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ADAM SMITH AND THE PROBLEM OF JUSTICE IN CAPITALIST SOCIETY

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THE CONCEPT OF JUSTICE

ON the occasion of the bicentennial of the publication of the *Wealth of Nations* we finally saw capitalism evaluated on the basis of Adam Smith's own conception of justice.¹ Normally, capitalism has been analyzed with external norms. This is not inappropriate as a final stage of evaluation but it tends to be narrow if it is the only approach used. The present study will carry the analysis further by distinguishing between different conceptions of justice, by looking closely at Smith's concept and by applying both his and the normally used conceptions to the problem of justice in capitalist society.

The concept of justice comes to philosophy mainly from the Greeks, and it is widely recognized that it has had a broader Greek meaning than the Latin *iustitia* or the English concept of justice familiar to capitalism.² Plato and Aristotle, accordingly, used justice to mean either the *general* virtue of goodness or righteousness or in the broad sense of acting fairly.³ But in both senses justice referred to a total way of acting in all personal, commercial, social and political relationships which the individual maintained in the community of the Greek city-state. Alexander the Great (or Eratosthenes among philosophers), then, took essentially this same broad meaning of justice and extended it to include relationships in the empire-state; and from this root it has taken hold among modern nation-states—especially those outside the British tradition.⁴

A third conception also has its roots in Aristotle but gives justice a much

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¹ James M. Buchanan, *The Justice of Natural Liberty*, 5 J. Leg. Studies 1 (1976). For the general problem of justice in capitalist society, see Irving Kristol, *Capitalism, Socialism and Nihilism*, The Public Interest, Spring 1973, at 3.

² See remarks of Sir Ernest Barker in the Introduction and Appendix II of *The Politics of Aristotle* lxix, 362-63 (Ernest Barker trans. 1962) and Francis Cornford in *The Republic of Plato* 1 (Francis Cornford trans. 1945).

³ Ernest Barker, *Aristotle's Conception of Justice, Law and Equity in the Ethics*, in *Politics of Aristotle*, *supra* note 2, at 362-63 and *Politics of Aristotle*, at 132 § 3.

⁴ Ernest Barker, *Introduction*, in *Politics of Aristotle*, *supra* note 2, at lix.

more limited meaning since it was also influenced by the Christian idea of separating Caesar's justice from God's justice. It is most clearly enunciated by St. Thomas Aquinas who distinguishes between God's righteousness which expects man to be fair and to act with mercy to "succor the needy . . . and to be liberally beneficent" and a natural justice which more narrowly "renders to each one what is his and claims not another's property." St. Thomas here openly breaks with the earlier Greek broader conception used by St. Augustine by saying that justice is *sufficiently* defined as giving "each one what is his" and that it is the realm of mercy or beneficence to give "what is not theirs but ours" to those who are in need. The virtue of goodness includes both the virtues of mercy and justice although he adds that "by a kind of reduction" justice may be viewed as the principal virtue.⁵ But justice is only the principal virtue in a limited sense, for "when magnanimity is added to justice it increases the latter's goodness."⁶ Critically, the rectitude of society is separated from that of the state inasmuch as the latter is not designed to enforce all virtue, but only is to forbid "the more grievous vices . . . and chiefly those that are the hurt of others." The function of the state, consequently, is to seek justice by controlling murder, violence, theft and cheating while beneficence and the other social virtues are in the province of individuals and of religion and will ultimately only be judged by God in the next world.⁷

A final conception of justice goes further and does not see justice as a quality which inheres in any collectivity like the state at all but simply defines the good as the sum of the self-interest or hedonistic decisions made by individuals. Thus, Bentham held that "the community is a fictitious body" and that the "interest of the community . . . is . . . the sum of the interests of the several members who compose it."⁸ Justice, then (although utilitarians would reject the term itself), is simply the result of the calculations of pains and pleasures resulting from man's condition as he is which determines "what we ought to do, as well as . . . what we shall do."⁹

ADAM SMITH'S CONCEPTION OF JUSTICE

In evaluating the different conceptions of justice which might apply to the capitalist or free society as conceived by Smith, the utilitarian one must be rejected immediately because utilitarianism must begin with reality as it

⁵ 2 St. Thomas Aquinas, *Summa Theologica* pt. 2, Q. 58, art. 11 (Fathers of the Eng. Dominican Province Trans. 1947).

⁶ *Id.* at art. 12.

⁷ 1. *id.* at pt. 2, Q. 96, art. 2; 2 *id.* at pt. 2, Q. 66, 77, 104.

⁸ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* 3 (Hafner ed. 1948) (1st ed. 1789).

⁹ *Id.* at 1.

is and hence existing property arrangements, *as they are*, must be considered "just."¹⁰ Smith, on the other hand, conceived justice as a natural sentiment of mankind which demanded *restitution* for *past* injustices and which, therefore, simply could not accept present property distributions. To him,

the violation of justice is injury; it does real and positive hurt to some particular persons, from motives which are naturally disapproved of. It is, therefore, the proper object of resentment, and of punishment which is the natural consequence of resentment.¹¹

Indeed, without this view of justice, capitalism could not be said to have a theory of its central element of private property other than to accept whatever property distribution the government desired. That is, there would be no *private* property. As Rothbard has noted, if government felt pressured to institute a *laissez-faire* capitalism but first granted ownership of whole states to powerful families (New York to the Rockefeller family, Massachusetts to the Kennedy family, etc.), a utilitarian would be forced to begin his new regime with that unjust and coercively imposed arrangement of property as the status quo.¹² But, except for prudential considerations, capitalism as expounded by Smith would argue that those who had their property taken from them would be unjustly treated, that the "rent" charged by the families would be expropriation, that people would never submit to this injustice, and that the property should be restored to its proper owners.¹³ Indeed, Smith held that "the violation of justice is what men will never submit to from one another" in this world and that if any system is to survive there it must attempt to guarantee justice.¹⁴

It also seems clear that Smith did not hold either of the undifferentiated Greek views of justice; and, further, when he is viewed from this perspective he is easily misunderstood. Cropsey, for example, states that "Smith believed he had been able to ground morality on a phenomenon of the passions alone" and that, therefore, to him as with the other philosopher of capitalism, John Locke, "nature continued univocally to mean preservation."¹⁵ This view ignores the fact that for these theorists the major division

¹⁰ Again, utilitarians would not call this just but would simply assume the present arrangement; for example Gordon Tullock, *The Logic of the Law* ch. 1 (1971) and see Virginia Held, *The Public Interest and Individual Interests* 123-24 (1970).

¹¹ Adam Smith, *The Theory of Moral Sentiments*, in *Adam Smith's Moral and Political Philosophy* 117 (Herbert Schneider ed. 1970) [hereinafter cited as *Theory of Moral Sentiments*].

¹² Murray N. Rothbard, *Justice and Property Rights*, in *Property in a Humane Economy* 105 (Samuel L. Blumenfeld ed. 1974).

¹³ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* 170, 674-75 (Edwin Cannan ed. 1937) [hereinafter cited as *Wealth of Nations*].

¹⁴ *Theory of Moral Sentiments*, *supra* note 11, at 67.

¹⁵ Joseph Cropsey, *Adam Smith*, in *History of Political Philosophy* 551, 569 (Leo Strauss &

was not between nature and convention as with the classicists but between the natural and the supernatural as with the scholastics.

Smith is so far from the Greek view of justice that he specifically criticizes Plato and Aristotle for only treating "justice in the same general manner in which they treat of all the other virtues." He then immediately points to the neo-scholastic Grotius' *The Laws of War and Peace* as "with all its imperfections . . . perhaps, at this day the most complete work that has yet been given upon this subject."¹⁶ In following the scholastics, moreover, Smith traces the implanting of the passion for justice to God who placed social action under two fundamental laws: "to love our neighbor as we love ourselves . . . the great law of Christianity" and the "great precept of nature to love ourselves only as we love our neighbor, or, what comes to the same thing, as our neighbor is capable of loving us."¹⁷

Beneficence and justice, further, are distinguished as they are for scholasticism. Accordingly, Smith first finds that

[b]eneficence is always free; it cannot be extorted by force, the mere want of it exposes to no punishment, because the mere want of beneficence tends to do no real positive evil. It may disappoint of the good which might reasonably have been expected, and upon that account it may justly excite dislike and disapprobation. . . . The man who does not recompense his benefactor, when he has it in his power and when his benefactor needs his assistance, is, no doubt, guilty of the blackest ingratitude. The heart of every impartial spectator rejects all fellow-feeling with the selfishness of his motives, and he is the proper object of the highest disapprobation. But still he does no positive hurt to anybody. He only does not do that good which in propriety he ought to have done. . . . His want of gratitude, therefore, cannot be punished. To oblige him by force to perform what in gratitude he ought to perform . . . would, if possible, be still more improper than his neglecting to perform it . . . and . . . charity . . . can still less be extorted by force than the duties of gratitude. . . .

There is, however, another virtue of which the observance is not left to the freedom of our own wills, which may be extorted by force, and of which the violation exposes to resentment and consequently to punishment. This virtue is justice: the violation of [which] . . . does real and positive hurt . . . [W]e feel ourselves to be under a stricter obligation to act according to justice than agreeably to friendship, charity, or generosity; that the practice of these last mentioned virtues seems to be left in some measure to our own choice, but that, somehow or other, we feel ourselves to be in a peculiar manner tied, bound, and obliged to the observation of justice. We feel, that is to say, that force may with the utmost propriety, and with the approbation of all mankind, be made use of to constrain us to observe the rules of the one, but not to follow the precepts of the other.¹⁸

Joseph Cropsey eds. 1963). Compare 2 St. Thomas Aquinas, *supra* note 5, at pt. 2, Q. 58, art. 12.

¹⁶ Theory of Moral Sentiments, *supra* note 11, at 69.

¹⁷ *Id.* at 88. Also see *id.* at 133-34. The recognition of love of neighbor is another reason Smith is not a utilitarian. See James M. Buchanan, Cost and Choice 79 (1969).

¹⁸ Theory of Moral Sentiments, *supra* note 11, at 116-18.

From this perspective, then, justice is concerned with protection against positive acts of injury, and is the province of the state, while beneficence, mercy, charity and gratitude are to be left to the prudence of the individual subject to the persuasion of others.¹⁹ Yet in making this distinction, Smith does not denigrate either justice or beneficence, since he holds that perfect goodness involves acting "according to the rules of perfect prudence, of strict justice and of proper benevolence" all under "the most perfect self-command."²⁰ Moreover, these virtues are not directed solely to materialistic ends, as is sometimes alleged,²¹ since Smith—although the first to emphasize the social benefits of pursuing the materialistic—held that when the individual approaches maturity and true wisdom,

[p]ower and riches appear then to be what they are—enormous and operose machines contrived to produce a few trifling conveniences to the body . . . which, in spite of all our care, are ready every moment to burst into pieces and to crush in their ruins their unfortunate possessor. . . . They keep off the summer shower, not the winter storm, but leave him always as much, and sometimes more, exposed than before to anxiety, to fear, and to sorrow, to diseases, to danger, and to death.²²

So unmaterialistic is Smith's "wise and virtuous man" that he rejects hedonism and even self interest, so that he is:

at all times willing that his own private interest should be sacrificed to the public interest of his own particular order or society. He is at all times willing, too, that the interest of this order or society should be sacrificed to the greater interest of the state or sovereignty of which it is only a subordinate part: he should, therefore, be equally willing that all those inferior interests should be sacrificed to the greater interest of the universe, to the interest of that great society of all sensible and intelligent beings of which God himself is the immediate administrator and director. . . . Nor does this magnanimous resignation to the will of the great Director of the universe seem in any respect beyond the reach of human nature. Good soldiers who both love and trust their general frequently march with more gaiety and alacrity to the forlorn station from which they never expect to return than they would to one where there was neither difficulty nor danger . . . and . . . [a] wise man should surely be capable of doing what a good soldier holds himself at all times in readiness to do.²³

Following St. Thomas and Locke, therefore, Smith posited a natural order created and ultimately under the control of God in which man is free to pursue the highest good.²⁴ Since he has freedom to choose,

¹⁹ *Id.* at 118.

²⁰ *Id.* at 251.

²¹ Kenneth M. Dolbeare & Patricia Dolbeare, *American Ideologies* 30-31 (1971).

²² *Theory of Moral Sentiments*, *supra* note 11, at 213-14. And he adds that "the beggar who suns himself by the side of the highway possesses that security which kings are fighting for." *Id.* at 215.

²³ *Id.* at 249-50.

²⁴ See especially Herbert W. Schneider's introduction in his *Adam Smith's Moral and Political Philosophy*, *supra* note 11, at xvii.

however, he may not act in his best long-term interests and may choose instead to injure his neighbors and thereby inhibit their freedom to pursue the good. This injustice must be controlled through natural means since God has left man free; since coercion is necessary to control coercion, the state becomes the natural means to control injury of neighbor against neighbor. Although all are expected to be just in that they may not injure one another, the observance of justice does no positive good and "seems scarce to deserve any reward." Consequently, there is an obligation beyond justice to display mercy and beneficence, which may be rewarded by recognition or friendship yet which cannot be enforced in this life but only in "that awful futurity which awaits."²⁵ So when Cropsey complains that Smith was not an Aristotelian,²⁶ he was most certainly correct as Smith actually was a Thomist in his derivation of the concept of the good, in separating justice from beneficence and in assigning to the state the role of enforcing justice rather than of enforcing virtue in general.

LIBERTY AND JUSTICE IN CAPITALIST SOCIETY

Social action is just in a Smithian capitalist society, then, when life is led and possessions are acquired, held and transferred without the infliction of injury.²⁷ Accordingly, an individual may be unjustly treated "in his body, by wounding, maiming, murdering, or by infringing on his liberty" or "in his reputation, either by falsely representing him as a proper object of resentment or punishment . . . or by depreciating his real worth, and endeavoring to degrade him. . . ."²⁸ Human activity and especially original acquisition, consequently, are just if they are pursued or obtained without inflicting any of these injuries upon any person, and without infringing on another's liberty to use the natural necessities of life which originally might have been used in common.²⁹

Once things are acquired, one also may be injured in his property. Then injury may be made by theft of another's justly obtained property, or through withholding property from the lender by the temporary possessor, or by denying unobstructed passage or other related privileges necessarily attached to ownership of property. In addition, once economic interaction takes place further responsibilities are created which may cause injury if the

²⁵ Theory of Moral Sentiments, *supra* note 11, at 77, 119-20.

²⁶ Joseph Cropsey, *supra* note 15, at 26.

²⁷ Adam Smith, Lectures on Justice, Police, Revenue and Arms, in Adam Smith's Moral and Political Philosophy 284 (Herbert Schneider ed. 1971) [hereinafter cited as Lectures].

²⁸ *Id.*

²⁹ Also see John Locke, Second Treatise on Civil Government, in Social Contract §§ 25-51 (Ernest Barker ed. 1947); Robert Nozick, Anarchy, State, and Utopia 151-52, 178-79 (1974); and F. A. Hayek, Studies in Philosophy, Politics and Economics 349-50 (1967).

obligation is not honored. Thus dishonoring of contracts, or refusal to give compensation to those who incur damage costs to property returned from a borrower, or not compensating for malicious or culpable damage all create injury.³⁰

Injuries to the body, reputation and property, again, do "real and positive hurt, to some particular persons," and, therefore, are the proper object of correction with positive governmental coercion.³¹

[But outside of the function of protecting from injury,] every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men. The sovereign is completely discharged from a duty, in the attempting to perform which he must always be exposed to innumerable delusions, and for the proper performance of which no human wisdom or knowledge could ever be sufficient; the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interest of the society. According to [this] system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: first, the duty of protecting the society from the violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, . . . every other member of it . . . and, thirdly, the duty of enacting and maintaining certain public works and certain public institutions. . . .³²

Thus within the system of natural liberty and justice proposed by Smith, the first great institution of capitalism is the three-functioned national state. The function of protecting from foreign coercion requires a standing army in modern society, which involves substantial cost which must be met by taxation. Yet this is an expense which the society holds to be worth the gain in security. Ultimate security of a free society, though, is not imposed by the state but is seen to depend upon the "martial spirit of the great body of the people" which both diminishes the requisite size of the army and protects against any indirect danger from it. But this spirit being essential to society's liberty, it is the additional duty of society to protect it through education of the people.³³

The major function of domestic government is that of protecting from injury to life, liberty and property. Police are needed to provide physical protection and safety, and courts are necessary to settle claims of title, passage, privilege and contract; and these also need to be supported by taxation. Again, police are not the ultimate source of protection since they cannot command the spirit of the people either to observe the laws of justice

³⁰ Lectures, *supra* note 27, at 284-85.

³¹ *Id.* at 288, and quote at p. 3 *supra*.

³² *Wealth of Nations*, *supra* note 13, at 651.

³³ *Id.* at 661-62, 666-68, 738-39.

or to respect the authority of the magistrate. Likewise, since “upon the impartial administration of justice depends the liberty of every individual,” and upon its justice his free support for government, the judicial should be separated from the executive and made independent of it so that it can act justly.³⁴

Contrary to general understanding, Smith even allowed government to regulate business. The functions allowed were only of two types, however: where the public safety might be threatened and where, because of the overwhelming cost involved, “it . . . cannot be expected that any individual or small number of individuals” could create institutions necessary to the development of overall prosperity.³⁵ The former are clearly extensions of the idea of injury—such as the example cited by Smith of requiring fireproof walls between adjoining buildings—and can clearly be considered consistent with what might be called the minimal state view of justice. The recognition by Smith of governmental supervision of the latter type, however, requires closer examination.

It is clear that the second fundamental institution, the market, is generally expected to regulate commerce under the regime of capitalist justice. In Smith’s famous rendition, as each individual directs his efforts so that they will produce the greatest value for him,

he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.³⁶

Moreover, the market also tends to increase efficiency and fairness in society as the growing use of contracts requires punctuality in both business and personal affairs and requires, in the self-interest of the parties involved, that contracts be honored.³⁷ And since the market leads to greater individual and social utility, wealth, efficiency and fairness, it is a just institution.

Consequently, the general role of government in commerce is to end “all systems of preference or restraint” so that the “simple system of natural liberty establishes itself of its own accord.”³⁸ Yet Smith also held that the system of natural liberty had certain negative effects since specialization of labor narrowed one’s interests, made one neglectful of improving one’s mind, and led to a decline in the individualistic spirit which supported the soci-

³⁴ *Id.* at 681. Lectures, *supra* note 27, at 313-14.

³⁵ *Wealth of Nations*, *supra* note 13, at 308, 681.

³⁶ *Id.* at 423.

³⁷ Lectures, *supra* note 27, at 317-18.

³⁸ *Wealth of Nations*, *supra* note 13, at 651.

ety.³⁹ Fortunately, however, even though the prudent man pursues justice naturally, careful attention to justice “can scarce ever fail to be accompanied with many other virtues—with great feeling for other people, with great humanity and great benevolence” and this makes him willing to extend charity first to those of closest acquaintance but ultimately to all.⁴⁰

Under the sentiments of justice, prudence and beneficence, accordingly, man seeks solutions beyond those guaranteed by the institution of the market. Consequently, although the law should not encourage the institution of voluntary associations, it should not discourage them either.⁴¹ Indeed, to contain the negative effects of specialization, Smith recommended local schools for the common people—apparently at least partially supported by charity. Similarly, he preferred voluntary donations to support the churches and their teachings and works rather than to have them supported by taxation or state-supported tithes.⁴²

Smith, finally, emphasized a distinction not often made in his day—between the institutions of local and provincial government on the one hand and of national government on the other. And it is clear that the comparison is to the benefit of the former at the expense of the latter. Thus, he argued that

the abuses which sometimes creep into the local and provincial administration of a local and provincial revenue, how enormous soever they may appear, are in reality, however, almost always very trifling, in comparison to those which commonly take place in the administration and expenditure of the revenue of a great empire [and] are besides more easily corrected.⁴³

Moreover, it is this early recognition of and preference for local government (in my opinion based upon the closer resemblance of a local government to a voluntary association) which leads Smith to assign local government the responsibility for two of the most important public works, education and transportation maintenance.

One must still account, however, for the assignment to the national government of the roles of highway builder, manager of “a bank which is to support the public credit,” insurance guarantor, and builder and maintainer of canals and waterworks, all other activities being local or private. Undoubtedly, here Smith uses prudence to balance efficiency with liberty and justice; he simply did not believe that these functions could be performed privately. It is relevant to note that Smith lived before the development of

³⁹ Lectures, *supra* note 27, at 318-21.

⁴⁰ Theory of Moral Sentiments, *supra* note 11, at 236.

⁴¹ Wealth of Nations, *supra* note 13, at 128.

⁴² *Id.* at 737, 741-42.

⁴³ *Id.* at 689.

provincial highway authorities, mutual benefit insurance companies and modern credit management. Moreover, it should also be recognized that Smith believed lack of inter-urban transportation, reliable credit sources, insurance and a trustworthy source of clean water were catastrophes for this early period of capitalism.⁴⁴ And the scholastic conception of justice has always been pragmatic enough to make exceptions for true catastrophes.⁴⁵

CONCLUSION

It is clear, then, that capitalism has a conception of justice and that it presents institutions through which justice may be actualized. Its conception is the narrow one which defines justice as the absence of injury. That is, for there to be an injustice, an act must be performed which results in "real hurt to particular persons." Since each individual is "left perfectly free to pursue his own interest in his own way," there is a preference given to a "system of natural liberty." But since men will "never submit" to hurt imposed by others, individual freedom must be limited by government so that all may be protected from injury. After justice by this definition is assured and barring catastrophes, the other aspects of goodness such as security, efficiency, beneficence, friendship and love are to be pursued freely in society without use of the coercive powers inherent in government.

Since Smith, Western social philosophy has moved away from this conception. By Mill's *On Liberty* a shift in emphasis had substituted the broader "harm" for the narrower "hurt" as justification for government involvement.⁴⁶ A more significant and conscious change is made by T. H. Green who voiced his approval for government to promote "freedom in the positive sense"⁴⁷ in addition to its negative function, protection from harm.

Smith gave protection from hurt a priority over all other social problems. But modern social philosophy has tended to see the problem of hurt as simply one among many others. Consequently, where Smith made protection from hurt an absolute prohibition prior all to other action⁴⁸ (subject only to prudential considerations such as the degree of hurt) the latter balanced different "liberties" against each other.⁴⁹ Although these later theorists have

⁴⁴ *Id.* at 684, 715. On efficiency balanced against liberty and justice, see James M. Buchanan, *supra* note 1, at 8.

⁴⁵ 2 St. Thomas Aquinas, *supra* note 5, at pt. 2, Q. 66, art. 7; F. A. Hayek, *supra* note 29, at 349-50; and Robert Nozick, *supra* note 29, at 180.

⁴⁶ John Stuart Mill, *On Liberty* (David Spitz ed. 1975) (1st ed. 1859). For the distinction between the two terms, see Joel Feinberg, *Social Philosophy* 27-31 (1973).

⁴⁷ T. H. Green, *Liberal Legislation and the Theory of Contract*, in *The Political Theory of T. H. Green: Selected Writings* 53 (John R. Rodman ed. 1964).

⁴⁸ On the distinction, see Alan Gewirth, *Political Justice*, in *Social Justice* 148-51 (Richard B. Brandt ed. 1962).

⁴⁹ John Rawls, *A Theory of Justice* 201-05 (1971). Also see James M. Buchanan, *supra* note 1, at 9, for an explicit comparison between Rawls and Smith on the priority question.

tended to reject a simple dichotomy of positive and negative liberties or rights, the other values to be balanced clearly were more nearly describable as positive.⁵⁰ And, critically, the balancing was to be done by government. So the positive role of government expanded even when new conceptions of justice added only the means by which justice was to be achieved rather than enlarged upon its formal requirements,⁵¹ or when some distinction was kept between justice and beneficence.⁵²

The general effect of these changes has been a broadening of the meaning of justice toward the more general virtue of fairness.⁵³ That is, there has been a movement toward a re-identification with the more inclusive Greek view of justice and consequently toward an expansion of what government legitimately may do to promote justice. It is not surprising that modern conceptions of justice—even those, generally speaking in the Smithian tradition—have been more extensive than that used by Smith. For not only has the conception of justice broadened but so has the realm of state activity. Indeed, Green very directly related the writing of his major work to the necessity of justifying positive legislation proposed in the previous session of Parliament.

The problem of justice for capitalist society is that its regime is difficult to justify with this newer and broader definition of justice. For the positive fairness conception of justice can be shown to imply even state ownership of property and government redistribution of income and wealth.⁵⁴ It is difficult for positive state capitalism to defend a preference for government regulation rather than state ownership, or supplementary welfare assistance as opposed to general redistribution of wealth since, without the guiding criterion of hurt, no government involvement easily can be excluded as illegitimate. Thus this regime's characteristic attribute of limited government is difficult to reconcile with ever-increasing demands for positive welfare. The "logic of history" has in fact moved toward socialism,⁵⁵ yet there remains a general reluctance to accept socialism. There is also a reluctance to return to Smith's more limited conception of justice, however; and this must help explain why justice has been a particular problem for capitalist society.

⁵⁰ Isaiah Berlin, *Four Essays on Liberty* ch. 3 (1969). Note that Gerald G. MacCallum, Jr., *Negative and Positive Freedom*, 76 *Phil. Rev.* 312 (1967) does not dispute the distinction but only argues that the difference is not over the meaning of freedom. It is over the meaning of justice.

⁵¹ Alan Gewirth, *supra* note 48, at 119-69.

⁵² William K. Frankena, *The Concept of Social Justice*, in *Social Justice*, *supra* note 48, at 21.

⁵³ Edmond Cohn, 8 *Int'l Encycl. Soc. Sci.*, Justice 341, 346-47 (1968).

⁵⁴ Robert E. Goodin, *The Politics of Rational Man* 130-36 (1976).

⁵⁵ See Reinhold Niebuhr, *The Children of Light and the Children of Darkness* 117 (1944).