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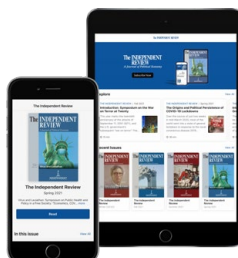
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Social Injustice and Spontaneous Orders

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JACOB T. LEVY

Hayek's Critique and Its Legacy

In *The Mirage of Social Justice* (1976), the second volume of *Law, Legislation, and Liberty*, F. A. Hayek developed an argument against “social justice,” describing it as a “mirage,” the pursuit of which would be both futile and destructive (see also Hayek 1988). The argument was unfortunately timed. It was published a few years after John Rawls put out *A Theory of Justice* (1971) but did not engage that book in any serious way. Hayek merely commented that he thought his differences with Rawls were “more verbal than substantial” (1976, xiii). Perhaps this was true, and Hayek’s book-length indictment of social justice was therefore largely irrelevant to the debate about justice that came to dominate political philosophy and theory in the English-speaking world after 1971. Perhaps it was false, possibly because Hayek knew Rawls’s work from the 1960s better than he knew *Theory* and did not realize how much Rawls had revised his views. In that case, Hayek *might* have had arguments that could have blunted the appeal of Rawls’s account, but because he did not understand the disagreement and confront it head on, those arguments did not enter mainstream debates.

Apart from the question of what was in Hayek’s mind, there are questions here about how to interpret both Rawls and Hayek. The apparent gap between them can be narrowed by noting Hayek’s long-standing if understated support for social insurance

Jacob T. Levy is Tomlinson Professor of Political Theory at McGill University.

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and basic income maintenance provided according to impersonal rules and by emphasizing the continuous elements in Rawls's thought from the 1960s on—namely, the identification of justice with impersonal rules identified *ex ante* rather than with individual outcomes *ex post*. But the substantive political commitments that both thought were informed by their theories remained distant.

In any case, Hayek's arguments on this question have generally been ignored in theoretical debates about justice, and when they have been subject to serious scrutiny, they have mainly been found wanting (Johnston 1997; Lukes 1997; and, in less depth, Fleischacker 2004). Hayek seems to have thought that the pursuit of social justice required, indeed consisted of, *ex post* redistribution to particular persons or interest groups, a distributive scramble of all against all. Because this appears not to be true of universal social insurance or state welfare provided according to impersonal rules of means testing and is certainly not true of Rawls's theory of "property-owning democracy" and rules of justice applied at the level of an overall institutional order, Hayek's argument has been taken to fall flat.

And, indeed, in the past decade or so classical liberal scholars self-consciously inspired by Hayek have moved toward an open *embrace* of social justice in Rawls's sense. John Tomasi (2012) pathologizes the rejection of social justice as akin to an allergic overreaction: "social justicitis." In his search for a reconciliation between Rawls and Hayek, the objection to social justice is an obstacle that must be removed. Jason Brennan and Tomasi identify an emerging school of thought, "neoclassical liberalism," as the view that encompasses "classical liberalism's commitment to robust economic liberties and property rights as well as modern or 'high' liberalism's commitment to social justice" (2012, 115).¹

The phrase *social justice* was not in particularly widespread use during the long era of Rawlsian dominance in political philosophy, although Rawls himself occasionally used it. The terms *distributive justice* and simply *justice* were more common, which only aggravates the sense that Hayek's critique was marginal to the prominent debates. Around the same time that these Hayek-influenced scholars were embracing Rawlsian "social justice,"² the phrase began to find a great deal more uptake, mainly outside of

1. I should note here that Brennan and Tomasi identify me as a member of this emerging school, along with David Schmidtz, Gerald Gaus, Matt Zwolinski, and Charles Griswold. This is, in the lawyers' sense, a constructive grouping, not one that tracks either self-identification or explicit discussion of the particular questions at hand. Zwolinski has identified himself with the label *neoclassical liberal* and its views, but I am not sure that any of the other listed people have. For my part, the present essay is my first piece of writing on the problem of social justice. Although I reach a number of conclusions similar to those reached by Tomasi and the others, "social justice" is not a concept that does much work in my path to them, and so I do not recognize myself in the description.

2. The usage of the term *social justice* as a way to talk primarily about the kinds of wrongs generated by racism or sexism rather than about problems of purely economic distribution is decades old in some academic disciplines and activist circles. What I mean here is that as recently as the early 2010s that usage had not spread to other disciplines or become ubiquitous in popular discourse. In 2012, a political theorist such as Tomasi could reasonably assume that his readers would understand that the term *social justice* refers primarily to the problems of distributive justice that arguably divided Rawls and Hayek, and thus he would never mention this alternative. In 2019, that assumption would be hard to imagine.

political philosophy circles. “Social justice” in this sense addresses a range of topics, some of which political philosophy tends to treat under concepts such as “identity,” “recognition,” and “oppression” (Young 1989; Taylor 1993; see Fraser 1996 for an important work that helped develop the idea that social justice encompasses both redistribution and recognition). Social justice in this sense remedies not poverty or maldistribution but racism, sexism, and similar phenomena that are understood as partly political, partly economic, and partly cultural. This understanding seems to leave behind not only Hayek’s critique but even the latter-day Hayekians’ rejection of it in favor of a more Rawlsian view. Hayek’s theory thus comes to look doubly marginal, a dead end on the way to a destination that is not there anymore anyway.

I think this conclusion is the wrong one to draw, however. In this article, I suggest that there is something importantly true in Hayek’s understanding of justice. The traditional understanding on which Hayek built is the conceptual core of the idea of justice that is easily lost sight of in contemporary political philosophy. Hayek can help us keep the rules of just conduct in mind and thereby avoid much confusion. But Hayek was wrong (and untrue to the tradition) to try to restrict the concept of justice entirely to the rules of just conduct. Indeed, his own contributions to social theory make it more difficult to rule out social justice in the way he aimed to do. The understanding of spontaneous or emergent social orders that forms such a crucial part of Hayek’s intellectual legacy helps us make sense of the idea of social justice and of why the rules of just conduct have never wholly exhausted that idea. I also suggest that this understanding of social justice can capture both the Rawlsian sense of *distributive justice* that has lately been adopted by some scholars in the classical liberal tradition and the widespread vernacular sense of attention to the oppression and misrecognition. The relationship between the microlevel rules of just conduct and social justice as a normative evaluation of emergent orders unifies the two senses of the concept. I conclude with some remarks on Hayek’s account of the dangers of pursuing social justice and on a possible theoretical remedy for them.

Ius and the Rules of Just Conduct

Hayek argued that justice is an inappropriate standard of evaluation for outcomes that are not planned and that the results of spontaneous or emergent processes are not in themselves either just or unjust. Justice and injustice are attributes of deliberate actions; justice consists of individual actors’ observance of rules of just conduct. In Hayek’s view, the use of this normative category, justice, to describe large-scale social outcomes is a superstitious anthropomorphication: imagining a blameworthy actor where there is none. The classical liberal theorist Anthony de Jasay turned the same basic idea into a more full-throated critique of Rawls and his followers, characterizing theories that view “justice as a matter of social choice rather than, as in the traditional approach, a quality of individual acts” as a category mistake, erroneously treating “justice as something else” (1996, 162)—fairness or universalizability or impartiality.

This view has its roots in the oldest and most widespread understanding of justice in the Western tradition: rendering unto each what is due him. In Plato's *Republic*, Cephalus defines justice as telling the truth and paying one's debts. The paying of debts in particular is probably the paradigmatic case of a rule of just conduct, the obvious example of rendering to someone else what is due to him. It moreover has the double moral and juridical sense that characterizes justice: repayment is an obligation under the positive law, and it is so *because* the law recognizes the underlying duty. The honoring of contracts is a broader way to think about this concept of justice. Note that contracts combine truth telling with the discharge of a debtlike obligation; a breach of contract means that the promise the contract codified has turned out to be a lie.

Aristotle subsequently saw the value in joining the justice of honoring voluntary obligations under private law to the justice of respecting the prohibitions of the criminal law.³ It is unjust to steal or kill and unjust to break a contract or repudiate a debt, and in either case the legal system will try to do justice by restoring the disrupted equilibrium through restitution, compensation, and punishment.

In the Roman tradition that came to dominate European thinking on justice, *ius* is "law" and "lawfulness," "right" and "rightfulness." Justice is a juridical and judicial virtue (and the terms are, obviously, etymologically related, as is *jurisdiction*). Just verdicts from a judge render unto each party what is rightfully due to each. To act unjustly is to commit an injury—*iniuria*, "injustice"—which calls for a judicial remedy. And when Thomas Aquinas sought to reinfuse Roman law with Greek morality, to characterize justice as paradigmatically a virtue of individual persons, as Plato and Aristotle did, the resulting hybrid was the definition of justice as *the constant and perpetual will to render to each what is due him*, to be the kind of person who will render just verdicts as a judge or who as a private person will pay one's debts and refrain from committing injuries.

Adam Smith famously endorsed a version of this understanding of justice in *The Theory of Moral Sentiments* ([1759] 1976), equating justice with rules of just conduct with which one complies mainly by refraining from the kinds of injuries that are justifiably punishable:

3. Aristotle somewhat confusingly prioritized the *corrective* character of this branch of justice—that is, the duty to make restitution of the appropriate kind after a wrong has been committed. In modern common-law language, he foregrounded remedies over the rights whose violations need to be remedied, such that it appears justice is a matter of, for example, punishing a criminal and making whole the victim of a contract breach rather than refraining from crime and honoring contracts in the first place. On the one hand, we could look at this emphasis on remedies and think that it really reaffirms the core sense of justice; Aristotle seemed to take the underlying rights so thoroughly for granted as to find them less important to discuss than remedial questions. On the other hand, this emphasis on remedies usefully reminds us of the legalism of justice—in other words, its close relationship to judicial proceedings. I also think here, as in the evolution of the common law, which writs and remedies preceded full legal articulation of the rights they vindicated, we see some of the wisdom in the conceptual emphasis Adam Smith and Judith Shklar later put on the term *injustice*. I return to this point in the conclusion. See Levy 2016.

Mere justice is, upon most occasions, but a negative virtue, and only hinders us from hurting our neighbour. The man who barely abstains from violating either the person or the estate, or the reputation, of his neighbours, has surely very little positive merit. He fulfils, however, all the rules of what is peculiarly called justice, and does every thing which his equals can with propriety force him to do, or which they can punish him for not doing. We may often fulfil all the rules of justice by sitting still and doing nothing. (82)

As Allan Beever (2013) argues, this core meaning of justice, the commutative justice associated primarily with private law and with the horizontal obligations among private persons to render each other his or her due, has been increasingly “forgotten” and obscured in modern political philosophy. Consider the strange intellectual path that led to G. A. Cohen’s (2008) purported “rescuing” of justice from John Rawls. Like David Hume, Rawls identifies justice as an attribute of institutions and laws suitable for coordination and coexistence under conditions of scarcity and limited altruism. But whereas Hume uses this understanding to explain the core private-law rules of just conduct, Rawls uses it to build a conception of distributive or social justice that includes limits on the permissible inequality in a society. But he does so while recognizing the link to Hume and the tradition. His conception of “justice as fairness” is explicitly a modification. He takes the legalistic normativity that characterizes property and contract law and, as he thinks, generalizes it through a contractarian thought experiment into a normativity that governs public institutions as well. We agree on the terms of a private-law contract before knowing who will later face the temptation to breach it. That fair-decision procedure becomes the core of Rawls’s thought that just institutions are those that would be chosen before knowing who would be advantaged by them. (It is this impulse that Hayek rightly recognized as shared between Rawls and himself.)

But in the decades that followed, many readers came to misunderstand the principles of justice Rawls derived from the fair-decision procedure, his hypothesis that we should link justice to fairness in this way. Rawls’s influence (here as elsewhere) was so great as to obscure recognition of his own ideas’ history and precursors, until it was common to simply *identify* justice with fairness or with Rawls’s particular principles, the limits on inequality in particular. And against that background, Cohen (2008) challenges precisely the legalism and institutionalism of Rawls’s view, insisting that they turned his theory into one of mere “rules of regulation” and not *justice*. If justice demands equality, then it cannot be premised on limited altruism and cannot be restricted in scope to juridical and enforceable norms. Justice demands an ethos of equality promotion in daily life. Rawls’s difference principle allows inequalities if they were necessary to increase the absolute well-being of the worst-off because, for example, those whose work create widespread economic benefits need to be compensated for it. Although this is not a traditional rule of just conduct, it is part of a theory of justice because all would agree to it in a fair-decision procedure.

Cohen breaks the link to the traditional views entirely without noticing that he has done so; justice forbids the talented from making the outrageous demand for unequally high compensation, and it demands that they put their talents to work for the betterment of all. If humans have such limited altruism that this is unworkable, so much the worse for humans, who may lack the capacity for justice. The legalism of justice, its roots in *ius*, disappear altogether. Cohen perversely moves justice back to the individual level, but not in order to reemphasize the rules of just conduct. Rather, he takes the idea of justice Rawls developed for public institutions based on a kind of metaphorical extension from *ius* and imports *them* to the level of individual morality. (I discuss this issue further in Levy 2010 and 2016.)

Cohen's work has been tremendously influential, doing a great deal to shape the research agenda of political philosophy as it begins to emerge from the decades of Rawlsian dominance. This influence makes it all the more important to reengage with Hayek and with the tradition of thinking about *ius* that he represents. Understanding Hayek's theory of justice would be valuable even for Rawlsians seeking to understand the older view to which Rawls's view remains tethered and from which Cohen's is completely detached.

Justice and Spontaneous Orders

All of that being said, the core of the idea of justice is not the *whole* idea. *The Republic* is not, after all, a book-length examination of the rightness of Cephalus's understanding of justice but rather a rejection of that view in favor of an understanding that includes the right ordering of the self and the right ordering of a polity. Alongside the commutative or corrective justice of honoring obligations between private individuals and responding to violations of them, Aristotle identified *distributive justice* as a part of the concept of justice. Persons are owed things not only by other persons but also by public institutions, and it is a matter of justice that they receive what is due to them in that sense as well: a proportionate rather than disproportionate share of the tax burden, a due measure of public honor, a due portion of political power, and due access to public places and benefits. This view is not, to be sure, the modern understanding of *re-distributive justice* (see Fleischacker 2004), but neither is it reducible to the individual-level rules of just conduct, and it cannot be satisfied by Smithian inaction.

Indeed, Hayek acknowledged that there are questions of justice at stake in “shares in the services of government services, and [perhaps] for an equal share in determining what government shall do” (1976, 102)—that is, precisely the kind of access to public benefit and political power that Aristotle identified with the distributive branch of justice. (And here it is worth remembering that the account of publicly provided social insurance Hayek gestured at several times over his career indicated that the public services at stake might be substantial.) Hayek likewise characterized the rule of impartial and disinterested law as a demand of justice. These concessions are in apparent tension with the emphasis of the rest of *The Mirage of Social Justice* and, I think, have not

received as much attention as they should have. Although Hayek was not explicit on the point, I think that he supposed *public* distributive justice to be reconcilable with his theory because it involves actors making decisions, decisions that can be identified as just or unjust depending on whether they are made justly or unjustly. (The evaluation of such actions includes concepts such as “impartially or partially” and, again, resembles the core contractarian impulse in Rawls’s theory.) What Hayek insisted *cannot* be judged against the standards of justice are outcomes that are unplanned and undecided, those that emerge in a spontaneous order such as the marketplace. It is to this exclusion that I now turn.

Around the same time that Hayek published *The Mirage of Social Justice*, Robert Nozick was arguing forcefully against treating goods or wealth as “manna from heaven,” available for legitimate distribution in accordance with the distributor’s theory of distributive justice. “Things come into the world already attached to people having entitlements over them” (1974, 160)—determinate, particular people. The image here is, appropriately for Nozick, Lockean. Either I have mixed my labor with the world and produced a new thing to which I have an entitlement, or I have reached voluntary contractual relationships with others (agricultural workers I have hired, perhaps) to do so on my behalf, retaining for myself the entitlement to the new good.

This cannot be, however, all there is to say about the matter, in part precisely because a market economy is a spontaneous order and, like all such orders, is very much more than an aggregation of its component microscale elements. To put it in different terms, it has been well known at least since Joseph Schumpeter that entrepreneurial innovation and technological development throw off tremendous positive externalities, creating much more wealth than the entrepreneur himself or herself will capture. Indeed, it is not uncommon to find that the key original entrepreneurs receive only a very short-lived economic reward, if indeed they receive any at all. That this should be so is an aspect of Schumpeterian creative destruction; a productivity-enhancing innovation has knock-on effects throughout an economic order in ways that cannot possibly be internalized by the innovator, no matter how dense and controlling intellectual-property law becomes. The more profound and transformative an innovation, the more widely it reshapes an economy, and the *more* impossible it is to track down, monetize, and capture all of the associated benefits.

Those large economic benefits are not manna from heaven; they were brought about by human action. But they were not brought about by human design, and there are no determinate, particular people who have a powerful moral entitlement to them. I think Hayek fundamentally understood this notion but used it to emphasize the *absence of injustice* in market losses. The particular entrepreneur, investor, or worker whose incumbent line of work is wiped out by the destruction in “creative destruction” can’t be said to have been injured because no particular person did the injuring. This is true enough as far as it goes, but it is no *more* true than that a growing market economy sees the creation of a great deal of wealth to which no particular actor has a decisive claim in prelegal justice to own.

I repeat: this conclusion does not mean that the proceeds of economic growth are the “manna from heaven” Nozick described. The idea that the only choices are goods that come into the world under an ownership-like kind of decisive and unique moral entitlement and “manna from heaven” is just the fallacy I mean to criticize. Nozick’s view was aggregative: all stuff comes into the world under entitlement, and stuff that doesn’t do so must come from some mysterious source. An emergent order is not aggregative; it is more than the *sum* of its parts even though it is made up of nothing but those parts. (A diamond is not a pile of coal dust.) This is not a mystical or holist view about social organisms; it is just a restatement of the idea of a spontaneous order Hayek did so much to develop. And I do not think he would have disagreed so far; his view was not Nozick’s. He consistently thought of the economic results of market processes as *neither just nor unjust*, whereas Nozick would have had to characterize them as just if they have arisen from just ownership and just exchanges.

Now, recall that Aristotle paired what I have been identifying as the core concept of commutative justice with *corrective* justice—that is, with remedies for injustice. And consider how individual-level injustices work in a spontaneous order.

Emergent phenomena are highly sensitive to small changes in initial conditions. They are somewhat *unpredictably* so, but that does not make it impossible to understand the relationship in retrospect. In a market economy, comparative advantage and the division of labor mean that very small differences in upstream talents or skills can lead to huge downstream differences in specializations. This need not but *can* mean huge differences in vulnerabilities: to state violence, to private violence, to natural disasters, or simply to the destructive side of creative destruction. And the original differences in talents, skills, or capital may have been triggered by an earlier injustice. Sometimes this earlier injustice will have been one of the great historical injustices: slavery or expropriation. But sometimes it will have been something smaller and subtler: an unjust educational system that segregated on the basis of race or was more concerned with stamping out a minority’s religion or language than with enhancing their capacities; an excessively restrictive intellectual-property regime that generated large rents; or, a crucial example Hayek used, a legal system with a pronounced class bias over time. Hayek suggested that “the most frequent cause” of a need for legal reform

is probably that the development of the law has lain in the hands of members of a particular class whose traditional views made them regard as just what could not meet the more general requirements of justice. There can be no doubt that in such fields as the law on the relations between master and servant, landlord and tenant, creditor and debtor, and in modern times between organized business and its customers, the rules have been shaped largely by the views of one of the parties and their particular interests—especially where, as used to be true in the first two of the instances given, it was one of the groups concerned which almost exclusively supplied the judges. (1973, 89)

As Adam Smith put it, the class bias in traditional lawmaking was so pronounced that it could generate a very reliable rule of thumb: “When the regulation, therefore, is in support of the workman, it is always just and equitable; but it is sometimes otherwise when in favour of the masters” ([1776] 1982, 157).

Hayek acknowledged the need for legal reform and for reform in the name of justice. But he did not consider the ways that the initial injustice might multiply through an economy and did not entertain the idea of rectification or correction for the attendant injustices. Once we leave behind the merely aggregative understanding of an economy, the injustices become extremely difficult to calculate, and the remedies complex to imagine. Most simply, if at some point in the past the thumb on the scales of justice in favor of employers, landlords, and creditors meant that some social groups had access to capital that could compound in their favor, and others disproportionately lived in debt that compounded to their detriment, initial injustices might have led to greatly magnified inequalities over the generations. Such compounding is admissible in considering remedies for private-law injustices; that is, the initial injustice cannot be made good years later by repaying only the initial amount. At a larger-scale social level, the remedies may be difficult to calculate, but *there is plainly a problem of justice at stake*.

But even compounding interest is a relatively simple case. The real complexities arise through such cases as comparative advantage and the resulting concentrations of skills and human capital. Thanks to some earlier initial injustice—an unequal educational system that left excluded some and left them largely illiterate—one part of a population specialized in manual labor, where their comparative advantage lay compared to their literate neighbors. Comparative advantage works to the absolute improvement of all concerned, but only so long as there is some demand for what each group is able to produce. If technological advancement leaves the manual laboring group’s specialized work close to valueless in exchange, then what? When the disadvantaged group says, “We would not have concentrated all of our human capital in this now defunct specialization if not for the initial injustice,” how shall we respond?

I cannot answer the question about what to do here; advancing a positive theory of social justice is well beyond the scope of this essay. But I think the *question* has to be understood as a question of justice. It is the core idea of corrective justice applied to the complex setting of a spontaneous order. The answer may well be “This situation is too complex to be justiceable or remediable,” but that is not the same as saying, “There is no problem of justice here.” It is rather only to say, “Not all injustices will be addressed.” And at that point, we have left behind Hayek’s world in which the outcomes of a spontaneous order cannot be attributed to any decision maker who might be judged unjust and have instead entered the world described in Judith Shklar’s (1990) rejoinder that *what misfortunes and injustices to respond to* is a matter for identifiable decision makers, who might themselves be blamed for injustice.

Some readers will object that a claim that is too complex to be remediable in a court of law cannot be a claim of justice because the concept of “justice” precisely means moral claims that are legitimately coercively enforceable. As with the similar concept of

“right” or “rights,” the legalism of *justice* as a word and a concept easily connects to the idea of legitimate enforceability. To render to others what is due them, understood as paying one’s debts, is a central case of an enforceable obligation. But even if there is considerable overlap between “rendering to others what is due them” and “legitimately enforceable claims,” they are not the same concept and come apart in plenty of cases. “To do someone an injustice” is a venerable way of describing a false disparagement of them and need not imply anything legally actionable or coercively reparable. It can occur in a private argument between two people, invisible to the law of defamation or customs of violent redress, such as dueling. It is a way of saying not that “you have violated an enforceable obligation” but that “you have given less credit, offered more blame or criticism, than is due.” (We might recognize the intuitive appeal of Rawls’s famous pairing by noting that the more current way to express the thought would be “that’s unfair” or “in fairness to me or that person . . .”)

To put the relationship between justice and enforceability in Adam Smith’s terms,

[W]e feel ourselves to be under a stricter obligation to act according to justice, than agreeably to friendship, charity, or generosity; that the practice of these last-mentioned virtues seems to be left in some measure to our own choice, but that, somehow or other, we feel ourselves to be in a peculiar manner tied, bound, and obliged, to the observation of justice. We feel, that is to say, that force may, with the utmost propriety, and with the approbation of all mankind, be made use of to constrain us to observe the rules of the one, but not to follow the precepts of the other. ([1759] 1976, 390)

That is, the relationship of justice to enforceability is a conclusion that follows from the character of justice as a moral demand; it is not part of the *definition* of justice. An injustice that cannot be remedied is not a contradiction in terms; the human condition may well be such that we are surrounded by such injustices. But the unremedied injustice is at least a ground for legitimate *complaint*. And so it matters that we are able to recognize the amplification of initial injustices through the complex workings of an emergent order as its own kind of injustice.

Social Injustice without Individual Injustice?

The next question is whether microlevel injustices are *necessary* to be able to generate a claim of injustice against the eventual outcomes of the spontaneous order. For an example to suggest otherwise, one that will bridge the case of distributive social injustice with that of oppressive social injustice, consider Thomas Schelling’s famous model of white flight as a perverse spontaneous order: “[T]he interplay of individual choices, where unorganized segregation is concerned, is a complex system with collective results that bear no close relation to individual intent” (1969, 488). On the reasonable view that it is not a violation of the rules of just conduct to sell my house and move for the

sake of my own family's financial well-being, a black family moving to a previously all-white neighborhood may trigger a cascade of sales and a spiral of falling property values without attributing an injustice to the local whites. Indeed, it may do so without even individual-level racial prejudice on the part of the local whites if they believe that *other* whites suffer from such prejudice or even if they believe that other whites believe this about other whites. Certainly it does not take *much* racial prejudice to trigger the cascade that leads to persistent racial segregation, and even a population of whites whose first preference might be to live in a racially diverse neighborhood will carry out white flight to avoid their worst-case scenario of living in an overwhelmingly black neighborhood with a collapse in property values. Again, as with comparative advantage, small shifts in initial conditions (a little bit of racial prejudice or even an uncertain belief in a widespread little bit of racial prejudice) can have very large effects on the ultimate pattern.

Of course, in the real world, the *ex ante* existence of all-white neighborhoods was a symptom of enforced discrimination and segregation that violated any ordinary sense of justice, but the dynamic Schelling models does not depend on that fact. The white homeowners, acting individually within the boundaries of the rules of just conduct, may have been led as if by an invisible hand to the creation of a pattern that was no part of their intention: a pattern whereby black homeowners were systematically set back in their attempts to invest in rising home values, and members of a rising black middle class were shut out of the social benefits provided by middle-class neighborhoods. In the real-world case, this is a story about how injustices persist and propagate through a complex order; in the model, it is a story about how patterns of systematic disadvantage can emerge even in the absence of an initial seed of injustice. An emergent or spontaneous order can display characteristics that its component elements do not display; this is what distinguishes the spontaneous order from an aggregation. Injustice can be one of those characteristics.

Social Justice and Oppression

Consider now the term *social justice* in the sense in which it is most often used today: the remedy for or absence of *oppression*, in Iris Young's (1989) sense, which is the combination of political, economic, and social disadvantage that faces those who stand outside a society's dominant understanding of full membership—women; gays and lesbians; persons with disabilities; members of disadvantaged ethnic, religious, and racial groups; and so on. Social justice so understood is characteristically concerned with *structural* disadvantages. We are now in a position to make sense of this idea: such structural disadvantages are more than the sum of individual acts. Cultures, like economies, are spontaneous and complex orders, as Hayek often emphasized with the example of language.

Under conditions of uncertainty, even a small minority of police officers committing unjust violence against members of racial minorities or a small minority of men

committing sexual assault against women is enough to multiply into a pervasive sense of unease and fear that limits the opportunities and freedom of many, most, or all members of those targeted groups. Individually minor slights or expressions of stereotypes—so-called “microaggressions,” no one of which rises to the level of an actual *aggression* or injustice—can multiply into a pervasively exclusionary atmosphere and culture. What feels to one actor like a minor and not-unjust act—crossing the street away from an oncoming black pedestrian, stopping to leer or whistle at a passing woman—can multiply into social and cultural effects that keep members of the affected groups from being able to enjoy their distributively just access to public space.

Again, to describe the resulting patterns of social and cultural exclusion as unjust is not to immediately call for their coercive remedy. And—crucially—it is not to call for the individual actions that make up the pattern to be criminalized, the conclusion often feared by those who are most critical of this understanding of social justice. The whole pattern may exhibit an injustice that the individual actions do not exhibit, and part of the value of being able to diagnose such a pattern—say, structural racism—is the ability to understand that it is not primarily about identifying lots of individual persons as racially prejudiced. Oppression and exclusion can be emergent phenomena, and we need not read them back into the souls of the individual actors any more than we read a desire for general prosperity back into the souls of the individual actors in Adam Smith’s original illustration of the invisible hand.

In the short space available here, I don’t pretend to decide which theory of social justice, in either sense, is correct. I don’t offer answers to the questions regarding which economic distributions or which patterns of racial and gender disadvantage are just or unjust. I aim only to show that the *questions* are legitimate and unavoidable and cannot be dismissed as a category mistake. They do not require, as Hayek supposed, a superstitious anthropomorphication of society, treating it as subject to unified and centralized decision making. Indeed, the understanding of social orders we gain from Hayek (and from Smith before him) can help us to comprehend social injustice *better* than someone in the grip of such a superstition can.

Of Tyranny and Injustice

I conclude by returning to the fear of tyranny that runs through Hayek’s critique. Believing as he did that social justice must mean trying to undo the results of impersonal processes, treating those processes just as though they were deliberate and planned actions, he saw a short path from the pursuit of social justice to the progressive subjection of human action to lawless and arbitrary state power. Although this fear is apparently misplaced when directed against social insurance policies in the world or in Rawlsian theory, it is not groundless. There are *ways* of understanding and seeking social justice that can lead to such consequences.

The best response to this worry, it seems to me, is not to abandon the idea of social justice. After all, there are ways of understanding ordinary *ius* that can lead to terrible,

violent, and tyrannical consequences, too. Justice, in its traditional juridical sense, can be too harsh and exacting, calling forth the moral urge to offset it by equity or moderation. (Think of *A Merchant of Venice*.) Rather, I would suggest that we proceed as Judith Shklar (1990) recommended: prioritize *injustice* over justice in our political-moral thinking.⁴ The point of viewing justice as a general normative category for thinking about social orders is not to provide a blank canvas on which utopian blueprints can be drawn, blueprints that will then tempt monomaniacal political actors to ruthlessly implement them. Rather, it is to provide a way to perceive, describe, and diagnose experiences of being wronged. This is how Adam Smith thought we learn a sense of justice: by perceiving injustices and reflecting on the wrongness of them. Working in this direction means that those who pay the price for any given remedy or program of reform do not disappear from view. Our problem is not to create the socially just society once and for all, but to perceive and, where possible, to mitigate or prevent injustices here and now, whether they be individual or social.

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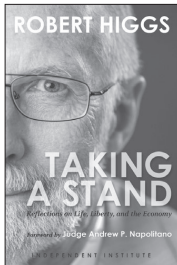
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