'THE INDIVIDUAL AND THE POLITICAL ORDER IN THE THOUGHT OF F.A. HAYEK AND ROBERT NOZICK:
A CRITICAL EXAMINATION.'

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INTRODUCTION. HAYEK, NOZICK AND THE PROBLEM OF THE INDIVIDUAL AND THE POLITICAL ORDER.

This thesis addresses one of the perennial problems of political life, that of the proper relationship between the individual and the political order. In particular, it examines aspects of the political thought of two contemporary libertarian philosophers who attempt to come to terms with this problem.

How much, and what kind of, freedom the individual should be allowed for ordering his private life, which influences upon others are legitimate, and how much the government should interfere, how, and in what areas, are questions of fundamental importance to ideologues, politicians and political theorists alike.

There seem to be irreconcilable differences between those for whom the state is a promoter of the individual as the primary unit of social meaning and value, and those who accord that status to the community. Even within the individualist tradition, there are different definitions of the private sphere of the individual and different views as to the priority of freedom as an end of government.

There is clearly a continuum of individualism to communitarianism. At one end atomic individualism takes persons as unaffiliated beings to whom every contact with others is a burden that must be justified by exclusive reference to the individual. Others, such as Locke and Rousseau, claim that freedom can only occur within
well-articulated political, social and moral orders. At the other end are communitarians, or collectivists, who see individuals primarily in terms of their attachment to others in political and social relationships. On this view, social roles and institutions define individual identity, and self-fulfilment is found only in the achievement of a common, collective purpose.

One of the most important recent contributions to the debate concerning the proper relationship between the individual and the state appeared in Rawls' *A Theory of Justice* (1971). However, there has been a reaction against Rawls' individualist defence of the welfare state by 'libertarians' who give absolute priority to individual freedom over welfare and social justice, and who argue against the use of the state's coercive apparatus to achieve and enforce so-called common ends. That any form of government intervention in individual lives for the purpose of mutual aid is either possible or desirable has been challenged most strongly by Robert Nozick in his *Anarchy, State and Utopia* (1974). A study of other post-war liberal thinkers reveals that many of Nozick's political conclusions are not novel. F.A. Hayek, in both *The Constitution of Liberty* (1960) and *Law, Legislation and Liberty* (1973, 1976 and 1979), offers a sustained and compelling defence of individual freedom as the primary end of political organisation.

The irreconcilability of various forms of the 'positive' or 'interventionist' state such as the welfare state with Hayek's 'liberal order' or Nozick's 'minimal state' reflects differing perceptions as to the reasons why individuals belong to a political
association and divergent views of man and society. Such theories contain assertions about the effects of state coercion on individuals, particular conceptions of such terms as 'freedom', 'rights' and 'justice', and different views as to their relative importance.

Many liberals in the twentieth century have accepted, and even defended, such practices of the welfare state as the redistribution of economic resources and regulation of the market; they have attempted to find a compatibility between the requirements of freedom and equality, and have discovered an active role for the state in the promotion of individual interests. This embraces the notions of positive freedom and rights espoused by such nineteenth century thinkers as T.H. Green, who argued that freedom involves more than simply the absence of a particular class of external constraints, namely interpersonal coercion. An older definition, proposed by Locke and Mill and still accepted by Hayek ('negative freedom') has the implication that one can be materially or morally impoverished and still free. It accords more importance to non-coercion than to the effective power or capability to act.

My focus is upon freedom and rights in the political sense of constitutional protections, and not in the philosophical sense, although the two are connected. A man may be a slave to his passions and hence unfree in the philosophical sense, but he may enjoy political freedom and benefit from the protection of the negative rights that permit him to become morally enslaved (through the disavowal of paternalist interventions).
Libertarians like Hayek and Nozick insist that positive conceptions of freedom and rights, and their attendant commitment to an interventionist order, are 'liberalism gone wrong', and vigorously denounce such views. They argue, from various premises, not merely that individual freedom should always take priority over social justice and welfare rights, but that the latter are meaningless and illusory. Such arguments, for Hayek and Nozick, determine the legitimate uses of coercion by the state. They find in the unimpeded mechanism of the free market an ideal solution to the problems of social life and political association. They conclude that the only proper coercive function of the state in a free society is to protect the individual against force, theft, fraud and breaches of voluntary contract. (Hayek also sees an extensive non-coercive role for government as being consistent with his principle of freedom.)

On these issues Hayek and Nozick are in fundamental disagreement with Rawlsian individualists and others who attempt to reconcile freedom with other values, with utilitarians who argue that social needs can be balanced, common ends determined and individual wills sacrificed, and with uncompromising communitarians who would impose collective decisions upon individuals for the 'common good'. Libertarians strongly condemn what they see as the sacrificing of individual rights and freedom in the name of justice. They define the problems of political life in a distinctive and challenging way, and question, on individualist grounds, the assumptions and implications of the widely accepted interventionist state. In particular, Hayek and Nozick explore questions of great political significance - the purposes of government, the nature of freedom and rights, the
legitimacy of the existing political order and the ends of justice -
and propose uncompromising and controversial solutions to the problems
they raise. They have provoked an enormous response from both
philosophers and political scientists, which makes imperative a
balanced critical assessment of their principal ideas.

Despite their divergent backgrounds, sources, approaches and
emphases, Hayek and Nozick are both concerned with the fundamental problem of
the role of the political realm in the life of the individual.
Moreover, they find their solutions in shared general principles.
They find, in the individualist conception of freedom and rights,
a criterion for judging the legitimacy of institutions, policies
and political practices. The justificatory arguments used to support
their positions embrace both consequentialist and deontological
approaches, making possible an assessment of the whole range of
possible arguments for the non-interventionist order. The political
imperatives derived from the stated principles of Hayek and
Nozick have important implications for arguments about the individual
and society.

In this introduction I want to summarise briefly the argument
of the thesis and explain its particular approach. As a textual
analysis, it has four aims, or themes: expository, interpretive,
comparative and critical. In terms of the structure of the thesis,
these aims are often, but not always, overlapping. Part I is
considered with exposition and comparison only, reflecting the need
to make coherent and cohesive the political position espoused by
Hayek and Nozick and the principles they seek to uphold. It lays the
groundwork for the interpretive and critical material in Part II, which addresses the problem of the justificatory sources of their thought and exposes them to the counterclaims of those who support alternative positions. Accordingly, Part I outlines the political conclusions of Hayek and Nozick: their principles, imperatives and implications. Part II assesses the arguments for and against these conclusions.

Hence issues are raised at a comparative level in Part I in order to establish the particular claim that Hayek and Nozick appeal to similar and closely related principles. This is clearly distinct from the critical purpose of Part II, which seeks to examine the issues in a different way. That the purposes are distinct (though related) determines the separation of the comparative description of Hayek's and Nozick's position from the critical analysis of their arguments. It would be difficult to proceed to the latter task without first having undertaken the former. A genuinely comparative treatment must first establish relevant connections and similarities before a critical assessment can be made of the arguments advanced. However, in order to solve the problem of introducing at the comparative level propositions that may be controversial without immediately taking them up, I use an extensive system of cross referencing. Implicit in my approach is the general aim of criticising Hayek's and Nozick's arguments for their positions rather than commenting in detail on the positions themselves. It would be unfair to criticise Hayek and Nozick without first explaining their positions and arguments.
Hence I regard both the comparative and critical exercises as important. However, the core of the thesis is undoubtedly in Part II. The central purpose of the thesis is to find out what can be said about the libertarian proposition that governments should do a lot less than they do at the moment. To this end, the following questions are paramount: Are the arguments for the non-interventionist political order convincing? Do they effectively dismiss the welfare state? Do they achieve the results desired by Hayek and Nozick, or can their arguments be used to support alternative political conclusions? Are their assumptions about man and society correct? How do their opponents attempt to refute libertarian claims? Are they successful?

With these caveats and questions in mind, I argue in Part I that the notions of freedom rights and justice appealed to by Hayek and Nozick are sufficiently similar to make a close comparison possible. They have shared 'concerns'. (Chapters 1 and 3).

Secondly, and more importantly, Hayek's and Nozick's principles direct them towards specific political conclusions. (Chapter 2) In particular, they are both committed to what I term a 'non-interventionist political order'. This kind of preferred political association is their chief normative conclusion.

These claims on behalf of the non-interventionist order are questioned by those who see a positive role for the state in the achievement of individual goal-satisfaction. For them, the requirements of justice, needs and welfare demand much more than this
'nightwatchman' role of the state described in classical liberal theory. These counterclaims and the critical questions I raised earlier about libertarian theory are to be addressed in Part II.

Part II attempts to elucidate and analyse the various ways in which Hayek and Nozick reach, and try to justify, their uncompromisingly libertarian conclusions. This involves a critical examination of the premises and arguments appealed to and the implicit assumptions contained in Hayek's and Nozick's justifications of the non-interventionist state.

The structure of Part II reflects both the similarities and differences in argument between Hayek and Nozick. Chapter 4 outlines and challenges Hayek's argument for the non-interventionist state which he couches in terms of the benefits that freedom provides. Chapter 5 addresses the moral arguments advanced by Nozick for rights-protection (and against coercion) that are derived from the nature of man. Chapter 6 attempts to find a common individualism in Hayek and Nozick that is essentially manifest in their views of the nature of society. Hence I explore both the areas of Hayek's and Nozick's arguments that are different and those that overlap.

Both Hayek and Nozick attempt to establish particular political conclusions by trying to dismiss the claims of political opponents. This strategy, whilst appealing as a powerful critique of the welfare state, must also be shown to provide a justification for their own position. They need to demonstrate the validity of their premises and show the necessary relationship between
premises and conclusions, to the exclusion of possible alternatives. In these tasks, particularly the latter, they are open to counter-argument. Do they dismiss, for example, the proposition that the interventionist state is legitimate simply by appealing to arguments as to the benefits of freedom or the immorality of coercion? Does their individualist view of society rule out all forms of positive state activity, even though there are different kinds and degrees of coercion with greatly differing affects on individual lives and choices? I argue that, although the theories of Hayek and Nozick severely question both the aims and methods of the wholly collectivist interventionist order, they need not, on the other hand, restrict the state to the merely classical liberal role of night-watchman.
PART I. POLITICAL PRINCIPLES.
CHAPTER I. PRINCIPLES CONCERNING THE INDIVIDUAL AND THE SOCIAL ORDER.

I. INTRODUCTION.

The initial task in a comparative and critical exposition of the political theories of Hayek and Nozick is to delineate and characterise the principles they see as fundamental to the just political order. This chapter is concerned with such principles: that of individual freedom in the case of Hayek and individual rights in the case of Nozick. I aim, in this chapter, to clarify the meanings of these key terms, and, in the following chapter, to demonstrate their importance as principles of political life.

It will be argued that the values of freedom and rights, as conceived by Hayek and Nozick, have important normative consequences for the role of the political order in the life of the individual. More specifically, the adoption of these principles and the meanings and importance ascribed to them by Hayek and Nozick lead to a shared political maxim. This is that the state (government, political order) may not coerce the individual in the formulation or execution of his or her free choices except in the punishment of interpersonal coercion or rights infringement.

In broad terms, this has three crucial implications for political life: the state must not dictate individual goals, it need not help individuals positively in the achievement of their goals, and it must not formulate its own goals if this involves the coercion of individuals. Despite important differences between Hayek's liberal order and Nozick's minimal state (these will become
apparent in later chapters), both authors agree on the fundamental principle that the voluntary choices of individuals must remain beyond state interference and control, provided that the individual actions involved are non-coercive. Protection of individual freedom, on this view, is the state's only coercive role.

II. HAYEK'S NOTION OF FREEDOM.

According to Hobbes, 'Liberty, or freedom, signifieth, properly, the absence of opposition...'.\(^1\) Hayek, in formulating his principle of freedom as a political maxim, clearly works within this tradition of viewing freedom as the absence of external constraints upon individual action. But it is a particular kind of constraint that is of primary concern to Hayek and that he is interested in minimising in the political order.

He states at the outset of The Constitution of Liberty:

\[
\text{we are concerned in this book with that condition in men in which coercion of some by others is reduced as much as possible in society. This state we shall describe ... as a state of liberty or freedom ... The state in which a man is not subject to coercion by the arbitrary will of another or others ...}\]

By 'coercion' we mean such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another.\(^2\)

Hayek's notion of freedom, then, covers only one class of actions amongst a whole range of possible constraints which can inhibit an individual's acting in specific ways.

Hayek's basic social unit is the free choosing individual,
unimpeded by the dictates of the wills (though not necessarily the actions) of others. He talks of the 'private domain of the individual', or the 'private sphere', in which the individual is free to act and to formulate goals. Whether or not these choices are fulfilled and goals achieved will be determined by many factors - including circumstances, chance, the actions of others with whom we interact - in general, by forces that may be beyond our direct control. The Hayekian definition of freedom is not concerned with the results of our choices (whether or not our plans are actually fulfilled), but with whether it is us who make the choices. Hence the only kind of restrictive action prohibited by the principle of freedom is that of dictating what an individual's choice will be. But this is a crucial prohibition which clearly has far-reaching social and political ramifications.

Hayek recognises that there are many restraining factors that may influence the way we act: natural abilities and opportunities, accidents of nature, traditions, habits, the concern of and for others, and our own weaknesses, impulses and obsessions. Most importantly, the fulfilment of individual goals and expectations depends upon the cooperation of others. Hayek sees these constraints as pertaining only to the ability to perform certain actions and not as conditions of unfreedom, which is defined solely in terms of interpersonal coercion.

The distinction between 'freedom' and 'capability' is a crucial one for Hayek. As will be seen later, for instance, the principle of freedom does not imply a commitment to substantive
equality. He makes two important claims. Firstly,

[w]hether or not a person is able to choose intelligently between alternatives, or to adhere to a resolution he has made, is a problem distinct from whether or not other people will impose their will upon him.5

Hence the distinction is drawn. But secondly, and more importantly for Hayek, is the claim that capability has nothing whatever to do with freedom. The concepts are both distinct and unrelated.

...the range of physical possibilities from which a person can choose at a given moment has no direct relevance to freedom ...6 The question of how many courses of action are open to a person is, of course, very important. But it is a different question from that of how far in acting he can follow his own plans and intentions, to what extent the pattern of his conduct is of his own design, directed towards ends for which he has been persistently striving rather than toward necessities created by others in order to make him do what they want. Whether he is free or not does not depend on the range of choice but on whether he can expect to shape his course of action in accordance with his present intentions...7

Seemingly Hayek sympathises with the individual who, because of circumstances beyond his control, cannot fulfil his plans. However, Hayek's notion of freedom cannot accommodate such problems. The kind of constraint involved outweighs the net effect of the constraint on an individual's ability to perform an action.

The constraints not relevant to, and therefore excluded from, Hayek's principle of freedom can clearly include human actions. For example, the case of an employee losing his job because of a management decision by his firm or employer clearly involves interference with the life-plans and choices of an individual by a human agent. His actions are shaped, even dictated, by the
actions of the employer. But Hayek contends that such an interference is not necessarily coercive, not only because the employment relationship is, according to Hayek, a voluntary contract in the first place, but also because the employer does not use force or threats to make the employee do specific things. He does not make the employee an instrument of his own will. On Hayek's view, the employee still has the choice, in a free society, of looking for another job. 8

Hayek concludes that

[i]t is only in very exceptional circumstances that the sole control of a service or resource which is essential to us would confer upon another the power of true coercion. 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, and each can determine to whom he wants to render services and on what terms. ...This is as true of social as of economic relations. If a hostess will invite me to her parties only if I conform to certain standards of conduct and dress, or my neighbour converse with me only if I observe conventional manners, this is certainly not coercion. Nor can it be legitimately called "coercion" if a producer or dealer refuses to supply me with what I want except at his price. 9

Hence in the free society there is no imperative to supply an individual with the things he needs or wants to fulfil his goals. Failure to do so cannot for Hayek constitute a state of unfreedom for that individual.

Moreover, the distinctions made by Hayek are politically as well as conceptually important. Attempts by the state to eliminate, or even reduce, all the possible constraints on individual self-
fulfilment would lead, he claims, in different directions. Some of these would clearly be unacceptable to Hayek because they would infringe freedom in his sense of the word. For example, a general redistribution of wealth promoted by the state and enforced through compulsory graduated taxation would clearly increase the opportunities for some to attain more of their goals, thereby improving their capability for action. But on Hayek's definition, this would not only not promote freedom; it would involve a loss of real freedom for those forced to pay for the equalisation of incomes. The latter would, in effect, become for Hayek an instrument of state coercion.

Hayek's view of freedom can be clarified by a brief examination of alternate usages of the term. Firstly, there is 'civil' or 'political' freedom, that is, society's choosing of its elected representatives and leaders, its 'having a say' in political decisions. But Hayek contends that

...a free people in this sense is not necessarily a people of free men, nor need one share in this collective freedom to be free as an individual.10

This leads Hayek to conclude that democracy - in the sense of representation through elections and majority rule - is neither a necessary nor a sufficient condition for the attainment of individual freedom.11

Another so-called freedom that Hayek distinguishes from his own conception is 'inner' or 'metaphysical' freedom. For him, how one uses one's opportunities, or even how one reaches conclusions or decisions about actions and life-plans, is of no relevance to whether one is coerced by others, and therefore has no place in
an accurate account of the nature of individual freedom.\textsuperscript{12}

The third, and, for Hayek, the most damaging misapplication of the term freedom is its description by some thinkers as 'power' or 'wealth' - or the ability to act independently of any impediments.\textsuperscript{13} A weaker version of this view is that capability for action is at least relevant to freedom, even if it does not equal freedom. But Hayek rejects both positions.

He sees the two principal competing formulations - freedom as the absence of coercion versus freedom as effective power - as reflecting the two divergent strands of liberalism over the period from the eighteenth to the twentieth centuries, and as having resulted in two distinct and indeed contradictory positions.\textsuperscript{14} Quoting J.S. Talmon, Hayek explicates the two definitions.

One finds the essence of freedom in spontaneity and the absence of coercion, the other believes it to be realised only in the pursuit and attainment of an absolute collective purpose ... one stands for organic, slow, half-conscious growth, the other for doctrinaire deliberateness; one for trial and error procedure, the other for an enforced solely valid pattern.\textsuperscript{15}

Hayek dismisses the view that there is a thing called 'coercion' (dictating an individual's choices) which is part of something else called 'freedom', meaning 'satisfying one's wants'. Freedom as the absence of coercion is quite different from 'power' meaning 'the ability to give content and meaning to one's freedom in specific ways'. It is this distinction, I have argued, that is central to the Hayekian principle of freedom.
III. NOZICK'S CONCEPT OF RIGHTS.

For Nozick, what individuals may legitimately do to one another is defined in terms of their rights. His initial claim in Anarchy, State and Utopia is that individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do ... 16

Nozick's chief concern is with those actions and interferences with individual goals that may be regarded as legitimate. This concern, and Nozick's commitment to a particular conception of individual rights, have equally as important (and, it will be argued, similar) implications for the political order as Hayek's notion of individual freedom.

According to one view of rights, expressed by A.J.M. Milne, 'To have a right is to be entitled to do something or have something done ...'. 17 Often in political discourse, rights claims - whether for 'human' rights, 'natural' rights, 'rights of persons' or 'civil' rights - have attempted to establish the rights individuals have to particular things, for instance the right to life and liberty, the right to good health, the right to happiness, the right to a 'meaningful' existence, the right to property, and more recently, the right to work, the right to a minimum wage, the right to strike, and the right to 'a say' in political decisions. 18 Some rights are said to be universal, pertaining to 'man qua man', whereas others are accorded to individuals because of their position or occupation, such as the rights of the employer, the employee,
or the rights of doctors to set fees and hours of consultation. Some rights are general, others particular. However, all rights claims imply or prescribe obligations for others to respect those rights, and in most cases these obligations are positive and specific. For example, the right to a minimum wage means that employers have an obligation not to pay their workers less than a specified amount.

Nozick, however, poses the problem differently. For him, there is no automatic right of any individual to particular actions, objects or situations. One has a right to do or to have something only if, in the course of an action, one does not infringe the rights of others. There are no particular, positive rights that engender obligations in others to do or provide specific things, except in the case of voluntary contracts. The only general, universal right for Nozick is the right not to have one's particular rights infringed, not to be forced by others to do certain things.

According to Nozick,

\[ \text{the right to engage in a certain relationship is not a right to engage in it with anyone, or even with anyone who wants to or would choose to, but rather it is a right to do it with anyone who has the right to engage in it ... Rights to engage in relationships or transactions have hooks on them, which must attach to the corresponding hook of another's right that comes out to meet theirs.} \]

For Nozick, there are moral side constraints upon our actions which delimit our rights and which prohibit aggression. In effect, these constraints determine the ways in which we can properly interact with others; they prescribe our rights.
'Aggression', for Nozick, covers such actions as force, theft, fraud and breaches of contract. In defining rights in this way, he appeals to the notions of voluntary consent and free choice.

A person may choose to do to himself, I shall suppose, the things that would impinge across his boundaries when done without his consent by another ... Also, he may give another permission to do these things to him ... Voluntary consent opens the border for crossings.

Nozick seems to be saying two things. Firstly, there is an absolute, general moral obligation not to treat others in certain ways, and secondly, the particular rights we have (and can legitimately enforce) are only those consensually arrived at. If these two conditions are met - the observance of moral side constraints and free choice - any individual action can be legitimised, despite the consequences of the action for the lives of others.

This has an important negative implication. The 'right to life' is simply the right not to have your life terminated or injured; the right to good health does not require that anyone actually provide health care; there is no right to work, but only the right to work for someone who chooses (and has a right) to employ you; there is no right to a particular job, a particular property or a particular kind of life.

Nozick's example of the twenty-six sets of marriage partners is illustrative of his view of rights. He labels the partners A and A' to Z and Z'.

A and A' voluntarily choose to get married,
each preferring the other to any other partner. B would most prefer to marry A', and B' would most prefer to marry A, but by their choices A and A' have effectively removed these options. When B and B' marry, their choices are not made non-voluntary merely by the fact that there is something else they each would rather do.24

We eventually arrive at Z and Z'.

The fact that their only other alternative is (in their view) much worse, and the fact that others chose to exercise their rights in certain ways, thereby shaping the external environment of options in which Z and Z' choose, does not mean they did not marry voluntarily.25

Nozick also discusses the more controversial example - which, in his view, is a parallel case to the marriage partners - that of the supposedly voluntary relationship between the worker and the owner of capital.

Z is faced with working or starving; the choices and actions of all other persons do not add up to providing Z with some other option ... Does Z choose to work voluntarily? ... Z does choose voluntarily if the other individuals A through Y each acted-voluntarily and within their rights.26

Nozick anticipates the objection to his own view '... that some actions (for example, workers accepting a wage position) are not really voluntary because one party faces severely limited options, with all the others being much worse than the one he chooses'.27 Hence, on an alternate view of rights, the worker who must accept the low wages or unhealthy conditions dictated by his employer (or starve), has his rights infringed.

But for Nozick, just as in the case of the marriages, the
employer has the right to choose his employees and employ them under whatever conditions he chooses, provided that he does not infringe the rights of others in so-doing, and provided that his employees are allowed the choice to work for whoever is willing to employ them. Hence the employer who makes an offer of x wages to prospective workers is not forcing anyone to work for him under those conditions, is not infringing the worker's right not to be coerced in the choice of his employment. But if some agency forced the employer to guarantee minimum wages or some specific conditions demanded by workers, then the employer's right to employ under his own conditions would be infringed.

Nozick concedes that the actions of many workers and employers may radically alter the choice environment of others and drastically limit their available options. But, for Nozick, who is to say that Z is forced to employ Z', or that Z' is forced to work for Z, just as the Z and Z' of the earlier example were not forced to marry? The implication of interfering with rightful, voluntary processes just as these would, for Nozick, be that A and A' had no right to marry one another, for by so doing they were 'interfering' with the rights of others. And Nozick certainly cannot accept this, given his view of rights.

Nozick's conclusions about rights and choices involve two central claims. The first is that there are no general positive rights and therefore no positive obligations. The second is a proposition about what 'voluntary' actually means. He claims that

[w]hether a person's actions are voluntary
depends on what it is that limits his alternatives. If facts of nature do so, the actions are voluntary. (I may voluntarily walk to someplace I would prefer to fly to unaided.) Other people's actions place limits on one's available opportunities. Whether this makes one's resulting action non-voluntary depends upon whether these others had the right to act as they did ... 28

A person's choice among differing degrees of unpalatable alternatives is not rendered non-voluntary by the fact that others voluntarily chose and acted within their rights in a way that did not provide him with a more palatable alternative. 29

Nozick's whole theory of rights is dependent upon these distinctions. His criteria for legitimate action and his dismissal of the proposition that the individual faced with few or undesirable options has his rights infringed are tied to Nozick's view of free choice.

Again, the distinction between 'right' and 'capability' is crucial for Nozick. That I can do certain things bears no relation to whether I have a right to do them, and vice-versa. Similarly, the actions of other individuals which, like nature or circumstances, restrict options, narrow choices, and hence interfere with individual lives do not necessarily belong to that class of actions which may properly be termed 'rights-infringement'. 30

In Nozick's theory, one has the right only to acquire and retain those possessions that do not rightfully belong to another. I only have a right to them if someone else is willing to give them to me, or sell them, or if I find them and no one else is entitled to them. I do have a right not to have the property which I legitimately possess (that is, through not infringing
the rights of others) either stolen, damaged, or interfered with in ways to which I have not consented.31

Whereas capability, desire, want and need bear no relation to Nozickean rights, consent and choice are central to them. The importance of this distinction leads Nozick to the social maxim:

[from each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet expended or transferred ... From each as they choose, to each as they are chosen.]

Nozick's theory of legitimate individual action, then, is conditional on his specific claims about rights and consent. For instance, exchanges are voluntary only if certain conditions are met. Although these conditions are stringent and of universal applicability,33 they exhaust the range of actions which properly count as 'rights-infringement'. Hence such issues as the range or the attractiveness of choices confronting an individual, whatever their effect on the outcome of his action or on his material predicament, are of no consequence to his Nozickean rights. If he has consented to a particular arrangement, the legitimacy of the actions of others involved in the arrangement cannot be questioned. Nor can it be argued, on Nozick's view, that an individual's needs or desires necessitate positive obligations in others.34

IV. FREEDOM, RIGHTS AND THE INDIVIDUAL.

To this point I have attempted to outline and explain the
initial principles appealed to by Hayek and Nozick in the construction of their normative theories of the political order. The remainder of the chapter will explore the relationship, if any, between Hayek's freedom and Nozick's rights. The following chapter will examine the implications of the enforcement of freedom and rights for the relationship between the individual and government.

It has been established that Hayek's freedom and Nozick's rights are specific in content and narrow in meaning, to the extent that they refer to a particular kind of influence asserted in interpersonal relations. It is prima facie plausible to assume that the class of actions which renders an individual 'unfree' in Hayek's sense also infringes that individual's Nozickean rights. Similarly, those influences deemed by Hayek to be irrelevant to freedom (natural factors, 'circumstances', individual capabilities, and the non-coercive actions of others) appear also to be excluded by Nozick's rights. Thus, for both Hayek and Nozick, the sacked employee has no cause for legitimate complaint against either his employer or the economic system to which he is subject.

Despite Hayek's use of the term 'coercion' and Nozick's concern with 'aggression', there appears to be a close similarity between them. What for Nozick is a moral side constraint upon action is for Hayek a condition of freedom. It is difficult to conceive of a case of the dictation of an individual's action by the will of another which would not also constitute a violation of '... persons' rights not to be forced to do certain things'. For example, Nozick's theory of rights enforcement explicitly
includes fraud. And according to Hayek,

[t]here remains, however, one other kind of harmful action which it is generally thought desirable to prevent and which at first may seem distinct. This is fraud and deception. Yet, though it would be straining the meaning of words to call them "coercion", on examination it appears that the reasons why we want to prevent them are the same as those applying to coercion.38

Hence Hayek and Nozick have essentially similar concerns. The reasons for them emphasising fraud is that it can be seen to be equally an instance of unfreedom and a violation of rights. Though it constitutes neither coercion nor aggression in the usual sense, fraud does have the effect of determining an individual's active choice. Thus although Nozick has argued elsewhere that coercion is not a sufficient condition for unfreedom,39 it is clear that his own concept of rights is dependent on an understanding of legitimate individual action that is akin to Hayek's principle of freedom. And the ranges of actions included and excluded by both are overlapping.

The close relationship between the substance of Hayek's freedom and Nozick's rights rests on, and is reflected in, the crucial distinction they both make between freedom or rights and capability, between authorship of choice (consent) and environment of choice. In defining legitimate individual action, the criterion appealed to by Hayek and Nozick is that of who chooses, rather than of the range of options that is available. Thus for Nozick, '...consent opens the border for crossings',40 and for Hayek, '[W]hether he [the individual] is free or not does not depend on the range of choice but on whether he can expect to shape his course of action
in accordance with his present intentions'. The individual who, for Nozick, voluntarily consents is also Hayek's free chooser. And whether a Nozickean individual's action is voluntary depends upon whether or not his rights have been infringed. Hence the connection between the Hayekian principle of freedom of choice and Nozickean rights is a close one. Not only do the same kinds of action that determine legitimate interpersonal relations come under the common rubric of freedom or rights; the grounds for distinguishing between different kinds of influence upon individual action are also commonly arrived at.

There is an important implication of this distinction stressed by Hayek and Nozick between consent and choice-environment, one which highlights the close relationship between freedom and rights. It is that neither value actually guarantees anything specific or positive for the individual in the fulfilment of his goals. 'Being free', or 'having a right', is a purely negative relation between an individual and his fellows. It does not confer general obligations (other than those derived from voluntary contracts), nor does it bear any direct relation to the notion of self-realisation.

According to Hayek,

[it is often objected that our concept of liberty is merely negative. This is true in the sense that peace is also a negative concept or that security or quiet or the absence of any particular impediment or evil is negative. It is to this class of concepts that liberty belongs: it describes the absence of a particular obstacle - coercion by other men. It becomes positive only through what we make of it. It does not assure us of any particular opportunities, but leaves it to
us to decide what use we shall make of the circumstances in which we find ourselves.\textsuperscript{42}

Hayekian freedom can therefore be accurately termed 'negative' in the sense that it does not guarantee the individual specific goods or benefits, aids in the ability to satisfy wants, easy access to the achievement of one's ambitions, or even favourable circumstances. Voluntary exchanges in the free society are entirely dependent on the individual's ability to elicit cooperation from others - in other words, on market forces. The enforcement of Hayek's freedom does not provide anything, beyond the knowledge that one's plans will not be interfered with by the violence or coercive threats of other individuals or groups, or by the state. Hayekian freedom is more aptly described as 'freedom from' rather than 'freedom to', if the 'from' and 'to' are taken to refer to specific things.

The claims made by philosophers of positive freedom such as T.H. Green and Bosanquet,\textsuperscript{43} and by the new welfare state liberals such as Hobhouse, enjoin such notions as self-mastery,\textsuperscript{44} (including control of one's 'inner-self' and control over nature), self-realisation,\textsuperscript{45} self-fulfilment, and sometimes even the pursuit of a common, rational, collective purpose.

For instance, according to A.J.M. Milne, the essentials of the positive theory

\textit{... may be summed up in the proposition that rational moral conduct, self-realisation and freedom are co-extensive. They are different but complementary aspects}
of a single idea: that of a society devoted to the harmonious development by all its members of their various gifts and capacities.\textsuperscript{46} Clearly, the logic of this position does not indicate that Hayekian non-coercion is a sufficient, nor even a necessary condition of freedom. Whether these thinkers are characterised as theorists of positive freedom, following Berlin,\textsuperscript{47} or as Cartesian rationalists or constructivists, following Hayek,\textsuperscript{48} the implication is clear: freedom is taken by some to include things anathema to Hayek's conception, and to exclude other things that are central for Hayek. The minimisation of external, human coercive restraints upon action - for Hayek the only task of the free society - forms only a small part of the theories of freedom advocated by others.

Similarly, Nozicidean rights are clearly negative. The earlier summary of the other kinds of rights claims that philosophers and ideologues have made indicated the distinctiveness of Nozick's approach to the question of rights. Just as Hayek's principle of freedom does not guarantee anything positive for individuals, and is therefore an 'opportunity-concept' rather than an 'exercise-concept' in Charles Taylor's terminology,\textsuperscript{49} so Nozick's rights do not ensure that individuals will reach the goals for which (Nozick admits) they are striving. As I have argued, Nozick claims that we have rights to life, liberty, health and possessions (following Locke),\textsuperscript{50} but they are not rights to a particular kind of life (the kind of life that we necessarily want) or to a particular state of health, or to a particular piece of property. Such results can only accrue from legitimate voluntary contracts. Hence, Hugh LaFollette has claimed, it is possible that everyone
in Nozick's Utopia may have a right to property without anyone actually owning any.

Advocates of positive rights, whether general or particular, pursue values of self-realisation and the achievement of human purposes. They emphasise an individual's right to be given particular things and a concomitant obligation on the part of others to provide these things. This is clearly not the case in Nozick's theory.

The positive rights theorist can envisage a state very different to that allowed by the negative rights theorist. The principal distinction is that the latter, like Nozick, sees no circumstances in which one's so-called positive rights (to welfare, for example) can override another's negative right not to be forced to do certain things, whereas the former does allow for this possibility, and is not worried by it.

The theorist of positive rights may agree with Nozick's claim:

[t]hat it is impossible simultaneously and continually to realise all social and political goods is a regrettable fact about the human condition ...

However, the positive rights theorist would still maintain that the political order can move some way towards ensuring that as many individuals as possible have meaningful opportunities to satisfy their wants and fulfil their purposes. Moreover, the very existence of positive rights would constitute an imperative to positive social action.
Nozick, effectively, claims that any positive rights or obligations that are not consensually arrived at are spurious, and dangerous to the enforcement of our inalienable negative rights, just as Hayek claims that to allow non-voluntary actions under the guise of an obligation to promote 'effective power' would destroy freedom.

Hence Hayek's freedom resembles Nozick's rights in fundamental ways. Both concepts convey legitimacy to individual actions in interpersonal relations; they are specific, stringent and universally applicable; they are concerned with only one class of possible interferences with human lives; they make similar distinctions between voluntary consent and capability for action; they have common criteria for judging acceptable constraints upon behaviour; and most importantly, both freedom and rights explicitly avoid appealing to any notion of self-realisation that would engender positive obligations. In other words, 'being free' in Hayek's sense confers similar entitlements on an individual as does Nozick's 'having rights'.

Essentially, these entitlements form the basis of libertarian individualism. They amount to a sense of individual autonomy, not in the idealist sense of rational self-control or independent determination of one's life, but autonomy in Murray Rothbard's sense of 'self-ownership'. The 'control' achieved by the individual over his life-plans is that (and only that) determined by the extent to which he (literally) makes his own decisions. Choice is defined as 'following a will to action', and Hayek and Nozick only recognise autonomous wills and their derivatives. Thus for Hayek's coerced
individual, '... the only comprehensive design that his actions fit into is that of another mind', and according to Nozick, '[t]o use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has'.

It is this common appeal to individual autonomy that makes Hayek's principle of freedom and Nozick's conception of rights so distinctive; it also directs them towards particular political conclusions. These will be the subject of Chapter 2.
CHAPTER 2. THE NON-INTERVENTIONIST POLITICAL ORDER.

I. INTRODUCTION.

Having firstly outlined and characterised the principles appealed to by Hayek and Nozick in constructing their normative theories of social relations, and secondly having demonstrated the closeness of the relationship between them, I want in this chapter to examine their strictly political implications. In other words, according to the dictates of the non-infringement of freedom or rights, what is the proper role of the political order in the life of the individual? I will argue that Hayek and Nozick have substantially similar general views as to what is to count as legitimate and illegitimate state interference in the lives of individuals, and that these views are closely tied to their commitment to freedom and rights.

II. HAYEK'S LIBERAL ORDER.

Hayek's explicit claim is that his political prescription is a 'Constitution of Liberty'. His stated concern at the outset is with '... that condition in men in which coercion of some by others is reduced as much as possible in society'. In his Introduction, he sees his principal task as an adequate restatement of the value of freedom. He is concerned '... with principles which claim universal validity'. His emphasis is on '... the positive task of improving our institutions'. Clearly, then, Hayek poses the problem of reducing coercion as a task of political life. Hence it is likely that the political institutions and functions advocated by Hayek will be consistent with the aim of minimising coercion,
and will not be concerned with the pursuit of ends which, he argues, interfere with this aim.

Hayek's most succinct statement of his political aims occurs in his essay 'The Principles of A Liberal Social Order'. He states that

> the central concept of liberalism is that under the enforcement of universal rules of just conduct, protecting a recognizable private domain of individuals, a spontaneous order of human activities of much greater complexity will form itself than could ever be produced by deliberate arrangement, and that in consequence the coercive activities of government should be limited to the enforcement of such rules...

Hayek, then, explicitly defines the role of the state as that of protecting the private sphere of the individual, and more importantly, claims that this should be its only coercive role, remembering that 'true coercion occurs when ... the state threatens to inflict punishment and to employ physical force to make us obey its commands'.

Essentially, the task of the state in regulating individual activity is to formulate rules that protect freedom and to use its coercive power to enforce them.

For Hayek, the recognition by society of the individual's private domain (the area in which he may properly execute his free choices) is essential in his political order for the protection of freedom.

Since coercion is the control of the essential data of an individual's action by another, it can be prevented only by enabling the individual to secure for himself some private sphere where he is protected against such interference. The assurance that he can count on
certain facts not being deliberately shaped
by another can be given to him only by some
authority that has the necessary power.7

Hence the rationale for the state's protective role derives from
an important concern of Hayek's definition of freedom: the need
for an individual to know as many of the facts about a decision
or action as are necessary for it to be properly called his action.
What coercion does is to control the data which the individual
himself normally controls in making his purposive choices.

For Hayek, society must have some definitional framework
whereby it can give meaning to the protection of individuals
against coercion. In order for individuals to be genuinely free,
they require the knowledge that certain facts are constant. On
Hayek's account, what is needed is a commonly defined and accepted
social recognition of what constitutes coercion towards individuals.
It is the knowledge that there is guaranteed by society a defined
and protected private domain for all that gives Hayekian freedom
social and political meaning.

But for Hayek, the content of the individual's private domain
is not simply a matter of initiative on the part of the state.
It is determined by adherence to general rules, by respecting the
individual's right to have a voice in his own protected sphere,
and by accepting the need for particular forms of protection
such as private property rights and the enforcibility of voluntary
contracts.8
The character of Hayek's 'abstract and general rules' is embodied in his theory of the rule of law. This will be examined in detail in the following chapter. It is sufficient to note here that Hayek's view of the proper role of the state in determining the content of the private sphere is limited by the imperatives of the principle of freedom. Hence the universal principle of individual free choice dictates what the state may enact through legislation in the area of the private domain. The state's specific role is to enforce the general rules whose content is determined by the demands of freedom.

Despite the somewhat indeterminate nature of Hayek's private sphere, he does specify some particular substantial content for its adequate demarcation. The first essential element of his view is the delineation of property and its protection by the state.

We are rarely in a position to carry out a coherent plan of action unless we are certain of our exclusive control of some material objects; and where we do not control them, it is necessary that we know who does if we are to collaborate with others. The recognition of property is clearly the first step in the delimitation of the private sphere which protects us against coercion; and it has long been recognised that "a people averse to the institution of private property is without the first element of freedom"... According to Hayek, individuals require some property in order to be able to make particular decisions and choices. Hence recognition of it in the definition of the private domain is required by the principle of freedom. However, this does not imply that governments are compelled to provide property for any individual, based on whatever criterion - need, desert, distributive justice, equality.
Rather it means that governments, in order to safeguard freedom, must enforce the right of the individual to property legitimately possessed - that is, through voluntary contract. Hence, that other people's property can be serviceable in the achievement of our aims is due mainly to the enforcibility of contracts. The whole network of rights created by contracts is an important part of our own protected sphere, as much the basis of our plans, as any property of our own.11

The state, then, has an obligation to respect and enforce the voluntary choices of individuals. But for Hayek, to achieve his stated aim of reducing coercion as much as is possible in society, this is all that the state need do. He concludes that... it seems that freedom demands no more than that coercion and violence, fraud and deception, be prevented, except for the use of coercion by government for the sole purpose of enforcing known rules intended to secure the best conditions under which the individual may give his activities a coherent, rational pattern.12

Hayek's recognition of the private domain of the individual, and the imperative that the state guarantee its protection, fulfil the requirements for freedom to thrive in the political order. They exhaust the conditions under which the state may intervene in the individual's free choices. The state's only coercive function, on this view, is the enforcement of legitimate voluntary contracts in the free market.

The close connection between the principle of individual freedom and Hayek's normative theory of the state has specific implications for the argument that the state ought to provide positive goods or opportunities for the individual. Simply, this
is not required by Hayek's theory of freedom. Nor is it acceptable to him as it would, he argues, involve the state in the determination of what the individual's choices will be. Hayek's rejection of any necessary connection between freedom and self-realisation precludes positive state action in the achievement of individual goals. For Hayek, the coercive state must remain a non-interventionist one. Hence,

[generally speaking, this means that the morality of action within the private sphere is not a proper object for coercive control by the state.]

Similarly,

[Equality of the general rules of law and conduct ... is the only kind of equality conducive to liberty and the only equality which we can secure without destroying liberty. Not only has liberty nothing to do with any other sort of equality, but it is even bound to produce inequality in many respects.]

It follows that the Hayekian liberal order has no right to dictate individual goals, can make no moral claims about such goals, and can in no way order individual preferences. It need not provide criteria for determining the results of individual actions, for instance in the distribution of resources, and must not formulate its own hierarchy of ends. Moreover, the state cannot make judgements about the so-called 'justice' of legitimate (non-coercive) human actions which affect the lives of others, even if the effects are detrimental. It has no place in ameliorating environmental constraints upon action. It is not to be the enforcer of a 'common good', since '[a] free society is a pluralistic society without a common hierarchy of particular ends'.
A plurality of interests and an individuation of ends characterise Hayek's order. There are no 'societal goals' as such because individuals do not agree (nor should they be forced to) on collective ends. Hayek's order, the 'catallaxy', is populated by individuals with no knowledge of ends other than their own and those with whom they make voluntary contractual agreements. Moreover, this is its great merit which makes individual freedom and all it values possible. It is indeed characteristic of such acts of exchange that they serve different and independent purposes of each partner in the transaction, and that they thus assist the parties as means for different ends.

Any social order, therefore, which does not recognise man's plurality of ends, does not, on Hayek's view, uphold freedom. And, according to Hayek, political associations that attempt to define and pursue common goals can only do so by issuing specific commands, not through general rules. Such orders are said to treat people differentially, enforce collective goals through coercive means, and hence undermine individual freedom.

For Hayek, 'the interference of the coercive power of government with our lives is most disturbing when it is neither avoidable nor predictable'. It is important whether the government's coercion actually interferes with our individual choices and the formulation of our goals and life-plans. If it does so, the state's legitimate role in the life of the individual is being unduly extended.

Hayek's definition of the state's coercive function in the regulation of individual lives is as explicit and specific as his
Hayek argues, contrary to the American libertarians John Hospers and Murray Rothbard,\(^\text{23}\) that not all government activity is necessarily coercive of individuals. Hayek is clear in his distinction: it is the **coercive** activity of the state that must be curtailed. As one Hayek scholar, N.P. Barry, notes,

... it is not what governments do that is important, although Hayek does believe that most western governments do far too much, but the methods they employ in whatever it is that they do. The principle, therefore, that determines the legitimacy of state action is the principle of the rule of law.\(^\text{24}\)

Government's service functions need not be coercive, though Hayek does admit that they are often coercively enforced through taxation. In his view these functions may be justified either because they reinforce the market order, or they provide competition in the market place, or they render services not covered by private enterprise. Moreover, as long as they are not monopolistic, they need not dictate individual choices. For Hayek, the non-coercive 'service' role of the state does not violate the principle of freedom which dictates the proper function of government in the liberal order.\(^\text{25}\)

In sum, the political imperative of Hayek's commitment to freedom is that the state must protect freedom and never infringe it
in important ways. This involves leaving the individual a private domain in which his free choices are beyond the reach of government intervention. The principle of freedom, then, has clear implications for the political order and its treatment of the individual.

III. NOZICK'S MINIMAL STATE.

Textual analysis reveals that Nozick's commitment to individual rights (that are closely allied to Hayekian freedom) also engenders particular political conclusions. The implication of Nozick's adherence to negative rights is that the state is severely limited in the proper range of its coercive activity.

Referring to the possession of rights by individuals, Nozick concludes,

[s]o strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the state? ... a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; ... any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified ... 27

The individual rights premise is, then, the basis of Nozick's claims about the legitimate functions of the state. In fact, his principal political claim is that our possession of rights makes it imperative for the state to enforce, but never to violate, them. For Nozick, all moral and political justifications are reducible to the effects of actions upon our rights. Only a minimal state, as defined, can be morally justifiable because it protects individual
rights and goes no further.

For Nozick, what the state may legitimately do to individuals derives from what individuals may do to one another without infringing rights.

What persons may and may not do to one another limits what they may do through the apparatus of a state, or do to establish such an apparatus. The moral prohibitions it is permissible to enforce are the source of whatever legitimacy the state's fundamental coercive power has. (Fundamental coercive power is power not resting upon any consent of the person to whom it is applied.)

Hence Nozick's view of the state simply reflects his conception of rights: states may not coerce individuals except to enforce rights, and, more fundamentally, the very legitimacy of the state derives from individuals actually having rights. The state may not coerce us, therefore, because we may not coerce one another. As Nozick claims, 'Moral philosophy sets the background for, and boundaries of, political philosophy'.

Initially, Nozick takes seriously the anarchist claim that no state is justified (on moral grounds) in interfering coercively in individual free choices in any circumstances, even if it is to protect the individual's right to make such choices. Hence,

[the fundamental question of political philosophy, one that precedes questions about how the state should be organised, is whether there should be any state at all.]

However, in attempting to establish the proper role for the state in the life of the individual, Nozick argues against the anarchist
position that no state can avoid infringing moral autonomy. 31
He claims that a morally justifiable state can arise naturally, and without anyone intending it (through what he calls an 'invisible-hand' process 32 ). This 'minimal state' does not infringe anyone's rights because individuals consent to it. In effect, they 'back in' to it. 33

Nozick describes how such a state could arise. Individuals, he argues, in a Lockean-type state of nature, a stateless society, have the right to protect themselves against the aggression of others. But, following Locke, it is inconvenient for individuals in the state of nature to be always exacting punishment and compensation, and protecting themselves.

Thus private and personal enforcement of one's rights ... leads to feuds, to an endless series of acts of retaliation and exactions of compensation. And there is no firm way to settle such a dispute, to end it and to have both parties know it is ended. Even if one party says he'll stop his acts of retaliation, the other can rest secure only if he knows the first still does not feel entitled to gain recompense or to exact retribution ... Also, in a state of nature a person may lack the power to enforce his rights; he may be unable to punish or exact compensation from a stronger adversary who has violated them ... 34

In other words, Nozick recognises the need to guarantee the individual security in his possession of rights. Our possession of rights makes it imperative that they be enforced, and private enforcement is unsatisfactory for Nozick on several grounds. 35

Individuals, cognizant of these 'inconveniences', may form
or join 'protective associations' to have their rights enforced. These institutions for Nozick resemble insurance companies. The process of forming these associations can lead, through market considerations of efficiency and cost-effectiveness, to the formation of a dominant protective association. This safeguards the rights of most individuals within a geographical area.

However, such a dominant agency which emerges without, Nozick argues, infringing anyone's rights is still not a state: it lacks a monopoly on the use of force and it does not protect everyone within its territorial domain. Nozick terms it the 'ultraminimal state'.

It can become a state through its unique power position of a 'de facto monopoly' in which the punishment procedures of 'independents' not covered by the dominant association towards those covered may be judged to be risky or dangerous - that is, they may violate the rights of those covered by the dominant association. The latter has the right to prohibit such punishments. In which case, it also has an obligation to supply the independent with protective services against its client.

Hence Nozick claims to have demonstrated how a state (formerly the dominant protective association) with the dual characteristics of a monopoly of force and an all-inclusive enforcement of rights over a geographical area, can be derived from the individual's right to protection against rights-infringement, without anyone's
rights being violated.

The rights possessed by the state are already possessed by each individual in a state of nature.42

Nozick's discussion of how a morally justifiable state can arise serves as a description for his own prescribed social order. His derivation has as its premise the possession of rights by individuals. The nature of these rights, which are negative and absolute, to uncoercive, autonomous activity, dictates the functions of a morally justified state.43

Nozick's preferred political order, then, reflects the kinds of rights that we are said to possess. Law enforcement - that is, the settling of disputes and the punishment of aggression - is the only proper activity in which a state may legitimately engage. The minimal state can only be justified by an appeal to negative rights: Nozick's order does not get involved in guarantees other than those of personal security. The only rights to be enforced by the state are procedural rights.44

Nozick describes his minimal state as a 'framework for utopia',45 which consists '... of many different and divergent communities in which people lead different kinds of lives under different institutions'.46 His essentially pluralist assumption is that people are different and their desires and goals complex. The best possible world for all of us can never be more than the best possible world for each of us.47
Utopia is a framework for utopias, a place where people are at liberty to join together voluntarily to pursue and attempt to realise their own visions of the good life in the ideal community but where no one can impose his own utopian vision upon others.48

Utopia, in Nozick's view, will consist of diverse institutions, practices and communities arrived at independently, irrespective of any particular individual's conception of what the world should look like.

Nozick distinguishes 'filter processes' from 'design devices' in his account of the minimal state.49 The former describe the spontaneous processes by which individuals try out different schemes and attempt to realise various visions, independently of the plans of others. Design devices, on the other hand, involve the construction of one best society by some planning mechanism, and are therefore to be rejected as they attempt to impose the constructed vision upon other individuals. Filter devices are characteristic of Nozick's state since they infringe no one's rights.

Nozick's political order is a 'free society'.50 'It is what grows spontaneously from the individual choices of many people over a long period of time ...'51 The suggested diversity of Nozick's framework inclines him not to attempt to describe the shape or content of such a society, as this can only be developed over time by individuals choosing their own goals in unpredictable ways.
Nevertheless, Nozick does claim that his own view of utopia necessitates a specific political commitment to the minimal state with its narrowly specified functions. He concludes that:

[t]he minimal state treats us as inviolate individuals, who may not be used in certain ways by others as means or tools or instruments or resources; it treats us as persons having individual rights with the dignity this constitutes. Treating us with respect by respecting our rights, it allows us, individually or with whom we choose, to choose our life and to realise our ends and our conception of ourselves, insofar as we can, aided by the voluntary cooperation of other individuals possessing the same dignity.52

Clearly, there is a role for a state in Nozick's rights-respecting free society. Moreover, its relationship to the individual is explicitly defined. The legitimate state must protect individual rights, and only those rights specified by Nozick. Hence any individual action which does not involve aggression against another person is regarded by Nozick as legitimate, and the state has no right to intervene, however detrimental an individual's actions may be to the purposes of another. It is only when breaches of consent which violate an individual's rights occur that the state must act. Moreover, the state cannot coerce us in our voluntary choices, either by dictating its own goals or by prescribing ours:

... the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection.53

Thus Nozick's state is a non-interventionist one. On this view, our entitlements are derived from voluntary contracts54 and not by the state's determining of what is a 'just' distribution. R.A. Rodewald claims that it is Nozick's contention
... that the enforcement of any theory of rights which is incompatible with his own will require 'continuous interference with people's lives'.

For Nozick, 'patterned' principles of distribution seek to achieve a particular result such as substantive equality or the meeting of welfare needs. In other words, the result would be a society with a particular shape. This he contrasts with his own entitlement theory, which rests upon 'historical' principles. That is, '... whether a distribution is just depends upon how it came about'.

Nozick uses the Wilt Chamberlain basketball example to illustrate how liberty upsets patterns. Suppose there is a patterned (or end-state) principle of equality of income operative in society. Next, some of the residents agree to give a portion of their income to watch Wilt Chamberlain playing basketball. In the process he will receive a more than equal share, thereby upsetting the pattern. However, the resultant inequality in this example comes about through the voluntary decisions of those who were acting within their Nozickean rights. They consent to the transfer. For the state to uphold the pattern of equal distribution (or any enforced pattern), it would necessarily have to impose limits on what individuals can do with their earnings, and on what others can earn through free contracts. The rightful, free actions of individuals alter the shape of a patterned society, and to prevent this, Nozick suggests, a central agency would have to interfere coercively with individual lives.
Since the task of the state is to uphold rightful practices, it need not encompass such concerns as the structure of society or the particular pattern of economic distribution therein. Hence Nozick's theory envisages and legitimises an extensive system of private property rights.\textsuperscript{59}

Rival theories attempt to justify an interventionist state on a variety of grounds. To do so they must either maintain that Nozickean rights are not the only rights that we possess, or that an extensive state (which dictates goals) does not violate our negative rights.\textsuperscript{60} Nozick rejects both of these arguments by attempting to firstly establish the absoluteness of his own rights, and then to maintain that alternative conceptions of justice, and other arguments for extensive state activity of a coercive nature, necessarily violate our only genuine rights. Nozick's exclusion of the possibility of there being positive rights to receive particular benefits, therefore, is central to his rejection of coercive state action of a redistributive kind. For, on Nozick's account, the only positive rights that we possess are those guaranteed to us by others in voluntary contracts. Hence, '... it is only coercive routes towards these goals that are excluded, while voluntary ones remain'.\textsuperscript{61} If all individuals consented to collective state action in the pursuit of a particular pattern or purpose, it would be legitimate.

Thus Nozick can claim that coercively enforced taxation is on a par with forced labour;\textsuperscript{62} he can reject welfare state
practices and any enforced distribution of wealth; he can dismiss claims in support of substantive equality or equality of opportunity (including Bernard Williams' arguments about medical care); and he can exclude from the legitimate range of activities engaged in by the state the guarantee of self-esteem, meaningful work, worker access to the means of production and compulsory philanthropy.

In sum, an analysis of the nature of Nozick's political order confirms the primacy in his thought of enforcing certain rights. Rights are the criteria by which he judges the acceptability of political institutions and states. The just state must protect these rights, it need do no more, and if it does, it must do so without infringing rights. Coercive state action which dictates individual goals is not acceptable. According to Nozick, both our possession of rights, and the kind of rights that we possess, shape the proper ends of political life.

IV. SUMMARY AND CONCLUSIONS.

The chief conclusions to emerge from a textual examination of Hayek and Nozick are that, firstly, they appeal to universal principles in order to legitimise certain kinds of social relations; secondly, these principles - freedom and rights - are closely related through shared characteristics and common distinctions; thirdly, the principles appealed to have specific implications for political life and, in particular, for the prescribed relationship between individual and state; and finally, Hayek and Nozick reach the same general political conclusion as to the nature of this relationship - the only legitimate political order is a
'non-interventionist' one.

What is the character of this political order? Hayek and Nozick argue that our possession of freedom or rights makes it imperative for the state to act in specific ways with regard to individual free choice. Voluntary choices are, on this view, legitimate if they do not interfere with others in certain ways. The function of the coercive arm of the state is to uphold voluntary, legitimate individual action. Hence the first characteristic of a non-interventionist order is the obligation to protect freedom and enforce rights. This involves the punishment of those who infringe these principles, and the laying down of rules which define legitimate action. The state must punish force, theft, fraud and breaches of voluntary contract, and must protect property rights.

Secondly, for Hayek and Nozick, the political order need do no more than this. There is no imperative, it is argued, to guarantee individual goal-satisfaction or self-realisation, for such ends are not stipulated by the conceptions of freedom and rights advanced by Hayek and Nozick. These principles do not demand that constraints upon action other than 'coercion' or 'aggression' be ameliorated by the state. For Hayek, such constraints are not relevant to the pursuit of freedom, while for Nozick, there are no general positive rights. Hence the coercive role of the state is a strictly limited one.

Thirdly, Hayek and Nozick conclude that the political order
must not pursue individual goal-satisfaction where this activity involves coercing people. There is an imperative not to force individuals to do specific things, including providing welfare for others. Since we as individuals may not interfere with other individuals in certain ways, the state may certainly not do so. The libertarian criterion for judging legitimate state action is whether or not it dictates people's goals and choices. This third condition implies that the state must not define its own collective goals if this means coercing individuals; hence, on this account, the pursuit of patterned principles of distribution or a common hierarchy of ends is precluded because individuals have different goals, and to alter these in any coercive way would necessarily involve illegitimate state interference.

These, then, are the principle characteristics of the non-interventionist political order favoured by Hayek and Nozick. They have been shown to be specifically and clearly defined, and to have purely negative implications for the individual's pursuit of goal-satisfaction. How these aspects of the non-interventionist order are related to the notion of justice is the subject of the following chapter.
CHAPTER 3. JUSTICE AND THE POLITICAL ORDER.

I. INTRODUCTION.

In Chapter I principles were discovered in the thought of Hayek and Nozick which determine the role of the state in the life of the individual. It was argued in Chapter 2 that, in order to protect freedom and enforce rights, the non-interventionist political order must not interfere coercively in the free choices of individuals.

However, freedom and rights are not the only principles appealed to by Hayek and Nozick, though they are the main ones. In attempting to define 'legitimacy' in social relations generally, and in political principles in particular, Hayek and Nozick address the question of justice. This chapter attempts to make explicit their answers to the question 'what is justice?', in order to determine the relationship, if any, between Hayek's concept of justice and Nozick's, and to demonstrate the close connection between justice and the principles of freedom and rights.

It will be discovered that the implications of the 'non-interventionist' theory of justice are sufficiently important for the role of the state in the life of the individual to warrant particular attention. Equally, such a theory is sufficiently distinctive to demand separate treatment from the concepts of freedom and rights analysed in Chapter I.

I will argue that Hayek's theory of the rule of law and
Nozick's entitlement theory of justice reinforce their political conclusion that freedom and rights demand a non-interventionist political order. In other words, the free society in which rights are respected and in which the coercive function of the state is severely limited is, on this view, also a just society. It is a market order in which the voluntary contracts of individuals alone determine the allocation of resources in society. This leaves no room for the state to determine what is 'socially just'. This non-interventionist imperative adhered to by Hayek and Nozick is a distinctive and controversial claim that has been challenged by defenders of various forms of interventionist order such as the welfare state. The latter argue that governments have a specific and positive role to play in the allocation of resources among individuals. Such a 'distributive' role is rejected by Hayek and Nozick. The voluntary choices of individuals constitute for them the ends of justice to be pursued by the legitimate political order. On this account, justice concerns what individuals do, not what happens to them.

II. HAYEK'S RULE OF LAW.

I demonstrated in the previous chapter that the coercive function of government in Hayek's liberal order is confined to enforcing those rules of just individual conduct which protect the individual's private domain. It is by the rule of law that society's recognition and delimitation of the private sphere is achieved and enforced. For Hayek, liberty and law are synonymous. He quotes approvingly a nineteenth-century German legal philosopher, F.C. von Savigny:
The rule whereby the indivisible border line is fixed within which the being and activity of each individual obtain a secure and free sphere is the law.¹

Hayek conceives of laws as 'abstract rules' and deliberately distinguishes them from 'commands', which, he claims, are specific.² The latter are said by Hayek to be arbitrary, since they distinguish between individuals and force them to do particular things, thereby breaching their voluntary consent. According to Hayek, commands reflect a will that is independent of, if not contrary to, the will of the particular individual. A law, however, on the Hayekian conception, is

... a general rule that everybody obeys, unlike a command proper, [and it] does not necessarily presuppose a person who has issued it. It also differs from a command by its generality and abstractness.³

Or, as N.P. Barry points out,

[a] command is an instruction emanating from a determinate source and addressed to a specific purpose while a law is highly general in form, does not presuppose a definite source, and does not specify a particular action but merely forbids a range of actions.⁴

Laws then, are independent of individual purposes, and do not embody a particular purpose themselves. They do not deliberately bestow benefits on specified individuals or classes; rather they are universal in their application and in their guarantee of equality.⁵

Hayek insists on the consistency between legitimate laws and freedom, in claiming that '... when we obey laws, in the sense of general rules laid down irrespective of their application to us,
we are not subject to another man's will and are therefore free'. Moreover, laws for Hayek can actually promote freedom for individuals, and not simply not curtail it. Laws provide additional information for the individual in the ordering of his actions.

If individuals know in advance that Hayek's general rules will apply universally to all like cases, will be abstract in that they will not serve the lawgiver's (the state's) own interests, and will not force individuals to do specific things, then those individuals may still make their own voluntary choices without the threat of arbitrary interference. Provided they do not coerce others, they will be able to count on the law's protection.

Hayek's legitimate laws are, for him, equivalent to the limitations upon human action imposed by the laws of nature. Even though we cannot fly, we need not feel coercively constrained by the fact, and can still formulate our own plans with this knowledge in mind. It may mean that our range of choice is limited - we have to rely on mechanical means of air transport - but, he argues, it is still our choice. Similarly, the kinds of state laws advocated by Hayek do not limit our choosing to the extent of forcing particular actions, but rather provide '... fixed features in the environment ...' in which we act.

Hayekian laws are therefore unlike commands. They supposedly uphold individual freedom, and do no more than this. On this view, the law is only coercive to the extent that the protection of
freedom involves the threat of punishment in order to be effective. But Hayek argues that such a threat affects only those who would seek to infringe freedom, so individuals need never be coerced by the law.¹⁰

For Hayek, then, the rule of law is a condition of freedom, and the only legitimate laws are those which uphold freedom. Their chief characteristics are generality, abstractness, and equal and universal applicability. (The latter includes the law-makers as well). 'Law', in Hayek's terms, is not the same as 'legislation' - the latter is made whereas the former is discovered.¹¹ Specific commands which discriminate among different individuals are inconsistent with Hayek's rule of law, and therefore with freedom. For they involve the assignment, by government, of particular tasks to particular individuals regardless of the dictates of their own free choices. And according to Michael Polanyi,

[w]hen order is achieved among human beings by allowing them to interact with each other on their own initiative - subject only to the laws which universally apply to all of them - we have a system of spontaneous order in society ... The actions of such individuals are said to be free, for they are not determined by any specific command, whether of a superior or a public authority; the compulsion to which they are subject is impersonal and general.¹²

Hayek's theory of justice revolves around his conception of the rule of law. The general rules of just individual conduct that are characteristic of his idealised interpersonal and governmental relations are embodied in the dictates of law. This law is, according to Hayek, the product of undesigned, evolutionary
growth rather than of constructivist rationalism.

However, Hayek gives further content and meaning to his prescribed rules of just conduct in 'The Principles of A Liberal Social Order', in which he states his four central precepts of justice. Firstly,

... that justice can be meaningfully attributed only to human action and not to any state of affairs as such without reference to the question whether it has been, or could have been, deliberately brought about by somebody...\textsuperscript{13}

In other words, neither the law of nature nor the allocation of resources in a market economy (catallaxy) is susceptible to the description 'just' or 'unjust'. Nature, on this view, is not unjust. The treatment of individuals by a cyclone may be unfortunate or tragic, but can never be accurately described as 'unjust'. And the treatment of the poor or the unemployed by the market order may be similarly unfortunate, unequal or lopsided. But for Hayek, neither 'systems', nor the unintended consequences of non-coercive (that is, just) human action, can be called unjust. Processes that are impersonal and general are unjust only to the extent that they involve particular individual actions that are coercive.\textsuperscript{14}

Hayek's second axiom of justice is that

...the rules of justice have essentially the nature of prohibitions, or in other words, that injustice is really the primary concept and the aim of rules of just conduct is to prevent unjust action ...\textsuperscript{15}

This reinforces the distinction between negative general rules and particular positive commands. If individuals are to be allowed
to use their own knowledge for their own purposes, then only
rules which tell them what they must not do can, for Hayek, avoid
being coercive. A 'just situation' is reducible to the absence of
injustice, of coercive human action. This is clarified in Hayek's third
precept:

... that the injustice to be prevented is
the infringement of the protected domain
of one's fellow men, a domain which is to
be ascertained by means of these rules of
justice ...\(^{16}\)

The object of injustice, of deliberate human action, is the
private sphere of other individuals. On Hayek's account of justice,
individual free choice and voluntary contracts are inviolable. The
task of a theory of justice does not extend beyond the prohibition
of coercion. It cannot prescribe, for instance, a specific material
condition for individuals or groups.\(^{17}\) Fourthly, Hayek claims

... that these rules of just conduct which
are themselves negative can be developed
by consistently applying to whatever such
rules a society has inherited the equally
negative test of universal applicability ...\(^{18}\)

Rules are just, according to Hayek, if they are applied negatively,
generally and consistently, not being open to the discretionary
powers of government. They are infringed only by coercive human
action, and the object of their protection is the private sphere
of the individual. And given Hayek's delimitation of the latter
(as outlined in the previous chapter), just rules necessarily
enforce property rights and contracts freely arrived at.\(^{19}\)

Hayek's theory of justice is essentially procedural. As
N.P. Barry notes,

[p]rocedural justice can best be understood
as a contrast to end-state or patterned conceptions of justice. Instead of social situations being compared in terms of such external criteria as merit, desert, need, and so on, they are evaluated by reference to rules and procedures; if these rules and procedures are adhered to rigorously then no further comment on the justice or the injustice of the outcome is required.\textsuperscript{20}

Hayek's theory has also been described as 'commutative' justice.\textsuperscript{21}

He rejects the legal positivism of, for instance, Hobbes and Kelsen - his rules exist independently of particular legislatures.\textsuperscript{22} (It is in this sense that they are discovered rather than created).

In making such claims, Hayek is much closer to the natural law position.\textsuperscript{23}

The anti-utilitarianism of his political position is clearly evident in his conception of justice. He emphatically rejects the very notions of 'social' or 'distributive' justice, and the strong, centralised authority that they would require. His notion of justice is clearly historical: criteria for judging justice exclude reference to the results of human actions. In sum, Hayek's position is that a just social order is one in which individual freedom is guaranteed by the formulation and enforcement of general rules and the avoidance of specific commands which reflect a 'societal purpose'.

\textbf{III. NOZICK'S ENTITLEMENT THEORY.}

Nozick's theory of justice, the 'entitlement theory', arises as a counter-argument against those who purport to justify a more extensive state than that tolerated by Nozick. In particular, he questions the claim '... that a more extensive state is justified,
because necessary (or the best instrument) to achieve distributive justice ...'. The interventionist state, as proposed, for instance, by Rawls, has functions that go beyond the protection of the negative, absolute rights of individuals. Moreover, in Nozick's view, a redistributive state cannot avoid violating rights.

For Nozick, justice concerns the 'holdings' or 'entitlements' that individuals possess. A person's holdings are justly held if he is entitled to hold them. This entitlement condition reflects three general principles: justice in acquisition, transfer and rectification. Put simply, an individual is entitled to a holding if it is unheld, and he acquires it without violating the principle of justice in acquisition; or if it has been legitimately transferred to him from someone else (either as a gift or by voluntary exchange) who had previously been entitled to it; or if he had been previously wrongfully deprived of a holding which he had a right to, and could claim it under the principle of rectification.

Nozick admits that these broad principles form only an outline of an adequate theory of justice. For example, he notes that the practical (and redistributive) problems raised by the rectification principle are enormous. However, the three principles do provide an explicit basis for the working out of an entitlement theory of justice. Moreover, they reflect his general criterion for thinking about justice.

The complete principle of distributive justice would say simply that a distribution is just if everyone is entitled
to the holdings they possess under the distribution. For Nozick, a society is susceptible to the description 'just' only in the sense that the individuals who comprise it possess their holdings legitimately, that is, by not infringing rights. This is similar to Hayek's claim that only individual action, not a society's resource allocation, can be described as 'just' or 'unjust'. Hence, 'if each person's holdings are just, then the total set (distribution) of holdings is just'.

The major point of such 'historical' principles is that the justice of any situation, whether it be a matter of distribution generally or a particular individual action, is purely a function of how it came about. A distribution is just if it arises from another just distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The legitimate first "moves" are specified by the principle of justice in acquisition ... Whatever arises from a just situation by just steps is itself just.

Alternative conceptions, variously termed by Nozick 'patterned', 'end-state' or 'current time-slice' principles, judge matters of justice in terms of the results, not simply the nature, of human actions. They assess justice according to what a situation or distribution actually looks like, whether it fulfils some preferred allocation such as equality, merit or need.

Nozick's theory, then, is distinctive; he claims that 'almost every suggested principle of distributive justice is patterned:
to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on'. But whereas most alternative theories specify distribution along a particular dimension, Nozick states that

[t]here is no one natural dimension or weighted sum or combination of a small number of natural dimensions that yields the distributions generated in accordance with the principle of entitlement. The set of holdings that results when some persons receive their marginal products, others win at gambling, others receive a share of their mate's income, others receive gifts from foundations, others receive interest on loans, others receive gifts from admirers, others receive returns on investment, others make for themselves much of what they have, others find things, and so on, will not be patterned.

The voluntary choices of free individuals in an open market are unpredictable. The resulting allocation of resources will not necessarily conform to any pattern, particularly not one of equality. More importantly, the entitlement theory is not only distinct from, but is incompatible with a patterned theory that is concerned solely (or even primarily) with particular results. This is so because Nozick's concrete entitlements - determined by the three principles - leave no room for any other rights or conceptions of justice.

On this view, there can be no conflict between one individual's right to particular holdings and another's claim to the same holdings. If the first individual's claim is legitimate, then his holdings cannot be taken without his consent to the transfer.
There is no room for a 'general' entitlement, in other words. Nozick's rights are absolute, not prima facie. The three principles fill the moral landscape upon which a theory of justice must be erected.

A notable implication of the perceived incompatibility of Nozick's entitlements with any patterned conception is that, in order to achieve and maintain the latter, the allocating agency would for Nozick have severely to curtail individual liberty.

... no end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference with people's lives. Any favored pattern would be transferred into one unfavored by the principle, by people choosing to act in various ways; for example, by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern. To maintain a pattern one must either continually interfere to stop people from transferring resources as they wish to, or continually (or periodically) interfere to take from some persons resources that others for some reason chose to transfer to them.38

A theory of justice committed to any pattern is, according to Nozick, in violation of an individual's right not to be forced to do certain things. The compulsion required by such enforced redistribution schemes breaches individual consent.

Another implication of Nozick's entitlement theory is that individual property rights are limitless in a society whose sole distributive criterion for justice is free choice, provided that no one's entitlements are illegitimately owned or transferred. Justice in original acquisition occurs when no other individuals
are entitled to a good or holding. Nozick's only restriction upon rights to acquire property is the weak Lockean proviso:

A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened.\(^9\)

Nozick claims that this proviso is not only weak, but is unlikely to come into effect in a true market economy.\(^40\) Importantly, the proviso does not guarantee to persons rights to well-being or to a particular property. And it does not provide any substantive limitations on an individual's right to accumulate possessions. Such limitations, clearly, would not constitute legitimate requirements for Nozick's conception of an adequate theory of justice.

It is apparent, then, that Nozick's entitlement theory of justice accords with his conception of rights.

Some people steal from others, or defraud them, or enslave them, seizing their product and preventing them from living as they choose, or forcibly exclude others from competing in exchanges. None of these are permissible modes of transition from one situation to another.\(^41\)

In other words, any infringement of individual rights is susceptible to Nozick's third principle of justice, that of rectification. But this is the only justification for redistribution by the state that is allowed by Nozick. And it does not, on this account, involve appealing to a patterned or end-state principle of justice.

Similarly, in the three cases previously noted, that of Wilt Chamberlain, the marriage partners, and the worker-employer
relationship, the criterion invariably appealed to is historical and dependent upon rights. Wilt Chamberlain's massive income is just because it came about through a legitimate, voluntary transfer of resources, despite the gross inequality of the end-result of the transfer. The fact that Z has no option but to marry Z' because A and A' to Y and Y' have married and thereby foreclosed particular choices is not an unjust situation because all those partners had a right to marry whom they chose to - those who would marry them. The worker who must accept servile employment or starve cannot complain that his situation vis-a-vis the employer is unjust, provided that the employer did not force him to take the job. What the distribution looks like bears no causal relation to matters of justice. The above cases can only be described as 'unjust' by appealing to principles other than those advocated by Nozick, for instance, to positive rights.

In sum, Nozick's historical principles of justice are clearly overlapping with the values of autonomy, consent and respect for negative individual rights. The proper task of justice is to uphold just practices, and does not encompass such concerns as the structure of society or the particular results of distribution therein. Like Hayek's notion of the rule of law, Nozickean justice is entirely procedural. It leaves no room for the state to pursue its own view of 'social justice'.

IV. FREEDOM, RIGHTS AND THE JUST POLITICAL ORDER.

I have hitherto argued that both Hayek and Nozick have explicit and specific theories of the just social order. Their standards
for judging justice are comprehensive yet stringent. However, the foregoing analysis also establishes a substantial similarity between Hayek's rule of law and Nozick's entitlement theory of justice. Both sets of assertions about the nature of justice are consistent with the political imperatives of the non-interventionist state - that a just political order must not coerce the individual except in the punishment of injustice; that such an order cannot, without exceeding its legitimate role, impose its own pattern of justice if this breaches voluntary individual choices; and that governments need not create positive obligations in the name of justice, for these are not required by the punishment of injustice. The principles of justice appealed to by Hayek and Nozick fully meet the requirements of freedom and rights in the non-interventionist order.

Both Hayek and Nozick view justice in terms of individual action rather than according to the dictates of a preferred end-result. Hence nature, misfortune, the results of non-coercive human action and the random allocation of resources by the market cannot by properly described as 'unjust' and therefore subject to a central re-allocation. Society as a whole is not responsible for determining particular end-results; distribution in a free society cannot be determined by a single human will. Since only particular injustices need be prevented, the economic order does not require regulation in the pursuit of justice. Hence for both Hayek and Nozick, just individual components make a just society.

Similarly, how things come about is the sole criterion for
Hayekian law and Nozickean entitlement. End-results are of no relevance to the problem of justice. The morality of state action is defined solely by reference to the legitimate particular actions of individuals. This reduction of all considerations of justice to the one level of individual entitlement is characteristic of both Hayek's liberal order and Nozick's minimal state. For Hayek, the pursuit of social justice is a dangerous 'mirage'. For Nozick, individual rights and private domains leave no room for a redistributive political order. For both, the role of the state is circumscribed negatively in its treatment of the individual by the nature of justice.

Clearly, for defenders of the notions of positive rights, self-realisation and social justice, a non-interventionist political order is insufficient. Redistributive state action is, on this view, allowable under, even required by, the dictates of equality, welfare and the common good. Morality is seen here as consisting of more than simply the allowance of uncoerced, voluntary, individual choosing. The choices that individuals make affect others in important ways. Hence positive rights theorists argue that the task of a just order is to ameliorate constraints upon individual action so that persons may actually fulfil their life-goals in meaningful ways.

In the first three chapters I have outlined and characterised the nature of the non-interventionist order and the fundamental principles of freedom, rights and justice that it upholds. I have confirmed the connection between Hayek and Nozick in their common
rejection of coercive state action outside the punishment of injustice. This exercise has been expository and comparative. The following chapters will explore the justificatory arguments appealed to by Hayek and Nozick in support of their shared political positions, and will seek to elicit their contrasting sources and emphases as well as their shared premises and assumptions. In doing so I will expose them to the counter arguments of those who, like the above-mentioned theorists, see a much more positive role for the political realm in the life of the individual.
PART II. JUSTIFICATORY ARGUMENTS.
CHAPTER 4. HAYEK'S ARGUMENT FOR THE NON-INTERVENTIONIST ORDER: 
THE BENEFITS OF FREEDOM.

I. INTRODUCTION.

In Part I I offered an account of the kinds of social arrange­ments espoused by Hayek and Nozick; the aim of Part II is to examine 
the arguments with which they attempt to justify or support those 
kinds of arrangements. The central question is whether Hayek and 
Nozick provide good reasons for accepting their preferred political 
order, and whether they succeed in delegitimising alternative 
forms of political association and the activities which these states 
engage in. The main thrust of criticisms of Hayek and Nozick is 
that their 'nightwatchman state' does too little, not that it does 
too much. Hence it is with this objection that I mainly deal.

Both Hayek and Nozick appeal to various arguments to justify 
the non-interventionist state. In particular, Hayek embraces two 
positions in his attempted dismissal of the intervening order. 
Firstly, he claims that positive state action, for example the re­distribution of wealth to eliminate poverty or inequality, or gradu­ated taxation to ensure self-realisation, is inconsistent with his 
stated value of freedom and all that it provides. Secondly, Hayek 
argues that these interventionist state activities are based on 
fundamentally flawed premises, and are therefore bound to fail 
anyway. Hence there are two levels of argument in Hayek, two sets 
of reasons why he refuses to accept a state whose coercive role 
goes beyond that of protecting individual freedom.
In this chapter and the first part of Chapter 6 I want to do three things: firstly, to establish that there are the two levels of argument in Hayek's thought outlined above; secondly, to outline the form that his two arguments actually take; and thirdly, to explore whether his premises, assumptions and arguments yield the desired conclusions, and whether they meet the objections of Hayek's critics.

This chapter focusses on Hayek's contention that the interventionist order is inconsistent with individual freedom, and asks whether this conclusion is important politically. That is, does Hayek provide good reasons for placing freedom above other possible goods? Does he demonstrate that freedom outweighs the advantages to be gained from an interventionist order?

In The Constitution of Liberty and elsewhere, Hayek continually refers to the benefits of freedom. In this sense, he seems to regard freedom as an instrumental or consequentialist value. The good derived from protecting freedom is not solely, or even largely, related to the actual pursuit of freedom, but rather is to be seen in the things that flow from freedom. Hence, freedom, for Hayek, is not justified by argument about the evil nature of coercion, the source of unfreedom. Although he emphasises coercion, and occasionally refers to the nature of compulsion, he seems to eschew it for more complex reasons. The immorality of coercion does not occupy the focal point of his political thinking. For instance, he is prepared to abide some forms of coercive state action if they can be shown to generally enhance individual freedom.
Hayek, then, has a 'maximising' view of freedom. In this sense his justification of it is utilitarian in nature. Although his conclusions are strictly non-, and in fact anti-utilitarian, to the extent that he refuses to 'fill in' the content of freedom and prescribe particular societal goals, he does nevertheless espouse the virtues of freedom largely in terms of the ways in which it best utilises society's productive forces. It enables individuals to do things that maximise their own happiness and that of others. Freedom is the means whereby society benefits from the actions of individuals - hence it is said to serve the utilitarian function of transmitting the preferences of particular people into socially useful actions. Although the uses to which society will put freedom are not specified by Hayek, his argument in terms of the benefits of freedom does depend on there being uses. Otherwise, in the absence of a deontological argument, his case for individual freedom would collapse.

What, then, are the specific benefits of freedom appealed to by Hayek? Essentially, he argues that the free society, based on voluntary contracts to the mutual benefit of participating individuals, is conducive to individual goal-satisfaction. The catallaxy, based on reciprocity of interests, is more likely to enable individuals to pursue self-fulfilment than is an order based on commands and government intervention. Through uncoerced activity, individuals can make more use of dispersed knowledge than is possible under centralised planning.

Hence Hayek's primary justificatory appeal is to the notion
of self-gratification, eschewed by him in constructing a definition of freedom. He sees a tension between the ideals of goal-pursuit and goal-satisfaction in the political order. However, the question is raised, firstly, whether the political order of non-intervention is sufficient to provide the framework for goal-satisfaction that Hayek clearly desires, and secondly, whether a more positive attempt to do so by the state would deny the benefits of Hayekian freedom. These questions, and the possible tensions that they point to in Hayek's thinking, occupy the central critical thesis of this chapter: that a thoroughgoing commitment to individual self-fulfilment, to which Hayek ultimately appeals in his teleological argument, perhaps requires much more than simply the containment of coercion, for coercion is not the only interference in individual life that prevents goal-satisfaction and that is susceptible to positive corrective action by the state.

To establish this thesis I examine, in turn, the nature of the benefits Hayek associates with freedom as non-coercion, the reasons why Hayek is concerned only with coercion in defining freedom, the relationship between coercion and goal-satisfaction, and the distinction Hayek draws between actions which affect options and actions which dictate choices. I then turn to Hayek's liberal order to determine the extent to which he actually allows coercion in certain instances.

II. THE BENEFITS ARGUMENT STATED.

According to Hayek's understanding of the development of liberalism, the non-interventionist order
... derives from the discovery of a self-generating or spontaneous order in social affairs ... an order which made it possible to utilize the knowledge and skill of all members of society to a much greater extent than would be possible in any order created by central direction, and the consequent desire to make as full use of these powerful spontaneous ordering forces as possible.1

Although this is an historical explanation of the development of liberalism, Hayek holds the view that a freedom-maximising political order is justified by both a discovery and a desire. Though these two claims are related, they provide different kinds of justification for non-intervention in individual choosing, and have different normative implications. The discovery of spontaneous order according to Hayek, is essentially an assertion about the nature of society which supposedly directs us towards a non-interventionist order. The desire to maximise spontaneity takes individual freedom as a starting point and argues from the benefits that utilising it will provide. That freedom reflects certain facts about society and that its pursuit ensures specific desirable consequences are both important arguments said to justify a non-interventionist political order.

Hayek asserts that freedom provides benefits and values. As J.W.N. Watkins claims, 'Hayek conducts his arguments in terms of the benefits of freedom; and the benefits he points to are enormous'.2 If this account is accurate, it would appear that Hayek's argument is a consequentialist one, and that freedom is primarily valuable instrumentally, as a means for the achievement of other ends. For instance, Hayek quotes approvingly the claim of one writer, H.B. Phillips, who argues that
Throughout history orators and poets have extolled liberty, but no one has told us why liberty is so important. Our attitude toward such matters should depend on whether we consider civilisation as fixed or advancing ... In an advancing society, any restriction on liberty reduces the number of things tried and so reduces the rate of progress. In such a society freedom of action is granted to the individual, not because it gives him greater satisfaction but because if allowed to go his own way he will on average serve the rest of us better than under any orders we know how to give.³

The inference is clear. On this view, society is better served, for reasons of progress which eventually benefit everyone, by allowing potentially creative human beings to pursue their own goals and values to achieve the ends they seek by their own choices and decisions, untouched by coercive state interference. For Hayek, the non-interventionist order can be described as the means to an end. What is important is that society benefits from the minimisation of coercion. That not every individual achieves in Hayek's free society the self-realisation appealed to by theorists of positive freedom does not mean that his argument here is not instrumental. His point is that the likelihood of individual goal-satisfaction is increased when people are not coerced by the state.

By emphasising the benefits of freedom that accrue from the utilisation of dispersed and fragmented knowledge,⁴ Hayek demonstrates that freedom is not simply an end in itself. It is not to be justified by reference to, for instance, natural rights, the recognition of which does not necessarily lead to anything.
Hayek's concern in his justification of an uncompromising commitment to freedom as non-coercion is therefore clearly utilitarian. It implies the value of achieving the greatest freedom for the greatest number in order that each individual will do things beneficial for society. It espouses the maximisation of individual goal-satisfaction in terms of the beneficial results of progress. And progress through freedom, he claims, can only come about with a non-interventionist political order.

It is one of the most characteristic facts of a progressive society that in it most things which individuals strive for can be obtained only through further progress... If we abandoned progress, we should also have to abandon all those social improvements that we now hope for. All the desired advances in education and health, the realisation of our wish that at least a large proportion of the people should reach the goals for which they are striving, depend on the continuance of progress.

Here Hayek appears almost to be connecting freedom as a means of achieving want-satisfaction with freedom as an actual guarantor of benefits to individuals through its promotion of creativity, invention, and the achievement of better standards of living. A close analysis of Hayek's views reveals an almost Darwinian appeal to the notion of allowing different ways of living to compete in order that the most successful will emerge as an example for others to follow. In effect, Hayek's instrumental argument is, as Watkins points out, an extension to society of the argument for academic freedom. For knowledge to grow, and be used to good effect by countless individuals in the pursuit of their goals, there must be no arbitrary constraining power which determines what individual choices will be and which thereby
disallows experiments in living from being at least tried, even if they prove unsuccessful.

Hayek believes that when new ideas are tried, the successful will prevail and become adopted generally, and that therefore freedom is likely to lead to specific incremental gains. Hence, '[w]hat matters is the successful striving for what at each moment seems attainable'. However, the argument for freedom rests equally on the conviction that no improvements in the human condition will ever eventuate if nothing new is ever tried, if the freedom of potential innovators is constantly infringed by state interference and constructivist planning. Hence although one cannot know whether (and how) one's ideas will be used by others, either now or in the future, if freedom is not guaranteed one can be confident that no progress will ever be achieved. Despite Hayek's caution in claiming that '[i]t is because we do not know how individuals will use their freedom that it is so important', he still argues that freedom is likely to '... on balance, release more forces for the good than for the bad'.

Hayek's non-interventionist order, then, '... is a scheme for maximising the possibility of improving social knowledge and of employing it to better effect ...'. Moreover, Hayek argues that history has demonstrated this beneficial result of freedom, that free decisions taken by individuals in a spontaneous order have created Western civilisation and all the benefits that have resulted from it. Thus he claims to belong to the 'empiricist evolutionary tradition' which finds '... the origin of institutions,
not in contrivance or design, but in the survival of the successful'.

Hayek wants to suggest here that the importance of preserving freedom as an instrument for progress can be established by observation of the pattern of Western development. These claims for freedom seen through a view of societal progress (that of spontaneous, unintended growth resulting from the application of knowledge by individuals to specific problems) serve as descriptive assertions with normative implications, demanding freedom as a political goal.

More importantly, this empiricist argument is clearly a consequentialist one, which reflects neither the 'beauty of liberty' nor 'the dignity of man'. It claims that freedom is valuable primarily instrumentally, and does not appeal to either the nature of man as a rational chooser or to the ethical objections that can be made against coercion.

For Hayek, the benefits of freedom are best illustrated by the market order. The spontaneous order of the market is based on reciprocity and mutual advantage. Hayek's free order, the 'catallaxy', derives from the ancient Greek, meaning not only 'to barter' and 'to exchange', but also 'to admit into the community' and 'to turn an enemy into a friend'. Referring to Oakeshott's distinction between nomocratic (law-governed) and telocratic (purpose-governed) orders, Hayek claims that

[t]he great importance of the spontaneous order or nomocracy rests on the fact that it extends the possibility of peaceful co-existence of men for their mutual benefit beyond the small group whose members have
The non-interventionist order, then, helps us achieve our ends in two ways. Firstly, it leaves us free to pursue our goals without coercive interference. This enables us to maximise our chances of success by cooperating with others who are equally free. Secondly, the knowledge that each of us has can be utilised meaningfully in a way that will benefit unknown persons in the future. Hayek's instrumental argument in support of the non-interventionist order, then, is that it achieves 'the good', defined as the numerous and various goals of individuals. This argument makes no direct appeal to the morality of allowing individuals free choice.

Hayek's argument, it seems, turns out to be a justification of individual self-gratification. Individual autonomy is prized by Hayek, not on deontological grounds, but because it allows for self-fulfilment and the pursuit of goal satisfaction. Although Hayek makes no comment on the worth or possible ordering of particular individual goals - here his thesis is at its most anti-utilitarian - he does, nevertheless, effectively claim that we should be allowed freedom because we have individual goals that are worth pursuing. On this view, it is good that as many individuals have as many of their goals fulfilled as possible. And the free market, Hayek suggests, is the means whereby this aim is best realised. This, I have argued, is Hayek's principal political conclusion.
III. THE NATURE OF COERCION.

An important question raised by Hayek's argument that we ought to value freedom because it maximises the opportunity for individual goal-satisfaction is the philosophical significance of coercion. This is summed up by Marshall Cohen's argument regarding Berlin's negative notion of freedom.

If the value of negative liberty lies in the fulfilment of desire, why is the nature of the obstacle to the realisation of desire of such crucial philosophical importance? It seems relatively unimportant that the oppression or coercion proceeds from the deliberate interference of other people.18

On this view, a utilitarian justification of freedom such as Hayek's - one which stresses the ends of freedom and its maximisation rather than simply the immorality of coercion - could plausibly lead to the amelioration of environmental constraints upon human action. One would perhaps expect such a justification of freedom to allow for state intervention which actively promotes goal-satisfaction. A consequentialist, instrumental justification, arguably, sits just as comfortably with the positive notion of freedom as with the negative. The question is at least open (and is an empirical one); which kind of order - interventionist or non-interventionist - more completely satisfies individual self-gratification. Hayek certainly does not go far enough in demonstrating that the non-interventionist order is to be favoured in this regard.

Hayek's strictly non-utilitarian political conclusions sit awkwardly with his utilitarian argument in support of them. There is an inconsistency between, on the one hand, a commitment to freedom in an absolutist sense - one which focusses exclusively
on non-coercion and which therefore cannot guarantee goal-fulfilment - and, on the other, an instrumental justification of freedom as a means towards individual goal-fulfilment.

Yet Hayek, in spite of this, maintains that coercion is the principal evil to be prevented by government. The political order has no role to play in the fulfilment of individual goals beyond the minimisation of one particular kind of constraint upon action. Why does he insist upon this anomalous position? He claims that

> coercion is evil precisely because it thus eliminates an individual as a thinking and valuing person and makes him a bare tool in the achievement of the ends of another. Free action, in which a person pursues his own aims by the means indicated by his own knowledge, must be based on data which cannot be shaped by the will of another.19

Hence Hayek's very definition of freedom as non-coercion, his stated concern that individuals be allowed to make their own choices (irrespective of whether or not they reach their goals), and his view of justice as protection only of the private domain, all turn on a particular view of the nature of the constraint upon human action.

Hayek explicitly claims that '... liberty is not merely one particular value but that it is the source and condition of most moral values'.20 His argument for freedom is one '... for principles and against expediency ...'.21 Hence there can be no justification for state coercion which seeks to promote welfare or goal-satisfaction, despite the fact that the reason we value freedom is because it promotes these things. Hayek writes of freedom:
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. Hayek's emphasis on freedom as a moral principle, and his claim that coercion is an evil in itself are revealed in his notion of toleration, and help explain his insistence on the importance of equality before the law.

The recognition that each person has his own scale of values which we ought to respect, even if we do not approve of it, is part of the conception of the value of individual personality ... But believing in freedom means that we do not regard ourselves as the ultimate judges of another person's values, that we do not feel entitled to prevent him from pursuing ends we disapprove so long as he does not infringe the equally protected sphere of others.

A society that does not recognise that each individual has values of his own which he is entitled to follow can have no respect for the dignity of the individual and cannot really know freedom.

Hayek's commitment to non-coercion purports to be a thoroughgoing defence of toleration which finds political expression in an insistence on freedom as a general principle that is not to be applied only in cases where it will benefit particular individuals, or even society as a whole. The implication is that freedom can never be sacrificed in order to benefit specific individuals or society generally. This reflects the uncompromising nature of Hayek's political position, despite the utilitarian nature of his argument for it. Thus there is a dilemma.

Hayek's definition of freedom is concerned explicitly and
exclusively with interpersonal coercion, that is, with the control of one individual's choosing process either by other individuals or by the state. On this view, the most objectionable feature of coercion is its elimination of the individual's choosing capacity. This outweighs the simple fact of the non-fulfilment of individual wants and goals. Hayek admits that many constraining factors prevent the satisfaction of our wishes. This is, at most, unfortunate. It is not a problem to be addressed by the non-interventionist state. 24

Moreover, it is not merely because coercion admits of political control that it is emphasised by Hayek. Although many constraints are undoubtedly beyond the reach of social control and beyond the political realm - inner or metaphysical freedom falls under this category - others are susceptible to public legislation, particularly in the area of economic constraints. Rather, it is the nature of coercion, not its effects upon individual plans, that attracts the exclusive attention of the definition offered by Hayek of the just political order. The defining mark of coercion is not its control of the choice environment of individuals (including the range of meaningful options available), but its deliberate dictation of the actual choice process. As Hayek has noted, the important factor in freedom is whether it is the individual himself who decides, and not whether the available choices are pleasant or desirable. Hence the nature of Hayek's definition of coercion appeals to a concern for the choice process and not to ultimate questions of individual welfare.
Taylor describes the kind of freedom embraced by Hayek as an 'opportunity'-rather than a 'exercise'-concept, to the extent that it is up to the individual to make the most of his circumstances. Freedom is not defined according to how it is exercised, or what it achieves. Yet this is precisely how Hayek attempts to justify freedom.

But what kind of opportunities does Hayekian freedom, upheld by the non-interventionist order, provide for the individual? In effect, it does no more than remove one of the many possible constraints upon individual action. It says nothing about which individual goals can be achieved. It makes no guarantees of goal-satisfaction, no commitment to positive intervention. Hence even as an opportunity-concept, the focus of Hayekian freedom is extremely limited. In particular, its concern for the means by which individuals are inhibited in their actions is one-dimensional. It does not, nor does it seek to, provide a favourable choice environment for the individual. Hayekian freedom rests on the optimistic premise that, on balance, freedom is likely to release more forces for good than for bad. It relies only on the dictates of the market to provide for individual wants and needs. If the absence of coercion does lead to the realisation of individual preferences, it can be no more than a happy coincidence.

Thus the important point for Hayek's definition is not that the individual's goals are not realised, but that his capacity for choice has been negated. The absence of coercion in no way guarantees the fulfilment of life-plans. It assists the latter
only in a minor and negative way, given the fact that most individual plans in contemporary democratic societies are undermined by factors other than interpersonal coercion. For instance, individual plans are constrained by the operations of the economy, by a person's position in the social structure, by unemployment, and by historical accidents. In Hayek's terms, the unintended consequences of legitimate, non-coercive human activity may very easily prevent the fulfilment of our expectations. Or, as critics of the libertarian position argue, the 'neighbourhood effects' of a capitalist economy leave many individuals without meaningful choices regarding their life-plans.26

The dilemma for Hayek is the relationship between his support for a political order which has no positive role to play in the fulfilment of individual goals and his conviction that such an order's chief quality is the likelihood of its promoting goal-fulfilment. A utility-maximising argument for a non-interventionist order sits awkwardly with a conception of freedom which ignores most constraints upon individual action by its exclusive focus on coercion. The defender of freedom as non-coercion may appeal to the immorality of coercion, the maximising effect of freedom in goal-fulfilment, or both. In definitional terms, Hayekian freedom is clearly insufficient for the second of these strategies, and in his argument as to the benefits of freedom, Hayek eschews the first strategy. In opting for an instrumental justification of freedom, Hayek needs to show that the non-interventionist order actively promotes goal-satisfaction for his argument to be a telling one. Yet he simply assumes this. Both definitionally and empirically,
there is important evidence to the contrary.

Hayek categorises freedom politically as a negative concept yet explains its importance in terms of its positive results. If the non-interventionist order can be shown to fail in its achievement of such results for particular individuals or classes, then the normative appeal of the argument from utility is negated. I have shown that one of Hayek's principal appeals is to utility - the desire to maximise the individual's use of dispersed knowledge in the catallaxy in order to attain his particular ends - but that his preferred political order cannot in any meaningful sense guarantee the fulfilment of utility. This is because of Hayek's refusal to entertain that other-than-coercive constraints upon human action require social control. 27

Hence the non-interventionist order does not easily or necessarily follow from an appeal to utility. It is therefore strange to find Hayek committed to both. This tension creates a difficulty for Hayek's attempt to establish the non-interventionist state as the only legitimate order. I claimed earlier that if one takes seriously his desire to maximise goal-satisfaction, one is led in the direction of positive freedom and the interventionist state. But the latter is precluded by Hayek's refusal to countenance government intervention in the life-plans of the individual. The state cannot legitimately interfere with individual free choice, by such activities as the enforced redistribution of wealth and the pursuit of equality of opportunity. Even 'milder' forms of intervention, including progressive taxation 28 (which does not actually
dictate goals), which are arguably consistent with the maximisation of goal-satisfaction and utility, are excluded by Hayek because they involve compulsion. Thus according to Watkins, 

[although Hayek's scheme is a sort of blueprint for a good society, it differs from many other such schemes in being so to speak algebraical - the variables are not filled in by the author but are left to be filled in by chance and circumstance and individual initiative.]

Hayek is determined that freedom, even for progress, must not involve an advance towards a known goal. In accordance with his claim that freedom must leave room for the unforeseeable and unpredictable, Hayek eschews progress in the sense of the attainment of power over nature, for this implies constructivist planning. Thus despite the possibility that positive intervention may provide benefits for the individual, it is still excluded by Hayek because it is said to involve the dictation of individual choices by the state. Hayek argues that his principle of freedom is inconsistent with the forms of intervention favoured by theorists of positive freedom and welfare. However, this claim demands critical assessment, especially in the light of my suggestion that the interventionist state is not inconsistent with some of the arguments and values appealed to by Hayek.

IV. COERCION AND THE INTERVENTIONIST ORDER.

Despite the observed tension between Hayek's uncompromising political position and his maximising argument, he remains wedded to a 'dogmatic' defence of the non-interventionist order. He is committed to denying that coercion may legitimately be used by the state to provide for individuals or groups the things that his
freedom is said to provide, the ends by which his order is justified.

The dogmatism of Hayek's political approach reflects his fundamental distinction (outlined in Chapter I) between freedom and power, or capability for action. The former refers solely to the choice process, whereas the latter, Hayek claims, refer to the range of options available to the individual. Any government action which involves cutting off individual choice, by dictating goals, issuing specific commands, creating 'common ends', and so on, even if done for the purpose of widening individuals' options, is regarded by Hayek as illegitimate.

The question is raised: how valid is this crucial distinction which is the basis of the non-interventionist order? Do positive interventions intended to lift environmental restrictions on individual action necessarily deprive other individuals of their choosing capacities, as Hayek wants to suggest? Or do such state actions simply restrict options by redistributing resources? Perhaps the distinction, drawn so sharply by Hayek and having such important political consequences, is not so marked as he believes. The collapse of the distinction would seemingly make legitimate certain positive state interventions which give effect to the individual choice process, and would then tend to undermine the negative definition of freedom appealed to by Hayek. He claims that widening the options of some individuals deprives others of their choosing capacity. Is such an assumption tenable?

Hayek admits that the victim of coercion still has a choice:
it is the unpleasant option of doing the coercer's will (not following his own) or of refusing to obey the coercer and accepting the consequences. Thus even coercion is about 'choices', as well as 'who chooses'. But the reason that coercion is evil is said to be that the individual's own will is denied; the options are not important. So long as the individual determines the course of his own actions, things are legitimate.

Hayek objects in principle to state actions which determine our choices. If positive interventions simply narrowed our range of options, there could be no objection to them. But to delegitimise government actions that are coercive - that make the individual's mind up for him - while tolerating the right of employers to sack employees is inconsistent, since the results of both actions are the same. The individual is forced in both cases to take into account the will of another in determining his own action. Hayek's insistence that in a competitive market the sacked worker simply has his options reduced seems to rest on an arbitrary distinction. One may agree that the employer is not acting 'maliciously' to thwart the employee's life-plans. But, nevertheless, the effect of the action is the same. Hence to distinguish between 'choosing' and 'choices' is perhaps not the only criterion for talking about coercion and life-plans. The results of an action are also relevant. With reference to the American libertarian, John Hospers, J.P. Sterba claims that

... libertarians are not similarly sensitive to the loss of liberty that occurs in the market place. When an employer decides to lay someone off, for example, Hospers claims the employer is simply deciding against
continuing a voluntary exchange and not restricting the person's liberty. Likewise, Hayek claims that as long as workers who are laid off can find alternative employment their liberty is not being restricted. But how can requiring a person to pay $500 into a social security program under threat of greater financial loss infringe upon a person's liberty when requiring a person to take a job paying $500 less under threat of greater financial loss does not infringe upon the person's liberty. Surely it would seem that if one requirement restricts a person's liberty, the other will also.\(^{35}\)

Here the plausible claim is that government interference with the plans of employers and corporations is logically on a par with the economic order's interference with the plans of individuals. The effect of the actions is the same, yet the former is disallowed within Hayek's order whereas the latter is acceptable. Why call one action 'coercion' and the other 'a legitimate interference with an individual's expectations'? Hayek himself claims that:

> [m]ost human aims can be achieved only by a chain of connected actions, decided upon as a coherent whole and based on the assumption that the facts will be what they are expected to be. It is because, and insofar as, we can predict events, or at least know probabilities, that we can achieve anything ... But if the facts which determine our plans are under the sole control of another, our actions will be similarly controlled.\(^{36}\)

Hence if 'legitimate expectations' are the criteria by which freedom is to be defined, perhaps actions other than Hayekian coercion must be included also. Here Hayek has so widened his definition that it would include instances such as that of the sacked employee. The latter's reasonable expectations are curtailed; the facts surrounding his decisions are effectively controlled by another. He would prefer not to be stood down; hence both his
choosing and his choices are affected.

Such examples intuitively constitute a restriction as severe as, and of the same kind (in terms of effects) as the positive interventions of government in the life of the individual. This illustrates the tenuous nature of Hayek's distinction between 'coercion' and 'unpleasant options'. It demonstrates that market transactions may be restrictive of the individual in similar ways to state compulsion, and that therefore Hayek's crucial distinction does not carry the implication that government interference is uniquely destructive of individuality and choice. His assertion that if governments do this, they prevent the individual from formulating and pursuing goals, is weakened by the counterclaim that individuals in a free market continually have the same effect on others. Of course, this is not to argue that employers (and employees) do not have the right to terminate voluntary contracts; it simply serves to question Hayek's assertion that to restrict options is legitimate while denying choice is not, and to discount the uncompromising political conclusion that is said to follow from this distinction.

These examples draw attention to the fact that the effect of an interference is, I would argue, an important consideration in judging its legitimacy. The distinction between coercion and non-coercion is not the only relevant factor in assessing state interventions. However, as I have argued, Hayek's dogmatic insistence on the evil of coercion determines his political position and denies the importance of goal-satisfaction that he insists on elsewhere.
Hence there are levels of coercion, of interference. Even though every denial of options is also a determinant in individual action, not every interference is of equal effect or magnitude. It would appear that the sacked employee has had his (perhaps) reasonable expectations denied in a more serious sense than someone who is taxed progressively in order to support welfare payments to the needy. Hayek fails to distinguish serious forms of interference from non-serious forms in his desire to preserve at all costs the distinction between coercion and the simple denial of options. That the market may deny the choosing process in significant ways is thus ignored.

Hayek's distinction, then, between freedom and power is a trivial one in many cases. It therefore does not support his contention that 'coercive' state intervention which seeks to extend power at the expense of freedom are illegitimate because of the distinction. It simply becomes a matter of extending the freedom (or power) of some at the expense of the freedom (or power) of others. Thus such positive intervention may be regarded as interfering with individual options as much as actual choices. For example, given the 'hidden' nature of progressive taxation (which is denied by Hayek's position), it is highly questionable whether it itself should be regarded as coercive in any meaningful sense. (Though any form of taxation requires at least the threat of coercion). Clearly, the state's enforced transfer of wealth benefits some at the expense of others in an attempt to add to the total welfare. But does such a transfer really force persons to act in specific ways by reducing their choices to one? (It is the
the taxed individual remains free in the essential ordering of his life-plans. Some forms of state compulsion simply cannot be regarded as seriously as other forms of coercive interference. But Hayek's dogmatic commitment to freedom ignores this.

To simply argue that the interventionist order is necessarily coercive (and therefore illegitimate) fails to take account of relevant distinctions. Who chooses is important as a test of freedom. Yet the effect of human actions in curtailing choices is often sufficiently similar to that of an actual denial of choice to make the distinction meaningless. And as this is crucial to Hayek's claim that positive intervention by the state in the life of the individual is to be excluded at all costs, the normative status of his political conclusion is not established.

The tension for Hayek between argument and position is not circumvented by appealing to the artificial distinction between freedom and power. The 'legitimate' interferences of the market are on a par with state intervention in the life of the individual, even though only the latter is defined by Hayek as coercive. Such examples collapse the distinction regarded by Hayek as the basis of his political order.

This has important implications for the force of Hayek's defence of the non-interventionist order to the extent that this is based on his inadequate and confused critique of the welfare state. My general argument questions the validity of Hayek's
insistence that the state's coercive power should never be used to interfere with individual freedom in positive, specific ways. It suggests that by engaging in such activities as welfare programmes, the redistribution of wealth, job creation schemes, state-subsidised education, control of wages and prices, the curtailment of unimpeded trade, and other forms of centralised planning and economic intervention, and by financing these schemes through 'coercively' collected and imposed graduated taxation, the state need not necessarily be regarded as denying freedom in the way, and to the extent that Hayek suggests. If 'legitimate' actions in the market which deny individual choice are tolerable, it follows that state actions which have similar effects must, on Hayekian grounds, also be tolerated.

But does the interventionist order deny the benefits of Hayekian freedom, even if its actual curtailment of freedom is not to be regarded as insidious? The earlier suggestion that Hayek's utilitarian argument is not shown to be inconsistent with positive state intervention demonstrates that Hayek has not shown the welfare state to be illegitimate. The benefits of freedom referred to in his argument - the promotion of individual goal-satisfaction - may well not be negated by political associations that he claims are destructive of freedom. I will now explore the specific implications of this claim.

The explicit concern of Hayek's argument is '... that at least a large proportion of the people should reach the goals for which they are striving ...'. This seems not to exclude an instrumental
welfare statist framework, but rather to demand it, despite Hayek's argument that the interventionist state negates the benefits provided by freedom. Several forms of the interventionist order appeal to notions of positive freedom in which the attainment of individual ends is regarded as important. Recipients of the benefits provided by the intervention of the state are given positive assistance in the pursuit of their goals. But although protagonists of the welfare state can appeal to communitarian, even collectivist principles, they need not in order to defeat Hayek's arguments against the efficacy of intervention. They can simply revert to Hayek's own appeal to the importance of individual goal-attainment. If this is the primary benefit of freedom, the main reason why we value it, as Hayek argues, then he need not be worried by a partial sacrifice of it and a genuine commitment to such intervention as a movement towards equality of opportunity. On this view, the welfare state is simply another (and perhaps a better) means of maximising individual goal-satisfaction.

The welfare state, then, can accommodate, and need not deny, the benefits of freedom. Charles Taylor suggests that a step away from the political ideal of negative freedom need not, contra Hayek, imply a commitment to the collectivist state.

The first step from the Hobbesian definition to a positive notion, to a view of freedom as the ability to fulfil my purposes, and as being greater the more significant the purposes, is one we cannot help taking. Whether we must also take the second step, to a view of freedom which sees it as realisable or fully realisable only within a certain form of society, and whether in taking a step of this kind one is necessarily committed to justifying the
excesses of totalitarian oppression in the name of liberty; these are questions which must now be addressed. What is certain is that they cannot simply be evaded by a philistine definition of freedom which relegated them by fiat to the limbo of metaphysical pseudo-questions.41

The importance of Taylor's claim is not simply that negative freedom is definitionally inadequate, but that a move beyond it to an interventionist state need not imply the abandonment of the individually derived goals and values that are appealed to in Hayek's utilitarian argument. Nor does it entail the pursuit of some 'common ultimate purpose'. In this connection the facile equation of some of the implications of positive freedom with the commitment to collectivism is quite misleading. There may be some historical grounds for believing in a slippery slope progression from the welfare state to totalitarianism (Hayek certainly adheres to this view though he by no means establishes it42), but there are no logical grounds, unless the individual's goals are prescribed by the state. Hayek's assertion that any extension of state coercive power necessarily involves collectivism, and a denial of the benefits of freedom is mistaken. This is another important distinction ignored by Hayek. By claiming that intervention necessitates collectivism, Hayek attempts to argue that in such an order the benefits provided by freedom are wasted. But intervention need not imply collectivism.

Hence the claim implied by Hayek's position - that the benefits of freedom that accrue from market transaction, the maximisation of the use of dispersed knowledge and the mutually advantageous reciprocity of voluntary contract which enable individuals to attain
their goals and society to generate progress, are denied by positive state actions of a coercive nature - is nowhere established.

For example, the argument for academic freedom - that freedom maximises progress through the interplay of competing ideas - does not imply that positive encouragement (in the form of subsidies) negates its benefits. Nor is it established that academic freedom alone is sufficient to ensure particular beneficial results.\textsuperscript{43} By labelling all forms of intervention as constructivist, Hayek implies that the value of freedom is removed whenever state compulsion is involved. However, it is one thing to claim that taxation and redistribution are coercive; it is entirely different to assert that the individual and all that he values and can achieve is negated in some sense by such principles as equality of opportunity and the division of rewards according to merit or desert rather than choice.

In sum, Hayek claims that freedom demands the commitment to a non-interventionist order because of its benefits. He argues that positive state intervention necessarily denies individual freedom, thereby implying that the benefits freedom provides are also denied. These claims, however, are open to serious question. Hayek's view of freedom as non-coercion rests upon a tenuous distinction between 'choosing' and 'options', an ignoring of relevant differences between the effects of different kinds of coercion, an assumption that all forms of state coercive interference are to be regarded as equally serious, and a facile reduction of all state intervention to the level of collectivist determinations.
It can be demonstrated that the coercive activities of the positively intervening order need not deny individual freedom in the sense of seriously restricting goal-formulation and pursuit. Hayek does not demonstrate that the maximisation of goal-satisfaction and the interventionist state are inconsistent.

Hence neither Hayek's argument for freedom, his uncompromising commitment to non-coercion, nor his distinction between coercion and non-realisation of goals, demonstrates the necessity of the non-interventionist order. A certain amount of positive intervention, even if this involves compulsion, is tolerable, even desirable, on Hayek's own grounds. The tension between Hayek's political conclusions, which involve an unjustifiably narrow commitment to non-coercion, and the flexibility implied, even demanded, by his instrumental justification of freedom, undermines the normative impact of his claim that compulsion cannot be justified in the fulfilment of individual goals.

V. HAYEK'S LIBERAL ORDER.

Despite Hayek's insistence that compulsion to achieve a common hierarchy of ends is never justified, a closer examination of his own non-interventionist political order shows that it exhibits some coercive features, although these are designed to enhance freedom. But when these are analysed, it is apparent that there are some inconsistencies which further demand an admittance of state intervention. It may be argued, in general, that if some forms of coercion are justified in order to enhance freedom, then any forms are potentially justifiable on the same grounds. For instance,
Hayek admits the possibility of some taxation (provided that it is proportional), he allows conscription, which clearly involves the state giving specific commands to particular individuals, and he denies strictly laissez-faire arguments by allowing extensive governmental service functions to compete in the market place. He acknowledges that though such functions should never involve monopoly nor restrict trade, they must be funded by coercively collected taxation which is necessarily redistributive.

If these activities allow, even demand state intervention, why does Hayek not also include more positive intervention in individual choice? His own argument that it is the compulsion involved in the interventionist order that makes it illegitimate is laid aside. Hayek claims that such interventions treat people differently, thereby infringing the rule of law which upholds freedom. But Hayek's rule of law is itself restrictive of individual choice, despite his insistence to the contrary. His distinction between general rules which he claims are never coercive, and specific orders which are always coercive, can be shown to be greatly exaggerated. Perhaps general rules which treat everyone equally can still be coercive. And even treating people differently need not deny their freedom. Hence a close analysis of Hayek's law-governed liberal order reveals contradictions which, taken with his utilitarian argument and the problems faced by his rigid adherence to freedom as non-coercion, fail to yield a coherent or cogent case for non-intervention.

Hayek's insistence on the rule of law and its necessary
corollary of a non-interventionist order rests upon the following claim:

[t]he conception of freedom under the law
... rests on the contention that when we
obey laws, in the sense of general abstract
rules laid down irrespective of their
application to us, we are not subject to
another man's will and are therefore free.47

But Hayek nevertheless admits that '... even general, abstract
rules, equally applicable to all, may constitute severe restrictions
on liberty'.48 De Crespigny points out that because the rules
apply to everybody, Hayek '... thinks it unlikely that they
will ever prohibit much that anybody may reasonably wish to do'.49

Yet other critics are not so sanguine about Hayek's optimism.
For instance, Lionel Robbins is 'perplexed' by Hayek's claim
that '... most such restrictions imposed on all...' are '...
comparatively innocuous beside those likely to be imposed on
some'.50 It is not clear, on Hayek's account, how this distinction
(between generality and specificity)is relevant to an individual's
freedom. If the 'legitimate expectations' of an individual are
controlled by another (the law-giver), his freedom is denied,
even if the law-giver is also similarly constrained. It seems strange
to argue that an individual's freedom is conditional upon whether
some other individual's freedom is being infringed or not. If
freedom is defined in terms of the effect of a promulgation on
one's actions or expectations, then all laws clearly can be
coercive. Hence to claim, as Hayek does, that the specific commands
of the interventionist state are coercive and the general rules
of his liberal order are not (because they are general), is
quite misleading. And to argue, from this, that freedom is necessarily preserved in a non-interventionist order, and necessarily infringed by positive state intervention, does not follow. If all kinds of law can be seen to restrict freedom, then the fact that state action in the area of equality of opportunity is supported by laws which treat people differently need not worry the defender of freedom. Treating people the same is not a sufficient condition for freedom, and treating people differently is not a necessary condition of unfreedom.\textsuperscript{51}

Hayek's distinction (which is unwarranted) is reflected in his view that proportional taxation is legitimate whereas graduated taxation is not. This is said to be because the former leaves individuals in the same relative position after tax as before, while the latter is necessarily redistributive. But what this difference has to do with individual freedom is unclear. At most, the greater losses of the rich are more restrictive of options than actual choice, since the poor are also 'dictated to' in their actions by the taxation. This case further calls into question Hayek's earlier distinction between freedom and capability for action.

He argues that 'coercion thus is bad because it prevents a person from using his mental powers to the full and consequently from making the greatest contribution that he is capable of to the community'.\textsuperscript{52} If Hayek uses this kind of reasoning to claim that progressive taxation is more harmful to initiative than simple proportional taxation, and that therefore it denies the benefits
of freedom, must he not also conclude that any restrictive interference with an individual's potential for contribution to society must be ameliorated if society is to gain? This line of reasoning tends to justify an interventionist order rather than prohibiting it. Hence Hayek's distinction between general rules and differential laws, and his example of taxation which reflects this distinction, is neither supported by the imperative of freedom nor shown by the benefits of freedom. Treating people differently need not deny freedom; rather, it may be necessary 'in order that the individual may do the things most beneficial to society'. It seems that if one is committed to the view that taxation is legitimate (as Hayek is), then to distinguish between proportional and progressive taxation as the basis for rejecting the interventionist order is not shown by Hayek to be warranted.

The demands of adhering to the rule of law, while superficially relevant to freedom as non-coercion, need not be taken to imply a rejection of positive state action. Hayekian law can be just as restrictive of choice as other laws. Thus whether or not state promulgations involve a common hierarchy of ends is not the sole criterion for judging freedom. To use compulsion in order to pursue state goals seems no more coercive than to do so with laws which restrict private goals. The argument that the rule of law is inconsistent with the interventionist order because of the former's generality and the latter's inequality does not establish that the interventionist order is illegitimate. Again, Hayek makes exaggerated distinctions in his attempt to delegitimise all forms of interventionist state action.
Hayek's law-governed liberal order is perhaps more utilitarian than he admits, despite his stated commitment to individual autonomy rather than active goal-maximisation. This is not to say that his position on positive intervention by the state is not genuine; rather, it can be established that his allowance of various government activities implies a commitment to an end-state and not simply to the model of unimpeded individual action adhered to by proponents of a strictly laissez-faire position. This allowance by Hayek of extensive government activity further supports the argument that a positive, intervening state may be quite acceptable despite Hayek's general insistence otherwise.

Laws, according to Hayek, provide additional information to be taken into account by individuals in the ordering of their actions. Hence, according to M.W. Wilhelm,

> [1] Liberals recognise that the state, while restrained from violating basic principles, must continually formulate laws and policies conducive to a liberal society.

And, as Scott Gordon argues, Hayek

> ... accepts the use of the power of the state, through taxation and other means, for the provision of collective goods, the correction of externalities, the financing of education, a system of transfer payments to assure that no one falls below a minimum standard of income ... licensure and certification, building codes, health, safety standards in the workplace, the prevention of private monopoly, and the prohibition of price discrimination. He does not wish to reject such governmental activities on principle ...

These interventions, for Hayek, support the liberal order and provide additional opportunities for the individual to maximise
goal-satisfaction. They require a state far-removed from a 'minimal' one 55 (as in Nozick) and allow governments to become involved' in the life of the individual. Hayek regards such activities, broadly, as the non-coercive service functions of government. He distinguishes them from the coercive state activity of punishing interpersonal coercion. The latter is, of course, the only task for which the political realm may use force.

By providing 'additional opportunities', Hayek's non-coercive government clearly reflects the imperatives of his utilitarian argument for maximising goal-fulfilment. Yet this still sits awkwardly with his insistence that compulsion is wrong, and that state action should never positively intervene in free market transactions. For Hayek admits that '[i]t is true that the non-coercive or purely service activities that government undertakes are usually financed by coercive means'. This very utilitarian admission seems to seriously compromise Hayek's position - both his argument that the rule of law which governs the liberal order is never coercive, and his insistence (questioned by Marshall Cohen) on the philosophical significance of coercion as the opposite of freedom.

Despite Hayek's insistence that only government monopolies infringe freedom, whereas the state's acting as simply one other competitor in the market is legitimate, the liberal order seems to require as state functions certain supports which involve compulsion and which go beyond the reduction of interpersonal coercion. If state coercion is allowed - in the instance of service functions
which do not necessarily benefit all - why is it not also legitimate to engage in other areas (redistribution and welfare) which do not benefit all, but which seek to give meaning to the fulfilment of individual purposes in similar ways?

The service functions of government are coercive; in fact, they are also redistributive. Any taxation, even proportional, cannot avoid being so, for not everyone utilises services, and certainly not to the same extent. If governments can legislate on minimum wage levels and safety requirements for work, thereby restricting the freedom of employers, why should they not also have some voice in determining what is a 'fair' wage?

If the state can order conscription - this would seem to be an enormous power over the life of the individual, perhaps the greatest means of depriving an otherwise uncoerced individual of his freedom - then why is a redistribution of wealth to be regarded as totally illegitimate. If defence of the country is sufficient to warrant coercion, is not poverty equally requiring of substantial state action?

Hayek acknowledges that there are good utilitarian reasons for sometimes denying individual freedom, yet he selectively ignores other areas which, on utilitarian grounds, would seem to demand similar intervention. Hayek claims that '[t]he provision of ... services has long been a recognized field of public effort, and the right to share in them is an important part of the protected sphere of the individual'. This willingness to give content to
an individual's freedom by state compulsion is inconsistent with Hayek's refusal to grant the efficacy of redistributive goal-maximising policies in other areas. If the market is insufficient in one instance, it may be equally insufficient in others.

Hence Hayek's insistence on the legitimate service functions of government creates additional problems for his argument against the interventionist order. His appeal to utility sits awkwardly with his stated value of autonomy which, he claims, sets determinate limits to the coercive role of government in the life of the individual. However, Hayek insists that the coercion involved in state service functions is legitimate because it is predictable, and rests upon known rules. These do not conform to Hayek's dictum that "[t]he interference of the coercive power of government with our lives is most disturbing when it is neither avoidable nor predictable," since such compulsion as that involved in taxation and military service is scarcely avoidable. But Hayek, strangely, takes the predictability of coercion to be a measure of freedom.

If the known necessity of paying a certain amount in taxes becomes the basis of all my plans, if a period of military service is a foreseeable part of my career, then I can follow a general plan of life of my own making and am as independent of the will of another person as men have learned to be in society.58

But if non-redistributive coercion is legitimate because it is predictable, and therefore need not affect life-plans in fundamental ways, presumably many forms of positive state intervention are similarly harmless to our freedom. If we expect to pay progressive taxes which support even a massive welfare state, it would seem that, on Hayek's own argument, we can still be free. The predictability
of law allows an interventionist state in the same way that it allows government's service functions. Hayek's proposition that service functions and duties are legitimate while positive interventions are not, because of the nature and requirements of the rule of law, clearly fails in its objective of dismissing the interventionist state. Hayek himself admits that the taxed person is still free.

In sum, an examination of Hayek's liberal order reveals further tensions between conclusion and argument, definition and justification. The utilitarian defence of autonomy leads even Hayek in the direction of an interventionist order. He abandons the minimal state and the laissez-faire order, because they fail to provide the individual with meaningful opportunities of fulfilling goals and achieving the benefits which freedom is said to bring. Yet the distinctions he provides between legitimate government coercion for these purposes and that which is illegitimate - the rule of law is said to be the criterion for judging this - do not serve to dismiss the claims of those who argue that an interventionist state is necessary in order to give meaning and content to freedom.

This is the contradiction of Hayek's position. He demands autonomy for the individual and claims that acting on constraints other than coercion are incompatible with this end. He then justifies autonomy on the grounds that it achieves benefits. But finally he admits that these goods are only realised if freedom is 'filled out' by state action. His utilitarian argument for a non-utilitarian
position eventually demands a negation of his position. Yet his refusal to allow positive state action in the amelioration of other-than-coercive constraints upon action leads him to the contradictory position that the free society cannot fulfil its own requirements.

Hayek thus admits that the state can have a positive role to play in fulfilling individual goals. But the narrowness of his conclusions precludes the possibility of the state's acting in positive ways to help achieve this end. To do this would clearly require much more than the mere prevention of coercion in interpersonal relations. It would require the kind of state action that Hayek (wrongly, I believe) claims would destroy autonomy. Hayek's dilemma is summed up by N.P. Barry.

Liberty is said to characterise voluntary, uncoerced actions of individuals such as exchange in an economic market ... yet the concept is also used to describe, favourably, a society that exhibits those very features. However, as a matter of logic, it is not necessarily the case that a liberal society, a society described in terms of freely contracting individuals, will result from the free contracts of individuals. Individuals may very well freely agree to impose restraints upon themselves of a kind severe enough to warrant the outcome being called 'illiberal' even though each individual may regard himself as better off as a result of the prior exchanges.60

Hayek does appear committed to both autonomy (the ability to enter into free contracts) and to the benefits that he believes will accrue from it (goal-maximisation). The problem is, as I have argued, that autonomy does not automatically lead to the benefits that
Hayek wants, nor is a rigid political commitment to autonomy the only way to achieve the benefits. Committing oneself to a utilitarian justification of freedom is quite inconsistent with a definition of it as non-coercion. An examination of Hayek's liberal order serves to highlight this problem.

VI. SUMMARY AND CONCLUSIONS.

In this chapter I have attempted to outline, characterise and assess Hayek's argument for the non-interventionist order. This order's chief features are its commitment to individual freedom in a distinctive sense and its use of coercion exclusively in the area of preventing interpersonal coercion. The legitimate political order need not help individuals to attain self-realisation, and it must not use compulsion to achieve this end. The value of autonomy dictates the proper function of the state in this area.

Hayek's chief justification of freedom as a political value lies in his desire to maximise the benefits that accrue from a spontaneous society. (His discovery of that spontaneity is a distinct claim which also serves as an argument for the non-interventionist order. This will be discussed in Chapter 6.)

Hayek's argument for the benefits of freedom is, I suggest, genuinely utilitarian. Its justification is the perceived likelihood that as many individuals as possible will attain their goals. This kind of argument sits awkwardly with Hayek's insistence that coercion alone is to be eliminated. If the end required is goal-maximisation, it is plausible to argue that constraints upon
individual action other than coercion need to be addressed by the state. Hence there is a tension in Hayek's thought between his stated position and the utilitarian nature of his justification of it. Utility implies goal-satisfaction, and may well be consistent with certain kinds of state intervention. Hayek certainly does not show the contrary.

Yet he makes certain claims about coercion which are said to deny the possibility of using state compulsion to achieve these utilitarian ends. Here he directly confronts those who claim state coercion is entirely legitimate in the pursuit of particular aims. He argues that coercion denies the individual his choosing capacity. He makes the distinction between freedom and capability for action and argues that a political dictation of ends is inconsistent with free choice. Yet he fails to acknowledge sufficiently that some forms of coercion are more serious than others, and that certain constraints in the market have exactly the same effect on choice as those denied to the state. Thus the weight attached to the distinction between freedom and capability is too great. Coercion both denies choice and reduces options, yet its chief effect on individual action is the prevention of goal-attainment. Hayek's negative view of freedom does not take sufficient account of this. If the market is allowed to dictate individual choices, why is state coercion (which really restricts options rather than preventing the pursuit of goals) to be regarded as illegitimate?

Thus the interventionist state is not shown by Hayek to imply a severe curtailment of freedom, despite its compulsory prescriptions.
Nor does it necessarily deny the benefits of freedom in the maximisation of dispersed knowledge. Hayek does not show that particular forms of intervention do not satisfy the utilitarian reason for wanting freedom. On the other hand, the positive state's negation of the benefits is not so clearly established. By reducing all intervention to the level of collectivism, Hayek ignores this fact. He falsely claims that the interventionist order necessarily denies individual values. It is arguable that such an order could be justified because it would seek to promote the benefits of freedom, albeit actively and through a redistribution of resources.

However, a close analysis of Hayek's liberal order reveals further inconsistencies which set aside the argument that redistribution is inconsistent with freedom. Hayek's utility argument inclines him to allow various non-coercive service functions of government. These, he claims, reflect the rule of law, whereas the use of coercion to enforce redistribution treats different individuals differently, and thereby breaches the rule of law. But this distinction too collapses. There is no necessary nexus between Hayekian law and freedom, since all laws dictate choices. Similarly, Hayek's service functions are coercive. Moreover, they are also redistributive. By claiming that if rules are general and predictable, though restrictive, their worst features are avoided. Hayek effectively admits that his own preferred order is not the only one consistent with freedom. The heavily taxed man need not therefore consider himself 'unfree' since his capacity to choose still exists, though he is coerced by the state. It is a dubious claim that equally applied coercion is less insidious than coercion which treats people differently.
Either might be a restraint on - a diminution of - freedom.

That Hayek's order is itself coercive admits a desire to maximise benefits in his position as well as his argument. This reveals the ultimate tension between the essentially competing demands of autonomy and end-maximisation. A utilitarian argument for freedom seems to demand that some freedom may be sacrificed in the pursuit of numerous and varied individual ends. Hayek's argument, in short, does not support only his own political conclusions. It suggests a much wider concern than simply negative freedom, and leaves open the question of the best means of achieving goal-satisfaction. By failing to justify his uncompromisingly individualist position of minimising coercion only, Hayek's argument does not refute the claim made on behalf of the interventionist order that goal-maximisation requires positive action and that this action should be regarded as legitimate. In other words, that Hayek's justificatory argument can be used (without too much distortion) to render political conclusions far different from his own either greatly reduces the impact of his argument or questions the nature of his conclusions.

Nozick's principal argument, it will be seen, is quite different, and hence raises different kinds of questions regarding the relationship between political position and justification. This will be the subject of the following chapter.
CHAPTER 5. NOZICK'S ARGUMENT FOR THE NON-INTERVENTIONIST ORDER: THE NATURE OF MAN.

1. INTRODUCTION.

Chapters I and 2 established clearly the dominance of individual rights in Nozick's thought and their importance as criteria for legitimising political arrangements. In Chapter 3 it was seen that these absolute, negative rights are regarded by Nozick as indicative of justice.

The significance of Nozick's position for political theory is that his rights can, allegedly, only lead to a non-interventionist order, committed to upholding voluntary contracts and individual entitlements at the expense of welfare and guaranteed goal-satisfaction. The latter 'utopian' aims are necessarily excluded by the dictates of natural rights. Whether this conclusion is justified by Nozick's supportive arguments is the subject of this chapter. Nozick's two principal contentions that are of political significance are that firstly, the interventionist state necessarily infringes rights, and must therefore be rejected; and secondly, that the negative rights against others are the only rights that we possess. These assertions will be critically assessed and the relationship between position and justification examined.

Hence the principal concerns of this chapter (as in the case of the previous chapter) are what R.G. Wright has called 'internal criticisms'. They pertain to matters of internal logic, consistency of premises and conclusions, adherence to stated values, and the
relationship between definition and argument. They do not directly question either the validity of the premises or the general acceptability of the conclusions. The question is rather whether Nozick's expressed reason for upholding individual rights yields only a state whose activities are so severely curtailed.

I argued that Hayek prizes individual autonomy of action as an instrumental value that is said to maximise utility. The inherent tension in his argument between individuality and the imperative of goal-fulfilment is expressed in his liberal order, which seeks both to guarantee autonomy and at the same time provide benefits (the service functions of government), provided that these activities treat individuals equally.

Nozick, on the other hand, does not talk of service functions at all. He doesn't enter the debate with Hayek as to whether there is a meaningful distinction between such supposedly non-coercive activities and the strictly coercive role of the state. For Nozick, the political order has only one function, the prevention and punishment of force, theft, fraud and breaches of contract. Any activities beyond these are said to be illegitimate.

For Nozick is strictly anti-utilitarian, both in position and argument. He does not even allow for a 'utilitarianism of rights'. This is because Nozick's rights are absolute, not prima facie; they may never be sacrificed for any reason pertaining to a collective good. Nozick's commitment to a rights-based position is uncompromising. As L.P. and J.G. Francis point out, such rights are inflexible.
... rights are moral properties one can 'just have', whether one needs them, deserves them or they play an important role in one's life ... The standard reason for taking rights to be prima facie is the belief that for any right there may be other moral claims of equal or greater importance, so that in some cases the right will not be morally determinative ... Nozick avoids the need to make rights prima facie by claiming that rights cannot conflict with other rights, and that there are no other moral considerations important enough to override rights which conflict with them.\(^3\)

Nozick denies that rights may be only partially important for moral, and therefore political judgements. Like Hayek's, his position does not, and cannot allow for balancing, compromise, and trade-offs between principles.

Although utilitarian political arguments may be equally uncompromising, they can envisage some sacrificing of principles for a greater good. This is altogether impossible in the non-interventionist order. As N.P. Barry notes,

> [a] contemporary, and popular approach to political philosophy holds that in matters of public policy trade-offs can be made between principles, that marginal amounts of liberty may be given up for marginal increases in equality. This is precluded by Hayek's [and also by Nozick's] system; the commitment to liberty must be dogmatic...\(^4\)

The important point here is not whether dogmatic theories of politics are justified or not, but whether the 'dogmatic' conclusion reached by Nozick - the absolute dominance of rights in political life - is justified by his supportive claims.

Nozick's argument, then, appeals to the 'right' rather than the 'good'. Nozick's discussion of utopia, in which many different
communities arise out of the free contracts of individuals, suggests that he is pleased at the thought of diversity and uncoerced goal-fulfilment. Utopia, then, is '... inspiring as well as right'. However, it would be misleading to argue that Nozick is thereby committed to a particular end-state, and that therefore his justification for rights-enforcement is, like Hayek's, instrumental. On the contrary, the benefits of rights-enforcement are an addendum to Nozick's argument; they are not central to it, even necessary for it. That Nozick's utopia is 'inspiring' is coincidental. He would still appeal to rights if they were not 'inspiring'. To suggest that Nozick appeals to 'the good' would be a superficial reading of his argument. Autonomy is not prized by Nozick as a means to an end; he does not seek to buttress his argument by appealing to benefits. His proposition, simply, is that rights-infringement is wrong, whatever the consequences.

Hence Nozick's argument apparently avoids the tension in Hayek between utility and autonomy. Their justificatory arguments are quite dissimilar, despite the similarities between their political conclusions. But does Nozick's argument provide support for his axiomatic position?

I will argue in this chapter that Nozick derives his view of rights from a particular conception of human nature. In other words, coercion by the state is objectionable because man is like 'x'. Nozick here is firmly placed in the natural rights tradition in which nature, not custom, tradition nor utility, determines the shape of the just political order. On this view, rights should be upheld
because persons qua persons deserve respect. According to Nozick, only an untrammelled individualism takes sufficient account of the fundamental dictates of human nature. His side constraints prohibiting aggression, his belief in the ultimate legitimacy of voluntary transactions, and his commitment to Rothbard's notion of self-ownership, all reflect a concern for human dignity. The sources of this dignity are, on Nozick's view, to be found in man's separateness and moral agency, his rationality and striving for 'meaningful life', and in the imperatives of Kantian ethics.

In putting forward this deontological argument, Nozick claims that compulsion as such is indefensible. Hence any state activity beyond the protection of rights is also wrong, simply because it is immoral to coerce people. For Nozick, the end-results of legitimate individual action, even if they are detrimental to (other conceptions of) human dignity, are not to be taken into account in the just order of the minimal state.

However, Nozick's argument from man's nature raises several critical problems. Why need human dignity yield only negative rights? Cannot 'respecting persons' also involve respecting their needs and not just the property they have? Even if it is wrong to coerce individuals, are there not other things that it is also wrong to do to them? I will question whether Nozick actually demonstrates that the implications of rationality, separateness, meaningful life and Kantian ethics cannot be a morality that goes beyond the confines of his notion of autonomy. Such a morality would clearly allow for positive state intervention which seeks to give effect and meaning to the values of the goal-oriented individual. On the other hand,
it may be argued that Nozick's rights are not able to guarantee these things.

This, in turn, raises the question whether positive state intervention (taxation, redistribution, equality of opportunity and welfare measures) really denies the things Nozick argues it does, or whether it simply infringes (by definition) Nozick's own narrowly conceived rights. If Nozick's justificatory argument is to be taken seriously (some critics have suggested that Nozick never justifies his particular conception of rights but simply assumes it⁶), then the question how, exactly, the interventionist state denies human dignity, is itself a serious problem. Hence, although taxation may be plausibly said to infringe Nozickean rights, it is an altogether different claim that taxation denies 'individuality' in any meaningful sense of that term. I will examine the plausibility of Nozick's suggestion, for example, that taxation impinges upon moral agency in the same way as forced labour would. It will be argued that perhaps also the effects of the rights-infringement upon the individual's life-plans should be taken into account in determining the legitimacy of the action.

It will be questioned whether Nozick's non-interventionist order and his individualist conclusions take sufficiently seriously the implications of his own premises, and whether indeed, Nozick's individualism is itself justified by his arguments. In this chapter, I will also analyse the role that Nozick's various examples - including those of the marriage-partners, Wilt Chamberlain, and the worker versus the owner-of-capital - play in his argument, and whether
Nozick, like Hayek, uses two levels of argument. These, are firstly, the specifically moral premises he appeals to to delegitimise the interventionist state, and secondly, his more general claims about the nature of society, which do not appeal to the rights of persons, but which are said also to support his political conclusions. These are very similar to Hayek's assumptions which suggest that arguments for the interventionist order are based on fallacious premises regarding the possibility of collective goods. They will be assessed as a shared individualism in the final chapter.

II. NOZICK'S ARGUMENT STATED.

Being concerned with the means by which individuals are constrained in the pursuit of their ends, Nozick's deontological argument refers exclusively to the specific nature of coercion and of rights-infringement. Individual rights are, essentially, moral claims against others. They are, as David Lyons points out, for Nozick, the sum total of morality.  

All political considerations are reducible to Nozickean rights, according to this ethical theory. The justice of a situation, as I argued in Chapter 3, depends entirely on how it came about, not on its outcome. Justice, rights and morality concern only the processes of human actions.

The importance of Nozick's conclusions is clear for both ethics and political theory - what the state may not do to individuals
derives from an understanding of what individuals may not do to other individuals, and why. When Nozick condemns the state for being coercive he is applying to it the same moral categories as he would apply to individual persons.

For Nozick, there is something peculiarly 'human' about individuals. This necessitates treatment of them in a way which takes into consideration (in an absolute sense) their rights, and which prescribes certain constraints on our actions towards other individuals. There is something special about man qua man such that his rights are natural, moral and absolute.

This view of man is, above all, individualistic. Nozick suggests that the '... moral side constraints upon what we may do, I claim reflect the fact of our separate existences'. Man, for Nozick, is above all an individual; moreover, he is capable of rational choice, that is of '... using abstract concepts, not tied to responses to immediate stimuli ...'. But Nozick questions the sufficiency of the simple fact of 'separateness' as a justification of rights-enforcement. He poses the questions:

[i]f a being is capable of choosing autonomously among alternatives, is there some reason to let it do so? Are autonomous choices intrinsically good? If a being could make only once an autonomous choice, say between flavours of ice-cream on a particular occasion, and would forget immediately afterwards, would there be strong reasons to allow it to choose? Nozick's conception of man is not simply one of separate individuals, not even of separate, rationally choosing individuals. His view of man is that of '... a being able to formulate long-term plans
for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself ...'. For Nozick, an overall conception of life is theoretically distinct from such specific human character traits as separateness and rationality.

Such an overall conception, and knowing how we are doing in terms of it, is important to the kind of goals we formulate for ourselves and the kind of beings we are.

Nozickean man is clearly goal-directed. The importance, in terms of rights-enforcement by the state, of man's ability to formulate life-plans is related to Nozick's concept of the 'meaning of life'; '... only a being with the capacity to so shape his life can have or strive for meaningful life'.

Hence man's nature, in particular his individuality, rationality, and ability to formulate goals which have meaning only for him, constitute for Nozick sufficient reason for asserting a right not to be coerced. Coercion is said to be a negation of essentially human characteristics. The constraints upon individual action towards others are causally related to the kind of beings that Nozick thinks we are. On this view, we have our own interests, and those are important because they are an essential part of human life.

Above all, '[t]here are only individual people, different individual people, with their own individual lives'.

Moreover, Nozick's rights and the 'specialness of man' which they reflect derive from the fact that man is a moral agent who possesses free will. This condition is important for the rejection
of 'using' people to achieve particular ends.

Side constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable.\(^{16}\)

Nozick claims that political philosophy should only be concerned with certain uses which individuals make of one another - that is, by coercively interfering with them, by aggressing against them. 'Side constraints express the inviolability of others, in the ways they specify'.\(^{17}\) And inviolability is said explicitly to exclude compulsion.\(^{18}\)

Hence, there is not only a physical separateness of individuals, and a logical claim that there is no social good for which some individual lives or goals may be sacrificed in order to help others. There is a moral claim involved as well.

...no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall social good. There is no justified sacrifice of some of us for others.\(^{19}\)

Irrespective of whether there can be a 'social good' or not, Nozick claims that Kantian ethics generally, and his own prohibition against using people in specified ways in particular, amount to a moral axiom regarding rights-infringement. 'To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has'.\(^{21}\) The separateness of individuals and their peculiar characteristics demand dignity; it is a moral separateness as well as a descriptive, pluralist claim about individuals' differing needs. He quotes Kant
in support of his own moral injunction:

[act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.]

Nozick's argument for the non-interventionist order, then, focusses on the means by which persons may not constrain one another, on the means by which individuals either achieve or do not achieve their goals and purposes. Nozick clearly need not object, according to the dictates of his position, if not all individuals actually fulfil their needs or wants. Rather, he only objects if they do not achieve them because their rights have been infringed. And more importantly for Nozick, the nature of man does not require that individuals be placed in a particular (material) position in order to benefit from their possession of rights. His argument can only give rise to purely negative and procedural claims upon others. The only positive moral obligations are those consensually arrived at.

As I argued in Chapter I, Nozickean rights are highly specific. The non-interventionist state is extremely narrow in its concerns, since its only justified role is to protect these rights. Yet, in general, the appeal to human dignity, registering the familiar imperatives of individuality, rationality and moral agency, forms the basis of many political positions. Positive rights claims - such as the right to work, the right to be free from poverty, and to be in a certain position of want-satisfaction, and even the right to four weeks paid annual leave - similarly reflect notions of
the inherent value of humanity, the worth of individual aspirations. Only they conclude - contra Nozick - that this implies a very different kind of social order, one which specifically guarantees much more than the protection against force, theft, fraud, and breaches of contract. The question is raised, then, is Nozick's particular conclusion justified by his arguments? Is not the alternative position that the dignity of man requires the recognition and enforcement of positive rights a legitimate inference from Nozick's arguments on behalf of rights? It may be suggested that his appeal to, and concern for, the dignity of man demands much more than the minimal state, and that therefore he provides no good reason for rejecting the interventionist order. On this view, is not his proclaimed moral individualism simply one way of interpreting the notion of the dignity of man, with no special claims on our political affiliation?

III. THE DICTATES OF MORAL AGENCY.

It is apparent, upon examination, that Nozick does not show positive rights to be inconsistent with the appeals he himself makes in his supporting arguments. If man's rights-engendering characteristics are consistent with claims for the positive view, Nozick's insistence that there are only negative rights can be shown to be without foundation.

Nozick argues that, on their own, rationality, free will and moral agency may not justify the conception of man that he portrays. But together, he claims, they add up to '... a being able to formulate long-term plans for its life'. He concludes that it is the overall conception of our life that is important to our humanity.
But Nozick does not explain, and it is certainly not clear, why such a view of human nature should imply only negative rights, and not positive rights as well. The notion of meaningful life, for instance, includes not only non-aggression, but also the existence of certain specific conditions under which our lives can be given meaning. It is contradictory to justify a theory of rights in terms of man's goal-oriented choice-patterns while at the same time limiting those rights in such a way as to ignore the importance of actually fulfilling goals. Rights are regarded as important by Nozick because they recognise life-plans. It is therefore strange to find him unconcerned with the actual fulfilment of human purposes.

Yet Nozickian rights clearly do not make any guarantees to the individual that he will attain meaningful life or be able to take advantage of his rational choice capacity. Nozick's political framework of rights in no way actively encourages, or even pretends to be concerned with the satisfaction of our wants. Hence Nozick's appeal to the notion of meaningful life appears not to provide a convincing reason for adopting a minimal state.

It is apparently the case that Nozick's individuals are not leading meaningful lives if their life-plans are being interfered with. This in itself seems a plausible claim. Man's rationality is of central importance to Nozick's image of 'man as chooser'. To deny that this implies that human goals are worthwhile because they are individual, that therefore it is worthwhile to have such goals fulfilled, and that rationality is of little use if our interests are constantly thwarted by things other than rights-
infringement, is to divorce the theory from its justificatory foundations. Nozick is clearly guilty of such an inconsistency. We supposedly respect rights because man is like x: he is a rational chooser, he has goals that are important to him, he needs to lead a meaningful life, he is a 'separate' individual. It is implausible for Nozick to then claim that these aspects of man's nature are reducible to the notions that uncoerced individuals, whose negative rights are respected, necessarily lead meaningful lives. However, if his justificatory arguments are to be taken seriously, this conclusion seems unavoidable.

Samuel Scheffler points out that:

[t]o say that the valuable capacity to lead a meaningful life is the basis of rights, is presumably to suggest that the moral protections and guarantees which rights assign to people may be understood as jealous of people's ability to actually live meaningful lives.24

The relevance of this claim to the tenability of Nozick's argument is that meaningful life is consistent only with goal-satisfaction, whereas Nozick's own rights are not. In other words, we do not choose simply because we like choosing, but in order that we may fulfil goals.25 To isolate man's capacity for choice from his desire to make these choices 'meaningful' is quite artificial; it ignores the real reason why choosing is important to individuals.

Scheffler concludes that an appeal to a conception of human dignity yields a positive theory of rights, (including the right to 'welfare'), and not that espoused by Nozick.26 Whether this conclusion is shown to be justified is not at issue. What is important is that
such a conclusion, which relates the notion of meaningful life in a positive way to individual goal-satisfaction is just as plausible as Nozick's insistence that coercion makes individual life meaningless. On this alternative (equally plausible) view of meaningful life, the state may clearly do positive things to help the individual achieve self-fulfilment, an implication that is rejected by Nozick. Nozick doesn't show that his own individualist interpretation of meaningful life is preferable to any other interpretation. Hence his appeal to this notion does not render the interventionist state illegitimate, nor does it establish the primacy of negative rights.

Nozick claims that individuals are inviolable; on this view, moral agency dictates that they should not be 'sacrificed'. But what do these assertions actually mean? What exactly is it about the individual that is inviolable? Nozick himself posits that it is not rationality alone. Hence we may question whether inviolability can simply be reduced to the axiom that we should never deny choice. What moral agency and inviolability actually dictate is respect for a particular concept of the individual. But it is possible that doing things to individuals without their consent is merely one way of failing to take sufficient account of their individuality. That the individual's life '...is the only life he has' may equally suggest respecting the content of that life, and taking into account the values that the individual finds important. This, clearly, would involve social and political arrangements that go beyond Nozick's minimal state. Respecting the content of a person's life would, at least, require some commitment to human needs. Yet this is
not possible within Nozick's political framework. Sacrificing a person's will (by denying him choice) is by no means the only way of sacrificing his life. A denial of options may have the same effect.

It has been argued by several critics that Nozick fails to draw wider, but still acceptable conclusions from his appeal to Kantian ethics, principally in the area of duties to mutual aid. The accuracy of Nozick's interpretation of Kant, whether he 'got Kant right', is not at issue. What is more important is whether the implications of Kant's ethical imperative - not to treat individuals as means towards our ends, but rather to acknowledge that they have their own ends which are themselves important - are such that only Nozick's theory of rights can accommodate it.

Again, the crucial question is whether moral agency is threatened only when our negative rights are infringed. Treating persons as ends in themselves and not 'tools' in the fulfilment of our own desires would appear to encompass relationships, uses, and influences that cannot possibly be covered by Nozick's theory. The Kantian injunction appealed to by Nozick could plausibly be interpreted to imply respect for the importance of the individual goals and ends themselves. Such a view would demand a political commitment to goal-fulfilment, not simply non-coercion. It is essential, on this account, not to treat individuals as means because their lives are important - and lives embrace interests and needs as well as choices. Kantian ethics appear entirely consistent with an interventionist order committed to the satisfaction of human goals. Nozick provides no argument to suggest that his own individualist
conclusions, with their exclusive commitment to negative rights, follow easily or directly from Kantian foundations. Nor does he demonstrate that positive obligations are not possible on Kantian grounds.

An appeal to moral agency, therefore, sits awkwardly with Nozick's narrow concern with consent-based obligations. The inviolability of humans, the dignity that demands respect, may be reflected in more ways than by simply avoiding coercing them. The interpretation of Kantian ethics, for instance, to include the injunction that all taxation is illegitimate is open to question. (Whether taxation and other forms of state intervention really infringe moral agency is a question that will be taken up in the following section).

Neither Nozick's concern for meaningful life, nor his appeal to Kant's notion of moral agency, need imply the exclusion of recognising some positive rights and obligations. Nozick's political conclusions, therefore, are not shown to be demonstrably true by his stated arguments. As George Kateb points out,

As I understand it, Nozick's general conclusion is that only when the rights of persons are respected absolutely are persons respected absolutely. Only when the rights of persons are respected absolutely can persons freely search for, and perhaps find, meaning in and for their lives, and thus be recognised in their distinct individuation. I think Nozick is saying that persons as persons deserve respect ... There is, however, a terrible distortion that destroys the book's usefulness in the cause of newly defending the idea of limited government. Instead of assuming that many kinds of rights must be recognised, and many social conditions
must exist if we are to favor the life of meaning for persons, Nozick narrows his theory of rights to the right of property, and he unfortunately makes that right his true absolute.28

Kateb does not prove that 'respect for persons' engenders particular positive obligations. However, his preference for allowing many kinds of rights is quite consistent with the notions of meaningful life and moral agency that are appealed to, but interpreted narrowly by, Nozick.

The absoluteness and the specificity of Nozick's rights are not established by his justificatory arguments. For instance, Nozick's concern for self-ownership embraces, as Kateb suggests, the notion of only negative property rights. But how does Nozick justify such a conclusion? On the one hand, when an individual's resources are taxed for whatever purpose (to aid other individuals), the implication is that part of him is 'removed' or 'infringed'. Hence the rightful owning of property is part of Nozick's concept of the inviolate individual.29 (Hayek too acknowledges the necessity of including some property in the private sphere of the individual to make it meaningful30). On the other hand, however, those who are denied access to property by non-coercive constraints cannot claim, according to Nozick, that a part of them is similarly 'lacking'. If meaningful life is tied to property rights, why is it granted to some yet denied to others?

The equation of moral essence with material possessions seems to be a serious fallacy embraced by Nozick, an unwarranted reduction of the importance of respecting persons as persons. His commitment
to absolute and unrestricted property rights is inconsistent with the need for property that is denied to those who do not have it. Seemingly those who have property cannot have it taken away because it is part of them, necessary for their personhood and meaningful life. But those who have no property cannot demand to be given any, because they have no right to.

This is a strange conclusion to draw for one whose principal appeal is to human dignity. Yet such a conclusion is demanded by Nozick's insistence that property rights must be absolute. As Kateb suggests, Nozick's reasons for enforcing rights, though legitimate, are not fulfilled by his commitment to only negative property rights. Nozick's appeal to his conception of human nature equally supports the claims of those without property that they should be given some.

Hence the logic of Nozick's arguments is consistent with an interventionist order committed to the demands of propertyless individuals. Recognising the importance of property leaves open the possibility of a positive theory of rights. If meaningful life, separateness and moral agency are to be regarded as important reasons for respecting persons, and if these things include the right to control material possessions, it follows that people without property are leading meaningless lives and therefore are worthy of Nozick's (and the state's) concern. The need to know how one is going in terms of one's life-plans, acknowledged by Nozick to be a vital part of personhood, is clearly denied to those without property. The statement that 'the individual's life is the only life he has' is just as much an argument for positive guarantees
as it is for negative prohibitions. The tone of Nozick's appeals quite clearly embraces a concern for the fulfilment of individual expectations.

Yet positive rights are denied by Nozick, who claims that only our 'legitimate' entitlements fill the landscape of moral obligation. Hence if all our acquisitions and voluntary transfers are legitimate, there is simply no room for a positive theory of rights. Nozick would argue that though property may be important for individual goal-satisfaction, it is the act of acquisition of it by the individual that renders it a part of his personhood. There is nothing special in the property itself, but rather it is his ownership of it that makes it wrong to take it from him. Therefore the state simply cannot accede to the demands of the positive rights theorist and the needs of the propertyless.

But this conclusion rests on the controversial view that there are only negative rights. As I have argued, Nozick never establishes this, and his own arguments suggest that other conclusions are equally plausible. There is only no room for positive rights via compulsory transfers if we accept the absoluteness of negative rights in the first place.

In effect, Nozick's individualist conclusion as to the existence of only negative rights is built into his premises regarding human nature and the consequent immorality of coercion. By definition, he gives human nature an individualist 'twist' and thus renders intervention by the state inadmissible. Hence one must reject
individualism in order to justify positive rights in terms of an appeal to human nature.

But are not Nozick's premises - Kantian ethics, separateness, moral agency and meaningful life - susceptible to treatment in other-than-Nozickean ways? We only have Nozick's word that these things demand individualist negative rights. If we remove the individualist structure from Nozick's premises, they may well yield (and not be infringed by) positive rights. Many socialists and interventionists use these same premises in non-Nozickean-individualist ways. This does not disprove Nozick's argument from human nature - it simply questions whether such premises, when stripped of their individualist interpretation, necessarily produce only a non-interventionist order. Nozick's premises, therefore, are not independent, objective 'facts' about human nature and the immorality of coercion, but are subject to Nozick's all-pervasive individualism. They yield the non-interventionist order only by definition.

Thus, in conclusion, the interventionist state is not excluded by an appeal to Kant, separateness, meaningful life or moral agency per se. It is excluded only by an appeal to them couched in terms of individualist presuppositions. The dictates of moral agency, as such, remain indeterminate, as does Nozick's claim that his own ethical premises concerning the nature of man rule out the re-distributive practices of the interventionist state.

IV. RIGHTS AND THE INTERVENTIONIST ORDER.

Nozick faces such a dilemma essentially because he, like Hayek,
fails to distinguish between serious and non-serious forms of rights-infringement. If this absoluteness is abandoned, there is clearly room for a variety of rights to give fuller effect to the recognition of human worth that Nozick himself favours.

Upon analysis, Nozick's failure to distinguish between different kinds and degrees of rights-violation is a serious flaw in his theory. He never demonstrates why all instances of breaching consent should be reduced a priori to the one level of 'infringement'. Are not some violations less acceptable than others on Kantian grounds? Nozick's insistence that such intervention as practised by the welfare state necessarily infringes rights is true by definition. However, it is not equally clear that these positive state activities deny the things that Nozick claims make rights valuable. Hence Nozick's argument that the coercion of the interventionist order negates individuality is just as open to question as his assertion that there are no positive rights. As such, his attempt to dismiss arguments for the interventionist order is not established. It is worth repeating Nozick's conclusion that only the non-interventionist state respects humanity:

[t]he minimal state treats us as inviolate individuals, who may not be used in certain ways by others as means or tools or instruments or resources; it treats us as persons having individual rights with the dignity this constitutes. Treating us with respect by respecting our rights, it allows us, individually or with whom we choose, to choose our life and to realize our ends and our conceptions of ourselves insofar as we can, aided by the voluntary cooperation of other individuals possessing the same dignity. How dare any state or group of individuals do more. Or less.31
I have already suggested that to claim that the non-interventionist order 'allows' goal-satisfaction is not a guarantee of meaningful life. Such an order as Nozick's, like Hayek's, which merely enforces negative rights, cannot guarantee anything more than the elimination of one constraint upon action amongst a wide range of influences. And to suggest that respecting rights fully embraces the implications of human dignity is, arguably, insufficient. Perhaps it is merely one aspect of it. Nozick's equation of dignity with rights is drawn too easily.

But Nozick also suggests in the conclusion above that any more-than-minimal state necessarily negates human dignity. Hence, on this view, even if the motives of positive rights theorists are legitimate - the amelioration of human hardship and the removal of obstacles to self-realisation - it cannot be denied that any attempt to achieve these aims by compulsion involves coercing people. And this is unacceptable to Nozick.

Does the redistribution of wealth (this covers most of the allegedly objectionable activities of the interventionist state, including the provision of welfare, equality of opportunity, common goals, and so on) by taxation really deny human dignity? Against Nozick, Hayek argues that the most objectionable features of coercion are reduced when it is predictable. In other words, we can still shape our lives according to a plan and attempt to fulfil our aims even if we are taxed a proportion of our income. If this is correct, it undermines the validity of Nozick's argument against taxation. Nozick asserts, however, that any taxation makes the individual a
resource for the use of others in the pursuit of their goals. The important question is whether Nozick's supporting arguments establish the truth of this view. We might be a resource of the state in one sense, and yet be still free to lead a meaningful life and engage in the voluntary contracts favoured by Nozick.

In the previous chapter I claimed that redistributive measures do not eliminate freedom of action. Here, it is equally clear that they are not inconsistent with the premises appealed to in Nozick's argument for the value of autonomy. This conclusion is unavoidable if one accepts that some instances of coercion are more harmful than others, and that therefore there are different kinds of rights with different political implications.

Thomas Scanlon is correct when he suggests, in reference to Nozick's disavowal of taxation, that he

... tries to make such measures seem more alarming to us by tying them to more extreme forms of intervention ... But there seems to be no reason to disregard such obvious differences in the degree of regulation of a person's life. It may be true, as Nozick claims, that there is a continuum of interferences extending from taxation to forced labor, each foreclosing a few more options than the preceding. But the fact that there is such a continuum is no reason why we must be indifferent between any two points along it.32

However, such a relevant differentiation is precluded by Nozick's restricted conception of rights. By defining rights exclusively in terms of consent, he begs the question of the legitimacy of the interference. Whether or not our moral intuitions may be reasonably expected to reject forced labour on the grounds of human dignity
and meaningful life, it is not at all clear that the rejection of redistributive taxation is warranted on the same grounds. This reflects the view of Charles Taylor that a step away from the negative conception of rights need not require a commitment to collectivism (the actual dictation of individual goals) and the genuine loss of human dignity that this would involve. The fruits of voluntary exchange are not denied by taxation; nor are the possibilities of goal-formulation and the use of human rationality in the achievement of ends. We may still 'know how we are going in terms of our life-plans' even if some of our resources are removed.

The kinds of moderate redistributive policies favoured by the welfare state embrace Taylor's first step towards a positive view of rights. They clearly need not prevent the pursuit of individual life-plans. Rather, they may be regarded as simply a denial of options. And as Scanlon points out, the importance of the options denied by others to the meaning of our lives varies enormously. The coercive nature of the welfare state - its use of a portion of the resources of some to benefit others - seems merely to infringe the choice environment of the individuals affected. As I argued in reference to Hayek, the removal of some of one's resources need not mean a 'loss of self'. Hence it is unclear that Nozick need be worried by the coercive activities of the state in its provision of welfare if his arguments are to be treated seriously. It is the effect of coercion on individual life that is important. It is a dubious claim that in contemporary liberal democracies the ultimate goals or life-plans of individuals are undermined more by taxation than by, for example, unemployment, which is regarded as a legitimate
interference by Nozick (and Hayek). Examples such as this illustrate the unreality of many of Nozick's conclusions, even in relation to his own stated premises. The importance of rights is their relationship to the autonomy of individuals. Things other than Nozickean rights-infringement deny autonomy by effectively negating the whole range of individual options. Yet Nozick ignores these, only to focus on things (such as taxation) which demonstrably do not have this effect.

Lives, then, are not 'sacrificed' by the taxation that makes redistribution possible and recognises positive rights. Taxation does not ignore the fact that the individual's life is the only one he has. The significance of 'consent' is reduced when Nozick's argument for meaningful life is considered.

It is stretching an argument to suggest that persons who are taxed a portion of their income to help the needy (Nozick sometimes gives the impression that all taxation is used to help the needy\textsuperscript{34}) are thereby denied the status of moral agency. Is it Nozick's claim that the poor man, who is not being coerced by anyone, but who cannot make any reasonable life-plans because of his condition, is leading a more meaningful life than the entrepreneur who is 'coerced' by taxation? The ability to lead a meaningful life bears no necessary relation to whether one is being taxed or not. Yet in his justificatory argument Nozick makes an explicit connection between having negative rights and having the ability to find meaning in life. More importantly, the latter is clearly very important for justifying Nozick's political prescriptions. This calls into
question the attempt by Nozick to define legitimacy of interference solely in terms of one's negative rights.

Using a person's resources for the purpose of mutual aid, whether or not demanded by Kantian ethics, need not infringe them. Nozick's claim that we are still merely resources is only relevant here if one builds his conclusion regarding the non-existence of positive obligations into his premises as to the nature of man. At any rate, it is never the case that the taxed person is merely a resource, if his life-plans remain intact. It is often the case that coercive interference will violate the Kantian moral injunction. It is equally true that coercion does not exhaust the means by which individuals can be used. It is not obvious that all forms of coercion use persons in ways that are important to their status as moral beings. In particular, progressive taxation of the rich would appear not to be as serious a 'use' as the holding of a rich man's family for ransom by a kidnapper. Perhaps the loss of his family would negate his reason for living and make life-plans meaningless. This does not imply, however, that taxation also does so.

It would appear, then, that Nozick's arguments against the intervening state (and for the enforcement of negative rights alone), based on moral agency, Kantian ethics and meaningful life, have little force in rejecting one form of positive political association, the welfare state. Nozick, on this as on other occasions, appears to be engaged in the destruction of a straw man by claiming that interventionism necessarily denies the above values and negates autonomy. J.P. Sterba's 'neo-libertarianism', which provides a
minimum of liberty for individuals while recognising the importance of welfare, rejects the narrowness of Nozickean rights. This kind of argument supports the contention that a commitment to the primacy of the individual is consistent with states other than the purely non-interventionist order on the grounds of helping the individual achieve some measure of goal-satisfaction. It shows that a more positive state does not infringe rights to the extent, and in the ways that Nozick claims, and it is consistent with the view that negative rights are not the only kind of rights that we possess.

That Nozick's premises are therefore insufficient to dismiss claims on behalf of state intervention is an important flaw in his argument. However, it may also be the case that Nozick's own minimal state does not provide the things valued by an appeal to autonomy. If Nozickean rights cannot guarantee human dignity (this is a plausible assumption) then perhaps intervention is required rather than simply allowed.

Nozick seems to acknowledge the necessity of some redistributive intervention in his discussion of the rectification of past injustice, though he argues that this is a different kind of redistribution from that implied by the principle of equality. He poses the following problem:

The existence of past injustice (previous violations of the first two principles of justice in holdings) raises the third major topic under justice in holdings: the rectification of injustice in holdings. If past injustice has shaped present holdings in various ways, some identifiable and some not, what now, if anything, ought to be done to rectify these injustices?
This, as Nozick acknowledges, raises enormous problems of implementation.\(^{38}\) However, it also creates anomalies for the proponent of a non-interventionist order. Clearly, the need to right past injustice demands redistribution (back to the original rightful owners). It is not clear that 'innocent' individuals will not have their property removed because of the misdeeds of their forefathers, over which they had no control. Yet such a redistribution is demanded by Nozick's theory of entitlements. Since the process by which they acquired their holdings was originally unjust, even if they did not know it, they are required to return the holdings to the original owner. The problems raised herein are similar to those faced by supporters of retrospective legislation - for example, are any gains (for example, from interest payments) also regarded as illegitimate, and subject to redistribution. Could the original rightful owners claim compensation in lieu of the interest he could have earned? Can 'classes' or races demand rectification as individuals can?

Nozick himself addresses the problem of compensation.\(^{39}\) However, the point here is not simply that his theory of justice raises serious difficulties of implementation, but that it would require such massive bureaucratic machinery as to render meaningless the notion of a 'minimal' state which is not redistributive. To enforce rectification would demand an interventionist state, would involve 'continuous interference in individual lives', would necessitate the negation of meaningful life for those innocent individuals who would lose their possessions under the rectification.

Hence Nozick's claim that individual rights can only lead to
a non-interventionist state is itself demonstrably false. His belief that autonomy (including property rights) can be guaranteed by the operations of the free market is not substantiated. That one kind of interventionist order is demanded by his own theory substantially weakens his argument against the general notion of redistribution. Positive state action of a redistributive kind is shown to be required by the imperative of respecting human dignity.

Nozick appears to contradict his own argument that intervention is illegitimate because it involves continuous interference in individual lives. And the simple equation of taxation with interference is misleading for, as Hayek admits, predictable coercion may in fact be more admissible (in terms of disrupting life-plans) than that which is not. But the rectification principle would demand real interference on a massive scale. It would deny choice and not merely restrict options.

Like Hayek's liberal order, (particularly in its service functions), Nozick's minimal state turns out to be both redistributive and interfering (interventionist) in order to fulfil the requirements of individual autonomy. Hence moral agency, meaningful life and human dignity not only allow, but positively demand one kind of interventionist state. All Nozick's arguments against intervention as such are thereby rendered meaningless.

An appeal to negative rights only is therefore not sufficient to guarantee the values revealed in Nozick's justificatory arguments. The latter nowhere demonstrate that negative rights are the only
rights we have, nor does he convince us that moderate forms of intervention necessarily deny autonomy.

V. NOZICK'S EXAMPLES.

Nozick argues that rights fill the landscape of legitimate state action, that these rights are necessarily negative and equally stringent, and that all coercive state action must be in violation of them. I have argued that in attempting to demonstrate the validity of these conclusions, Nozick appeals to certain moral premises concerning human nature and the consequent indefensibility of coercion, yet fails to establish the exclusive legitimacy of the non-interventionist order.

However, he also appeals to a number of disarming examples of rights-infringement in order to establish his claims. These cases, like the claim that taxation really involves the same use of others as resources for our purposes as forced labour does, attempt to convince the reader that the interventionist state really is illegitimate, that all forms of positive state action deny human dignity.

Primarily, the examples referred to are those of the marriage partners, the Wilt Chamberlain basketball case, the worker and owner-of-capital relationship and specific instances of equality of opportunity arguments. They all attempt to demonstrate the implications for individual autonomy of allowing interventionism. But do such examples justify Nozick's political position, or do they simply illustrate it?
The implication of the twenty-six sets of marriage partners is that if transactions are voluntary, even if unpalatable for some individuals, they are nevertheless legitimate. On this view, no agency has the right to coerce particular persons in order to make the options of others more attractive. Envy is not a sufficient reason for intervention. However, the relevance of this example to considerations of justice is not clear. In the pursuit of social justice, there is no evidence that an interventionist state need legislate to arrange marriages. By appealing to the most cherished example of free choice, Nozick claims that all interventions are unjust. By appealing to an instance where equality of opportunity is beyond the concern of all but the most repressive of governments Nozick does not establish that such equality is never relevant. In marriage, choice is the only relevant factor, for no amount of redistributive activity would necessarily alter an individual's choice in the matter. Nozick's example may reveal the insidious nature of arranged marriages, but it tells us little about the nature of the just political order.

Marriages are instances of individuals exercising free choice. They are said to demonstrate the kinds of human attributes - free will, dignity, rationality, ability to attain meaningful life - that make rights valuable. Nozick takes marriage to be the paradigm case of the free market order. He asks what right the state has to intervene in marriage. Hence, what right has the state to intervene in other exercises in free choice? He implies that if interference is illegitimate in one, then it must also be illegitimate in every other exercise of free choice, such as the willingness of
particular owners of capital to employ particular workers, and the willingness of fans to pay basketballers. But such an inference does not follow simply because the former interference would be an unjustified one. Nozick would have to demonstrate that, on the grounds of separateness, meaningful life, moral agency and rationality, a person's individuality was being threatened in every example.

The problem raised by such examples is that of 'neighbourhood effects'. Free transactions may curtail options, but they need not deny free choice to others. If no one's autonomy is denied, then the effects of human action which seriously curtail options must be regarded as legitimate. But Nozick seems to ignore the fact that different kinds of choice-exercising have greatly varying effects on the choice-environment of others. It does not follow that since it would be immoral for the state to intervene in some areas (the most important to us) then it would be also and equally wrong to intervene in others. All such examples can hope to demonstrate is that it would be wrong for the state to intervene in those areas. Some instances of intervention would deny free choice in an ultimate sense. But proponents of redistributive taxation, for example, need not support such kinds of intervention. As I argued earlier, the values of autonomy are not necessarily threatened in significant ways by the coercive measures of the state. By appealing to precious examples, Nozick hopes also to dismiss less important forms of intervention in the life of the individual. But this attempt fails, since he does not establish the primacy of his own
negative rights in his justificatory arguments.

Similarly, the Wilt Chamberlain case only serves to dismiss the interventionist order if it is accepted that taxing some of his earnings denies his right to choose. Again, this is simply not the case. The most that can be said is that his profits from the free transactions are reduced. His right to choose is not curtailed. And, as I have argued, there are problems with the view that 'property' and 'self' are inextricably linked, and that therefore to deny (part of) one is also to deny the other. Clearly, it would, on Nozick's appeal to meaningful life, be different if a government actually stopped basketball players from doing what they enjoy, or from earning money from it. Nozick's own distinction between 'choosing' and 'options' must be drawn here.

Hence, again, the example cannot serve as an illustration of Nozick's view of rights, not as an independent justification of it. Its plausibility rests on the acceptance of particular assumptions (for example, that there are no positive rights) which Nozick has not shown to be warranted by his supporting arguments. It has not been shown, in this instance, that Wilt Chamberlain's 'humanity' is denied simply because his profits are taxed, unless one accepts Nozick's individualist conclusions, which, I have argued, are open to question.

Nozick claims to show that particularly objectionable instances of applying the principle of equality of opportunity undermine the principle itself. He argues thus:
If the woman who later became my wife rejected another suitor (whom she otherwise would have married) for me, partially because (I leave aside my lovable nature) of my keen intelligence and good looks, neither of which did I earn, would the rejected less intelligent and less handsome suitor have a legitimate complaint about unfairness? Would my thus impeding the other suitor's winning the hand of fair lady justify taking some resources from others to pay for cosmetic surgery for him and special intellectual training, or to pay to develop in him some sterling trait that I lack in order to equalize our chances of being chosen?42

The answer is of course, that such a case does not warrant guaranteeing equality of opportunity. Apart from the irrelevance of equality to this kind of choosing, it is a caricature of the principle of equality to portray it in this way. Because we would not want to re-educate the losing suitor and pay for plastic surgery for his looks need not imply, however, that we would not tax others to feed him if he were starving. The imperative of goal-achievement has not been shown by Nozick to demand that any possible individual want or need must be satisfied in order for the principle to be meaningful.

The above case provides no good reason for equalising opportunities. But this does not show that there exists no good reason for doing so. A supporter of the interventionist order need not argue that all opportunities should be equalised. Nor would he deny that there are some instances of free choice where the principle of equality has no relevance. Hence such an example does not delegitimise the interventionist state which pursues equality of opportunity. It does not show that the values of autonomy appealed to by Nozick never require the pursuit of some form of equality.
Thus Nozick's examples, on their own, do not demonstrate that all state intervention which seeks to give some meaning and content to individual choice must necessarily infringe autonomy. They are simply illustrative of his negative commitment to rights, which can be demonstrated to be unproven by his supporting arguments. The examples cited by Nozick do not falsify the claim that human dignity need not be denied by political associations other than Nozick's minimal state. Nor do they show that free choice is always the sole criterion for judging justice - perhaps it is in marriage, but this does not indicate that it is always so. Only in a world populated by obligation-free individuals do Nozick's examples have meaning and force. That Nozick believes this to be an accurate picture of the world is an individualist assumption on his part, not an argument. The only evidence of argument in Nozick as to the source and nature of rights is his moral claim about coercion that rests on his view of dignity, separateness, rationality and meaningful life. And I have shown that these premises are open-ended. They need not imply only negative rights on the evidence Nozick provides.

As David Lyons points out, with reference to Nozick's Wilt Chamberlain example,

[n]ow, what such an example can hope to show is that voluntary transfers are relevant to judgements of justice. It follows that the justice of a social situation cannot be determined without regard to how it came about. But it should not be supposed that such an example shows any other considerations to be irrelevant. Nozick may encourage such an inference, for he does not fully clarify the point of his example, and he sometimes argues against alternative conceptions of justice by showing that they are insufficient
guides to justice. But of course, it is perfectly possible (for all that Nozick has shown) that more than one type of principle (for example historical principles plus some others) determine the truths of social justice. We certainly cannot assume the contrary. The point of Nozick's example must be to remind us that historical considerations play a role in our considered moral judgments. 43

Nozick demonstrates that free choice is an important value, and that denying it demands justification. But he does not show, as he wants to, that no such justification can be found. On the other hand the dictates of moral agency upon which his arguments for rights are founded indicate that there may be reasons for allowing measures that deny some freedom of choice. This is especially the case if one accepts that the imperative of meaningful life demands some positive state action.

Neither his examples nor his justificatory arguments prove that an absolute commitment to negative rights follows from a theory of man. (Nor do his arguments establish beyond doubt that any other conception of rights may be derived in a coherent way.) The conclusion, I suggest, must remain open. However, the interventionist state does not deny the reasons that make rights worth pursuing. Nozick fails to acknowledge the importance of the fact that not all so-called 'infringements' of rights are equally objectionable. Nor does he allow that some infringements may not be at all objectionable, on his own stated premises. Here his assertions against taxation fail, as do his examples which seek to refute appeals to equality.
Nozick's deontological argument, if anything, demonstrates the necessity of recognising and enforcing different kinds of rights. Thus Lyons argues that though negative rights may be important for the reasons Nozick suggests, they need not comprise the total content of public morality. Nozick's arguments do not exclude positive rights; rather, his conclusions define them out of existence. If Nozick's claims on behalf of meaningful life, moral agency and Kantian ethics are to be taken seriously, the possibility of helping individuals to achieve their goals must at least be admitted, even if at the expense of denying others some free choice. (If taxation can be shown to be anything more than a denial of options.) But, as I have argued, on his own moral grounds, redistributive policies need not be as objectionable as Nozick wants to suggest. He does not show that all rights must be negative; nor does he establish that negative rights-infringement is never worth pursuing in the name of meaningful life. His appeal to examples of such infringements begs the question of whether or not they are legitimate forms of intervention.

VI. SUMMARY AND CONCLUSIONS.

I have argued in this chapter that Nozick's argument for individual rights and the non-interventionist order is deontological in nature. Unlike Hayek, who speaks of freedom largely in terms of the benefits it provides for the individual and for society generally, Nozick justifies autonomy simply in terms of the immorality of denying it. The reasons he provides, then, for enforcing rights, do not relate to results that are largely independent of the mere exercise of those rights. Whether or not rights lead to goal-
satisfaction is unnecessary for Nozick's argument. Hayek, on the other hand, relies heavily on the belief that freedom leads to other obtainable goods (that, I argue, may be achieved by means other than the granting of negative freedom). Whereas Hayek's argument is largely instrumental, Nozick's clearly is not.

However, Nozick does not simply value autonomy per se. For autonomy reflects particular aspects of human nature and seeks to guarantee their respect. They are, specifically, rationality, separateness, free will, moral agency, the ability to attain meaningful life and the dictates of Kantian ethics. Individuals possess certain characteristics that deserve recognition. These amount to a conception of human dignity which demands respect.

Upon these premises Nozick attempts to justify a non-interventionist order. In particular, he argues that the above human characteristics yield specific rights which are of a negative character. They do not demand positive state intervention to provide individuals with particular things in order to make their lives meaningful. Moreover, any attempt to achieve such ends through compulsion necessarily infringes rights and autonomy, thereby denying humans respect for their dignity. Hence, on this view, the interventionist state which uses coercion to achieve what may otherwise be quite legitimate goals is to be rejected.

Despite Nozick's own reservations about such concepts as 'meaningful life', and the claim made by Scanlon that Nozick doesn't argue for his rights but merely assumes their existence, it
seems plausible to suggest that Nozick's view of man is the basis for his political position. Indeed, it is the only basis he provides. Moreover, his position is genuinely uncompromising, for his rights are both specific and comprehensive. He does not admit that some rights-violations may be less unacceptable than others (which could allow for some state intervention). Nor does he recognise the possibility of there being other kinds of rights apart from negative ones (which could also allow for intervention by the state in individual lives).

I have claimed that such an individualist conclusion is not justified merely by an appeal to human dignity. Hence Nozick's moral argument for autonomy does not by itself dismiss the interventionist order. Nozick's conception of man is entirely consistent with the view that there are positive rights and therefore positive obligations. Indeed critics such as Scheffler have attempted to devise 'welfare rights' using Nozick's own premises. Nor does Nozick's view of man imply that the values of autonomy are denied by such state actions that promote equality or welfare through redistributive taxation. Though such measures violate Nozickean rights in a trivial sense (by definition), they need not negate the moral agency or meaningful life that Nozick wants to uphold. Here his claims about the interventionist order are quite misleading. Like Hayek, he fails to recognise the important distinction between serious and less-serious forms of coercion. He encourages (falsely) the view that all positive state intervention is collectivist in nature by suggesting that taxation is like forced labour. That some forms of intervention deny freedom of choice is obvious; but that others do not is
equally clear. Nozick blurs relevant distinctions in his attempt to establish the exclusive legitimacy of negative rights.

If such orders as the welfare state do not curtail the values of autonomy, in the ways Nozick suggests, and if the possibility of positive obligations is not ruled out by Nozick's argument from the nature of man, then his absolute political position is seriously weakened. That his principle of justice in rectification actually demands an order that is both interventionist and redistributive casts doubt on his conclusion that only a minimal state can safeguard human dignity. Nozick's opposition to state interference per se is compromised by his insistence that past injustices be rectified, even though the latter is, according to Nozick, independently justifiable.

Nozick's attempt to persuade by the use of compelling examples does not establish his political conclusions. They either destroy straw men by rebutting irrelevant uses of interventionist arguments, or claim that one instance of a wrongly applied principle negates the principle itself. Nozick's appeal to marriage and other 'capitalist acts between consenting adults' only shows that intervention in these areas would be wrong on his grounds. It does not exclude intervention as such. Hence Nozick's claim to have delegitimised the interventionist order is falsified by an analysis of his justificatory argument.

It is clearly the case that in matters of detail, Hayek's
liberal order and Nozick's minimal state are quite dissimilar. However, they do share the general view that the state should not coercively intervene in matters of individual choice except in the punishment of interpersonal coercion. Both their positions are absolute to the extent that they believe nothing can justify compulsion in areas beyond such punishment. They both rely on the distinction between freedom or rights on the one hand and power on the other. But in so doing they both fail to distinguish between serious and non-serious coercion. More importantly, Hayek and Nozick fail to establish the philosophical significance of coercion as a constraint upon individuality. This is especially true of Hayek, whose utilitarian justification seems to demand that the exclusive emphasis on coercion be relaxed in favour of ameliorating other constraints. However, even Nozick's appeal to the supposed immorality of coercion establishes neither that it is never justifiable, nor that it really denies individuality. And for theorists of the non-interventionist state who so clearly rely on a conception of individuality, this is an important problem.

Hence both utilitarian and deontological arguments for an individualist position face important difficulties in the attempt to reject various manifestations of state intervention. I have argued that despite the closeness of Hayek's position to that of Nozick, there is a fundamental contrast in their justificatory approaches. This is hardly surprising considering the different sources of their thought and the intertwining of traditions to which they belong. But is the extent of the contrast obvious?
I argue that Hayek's argument is teleological because he appeals to the benefits of freedom. Though he sometimes claims that coercion is evil simply because it negates the thinking and valuing aspects of the individual, he clearly does not couch his justification primarily in these terms. Hence it can be readily assumed that Hayek's main justificatory concern is for coercion's denial of benefits. Similarly, though Nozick claims that utopia (the minimal state) is 'inspiring' because it fulfils the expectations of utopians (by presumably maximising the individual's happiness), it would be misleading to attribute much justificatory importance to this claim. Nozick's appeal, rather, is to a conception of 'the right' and not 'the good'. Goal-satisfaction is not necessary, he believes, to support the value of autonomy.

Thus the contrast between Hayek and Nozick regarding their arguments is valid. However, though these are the main arguments used to exclude interventionism from politics, they are, upon further examination, not the only ones. That autonomy is seen primarily through either the benefits of freedom or the nature of man and his rights is not the end of the debate for Hayek and Nozick. For they both put forward a series of propositions as to the true nature of society which are said to yield only a non-interventionist political order. These statements are largely empirical; they attempt to demonstrate the impossibility (or futility) of moving beyond their own preferred form of political association. Although such assumptions about society are quite distinctive, they can ultimately be reduced to the notion that society consists of no more than a collection
of individuals without common bonds, whose major relations with others are immunities rather than obligations. This thorough-going individualism is manifest in particular premises and assumptions in both Hayek and Nozick, though it is clearly common to both of them.

A complete assessment of Hayek's and Nozick's libertarian political position, then, is impossible without reference to their shared assumptions about the nature of society, which lead to a shared individualism. For this task it is not sufficient to argue that their claims on behalf of the non-interventionist order, which appeal to the values of freedom and rights, are fundamentally flawed. For ultimately their rejection of positive state action rests on much more than this. A critical analysis of both their general individualism and its specific manifestations is the task of the final chapter.
CHAPTER 6. INDIVIDUALISM, SOCIETY AND THE REJECTION OF THE INTERVENTIONIST ORDER.

I. INTRODUCTION.

I have argued that Hayek and Nozick approach the problem of justifying the non-interventionist order, one that does not interfere coercively with individual choices, from two fundamentally different perspectives. However, neither Hayek's consequentialist argument nor Nozick's deontological justification support the political conclusion that only a non-interventionist state is legitimate. Certain uses of state compulsion, limited to the pursuit of individual goal-satisfaction through the amelioration of external constraints upon action other than interpersonal coercion, are fully consistent with the values of autonomy appealed to by both Hayek and Nozick. Hence their particular arguments on behalf of freedom and rights do not dismiss the claims of those who favour the interventionist order.

In this chapter I want to examine the important additional claims made jointly by Hayek and Nozick in support of non-intervention that are distinct from their particular claims outlined above. If the latter are insufficient to delegitimise the interventionist order, what other claims can be made to achieve this end? How can these claims be described? What, if anything, do they have in common? What is their justificatory force in relation to the political conclusions reached by Hayek and Nozick regarding freedom, rights and justice?
I will argue that Hayek and Nozick share certain individualist premises and assumptions concerning the nature of society which serve as justifications, and not merely descriptions, of their preferred political association. We ought, on this account, to reject the interventionist order, not because it infringes individual autonomy, but because it is based on fallacious premises. Society, they argue, is not an 'organisation', if this is taken to include a set of common goals. Rather it consists of individuals who come into contact 'accidentally' in the pursuit of their separate goals. Hence the political association ought simply to provide a set of rules which allows individuals to pursue their goals through voluntary cooperation and mutually beneficial contracts. There can be no 'societal' goals as such, for individuals cannot agree upon collective ends. Hence such questions as 'social justice' are said to be merely pseudo-problems posed by defenders of centralist planning which are, in principle, unsolvable. There is no 'cake' to be somehow best distributed amongst the members of society. That the allocation of benefits and resources is entirely a random process, properly understood, is said to have particular political implications. It is not one of the tasks of government to create criteria (need, desert, equality) by which a distribution can be judged. This, according to Hayek and Nozick, would be a nonsensical exercise in a free society. Its only possible justification would be if society were an organisation with common ends.

This shared view of society is manifest in various propositions and arguments. Hayek's most important premise relates to his theory of knowledge. It is that the argument for freedom is based on human
ignorance. The limited nature of our knowledge is said to preclude planning, social justice and state interference in individual lives. Moreover there is a plurality of ends and an individuation of needs in society which allegedly exclude positive state action. For Hayek, we cannot know enough about the ends of others to justify dictating their goals and choices. And the notion of a 'collective goal' is meaningless and illusory.

Nozick also argues against those 'utopian planners' who are said to ignore the plurality of interests and the inherent complexity of society. Though his theory of knowledge is much less developed than Hayek's, Nozick nevertheless believes that utopian (collectively conceived) visions of the good life are both undiscoverable and unachievable. They are beyond the realm of legitimate societal endeavour. There can be no 'social' good beyond the ends of specific individuals, and any attempt by the interventionist order to achieve such ends is bound ultimately to fail. On this argument, the interventionist order is not to be rejected because it infringes freedom and violates rights, but because the whole notion of intervention is itself falsely conceived.

In addition, both Hayek and Nozick make use of Adam Smith's notion of the 'invisible-hand' in order to establish the primacy of the non-interventionist order. Hayek claims to adopt an evolutionary approach to freedom. Although human actions determine, for example, the distribution of goods, human planning does not. For the appearance of a society with a particular shape is an accident, resulting by chance from the uncoordinated actions of
many individuals and by the impersonal mechanism of the market. To interfere with the natural process of evolution through state intervention, he argues, would destroy the effects of the invisible-hand which allows the free society to develop.

Similarly, Nozick justifies his minimal state, against both anarchism and interventionism, by claiming that individuals in a state of nature could 'back into' a particular kind of political association without having intended it. Such an approach reflects the rejection of all social contract explanations which could justify a more-than-minimal state. Only an invisible-hand process (which does not dictate individuals' rights and needs) can adequately account for the emergence of political life. Therefore all contrary explanations are said to be falsely conceived, and their political conclusions void.¹

The accuracy, and the means of establishing the general premise that there is no social good, only individual goals, remain unclear. However, this is the ultimate appeal made by Hayek and Nozick in their attempt to refute claims in support of positive state action. They are forced to rely on this individualist conception of society since their specific arguments on behalf of freedom and rights do not yield their desired conclusions.

Despite the difficulty of justifying (or rejecting) such uncompromisingly individualist conclusions, some specific problems confront Hayek's and Nozick's particular arguments. The distinction between a 'catallaxy', in Hayekian terms, and an organisation,
based on the presence or absence of common ends among their members, is somewhat exaggerated. For every political association has at least one end, by definition - its own perpetuation. Hence, the non-interventionist state has as its end the protection of individual autonomy. If 'common ends' can be reduced to 'agreed-upon ends', then clearly even a free society may contain agreement over some things. Hayek, for instance, assumes this in his notion of the rule of law, which can only be 'discovered', not made. Yet such a discovery must rely upon the use of human reason. And the determination of the content of the private sphere clearly has to rely on some common agreement; otherwise its delimitation and protection would be impossible. Hence if the difficulties of reaching agreement over ends are taken to be an argument against the interventionist order, the logical outcome is not Hayek's and Nozick's preferred political association, but anarchism.

Many forms of interventionist state concede the importance of individual ends without at the same time reaching the absolute position of precluding any common agreement. Again, there is perhaps a continuum of agreements: at one end, an order which reflects agreement only on the need for mutual protection, and at the other a collectivist order which actually determines what individual ends will be. Seemingly the latter ignores the plurality of interests appealed to by Hayek and Nozick, but clearly intermediate forms along the continuum can allow for limited agreement without goal-determination. Hence arguments from the premise of a plurality of individual interests need not exclude an interventionist order that is committed to the non-dictation of what individual
goals will be.

If the distinction, as posed by Hayek and Nozick, between 'society' and 'organisation' can be shown to be at least misleading, if not false, then the conclusions they reach regarding justice and common ends lose much of their political force.

II. HAYEK'S THEORY OF KNOWLEDGE AND SOCIAL PLURALISM.

The most important feature of Hayek's individualism is that, not only is man a rational and responsible chooser, but in society his separate individual choices cannot render a hierarchy of ends, a commonly agreed-upon set of goals to be maximised. In describing Hayek's liberalism, M.W. Wilhelm points out that '[t]here is no "natural harmony of interests"'. Individuals in a spontaneous order pursue their own goals irrespective of, and ignorant of, the goals and wants of the individuals that they do not know. On this view, there is no necessary coincidence of individual interests.

The specific purposes of each party in a voluntary contract may determine what mutual benefits will accrue from it. But the ends of one person are not necessarily those of the other, nor need they be for the cooperation to be successful. Voluntary contracts can serve the different ends of different individuals. Hayek's belief in the individuation and plurality of human purposes engenders a commitment to freedom as a political value. He argues that only a non-interventionist order adequately accounts for the fact that individual interests differ.
Hayek's individualism rests principally on his theory of knowledge. He argues

... that the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends...
If there were omniscient men, if we could know not only all that affects the attainment of our present wishes but also our future wants and desires, there would be little case for liberty...
It is because every individual knows so little, and, in particular, because we rarely know which of us knows best that we trust the independent and competitive efforts of many to induce the emergence of what we shall want when we see it.

For Hayek, this condition of man's ignorance of both the means and the ends of the best form of life demands the political conclusion that

... we should provide the maximum of opportunity for unknown individuals to learn the facts that we ourselves are yet unaware of and to make use of this knowledge in their actions.

With this assumption of what Wilhelm calls 'the limited rationality of man', Hayek is claiming, with Popper, that individuals cannot know the future course of their development, since knowledge is transitory, and the unintended consequences of human actions in the future would make meaningful prediction (and therefore planning) of future needs impossible.

The whole conception of man already endowed with a mind capable of conceiving civilisation setting out to create it is fundamentally false. Man did not simply impose upon the world a pattern created by his mind. His mind is itself a system that constantly changes as a result of his endeavour to adapt himself to his surroundings.

The conception of man deliberately building
his civilisation stems from an erroneous intellectualism that regards human reason as something standing outside nature and possessed of knowledge and reasoning capacity independent of experience ... The mind can never foresee its own advance.9

Knowledge, for Hayek, seems both a set of facts, a store of information used by individuals, and an activity or process of social interaction. In either case, it can be used only by individuals, and is created by individuals, in the pursuit of their specific purposes. Knowledge of societal goals, according to Hayek, is therefore impossible. Moreover, our scientific or technical knowledge grows only to increase our relative ignorance of more and more complex phenomena.10 Thus though individuals are rational, society cannot be similarly described. To this extent, Hayek argues against the use of human reason for the attainment of collective purposes, for it is senseless to even talk about collective purposes. Similarly, man simply has not discovered criteria by which social justice can be judged, and the questions it poses answered.11

Planning presupposes a technical knowledge of means, and social justice requires a moral knowledge of ends that are regarded as unattainable in Hayek's 'limited rationality' thesis.

For Hayek, all human actions are determined by individual uses of knowledge. This is the basis for his claim that man can and does have individual purposes that are thwarted by coercion. Although individuals are ultimately ignorant in relation to the store of technical knowledge developed by society, and in relation to the needs and purposes of countless unknown individuals, they are in the best position to know their own wants and goals. Despite
an individual's ignorance of all the facts he needs to know in making purposive decisions, we can be certain that no one else will know them better than the individual himself, since an individual's knowledge is, for Hayek, concrete rather than generic. The individual knows best the conditions which affect his wants, needs and life-plans. But, on the other hand, since our goals are transitory, '[l]iberty is essential in order to leave room for the unforeseeable and unpredictable ...'.

Hence Hayek's argument for freedom from the state of human knowledge involves assertions about both the knowledge we do not have, and that which we do possess. We cannot know all the facts that are necessary for the formulation of another individual's plans. As N.P. Barry notes,

[t]his has important implications for morality because this thesis of man's limited knowledge means that individuals cannot be expected to have moral obligations to society as a whole, not merely because they are incapable of the degree of altruism this would require, but because they can never know what these obligations are. This thesis ... is not merely an empirical problem, or a contingent fact about men which may be altered by some technological advance. It is a philosophical thesis about the form in which knowledge exists in the world and about the way in which the mind becomes aware of this knowledge. The sum total of knowledge existing in any society will be fragmented and dispersed throughout the members of that society and neither economic knowledge or any other kind of knowledge can be centralised in any one mind or institution.

Thus the claim that in society there cannot be a hierarchy of common goals or a natural coincidence of interests is not reducible
to man's so-called egoism or self-interest, but is for Hayek the product of our imperfect moral knowledge. That we cannot agree on ends is related to our inability to even know what those ends might be. Hence George and Wilding point out that

\[\text{[f]or this reason no one man can have a panoramic view of society and can know what ought or ought not to be done on a grand scale. Rather, through their interaction, by correcting, modifying or adding to what others have done, individuals produce achievements that are beyond their individual capacities.}\]

Hayek's theory of knowledge has the clear political implication that the formulation of much public policy (legislation) is fundamentally mistaken. Hayek argues that freedom must be upheld, and coercion therefore minimised, in order to provide individuals with the opportunity of using their specific knowledge for knowable, specific purposes. On the other hand, public policy, in Hayek's view, involves making claims about 'general' knowledge and 'social' goals which do not take account of the use of specific knowledge by individuals. And since this latter kind of knowledge is the only kind that we can ever possess, it follows for Hayek that only a non-interventionist state can be derived from a proper understanding of the nature of human knowledge. Positive state actions of the kind rejected by Hayek are said to be inconsistent with the kind of knowledge that humans possess and can meaningfully use.

Hence a clear argument for freedom can be adduced from Hayek's individualistic view of man and society - in his rational choosing, his plurality of wants and his inevitable ignorance. Moreover, this argument serves not only as a description of how real societies
develop, but as a justification of a particular set of political arrangements. It stands as a separate argument distinct from his consequentialist claims about the benefits of freedom. The latter seeks to maximise spontaneous forces, whereas the argument about knowledge refers to the actual discovery of the nature of those forces, and relates to the alleged spuriousness of the claims made by interventionists: they are promising to achieve the unachievable.

According to Hayek,

[t]he ideal of using the coercive powers of government to achieve 'positive' (i.e. social or distributive) justice leads, however, not only necessarily to the destruction of individual freedom, which some might not think too high a price, but it also proves on examination a mirage or an illusion which cannot be achieved in any circumstances, because it presupposes an agreement on the relative importance of the different concrete ends which cannot exist in a great society whose members do not know each other or the same particular facts. 17

Hence Hayek is arguing from premises of both ignorance and social pluralism. He insists, not only that we cannot know enough in order to make planning possible, but also that there is, in a sense, nothing to know, since the very notion of agreed-upon, collective goals is fallacious. His theory of ignorance pertains to our knowledge of the goals of others, whereas his assertion that no common goals exist reflects our inability to reach agreement with others. Hence there are two sets of premises relevant to Hayek's conclusions about this alleged confusion in interventionist thinking - ignorance and pluralism. Taken together, they are said to render societal goals meaningless.
For Hayek, it is only in a free society that ignorance and pluralism exist, for in the absence of dictated goals, individuals will pursue their own interests, which do not necessarily coincide with the interests of others. In such a society the collective determination of individual goals is therefore impossible, due to both the multiplicity of purposes and our inability to order them. The interventionist order, on the other hand, is said to deny plural values and human ignorance in its attempt to determine outcomes. Hence Hayek can say both that our ends are non-coinciding, and that we cannot know enough of the interests and goals of others to justify state intervention.

Hayek's evolutionary liberalism, which according to his own view, '... derives from the discovery of a self-generating or spontaneous order in social affairs ...' could not, he argues, possibly give rise to, or justify, social planning, enforced welfare and the redistribution of wealth. His understanding of how institutions, customs, morals and traditions arise and develop - by undesigned growth as the product of spontaneous individual actions, rather than as the deliberate imposition by planners of a thought-out, contrived scale of values - can only find fulfilment in a political order that above all recognises and values individual freedom. Hayek attempts to justify this order by an explicit appeal to both a distinctive and individualistic theory of knowledge, and to a set of assertions as to the plurality of individual ends.

Thus Hayek can claim that 'social justice' is a mirage, the pursuit of which is futile as well as destructive of individual freedom.
Individuals have their own personal goals, independent of the goals of others, and there is simply no coincidence of general interests. The very notion of 'societal good' is meaningless on Hayek's social pluralism.

On this view all arguments relating to government-controlled programmes, whether in welfare, the economy, or national planning, are misconceived in the beginning and doomed to failure. They rely on an allegedly false belief in the existence of determinable social goals, on an exaggerated view of human rationality, and on a misunderstanding of the nature of the spontaneous market order. The latter, Hayek claims, is an impersonal, undesigned process in which goods and services are allocated in a random manner. There is no 'cutter of the cake' who determines who is to get what. This can only be achieved in a purpose-governed, and not in a purpose-independent, society. Hence distributive justice can have literally no meaning in Hayek's order; social ends can never be anything more than the sum of the ends of the individuals that make up the society.

In sum, Hayek concludes that the tasks of freedom, justice and the market are derived from a proper understanding of the pluralist nature of society, and that our essential ignorance of the needs and goals of others precludes the possibility of social planning. Any attempts to claim that there can be societal goals are said to be ultimately groundless.
III. NOZICK'S INDIVIDUALISM AND THE SOCIAL GOOD.

I have argued that Nozick's morality, which conditions his political philosophy, is individualistic in nature. The individual is the focus of moral agency and meaningful life which determines the immorality of coercive state action. However, Nozick also makes claims of a non-moral nature about the individual in society, which clearly support the political conclusions of his other argument but which are distinct and separate claims. These arguments relate to the nature of human interests and to the alleged impossibility of collectivist 'utopian' planning.

Not only are our interests separate and individual, they are invariably different and complex. Nozick's theory of the plurality of human goals and wants, and of our necessary ignorance of the goals of others, is claimed to be a justification for enforcing individual rights. (But it is not a defence of the rights themselves - this is the function of his strictly moral argument outlined in the previous chapter.)

Firstly, Nozick claims that there is no 'social good' or 'social entity'.

Individually, we each sometimes choose to undergo some pain or sacrifice for a greater benefit or to avoid a greater harm: we go to the dentist to avoid worse suffering later; we do some unpleasant work for its results; some persons diet to improve their health or good looks; some save money to support themselves when they are older. In each case, some cost is borne for the sake of the greater overall good. Why not, similarly, hold that some persons have to bear some costs that benefit others more, for the sake of the overall social good? But
there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives.\textsuperscript{19}

The concept of 'social goals' can therefore mean no more than the sum of all the individual goals in the society. There is no mechanism which somehow 'adds up' all these disparate interests and makes a combined public interest that is achievable and knowable. 'That it is impossible simultaneously and continually to realize all social and political goods is a regrettable fact about the human condition ...'.\textsuperscript{20}

Hence the second implication of Nozick's plurality argument is that private interests are necessarily non-complementary.

The best of all possible worlds for me, will not be that for you. The world, of all those I can imagine, which I would most prefer to live in, will not be precisely the one you would choose.\textsuperscript{21}

As I argued earlier, all quests for utopia are, in Nozick's theory, simply quests for utopias.\textsuperscript{22} Our separate, individual meaningful lives only coincide through the voluntary choices of free individuals. There is no natural coincidence of interests. For Nozick, this simply reflects the fact that people are different.

They differ in temperament, interests, intellectual ability, aspirations, natural bent, spiritual quests, and the kind of life they wish to lead. They diverge in the values they have and have different weightings for the values they share ... There is no reason to think that there is one community which will serve as ideal for all people and much reason to think that there is not.\textsuperscript{23}

That there are numerous individual goals and life-choices which
invariably differ in the real world is, for Nozick, sufficient justification for defending a pluralist society governed by a minimal state that does no more than protect us from the coercive interferences of other individuals. The idea that utopia can be regarded as a state of affairs in which all problems are solvable, and all individual wants simultaneously satisfied, is for Nozick 'incredible'. Rights-enforcement as a political value takes account of the individuality of man's needs, whereas the interventionist order is said to rest upon the ill-conceived attempt to simultaneously fulfil fundamentally different and, indeed, contradictory goals.

However, there is a third aspect of Nozick's plurality thesis that should be emphasised. Not only is the idea that there is one best society for all of us specious, but '... the idea that, if there is one, we now know enough to describe it is even more incredible ...'. Nozick's problem is: 'How are we to find out what this society is like?' Man is essentially ignorant of all the facts needed to make the kind of statement: 'the best public policy is x, because of y'. Or in Hayekian language, knowledge is concrete rather than generic, is dispersed and fragmentary. A minimal state, concerned only with the protection of our absolute negative rights, is justified because it does not have to make impossible assumptions about our various specific needs. In Nozick's account, man's ignorance is simply a function of the complexity of society.

Given the enormous complexity of man, his many desires, aspirations, impulses, talents, mistakes, loves, sillinesses, given the thickness of his intertwined and interrelated
levels, facets, relationships (compare the thinness of the social scientists' description of man to that of the novelists), and given the complexity of interpersonal institutions and relationships, and the complexity of coordination of the actions of many people, it is enormously unlikely that, even if there were one ideal pattern for society, it could be arrived at in this a priori (relative to current knowledge) fashion.\textsuperscript{27}

Nozick can therefore conclude that, given man's individuality, the lack of a natural sharing (and the impossibility of an artificial identification) of interests, and his innate ignorance of the 'panoramic view of society' referred to by George and Wilding, born of the complexity of man's inter-relationships, the only political order which fully recognises the nature of the individual and society is Nozick's own minimal state. This state alone, he claims, also takes into account the fact that there are no super-individual (social) interests.\textsuperscript{28} Man, as an initiator of conflicting wants and desires, is said to demand no more than the non-interventionist order.

Attempts to ignore the complexity of individual goals by imposing one's own utopian vision, or through what Nozick terms 'design devices', are fallacious, bound to fail and at the same time injurious to our rights. Utopian visionaries, he claims, invariably attempt to impose their own schemes upon others.\textsuperscript{29} They have a composite picture of the one kind of society that is best for all. For instance, the utilitarian maximisation of happiness allegedly demands some authority to judge what happiness consists in, and how it is to be apportioned. However, for Nozick, any attempt to enforce a utopian vision necessarily precludes the
possibility of individuals having (and fulfilling) their own goals and visions. In any case, Nozick argues, '... even supposing that some great genius did come along with the blueprint, who could have confidence that it would work out well?',

In addition to his rejection of utopian theorising in general, on the grounds that there is no social good, Nozick questions on similar grounds several particular attempts by the interventionist state to impose patterned results on individuals. For example, his rejection of all conceptions of social or distributive justice other than the entitlement theory is based on the following reasoning:

The term "distributive justice" is not a neutral one. Hearing the term "distribution", most people presume that some thing or mechanism uses some principle or criterion to give out a supply of things. Into this process of distributing shares some error may have crept. So it is an open question, at least, whether redistribution should take place; whether we should do again what has already been done once, though poorly. However, we are not in the position of children who have been given portions of pie by someone who now makes last minute adjustments to rectify careless cutting. There is no central distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person, gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons. There is no more a distributing or distribution of shares than there is a distributing of mates in a society in which persons choose whom they shall marry. The total result is the product of many individual decisions which the different individuals involved are entitled to make.31

For Nozick, redistributive thinking can never avoid making this
false basic assumption that there is a 'someone' to do the distributing - some authority to which claims may be addressed, and which is entitled to make effective decisions about these claims. Since all such patterns are falsely conceived, societal needs cannot be said to exist, and cannot be defined. This is why Nozick can claim that '... there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people'. 32

Patterned theories are said to reflect the basic assumption, rejected by Nozick, that a community or society consists of something more than the sum of its separate parts, that a state has rights and obligations of its own to serve the needs of society. For Nozick, the rejection of the whole notion of 'societal needs' includes the rejection of the interventionist order which attends to them.

He rejects equality of opportunity because it rests on a false premise, namely that human lives can be treated in terms of the 'race and prize' analogy, in which some 'starters' are unfairly handicapped. 33 Advocates of equal opportunity believe that, by moving towards an equalisation of starting conditions, they can make things fairer for all. But Nozick claims that the analogy is a false one. There is no 'race' for Nozick; there are only random individual choices. Hence, on this view, the interventionist state ought to be rejected on logical as well as moral grounds. Not only does state coercion for the purpose of, for example, mutual aid, infringe the moral agency of the individual; it also reflects an unattainable goal which is initially misconceived. Nozick's argument here is clearly distinct from his earlier premises regarding
man as a rights-bearing animal. It must therefore be assessed separately.

IV. INDIVIDUALISM AND THE INTERVENTIONIST ORDER.

Despite the fundamental difference between Hayek's utilitarian defence of freedom and Nozick's argument from the immorality of coercion, they clearly share individualist beliefs as to the nature of social organisation. In particular, they deny the very notion of 'social good' and disallow the possible existence of 'social ends'. They take a 'good' to be a 'goal' or 'end' that one chooses. This makes it easy for them to argue that only individuals can choose, and easy to exploit their arguments about knowledge. Man cannot agree on what a society's goal should be, and he cannot know enough to be able to formulate it. Nor does he have adequate knowledge of the needs of particular individuals. This also is said to preclude social planning. The only way to fully take account of the plurality of interests in society and the complexity of those interests, is according to this view, to allow the voluntary contracts of individuals to take precedence over any concept of societal goals.

This individualism serves as an argument against both the very notion of the interventionist order, and the possibility of engaging in its particular activities. If there is no 'common good', (and even if there were, we could never know enough to determine what it would involve), there can be no distributive justice. Since human needs vary, there can be never a genuine equality but only the coercive interference of the central planning agency. The notion of individuality is said to be undermined by the end-state conception of society that is characteristic of the interventionist order.
Thus for both Hayek and Nozick, "... the world is a market-place in which isolated, autonomous individuals with no social bonds relate only through formal processes of exchange where they give or receive personal goods for private gain and satisfaction". Individuals have no general positive obligations to others, only those specific obligations acquired through voluntary contracts which benefit the separate individuals in different ways. According to M.F. Plattner,

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\text{[t]his line of reasoning ... is based on the assumption that the wants or preferences of individuals form the unquestionable starting point of political philosophy. It is not possible to make moral judgments about the intrinsic value of these wants and preferences, or to rank them in any way. Considerations of what is good or moral come into play only extrinsically, through the collision of one's individual wants with those of others.}\]

Hence, for Hayek and Nozick, the political realm cannot be itself goal-directed, cannot be concerned with moral judgements as to the best form of life. Its coercive role is to be reduced to what Richard Vernon has called a 'maintenance squad', or in Karen Johnson's terminology, 'government by insurance company'.

The immediate political inference of the individualist premise noted by Plattner is that government can have no legitimate purpose other than to allow individuals to pursue their separate ends. It should not impose its own conceptions of the good life on them. This conclusion is said to reflect the plurality of needs and the ignorance of ends. But is the connection that is argued for by Hayek and Nozick between the nature of society and the role of government shown to be justified?
The argument that man's preferences largely concern his private goals, and that these are individually arrived at, is undeniable. The critical question concerns whether the interventionist state necessarily conflicts with individualist arguments as to the nature of society. If it can be shown that state intervention may be justified on individualist grounds, and that it takes account of the very plurality of needs to which Hayek and Nozick appeal, then the political significance of their crucial distinction between 'individual' and 'social' goals is not established. That the interventionist order pursuing, say, equality of opportunity through progressive taxation, need not make judgements as to the worth of particular individual goals, nor need it deny the complexity of individual preferences, indicates that Hayek and Nozick are deriving inappropriate conclusions from what may be a quite legitimate distinction. By appealing to individualist premises, they are really rejecting only the collectivist order, and not the interventionist order. The notion of a central agency allocating resources need not disallow the pursuit of goal-satisfaction by individuals. Moreover, an interventionist order need not rely on common agreement over individual ends. That individual ends are different and needs complex, is not denied simply by taxing some individuals in order to help others, even if this is seen as infringing their rights. Hence an appeal to either plurality, complexity or ignorance does not necessarily delegitimise the interventionist order. Nor is the knowledge of the ends of individuals required by a central planning agency concerned to maximise goal-satisfaction by simply providing individuals with material benefits. We need not agree on what each individual should do with his allotted share of centrally distributed resources to construct an argument.
in defence of such an allocation. Hence the argument that we cannot agree over ends says nothing of the legitimacy of a political order which does not depend on such agreement.

The general claim that there are no social goods is misleading. For any form of political association, arguably, incorporates collective goods, even if these are reduced to one, the maximisation of freedom, and even if their benefits are discovered by accident. Hence to assert that we cannot know enough to formulate any collective goals is incorrect. It denies the possibility of any political order, and is therefore consistent only with anarchism. Any political goal necessarily involves the collective commitment to some end. Here it is worthwhile to distinguish between ends which are the same, but not shared (for example, we all want to be rich, or free), ends which are shared (we all want a road to the coast built); ends which we all share, but which we do not rate the same; and genuinely collective ends, that is, ends which relate to the collectivity, not to its individual members. These are important distinctions, but they need not all imply the abandonment of individually derived goals and values. That we can all agree on the need for public utilities does not require that we all use them to the same extent, nor that the particular benefits gained from our use of them be prescribed in any way. The important point is that some agreement is possible over shared concerns. Hence compulsory schemes can serve individual ends in different ways, just as the free market does. The catallaxy is not the only form of political association to take account of the non-coincidence
of individual ends.

Once it is acknowledged that collective agreement over some ends is possible, the crucial conclusion of Hayek and Nozick that there are no social goals is politically meaningless. That it is possible, in principle, for individuals to agree to maintain a political association therefore leaves open the question of what specific goals they would agree on. Hence for Hayek and Nozick to reject particular common goals by arguing that common goals can never exist is not sufficient to establish their political conclusion. Despite the difficulty of assessing the general individualist claim that there are no social goals, it is not established simply by an appeal either to man's ignorance of the ends of others or to the plurality of his interests.

The question then becomes: are the particular goals rejected by Hayek and Nozick (distributive justice, equality of opportunity, mutual aid, welfare and planning) inconsistent with the pluralist nature of society? Does the interventionist order necessarily deny the individualist premises upon which the arguments of Hayek and Nozick are based?

Hayek's thesis on knowledge and Nozick's appeal to plurality and complexity provide excellent reasons for rejecting any political order which attempts to dictate what individual goals will be. But only a genuinely collectivist order sacrifices individual wills in the pursuit of a greater common goal. Only a thoroughgoing
redirection of wills, and the pursuit of common goals that are inconsistent with the formulation and realisation of individual goals, deny the individuation of human interests which concerns Hayek and Nozick. Ignorance and plurality, taken together, provide a justification for never denying individuals their right to fill in their own private spheres. Yet neither of these premises establishes that individuals cannot collectively agree to sacrifice some of their freedom in pursuit of other ends, such as the particular welfare concerns of the interventionist order. Only when the individualist conclusion that there can be no social good is built into the premises of ignorance and plurality do the latter dismiss positive state actions. Yet such a conclusion is assumed by Hayek and Nozick to be true.

Both writers imply a necessary and inevitable contradiction between individual and social goals which is false. The pursuit of private interests is entirely consistent with certain social commitments, either to others, or to the collectivity. Many of the interventionist measures rejected by Hayek and Nozick need in no way deny the individual the determination of his own interests by the use of his own knowledge. Only when individual goals are actually denied by state coercion do the arguments of Hayek and Nozick have any force.

The implication of the necessary inconsistency between the individual and the social rests on the questionable assumption that a redistribution of resources is also a denial of the possibility
of individual goal-formulation. Clearly the question of redistribution is different from that of goal-formulation. To suppose that reallocating resources involves the dictation of individual wills is quite misleading. Yet this is a necessary inference from the arguments appealed to by Hayek and Nozick. This is certainly not to argue that government actions do not affect individuals in significant ways; but it does not follow from an appeal to the importance of recognising separate individual interests that state intervention is to be rejected.

The problems of ignorance, knowledge and complexity are only relevant to the legitimacy of the interventionist order to the extent that the tasks of such an order attempt to determine what ends individuals should pursue. That the individual is the best judge of his own private interests does not imply that the state should not, for instance, legislate on minimum wage levels or working conditions, or should never reallocate resources. The redistribution of wealth that is involved in many state actions still takes into account the necessary impossibility referred to by Hayek and Nozick of achieving a 'blueprint' of the good society.

Clearly such interventionist orders as the welfare state contain positive guiding principles such as the maximisation of individual goal-satisfaction. But this does not necessitate dictating how particular individuals will use their lives. It simply provides a positive framework for realising individual ends. Even if it can be said to rely on the pursuit of a collective purpose upon which
we do not all agree, the welfare state cannot be said to deny individual goal-formulation as such. And the possibility of such collective agreement being achieved is denied by neither our ignorance of the needs of others nor by the individuation of our ends. Hence the question of human ignorance is irrelevant to the legitimacy of particular forms of state intervention. It can only serve as an argument against a political order which presumes knowledge that it does not possess - that needed to determine or prescribe specific individual purposes.

A moderate interventionist order simply need not make the claims on knowledge that are attributed to it by Hayek and Nozick in their assumptions of ignorance, complexity and plurality. Even if its criteria for distributing resources are achieved independently of the wills of individuals, the interventionist order need not fill in the goals to be pursued by them. And it is the actual filling in of goals and purposes by the state that is the principal concern of Hayek and Nozick in their appeal to knowledge and interests. The formulation of goals through the individual use of concrete knowledge is not inconsistent with the interventionist order. The latter is only inconsistent with the assertion that there are no positive obligations to others, and this, I suggest, is demonstrated neither by Hayek's and Nozick's social pluralism nor by their theories of knowledge. It is clearly possible that we can have obligations to others and remain ignorant of their particular needs. Hence ignorance is consistent with the existence of obligations. Equally, that our interests may be different and complex need not be seen
as an argument that we must ignore the needs of others.

Hence the rejection of a collectivist or genuinely communitarian political order that is committed to a hierarchy of ends which denies the free choices of individuals does not imply the rejection of an interventionist order which does not do these things. The pluralist nature of society and the distinctiveness of separate human ends are not therefore inconsistent with the particular forms of state action rejected by Hayek and Nozick. Although such activities as enforced mutual aid and the pursuit of material equality are to be regarded as 'common' goals by definition (in that they are not necessarily the goals that individuals would separately pursue), this need not imply their rejection. For the general description 'common goal' is too broad to be effective as an argument against positive state action. There are different degrees and different kinds of common goals. The welfare state is a different logical animal from the collectivist state.

The basis of this relevant distinction is that welfare state intervention recognises the pursuit of separate interests as fundamental to the common good, whereas the collectivist order overrides these in its pursuit of the common good. Hence the latter can eliminate any individual goals which conflict with the collectively defined purpose, whereas in the former, both individual and collective goals can co-exist peacefully. The point is that Hayek's and Nozick's arguments concerning man's ignorance and the plurality of his interests simply don't work against some of the forms of state inter-
vention that they reject. They fail to distinguish between actions that merely redistribute resources and actions that actually determine which individual goals are legitimate or are to be favoured.

No doubt many of the particular actions of central political agencies are ill-conceived. There is much to be said for decentralised decision-making, and for this the argument about complexity and ignorance is clearly relevant. But it is an unwarranted extension of this argument to also suggest either that no common agreement is possible, or that all state action of a redistributive kind is misconceived. The former claim is denied by the fact that every form of political association contains the pursuit of some goal, and the latter is denied by the fact that the interventionist order need not be inconsistent with either the recognition of human ignorance or the acknowledgement of a plurality of individual interests.

Although the interventionist order uses the rhetoric of collectivism, indicated by such terms as 'social justice' which imply moving towards a known goal, it is not clear that redistributive policies such as equality of opportunity need specify a particular outcome at all. This form of state intervention at least, does not assume any patterned end-result, hence it need not demand perfect knowledge. At most, this utilitarian approach could affect the relative chances of different individuals satisfying their wants; it need not determine the actual content of individual goals. Hence there seems no reason to conclude from the premises of either
ignorance or plurality that an individualist conception of society is necessarily incompatible with the interventionist political order.

Despite the insistence of Hayek and Nozick that there is no social good (either one accepts the view that individuals have no general positive obligations, or one does not), it is plausible to conclude that our inevitable ignorance, which involves the plurality and complexity of human needs, is not sufficient reason for rejecting the interventionist order. All Hayek's and Nozick's particular arguments against intervention reflect the basic assertion that there is no social good. They try to justify this assertion by an appeal to the nature of society - to the fact that individuals who make up society are ignorant and their needs different. But this justificatory argument only dismisses the proposition that the political association can decide which interests should be satisfied and which not satisfied. I have argued that proponents of the interventionist order need not make such a claim. Hence the arguments used by Hayek and Nozick to support the assertion that there is no social good do not delegitimise the interventionist order.

V. THE INVISIBLE-HAND.

An important aspect of Hayek's and Nozick's individualism concerning the nature of society that is separate from their arguments from ignorance, complexity and plurality is their shared commitment to what, paraphrasing Adam Smith, they term 'invisible-hand' explanations of political life. Though it is an empirical claim about the way that liberal societies actually develop, it
contains normative implications for the role of government in the life of the individual. Hayek, for instance, draws the distinction between spontaneous growth and constructivist planning. The former is said to be characteristic of free societies and the latter of interventionist orders. Nozick, on the other hand, explains the formation of the minimal state by reference to the invisible-hand. Individuals in a state of nature, he claims, would 'back into a state without really trying'. And Hayek argues that individuals 'discover', rather than 'construct' the value of freedom and the rule of law that it embodies. Again, the distinction is made between the unintended results of voluntary choices and the conscious determinations of centralised planning.

Is the invisible-hand an adequate means of explaining political, as opposed to economic life? Is the distinction between unintended and planned outcomes an important one for political theory, yielding the conclusions drawn by Hayek and Nozick? As an important aspect of the individualist view of society, one which implies a commitment to the non-interventionist order and the rejection of positive state action (which would curtail the operation of the processes of the market), the invisible-hand model demands critical assessment. In terms of the proper role of the state in individual life, the distinction between spontaneity (limited rationality) and constructivism (the untrammelled use of human reason to solve political and social problems) is said by Hayek and Nozick to delegitimise the interventionist order, since the latter allegedly involves 'unlimited' rationality.
But perhaps government actions to uphold freedom or enforce rights are just as much directed towards a specific end as are more interventionist measures. And positive state activities need not, as I argued in the previous section, 'fill in' the ends of individual action to the extent that Hayek believes. Hayek's liberal order may be seen as not entirely the outcome of spontaneous individual forces, since he believes governments have a positive role to play in providing a free market. Similarly it is not clear that individuals in Nozick's state of nature would necessarily choose a minimal state, as he wants to suggest. Hence there is a tension in Hayek and Nozick between their commitment to the results of unimpeded individual choices in the spontaneous order and the particular picture they have of a liberal order or minimal state. Such a tension reduces the effectiveness of their individualist argument against the intervening state. The argument against a particular end-state (such as the welfare state) by the use of a device (the invisible-hand) which denies all end states is substantially weakened if they themselves show a commitment to another end-state.

What is the nature of the 'invisible-hand' appealed to by Hayek and Nozick? Milton Friedman refers to '... the economic principles of Adam Smith, which explain how it is that a complex, organised, smoothly running system can develop and flourish without central direction, how coordination can be achieved without coercion'. And quoting Smith, Nozick explains the concept:

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\text{Every individual intends only his own gain, and he is in this, as in so many other cases, led by an invisible hand to promote an end which has no part of his intention.}
\]
Hence, 'an invisible-hand explanation explains what looks to be the product of someone's intentional design, as not being brought about by anyone's intentions'. The idea that the capitalist market order deliberately distributes economic and political power to a ruling elite in order to preserve the existing structure is therefore incorrect, according to the invisible-hand view of society. Nozick uses as an example of an invisible-hand process

...Hayek's explanation of how social co-operation utilizes more knowledge than any individual possesses, through people adjusting their activities on the basis of how other people's similarly adjusted activities affect their local situations and through following examples they are presented with, and thereby creates new institutional forms, general modes of behaviour, and so on.

In this connection, Hayek refers to the 'creative powers of a free civilisation'. The spontaneous order of freely acting individuals is said to create benefits that are not intended, that cannot be known in advance. Thus Hayek claims that

The Great Society arose through the discovery that men can live together in peace and mutually benefiting each other without agreeing on the particular aims that they severally pursue.

Hayek explicitly stresses the value of evolutionary change. Yet, as Scott Gordon points out correctly, Hayek cannot be committed to a thoroughgoing evolutionism which would admit the value of any process that was spontaneous simply because it was spontaneous.

For the growth of many illiberal societies may be entirely spontaneous. Collectivist thinking may develop without anyone intending a specific outcome. Hayek's view of just laws as those which have evolved over time, against 'contrived' legislation which is the
product of reason and design, leads him to conclude (wrongly, according to James Buchanan) that '... politically orchestrated change must, in most cases, produce social change'.

Yet it is not clear that spontaneous processes must lead to desirable consequences, even to the maximisation of freedom. Nor on the other hand must politically contrived change necessarily endanger freedom and its values. The 'abstract order' that is characteristic of Hayek's rule of law is not a sufficient guarantee that individuals will use their free choices in ways that Hayek would regard as acceptable.

This inconsistency in Hayek calls into question the very utility of his distinction between spontaneous and planned orders. Clearly both the planned and unplanned actions of individuals and states have intended and unintended consequences. To say that the pursuit of social justice will '...produce highly undesirable consequences ...' to the extent that it will lead to '... the destruction of the indispensable environment in which the traditional moral values alone can flourish, namely personal freedom', seems to be attributing to governments an omniscience that even they would deny having. And to contrast such a pursuit to the claim that evolutionary actions, on the other hand, produce desirable consequences does not follow.

Nozick claims that self-interested rights-bearing individuals in a state of nature would back into his own version of the legitimate state without intending to. This goes even further than Hayek's
claim that individuals 'discovered' the benefits of freedom, then implemented them. For Nozick's natural man simply joins a 'protective association', not a state.

Nozick's discussion of how a morally justifiable state can arise is for him a justification of his own prescribed social order. Individuals would, he claims, necessarily choose a minimal state. On the other hand, utopia, in Nozick's view would consist of diverse institutions, practices and communities independently arrived at, irrespective of any particular individual's conception of what the world should look like. Utopia '... is what grows spontaneously from the individual choices of many people over a long period of time ...' 51 Given that many communities would arise, it is plausible to argue (Nozick does so himself) that these would include those with compulsory redistribution of resources and governing associations concerned with far more than the simple law-enforcement activities of the minimal state. 52

Nozick's image of man prior to the emergence of the state is well-defined and specific. His concept of man's nature, his needs and interests, is such that the minimal state only is conceivable. The behaviour of self-interested man in the state of nature is entirely predictable.

However, the operation of the minimal state gives rise to a different image of man's interests and needs. Nozick claims to have no idea at all as to the kinds of political association that will arise, so long as they are voluntary. But the fact that individuals,
in the pursuit of their disparate goals, will surely require from their political units more than is offered by the protection of negative rights, sits awkwardly with the assumptions underlying Nozick's derivation of the minimal state and his exclusion of the interventionist order.

That a political association such as Nozick's minimal state can arise in a certain way bears no relation to whether it must so arise, or to whether alternative associations could not also be derived from similar beginnings. But Nozick's own claim is essentially that nothing beyond a minimal state is justifiable, in other words that the minimal state must arise from the free choices of individuals in a state of nature. Here he seems to be actually guiding the invisible-hand.

The contradiction in Nozick's use of an invisible-hand explanation concerns, specifically, the behaviour of self-interested man. The behaviour of individuals in the state of nature reveals an exclusive social concern for protecting their negative rights. However, the willingness of those same individuals to give up their rights and consent by joining a more-than-minimal state in utopia indicates that the minimal state cannot satisfy their needs and interests. Natural man chooses 'government by insurance company', but free Nozickean man has many more interests to be provided for.

It seems that Nozick cannot have it both ways. Either he is committed to the view that only the minimal state would arise from the free choices of individuals, or to the view that more than one
kind of association could develop through invisible-hand processes (or filter devices). It is impossible to simultaneously hold both views. If Nozick refutes anarchism by means of an invisible-hand explanation, he must also accept the possibility of an interventionist order. Again, there is a tension between favouring the free choices of individuals, and an unwillingness to accept the possible consequences of those choices if they are not in accordance with a particular political conclusion. As David Wood has noted,

... if this reasoning works effectively in justifying the move from the ultraminimal to the minimal state, then it works just as effectively in justifying the move from the ultraminimal to the more-than-minimal state - something Nozick would not appreciate.53

Hence Nozick's very appeal to an invisible-hand explanation of political life undercuts his own rigid conclusion that the interventionist order is inadmissible. It seems that if one respects the choices of individuals, one can say nothing positive about what those choices will be, and whether they are the 'right' choices. This essentially democratic commitment is entirely consistent with the possibility of an interventionist order. A consent-based theory of political obligation such as Nozick's which uses as its sole criterion individual choice must accept that individuals with specific needs may be dissatisfied with a simply non-intervening (non-helping) order. To reject this conclusion is to make a moral judgement about individual choices (some are the 'right' choices, and others are not), which in effect denies the validity of the invisible-hand explanation which Nozick favours.
Clearly, an appeal to invisible-hand processes such as those of the market, the formation of political association, and the argument about evolution and the rule of law, is fundamentally an individualist appeal. It takes as its premise the inherent worth of free choice, and denies the legitimacy of any government intervention which curtails such choice. The focus is on the responsible, rationally choosing individual, for as Hayek argues,

[1]Liberty and responsibility are inseparable. A free society will not function or maintain itself unless its members regard it as right that each individual occupy the position that results from his action, and accept it as due to his own action. The complementarity of liberty and responsibility means that the argument for liberty can apply only to those who can be held responsible... It presupposes that a person is capable of learning from experience and of guiding his actions by knowledge thus acquired.

Hence, it is Hayek's and Nozick's understanding of the nature of the individual that determines their commitment to free choice, and an acceptance of the results of free choice. Equally clearly, this argument from an invisible-hand explanation is not the same as the claim that there is no social good. It is an independent justification of the non-interventionist order.

Yet I have argued that such an argument does not serve to dispose of the interventionist order. The distinction in Hayek between the free choices of individuals and the specifically liberal order (which requires government action to maintain it) contradicts his argument that evolution is to be favoured over political design, that free choice provides greater good than 'planning'. Similarly, Nozick's
claim that individual choice must lead to a non-interventionist order
is belied by his conviction that utopian society is characterised
by many kinds of political association. Again, there is a contradiction
here between the results from free choice and the requirements of
a liberal society. The two results may be quite different. Hence the
illegitimacy of the interventionist order is not established by
either Hayek or Nozick in their appeal to the notion of the invisible-
hand.

VI. SUMMARY AND CONCLUSIONS.

Although Hayek argues for a non-interventionist order in terms
of the benefits of freedom, and Nozick claims that only such an
order adequately takes into account the nature of man's rights-
bearing characteristics, it is also clear that their shared
political conclusions rest upon shared individualist premises.

Essentially, both Hayek's and Nozick's axiomatic conclusions as
to the nature of society are individualist in nature. They take as
their starting point the unaffiliated, autonomous, bargaining
individual who seeks cooperative society with his own goal-maxi-
misation in mind. Such an individual has no conception of the 'ends
of society' beyond his own self-interest. Despite this, a social
order does arise through the voluntary contracts of many free
individuals. And it is characterised by the presence of a state
that simply protects the rights of individuals to pursue voluntary
relationships.
Accordingly, for Hayek and Nozick, a society made up of such individuals cannot be properly said to have 'common goals', for which individual goals may be sacrificed. The principal implications of this conclusion are that such notions as social justice can have literally no meaning, and that therefore their justifications are groundless and pursuit futile. The arguments provided for these conclusions concern the nature of human knowledge and the plurality of human needs. On this view, no one 'plan' can attempt to solve the problems of scattered individuals in a free society, individuals who are said to have no common bonds. Man's ignorance and the complexity of his interrelationships are supposed to justify a commitment to a non-interventionist order. These suggested arguments for an individualist conception of society have been the subject of this chapter.

I have argued that, although the notions of ignorance, complexity and plurality are good reasons for rejecting a collectivist order which stipulates what individual goals will be, they do not imply the rejection of a more moderate interventionist order which pursues agreed-upon ends, but not at the expense of individual goal-formulation. This is an important distinction which is ignored by both Hayek and Nozick. They fail to admit degrees of social control, and different kinds of 'social goal'. Conceivably the aims of welfare programmes, equality (of opportunity or outcome) and social justice concern the ability of some individuals to attain their goals. But the implementation of such programmes is not sufficient to deny other individuals the opportunity of achieving goal-satisfaction.
The interventionist order cannot therefore be dismissed on individualist grounds if it does not actually interfere with the plurality of individual goals or the pursuit of these goals. A social goal which 'fills in' the content of individual choice is quite different from one which merely seeks to alter life chances. A redistribution of resources need not imply the subordination of individual goals to those of the collectivity. Such programmes can clearly work towards a societal goal, for example the alleviation of poverty, but they need not imply that individuals must abandon their own ends in the pursuit of others. Moreover, the 'goals' of an interventionist order may be just as 'unadjectival' and indeterminate as those of the liberal order or minimal state. Put simply, Hayek's and Nozick's assertion that there can be no genuinely social goals, because of man's ignorance and the plurality of his ends, is not supported by their arguments. It does not mean that the interventionist order is to be rejected. Once again, there is an important contradiction between argument and political conclusion. Individualist premises need not be inconsistent with positive state action.

Clearly there are degrees of 'agreement over ends' that can be admitted. We need not all pursue the same goals, but can still recognise that some agreement is possible, despite the conditions of ignorance, complexity and plurality. Every form of political association demands some agreement over ends - otherwise anarchism would prevail. Hence the mere existence of political society is enough to deny one fundamental claim made by Hayek and Nozick. If
we can agree on the benefits of freedom, as Hayek suggests, or can join protective associations to obviate the problems of Nozick's state of nature, it is equally plausible to assume that other ends may be agreed on by all. We may even 'back into' an interventionist order, if the implications of adhering to an invisible-hand explanation are taken seriously. Agreement over collective ends may well be just as 'accidental' or 'spontaneous' as Hayek and Nozick claim the non-interventionist order is.

I have admitted difficulty in the assessment of such a broad claim as that 'there is no social entity'. Taken at face value, it is virtually meaningless. What is at issue is whether this starkly individualist conclusion is substantiated in any way by arguments. And this is simply not the case in Hayek and Nozick. The distinction between the 'individual' and the 'social' is more blurred than Hayek and Nozick admit. There is a continuum of interferences and goal-determinations; it is not simply a matter of extremes. The arguments used by Hayek and Nozick to condemn all interventions only serve to exclude the most extreme forms.

Hayek and Nozick appeal to the notion of the invisible-hand in their individualist conception of society, in order to justify the minimisation of intervention. But the invisible-hand notion itself is an insufficient explanation of political life. In Hayek's case it rests on a possible inconsistency between spontaneous order and the liberal order, and in Nozick's, it does not imply that individuals would necessarily choose the minimal state.
In sum, many of the assumptions made by Hayek and Nozick concerning the nature of society are clearly plausible warnings against too much reliance on the beneficence of state action. That there are limits to the concept of social agreement is not in doubt. But whether these arguments preclude all forms of positive state intervention is another question. I have argued that neither Hayek nor Nozick provide, in their shared appeal to either human ignorance or social pluralism, sufficient justification for reaching such a conclusion. The interventionist order is consistent with a conception of political life that has as its basis a concern for the welfare of the individual. Therefore Hayek's and Nozick's arguments fail in their attempt to admit only the non-interventionist order.
SUMMARY AND CONCLUSIONS.

This thesis has attempted an expository, comparative, interpretive and critical analysis of the arguments and conclusions of two influential, contemporary libertarian thinkers regarding the proper role of the state in the life of the individual.

Part I sought to characterise the principal political maxims advanced by Hayek and Nozick. Part II explored the various ways in which they reach, and attempt to justify, their uncompromising conclusions. This involved a critical examination of the premises and arguments appealed to and the implicit assumptions contained in Hayek's and Nozick's justifications of the non-interventionist order.

I argued in Part I that the notions of freedom, rights and justice described by Hayek and Nozick are both similar and related. They utilise particular conceptions of consent and autonomy in characterising idealised interpersonal relations, and make the important distinction between freedom and rights on the one hand, and self-realisation and capability for goal-fulfilment on the other. They see similar things infringing the private sphere of the autonomous individual. In sum, the principles upheld by Hayek and Nozick regarding the individual and the social order are sufficiently similar to make a close comparison of them possible and useful. They have shared concerns.

More importantly, the principles of freedom and rights have,
for Hayek and Nozick, specific and important political implications. It is imperative, they argue, that the state act to uphold freedom and preserve rights. On this view, their 'non-interventionist' order has a severely circumscribed role in the life of the individual.

According to Hayek and Nozick, the state's coercive role should be confined to the protection of freedom, the enforcement of rights, and the recognition of voluntary and legitimate private contracts in a market society. Governments, therefore, must create laws only to punish and prevent coercive interferences with the individual's choice processes. The evil to be avoided is compulsion, the dictation of individual wills, either by other individuals or by the state. The latter must never formulate or direct individual goals; it has no obligation to help individuals positively in the achievement of their goals - by equalising opportunities, for example - and it must not formulate its own goals if this involves the coercion of individuals. What the political order may legitimately do to individuals derives from what individuals may do to one another. And the rights that individuals possess are stringent and purely negative in character. They do not engender an obligation in any person to provide for another individual's welfare.

Hence, in the libertarian account, the state's purely negative role excludes paternalism, the pursuit of a common hierarchy of concrete ends, and the achievement of a particular quality of life for individuals. There is said to be no room for the attainment of 'social justice' by a redistribution of wealth and the regulation of the economy. Nor need governments attend to human welfare needs
through enforced mutual aid or the distribution of resources according to moral merit or desert.

As I have argued, these claims on behalf of the non-interventionist order are questioned by those who see a positive role for the state in the achievement of individual goal-satisfaction. For these critics, the requirements of justice, needs and welfare demand more than a simple nightwatchman role for the state. Such counterclaims were addressed in Part II.

The structure of Part II reflected both the similarities and the differences in argument between Hayek and Nozick. Chapter 4 outlined and challenged Hayek's argument for the non-interventionist state which he couches in terms of the benefits that freedom provides. Chapter 5 addressed the moral arguments advanced by Nozick for rights-protection (and against coercion) that are derived from the nature of man. Chapter 6 attempted to find a common individualism in Hayek and Nozick that is essentially manifest in their views of the nature of society. Hence I explored both the areas of Hayek's and Nozick's arguments that are different and those that overlap.

I argued that Hayek's particular version of libertarianism reflects his belief, firstly, that society consists of individuals with separate and non-coinciding interests, which is said to preclude collectivist planning and goal-determination; and secondly, that spontaneous forces in society should be harnessed as much as possible (by not coercing individuals) to allow them to freely
achieve the distinctive life-plans. Their arguments I termed respectively the 'Nature of Society' and the 'Benefits of Freedom'. Together they form an attempted justification of the non-interventionist order. One is supposedly an empirical statement about the nature and development of political associations, while the other expresses a preference for non-coercion and a belief that freedom really benefits individuals.

Essentially, the distinction between what I regard as two levels of argument in Hayek is that his instrumental argument tries to dismiss the interventionist order on the grounds that its activities conflict with individual freedom, whereas the nature-of-society argument attempts to dispose of the very basis of that order by denying the existence of the notions (such as social good) which sustain it. On the first argument, the benefits of freedom are removed or curtailed by positive state actions, and on the second, the supposedly fallacious nature of the foundations of the interventionist order prevents its prescribed goals from being achieved. Hence there is a meaningful distinction between what I took to be Hayek's two principal justificatory arguments.

Firstly, I examined Hayek's proposition that freedom should be maximised in order to help individuals to achieve their goals and fulfil their purposive actions. This argument I described as maximising, instrumental, consequentialist and utilitarian, since, although it does not involve the collective pursuit of a common set of goals, it does justify non-intervention in terms of its contribution to the welfare of the collectivity. I argued that freedom,
for Hayek, is not simply good for its own sake; it is to be pursued because it provides any individual (selected randomly) with the best possible opportunity for goal-satisfaction. Hayek does not specify the greatest happiness for the greatest number, but he turns out to be justifying freedom in terms of a particular conception of this.  

This argument - with its explicit concern for individual goal-satisfaction - can be contrasted with Hayek's insistence that only coercion amongst a whole range of constraints upon individual behaviour is to be minimised in the non-interventionist order. How can Hayek's justificatory argument be reconciled with such a narrow conclusion? What makes coercion particularly significant, if the general aim is the maximisation of goal-satisfaction? It would appear that this would require much more than a non-interventionist state, that positive help ought to be provided by the state for the individual in order that he may pursue his goals more meaningfully. However, this compromise, seemingly required by Hayek's argument, is excluded by his insistence that coercion only is to be prevented. There is a tension, then, between Hayek's maximising argument for freedom and his simultaneously held view that non-coercion is an absolute good in itself.  

The question was raised to what extent the coercion that is characteristic of an interventionist order denies individuals the opportunity to achieve goals. This is supposedly the reason why Hayek wants us to reject such an order. These questions and the apparent problems they highlight in Hayek's argument occupied
In Chapter 6 I turned to Hayek's conclusion that society cannot properly be said to have collective goals because it consists only of individuals with separate and non-coinciding interests. He claims that we are ignorant of the needs of others, and of the social good because such a collective goal (manifest in the quest for social justice) is illusory, and only possible in a purpose-governed organisation. Therefore any attempt by the interventionist state to coerce persons for the sake of a greater overall good is groundless, and to be rejected.

Hayek's conclusion turns on his theory of knowledge, his social pluralism and his adherence to an invisible-hand explanation of social and political life. Like his claims for the benefits of freedom, these supporting arguments and their implicit assumptions are open to question. The question is raised to what extent the interventionist state demands knowledge of a social good, or if it even relies on this notion at all. If the notion of social good and the requirements of individual goal-satisfaction can be shown not to be mutually contradictory, then Hayek's argument against the interventionist state on these grounds is flawed. Secondly, Hayek's emphasis on the necessary benefits of spontaneous, as opposed to constructivist, actions demands closer scrutiny. If this distinction can be shown to be politically meaningless, then many of Hayek's political axioms remain unproven.

Nozick's principal arguments against the interventionist order - that which infringes rights - were analysed in Chapters 5 and 6. They
were compared and contrasted with Hayek's, and were critically assessed for the degree to which they render the libertarian political conclusions inferred by Nozick.

Nozick attempts to justify the non-interventionist order by appealing to a view of the nature of man which allegedly makes any form of state coercion immoral and therefore, on Nozick's grounds, indefensible. He appeals to Kantian ethics, man's separateness, moral agency and rationality, and his capacity for attaining meaningful life. On this view, we should respect rights because man, qua man, deserves respect. For Nozick, upholding the individual's right to be free from state compulsion preserves human dignity. It is simply immoral to coerce, to 'use' persons for the achievement of ends other than their own. We would not, he suggests, force people to work extra hours in their leisure time to aid others, so how can we legitimately appropriate a portion of their wealth for similar reasons?

Nozick's deontological argument for rights-enforcement by the non-interventionist state differs from Hayek's instrumental argument in that it avoids appealing to things that flow from the exercise of voluntary contracts. In addition, although Hayek at times assumes the immorality of coercion, he does not (unlike Nozick) construct an argument to demonstrate it.

In spite of this, it must be questioned whether Nozick's argument (his premises concerning the nature of man) dismisses alternative conclusions which allow some state intervention in
the life of the individual. Nozick's two specific conclusions are
that, firstly, the interventionist order necessarily infringes
rights, which leaves it indefensible; and secondly, there are no
positive rights or obligations which could justify such an order.
I seriously questioned both these propositions and related them
to Nozick's actual premises about man. Despite the fact that the
welfare state (a paradigm interventionist order in the eyes of
Hayek and Nozick) coerces, appropriates and redistributes, I argued
that these practices need to be examined in the light of Nozick's
dictum that we should respect persons qua persons. In other words,
Nozick must show that the only legitimate rights that we possess
are negative in nature, and that the activities of the interventionist
state necessarily infringe individuality (his primary concern) in
meaningful and substantial ways. Whether or not Nozick achieves his
stated goal of dismissing the interventionist state is dubious
when his supporting arguments are examined in relation his conclusions.

However, Nozick's libertarian individualism is not confined to
his view of man's nature. He also makes explicit claims about the
nature of society which, he argues, invalidate the interventionist
state. Here, he is close to Hayek. In Chapter 6 I demonstrated that
Nozick, like Hayek, views society (any collectivity) not as an
organisation with purposes, but as a loose collection of self-
interested and autonomous individuals without naturally coinciding
interests or goals. Society, Nozick argues, is too complex, and
man's interests too varied, to allow for a coercive state apparatus
which would attempt to define the social good. On this argument,
Nozick dismisses claims for redistributive social justice and
constructs his own entitlement theory. Like Hayek, he also appeals to the invisible-hand to explain the emergence of the minimal state as the only justifiable form of political association.

I argued in Chapter 6 that Nozick's view of society is distinct from, though related to, his moral argument against coercing persons. It is one thing to claim that individuals should not be coerced because of some special human trait that makes coercion immoral (irrespective of possible justifications of coercion). It is quite another to suggest that the non-coincidence and complexity of human interests makes coercion futile, and the interventionist state superfluous. Clearly, one set of premises is moral and the other is not. One concerns the individual qua individual, the other the individual in society. On Nozick's first argument, even if there were a definable social good, it would still not justify infringing individual rights. But on the second argument, the existence of the social good is denied outright. Hence it is meaningful to speak of at least two kinds of argument in Nozick, despite his pervasive individualism.

Again, I critically examined the substance of Nozick's justificatory premises in order to establish whether they yield only his own political conclusions. To this end, I analysed the nature of a 'social good' and the degree to which complexity (and its concomitant, ignorance) and plurality actually rule out redistribution. The question of whether the latter genuinely denies the pursuit of separate individual interests was found to be central here.
The general conclusion of the thesis is that neither Hayek's libertarianism nor Nozick's radical individualism is justified by the particular arguments to which they appeal. Hayek, for instance, admits that the notion of social justice is only meaningless in a purpose-independent order such as the market. Yet the atavism of social justice is one of his principle arguments for dismissing another kind of political association. Hence one only need accept his political conclusions if one also accepts the assertion that societies cannot have purposes. And this, I have argued, is never shown by Hayek to be the case. It is simply an article of the libertarian faith. All he has shown is that such notions as the social good are meaningless in his own preferred order.

Similarly, Nozick's strength lies in his uncompromising individualism. All his arguments, moral and non-moral, and regarding man and society, make sense only in a world populated by individuals with absolute negative rights. Hence his arguments can only be defeated by taking on his individualism. This is quite a difficult task, since the latter is not susceptible to substantiation by his justificatory approaches. Hence one need only interpret his premises in an individualist way if one is already an individualist. The arguments themselves in no way justify his political position.

Hayek and Nozick have not demonstrated the illegitimacy of the interventionist order which seeks to pursue individual goal-satisfaction. It is tempting to interpret their arguments as actually necessitating such positive state actions. Yet I have
not taken this additional step. To do so would require the defeat of their radical individualism, which cannot be dismissed lightly, and which is certainly beyond the bounds of this thesis. What I have simply attempted to do is to elucidate and criticise particular arguments in support of a political position that is accepted by few in the community. In doing so I have shown the lengths to which they must go to establish their claims. Nozick's arguments, for instance, demonstrate the difficulty of devising any theory of rights from the nature of man, even if one accepts his premises. And Hayek does not show that a coercion-free society is to be specially favoured over an interventionist order in the pursuit of individual goal-satisfaction. Such an undertaking would require massive empirical documentation. Hayek does not establish it simply by dismissing totalitarian orders.

Many of the specific claims of Hayek and Nozick are intuitively plausible, while others are not. We may agree that the selection of marriage partners is beyond the realm of legitimate state intervention, without inferring that state assistance for the unemployed is not a worthwhile end (on the grounds of respecting persons qua persons). Hence on occasions Hayek and Nozick seem to ignore the logic of their own arguments. Yet in order to accept this logic they would have to abandon their individualism. And this is something that they are clearly not prepared to do.
CHAPTER I. PRINCIPLES CONCERNING THE INDIVIDUAL AND THE SOCIAL ORDER.


3. Ibid., pp. 20-1.

4. See, for example, Hayek, op.cit., pp. 139-40.

5. Ibid., p. 15.

6. Ibid., p. 12.

7. Ibid., p. 13. The efficacy of Hayek's distinction is discussed in Chapter 4, Section III.

8. Ibid., pp. 136-7.

9. Ibid., pp. 135-6.

10. Ibid., p. 13.

11. Ibid., pp. 103-17.

12. Ibid., p. 15.

13. Ibid., pp. 16-8.


15. Ibid., p. 56.


20. Ibid., pp. 28-35.
21. See his Introduction, especially p. ix.

22. Ibid., p. 58.

23. See Nozick's argument against Bernard Williams on this issue, ibid., pp. 235-5. The whole question of the existence of positive rights is discussed in Chapter 5, Section III.

24. Ibid., p. 263. This controversial example, and its justificatory purpose in Nozick's argument, will be discussed more fully and critically in Chapter 5, Section V.

25. Ibid.

26. Ibid.

27. Ibid., p. 262.

28. Ibid.

29. Ibid., pp. 263-4.

30. Ibid., p. 264.

31. See Nozick's Entitlement Theory, pp. 150-3. This is discussed in greater detail below, in Chapter 3, Section III.

32. Ibid., p. 160.

33. As H.L.A. Hart notes, '[i]n this scheme of things the basic rights which fill the moral landscape and express the inviolability of persons are few in number but are all equally stringent'. See Hart's 'Between Utility and Rights', in Alan Ryan, The Idea of Freedom (Oxford, 1979), p. 81.

34. This vexed question will be taken up critically in Chapter 5, Section III.

35. Nozick consistently talks about 'aggression' rather than coercion. However, he does discuss the nature of coercion elsewhere, in 'Coercion', in Morgenbesser, S., Suppes, P., and White, M. (eds) Philosophy, Science and Methods (New York, 1969). But in Anarchy, State and Utopia Nozick is fundamentally concerned, in his discussion of rights infringement, with coercion in Hayek's sense. For Hayek, the principal defining features are that it presupposes a human agent, that the coerced individual is made through an action to serve another's will rather than his own, that the coercer can use a threat of inflicting harm to be coercive, and intends to bring about certain conduct, and that coercion forces the victim to do specific things. See Hayek, op.cit., pp. 133-9. See also Michael Bayles, 'A Concept of Coercion', in Pennock, J.R., and Chapman, J.W. (eds), Coercion, Nomos XIV (Chicago, 1972). These characteristics of coercion adumbrated by Hayek, though perhaps not overlapping totally with Nozick's view in his article,
are consistent with the view of aggression that Nozick develops in his book. The case for treating them together appears strong.


37. Ibid.


43. See Milne, op.cit., p. 146.


46. Ibid., pp. 146-7.


49. Op.cit., Taylor in Ryan, 1979, p. 177. He argues that '[d]octrines of positive freedom are concerned with a view of freedom which involves essentially the exercising of control over one's life. On this view, one is free only to the extent that one has effectively determined oneself and the shape of one's life ...
By contrast, negative theories can rely simply on an opportunity-concept, where being free is a matter of what we can do, of what it is open for us to do, whether or not we do anything to exercise these options ... Freedom consists just in there being no obstacle. It is a sufficient condition of one's being free that nothing stand in the way'. Hence, for Taylor, negative freedom (the absence of external obstacles) can be either an opportunity-concept or an exercise-concept, whereas positive freedom must be the latter.


CHAPTER 2. THE NON-INTERVENTIONIST POLITICAL ORDER.


2. Ibid., p. 1.

3. Ibid., p. 4.

4. Ibid., p. 5.


7. Ibid., p. 139.

8. Ibid., pp. 139-40.

9. Hayek admits that 'if the recognition of such individual spheres, however, is not itself to become an instrument of coercion, their range and content must not be determined by the deliberate assignment of particular things to particular men'. (p. 139). This leaves quite open the question of the
specific content of the private domain. The problems raised herein will be addressed in detail in Chapter 4, Sections III and V.


11. Ibid., p. 141.

12. Ibid., p. 144.

13. Again, these questions will be examined more critically in Chapter 4, Sections III and V, and Chapter 6, Section IV.


15. Ibid., p. 85.

16. Hayek, Law, Legislation and Liberty, Volume 2, 'The Mirage of Social Justice', (London, 1976), p. 109. This claim, that the plurality of interests in society demands a non-coercively interfering state, will be addressed critically and in more detail in Chapter 6, Section IV.

17. Ibid., pp. 108-9. See also Hayek, 1975, p. 60, and Barry, N.P., Hayek's Social and Economic Philosophy (London, 1979), p. 45. He claims that '... a catallaxy is a network of many economies, firms, households, etc. but it has no specific common purpose itself; and it is not a deliberately made organisation but is a product of spontaneous growth'. (See Footnote 10', Chapter 4).


19. See Hayek, op.cit., 1960, Chapter 10, especially pp. 149-50. This distinction between 'rules' and 'commands' is explored further in Chapter 3.

20. Ibid., p. 143.

21. This question whether, and how much, such 'common goals' as equality of opportunity enforced through graduated taxation, actually deny individual free choice, is taken up in Chapter 4, Sections IV and V.


23. See Hospers, J., Libertarianism (Los Angeles, 1971) and Rothbard, op.cit.


26. Hayek claims that '... coercion is, in the last resort, a matter of degree and that the coercion which the state must both prevent and threaten for the sake of liberty is only coercion in its more severe forms - the kind which, when threatened, may prevent a person of normal strength from pursuing an object important to him'. (p. 146) How far Hayek takes this distinction between severe and non-severe coercion is taken up in Chapter 4, Sections III and IV.


28. Ibid., p. 6.

29. Ibid.

30. Ibid., p. 4.

31. For a recent statement of the anarchist position regarding political obligation, see Wolff, R.P., In Defense of Anarchism (New York, 1970). Wolff argues that man's primary motivation is autonomy, or self-direction, whereas the state is inevitably characterised by relations of authority, which is the opposite of autonomy.


33. The very title of Part I of Nozick's book is '... How to Back into a State without Really Trying'.


35. These are set out below.


39. Ibid., p. 108.

40. Ibid., p. 112.

41. Ibid.

42. Ibid., p. 118.

43. The absoluteness of Nozickean rights is discussed in Chapter 5, Introduction, Section III and Section V.
44. The 'procedural' nature of Nozick's theory of justice is discussed in the following chapter, Section III.


47. Here, description and justification tend to merge in Nozick. His pluralism and its role in the argument in support of rights-enforcement, is the subject of Chapter 6, Sections III and IV.


51. *Ibid*.


54. Hence Nozick's distributional dictum: 'From each as they choose, to each as they are chosen'. (p. 160).


56. *Op.cit.*, Nozick, pp. 150-64. Nozick's theory of justice is analysed more fully in Chapter 3, Section III, and its relationship to Nozick's arguments in support of the non-interventionist order discussed in Chapter 6, Sections III and IV.


58. *Ibid.*, pp. 160-4. See also my Chapter 5, Sections IV and V.


60. I specifically raise these questions here in order to characterise the rights possessed by individuals in Nozick's non-interventionist order. I take them up critically in Chapter 5, Sections III and IV.


64. *Ibid.*, Chapter 8, *passim*. 
CHAPTER 3. JUSTICE AND THE POLITICAL ORDER.


2. Ibid., p. 149.

3. Ibid.


5. Hayek argues that '[t]he great aim of the struggle for liberty has been equality before the law'. (1960, p. 85).


7. Ibid., pp. 149, 156-7.

8. Ibid., p. 153.

9. Ibid.

10. See Gordon, op.cit. He claims, contrary to Hayek, that '[l]aws may be as general as one can make them and yet be coercive. Are laws saying that no one may buy saccharine or that everyone must use seat-belts in cars not coercive? To say, as Hayek does, that they are not coercive because one can avoid their penalties by not buying saccharine and by fastening one's seat-belt (or staying out of cars) is simply absurd. Solzhenitsyn could have avoided coercion in the U.S.S.R. by not writing books which he knew beforehand would be illegal.' Gordon is arguing, correctly, that the distinction made by Hayek between laws and commands based on avoidability collapses, and that therefore conclusions derived therefrom are meaningless.

See also Hayek, 1960, p. 237.


14. For a more detailed explication of this view, see Hayek, op.cit., 1976, pp.67-70, under the heading 'the inapplicability of the concept of justice to the results of a spontaneous process'.


16. Ibid.

17. Hayek argues that '... no test or criteria have been found or can be found by which such rules of 'social justice' can be assessed ...' ibid., p. 63. In other words, Hayek is suggesting, quite plausibly, that there is no mechanism for objectively achieving a deserving standard of living for an individual or class of individuals. See Lang, W., 'Marxism, Liberalism and Justice', in Kamenka, E., Tay, A.(eds), Justice (London, 1979), p. 130. See also Hayek, 1960, pp. 85-102. In a market society, Hayek substitutes the criterion of value for that of merit: an individual's worth is measured according to his contribution to the needs or wants of his fellows. On Hayek's theory of value, see Nozick's comments, op.cit., 1974, pp. 158-9.

18. Ibid., p. 62.

19. Op.cit., Hayek, 1960, pp. 140-1. He states: '[t]hat other people's property can be serviceable in the achievement of our aims is due mainly to the enforceability of contracts. The whole network of rights created by contracts is as important a part of our own protected sphere, as much the basis of our plans, as any property of our own'. The importance of the connection in Hayek's thought between law and free contract cannot be underestimated. He adopts the Oakeshottian distinction (1975, p. 59) between a free 'nomocratic' society governed by laws and an unfree 'telocratic' society governed by specific purposes. The great benefit of the market order for Hayek is that it '... rests not on common purposes but on reciprocity, that is on the reconciliation of different purposes for the mutual benefit of the participants'. (Ibid., p. 58). I explore this further in Chapter 4, Section II.


21. Ibid., pp. 133-4. See also Lang, op.cit., pp. 130-1. Referring to Hayek's theory of value, Lang states that '[c]ommutative justice - Hayek draws on Aristotelian terminology here - means the principle according to which services rendered should be rewarded according to the value they have for the recipients ... There is no link between commutative justice and the personal circumstances, virtues, needs or desires of the parties.
All these factors are completely irrelevant to the market value of services and products of human work. Commutative justice ensures freedom of choice of the persons who are the parties to transactions.

27. Ibid., pp. 150-1.
29. Ibid., pp. 152-3. This point is taken up critically in Chapter 5, Section IV.
30. Ibid., p. 151.
32. Ibid.
33. Ibid., p. 151.
35. Ibid., pp. 156-7.
36. Ibid., p. 157.
37. Nozick demonstrates the difficulty of maintaining an egalitarian distribution pattern by the examples of Wilt Chamberlain and the entrepreneur in the socialist society, pp. 160-4.
38. Ibid., p. 163.
39. Ibid., p. 178.
40. Ibid., p. 179.
41. Ibid., p. 152.
CHAPTER 4. HAYEK'S ARGUMENT FOR THE NON-INTERVENTIONIST ORDER:
THE BENEFITS OF FREEDOM.


4. On Hayek's theory of knowledge, see his Chapter 2, op. cit., 1960, especially pp. 22-9. This will be discussed more fully in Chapter 6, Section II.

5. Ibid., p. 42.

6. Ibid., p. 51.


9. Ibid., p. 31.

10. Ibid. See also Hayek, op. cit., 1976, p. 132, where he claims that '[t]he good society is one in which the chances of anyone selected at random are likely to be as great as possible', and Hayek, op. cit., 1975, p. 71.

11. Op. cit., Watkins, p. 34. See Hayek on this point, op. cit., 1960, p. 76. He states: '[t]hough we leave people to decide for themselves because they are, as a rule, in the best position to know the circumstances surrounding their action, we are also concerned that conditions should permit them to use their knowledge to the best effect'. (My emphasis) It is in this sense that Hayek's order is a maximising one. It is for the same reason that he recognises the importance of including property rights in the private domain of the individual. Again, these help the latter to use his freedom to the best effect.


13. Ibid., p. 61.


15. Ibid., p. 6. Whether Hayek sees freedom simply as an end to be pursued for its own sake, or an instrumental value, or both, is much debated. I discuss this further in Section III of this chapter, for example, under Footnote 22. N.P. Barry argues that Hayek regards freedom as both an end in itself and an instrumental value (p. 67). A. de Crespigny, however, sees


17. Ibid., p. 59.


20. Ibid., p. 6.

21. Ibid., p. 68.

22. Ibid. Hence de Crespigny admits that, in spite of Hayek's stress upon freedom as an instrumental value, '... he sometimes writes as if he views individual liberty as intrinsically desirable ...' (op.cit., de Crespigny, p. 58, my emphasis). George and Wilding argue that, for anti-collectivists such as Hayek, 'Liberty is valued both as an end in itself and as a means to an end'. See George, V., Wilding, P., Ideology and Social Welfare, (London, 1976), p. 23. Hayek himself states that '...some readers will perhaps be disturbed by the impression that I do not take the value of individual liberty as an indisputable ethical presupposition and that, in trying to demonstrate its value, I am possibly making the argument in its support a matter of expediency. This would be a misunderstanding' (op.cit., 1960, p. 6) Hence Hayek clearly believes that freedom can be both intrinsically and extrinsically valuable. But he does maintain that in order to convince his opponents of the merits of his position, instrumental arguments are likely to prove more effective. (See, again, p. 6 of his Introduction). He states: '[w]e can therefore not fully appreciate the value of freedom until we know how a society of free men as a whole differs from one in which unfreedom prevails'. (My emphases). This statement, perhaps more than any other, indicates that Hayek believes his argument, to be convincing, must demonstrate the benefits of freedom. It is the effect of freedom on society, and on the lives of the individuals therein, that is important for Hayek. Hence to talk merely of the immorality of coercion is clearly not sufficient. In this sense his argument is primarily instrumental. But Barry, George, Wilding and others are correct to claim that freedom for Hayek is both an end and a means, and that to hold such a dualistic view need not be contradictory.


26. For instance, they would argue that full employment, at least, is required to guarantee a meaningful opportunity for individual goal satisfaction, and therefore satisfy Hayek's justificatory appeal to the benefits of freedom. Yet Hayek argues against the regulation of employment in this fashion, contrary to the operations of the free market. See Hayek, op.cit., 1960, Chapters 17, 18 and 19, in Part III of his book: 'Freedom in the Welfare State'. Hence Hayek's free society cannot accommodate his critics in this area, for he argues, it is up to the individual to make the most of his circumstances. Factors such as periodic unemployment, which clearly affect life-plans and opportunities, are not to be subject to political control. Keynesians, in particular, have argued differently.

27. My counterargument here is not a justification of social control generally, or in any particular area. It simply suggests that Hayek's consequentialist appeal requires much more than a negative conception of freedom in the political realm.

28. I will argue this more fully in the following section.


31. Ibid., p. 29.

32. See N.P. Barry on Hayek's so-called 'dogmatism', (op.cit., pp. 70-1) and also Footnote 4 of the following chapter. Barry claims (p. 69) that "[t]he most important feature of Hayek's defence of liberty is its deliberately dogmatic approach, not dogmatic in the pejorative sense of the word but in the sense of a general defence of liberty rather than particular cases of it'. And on p. 71, '[d]oes it not entail that massive inequalities are to be tolerated because to do anything to alleviate them would involve the use of coercion? This would appear to follow because in Hayek's thought there is no quantifiable relationship between liberty and other principles'.


34. Hayek states (ibid., p. 134) that '... though physical circumstances will often be unpredictable, they will not maliciously frustrate our aims!'


the upholding of voluntary agreement as essential for the
fulfilment of individual goals. And yet he, like Nozick,
refuses to embrace the right of an individual to be in a
particular material position. Given his instrumental view
of freedom as a means of achieving goal-satisfaction, it is
strange that he should recognise some 'legitimate expectations'
yet exclude others, such as the termination of employment,
as an object of political regulation.

37. Hayek states (ibid., p. 146) that government's main role
is to eliminate the most severe forms of coercion, so he
does recognise my distinction, yet he fails to take account
of its implications in important areas.

38. For his views on taxation, see Hayek, op.cit., 1960, Chapter
20, 'Taxation and Redistribution'. Here he discusses why
progressive taxation is indefensible, and why he allows
proportional taxation. What I take issue with is the importance
of such a difference for the effect of taxation on freedom
and life-plans.

39. Ibid., Chapter 10, 'Laws, Commands, and Order', passim,
but especially pp. 148-53.

40. Ibid., p. 51.


42. Hayek initially put this view in his The Road To Serfdom,
(London and Chicago, 1944), but has emphasised it less in
more recent works.

43. See John Passmore's arguments regarding the importance of
state subsidies for research in his 1981 Boyer Lectures,

44. See Footnote 38 above, and Hayek, op.cit., 1960, pp. 143-4.

45. Ibid., pp. 143-5.

46. Ibid., p. 144. He admits that, for instance, '[i]t is not
to be expected that there will ever be complete unanimity
on the desirability of the extent of such services ...'.

47. See Chapter 3, Footnote 6, and Hayek, ibid., p. 153. Hayek
here comes close to Rousseau's position, as expressed in his
insistence that "the law always consider the subject in the
round and actions in the abstract and never any individual
man or one particular action". See Rousseau, J.J., The Social
Contract, Book II, Chapter vi. Also he is quoted in de
Crespigny, op.cit., p. 60. Again, the laws which for Hayek
reflect freedom are instrumental in value. He says, in relation
to his laws, that '[t]hey are instrumental, they are means
put at his disposal, and they provide part of the data which,
together with his knowledge of the particular circumstances
of time and place, he can use as the basis for his decisions'.
(p. 152)

48. Ibid., p. 154.


51. See Scott Gordon on the avoidability of Hayek's laws which supposedly makes them non-coercive, in Chapter 3 above, Footnote 10.


54. Op.cit., Gordon, p. 473. Hayek, Gordon claims, does not '...regard the market system as sufficient, in itself, to create a sublime order of immaculate accord'.


58. Ibid.


60. Ibid., p. 65.

CHAPTER 5. NOZICK'S ARGUMENT FOR THE NON-INTERVENTIONIST ORDER:
THE NATURE OF MAN.


2. Op.cit., Nozick, 1974, pp. 28-30. Nozick contrasts his own uncompromising view of rights with a minimising theory of rights infringement: '[t]he side-constraint view forbids you to violate these moral constraints in the pursuit of your goals; whereas the view whose objective is to minimise the violation of these rights allows you to violate the rights (the constraints) in order to lessen their total violation in the society'. (p. 29) See also H.L.A. Hart in Ryan, op.cit., 1979.


10. Ibid., pp. 48-9.

11. Ibid., p. 49.

12. Ibid.

13. Ibid., p. 50.

14. The focus on separate interests in Chapter 6 is not that the separateness is a moral issue, but that it precludes the possibility of formulating and achieving collectivist utopian schemes. Hence it will be shown that there are two strands in Nozick's individualism.


16. Ibid., pp. 30-1.

17. Ibid., p. 32.

18. As Nozick argues elsewhere, '... consent opens the border for crossings'. (Ibid., p. 58)

19. Ibid., p. 33. The emphasis on 'moral' is my own.

20. See Chapter 6 for further discussion of this point, Sections III and IV.


23. Ibid., p. 49.

25. For this idea I am indebted to M.W. Jackson.

26. Op.cit., Scheffler. For instance, he concludes that only a positive theory of rights '... insures that all the necessary material conditions for having a reasonable chance of living a meaningful life will be met'. See also Peffer, R., 'A Defense of Rights to Well-Being', Philosophy and Public Affairs, Vol. 8, No. 1, Fall 1978, pp. 65-87.


29. See Nozick's entitlement theory of justice, especially his theory of justice in acquisition (pp. 150-3, op.cit., 1974). It is the individual's ownership of property that makes it important to respect it, not the property itself. Hence it is to be regarded as part of the individual's rights - it cannot be taken from him without his consent.


33. See my argument on this in the previous chapter. Nozick, like Hayek, is committed to the distinction between 'choosing' and 'options'.

34. This is despite his claim on pp. 274-5 (op.cit., 1974) that the welfare state in the U.S.A. largely benefits the middle class.


37. Ibid., p. 152.

38. Ibid.

39. See his Chapter 4, 'Prohibition, Compensation and Risk'.

40. Ibid., pp. 239-46.

41. As Scanlon argues, '[t]he liberties involved in the example seem to be these: the liberty of the fans to pay an extra quarter to see Wilt play, his liberty to keep any amount he
may receive through such transactions, his liberty to decide whether or not he wants to play for the amount remaining after taxes from what the fans and promoters offer him, and, finally, the liberty of his heirs to keep any amount of money he wishes to pass on to them. It does not seem likely that egalitarians ... will want to keep watch over everyone's quarters or to conscript basketball stars' (op. cit., Scanlon, p. 7). In this context, Brian Barry argues that Nozick's definition of freedom is extremely narrow, confined to '... the retention of one's gross income', in his 'Book Review: Anarchy, State and Utopia by Robert Nozick', Political Theory, Vol. 3, No. 3, August 1975, p. 332. The point is that Nozick's examples assume that the interventionist state does a lot more than it really does. Both Scanlon and Barry argue plausibly that taxation need not imply the direction by the state of individual goals, and that the taxed person still has the capability and opportunity to fulfil his life-plans. A reallocation of resources by the state does not imply the dictation of how those resources are to be used. Nor does such a reallocation have to be total.

44. Ibid.

CHAPTER 6. INDIVIDUALISM, SOCIETY, AND THE REJECTION OF THE INTERVENTIONIST ORDER.

1. Nozick also uses invisible-hand images in his contrast between filter processes and design devices in Chapter 10,'A Framework for Utopia', op. cit., 1974. His discussion of them is similar to Hayek's argument (see Chapter 4) that is based on academic freedom - the more things that are tried, the better the results will be.

5. Ibid., p. 30.


11. Op.cit., Hayek, 1975, pp. 66-7. He argues that '[t]he concepts of a 'just price', a 'just remuneration' or a 'just distribution' of incomes are of course very old; it deserves notice, however, that in the course of the efforts of two thousand years in which philosophers have speculated about the meaning of these concepts, not a single rule has been discovered which would allow us to determine what is in this sense just in a market order'.


14. Ibid. For a different view, see Wilhelm, op.cit., p. 171. He claims that a '... basic assumption of liberalism, Hayek maintains, is the paramount importance of self-interest to human motivation'. There is no '... innate drive for cooperation'. Hayek, I think, would deny this, especially given his view of the growth of the catallaxy, a word he derives (p. 60, 1975) from the Greek meaning 'to admit to the community' and 'to turn from enemy into friend'. For Hayek, I believe, human self-interest itself does not rule out social cooperation.

15. Op.cit., George and Wilding, p. 24. See also Wilhelm, op.cit., p. 171, who argues in reference to Hayek, '[n]o one, therefore, has a 'right' to judge and coerce others on the grounds of altruistic feeling; no one possesses any social or joint responsibility ... To assert that individuals have a responsibility towards an infinite number of actions within a society is to claim a supernatural ability for man.'


17. Ibid., p. 68.

18. Ibid., pp. 66-7. He also claims (p. 67): '[t]hat the concept of justice is nevertheless so commonly and readily applied to the distribution of incomes is entirely the effect of an erroneous anthropomorphic interpretation of society as an organisation, rather than as a spontaneous order'.

29. Ibid., p. 319. Nozick refers specifically to 'imperialistic utopianism', '... which countenances the forcing of everyone into one pattern of community', and to 'missionary utopianism', '... which hopes to persuade or convince everyone to live in one particular kind of community, but will not force them to do so'. He also refers to 'existential utopianism', which, he claims, is more consistent with his views.


38. See the Wilt Chamberlain example and the arguments surrounding it in Chapter 5. Also Footnote 41 in Chapter 5.

39. See Nozick, op.cit., 1974, pp. 18-21. Hayek refers to the term (op.cit., 1973, p. 37) and clearly works within such a framework in his account of the growth of knowledge. See Nozick on Hayek,
p. 21, and Hayek, op.cit., 1960, Chapter 2. See also Footnote 45, and Hayek, op.cit., 1975, p. 67, where he argues that '[i]n the catallaxy, the spontaneous order of the market, nobody can foresee, however, what each participant will get, and the results for particular people are not determined by anyone's intentions; nor is anyone responsible for particular people getting particular things'. Here Hayek clearly sees the market order in terms of the invisible-hand. Elsewhere he acknowledges his debt to Adam Smith, for example, 1975, pp. 55, 57. On this see also Gordon, op.cit., p. 479, and his Footnote 15.


42. Friedman, M. and C., Free To Choose (Harmondsworth, 1980) p. 25.


44. Ibid., p. 19.

45. Ibid., p. 21.

46. Ibid. See also Hayek, op.cit., 1960, Chapter 2.


49. Quoted in Gordon, ibid., p. 480.


52. On Nozick's argument here, see also my A.P.S.A. paper, 'Nozick's Derivation of the Minimal State'. A.P.S.A. Annual Conference, Canberra, August 1981.


55. Ibid., p. 77.

56. See also my claim in Chapter 4 that taxation merely affects options, not choices, on Hayek's own distinction.
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