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The Role of Coercion and
Individual Liberty within the
Spontaneous Order

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by

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Abstract

This thesis examines the implications of Friedrich Hayek's assertion of liberty as the supreme value. The definition of individual liberty and coercion represents a crucial determinant of his social theory. Society exists as a spontaneous order, where knowledge is disseminated and utilised through the market. The participants in the market process are an association of free individuals, regulated by a body of abstract and universally applicable laws. Each individual must be guaranteed the maximum degree of freedom that is equal to and compatible with all other individuals. The benefits of individual freedom are intended to encourage individual responsibility and allow for the greatest possible amount of discoveries for the improvement of society. The emergence of new processes and technologies is a result of the spontaneous order of free individuals.

Hayek's assertion of the connection between individual freedom and invention is correct, although totalitarian societies are still capable of progress. However Hayek's theory has serious flaws and inconsistencies. His definition of freedom, as an absence of arbitrary coercion, is inadequate for the requirements of individual self-determination. The reliance on universal laws as a guarantee against coercion is misplaced. Alternately he is inconsistent with his claim of the coercive powers of the state and trade unions as intolerable while the coercive nature of the market is acceptable. Monopolies and cartels created by the market are incompatible with liberty. Hayek's reliance on competition will not always secure freedom for those individuals who do not have the opportunities to pursue their particular ends.

Preface

My original intention when beginning my thesis was to try and refute the arguments of Neo-liberal theorists, with their insistence of the market exchange process has the primary structure in the distribution of resources. Freidrich Hayek's social theory represented, to me one of the most comprehensive and realistic interpretations of capitalism. I believed his assumption of liberty as the supreme value forms the basis of his social and economic theories. A closer examination of the concept of liberty, as an absence of arbitrary coercion, reveals weaknesses and inconsistencies which undermine his theories of equality and the proper role of government. My intention was to concentrate primarily on the arguments of liberty and coercion, in so doing I have excluded a more in depth discussion on the role of government, which in hindsight would have been appropriate to include. I found when reviewing my thesis, that I concentrated on the works of C. Kukathas and N. Barry whose analysis of Hayek's theory of liberty I found excellent and they discussed the particular aspect of the subject that I wished to discuss. I also found T. Gray's analysis of liberty to be very useful when comparing the different types of liberty.

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List of Abbreviations

References to the principal books of Hayek, have followed a system similar to other works on Hayek. The letters below are abbreviations of a particular title, using the Harvard method. (Full citations of these works are found in the bibliography.)

CL	The Constitution of Liberty
FC	The Fatal Conceit
MSJ	The Mirage of Social Justice
NS	New Studies in Philosophy, Politics, Economics and the History of Ideas
POFP	The Political Order of a Free People
RO	Rules and Order

Introduction

Every society is confronted with the dilemma of ensuring the most appropriate outcomes for each individual, endeavouring to accommodate the differing and often competing individual preferences. A continuous search for the most efficient and effective means in achieving this goal, results in conflict between many competing ideas. The supremacy of the capitalist market structure has undermined the socialist system of production, as a means of distributing resources, from the ideological debate. A new consensus has formed on the general operations and duties of the state as secondary to that of the market. The most appropriate role for the state in determining the boundaries of the market and the degree of alteration in the outcomes of market operations has yet to be determined. As the market is an essentially neutral exchange procedure, it is the participants, namely the buyer and seller proceeding from a historical process of cumulative market transactions, who encompass the central problem of fairness when judging market outcomes.

The role of the state or government (these terms will be used inter-changeably) is crucial, since it places limitations on the freedom of individuals to act within the market process subsequently altering the outcomes. The government can act primarily as a constitutive organisation developing legislation, regulating the operation of the market and ensuring effective compliance with the rule of law. Government can also act as a facilitator, improving the opportunities of market participants, by providing resources for individuals to participate with a greater degree of equality. This is especially applicable in the fields of health and education, both are goods that are expensive for the individual or family to procure. Although private goods, they are necessary, not only to improve the quality of life for the individual, but their supply provides positive benefits for society overall and can be considered social goods.

It is the redistribution, by government, of resources or social goods amongst the market participants, that results in controversy. New-Right theorists argue the state has only a limited role in this area, however failure to act generally causes a more pronounced

inequality between the powerful (those that have greater access to resources) and the powerless (those that do not). The theorists who argue principally for non-intervention believe freedom can only be guaranteed for the individual through the most efficient operation of the market process. This may entail unsatisfactory outcomes for some individuals, but overall the outcome is beneficial in the long term for everyone, by eventually improving prosperity and increasing living standards.

The argument between allowing individuals to choose and act on their preferences without hindrance from the state and the necessity of collectively providing a level of resources for individuals, within a context of individual liberty, is the principal debate of this thesis. This argument centres on the level of personal freedom or liberty (these terms will be used interchangeably) that is available to the individual, recognising an individual is automatically constrained within a social context by rules, the actions of others and the availability of talent and opportunities. Generally it can be stated society recognises fundamental inequalities and seeks to alleviate them by providing resources or preventing the accumulation of unfair privilege. It is the methods used to alter these inequalities that causes controversy. One argument proposes that the unhindered operation of the market will eventually provide improved living standards through changing technology. Other arguments favour the state actively intervening to alter the distribution of social goods in the short term, on the basis of a predetermined equality.

This debate begins with a discussion on Friedrich Hayek's theory of the development of society as a spontaneous order. Hayek's social theory represents one of the most comprehensive and complex discussions on the role of the individual and the state within a New-right or Neo-liberal framework. The discussion will primarily concentrate on Hayek's definition of liberty as an absence of arbitrary coercion, or alternatively, individual freedom exists within a framework of general rules guaranteeing a private sphere free of interference. In reply an argument will be developed that considers Hayek's assumptions fundamentally inadequate for the purpose of ensuring a prosperous

society. The complex nature of industrial society, engaging both individuals and organisations, is reliant upon an increasingly complicated process of production, requiring highly trained individuals whose lengthy education requires a considerable amount of government investment in which the individuals themselves and private firms would be unwilling to undertake. It is the coordination of individuals, and private and state organisations that provides the basis for the successful functioning of the market process.

A brief and introductory review is required to understand the considerable importance Hayek placed on society having evolved as a product of a spontaneous order. It is impossible for individuals or organisations to acquire all possible knowledge for the production and consumption of goods. It is from this context of ignorance that the market, involving the price mechanism, is used to gather and disperse information for the individual participants, this facilitates the discovery process for the development of new ideas, institutions and technologies, resulting in the eventual distribution of its benefits for all, if somewhat unequally. Unlike other theories that assert perfect competition is possible when equilibrium is attained, Hayek believed the purpose of competition was a discovery process, involving a continuous process of trial and error that would rarely achieve a stable equilibrium. The market is controlled by unspecified, abstract rules applicable to everyone, these rules have developed as part of the spontaneous order, similar to the development of new technology and forms part of a the natural progression of development. Hayek considered society as pluralistic with a multiplicity of individual ends that is unable to be reconciled through central direction. The market device is used to organise and arrange in preferential order, the use of scarce resources for each individual to pursue their own ends.

This is not a comprehensive overview of Hayek's social and economic theory, his epistemological, legal and economic theories are only included when they have direct relevance to his discussion on liberty and coercion. Although Hayek appears as a rigorous proponent of market capitalism, concomitantly asserting a limited role for the state, he had a tendency to issue dogmatic statements and then qualify these with

exceptions and allowances for certain circumstances. This could lead to charges of inconsistency, however he was trying to make his theories resemble a complex and often inconsistent and contradictory society. He continuously advocates private provision of welfare, by connecting individual liberty with personal responsibility and eschewing collective responsibility. However he acknowledged there are individuals unable to provide for themselves and this requires a form of state intervention to alleviate at least those suffering 'severe deprivation'. (MSJ:p.87)

Critical to Hayek's understanding and political philosophy is his concept of liberty. To disagree with his definition of liberty automatically questions the relationship of the individual with society, the market and the organising principles of government and its consequent authority derived by law. Individual liberty is the supreme principle for Hayek, and it rests on the definition as an absence of arbitrary coercion by other individuals and the state. Other definitions will be used as a comparison and consequently the distribution of liberty advocated by Hayek will be examined. Essentially, the distribution of freedom is guaranteed through the existence of general, non-discriminatory laws applicable to all. Individual freedom cannot be bargained with other values such as equality, as this implies a redistribution of freedom, through such measures as progressive taxation, which is considered morally wrong and unjustifiable.

Hayek believed a private or protected domain could be established, in which the individual is assured freedom of action and freedom from arbitrary coercion. However he modifies his definition by justifying some forms of coercive activity, such as taxation, by the state. The possibility of other forms of acceptable and unacceptable coercion by institutions including enterprise monopolies and trade unions will be examined.

The principal criticisms will centre on the inadequacy of the definition of freedom as an absence of arbitrary coercion, and will argue for the inclusion of an additional definition of freedom as self-determination. The formulation of general laws both as a determinant and a protector of individual liberty will be examined, arguing the rule of law is as liable for capture by vested interests as any other government

process and also Hayek has failed to ensure all laws, despite being general and equal are not oppressive. Hayek's justification of enterprise monopolies as not being coercive, whereas other monopolies are considered coercive, will be examined. The assumption that market transactions undertaken by participants are free, if they are undertaken within a competitive market, is an indefensible assertion by Hayek, as it fails to recognise the fundamental inequality inherent within the process. Some individuals are powerless to alter their contractual agreements, such as labour contracts, despite the possibility of their being inequitable. Hayek would appear to disagree with any attempt, by the state or any other organisation, to alter these "freely contracted arrangements", even if they improved the quality of life for the individual and overall standard of living for society.

PART I

LIBERTY

The considerable effort Hayek expounded in defining freedom, and its obverse, coercion, is evidenced by his significant work The Constitution of Liberty. It was a theme he repeatedly considered in later books and articles and remained in essence unaltered and constant. The fundamental assumptions derived from Hayek's conception of freedom are crucial in the development of his social and economic theory. Individual freedom exists prior to other ideals and theories, it cannot be traded or compromised. Liberty is the principal ideal for the development of law, the preservation of the market process and the basis of individual relationships between people and organisations.

Individual liberty describes the level of action permissible for each individual, the social environment both constrains and enhances liberty. The problem is determining the most appropriate levels of interference or constraint by other individuals and organisations. A useful classification for comparison is that of Berlin's two concepts of negative and positive liberty (Berlin:1969). The negative version can be defined as freedom from something or an absence of restraint and the positive interpretation is defined as freedom to act. This requires an enlargement in the range of opportunities, that can be altered by human agency, to allow a greater number of possibilities for the individual in the exercising of his or her liberty in a meaningful sense.

Defining Liberty

It is useful to begin by categorising Hayek's concept of liberty as part of the negative or liberal tradition, in the sense of an individual pursuing an inclination without interference. The process of forming these inclinations are conducted within a boundary of abstract socially derived rules. However, Hayek immediately modifies this definition, by recognising that the inevitable participation of individuals within a society creates restraint in one form or another. Hayek recognises the limitations placed on an individuals actions by the innate paradox of being human. To be human is to be automatically a participant in the actions of others. Therefore the process of participation in a society of others, is to be constrained by them.

"The liberal conception of freedom was therefore necessarily one of freedom under a law which limited the freedom of each so as to secure the same freedom for all." (NS:p.133) Recognising these constraints Hayek makes the distinction between an individual who is restrained from a particular course of action and one who is coerced by another's will into following a course of action, both are equally deleterious towards individual liberty. (CL:p.16) He then describes the acceptable limits of coercion by others upon the individual and more specifically, the limits of coercion by governments. (This will be discussed below in Part 2.) Complete freedom of action in a social context is impossible, and there are certain conditions that must be met before a person is considered to be 'acting without constraint'. These conditions which guide a person's actions are; a guarantee of voluntary action and the agreement to abide by socially derived laws.

"For Hayek, this implies that rules of law--general, abstract rules laid down in advance of the particular activities they are meant to regulate--are not coercive, for such laws do not direct behaviour but are merely conditions that a person takes into account when deciding how to act. Thus in Hayek's view a liberal political order, composed entirely of such rules, imposes no limits at all on negative liberty in the proper sense of that term." (Miller:1991:p.14)

At its most fundamental, Hayek's definition of freedom is defined as "the state in which a man [or woman] is not subject to coercion by the arbitrary will of another or others ..." (CL:p.11). Acknowledging a complete absence is impossible, therefore the task of all societies is to minimise coercion as much as possible. Arbitrary coercion by others is abhorred, and coercion by the state must be kept to a minimum, with the impartial implementation of universal laws to protect the individual and encourage co-operation between individuals and groups.

The individual exists as a social being, therefore constraint by others is inevitable. This issue is one of interpersonal freedom, which Hayek analyses in the greatest detail, as it is this form of freedom which is the most relevant in a social and therefore political context. In addition Hayek considers alternative forms of liberty, the separate

although related issue of intrapersonal or psychological freedom. Hayek briefly discusses the individual impeded by personal psychological constraints, in the form of being guided by emotion instead of reason. (CL:p.15) As Hayek is primarily concerned with questions of social organisation, psychological constraint is not examined in any detail.

Another form of intrapersonal freedom is that of the individual constrained by his or her abilities and circumstances, Hayek uses an analogy of a rock climber (CL:p.11-12) to explain the inevitability of restraint involving ones actions because of the individual's specific abilities or lack of them. These constraints are individualised and personal and should not be altered or improved through government intervention, in what he believed to be the fruitless pursuit of equality of outcomes by providing resources to improve an individuals opportunities. Although an individual maybe constrained, Hayek maintains it is not through lack of personal choice or opportunity.

"Whether he [or she] is free or not does not depend on the range of choice but on whether he [or she] can expect to shape his [or her] course of action in accordance with his [or her] present intentions, or somebody else has power so to manipulate the conditions as to make him [or her] act according to that person's will rather than his [or her] own." (CL:p.13)

This issue of choice is closely aligned with the availability of opportunities and the resources required to enhance an individual's abilities when choosing and pursuing his or her actions. Hayek refers to this as "liberty as power" (CL:p.16) Although dismissing any claims upon society to provide these opportunities, he did acknowledge the necessity of the state providing some form of education for children, presumably to alleviate social and economic disadvantage.

"There is also much to be said in favour of the government providing on an equal basis the means for the schooling of minors who are not yet fully responsible citizens, even though there are grave doubts whether we ought to allow governments to administer them." (MSJ:p.84)

This would appear to be one of the few concessions Hayek acknowledges on the inequalities inherent within a society based on a market order. A

continuous theme repeatedly stated is the inadvisability of government changing existing patterns of resource distribution to negate the influence of ones family fortunes and of ones natural talents. As this process would require a large degree of government intervention to ensure that everyone is relatively equal. Hayek's dismissiveness of "liberty as power" referring to "...the dreams of many people in the form of the illusion that they can fly..." (CL:p.16) indicates the contempt in which he holds the concept of 'freedom as an availability of choices'. Although Hayek's definition of liberty is effective in its simplicity, it ignores the complexity of the human situation and all the myriad influences upon a person's ability to utilise their resources to achieve what they choose. This issue will be considered in greater detail below, when examining the distribution of liberty and other alternative forms of individual freedom.

Hayek sought to isolate and undermine the concept of liberty 'as availability of choices' and other 'liberty as power' concepts, such as 'liberty as self-determination'. To accept an alternative definition might establish a causal connection between liberty and social justice or equality. Associating the concept of liberty with the need for wealth to enhance an individual's liberty by providing greater choice, would encourage a redistribution of society's resources via the state, an alternative Hayek vigorously opposed. (CL:p.17) For Hayek the only concept of liberty possible is, an absence of coercive influence, this exists as the pre-eminent concept in his system of social thought and morality.

"In the context of morality Hayek stresses that not only is liberty the supreme value but it is also the condition for other values. This means that a society is to be evaluated in accordance with freedom and not in accordance with some other trade-off between, for example freedom and social justice or by a criterion of 'economic efficiency'." (Barry:1979:p.55)

Personal liberty, therefore, should have precedence over other societal or state ambitions to change the outcomes resulting from market operations. This interpretation undermines the justification for the necessity of the welfare state, an additional criticism is that the

welfare state diminishes individual responsibility and choice, both, according to Hayek, essential for the preservation of individual liberty. (Barry:1979:p.55)

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In practical terms individual liberty consists of: equal legal status as a member of a community; immunity from arbitrary arrest; the rights of movement, choice of occupation and to own property. (CL:p.20) One assumes the freedom to form contracts should also be included as it is usually a fundamental tenet of the classical liberal tradition. The most notable exclusion from this list is political freedom, such as the right to vote and form political parties. Hayek regarded the public sphere of politics as an unwarranted intrusion into the private sphere of individuals, and consequently their decision-making within the market. However, Barry among others, considers it unusual for any definition of liberty to exclude political freedoms. (Barry:1979:p.58) Part of Hayek's distrust for political liberties is derived from what he perceived as the increasing encroachment of public or legislative and bureaucratic involvement in what should be the private world of individual choice and decision-making. The distinction between individuals pursuing their own goals within a framework of general abstract rules and individuals directed to pursue centrally determined goals is crucial. This private world or protected domain consists of law, including contracts, and property. It is the ownership of private property, including labour as well as physical resources, which guarantees liberty. (Barry:1979:p.61)

Individual liberty cannot be constrained by law or by the agents of the state if they are acting in accordance with the legislature. This assumes the rule of law is non-specific and applied equally to all. "Rules of law ... are not coercive, for such laws do not direct human behaviour but are merely conditions that a person takes into account when deciding how to act." (Miller:1991:p.14) This is a significant departure from other concepts of negative liberty, these are usually interpreted as an absence of restraint or impediment.

"...Hayek in a very important sense, does not necessarily regard laws as constituting restraints. Thus freedom does not depend upon the range of choice open to the individual (the orthodox view does

measure liberty in terms of the absence of law) but in whether the restraint is of human origin. Under a rightly constituted legal order the notions of law and liberty are consistent."

(Barry:1979:p.57-8)

The rule of law forms an important basis for the practical determinants of liberty. A principal criticism of the primacy of law is that a general law applied equally can still be severely restrictive of individual liberty. These general rules or laws may also contradict the right to own property and the right to enter a contract. For example the prohibition laws on the sale of liquor in the early twentieth century, although created with the best intentions were regarded as intrusive, continuously ignored and eventually overturned. (Miller:1991:p.15) The connection between liberty and the rule of law will be examined in greater detail below.

Liberty as the Supreme Principle

Hayek believed the concept of liberty is the pre-eminent value in a society of individuals, indeed it is the source and condition of most values. (CL:p.6) Kukathas has identified three main claims formulated by Hayek in support of the previous statement; liberty is not incompatible with order, any interference with individual liberty to alter distributive patterns would negatively affect any benefits from the spontaneous order and finally liberty is not only necessary for well-being but essential for developing the individual's capacities of discovery and consequent practical application in the market-place. (Kukathas:1989: p.131-132) (The latter claim is discussed more fully in the next section.)

Hayek sought to separate and protect liberty from the encroachment of collective decision-making and what was currently expedient for the majority in control of the legislative process.

"The most important among the few principles of this kind that we have developed is individual freedom, which it is most appropriate to regard as a moral principle of political action. Like all moral principles, it demands that it be accepted as a value in itself,

as a principle that must be respected without our asking whether the consequences in the particular instance will be beneficial."

(CL:p.68)

Unlike utilitarian interpretations of freedom, individual liberty cannot be diminished for the improvement of overall utility. Presumably an improvement in universal happiness cannot compensate for a small loss in individual liberty. Nor can liberty be reduced for improvements in efficiency that may only be temporarily provided by monopolistic government provision. Individual liberty should be an overriding principle for all legislation. It cannot be aggregated and apportioned between competing demands for resources.

"This freedom thus conferred on all judged responsible for their actions also held them responsible for their own fate: while the protection of the law was to assist all in their pursuit of their aims, government was not supposed to guarantee to the individuals particular results of their efforts." (NS:p.133)

Hayek was arguing against any possible justification by government in redistributing opportunities, as this action would favour particular interests or groups of people. All government actions should be universal in application.

However the essential importance of freedom, is the engine of progress within a spontaneous order of differing ends. Kukathas's interpretation of Hayek's main argument in support of liberty, is one based on ignorance. It is impossible for all individuals to know or even agree on what they want, and they must have the freedom of the decentralised market to coordinate the many disparate opportunities available. "The value of freedom is that it facilitates the co-ordination of this knowledge and, indeed, enables individuals to discover knowledge." (Kukathas:1989:p.132) Therefore the value of freedom is in providing the opportunity and incentive for individuals to maximise the acquisition of knowledge, not only for their advantage but also society's. The dispersal of knowledge, through the market, not only acts for the advantage of individuals and groups by increasing their ability to adapt to change and uncertainty, it also provides for the introduction and modification of new technologies, institutions and

rules, culminating in greater complexity, innovation and competition.

"He [Hayek] is attempting to argue that what is valuable about human life is manifested in individual activity, in the striving in which the individual extends his [or her] capacities to the full. Value resides in his [or her] seeking after, rather than in the achievement of, particular goals." (Kukathas:1989:p.138)

For the discovery process to be successful, it must be conducted with the minimum possible interference by others, especially by the state. Without liberty as the fundamental value, the spontaneous social order would be less effective in distributing information. Hindering the efforts of individuals in the utilisation of information when choosing how to act. Because changing circumstances cannot be foreseen, it is impossible to plan and organise with any certainty, this anti-rationalist approach of Hayek's will be explored in the next section.

The Role of Liberty in the Spontaneous Order

The value of individual liberty consists not only in the ability to pursue a course of action without impediment, this can be considered as a private good, but it also results in a public good or positive externality being produced. Societies which allow the greatest possible freedom of individually directed actions, encourage invention and improvement. This adaptation is a result of the historical process being unpredictable, due to a changing environment, including natural and technological changes, resulting in altered social conditions. The existence of individual freedom allows for the largest number of alternative courses of action to choose from, enabling society to develop and improve institutions and technologies for advancing the quality of life of its citizens. "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." (CL:p.31) Therefore freedom should be guaranteed for not only the few but for all, even if only a few individuals actually produce ideas for advancing social progress, this would enable the maximum number of possible ideas to be selected. (CL:p.32)

There exists a fundamental inconsistency with Hayek's conception of individual liberty, between the autonomous utility-maximising individual and the situated individual. The first makes choices in unpredictable circumstances and requires an absence of constraint unless voluntarily entered into. The other type, is that of an individual situated within a society, shaped by historical precepts accumulated through a body of tacit knowledge. (Rowland:1987:p.6) The asocial individual contrasted against the encumbered individual would appear contradictory, Hayek attempts to unify these antithetical elements to explain the epistemological transfer within a current society and between generations. The primary role of the asocial individual is that of a discoverer, inventing new methods and processes, accepting risks and rewards. The role of the encumbered individual is to use and transmit knowledge.

This emphasis on the need for adaptability, because of uncertainty over future developments, is derived from an empiricist and unsystematic tradition of trial and error. This is compared to a rationally planned tradition.

"The use of reason aims at control and predictability. But the process of the advance of reason rests on freedom and the unpredictability of human action ... for advance to take place, the social process from which the growth of reason emerges must remain free from its control." (CL:p.38)

Although appearing contradictory Hayek sought to distance planning and control from the invention process. Progress derived through the transmission of knowledge happens in an uncertain environment and is incapable of being predicted, but evolves spontaneously through constant invention and adaptation.

"The rationalistic design theories were necessarily based on the assumption of the individual's propensity for rational action and his [or her] natural intelligence and goodness. The evolutionary theory, on the contrary showed how certain institutional arrangements would induce man [or woman] to use his [or her] intelligence to the best effect ..." (CL:p.61)

Therefore Hayek is fundamentally opposed to rationalism, the

organisation of society cannot be imposed by design, it must evolve through a process of competing ideas, the most suitable for the current conditions will be chosen and adopted. "We would destroy the foundation of much successful action if we disdained to rely on ways of doing things evolved by the process of trial and error simply because the reason for their adaptation has not been handed down to us." (CL:p.64)

The process of selection and adoption of the most appropriate ideas is not explained fully by Hayek, and would seem to be based upon experiment and those ideas that are seemed the best are adopted on an ad hoc basis. The explanation offered, is that knowledge is disseminated through a market structure to allow for its most efficient utilisation by the many market participants. The emphasis on the participants of the market as the arbiters of what is useful, does not exclude a role for the state, whose principal role is to formulate laws and ensure their compliance. Capitalism is judged, by Hayek, as the most appropriate organising principle of social and economic activity. Allowing the transmission of knowledge caused by inventions, the benefits are simultaneously combined with the autonomy required by an individual when engaging in the discovery process. It is deemed both free and beneficial. Therefore Hayek's interpretation of society is a spontaneous order, forming a continuously evolving social group. Each individual is free to pursue his or her own concept of the good, regulated by a tradition of rules or principles from an accumulated store of knowledge. These rules, based on precedence, are added to and altered when necessary. Although Hayek is circumspect on the actual procedures involved in this change, it appears to be achieved gradually through social change, causing the revision. It is this process of adaptation that constitutes human reason.

"The case for liberty is not simply that it will lead to superior consequences which we can predict, and still less that the individual as a rational being is better able to identify his [or her] interests if left free to do so. ... Rather, freedom is valued more because it facilitates the development of human rationality." (Kukathas:1989:p.139)

Unsurprisingly Hayek is vigorously opposed to all socialist states

which seek to control the actions and economic choices of individuals. The rational operation of socialist central planning is incapable of using fragmented knowledge to the greatest advantage in the long run. The complexity of modern society requires a decentralisation of invention and practical application. These conditions, Hayek argues, can only be met by the experience of individual liberty within a market structure, "...since much of human knowledge cannot be specifically organised, the knowledge of time and place in decentralised market economies is an example of unorganised knowledge, individuals in society require considerable freedom of action if it is to be utilised." (Barry:1979:p.68) An additional argument in favour of the necessity for the existence of individual freedom is in the creation of new ideas and technologies being freely available to everyone enabling a greater improvement in the quality of life for all societies. Everyone has the opportunity to use knowledge in their own activities, enabling them to indirectly contribute to the overall improvement of society. However Barry raises the problem, that freely available knowledge creates a disincentive to invent and share. This problem is partly solved by the restrictive use of patents. However Hayek disapproved of monopolies created by patents as they slowed the process of adopting new technology. (Barry:1979:p.69)

The reliance Hayek places on individual liberty as a necessary prerequisite for the historical progression and improvement of technologies and institutions would seem misplaced. Using a historical basis of assessment, societies, whether they have been regarded as free or not, seem equally capable of designing weapons and ever more complex industrial technology. Hayek's reply, would be that in the wider historical context, decentralised societies, with market-based economies, achieve the most advancement through the spontaneous development of knowledge for use in the continuous evolvement of human progress.

"The claim for freedom does not depend upon its observable and quantifiable consequences (and he [Hayek] insists that people ought to be allowed to act freely within general rules even though we may disapprove of the consequences of their actions), but upon

freedom consistently pursued. The benefits may not be immediately obvious but in the long run the advantages of the system of liberty are obvious." (Barry:1979:p.69)

Ultimately the final judgement can never be made. It would be impossible to successfully refute either the empiricist or the rationalist arguments, even though Hayek didactically insists upon the supremacy of the empiricist spontaneous order. Perhaps the distinction between the spontaneous order and that of the purposive design of social progress is illusionary and breaks down (Rowland:1987:p.68).

Barry supports Hayek's interpretation of social progress as decentralised and unplanned,

"... [humans] did not think up a libertarian value system and deduce the necessary institutions from the values. It is rather the case that by accident men [or women] discovered the advantages of limiting the powers of their rulers and chose to extend, and indeed universalise the benefits of so doing." (Barry:1979:p.70)

An alternative argument is, that written constitutions were originally formulated by design to assure individual freedom, by acting as a comparison for laws evolving from the spontaneous order. Government institutions are required to maintain order and improve the operations of the market, by redistributing benefits and costs. The arguments concerning progress by design or evolvement, are circuitous and impossible to prove or disprove. Again it would seem to depend on which philosophical system one adheres to. Societies tend to develop in a disorganised fashion, but this cannot diminish the role of the state or ideologies and other contributing factors, such as nationalism, which have sought to recognise and impose ideals. All aim to improve the lives of its citizens.

The Rule of Law

This section will consider the central role law provides in Hayek's interpretation of liberty. Unlike other negative definitions of freedom, Hayek does not consider rules or law as restrictive of liberty, if they adhere to the attributes of generality and equality.

"The goal of maximising liberty depends upon the reduction to a minimum of that area of an individual's life which is controlled by personalised central authorities. Thus law, properly understood, is not a barrier to individual liberty but a necessary condition of it." (Barry:1979:p.77)

Therefore law both creates and secures the private domain from the arbitrary coercion of other individuals and institutions, enabling the individual to pursue his or her own particular ends without interference.

"It was within the limits determined by these rules of just conduct that the individual was supposed to be free to use his [or her] own knowledge and skills in the pursuit of his [or her] own purposes in any manner which seemed appropriate to him [or her]." (NS:p.135)

Hayek believed the rule of law would evolve from the spontaneous order, similar to the development of knowledge and other social processes. Rules or laws share several common attributes; they are general and abstract, known and certain and be equally applicable to everyone. (CL:p.208-9) Kukathas argues, these attributes particularly generality and equality, will not necessarily guarantee the protection of the individuals private domain. "The constraints imposed by the requirements of generality and equality are not sufficient to define the scope of the individual's protected domain in any substantive way." (Kukathas: 1989:p.159) These laws may assure the individual the right of personal freedom within a private setting, however it is quite possible universal and equal laws, such as a requirement of religious conformity, may seriously impinge upon an individual's freedom. Without the existence of a separate group of principles or rights, a natural or private domain cannot be identified and secured. (Kukathas:1989:p.160)

When Hayek considered the nature of law he was referring to general prescriptive laws forming part of an abstract system of rules. These rules were developed through an historical process of deducing principles from case law and applying these principles in future decisions. Alternatively, law is developed through the application of precedence. He regarded legislatively derived law has principally for

administrative purposes. But he acknowledged legislation was required to modify case law which has been slow to adapt to changed circumstances or has developed undesirably (RO:p.88). He held a deep suspicion of legislative law, as he believed it was imposed by certain groups that had captured the statute process. (RO:p.89) Legislatively derived law is untried and intrusive, favouring particular instead of universal circumstances. The principal difficulty with law produced through legislation lies in the particular outcomes it was designed to achieve, this is compared with case law which is considered universal. (NS:p.135)

Kukathas believes Hayek is unable to provide criteria based on independent principles that would act as a comparison with case law, and that can be used to judge, by legislators, if case law has developed incorrectly or in an unjust fashion. "... [Hayek] has committed himself to the claim that the generality and equality of rules, in satisfying the requirements of the rule of law, have also satisfied the requirements of justice." (Kukathas:1989:p.159) The principal objection centres on the absence of an independent criteria of values, on which the legislators are able to compare and judge case law.

Barry identifies similar objections to Hayek's definition of law. If the universal rule of law cannot be considered coercive of individual liberty then, "The justification for legal restraints must then lie in the claim that they in fact advance liberty rather than restrain it. ... there is a causal connection between laws which are properly constructed and individual liberty." (Barry:1979:p.101) The causal connection between general rules and liberty is emphasized, as the application of a general law can result in a diminishing of individual liberty as opposed to all general law being consistent with liberty. Laws must be general as rules relating to specific circumstances are commands and therefore coercive. The principal objection to Hayek's concept of law as a protector of liberty, relates to the possibility of there being some laws, that despite being non-specific, are severely restrictive of individual liberty.

"It would appear that a proper protection for individual liberty requires a more substantive limitation on what a government can do than that contained in the requirement that rules be perfectly

general and non-discriminatory." (Barry:1979:p.102)

Similar to Kant's problem with the categorical imperative, Hayek's rule of law is unspecific, and has the capacity to intrude upon the legitimate rights or the private domain of the individual. The application of generality and equality are an inadequate defence of individual liberty from potentially coercive laws that would qualify if Hayek's definition of law was applied.

The Distribution of Liberty

To conclude this section, the discussion will return to a more general debate on different forms of liberty. There are three contentious areas in which differing conceptions of liberty affect each individual and the functioning of society. They are; the distribution of resources enabling greater choice, the role of the state regarding the redistribution of resources and the rights of the individual in the area of private property. The wealth that has ensued from the development of society has resulted in a debate on its distribution. Hayek argues for the primacy of individual liberty and rejects the possibility of a trade-off. For example, using the state to increase social equality by progressive taxation at the expense of a small decrease in individual liberty by taxing personal disposable income.

In response to the debate on the redistribution of resources, alternative definitions of liberty will be examined, resulting in a definition of liberty which balances the individual right to choose with the need for social cooperation. Using Tim Gray's analysis of freedom, he begins with MacCallum's definition of the triadic concept of value-free liberty.

"... freedom is always (i) of something (the agent) (ii) from something (the constraint) (iii) to do something (the objective). The meaning of freedom is therefore constrained in the triadic formula X is free from Y to do or be Z. ... MacCallum argues that this is the only concept of freedom, and that differences of opinion over liberty turn on different interpretations of what (for the purpose of freedom) counts as an agent, a constraint or an objective." (Gray T:1990:p.12)

MacCallum believes his triadic concept is value-free, because it does not identify the constraint or the objective with a specific category, such as power. Once an identification or association is made, freedom becomes value-laden and is then provided with meaning. The differing interpretations are associated with different conceptions of liberty, Gray has identified seven, and believes the controversy lies not with the triadic concept of liberty itself, instead it is with what

constitutes a constraint or an objective. However Gray argues it is precisely the controversy over the differing conceptions of an agent, a constraint or an objective that forms the disagreement on what constitutes the substantive meaning of liberty. (Gray T:1990:p.15)

Gray has identified seven categories of freedom that differ on what constitutes the constraint and the impediment. He has divided them into two groups, psychological and social conceptions. These conceptions are similar to the intrapersonal or interpersonal conceptions identified above, by Hayek. The first group of psychological interpretations include freedom as; self-determination, doing what one wants and self-mastery. The first consists of "freedom as self-determination" implying freewill and the capacity to make autonomous decisions (Gray T:1990:p.52). This interpretation is also associated with collective freedom, such as independence from a colonial power. The second category is "freedom as doing what one wants". However this is restricted to mental capacities as translating wants into actions is fraught with practical difficulties, not only reconciling the internal conflicting preferences of an individual but also reconciling the differing and often competing wants of many individuals. (Gray T:1990:p.73) Hayek would probably have argued this conception would be destructive of social order and difficult to implement even if there were broadly agreed preferences. The final category in this group is "freedom as self-mastery" implying maturity and a rational, stable sense of self. (Gray T:1990:p.74) The four definitions in this category are usually considered personal or internal conceptions of liberty and have less relevance in a social context consisting of differing interests between individuals.

The second group in which Gray classifies as social conceptions of liberty have a greater degree of relevance, as they try to balance the competing demands of people. The first, "freedom as status", implies freedom is derived from collective association, Gray argues this category is a definition of collective identity rather than individual freedom. (Gray T:1990:p.46) The second is "freedom as effective power" and involves overcoming impediments rather than removing them. The argument against this interpretation consists of power being considered quite separate from the concept of liberty. However if effective power

is being denied to an individual by another agent, then the individual's freedom is being curtailed. (Gray T:1990: p.42-43)

The third interpretation is "freedom as availability of choices", and emphasises the objective, or Z factor. Essentially the greater the number of choices the greater the freedom. (Gray T:1990:p.31) This definition is popular with many New-Right theorists, Hayek is an exception, he argues liberty is not measured by the ability to consume. This argument favours the market as the only provider of the greatest variety of choice for the individual. However this raises the question of choice being limited or inappropriate; due to cost, the ability of the agent to make the right choice and the possibility of choosing not to be free, that would be accepting slavery. It would seem an infinite variety of choice is impossible, again each individual is subject to the demands and constraints of others. Hayek would argue against this definition, as it is not the number of or range of choices available to the individual that matters but if the individual has the opportunity to act without hindrance or being compelled to choose. Therefore it is the process itself and not the number of choices available that determines if an individual can be regarded as free.

Acting without hindrance is Gray's final category of liberty. This interpretation is the most well known of the negative concepts of liberty and Gray has labelled it as "freedom as an absence of impediments". The difference between this definition and that of "an absence of coercion", is between the freedom to act without constraint and the freedom of not being forced to act against one's will. The "absence of impediments" definition has a long history and is linked with many prominent philosophers, such as J.S. Mill. It is argued this definition would reduce freedom to a void, as a complete absence of impediments would result in an individual ceasing to be part of a social context. (Gray T:1990:p.20) However Gray replies the ability to do something (the Z factor) without constraint exists only as a possibility not a certainty. A distinction is made between natural impediments (individual ability) and social impediments (availability of resources), "... we assume that only human beings can be free, so we are to assume only human beings can impede freedom." (Gray T:1990:p.22) Some natural

impediments such as gravity can never be changed, but either type of impediment can be considered restrictive of freedom if it can be removed by human agency.

It is the ability of human agency or society to remove impediments, whether they are laws, lack of resources or abilities, that is the true determinate of freedom. It would be unreasonable to expect society to supply an infinite number of resources for the provision of all the opportunities each individual could possibly want, or to invalidate a law simply because one individual could claim that it would interfere with his or her actions.

The distribution of freedom raises important questions, as it is impossible for individuals to possess similar assets or abilities, this inequality leads to differing levels of freedom in the categories of freedom as self-determination and as availability of choices. The act of being part of society necessitates a synthesis between achieving complete freewill and solving an infinite variety of competing and contradictory demands.

"The nature of politics suggests that it is not only difficult to secure agreement on conceptions of need or desert, but also hard to ensure, through political processes, distributive outcomes that reflect need or desert rather than the power of contending interests." (Kukathas:1989:p.130)

It is difficult to determine which right or freedom has precedence, but it is something that is continuously attempted by all societies to maintain a balance between competing interests including those of the powerful and the powerless.

One of the principle areas of contention is that of private property. This includes ones labour and physical resources such as houses and businesses, that is recognised by law as an individual having autonomy within a fixed boundary. A justifiable case of restraint can be made against taxation as having a negative impact on personal freedom as well as the many government laws and regulations that are intended to prevent harm and encourage cooperation. Alternatively it is possible to justify the health and safety of employees, through extensive legislation that may severely limit individual courses of action, even

though they may freely have entered into a contract. Taxation and industrial law are two examples of the state restricting personal autonomy over private property and yet these laws improve the quality of life for many individuals. Determining the most appropriate levels of intervention is usually defined by the current attitudes of society, these are based on fluctuating interpretations of individual rights and entitlements. But it would seem most people have accepted, that as citizens of a state, they must cooperate and surrender a portion of their liberty to improve society as a whole.

This debate forms part of the negative and positive interpretations of liberty, those of the negative school of thought, such as Hayek, maintain their interpretation encourages personal responsibility and not social responsibility. "Liberty not only means that the individual has both the opportunity and the burden of choice; it also means that he [or she] must bear the consequences of his [or her] actions ..." (CL:p.71) Negative theorists have argued the development of the welfare state has undermined individual responsibility by preempting decisions that should be of individual concern.

"Hayek's concern was ... to show how welfarist policies implemented in the wrong way would produce a psychological change of attitude in people which would undermine the spirit of liberty which is required for the continuation of the spontaneous order. Evidence for this might in fact be relevant, and Hayek produces some, but it is of a rather anecdotal kind and not all that convincing." (Barry:1979:p.185)

Another objection, by Hayek, to state intervention in the redistribution of resources and indirectly liberty is the impossibility of aggregating individual liberty and thereby redistributing it.

"While an equality of rights under a limited government is possible and an essential condition of individual freedom, a claim for equality of material position can be met only by a government with totalitarian powers." (MSJ:p.83)

The existence of private property is central to the discussion on the nature of freedom. Negative liberals believe private property enhances freedom and prevents coercion by the state, it also provides

status and independence for all individuals. However communitarians believe private property acts as a system of restraint. Although an individual is free to use his or her property they are unfree, in the sense of not being allowed to use the private property of others. (Gray T:1990:p.146-7) Milton Friedman argued any redistribution is inherently incompatible with freedom while a counter-argument insists a redistribution adjusts the structures of freedoms and unfreedoms entered into by people during voluntary exchanges. (Gray T:1990:p.151) Which ever approach is accepted, those that believe in the inviolability of private property and those who seek to redistribute it, are each advocating a curtailment of individual liberty in one form or another.

Property forms part of the protected domain that is crucial to Hayek's social theory,

"The protected domain the essential condition of a liberal social order, includes property; law, liberty and property are regarded as inseparable. That property precedes civilisation, and is a prerequisite of a rule governed society, Hayek maintains is a scientific truth." (Barry:1979:p.61)

The link between liberty and property is not as inseparable as Hayek would have us believe. It is possible to live in a dictatorship ruled by martial law or arbitrary decree and still own private property, although the certainty of continuing ownership would be indeterminate and the level of personal freedom would be considerably less than in a democratic society. Hayek believed private property or the exclusive control over certain material objects to achieve a course of action is an essential condition for the protection of liberty. Yet Hayek cautioned, "The important point is that the property should be sufficiently dispersed so that the individual is not dependent on particular persons who alone can provide him [or her] with what he [or she] needs or who alone can employ him [or her]." (CL:p.141) The problem is how to maintain an acceptable level of dispersal. Competition alone will be inadequate, surely the state is required to intervene. Barry argues Hayek's methodology fails to provide an answer on the public-private mix of property that is required for successful social order. (Barry:1979:p.62)

In summary, private property forms part of the protected domain inseparable from liberty and law. Unjustifiable coercion occurs when the rules delimiting this domain are transgressed. As long as an individual is not subject to the commands of an agent that has the sole control of objects required by the individual to achieve his or her goals, then the individual cannot be considered coerced. "The crucial point about Hayek's position ... is that he asserts that liberty is not to be disaggregated. Freedom to dispose of one's goods (whether by goods or exchange) is no less important a freedom than the freedom to speak or to associate ... " (Kukathas:1989:p.144) In Hayek's concept of liberty there can be no trade-off between one individual's freedom to own and control property and another individual's right to greater opportunities and choice through state intervention. The definition of freedom as an absence of arbitrary coercion requires an additional component. An individual is restrained by his or her capabilities, however, the differing levels of choice between the powerful and the powerless requires the inclusion of freedom as self-determination. Individuals are restrained by a scarcity of resources that requires a preferential ordering of wants, the state acts as an arbitrator between the competing preferences of individuals. Consequently, the reliance on competition as an antidote of coercion is an inadequate compromise for the powerless individual.

PART II

COERCION

Hayek interprets liberty as an absence of arbitrary coercion. The second part of this thesis will consider the possible implications for this negative concept of liberty. Examining the context in which Hayek considered coercive behaviour could occur and if there are circumstances where coercion is justifiable by the state, market or other individuals.

A complete absence of coercion from fellow individuals is an impossible situation for any individual to achieve, and Hayek recognised this. Social conventions, laws and organisational rules all regulate our behaviour.

"We cannot prevent all harm that a person may inflict upon another, or even all the milder forms of coercion to which life in close contact with other men [or women] exposes us; but this does not mean we ought not to try to prevent all the more severe forms of coercion, or that we ought not to define liberty as the absence of such coercion." (CL:p.139)

The individual is a participant with others in society, situated within a historical context of communality and from the necessity of social cohesion, must follow a minimum of social rules and law, which by necessity entail a degree of coercion. Kukathas argues, that Hayek sought to distinguish between two forms of coercion, "... morally illegitimate actions, such as threats, which are coercive, and morally legitimate actions such as conditional offers, which are not coercive." (Kukathas:1989:p.150) Hayek was not always successful in separating the two definitions when considering their practical implications. This will be discussed below in coercion by the state. The important issue Kukathas raises, is the difficulty Hayek had in specifying the individual's private domain which could be considered justifiably protected and free from coercion.

Hayek believed that limiting coercion, especially by a socialist state, allows all individuals the opportunity to discover knowledge and contribute their ideas. "Coercion thus is bad because it prevents a person from using his [or her] mental powers to the full and consequently from making the greatest contribution that he [or she] is capable of to the community." (CL:p.134) The ability of individuals to discover not only improves society, but in addition living in a social

environment as free as possible from arbitrary coercion must increase the autonomy of the individual and in so doing their sense of self-worth. The atomist-holist debate between the necessity for unity of purpose to achieve a prosperous and progressive society and the need for individual autonomy to create a diversity of ideas for society's renewal, has not been solved by Hayek's insistence upon the competitive market as a non-coercive structure. The state can act as a facilitator of economic and social development, by acting as a stabilising influence, between the sudden changes characteristic of a market economy. These sudden changes of economic fortune can be militated by a welfare state that distributes resources amongst its citizens and alleviates possible coercive employment situations.

Coercion has a pejorative meaning, implying a lack of freewill on the part of the individual and is therefore damaging to the discovery process. However each individual is constrained in his or her choices and abilities and sometimes an individual is compelled to act. Hayek sought to describe acceptable limitations or justifiable coercion placed, by society, upon an individual's freedom. Using the example of a social convention, such as a suitable standard of dress and behaviour required at a social function before being admitted, this situation cannot legitimately be considered severely coercive. "So long as the services of a particular person are not crucial to my existence or the preservation of what I most value, the conditions he [or she exacts] for rendering these services cannot properly be called 'coercion'." (CL:p.136) Kukathas notes, one difficulty is determining what is crucial to an individuals existence and sense of value. This varies between individuals and cultures, as each individual or group will have a different set of preferences of what they most value. (Kukathas: 1989:p.152)

This discussion on freedom as an absence of coercion is primarily concerned with the economic power of the individual. Hayek has categorised and discussed three forms of coercive behaviour by groups and individuals; coercion by a monopolist, coercion by the state and coercion by a social group (specifically an occupational union). The first category is considered the least harmful, by Hayek, as coercive

monopolies or oligopolies covering essential goods or services are rare and usually defused eventually by a competitive market. Monopolies of non-essential goods or services imply an individual has a choice and cannot be considered forced into purchasing them. The last two categories are considered more insidious. The state, although recognised as a legitimate user of force by its citizens to maintain order, because of this very acceptance as a necessity for ordered life, the state becomes capable of controlling and directing with little effective dissent. The last category considered by Hayek is trade unions, unsurprisingly they are found to be injurious to individual liberty by compelling workers to belong and acting coercively to attain their goals.

Before exploring Hayek's theory in greater detail, there are several small issues to be clarified. Hayek makes the distinction between an individual being compelled by nature to act as if coerced, and that of another human agent forcing an individual to respond and submit to the will of that agent. Therefore the term, an agent, refers specifically to the intention of coercing the individual to do what the agent or coercer commands. Whereas it is possible to state, that individuals are forced or compelled by natural disasters to alter their lives, it would not be correct to state they have been coerced. (CL:p.133)

A second point concerns the nature of coercion. The threat of physical force is implicit when considering all forms of coercion, although Hayek primarily considers the psychological aspect.

"Coercion implies, however, that I still choose but that my mind is made someone else's tool, because the alternatives before me have been so manipulated that the conduct that the coercer wants me to choose becomes for me the least painful one. Although coerced, it is still I who decide which is the least evil under the circumstances." (CL:p.133)

Therefore the defining characteristic of coercive behaviour, is threatening or intimidating behaviour nearly always implying violent force, although there are other forms, such as blackmail that can prove just as effective. The coerced individual is left in no doubt as to the perpetrators intentions and complying becomes the only alternative.

Monopolies

It has been argued, that through the operation of the market, individuals are compelled to participate, despite being unequal in bargaining power, thus creating severe inequalities in outcomes. Central to Hayek's defense of this argument, is that choice for the individual is made available through the existence of innumerable actors in the exchange process, the many buyers and sellers create competition and this process is formed through a basis of voluntary participation, implying freewill and adequate knowledge and ability by the actors. "It is clear that Hayek wants to reserve the use of the word coercion to describe very special situations and avoid its use in situations where an individual merely has some choice in a range of rather unpleasant options." (Barry:1979:p.72) Coercive behaviour will only arise if there is monopolistic control of an essential resource with all other alternative sources of supply unavailable. Although monopolistic coercion is not defined exactly as a threat using physical force, the consequences are so dire that a failure to cooperate would leave an individual in a considerably worse state. Hayek uses an example of a spring at an oasis, if alternative supplies of water are unavailable, then the property owner in control of the spring exercises complete coercion (CL:p.136). Miller argues, that once Hayek acknowledged the possibility of coercive behaviour on the part of a supplier then similar behaviour may occur even in situations of relative, as opposed to absolute, scarcity,

"Finally, Hayek appears to put the cat among the pigeons when he concedes that in certain circumstances economic power might be used in a coercive manner. Once the possibility has been conceded, why restrict the circumstances as narrowly as Hayek does, confining them to extreme cases where an individual enjoys a monopoly of a vital resource? Why not admit the distribution of resources is always going to be relevant to the distribution of negative liberty in a society?" (Miller:1991:p.15)

Barry agrees, "... his [Hayek's] restrictive definition of coercion leaves out certain sorts of activities which may be regarded as coercive

on other, equally plausible, definitions." (Barry:1979:p.72) If a buyer or seller ceases to have relatively competitive choices then a mild form of coercion must occur. Any limitation placed on the buyer of an essential commodity, whether it is cost or forcible restraint, must be regarded as severely coercive.

Hayek argues the solution to coercive monopolistic control, is insisting the price of the essential good or service being the same for all buyers. (CL:p.136) However, this reliance on preventing price discrimination is inadequate for those unable to afford the article or service in the first instance, an objection Hayek seems to overlook. Hayek also believes, ensuring the same price for all prevents coercion on the part of the state. He does not fully develop the reasoning for this, but presumably the state or monopolist cannot be considered to be acting coercively if all buyers are paying the same exorbitant price. Hoy argues,

"If Hayek means that whenever an essential commodity comes under monopoly ownership the owner should automatically be required to charge each customer the same price, then the question of what price is coercive is moot because then the price charged is not the criterion by which we apply this sanction, but rather the condition of monopoly and the control of an essential commodity are the criteria by which the sanction are applied."

(Hoy:1984:p.20)

Despite being regulated, if a monopolist in control of an essential resource is the only agent involved when determining a price, then the buyers are at the mercy of the monopolist. "... how do we determine the price to be charged for a good or service that is 'crucial to my existence', since, as Hayek reminds us, there is no such thing as a just price?" (Kukathas:1989:p.152) Furthermore, Kukathas argues, that if there are several sellers but all charge a monopoly price, that is a cartel, then they too are considered to be acting coercively.

Developing further on the concept of voluntary behaviour, the reliance on mutual agreement between individuals and organisations is an essential supporting argument for Hayek's interpretation of the capitalist economy. Although we may not always approve of the situation

or type of choices that are available to us, we must cooperate to survive. If there exists a choice, however limited, in whatever course of action we undertake, then we cannot be considered as being coerced.

"Life in society necessarily means that we are dependent for the satisfaction of most of our needs on the services of some of our fellows; in a free society these mutual services are voluntary, ... The benefits and opportunities which our fellows offer to us will be available only if we satisfy their conditions." (CL:p.135)

To prevent coercion all agreements, such as employment or the purchasing of goods, should be voluntary and if the economy is competitive and expanding the increasing variety of choice will alleviate possible control over a sector by an individual or organisation. A recessionary economy limits opportunities, especially in the labour market, and Hayek acknowledges an employer may act coercively in periods of high unemployment,

"In periods of acute unemployment the threat of dismissal may be used to enforce actions other than those originally contracted for. ... But such conditions, though not impossible, would, at the worst, be rare exceptions in a prosperous competitive society."

(CL:p.137)

It would seem unsatisfactory to leave possible coercive situations experienced by employees to the vagaries of the economic cycle. In response, since the nineteenth century there has been a continuous development of complex industrial law in advanced capitalist economies to alleviate any severe power imbalances between employers and employees. In addition the development of consumer protection law, would seem to be a result of changing social attitudes to what is considered just. Extrapolating from Hayek's social theory these laws could be considered part of the evolutionary process for a prosperous society. However they could also be considered as an unwarranted infringement on the rights of individuals to enter into contracts, thereby creating a greater anomaly by using state institutions to prevent the efficient operation of the market, no matter how unpleasant.

Hayek's theory is imprecise in this situation, as to which can be considered the most deleterious towards individual liberty. It would

seem difficult to imagine the rescinding of much of the labour and consumer protection legislation, because of the level of acceptance through out society over a number of decades, even though this legislation interferes considerably with the operation of a competitive market. However Hayek believes an individual is not coerced when in a situation of having to accept low paying employment,

"So long as the act that as placed me in my predicament is not aimed at making me do or not do specific things, so long as the intent of the act that harms me is not to make me serve another person's ends, its effect on my freedom is not different from that of any natural calamity ..." (CL:p.137)

It would seem Hayek disagrees with many aspects of labour protection legislation. However the complex nature of an industrialised society requires all individuals to participate in the monetary system. As long as individuals are required to rely on paid employment for their needs, then it is society's obligation to provide employment or some other form of income support for their livelihood.

The assessment, by Hayek, of possible coercive situations in the labour market is indicative of a dogmatism inherent in many neo-liberal theories. Principally, no matter the conditions of employment, a worker cannot be said to be forced into accepting inadequate wages and conditions. Certainly a growing economy will improve the standard of employee remuneration, by providing an increasing choice of workplace and an increase in the real price of labour. However the very nature of employment is to "serve anothers ends", even though an agreement has been entered into voluntarily, in exchange for remuneration the employee sells his or her labour power. The neo-liberal tradition fails to recognise the fundamental power imbalance between an individual employee and employer, whose primary mode of support is the selling of his or her labour, in a market process that only values labour based on its scarcity. Generally it can be stated the strategic bargaining power lies with the employer. As a result of this inequality in the bargaining process, this in itself has been recognised by society, various structures have evolved, such as; trade unions, legislation protecting the rights of individual workers and specialised courts and tribunals to

adjudicate on disputes. These institutions, can be described as coercive structures, but they exist to prevent a greater diminishing of individual liberty for the less powerful worker, than otherwise would be the case.

It would seem Hayek regards the possible coercion of an individual worker in an employment situation as a mild form of coercion, compared to a severe form such as violent extortion. However Hayek is in greater difficulty when he ignores the substantial amount of legislation existing in many countries protecting workers rights and by implication their liberty. Surely this particular type of legislation has evolved and been accepted as creating a social good, in the sense that its provision benefits all of society. This outweighs the freedom of an employer and cannot be undone by claims of interference in the competitive market order.

Hayek was aware of the existence of market imperfections, such as producer monopolies and differentiated between two types. The first, monopolies characterised as efficient, perhaps due to economies of scale, are favourable because competition is unavailable. As long as they do not engage in price discrimination they need not be restricted because they are efficient. The second type are monopolies which have gained an advantage due to privileges granted by the state, this category includes unions, firms granted subsidies or tariff protection. Hayek believed these privileges should be dispersed, through competition. It is inevitable monopolies will form, instead of insisting on government regulation through price control Hayek believed if a market controlled by a monopolist had no barriers to entry from potential competitors then monopolistic practice is acceptable.

"Monopoly is certainly undesirable, but only in the same sense in which scarcity is undesirable, in neither case does this mean that we can avoid it. It is one of the unpleasant facts of life that certain capacities ... cannot be duplicated, as it is a fact that certain goods are scarce." (CL:p.265)

In effect monopolies are not coercive unless they prevent an individual from acting in a way that is crucial to his or her existence. Efficient monopolies are unavoidable but those guaranteed by government patronage

should be open to competition.

Coercion by the State

The state is a coercive apparatus, whose purpose should be the prevention of severe coercion, or the prevention of arbitrary coercion by an individual or group towards another individual or group. This primarily involves enforcing laws to prevent or prosecute criminal acts. The domestic sphere forms part of the private or protected domain, and will be discussed in greater detail below, Hayek maintained, that domestic concerns should be excluded from state control. Briefly his reasoning was, that if domestic relations are purely voluntary, then the state has no right to intervene. "But here the society can do little to protect the individual beyond making such associations with others truly voluntary." (CL:p.138) This is difficult to achieve, unless all individuals have the means or resources to be independent and this would require intervention by the state, only then can domestic relationships be considered voluntary.

Hayek placed considerable importance on the assurance of a "private sphere", protected from coercion. This principally consists of private property or the control and utilisation of the means to do what one wants. The concept of a private sphere or domain where, "The "legitimacy" of one's expectations or the "rights" of the individual are the result of the recognition of such a private sphere." (CL:p.139) This would appear the closest reference Hayek has made comparing the private sphere with a natural rights based interpretation of liberty, that is, certain inalienable rights all individuals are entitled to. The private domain consists of material objects (private property), labour and general rules which delimit the domain by guaranteeing security of tenure, but in some circumstances the boundaries could be adjusted.

"In modern society, however, the essential requisite for the protection of the individual against coercion is not that he [or she] possess property but that the material means which enable him [or her] to pursue any plan of action should not be all in the exclusive control of one other agent." (CL:p.140)

The necessary conditions for the functioning of private property are; the existence of many actors for mutual exchange and general rules to enforce voluntarily entered contracts. The necessity for rules on private property and contracts are a result of scarce resources and their utilisation that is required to produce goods and services. (CL:p.141) The reliance Hayek places on the existence of competition between market participants, is an inadequate defence and an insufficient assurance that coercion within the market process will not occur. There are problems concerning negative externalities, such as pollution, and Hayek concedes a form of government regulation is required. The state has also been required to fund and provide public goods, such as compulsory education. These goods generally create beneficial externalities for society as a whole, by providing equality of opportunity and contributing to the technological and social advance of society.

Public goods are not as easily delimited as the private sphere, although Hayek recognised the necessity for their provision and the difficulty private individuals or groups had in supplying and charging for such public goods, as roads.

"A public good is a commodity or service whose benefits are not depleted by an additional user and for which it is generally difficult or impossible to exclude people from its benefits, even if they are willing to pay for them." (Baumol&Blinder:1988:p.639)

For example, with the provision of street lighting, everyone gains a benefit from having street lights, but the cost of provision cannot be apportioned between the individuals who use them. The problem of funding public goods requires an enforcing structure, such as the state, that can legitimately demand payment for public goods. Therefore provision is equitable if everyone accepts and complies with the conditions for their supply.

Perhaps rules and regulations, such as labour market and consumer protection legislation, share similar characteristics to public goods. Unlike public goods that have a 'free-rider' problem, legislation relating to health and safety measures requires compliance by all groups to ensure costs are apportioned equitably. The resulting beneficial

externalities, similar to public goods, improve the quality of life for all. For example, if a manufacturer decreased the output price on a product by cutting safety measures, competitors would be forced to follow and maintain market share, thereby undermining safety measures. The insistence on all complying with safety regulations can be considered a public good, in the sense that all manufacturers must obey to ensure their provision. But only a legal requirement, by the state, threatening sanctions, forces individual manufacturers to comply. Alternatively labour legislation relating to minimum pay and conditions, and other regulations, interfere with the operation of a competitive labour market. Hayek would have disagreed with any regulations that set a minimum wage rate, and yet the increasing benefits, through greater power and consequently liberty, for the individual workers are real. The existence of these rules and their compliance, are subject to current social attitudes and consensus on the appropriate levels of protection for 'powerless' workers.

The financing of public goods requires a third party in the competitive market-place. The state as a law-making institution is empowered, through general laws applicable to everyone on an equal basis, to legislate on the raising of taxes and also ensuring the compliance with compulsory services, such as jury duty. (CL:p.143) Hayek sought to differentiate between the functioning of government as a distributor of resources and the limiting of coercion through law enforcement. "It is true the that the non-coercive or purely service activities that government undertake are usually financed by coercive means." (CL:p.144) But it would be impractical for the situation to be otherwise, not all taxpayers would agree on the provision of certain government services, such as defence, but all must comply.

As discussed above, Kukathas believes Hayek is imprecise in defining coercion in these terms, either all coercive actions are morally wrong, or some morally sound actions can be deemed coercive, (Kukathas:1989: p.149) Hayek favours both approaches. This problem involves the proper functioning of government. All individuals belong to a society ruled by a government, the association exists automatically and is not voluntary. Therefore legitimate actions by a government are coercive, but they are

in many circumstances morally justifiable.

"The conceptual inconsistency is important because, if the protected sphere is to be identified by arguing that actions do not infringe that sphere only when they are not coercive, there can be no distinction between justifiable and unjustifiable coercion unless it can be conceded that it can be justifiable to invade the protected sphere." (Kukathas:1989:p.150-1)

The inviolability of the protected sphere would therefore be undermined. Kukathas claims Hayek fails to specify what constitutes coercion and coercive actions that effect the individual's protected domain. A different criteria is required, such as a written constitution delineating individual rights, instead of relying on the protection of general and abstract laws. The principal role and justification of the state is to only use coercive measures to prevent arbitrary coercion. The provision of general rules must be predictable and applicable to all, including the state. (CL:p.143) The nature of these rules or laws and their evolvment and public acceptance are, in this respect, crucial to the justification of coercion by the state in the protected domain of the individual.

The other principal role of the state as a distributor of resources, through such measures as taxation or compulsorily funded social services, greatly disturbed Hayek. The growth of the welfare state in the latter half of the twentieth century is well known. Hayek recognised the benefits of ensuring compulsory provision for retirement, illness and unemployment. His principal objection was the coercive monopolistic control governments had acquired in their financing and provision, he believed this task should be undertaken by private institutions. (CL:p.296)

Coercion by Labour Unions

Hayek sought to differentiate between various forms of monopolistic practice and in effect he tolerated enterprise monopoly as undesirable but inevitable until changing technology allowed other competitors to enter the monopolists market. However, with labour union monopolies,

Hayek sought to obviate their control which he regarded as extremely coercive. "I have, however, become convinced that it would be disingenuous to represent the existing monopolies in the field of labour and those in the field of enterprise as being of the same kind." (CL:p.265)

The development of unions, Hayek argued, lead to a failure by governments to restrict their activities by granting them exemptions from the law, resulting in what he considered coercive practices. The abuse of power, using such measures as violent picketing and closed shops, whereby non-union labour is excluded from workplaces, he regarded with hostility. Hayek was not against unions as voluntary associations, he simply believed they should be recognised as groups with legitimate interests and rights of association, who should be restrained by competing interests. (CL:p.268) Thus workers should have a choice in which group they wish to join and represent them. It is the coercion employed by unions to force individual workers to join that offended him,

"It cannot be stressed enough that the coercion which unions have been permitted to exercise contrary to all principle of freedom under the law is primarily the coercion of fellow workers. ... the coercion of employers would lose much of its objectionable character if unions were deprived of this power to exact unwilling support." (CL:p.269)

The nature of the individual employee-employer relationship is unbalanced and weighted in favour of the employer, collective bargaining that has the unanimous support of the workers greatly improves their bargaining position. Individual workers are in a less powerful negotiating position.

A primary concern, of Hayek's, was to ensure the level of wages within a particular workplace were commensurate with the market rate, closed-shop practices pushed up the wage rate, excluding workers outside the unionised workplace from competing at a lower wage level more closely aligned with the current market rate. "Unions that had no power to coerce outsiders would thus not be strong enough to force up wages above the level at which all seeking work could be employed," (CL:p.270)

Similarly, picketing is regarded as intimidation and severely coercive, "...it represents a kind of organized pressure upon individuals which in a free society no private agency should be permitted to exercise." (CL:p.275) Closed shops are considered a restriction on trade and should not be exempt from unfair trade practices.

"Hayek claims that closed-shop agreements are contracts in restraint of trade and should not therefore be enforced at law. ... almost any contract can be interpreted as a restraint of trade and, furthermore any law that specifically banned voluntarily made closed-shop agreements would be, as a matter of logic, as discriminatory and coercive as a law which made them obligatory." (Barry:1979:p.74)

Certainly an employer who voluntarily entered into a closed-shop agreement could be at a competitive disadvantage to those employers who did not. Hayek states "... this principle can never mean that all contracts will be legally binding and enforceable." (CL:p.279) The only criterion is that all contracts must be subject to the same general rules, clearly Hayek regards closed-shop agreements as invalid because they restrain competitive trade, this objection applies to any contract, not just closed-shop agreements. Hayek believed competition was the crucial determinant in support of the individual's freedom to act. It is not the range of choice available, but the individual's ability to utilise his or her talents and material resources to achieve their own particular ends.

There are legitimate functions of unions, recognised by Hayek, principally wage determination, this includes setting wage differentials securing benefits, such as health care. Also generally facilitating the smooth operation of the workplace, by implementing rules determined with employee participation. "The most effective way of securing consent is probably to have the general scheme agreed to in collective negotiations in which all the different interests are represented. (CL:p.276)

Unions cannot be denied freedom of association, and Hayek believed unions had legitimate interests that could be socially beneficial, but unions had to be restrained by being exposed to the rule of law and

competitive practices. Hayek sought to ban the practice of intimidating picketing and allow individual workers the right to choose if they wished to belong to a union.

"The essential requirement is that freedom of association be assured and that the coercion be treated as equally illegitimate whether employed for or against organization, by the employer or by the employees." (CL:p.278)

Essentially any restriction of trade is unjustifiable, employers should be able to employ any individual as close to the market-clearing price as possible, if workers are employed at higher wage rates this produces involuntary unemployment. However this assumes individual employers and employees have perfect knowledge of all possible wage prices available. Also it is difficult to determine if complete price flexibility will diminish unemployment. There are many other contributing factors, such as skill shortages, levels of demand which determine the level of unemployment. In summary, Hayek was against compulsory membership of unions and advocated a restriction on any coercive practices by unions that could restrain competitive agreements.

Conclusion

There can be little disagreement on the concept of individual freedom being situated within a social context of often contradictory and competing ends. The boundaries of personal freedom must be delineated to allow for the maximum possible amount of individual liberty while ensuring an equal amount of fundamental liberty for all other members of a society. This involves the choosing of restraints that are acceptable to all.

Hayek's definition of individual liberty forms the basis of his social theory. As the supreme principle, liberty exists prior to other principles, yet Hayek links liberty inextricably with the rule of law and social progression. But he disdains any link with other values, such as social equality and social justice. (Gray J:1989p.97) He is incorrect when judging liberty, law and property as more valuable than social justice.

The precise definition of liberty, as an absence of arbitrary coercion, is inadequate for social progression. Individual liberty is more than the assurance of not being forced to act and follow the will of another. Freedom consists of an absence of impediments combined with the ability of self-determination within an agreed context of resource distribution. An exact equality of resources between individuals is impossible to achieve, however the individual that is rendered powerless through an inability to pursue his or her particular goals is less free than an individual that can. Hayek disdained the concept of liberty as power. But society, developing through the spontaneous order, makes values judgements by an agreement of political will. Altering the outcomes of the market process, by improving the amount of liberty experienced by the powerless. The increase in opportunities in such areas as health and education also has a beneficial effect for society as a whole.

Hayek's reliance on laws being automatically just, if they satisfy the attributes listed by Hayek is an inadequate protection against laws that are detrimental to individual liberty. This assumes the derivation of law is free of distortion from vested interests that may have

considerable influence over the legislative and judicial procedures, whether it is formed from statute or case law. The making of law is as liable for capture, by special interest groups for their advantage, as any other social process.

The attributes concerning the rule of law identified by Hayek, "... they must be general rules of individual conduct, applicable to all alike in an unknown number of future instances, defining the protected domain of the individuals, and therefore essentially of the nature of prohibitions rather than of specific commands." (NS:p.135), results in a failure to ensure the possibility of oppressive general and equal laws being enacted. Barry, Kukathas and Gray all believe Hayek's theory of law requires an additional group of moral principles, that can be used as a comparison, in determining the justness and appropriateness of the rule of law. This would be similar to a written constitution acceptable to all, incorporating an entrenched Bill of Rights to be used as a reference for solving future problems concerning the conflicting rights and freedoms of the individual.

In addition the private domain, consisting of the freedom to control one's property and labour and secured by the law of contract, fails to secure the freedom of the individual, as the boundaries are variable. The individual cannot be assured that the protected domain will be free of intrusion, if the criterion of freedom as an absence of arbitrary coercion is used, then it is quite possible to envisage many circumstances whereby the state is justified in intruding within the private domain. One such example, is the prevention of domestic violence. The private domain as a protector of individual liberty is inadequate.

The inevitability of conflicting rights and freedoms requires the existence of an adjudicating body, capable of deciding the most appropriate distribution of liberty and enforcing compliance with its decisions. The only suitable structure is a democratic state, as it is the only legitimate constitutive and enforcing structure acceptable agreed by everyone. In theory all individuals have the ability to influence the outcomes of government, thereby reinforcing the legitimacy of the role of the state. The state reflects the current set of social

values, derived from an historical process, its ability to sanction and alter the outcomes produced by the operation of the market ensures a considerable involvement, that Hayek attempts to deny or at least curtail.

The role of the state has been gradually increased to encompass the prevention and regulation of monopolies, a principal infringer of personal freedom on the part of the consumer. The reliance Hayek places on competition, as a disperser of privilege and power underestimates the ability of particular groups or individuals to control or coerce.

The other principal role of the state, consists as a provider of public goods, externalities the private sector is either unwilling or unable to provide. Included in this group are laws relating to labour and consumer protection, although these cannot be classified as a public good, their existence is only guaranteed through the compulsory requirements of state legislation which compel producers to conform to the prescribed standards. The development of the welfare state, can also be argued, is a response to the necessary requirements individuals have in improving their education and health, amongst other social goods. This has an additional positive externality, caused by improving the range of opportunities for self-determination and thereby increasing individual liberty overall. Hayek's attempts to undermine the theoretical justification for these entitlements by asserting freedom is not dependent upon the number of choices available or liberty as power concepts. The removing of impediments to individual action, fails to recognise the inequalities caused by restricted access, usually due to an absence of wealth, this usually determines opportunities and chances.

Hayek argued that just rules of conduct developed through a gradual process of trial and error within the spontaneous order, surely the considerable legislation regulating the operation of the market and the emergence of the welfare state to provide protection for individuals, has also developed through a similar process within the spontaneous order. Hayek appears selective in assuming which social processes and institutions will develop through the spontaneous order, some would appear more acceptable than others. Hayek's attempt to incorporate the limited capacity for human reason in a social theory of natural

progression cannot exclude those measures designed to improve the quality of life for all within a society.

Hayek's rejection of possible coercive practices within the market process, except those relating to essential goods, fails at a fundamental level to recognise possible inequalities between the participants before a market transaction takes place. If individuals within a society have reached a consensus, formalising a sharing or redistribution of resources through such measures as progressive taxation, then this must be considered acceptable within Hayek's social theory. It is not possible to allow the development of "just rules of conduct" without including measures designed to improve the opportunities of individuals which directly contributes to an improvement in individual liberty. The market process is assumed to be competitive, however the economic cycle produces distortions that can have an extremely negative effect on individuals limiting their opportunities and ability of self-determination. Any concept of liberty must incorporate a degree of opportunity for individuals to be able to utilise their abilities and lead a rewarding life.

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