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How Much State Does a Just Society Need?

The title question I was asked, “How much state does a just society need?” assumes that a just society requires a superior power—the state. The question is about “how much state” is needed for a society to be just. To be able to answer it, we must first ask what is meant by the justice for which the state is necessary. For justice is, after all, a virtue of the human individual. The state does not really seem to play a role here. Obviously, there is something about the title question that addresses another issue, namely justice as a condition or state of affairs of society as a whole. The question then arises as to what role the government must play to create such a state or to guarantee its preservation.

The Socially Just Society – The Ideal and the Reality

When we think of expressions like “justice” or “just society,” we automatically think of the fair distribution of wealth, income, opportunities, and resources; we imagine a certain “pattern” of society or at least believe that a just society is a society based on solidarity, in which the politically organized community—

and that means the state—ensures that no one is left behind, that everyone’s basic needs are met, and that the basic demands for health, education, and social welfare are also met.

Such a society is certainly a desirable ideal. Many persons form their concepts of justice and injustice based on this ideal. They argue that in order to achieve such “social justice,” the state must intervene in the normal course of economic processes and their outcomes by redistributing income, and ideally assets, in such a way that the lowest income strata would receive an increase in income through transfers, and the highest strata receive a corresponding decrease in income. By putting some people in a better position at the expense of others, social differences perceived as unfair can be balanced out, and equal opportunities can be created for all.

However, this ideal is very much clouded by a more complicated and far less perfect reality. For example, in the run-up of recent protests by the French “yellow vests,” we heard that the income of the lowest 20 percent in France increases by 72 percent through government transfer payments—at the expense of their better-off fellow citizens.¹ Who are these

¹ Cf. Nina Belz, “Woher kommt die Wut der gelben Westen? Das französische Steuersystem sorgt zwar für eine gerechtere Einkommensverteilung—allerdings zu einem hohen Preis,” *Neue Zürcher Zeitung* (December 14, 2018); The source for the figures is the *Institut national de la statistique et des*

études économiques / INSEE. This document can be found directly on the INSEE website or through the Google search engine, and it has the following file name: FPORSOC18m4_F4.4.pdf.

wealthier citizens? In addition to the top earners, it is primarily the members of the lower middle class who must hand over more than half of their relatively modest income to the state—hardly receiving any additional benefits themselves. They were the first to take to the streets because of the increase in fuel taxes.

At issue is not the welfare state as such, with its social security systems based on the insurance principle. At issue, rather, is the state that redistributes wealth and equalizes income for social purposes, weakening the lower segments of the middle class most of all, perpetuating the poverty of the poorest by making them dependent on state benefits, and over the decades repeatedly creating new poverty—but primarily unemployment, especially hidden unemployment. This was proven long ago to be the case for the U.S. through the empirical work of sociologists like Charles Murray,² but it is also a general pattern in modern social and welfare states.³ Well-intentioned social policy leads to the weakening of the middle class. The blame is wrongly placed on the highest earners and their increasing distance from the lower classes. This despite the fact that, at least in the U.S., it is precisely the top one percent that is responsible for the great innovations of recent times and thus also for the prosperity gains of broad sections of the population.⁴

The often extremely high taxation of the super-rich, but also of capital and corporate

profits, does not mean an immediate loss of quality of life for top earners; however, it does impede the growth potential of economies, and it thus impedes more and more productive work opportunities and higher real wages. As paradoxical as it sounds: in a capitalist economic system, the extremely high taxation of the super-rich works against the public good. Innovation, growth, and real wage increases require the accumulation of capital, and this inevitably means that phases of greater innovation and the resulting general rise in living standards are characterized by increased social inequality. Without the super-rich and corresponding inequality there is no mass prosperity—which does not mean that growth always goes hand in hand with an increase in inequality; sometimes the opposite is the case. In the U.S., for example (but also in Europe after the Second World War), as growth and prosperity increased, inequality decreased. Despite cyclical increases in inequality during periods of accelerated innovation—as is the case today because of the close link between digitalization and globalization—healthy growth seems more likely to reduce inequality in the long run.⁵ The connection between innovation, growth, and inequality is based on inescapable economic laws, which are confirmed by the history of the last two hundred years. A meaningful and realistic debate about justice is therefore impossible without taking such economic interrelationships into account. It would devolve into a moralism that is out of touch with reality.⁶

² Charles Murray, *Losing Ground: American Social Policy 1950-1980* (New York: Basic Books, 1984) Second edition, 2015.

³ Cf. James Bartholomew, *The Welfare of Nations* (London: Biteback Publishing, 2015).

⁴ Cf. Edward Conard, *The Upside of Inequality. How Good Intentions Undermine the Middle Class* (New York: Portfolio, 2016).

⁵ Cf. Branko Milanović, *Die ungleiche Welt. Migration, das Eine Prozent und die Zukunft der Mittelschicht* (Berlin: Suhrkamp Verlag AG, 2016), esp. 98ff.

⁶ It should also be taken into account that the policy of cheap money (low to zero interest rates) that has been deliberately pursued for almost two decades has led to a huge increase in asset prices (real es-

The Problem Is Not Inequality, but Poverty

Recently, an OECD study from 2014 has repeatedly been cited, which according to media reports is supposed to prove that social inequality, i.e. the increasing gap between the wealthiest, especially the top ten percent (or even the top tenth of a percent) and the rest of society, has a negative impact on economic growth.⁷ In reality, however, the OECD study says the exact opposite: “...no evidence is found that those with high incomes pulling away from the rest of the population harms growth.” The problem is rather the gap between the lowest income groups and the rest of the population (“what matters most is the gap between low-income households and the rest of the population”). It is this kind of inequality, the study says, that has a negative impact on growth.⁸

This is, strictly speaking, a trivial result. It is obvious: the more low-income and poorly educated people there are in a society, the lower the growth rate must be compared to societies with fewer low-income earners and better educated people. It is not inequality as such that hinders growth. Rather the fact that this lowest section of the population lives at the expense of the rest of the population, is itself unproductive; moreover, there are few incentives for such people to work productively, and they are unable to do so because of a lack of qualifications. In short, the reason why societies with great inequality as regards the

tate and shares), which on paper has made the rich even richer—a bubble that will burst.

⁷ Federico Cingano, “Trends in Income Inequality and its Impact on Economic Growth,” *OECD Social, Employment and Migration Working Papers*, No. 163, (OECD Publishing: 2014), <http://dx.doi.org/10.1787/5jxrjncwv6j-en>.

⁸ *Ibid.*, 6.

lowest income groups are weaker in terms of growth is not the wealth of the rich, but the poverty and the educational inequality of the low-income groups. Their condition is caused or perpetuated precisely by socially motivated regulation of the labor market and other obstacles to job creation—such as high tax progression, high capital and corporate taxes, and other burdens on companies and employers.⁹

The initial intuitions about a just society made possible by state intervention thus seem to lead us on the wrong track. The justice of a society has nothing to do with the distribution of income and wealth, or with the level of social inequality. “From a moral perspective, it is not important that everyone has the same amount. What matters morally is that everyone has enough.”¹⁰ The justice of a society is determined by the question of whether it is ordered in such a way that no one lives at the expense of others; in other words: that the rich are not rich at the expense of the less rich, and the low-income earners are not better off at the expense of higher earners, or even made dependent on them. A just society should enable everyone to live in dignity and freedom. However, a life in dignity and freedom does not depend so much on material resources, and certainly not on the equality of material resources, but on whether one stands on one's own feet in life, i.e. that one does not live at the expense of others, and thus has “enough”—even if one has little compared to others. The question of justice is decided by the space for individual freedom and self-responsibility and

⁹ The harmful effects of minimum wages for the least qualified must also be taken into account; see, in addition the unambiguous study of David Neumark and William L. Wascher, which critically evaluates other studies on the issue: *Minimum Wages* (Cambridge, MA: MIT Press, 2008).

¹⁰ Harry G. Frankfurt, *Ungleichheit. Warum nicht alle gleich viel haben müssen* (Berlin: Suhrkamp, 2016), 17.

by the possibilities available in a society to earn a sufficient share for an independent and self-determined life through one's own work—not by who owns how much or even by the extent of inequality, and even less by the extent to which social inequality is reduced by political measures, e.g., by redistribution.

Unfortunately, the question of a just society today is not usually posed in this way, but in a purely materialistic way, ultimately aiming at the justification of redistribution, because inequality—as a “negative yardstick,” so to speak—serves as an argument that has taken up highly emotional and clear thinking, becoming confused and correspondingly emotionally charged. But Catholic Social Teaching is based on another tradition. It saw the question of justice not as a question of distribution (of income and property), but as one of justice, of equality of rights and, very importantly, of freedom from state paternalism and dependence: a freedom that enables the individual and the smallest communities, especially the family, to provide for themselves. Let me first illustrate this by looking back into the past at the concept of distributive justice and its transformation into ‘distributional justice’,¹¹ so that we may examine the essential questions.

From “Distributive Justice” to ‘Distributional’ Justice

The idea that a just state is a state with a fair distribution of income, wealth, and opportunities is based on an idea of justice that we usu-

ally refer to as “distributive justice”—a term that comes from the classical moral-philosophical tradition as *iustitia distributiva*. Today's ideas of ‘distributional justice’, however, have little in common with distributive justice, which originated with Aristotle, was taken up by the Christian tradition and incorporated into Catholic social teaching. The idea of distributional justice that is discussed above, however, which led us on the wrong track, comes from the socialist-social democratic tradition. Until not long ago it was vehemently rejected by Catholic social ethics as being contrary to the common good. To understand this, we must first consider the classic concept of the common good.

The classical concept of the common good, which goes back to Aristotle and was taken up by medieval scholasticism (especially Thomas Aquinas) and has developed and been passed on to modern times, sees the common good in the legal safeguarding of the coexistence of citizens in peace and justice (*bonum commune iustitiae et pacis*).¹² Only such things “without whose prohibition the preservation of human society is not possible”—according to Thomas Aquinas—are to be regulated by law; as an example he cites the prohibitions on murder and theft.¹³ In addition to the protection of commutative justice, which is primarily concerned with the making and observance of contracts of all kinds, distributive justice is above all to be protected by the state. For the latter regulates the distribution of public goods and burdens, i.e., those affecting the community, and thus the relations of the state with its citi-

¹¹ Translator's note: The German word translated as ‘distributional justice’ is *Verteilungsgerechtigkeit*, which has become a common word in German and is used instead of the more technical term for ‘distributive justice’ (“*distributive Gerechtigkeit*”). The problem that the author is pointing out is that what is translated as ‘distributional justice’, for

lack of a proper English equivalent, is often not properly distinguished from distributive justice as it was traditionally understood.

¹² Thomas Aquinas, *Summa Theologiae*, I-II, q. 96, a. 3.

¹³ *Ibid.*, a. 2.

zens.¹⁴ For example, it would be a violation of distributive justice if a government only provided physical and legal security for some, but not for others (either individuals or groups), because security is a common good for all citizens. Distributive justice would also be violated by a state that imposes an excessive tax burden on some, or relieves some tax burden inappropriately, or that only drags into military service those who cannot be freed from it through knowing the right person. Corrupt officials or other corrupt civil servants violate distributive justice, and nepotism and other forms of public advantage—to individuals, groups, companies or entire sectors of the economy and industry—are also at the expense of the common good.

The modern state, which we know as the political organization of society with a monopoly on coercive power, came into being in the late Middle Ages as a result of the formation of territorial safeguards against superior powers such as the emperor and the pope. The state's claim to power was strongly enhanced by the Reformation and the denominational division that it brought about, leading to an increase in power resulting in taking the form of an absolute confessional principality. Absolutism initially secured religious peace, but was also intolerant and repressive. It provoked the reaction of liberal constitutionalism, the demand for the rule of law, and the protection of the fundamental rights of individual freedom. To this end, as is particularly clear with John Locke, one fell back on premodern theories of natural law, the medieval doctrine on tyranny and the associated idea of the right of re-

sistance.¹⁵ On the foundation of common law, demands gradually arose in the Anglo-Saxon world for the safeguarding of individual liberties, property, and physical security against the arbitrariness of lawless rule. According to this classical liberal view, a state is just if it does not discriminate against anyone, i.e., if it does not prevent anyone with public or legal authority from exercising the fundamental rights to which every human being is entitled. However, this conception of the state was far removed from the goal of establishing a certain state of society, defined as just with respect to the distribution of goods.

With the Industrial Revolution and the emergence of industrial capitalism, social conditions became fluid and were no longer experienced as natural or as the status quo; old hierarchies became fragile or even collapsed. Through the combination of industrialization and capitalism the cards were reshuffled. The rural population, trapped in misery and hunger as a result of increasing population growth towards the end of the 18th century, poured into the factories, where they were at least able to survive, albeit for a long time under precarious and often miserable conditions. The liberation of farmers and the introduction of freedom of trade destroyed outdated social safety nets. It was the time of 'pauperism'. It was only now that the mass misery of the rural population became visible in the cities, where the impoverished masses poured in. The intellectual urban elites, unaware of the misery in the countryside, very soon blamed industrial capitalism, which in reality was not the cause of poverty but what overcame it. "In pauper-

¹⁴ Cf. *Ibid.*, II-II, q. q. 61, a. 1: "iustitia distributiva, quae est distributiva *communium*, secundum proportionalitatem."

¹⁵ Cf. A. Passerin d'Entrèves, *The Medieval Contribution to Political Thought: Thomas Aquinas, Marsilius of Padua, Richard Hooker* (Oxford: Oxford University Press, 1939 [reprint: New York: Human-

ities Press, 1959]); Alexander S. Rosenthal, *Crown Under Law: Richard Hooker, John Locke, and the Ascent of Modern Constitutionalism* (Lanham, MD: Lexington Books, 2008); Martin Rhonheimer, "Saint Thomas Aquinas and the Idea of Limited Government," *Journal of Markets and Morality* 22, 2 (2019): 439-55.

ism”—wrote the rather left-wing social historian Hans-Ulrich Wehler—“a secular crisis situation came to light, which was only overcome by successful industrial capitalism—not the cause of the problem, but the savior.”¹⁶

Not least because the causal links between poverty and industrial capitalism were generally misunderstood, the question arose more and more throughout the 19th century about whether the state should intervene in social and economic conditions in the name of justice in order to save the masses of industrial workers from alleged exploitation by factory owners and capitalists. Liberal-minded and economically educated politicians spoke out against this, because they were convinced—as it turned out, not without good reason—that the capitalist market economy was actually beneficial to the masses of workers and would in time automatically improve the situation of the industrial workers and indeed the entire population. The socialists, or rather the social democrats of the time, took the position that only a revolutionary overthrow of property and productive structures could prevent a small circle of capitalists from becoming richer and richer at the expense of the mass of workers.

Accepting the socialist analysis of capitalism but rejecting, especially in Germany, its revolutionary program, economists of the so-called

Historical School (who were soon called *Kathedersozialisten*, “Socialists of the Chair”) such as Lucio Brentano, Gustav Schmoller, and Adolf Wagner, pleaded for an “ethical national economy” rather than a revolutionary overthrow. They also demanded a kind of socialism inherent in the system and organized by the state itself, which they called “social policy,” or “state socialism.” Specifically, they advocated the improvement of the situation of the working class through state correction of the results of the capitalist economic process, state social insurance, redistribution of income through fiscal and labor law measures—demands which in their content and argumentation anticipated what are normal socio-political elements in today’s welfare states.¹⁷ However, these advocates of a robust social policy also advocated for a nationalist economic policy—the German naval policy— but above all, protective tariffs and cartels to safeguard social welfare.¹⁸ One of these thinkers, Gustav Schmoller, called the large industrial cartels (also promoted by the courts) the pride of Germany.¹⁹ The formation of cartels in the last third of the 19th century and thereafter was the work of targeted state intervention based on economic and social policy. Economic policy was understood as power politics, an approach that even a younger representative of the Historical School such as Max Weber was unable to escape²⁰ and which was one of the

¹⁶ Hans-Ulrich Wehler, *Deutsche Gesellschaftsgeschichte*, Vol. 3: *Von der “Deutschen Doppelrevolution” bis zum Beginn des Ersten Weltkrieges 1849–1914* (Munich: 1995), 286.

¹⁷ See especially the speech by Adolf Wagner “Über die soziale Frage” from 1871, in *Politische Reden II 1869–1914*, ed. Peter Wende with the collaboration of Inge Schlotzhauer, in *Bibliothek der Geschichte und Politik*, ed. Reinhard Koselleck, vol. 25 (Frankfurt a. M.: Deutscher Klassiker Verlag, 1990), 47–102; see also the shorter speech by Gustav Schmoller, “Über die soziale Frage” from 1872, *ibid.* 137–145.

¹⁸ Cf. Wilhelm Deist, *Flottenpolitik und Flottenpropaganda: Das Nachrichtenbureau des Reichsmarinamtes 1897–1914* (Stuttgart: Deutsche Verlags-Anstalt, 1976), 102 ff.; 109; 113.

¹⁹ See Martin Rhonheimer, “Vom Subsidiaritätsprinzip zum Sozialstaat. Kontinuitäten und Brüche in der katholischen Soziallehre,” *Historisches Jahrbuch der Görres Gesellschaft* 138 (2018): 33.

²⁰ Cf. Max Weber, “Stellungnahme zur Flottenumfrage der Allgemeinen Zeitung (München)” in *Max Weber, Gesammelte politische Schriften*, ed. Johan-

causes of the First World War. By the way, the same thing happened in the U.S. before the First World War, in what is called the ‘progressive’ era: economic concentration was celebrated as progress and as promoted by the state. That it was the result of the free market and laissez-faire policies is a persistent historical legend.²¹

The Catholic Church and representatives of its social doctrine at that time vehemently resisted this growing influence of the state and politics. As early as the 1860’s, the Bishop of Mainz, von Ketteler, had called for protective laws for the benefit of industrial workers, but strongly condemned “state assistance decreed by majorities” for workers by taxing of the rich, i.e., redistribution, as an attack on the spirit of freedom and property.²² “The state’s enforced justice goes only up to a certain limit, which is necessary for order and the protection of all. Beyond that, the area of freedom, including the freedom of property, begins.”²³ Otherwise one would arrive at a “tax and coercive system in which all states would almost perish and in which free self-determination and ethics would completely fade into the background.”²⁴ Finally in the year 1891, Pope Leo XIII took a stand in this direction in the encyclical *Rerum novarum*: Apart from the demand for a family wage—an idea whose economic problems and impracticability cannot

be discussed here²⁵—the Pope demanded that the state must take care of the defenseless industrial workers, otherwise they would be powerlessly at the mercy of the factory owners. Thus, Leo XIII demanded factory laws to protect the lives and physical integrity of factory workers. The argument was: if the state does not provide this protection to all citizens, but instead hands over highly endangered industrial workers to their employers for better or worse, then it violates distributive justice. The introduction of protective laws for the benefit of workers, on the other hand, meant “to act with strict justice [...] toward each and every class alike.”²⁶

The legal term ‘distributive justice’ here regards the distribution of the public good of ‘safety’, which is to be ensured by the state through force, and that means the protection of a fundamental individual right—for Catholic social doctrine, a natural right—namely, the right to life and physical integrity, which, according to distributive justice, is to be protected by the state without discrimination between members of all social classes. At the same time, however, Leo XIII, like Bishop von Ketteler, condemns any attempt to solve the social question by infringing upon or redistributing private property. Instead, Leo XIII calls the betterment of the impoverished at the expense of the wealthy “slavery” and an

nes Winkelmann, 5th ed. (Tübingen: J. C. B. Mohr (Paul Siebeck), 1988), 30–32.

²¹ For more on this: Martin Rhonheimer, “Wohlstand für alle durch Marktwirtschaft—Illusion oder Wirklichkeit?” in Helmut Kukack and Alexander Rauner (eds.), *Wohlstand für alle durch Marktwirtschaft. Illusion oder Wirklichkeit?* (Vienna: 2017) (= Gesellschaft & Politik, Dr. Karl Kummer Institut Verein für Sozial- und Wirtschaftspolitik, Vol 53. Issue 1, 2017), 9–38; esp. 16f.

²² Cf. Wilhelm Emmanuel Freiherr von Ketteler, “Die Arbeiterfrage und das Christenthum,” in *Ketteler, Sämtliche Werke und Briefe*, ed. Erwin Iserloh,

Abteilung I, Band 1 (Mainz: v. Hase & Koehler Verlag, 1977), 377 ff.; 416. Regarding Ketteler, see Rhonheimer, “Vom Subsidiaritätsprinzip zum Sozialstaat,” 10–19.

²³ Wilhelm Emmanuel Freiherr von Ketteler, “Die Arbeiterfrage und das Christenthum,” 416.

²⁴ *Ibid.*, 417.

²⁵ Cf. Rhonheimer, “Wohlstand für alle durch Marktwirtschaft,” 23f.

²⁶ Leo XIII., Encyclical *Rerum novarum* (1891), No. 33; see Rhonheimer, “Vom Subsidiaritätsprinzip zum Sozialstaat”, 19–21.

unfortunate “levelling down.” He contrasted such efforts with the primary duty of the state to protect private property.²⁷ Only on this basis, according to Pope Leo, could the impoverished, in time, improve their situation and obtain property.²⁸

With this, Catholic social doctrine clearly opposed the chair- or state-socialist understanding of social policy and social justice as a *redistributive* ‘distributional’ justice, an idea of justice as a certain distribution of income, wealth, and opportunities that the state would have to provide for in order to create a balance against the forces of the free market and capitalism, which allegedly favor only the rich—in the sense of a levelling of disparities in income and wealth. In contrast to this, the first and fundamental social principle of Catholic social teaching is private property and the duty of the State to protect it—primarily not for economic but for moral reasons—against attempts to expropriate it for the benefit of the more impoverished. What the Church demanded, on the other hand, in the name of distributive justice—and that means in the name of legal equality—were protective laws for workers and, in general, laws for better working conditions. The moral position of the church in this case was also economically advantageous for the workers, even if the church representatives did not argue at all in economic terms, and there is no evidence that they were aware of this connection.

The position of nineteenth century liberals had one thing on everybody else, especially the *Kathedersozialisten*: they took into account the economic connection between increased productivity and an increase in the standard of

living, which was in fact the decisive factor that would constantly improve the lives of even the lowest strata of society and make it possible to solve the social question. In contrast to the socialists of the chair, the classical liberals—derided as ‘Manchester liberals’—always regarded the workers as consumers and therefore understood the harm of the protective tariffs advocated by the ‘social’ politicians, along with the harm of other supposed socially beneficial interventions in the free market. At the same time, even German liberals such as John Prince-Smith, Eugen Richter and Heinrich Oppenheim (the first critic of the *Kathedersozialisten* and creator of the name) were not opposed to the state remedying particularly serious abuses such as unlimited child labor or—regarding English factory laws—the lack of safety standards in factories.²⁹

From ‘Distributional’ Justice to Social Justice

Quite a few representatives of the political Catholicism of the time—especially those in the Reichstag who were members of the Catholic Centre Party—were influenced by the socio-political ideas of the *Kathedersozialisten*, such as the priest and Centre Party member Franz Hitze. The leading centrist politician Georg von Hertling—professor of philosophy, Bavarian Prime Minister, member of the Reichstag, chairman of the Centre Party, co-founder and first president of the Görres Society, and finally second-to-last Chancellor of the Empire—described Hitze as one of those good-natured idealists who “allowed themselves to

²⁷ Leo XIII., Encyclical *Rerum novarum*, *ibid.* No. 30.

²⁸ *Ibid.* No. 35.

²⁹ See also Ralph Raico, *Die Partei der Freiheit. Studien zur Geschichte des deutschen Liberalismus* (Stuttgart: Lucius & Lucius, 1999).

be led into state socialism without realizing it.”³⁰

In contrast to Hitze and the “social” politicians, Hertling, who after all had fought for the introduction of social insurance for otherwise defenseless workers, in his 1893 book *Naturrecht und Socialpolitik* (“Natural Law and Social Policy”) firmly held the opinion that the social question would not be answered by social policy but by economic and technological progress. The state should therefore, instead of patronizing citizens with social-welfare policy, promote entrepreneurial freedom and initiative.³¹ The Catholic social ethics that revolved around *Rerum novarum*, as it was represented by Hertling, was not socio-politically but economically oriented. It did not plead for a state which was charged with the task of creating a ‘just society’ in the sense of a state-socialist understood distributive justice, but a state uncompromisingly committed to the fundamental requirement of the protection of property as a prerequisite for economic and social progress: “Only a completely secured order of property makes the prosperous development of human economy, and all higher culture, possible.”³² At that time, however, only a few people understood the economic connections as Georg von Hertling did. As a rule, it was not recognized that it was precisely the securing of property rights and the resulting accumulation of capital and steadily advancing technological innovation that would solve the social question. These economic aspects were never really received in the Church’s Social Teaching. They have re-

mained deeply alien to it. With a few exceptions—such as Joseph Höffner and his school—Catholic Social Teaching represented an often economically unenlightened moralism.

Even the Jesuit Heinrich Pesch, who had a lasting influence on Catholic Social Teaching from the beginning of the twentieth century with his concept of “solidarity” and the corporatist order (*Berufsständische Ordnung*), and who in later years studied economics under Adolf Wagner—a representative of the ‘ethical economics’ of the Historical School—remained alien to Hertling’s perspective. Pesch, despite his knowledge of economics, was never able to understand the wealth-creating logic of the free market and of a capitalist society. This fact gives us is all the more reason to emphasize that Pesch is still a faithful witness to the tradition regarding the question of distributive justice.

After all, Pesch sharply criticized Gustav Schmoller, the *Kathedersozialist* and advocate of the redistribution organized by the welfare state, because the latter understood distributive justice as ‘distributive’ justice not only with regard to the “common goods of public life” but also with regard to the assets and income of private individuals, i.e. the general distribution of goods.³³ Thus Pesch wrote clairvoyantly in 1898: “Whoever wanted to make distributive justice the principle of the distribution of goods could not escape the absurd consequence of a complete suppression of the national economy by the economy of the

³⁰ Georg von Hertling, *Erinnerungen aus meinem Leben*, 2. Band [vol. 2], ed. by Karl Graf von Hertling (Kempfen and Munich: Verlag der Jos. Kösel’schen Buchhandlung, 1920), 182 f.

³¹ Georg von Hertling, *Naturrecht und Socialpolitik* (Cologne: J. P. Bachem, 1893), 80; 23 f. See also Rhonheimer, “Vom Subsidiaritätsprinzip zum Sozialstaat,” 21-29.

³² Georg von Hertling, *Naturrecht und Socialpolitik*, 42.

³³ Heinrich Pesch, *Liberalismus, Socialismus und christliche Gesellschaftsordnung*, vol. I, *Der christliche Staatsbegriff*, second edition (Freiburg: Herder’sche Verlagshandlung, 1898,) 192; see also 160ff.

state.”³⁴ Pesch remained true to this viewpoint in his later five-volume *Lehrbuch der Nationalökonomie* until its last edition in 1925. There, too, he categorically rejects his teacher’s (Adolf Wagner’s) idea of distributive justice as a fiscal redistribution of “private individual income and wealth” to reduce inequality.³⁵ With this, Pesch’s concept of solidarity was, at least in this respect, still completely in line with that of Leo XIII.

It was to be fatal for Catholic social teaching, however, that Pesch introduced into it the concept of ‘social justice’ as a counter-concept to the regulatory principles of the market and competition. Social justice as an economic principle of order first meant the principle of a state-organized corporatist ordering of society. Thus, we find ‘social justice’ as an ordering economic-political principle in Pius XI’s encyclical *Quadragesimo anno* (1931), which was essentially conceived by Pesch’s students Oswald von Nell-Breuning and Gustav Gundlach. Here ‘social justice’, as a state-moderated cooperation of professional corporations, appears as a regulative principle that takes the place of the free market and competition. Moreover, the encyclical mistakenly blamed the free market and competition for the great economic crisis, the formation of monopolies, cartels, and for harmful financial capitalism. Despite his initial sympathy for the encyclical, Wilhelm Röpke recognized early on that this

was a misjudgment.³⁶ Nevertheless, from now on Catholic social teaching’s concept of social justice took on the function of a corrective, indeed a concept to counter the action and results of the free market and competition.

Ludwig Erhard’s competition-oriented concept of a social market economy was therefore in contradiction with the ideas of *Quadragesimo anno*, because it was based on the ordering principle of a free, competitive market, the results of which, as long as they are really competitive, do not need any correction; for according to Erhard, in a competitive market society, everyone takes exactly the place to which he is entitled on account of one’s performance. Wilhelm Röpke initially interpreted *Quadragesimo anno* in the sense of the ‘neoliberalism’ he advocated, and he rejected its understanding in terms of a professional order as a misinterpretation; he also rejected the position of the ordo-liberal thinker Joseph Bless, who even went so far as to speak of “text manipulation” in the German translation.³⁷ Anton Rauscher replied to Bless and Wilhelm Röpke, who was close to Erhard as late as 1960—rightly, but no less regrettably—that this view of a manipulation of the text was based on a lack of knowledge of the encyclical and the corresponding literature.³⁸ He thus revealed himself as the antipode to the ‘social market economy’, whose basic idea was pre-

³⁴ Ibid., 192.

³⁵ Cf. Heinrich Pesch, *Lehrbuch der Nationalökonomie*, vol. II, fourth and fifth editions. (Freiburg i. Br.: Herder, 1925), 274f.; also *ibid.*, vol. III, second, third, and fourth newly revised editions (Freiburg i. Br.: Herder, 1926), 759f.

³⁶ See also Tim Petersen, “Wilhelm Röpke und die Katholische Soziallehre,” *HWWI Research Paper* No. 5–5 (2008) (accessible online): 18.

³⁷ Ibid., 19. The accusation of “text manipulation”, however, does not refer to the German translation,

but to Rauscher’s handling of the text, especially his “derivation that the professional order is in accordance with nature”; see Joseph Bless, “Subsidiaritätsprinzip und berufsständische Ordnung in ‘Quadragesimo Anno’, Zu Anton Rauschers Buch mit dem gleichen Titel” *Ordo, Jahrbuch für die Ordnung von Wirtschaft und Gesellschaft*, 11 (1959): 365–373 at 371.

³⁸ Petersen, “Wilhelm Röpke und die Katholische Soziallehre,” 17–19.

cisely “prosperity for all through competition.”³⁹

The widespread narrative that the Catholic social doctrine was the godfather of Erhard’s concept of the social market economy, or that of the ordoliberalism of the Freiburg school—and that it influenced it considerably—is a revisionist construction that is historically false. The opposite is true. It is also true that Catholic social doctrine has been disoriented in terms of economic policy since the failure of the professional solidarity of *Quadragesimo anno*. To speak only of Germany, Nell-Breuning finally pivoted toward trade unions and maintained close contacts with the Social Democratic Party; on the other hand, there formed an entrepreneurial wing around Joseph Höffner and his students. However, the concept of social justice—like that of the social market economy, which Catholic social ethics now also appropriated—was increasingly caught in the wake of the social-democrat-dominated concept of social justice as ‘distributional justice’ and it was finally transformed, beginning with the encyclical *Mater et magistra* by John XXIII, in the direction of a welfare state and a socio-political orientation.⁴⁰

Today, private property and its protection is only marginally mentioned in Catholic social teaching. It is not mentioned as one of the fundamental moral principles in the *Compendium of the Social Doctrine of the Church* (2004), but is always mentioned only in a function subordinate to the principle of the general destina-

tion of goods and the principle of the common good. In reality—as Leo XIII emphasized in *Re-rum novarum*—private property serves precisely to ensure that the goods of this world can benefit everyone, i.e., it is in a means-end relationship to this principle, and is thus in no way relativized or limited by the principle of the general destination of goods. Secondly, it is precisely the protection of private property that is a primary component of the common good and thus a basic requirement of justice. The common good cannot therefore be played off against private property either. The principle of the “social responsibility of property” and thus its relativization originates from the Social Democrat-influenced portion of the Weimar Constitution, not from Catholic social doctrine, and is also found, slightly amended, in the German *Grundgesetz*.⁴¹

The fact that, as both constitutional texts state, property should serve the public, can be correctly understood to mean that property should not be used in a way that is contrary to the common good. What is wrong with the wording, however, is the assumption that private property does not already in itself and by its very nature serve the common good. Thus, so it is assumed, something must first be done so that it can be at the service of the common good—for example, through sufficiently high taxation, redistribution, or regulation that restricts freedom of disposal. The fact that private property and its respective use in accordance with the intentions of the owner is already as such beneficial to the common good, applies in a capitalist-market economy pre-

³⁹ Cf. Martin Rhonheimer, “Wohlstand für alle durch Marktwirtschaft”; and, “Ludwig Erhards Konzept der sozialen Marktwirtschaft und seine wettbewerbstheoretischen Grundlagen,” *Journal for Markets and Ethics/Zeitschrift für Marktwirtschaft und Ethik* 5, 2 (2017): 83-106.

⁴⁰ Cf. Rhonheimer, „Vom Subsidiaritätsprinzip zum Sozialstaat,“ 52ff.

⁴¹ Weimar Constitution Art. 153 para. 3 WRV: “Property is an obligation. Its use shall at the same time be a service to the common good.” The German Constitution states in Article 14 para. 2: “Property obligates. Its use shall at the same time be for the common good.”

cisely with regard to the means of production which, being in private hands and connected with corresponding liability, increase the common good through the coupling of risk and liability. This is different than in pre-industrial times, when the proper use of private property with a view to the common good concerned almost exclusively consumer goods, which a few possessed in abundance and many others possessed only to a small extent, if at all. Therefore, alms and other charitable activities were at the forefront of the use of private property for the common good. Catholic social teaching of the later nineteenth century generally freed itself from this limitation and was well aware of the difference between the logic of alms and the enormous productive power of industrial capitalism, which was based on the investment of private wealth and which served everyone. As we have seen, therefore, despite its commitment to the protection of the weakest, it also defended private property and the freedom and responsibility associated with it against the presumption of the state to become an agent of widespread handouts through redistributive taxation of private property.

The break with the earlier tradition of Catholic social teaching, for which the priority was not the social tasks of the state, but the protection of individual freedom from the state, has today largely disappeared from consciousness. That is also the reason why a question like “How much state does a just society need?” is today as a matter of course—and quite in the tradition of the social policy of the nineteenth century *Kathedersozialisten*—asked as a question about “distributional justice,” which corrects the results of the free market and capitalism: with the latter allegedly only benefiting the rich. Private property is no longer seen as a so-

lution. On the other hand, the free market, or the capitalist economic process based on free enterprise, is perceived as unjust because it creates inequality. In the name of social justice, therefore, demands for state corrections and “social compensation” are voiced. Only when we understand why such a view and the demands based on it are aimed in the wrong direction can we correctly answer the question of how much state is needed for a just society.

What Does It Mean to Be Just – And Is the Market Just or Unjust?

To answer the initial question, a fresh start is advisable. The first question to be asked is: What do we mean by ‘just’ in this context? We cannot completely elucidate here what the virtue of justice implies.⁴² Rather, it must only be about the meaning of the word ‘just’ in the context of the present question. Such a context concerns the task of the state of creating a just society, or more precisely, the question of how much state is needed for this. And it can be assumed that whether justice prevails in a society depends on more than the state alone.

First: Due to what has been said so far, ‘just’ cannot be defined in the sense of a ‘just distribution’. Rather, we need to move away from the idea that there is any distribution of goods or resources in this world that could be called ‘just’ or ‘unjust’ simply because of a certain pattern of distribution. We can, of course, form ideas about an ideal, best possible or, for some reason, desirable distribution of resources, goods, wealth, income, and opportunity. But what is desirable always remains subjective, and above all, what is desirable as such has nothing to do with justice. Conversely, what is

(Washington D.C.: Catholic University of America Press, 2011), 230–9; 282ff.

⁴² See, from the perspective of virtue ethics: Martin Rhonheimer, *The Perspective of Morality: Philosophical Foundations of Thomistic Virtue Ethics*,

tragic, undesirable, despicable, suboptimal, or unequal is therefore far from being unjust. Moreover, in a society in which there are a great number of welfare recipients, in which poverty and unemployment are high and persistent, justice will probably not be very well served: the question is why.

As Friedrich Hayek wrote—correctly, in my view—the question of whether market outcomes are fair or unfair is a nonsensical one. Markets are not acting subjects, but rather a network of cooperation between myriad acting subjects who pursue their own goals, without having as a goal a certain overall result of the market process. However, the only thing that can be unjust is the consequence of an unjust action attributable to an individual or a group of individuals.⁴³ For example, deaths resulting from an earthquake—not an intentional act, but a natural phenomenon—are not unjust but tragic, unless they are due to the culpable negligence of competent authorities or to the fraudulent actions of those who did not build the collapsed houses according to the necessary requirements.

In a similar way, unequal distributions of resources, goods and opportunities due to unjust legal discrimination or other intentional injustices are themselves unjust, but not distribution patterns that are the result of inherently just transactions and processes that are not themselves based on an intentional control principle and which cannot therefore intend a specific distribution pattern. “In a free society, in which the position of the different

individuals and groups is not the result of anybody’s design (...), the differences in reward simply cannot meaningfully be described as just or unjust.”⁴⁴ In an otherwise free society, in which, for example, there are no blacks or Jews in certain professions or income brackets because of unjust discrimination, this is not due to the free market, but to the laws that prohibit persons discriminated against in this way from entering these professions or income brackets.

Legal injustices such as discrimination can therefore lead to unjust results of market processes, the latter acting as a conveyor belt of the legal injustice. The problem cannot be solved by regulating the market, but rather by correcting the legal rules on the basis of which market processes take place.⁴⁵ Thus it is the rules that are fair or unfair, and not the results of market processes. In free societies, therefore, the category of justice cannot refer to a pattern of distribution, but only to rules that produce certain patterns of distribution. “The place of social justice lies not in politically enforced distribution results, but in the institutional framework of market and society.”⁴⁶ If the rules are fair, the result of the free market can never be called unjust—even if it leads to social inequality and to some persons doing poorly or much worse off than before. Inequalities resulting from differences in starting positions, talent, or luck cannot be called unfair either, because nobody has a claimable right to a certain starting position, talent, or luck.

⁴³ F.A. Hayek, *Law, Legislation and Liberty. A new statement of the liberal principles of justice and political economy*, Volume 2: *The Mirage of Social Justice* (London: Routledge & Kegan Paul Ltd, 1976), 31.

⁴⁴ Hayek, *The Mirage of Social Justice*, 70.

⁴⁵ Martin Rhonheimer, “The True Meaning of ‘Social Justice’. A Catholic View of Hayek,” *Economic Affairs* 35, 1 (2015): 35-51.

⁴⁶ Wolfgang Kersting, *Wie gerecht ist der Markt? Ethische Perspektiven der sozialen Marktwirtschaft* (Hamburg: 2012), 212.

Poverty Is the Natural State of Humanity—How Does Prosperity Then Arise?

There is another reason why there can be no general criteria of justice for distribution patterns independent of the justice of the rules by which they were created: poverty is the natural state of humanity. We are born naked and needy, without means or knowledge. We cannot even use our intellect, let alone our freedom. “The famous words of Rousseau: ‘Man is born free and everywhere he is in chains may sound good, but man is in fact *not* born free. Man is born a very weak suckling. Without the protection of his parents, without the protection given to his parents by society, he would not be able to preserve his life.’”⁴⁷ At birth, people are totally dependent on those who have begotten them, who, in the form of a family, provide them with the place where they can survive and develop as human beings and only later become independent. By nature, they have neither belongings nor estate, they are at most entitled to inherit these, but even this is not by nature, but due to the achievement or

⁴⁷ Ludwig von Mises, *Economic Policy. Thoughts for Today and Tomorrow*. Third Edition (Auburn, Alabama: Ludwig von Mises Institute, 2006), 19.

⁴⁸ Leo XIII., Encyclical, *Rerum novarum*, no. 8: “For God has granted the earth to mankind in general, not in the sense that all without distinction can deal with it as they like, but rather that no part of it was assigned to any one in particular, and that the limits of private possession have been left to be fixed by man’s own industry, and by the laws of individual races. Moreover, the earth, even though apportioned among private owners, ceases not thereby to minister to the needs of all, inasmuch as there is not one who does not sustain life from what the land produces.” (Text from the official Vatican site: http://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html.)

good fortune of their forebearers. This then becomes their own good fortune but not infrequently also their own misfortune.

That is why the encyclical *Rerum novarum* rightly states that no human being has by nature a right to a specific share of the goods of this world.⁴⁸ Much less is he entitled to goods which others have created through their work or which have accrued to them through luck and favorable circumstances, but only to those which are the lawful fruit of his own work (or have accrued to him by inheritance).⁴⁹ People have needs, but there is no moral reason to claim them as legal claims against the legitimate property of others.⁵⁰

This is not contradicted by the fact that owners, not for reasons of justice but for reasons of interpersonal solidarity or charity, may be morally obliged to meet such needs within the limits of their options. Bishop von Ketteler already argued this point,⁵¹ and so did *Rerum novarum*.⁵² This, however, has nothing to do with claims of justice or a right and is therefore not a genuine task of the state; for the state is entitled to enforce rights but not to or-

⁴⁹ Ibid.: “Those who do not possess the soil contribute their labor; hence, it may truly be said that all human subsistence is derived either from labor on one’s own land, or from some toil, some calling, which is paid for either in the produce of the land itself, or in that which is exchanged for what the land brings forth ... and it cannot but be just that he should possess that portion as his very own, and have a right to hold it without any one being justified in violating that right.”

⁵⁰ See also Martin Rhonheimer, “The Democratic Constitutional State and the Common Good,” in *The Common Good of Constitutional Democracy: Essays in Political Philosophy and Catholic Social Teaching* (Washington D.C.: Catholic University of America Press, 2013), 72-141; esp. 109ff.

⁵¹ Wilhelm Emmanuel Freiherr von Ketteler, *Die Arbeiterfrage und das Christentum*, 415.

⁵² Leo XIII., Encyclical *Rerum novarum*, no. 19.

ganize charity or even to force its citizens to do works of solidarity and charity in order to satisfy the claims of others and meet their needs. If we, today's citizens of developed welfare states, take for granted the forced solidarity that is organized by the state, it is because we have long since internalized a precarious subservient mentality, on the basis of which we expect the state to fulfill our claims to a good life—and we feel it is unfair if these claims are not fulfilled.

The only *natural* claim that every human being has against each of one's fellow human beings is that of existence and physical integrity, because this directly affects one's survival as a member of human society and is thus a requirement of justice as the—theoretically fundamental—recognition of the other as “my equal” in terms of one's humanity.⁵³ The Catholic tradition has therefore always considered it a duty of justice, and not only of charity and solidarity, to provide people who cannot help themselves with what is necessary for survival. Thus, the tax-financed establishment of a minimal social security network in the sense of the principle of subsidiarity can be optimally justified at the most local level possible. Bishop von Ketteler also emphasized that and clearly distinguished it from a “subsidy of the working class” for the purpose of its economic and thus also social promotion. This would, in his opinion, go beyond a justified safety net, and is illegitimate because it endangers property and freedom.⁵⁴

In terms of the common good, legally regulated protection against unforeseeable risks and strokes of fate that can affect everyone is also justified. Such social networks then take

on the character of solidarity communities and insurance companies. They require legal regulation, but do not in themselves imply redistribution. If, moreover, such security networks are based on democratic decision-making processes, they are not fundamentally contestable in terms of justice theory, but they will be so the moment they seek to prevent private structures of social assistance (whether on a charitable or entrepreneurially profit-oriented basis) and displace existing ones, or if they degenerate into a mechanism in which a majority permanently improves at the expense of a minority: the richest. At the very least, this would blatantly violate the principle of subsidiarity, which at its core is a principle of freedom and thus also a principle of justice.⁵⁵ Democracies easily become the vehicle of envy of the less well-off towards the better off, who are blamed for inequality, and are then asked to pay for it in the name of social justice. This gives more and more power to the tax-financed state and its bureaucracies. Politicians concerned about votes try to find the necessary majorities for this by making all the right promises.

Injustice does not consist in the unequal distribution of the goods of the earth, but it exists where people, through political and legal structures, corruption, and lawlessness, prevent other people, even entire societies, from freeing themselves from natural poverty—through their work and the securing of its fruits, but also through just and free contractual transactions or inheritances. The crucial question is therefore not “how poverty arises,” for poverty does not “arise” at all, but it is—biblically speaking: after the expulsion from Paradise—as it were by nature part of the *con-*

⁵³ Cf. Martin Rhonheimer, *The Perspective of Morality*, 282ff.

⁵⁴ Wilhelm Emmanuel Freiherr von Ketteler, *Die Arbeiterfrage und das Christentum*, 414f.

⁵⁵ In contrast to its reinterpretation by Oswald von Nell-Breuning into a pure principle of the distribution of competences; for criticism see Rhonheimer, “Vom Subsidiaritätsprinzip zum Sozialstaat,” 60–64.

ditio humana; from the theological perspective it is thus a characteristic of fallen humanity. The decisive question is therefore how wealth and prosperity are created.

In order to find the rules for a just society under the conditions of a modern industrial and post-industrial, and increasingly globalized, world, and to determine the role of the state, we must therefore ask what are the causes of wealth and prosperity that enable people to live in dignity. Asking the question in this way corresponds with the Christian image of man: the image of man as a free, self-responsible, intelligent, and creative being. It is not the image of one who maintains one's dignity and achieves fulfilment by becoming dependent on society or even on the state—as it were by perpetuating infancy and childhood—as a mere recipient of services. Such services fail to help one overcome one's poverty, but only conceal it and ultimately perpetuate it.

History offers a clear answer to the question of the causes of the wealth and prosperity that enable people to live in dignity; and it also elucidates the obstacles that stand in the way of this. The causes of wealth and prosperity in a society consist in the combination of free enterprise, capitalism, the market economy, cross-border trade, capital accumulation, and technological innovation, based on the state protection of property rights and, as Adam Smith called for, the production of those public services and infrastructures that are sovereign in nature or that the free market does not or cannot provide. A state that makes this process possible and creates the necessary framework conditions for it, which it alone can guarantee, serves the common good and is *just* to this extent. A state that prevents it because it keeps people in poverty or dependence is unjust. The most unjust state is therefore the socialist state. It prevents people from achieving

self-generated prosperity and keeps them in permanent dependence on a state and on privileged leadership that lives at the expense of the common good.

I think it is important to understand the full meaning of this last statement, that the socialist state is the most unjust state. After all, we are used to admitting that socialism is about (social) justice and that is indeed well-intended. Of course, it is quite possible—perhaps in most cases—that socialists have good intentions, out of ignorance of fundamental economic relationships and also because of a false, mostly utopian view of human nature. But that does not change the fact that socialism is the incarnation of injustice. Wherever it has been attempted, it has led to mass poverty, political terror, and finally to the breakdown of the population's supply of goods.

It is in itself a generally shared intuition that a society in which everyone has the chance to live a self-determined life and enjoy a higher standard of living is better than a society with a low general level of prosperity, even if in the more prosperous society social inequality is greater. Indeed, the level of inequality should not really matter at all unless the inequality itself arises from injustice—i.e. from unjust rules that favor a certain distribution—and unless it implies the trapping of groups of people in a poverty from which they cannot escape by their own efforts. If this is true, the yardstick for a just society is not social equality, equality in material goods, opportunities, education, etc., but only that equality which ensures that the same rules apply to everyone, regardless of race, sex, religion, social origin, etc. We call this legal equality or equality before the law.

Legal Equality, Material Equality, Equal Opportunities, and the Public Good of Private Property

However, this “equality before the law,” which is understood in the classical liberal sense, is usually immediately objected to as being of more use to the rich than to the poor. Liberal equality before the law was, so they say, a farce; genuine equality before the law had first to be created by raising and equalizing material living conditions, and only then was it possible to exercise legal rights on an equal footing. The dictum of Anatole France from his novel *Le lys rouge* (1894) is famous: the legal prohibition to beg, sleep under bridges or steal bread has a completely different meaning for a rich and a homeless person, although they are both equal before the law. The dictum is suggestive, but it misses the point because it not only implies that the creation of material wealth is a precondition for legal equality and the rule of law, but that these material preconditions of legal equality can be created immediately and by circumventing the law. In reality, however, the reverse is true: without equality before the law in the classically liberal sense, economic development, and a rise in living standards for everyone is not possible.

The argument that equality before the law must first be achieved through social measures that promote prosperity, which is paternalistic in its consequence, is also based on an internal contradiction. If it is really a justice argument, it would mean that for a society that is just in the sense of having “equality before the law” we would first have to establish absolute equality of living conditions and opportunities. Otherwise, there would be no equality of rights. Even a slight deviation would be unjust.

But it follows that the argument, if one wants to do without total equality, becomes morally

contradictory, and a production of equality of living conditions—also under the label “equal opportunities,” which in the end amounts to the same thing—must appear arbitrary and thus necessarily violate legal equality. If one wants to avoid that, the principle becomes a bottomless pit. The consequence is a social-political spiral of intervention and with it an increasing expansion of the number of those who will lead a life dependent on the state and its bureaucracies. This means a loss of freedom with all the associated false incentives and psychologically negative effects. Moreover, in many countries the demand for equal opportunities in the education system has led to an excess of university graduates, a mass of universities with a corresponding loss of quality, an academic proletariat with overqualified and frustrated employees in non-academic professions, but also to a lack of skilled workers resulting from a lack of vocational training—all these are effects of a well-intentioned social policy in the name of justice and equal opportunities that are harmful to the common good. It is a huge waste and misallocation of human and material resources. It is not taken into account that in a modern capitalist industrial society, in which increasingly all social classes enjoy a high standard of living, over time—usually two or three generations—everyone takes that place in society which corresponds to their abilities and inclinations: even without any social policy.

Even if one pleads in favor of at least approximate realization of the state’s creation of ever greater equality of opportunity through socio-political interventions of a redistributive nature, one must accept massive violations of the principle of equality of legal rights. For such equality of opportunity can only be achieved by violating the property rights of those whose resources are redistributed in favor of the disadvantaged. Moreover, if we really want to bring about the profound change in the struc-

ture of society that is necessary for such a request, this will undermine the foundations of the forces that bring prosperity and ever-increasing living standards to the broad masses. Here, too, we would then have more equality, but also less prosperity for all. Abstract demands for justice thus come into conflict with the real economic conditions for more prosperity and better living conditions for all social classes. They thus bite their own tail, so to speak. After all, more prosperity for all also means more opportunities for all.

Against the argument that rights are violated through redistribution, the objection is raised that private property is not an absolute right, that it can, indeed often must be restricted in favor of the common good. This cannot be denied, but redistribution in favor of certain social groups is not in itself a measure in favor of the common good, but in favor of the good of certain groups and concrete individuals. Specifically, the serving of special interests cannot be justified by the principle of social responsibility of private property. Expropriation to enable infrastructure projects (motorways, railway lines, land improvement, dams), instead, can be justified in this way—but always only with appropriate compensation. But there is naturally no compensation for the higher taxation used for redistribution—Pope Leo XIII therefore spoke of “robbery.” Social justice as redistribution has nothing to do with a Christian idea of justice.

Moreover, this “social justice” contradicts the economic preconditions of the common good. For the creation and safeguarding of prosperity for the broad masses, it is not tax-financed social security systems or even transfer payments on a large scale that are decisive, making entire strata of the population dependent

on transfer payments and thus on the state—and ultimately dependent on the rich who actually generate these incomes. Instead, broad-based, mass prosperity is created by investing wealth to create innovation, new jobs, the payment of wages and, above all, by increasing productivity, which gives the whole process the wealth-creating dynamism that is its cause and its ever-advancing consequence.

Certainly, according to the Christian view, God created the goods of this world for the benefit of all people. It is precisely for this reason, as Leo XIII taught, that private property is so important, because it satisfies this principle in the most efficient way. The goods created by man are not the goods created by God and made available to all. No one has the right to monopolize natural resources as one’s own property by preventing others from having access to them for productive use. But whoever makes use of such natural resources productively through discovery and additional work, as well as through technological inventiveness, has a right to own them, and to the fruits of one’s work, which also includes the risk taken and the spirit of innovation this manifests. Therefore, Leo XIII argued, it is precisely private property that ensures the use of the goods of this earth for the benefit of all.⁵⁶ But this turns the traditional principle of the universal destination of goods against its socialist interpretation. It is precisely the capitalist market economy, based on private ownership of the means of production and accumulation of capital, which best satisfies this principle. Therefore, the safeguarding of property rights is also in the service of the common good and must be regarded as a fundamental requirement of justice.

⁵⁶ Leo XIII., Encyclical, *Rerum novarum*, no. 7 (see citations above).

The State is Responsible for Framework Conditions and Fair Rules

This brings us to the crucial point: a just society is one in which the state ensures that the legal rules enable and promote this process of wealth creation. The state must therefore create favorable conditions and sensible rules for this process of wealth creation. It has the right to enforce them, including the criminal law. It must guarantee legal security at the level of property—think of the important function of the land registry—but also in the area of transactional justice, and it must ensure domestic and international security as far as necessary.

It is therefore the primary task of the state to prevent or punish injustices, whether through criminal law or through civil law, especially to enable the enforcement of contracts. The fact that there are also other public tasks to which the state is entitled is by no means denied. But we should beware of simply equating the “public” with the “state.” Citizenship and civic responsibility go beyond the realm of the private sphere and refer to what is of overriding, common and, in this sense, public interest. Even if a functioning education system is a public (or collective, common) good and the state should promote the production of this good, it does not mean that the state must necessarily provide it. In the nineteenth century, both Germany and France had state schools, universities, and academies, but England took the economic and technological lead, even though it had neither state schools nor state universities.⁵⁷ This, in turn, does not mean that there must be no state schools. But it does mean that they should only exist if quality education cannot be provided in any other, pos-

sibly non-state way that is better and economically more efficient.

Economists have become accustomed to diagnosing “market failures” in connection with such public goods. The presumption that public or collective goods could possibly be provided by individuals or by the market, and that the market could perhaps even do this better, is quickly dismissed as a “market fundamentalism.” Now, as already briefly mentioned above, the “market fundamentalist” Adam Smith already said that if a public good cannot be supplied by the market “because the profit” of such public works and institutions, “could never repay the expense to any individual or small number of individuals,” the state must step in to establish and maintain it.⁵⁸ However, even if markets by no means function perfectly all the time and “fail” when measured against an ideal model, it is also possible that it is precisely the state that prevents markets—i.e. entrepreneurial activity—from providing those goods which the state already provides. It provides them, however, with the help of taxpayers’ money, without the market pressure to succeed—based on principles of personal liability—and is thus often inefficient. This effect is known as crowding-out: useless or excessive government activity crowds out the incentive for market solutions, which can therefore never be profitable, and, in so doing, it often makes permanent costly, untransparent, and resource-inefficient government offerings. This is shown by the fact that in modern welfare states the tax burden and the government quota are constantly rising, especially in socially sensitive areas such as education, health, and social welfare. However, it is economically clear that, in principle,

⁵⁷ Cf. Terence Kealey, *The Economic Laws of Scientific Research* (Houndsville and London: Palgrave MacMillan, 1996).

⁵⁸ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Book IV, Ch. IX, par.

51, ed. by R. H. Campbell, A. S. Skinner, and W. B. Todd, vol. 2, 688 (Oxford: Clarendon Press, 1976), 688 (= *The Glasgow Edition of the Works and Correspondence of Adam Smith*, II).

every tax weakens the economic performance of an economy in the first place, i.e. it creates costs. These costs are only worthwhile if they lead to higher productivity or to necessary services that would otherwise not be provided. Only then, at least in theory, do they bring about a general welfare gain in the long run.

The concept of market failure, which is based on the standard economic model of “full competition,” has, like this standard model, been repeatedly cast in doubt.⁵⁹ This model is a static model that ignores the dynamic temporal progression of the economic process as well as the creativity of entrepreneurial action. Therefore, it easily leads to wrong conclusions—e.g., as regards the matter of assessing monopolies and market power.⁶⁰ In one current and representative textbook, the concept of market failure is not rejected in the face of this recent criticism, but is classified as “necessarily vague.”⁶¹

However, the concept of market failure is also questionable from a methodological point of view: it compares the imperfection of real markets with the perfection of the—completely unreal—ideal model of “complete competition.” It then concludes that if the ideal model is deviated from then there is a failure of the market in reality, and in turn concludes from this that said failure can be corrected by

state intervention in the interest of consumers and society as a whole in such a way that one comes as close as possible to the ideal model. In other words, the imperfection of reality is overcome. This welfare-economic approach, which goes back to the British economist A. C. Pigou and to which the ordoliberalism of the Freiburg School founded by Walter Eucken is also committed, thus compares a reality with a theoretical ideal, but it fails to compare the reality of the (imperfect) market with the reality of a market corrected by state intervention and bureaucratic regulation.⁶² Only when comparing “Reality 1” to “Reality 2,” and not to the ideal model, can we see that, in addition to “market failure,” there can also be real “state failure”; that is, “Reality 2” may not be better, but even worse than “Reality 1.” State failure is far worse than market failure because it is centralized failure, i.e., it affects society as a whole and an entire economy, and also gives the state a power base that creates new problems and inefficiencies.⁶³ Market failure, on the other hand, is decentralized and can be corrected again and again by the logic of the market and entrepreneurial action.⁶⁴

This does not deny that in certain cases there is a need for legal incentives: to enable the market to internalize costs, for example, of the environmentally negative consequences of economic activity; or to produce other public or collective goods. Moreover, there are areas

⁵⁹ See my own criticism of this model of thinking, with many references to the literature: “Ludwig Erhards Konzept der sozialen Marktwirtschaft und seine wettbewerbstheoretischen Grundlagen.”

⁶⁰ See Dominick T. Armentano, *Antitrust and Monopoly: Anatomy of a Policy Failure*, second edition (Oakland, Ca.: Independent Institute, 1996).

⁶¹ Michael Fritsch, *Marktversagen und Wirtschaftspolitik. Mikroökonomische Grundlagen staatlichen Handelns*, tenth edition (Munich: Verlag Franz Vahlen, 2018), 61.

⁶² See Martin Rhonheimer, “Ludwig Erhard’s Konzept der sozialen Marktwirtschaft und seine wettbewerbstheoretischen Grundlagen,” 89ff.

⁶³ See Gordon Tullock, Arthur Seldon and Gordon L. Brady, *Government Failure. A Primer in Public Choice* (Washington D.C.: Cato Institute, 2002).

⁶⁴ On the debate, see the various “market failure” theorists such as Joseph E. Stiglitz and George A. Akerlof and challenges to their claims in Tyler Cowen and Eric Crampton, *Market Failure or Success. The New Debate* (Cheltenham: Edward Elgar, 2002).

where markets do not exist at all because property rights are not defined and protected. Here the state would have the task of allocating such property rights if they do not develop of their own accord, or—as in the case of common goods—to promote economically efficient, meaningful structures of self-governance through legal incentives. As Nobel Prize winner Elinor Ostrom has shown, there are solutions for common goods beyond state and privatization. In areas where there is no market and where it is difficult to create one because the nature of these goods contradicts or hampers the allocation of property rights (think of marine waters with deep-sea fishing, or of air and climate), even state solutions are not a good alternative because they create new power structures that are a threat to freedom and are ultimately determined by political interests. As Ostrom argues, the state should therefore be careful not to hinder the emergence of self-governing structures through overregulation; rather, it should promote such solutions through legal incentives and framework conditions.⁶⁵

However, even here it seems inappropriate to speak of “market failure.” There can be no market failure where markets do not or cannot exist. Markets—as they are understood in a capitalist, entrepreneurial market economy—are only possible under the condition of defined property rights. However, the scope

for market solutions that also support citizens’ freedom of choice and their self-responsibility—the original intention of a social market economy as understood by Ludwig Erhard—seems to be much greater than is generally assumed.⁶⁶ As already mentioned, they open up wherever it is possible to define and protect property rights.⁶⁷ Only then is there the connection between ownership, risk, and liability (which is constitutive of markets). Goods and services then receive a price and can be traded, transparency prevails, and competition and cooperation develop. This also applies to common goods, especially in ecological terms: “Resources in unregulated common property cannot be transferred between interested users against payment of a fee, because no person has the right to exclude others from using the resources. Therefore, there are no markets and market prices for the peaceful regulation of the competition between the productive and consumptive use of environmental resources.”⁶⁸ If markets or market-like collective self-governing structures can be established through the allocation of property rights and corresponding responsibilities and liabilities, or on a purely contractual basis, this is in principle better than a state solution.⁶⁹

State solutions are always monopolistic solutions that eliminate competition, involve coercion and open the door to politically served interests and nepotism; they also displace the

⁶⁵ See Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge: Cambridge University Press, 1990).

⁶⁶ Mark Pennington, *Robust Political Economy. Classical Liberalism and the Future of Public Policy* (Cheltenham: Edward Elgar, 2011).

⁶⁷ Contrary to Elinor Ostrom, an argument has been made that the problem of overfishing the seas is indeed amenable to such solutions. See Richard Wellings (ed.), *Sea Change. How Markets and Property Rights Could Transform the Fishing Industry* (London: London Publishing Partnership, 2017).

⁶⁸ Karl Farmer, *Beiträge zur wirtschaftstheoretischen Fundierung ökologischer und sozialer Ordnungspolitik* (Vienna: LIT Verlag, 2005), 24, our translation.

⁶⁹ On the history and often surprising possibilities of “private governance” through non-state formation of the institutions of self-government, see Edward Peter Stringham, *Private Governance. Creating Order in Economic and Social Life* (Oxford: Oxford University Press, 2015).

emergence of non-governmental solutions that are often more efficient, cheaper, and more freedom-compliant.⁷⁰ A market economy that calls itself a “social” (socially-minded) economy should first and foremost fear the monopoly power that is the state itself. This is how it is viewed by economists who also account for the logic of public choice: “Every monopoly tempts the abuse of power. The same applies to the monopoly of the state. The state may claim knowledge for problem solving and intervene and regulate economic processes. The economic subjects often have no means of opposing the state, since politics is always legally right. Thus, the state has a monopoly on legislation, administration, and the exercise of power in a society. In philosophical literature it is assumed that the state intervenes to protect citizens and demands the common good of its citizens. Public Choice theory, however, views state decision-makers from the perspective of maximizing benefits. The interests of the majority of citizens do not always come into play.”⁷¹

The world is necessarily imperfect—and this also applies to the state and politics, even if governmental thinking often does not want to see it. It assumes that while private economic actors act selfishly and in their own interest, the state, politicians, civil servants, and other state employees do not, but instead work for the common good. The above-mentioned Public Choice school of thought has made it clearer that representatives of the state, and especially politicians, also act out of self-interest and are, in this sense, utility maximizers; however, unlike market participants or private entrepreneurs, they are not personally liable for the consequences of their decisions. Political

decisions that are wrong do not end up in bankruptcy, but instead waste taxpayers’ money, and such waste usually remains invisible while nonetheless seriously damaging the common good. Just as there is no such thing as perfect justice, so there are no such things as perfect markets much less perfect states or politicians. If too much space is given to the state and politics to create justice—and to correct “market failures”—less justice is usually achieved. Rather, more special-interest politics is carried out, and there emerges what is called crony capitalism in the U.S.: the combination of big government and big business. The welfare losses caused by “market failures” can be much greater when the state corrects these “failures.” Companies, especially powerful and financially strong ones, try to keep the intervening state on their side whenever possible, always at the expense of competition, and thus at the expense of prosperity. The market failure-correcting state therefore does not create the best of all possible worlds, but simply a different kind of imperfect world. It is also often a much worse one than that of a free and imperfect market, whose imperfections and imbalances have the decisive advantage of providing an incentive for entrepreneurial and innovative action, and rewarding those who solve problems: meeting the wishes and preferences of consumers.

Today’s advocates of the “social market economy” tend to largely ignore the danger of state failure; they want above all to correct the market and its results. Behind the problem of state failure, however, there is also a problem of democracy, to which too little attention is paid. State action is political action, and in this context the reference to market failure to justify

und Staat im Lichte christlicher Wirtschaftsethik (Münster-Hamburg-London, LIT Verlag, 2000), 137-154; at 145, our translation (emphasis in the original).

⁷⁰ Ibid., 195 ff.

⁷¹ Werner Lachmann, “Ethik des Wettbewerbs aus nationaler und globaler Perspektive,” in Karl Farmer, Reinhard Haupt, Werner Lachmann (Eds.), *Individuelle Freiheit oder staatliche Lenkung? Markt*

state intervention is quite politically explosive. It can be manipulated and ultimately leads to the successive expansion of state activity and—in the name of justice—of citizens' demands on the state. The consequences are the corresponding allocation battles, which politicians use to woo their electoral constituency: more and more laws and regulations, higher taxes, state expenditure and, finally, exorbitant state debt.⁷²

How Much State Do We Need? No More than Is Absolutely Necessary!

The question of “how much state we need” should always be answered in the following direction: only as much as is absolutely necessary, and no more. For “state” always also means “power” and coercion—not to mention, waste. The state holds a monopoly on legitimate exercise of force, which is an achievement of civilization, but is always also a danger to individual freedom and to those people and human communities who want to lead their lives in a self-determined and responsible way. Freedom, in turn, is a source of dignity, creativity and, ultimately, prosperity. Precisely this—and not the state as provider and benefactor—corresponds to the Christian view of humanity. The idea that the state is fundamentally a benefactor and not by its very nature a dangerous leviathan tending towards abuse of power has caused a great deal of harm throughout history—especially in Germany, but not only there. For it is forgotten that state power is always in the hands of concrete people and that power corrupts all those who hold it—without exception. The mechanisms of checks on power are therefore crucial, but the most important thing is to give the

state as little power as possible. In economic terms, the state should merely act as a midwife, helping market participants and entrepreneurship through legal incentives and framework conditions, but should not do what society, private economic actors, and entrepreneurs can do themselves. This is so, even though private economic actors will always do it in an imperfect way and thus there will always be winners and losers. Christian action is not taken by those who promise to create a perfect world, but by those who, within the bounds of their possibilities, stand up for those who are victims of the imperfections of this world, and the imperfections of their own weakness: those who cannot do it alone and are dependent on the help of their fellow human beings.

Let us not forget that the greatest injustices and atrocities in history have been wrought by the state and by politics—often in alliance with large corporations that profit from them—and not by the forces of society or the market acting in freedom. As mentioned above, the wealth-creating market economy has also been distorted by politically motivated state intervention and cartel formation, which have become instruments of power politics. This was one of the decisive causes of the great catastrophe of the First World War, without which the subsequent catastrophes of the twentieth century would not have been possible. The same is true of the great financial and economic crises of the past, including the most recent ones—they are all the result of political intervention, often well-intentioned, and apparently very much oriented toward social causes.

Today we are witnessing a state which, in the name of social justice, has acquired a power in

⁷² See also: Charles B. Blankart, *Öffentliche Finanzen in der Demokratie. Eine Einführung in die Finanzwissenschaft* eighth edition (Munich: Verlag

Franz Vahlen, 2011), 57ff. (shorter: ninth edition, [2018], 47ff.).

the face of which the founders of the social market economy would turn over in their graves. At the same time, there is increasing pressure on the actual creative, innovative, and wealth-creating forces of society, namely, the entrepreneurs and investors, who are taking great risks to enable us to develop the technologies of the future. Bureaucrats and politicians are constantly handing out new benefits generated by increasing state activity and rising national quotas. There are also historical precedents for this—but today it is done in the name of the common good and social justice and therefore its harm is less recognizable. This is reminiscent of the future vision of a new despotism, as Tocqueville described it already in his work *Democracy in America* in 1840, where the state is described as “an immense and tutelary power” that rises above “an innumerable multitude of men all equal and alike” and “takes upon itself alone to secure their gratifications, and to watch over their fate. That power is absolute, minute, regular, provident, and mild.” It tries to keep people “in perpetual childhood: it is well content that the people should rejoice, provided they think of nothing but rejoicing. For their happiness such a government willingly labors, but it chooses to be the sole agent and the only arbiter of that happiness: it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances...” Moreover: “it every day renders the exercise of the free agency of man less useful and less frequent; it circumscribes the will within a narrower range, and gradually robs a man of all the uses of himself. The

principle of equality has prepared men for these things: it has predisposed men to endure them, and oftentimes to look on them as benefits. After having thus successively taken each member of the community in its powerful grasp, and fashioned them at will, the supreme power then extends its arm over the whole community. It covers the surface of society with a net-work of small complicated rules, minute and uniform, through which the most original minds and the most energetic characters cannot penetrate, to rise above the crowd. The will of man is not shattered, but softened, bent, and guided: men are seldom forced by it to act, but they are constantly restrained from acting: such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to be nothing better than a flock of timid and industrious animals, of which the government is the shepherd.”⁷³

We call “servitude of the regular, quiet, and gentle kind”⁷⁴ today a social or welfare state. It has turned the state into an overarching Leviathan that seeks—with the consent of the governed, but financed by huge mountains of debt—to regulate and control more and more areas of life. After wars, even after the Second World War, countries had always been highly indebted. These were debts as a result of war expenditures. This debt could be quickly reduced by the periods of growth that immediately followed. Today, the Western industrial nations are more indebted than after the Second World War, but this debt cannot simply be reduced, because it is of a structural nature.⁷⁵ The debt is not based, as in the past, on temporary war expenditures, but above all on the so-

⁷³ Alexis de Tocqueville, *Democracy in America* (Trans. Henry Reeve), Project Gutenberg, 2013, Second Part (1840), Book Four, Chapter VI: <https://www.gutenberg.org/files/816/816-h/816-h.htm>

⁷⁴ Ibid.

⁷⁵ See also Niall Ferguson. *The Great Degeneration: How Institutions Decay and Economies Die* (New York: Penguin Books, 2012), 39-45.

cial benefits and pay-as-you-go benefit promises anchored in the welfare state system, some of which are debt-financed, and hinder the economic and demographic growth that would be necessary for their sustainable financing.⁷⁶ This raises a huge problem of justice, namely that of intergenerational justice: “The heart of the matter is the way public debt allows the current generation of voters to live at the expense of those as yet too young to vote or as yet unborn.”⁷⁷ Tragically, it is precisely demands in the name of social justice that open up a huge justice gap with regard to those who will come after us. This shows once again how important it is not to have a one-sided view of what the state must achieve when it comes to the question of a just society.

The answer to the question of how much state is needed for a just society does not by a long shot finally answer the question of what a just and solidary society consists in. Here much more would have to be said, of people who are committed to their fellow human beings and to the poorest, of civil society, the family, the churches—all of these are not genuine tasks or

institutions of the state, but tasks whose performance in freedom and diversity the state should promote in a sense consistent with subsidiarity: not by subsidizing them and thus making them dependent on itself, but by creating incentives for them and guaranteeing the proper conditions provided by a legal framework. In this sense, it is precisely not the task of the state to create a just society. Apart from setting the framework conditions for the capitalist-market-economy process to take place today on a global level and the other fundamental tasks of state sovereignty, the most important challenge for the state and politics is not to prevent a just society by interventions that destroy prosperity—in other words, its task is not so much to create a “just society” as to avoid injustices. Such a society, which is free and in solidarity, and does not hinder the wealth-creating dynamics of the capitalist market economy through false ideas of justice, would be a task—also a Christian task—for the future. This is especially the case if we are thinking of the generations that will come after us. ■

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⁷⁶ On the demographic problem: As a 2005 report by the scientific advisory board of the Federal Ministry of Economics and Labour (BMWA) on the subject of "Ageing and Family Policy" states, "the transfer pensioner simultaneously reduces the incentives to give birth and raise children himself. According to the legal construction of our pension system, one acquires a pension entitlement when

one finances the generation of one's parents by paying contributions. It is not important that you have children yourself. Without children, however, the pay-as-you-go system collapses. (BMWA Dokumentation, No. 548, Berlin: 2005, 41).

⁷⁷ Niall Ferguson. *The Great Degeneration*, 41.



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Herausforderungen der Evolutionstheorie und die Antwort der Philosophie. Springer VS, 2016, 288 pgs., ISBN 978-3-658-12074-0, EUR 49,99

The Common Good of Constitutional Democracy: Essays in Political Philosophy and on Catholic Social Doctrine, Catholic University of America Press, Washington D.C., 2013, ISBN 978-0813220093, 535 pgs., \$44.95.

The Perspective of Morality. Philosophical Foundations of Thomistic Virtue Ethics. Washington D.C.: The Catholic University of America Press, 2011. ISBN 978-0-8132-1799, 467 pgs., \$39.95.

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