Questions for David Schmidtz
Nonideal Theory: What It Is and What It Needs To Be?

1. In section I you suggest two points: that there is no such a thing as perfect justice, and that focusing on the need to avoid injustice is more plausible than trying to articulate what justice requires. First, the latter idea does not follow from the former, right? Second, and more importantly, we were wondering whether you can say a bit more on how one can form a view about anything being unjust without having a view about what justice requires?

2. On the idea that justice must take people (and other aspects of the world) as they are, not as they ideally should be: we were wondering how far you are willing to take this realism about human nature? For example, should justice take people’s selfishness as given (all the way through)? People are sometimes prone to wanton cruelty, should justice accommodate that as well?

3. On the rejection of ideal theory as strict compliance: your main argument here seems to rest on the idea that compliance is an endogenous variable, partly a function of the preferred principles, hence cannot be bracketed in the construction of a theory. We have two questions about this:

   We were wondering, again, how far would you want to take this idea? For example, would it also apply to ways in which we should think about criminal law? (And if not, what accounts for the difference?)

   Second, we were wondering whether this critique applies to Rawls, given the high level of generality of the two principles of justice. Why would Rawls not be able accommodate questions of compliance at the stage of institutional design, considering ways in which the two general principles can be implemented?

4. On your suggestion that theories are like maps: “successful theorizing”, you claim at the beginning of that discussion, “is not a matter of articulating propositions that resist counter-examples”. But it would seem that maps are exactly that: propositions that can be refuted by the way things are. So we were
not quite sure what the map analogy is supposed to show. Can you please explain?

5. On the idea that justice is like traffic regulation: we were puzzled by this analogy. Traffic regulation is a paradigmatic example of solving large-scale coordination problems, hence there is a clear sense in which traffic regulations are, indeed, “mutually advantageous” to the parties concerned and, crucially, because coordination problems do not involve significant conflict of interests. But justice is typically called for when profound conflicts of interest are involved; problems of justice don’t seem to be coordination problems. So what is the point of the analogy? Furthermore, even solutions that are, in some sense, mutually advantageous, can be more or less just. For example, presumably both a progressive income tax and a flat tax rate are advantageous to all (assuming some taxes are) but one may be unjust, or less just than the other. Or would you hold the position that there is nothing justice recommends in such cases?

6. On the analogy of justice to common law reasoning over time and the idea that having a decision mechanism is more important that the principles chosen: First, can you say a bit more on who, in your view, is to make these piecemeal decisions about justice? You say, for example, that “communities decide what people should tolerate” – even if the community is an intolerant one?

Second, common law is based on following precedent; we were wondering whether this is a desirable model for developing justice, given the danger of entrenching past errors? Or can we have a kind of common law model for justice without assigning weight to precedent?

7. On the question of whether history can refute principles/hypotheses about justice: easier to concede, it seems to us, that factual presuppositions of theories/principles of justice can turn out to be false; but can you explain how fundamental principles of justice can be refuted by history? And, more generally, we were wondering whether justice, in your view, is radically different from morality? Or can morality also be refuted by history?

8. On the idea of prosperity and avoiding famine: we were wondering whether your main idea here is that capitalism, not democracy, is the better guarantee of prosperity? Even so, we were wondering about examples like Chile during the Pinochet regime and these days about China; can you say a bit more on how, on your view, economic prosperity brings about justice?