

# Part I

## Social Justice: The Basics

There exists today widespread propaganda which asserts that socialism is dead. But if to be a socialist is to be a person convinced that the words 'the common good' and 'social justice' actually mean something; if to be a socialist is to be outraged at the contempt in which millions and millions of people are held by those in power, by 'market forces', by international financial institutions; if to be a socialist is to be a person determined to do everything in his or her power to alleviate these unforgivably degraded lives, then socialism can never be dead because these aspirations never die.

Harold Pinter



# 1

## Why We Need a Theory

In 'Why I Write', George Orwell claimed that all writers were motivated by some mixture of four motives. The first was 'sheer egoism', which must to some degree be present if (as Orwell assumed) a 'writer' is someone who is not content to write but wants to publish. The second was 'aesthetic enthusiasm', which Orwell took to be some concern for the form (or perhaps even just the appearance) of one's work. The third was 'historical impulse' or, more broadly, 'the desire to see things as they are'. The last was 'political purpose – using the word "political" in the widest possible sense. Desire to push the world in a certain direction, to alter other people's idea of the kind of society they should strive after.'<sup>1</sup> Whether or not Orwell was correct in claiming that all these motives are present all the time in every writer, he would be right about the author of this book. I do want to get things straight and express myself effectively, as well as indulging in whatever egoism is called for to overcome the tendency to inertia that besets all writers. But I was also definitely led to write this book by the 'political' motive, as Orwell defined it.

But why produce a theory of social justice? In the poorest countries, people do not need a theory to tell them that there is something wrong with a world in which their children are dying from malnutrition or diseases that could be prevented by relatively inexpensive public health measures. Even in the richest country in the world, just north of the academic enclave in New York centred on Columbia University, lies Harlem, where it has been estimated that a black male born and brought up in some areas has less chance of reaching the age of 65 than a child born and brought up in rural Bangladesh. Some Americans (perhaps even a majority) purport to believe that this is

#### 4 **Social Justice: The Basics**

not in some way a reflection on the way in which their society is organized, but only on the moral (and maybe also genetic) degeneracy of the denizens of the ghetto. I doubt if many people elsewhere would fail to draw the conclusion that all is not as it should be with American institutions. But is it that inequality is wrong or only that poverty is bad? Political philosophers and ordinary people disagree about that. They also disagree about what obligations, if any, the rich have towards the poor (either domestically or internationally), at any rate as long as the rich did not come by their wealth by manifestly illegitimate means such as theft or extortion. To answer questions like these we need a theory – a theory of social justice.

Even more importantly, of course, we need the right theory of social justice if we are to get the right answers. Having the wrong theory may bring about worse results, if it is acted on, than a simple feeling of goodwill towards the human race. For an ill-conceived theory may well have the pernicious effect of thwarting the natural impulse to feel that something ought to be done to save children in a rich society from homelessness and malnutrition, and in the world as a whole to relieve the absolute destitution that is the lot of at least a billion people. I believe that the theory of justice that I put forward in this book has universal validity, and I shall say something about its scope in chapter 3. But I shall lay out the theory primarily in relation to the most straightforward case of justice within a society.

Until about a century and a half ago, justice was standardly understood as a virtue not of societies but of individuals. The much quoted Latin tag to the effect that justice is ‘the constant and perpetual will to give each his due’ clearly presupposed that everybody had a ‘due’. Justice consisted in not cheating, stealing or breaking contracts, within an established framework of property rights which might (as in the Roman case) include property in other human beings. Justice could, it was thought, also be ascribed to institutions, but only on a very limited scale. A verdict in a trial could be described as just or unjust, and the long-standing notion of retributive justice reflects persistent concerns about the appropriateness of the punishment to the crime. There was also the notion of ‘natural justice’ in a trial, which called for certain safeguards such as an impartial judge and the defendant’s having the opportunity to hear the evidence and call witnesses in his defence. Perhaps the closest approach to the contemporary concept of social justice was the medieval notion of the ‘just price’, since this probed into the justice of a bargain that was not contaminated by force or fraud but entered into voluntarily by both parties. However, its scope was relatively narrow: its main concern was to condemn exploitation by sellers who took advantage of

temporary scarcity or particular need. But such invocations of justice operate only at the margins of a system taken as given.<sup>2</sup>

The modern concept of social justice emerged out of the throes of early industrialization in France and Britain in the 1840s. The potentially revolutionary idea underlying the concept of social justice was that the justice of a society's institutions could be challenged not merely at the margins but at the core. What this meant in practice was that a challenge could be mounted to the power of the owners of capital, and to the dominance of the entire market system within which capitalism was embedded. The justice of the unequal relations between employers and employees could be called into question, as could the distribution of income and wealth arising from the operation of capitalist institutions and the part played in people's lives by money.

Social justice became the rallying cry of social democratic parties everywhere in Europe, but argument raged over the institutions that were required to realize social justice. These arguments took their most sophisticated form in Germany and Sweden, though it was in Sweden that the most fruitful developments occurred, because the task of creating a programme was seen by social democrats as collaborative rather than confrontational. Although no generalization can cover every case, it is broadly correct to say that in the period following the Second World War social democratic parties had converged on a handful of key ideas:

- 1 The power of capital must be curbed by strong trade unions (perhaps also worker representation) and by regulation to ensure that people come before profit. As far as public ownership was concerned, non-socialist parties had already, from the nineteenth century on, put public utilities and public transport under municipal ownership or control in most countries, but its extension beyond this was not essential to social democracy. (It is significant that the Swedish social democrats, who were the best exemplars, did not have public ownership as part of their core programme.)
- 2 The distribution of income and wealth created by capitalism was unacceptably unequal, and should be changed by appropriate measures of taxation and transfer. In particular, the market mechanism failed to provide support for those unable to earn enough to live on at a level consistent with social justice. Institutions (the 'welfare state') must therefore be created to provide adequate incomes.
- 3 Education and health services of uniformly high quality should be provided universally in such a way as to be equally available to

## 6 Social Justice: The Basics

all, thus eliminating the market criterion of ‘ability to pay’. Although housing was not treated in the same way across the board, it was universally recognized as too important to be left to market forces, though intervention might take different forms.

My object in this book is to elaborate a conception of social justice of a kind that will support the case for institutions of the kind that I have just outlined. I shall seek to show that the reasons that have been given for abandoning this analysis are flawed. Conditions have not changed in ways that make the social democratic prescriptions inappropriate: in some ways they have in fact changed so that social democratic institutions are more necessary than ever.

Although my lightning sketch of the development of social democracy has focused on Europe, many of the same ideas underlay Franklin Delano Roosevelt’s ‘New Deal’, Harry Truman’s ‘Fair Deal’ and Lyndon Johnson’s ‘Great Society’, and their rationale was expressed in terms of justice. As is known, Roosevelt’s inner circle of advisers felt that to describe their programme as ‘social democratic’ would be imprudent, and they therefore appropriated the word ‘liberal’ for it. This, however, makes no difference for my purposes, and it is a toss-up whether or not ambitious politicians in the United States are more keen to avoid being described as liberals than ambitious politicians in Europe are to avoid being described as socialists. In Britain, New Labour has quite explicitly repudiated the social democratic agenda that I have laid out. Indeed, a friend and ex-colleague who was recruited as a member of Tony Blair’s team of special advisers told me that you could canvass any policy you liked, just as long as there was no possibility of its being branded as ‘Old Labour’ thinking.

I suggest that the most instructive way of tracing the peculiar evolution of the conception of social justice within the political elite of the Labour Party is to examine the work of the Commission on Social Justice that was set up by Tony Blair’s predecessor as leader, John Smith, during his brief tenure in the position. When it reported, the Commission apparently felt obliged to retain the title *Social Justice*, but its real agenda was conveyed in its subtitle: *Strategies for National Renewal*.<sup>3</sup> One of the things that was going to have to be sacrificed in the cause of ‘national renewal’, as the Report repeatedly emphasized, was the pursuit of social justice understood in any way that retained a connection with the social democratic tradition.

The concept of social justice was disposed of peremptorily under four headings in a single paragraph.<sup>4</sup> The first two elements predated the modern conception of social justice. The first consisted of basic

civil and political liberties and the second was the idea that ‘basic needs’ should be met – a claim recognized as far back as the Elizabethan Poor Law. The third element at first sight looks rather more promising in establishing some connection with the social democratic agenda: ‘opportunities and life-chances’. But social justice is, and is normally understood to be, a question of *equal* opportunities. Significantly, however, that word does not appear. In relation to this book, the omission is important because I shall be arguing that, if the notion of equal opportunity is taken seriously, it generates implications inconsistent with just about everything in the Report. To say that you are in favour of *some* opportunities is not to say much, and we can see just how little it meant to the Commission by noticing that the Report did not even mention as a problem for social justice the competitive advantages conferred on children who attend expensive private schools.

As its final contribution to the definition of social justice, the Commission offered the proposition that ‘unjust inequalities should be reduced and as far as possible be eliminated’.<sup>5</sup> Well, it would be hard to disagree with that – indeed logically impossible, on the assumption that injustice is a bad thing. The question is, of course, what makes an inequality unjust? Since the Report does not go on to say anything about this, we have to deduce what it thought from its recommendations about the taxation of income and wealth. The most remarkable thing here is that the Report does not even provide any information about the distribution of wealth, thus pre-empting the notion that its distribution of wealth largely defines the justice of a society. (See chapter 14 for a discussion of the crucial importance of the distribution of wealth and of possible ways in which it can be made more equal.) The Commission did concern itself with death duties, but seemed primarily concerned about the bad luck of having your parents die within seven years of giving away their money. Thus, it argued, the system created inequity *among* the very rich: ‘a state-created gamble in which the state stands to gain at the expense of the less fortunate heirs’.<sup>6</sup> It had no suggestions for closing loopholes or raising rates.

As far as incomes are concerned, the Report gives a table showing their unequal distribution.<sup>7</sup> And it points out that ‘the [income] gap between the richest earnings of the highest-paid and those of the lowest-paid workers is greater than at any time since records were first kept in 1886’.<sup>8</sup> But instead of concluding that the amount of tax collected from those making, say, £10 million a year should be vastly increased, its main concern turns out to be that old-fashioned adherents of social justice might want the rich to pay much more than the

## 8 Social Justice: The Basics

top rate of 40 per cent established by Margaret Thatcher (and retained by two New Labour governments). Thus, significantly, it buys uncritically into what – when left and right could be distinguished – was the typical cant of editorials in right-wing newspapers. So, to say that ‘no one should pay punitive levels of taxation’ is literal nonsense.<sup>9</sup> Even if the marginal tax rate on high incomes were 99 per cent, it would still be true that the more pre-tax income people have the more they would have after paying their tax. This is a kind of ‘punishment’ we would all enjoy being subjected to!

If the top marginal rate is high, the very rich will be less well off after paying taxes than they would have been if it had been lower. But the same could obviously be said of any tax rate – and was being said in the USA by Republicans even after the May 2003 tax cuts (of which more below).<sup>10</sup> Clearly, then, the truism that high tax rates are higher than low ones does not tell us what the top rate should be, and certainly does not justify the assertion that ‘there can be no question of returning to the top rates of the 1970s’.<sup>11</sup> High marginal tax rates introduced during the Second World War were maintained after it by both the Labour and the Conservative governments that shared the period until Mrs Thatcher came to power in 1979. Furthermore, because tax brackets did not keep pace with inflation, the amount paid by the seriously rich actually increased after the war (see below). A policy endorsed by both parties for more than thirty-five years could scarcely be as outlandish as the Commission manages to imply.

Of course, if there is no question of returning to the high marginal tax rates of the pre-Thatcher era, there is presumably no need to explain why. It is curious, though, that the Report claims (only a page earlier) that ‘taxes are not fairly shared’, citing as evidence the fact that ‘of the £31 billion which went in income tax cuts during the 1980s, £15 billion went to the richest 10 per cent of the population’.<sup>12</sup> But this was the inevitable consequence of cutting the top rate of tax to 40 per cent, so the disparity could be reversed only by going back to the earlier rates that are now said to be ‘out of the question’. Although the Commission purports to find something objectionable in the growth of inequality in its initial analysis, its main message – constantly reiterated in a variety of (invariably tendentious) formulations – is that social justice does not, as some unregenerate Labour supporters might still think, have anything to do with taking away money from the rich and giving it to the poor so as to reduce the gap between them.<sup>13</sup>

Perhaps the most remarkable expression of the Commission’s concern for the welfare of the rich is its axiom that, whatever the mar-



ginal tax rates may be, nobody should pay more than half of his or her total income in tax.<sup>14</sup> The Commission presents this 50 per cent rate as the absolute maximum that could be tolerated.<sup>15</sup> To put it into context, it is worth asking how much those earning ten times the average (which would have come to almost a quarter of a million pounds in 2004) would have paid in direct taxes – income tax plus national insurance contributions – in earlier years. The proportion of total income paid by such a person would have risen from 47 per cent in the 1950s to 70 per cent during the 1970s, fallen in Mrs Thatcher's first ten years to a bit over 50 per cent and then in the 1990s come down to the 38 per cent at which it remains after two terms of Labour. 'Fat cats have never enjoyed so much fiscal cream; even with the 50% tax rate [proposed by the Liberal Democrats] in place, someone with an annual income of almost £250,000 would still pay less than 45% of their total income in direct taxation – a lower rate than at any point between 1950 and 1987.'<sup>16</sup> Indeed, because somebody making £10 million a year could never pay more than £5 million in income tax, it is obvious that the implication of the Commission's proposal is that the very rich can never face an effective marginal tax rate above 50 per cent, even if the notional tax rate goes right up to 99 per cent.

The members of the Commission were not idiots – a couple of them were extremely intelligent, in fact – so how could they have reached the unanimous conclusion that social justice would be violated if those making £10 million were left with less than £5 million after paying their income tax? The only explanation that comes to mind is that, somehow, 'one for you, one for me' appears superficially equitable in contrast to the 'one for you, nineteen for me' that the Beatles sang about in a very different era. But if we take seriously the idea that social justice is about (among other things) what incomes people enjoy after taxes and transfers, the Commission's way of looking at it is simply frivolous.

Unfortunately for the Commission, it suffered from the same 'unseemly lottery with life' that attracted its sympathy for heirs who lost money as a result of the seven-year rule. By the time the Report was published, its sponsor was dead and his place had been taken by Tony Blair, who consigned it to the rubbish bin and created his own 'working parties' with members who were hand-picked to produce proposals that left the spirit of social democracy even further behind than those that had been made in the Report. I have exhumed it here simply because it constitutes the last sustained discussion of social justice sponsored by the Labour Party. It thus gives us some idea of the scale of the task ahead if social justice is to be restored as the guiding star of the party that we must (however wryly) call the party

## 10 Social Justice: The Basics

of the left. What we have instead are what the Commission called 'strategies for national renewal' or, in the New Labour lexicon, policies justified on the ground that they constitute 'modernization'. An invaluable guide with a glossary intended 'to help you talk bollocks and get ahead in Blair's Britain' explains: '*Modernization* should be used as if it is value-free, an objective process which cannot be resisted, especially if it is something highly contentious like taking away benefits.'<sup>17</sup>

The absence of an explicit conception of social justice in political life has the result that arguments about public policy are made without any attempt to explain from the ground up what is their justification. Instead, such arguments as are offered rest on tacit assumptions that would not withstand scrutiny if they were spelt out formally. Let me give two examples, one from Britain and one from the United States. The British one involves the place of universal cash benefits, that is to say benefits paid to anybody who falls into a certain category (e.g. having children, being over a certain age, being unemployed, being disabled, and so on), without regard to their incomes or assets. The extension of universal cash benefits is essential to social justice, as I shall seek to show in this book. Not surprisingly, therefore, they arouse the ire of New Labour. Why, it is asked, should money be paid to people who do not 'need' it? Instead of 'wasting' this money, it is said, it should go to the very poor (or kept by the very rich, if the very poor are considered well enough off already). At the least, the value of universal benefits for those who do not 'need' them should be reduced by lumping them in with other income and taxing them, so that the treasury claws a part back. This kind of thinking precisely reflects the archaic notion of the Commission on Social Justice that the obligations of the state extend only to meeting 'basic needs' – the thinking that informed the Poor Law and that the post-war 'welfare state' was supposed to have overcome.<sup>18</sup>

Social justice is about the treatment of inequalities of all kinds. Thus, the point of a disability allowance is to compensate for the financial disadvantage of disability. At any income level, therefore, a disability allowance will even out the position (economically at least) of those with and those without a disability. The relevant 'need' is for financial assistance to make up for the disability. If we think that the rich are too well off anyway, the answer is to tax them more highly – not to create an inequity between the disabled at any given level of income and others at the same level of income who are not disabled. Similarly, universal child benefit is not aimed at relieving poverty, though at an adequate level it does have the effect of lifting some families out of poverty. It is a way of recognizing that those who are

rearing the next generation of citizens are performing an expensive task and that the cost should be shared by all citizens who can afford to contribute. There is therefore no case for linking it to parents below some income or for taxing it, since there is no case to be made for this allowance to be worth less to parents who are well off. Parallel points can be made about old age pensions and unemployment benefits, but I shall leave them until later.

My second example concerns the American tax cuts already mentioned, which lowered the capital gains tax, eliminated all taxes on dividends, and provided for the phased-in abolition of all death duties, at a time when inequality of wealth had increased faster than at any time since the 1920s. It also lowered income tax rates, but in such a lopsided way that a study found that 58 per cent of the benefits accrued to those making more than \$100,000 a year (8.6 per cent of all taxpayers).<sup>19</sup> The defence of the tax cuts put out by the Republican National Committee on its website was that ‘everybody who pays taxes [benefits] – especially middle-income Americans’.<sup>20</sup> If ‘middle-income’ means (as it should) those halfway down the income distribution (those at the median), it could hardly be further from the truth. For all taxpayers making \$30,000 a year or less shared just 5 per cent of the total benefit between them, and over half of all households have incomes of \$30,000 a year or less.<sup>21</sup> Moreover, it was not correct to claim that all taxpayers gained – even a pittance. Eight million taxpaying households gained nothing. In addition, needless to say, those too poor to pay direct taxes gained nothing from tax cuts, so that altogether there were ‘50 million households – 36% of all households in the nation – who [received] no benefit’.<sup>22</sup>

But even if everybody had benefited from tax cuts (even non-taxpayers by providing them with ‘tax credits’), would this have told us anything about their contribution to social justice? Not a thing. We should first ask if taxes ought to be cut at all, or if they should actually be increased. Are there pressing demands for more public expenditure that should have priority? The architects of the tax cuts knew perfectly well what they were about. Like the Reagan tax cuts, these (and bigger ones still if the Republicans can get away with it) are deliberately designed to forestall such demands by ensuring that the tax base to fund them will have been abolished. The chairman of the Senate budget committee spelt it out: ‘Members are talking about paying for prescription drugs [on Medicare] and expanding unemployment benefits. . . . But that’s going to change because there will be less revenue available.’<sup>23</sup> (Although a lot of the tax cuts’ boosters are born-again Christians from the South, their idea seems to be to take all they have and give it to the rich.) We must also, of course,

## 12 Social Justice: The Basics

look at the existing distribution of public expenditures, comparing the amount spent on the military, on agricultural subsidies and on prisons with the amount going on education, housing, medical care and income support.

If we leave all that on one side and simply ask about the fairness of the shape taken by the tax cuts – accepting their cost of \$350 billion as fixed – we still cannot do that in a vacuum. We have to have some independently derived idea of what a just distribution of post-tax income would look like before we can ask whether any particular pattern of cuts contributed to the pursuit of social justice or detracted from it.

One apologist for the shape of the Bush tax cuts wrote in a letter to the *Wall Street Journal* that ‘the top 1% of income earners constitute 20.8% of the total income earned and pay 37.7% of federal income taxes’, so it was only reasonable that ‘the richest 1% of taxpayers will get 29% of the benefits of the tax cut [excluding their gains from the abolition of death duties]. . . . Since the liberals’ favourite mantra – fairness – is always lurking in the political wings, it’s critical that responsible publications such as the [Wall Street] Journal do their best to dispel the myth that higher-income earners aren’t already paying more than their fair share of income taxes, as a percent of their total income.’<sup>24</sup> Perhaps if the concept of fairness were at centre stage rather than ‘lurking in the wings’, it would be more clear that the correspondent’s idea of fairness appears to be a tax system in which income taxes are paid on a basis strictly proportional to income. For why, otherwise, should it be assumed that the richest 1 per cent are paying more than their ‘fair share’, even after the tax cuts? An alternative way of looking at the position, for which I shall argue, is that there is something grotesquely wrong with a society in which 1 per cent of the population make off with more than a fifth of the entire national income, and that far *higher* marginal tax rates on very high incomes would be needed to approach some semblance of social justice.

The author of the letter concludes by contending that ‘if the average American were made aware of these facts, the politics of economic envy and distortion, so shamefully peddled by the left, would be relegated to the wasteland where [etc.]’.<sup>25</sup> But what has to be emphasized is that the conclusions to be drawn from ‘the facts’ depend on one’s theory of social justice. The author believes that, once made aware of them, the ‘average American’ would agree that the rich are paying more than their ‘fair share’. But the same ‘facts’ can also support the opposite conclusion, that far tougher steps ought to be taken to address the monstrous inequality of incomes that (on

the letter-writer's own 'facts') leaves the bottom half of the population sharing 13 per cent of the total income.<sup>26</sup> What the writer takes to be his trump card – that those in the bottom half of the income distribution pay only 3.9 per cent of federal income tax, so they can hardly be expected to benefit much from tax reductions – is, as far as social justice is concerned, insignificant.<sup>27</sup> It is the inequality of incomes that cries out as the key point. Perhaps the truth about the unequal distribution of wealth, with the top 1 per cent holding around 40 per cent of it, would have an equally galvanizing effect, especially since the benefits from the abolition of tax on dividends, the reduction in capital gains tax and the ending of death duties will accrue almost entirely to this tiny minority of extremely wealthy people.

No compilation of 'facts' can tell us about the fairness or unfairness of a tax system. For that we have to have a theory of social justice. As the eminent political economist John Roemer has put it: 'The major problem for the left today is a lack of theory. Where do we go from here? What kind of society do we wish to fight for? If we socialist intellectuals can provide some direction that will be of inestimable value for the transformation of society.'<sup>28</sup> Without claiming inestimable value for this book, it is certainly my intention to offer definite answers to the questions Roemer asks and provide a systematic rationale for them based on a theory of social justice.