What Is Seen and What Is Not Seen: Hayekian Extensions of Bastiat's Insight

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ABSTRACT

Bastiat was concerned that people often see the relatively immediate particular positive effects of violations of property rights and do not see the harder to detect particular positive effects that would ensue were those violations of rights not to take place. His basic proposal is that we do a better job at recognizing what those particular positive effects would have been. This proposal assumes that with greater resolve we can do a pretty good job of detecting what these particular positive effects would have been. Thus, in effect, Bastiat calls for more conscientious case-by-case assessments of proposed infringements on property rights. In contrast, Hayek holds that: (i) we are not usually able to predict what particular results would have ensued were property rights respected; but (ii) we have general theoretical reasons for believing that a strict policy of respecting property rights will yield more positive effects than a policy of deciding on a case-by-case basis whether the particular benefits of infringements on rights will outweigh the particular benefits lost through those infringements. This paper explores two distinct theoretical lines of reasoning that Hayek advances for rule-based (i.e., rights-compliant) decision-making rather than case-by-case consequentialist decision-making.

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INTRODUCTION

Frederic Bastiat’s vital insight is that, in the course of choosing or assessing actions, (1) some things are seen and other things tend not to be seen and (2) better choices or assessments will be made if the things that tend not to be seen are better taken into account. 1 Bastiat’s special concern is with the seizure of, the destruction of, or the interference with the peaceful employment of private property and with the fact that we readily see the gains that such actions may engender but do not readily see the gains that would have emerged had those infringements of property rights not taken place. Hence, we often do not appreciate the opportunity costs of these interferences. Bastiat’s proposed remedy for this costly initial ignorance is to overcome it through a heightened resolve to ascertain what gains—or at least what sorts of gains—would be attained if those interferences were not to take place. Hence, according to Bastiat, our goal should be more accurate, case-by-case, cost-benefit assessments of those interferences.

In this essay, I want to investigate alternative remedies to problems of ignorance—remedies that take our ignorance to be profoundly less remediable than Bastiat seems to presume. As we shall see, the general implication of taking our ignorance about the benefits and costs of particular actions to be markedly less remediable is to undermine the goal of improving our choice or assessment of particular actions through more resolute case-by-case analysis. Put more positively, the general implication of taking seriously our ignorance of the benefits and costs of particular actions is a shift to much more abstract, rule-focused decision-making.

Rather than attempting to pursue the enormous topic of the appropriate adaptation of our decision-procedures to the fact of our ignorance, I will instead describe some phases or aspects of the thought of F.A. Hayek—who was deeply impressed by the fact of our ignorance and who saw the human disposition to abide by evolved rules as our adaptation to the fact of this ignorance. Hayek follows Bastiat in thinking primarily about the choice or assessment of infringements upon property rights and in maintaining that the appropriate response to our (initial or permanent) ignorance supports a rejection of such infringements even when the gains from them appear to exceed their costs. So, Hayek can readily be seen as offering extensions of Bastiat’s basic insight that some of the effects of actions tend to be unseen and that, in our choices and assessments, we need in some way to adapt to this (initial or permanent) lack of perception.

Hayek’s The Constitution of Liberty2 is the primary site of the first phase of Hayek’s extension of Bastiat’s insight. Hayek’s Law, Legislation, and Liberty—especially volume one, entitled Rules and Order3 and volume 2, entitled The

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Mirage of Social Justice—is the primary site of the second phase of Hayek’s extension. I will recount Hayek’s first extension in Part II and recount his second extension in Part III. In both cases, we find Hayek appealing to considerations of ignorance to reject case-by-case cost-benefit assessment of actions and concluding that actions must instead be assessed on the basis of their rule compliance or non-compliance. In Part IV, I will discuss briefly Hayek’s striking comments about the tendency for rule compliance and the benefits of rule compliance to be unseen. In the concluding Part V, I raise questions about whether Hayek’s strategy of circumventing our ignorance about current and future particular facts through reliance upon our capacity for understanding law-like regularities over-estimates the power of our understanding.

I. First Phase of Hayek’s Extension

As we all know, Bastiat envisions some lout breaking a pane of glass in a shopkeeper’s window and some observer asserting that this destructive action really has good consequences because the shopkeeper’s need to replace the glass will augment the business of some glazier. Bastiat points out that the augmentation of the glazier’s business is the seen good consequence of the lout’s action; but two further consequences are not perceived by the observer. First, the observer does not see that, had the glass not been broken, the shopkeeper would have spent a comparable amount of money on a new pair of shoes—thereby, comparably augmenting the business of some shoemaker. If we take note of this unseen consequence, we see that the destruction of the pane does not on net increase employment or mutually advantageous exchange. It merely shifts business from the shoemaker to the glazier. Second, the observer does not perceive that, after paying for a new window pane, the shopkeeper ends up with only a window pane whereas, if the shopkeeper did not have to purchase a new window pane, he would end up with both a window pane and a new pair of shoes. Bastiat concludes, if we attend both to what is initially seen and what is not initially seen, we will recognize that, rather than the destruction being socially neutral or even beneficial, it is negative in its effects.

Let us note that everything Bastiat tells us about the shopkeeper is consistent with the shopkeeper replacing the pane and, hence, foregoing the purchase of the shoes, without his ever perceiving the breaking of the pane as a violation of some rule—e.g., a rule against the destruction of someone’s property. We can even imagine that he perceives the destruction as just retaliation for some wrong he has done to the individual who I have unjustly labeled a lout. Or we can imagine Bastiat’s shopkeeper replacing the pane without ever believing that the pane was broken by human action. We can easily imagine Bastiat offering the

5. Would someone still think this, even for a minute, if the lout entered the glazier’s warehouse and broke panes of glass stored there?
same response to someone who celebrates the economic stimulation of window panes being smashed by hail storms.

Hayek presents *The Constitution of Liberty* as a defense of principled respect for freedom—indeed, as a restatement of Mill’s defense of liberty in *On Liberty*. According to Hayek, liberty itself consists in not being subject to actions that violate certain rules. So, a defense of principled respect for liberty amounts to a defense of strict compliance with the rules that provide the constitution of liberty. In *The Constitution of Liberty*, Hayek often speaks of a certain type of “tools” rather than rules. These are the “tools” which man has evolved and which constitute such an important part of his adaptation to his environment [and which] include much more than material implements.” These non-material tools consist in a large measure in forms of conduct which [man] habitually follows without knowing why; they consist of what we call “traditions” and “institutions.” Man is generally ignorant not only of why he uses implements of one shape rather than another but also of how much is dependent on his actions taking one form rather than another. He does not usually know to what extent the success of his efforts is determined by his conforming to habits of which he is not even aware.... Concurrent with the growth of conscious knowledge there always takes place an equally important accumulation of tools in this wider sense, of tested and generally adopted ways of doing things.7

Hayek adds that at some point some of these forms of conduct attain explicit articulation. “With this cumulative embodiment of experience in tools and forms of action will emerge a growth of explicit knowledge, of formulated

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6. Hayek, supra note 2, at 148–61. Unfortunately, Hayek tends to conflate the claim that one’s freedom consists in others’ abiding by certain restrictive rules in their treatment of one and the claim that one’s freedom consists in one’s own compliance with those restrictive rules. The former claim is probably best conveyed by the sentence from F.C. von Savigny with which Hayek begins chapter ten: “The rule whereby the indivisible border line is fixed within which the being and activity of each individual obtains a secure and free sphere is the law.” *Id.* at 148.

The latter, Rousseau-like claim is well represented by Hayek’s statement that “when we obey laws, in the sense of general abstract rules laid down irrespective of their application to us, we are not subject to another man’s will and are therefore free.” *Id.* at 153. See also his assertion that “so far as men’s actions toward other persons are concerned, freedom [apparently the freedom of the actors] can never mean more than that they are restricted only by general rules.” *Id.* at 155. Yet Hayek admits that “even general, abstract rules, equally applicable to all, may possibly constitute severe restrictions on liberty.” *Id.* at 154. This, however, would not be possible if freedom means being restricted only by general rules.

7. Hayek, supra note 2, at 27. See also *id.* at 26 (“Our habits and skills, our emotional attitudes, our tools, and our institutions—all are...adaptations to past experience, which have grown up by selective elimination of less suitable conduct. They are as much an indispensable foundation of successful action as is our conscious knowledge.”). Strikingly, Hayek immediately says that these habits, attitudes, tools, and institutions are “non-rational.” *Id.* He also adds that some of them may outlive their usefulness and “become more an obstacle than a help.” *Id.*
generic rules, that can be communicated by language from person to person."9

Hayek does not directly tell us which "forms of conduct" or "generic rules" he has in mind. But we can make a pretty good inference from what he does say. They are the forms of conduct compliance that enables individuals to experiment with new uses of their respective knowledge, skills, and productive resources when some adjustment in activities is needed or useful for advancing their respective ends in response to "ever changing circumstances."9

What is essential to the functioning of the process is that each individual be able to act on his particular knowledge, always unique, at least so far as it refers to some particular circumstances, and that he be able to use his individual skills and opportunities within the limits known to him and for his own purposes.10

For Hayek, this means a process in which each individual has discretionary control over her own skills, powers, and material resources so as to be able to deploy them in accordance with her own (explicit or tacit) knowledge and hunches to achieve beneficial adjustments in the circumstances at hand. Hayek is not limiting his claim to the economic freedom that facilitates adjustments to economic circumstances. For, he tells us that the role of "the process" is to achieve moral and aesthetic adjustments as well as economic ones.11 Nevertheless, Hayek's key focus is on the rules that support economic freedom. This is clear from his contrast between those theorists who think that freedom especially demands protection in "the intellectual sphere" and his own view that the value of "the freedom of doing things" is at least as great as the value of intellectual liberty.12 Clearly among the tools that facilitate individuals acting on their own knowledge are rules against destroying or seizing another's property or otherwise depriving individuals of control over their property.13

Why, according to Hayek, is it so important that individuals have the freedom of doing things, i.e., that they have discretionary control over their own skills, powers, and material resources? Hayek's answer is ignorance: "It is because every individual knows so little and, in particular, because we rarely know which of us knows best that we trust the independent and competitive efforts of many to induce the emergence of what we shall want when we see it."14 Furthermore,

8. Id. at 33.
9. Id. at 28.
10. Id. at 29.
11. Id. at 28.
12. Id. at 33.
13. Cf. HAYEK, supra note 2, at 151 ("[G]eneral rules laid down in advance for longer periods... can make it possible for each individual by his own action... to alter or shape the sphere within which he can direct his action for his own purposes. Thus, from the delimitation of a private sphere by rules, a right like that of property will emerge.").
14. HAYEK, supra note 2, at 29.
It is through the mutually adjusted efforts of many people that more knowledge is utilized than any one individual possesses or than it is possible to synthesize intellectually; and it is through such utilization of dispersed knowledge that achievements are made possible greater than any single mind can foresee. It is because freedom means the renunciation of direct control of individual efforts that a free society can make use of so much more knowledge than the mind of the wisest ruler could comprehend.\textsuperscript{15}

Hayek concludes:

\[\text{[It follows that we shall not achieve the ends [of liberty] if we confine liberty to the particular instances where we know it will do good . . . Our faith in freedom does not rest on the foreseeable results in particular circumstances but on the belief that it will on balance release more forces for the good than the bad.]}\textsuperscript{16}\]

In light of all this, consider the way in which Hayek’s reaction to broken window cases differs from Bastiat’s reaction.

Bastiat’s reaction is premised on the idea that with a bit more effort and attention we can see what the shopkeeper would have done had his freedom not been infringed upon by the lout. We can see that he would have purchased a new pair of shoes or at least that he would have engaged in some similar purchase—perhaps a new blouse for his wife, a new stool for his shop—which would have been similarly economically stimulating. Bastiat’s condemnation of the lout’s action turns on his being able to say with some degree of confidence what the shopkeeper would have done had his window pane not been broken. Similarly, the way to undermine the case for tax-funded public works is “to note also what the taxpayers would have done—and can no longer do—with these millions.”\textsuperscript{17} Bastiat’s general description of his procedure in dealing with particular proposed interferences is, “there is something here that is seen and something that is not seen. \textit{Let us try to see both.}”\textsuperscript{18} If, in a particular case, we cannot ascertain what the subject of the coercive intervention would have done had he not been subject to that behavior, our condemnation of the behavior will be baseless.

Hayek, of course, is not precluded from sometimes pointing to what particular individuals would have done had they not been subject to the destruction of their property or to limitations on their chosen use of their skills, powers, or property. However, the gravamen of Hayek’s reaction is that the crucial losses

\textsuperscript{15} \textit{Id.} at 31.

\textsuperscript{16} \textit{Id.} at 31. Compare this with a statement Hayek quotes from H.B. Phillips: “In \textit{[an advancing society]} freedom of action is granted to the individual, not because it gives him greater satisfaction but because if allowed to go his own way he will \textit{on the average} serve the rest of us better than under any orders we know how to give.” \textit{Id.} at 9 (emphasis added).

\textsuperscript{17} Bastiat, supra note 1, at 17.

\textsuperscript{18} \textit{Id.} at 36 (emphasis added).
that are imposed by such infringements on freedom are losses that we will never be able to identify—losses that will remain unseen. This is because, at least in a significant number of cases, we will not know what insightfully innovative actions would have been performed by individuals who have been rendered less able to bring their resources to bear on the basis of their own knowledge or hunches. The more insightfully innovative those particular actions would have been, the less likely we are ever to have well-grounded beliefs about what they would have been.  

Our ignorance about what is unseen is much more irremediable than Bastiat presumes. For this reason, the appropriate adjustment to what is unseen cannot be a heightened resolve to see what specific actions would have been or will be performed if individuals had not been or will not be subject to those infringements. Rather, the appropriate adjustment is the adoption of a strong general presumption on behalf of liberty, i.e., on behalf of compliance with rules against interference with persons and their possessions. Except perhaps in very special circumstances, this presumption will remain decisive even when a heightened resolve to detect the initially unseen cost of some particular infringement fails to make that cost visible.

Certainty we cannot achieve in human affairs, and it is for this reason that, to make the best use of what knowledge we [separately] have, we must adhere to rules which experience has shown to serve best on the whole, though we do not know what will be the consequences of obeying them in the particular instance.  

We must abandon the idea that specific interferences are only to be condemned when we can identify the particular ways in which those interferences are costly.

Thus, Hayek rejects the program that Bastiat seems to recommend for dealing with the less well seen (and negative) effects of lout-like activity—precisely

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19. Does a similar argument apply to forbidding infringements on freedom, e.g., to forbidding individuals from exercising control over other person’s skills, powers, or material resources? That is, can it similarly be argued that we will never know what insightfully innovative uses of those skills, powers, or material resources would have taken place had those violations been allowed? A negative answer emerges if we consider the two main variants on allowing such violations of freedom. In the first case, everyone is allowed to violate everyone else’s freedom on the basis of his own beliefs about what actions will advance his purposes. The systemic effect of this would be the radical reduction of people’s capacity to deploy skills, talents, and material resources in accordance with their respective knowledge in the service of their personal ends. See generally THOMAS HOBBES, LEVIATHAN 75–76 (Edwin Curley ed., Hackett Publ’g Co., 1994). In the second case, only a single agent (or a small number of agents each with permission to infringe certain freedoms) is allowed to exercise control over others’ skills, powers, and material resources. In this case, a radical decrease in people’s capacity to deploy skills, talents, and material resources in accordance with their respective knowledge in the service of their personal ends follows from the disenfranchisement of almost everyone’s distinctive knowledge about her own skills, powers, material resources, circumstances, and personal ends.

20. HAYEK, supra note 2, at 30.
because he holds that knowledge about the specific costs of particular instances of such activity is more deeply inaccessible than Bastiat seems to believe. Hence,

generally speaking, only the rule as a whole must be justified [on the basis of its usefulness], not its every application . . . . [F]ew beliefs have been more destructive of the respect for rules of law and morals than the idea that a rule is binding only if the beneficial effect of observing it [or the harmful effect of violating it] in the particular instance can be recognized.\textsuperscript{21}

In the first volume of \textit{Law, Legislation, and Liberty}, Hayek returns to this argument. Freedom again is taken to be the condition that obtains for one when others adhere to the constraining norms of just conduct; and Hayek maintains that,

Since the value of freedom rests on the opportunities it provides for unforeseen and unpredictable actions, we will rarely know what we lose through a particular restriction of freedom. Any such restrictions, any coercion other than the enforcement of general rules [which confer on each individual the freedom to deploy his person and possessions on the basis of his own knowledge], will aim at the achievement of some foreseeable particular result; but what is prevented by it will usually not be known. The direct effects of any interference with the market order will be near and clearly visible in most cases, while the more indirect and remote effects will mostly be unknown and will therefore be disregarded. We shall never be aware of all the costs of achieving particular results by such interference.\textsuperscript{22}

Thus,

If the choice between freedom and coercion is . . . treated as a matter of expediency [i.e., of case-by-case balancing of perceived gains versus perceived losses], freedom is bound to be sacrificed in almost every instance . . . . [T]o make the decision in each instance depend only on the foreseeable particular results must lead to the progressive destruction of freedom.

Hence, “freedom can be preserved only if it is treated as a supreme principle which must not be sacrificed for particular advantages.”\textsuperscript{23} And a few pages later Hayek proclaims that “[F]reedom will prevail only if it is accepted as a general principle whose application to particular instances requires no justification.”\textsuperscript{24}

Hayek \textit{seems} to be saying that freedom requires its application to all particular instances and that particular interferences are not to be assessed on a

\begin{itemize}
  \item \textsuperscript{21} \textit{Id.} at 159.
  \item \textsuperscript{22} \textit{Hayek, supra} note 3, at 57.
  \item \textsuperscript{23} \textit{Id.}
  \item \textsuperscript{24} \textit{Id.} at 61.
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a supreme principle and a few pages later accepted as a general justification.

26. See id. at 156.
27. Indeed, within Hayek's presentation of what I have labeled his "first phase" extension, Hayek attitudes to Bastiat's What Is Seen and What Is Not Seen in Political Economy and declares this to be Bastiat's "most brilliant essay." Hayek, supra note 3, at 57, 160 n.6.
rights will be generally respected or upon losses that ensue when violations of property rules weaken people’s expectations of general compliance with these rules.

II. SECOND PHASE OF HAYEK’S EXTENSION

The second phase of Hayek’s extension of Bastiat’s insight focuses on the systemic, but difficult to ascertain, positive consequences of people expecting widespread compliance with anti-interference rules and the difficult to ascertain, negative effects that ensue when interferences undermine such beneficial expectations. This second phase makes a surprisingly brief appearance in The Constitution of Liberty. According to Hayek,

We understand one another and get along with one another, are able to act successfully on our plans, because, most of the time, members of our civilization conform to unconscious patterns of conduct, show a regularity in their action that is not the result of commands or coercion . . . . The general observation of these conventions is a necessary condition of the orderliness of the world in which we live, of our being able to find our way in it, though we do not know their significance and may not even be consciously aware of their existence.

The focus here is not on local benefits from particular instances of non-interference, e.g., the benefit to the shopkeeper of purchasing that pair of shoes. Rather, the focus is on “[t]he general observation of these conventions” and the systemic result which is “the orderliness of the world in which we live” and “our being able to find our way in it.” General “submission . . . to [these] rules and conventions . . . is indispensable for the working of a free society.”

Hayek is most concerned with rules that are elaborations of Hume’s “three fundamental laws of nature, that of stability of possession, of transference by consent, and of the performance of promises.” Since these rules “operate through the expectations that they create, it is essential that they be always applied, irrespective of whether or not the consequences in a particular instance seem desirable.” In a long endnote in The Constitution of Liberty, Hayek cites crucial passages from Hume’s A Treatise on Human Nature and An Enquiry Concerning Morals.

A single act of justice is frequently contrary to public interest; and were it to stand alone, without being follow’d by other acts, may, in itself, be very

28. To be more precise, the positive consequences are difficult to perceive as consequences of the general expectation of compliance with anti-interference norms.
29. HAYEK, supra note 2, at 62.
30. Id. at 63.
31. Id. at 158.
32. Id. (emphasis added).
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prejudicial to society . . . . Nor is every single act of justice, considered apart,
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acts of justice may be contrary, either to public or private interest, ‘tis certain,
that the whole plan or scheme is highly conducive, or indeed absolutely
requisite, both to the support of society and the well-being of every individual . . . . [T]his momentary ill is amply compensated by the steady prosecution
of the rule, and by the peace and order, which it establishes in society.

The benefit, resulting from [the social virtues of justice and fidelity] is not
the consequence of every individual single act [that accords with these
virtues]; but arises from the whole scheme or system, concurred in by the
whole, or the greater part of society . . . . The result of the individual acts is
here, in many instances directly opposite to that of the whole system of
actions; and the former may be extremely hurtful, while the latter is, to the
highest degree, advantageous.\footnote{HAYEK, supra note 2, at 454, n.18 (first bracketed insertion is Hayek’s; second insertion added) (citations omitted).}

This argument expressed in these passages from Hume is strikingly different
from Hayek’s first phase argument—albeit, Hayek does not seem to notice this.
For, this argument does not depend upon the expected local gain from abiding
by anti-interference rules always being greater than the expected local gain from
interference.

Indeed, Hume goes out of his way to say that one can sometimes know that
the actual or expected local gain from abiding by anti-interference rules will be
less than the actual or expected local gain from violating those rules. Thus, for
Hume (and for Hayek’s second phase argument), the rationale for strict compliance
with these rules is not our ignorance about the local consequences of
particular interferences or acts of compliance. Rather, the rationale is our
understanding that “the steady prosecution of the rule” establishes “peace and
order” in society. Or, as Hayek puts it, the rationale is that “The general observation of these [anti-interference] conventions” engenders “the orderliness
of the world in which we live” and “our being able to find our way in it.”

Hayek places much more emphasis on this largely Humean argument in Law,
Legislation, and Liberty.\footnote{It is emblematic of the greater salience of this argument that Hayek promotes the long passage of Hume’s Treatise from an endnote, id., to the main text. See HAYEK, supra note 4, at 16.} In this work, he refers to the crucial conventions that
enable us to find our way in the social world as the rules of just conduct. These
are “rules regulating the conduct of persons toward others, applicable to an
unknown number of future instances and containing prohibitions delimiting
the boundary of the protected domain of each person (or organized group of
persons).”\footnote{HAYEK, supra note 3, at 122.} Like Hume, he asserts that great systemic gains arise from the fulfillment of people’s expectations of general compliance with these rules.
These rules will achieve their intended effect of securing the formation of an abstract order of actions only through their universal application, while their application in the particular instance cannot be said to have a specific purpose distinct from the purpose of the system of rules as a whole.\textsuperscript{36}

Nevertheless, Hayek's stance here is only "largely" Humean because Hayek is eager to avoid any suggestion that we can vindicate our endorsement of the rules of just conduct by predicting the particular outcomes would arise if there were general compliance with those rules, predicting the particular outcomes would arise if there were general compliance with some other set of rules, and recognizing the greater aggregate value of the first set of particular outcomes.\textsuperscript{37}

Nor can the choice of the appropriate set of rules be guided by balancing for each of the alternative set of rules considered the particular predictable favourable effects against the particular predictable unfavourable effects, and then selecting the set of rules for which the positive net result is greatest; for most of the effects on particular persons of adopting one set of rules rather than another are not predictable.\textsuperscript{38}

If the rule utilitarian project is to justify strict compliance with one set of rules on the basis that such compliance will yield particular outcomes the (expected) net value of which is greater than the (expected) net value of the particular outcomes engendered by compliance with any other set of rules, Hayek repudiates rule utilitarianism. For many of the consequences, or even the probabilities of the consequences, of general compliance with any set of principles are irremediably unseen.

Moreover, according to Hayek, even if we knew what these consequences or their probabilities would be, our moral ignorance of any standard for measuring the value of different sorts of consequences will derail any justification of the rules of just conduct that is based on the greater overall value that would (be expected to) arise from strict abidance with those rules. For, one thing that is unseen and will remain unseen is a single attribute or feature of human ends in virtue of which those ends have value. Since, there is no known "measurable common attribute"\textsuperscript{39} in virtue of which different ends have value, there is no standard in terms of which we can compare the value of alternative sets of particular outcomes. This is a further ignorance-based reason for rejecting both the act and the rule utilitarian project.

\textsuperscript{36} Id.
\textsuperscript{38} Hayek, \textit{supra} note 4, at 3.
\textsuperscript{39} Id. at 18.
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If we understand Hume as an advocate of the rule utilitarian project, Hayek
departs from Hume both in his insistence on our ignorance regarding the
particular outcomes of rule compliance 41 and on our ignorance of any attribute
or feature of human ends—such as their “utility”—that would allow us to rank
one set of known particular outcomes against another. 42 This rejection of all
forms of utilitarianism is captured in Hayek’s claim that, “It is the interpretation
of rules of conduct as part of a plan of action of “society” towards the
achievement of some single set of ends which gives all utilitarian theories their
anthropomorphic character.” 43

Hayek maintains that the only predictable consequence of general compliance
with anti-interference norms is an abstract “order of actions” 44 that will be
manifested in some unpredictable concrete complex of actions and interactions.

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[T]he enforcement of those abstract rules serves the preservation of an equally
abstract order whose particular manifestations are largely unpredictable,
and... this order will be preserved only if it is generally expected that those
rules will be enforced in all cases, irrespective of the particular consequences
some may foresee. 45

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The abstract “order of actions,” which Hayek takes to be a necessary outcome
of general compliance with the rules of just conduct, is a mutually advantageous
order of peaceful coexistence and complex, multi-layered voluntary cooperation
the specific details of which cannot be predicted. The purpose of the rules is not
any particular concatenation of concrete outcomes. It is not any specific set of
gains or losses for each participant in that order. Rather it is an ongoing social

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40. id. at 39. A much earlier statement of the incommensurability of the value of distinct basic human

41. Perhaps there is little difference here between Hume and Hayek. For I am not aware of any place
at which Hume explicitly contends that the known particular consequences of compliance with the
principles of justice are on net of greater utility than the known particular consequences of compliance
with alternative sets of rules. Perhaps Hume only means to say that compliance with the principles of
justice (best) engenders the abstract condition which in the Treatise is labeled, “peace and order.”

42. Hayek, supra note 4, at 18 (“[T]he rationalist desire explicitly to derive the usefulness of means
from known ultimate ends lead to the attribution to these ends of a measurable common attribute for
which either the term pleasure or the term utility was employed.”).

43. Id. at 22.

44. The most common term that Hayek uses for the abstract order that arises from compliance with
the rules of just conduct and which is the end that warrants strict compliance is “order of actions.” See,
e.g., Hayek, supra note 3, at 86, 100.

45. Hayek, supra note 4, at 16. See also, F.A. Hayek, Notes on the Evolution of Systems of Rules of
world in which individuals—usually in chosen interaction with their fellows—
can all advance their distinct purposes.

In an almost Platonic moment, Hayek says,

Only if applied universally, without regard to particular effects, will [these
norms] serve the permanent preservation of the abstract order, a timeless
purpose which will continue to assist the individuals in the pursuit of their
temporary and still unknown aims . . . . The rules of just conduct are thus not
concerned with the protection of particular interests, and all pursuit of particu-
lar interests must be subject to them. 46

Hayek believes that because we can see so little of the particular, concrete
consequences of our choices—whether they be choices of individual actions or
of sets of rules—we cannot be intelligently guided by our anticipations of such
consequences. Moreover, even if we could correctly anticipate particular con-
crete consequences, our ignorance of a common standard for ranking concrete
outcomes that embody distinct ultimate ends would derail any such rankings.

The only common end or purpose that we can reasonably endorse is a certain
form of social order—a form within which peacefully coexisting and voluntarily
interacting individuals each are enabled to advance their own particular goals.
The adoption of this sort of abstract end and of the principles that are conducive
to it does not require knowledge of the particular consequences that compliance
with (or deviation from) those principles will have and does not require
knowledge of how to commensurate the content of the distinct sorts of ends that
individuals pursue. 47

If rational policy were to require that we be able to see what the particular
consequences of our choices will be and that we possess “a common scale” for
ranking alternative “concrete ends,” then no rational policy would be possible.
However, according to Hayek, we can adapt (and have adapted) quite nicely to
both aspects of our ignorance through our disposition to abide by principles that
engender “an order of actions” that facilitates each agent’s advancement of his
or her own ends.

Policy need not be guided by the striving for the achievement of particular
results, but may be directed towards securing an abstract overall order of such
character that it will secure for the members the best chance of achieving their
different and largely unknown particular ends. 48

46. Hayek, supra note 4, at 17 (emphasis added).
47. Hayek distinguishes between the abstract principles and the abstract order that ensues from
compliance with those principles; and this allows him to hold that the resulting order provides a type of
telic vindication for those principles. “Only when it is clearly recognized that the order of actions is a
factual state of affairs distinct from the rules which contribute to its formation can it be understood that
such an abstract order can be the aim of rules of just conduct.” Hayek supra note 3, at 113–14.
48. Hayek, supra note 4, at 114.
Indeed, it is fortunate that we are unable to see what the particular consequences of competing sets of rules or policies would be.

There would exist not harmony but open conflict of interests if agreement were necessary as to which particular interests should be given preference over others. What makes agreement and peace . . . possible is that the individuals are not required to agree on ends but only on means which are capable of serving a great variety of purposes and which each hopes will assist him in the pursuit of his own purposes. ⁴⁹

General compliance with different elaborations of Humean principles of justice will yield different orders of actions. We can expect that one of these mutually advantageous orders of actions will in fact be maximally beneficial for some individuals while some other order of actions will in fact be maximally beneficial to others. So, if individuals knew which particular consequences would arise under various possible regimes and, hence, knew which regime was maximally beneficial to him or her, rational individuals would dispute about which articulations of the rules of just conduct should be instituted. However, human ignorance about the particular consequences of compliance with different articulations of such rules forestalls this dispute. Our ignorance makes it unnecessary (and impossible) for us to choose which instantiation of the rules has the best mutually advantageous outcomes. ⁵⁰

Two main factors lead to the common error of describing Hayek as a rule utilitarian. One of these is the failure to see that, according to Hayek, the outcome that justifies the rules of just conduct is the attainment of the abstract “order of actions” and not the attainment of the concrete outcomes that have greater net value than the concrete outcomes that would arise were an alternative set of rules to be followed. “Only when it is clearly recognized that the order of actions is a factual state of affairs distinct from the rules which contribute to its formation can it be understood that such an abstract order can be the aim of the rules of conduct.” ⁵¹ The second factor is that Hayek himself has no term for the type of telic justification for rules of conduct that he offers. Since his proposed vindication involves an end or purpose for actions, he takes his position to be “utilitarian” in some wide sense. And, since it also involves a

⁴⁹ Id. at 3.
⁵⁰ Our actually existing ignorance obviates the need for us to step behind an artificial Veil of Ignorance where we are supposed to determine which (representative) individual’s gains have priority. ⁵¹ Hayek, supra note 3, at 113–14. And Hayek explains why it is hard for people to grasp the identification of this abstract order as the ultimate vindicating end of rules of conduct. “[T]o conceive as a goal an abstract order, the particular manifestation of which no one could predict, and which was determined by properties no one could precisely define, was too much at variance with what most people regarded as an appropriate goal of rational action. The preservation of an enduring system of abstract relationships, or of the order of a cosmos with constantly changing content, did not fit into what men ordinarily understood by a purpose, goal or end of deliberate action.” Id. at 112.
vindication of rules and stands in sharp contrast to act utilitarianism, there is a tendency to describe Hayek's own position as a species of rule utilitarianism.

I have emphasized the difference between the first and the second phase of Hayek's extension of Bastiat's insight. The first phase focuses on the unseen, local, and concrete benefits of compliance with anti-interference principles. Our ignorance of both the character and the extent of these benefits in particular cases calls for us to abandon case-by-case justification of non-interference and, instead, to adopt strict ("principled") conformity with non-interference norms. The appropriate response to the unseen-ness of the local benefits of non-interference is not to devote more effort to seeing these benefits. Rather, it is to secure these unseen benefits by following abstract norms based upon theoretical reasoning about how non-interference on balance enhances individuals' development and use of knowledge.

The second phase focuses on the unseen, systemic, and abstract benefit of general abidance. The predictable, systemic, and abstract benefit is the fostering of an order of actions which will be realized by some complex network of peaceful coexistence and voluntary interaction based upon the pursuit by individuals of their own purposes in light of their personal (and often tacit) knowledge. Abstract, theoretical (but not purely a priori) reasoning is needed to appreciate the abstract beneficial effect of general compliance with the rules of just conduct. Since the predicted effect is an abstract order of actions and not a set of particular, concrete factual conditions, the benefit of rule compliance is quite literally unseen—as is the effect's standing as the consequence of rule compliance. The appropriate response to the unseen-ness of the systemic benefit of non-interference is not to devote more effort to seeing this benefit. Rather, it is to secure this unseen benefit by following abstract norms based upon theoretical reasoning about how fulfilled expectations of compliance with these norms invigorates and expands mutually beneficial relations and interactions among agents.

Although there are two distinct phases of Hayek's extension of Bastiat's insight, they are entirely consistent with one another. Indeed, they display the common trait of responding to the unseen-ness and unpredictability of particular factual states by shifting to principled—rather than case-by-case—decision-making based on abstract insights about the propensity of certain types of conditions to yield certain types of outcomes.

III. RULES AND THE EFFECTS OF COMPLIANCE WITH THEM ARE LARGELY UNSEEN

Hayek often says that the case for freedom depends upon on pervasive ignorance. For instance, in *The Constitution of Liberty* he says,

[T]he case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on
which the achievement of our ends and welfare depends . . . . If there were omniscient men . . . there would be little case for liberty. 52

These remarks are potentially misleading if one fails to recognize that Hayek is focusing on our ignorance about present concrete factual matters on which the actions and predictions of individuals will be based and about the particular factual conditions that will arise from agents' current actions and predictions. Hayek distinguishes this sort of pervasive human ignorance from our abstract scientific knowledge about the relations between different types of conditions and our often implicit knowledge that actions of certain sorts are likely to bring about outcomes of certain sorts. It is "a misconception of the tasks and powers of science" to believe "that science is a method of ascertaining particular facts and that the progress of its techniques will enable us to ascertain and manipulate all the particular acts we might want." 53

In addition, knowledge about particular current factual states or particular likely consequences is not so much non-existent as radically dispersed. If we were all equally ignorant with respect to all particular matters, there would be no (Hayekian) case for protecting individual freedom of action. Such freedom of action is a device for "conquering ignorance" by protecting and facilitating "the utilization of knowledge which is and remains widely dispersed among individuals." 54

According to Hayek, our ignorance with respect to particulars is fully compatible with our possession of scientific knowledge. Similarly, our ignorance with respect to factual particulars is fully compatible with our having knowledge about what sorts of conduct must be avoided and what sorts of conduct must be engaged in if we are to have a structure of social interaction that is conducive to the fulfillment of our distinct purposes. However, this sort of knowledge (or know how) need not be knowledge that one has reasoned one's way to or even that one can articulate. This sort of knowledge can readily be and often is unseen.

A highly salient strain in Hayek's thought is that the rules of just conduct—like other norms that have been beneficial to human beings at various periods of human history—are the products of cultural evolution. In the course of societal evolution, different sets of norms arise, and the norms that turn out to be advantageous to a given society (and its members) and that are inculcated in that society survive as that society prospers and expands, while disadvantageous norms are weeded out as the societies in which they are followed decline.

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52. Hayek, supra note 2, at 29.
53. Hayek, supra note 3, at 15. Also, "All scientific knowledge is knowledge not of particular facts but of hypotheses which have so far withstood systematic attempts at refuting them." Id. at 17.
54. Id. at 15, see also Hayek, supra note 2, at 29 ("It is because every individual knows so little and, in particular, because we rarely know which of us knows best that we trust the independent and competitive efforts of many to induce the emergence of what we shall want when we see it.").
Advantageous norms arise and spread through an invisible hand process. They are not deliberately designed and enacted by legislative geniuses who foresee the local and systemic benefits of compliance with them. Nor do those who are socially trained to follow these norms understand the purposes that they serve.

The cultural heritage into which man is born consists of a complex of practices or rules of conduct which have prevailed because they made a group of men successful but which were not adopted because it was known that they would bring about desired effects.\textsuperscript{55}

These rules of conduct have thus not developed as the recognized conditions for the achievement of known purposes, but have evolved because the groups who practiced them were more successful and displaced others.\textsuperscript{56}

Such rules come to be observed because in fact they give the group in which they are practiced superior strength, and not because this effect is known to those who are guided by them. Although such rules come to be generally accepted because their observance produced certain consequences, they are not observed with the intention of producing those consequences—consequences which the acting person need not know.\textsuperscript{57}

General observance of such rules does not require their explicit articulation and observers of such rules may well be unable to articulate them. Moreover, observers may well be baffled if they are asked to supply justifications for the rules which they feel must be obeyed.

For this reason, Hayek expresses a sort of nostalgia for an age in which norms like the rules of just conduct were widely internalized without there being much felt need to offer explicit justification for them: “Principles are often more effective guides for action when they appear as no more than an unreasoned prejudice, a general feeling that certain things simply ‘are not done’; while as soon as they are explicitly stated speculation begins about their correctness or their validity.”\textsuperscript{58}

However, once the issue of the justification of these principles is raised, the soundness of these norms has to be explicated addressed: “Once the instinctive certainty is lost, perhaps as a result of unsuccessful attempts to put into words principles that had been observed ‘intuitively’, there is no way of regaining such guidance other than to search for a correct statement of what before was known implicitly.”\textsuperscript{59} Hayek takes Law, Legislation, and Liberty—subtitled, A New Statement of the Liberal Principles of Justice and Political Economy—to be the

\textsuperscript{55} Hayek, supra note 3, at 17.
\textsuperscript{56} Id. at 18.
\textsuperscript{57} Id. at 19.
\textsuperscript{58} Id. at 60; see also Hayek, supra note 2, at 27.
\textsuperscript{59} Hayek, supra note 3, at 60. Hayek regularly speaks of restatements of principles when one would expect him to speak of justifications. Id. at 2. Hayek is caught between his recognition that justifications are needed and the belief that he seems to have acquired in his early adulthood in Vienna.
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needed “correct statement of what before was known implicitly.”

Yet, presumably, only a limited number of individuals—some political and legal theorists, public intellectuals, influential journalists, and judges—need grasp and articulate the correct, vindicating statement of these principles. For most of the rest of the citizenry, it should be enough to be reassured that trustworthy authorities understand the validity of these norms. This should be enough for most people to observe these norms intuitively, i.e., without themselves coming to their compliance through explicit deliberation and often without even seeing themselves as engaging in rule compliance.

There are further reasons for thinking that for most people actions on their part that are in accord with the rules of just conduct will often not be seen as acts of compliance with those rules. This is because these rules are fundamentally negative. Aside from rules against seizing and destroying others’ property, they include rules against killing, assaulting, enslaving, and defrauding others. When they are internalized such rules place a variety of ways of advancing (or attempting to advance) one’s ends morally and psychologically out of bounds.

Consequently, except under various emergency circumstances, individuals who have internalized these norms simply do not take actions that would violate these rules to be among the means that are available for advancing their respective ends—even though these actions may be physically available to them. Hence, these individuals do not see avoidance of actions that would violate those rules as being among the means by which they pursue and achieve their ends. They tend not to perceive their own compliance with the norms as part of the plans by which they attain their respective ends.

It is not part of my plan to get some groceries today to comply with rules against snatching some cash out of the tip jar at the coffee shop or against slipping some beef jerky under my shirt at the grocery. If someone asks me by what means I gathered the groceries now in my kitchen, it does not occur to me to mention my non-violation of these norms. I may mention my paying at the check-out counter. However, I will think of this as one of a series of actions—along with putting items in the shopping cart—not as an instance of rule compliance. General compliance with rules—especially negative rules—engenders a social environment within which individuals can select means that are apt to promote their ends. However, since compliance with the relevant norms is not among the selected means, it is easy for agents simply to take that compliance as part of the given circumstances and fail to see how general compliance creates an environment that makes pursuit of their respective purposes more likely to be successful.

that “[O]ur language is so made that no valid inference can lead from a statement containing only a description of facts to a statement of what ought to be.” Id. at 79–80.

60. Id. at 60.

61. If someone asks me how I drove from starting point S to destination D, I will say that I drove down route 1, turned right onto route 2, and then left onto route 3. I will not say that I complied with
[The rules] will often merely determine or limit the range of possibilities within which the choice [of some concrete action] is made consciously. By eliminating certain kinds of action altogether and providing certain routine ways of achieving the object, they merely restrict the alternatives on which a conscious choice is required. The moral rules, for example, which have become part of a man's nature will mean that certain conceivable choices will not appear at all among the possibilities between which he chooses. Thus even decisions which have been carefully considered will in part be determined by rules which the acting person is not aware.62

Especially when we have internalized rules that take the form of side-constraints—rules that do not direct us toward certain ends but rather exclude certain means of attaining our ends, these rules will often be unseen by us. When such rules in part constitute “man's nature,” we tend not to see the extent to which our individual actions and our patterns of interaction are governed by these rules and our expectations of mutual rule compliance.

According to Hayek, when people are reminded of the importance of rules for the preservation of ‘order,’ they tend to identify this order with obedience to the rules and “will not be aware that the rules serve an order in a different way, namely to effect a certain correspondence between the action of different persons.”63 Thus, we often see the rules that are normally complied with only when they are violated or when there is a prospect of their violation without seeing the systemic benefit of abidance with those rules.

Recall that for Hayek, the systemic benefit of rule compliance—more specifically, of compliance with the rules of just conduct—is an abstract “order of actions” the concrete manifestation of which cannot be foreseen. It is our understanding of how the fulfilled general expectation of compliance with these rules will engender an order of peaceful coexistence and mutually beneficial voluntary interaction that we must and can rely upon to vindicate these norms—at least once the happy age of unthinking commitment to evolved norms has passed.

This exemplifies the fundamental contrast between Bastiat and Hayek. For Bastiat, the problem is the non-perception of certain particular current or future facts; and the solution is enhanced perception of such facts. For Hayek, the problem is the extent of our belief in our ability to perceive particular current or future facts. The solution is to rely upon our understanding—on our grasp of abstract principles and of the pattern of social order that is likely to emerge if those abstract principles and people’s anticipation of broad compliance with them guide and channel their choices and actions.

63. Hayek, supra note 3, at 113.
IV. WHAT IS UNDERSTOOD AND WHAT IS NOT UNDERSTOOD

Hayek often describes himself as an “anti-rationalist”—although he usually explains that he opposes only an exaggerated and self-defeating belief in the powers of reason. Hayek’s chief exemplar of hubristic rationalism is Descartes. The sensible anti-rationalist rejects “Cartesian rationalism.” Yet Hayek’s selection of “rationalism” as his primary target is quite puzzling. For Hayek’s real complaint is against an exaggerated and self-defeating belief in our powers to acquaint ourselves with particular current and future states of affairs. Bacon, rather than Descartes, ought to have been his bête noire.

According to Hayek, our epistemic strong suit is not our capacity to perceive particulars but rather our capacity for abstract scientific (and seemingly rationalistic) thought that detects laws governing the relationship between different types of events—and, most importantly for Hayek, between types of human action and forms of social existence. In this concluding Part, I simply want to raise a question about whether Hayek ends up being overly optimistic about our powers of understanding.

Hayek’s reliance on our capacity for abstract understanding is most prominent when he describes the ways in which judges need to reason when a decision is not unambiguously required by a recognized principle of just conduct (in some specific legal formulation). In the past in cases in which acknowledged norms did not dictate a best decision, judges sought to accommodate the reasonable expectations that citizens would have based on already recognized law and fortifying expectations that were likely to diminish future conflict and enhance future cooperative interaction. To do so, these judges sought to discover new rules or new implications of existing rules—without being explicitly guided by a belief that the purpose of law is the maintenance and expansion of an abstract order of actions. Judges whose hunches about how the law should be extended or modified have been most fitting have been vindicated by the greater success of societies that incorporate their discoveries. Thus, to a significant extent, judicial decisions that have improved law—and thereby have made it better adapted to new circumstances—have done so through an invisible-hand process.

However, now that there is explicit speculation about the correctness of society’s (coercively enforced) rules, judges have to be equipped with a Hayekian understanding of the special abstract end that provides a telic vindication for

64. Hayek, supra note 3, at 9.
65. Hayek also thinks of rationalism as the view that desirable norms and institutions must be the product of intentional construction—thus, the bad rationalism is “constructivist rationalism.” However, it seems entirely consistent to reject the idea that desirable norms and institutions are the product of deliberate design and to advance a “rationalist” vindication of such norms and institutions as serving a mutually beneficial order of actions.
66. Hayek, supra note 3, at 99 (“[T]he groups which happen to have adopted rules conducive to a more effective order of actions will tend to prevail over other groups with a less effective order.”).
67. Id. at 60.
these rules. Now, when law needs to be extended or modified, judges need deliberately to identify those extensions or modifications that will maintain and expand their society’s order of actions. Desirable extensions or modifications of law become the explicitly intended results of such judicial deliberation.  

[Although rules of just conduct, like the order of actions they make possible, will in the first instance be the product of spontaneous growth, their gradual perfection will require the deliberate efforts of judges (or others learned in the law) who will improve the existing system by laying down new rules.]

Moreover, in assigning judges this task, Hayek seems to presume that judges will generally understand how altering or adding to existing rules of just conduct will serve this abstract end.

The judge . . . serves, or tries to maintain and improve, a going order [that is based on individuals'] expectations becoming mutually adjusted . . . . Since new situations in which the established rules are not adequate will constantly arise, the task of preventing conflict and enhancing the compatibility of actions by appropriately delimiting the range of permitted actions is of necessity a never-ending one, requiring not only the application of already established rules but also the formulation of new rules necessary for the preservation of the order of actions.

One concern here is what sort and degree of social scientific knowledge judges will need in order to ascertain which new rules will be most apt to preserve or expand the order of actions under changing circumstances. Another concern is about how much knowledge of particulars such judges will need to select well among possible alterations of the existing laws. As Hayek notes,

Whether a new norm fits into an existing system of norms will not be a problem solely of logic, but will usually be a problem of whether, in existing factual circumstances, the new norm will lead to an order of compatible actions . . . . The test of whether a new norm fits into the existing system may thus be factual one; and a new norm that logically may seem to be wholly consistent with the already recognized ones may yet prove to be in conflict with them if in some set of circumstances it allows actions which will clash with others permitted by the existing norms.

68. 3 F.A., HAYEK, LAW, LEGISLATION, AND LIBERTY: THE POLITICAL ORDER OF A FREE PEOPLE (1979). Hayek assigns the task of intentional modification or expansion of the law to a Legislative Assembly, which actually is better described as a Council of Judges. See id. at 109–17.
69. HAYEK, supra note 3, at 100.
70. Id. at 118–19.
71. Id. at 105–06.
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Perhaps the factual information that Hayek says judges will need to make successful decisions when recognized norms have to be modified or supplemented is not the sort of information about particulars that he thinks is unattainable. As in many other places in Hayek’s writing, a specific example—in this case, of an apt judicial decision involving modification or supplementation of recognized norms—would surely help. Unfortunately, such examples are rarely, if ever, seen.

Here, though, is one example of a case in which a general (but not a priori) understanding has guided judges in their efforts to serve a Hayekian order of actions: the 1862 decision in Bamford v. Turnley.72 The operation of Turnley’s kiln introduced noxious fumes into the home of his neighbor Bamford. The court ruled that Turnley was liable to make restitution to Bamford—indeed, that Turnley’s activities could be enjoined. In contrast, Bamford could not enjoin or even demand compensation from Turnley, if Turnley’s activities were merely making Bamford’s home “less delectable or agreeable”73 than it otherwise would be. The crucial principle asserted by the majority in this case was “No man may use his right so as to damage another; though, on the other hand, everyone has a right reasonably to use his property, even if he should thereby annoy his neighbor.”74 Baron Bramwell, in particular, argued that, while no one could be said to have a property right if others could damage that property without his consent, property rights would also be effectively nullified if one was not allowed to engage in uses of one’s property that merely annoyed others.

Bramwell maintained that “those acts necessary for the common and ordinary use and occupation of land and houses may be done, if conveniently done [i.e., done without damage to others], without submitting those who do them to an action...” If individuals were to have claims against others’ using their property in merely annoying ways, then the property rights of each of those individuals would be radically undermined; for almost any use of their property will make things “less delectable or agreeable” to some neighbor. Hence, Bramwell’s insistence on the liberty of each property holder to employ his property in non-damaging ways, “is as much for the advantage of one owner as of another; for the very nuisance the one complains of, as the result of the ordinary use of his neighbor’s land, he himself will create in the ordinary use of his own...”75

In Hayekian terms, to secure the order of actions that private property rights engender, property rights must include a right not to have one’s property damaged without one’s consent and must not include a right not to be annoyed by one’s neighbor’s use of his property. Our general understanding of how the world works—which draws upon a range of our particular experiences—

73. Id. at 30.
74. Id. at 29.
75. Id. at 32.
supports the need to draw a (perhaps largely conventional) line between damages and annoyances. However, this general understanding does not seem to require the sort of knowledge of specific particular current or future facts of which, according to Hayek, we are ignorant.

CONCLUSION

I have articulated two ways in which Hayek extends Bastiat’s recommendation that, in our assessments of actions, we take better account of what is initially unseen. In neither case does Hayek call for a heightened perception of what is initially unseen. Rather, in first phase of Hayek’s extension of Bastiat’s insight, Hayek argues for the general proposition that on average the local gains of forbidding violations of private property rights will exceed the local gains of allowing loutish behavior. And, since we will not be able to identify the particular cases in which the local gains from infringing on the property of shopkeepers will exceed the local losses, the best we can do is to forbid all such infringements. In the second phase of Hayek’s extension, Hayek maintains that the crucial consideration is the systemic gains that arise from strict compliance with rules like the rule against damaging another’s property. Here, even if we did know that the local gain from violating such a rule will exceed the local loss, we still should abide by the rule because of the systemic benefits that arise from the expectation of general compliance. I have also noted some of the ways in which rules, rule compliance, and the benefits of rule compliance tend to be unseen. If Hayek is correct, we have to turn to one type of thing that tends to be unseen, viz., rules, in order to remedy our tendency not to see another sort of thing, viz., the particular consequences of particular actions.