentially beneficial to the household or the community.

The medieval limitations on trade (which included a prohibition of usury and of monopolistic market-rigging) were not, as later theorists took them to be, perverse limitations on some innate propensity of the individual to 'truck, barter, and exchange one thing for another' as Adam Smith put it. They were, rather, outcomes of the value systems of societies not yet transformed by the market, societies in which the organization of production and exchange was subjected to social goals. They were defence mechanisms against a complete market take-over. A distinction was made between two kinds of exchange activities, and of the gains arising from them. Gains made by moving commodities from less-wanted to more-wanted areas were ethically unexceptionable: they took advantage merely of geographical terms of trade, and were
The death of the concept of economic justice may be said to have been proclaimed by Thomas Hobbes in 1651. Although he was no friend of the rising mercantile order, he saw that it had come to stay. Accordingly, he dismissed the claims of both commutative and distributive justice as irrelevant.

Commutative justice required that exchanges be of things of equal value. But as Hobbes saw it, 'the value of all things contracted for, is measured by the Appetite of the Contractors: and therefore the just value, is that which they be contented to give.' All market exchanges are therefore, by definition, exchanges of equal values, that is, values deemed equal by the exchangers.

Distributive justice required that a society's produce should be distributed in proportion to men's merits. But in a full-market society there is no measure of a man's merit other than what the market will award him: as Hobbes put it, 'the Value or Worth of a man, is as of all other things, his Price; that is to say, so much as would be given for the use of his Power...'. So any actual distribution is by definition a distribution in proportion to men's merits, and hence just; it cannot be judged by any non-market standard.

Hobbes set the tone of all subsequent liberal theories. Locke, agreeing with Hobbes in this as in so much else, was quite clear in his own mind that the market price was the just price, and he went into still more detail in asserting that any particular parcel of commodities could justly be sold by the same merchant at different prices in different markets at the same time.

Economic justice disappeared as a category of political and economic theory. It is not difficult to see why this happened then. For only then in the most advanced countries had the market changed, and was seen to have changed, qualitatively: human energies and skills—men's ability to work productively—became normally marketable and marketed. From then on, an increasing part of the whole working population sold their labour power rather than their products. Labour itself, as Hobbes saw, had become a commodity, the price of which was determined by the impersonal market. The sway of the market was thus potentially complete: the relative autonomy of the market from society and traditionally imposed norms was assured.

2 Leviathan, Ch. 15, p. 208.
3 Leviathan, Ch. 10, p. 151.
5 Leviathan, Ch. 24, p. 295.
There were some rearguard actions by custodians of traditional social values. In England, Tudor and Stuart governments tried to limit the market takeover by limitations on land enclosures, by regulation of wages and labour contracts, and by provisions to protect the work force from the worst effects of market fluctuations. Provisions of the latter sort continued into the nineteenth century, until swept away by the Poor Law Reform of 1834. But in the mainstream of both political theory and political economy, from the seventeenth century on, there was no more concern with economic justice.

Some radical theorists in the early nineteenth century, notably the so-called Ricardian socialists (Hodgskin, Thompson, Bray) writing in the 1820s and 1830s, did argue in terms of economic justice, tracing distributive injustice to commutative injustice. And by 1875 the German social democrats, in their Gotha Programme, put their case mainly in terms of distributive justice. But the most radical theorist of the century, Marx, held that all of that theory was fundamentally misguided precisely because it looked only at distributive relations, or the sphere of circulation or exchange, and not at the relations of production. His sharpest criticism was about the ‘vulgar socialists’ was their concentration on the distribution of income (‘the means of consumption’) instead of the way the consumable income was produced under capitalism. Demands for ‘equitable distribution’ of the whole social product were empty: ‘Does not the bourgeoisie consider that the present distribution is equitable? And is it not in fact the only “equitable” distribution on the basis of the present method of production?’ Again: ‘Vulgar Socialism (and with it a section of the Democrats) has taken over from bourgeois economics the method of treating and considering distribution as independent of the methods of production and thereby representing Socialism as turning principally on distribution.’ This, for Marx, was a dangerous mistake: the drive should not be for a just distribution of income but for new relations of production, since they determined both the distribution of income and the possibility of a transformation of the human condition.

The socialist movement, Marx held, should certainly seek to increase the workers’ share at the expense of the capitalists, but it should not delude itself by talk about equitable distribution. To make distributive justice the centrepiece of the socialists’ demands (as the Lasalleans, in their Gotha Programme, were doing) was to play into the hands of the capitalists, who could reasonably (on Marx’s own analysis) claim that there was nothing unjust or inequitable in the capitalists’ taking the surplus value that accrued to them from their buying labour power at its market value and benefitting from that purchase.³

That Marx thought it necessary to downgrade distributive justice does however show that at least the moderate German social-democratic movement by 1875 was putting its case in terms of economic justice. And as we shall notice, social-democratic and labour parties, and the labour movement generally in the West, have pressed their claims largely in those terms since then. The revival of economic justice, though not at a very profound theoretical level, came first from working-class practice.

Liberal mainstream theory—both political economy and political theory—has remained largely impervious to a concept of economic justice from the eighteenth century to the present. The classical political economists of the eighteenth and nineteenth centuries were indeed interested in analysing what determined the distribution of the annual produce of a nation as between landowners, capitalist entrepreneurs, and workers, but since they believed that what the freely competitive market did, or could do, was all for the best, they did not discuss the distribution in terms of justice. Later in the nineteenth century, as political economy turned into modern economics, it abandoned even an interest in the market determination of class distribution.

It is true that in liberal-democratic political theory, distributive justice has shown signs of revival intermittently since the mid-nineteenth century, but for reasons we shall see, it has never taken root. John Stuart Mill was shocked by the injustice of the distribution of wealth in his society, but since he attributed that distribution, not to the operation of the capitalist market, but to extraneous institutions, and since he still relied on competitive markets and a virtually unlimited property right,

³ For an elaborate discussion of Marx’s position on economic justice, see the controversy between Allen Wood and Z. I. Husami, in Philosophy and Public Affairs, 1 (1972), VIII. 1 (1978), and VIII. 3 (1979).

⁶ G. A. Cohen (‘Freedom, Justice and Capitalism’, New Left Review 126 (Mar-Apr 1981), 13, n.7) has pointed out that Marx was here objecting only to the social democrats’ failure to see that the distribution of income (the means of consumption) was an automatic result of the distribution of capital and land (the material means of production), and has concluded that Marx cannot be said to have been hostile to the whole idea of justice in distribution. True enough, but it is still fair to say that Marx downgraded the concept of distributive justice, for that concept has been, ever since Aristotle, mainly confined to the distribution of the means of consumption.


he could not establish a new foothold for a concept of distributive justice which would counteract the market distribution. In any case, distributive justice was never as important for Mill as were individual liberty and the improvement of mankind. Liberal theorists in the idealist tradition, such as T. H. Green, also made little of economic justice. What shocked Green was not so much the distributive injustice of late-nineteenth-century capitalism as its debasing of the human essence by preventing so many from coming within reach of the ‘moral vocation’ of man; and Green, like Mill, could see no alternative to the market.

Later liberal theorists have generally let the idea of economic justice go by default, since they also have relied on the market, though calling for some state action to offset its worst allocative effects. The most acclaimed theory of justice in our own time, that of John Rawls, is devoted to working out a general principle of distribution which will justify the class difference in life prospects which any market society (indeed, he argues, any society) is bound to produce. His is certainly a general theory of distributive justice. But it is scarcely recognizable as a theory of economic justice. For it starts from the claims of dissociated individuals, not of individuals as members of society, and assumes market-maximizing behaviour as their innate or essential attribute, whereas the hallmark of the concept of economic justice has been its assumption that social norms and ethical values should prevail over, or not be eroded by, impersonal market values.

It might be argued that Rawls’s theory does meet the criteria for a theory of economic justice, since it does propose to subject distributive arrangements to an ethical principle. But I do not think such an argument can be sustained. For Rawls sets a severe limit to the amount of redistribution of income allowed by his ethical principle, and the limit is dictated by the market economy.

His ethical distributive principle does not permit an increase of welfare-state redistribution to a point at which ‘greater taxes interfere so much with economic efficiency that the prospects of the least advantaged in the present generation are no longer improved but begin to decline.\(^{10}\) The test of economic efficiency is to be applied explicitly in ‘the competitive economy’,\(^{11}\) and it logically must be a completely market-dominated one in which the negative response of entrepreneurs to increases in taxation reduces the productivity of the whole economy. It is the classical model of the competitive capitalist market economy, in which impersonal market forces determine investment and productivity. Thus Rawls’s ethical distributive principle does not prevail over, but is overridden by, the capitalist market relations of production. And indeed this is the only position consistent with his fundamental Hobbesian assumption of unsocial maximizing individuals as the irreducible units of modern society.

We may conclude that the distributive component of the concept of economic justice has not been effectively revived in liberal, or accepted in Marxist, political theory.

The notion of commutative justice made even less of a comeback. It remained of no interest to the liberal theorists. Something like it did reappear, early in the nineteenth century in the writings of the Ricardo socialists, who held that it was through *exchanges* of unequal values that the working class was exploited. Their measure of equal value was equal labour input. They thought in terms of homogeneous labour, not the ranked labour of the medieval doctrine: they appealed not to a traditional hierarchical social order, but to a vision of a classless society. Not surprisingly, this made no impression on mainstream liberal political theory. Marx too rejected it, for much the same reason as he rejected the distributive justice concept of the Gotha Programme: both concepts focused on the sphere of circulation rather than on the fundamental relations of production. So commutative justice also got no foothold in nineteenth-century theory.

Thus the whole concept of economic justice seemed, by the nineteenth century, to have been knocked out of the running, or at least permanently crippled. The reason is plain: in the measure that the capitalist market economy triumphed, it rendered the old notions of distributive and commutative justice helpless and useless: they could no longer be used to fight the market takeover.

The reason for their failure may be put in another way. I said earlier that a concept of economic justice distinct from justice in general required that economic relations be seen as having become distinct from (that is, not engulfed in) social and political relations in general. That was a requirement for the historical *emergence* of the concept. We may now add that that is only a special case. The logical requirement for the *existence* of the concept is not only that the economic relations not be engulfed in the social and political relations, but also that the former must not engulf the latter. But that is just what they did in the seventeenth and eighteenth centuries. The relations of the market superseded all other relations. Critics on the left and on the right lamented, in the

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\(^{11}\) Ibid., p. 284.
nineteenth century, that the cash nexus had replaced all traditional social relations, and the received wisdom was that status had given way to contract. Economic relations became again indistinguishable from social and political relations, but now because they had swallowed them up. Not only did economic justice disappear: justice in general was reduced to, where it was not displaced by, market calculation of maximum utility, or the keeping of contracts. As long as the capitalist market economy was generally accepted as on balance beneficial, there was scarcely any use for a concept of justice at all, and little thought was given to it in mainstream theory.

Most obvious is the growth of trade unions, and labour and social-democratic parties, to the strength which brought the welfare-state measures typical of every advanced capitalist democracy. Since those measures were and are demanded in the name of economic justice, their arrival put economic justice on the agenda of all political parties.

A second change in the nature of the capitalist economy in the twentieth century was the decline of market competition in face of concentrations of capital which, in more and more sectors of the economy, let a few very large corporations dominate the market. When corporate capitals become so large that they can control markets instead of being controlled by them, it can no longer be said that the market automatically treats buyers and sellers equally, or that every exchange is by definition a just exchange. Thus, with the twentieth-century decline of competition, the market could no longer claim exemption from non-market ethical standards: the way was opened for some revival of commutative justice.

A third change, less obvious but no less important, is that the market is no longer expected, and no longer allowed, to do the whole job of allocation of rewards. The market no longer does the whole job of distribution of the total annual product between all those who may be said to have contributed to its production. In every advanced capitalist country, the state now intervenes in many ways in that allocation: the state prevents or distorts the allocation which the market would have made. The present allocation is indeed still done largely through markets, but it is not done by markets: the part that is done through markets is done by state and corporate power blocs operating in markets, not by autonomous markets.

The state has been compelled to intervene, partly by pressure from organized labour, partly by pressure from various sections of organized capital, and partly by the need to save the system from itself. These pressures continue. They indicate that the market by itself is widely regarded by the most advanced sections of capital, as well as by organized labour (and farmers), as incompetent to look after a fair allocation of rewards. So in this respect also, the market can no longer claim exemption from non-market ethical standards. Moreover, the state, which now shares the allocative function, must, in so far as it is a democratic state, claim that its economic policies are based on the public interest; and the most convenient, because most familiar, principle for the state to invoke is economic justice.

If these are the reasons why wide use is now being made of the notion of economic justice, how durable is that use likely to be? What are the
long-term prospects of the concept? We may look in turn at distributive and commutative justice.

5. The Probable Future of Economic Justice

(i) Distributive justice

Given a continuing enlargement of the state’s allocative and regulatory functions, and a continuing increase in the strength of the monopolistic or oligopolistic corporate sector, both of which tendencies may reasonably be presumed, what can we expect?

One possibility is such an alliance between corporate capital and the regulatory state as would negate social-democratic pressures by effectively destroying the democratic process. Such a corporatist or plebiscitarian state would neither have to accede to demands for distributive justice nor need to defend itself in those terms. It would appeal instead to other values—efficiency and stability. It would, indeed it already does, hold itself out as the only mechanism capable of saving the country from economic collapse—from massive unemployment and runaway inflation, which together are more to be feared than a little economic injustice. When calamity threatens, the distribution of misery becomes unimportant. The claims of distributive justice would be buried. That this is no fanciful possibility is suggested by the electoral success which right-wing parties have had in recent times in putting economic efficiency and stability ahead of distributive questions.

A second possibility, at the other extreme, is that the contest between democratic pressures and vested interests might go the other way. If democracy is not put down, democratic forces might take control of the capitalist state and transcend or transform our present managed capitalism. It is not impossible that such forces should be generated, both within sections of the working class who become convinced of the incompetence of managed capitalism and become resentful of their role as mere counters manipulated by impalpable power centres, and within a middle class increasingly aware of the deteriorating quality of life under late capitalism.

Supposing such a transformed society to have been brought into existence, would the concept of distributive justice have a continued lease of life? Not for long, I think. For such a transformed society is unlikely to be achieved by pressures which rely, as trade unions and social-democratic parties traditionally have done, mainly on making their case on grounds of distributive justice. By the time such a transformed society was reached, the main concern of the movements which had brought it into being, and which presumably would give it its direction, would no longer be distributive justice. Priority would have been given to other values, which may be summed up as quality of life: not merely the quality of the physical environment (calling a halt to pollution, ecological destruction, inner-city decay, etc.) but also the quality of the social and economic institutions which would be seen as determining (and hampering) the chances of the full use and development of human capacities (calling for an end to the degradation of work, and of play; the degradation of culture by the mass media; and the degradation of politics by manipulative oligarchic parties; in short, checking and overcoming the modern phenomena of alienation and domination.)

It is true that even such a society would still need a principle of allocation of the whole social product, as long as the productivity of the society was not sufficient to take care of all the wants of all its members without some principle of rationing, and the rationing principle would most easily be cast in terms of distributive justice. It would be hazardous to predict how long such a rationing principle would be needed. Perhaps a few more decades after such a transformation of society, but not indefinitely, for the need for rationing depends not on productivity alone, or on levels of material desire alone, but on the relation between them. And it seems reasonable to expect that, if we are not taken over by an anti-democratic corporatist state, we can manage a less than infinite level of material desire, and a higher level of productivity.

We may conclude, then, that, if the democratic state survives, other values will have a higher priority than distributive justice. The concept of distributive justice would not be put down, it would wither away.

(ii) Commutative justice

We have still to ask about the prospects of the concept of commutative justice. How substantial is its twentieth-century revival, and will the forces which led to that revival keep it up?

The extent of the revived use of the concept of commutative justice in Western countries’ legislation and judicial decisions is at first sight quite impressive. For instance, the US federal ‘Uniform Commercial Code’, parts of which have been implemented by legislation in some of the American states, permits the courts to refuse to enforce ‘unconscionable’ contracts or clauses in contracts. The law of contract, which used to be the mainstay of pure market relations, and had no ethical content, is now, in the common-law countries, being reinterpreted to
that disallowance on that ground has not been carried very far. If it had been, the courts would have had to disallow a great many wage contracts—indeed all wage contracts except those made by trade unions that were as powerful as the employing corporations (or state agencies).

A different doubt arises about legislation and judicial decisions which directly use the test of ‘exchange of equal values’, or condemn contracts embodying ‘gross excess of price’. In these cases we must ask what the measure of values, or of excess of price, is. And apparently the measure is simply the supposed price that would have been set by the market if it had been fully competitive. ‘Normal’ market price is taken as the just price. This is scarcely a revival of the old commutative justice, which tried to control market price by imposing a just price based on traditional social needs. Now, instead, a hypothetical competitive market price is being used to try to control actual uncompetitive market price. Still, it is like the old commutative justice in that it does embody a notion of a just price which is taken to have been the norm in an earlier society: the earlier society, now, is the liberal competitive market society. Legislators and judges who cherish liberal market values are thus quite at home with the new justice in exchange.

But this revival of something like commutative justice is not likely to have any longer a run, in the Western world, than the concept of distributive justice, in the face of the late twentieth-century trend to the state takeover of the allocative market. If corporate capital replaces the democratic state with a corporatist state, electoral expediency will no longer require legislation protecting the weaker bargainor. If, on the contrary, the democratic state flourishes and takes over the control of capital, the justice of private contracts will sink in importance compared with the larger issues of quality of life. Commutative justice, like distributive, will either be put down or wither away.

The only thing that is likely to prolong the life of the concept of economic justice is the growing pressure of the Third World countries which naturally press the concept of economic justice in the hope of improving their position vis-à-vis the economically advanced world. The Third World countries are able to put their claims in terms of either distributive or commutative justice. In the terms of world-wide distributive justice, measured either by need or by desert, they can make a strong claim. They can also make a strong claim in terms of commutative justice, since they can easily demonstrate that the capitalist world, by virtue of its superior strength in an oligopolistic international market, imposes unfair terms of trade on them. Thus Third World

14 Ibid., p. 335.
countries will still find the concept of economic justice a useful offensive or defensive weapon against their economic subjugation by the advanced countries. This will even be reflected back into the conscience of left-liberal circles in the rich countries, but that will scarcely check the erosion of the concept there.

In summary, then, it seems probable that the concept of economic justice will not have a very long future. It will struggle along for some decades yet in the capitalist countries (and longer in the Third World), until in the advanced countries it is either brought down entirely by a totalitarian or corporatist state, or is transcended in a new society by a concept of human fulfilment which will surpass the concept of economic justice.

CHAPTER 2

Problems of Human Rights in the Late Twentieth Century

One might think that everybody must be in favour of human rights. There might be some doubts about animals’ rights, and even more doubts about whether trees have rights (a question which has been seriously raised), but surely we might expect that no humans would decry human rights. Yet many of them do, especially since the enlargement of the concept of human rights that was formalized in the United Nations Universal Declaration of Human Rights in 1948.

The only persons who now uniformly endorse human rights are politicians (and they usually do so in terms that are rather non-committal, particularly about the economic and social rights asserted in the UN Declaration). Philosophers and political theorists are divided: some see the new human rights’ package as a logically indefensible mess. Businessmen are sceptical or hostile, seeing human rights advocacy as the thin edge of a wedge that is being driven into the historic rights of private enterprise and market freedoms. Lawyers may be divided according to their positions or aspirations: those who are or intend to be corporation lawyers will share the businessman’s scepticism or hostility; those who have, or seek, a career in the civil service will model themselves on the politicians’ flexible or ambiguous position; those who choose private practice will, being private enterprisers, trim their sails to the prevailing or expected winds.

We should not be surprised at such division of opinion about human rights. For in any class-divided society and, above all, in a class-divided world—I mean a world divided into the poor nations and the rich nations—the slogan ‘human rights’ is bound to appear—as it has historically been—something of a threat to the established order. That was certainly the case in the French Revolution, when the ‘rights of man’ were pressed as a weapon against the highly unequal class state of the old regime. And it is so again now, when human rights, now much expanded to include all sorts of economic and social rights, as well as the civil liberties and political rights which were the main demands of