

Can Social Justice Be Achieved?

From Aristotle to
Friedrich Hayek:
Bertrand de
Jouvenel's Analysis
of the Desirability and
Possibility of a Just
Social Order

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Can social justice be achieved? Bertrand de Jouvenel wondered in his 1954 paper “De la Justice” [“On Justice”]. He answered: “It is impossible to achieve the reign of Justice, if the latter is conceived of as an established, permanently maintained coincidence of social organization and abstract vision. The reign of Justice is achievable if the spirit of justice presides over all decisions that imply sharing.”

His analysis is worth being investigated: It includes a prefiguration of spontaneous order theory and precedes Hayek’s response to the achievability of social justice. It pays careful attention to the definition of justice by classical philosophers and accounts for the distributive scope of commutative justice. “De la Justice” highlights the filiation from classical philosophers to Hayek.

Our contemporaries’ extreme sensitivity to income disparity leads them many a time to dream of the advent of a more just society. There are times when we are jealous of the luck of the happy people in this world or feel profound compunction when confronted with situations of extreme misery. Nor have Christians wanted to fall behind in the definition of the claims of social justice. Not only have they coined the phrase,¹ they also seem to be responsible for its meaning among our fellow scholars, one based on a definition refined on by Mgr. de Solages in 1949: “the obligation to build, complete or transform a just social order.”²

To proclaim such an obligation implies that it is possible to build the society of our dreams. It is precisely against this argument that Friedrich Hayek raised his voice in the name of history and law: From his point of view it is *conceit* to believe in the possibility of creating an ideal social order. He also held that social justice is but a mirage. Unsurprisingly, Father Valadier thought that Hayek

was “incapable of understanding the nature of morals.” Catholics like him state that “our societies, embraced by tradition, are not, as such, all organized [and that] it is part of a human calling to introduce a human order”:³ They presume that what Hayek considered to be nothing but *conceit* is possible. Can there be a clearer opposition?

Christians concerned with orthodoxy cannot accept this opposition: Is a demonstration that an ideal social order is impossible a sufficient indication that its author cannot understand the nature of morals? Perhaps it means, for instance, understanding morals not as transformation of the world but as soul appeasement. Is social justice truly a mirage? It is undoubtedly desirable that the virtue of justice should preside over a distribution of the assets that family life or profession may bring us. Thus, this point of view does not seem so unbending, and, along with Bertrand de Jouvenel, Christians concerned with orthodoxy may wish to conclude that: “It is impossible to achieve the reign of Justice, if the latter is conceived of as an established, permanently maintained coincidence of social organization and abstract vision. The reign of Justice is achievable if the spirit of justice presides over all decisions that imply sharing.”⁴

We propose to expand on these two statements. To do so, it is imperative that we turn to the classical concept of justice and virtue and distinguish commutative from distributive justice. It is upon justice that the whole of Bertrand de Jouvenel’s reflection rests, in particular, his least known argument: the distributive dimension of commutative justice. At this stage, we believe that it is useful to underline Hayek’s arguments: His typology of the human interaction of various kinds of orders and justice, presiding over respect for rules of conduct, is the crowning touch to Bertrand de Jouvenel’s demonstration. It remains to follow this strand of thought.

The Perspective of Classical Philosophers

Let us then start with briefly presenting the classical philosophers’ concept of justice, more particularly the originally Aristotelian distinction between corrective and distributive justice. This will allow us to highlight that those who do not understand that these two kinds of justice differ in their techniques, not in their domains, run the risk of negating the distributive dimension of commutative justice as a result of confusing distributive justice with state redistribution.

In the classical perspective,⁵ justice is the virtue whereby one regulates one’s acquisitive appetite. In other words, it is a disposition, acquired by repetition, deliberately to respect the individual rights of others, their external properties, and ranks and honors, whenever we relate to them. According to Aristotle’s

Nicomachean Ethics, quoted by Bertrand de Jouvenel together with Justinian's *Institutes* and Saint Thomas Aquinas's *Summa Theologica*, justice is precisely a disposition according to which a just man defines himself as the one who can deliberately choose to do what is just, the one who will, when the distribution of a desired asset has to be made between him and some other man or between two other people, not assign to himself too big a part or assign to his neighbor too small a part but assign to each one the proportionately equal part that he is entitled to and who acts in the same way when the distribution is made among third parties.⁶

Thus, justice consists in respect for individual rights. Its implementation rests on the knowledge or determination of these privileges. Therefore, we can differentiate among as many kinds of justice as we can among ways of creating privileges. Aristotle differentiated between distributive and corrective, also designated by the classics as commutative justice, according to whether individual rights have, or have not, been determined.

Aristotle called distributive the kind of justice that regulates the sharing, among members of a group, of objects that have not been appropriated. When it comes to this kind of justice, the way of determining privileges consists in a distribution according to geometric proportion, given that if distribution is based on the common wealth, it will be according to the same proportion that presided over the individual contributions of the community's members.⁷

He called corrective the kind of justice that consists in rectitude in private transactions,⁸ those that are concerned with already appropriated objects. In this sort of justice, the way to assign rights consists in a distribution according to arithmetic equality. Indeed, it is necessary that the established relationship should abide by an *equal* which is an average between a *plus* and a *minus*, not between loss and profit taken relatively: The profit and the loss respectively are plus and minus in opposite ways—more of a good and less of an evil being profit, its contrary loss.⁹

Distributive and commutative justice, therefore, differ not in their domains—they both consist in respect for other people's rights—but in the techniques that allow the men who enforce them to determine individual rights—proportion or strict equality. As a result, as stated by P. Dognin, these two kinds of justice

support each other. Distributive justice prepares the field for commutative justice, for it attributes the things that initially were common, and proceeds to the division into parts. Commutative justice contents itself with executing the decisions of distributive justice and guaranteeing the respect of the shares the model of which distributive justice provides it with.¹⁰

It is to be feared that those who do not properly understand that the distinction between commutative and distributive justice bears on their techniques, not their domains, overlook the distributive aspect of commutative justice and forget that the requirements of distributive justice materialize the demands of commutative justice: They might demand a redistribution, if not of the patrimony, at least of incomes and, by assuming that the state is a subject of distributive justice, they might mistake distributive justice for state redistribution.¹¹

Friedrich Hayek's Analysis

It was the better to denounce the liberticide character of state redistribution that Hayek was led to analyze its cause, distribution according to merits, otherwise called social justice. When applied to the market order, social justice is a meaningless expression, which makes it pointless to believe that any social justice is possible there. In order to bring out the vigour of this conclusion, we will briefly present Hayek's typology of grown orders and made orders that, according to him, are the two ways to coordinate individual actions. We will then specify the respective kinds of justice behind each of these two sorts of orders.¹²

Hayek wondered about the coordination of individual actions because he noted that, in any civilized society, knowledge is dispersed among all individuals. Given individual resources and circumstances, each one of us has some knowledge of the actions that he can perform; more specifically, each one foresees that such and such action is likely to be successfully undertaken. There remains to understand the factor that ascertains the accuracy of the estimate of such facts and the coordination of individual actions. Hayek spoke of order and differentiated between two types: the artificial or made order and the spontaneous or grown order. The made order (as happens with organizations) is a society the regulations of which have been defined in conscious fashion and deliberated on by human will. Objectives are pursued in common, each individual having a specific task to fulfil. The available means to achieve these goals are attributed according to each individual's tasks. On the contrary, no particular objective is imposed on the members of a grown order, as for instance the participants in markets. Within this order, each one follows his own goals with the aid of his own means, just expecting to receive such profits from society as can derive from the relationships with his peers. Coordination of individual actions cannot be made there in a conscious way or deliberated on by a central power. It is "the result of human action but not of human design."¹³ In other words, if made orders incorporate their founders' intentions, grown orders develop spontaneously through the experience of successive generations.

A particular kind of justice relates to each of these two orders. In order to understand this point properly, it is necessary to specify the attributes of their respective rules of conduct. In opposition to made orders, which are presided over by an *ad hoc* legislation expressing particular and specific prescriptions (like the public law respecting organizations), in the grown order, the coordination of individual actions depends on the reliability of behavior. Human beings make theirs predictable as they follow general and abstract rules of conduct, that is, the juridical corpus induced by the experience of juridical practice, specifically, the rules “that David Hume called ‘the three fundamental laws of nature, *that of stability of possession, of its transference by consent, and of the performance of promises.*’”¹⁴ In a grown order, “law is therefore not a means to any purpose, but merely a condition for the successful pursuit of most purposes.... It [makes] people who [operate] under it more effective in the pursuit of their purposes.... The rules of law are required to preserve ‘order’ ... namely to effect a certain correspondence between the actions of different persons.”¹⁵ Thus, within the respective frameworks of grown and made orders, the word *justice* takes on different meanings. In a made order, justice is the principle according to which central authority divides among agents the means of actions and the revenues of common action. In a grown order, justice consists in individuals’ respecting rules of conduct that Hayek called just in order to differentiate them from the rules of made orders. According to him, social justice belongs to the first of these two kinds of justice: the qualifier, social, accordingly specifies that “society treats individuals according to their deserts.”

From this distinction, Friedrich Hayek concluded that the expression *social justice* becomes meaningless when applied to the market order:

In such a system [market economy] in which each is allowed to use his knowledge for his own purposes the concept of “social justice” is necessarily empty and meaningless, because in it nobody’s will can determine the relative incomes of the different people.... In a free society in which the position of the different individuals and groups is not the result of anybody’s design—or could, within such a society, be altered in accordance with a generally applicable principle—the differences in reward simply cannot meaningfully be described as just or unjust.¹⁶

Yet, it so happens that the expression *social justice* is constantly applied to the market order. Hayek was thus led to state that such application might leave one under the impression that a certain justice in the distribution of incomes was possible, while truly this is not the case:

Indeed, no system of rules of just individual conduct, and therefore no free action of the individual, could produce results satisfying any principle of distributive justice. We are, of course, not wrong in perceiving that the effects of the processes of a free society on the fates of the different individuals are not distributed according to some recognizable principle of justice. Where we go wrong is in concluding from this that they are unjust and that somebody is to be blamed for this.... There are, no doubt, many kinds of individual actions which are aimed at affecting particular remunerations and which might be called just or unjust. But there are no principles of individual conduct which would produce a pattern of distribution which as such could be called just, and therefore also no possibility for the individual to know what he would have to do to secure a just remuneration of his fellows.¹⁷

Bertrand de Jouvenel's Answer

Even though Hayek called social justice distributive (undoubtedly it would be more judicious to call it redistributive), it seems deceiving to draw a parallel between, on the one hand, the two kinds of justice, the one characterizing grown orders, the other made orders, and, on the other hand, commutative and distributive justice such as they were defined by the classical philosopher. The latter kinds of justice are differentiated by their techniques, not their domains, as against the former. A clear perception of the falseness of this parallel allows us to assert how much Hayek's analysis is close to the thought of classical philosophers. The justice that, according to Hayek, consists in the respect, by individuals, for the rules of conduct in the grown order within which they act, embraces the two kinds of justice distinguished by the classics. Therefore, the classics could have stated, together with Hayek, that our contemporary concept of social justice bears no relation with what they understood to be justice;¹⁸ hence, too, the disappointment they could have felt by not discovering in Hayek an analysis of the distributive dimension of commutative justice. For that reason, Bertrand de Jouvenel's "De la Justice" is worth being reinvestigated.¹⁹ It includes an anticipation of the grown order theory and anticipates Hayek's answer as to whether social justice is possible, and, being attentive to the classical definition of justice, it gives adequate expression to the distributive dimension of commutative justice. Let us follow this strand of thought.

Immediately after having recalled the classical definition of justice, Bertrand de Jouvenel analyzed the meaning given by contemporary scholars to the word *justice*:

The justice that we speak of today is no longer that virtue of the soul (defined by the classics), it is a state of things. The word no more represents to the mind a certain way of being among men, but a certain configuration of Society; it no longer applies to personal attitudes, it aims at collective arrangements. Instead of thinking that social relations are improved by justice within men, it is thought, on the contrary, that the introduction of justice within institutions generates improvement within men.²⁰

Having realized this, he sought to know what systems could be considered just, and, to do so, he favored the classical definition, particularly, what it expressed apropos of rights. Is a social system just when it respects rights only? The prestige of the protective concept of rights might support such a reading if it was not balanced by the strength of aspiring to the introduction of a perfect order.

Far from a positivist conclusion equating justice with simple compliance with the established rule, Bertrand de Jouvenel analyzed the sentiment of fairness and rediscovered Aristotle's definition of distributive justice (proportioned equality): "in what concerns something at stake, what men find just is keeping among them the relations that they have concerning something else."²¹

Because various relations refer to that proportion the respect of which justice consists in, the relevance of the retained relation is all the more acute as the resources to be distributed are the result of certain efforts. Bertrand de Jouvenel thus suggested a rule of experience according to which any new resource is to be attributed to those whose efforts created it. On this basis, he was in a position to elaborate a fable in order better to show that "the idea of totally organizing distribution is but presumptuous fantasy."²² He was also able to create a pattern of the "sharing of the fruits among the group" and, foreseeing Friedrich Hayek's theory of grown orders, he emphasized:

The state of equality, observed at a certain instant, is the result of a multiplicity of phenomena over which certain actions can, undoubtedly, be exercised, but it is impossible or unwise to wish for the global cancellation of all their effects in order to create a condition of sharing chosen by the mind, a solution which transcends the phenomenon of social life.²³

Such an acknowledgement does not mean that distributive justice does not preside over the sharing of all resources. Although he did not go the whole length of stating that the demands of distributive justice are fulfilled by respect for the demands of commutative justice, Bertrand de Jouvenel believed that, on the contrary, everybody was led to practice distributive justice:

It is an attribute of a weak, indolent mind to view distributive justice as the will of some supreme dispensing power. It is everybody's duty, as no existing free being does not have to make decisions about sharing with others, let it simply be dividing among them his efforts and his time (as for instance, a housewife). Since each one enforces commutative justice by applying himself to creating the equivalent of what he received, each one enforces distributive justice by enforcing sharing with a view to one's responsibility and by comparing one's peers according to a relevant, circumstantial relation.²⁴

All that remained for Bertrand de Jouvenel was to formulate his answer to the question that underlay the whole of his analysis: Is social justice possible? This answer forecast the one Friedrich Hayek (equipped with his theory of grown orders) announced later on and reached beyond it. Because he was well versed in the classics, he was not unfamiliar with the distributive dimension of commutative justice:

No proposal is so likely to scandalize our contemporaries as this one: it is impossible to establish a just social order. However, it logically originates in the very concept of justice that we have been at such pains to elucidate. To do justice is to employ in a distribution process the relevant sequential order. Yet it is impossible for the human mind to establish a relevant sequential order to all resources and in all respects. Humans have needs to fulfil, merits to reward, possibilities to actualize: considering these purposes solely under these three aspects and supposing we could assign them precise ratings, which is not the case, we would still not know how to balance the three sets of adopted ratings. Design collides with a radical impossibility.

Should we, therefore, state that justice cannot rule in society? It should be affirmed if justice is only to be found in an organization that coincides with some abstract vision. We will conclude differently—it is impossible to achieve the reign of justice, if the latter is conceived of as an established, permanently maintained coincidence of social organization and abstract vision. The reign of justice is achievable if the spirit of justice presides over all decisions that imply sharing.²⁵

Notes

- * We are indebted to the late Raoul Audouin and Professor Norbert Col for their comments and assistance, and also to Professeur Jean-Yves Naudet for being at the origin of our collaboration. May they accept our gratitude.
1. For the history of the use of the social justice expression by Catholic theology, cf. J.-Y. Calvez and J. Perrin (1959/1961), chap. 6 “La Justice,” 178–211 and 543–67, and *Idem* 1963, 117–23, who reveal that the phrase was first used by Taparelli to designate what Thomists called legal justice (for an analysis of his influence on the rebirth of Scholastic natural law, cf. T. C. Behr 2003). However, Catholic moral theology was ultimately influenced by the doctrines of nonbelievers, which testifies to the need felt by certain theologians to underline these influences the better to understand them (cf. P. Vallin 1960) or to fight against them (cf. G. de Broglie 1972). For greater accuracy on the precise meaning of the social justice expression in pontifical documents, namely in *Quadragesimo Anno*, cf. Jean Madiran (1961).
 2. Our translation. B. de Solages (1949), 127, drew a caricature of the Aristotelian-Thomistic pattern of the virtue of justice in order to oppose it to his concept of social justice as social organization. For a more sophisticated explanation of its contemporary meaning, also based on distance from an Aristotelian-Thomistic pattern, cf. P. Antoine (1961).
 3. P. Valadier (1983), 78–79 (our translation).
 4. Our translation from the French: “Le règne de la justice est impossible, conçu comme la coïncidence établie et continuellement maintenue de l’arrangement social avec une vue de l’esprit. Le règne de la Justice est possible dans la mesure où l’esprit de justice préside à toute décision impliquant un partage.” B. de Jouvenel (1955), 212.
 5. In order to highlight the existence of a definition of justice that was shared by the classics (Aristotle, the Romans, and Saint Thomas Aquinas), cf. Villey, 1961.
 6. Cf. Aristotle, 1134-a 1 et sq.
 7. Cf. Aristotle, 1131-b 30 et sq.
 8. Cf. Aristotle, 1131-a 1.
 9. Cf. Aristotle, 1132-a 15–20. If the relation (for instance, robbery) is involuntary on one of the parts, corrective justice consists in ultimately possessing an equal quantity to what was possessed previously (cf. 1132-b 18). If this relation is voluntary on both parts, for instance, in selling, purchase, consumer loan, deposit or rental, (cf. 1131-a 4), the just corrective consists in both parties receiving precisely what they gave: they state that they have what is rightly theirs and that there is no loss or profit (cf. 1132-b 17).

10. Our translation from the French: “se prêtent un mutuel secours. La distributive prépare le champ d’action de la commutative en appropriant des choses qui, d’entrée de jeu, sont communes et en y faisant des parts. La commutative se borne à exécuter les décisions de la distributive et à assurer le respect des parts dont elle lui transmet le dessin.” Dognin, 1955, 20.

11. Such an attitude is reinforced by a traditional interpretation of an ambiguous extract from Saint Thomas Aquinas’ *Summa Theologica* (IIa IIae Q. 61 art. 1), stating that the subject of distributive justice actually is the state. Dognin (1961) challenges the “Statist” hypothesis that distributive justice has traditionally, and erroneously, been associated with.

It is an understatement to evoke the possible existence of people that make this confusion. As Friedrich Hayek underlined, the formula, “social justice,” “seems in particular to have been embraced by a large section of the clergy of all Christian denominations, who, while increasingly losing their faith in a supernatural revelation, appear to have sought a refuge and consolation in a new ‘social’ religion which substitutes a temporal for a celestial promise of justice” (Hayek 1976, 66).

Hayek criticized the encyclicals, *Quadragesimo Anno* (1931) and *Divini Redemptoris* (1937), of Pope Pius XI for having “made the aim of ‘social justice’ part of its official doctrine” (Ibid., 66), stressing that the “term ‘social justice’ (or rather its Italian equivalent) seems to have been first used in its modern sense by [the neo-scholastic theologian] Luigi Taparelli d’Azeglio” (Ibid., n. 8, 176). In opposition, M. Novak stated that Hayek’s criticism was not aimed at Aquinas, Taparelli d’Azeglio, the ‘solidarist’ German Catholics, and Pope Pius XI, but at socialist concepts of social justice (Novak 1989). For some French comments, cf. the authors mentioned in n. 2, but it seems to us that some Catholic theologians, like those mentioned in n. 3, including P. Antoine (1961) that Hayek read (see Ibid., n. 8, p. 176), try to legitimate the new concept of social justice that they promoted on the authority of the encyclicals.

12. For an analysis of Hayek’s concept of justice, cf. Moreira (1996).

13. The title of Hayek’s founding article, leading to his theory of grown orders (cf. Hayek 1966).

14. Hayek (1976), 40.

15. Hayek (1973), 113.

16. Ibid., 69.

17. Ibid., 69–70.

18. Hayek stressed that “the phrase ‘social justice’ ... has become a dishonest insinuation that one ought to agree to a demand of some special interest which can give no real reason for it”; it “aims [most of the time] at much more sordid sentiments: the dislike of people who are better off than oneself, or simply envy” (Hayek 1976, 97,

98). Is it necessary to point out that envy, being no more than robbery in thought, constitutes, according to classical philosophers, one of the vices that run against the virtue of justice?

19. Hayek read about three books by Jouvenel, *Power: The Natural History of its Growth*, which he reviewed (Hayek 1948); *The Ethics of Redistribution*, which he called “very important” in *Law, Legislation, Liberty* (Hayek 1976, 177n8) and *Sovereignty*, which he quoted several times in *Law, Legislation, Liberty* (Hayek 1976, 177n8, 182n38, and Hayek 1979, 202n41), especially the conclusion of the chapter “On Justice” that he also deemed very important (Hayek 1976, 177n8).
20. Our translation from the French: “La Justice dont on parle aujourd’hui n’est plus cette vertu de l’âme [que définissaient les classiques], c’est un état des choses. Le mot ne présente plus à l’esprit une certaine manière d’être des hommes mais une certaine configuration de la Société; il ne s’applique plus à des attitudes personnelles, il vise des aménagements collectifs. Au lieu de penser que les rapports sociaux sont améliorés par la justice dans les hommes, on pense au contraire que l’instauration d’une justice dans les institutions est génératrice d’amélioration dans les hommes.” Jouvenel (1955), 184.
21. Our translation from the French: “Ce que les hommes trouvent juste c’est de conserver entre les hommes, quant à quelque chose qui est en question, les rapports que les hommes ont entre eux quant à autre chose.” Ibid., 195.
22. Ibid., 206.
23. Our translation from the French: “L’état d’égalité, photographié à un instant donné, est la résultante d’une foule de phénomènes, sur chacun desquels certaines actions peuvent sans doute être exercées, mais dont il est impossible ou insensé de vouloir annuler globalement tous les effets pour créer un état de répartition élu par l’esprit, solution transcendant le phénomène de la vie sociale.” Ibid., 210.
24. Our translation from the French: “Il est d’une pensée pauvre et paresseuse de se représenter la justice distributive comme le fait d’un suprême dispensateur. Elle est le devoir de chacun, ne se trouvant aucun être libre qui n’ait à prendre des décisions de partage entre autres, ne s’agit-il que de leur partager ses efforts et son temps (cas de la mère de famille). Comme chacun applique la justice commutative en s’appliquant à rendre l’équivalent de ce qu’il a reçu, chacun applique la justice distributive en opérant le partage avec le souci de sa responsabilité et en comparant les copartageants sous le rapport pertinent à l’occasion.” Ibid., 211.
25. Our translation from the French: “Aucune proposition n’est aussi propre à scandaliser nos contemporains que celle-ci: il est impossible d’établir un ordre social juste. Pourtant elle découle de la notion même de la justice que nous avons péniblement élucidée. Faire justice est appliquer dans une répartition l’ordre sériel pertinent. Or il est impossible à l’esprit humain d’établir un ordre sériel pertinent à toutes

ressources et à tous égards. Les hommes ont des besoins à satisfaire, des mérites à récompenser, des possibilités à actualiser: en les considérant sous ces trois aspects seulement et à supposer qu'on pût les affecter à ces trois égards d'indices exacts, ce qui n'est pas, on ne saurait encore pas comment pondérer entre eux les trois jeux d'indices adoptés. Le dessein se heurte à une impossibilité radicale.

Faut-il donc dire que la justice ne saurait régner dans la Société ? Il faut le dire si on ne trouve la Justice que dans un arrangement coïncidant avec une vue quelconque de l'esprit. Mais nous concluons autrement ... Le règne de la justice est impossible, conçu comme la coïncidence établie et continuellement maintenue de l'arrangement social avec une vue de l'esprit. Le règne de la Justice est possible dans la mesure où l'esprit de justice préside à toute décision impliquant un partage." *Ibid.*, 212.

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