

Marx, Hayek and the Relationship between Capitalism and Freedom

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Declaration

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration except where specifically indicated in the text.

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Signed.....

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Introduction

This dissertation provides a critique of the claim that capitalism maximises individual freedom, taking Friedrich Hayek and Karl Marx as providing the best arguments that can be made for and against that claim. Several others have also attacked this defence of capitalism: G. A. Cohen is most prominent, and his case will be important here. Nonetheless, I believe that the form of critique that I want to offer has something to add.

The particular version of Hayek's 'freedom argument' to be explored is that developed in his post-1960 writings, or 'Hayek III,' to borrow Steve Fleetwood's (1995) terminology. The source of the most powerful ammunition against this case I take to be Marx, particularly the 'mature' Marx of *Capital I* (1867). The conclusions to be drawn here could not be reached if it could be argued that Hayek and Marx did not share an understanding of capitalism. Following Meghnad Desai (2002), however, I will take it that they did.

While there is no reason why my preference for Marx should not be made clear at the outset, this dissertation does not intend merely to outline Hayek's argument, set Marx against it, and pronounce Marx the winner. Rather, the argument that I offer to suggest why it is that Hayek's defence of capitalism is not in fact proof against Marx's critique of it is double-edged: it *also* suggests how some of Hayek's and Marx's claims concerning capitalism and freedom could be said to be compatible, such that individual freedom in society might actually be maximised by combining some of their insights. My analysis suggests that much of Hayek's argument can fit quite easily into Marx's framework, and for that reason has no impact on what I take to be Marx's most crucial point. At the same time, however, there may be something in Hayek's argument that Marx lacks, and which, if it were explicitly incorporated into his framework, would strengthen his hand. More controversially, perhaps, it will be argued that to do so would not be detrimental to Marx's project: that is, that according to the interpretation of Marx advanced here, his framework would not be rendered recognisably un-Marxian by the inclusion of the Hayekian claims that I have in mind.

Specifically, this dissertation will not be concerned with freedom in its broadest sense, but with individual freedom to choose. That, it will be argued, is the best way of characterising the substantive content of the conception of freedom that Hayek offered in defence of capitalism, and while it may not exhaust Marx's more expansive notion of freedom, neither, at least, would it seem to be incompatible with it. The argument will then proceed on the basis that an important distinction needs to be made in relation to the kinds of choices that individuals face in society: a distinction that can be seen to emerge internally in the work of both Hayek and Marx, but that appears even more clearly when their contrasting and apparently conflicting views on capitalism and freedom are juxtaposed. Briefly, in the terminology that will be used here, the argument to be put forward is that while Hayek's focus was primarily on 'first-order' choice, or the freedom to choose how to achieve one's ends within a given system – in this case, the domain of the market – Marx's principal concern, in contrast, was with the lack of choice available, in capitalist and other societies, at the 'second-order' level: that is, the lack of freedom to *choose the domain in which one's first-order choices might be made*, at least insofar as the pursuit of many ends, including most notably that of survival, is concerned.

The dissertation will proceed as follows. The first chapter will argue the importance of Hayek's argument for capitalism as freedom and outline its main features, drawing special attention to the claim that, for Hayek, freedom was co-extensive with the domain of the market, and capitalist societies therefore to be more energetically supported, the closer they came to being fully encompassed by the market mechanism.

In the second chapter, it will be contended that Hayek's argument can most reasonably be characterised as concerning individual freedom to choose, as opposed to freedom as such. In the light of recent work on the related concept of freedom of choice, the notion of freedom to choose will be carefully defined prior to being adopted as the focus for the rest of the dissertation. It will then be argued that two levels of choice to be made by individuals in society do, in fact, exist, and may be discerned even in Hayek's argument. Hayek's defence of capitalism as freedom is exclusively concerned with freedom to choose at the level of the first order, however, and this renders his argument rather unstable on its own premises.

The burden of the third chapter will then be to show that it was precisely the lack of second-order freedom to choose that provoked Marx's antipathy to capitalism, and that this, for him, was actually the secret of its dynamism. The usefulness of focusing on the issue of choice at the second-order level with respect to contemporary discussion of the question whether or not the worker in capitalist society is forced to sell her labour-power will then be spelled out. The chapter will close by noting that as far as Marx's interpretation of the logic of capitalism was concerned, Hayek agreed with him. The difference between them was only that, while for both the elimination of second-order freedom to choose was a necessary condition of capitalism, for Hayek capitalism was also necessary for economic production itself.

Yet even in Hayek's argument there existed the glimmer of an alternative possibility. This was evident in his celebration of the beneficial role to be played by 'independents' in his ideal society, whose very lack of dependency on the market would free them to pursue certain desirable ends that Hayek identified as being incompatible with the proximate aim of profit-making. In conclusion, then, the dissertation will outline some of the implications of the analysis provided here by sketching out just what an alternative society that sought to take seriously the compatible aspects of Hayek's and Marx's thought, and embed real freedom to choose at both the first- and second-order levels, would, on my interpretation, have to look like. It will also briefly consider what these conclusions might suggest in relation to other recent contributions to the ongoing debate over the proper limits of the market.

1. Hayek on Capitalism as Freedom

This chapter will introduce Hayek's argument for capitalism as freedom by outlining its importance in relation to other defences of capitalism that have been offered, and by elucidating its special significance for the left. Developing out of this analysis, the crucial feature of Hayek's ideal society will then be identified. Finally, his case for believing that a society structured along those lines would be equivalent to freedom as such will be explored.

Why Hayek?

Numerous arguments have been made in defence of capitalism. Recent major figures, aside from Hayek, who have endorsed, either explicitly or more indirectly, the social order to be found in capitalist societies include Robert Nozick, Milton Friedman, Ronald Dworkin and John Rawls. Hayek's argument is distinctive, however, for two important reasons. The first is one of general significance, and the second especially relevant to those who would seek to criticise capitalism from the left.

First, Hayek's argument is, in my view, simply the best-case defence of capitalism, on any grounds, that has yet been offered. In part, this is the effect of its construction around what may be the most potent claim in support of capitalism that can, at present, be advanced: that is, the claim that capitalist society can be identified with freedom. As a glance at the work of the writers named above would confirm, three concepts – freedom, justice and economic effectiveness – tend to be invoked in the defence of capitalist society. Arguably, however, as the historical sociologist Orlando Patterson confidently asserted in 1991, 'today freedom stands unchallenged as the supreme value of the Western world' (Patterson 1991: ix). On this basis alone, then, if capitalism's association with freedom could plausibly be argued, it might inevitably be deemed worthy of support, even 'reverence' (Hayek 1967: 155).¹

Hayek's approach was particularly effective, however, since he was able to show how, by pursuing only the notion of capitalism as freedom, all of the arguments commonly made in support of capitalism could be drawn together. As G. A. Cohen has written, capitalism is usually supported on the *distinct* grounds that it 'enlivens production, safeguards freedom, and conforms to principles of justice' (Cohen 1988: 289). In Hayek's case, however, the arguments concerning justice and economic effectiveness were actually drawn into the orbit of the argument for capitalism as freedom. If individuals can freely pursue their own chosen ends, by means they also freely choose – as, Hayek argues, capitalist societies not only allow, but require, if they are to function successfully – then it would seem difficult to see where injustice might be said to arise. If, in addition, as Hayek claims, the mere existence of multiple individuals acting freely can be shown to generate a neat feedback mechanism, such that more economically effective means for achieving desired ends can be produced, thus enabling the steadily *increasing* freedom of individuals to pursue

¹ 'Capitalism as freedom' is not, of course, the only plausible way of characterising Hayek's argument. Nonetheless, it can encompass several other suggestions, such as Nick Bosanquet's claim that Hayek supported the market primarily because it could 'live with uncertainty' (Bosanquet 1983: 27). John Gray suggestively observes that while Hayek offered two arguments for capitalism, one epistemic and one concerning incentives, both derive from a regard for individual autonomy (Gray 1993: 74).

whatever ends they desire, then the economic argument for capitalism would also look to have been secured.

Hayek's argument is thus a highly efficient one. Yet his success here would also seem all the more noteworthy, given that others have also sought to combine some of the arguments in defence of capitalism, but to less good effect. Nozick (1974) is the obvious example here: in his case, a rights-based theory of forced choice was intended to provide a link between freedom and justice in capitalist societies, albeit by way of a focus on justice rather than freedom. The relevant question for Nozick regarding individual freedom was whether or not the people whose actions limited an individual's alternatives 'had the right to act as they did' (Nozick 1974: 262). If those people did act only within their rights – that is, justly – then the individual in question could not be said to be unfree.

Nozick's position could be easily undermined, however, by the observation that it had the 'absurd upshot' that on this basis a criminal who had been justly imprisoned could not be said to be unfree either (Cohen 1988: 256). Yet despite the fact that Hayek's argument was safe from this criticism, as well as being arguably more effective in other ways, he has remained a figure of more 'marginal status' (Kukathas 1989: 3). Instead, it has been Nozick who has continued to be regarded as the 'most prominent philosophical defender of capitalists' rights,' and the figure whose argument leftists, in particular, have felt the need to rebut (Cohen 1988: 252; Cohen 1995; Olsaretti 2004).² Helping, in a small way, to redress this imbalance is therefore one part of the aim of this dissertation.

The second reason that Hayek's argument is useful to consider in this context is especially important for those who would seek to oppose him from the left. This is the fact that – contrary to his reputation, perhaps – what Hayek presented was not so much a standard right-libertarian argument, but rather what might be termed an interestingly extreme liberal one.³ He actually accepted several of the claims advanced by some of those to his left in support of a truncated capitalism, or even towards a rejection of capitalism altogether, without considering that such claims need affect his staunch pro-capitalist position in the least. This is significant, because it would seem that Hayek had pulled off the delicate trick of pushing the argument for capitalism as freedom as far as it would go – and much further than anyone on the left would be inclined to accept – without ceasing to inhabit a theoretical universe not wholly unfamiliar to those on the left. If so, he provides a useful challenge to those who would continue to argue for the 'desirability of an egalitarian socialist society' (Cohen 1995: 7).

According to Jan Narveson, what is distinctive about the standard libertarian position, as epitomised by Nozick or Friedman, for example, is that the deep connection between capitalism and freedom is held to justify 'unfettered' or 'full' capitalism, in which everything is owned by individual agents, those agents have full private property rights, and those rights are fully

² Those who have focused on Hayek, however, include Wainwright (1992) and O'Neill (1998).

³ This is true despite the fact that Hayek accepted the libertarian label, albeit with reservations on account of its being 'singularly unattractive' (Hayek 1960: 408)

tradable (Olsaretti 2004: 86). In such a society the production and circulation of goods and services would therefore occur solely as a result of private enterprise.

This does not describe Hayek's ideal society, the 'Great Society,' however. His public support for the Thatcher and Reagan governments during the 1980s may not have conveyed the more qualified note sounded in many of his writings; nor, indeed, did his final publication, *The Fatal Conceit* (1988), do much to advertise any earlier caution. But as late as 1979 at least, he was convinced that the Great Society would *not* consist of, merely, full capitalism plus a 'minimal state,' in which the 'enforcement of the law and the defence against external enemies' would constitute the only legitimate functions of government (Hayek 1979: 41). Rather, he found it 'unquestionable' that, in an advanced society, governments ought to use their power of raising funds by taxation to provide 'a number of services which for various reasons cannot be provided, or cannot be provided adequately, by the market' (Hayek 1979:41). Such services, as he had written earlier, would in all likelihood include 'most sanitary and health services,' the 'construction and maintenance of roads,' and 'many of the amenities provided by the municipalities for the inhabitants of cities' (Hayek 1979: 43-4; 1960: 223). He also saw 'no reason why a society which, thanks to the market, is as rich as modern society should not provide ... a minimum security for all who in the market fall below a certain standard' (Hayek 1967: 175; see also Hayek 1994: 133; 1979: 55). He did not even think that the regulation of private enterprise by government should be ruled out, if it was thought likely to benefit the general welfare. He merely commented that if the effects of regulation on costs were 'fully taken into account,' and it was 'still thought worthwhile to incur the cost to achieve a given end,' then there could be 'little more to be said about it' – although he did suspect that such a move would be *wise* 'only in exceptional circumstances' (Hayek 1960: 224).

Evidently, then, Hayek accepted some that different forms of property and enterprise, both public and private, could confer some benefits. As his note on regulation would seem to suggest, he even left room for rational collective action in aid of the general welfare. It might be thought, then, that he had something in common with rather more moderate liberals, defined by Cohen as those who 'would agree with libertarians that pure capitalism is freedom pure and simple,' but who would also argue that 'freedom must be must be balanced against other values,' such as equality or welfare, such that 'what is known as the Welfare State mixed economy' would seem to achieve the right compromise (Cohen 1988: 292).

Yet Hayek remained far from that position. Anything like the mid-twentieth century welfare state mixed economy was certainly not his ideal, and it is precisely this apparent contradiction that makes his argument so instructive for the left. It would seem necessary to think unusually carefully about the defining characteristics of capitalism in order to criticise it.

The Prioritisation of the Market

Thus Hayek did not believe that strong support for capitalism necessarily entailed support for the kind of regime of purely private property and private enterprise that, for the standard libertarian, would be required in order to establish a full, free market society. What, then, *was* the crucial feature of the Great Society – that which would render it so hospitable to freedom, as Hayek thought it should be conceived?

First, while Hayek's position was not to be defined by support for *purely* private property rights, he was far from indifferent to them. While not everything in the Great Society was necessarily to be owned by individual agents, possessed of full and fully tradable private property rights, most things certainly would be. True liberalism, Hayek argued, was inherently 'inseparable from the institution of private property': that was the very name given to an individual's protected domain, the defence of which lay at the heart of the classical liberal position (Hayek 1967: 165). By the same token, while the production and circulation of goods and services was not *necessarily* to occur solely as the result of private enterprise, such was undoubtedly to be the norm. State enterprise was to be merely a back-up option: governments would only be called on to provide services that would 'otherwise not be supplied at all,' and even then the benefits would have to be weighed against the costs (Hayek 1960: 222).

Nonetheless, Hayek's support for private property rights and private enterprise was animated by something other than the presumed virtue of their hegemony for its own sake. Private property was, for Hayek, significant for primarily *instrumental* reasons. It was because he thought that without some private property individuals would be precluded from launching new forms of enterprise within the domain of the market that he supported societies in which private property was the predominant property form. And it was because he thought that the whole of society should be constituted *entirely* by the order of the market – that is, wholly susceptible to ordering by the market mechanism – that he supported capitalism. Insofar as a considerable amount of private property could be expected to advance that ideal, Hayek therefore advocated a system of private property: but it did not seem to him that it would be necessary for society to be composed of *solely* private property in order to establish the 'full market' aspect of capitalism, that he was convinced was indispensable for freedom.

In drawing this distinction between two aspects of capitalism, a 'property' and a 'market' aspect, it might, of course, be argued that Hayek was simply being inconsistent. What kind of society, it might be asked, could be entirely subject to ordering by the market mechanism, if it was not to be composed of wholly privately owned and fully tradable forms of property? Could the market be used to order entities – even a small number – if those entities themselves could not be freely bought and sold?

For the standard libertarian or moderate liberal supporter of capitalism, of course, that question would not arise: in the case of the first, a full market society would inevitably emerge where nothing but fully tradable private property existed, while in the second, a more limited market domain and a range of property forms were anyway both to be supported. A market socialist, of course, such as Alec Nove or David Miller, might immediately accept the possibility of distinguishing between the 'property' and 'market' aspects of capitalism – that was precisely the distinction on which their argument was based (Nove 1981; Miller 1989). But Hayek was, of course, no market socialist.

Still, a more feasible example, perhaps, of the model suggested by Hayek's position might be the existence of competition between private and public healthcare providers in the U.K. For this did indeed seem to be the kind of model Hayek had in mind. In the Great Society, services were to be fully subject to ordering by competition – that is, 'guided by the spontaneous

mechanism of the market’ – independently of whether or not they were funded by the ‘coercive method of central determination’ (Hayek 1979: 46). Indeed, Hayek argued that even where publicly-funded projects were unavoidable, the services in question could generally – and ‘more effectively’ – be provided ‘by the government’s assuming some or all of the financial responsibility but leaving the conduct of the affairs to independent and in some measure competitive agencies’ (Hayek 1960: 224).

In arguing this point Hayek was not principally concerned with such things as economic efficiency, or increased consumer satisfaction. His most immediate interest lay in protecting the freedom of other agents to compete, should they wish to do so. It was this idea that lay behind his insistence that it was not state enterprise as such that he found objectionable, but the existence of state monopoly (Hayek 1960: 224). For while a government might, at any moment, be best qualified to take the lead in certain fields, for Hayek there could be ‘no justification for assuming that this will always be so and therefore for giving it exclusive responsibility’ (Hayek 1960: 223). As Andrew Gamble has emphasised, for Hayek the ‘capacity to evolve further’ resided in ‘constant experimentation and competition’ (Gamble 1996: 181): any ‘special advantages, including subsidies,’ that governments gave to their own enterprises in ‘any field’ therefore had to be made available to competing private agencies as well (Hayek 1960: 224). If monopolies ever *were* to arise – as might be the case, of course, should it turn out that certain producers were simply able to ‘meet demand at prices which no one else can match’ – the only essential point, as far as Hayek was concerned, was that that this should not occur because ‘others were prevented from trying’ (Hayek 1979: 73).

Freedom was thus the crucial feature of Hayek’s ideal society, and the motivating idea behind his extreme pro-capitalism, since it was on these grounds that he concluded that the whole of society should be wholly co-extensive with the domain of the market. For, as long as individuals remained within the domain of the market, subject to ordering by the ‘same abstract rules’ of the market mechanism rather than by the ambitions of any human agents, it seemed to Hayek that nobody could ever be ‘prevented from trying’ (Hayek 1976: 12). In contrast, he reasoned, any alternative to the hegemony of the market would necessarily entail the diversion of part of the ‘stream of goods’ emerging from the market to individuals located in some sense *outside* the market domain, for reasons other than the value of those individuals’ role *in* the market (Hayek 1976: 120). But such decisions could only be made by ‘some authority,’ to whose whims the ambitions of the rest of society would then be subject, which Hayek considered would inevitably be ‘inconsistent and unjust’ (Hayek 1976: 120). For Hayek it therefore followed that the whole of society should simply *be* the ‘order brought about by the mutual adjustment of many economies in a market,’ or, as he preferred to call it, the ‘catallaxy’ (Hayek 1976: 108-9).⁴

⁴ The term ‘catallaxy’ and its relation, ‘catallactics,’ which Hayek advocated in place of ‘economics’ to describe the ‘theoretical science explaining the market order,’ were ‘particularly attractive’ to Hayek because ‘the classical Greek word from which they stem, *katallattein* ... meant not only “to exchange” but also “to receive into the community” and “to turn from enemy into friend,” further evidence of the profound insight of the ancient Greeks in such matters’ (Hayek 1988: 112).

Freedom in the Market Domain

The mechanism of the market, for Hayek, was thus to be advocated as the sole generator of social order: no part of society was to be closed to the forces of competition. Yet this was not because Hayek thought that any particular feature of the order arising from the use of the market mechanism embodied, or in any way represented, individual freedom. For him, the case was rather the other way around: it was the free actions of individuals that gave rise to the order of the market, not the market that enabled the free actions of individuals. Admittedly, the market mechanism did require something else in order to function properly: a set of background ‘rules of the law of property, tort and contract’ (Hayek 1976: 109), which laid down how the ‘game of catallaxy’ (Hayek 1976: 115) was to be played. Yet, for Hayek, they could not be regarded as unjust constraints, partly because the same ‘rules of conduct’ would apply to all individuals ‘independent of the particular purposes of those concerned’ (Hayek 1967: 168), and partly because these rules had evolved freely from the ‘regularities of the actions of ... individuals’ over the centuries (Hayek 1973: 74), only coming to prevail ‘because the groups who observed them were more successful’ (Hayek 1967: 164).

Given this conception of the development of market society, then, Hayek could never have laid out precisely what it was that capitalism enabled. It ‘did’ nothing, in a positive sense; moreover, even to discuss capitalism metaphorically as an abstract agent was somewhat foreign to Hayek’s way of thinking. The Great – or more tellingly perhaps, following Hayek’s friend Karl Popper – the Open Society simply ‘was’ freedom: that was Hayek’s whole point (Hayek 1973: 148). In consequence, he devoted considerable effort to fleshing out his conception of freedom – freedom as such, and by definition co-extensive with the domain of the market. The remainder of this chapter will therefore outline in more detail its three main features, including the ‘special attributes’ possessed by the market mechanism, to which freedom itself apparently gave rise (Hayek 1976: 107).

First, for Hayek, freedom meant that nobody should ever have to pursue ends not of their own choosing. The essential test of freedom was ‘whether or not I am my own master and can follow my own choice’ (Hayek 1960: 17), and the obvious contradistinction to be made here was between the slave and the free worker. The slave, by definition ‘irrevocably subject to the will of another,’ could only work to advance ambitions not his own (Hayek 1960: 12). This was ‘evil,’ since – in a Kantian formulation⁵ – Hayek argued that it eliminated the individual as a ‘thinking and valuing’ person in his own right, and turned him instead into ‘a bare tool in the achievement of the ends of another’ (Hayek 1960: 21).

In contrast, no free worker within a market society – not the poor peasant or artisan, ‘the poorest farmer or shepherd,’ nor even ‘the penniless vagabond who lives precariously by constant improvisation’ – could be forced to pursue any but their own desires (Hayek 1960: 17-18). They might go to work for another, as a *means* of pursuing their ends, but they could always leave: the ‘essential fact,’ as Hayek put it, was that ‘in a competitive society the employed is not at the mercy of a particular employer’ (Hayek 1960: 121). Nobody could be forced to stay and serve another’s will, since in a ‘normally operating

⁵ For further discussion of Hayek’s relation to Kant, see Kukathas (1989) and Gray (1984).

competitive society,' alternative employment would always be available, although it 'might often be less remunerative' (Hayek 1960: 121).

Especially in the three volumes of *Law, Legislation and Liberty* (1973-9), however, Hayek also made much of another reason that the free worker, under capitalism, was better off. Not only obviously personal forcings⁶ of the type existing between a slave and his master were objectionable, to Hayek's mind: freedom also precluded, and for the same reasons, any socialist-style, collectively agreed 'ranking of ends,' adjudicated and enforced by government agents, no matter how democratically accountable they might be (Hayek 1976: 109). As Hayek emphasised, the Great Society was not to be 'ends-connected,' but merely 'means-connected': individuals would 'contribute to the needs of others without knowing or caring about them,' perhaps even unwittingly aiding the 'achievement of ends of which we would disapprove if we knew about them' (Hayek 1976: 109-10). There would be no 'solidarity,' in what Hayek called the 'true sense of unitedness in the pursuit of known common goals' (Hayek 1976: 110-11). For Hayek, such solidarity could hardly fail to obstruct freedom, since some individuals, in such circumstances, would surely end up having to strive for ends not of their own choosing. The order of the market was therefore to rest 'not on common purposes,' but wholly on 'reciprocity, that is on the reconciliation of different purposes for the mutual benefit of the participants' (Hayek 1967: 163).

Second, and following on from that, freedom meant freedom to choose the means by which one's ends might be achieved. By this, Hayek evidently had in mind above all two forms of activity: choosing one's occupation, as a means of obtaining an income, and choosing how to spend one's income, as a means of surviving and achieving one's other, more personal ends.

The necessity of finding a 'sphere of usefulness,' Hayek thought, was 'the hardest discipline that a free society imposes on us' (Hayek 1960: 80). Nonetheless, the 'pressure that responsibility for one's own fate brings' was – although some might regret it – inevitable in order to escape 'the far more invidious pressure of personal orders that one must obey' (Hayek 1960: 82). Here Hayek was again writing largely against socialist society as he understood it throughout his life: that is, as entailing a form of centralised planning. A planned society, Hayek argued, whether fully constituted, or moving in that direction through what he considered injudicious welfare policies (Hayek 1994: xxiii), could not but require that individuals be directed to particular occupations, in a manner anathema to a free market society. Whether they liked it or not, Hayek argued, 'planners,' with particular ends in mind, would have to be able to 'control the entry into the different trades and occupations, or the terms of remuneration, or both' (Hayek 1994: 104). This could not but hamper, if it did not absolutely close off, the freedom to launch initiatives unanticipated by the authorities.

⁶ The standard term given to the absence of freedom, by Hayek and others writing in defence of capitalism along similar lines, is 'coercion,' which for Hayek implied that 'my mind is made someone else's tool, because the alternatives before me have been so manipulated that the conduct that the coercer wants me to choose becomes for me the least painful one' (Hayek 1960: 133). As Serena Olsaretti has persuasively argued, coercion should really be understood as 'a type of forcing,' where forcing is defined as any instance of vitiated voluntariness, since voluntariness may be vitiated even if coercion is not present, and what lies behind the concern with coercion is, arguably, a concern for vitiated voluntariness (Olsaretti 2004: 142). Hayek acknowledged some confusion on this point, although he did not pursue it (Hayek 1960: 135).

On these grounds, then, Roland Kley may have been mistaken to claim, against Hayek, that a planned society could be described as merely means-connected, and not ends-connected, in exactly the same way that market society was: that is, as entailing ‘no judgement’ with respect to the ultimate ends that individuals might try to pursue (Kley 1994: 204). For Hayek, it was crucial that in a planned society an individual’s choice of occupation could never be *completely* open to self-determination, as he argued it would be in a market society. Rather, in a planned society that choice would *already* have been narrowed down to a range of possibilities, preconceived, in some sense, by some other agent, thus limiting the individual’s own capacity to choose.

There is a second reason why Kley may have been mistaken to make the above claim. This relates to the opportunities available to individuals to spend the income that they earned in either the planned or the market system, and we can identify it as the third feature of freedom, as Hayek conceived it. While it might be supposed that once an individual had earned her income, in a planned society, she could at least spend it with complete freedom to advance whatever ends she had in mind in whatever ways she chose, for Hayek that would be an illusion, because certain opportunities for that individual to advance her ends would already, albeit invisibly, have been lost, as a result of the incapacity of others to freely choose *their* own occupation. This was the reasoning behind Hayek’s claim that it was ‘only because we are free in the choice of our means that we are also free in the choice of our ends’ (Hayek 1967: 229), and it epitomised the effect of the neat feedback loop known as the market mechanism.

For Hayek, then, the market mechanism was straightforward: the free choice of means to achieve one’s ends – which occupation to choose, which purchases to make – was expected to encourage the production of more and increasingly better-tailored means, thus enabling individuals to pursue their ends with increasingly greater freedom. This would be because the best way for any individual to serve his own ends would always be to ‘use his knowledge of the circumstances of his environment’ to produce something that others, not being in his unique position, could not have been so well aware of the need for (Hayek 1976: 9). The only information the individual in question would need would be ‘signals in the form of known prices he can get for the alternative services or goods he can produce’ (Hayek 1976: 9), which, in a market society, would inevitably emerge as a result of the voluntary exchanges made between individuals; and since the highest prices would be obtained for whatever other individuals in that society most desired, every individual would have an incentive to provide precisely those goods or services that others needed most, thus contributing in the best way that they possibly could to the good of all the other members of that society. In this way a ‘self-generating or spontaneous order in social affairs’ (Hayek 1967: 162) would emerge, that no ‘outside agency’ would be able to fathom, let alone have been able to create deliberately (Hayek 1973: 39).

The price system was thus the key element giving rise to order within the market, although since prices only made sense in the context of a complete set of ‘rules of conduct,’ the catallaxy could be better characterised as a multifaceted ‘telecommunications system,’ in which knowledge of all sorts was ‘produced, discovered, acquired, transformed, conveyed, communicated and stored’ (Fleetwood 1995: 5). But what was also crucial about life within the domain of this system was that, since competition would stimulate all

individuals to ‘produce their outputs as cheaply as possible’ (Hayek 1976: 118), the market would also help serve the ends of every individual within its domain by ‘increasing the prospects or chances of every one of a greater command over the various goods...than we are able to secure in any other way’ (Hayek 1976: 107).

In other words, both by increasing ‘the stream of goods’ as a result of the coordination of otherwise dispersed information through a free price system, and by increasing ‘the prospects of all participants to satisfy their needs’ as a result of each individual’s pursuit of the most cost-efficient means of production (Hayek 1976: 115), the market mechanism – itself generated only by the freely made choices of individuals – was, in turn, believed to generate *greater* freedom for the individuals within its domain to pursue the ends that they had in mind, in ways most appropriately designed to meet their needs.

It was for these reasons that Hayek identified the order of the market with freedom, and concluded that the whole of society itself, if freedom was to be cherished at all, should simply *be* that order. Within the catallaxy, individuals could freely choose their own ends, to be accomplished by their own choice of means, and the whole system would function such that information about the most desired products and services would reach those with an incentive to produce them, increasing the freedom of every individual to achieve their ends.

As we have seen, also, for Hayek it did not follow that society should consist of purely private property and private enterprise. Important as the question of who owned what and how was, the scope and significance of the domain of the market was the crucial factor in the advancement of human freedom. Domination by the market mechanism was simply what happened, once humanity was free.

2. First- and Second-Order Freedom to Choose

This chapter will suggest that the substantive content of the conception of freedom advanced by Hayek in order to defend capitalism on the grounds of freedom can actually be better characterised as referring specifically to individual ‘freedom to choose’. In the light of recent work on the related but distinct concept of ‘freedom of choice,’ the notion of freedom to choose will first be carefully defined, prior to being adopted as the focus for the rest of the dissertation.

It will then be contended that at least two levels of choices to be made exist for individuals in society, but that Hayek’s argument for capitalism as freedom was exclusively concerned with choice at what I will call the first-order level. This was not because Hayek did not recognise that a second-order level of choice existed, however. He was simply unable to deal very effectively with the problems it raised for his argument – which was thereby rendered rather unstable on its own premises.

Freedom to Choose

As we have seen, freedom, for Hayek, was both the necessary precondition for, and ongoing effect of, society within the domain of the market. The Great Society, constituted entirely by the order arising from the use of the market mechanism, would therefore represent the maximisation of individual freedom; and to the extent that they came close to being co-extensive with the market, actually existing capitalist societies, for Hayek, were also close to being the ideal social form.

It will now be suggested that the substantive content of Hayek’s conception of freedom can be best characterised as pertaining to individual ‘freedom to choose’. Since Milton and Rose Friedman’s 1980 television series and best-selling book of the same title, that idea cannot be said to be an unfamiliar one. However, at least in reference to Hayek, the concept may be taken to indicate something quite particular, for which some elaboration is required.

As it will be used here, the idea of freedom to choose should be understood as positing two aspects. These might be described as, first, an aspect ‘internal’ to the chooser, consisting of freedom of choice,⁷ or voluntariness, signifying that an action is made freely, and second, an aspect ‘external’ to the chooser, signifying the existence of a meaningful variety of options from which an individual may choose. Both of these points will now be more fully explored, with particular reference to the argument recently presented by Serena Olsaretti (Olsaretti 1998; 1999; 2004), from whose concept of freedom of choice my concept of freedom to choose will have to be distinguished.

For Olsaretti, the concepts of freedom and freedom of choice, or voluntariness, are distinct, and although *some* freedom is necessary for voluntariness, the *absence* of voluntariness is not precluded by the existence of freedom. Freedom, negatively conceived (in line with the understanding of freedom advanced by libertarians, here including Hayek) such that an individual is unfree to do something if and only if another agent prevents her from doing

⁷ To clarify: from here on, to avoid ambiguity, the term ‘choice’ will be used to denote ‘the choosing of an option,’ to be used interchangeably with the term ‘decision’ or ‘action’. The term ‘option’ will be used to signify the thing available to be chosen.

that thing, or would do if she attempted to do it, tells us something about the options that an individual faces. Freedom of choice, however, or voluntariness, is defined such that an action is voluntary if and only if it is not made because there is no acceptable alternative to it. Voluntariness, therefore, tells us something about how the options facing an individual affect her will, motivating (or not) her subsequent actions (Olsaretti 1999: 114-15).

Possessing freedom, or being free to act, is thus not at all the same thing as exhibiting voluntariness, or acting freely, as G. A. Cohen recognised when he argued that the fact that an individual is forced to do a thing does not alter the fact that she had been, and remained, free to do it: one cannot, after all, be forced to do something that one is not free to do (Cohen 1988: 241-4). That which is vitiated in the event that an action is forced is not freedom, therefore, but freedom of choice, or voluntariness: that is, the capacity to act freely.

On the basis of this analysis, Olsaretti has argued that especially with respect to discussions of the free market, libertarians have consistently ‘tended to resolve questions of voluntariness by appeal to questions of freedom’ (Olsaretti 2004: 137). What libertarians would need to show, in order to be able to argue that the free market does not permit the ‘vitiating voluntariness’ that, she argues, is actually what they dislike about the cases of coercion that they find so objectionable (Olsaretti 2004: 141-8), is not merely that the free market succeeds in ‘giving people options’ – or, in other words, in giving them the *freedom* to do various things – but that it maintains those circumstances in which every one is ‘enabled to make voluntary choices’ (Olsaretti 2004: 137).

Now, in two of the three main features of Hayek’s conception of freedom that this dissertation has identified – that is, freedom to choose one’s own ends, and freedom to choose the means by which those ends might be achieved – concern with what I wish to designate the ‘internal’ aspect of freedom to choose clearly predominates. It is not so much the claim that individuals are free to select from a pool of options those which they would prefer that animates Hayek’s argument, as the claim that in doing so, those individuals act voluntarily or freely, in no way ‘subject to the will of another’ (Hayek 1960: 12). Indeed, Hayek even spelled this point out. While the question of ‘how many courses of action are open to a person’ was ‘of course very important,’ it was not his chief concern: what was more important for an individual was ‘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 toward ends for which he has been persistently striving’ (Hayek 1960: 13). For Hayek, whether an individual was 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’ (Hayek 1960: 13). While Hayek might have believed himself to be discussing freedom here, therefore, his subject was really what Olsaretti has designated voluntariness, or freedom of choice.

Why bother, then, to introduce a concept of freedom to choose distinct from freedom of choice at all? Why not simply characterise Hayek’s argument as concerning freedom of choice? The short answer to this is that making the distinction allows us to explore further the question of the range and quality of options from which individuals are able to choose. For despite Hayek’s claim that he was not concerned with an individual’s ‘range of choice,’ the third feature of his conception of freedom is precisely the claim that the voluntary actions of individuals lead to a *proliferation* of increasingly efficient means to

achieve individual ends, which is thereby held to generate greater freedom. Certainly Nick Bosanquet, among other commentators, was right to argue that Hayek's conception of freedom, as it is formally presented, is 'not about content; it is not about having a wide range of opportunities to choose from' (Bosanquet 1983: 32). Nevertheless, since Hayek's argument in respect of the freedom-enhancing capacities of market society *does* make much of the fact that the market mechanism encourages an increased 'stream of goods' (Hayek 1976: 115), it would seem reasonable to try to bring out that emphasis here.

Olsaretti's conception of freedom of choice, it should be noted, is not blind to the question of the nature of the options available to individuals. On the one hand, and rightly, Olsaretti argues that having a variety of options is *not* a necessary condition for a voluntary action. The example she gives is that of Wendy, the contented inhabitant of a wonderful city, surrounded by an electrified fence, who has no wish to leave and whose staying in the city is entirely unmotivated by the fact that she is unfree to do otherwise. Since voluntariness is a quality of one's actions, rather than one's options, Wendy's staying in the city is therefore voluntary (Olsaretti 2004: 138-9). As this example makes clear, the only freedom necessary to perform an action voluntarily is therefore the freedom to do *that action*, and not the additional freedom to do any *other* action – in line with Cohen's argument, cited above, that we cannot be said to be any the less free to do something, simply because we are forced to do it. The freedom to choose from more than one option is not, therefore, necessary for voluntariness.

On the other hand, however, and also rightly, Olsaretti is clear that since an individual's action is voluntary 'if and only if it is not made *because* there is no acceptable alternative to it,' then the voluntariness of an action must be 'a function of *both* the individual's preferences and the acceptability or unacceptability of the options' available to that individual (Olsaretti 2004: 154). The criterion for the acceptability of the available options should also, she argues, be an objective one, for which a 'plausible candidate' would be a criterion of basic needs, such that 'an option is unacceptable if pursuing or choosing it threatens some basic need' (Olsaretti 2004: 154).⁸

It would not be correct to suggest, therefore, that *no* interest in the nature of the options that an individual faces – what I have designated the 'external' aspect of freedom to choose – works its way into Olsaretti's definition of freedom of choice. Yet it remains the case that voluntariness does not require the existence of *more* than one option. That option would, of course, have to be independently attractive and 'choiceworthy' (Olsaretti 2004: 139*n*), for it to have been chosen for reasons other than the fact that no alternative was available. More than one option might also be *desirable*, if only to solve what Olsaretti terms an 'epistemic problem': if acceptable alternatives exist, we may be reassured 'that no adaptive preference is at stake...if someone has two acceptable options to choose from, then *we have more reason to be sure that*, whichever one she chooses, she chooses it voluntarily' (Olsaretti 2004: 156). Nonetheless, as far as voluntariness alone is concerned, an individual need not choose from more than one acceptable option.

⁸ An objective standard would avoid, among other things, the possibility of adaptive preference: see Elster 1982, in addition to Olsaretti 2004: 154*n*.

The existence of a certain range of options would still seem desirable on independent grounds, however. In part, this is simply because instances of perfect voluntariness in unfree conditions, as in Wendy's case, are likely to be rare. More importantly, Amartya Sen would seem right to say that 'choosing itself may well be a valuable part of living, and a life of genuine choice with serious options may be seen to be – for that reason – richer' (Sen 1992: 41). This, surely, is also what is implied by Hayek's emphasis – no matter what his formal reasoning on the conception of freedom – on the 'increased stream of goods' available to the individuals in a market society. Nor, if such was his position, would it seem to have been an unreasonable one to have held.⁹

On these grounds, therefore, it would seem reasonable to characterise the conception of freedom active in Hayek's argument for capitalism as freedom as pertaining to individual freedom to choose, in contradistinction to freedom as it might be defined in any broader sense, and to define this freedom to choose as composed of two aspects, namely, individual voluntariness *and* the existence of a sufficient range of options.¹⁰ It will thus be on this notion that the rest of the dissertation will focus. The question to which it now turns concerns the efficacy of Hayek's claim. Is his argument fair? Does capitalism – or, would that form of capitalism to be found in Hayek's Great Society – actually present the maximisation of individual freedom to choose, thus defined?

First- and Second-Order Choices

As several commentators have suggested, a variety of criticisms might be levelled at Hayek's argument. Andrew Gamble has listed some of the more important weaknesses in his case. Hayek failed to consider that the expanding role of the state and of democracy might also be conceived as the outcome of freely evolving rules of conduct, and thus seem unobjectionable on the argument he offers; he did not attempt to apply either his concept of 'coercion' to the subordinate position of workers in factories, or his concept of 'dependency' to the organisation of industry; and most crucially, he wholly neglected the potential problem of private, as opposed to government, power (Gamble 1996: 190).¹¹

To this set, one might add Cohen's criticism of all arguments defending capitalism on the grounds of freedom. For Cohen, the fact that, in capitalist societies, 'everyone owns something, be it only his own labour power, and each is free to sell what he owns, and to buy whatever the sale of what he owns enables him to buy,' does not alter the possibility that an individual might also be *forced* to sell what he owns: one can, after all, *only* be forced to do something

⁹ Others have also lent support to this position. For Joseph Raz, 'to be autonomous a person must not only be given a choice but he must be given an adequate range of choices' (Raz 1986: 373). John Gray has rearticulated this even more pointedly, writing that 'autonomy, if it is to be meaningful and valuable, requires not only capacities for choice on the part of the individual but also a span of worthwhile options in his or her cultural environment,' and has argued that this is precisely what is implied by the conception of freedom at which market societies are aimed (Gray 1993: 111).

¹⁰ Like Olsaretti, I would suggest that the criterion for deciding what would constitute a sufficient range here should also be objective, and that the adequacy of each option with respect to basic needs would be a 'plausible candidate' for this role. Also like Olsaretti, however, this point will not be pursued further here.

¹¹ Other useful criticisms of the details of Hayek's argument may be found in Wainwright 1994: 54-5 and Kukathas 1989: 209-12.

that one is free to do, so this information is not sufficient to conclude that no forcing has occurred (Cohen 1991: 163). For Olsaretti, of course, such forcing is problematic because it negates the possibility of making a voluntary choice, which is really what most libertarians have in mind when they defend capitalism as freedom. To these points we might also add the claim that capitalism is anyway ‘inimical to freedom in the very sense that libertarians like’ (Cohen 1991: 173), since those who do not own a piece of property are always rendered unfree by the fact that another individual *does* own it. One may not simply set up camp in another person’s back garden, and this unfreedom is strictly enforced by the state (Cohen 1991: 167). But the world’s resources need not be organised in this way, broken up into individual private property: original joint world-ownership would seem at least conceivable (Cohen 1995: 67-91).

I do not deny the power of these claims. However, the argument that I now wish to make proceeds on different lines. For my purposes, we may fully accept Hayek’s argument: life within the market, in which all individuals and institutions are wholly susceptible to ordering by the market mechanism, may be agreed to consist of perfect individual freedom, as Hayek conceived it. All choices within this domain may be defined as voluntary, with sufficient options consistently being generated to render the fact that an individual chooses between them a significant one. We may assume for the purpose of argument, in other words, that Hayek’s argument, as it has been presented thus far, is absolutely right: within the domain of the market, we are entirely free to choose.

Even if that were the case, however, it could never be enough. A crucial problem would remain. If freedom to choose is to be considered a significant criterion at all, then it ought to be the case that the decision to enter the system within which choices are to be made is *also* a freely chosen one. As far as the relationship between capitalism and freedom is concerned, it could never be enough to say that perfect freedom to choose is available within the domain of the market. The domain of the market would also, for the ‘freedom argument’ to carry any weight, have had to have been chosen by the particular individual concerned as the appropriate system in and through which to make particular choices.

As it stands, then, Hayek’s argument, *by definition*, would seem to face a major problem. Life in his ideal society, as we have seen, might be characterised as follows: you are free to choose, according to this system. You may choose whatever you like, so long as it is compatible with the needs and norms of the market. But you may not choose any *other* way of choosing: you may not choose to alter the rules of the market, or to try to advance your ends by way of another kind of mechanism altogether.

Of the two levels of choice that can be said to exist, then, Hayek would seem to have been deeply concerned with one, but to have ruled out the other. The kind of choice in which Hayek was interested I will describe as choice at the level of the first order, or first-order choice for short. Which job shall I take to gain an income? How shall I spend that income once it’s earned? Those are first-order choice questions. They presume that an individual has already taken up a position within the domain of the market. Such questions could, therefore, obviously, only arise once the decision to enter the market had already been made. Making *that* decision we may therefore describe as a choice made at the level of the second-order, or a second-order choice. How shall I go about getting the means for my survival – shall I take a job, grow my own food and weave

my own clothes, or find a rich husband? How shall we go about making certain decisions, or attaining certain desirable outcomes – through the market mechanism, through political mechanisms such as voting, or through mechanisms designed for quite specific ends, such as blood donation systems operating on non-market principles? In short, which domain shall I enter, in what circumstances? Those would be the abiding questions at the second-order choice level.¹²

Yet in Hayek's Great Society, the *choice* of whether or not to use the market mechanism to achieve one's ends – that is, the choice of whether or not to enter the domain of the market – could not usually be made. Hayek's Great Society, as we have seen, was to be *co-extensive* with the market. Not everything in it was to be privately owned and tradable, but the needs and norms of the order of the market were to dominate as far as possible: the political domain, for example, where decisions would, Hayek expected, be taken by voting, was to be highly limited, since on his understanding 'a group of men normally become a society not by giving themselves laws but by obeying the same rules of conduct,' and these would have evolved as part of the development of the market (Hayek 1960: 106-7). The individuals within that society might enjoy a good deal of first-order freedom to choose, therefore; but second-order freedom to choose, at least as far as the pursuit of most ends was concerned, would have to be entirely lacking.

In identifying these first- and second-order levels of choice, it may be helpful to note that I am drawing a parallel with Sen's discussion of first- and second-order preferences, or preferences and metapreferences, where 'metapreference' is the name given to a preference about one's preferences (Sen 1973: 100). My second-order choice describes a choice to be made about one's choices. To use more Hayekian terms, we could also define first-order choices as concerning the immediate means by which we try to achieve our ends, and second-order choices as concerning the means by which we try to obtain the immediate means to achieve our ends. Roland Kley's claim, cited above, that planned societies might be described as means-connected in the same way as market societies, might also be recalled at this point: the distinction between first- and second-order choices that is being advanced here may possibly have been what he had in mind, although this is not wholly clear (Kley 1994: 204).

Someone who *has* clearly made this distinction – albeit in different terms – is Olsaretti, however, and it is worth pursuing the case that she presents in some detail. As will emerge in the next chapter, she and I differ, with important consequences, in our assessment of the circumstances in which it is helpful to pursue this distinction, but her analysis is nonetheless very helpful in establishing its significance.

For Olsaretti, the need to draw a distinction between first- and second-order level choices emerged out of a critique of Nozick's claim that a worker in a capitalist society cannot be regarded as making a less than voluntary choice when he seeks employment, by way of drawing an analogy between that case, and the case of twenty-six men and twenty-six women choosing marriage partners. The last ones to choose are stuck with each other: Nozick's point,

¹² Michael Walzer's (1983) work on 'spheres of justice' might be recalled here: there are certain parallels between his ideas and mine, although they are not quite the same. His work will be discussed briefly in the Conclusion.

however, is that it does not follow that they do not marry voluntarily (Nozick 1974: 263).

According to Olsaretti, however, that analogy is not at all an apt one. In Nozick's marriage game, crucially, 'the choice of opting out of the game is available,' and it is that option that the worker in a capitalist society lacks. The choice that the worker faces is, Olsaretti argues, 'not limited because he has only one entrepreneur who wants to employ him: it is limited because he can only sell his labour, or starve.' As she describes it, Nozick thus confuses the choice of 'whether or not to x ' with the choice of 'whether or not to y as one's way of doing x , given that one has to do x .' The decision to work at all, that is, is different from the decision to work or not at a particular job, given that one has to work; and these two kinds of choice Olsaretti terms 'primary' and 'secondary,' since the first must be made before the other can be considered (Olsaretti 1998: 67-9).

It should be noted that what I have termed first-order choices are Olsaretti's secondary choices, and her primary, my second-order, but the salient distinction and its significance is clear.¹³ As far as workers in many capitalist societies are concerned, there exists no acceptable alternative to putting themselves on the labour market: that is, they lack significant options at the second-order level, depriving them of second-order freedom to choose.

Such workers might well enjoy a choice of several different jobs, or several different brands of breakfast cereal that they might like to buy: that is, they might well possess abundant first-order freedom to choose, at least in a 'normally operating competitive society' (Hayek 1960: 121). But the question remaining to be answered would be whether or not only first-order freedom to choose could ever be enough – or, to put the problem in more apposite terms, perhaps, whether or not purely first-order freedom to choose could ever be *freely chosen*, by all the individuals in society, as being enough.

Hayek and Second-Order Choice

Independently of Hayek's own discussion, then, it would seem reasonable to argue that two levels of choice exist, only one of which, by definition, is addressed by Hayek's argument for capitalism as freedom. Yet Hayek does not seem to have been oblivious to the idea that there was a decision to be made at the second-order level. While he may have addressed this issue explicitly only once, and then in rather ambiguous terms, it might be argued that the problem that it raised continued to draw his attention in a significant way. Not implausibly, it may have been recognition of the problem that second-order freedom to choose posed for his case that accounted for his increasing turn towards evolutionary arguments, especially over the course of the 1980s.

There is only one passage, Kley reports, in the whole of Hayek's oeuvre, in which he showed awareness that, 'not being a natural fact, the market system may be in need of moral justification' (Kley 1994: 202). From the perspective of this dissertation, what is noteworthy about this passage is not its moral

¹³ My reason for using the terms first-order and second-order choice, following Sen, rather than Olsaretti's secondary and primary respectively, is partly because I wish to leave open for consideration the existence of third-order choices to be made. Such would be the correct term, I think, for the kinds of decisions that would have to be made at the constitutional level concerning the ways in which the options available at the second-order choice level were to be chosen and made effective. I will leave this topic to be addressed by future work, however.

relevance, but its evidencing of the fact that Hayek recognised, at some level, that accepting the total hegemony of the market mechanism was, in fact, a choice that had to be made. Making the argument that considerations of justice were irrelevant within the domain of the market, Hayek wrote that: ‘We might ... question whether a deliberate choice of the market order as the method for guiding economic activities, with the unpredictable and in a great measure chance incidence of its benefits, is a just decision, but certainly not whether, once we have decided to avail ourselves of the catallaxy for that purpose, the particular results it produces are just or unjust’ (Hayek 1967: 170).

Evidently, then, Hayek was not blind to the existence of a choice to be made at the second-order level: that is, the decision as to whether or not to use the market order as the ‘method for guiding economic activities’ in the first place. Yet the conclusions to be drawn from this apparently crucial admission are ambiguous, and Hayek did not, explicitly at least, pursue the matter. Was it his intention to suggest that such a ‘deliberate decision’ to adopt the market as the sole option from which to choose at the second-order level might actually have taken place, or that we might as well proceed as if it had, since it would have occurred so long ago that it no longer mattered anyway; or was it his intention to pour scorn on the very idea that justice could mean anything within the domain of the market, by suggesting that *even* if a ‘deliberate’ decision – a ridiculous idea – had been made to render the market mechanism fully hegemonic, it could still mean nothing now?

There is no way of telling from this passage alone. However, Hayek’s insistence, particularly towards the end of his life, on the significance of ‘evolutionary selection’ in the development of economic civilisation – that is, the ‘comparative increase of population and wealth’ among groups who stumbled upon the ‘extended order of human cooperation ... more commonly, if somewhat misleadingly, known as capitalism’ – could be interpreted as indicating that Hayek continued to be concerned with the implications of second-order choice for his argument (Hayek 1988: 6). For if, as he seemed to recognise, a level of second-order choice could be said to exist, and if the argument for capitalism as freedom hinged on the application of the concept of freedom to choose, hence rendering it imperative that the decision to use the market as the only available second-order option should also have been freely chosen, it would appear highly interesting that – despite seeming unconvincing some interpreters, such as Kley, for whom this argument was merely a ‘crude naturalism’ (Kley 1994: 24) – the one claim that an evolutionary argument would seem cut out to support was that domination by the market mechanism had indeed, in a sense, been chosen: through the transmission of ‘certain “cultural” traditions’ (Hayek 1988: 17) by thousands of individuals over the centuries, who, despite possessing only the ‘capacity to imitate and pass on what [they] had learned,’ in so doing had selected the best possible way of organising survival (Hayek 1979: 157). As John Gray writes, Hayek would seem to have had in mind something like a ‘market in traditions’ at what I would call the second-order level, from which the most appropriate second-order survival mechanism would be universally adopted via a process akin to natural selection (Gray 1983: 60).

This would, arguably, provide a neat interpretation of the end of Hayek’s career: a prolonged, if indirect, attempt to address the problem of the demands of second-order freedom to choose, in accordance with an argument in favour

of capitalism that culminated in advocating the effective denial of the possibility of making such choices. It would certainly explain why evolutionary theory was so important to Hayek: as Gray has also emphasised, for Hayek, the ‘spontaneous formation of an order’ and the concept of social evolution were to be considered ‘twin ideas’ (Hayek 1978: 250). Yet, if this reading is plausible, it would also seem that Hayek’s evolutionary approach could not have successfully performed its task. For, while the decision to use the market as the means through which a given individual would try to obtain the means to achieve her ends might repeatedly have been *made*, eventually to result in the monopoly of the market mechanism at the second-order level, it would not follow that all of the choices leading to that result must have been made *freely*, or in accordance with the ‘internal’ aspect of the concept of freedom to choose posited earlier. Nor, indeed, in the continuing absence of alternative second-order options to be considered by those individuals born later, could it be said that the ‘external’ aspect of freedom to choose, the existence of a range of acceptable options, could continue to be fulfilled.

The evolutionary argument, in other words, is at odds with the stipulations regarding freedom to choose. The most that evolutionary selection would seem to be able to support is the claim that the relevant second-order choices had been made *blindly*. But if that was the best account that Hayek could come up with, to address the demand that the market should also have been chosen to dominate at the second-order level – and it was an account not incompatible with the existence of *forced* choices, and which was also to justify the closure of the possibility of choosing among a range of options at that level – then it would surely remain to be asked: what price freedom to choose?

If Hayek wished to present an argument defending capitalism on the grounds of freedom, then, it would seem that the specific grounds on which he chose to advance that argument were awkwardly suited to that task. So long as he tried to defend the co-extension of society with the domain of the market as necessary for freedom, there would be a certain level of freedom to choose that the Great Society, by definition, could not provide.

If he had been able to argue, of course, that the collective decision to reduce the ‘external’ aspect of freedom to choose at the second-order level had at least been made freely, as the result of many thousands of individuals’ voluntary choices over the centuries, that would have gone some way towards defending his conception of capitalism as freedom – even though the necessary range of options required for freedom to choose would have remained lacking. So long as that case was not made, however, Hayek’s entire project remained vulnerable to any plausible argument that might come along to the effect that the relevant second-order decisions had *not* been freely made. Such was precisely the argument that we find in Marx.

3. Marx and the Significance of the Second Order

This chapter will begin by arguing that the distinction between first- and second-order freedom to choose was precisely that on which Marx's critique of capitalism rested. For Marx, it was obvious that what Hayek described as the self-generating 'spontaneous order' of capitalist society entailed the elimination of freedom to choose at the second-order level. More than that: it was there that the logic of capitalism was secured. Distinctively capitalist societies were held together *directly* as a result of the dependence of the vast majority of individuals, poor workers and rich capitalists alike, on the market as their only second-order option, as far as the pursuit of most ends was concerned.

The significance of this point is not always recognised by leftist critics of the argument for capitalism as freedom, however, and the work of the two who have been particularly useful for this dissertation, Cohen and Olsaretti, will now be examined in a more critical light. These writers have – entirely understandably, but in this context unfortunately – preferred to focus on the unhappiness caused by the differences in bargaining power between individuals at the first-order level, that is, *within* the domain of the market. Overlooking the importance of the lack of second-order options for virtually all individuals in pursuit of most ends has some potentially problematic side-effects, however, which, following Marx, we can avoid.

Finally, it will be noted that far as the logic of capitalism was concerned, Hayek was in full agreement with Marx. The grounds on which Hayek advocated the exclusive hegemony of the market mechanism at the second-order level did not, in the end, only concern freedom to choose. His reasoning was also pragmatic: like Marx, he did not expect capitalism to function otherwise. Where Hayek and Marx parted was only over the possibility of effective production without capitalism – although the glimmer of a potential alternative was apparent even in Hayek's writing.

The Lack of Second-Order Freedom to Choose

Marx was well aware of the nature and significance of what was available to individuals within the domain of the free market. In the case of his major object of study, nineteenth-century England, the whole of society very nearly *was* that domain, almost after the manner of Hayek's ideal: the agrarian capitalism that had begun to emerge in the sixteenth century (Wood 2002: 73-121) had already given rise to the Industrial Revolution, but the scope of the market had not yet been limited by the development of the welfare state mixed economy of the twentieth century. For Marx, while not everything within a society dominated by the capitalist mode of production might be wholly characterised by its relation to that mode, it certainly seemed plausible to suggest that capitalism determined 'the specific gravity of every being that has materialised within it' (Marx 1973: 107). The effects of domination by the market were everywhere to be seen.

That domain did not lack freedom, in Marx's view. He fully acknowledged the existence of the first-order freedom to choose that this dissertation has identified: early on he identified it as 'bourgeois freedom,' and described it as consisting in 'free trade, free selling and buying' (Marx 2002:

237). As Hayek observed, this meant that all individuals within capitalist society were free to choose their own occupation, and to spend their income on whatever they pleased, to advance their ends as they saw fit. A worker could sell his labour-power to anyone who wanted it: unlike the slave, who was ‘the property of a particular *master*,’ the free worker did not have to sell himself to a ‘particular capitalist,’ and so ‘within certain limitations he may choose to sell himself to whomever he wishes; and he may also change his master’ (Marx 1976: 1032). Since he earned a money income, or to use more Marxian terminology, since he received ‘exchange-value,’ the worker could also spend his income as he wished. In contrast to the slave, who received only ‘use-values,’ the free worker himself, in a capitalist society, ‘converts the money into whatever use-values he desires; it is he who buys commodities as he wishes’ (Marx 1976: 1033). A range of options was also available: newspapers, for example, formed ‘part of the essential purchases of the urban English worker.’ He could also ‘save or hoard a little,’ or ‘squander his money on drink.’ What Marx noted – as did Hayek, and as Sen, Raz and Gray have also emphasised – was simply the fact that the worker was ‘a free agent ... responsible to himself,’ as far as making these choices was concerned (Marx 1976: 1033).

Yet these first-order freedoms were not Marx’s principal concern. The burden of his critique of capitalism was not to deny the existence of first-order freedom to choose. Certainly life within the order of the market allowed individuals to choose their particular employer and purchases. Certainly the market also gave rise to a proliferation of cheap goods. But what Marx stressed was rather that capitalism entailed – in fact, *depended* on – the elimination of freedom to choose at the second-order level. For almost all people, in pursuit of almost all ends, there was simply no significant alternative to entering the domain of the market as the second-order means through which to obtain the means immediately necessary to achieve one’s goals, and it was this that kept the order of the market secure.

We may therefore agree with George Brenkert that Marx was animated by a ‘principle of freedom’ (Brenkert 1980: 81). However, we can also be more specific, and stipulate that he was principally concerned with second-order freedom to choose. It is for this reason that Hayek’s argument urging first-order freedom to choose can be said to have no impact on Marx’s argument, and even to be compatible with his case. It was on the question of second-order freedom to choose that they differed.

For Marx, capitalism did not result from the mere existence of markets. Adam Smith’s famous description of humankind’s general ‘propensity to truck, barter and exchange one thing for another’ described nothing that was distinctive about capitalist societies (Smith 1993: 21). Rather, Marx regarded capitalism as the outcome of many individuals’ *dependence* on the market. The expropriation of the working population from the land described in the last section of *Capital*, on ‘So-Called Primitive Accumulation,’ was not, of course, included just because that development had been a bad thing in itself. Yet neither was the workers’ loss of access to property to be considered merely the *direct* and necessary condition of capitalism. That formulation would miss out a step. The reason that the loss of access to property was significant was because it rendered individuals specifically *dependent on the labour market* at the second-order level. It eliminated the possibility of their choosing *not* to put their

labour-power on the market, and it was this, for Marx, that was the characteristic feature of capitalism.

The ‘owner of money,’ Marx commented, might well not be interested in ‘why this free worker confronts him in the sphere of circulation’ (Marx 1976: 273). That question deeply interested Marx, however, and contrary to what Hayek would later say about evolutionary selection, for Marx there was no doubt that the elimination of alternatives to the market for most individuals at the second-order level had not been the outcome of many thousands of voluntary choices. Certainly ‘nature’ did not produce ‘on the one hand owners of money or commodities, and on the other hand men possessing nothing but their own labour-power’ (Marx 1976: 273). Rather, Marx considered that it had taken ‘centuries’ before the ‘free’ worker had been brought to make ‘a voluntary agreement ... to sell the whole of his active life, his very capacity for labour, in return for the price of his customary means of subsistence, to sell his birthright for a mess of pottage,’ and during that time the conditions favourable to capitalism had had to be ‘aided by the power of the state’ (Marx 1976: 382). Not before capitalism had fully *arrived* had it been possible for it to ‘use the sheer force of economic relations to secure its right to absorb a sufficient quantity of surplus labour’ (Marx 1976: 382). The ‘historical process of divorcing the producer from the means of production’ (Marx 1976: 875), then, which had driven workers onto the labour market and so *created* capitalism, had not been the result of ‘purely economic forces,’ the hegemonic power of which was characteristic of specifically capitalist rather than pre-capitalist conditions. Rather, ‘violent means’ had had to be employed (Marx 1976: 883): the expropriation of the agricultural population from the land through enclosures, the loss of common grazing rights, the reduction in land allotted to homesteads, ‘bloody legislation’ against the expropriated, the ‘forcing down’ of wages, and so forth (Marx 1976: 877-904). As a contemporary of Marx reported proudly, worker’s cottages in the nineteenth century now came without their customary plot of land: ‘landlords and farmers work here hand in hand. A few acres to the cottage would make the labourers *too independent*’ (cited Marx 1976: 881, italics mine).

The distinctive logic of capitalism, for Marx, was thus from the beginning what we might call a second-order issue: it arose through the closure of a variety of opportunities to obtain the means for one’s ends, most notably survival, for many individuals at the second-order level. For Marx as well as Hayek, the crucial feature of fully developed capitalist society was domination by the market, rather than, necessarily, domination by private property.¹⁴ Obviously, these two aspects of capitalism were connected, and arguably more subtly for Marx than Hayek. Nonetheless, Marx was explicit that ‘developed capitalist production’ was to be understood as equivalent to ‘the domination of the system of wage-labour’ (Marx 1978: 554), and that what was significant about wage-labour was the specific point that it was *only* upon its basis that ‘commodity

¹⁴ My emphasis here differs from Brenkert’s. In my view, it is better to say that Marx was against capitalism, understood as including both ‘property’ and ‘market’ aspects, than to say that Marx was against private property on the basis of freedom (Brenkert 1980: 81, 102). Undoubtedly Marx was against private property on these grounds, but since private property could also exist (as could markets) outside capitalist societies, and since Marx’s critique was offered in relation to specifically capitalist conditions where dependency on the market was key, Marx should not be presented as exclusively concerned with private property.

production can impose itself upon society as a whole,' thus allowing the whole of society to be dominated by the logic of the market (Marx 1976: 733).

Thus capitalism emerged originally out of the dependence of much of the working population on the market as their only second-order option. However, once the system was underway Marx was clear that virtually all individuals would be drawn into the market domain. The elimination of second-order freedom to choose thus came to be felt by almost everyone, proletarian and wealthy capitalist alike. To be sure, the wage-labourer – even those less badly off, such as 'the physician, the lawyer, the priest, the poet, the man of science' (Marx 2002: 222) – would always remain a special case, since for Marx it was the creative power of human labour, the value of which to the capitalist was greater than the wages received by the worker, that caused the self-expansion of capital and thus underpinned the reproduction on an increasing scale of the entire system (Marx 1876: 283-306). The worker's dependence on the market was also more personal than the capitalist's: 'unencumbered' by any means of production of his own (Marx 1976: 874), in order to pursue that most basic human end, immediate survival, the proletarian was 'compelled to offer for sale as a commodity that very labour-power which exists only in his living body' (Marx 1976: 272).

The consequences of the worker's dependence on the market were therefore particularly significant, both for society in general and for the individual concerned. But the capitalist was equally subject to the rules of the market. For Marx it was 'plain' that the capitalist was 'just as enslaved by the relationships of capitalism as is his opposite pole, the worker, albeit in quite a different manner' (Marx 1976: 990). No matter how wealthy or benevolent he was, the 'immanent laws of capitalist production' still confronted the individual capitalist 'as a coercive force external to him' (Marx 1976: 381). Citing a petition presented by twenty-six owners of potteries in Staffordshire in 1863, Marx accepted that although they might want to, the owners of rival firms could not 'limit the hours worked by children voluntarily, etc.,' lest they put themselves immediately out of business. Under free competition, asking the government for 'some legislative enactment' was the best they could do (Marx 1976: 381*n*).

It might, of course, be objected that no capitalist is ever *forced* to remain in the market domain: her second-order freedom to choose *not* to enter it in the pursuit of many ends could never be entirely curtailed, since any individual wealthy enough to have money to invest, or any property that could be converted into exchange-value, could always exit the market and live off what she owns. As Cohen has remarked, some capitalists have so much 'that they could devote the rest of their days to spending it on consumer goods' (Cohen 1988: 273). While this point supports the argument that few capitalists are forced to *invest* their money, however – and certainly in support of the argument that no capitalists can be forced to enter that subset of the market domain, the *labour* market – it cannot be used to defend the argument that the rich can easily exit the market altogether, as Cohen's assumption that the ex-capitalist would spend her time making purchases, presumably boosting the coffers of other capitalists around, would seem to indicate.

For Marx, also, the case was not so simple. If it was the case that when his 'capacity for labour remains unsold, this is of no advantage to the worker' (Marx 1976: 277), it was also the case, as Marx sarcastically remarked, that the

capitalist ‘cannot eat his money’ (Marx 1976: 298). While *Capital I* had emphasised the process of production, as Marx pointed out in *Capital II*, consumption was also an essential part of the ‘overall process’ (Marx 1978: 428). What was crucial was that once the market mechanism had come to dominate society, the means for almost all ends, including the means of subsistence, no matter how wealthy an individual was, would simply have to be obtained via purchases made on the market. ‘To the degree that the wage system develops,’ Marx wrote, ‘all products are transformed into commodities, and all ... must therefore jointly undergo the transformation into money as a phase in their development’ (Marx 1978: 554). The overwhelming majority of people, therefore, could not escape the market. It was on this account that Marx was able to describe the bourgeoisie as ‘like the sorcerer, who is no longer able to control the powers of the nether world whom he has called up by his spells’ (Marx 2002: 225).

As Ellen Meiksins Wood argues, then, what was distinctive about capitalism, for Marx, was not the mere existence of markets, but its ‘unique system of market-dependence,’ which affected both workers and capitalists alike (Wood 2002: 7). Yet, as Wood correctly points out, the majority of even Marxist historians – such as Maurice Dobb, R. H. Hilton and Perry Anderson – have failed to identify the specificity of capitalism in these terms. In line with historians advancing the classic ‘commercialisation model’ of capitalist development, they have instead tended to seek the ‘seeds of capitalism’ in even the ‘most primitive acts of exchange’ (Wood 2002: 4-5). In the terminology adopted here, they have sought the logic of capitalism strictly at the first-order level – within the domain of the market itself. I now turn to a parallel tendency, exhibited by the political philosophers most important for this dissertation, to overlook or underplay the significance of the domination of the market at the second-order level in capitalist societies. This tendency has arisen for understandable reasons; but it also gives rise to unfortunate results that, following Marx, we should be able to avoid.

The Focus on the First Order

Of all the contributions in recent years to the discussion of the relationship between capitalism and freedom, and especially to the key debate on whether or not the worker in a capitalist society can be said to be forced to sell her labour-power, the writings of Cohen and Olsaretti have proved most useful for this dissertation.¹⁵ However, they have not focused their attention on the problem of the lack of second-order freedom to choose, which, as we have seen, affects virtually all individuals in capitalist society. Rather, what has primarily interested them has been the *relative unfreedom of the worst-off*, given the limited options available to them within the market, in *comparison* to others who must also take up positions within that domain. In other words, they have concentrated less on the ‘market’ aspect of capitalism, the analysis of which draws attention towards the deprivation that unites individuals at the second-order level, than its ‘property’ aspect: specifically, the effects on bargaining

¹⁵ Other contributors to this debate include Zimmerman (1981), Wertheimer (1987) and Reiman (1987).

power arising from differences in property ownership among individuals, which are felt at the first-order level.

This has not been because they have lacked awareness that a second-order level of choice plausibly exists. Olsaretti, as we have seen, recognised in 1998 the potential of the distinction between ‘primary’ and ‘secondary’ choices for the argument against Nozick’s claim that the worker’s employment in capitalism was wholly voluntary (Olsaretti 1998: 67-70). Six years later, however, she drew back from this line of attack. While she granted that there was ‘a sense in which market transactions *as such* are instances of limited choice,’ given that ‘there is no possibility of opting out of the market game, as there is to opt out of playing the Lottery,’ she considered that the claim that ‘all market transactions are forced insofar as participating in the market is not a voluntary choice’ was ‘just too sweeping’ (Olsaretti 2004: 120-1).

In part, Olsaretti would not now pursue this claim because she did not want to suggest that ‘*whenever* an individual has no acceptable alternative, then he is forced to choose as he does,’ a point that had not come out clearly in her earlier treatment (Olsaretti 2004: 120, 131-2n).¹⁶ I have accepted this definition of voluntariness, but this reason to avoid making the relevant claim would not suffice for my purposes, since the lack of acceptable alternatives does affect freedom to choose as I, following Hayek’s emphases, have defined it. Olsaretti offered another reason to draw back here, however. While it was ‘true that the great majority of individuals do not choose to participate in the market,’ this was simply not ‘what we should concentrate on.’ The important problem was ‘that presented by *some* transactions that occur in a free market society, such as the case of a worker in a hazardous job,’ which ‘constitute limited choice situations in a way in which other market transactions do not’ (Olsaretti 2004: 121).

The distinction that Olsaretti was making here, then, was that while ‘all market transactions’ might possibly be thought limited in relation to freedom to choose at the second-order level, the case of a worker in a hazardous job is limited in a first-order sense: that is, he has fewer options within the domain of the market than others do. Olsaretti is right, of course, to identify this as a particularly urgent problem within the free market. However, it is not possible to mount an argument against capitalism as freedom exclusively on the grounds of the relative unfreedom of the worst-off, as Cohen’s work will help us to see.

Cohen’s wish to focus on the plight of the least powerful individuals within societies dominated by the market mechanism is, as in Olsaretti’s case, entirely admirable. Nor, again, is it the result of blindness to the fact that second-order freedom to choose is lacking in capitalist societies. He recognises that there is no ‘safe’ alternative to taking up a position in the market: ‘the would-be shop owner could indeed eschew risking his (possibly borrowed) capital, but he will not then face a risk-free life ... he must then enter another’s employ, and there is plenty of risk in that course’ (Cohen 1995: 49). He has also observed

¹⁶ I am not actually sure that the claim that ‘market transactions *as such* are instances of limited choice’ would suggest that ‘*whenever* an individual has no acceptable alternative, then he forced to choose as he does’: acknowledging limited choice does not necessarily imply a claim to non-voluntariness, as Olsaretti herself argues. There might not, therefore, be any objection to exploring the significance of the claim that individuals rarely do possess an acceptable alternative to entering the market to achieve many of their desired ends. But I will not pursue this point further here.

that the distinctive feature of the market is that it is a given means of working towards one's ends: 'entering the market lottery is always a (possibly dispreferred) way of doing something else' (Cohen 1995: 49). But he has noted the lack of second-order freedom to choose, however, he has not pursued the conclusion that in some relevant sense, virtually all individuals in capitalist societies, workers and capitalists alike, are unfree. He has chosen to emphasise rather the opposite. Against the claim put forward by Hillel Steiner, Jan Narveson or Gary Young to the effect that if the worker is compelled to sell his labour-power, so, on the same grounds, must the capitalist be compelled to obtain it, Cohen has stressed the first-order argument that since the capitalist always has the option of selling his own labour-power, he cannot be compelled to invest his capital (Cohen 1988: 272-5).

As a response to the claim in question, Cohen's first-order perspective is entirely appropriate: whether or not a given individual must enter the domain of the market because she needs to sell her labour-power is indeed a different kind of question to whether or not she must enter the domain of the market at all. Yet, the similarity between the worker and the capitalist at the second-order level is one thing and the differences between the worker and the capitalist once they have entered the market domain another – as Marx illustrates. Cohen has consistently concentrated on the relative deprivation of the worker within the market domain when exploring the relationship between capitalism and freedom, and a significant upshot has been the implication that living according to the order of the market is *only* problematic for the individuals who hold particularly bad positions within that domain.¹⁷ Thus, for Cohen, an acceptable alternative to being a proletarian would simply be to become a member of the petty bourgeoisie, and the major drawback to being a proletarian is that not every member of that class can achieve 'class ascent' (Cohen 1988: 253-85). Having to remain in a society dominated by the market mechanism would not appear, on this approach, as problematic in itself. On Cohen's presentation it even seem that any *worker* not required to take up a hazardous job might be regarded as adequately free, since such an individual could evidently not 'lack superior alternatives' within the market domain (Cohen 1988: 249-50).

The suggestion would thus seem to be that those in a 'superior' occupation have nothing to complain about, and that at least as far as freedom to choose is concerned, capitalism is only to be faulted for the sake of those at the very bottom. Olsaretti, too, has adopted this line. On her account, a distinction must be made between a 'worker choosing a badly paid job' and 'a teacher who accepts a job she loves,' even where it is the case that neither 'has enough wealth to live on or any other means, other than working, to make ends meet' (Olsaretti 2004: 156). For Olsaretti, since the teacher accepts her job because she loves it, unlike the worker reluctantly taking the badly paid job, it cannot be the case that

¹⁷ Another upshot has been, at times, a rather idiosyncratic presentation of Marx. Cohen's claim that the term 'proletarian' could mean nothing in relation to 'top-salaried architects,' even if they did not themselves own 'the tools of their trade' (Cohen 1978: 69), was arguably misleading: poverty, for Marx, was not more significant than the fact that an individual was a 'productive labourer,' in the special Marxist sense that 'his product is from the outset subsumed under capital, and comes into being only for the purpose of increasing that capital' (Marx 1963: 401). Nonetheless, such an interpretation usefully clarifies Cohen's sympathies, at least.

she is ‘forced to sell her labour,’ and she need not be considered any further in this context (Olsaretti 2004: 156).

Olsaretti’s conclusion here is arguably inaccurate, but her apparent carelessness neatly introduces what is really interesting about her position and Cohen’s. She does not, in fact, have any grounds on which to say that the teacher is not ‘forced to sell her labour,’ or, as Marx would have it, her labour-power. The most that she can claim is that the teacher is not forced to sell her labour-power *in this particular job*. What Cohen and Olsaretti are concerned with is not really individual freedom in capitalist society. They are not even really concerned with the freedom of individuals who might be said to be forced to sell their labour-power – not because any other agent forces them, nor even because they are ‘structurally’ forced (Cohen 1988: 258-9), but simply because they have nothing else that they can safely *sell*, and they happen to live in a society dominated by the market mechanism. What matters to these writers is rather the freedom of individuals who might be said to be forced to work at *this or that particular job*: not merely an exclusively first-order question, then, but a particularly limited one at that.¹⁸

What is interesting about this position is that it exactly mirrors Hayek’s – or that of any other writer inclined to press the argument that since no worker can be obliged to work at any *particular* job, capitalism may be identified with freedom. Moreover, this is surely deliberate: Olsaretti is clear that her argument follows the ‘pure negative conception of freedom’ favoured by libertarians (Olsaretti 1998: 114), and for the purpose of argument also assumes ‘the plausibility of full self-ownership, the justifiability of world ownership and the coherence of the claim that the voluntariness of transactions is both a necessary and a sufficient condition for their justice,’ along right-libertarian lines (Olsaretti 2004: 96).

Cohen, similarly, has expressed impatience with socialists who have failed to meet the ‘freedom argument’ on ‘its own ground,’ trying to claim instead that ‘the freedom dear to the supporter of capitalism is merely bourgeois freedom. Socialism will abolish bourgeois freedom but it will provide freedom of a better and higher kind’ (Cohen 1988: 291). That line, Cohen argues, is too vulnerable to the reasonable claim that most people prefer freedom ‘of the known variety’ to an ‘unexemplified and unexplained rival’ (Cohen 1988: 292). The line that *should* be taken, he argues, is rather that capitalism is ‘inimical to freedom’ in the very sense in which a person’s freedom is diminished ‘when his private property is tampered with’ (Cohen 1988: 292). For David Miller, moreover, to have shown that it is possible to criticise arguments in favour of capitalism without ‘having recourse to a “positive” view of liberty,’ is one of the particular strengths of Cohen’s position (Miller ed. 1991: 17).

I do not disagree with Miller here, or with the reasoning behind Cohen’s and Olsaretti’s approaches. It is more effective to adopt the position of an opponent and subject it to internal criticism, than to criticise it from without. But what I now want to emphasise is that the specific approach adopted by Cohen and Olsaretti with respect to the relationship between capitalism and freedom is unnecessarily limited. In their attempt to hold the libertarian line,

¹⁸ The same criticism would apply to Jon Elster. His claim that a worker can only be said to be forced to sell his labour-power when i) ‘the offered wage rate is above the alternative,’ and ii) ‘the alternative is below some critical level,’ is a good summary of the endpoint of this position (Elster 1985: 215).

they go too far, and abandon useful ammunition against the defence of capitalism that they seek to undermine. For, as this dissertation has shown, the distinction between the kind of freedom that capitalism embeds – Marx’s ‘bourgeois freedom,’ or my first-order freedom to choose – and the kind of freedom that in capitalist societies is in short supply, does not only enter this debate via the arguably ineffective manoeuvres of those socialists disparaged by Cohen above.¹⁹ The crucial distinction can already be discerned in Hayek’s argument. The only significant point is that this distinction is not to be made within the idea of freedom itself: there is nothing to be said here concerning two different concepts of liberty. Rather, at least in this case, the distinction to be made is between two different levels of choice.

At least if we take Hayek as our prime exemplar of the argument in defence of capitalism as freedom, then, there would seem to be no need for Cohen and Olsaretti to restrict their arguments to the relative unfreedom of the worst-off individuals in capitalist society: since the relevant point arises in Hayek’s argument, they could follow Marx and make more of the second-order unfreedom suffered by all individuals under capitalism. In fact, I would suggest not only that they could do this, but that they *should*. For the most significant problem with Cohen’s and Olsaretti’s approach as it stands is that it provides no grounds on which to object to specifically capitalist society. Unfortunate individuals face limited options in all forms of society: unless Cohen and Olsaretti can show how the worker choosing the hazardous job is in that position specifically as a result of society’s domination by the order of the market, or, even more pertinently, that capitalism required someone to be in that position, then their focus on the worst-off cannot get them very far.²⁰ In fact, since even Hayek’s Great Society, as well as being wholly encompassed by the market mechanism and dominated by private property, was also to be potentially subject to regulation and would feature the ‘security of a minimum income,’ ‘sufficient to preserve health and the capacity for work,’ Cohen’s and Olsaretti’s first-order focus on the worst-off in society does not even provide them with grounds on which to oppose Hayek’s ideal (Hayek 1994: 133; see also Hayek 1979: 55).

For Olsaretti this might not necessarily be a problem. She does not, after all, set out to criticise capitalism directly; her concern is rather the libertarian defence of the free market, and as she recognises, what concern with the ‘voluntariness of choice’ would suggest would be a ‘guaranteed minimum for all’ within a ‘regulated market’ (Olsaretti 2004: 164, 169). Of course, Hayek and Olsaretti might differ in relation to the quantity and kind of regulation to be pursued, or over what would constitute a minimum income: Olsaretti might well be more likely than Hayek to join with Philippe van Parijs in advocating ‘the highest sustainable such income,’ rather than a bare minimum (van Parijs 2001: 6). In principle, however, since her prime concern has been to draw attention to the limited freedom to choose of the most unfortunate individuals in capitalist society, her analysis would seem perfectly compatible with Hayek’s recommendations.

¹⁹ These manoeuvres are still arguably ineffective, however, on the grounds that one need not be so ready to get rid of what ‘bourgeois freedom’ has to offer. This point will be discussed further below.

²⁰ These might be possible arguments, as Marx showed, but I will not pursue them.

Such recommendations would certainly not be acceptable to Cohen, however. For Cohen even market socialism, in which private property would not dominate but production would nonetheless take place entirely for the market, is second best. For him, the market *as such* was ‘intrinsically repugnant,’ since it ‘recruits shabby motives to desirable ends’ (Cohen 1995: 263). No form of society constructed around a standardly operating market mechanism was therefore, for him, to be regarded as ideal.²¹

Yet the awkward fact is that Cohen’s argument concerning capitalism and freedom seems to bear no relation to his distaste for markets as such. The best that *that* argument could justify would be a benevolent form of welfare capitalism, or again, arguably, Hayek’s Great Society: somewhat embarrassingly, perhaps, Cohen has to desert his internal criticism of the libertarian ‘freedom argument,’ turning instead to the different question of motivation, in order to claim that there is something *more* problematic about capitalist society than the fact that, within it, the least fortunate suffer. There *is* an argument concerning freedom to be made here, however, and Cohen does himself a disservice – and makes it rather difficult to see what the distinctive problem with capitalism actually is – by failing to pursue it.

This argument was put very clearly by Marx. Marx did not only claim that capitalism depended on the lack of second-order freedom to choose for most individuals in most circumstances. He also criticised capitalism on specifically second-order grounds. It was not to be opposed merely because it gave rise to suffering at the first-order level – although Marx had an analysis to show how the relative lack of first-order freedom for most people, and the almost total lack of second-order freedom for all, were connected. Rather, for Marx, capitalism would still have to be opposed *even if* everyone in capitalist society were perfectly happy and adequately rich.

Marx thus argued against capitalism on two distinct grounds. First, he provided what we might term an ‘anti-slavery’ critique: capitalism undermined freedom because those lacking bargaining power – effectively, sufficient property – within the domain of the market had no choice but to enter the labour market, and possibly take highly unattractive employment. This was his first-order line of attack: it explained why wage-labour could be regarded as slavery (Marx 2002: 227), and it has been paralleled by the approach offered by Cohen, Olsaretti and others such as Jon Elster. But Marx also offered an attack at the second-order level, which might be described as his ‘anti-alienation’ critique. Capitalism also undermined freedom because human beings, for Marx, simply should not become subject to systems which they themselves had created, and the power of which was really their own.

As Diane Elson has observed, Marx was undoubtedly, in a significant sense, a supporter of capitalism, offering ‘paeans of praise’ for the way that markets ‘swept away feudal ties’ and ‘enabled the mutual recognition of needs’ (Elson 1988: 12). But he also stressed that markets were not simply ‘instruments of freedom and agency for individuals and co-operation between individuals.’ Even idealised markets could in their turn ‘exercise a power over individuals, a power that Marx called the “fetishism of commodities” and which appears in popular discourse as market “forces”’ (Elson 1988: 12-13).

²¹ It should be noted that Carens’ (1981) suggestion for a form of market society, which Cohen admired (Cohen 1995: 264), was not a standardly operating one.

Elson does not emphasise, but I do, that for Marx, the period of the market's 'exercising a power' over individuals was by that token the distinctively capitalist period. What he termed the 'fetishism of the commodity' was the peculiarly capitalist form of the general problem of alienation in human life processes, which he described early in his career as the 'consolidation of our own product into a material power over us, which grows out of our control, cancels our expectations and nullifies our plans,' and which he considered to have been 'one of the principal factors in historical development up to now' (Marx 1994: 132). For Marx, there was something intrinsically objectionable about any circumstances in which 'the creators have bowed down to their creations' (Marx 1994: 119). That line was a sneer at the 'Young Hegelians,' but Marx did not outgrow the sentiment. So long as individuals depended on systems of power which they conceived as being 'external' to themselves and 'which, therefore, they can no longer control,' they would be unfree, no matter how well or how badly they appeared to be doing out of that system (Marx 1994: 132-3).

No matter what other points Marx wished to make in relation to the poverty and exploitation that he saw around him, then, it was *independently* problematic that the 'definite social relation between men themselves' should come to assume, 'for them, the fantastic form of a relation between things' (Marx 1976: 165). To put it bluntly, freedom, for Marx, was not merely a question of not being so poor that you couldn't turn down a hazardous job; it was also a question of not being dominated by a system, the logic of which you could not help to control.

As we have seen, the first part of that formulation has been vigorously pursued by Cohen and Olsaretti. The significance of the second part has been lost, however, with the result that their criticism of the argument in defence of capitalism as freedom does not enable them to attack distinctively capitalist society itself, let alone Hayek's ideal, the Great Society. Yet Cohen, in particular, would seem to stand in need of Marx's second-order argument; it would provide the missing link between his own criticism of capitalism on the basis of freedom, and his apparent distaste for market society as such.

If my analysis is correct, however, that is not the only revision that Marx's perspective might make to Cohen's argument. For, as it is, Cohen's articulation of dislike for the market illustrates just how far his understanding of capitalism remains from that of Marx. For Marx, as we have seen, capitalism was to be attacked because it entailed domination by and dependence on the market, not because it involved the mere existence of markets: not because, as Cohen put it, the market *as such* was 'intrinsically repugnant' (Cohen 1995: 263). What this would also suggest for Marx, although not for Cohen, is that should *dependency* on the market be cut, a society simply featuring certain markets, certain opportunities for voluntary exchanges of rights over certain things, might not be objectionable. As long as the decision to enter the market domain remained freely chosen, its benefits with regard to the coordination of dispersed information, urged by Hayek, might also possibly be maintained.

The Compatibility of Marx and Hayek

Marx and Hayek, then, may be more compatible than has perhaps been supposed. Both, as we have seen, recognised the benefits of first-order freedom

to choose. More than that, however, if my interpretation of Hayek's use of evolutionary arguments is correct, both were aware of the significance of freedom to choose at the second-order level – or rather, the lack of it, for most individuals pursuing most ends, in ideally functioning capitalist societies. For Marx, it was obvious that capitalism depended on the lack of freedom to choose to opt out of the market domain. Hayek also recognised this. Putting the question of freedom temporarily aside, for Hayek the lack of alternatives to the market at the second-order level was crucial for the sake of maximising capitalist efficiency. This was, in part, why he sought to extend the order of the market to contain the whole of society: the 'optimum position,' in which as much would be produced as could be 'by any method that we know,' would 'be achieved only if we leave the share in the total, which each member will get, to be determined by the market mechanism and all its accidents,' because 'it is only through the market determination of incomes that each is led to do what this result requires' (Hayek 1967: 174).

Still, it would not be entirely correct to suggest that for Hayek, the elimination of second-order alternatives to the market was necessary *purely* because capitalism required it: other motives also underlay this pragmatic conclusion. As Kley has noted, Hayek possessed a rather Manichean viewpoint (Kley 1994: 4). Either his brand of liberalism, or socialism, must govern the world – and, as we have seen, for Hayek, socialism would undermine first-order freedom to choose one's preferred means and ends entirely. For him, therefore, it seemed reasonable to exchange the possibility of pursuing our ends through a variety of what we might call second-order 'choice mechanisms,' thereby presumably accepting a reduction in the kinds of things one could buy and sell, for a guarantee of maximum freedom to choose at the first-order level, within the market domain. If this meant some awkwardness when it came to dealing with the question of the loss of second-order freedom to choose, resulting in an evolutionary argument that was, as Gamble pointed out, highly selectively applied, that also presumably seemed a reasonable price to pay (Gamble 1996: 190).

Hayek's same 'Manichean viewpoint' makes it easy to reject his conclusions here. As Nick Bosanquet has noted, Hayek's 'trumpet call' was sometimes 'uncertain': the welfare state, in particular, was not 'as definite a target as was central planning' (Bosanquet 1983: 35). Despite claiming that the 'ultimate outcome' of the 'extensive redistribution of incomes through taxation and the institutions of the welfare state' would be 'much the same' as that of central planning, on one reading, at least, the various successes of the mixture of social forms, both present and past, that the world has seen would seem to licence further experimentation (Hayek 1994: xxiii-xxiv). As Chandran Kukathas has observed, even Karl Popper advocated 'piecemeal social engineering,' and Hayek himself was not 'slow to prescribe' (Kukathas 1989: 209, 212).

Arguably, therefore, we should disregard Hayek's less nuanced formulations in this respect, and turn to Marx, for whom both first- and second-order freedom to choose were live issues. This need not be at the cost of abandoning Hayek altogether. Since what was crucial about distinctively capitalist society, for Marx, was not the mere existence of markets but *dependency* on them, it might well be argued that, were it possible to cut this dependency, Hayek's claims in favour of the benefits of markets in relation to

their capacity to coordinate information in support of certain ends – such as the production of luxury goods – might be incorporated into Marx’s argument, without risking the integrity of Marx’s project as a whole. After all, the distinction between producing something specifically *for* the market, and producing something that might later be sold, was crucial to Marx. It was this distinction that he made when he described Milton, who ‘produced *Paradise Lost* for the same reason that a silkworm produces silk,’ as an ‘unproductive labourer’ from the point of view of capitalist society: Milton wrote ‘as an activity of his nature. Later he sold the product for five pounds.’ Unlike the ‘literary proletarian,’ churning out compendia of economics for his publisher, Milton’s product did not ‘come into being for the purpose of producing capital’: it did not come into being as the sign of his own dependence on the market, and on what the market might require (Marx 1963: 401). Milton was thus an independent producer, in a significant sense – and in this, his behaviour also demonstrated something else that was important to Marx. Human creativity did not depend on market incentives. Production would not collapse if, in the absence of capitalism, both first- and second-order freedom to choose became a reality.

In arguing the compatibility of Hayek and Marx, I have partly taken my lead from other leftist writers who have also attempted to co-opt Hayekian insights into arguments against capitalism (Elson 1988; Blackburn 1991; Wainwright 1994). As Blackburn has noted, socialists should ‘be gentle’ in their ‘critiques of the Austrian notion of a catallaxy, since it is so obviously first cousin to the notion of “freely associated producers” in a world where the state has withered away’ (Blackburn 1991: 38*n*). But what the ‘Austrian notion of a catallaxy’ excluded is an adequate way of addressing the problem of the lack of second-order freedom to choose in capitalist societies, although recognition of the problem is evident in Hayek’s argument. If that problem is squarely faced, we find ourselves returning to Marx, and there is more to be taken from Marx’s analysis in this context than has been recognised by contemporary political philosophers.

Yet, just before closing, we may note a tantalising suggestion from Hayek. The market may *not* have been, for Hayek, the obvious conduit through which to pursue virtually all ends. He might have believed it necessary, on grounds of freedom, to defend a lack of alternatives to the market at the second-order level for most individuals; but it did not follow that all ends would *best* be pursued in that way. For Hayek, it was actually crucial that the Great Society should include some individuals who were *not* dependent on the market: the very ‘freedom of the employed’ depended on it (Hayek 1960: 121).

Most people, of course, would have to ‘earn their income,’ and their lives would therefore be circumscribed by the needs and norms of the market (Hayek 1960: 127). But Hayek also thought that certain ends – particularly ‘in the field of cultural amenities, in the fine arts, in education and research, in the preservation of natural beauty and historic treasures, and, above all, in the propagation of new ideas in politics, morals and religion’ – were simply not compatible with ‘the pursuit of material gain’ (Hayek 1960: 125). Such ends would, therefore, have to be cared for by individuals who had been released from the need to obey the norms of the market – that is, to use the information imparted in the price system, to take profit as their chief (if proxy) value, and to

employ only avarice as their ‘mode of valuation’ (Anderson 1993: 6) – by their extreme wealth. So crucial was this function, Hayek felt, that ‘if we knew of no better way of providing such a group, there would be a strong case for selecting at random one in a hundred, or one in a thousand, from the population at large and endowing them with fortunes sufficient for the pursuit of whatever they choose’ (Hayek 1960: 125-6).

Evidently, then, for Hayek as well as Marx, not all useful human activity depended on the pecuniary motive. He would not even have agreed with Frank Hahn that ‘when a man is not pursuing money it is not at all clear how his pursuits can be harnessed to the coordination of economic activity and to the innovating necessities of growing prosperity’ (Hahn 1990: 158). Rather, for Hayek, the whole purpose of maintaining ‘independents’ in society was innovation: their wealth would allow them to pursue ‘experimentation in living’ (Hayek 1960: 129), free of the need to follow the market, and the results of this would later be disseminated among the poor (Hayek 1960: 44).

We may agree with Gamble, therefore, that some of Hayek’s most important insights ‘remain undeveloped in his writings because of the ideological closures he imposed on his work’ (Gamble 1996: 3). If this obstacle does not deter his readers, however, Hayek’s comments here, along with the lessons to be learned from Marx, might possibly be developed in some interesting ways. They can certainly help us to think about possible alternatives to capitalist society, and the proper limits of the market.

Conclusion

This purpose of this dissertation has not been to advance a blueprint for an alternative society. Nor has it been argued that Marx saw his task as urging the possibility of choosing from a variety of options at the second-order choice level – or still less that *pre*-capitalist conditions would seem preferable on the basis of freedom. The point of Marx's argument, as has been the point of the argument presented here, was predominantly negative: it was to suggest that any argument defending capitalism on the basis of freedom was unconvincing on its own premises.

Nonetheless, in treating both first- and second-order freedom to choose as significant issues, the question of an alternative inevitably arises. In conclusion, therefore, I will attempt to draw out some of the implications of the analysis presented here by sketching how a society that sought to take seriously the compatible aspects of Marx's and Hayek's thought and embed real freedom to choose at both levels might proceed.

Against Monopoly by the Market

Any desirable alternative to capitalist society, on the argument presented here, would have to ensure that no single second-order option could have a monopoly over the pursuit of several different kinds of end. The market would then become just one of several 'allocative mechanisms' (Wolf 1993: 157) through which individuals could pursue their ends at the first-order level, the domain of which was only ever entered because its needs and norms had been freely chosen as being compatible with the ends and values of the individual whose choice was in question.

If this could be ensured, the market might then actually emerge as the ideal system through which to pursue certain things. The production and consumption of luxury goods, for example, might well be perfectly compatible with the norms of the market; and the benefits of the market's ability to coordinate the information relevant to it would presumably not be undermined because individuals only entered its domain voluntarily.

As a first step, then, dependency on the market mechanism as the means by which most people have to obtain an income would have to be cut. For this purpose, Hayek's suggestion of a minimum income would suffice, provided it was set high enough for a decent subsistence. Yet this in itself would not provide 'real freedom for all' (van Parijs 1995). It would get us to the point where, as we have seen, Cohen's and Olsaretti's critiques of capitalism leave off: that is, to the point at which everyone had some bargaining power within the market. But it would not cut dependency on the market mechanism for anything other than obtaining the income necessary for survival: purchases would still have to be made, and production would still occur principally for the market.

Second, therefore, it would be necessary to think precisely about what makes a good second-order choice mechanism, and under what circumstances, and to try to ensure that a reasonable range of options were available to use in the pursuit of individual ends. If we consider some of the means through which choices may be made and outcomes effected, such as the market, voting, or the variety of ways to organise blood donation, the crucial criterion for suitability in this context would seem to be the *overall compatibility* of six variables: the mechanism itself, the desired end, the incentive, the measure of success, the

values effected thereby, and the individual's preferred mode of valuation. In the most elegant examples, the same material element might fulfil the function of more than one of these variables: this is what I think Milton Friedman has in mind in calling 'one of the beauties of a free price system' the fact that 'the prices that bring the information also provide both an incentive to react to that information and the means to do so' (Friedman 1990: 18). Here, the incentive and a key part of the mechanism itself are the same thing, rendering these aspects of the choice process perfectly compatible. Yet ideally *all six* variables must match each other. As Richard Titmuss showed when he compared the success of blood donation systems in the U.K. and U.S., the wrong incentive can obstruct the desired end: profit-seeking will not provide an adequate blood supply (Titmuss 1970).

Focusing on the overall compatibility of several variables also suggests certain criticisms of other recent approaches to this topic. Elizabeth Anderson's process-oriented question, 'why not put everything up for sale?' would seem a better starting-point than Michael Sandel's object-oriented 'are there some things that money can't buy?' or Margaret Jane Radin's 'what things can be properly bought and sold?' (Anderson 1993: xi; Sandel 1998: 90; Radin 1996: xi). The market should not simply be taken as a given, and various goods slotted into it: rather, we should consider the compatibility qualities of a range of mechanisms, in order to identify the market's proper place. After all, as John Gray points out, there is 'no general, universal principle that can tell us which goods are best produced by markets, by voluntary associations, by the institutions of an enabling welfare state, by collective political decision-making or by the application of a rule or the invocation of an entitlement' (Gray 1993: 110). Concentrating on the nature of the goods in question thus might even be read as a form of commodity fetishism, when we should be thinking about the character of the whole process.

A better approach might seem Michael Walzer's notion of 'complex equality,' which divides society into 'spheres,' each with their own allocative logic (Walzer 1983: 17). My use of the term 'domain' has also recalled his analysis. It is a serious difficulty in Walzer's argument, however, that the unity of what he differentiates, and his grounds for doing so, are unclear. For Milton Friedman, for example, 'the market' and 'education' simply would not be conceived as mutually exclusive examples of the same kind of thing. My argument can explain the difference, however: what is distinctive about the market is that it is a *choice mechanism*, and the scope of its domain would therefore need to be decided in relation to a wholly different set of criteria to that used to identify the sphere of education. A comment of Hayek's might also illustrate the significance of this fact: in his view, the hegemony of the market mechanism across every sphere would actually *lead* to the kind of 'pluralistic society which knows no single order of rank but has many different principles on which esteem is based; where worldly success is neither the only evidence nor regarded as certain proof of individual merit' that Walzer would prefer (Hayek 1967: 234-5).

The overall compatibility of the variables involved in the choice process would therefore seem a better focus, and I would agree with John O'Neill that 'the problem is not that of either explaining or designing institutions given universal avarice, but that of examining the ways in which institutions define and foster different conceptions of interests' (O'Neill 1998: 163). Yet, if

freedom to choose is really to be taken seriously, it should also not be supposed that for every kind of end, a single second-order means must be appropriate. I agree with Anderson that ‘the ways one person should value a particular thing or person need not be the ways another person should value it or him’: similarly, what might be an appropriate way of pursuing a given end to one person need not necessarily be adopted by another (Anderson 1993: 15). As Hayek urged, ‘each person has his own scale of values which we ought to respect’ (Hayek 1960: 79), and this scale might also indicate preferred choice mechanisms.

This would seem particularly clear, and important, in the context of survival. A range of second-order options to achieve the aim of just getting by might include the labour market, self-sufficiency or kibbutzim, and each might find adherents. What would be crucial from the perspective of both first- and second-order freedom to choose would simply be that the choice between these options, prior to the choice of what to do within their domains, was a wholly voluntary one.

This dissertation has not sought to suggest that any society that succeeded in embedding freedom to choose at both the first- and second-order levels should, by that token, be considered *the* ideal society. If defences of capitalism in the name of freedom are to be advanced, however, it would seem necessary to present the kind of argument made here.

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