

CHAPTER 5

Social Justicitis

The Distributional Adequacy Condition

Opposition to social justice is a fixed premise of the classical liberal and libertarian traditions. This arc of opposition runs from Hume, to Hayek, to Nozick and beyond. In Hume's classic statement: "Render possessions ever so equal, men's different degrees of art, care, or industry will immediately break that equality. Or if you check these virtues, you reduce society to the most extreme indigence; and instead of preventing want and beggar in a few, render it unavoidable to the whole community."¹ Hayek argues that "justice" applies only to the products of deliberate human will. A free society is a spontaneous order rather than a made thing: distributions emerge as a product of human action but not of human design. Within the context of a market society, Hayek says, the phrase *social justice* "does not belong to the category of error but to that of nonsense, like the term 'a moral stone.'"² Nozick advocates "historical" principles of justice and rejects Rawls's theory of justice for being "patterned." Goods come into the world morally attached to producers. Attempts to impose patterns violate liberty. Indeed, Nozick rejects the whole "redistributive" approach to justice: "There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry."³

Orthodox libertarians stand on solid ground when they reject social justice. If the foundational principles of libertarianism (self-ownership, say, or some principle of natural liberty) generate unassailable rights to property, then taxation of that property in pursuit of the distributional requirements of social justice is unjust. Indeed, the very positing of distributional patterns as requirements of justice is a moral error.⁴ Libertarians may reluctantly accept talk about distributive justice in a derivative sense: whatever distributions emerge from

market-based procedures might be called “distributively just.”⁵ Further, as Loren Lomasky notes, libertarians might allow informal uses of the term to refer not to what people are obligated to do politically, but to what it might be good or praiseworthy for them to do. But in no case can social justice play the role of a final, process-independent standard of evaluation that might justify the coercive use of state power toward some distributive goal. As Lomasky puts it, “ideals of ‘distributive justice’ have no political standing.”⁶

As noted earlier, traditional forms of classical liberalism have often been presented with less philosophical consistency than have recent expositions of libertarianism.⁷ As a result, the logical disposition of classical liberalism toward social justice is also less clear. Unlike the deductive chains that bind libertarians to a rejection of distributive justice, the chain connecting classical liberals to that conclusion has a number of weak and uncertain links. When they object to social justice, classical liberals often slip between different argumentative levels—sometimes basing their objections on practical worries about the pursuit of distributive ideals by direct governmental programs, and other times seeming to base their objections on purely moral grounds. Still, classical liberals have been among the most strident opponents of social justice.

Traditional classical liberals and libertarians oppose social justice so strongly that their reaction seems almost biological. From the market democratic perspective, many defenders of private economic liberty suffer from a malady that I shall call *social justicitis*. *Social justicitis*, as I use that term, refers to a strongly negative, even *allergic*, reaction to the ideal of social or distributive justice.⁸ For libertarians, given the foundationalist biology of their view, arguments on behalf of social justice may be as threatening as a bee sting is to some people: a direct and mortal threat to the heart of their system. However, the anatomy of classical liberalism is more complex.

Within systems of classical liberal thought, social justicitis typically begins as an adverse reaction to talk about social justice at the level of immediate political practice that I call public policy. This is no surprise; within actual political campaigns, demands for social justice have long served as attacks upon private economic freedom. After securing a foothold in the realm of public policy, however, the malady quickly infects the whole classical liberal scheme. It spreads next to the level of regime advocacy that I call political theory, and unless it is arrested there, it soon masquerades as a reason for clas-

sical liberals to reject the ideal of social justice at the identificatory level of political philosophy.

There is a difference between the strains of social justicitis afflicting libertarians and classical liberals. This difference is important to the development of market democracy, as we shall see later in this chapter when I argue that classical liberals, at least, should embrace the idea of social justice. First, though, I would like to address libertarians and classical liberals as a group. By doing so, I hope to soften up the opposition to social justice within both camps. Few classical liberal or libertarians have adopted “Social Justice!” as a slogan, or rallied beneath banners emblazoned with its distributional demands. Yet the idea of social justice, or something very like it, has long played a quiet role in defenses of classical liberalism and libertarianism alike.

Most all prominent classical liberals and libertarians share a curious feature: while rejecting the idea of distributive justice, they defend their preferred institutional forms by predicting that these institutions will produce distributional patterns that benefit the poor. Free market thinkers typically leave unclear what role they see these expressions of concern playing within their arguments. Most often we find these distributional concerns peeking out from the interstices of their official (property-rights affirming) arguments. In making these predictions, however, many classical liberals imply that they accept a further normative idea. That idea, rough and inchoate, is that a system of social and economic institutions is rightly applauded only if that system works to the benefit of the least well-off members of society. A system that does *not* work to the benefit of the working poor is defective from a moral point of view.

Of course, one can express a concern about the shares held by the poor without committing oneself to a full-blown theory of fair shares. It is one thing to claim that some set of institutions benefits the least well-off and applaud that (alleged) fact about those institutions. It is a different thing to say that such institutions are to be applauded because they are intended to benefit the least well-off. And it would be different yet again to assert that institutions are to be applauded only if they are designed to benefit the least well-off for the sake of the least well-off.

There are ways to explain away these expressions of concern. On traditional consequentialist defenses of classical liberalism, for example, economic productivity might well be said to require social stability.

SOCIAL JUSTICITIS = ALLERGIC REACTION

NEEDS-BASED PUBLIC POLICY → THE PUBLIC POLICY

> HOW CAN WE REJECT SOCIAL JUSTICE? (S. 110)

> EXPLAINING AWAY

If a predictable effect of the operation of the system of natural liberty is that the poor will be benefited, this may head off social unrest and other threats to productive stability. The positive distributional effects of capitalism on the poor might be applauded simply on those grounds.

These expressions of concern for the poor might also be explained away by libertarians. The justification for the system of economic freedom rests atop the principle of self-ownership. Will this system tend to be beneficial to the poorest class? Most advocates of the system of natural liberty say it will. But they tend to mention this prediction merely as a happy aside. The claim that economic freedoms predictably benefit the poor is merely a buttressing argument. A system that benefits the poor is not something we are required to secure for people as self-owners.

Still, for reasons that remain undertheorized, I believe that many thinkers in the free market tradition rely on the claim that the program of economic freedom and limited government benefits the poor. They need this claim to do some additional, independent justificatory work in support of their ideal of limited government. By considering the patterns of predictive claims classical liberals and libertarians make, we find clues about moral commitments that float in the background of their official argumentative positions. Whatever their official positions, thinkers in the free market tradition often employ predictions about the beneficial effects of capitalism as though they were something very like a necessary condition for defending classical liberalism at all.

Many classical liberal and libertarian thinkers implicitly accept some version of what I call *the distributional adequacy condition*. According to this condition, a defense of any version of liberalism is adequate only if it includes the claim that the institutions being endorsed are deemed likely to bring about some desired distribution of material and social goods. That desired distributional standard might be expressed in *egalitarian* terms: the distribution must be expected to satisfy some criterion about the relative holdings of citizens, where some equalizing of those shares is taken to be desirable. Alternatively, that standard might be expressed in *sufficientarian* terms: the distribution must work out in such a way that every citizen (or class of citizens) holds some target bundle of real goods, regardless of how the size of that bundle compares to those held

DISTRIBUTIONAL ADEQUACY CONDITION - EGALITARIAN
SUFFICIENTARIAN
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by others. Some authors appear to endorse a distributional requirement in *maximizing* terms: a market-based set of institutions is recommended because, compared to alternative sets of institutions, market-based institutions are expected to produce the largest real bundle of goods for the poor over time. Or, slightly differently, the institutions of *laissez-faire* are recommended because they maximize the expected utility of all citizens. Other times, these distributional concerns are expressed in capabilities-based terms: free market institutions are recommended because they are expected to bring about conditions in which citizens can develop their (diverse) functional capabilities. Many times, classical liberals appear to endorse a distributional adequacy condition that blends more than one of these distributional ideals. Speaking generally, though, many classical liberals and libertarians do endorse something like the distributional adequacy condition: a set of political and economic institutions, in order to be fully justified, must be expected to work to the benefit of the least well-off. And classical liberals and libertarians do this even while loudly claiming to reject any ideal of distributive or social justice.

This chapter begins by tracing a line of concern for the poor that we find running through the classical liberal and libertarian traditions. Part of my goal here is simply to gather normative materials that we might use in later chapters to indicate how the market democratic affirmation of thick economic liberty might be made compatible with a wide variety of approaches to distributive justice. By showing the diversity of the distributional concerns that appear across the free market tradition, I hope to make plausible my suggestion that market democracy is above all else a general research program: it is not wedded to any particular account of democratic justice. Market democracy's foundational commitment to thick economic liberty allows it to remain eligible (and, I hope, attractive) to a wide range of distributional suitors. Let's begin.

Hit Parade: Property and the Poor

According to John Locke, the great end of government is the securing of people's right to property. Locke says that the state's protection of property rights encourages the productive possibilities of human

creativity, since “labor puts the difference of value on every thing.” Locke believed that inequalities in material holdings could be justified by the different degrees of industry of self-owning persons. But from the earliest stages of his argument, Locke expresses concerns for the material well-being of all citizens—the most fortunate and the least fortunate alike. Locke says that an effect of the operation of his property-protecting political scheme is that under it, even the poorest will do well. Thus “a day labourer in England,” Locke tells us, “feeds, lodges and is clad” better than a king in America—that is, a (naturally bountiful) place where this system is not fully in place.⁹

But this is proto-Rawls. The “day labourer” in seventeenth-century England was indeed “the representative member of the least well-off class.” Locke is taking care to point out that even the least well-off wage laborers will fare better in this system than in other systems. After all, what if the class of day laborers were *not* made better off under Locke’s preferred scheme? What if they grew steadily and precipitously worse off? Would Locke just say: Too bad? Natural rights carry foundationalist justification, so are issues of material well-being thus mere sidebar niceties? In a world where the facts on the ground were such that gains to the wealthy came only with losses to the poor, it seems doubtful that Locke would expect his argument about the importance of property rights to convince anybody. A system that predictably produced such effects could not plausibly be said to make good on Locke’s ideal that people be treated as free and equal children of God. Nor would such a system be likely to win people’s consent.

Locke’s sense of the importance of a positive material outcome for the poor explains his need to carve out moral permissions in the cases where the expectation of well-being is not realized. Thus Locke writes, “common Charity teaches, that those should be most taken care of by the Law, who are least capable of taking care for themselves.”¹⁰ Locke returns to this theme in an often-quoted line from the *First Treatise*: “As Justice gives every Man a Title to the Product of his honest industry and the Fair acquisitions of his Ancestors . . . so Charity gives every Man a Title to so much out of another’s Plenty, as will keep him from Extream want, where he has no means to subsist otherwise.”¹¹ Locke takes pains to point out that the political system he recommends can be expected to work to the benefit of the working poor.

Bernard Mandeville is best known for his disquieting suggestion that even the most vicious forms of vice and greed could result in positive cooperative outcomes, if only those vices would be properly channeled. In his early satirical poem, “The Grumbling Hive” (1705)—which would later provide the core for *The Fable of the Bees*—Mandeville suggested that private vices could lead to public benefits, at least when vice is by justice “lopt and bound.” Yet Mandeville took pains to point out that the commercial system he favored worked to the material benefit of the least fortunate. More, Mandeville claims that his preferred market-based institutions maximized the benefits to the least well-off working class. Mandeville wrote: “THUS Vice nurs’d Ingenuity, / Which join’d with Time and Industry, / Had carry’d Life’s Conveniencies, / It’s real Pleasures, Comforts, Ease, / To such a Height, the very Poor / Liv’d better than the Rich before, / And nothing could be added more.”¹² Compared to other possible systems, Mandeville claims, market society *maximizes* the benefits to the least well-off class.

Adam Smith’s concern for the laboring poor was central to his attack on mercantilism. Under mercantilism, the politically powerful were able to craft highly specific rules and regulations that enabled them to maintain or even extend their advantaged positions.¹³ In this way the mercantilist system exploited the poor and fixed people in their classes. As Smith put it, “It is the industry which is carried on for the benefit of the rich and the powerful, that is principally encouraged by our mercantile system. That which is carried on for the benefit of the poor and indigent, is too often, either neglected, or oppressed.”¹⁴ By contrast, Smith argued, the open market system of natural liberty benefited the least well-off and allowed for more social mobility. Indeed, Smith was so concerned to demonstrate the positive effects of commercial freedom on the poor that contemporary critics such as Robert Malthus criticized him for not differentiating between the wealth of nations and “the health and happiness of the lower orders of society.”¹⁵ Smith cares *too much* for the working poor.

It is possible to read Smith as expressing a concern for the material well-being of the poor out of simple prudential grounds. After all, as Smith notes, “Servants, labourers and workman of different kinds, make up the greater part of every great political society.”¹⁶ Perhaps Smith mentions the positive material effects of his system on the poor

simply to demonstrate that no great problems of social unrest need be worried about from that direction. But Smith's writings often suggest that he devotes so much attention to the question of how the system of natural liberty will affect people's material holdings for moral reasons of reciprocity. Society is a cooperative venture. The wealth enjoyed by any individual is in part made possible by the actions of all the others. This gives every citizen a moral claim to consideration when questions of material distribution arise. As Smith puts it: "It is but equity, besides, that those who feed, cloath and lodge the whole body of the people, should have such share of the produce of their own labor as to be themselves tolerably well fed, cloathed and lodged."¹⁷ This may not quite reach the ideal expressed by the early Rawls of citizens' being committed to "share in one another's fate," but a moralized idea of reciprocity is working in the background in Smith's arguments.¹⁸

We find concern about patterns of material outcomes in the work of the American founders, such as James Madison. Americans typically see a concern for the material well-being of the poor as a recent development in American history. On this view, founders such as Madison had a quaint but simple faith in property rights as bulwarks against tyranny. The naive and unscientific application of the Lockean ideas of the founders, however, rendered America an increasingly class-riven and undemocratic society—an error of navigation that was at last identified by Progressive thinkers and then acted upon by FDR's New Dealers and later progressives (now with a small "P"). But Madison's views were more Lockean, and in that sense more materially egalitarian, than this story suggests.

Madison is sometimes accused of acquiescing to a rigid form of material inequality. In his early writings, Madison apparently accepts the idea that there will always be two great classes in America, one wealthy and one poor. Madison's acquiescence to class-based inequality is often said to be revealed most clearly in his account of how liberal property rights can be reinforcing of democracy. By accepting secure, government enforcement of property rights, Madison argued, the poor can reassure the wealthy that the core of their wealth will not be confiscated through majoritarian measures. The wealthy, with their elite status thus secured, will be more likely to participate in popular government of the sort demanded by the less well-off—rather than using their economic power to subvert dem-

ocratic self-government. With members of the wealthy class participating in democratic processes, the poor in turn have reason to participate as well—rather than breaking off into open class warfare. Secure rights to property are thus justified in terms of their tendency to support democratic self-governance, an argument run against a background acceptance of a society divided into classes.

Significantly, however, Madison defends the economic liberties laid out in the US Constitution in terms of the benefits of those liberties to the least well-off members of society. Madison thought the Constitution, with its system of dual and divided sovereignty and thick economic liberty protected by the state constitutions, would make possible a strongly commercial society. Commercial society, unlike a mercantilist one, would encourage a great dispersion of property ownership across the entire population. So Madison defended strong rights to private productive property not only because of the ameliorative effects of rights with respect to class-based threats to democratic processes.¹⁹ Just as important, Madison defended property rights in terms of the direct material benefits of such rights to all members of society, rich and poor alike. As Stephen Holmes says, on Madison's view, property rights "are productive not merely protective; they contribute to overall prosperity, enhancing the well-being of *the poorest members of the community*; with economic growth, the proportion of property owners in the population will increase."²⁰

Madison's argument about the productive, material egalitarian effects of property rights is no mere aside or throwaway. Taken by itself, Madison's argument that property rights bring opposed class interests into democratic equipoise would make little sense. Democracy assumes equal moral standing of participants. The great language of the founding documents all advert to that deep ideal. This is why Madison *combines* the productive with the protective justifications for property rights the way he does—rather than simply setting forth the protective, class-balancing considerations. Madison sees himself as working out the political and institutional implications of the grand phrases of equality that framed the Declaration and the Constitution.

For Madison, it was obvious that a concern for political equality within the classical liberal tradition required a concern for the material holdings of all members of society. Indeed, Madison noted

with approval the widespread sentiment that American institutions favored the poor classes of citizens. Thus: "It has been said that America is a country for the poor, not the rich. There would be more correctness in saying it is the country for both, where the latter have a relish for free government; but, proportionally, more for the former than the latter."²¹ Madison defends the American system on the grounds that it is designed to be *especially* advantageous to the poor.

If classical liberal luminaries such as Locke, Mandeville, Smith, and Madison accept something like a distributional adequacy condition, why do classical liberals get such a bad rap with respect to their concern for the poor? It is probably Herbert Spencer's fault. Spencer speaks with contempt of louts who hang about tavern doors, who fight with and seek to cheat one another, refuse to take work of any kind, instead stealing the wages of their own wives for drink. Regarding such people, Spencer asks: "Is it natural that happiness should be the lot of such? Or is it natural that they should bring unhappiness on themselves and those connected with them? Is it not manifest that there must exist in our midst an immense amount of misery which is a normal result of misconduct, and ought not be dissociated from it?"²²

It is true that Spencer thinks that in every type of society there would be dishonest, violent people who refuse to work or care even for themselves. When dealing with such people, Spencer thought there could be no social remedy but prison, or slow dissolute death. But on this point Spencer's position is much like that of mainstream high liberals—even if Spencer's language is more colorful. Rawls, for example, accepts that even a "well-ordered" liberal democratic society will include people he calls "politically unreasonable." Among the politically unreasonable, presumably, will be people we might call "economically unreasonable." Such people make economic demands on their fellow citizens, the force of which they would refuse to recognize if made by their fellow citizens against them. Thus high liberals typically deny that surfers (or other less romantic, chronically nonproductive people—say, adult, full-time surfers of the World Wide Web) have a right to be clothed, housed, provided boards (or bandwidth), and fed. Surfers who make such demands, like Spencer's tavern louts, effectively deny the equality of their fellow citizens. They seek to use the state to harness the talents and efforts of their fellow citizens for their own ends, while refusing to

allow their own talents to be made use of in any socially meaningful way.²³

Like Locke, Spencer acknowledges that there would be different degrees of industry and talent among the ranks of normal industrious people, and that material inequality would be a natural result. Intriguingly, though, Spencer is sensitive to the modern liberal distinction between hardships that result from people's choices and hardships that result from bad luck. He writes: "Accidents will still supply victims on whom generosity may be legitimately expended. Men thrown upon their backs by unforeseen events, men who have failed for want of knowledge inaccessible to them, men ruined by the dishonesty of others, and men in whom hope long delayed has made the heart sick, may with advantage to all parties be assisted."²⁴ It is not always clear what role Spencer sees for the state in such cases, and it would be prochronistic to label Spencer a "luck egalitarian." Still, Spencer is clearly concerned about the distribution of goods that would likely emerge under the free market institutions he endorses.

Despite his reputation for disregarding the poor, Spencer does not justify the classical liberal society in terms of benefits to the supposedly deserving wealthy. Instead, Spencer advocates liberal institutions in terms of the material benefits he predicts that system will provide to *all* the members of the society—at least all those who were nonviolent and willing to work. In a fascinating exchange with the socialist H. M. Hyndman, for example, Spencer says the system of individual economic freedom is justified because of its benefits to the poorest workers. Regarding Hyndman, Spencer writes: "Many things he reprobates I reprobate just as much; but I dissent from his remedy."²⁵ Concerning the obligations of society to the least well-off members of the working class, Spencer agrees with the broad aims of the socialists. His difference with them is primarily about means, not ends.²⁶ Spencer too endorses something like a distributional adequacy condition.

The list goes on. During the Progressive era, Ludwig von Mises complained that advocates of the New Liberalism "arrogate to themselves the exclusive right to call their own program the program of welfare." Von Mises calls this "a cheap logical trick." Just because classical liberals do not rely upon direct, state-based programs and agencies to secure the material well-being of citizens, this does not mean that classical liberals are any less concerned for the poor.²⁷ In

defending his preferred regime of thick economic liberty and strictly limited governmental power, Von Mises writes: "Any increase in total capital raises the income of capitalists and landowners absolutely and that of workers both absolutely and relatively. . . . The interests of entrepreneurs can never diverge from those of the consumers."²⁸ If capitalism benefits the poor not just in real terms but also relative to the wealthy, then capitalism is *especially* beneficial to the poor.

Von Mises is often read as advocating an uncompromising system of individual economic liberty on the basis of a consequentialist claim that such a system maximizes overall productivity. However, notice what Von Mises does *not* say here. He does not say: "Classical liberal institutions generate the greatest aggregate wealth and so, even though such institutions predictably deposit 20 percent of the population in a position of hereditary class inferiority, this is OK." Instead, Von Mises thinks capitalist institutions are justified, at least in part, because he believes the likely outcome of voluntary exchanges under those institutions will be materially beneficial for all citizens. Inequalities are justified, Von Mises seems to be saying, because they work to the benefit of the least well-off members of society (that is, the workers are benefited relatively as well as absolutely). Of course, this is an empirical claim: it might turn out to be true; it might turn out to be false. But to understand the nature of the moral case Von Mises makes for the regime of wide economic liberty, we must consider that he makes that claim. Von Mises accepts some version of the distributional adequacy condition. Indeed, Von Mises is explicit about the justificatory role he sees this playing in this argument. Thus: "In seeking to demonstrate the social function and necessity of private ownership of the means of production and of the concomitant inequality in the distribution of income and wealth, we are at the same time providing proof of the *moral justification* for private property and for the capitalist social order based upon it."²⁹

Von Mises emphasizes that humans must always cooperate within the framework of societal bonds. "Social man as differentiated from autarkic man must necessarily modify his original biological indifference to the well-being of people beyond his own family. He must adjust his conduct to the requirements of social cooperation and look upon his fellow men's success as an indispensable condition of his own."³⁰ In commercial society, no person is an isolated atom. Com-

mercial competition is merely one form of social cooperation. Society, according to Von Mises, is a cooperative venture for mutual gain.

Ayn Rand famously defends a doctrine of egoism. Egoism, as Rand uses that term, is a claim about the grounds of concern rather than a claim about its scope. Rand's ethical egoism is the claim that reasons for actions should be grounded in the self-interest of the agent. Rand understands an agent's self-interest widely, so that her brand of egoism does not rule out a strong concern for one's friends, nor even an attitude of general benevolence to all humankind.³¹ (This is why heroes of her novels are depicted as capable of forming intense friendships.) Nonetheless, Rand's egoism serves as a foundation for her defense of a libertarianism that starkly rejects all ideas of distributive justice. How interesting therefore that Rand thought it necessary to pen the following lines: "The skyline of New York is a monument of a splendor that no pyramids or palaces will ever equal or approach. But America's skyscrapers were not built by public funds or for a public purpose: they were built by the energy, initiative and wealth of private individuals for personal profit. And, instead of impoverishing the people, these skyscrapers, as they rose higher and higher, kept raising the people's standard of living—including the inhabitants of the slums, who lead a life of luxury compared to the life of an ancient Egyptian slave or of a modern Soviet Socialist worker."³²

Rand's concern for the material well-being of her least well-off fellow citizens is not merely a concern that such citizens be better off than Egyptian slaves (or modern socialists). Rand takes pains to point out that capitalism is a positive benefit to all who are willing to engage in productive work: "Capitalism, by its nature, entails a constant process of motion, growth and progress. It creates the optimum social conditions for man to respond to the challenges of nature in such a way as best to further his life. *It operates to the benefit of all those who choose to be active in the productive process, whatever their level of ability.*"³³

In *Atlas Shrugged*, the most productive and innovative members of society, tired of being accused of exploiting others, go on strike. The American economy collapses. Rand's message is that the less talented need the more talented more than the more talented need the less talented. There is no concern for the poor shown in that message. But notice that, as Rand takes pains to show, the strikers only

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hasten an inevitable collapse. In *Atlas Shrugged*, socialist economies have been collapsing long before the book's hero, John Galt, calls a strike. And Rand goes out of her way to show that the people who suffer the most from these collapses are not her heroes (they find ways to make do in any situation), or the well connected (they use their connections to exploit others), but the deserving but less talented members of society.

So, in *Atlas Shrugged*, the bad guys try to exploit Rand's heroes, but Rand makes clear that the innocent poor are the ones who suffer the most as a result. If Rand were utterly unconcerned for the poor, why would she take such great pains to make this point? Is it a mere *reductio ad absurdum*: "I couldn't care less if the poor starve but I know that you socialists do, so here you go?" I don't think so. Even avowedly egoistic defenses of libertarianism recognize the moral imperative that material benefits of social cooperation reach the least well-off class.³⁴

For Hayek, recall, the deep justification of property-protecting institutions is that such institutions have the ability "to enhance the probability that the means needed for the purposes pursued by the different individuals would be available."³⁵ Hayek defends the version of liberalism he prefers because he thinks this system best assures that everyone will possess the material means and enjoy the opportunities that might make their formal rights and liberties valuable.³⁶ As with Von Mises, Hayek's defense of market-based institutions relies at least partially on an empirical claim. Hayek claims that, as a matter of fact, market-based institutions will have the effect of most greatly improving the chances of all citizens, included the poorest, to achieve their purposes. Whatever truth value one assigns to this empirical claim, it cannot be denied that this claim is central to the moral case for the Great Society that Hayek makes.³⁷ Hayek too accepts some version of the distributional adequacy condition.

Milton Friedman? Friedman notes that a capitalist society, where people are free to make payments according to product, will be marked by considerable material inequalities. The heart of Friedman's case for capitalism is his belief in the dignity of the individual, a dignity that we respect when we allow people to develop according to their own lights, subject only to the proviso that they not interfere with other free individuals when doing so. However, Friedman claims: "capitalism leads to less inequality than other systems."³⁸ He

often returns to this theme, arguing that "a free society in fact tends toward greater material equality than any other yet tried." Yet Friedman hastens to add that while the liberal may "welcome" this fact, "he will regard this as a desirable by-product of a free society, not its major justification."³⁹ But what exactly makes this by-product "desirable" and in what sense is a liberal right to "welcome" it? Like many historical figures in the classical liberal tradition, Friedman feels the need to consider the (hoped-for) distributional consequences of his liberal view.

According to Murray Rothbard, "The advent of liberty will immeasurably benefit most Americans." Notice that Rothbard does not claim that a movement toward economic liberty will benefit *all* classes. Strong private economic liberties reduce the ability of politicians to manipulate the market. Such liberties thus force businesses to compete with one another to provide the best goods at the lowest prices to consumers, rather than competing with one another by manipulating the political process. So, while the defense of economic liberty will benefit most people, Rothbard says some will assuredly lose: "those who have been feeding at the public trough." He continues: "And these special interests and ruling elites will not surrender their ill-gotten gains so readily. They will fight like hell to keep it. Libertarianism is not a message of treacle and Camelot: it is a message of struggle."⁴⁰ Libertarianism is a struggle on behalf of the weak against the interests of insider elites.

Robert Nozick provides a broadly Kantian defense of libertarian rights. A political community that violates libertarian property rights thereby treats people as means rather than as self-originating sources of ends. But Nozick emphasizes the positive material effects that as a practical empirical matter he predicts will result from the protection of property rights. In the course of his discussion of the Lockean requirement that appropriations must leave "as much and a good" for others—a requirement that Nozick himself amends to say that appropriations must not worsen the condition of others—Nozick enthusiastically describes these hoped-for effects:

It increases the social product by putting means of production in the hands of those who can use them most efficiently (profitably); experimentation is encouraged, because with separate persons controlling resources, there is no one person or small

group whom someone with a new idea must convince to try it out; private property enables people to decide on the pattern and type of risks they wish to bear, leading to specialized types of risk bearing; private property protects future persons by leading some to hold back resources from current consumption for future markets; it provides alternative sources of employment for unpopular persons who don't have to convince any one person or small group to hire them, and so on.⁴¹

Eric Mack advocates natural rights to property on the basis of what he calls the "self-ownership principle" (or "SOP"). However, Mack puts an interesting twist on this familiar libertarian idea. Describing the attitude of the advocate of SOP, Mack writes: "I am a friend of markets,' he says, 'partially because I expect markets to work as well as friends of markets expect them to. . . . [But] If markets do fail conspicuously vis-à-vis a given individual in ways that *worsen her position by blocking her from bringing her self-owned powers to bear in the world* that person will have a just complaint under the SOP.'" Mack appears to accept a distributive standard, though one aimed at the negative goal of avoiding situations where the opportunity to develop human capacities is worsened. Indeed, Mack might even be read as affirming the idea, familiar from the high liberal tradition, that the function of the state is to secure conditions necessary to the development and exercise of the moral powers people have as citizens. By emphasizing the importance of "self-owned powers," Mack certainly *tempts* that interpretation.⁴²

Richard Epstein makes a concern for the least well-off the centerpiece of his moral argument in favor of classical liberalism over Progressive versions of social democracy (and over property-absolutist versions of libertarianism). Why does Epstein advocate the classical liberal system of thick-but-not-absolute economic freedom? Ultimately, Epstein does so because he believes this latter system will be more robustly positive-sum than any alternative system. "The private voluntary contracts that may result [under classical liberal institutions] are positive-sum games for the parties to them, and whatever harm ordinary contracts of sale and hire wreak upon competitors (and it is real harm, no doubt) is more than offset by the gains to the parties and to consumers. We are all systematically better off, therefore, in a regime in which all can enter and exit markets

at will than in a social situation in which one person armed with the monopoly power of government, can license or proscribe the actions of others."⁴³ According to Epstein: "Competition enhances social welfare." Thus: "For that social reason, and not for any fascination with the 'possessive individualism' that the Progressives denounced, the [system of competition] should be favored and protected while the [system of aggression] is deplored and restricted."⁴⁴

It is not only academics (and novelists) who affirm the distributive adequacy condition. Politicians who staunchly defend property rights often affirm some version of this condition too. Ronald Reagan was famously critical of socialism abroad and of the welfare state at home. Yet Reagan distinguished the aims of those programs, which he claimed to share, from the programs themselves. In a speech given in 1966, Reagan said: "The Great Society grows greater every day—greater in cost, greater in inefficiency and greater in waste. Now *this is not to quarrel with its humanitarian goals* or deny that it can achieve those goals. But, I do deny that it offers the only—or even the best—method of achieving those goals." A better way to fight poverty, Reagan said, was through traditional American ideals of capitalism and enterprise. "Have we in America forgotten our own accomplishments? For 200 years we've been fighting the most successful war on poverty the world has ever seen."⁴⁵ Human needs are best met through the actions of ordinary people seeking to make their mark in the world, not by creating new branches of government.⁴⁶

Toward the end of his political career, Reagan gave a speech offering an alternative to Roosevelt's famous "second bill of rights" speech. In that speech, Reagan proposed a renewed commitment to what he called "America's Economic Bill of Rights."⁴⁷ Rejecting libertarian absolutism, Reagan noted that the American founders saw economic liberties as being on a moral par with the other traditional rights: "as sacred and sacrosanct as the political freedoms of speech, press, religion, and assembly." Reagan described four economic freedoms: freedom to work, freedom to enjoy the fruits of one's own labor, freedom to own and control property, and freedom to participate in a free market. These rights allow for regulation and taxation of various kinds, but Reagan warned that beyond a certain level taxation and regulation could reduce a people to servitude. Economic freedoms, Reagan argued, "are what links life inseparably to liberty, what enables an individual to control his own destiny, what makes

self-government and personal independence part of the American experience.”

Naturally, left liberals may be skeptical of some of these expressions of concern for the poor, especially when mouthed by politicians. But I do not call attention to these passages in the hope of convincing people on the left of the hidden humanitarian agenda of the political right. Rather, my aim is to encourage classical liberals and libertarians to reflect upon the pervasiveness of these expressions of concern about distributive outcomes on the part of philosophers (and, perhaps, politicians) whose work they admire.

As we have seen, different thinkers in the classical liberal school regard different patterns of material holdings as meriting applause. What’s significant is that thinkers in the classical liberal tradition are nearly unanimous in affirming some version or other of what I am calling the distributional adequacy condition. From their many different perspectives, classical liberals and libertarians converge on the idea that the defense of market society is strengthened by assertions that the institutions of this society are advantageous to the poor.⁴⁸

Classical liberals rarely (if ever) use the language of social justice in describing the distributive benefits of market society. Many were writing before social justice had emerged as a concept, so I am not claiming that these thinkers did affirm social justice (secretly, say). Some of them who were aware of social justice, Milton Friedman for example, explicitly deny that their concerns for the working poor are based on any commitment to that ideal.⁴⁹ So when I describe these thinkers as affirming a distributional adequacy condition, we should keep in mind that adequacy conditions come in different strengths. For some, the claim that free market institutions benefit the poor may serve as a necessary condition of those institutions being normatively justified; for others, their benefiting the poor may simply be a condition those institutions must meet if they are to be more fully attractive. Showing that classical liberals *care about* the material holdings of poor citizens (or at least, showing that many of them *claim* to care about that) is different from showing that they think all citizens are *owed* that concern as a matter of social justice. Still, most every journey begins with a first step.

Market democracy applauds these defenders of thick economic liberty. In their various ways, most all these classical liberal and libertarian thinkers recognize a commitment to consider the distributions

of shares that they anticipate their preferred political regime would generate across all classes of citizens. In doing so, from a market democratic perspective, these classical liberal and libertarian thinkers come very close to an attractive idea that lies near the very heart of social justice. This is the idea that institutional regimes should be evaluated in terms of the benefits they provide to all citizens subject to them. In particular, institutional regimes should be evaluated in terms of how those systems are expected to affect the interests of the working poor.

Market democracy urges libertarians and classical liberals to embrace this idea. Material benefits that are said to accrue to the poor by the platform of thick economic liberty are not merely buttressing attractions of that system. Nor should those (hoped-for) benefits be boasted about merely for their tendency to support economic productivity or some other aggregative good. Instead, classical liberals should advocate the system of economic liberty *because* that system advances the interests of all citizens, and most notably the interests of the poor. Classical liberals should affirm the condition of material adequacy, that is, as an expression of their commitment to reciprocity. When a set of institutions works to the benefit of the least well-off members of society there is a specific reason that that set of institutions is to be applauded: it is to be applauded for respecting citizens as free and equal self-governing agents, with citizens of every class shown the same moral respect. Classical liberals should be concerned about how the system of thick economic liberty and limited government affects disadvantaged citizens because they should insist that the distribution of goods and opportunities be fair.

As we saw earlier, libertarians and traditional classical liberals tend to reject social justice for different reasons. While libertarians typically reject social justice on deductive grounds: the redistributive requirement of social justice violates the rights of self-owners. The objections put forth by classical liberals tend to be more oblique and varied. Perhaps the most powerful classical liberal critique is that social justice, as a concept, is incompatible with the ideal of a society of free individuals. Put another way, the pursuit of social justice corrodes the spontaneous order upon which a free society depends. Hayek presents the most prominent critique of this sort. He rejects social justice in sharp, uncompromising terms. And yet here, as so often in Hayek’s work, there is surprising nuance and subtlety.

Indeed, Hayek's famous defense of spontaneous order illuminates a path toward market democracy.

Hayek's Critique

Through his theory of spontaneous order, Hayek offers the most sustained and prominent classical liberal argument against social justice. Hayek's critique rests on the claim that only products of deliberate human design can be just or unjust. Intriguingly, though, spontaneous social orders of the sort that classical liberals advocate are *themselves* products of deliberate human design. This opens an important pharmaceutical opportunity. Hayek's theory of spontaneous order offers an over-the-counter cure for *social justicitis*. Hayek's theory of spontaneous order offers the beginnings of a distinctively classical liberal conception of social justice: Benadryl for free-marketeers.

Hayek runs his critique of social justice across all three of the argumentative levels we distinguished in the previous chapter. Sometimes Hayek focuses on what he sees as the pernicious tendencies of talk about "social justice" at the level of public policy. In the context of the political debates of his day, Hayek notes that appeals to social justice are enormously effective. "Almost every claim for government action on behalf of particular groups is advanced in its name, and if it can be made to appear that a certain measure is demanded by 'social justice,' opposition to it will rapidly weaken." When invoked in public debates about whether or not to create some new governmental social service program, Hayek complains that the invocations of social justice have an "open sesame" effect.⁵⁰

Other times, though, Hayek runs his critique at a more foundational level. For example, Hayek argues that the term "social justice" is "empty" and lacks "any meaning whatever"—at least within the context of a society affirming traditional liberal values.⁵¹ He compares a belief in social justice to a belief in witches or ghosts.⁵² Because of its effectiveness as a cloak for coercion, Hayek asserts, "the prevailing belief in 'social justice' is at present probably the gravest threat to most other values of a free civilization."⁵³ To talk of justice in terms of social justice is "an abuse of the word."⁵⁴ According to Hayek, "the term is intellectually disreputable, the mark of demagoguery or cheap journalism which responsible thinkers ought to be ashamed to use because, once its vacuity is recognized, its use is dishonest."⁵⁵

To give the concept of social justice any meaning within a free society one would have to completely transform the social order. To make sense of "social justice," Hayek tells us, we would be required "to treat society not as a spontaneous order of free men but as an organization whose members are all made to serve a single hierarchy of ends."⁵⁶ To achieve this transition, central values that formerly governed that society—most notably the value of personal freedom—would have to be sacrificed. Instead of laws taking the form of impersonal rules equally applicable to all, laws would increasingly need to take the form of specific commands issued by authorities on the basis of information only they could be in position to hold. The very form of social order found with the Great Society is therefore incompatible with social justice as a concept. To accept the standard of social justice requires the rejection of the Great Society and its transition into a regime of a very different type. Distributional justice is not the realization of the liberal promise of equal freedom: it is the betrayal of that promise. Let's look more closely at this argument.

Hayek's critique of social justice is based on his idea of order. For Hayek, an *order* is: "a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct explanations concerning the rest, or at least expectations that have some chance of proving correct."⁵⁷ To unpack this idea, let's consider three (admittedly homey) examples: a grouping of sugar crystals, a Lego model, and the collection of items distributed across the floor of a messy child's room.

Consider first a grouping of sugar crystals, say, a cluster of rock candy on a string. Rock candy forms as a result of the molecular properties of sugar (sucrose) and water. When sugar is dissolved in warm water, the lattice bonds of the sugar crystals are broken. The sugar molecules bond to the molecules of water, creating a solution. When the solution is cooled, the solubility of the water decreases and the solution becomes supersaturated. If the cooling is continued, and a host is introduced—say, a stick or a string—the sugar molecules begin to recrystallize on the surface of the host. As the process continues, the lattice bonds of the sugar molecules continue to reform, creating larger and more complex crystals.⁵⁸

Contrast the string of rock candy with another complex structure, say, a Lego model of the Death Star. The Death Star is one of the most

complicated of all the models made by Lego Group. The large box contains 3,449 small plastic pieces and an instructional booklet with many painstaking pages of step-by-step construction instructions. The rules are highly specific and a person, or team of persons, must carry out each step precisely as specified. Each instructional step requires that every previous step be completed precisely in accord with the overall plan.

The Lego model of the Death Star and the string of rock candy are both complex organizational structures. Yet each is a product of an importantly different type of organizational process. The bringing together of the Lego parts into the form of the completed Death Star requires the constant application of goal-directed reason on the part of some organizing agent or team of agents (in this case, an agent that is external to the model being constructed). It is that agent's commitment to the end specified in the instructions, and the agent's skill in interpreting and carrying out those instructions, that determines how closely the resulting assemblage of plastic pieces will resemble the picture on the box.

By contrast, the molecular units that are to compose the rock candy crystals are not moved by any unified intentional agent—whether internal or external—according to some overall plan. The crystals are built as a result of the way the particular units react to one another. Those reactions, in turn, are governed only by general rules of molecular motion. No one can know in advance what precise shape the rock candy will take. Unlike the principles governing the construction of the Lego model, the principles governing the construction of the crystals are endogenous or intrinsic. A rock candy crystal is a self-organizing or spontaneous system. The model is *made*; the crystals *grow*.

Of course, not every collection of parts counts as an order in the systems theory sense. Consider our third example, the items on the floor of a child's room. There may be a great variety of things strewn across the surface of the floor: a pajama top, a wet towel, a stuffed toy eel, and a homework assignment (due tomorrow). These items are not fixed in any set places in relation to each other. While the items may often be in motion, there are no rules governing the changes that occur among them. When crossing the room, the boy may kick the eel so that it now rests atop the wet towel. In picking up his pajama top, he may inadvertently nudge the homework assignment so it now rests completely under the bed.

If we knew the exact location of one of the items on the floor (for example, if we knew that the wet towel is now precisely in the middle of the floor), this information would not help us in predicting the locations of the other items around it. Even if we had general knowledge of the causes of change on the child's floor (that the child often walks between his bed and his bulletin board) and were given further pieces of locational information (the pajama top is now adjacent to the damp towel) this would not help us chart the overall pattern, the direction or rate of change, of the items on the floor with respect to the others. These items can meaningfully be picked out as a group—"differentiated," as the political geographers might say. We can distinguish this grouping from other groupings—the collection of items next door on the floor of the boy's (equally) messy sister, for example. But this property does not make the collection of items on the child's floor an order in Hayek's sense. The units of this grouping are not related to one another according to any system of organizing principles, whether intrinsic or extrinsic. This grouping is not an order, whether made or grown, in the system's theory sense. Its existence is merely definitional.

Hayek's critique of distributive justice relies upon a similar set of distinctions applied to human groupings. As mentioned in chapter 1, Hayek distinguishes two great types of social order, and a form of rule or law correspondent to each. To demarcate the two types of social order, recall, Hayek uses the classical Greek terms *cosmos* and *taxis*.⁵⁹ He invokes two further Greek terms, *nomos* and *thesis*, to distinguish a type of rule appropriate to the construction of each type of social order.

An "order," in the systems-theory sense that concerns us, is a grouping so arranged that we can use our knowledge of some parts to form correct predictions about the grouping's other parts. Not all human groupings count as orders in this sense.⁶⁰ But many human groupings do. Indeed, it is the possibility of orderliness in social life that makes purposive action possible. To satisfy even the simplest of ambitions, humans must consider the nature of the rules that govern and coordinate the behavior of the people in the various social groupings in which they take part. It is our ability to learn which rules are likely to effectively govern the likely actions and reactions of other parts of the system, and to combine our understanding of the operative rules with particular pieces of information held by each

of us, that makes even the simplest forms of intentional action possible in the world.

Hayek uses the term *cosmos* to describe a spontaneous order, the social analogue of our collection of rock candy crystals. On the social level, a cosmos is a type of human order that forms or comes to exist independently of any act of human will directed toward that end. Because it was not constructed according to the dictates of any unified will, there exists no single end or purpose the system as a whole must serve.⁶¹

The form of rule that is distinctive to *cosmoic* structures—a type of rule that Hayek calls *nomos*—reflects this openness about ends. By *nomos*, Hayek means “a universal rule of just conduct applying to an unknown number of future instances and equally to all persons in the objective circumstances described by the rule, irrespective of the effects which observance of the rule will produce in a particular situation.” Hayek continues, “Such rules demarcate protected individual domains by enabling each person or organized group to know which means they may employ in the pursuit of their purposes, and thus to prevent conflict between the actions of the different persons. Such rules are generally described as ‘abstract’ and are independent of individual ends.”⁶² Nonetheless, the regularities of behavior that characterize the elements of a *cosmos* may make that type of order extremely useful for the diverse purposes of its members. In social settings, *nomoi* function like the rules of molecular chemistry in the case of rock candy.

By contrast, Hayek uses the term *taxis* to describe a made order, the societal analogue of our Lego model. By *taxis*, Hayek means a group of humans brought together into an organizational structure with the aim of realizing some unified, identifiable goal. Hayek calls the distinctive form of rule distinctive to *taxitic* structures a *thesis*: “any rule which is applicable only to particular people or in the service of the ends of rulers.” Theses may be general to various degrees and will normally be general enough to refer to a multiplicity of particular instances. As a logical matter, the difference between *nomos* and *thesis* is necessarily one of degree rather than kind. But the distinctive tendency of *theses* is to shade imperceptibly from rules in the usual sense into particular commands.⁶³

Within a *taxis*, the knowledge and purposes of the organizer determine the particular shape of the order at any given time. Members of

a *taxis* are put in their places and assigned their distinctive tasks in light of the end being pursued by the grouping as a whole.⁶⁴ In this sense, a body of *theses* is more like the rulebook in our Lego box, and less like the laws of molecular chemistry.⁶⁵

What type of order is most appropriate for people who affirm the liberal ideals of free and equal citizenship? It would be difficult for those ideals to be realized within nonordered social conditions—the analogue of the items on the floor of the child’s room. The literature on “failed states,” perhaps, could be read as providing examples of social worlds that fail to count as *orders* in the systems-theory sense. Such worlds lack the predictability of rule-governed societies, whether *taxitic* or *cosmoic*. Investments, whether of capital, time, or even of attention, become problematic in such conditions. Without orderliness, human reason has trouble getting traction in the world. Social change becomes a product of drift and happenstance rather than public reason or, say, mutually advantageous exchange.

For Hayek, the greatest example we have of *cosmos* is liberalism, especially as interpreted within the English and Scottish tradition. In Adam Ferguson’s famous phrase: “Many human institutions are the product of human action, but not of human design.” The great examples of *taxitic* social order are provided by the socialist states of the twentieth century. Hayek thinks that his arguments against socialism, though, also push against a social democratic interpretation of liberalism, precisely because those institutional regimes have as their goal the pursuit of social justice.

First, a *cosmos* typically can make effective use of more information than can a *taxis*. To pursue a goal by means of a *taxis* organization, the only information that can be utilized in the rational structuring of the relations of its members is information that can be gathered, organized, and acted upon by the directing agency.⁶⁶ This directing agency plays a role within the organizing structure of a *taxis* much like that played by a set of fuses (or, in the case of state socialism, perhaps, of a central fuse) within the electrical system of a house. Whatever the other advantages of such organizational systems, the unit-capacity of those organizing elements places a limit on how much information can rationally be put to use within the organization. “The knowledge that can be utilized in such an organization will . . . always be more limited than in a spontaneous order where all the knowledge possessed by the elements can be taken into account

in forming the order without this knowledge being first transmitted to a central organizer."⁶⁷

This does not mean that a *cosmos* order will always be more effective than a *taxis*. As Hayek says elsewhere, "It is probably true that, at any given moment, a unified organization designed by the best experts that authority can select will be the most efficient that can be created." But Hayek warns that such a form of organization will not likely remain efficient for long, especially if that initial design is made the starting point for all future evaluations of how the goods might best be provided, and if those initially put in charge are allowed to be the main judges of what changes might be necessary.⁶⁸

Taxitic structures operate under a complexity constraint that is typically more restrictive than that within *cosmoi*. A *cosmos* has no such limiting element. (To adopt the terms of Michael Polanyi, the decision-making structure within a *cosmos* is "poly-centric" rather than "mono-centric."⁶⁹) This information consideration may itself help us determine whether it is best to understand modern society as a whole as a *cosmos* or *taxis*. When we consider a comprehensive system such as a society—a system whose features dramatically influence the life chances of its members—the most important determinant, however, is moral. This moral determinant is derived from the factor that generates that complexity constraint. In deciding whether it is appropriate to treat some society as a *taxis* or as a *cosmos*, we must ask whether it is appropriate to treat all the members of that grouping as though they all shared a single, predetermined goal, a goal that could be in principle knowable in advance of actions undertaken by any of them. We ask, that is, whether it would be appropriate for those people to live their lives within a system of rules that takes the form of particular commands.

In place of the idea of a unified goal or end, Hayek says, thinkers in the liberal tradition treat liberty as the highest value. For Mill, liberty involves people pursuing their own good in their own way. Similarly, Hayek defines freedom as using one's own information in pursuit of one's own ends. The idea that human beings should be allowed to direct their own lives is reflected in the form that rules take within liberal societies. Rather than understanding laws as particular commands issued from authorities in light of their best determination of what immediately needs to be done in order to advance the society toward its given social end, liberals see rules as general multipur-

pose tools. While a fierce critic of utilitarianism, Hayek's approach remains broadly consequentialist. Rules with an appropriately general form facilitate the creation of an order in which individuals may coordinate their activities. By such coordination, Hayek contended, each might increase the likelihood that his own purposes and ends might be realized.⁷⁰

Hayek writes, "To judge actions by rule, not by particular results, is the step which made the Great Society possible. It is the device man has tumbled upon to overcome the ignorance of every individual of most of the particular facts which must determine the concrete order of a Great Society."⁷¹ This approach to law, because it is impersonal and general, enables each person to act on the basis of information that is often available only to that individual. For this reason the form of social order that values freedom thus turns out to bring about a greater satisfaction of human aims than any deliberate human organization could hope to achieve.

When Hayek says that this system was "tumbled upon," he means that these were discovered through the experiences of countless human encounters rather than being created through some deliberate process. The rules that make up the liberal system did not spring forth ready-made from the mind of any philosopher or from the deliberations of any legislative body, the way the booklet of directions in a Lego box might have been created. Instead, the rules emerged through a process that Hayek describes in evolutionary terms. Hayek says, "The rules of conduct which prevail in the Great Society are . . . not designed to produce particular foreseen benefits for particular people, but are multipurpose instruments developed as adaptations to certain kinds of environment because they help to deal with certain kinds of situations."⁷² Hayek likens *cosmoic* rules to a pocketknife. A person setting out on a walking tour may take along the pocketknife not for a particular known anticipated use but because past experience has shown the general value of having a knife along. So too, Hayek explains, "the rules of conduct developed by a group are not means for known particular purposes but adaptations to kinds of situations which past experience has shown to recur in the kind of world we live in."⁷³

Because these rules come down to us by an evolutionary process of selection, we often may not be able fully to understand or explain why these rules function well toward the realization of

human purposes. These rules come down to us because the group that had them prevailed, but sometimes even the reason why the group originally adopted them and the reason they in fact prevailed may be quite different. "And although we can endeavor to find out what function a particular rule performs within a given system of rules, and to judge how well it has performed that function, and may well as a result try to improve it, we can do so only against the background of the whole system of other rules which together determine the order of action in that society."

Appeals to "social justice" threaten to destroy the fruit of this evolutionary process. State socialism represents the constructivist approach to social rule making in its extreme form. But Hayek sees the European branch of liberalism favored by social democrats as also founded on a commitment to constructivist, rather than evolutionary, forms of rationality. Social justice is a quintessential product of constructivist rationality.

Justice, Hayek claims, applies only to situations that are the product of someone's will. To make sense of the concept of social or distributive justice, the rules governing the Great Society would need to be changed so that resulting distributions could be thought of as being the result of someone's will. A demand for social justice is a demand that the form of social order be changed from a *cosmos* into a *taxis*. The processes of social growth and change in that order would need to be altered so that the society would be less like a growing crystal and more like a model undergoing situation-specific assembly. This change can be effected only by a change in the character of the rules governing the society.⁷⁴ General, multipurpose rules need to be replaced by more finely tailored directives. In Hayek's terminology, *nomoi* must be replaced by *theses*. At the level of institutions, this is analogous to a regime in which citizens pursuing social construction in light of their constitutional protections becomes replaced by a regime in which citizens pursue social construction by voting for, and following, ever more finely tailored legislative directives.⁷⁵

Hayek thinks liberal democratic states are particularly vulnerable to attacks on freedom via demands for "social justice" at the immediate level of public policy. After all, the appeal to social justice is an appeal to inject human intentionality directly into parts of the social world that stand visibly in need of improvement. It is an appeal for *somebody* to do *something*. However, Hayek says the doctrine of social

justice threatens to destroy the very basis of morality itself: gradually at first, but then ever more completely, it replaces the ideal of freedom of personal decision with the habit of dependence upon other people's power.⁷⁶ Echoing concerns expressed by David Hume, Hayek writes, "like most attempts to pursue an unattainable goal, the striving for it will produce highly undesirable consequences, and in particular lead to the destruction of the indispensable environment in which the traditional moral values alone can flourish, namely personal freedom."⁷⁷

The pursuit of any distributive ideal runs into a knowledge problem. There are no rules of just individual conduct upon which individuals in a market order might act that might bring about such a (putatively desired) distribution, and thus no way for any of the members of society to know what actions they ought to perform to realize the desired distribution.⁷⁸ The only way a society could achieve social justice, therefore, would be for the members of that society to submit to a governmental apparatus that would specifically direct the actions of each so that the desired distribution could be realized and maintained. That apparatus would have to be especially intrusive in the economic dimensions of citizen's lives. In issuing directives to correct for inequalities that would arise between individuals or different classes of individuals, one would have to abandon the ideal of treating all citizens according to the same rules. More important, such a program would substitute a principle of collective decision making for the principle of individuals ordering their own values on the basis of information known only to themselves. This would be to abandon the ideal of personal freedom, which Hayek sees as the very root of liberal morality.

Benadryl for Free-Marketeers

So Hayek rejects the idea of social justice in an uncompromising way. He allows for a social safety net but carefully distinguishes that from any requirement of social justice.⁷⁹ Within the liberal world of the Great Society, there is not even conceptual space for the idea of social justice: the phrase *social justice* "does not belong to the category of error but to that of nonsense, like the term 'a moral stone.'"⁸⁰ This, or something like it, is what I take to be the standard interpretation

of Hayek's attitude toward social justice. The conduct of individuals as they exercise their economic liberties in the marketplace may be just or unjust. But it would be meaningless to describe the distributional patterns that result from market transactions as just or unjust. There is abundant textual support for this interpretation. As Hayek says, justice "clearly has no application to the manner in which the impersonal process of the market allocates command over goods and services to particular people: this can be neither just nor unjust, because the results are not intended or foreseen, and depend on a multitude of circumstances not known in their entirety to anyone."⁸¹

However, Hayek is a thinker of complexity and nuance. Without denying the force of the consensus interpretation, it is worth attending to some discordant notes within Hayek's writings. These notes open the possibility for a significantly different interpretation about the implications of Hayek's theory of spontaneous order with respect to distributional ideals.⁸² Most interesting to us, some of these notes form a pattern, even a leitmotif. When we pick up that tune, we find that Hayek's theory of spontaneous order—despite his protests—positively rests upon some (conceptually prior) distributional standard, a standard like the one an account of social justice typically provides.

First, against the consensus interpretation, Hayek sometimes affirms the cogency of social justice, at least as a logical concept. For example, he tells us that "the benefits and burdens . . . apportioned by the market would in many cases have to be regarded as very unjust if [they occurred as] a result of deliberate allocations to particular persons."⁸³ Of course, as Hayek emphasizes, in a free society such distributional patterns are not the result of deliberate design, and thus he says the concept *justice* cannot be applied to their evaluation. But what evaluative standard is Hayek invoking when he says that some market distributions, if they had been intended, would be unjust? Hayek's view, it turns out, is not that society-wide distributional patternings are themselves inappropriate objects for evaluation by standards of justice. It is the application of that standard to patternings *that lack intentionality* that he deems inappropriate. So Hayek's argument against social justice rests on his point that, in free societies, intentionality does not seep throughout the system, rather than on the claim that there is no logical space for talk about the justice of distributions of goods across a society.⁸⁴

However, all political orders are the product of human intentionality. To see why, consider our paradigm of spontaneous order, the crystals of rock candy on a string. As the solution cools, crystal facets begin to form according the general rules of molecular chemistry. The particular forms those crystal structures will take are beyond the predictive power of even the most sophisticated scientist. The crystals grow according to their own internal principles; no one controls or intends the precise outcome of that process of growth. And yet at a more general level, human intentionality and conscious design pervade the entire process. After all, some one or some group had to decide to create the conditions in which the candy crystals could spontaneously form. Someone had to mix up and heat the solution of sugar and water. Someone had to cut the piece of string to some desired length, weight one end, attach the other end to a pencil or other support, and then dip the weighted end of the string in. The makers of rock candy are in this way very like the designers of a constitution to govern a liberal society. Even without being able (or seeking) to control the details of the order that will emerge, both sets of orders require a maker, and that maker's intentionality pervades the order that results.

According to Hayek, the rules of just individual conduct that most effectively govern a liberal social order are rules we discover, rather than rules we attempt to create. But this jurisprudential theory—even for those who accept it—does not eliminate the role of intentionality in the formation of social orders. After all, we also discover rather than create the molecular rules governing candy crystal formation. Such discoveries do not eliminate the human intentional element in the case of candy making. On the contrary, it is our discovery of such rules (or our "construction" of them) that gives intentionality its traction in the world.⁸⁵

Experience and observation have taught candy makers that different rates of cooling, and different volumetric ratios of sucrose to water, will tend to produce crystals of different shapes and sizes. Makers of candy know that sugar crystals produced in a spotlessly clean container will tend to be larger than those produced in less clean containers, since in the clean container the molecules reform intensively on the string rather than being dissipated on other microscopic features of the environment. Sophisticated candy makers have learned that by introducing seed crystals to the string they can produce

dramatically larger crystals: seed crystals encourage the lattice bonds of the sugar molecules to reform themselves more intensively on the site of preexisting crystals, whatever their size.

It is knowledge of molecular rules that makes human intentionality effective, given some norm that allows us to identify good candy making from bad. This does not require that people micromanage the system in hope of achieving any particular arrangement of molecules. Candy-making standards are formulated in general terms. Candy makers know that large crystals are desirable no matter the particular arrangement of the facets thereon. When they evaluate rival candy-making systems, they prefer those that produce crystals of that sort.

With sugar crystal orders, so too with human social orders: once basic laws are discovered, we employ intentionality to tweak the system to our purposes. In the domain of political institutions, those purposes are defined ultimately by our theory of justice.

Hayek, following Smith, often compares the order of the Great Society to a complex game. But as Hayek notes, we must always seek to control unwanted outcomes “by improving the rules of the game.”⁸⁶ In Hayek’s view, people have consented to retain and agreed to enforce the rules of just individual conduct associated with classical liberalism because they have discovered that following such rules best improves the chances of all to have their wants and needs satisfied. This system has this effect, according to Hayek, because it provides the procedure that makes it most likely that the information dispersed across a society can be harnessed to the benefit of all.

A cost of adopting the classical liberal system, as Hayek emphasizes, is that all particular individuals and groups within the system incur the risk of unmerited failures and disappointments. That cost can never be eliminated, though Hayek emphasizes the importance of our using our reason to minimize such disappointments. “It is a procedure which of course has never been ‘designed’ but which we have gradually learned to improve after we discovered how it increased the efficiency of men in the groups who had evolved it.”⁸⁷ Whether our aim is to produce larger candy crystals or conditions more favorable to the ideal of greater freedom for all, the designers of orders cannot evade the responsibilities that come with the discovery of their capacity to use their reason to bend spontaneous processes toward human purposes.

Hayek sometimes writes as though the distinction between *cosmos* and *taxis* is an existential distinction. A social order either *is* a *taxis* or it *is* a *cosmos*. Since a *cosmos* has no purpose while a *taxis* has a particular purpose, a social order either has a particular purpose or it has no purpose. On this existential reading, the distinction between *cosmos* and *taxis* is absolute, and there can be no shading or overlap between these two social forms.⁸⁸ The consensus reading of Hayek, which sees him as rejecting social justice as a concept, typically rests on some version of this idea.

There is another reading of this distinction, however, that fits better with the deep architecture of systems theory. On this reading, the distinction between *cosmos* and *taxis* is not so much a distinction between kinds of social order, but a distinction between two *strategies* for social construction. *Cosmos* and *taxis* represent two different ways of seeking to give traction to normative reasoning in the social world. Viewed this way, Hayek’s distinction between *cosmos* and *taxis* should be understood as a contribution to debates among liberals at the level of regime-type advocacy, rather than at the level where liberals identify their deepest normative ideals.

Hayek’s neglected essay, “The Confusion of Language in Political Thought,” begins with Hayek’s familiar description of a *cosmos* as a self-regulating system. The order within such a system results endogenously from the regularities of the behavior of its elements. Those within a *taxis*, by contrast, are imposed by an external, exogenous agency. Regarding that purposive agent, Hayek tells us: “Such an external factor may induce the formation of a spontaneous order also by imposing upon the elements such regularities in their responses to the facts of their environment that a spontaneous order will form itself.”⁸⁹ Hayek then describes this as an “indirect method” of securing a social order, and he ascribes to it all the moral and informational advantages of *cosmoic* as opposed to *taxitic* social structurings. Crucially, Hayek emphasizes the importance of distinguishing between the spontaneity of the order and the spontaneity of the forms of behavior of the elements within such an order. “A spontaneous order may rest in part on regularities which are not spontaneous but imposed.” Hayek concludes, “For policy purposes, there results thus the alternative whether it is preferable to secure the formation of an order by a strategy of indirect approach, or by directly assigning a place for each element and describing its function in detail.”⁹⁰

This distinction between “direct” and “indirect” strategies admits many divisions of degree. For example, Hayek believes that a legal order restricted to expositing and enforcing rules of just individual conduct will encourage the formation of a complex social order. By making use of local knowledge, such an order will tend to maximize the freedoms of all citizens (that is, will provide all citizens with their best chance at realizing their goals and ambitions). In some exceptional areas though—such as schooling—Hayek believes that more direct methods will be required to realize this goal of equal freedom for all. In advocating public funding of education, for example, Hayek is advocating *taxis*-style rules by which social resources would be collected and directed to the particular purpose of providing the means for equal schooling for all. Even in such cases, though, there are less direct and more direct methods available. While advocating that the government guarantee that these means be made available for schooling, Hayek expresses his “grave doubts whether we ought to allow government to administer them”—preferring, it seems, some more competitive scheme involving educational vouchers.⁹¹ This accords with the central classical liberal idea that the social rules should encourage the creation of diverse goods (including diverse forms of education) to suit the diverse interests, characters, and values of free citizens. Hayek’s master maxim of feasibility seems to be that for both moral and informational reasons designers of legal orders for liberal societies should typically prefer the least direct (or most indirect) methods of realizing their social goals. This maxim guides Hayek to advocate the institutional regime of commercial society at the level of what I call political theory. And it would guide him also when considering various specific public policy options that might be proposed within that type of regime.⁹²

On the reading I am proposing, Hayek’s rejection of social justice turns out to be primarily an expression of skepticism of the direct, *taxitic* approach to social construction on grounds of feasibility. At the level of political theory, and especially at the level of public policy, Hayek presents his theory of information as giving us reason to be wary of *taxitic* strategies of social construction.⁹³ But Hayek’s famous critique of social justice gives us no reason to object to social justice at the identificatory level of political philosophy.⁹⁴ His idea of spontaneous order makes conceptual space for “constructivist” norms to evaluate both the product and the processes of spontaneous orders.

When considering any social system as a whole, *cosmos* and purpose, far from being opposites or antagonists, go together. In the social setting, spontaneous orders seem positively to require such normative evaluations: evaluations, that is, in terms of social justice.

This reading of Hayek makes ready sense of some passages that have long perplexed Hayek scholars (scholars in the traditional “Hayek-rejects-social-justice” school).⁹⁵ In the preface to *The Mirage of Social Justice*, Hayek notes that while he was completing his book an important, and seemingly rival, approach to liberal justice had appeared in Rawls’s *Theory of Justice*. Hayek tells his readers that he decided not to include an extended discussion of Rawls’s theory because, despite what he expects to be the first impression of many readers, the differences between his general conception of liberal justice and that of Rawls are “more verbal than substantive.” According to Hayek, he and Rawls “agree on what is to me the essential point.”⁹⁶ How can this be?

Jeremy Waldron claims that Hayek mistakes a superficial point of agreement between himself and Rawls about justice for a deeper form of agreement.⁹⁷ As Waldron notes, Rawls thinks the problem of justice must be approached with a holistic emphasis on institutional structures rather than with an eye on distributive questions taken in isolation. To elucidate this point, Waldron invites us to imagine an occasion in which the economic institutions of some society happened to yield a particular distribution, D1, that is inferior in terms of the difference principle to another particular distribution, D2. Does liberal justice require that we immediately reallocate the wealth so as to achieve D2 (say, by a special tax on the rich)? As Waldron observes, Rawls and Hayek agree that justice, in itself, generates no such requirement. So in this sense they are on common ground. Yet looking deeper, Waldron says Rawls’s and Hayek’s *reasons* for that conclusion reveal that they hold fundamentally different understandings of the nature of liberal justice.

The reason Rawls does not see justice as generating imperatives regarding the correcting of particular (unjust) distributions springs from his conception of justice as having a holistic application. Confronted with a society characterized by unjust distributional pattern D1, Rawls does not immediately see justice as requiring corrective measures. There may be many considerations, including the requirements of stability and of publicity, that might count against such

corrective measures. Yet on Rawls's understanding of the nature of justice, the observation of any particular instance of injustice *would* lead Rawls to ask more general questions about the society. For example, Rawls thinks our commitment to justice would require that we ask how that unjust distribution arose, and then to consider whether the basic structure of the society might be adjusted to make it less likely that similarly unjust distributions arise in the future.

However, according to Waldron, Hayek's reasoning here is quite different. Like Rawls, Hayek denies that liberal justice requires immediate correctives to D1. But this is *not* because Hayek, like Rawls, takes a holistic approach to justice that emphasizes structures and general institutional forms. Rather, Hayek rejects distributive correctives to D1 because Hayek rejects the idea that liberal justice applies to distributive questions on any level, whether regarding particular distributions or social structures taken as integrated wholes. Adopting the consensus reading, Waldron makes this point by quoting Hayek: "justice is not concerned with those unintended consequences of a spontaneous order [such as a market] which have not been deliberately brought about by anybody."⁹⁸ The differences between Rawls's and Hayek's understanding of liberal justice are thus substantive indeed.

I suspect that things are more complicated here than Waldron perceives. As we have seen, Hayek—and in this quite unlike Rawls—sometimes asserts that the concept *justice* can be applied only to human actions. His more careful formulations, however, reveal a more nuanced view: "To apply the term 'just' to circumstances other than human actions or *the rules governing them* is a category mistake."⁹⁹ If "justice" can be applied not only to actions but also to rules governing those actions, presumably that term can be applied to whole systems of rules—systems such as that given by a constitutional order, whether written or unwritten. This is precisely Hayek's view: "there unquestionably also exists a genuine problem of justice in connection with the deliberate design of political institutions, the problem to which Professor John Rawls has recently devoted an important book."¹⁰⁰ Justice can sensibly be applied to the rules governing a society's basic social and economic institutions. This can be accomplished through an evaluation of the general tendency of the effects of those rules on the social order and the people within it.¹⁰¹

At the level of moral identification, Hayek objects to the term "social justice" only when it is used to evaluate particular distributions of goods that happen to emerge within a market society. In rejecting that sense of social justice, Hayek's position is very like that of Rawls. Indeed, Hayek approvingly quotes an early essay of Rawls's on this point. Hayek writes: "the task of selecting specific systems or distributions of desired things as just must be [as Rawls says] 'abandoned as mistaken in principle, and it is in any case not capable of a definite answer.'"¹⁰² So, for Hayek as for Rawls, particular distributions of goods that happen to emerge in a society governed by liberal principles cannot in themselves be described as just or unjust. The justness of a society can be tested only by considering the general distributional tendencies of the social order that emerges within that system of rules.¹⁰³

Hayek affirms that there is a genuine problem of justice in connection with the deliberate design of political institutions. To solve that problem of justice, intriguingly, Hayek developed a decision mechanism that is very like the device that Rawls, decades later, would call the original position. A good society, according to Hayek, is one in which the chance of any person achieving their desired aims is as great as possible. Hayek interprets this to mean that if we were selecting among a range of candidate social systems, the most just system would be the one we would choose to live in if we were deprived of personal information that might taint our choice from the perspective of objective fairness. In one formulation of this idea, Hayek says: "we should regard as the most desirable order of society one which we would choose if we knew that our initial position in it would be determined purely by chance (such as the fact of our being born into a particular family)."¹⁰⁴ Yet Hayek worries that even this test might allow the fact of differing natural skills and talents to influence the fairness of the selection. After all, "the attraction such chance would possess for any particular adult individual would probably be dependent on the particular skills, capacities and tastes he has already acquitted." So Hayek thinks fairness requires that we thicken the information filter on this choice scenario. He does this by suggesting that we should ask which systems would be chosen, not simply by individuals who do not know the place they would occupy, but by representative heads of families reasoning under that same informational constraint.¹⁰⁵

Rawls, like Hayek, denies that liberal justice properly generates correctional imperatives with respect to particular distributional patterns that emerge as a product of (free) social activity. But Hayek, like Rawls, believes that liberal justice may properly be applied holistically when we evaluate deliberately designed institutions—such as those institutions that support the development of market-based society. In pointing out these very substantial points of agreement between Hayek and Rawls, however, I am not suggesting that remaining disagreements between them about the *particular requirements* of liberal justice are merely verbal. Famously, Hayek never provides a theory of social justice. And, as we will see later, the interpretation of liberal justice that Rawls affirmed (especially toward the end of his career) includes many features to which we can confidently predict Hayek would vociferously object.

Nonetheless, the general point remains. A commitment to the ideal of a free society as spontaneous order is compatible with the affirmation of some external standard of holistic evaluation, including a standard that expresses distributional concerns. Indeed, against the consensus reading, I would even go further in emphasizing the role of social-justice-like concerns within the Hayekian view. Social justice, we might say, gives the Great Society its point. It provides the evaluative standard that allows us to know when the equal freedom promised by liberalism is in danger of being lost and explains to us why that threat is something worth fighting back against. Indeed, for Hayek, we might say, the phrase “The Great Society without social justice” belongs not to the category of error but to that of nonsense. That phrase would make about as much sense as “naturally occurring rock candy on a string.”

Hayek does not like the term “social justice.” As a matter of practical political experience, Hayek sees calls for social justice as having led to the erosion of personal freedom and to the rise of deadening bureaucracies (not to mention the bundling up of people into the dangerous militarist collectives of “nations”). True to the deep biology of his theory of spontaneous order, Hayek affirms not merely the conceptual coherence of evaluating a liberal society in terms of what Rawls and others refer to as social justice. He also affirms the *moral necessity* of a society’s basic institutions passing muster by social and distributive standards.

After all, it is a liberal theory of (social) justice that tells us why we should affirm the ideal of thick economic liberty, and the other general rules of just individual conduct on which Hayek says the preservation of an economically free society depends. Such a theory also tells us which *taxitic* deviations from the model—such as a tax-funded safety net, or special funding for schooling—can be pursued without conflict to our commitment to the ideal of freedom, and which deviations cannot.¹⁰⁶ Whether orthodox libertarians might affirm a similar conception of spontaneous order is a question I leave for others. But classical liberals who follow Hayek can affirm a conception of spontaneous order that makes room for social justice. Recently, leading classical liberals have begun to do exactly that.

("Two Pages of Fiction: The Impossibility of Socialist Calculation," in Nishiyama and Leube, eds., *The Essence of Hayek*). For a normative defense of market socialism, see David Miller, *Market, State, and Community: Theoretical Foundations of Market Socialism*.

32. Like democratic laissez-faire regimes, these limited government ones would generally oppose schemes of government licensure of professions as restrictions on economic liberty. In cases where such government licensure were allowed, though, democratic limited government would be likely to see an antidiscrimination law as applying with special force.

33. Murray, *In Our Hands*. Murray's proposal bears some resemblance to the minimum income scheme Milton Friedman proposed in *Capitalism and Freedom*, esp. 191–94. For a discussion of the philosophical issues, see Matt Zwolinski, "Classical Liberalism and the Basic Income."

34. Freeman, *Rawls*, 57.

35. See also Bruce Ackerman, "What Is Neutral about Neutrality?," 372–90 (esp. sect. "II. Possible Worlds"); G. A. Cohen, "Facts and Principles"; and David Miller, "Political Philosophy for Earthlings."

Chapter 5: Social Justicitis

1. Hume, *An Enquiry concerning the Principles of Morals*, sect. III, pt. ii, 155. For discussion, see Samuel Fleischacker, *A Short History of Distributive Justice*, 12.

2. Hayek, *Law, Legislation, and Liberty*, vol. 2, *The Mirage of Social Justice* (hereafter: *Mirage*), 78. For other formulations of Hayek's claim that "social justice" is logically incoherent, see *Mirage*, 62, 69, and 96.

3. Nozick, *Anarchy, State, and Utopia*, 149–50.

4. Eric Mack, "Distributionism versus Justice," *Ethics* 86, no. 2 (January 1976): 145–53.

5. "If the domain of 'justice' is coextensive with the rights that people have," Loren Lomasky states, "then any sets of property holdings that emerge from rightful activity are, by definition, (distributively) just." Sam Freeman attributes a similar position to Nozick (*Rawls*, 128, 142).

6. Lomasky, *Persons, Rights, and the Moral Community*, 125.

7. I am thinking in particular here of work by Nozick, Jan Narveson, Eric Mack, and, to the degree that he counts as a libertarian rather than a classical liberal, Loren Lomasky.

8. I am aware that in strict medical parlance, "justicitis" refers to a form of inflammation, rather than to an allergy proper. I use the term metaphorically (though I am heartened to learn from my friend, Dr. Jami Star, of quasi-allergenic forms of inflammation such as nasal congestivitis).

9. Locke, *Two Treatises of Government*, *Second Treatise*, II, sect. 41.

10. Locke, "Some Considerations of the Consequences of the Lowering of Interest and the Raising the Value of Money" (1691). At <http://socserv.mcmaster.ca/econ/ugcm/3113/locke/consid.txt>. I thank Dennis Rasmussen for bringing this passage to my attention.

11. Locke: "Charity gives every Man a Title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise" (*Two Treatises of Government*, *First Treatise*, I.4. sect. 42).

12. Mandeville, "The Grumbling Hive" (1705), in *The Fable of the Bees*, 37.

13. The Statute of Apprentices, which limited the ability of workers to choose when and where to work, is one example of this. The Settlement Act, which limited the mobility of poor people, is another.

14. Smith, *Wealth of Nations* (hereafter: WN), IV.viii.4, 644; see also IV.viii.49, 660.

15. I am indebted to Dennis Rasmussen for discussion of these issues, and for this quotation from Malthus.

16. WN I.viii.36, 96.

17. *Ibid.*

18. After describing Smith's theory, Fleischacker comments: "Smith thus gives us essentially the same justification for inequalities that John Rawls was to propose two centuries later: they are acceptable if and only if the worst-off people under a system of inequality are better off than they would be under an egalitarian distribution of goods" (*Short History of Distributive Justice*, 39).

19. See John Tomasi, "Governance beyond the Nation State: James Madison on Foreign Policy and 'Universal Peace.'"

20. Stephen Holmes, *Passions and Constraint: On the Liberal Theory of Democracy*, 29–30, emphasis mine.

21. Madison to Francis Corbin, November 26, 1820. In Gaillard Hunt, ed., *The Writings of James Madison, Volume IX: 1819–1836*, 38–41 (quote is at 40–41). (This is from a facsimile via the Online Library of Liberty.) I thank Greg Weiner for this quotation and for improving my understanding of Madison's position on economic liberty.

22. Spencer, "The Coming Slavery," in *Man versus the State*, 32.

23. For an alternative view, see Philippe van Parijs, *Real Freedom for All: What (If Anything) Can Justify Capitalism?* (New York: Oxford University Press, 1995).

24. Spencer, *Social Statics*, 326.

25. Spencer, *Man versus the State*, 69–70.

26. Spencer stood against calls to nationalize the English economy, just as he stood against "Progressive liberal" attempts to regulate private labor agreements. In "The Coming Slavery," Spencer explicitly says that his main objection to socialism is founded on his concern for the workers, not the owners.

27. Von Mises, *Human Action*, 834.

28. Von Mises, *Liberalism: In the Classical Tradition*, 164–65. Conversation with George Reisman deepened my understanding of this passage from Von Mises, even though he does not fully share my reading of it.

29. Von Mises, *Liberalism: The Classical Tradition*, 33, emphasis mine.

30. *Ibid.*, 14.

31. I thank Roderick Long for discussion of these features of Rand's egoism.

32. Rand, "Monument Builders," in *The Virtue of Selfishness: A New Concept of Egoism*.

33. Rand, "The Divine Right of Stagnation," in *The Virtue of Selfishness: A New Concept of Egoism* (emphasis mine).

34. I owe these ideas about *Atlas Shrugged*, and much of the wording in these two paragraphs about the novel, to Jason Brennan.

35. Hayek, *New Studies in Philosophy, Politics, Economics, and the History of Ideas*, 132–34.

36. Hayek says, “The proletariat which capitalism can be said to have ‘created’ was thus not a proportion of the population which would have existed without it and which it had degraded to a lower level; it was an additional population which was enabled to grow up by the new opportunities for employment which capitalism provided” (“History and Politics,” in *Capitalism and the Historians*, 16).

37. As David Miller puts it (albeit with evident sarcasm): “if people believe Hayek, then even a coalition of the poor will eschew government redistribution in favor of the trickle-down effect of the free market” (*Principles of Social Justice*, 256).

38. Friedman, *Capitalism and Freedom*, 169.

39. Both quotations are from *ibid.*, 195.

40. Quoted in Brian Doherty, *Radicals for Capitalism: A Freewheeling History of the Modern American Libertarian Movement*, 417.

41. Nozick, *Anarchy, State, and Utopia*, 177. For discussion of this point, see Matt Zwolinski “Libertarianism,” *The Internet Encyclopedia of Philosophy*.

42. Eric Mack, “Self-Ownership, Marxism, and Egalitarianism: Part II: Challenges to the Self-Ownership Thesis,” 237, emphasis mine.

43. Epstein, *How The Progressives Rewrote the Constitution*, 15.

44. *Ibid.*, x–xi, 16. See also 74.

45. Reagan continues: “We built the West without waiting for an area redevelopment plan. San Francisco, destroyed by fire, was rebuilt by Californians who didn’t wait for urban renewal. We have fought our wars with citizen-soldiers and dollar-a-year men.” Terry Golway, *Ronald Reagan’s America: His Voice, His Dreams, and His Vision of Tomorrow*, emphasis mine.

46. On democratic capitalism generally, see Michael Novak, *Three in One: Essays on Democratic Capitalism, 1976–2000*.

47. Ronald Reagan, “Remarks Announcing America’s Economic Bill of Rights, July 3, 1987.” Steven Calabresi, who was at the time a member of Reagan’s White House staff working under Kenneth Cribb, contributed ideas to the speech. I thank Calabresi for bringing this speech to my attention.

48. Other advocates of thick economic liberty and limited government who might be added to this list include: Benjamin Tucker, Ezra Haywood, Lysander Spooner, Voltairine de Cleyre, Albert J. Nock, Frank Choderov, and contemporary libertarian scholars such as Kevin Carson, Gary Chartier, and Sheldon Richman. The Catholic free market tradition running from Lord Acton to Michael Novak offers another rich vein of resources.

49. Friedman, *Capitalism and Freedom*, 195.

50. *Mirage*, 65.

51. *Ibid.*, 69 and 68, respectively. See also 96.

52. *Ibid.*, 66.

53. “What we have to deal with in the case of ‘social justice’ is simply a quasi-religious superstition of the kind which we should respectfully leave in peace so long as it merely makes those happy who hold it, but which we must fight when it becomes the pretext of coercing other men. And the prevailing belief in ‘social justice’

is at present probably the gravest threat to most other values of a free civilization.” *Mirage*, 66–67.

54. *Ibid.*, 62.

55. *Ibid.*, 97. “I believe that ‘social justice’ will ultimately be recognized as a will-o’-the-wisp which has lured men to abandon many of the values which in the past have inspired the development of civilization—an attempt to satisfy a craving inherited from the traditions of the small group but which is meaningless in the Great Society of free men.” *Ibid.*, 67.

56. *Ibid.*, 75.

57. Hayek, *Law, Legislation, and Liberty, vol. 1, Rules and Order*, 36.

58. See International Gem Society website, at <http://www.gemsociety.org/info/igem17.htm>. Written by Don Clark, CSM President, and Jain and Jain, “Learning the Principles of Glass Science and Technology from Candy Making.”

59. Hayek borrows the term “cosmos” from Joseph Schumpeter, *History of Economic Analysis*, e.g., 467; see Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, 73. On systems theory generally, see Michael Polanyi, *The Logic of Liberty*, esp. the section titled “Two Kinds of Social Order,” 190–202. Polanyi also mentions a crystal as an example of what he calls “a spontaneously attained order” (191).

60. As a definitional matter, for example, we could sensibly pick out the grouping of redheaded natives of Rhode Island who were born in January. But the members of the grouping—being of different ages, having different interests, skills, and educational backgrounds, living in different places—are not an order in the system’s theory sense.

61. For a helpful discussion of the intellectual roots of this idea, see Ronald Hamowy, *The Scottish Enlightenment and the Theory of Spontaneous Order*.

62. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, 77. “A command regularly aims at a particular result or particular foreseen results, and together with the particular circumstances known to him who issues or receives the command will determine a particular action. By contrast, a rule refers to an unknown number of future instances and to the acts of an unknown number of persons, and merely states certain attributes which any such action ought to possess.” *Mirage*, 14.

63. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, 77.

64. *Mirage*, 15.

65. These two general forms can function at various levels and as subsets of each other. A corporation may be described as a *taxis* operating within the *cosmos* of a competitive market order, for example. The distinction between *cosmos* and *taxis* blurs on other dimensions as well. Chandran Kukathas comments: “This distinction between exogenously and endogenously created structures is not always clear cut since many structures that are ‘made’ could not be ‘made’ unless particular substructures will form spontaneously. A digital watch cannot be made without relying on the spontaneous orders formed by liquid crystals when an electric charge is generated. Nevertheless, the distinction between the *processes* of order formation can be sustained.” *Hayek and Modern Liberalism*, 87.

66. Hayek, “The Use of Knowledge in Society,” 519–30.

67. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, 75.

68. *Constitution*, 250.
69. Polanyi, *The Logic of Liberty*, esp. 208–20.
70. John Gray characterizes Hayek as an indirect utilitarian (*Hayek on Liberty*, 59–61). Kukathas, more convincingly, argues that Hayek is best thought of as a type of consequentialist but not a utilitarian because Hayek's discovery-approach arguments "do not point to any end point to be achieved" (*Hayek and Modern Liberalism*, 196).
71. *Mirage*, 39.
72. *Ibid.*, 4.
73. *Ibid.*, 4–5.
74. Hayek writes: "while the deliberate uses of spontaneous ordering forces . . . thus considerably extends the range and complexity of actions which can be integrated into a single order, it also reduces the power that anyone can exercise over it without destroying the order" (*Mirage*, 75).
75. While traveling to a Federalist Society conference on Hayek's legal theory, I read an article about an experimental food stamp program being conducted in western Massachusetts. In a group of test communities, a 30 percent discount was being applied to food stamp purchases of selected fruits and vegetables in an effort to reduce the obesity of poor people. Whatever effects that particular program might turn out to have on the food stamp recipients in those communities when put into practice (whether in terms of their weight or their self-esteem), it is a striking example of a "taxitic" directive. Patrick G. Lee, "Food Stamp Discount for Buying Produce," *Boston Globe*, August 19, 2010, B1 Metro.
76. *Mirage*, 99.
77. *Ibid.*, 67.
78. As Hayek puts it, "there are no principles of individual conduct which would produce a pattern of distribution which as such could be called just, and therefore also no possibility for the individual to know what he would have to do to secure a just remuneration of his fellows" (*ibid.*, 83).
79. "It is essential that we become aware clearly of the line that separates a state of affairs in which the community accepts the duty of preventing destitution and of providing a minimum level of welfare from that in which it assumes the power to determine the 'just' position of everybody and allocates to each what it thinks he deserves" (*Constitution*, 252).
80. *Mirage*, 78. For other formulations of Hayek's claim that "social justice" is logically incoherent, see *ibid.*, 62, 69, and 96.
81. *Ibid.*, 70. Similarly, Michael Oakshott criticizes Hayek for advocating "a plan to resist all planning" (*Rationalism in Politics and Other Essays*, 26).
82. Critical discussions I have found helpful include: Adam Tebble, *F. A. Hayek* (New York: Continuum International Publishing Group, 2010), esp. 63–72; Kukathas, *Hayek and Modern Liberalism*, 86–104; John Gray, *Hayek on Liberty*; Theodore Burczk, *Socialism after Hayek* (Ann Arbor: University of Michigan Press, 2006), esp. 54–57; Anna Galeotti, "Individualism, Social Rules, Tradition: The Case of Friedrich A. Hayek," 163–81, 168–70; João Carlos Espada, *Social Citizenship Rights: A Critique of F. A. Hayek and Raymond Plant*; and a lively collection of articles by David Johnston, Steven Lukes, and Edward Feser in *Critical Review* 11, no. 1 (1997).

83. *Mirage*, 64.
84. By contrast, Gerald Gaus defends what we might call a "pure-discovery" reading of Hayek: "Why All Welfare States (Including Laissez Faire Ones) Are Unreasonable," 3, 24, 28–29, 31. On that reading, it is difficult to make sense of Hayek's own claims about the affinity of his view of justice to that of Rawls (on which, see below).
85. The question of what role intentionality can have, of course, is crucial. Kukathas comments: "while Hayek has developed a theory of the spontaneous ordering forces of society, he has not come up with an explanation of the extent to which reason can criticize and try to alter the direction of social development" (*Hayek and Modern Liberalism*, 104).
86. *Mirage*, 99.
87. *Ibid.*, 70–71, emphasis mine.
88. When Hayek describes the Great Society as a cosmos, on this reading, he means that form of social order that has no purpose, including that of a satisfying normative ideal that might be defined by a (distribution-sensitive) conception of social justice.
89. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, 74. I am indebted to Adam Tebble for first bringing this passage to my attention.
90. *Ibid.*, 74–75. For an early formulation of this distinction between direct and indirect strategies of social construction, see Herbert Spencer, "The New Toryism," in *The Man versus the State*, esp. 14–15.
91. *Mirage*, 84.
92. Lomasky asks which strategy of social construction works better, markets or political processes: "the most important finding of the first century of post-Adam Smith economics is that the second strategy pays off better than the first. Indirection triumphs over direct pursuit of the desideratum. The most important finding of its second century may be that the aims of social justice also are better pursued by an indirect strategy." "Libertarianism at Twin Harvard," 192.
93. "The prime public concern must be directed not towards particular known needs but towards the conditions for the preservation of a spontaneous order which enables the individuals to provide for their needs in manners not known to authority." Thus: "The most important of the public goods for which government is required is thus not the direct satisfaction of any particular needs, but the securing of opportunities of mutually providing for their respective needs." *Mirage*, 2.
94. Michael Novak suggests another level at which Hayek might affirm the coherence of social justice: the level at which individuals work for the general good (in Hayek's case, as a public intellectual). Novak, "Hayek: Practitioner of Social Justice, 'Social Justice Properly Understood' Celebration of Friedrich Hayek's 100th Birthday," in *Three in One: Essays on Democratic Capitalism, 1976–2000*, 135.
95. David Miller says: "Hayek and other earlier critics of the idea [of social justice] believed that the pursuit of social justice was feasible but mistaken" (*Principles of Social Justice*, 256). See also Steven Lukes, "Social Justice: The Hayekian Challenge," 65–80; David Johnston, "Hayek's Attack on Social Justice."

96. *Mirage*, xiii. It should not be lost on readers that Hayek makes that statement in the preface of a book called *The Mirage of Social Justice* in reference to a book titled *A Theory of Justice*.

97. Waldron, "Socioeconomic Rights and Theories of Justice," 14–16. See also Arthur DiQuattro, "Rawls versus Hayek," 307–10.

98. Waldron "Socioeconomic Rights and Theories of Justice," 15, quoting Hayek, *Mirage*, 38 and 166n.

99. *Mirage*, 31.

100. *Ibid.*, 100; DiQuattro, "Rawls versus Hayek," esp. 307–10.

101. Thus Hayek notes regarding the term "social justice" that "it is to the present day sometimes employed in learned discussions to evaluate the effects of the existing institutions of society." The footnote to that sentence cites Rawls's *TJ* as an example. For yet another approving reference to Rawls, see footnote 16 on *Mirage*, 74. Hayek there notes that for Rawls, as for thinkers in the classical liberal tradition, justice in a competitive system is to be found in the way that competition is carried on rather than in its particular results. Hayek appears to mean "in the way it is carried out" as evaluated by the general tendency of the effects of competitions carried out *under such rules and institutions*.

102. *Mirage*, 100, quoting Rawls, "Constitutional Liberty and the Concept of Justice," *NOMOS VI: Justice*, New York, 1963, p. 102. *Mirage*, n. 44, p. 183, bracketed material mine. The quotation from Rawls continues: "Rather, the principles of justice define the crucial constraints which institutions and joint activities must satisfy if persons engaging in them are to have no complaints against them. If these constraints are satisfied, the resulting distribution, whatever it is, may be accepted as just (or at least not unjust)."

103. A similar argument on behalf of "social justice" might be developed from within the work of Milton Friedman. Friedman emphasizes that rights of property are complex social creations. According to Friedman: "The ethical principle that would directly justify the distribution of income in a free market society is 'to each according to what he and the instruments he owns produces'" (*Capitalism and Freedom*, 162). However, as Sam Freeman has pointed out, "The implication [of these two propositions] is that we stand in need of some principle to specify the rules of property that underwrite the classical liberal precept: "To each according to what he and the instruments he owns produces" ("Capitalism in the Classical Liberal and High Liberal Tradition," 35). Until some such principle is elucidated, Freeman says the idea of ownership and property are mere "placeholders." From a market democratic perspective, it is a theory of social justice that provides that needed elucidation.

104. *Mirage*, 132. Hayek says he first came to appreciate this point in 1940, when he was living in London under the German bombing. Facing the real possibility of death, Hayek received offers from several neutral countries (among them the United States, Argentina, and Sweden) to place his young children with some unknown family with whom they would remain if he did not survive. "This led me, as abstract speculation perhaps never could have done, to realize that where my children were concerned, rational preferences should be guided by considerations somewhat different than those that would determine a similar choice for myself' (a person with a known set of characteristics such as age, gender, professional accomplishments, tastes

and interests, and so forth)." *Mirage*, n. 25, p. 188. I thank Keith Hankins for calling my attention to this footnote.

105. As Hayek puts it: "the best society would be that in which we would prefer to place *our children* if we knew that their position in it would be determined by lot" (*Mirage*, 132, emphasis added). For Hayek, as for Rawls, the key point to keep in mind is that "a person in an established position inevitably takes a different attitude from that which ought to be taken in considering the general problem" (*Mirage*, n. 25, p. 188).

106. At one place, Hayek concedes that his strong aversion to social justice may well be "unduly allergic." *Mirage*, 97.

Chapter 6: Two Concepts of Fairness

1. Lindsey, "Libertarians" *The New Republic*, December 11, 2006, at <http://www.tnr.com/article/politics/libertarians>.

2. Murray, *In Our Hands*.

3. Murray refers readers to his *In Pursuit: Of Happiness and Good Government* (New York: Simon & Schuster, 1988) and *What It Means to Be a Libertarian* (New York: Broadway Books, 1997).

4. Murray, *In Our Hands*, 4.

5. *Ibid.*, 5.

6. There are also luck egalitarian elements in Hayek, as when he suggests that the primary justification for public support of education is to "eliminate the effects of accident" (*Constitution*, 333).

7. Lomasky, "Libertarianism at Twin Harvard," 178–99.

8. Shapiro, "Why Rawlsian Liberals Should Support Free Market Capitalism," 58–85; "Liberalism, Basic Rights, and Free Exchange," 103–26; and *Is the Welfare State Justified?*

9. Gerald Gaus and David Schmidtz are professors in the Philosophy Department at the University of Arizona; Jason Brennan earned his PhD there; I completed a master's at Arizona before transferring to Oxford. In mentioning the connection of these scholars to Arizona, I am not suggesting that work on this new paradigm is only being done by Arizona philosophers. Nor, certainly, am I suggesting that every political philosopher at Arizona works from this orientation. Some of Arizona's most prominent political philosophers, notably Thomas Christiano, manifestly do not.

10. See especially Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World*.

11. Gaus, "Reasonable Pluralism and the Domain of the Political: How the Weaknesses of John Rawls's Political Liberalism Can Be Overcome by a Justificatory Liberalism," 229–58.

12. Gaus, "Coercion, Ownership, and the Redistributive State," 252.

13. *Ibid.*, 259.

14. Gaus, *The Order of Public Reason*, 273.

15. Gaus, *Contemporary Theories of Liberalism: Public Reason as a Post-Enlightenment Project*, 214. See also Gaus, "Coercion, Ownership, and the Redistributive State," 237; and Gaus, *Social Philosophy*, chaps. 7–11.