

**A CRITIQUE OF SELECTED KEY ASPECTS OF HAYEK'S  
'THE MIRAGE OF SOCIAL JUSTICE'**

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## **Abstract**

This thesis consists of four main chapters; excluding the main introduction and conclusion. The first main chapter consists of justifications for the content of the other three. It is within the latter three that the principal ideas of this thesis are contained.

The second main chapter contains several interrelated arguments designed to undermine three of Hayeks' key claims. These claims are the following. First, a legitimate distinction can be drawn between private and public concerns. Second, this distinction can be drawn by appealing to some notion of ordinary belief and discourse. Third, there can (in terms of some such notion) be morally neutral manipulations of legislation. (The term 'manipulation' is intended here in the broadest possible sense. For it is intended to mean not only implementation and/or repeal of legislation, but also refusals to do either).

The third main chapter includes an exposition of several arguments and claims defended by Hayek (1976) in his The Mirage of Social Justice. It also includes responses to them by the present author.

Finally, the argument of the fourth main chapter will be as follows. There may be several 'ordinary' notions of what a prediction is. Some such notions may be mutually incompatible. Hence, another possible example of the unreliability of 'ordinary' belief and discourse as a basis upon which to arrive at persuasive conclusions. Also therefore, some 'ordinary' notions of what a prediction is may be confused and mistaken. For, they mistake what a prediction is for what a correct prediction is. This happens, perhaps because 'ordinarily' people associate the concept of a prediction with what they can correctly predict rather than with what they cannot successfully predict. Furthermore, they thus associate, for correct predictions are more useful to their aims than incorrect ones; as indeed Hayek implicitly accepts; he justifies his 'rules of just individual conduct' on the basis of what can and cannot be ordinarily predicted. One dubious implication of his position is that most of the time most people believe that predictions of a relatively general kind are easier to make correctly than those of a relatively less general kind. Another equally dubious one is, that they choose their 'rules of conduct' on the basis of this belief. Finally, even if they did, they would be doing so on the basis of a belief that is false.

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## MAIN INTRODUCTION.

### (A) SOME PRELIMINARY REMARKS ON THE PRESENT CHOICE OF CRITIQUE.

Given the number of Hayeks' publications in politically-related theory, it may seem arbitrary to select just one of them as the main subject matter for the present critique. This may seem especially so, given that the present author is aware of over twenty such publications. Hence, the main subject matter of the present critique (apparently at least) needs justifying. However, the kinds of justifications this invites will not be appropriate to include in a main introduction. Or, at least this is so, given the view that main introductions should be relatively short. Also, the kind of justifications invited by the aforementioned (and apparently at least) arbitrary selection of subject matter, are, arguably at any rate, not only too long to be included in a main introduction, but are necessary to vindicate that selection as thoroughly as possible. So, given the (in a sense, arguably necessary) length of those particular justifications, they will be given instead in the first main chapter of this thesis (see 1.1, and 1.2). At this point therefore, only the two main conclusions of those justifications will be indicated. The first is this. If the present choice of the main subject matter for critique is arbitrary, it is only arbitrary for essentially the same reasons that any choice of subject matter for critique will inevitably be (see 1.1). And the second is this. The present choice of the main subject matter for critique, can be rendered less arbitrary than it may at first seem anyway, due to a certain thematic constancy evident in, or throughout, the content of Hayeks' publications in politically-related theory (see 1.2).

But there are other reasons why the aforementioned justifications are given in the first main chapter rather than here. One is this. The plausibility of those given in 1.1, can, arguably at least, be stressed more (and indeed perhaps most) fully, only in terms of a certain critique of the (so-called) liberal tradition that Hayek subscribes to. Again however, this critique is arguably too long to be included in a main introduction. So, in order to maintain a certain continuity of analysis, as well as for the sake of brevity, that critique and the aforementioned justifications stressed in terms of it, will be provided in the first main chapter instead (in 1.1). Secondly, the justifications given in 1.2, by their very nature need to contend with (arguable) inconsistencies in Hayeks' relevant publications. Such (arguable) inconsistencies, potentially undermine those very same

justifications that need to contend with them. For such (arguable) inconsistencies may give reason to question the aforementioned notion that there is a certain thematic constancy in, or throughout, the content of Hayek's relevant publications. And as already pointed out, the latter justifications are somewhat dependent on that notion being correct. Once again, this will require an analysis that is (arguably) too long to be included in a main introduction, given that main introductions should be as brief as is reasonably possible.

**(B) SOME INTERIM REMARKS ON THE PRESENT CHOICE OF REFERENCING.**

Not all of the aforementioned publications will necessarily be referred to again in this thesis, or indeed in the rest of this introduction. But, before explaining other different justifications for the present choice of the main subject matter for critique, it may be apt here to make one more point. This point furthermore, is to do with a style of referencing used in the main text of this thesis as well as in the remainder of this introduction to it. It is as follows.

For the sake of brevity, those aforementioned publications that will be referred to again in what follows, will, at least as often as not, and from here on, be alluded to in the following way. The Road to Serfdom as: R.S. Rules and Order as: R.O. New Studies: In Philosophy, Politics, Economics and the History of Ideas as: N.S. The Political Order of a Free People as: P.O.F.P. And: Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy as: L.L.L.

The style of allusion just indicated, will, for the most part at least, be used in the main body of this thesis (i.e. see chapters 1 to 3) only at the end of passages quoted from the publications cited in the last paragraph. Similarly, it will only be used in the rest of this introduction at the end of such passages.

**(C) SOME FURTHER REMARKS ON THE PRESENT CHOICE OF CRITIQUE**

Another question, which may be raised at this point, is the following. Why critique some arguments to be found in The Mirage of Social Justice and not others? In a sense, this question is appropriate. For not every argument to be found in the latter publication, is

even mentioned in this thesis, let alone critiqued in it. Hence, yet again, the choice of those that are critiqued in it may seem somewhat arbitrary.

One conceivable answer to all this, may take a similar form, to one eventually suggested and defended more fully in the first main chapter (see 1.1). For, it may be claimed, that The Mirage of Social Justice, consists of too many arguments for it to be possible to critique them all, in a way that would do each due justice in a thesis of this nature and prescribed length. And again, given this, it may be easy to simply add, that the choice of arguments critiqued in this thesis is purely arbitrary. Then perhaps, no more by way of justification for this 'arbitrary' choice may be further added, other than that, any other choice(s) would have been equally arbitrary. But, once more, the present choice of arguments critiqued, just like the present choice of particular publication critiqued, can be justified more substantially, and in a way that will hopefully render it less (if not completely non-) arbitrary. For it can be further justified in the following way.

It may or may not be true, that in a thesis of this prescribed length and nature, it is possible to critique every argument in The Mirage of Social Justice, and at the same time do each due justice. Either way however, every attempt has been made by the present author, to give as comprehensive analysis as it is possible to give, in a thesis of this nature and prescribed length of the content of the latter publication. So, any relevant omission(s), will, at worst, be only arguably an indication of some inadequacy on the part of the present author. But, there is no way, that it should be taken as an indication of any conscious, prior intention. For research, indeed like so many other human endeavours, sometimes involves, starting out with some (perhaps relatively rough) general plan. And then, only as one proceeds, does it become increasingly clear, exactly what one can realistically hope to achieve, given the nature of the original plan, and the inevitable restrictions of time and space. Also, partly because of such restrictions, one may not, in the end, achieve as much using the original plan, as one initially hoped to. This, again, may or may not in this case, be reasonably taken, as being indicative of the inadequacy of the original plan, and by implication, the inadequacy of the present author who devised it. Equally however, and depending on ones' view of the nature of what good research should aspire to, it may or may not be, reasonably taken as being indicative of something quite different. It may, that is, be reasonably taken as being indicative of one of the most inherently rewarding aspects of research itself. Indeed, and more especially, it may be just

as reasonably suggested, that it is in the very spirit of good research, to begin with a plan, and be prepared to modify it as one proceeds, if relevant trains of thought become apparent that were not apparent at the start. Just as indeed, a good scientist, may start with a hypothesis, and be prepared to at the very least modify it, if relevant variables become apparent that were not apparent to begin with. Indeed, a good scientist is expected to do this. Indeed, good science necessarily involves it. Hence, it is only if it is arbitrarily insisted, that the literary researcher should always stick doggedly to her/his original unmodified plan, can s/he be said to be violating the spirit of good research if s/he does not. Parts of the original plan of this thesis, have been modified. For the sake of brevity, just one example of this will be offered here. It is as follows.

One initial aim was to critique The Mirage of Social Justice as part of a broader philosophical agenda. This agenda was originally intended to include an analysis of issues not addressed in what follows. One such issue, is the question of whether human nature exists. To this end, (as well as others), it was originally intended, to include critical discussion of certain works by some contemporary authors. The latter include, R. Bhaskar (1975), R. Rorty (1979), and B. Barry (1992). However, as implied already (in the last paragraph), in the case of the present research, the agenda did shift somewhat. For it eventually became apparent, that The Mirage of Social Justice, in itself, is sufficiently substantial to warrant the whole attention of a thesis the nature and prescribed length of the present one. Also, with the passage of time, certain lines of criticism of arguments to be found in the latter publication, became apparent that were not apparent when the original agenda was conceived. Further, the present author decided, that as far as the present choice of arguments to be critiqued is concerned, priority would be given to those arguments that were especially open to such lines of criticism.

Also, the present choice of arguments critiqued, as far as is reasonably possible, was guided by the sequence in which they appear in The Mirage of Social Justice. But, the reason for this, has as much to do with sound philosophical strategy, as it has to do with mere stylistic convenience. For unsurprisingly perhaps, the arguments appearing earlier in the aforementioned sequence, serve as a basis for those appearing later in it. So, if the former can be shown to be unpersuasive, then to that extent at least, the latter are rendered dubious also. To take just one example. If "...neither...government [n]or anybody else... can...know...the particular aims pursued by...different individuals [or at least if those

aims] must be mostly unknown [except]to those who...pursue them..."[M.S.J. pp 2-3], then neither can anyone know that "...a given system of rules...can...be...a means for assisting in the pursuit of a great variety of individual purposes" [M.S.J. p 5], (see 3.16 ). There is a sense then, in which, the logical relationship of the former to the latter, is somewhat analogous to the logical relationship of the premise of an argument (albeit an unpersuasive one), to the conclusion of it. There are times perhaps when the conclusion of an argument seems intuitively unacceptable. When this happens, it may be tempting to dismiss the conclusion before examining the reasoning and the premise from which the conclusion was derived. In such instances, the irresistible temptation may be, to simply assume that, given the highly counterintuitive nature of the conclusion, something must be wrong with any line of reasoning and/or premise from which that conclusion emerged. This temptation may seem irresistible perhaps, even to someone unable to detect any flaws in the reasoning and/or premise in question.

But what may sometimes seem (un)acceptable to common intuition, is not necessarily (in)sufficient for the purposes of good analytical philosophy. And indeed, an important aim of the present thesis, is to try to show that common intuition is not infallible (see 3.5) although some at least of the arguments critiqued in this thesis effectively rely upon it (see for example 2.20 and 3.20). Given all this, it seems at the very least, no less consistent with the requirements of good analytical philosophy to employ the reverse strategy. This hopefully, will help to resist any temptation, that otherwise might be felt, to simply intuitively dismiss any conclusion, prior to examining the reasoning and/or premise which led to it. Furthermore, the latter strategy, is perhaps an especially appropriate one to use in the present thesis. For, many of the arguments critiqued in it, have premises that are effectively empirical claims (see 3.12, and 3.21). Also, such claims can be doubted (see for example 3.12 and 3.21). So, to the extent that this is the case, the conclusions that are based upon such claims can be doubted too. Finally, given that the latter (rather than the former) strategy is, for the reasons just given, the preferred method of analysis for the purposes of the present thesis, it should be unsurprising, that most of the arguments included in The Mirage of Social Justice, but, unmentioned in what follows, appear in the later parts of that publication.

Yet another question may be raised at this point. It is this: Why is there no reference anywhere in the present thesis, to any other contemporary political theorists who have

critically assessed Hayeks' relevant works? Now, it may be supposed, that it would be inadequate to respond to this question, by saying that it is entirely inappropriate, on the grounds that it is based on the false premise that no such reference is made when several eventually are. For A. Haworth (1994) amongst others, is alluded to later in the first main chapter. However, no arguments by Haworth or any such others, that are specifically directed against Hayek will (as far as the present author is aware) be used at any later point in this thesis. Nevertheless, a more philosophically substantial response to the latter question is possible. The seeds of this response have already been sown by points already made in response to the earlier question (raised in the last paragraph but four). For, it may also be recalled, that it has already been pointed out (in the last paragraph but one) that as far as the present choice of arguments to be critiqued is concerned, priority has been given to those arguments that are especially open to certain lines of criticism that were not apparent when the original agenda was first conceived. When however, the original agenda was first conceived, the present author was already aware of several worthy criticisms levelled at The Mirage of Social Justice by several equally worthy contemporary political theorists. But, at that same time, as far as the present author was aware, none of the aforementioned criticisms that only became apparent after the original agenda was conceived, had already been levelled at any of Hayeks' work by any other political theorists, contemporary or indeed otherwise.

Also, given that the nature of the present thesis requires the maximisation of the inclusion of original thought, it is not out of any irreverence towards any other political theorists that none of them have been given anything other than (at best) relatively scanty attention in what follows; with perhaps the possible exception of some mentioned in the first main chapter (see 1.1). Rather, it springs from a wish to fulfil one important (and aforementioned) requirement as completely as possible.

Moreover, some of the lines of criticism not apparent at the time that the original agenda was conceived, involve stepping outside the realm of political discourse itself. This for example, is especially true perhaps of the lines of criticism appearing in the fourth main chapter of this thesis. Stepping outside the realm of political discourse, given present purposes, can be arguably useful. For sometimes at least, problems in political philosophy may seem perennial. This in turn, may have something to do with the fact that political problems are for the most part at least, debated within the confines of political discourse

itself. Hence, by stepping outside of such discourse it might be possible to generate new insights, or at the very least insights that have only rarely been generated previously. To the best of the present authors' awareness, none of the lines of criticism, that were not apparent at the time the original agenda was conceived, have been expressed by any other theorists (political or otherwise) since it were conceived. So, any similarity that may exist between such lines of criticism, and any expressed by some person(s) other than the present author, is entirely coincidental.

A final question that may be raised here is this: Why is there little or no reference to contemporary theorists who have written voluminously and critically about certain problems raised at various points in this thesis, especially perhaps those raised in the fourth main chapter of it?

One response to this may be the following. The problems alluded to in the latter question, concern in part the problem of event/act-individuation. And all debates generated by such problems, perhaps unsurprisingly, aim to identify the most plausible way of individuating events and/or acts. Or again at least, this is so as far as the present author is aware. Furthermore, as far as the present author is aware, to date, no such debate or critical work in this area, has attempted to forge a link between issues in political philosophy, and issues raised by questions concerning event/ act-individuation, in quite the same direct way as such a link is forged here. Neither, for example has any such debate (as far as the present author is aware) attempted to forge a link between the latter issues and those raised by the question of the essential nature of a prediction. The latter question is a particularly important one given certain purposes of this thesis, for reasons explained in the fourth main chapter of it. So again it is the (relatively) unusual nature of the links made between issues concerning event/ act-individuation on the one hand, and certain other aforementioned issues on the other hand, as well as the (relatively) unusual purposes to which the former issues are put in this thesis, that explains the (relative) lack of reference to any other contemporary work here. It is not once more out of a lack of due reverence to the relevant contemporary writers.

#### **(D) THE PLAN OF THE THESIS**

The main body of this thesis is divided into four main chapters; the content of the first of these has already been explained. Twenty sub-sections make up the second of these. Some of these sub-sections are relatively short. An example here is the very first one, ie sub-section 2.1. Other sub-sections are relatively long. Sub-section 2.20 is an example of the latter. Considered as a whole, the second main chapter is a system of interrelated ideas. This perhaps may seem unsurprising. For, it may be thought, the ideas included in any one chapter of any thesis need to be related to one another. Otherwise, (it may be further thought) the chapter would lack cohesion. And without cohesion, no piece of writing could count as a distinct chapter worth the name at all. Also, what, in this sense, applies to any individual chapter(s), applies equally to any whole thesis. But, the second main chapter of this thesis amounts (again perhaps inevitably) to a system of interrelated ideas of a certain kind. More particularly, it is a system of interrelated ideas, by and large constructed by the present author, as a basis upon which to attack certain lines of argument(s). These line(s) of argument(s) are defended by Hayek in The Mirage of Social Justice. An exposition of several of them appears furthermore, in the third main chapter of this thesis.

Because the ideas which largely make up the second main chapter, are (largely at least) constructed by the present author, relatively little reference will be made throughout it to Hayek himself. An exception here is sub-section 2.1. Another is sub-section 2.20. The latter for example, includes several passages quoted from The Mirage of Social Justice. However, although the second main chapter of this thesis, contains relatively little reference to Hayek, the ideas discussed in it are (indeed as already implied) importantly relevant to some arguments proposed and defended by Hayek in The Mirage of Social Justice, as well as elsewhere. In some of the rest of this introduction, it will hopefully be possible to clarify the nature of this relevance adequately enough. But before attempting this, it will be pointed out, that from here on, the sub-sections of the second main chapter will be alluded to as follows. The first such sub-section simply as 2.1, the second as 2.2, and so on.

2.1, is a relatively short statement of two key claims made by Hayek. The first of these is that a legitimate distinction can be made between private concerns on the one hand, and public concerns on the other. And, the second is, that no government can legitimately promote and/or obstruct exclusively private interests. Rather, any government can only



legitimately interfere in peoples' lives in order to promote some public concern(s). So, the legitimate role of any government is, in at least one sense, neutral. Further, it is neutral with respect to purely private concerns.

2.2, is, to a noticeable extent at least, a perhaps relatively elementary outline, of some general issues and problems arising from any alleged distinction between public and private concerns. Some of these at least, are explored further in later sub-sections. But, to outline them first in 2.2, will hopefully still be useful. For this (hopefully) will give some indication relatively early on of some of the type(s) of problems addressed later, thus providing a (hopefully somewhat) substantial framework for at least some (if not much) of what follows. Such problems, as well as the relationship between them, may for now, be indicated as follows in bullet-point form.

- (A) To deny that any legitimate distinction can be drawn between public and private concerns, may be (generally) seen as a threat;  
for,
- (B) it may be (generally) seen as a threat to personal liberty;  
and,
- (C) individual conscience is the only ultimate legitimate (moral) guide for decision making on some matters;  
also,
- (D) the more that (C) is true of some matter, the less that matter is legitimate subject matter for legislation;  
but,
- (E) there are grounds to believe that not everyone would agree with (D);  
besides,
- (F) there is at least one sense in which (in any society involving formal legislation) (D) would seem to have to be false;  
since,
- (G) if (C) is true, then (in any such society) the (alleged) right to use ones' conscience as the only ultimate legitimate (moral) guide on some matters, (presumably) needs protecting by legislation;  
further,

(H) if (G) is true, then to the extent that there is any sense in which, if some matter is legitimate subject matter for legislation, it is also a public issue, then the (alleged) right to thus use ones' conscience is a public issue;

and,

(I) it does not necessarily follow, that to remove (or refuse to implement) legislation is (or would be generally seen as) adopting a (morally) neutral stance;

for,

(J) the (alleged) right first alluded to in (G), may be (generally seen as) a moral right;

so,

(K) any removal of (or refusal to implement) legislation protecting such a (alleged) right may not be (generally seen as) morally neutral;

furthermore,

(L) some reliable criterion or criteria is needed to distinguish public concerns from private concerns;

however,

(M) if some such criterion or criteria cannot be found, then there is no reason to think that any legitimate way of thus distinguishing is possible;

hence,

(N) two mutually conflicting conclusions would seem equally acceptable;

one is,

(O) there is no such thing as an exclusively private concern;

the other is,

(P) there is no such thing as an exclusively public concern;

moreover,

(Q) if (O) and (P) are equally acceptable, then it would be just as arbitrary to accept (O) as it would be to accept (P) and vice-versa;

therefore,

(R) it would be equally arbitrary to accept that the nature and number of exclusively private concerns is theoretically unlimited as it would be to accept that public concerns, and by implication, government legislative powers are;

again,

(S) if (O) is true, then no government intervention in any human concerns, may seem to be unjustified in any non-arbitrary, definitive, objective (moral) sense;

but,

(T) if (P) is true, then no government intervention in any human concerns, may seem to be justified in any non-arbitrary, definitive, objective (moral) sense.

At this point, it may be appropriate to indicate how and why the problems just listed above relate to arguments proposed and defended by Hayek in The Mirage of Social Justice as well as elsewhere. Exactly how and why (A), (B) and (C) thus relate, may be rendered somewhat self-explanatory perhaps. This may be done by citing the following passages from some of Hayeks' aforementioned publications. For example, Hayek states that there is a need for "...the recognition of...[peoples']...own views and tastes as supreme in...their...own sphere...and the belief that it is desirable that...[people]...should develop their own individual gifts and talents"[RS p11]. Again, Hayek writes of a

"...range of actions in which each will be secured against the interference of [government and] others [and that this] can be...[achieved]...only if...it [is] possible to ascertain...the boundary of the [legitimately] protected [private] domain of each [individual] and...[in order]...to distinguish between the...[private domain(s)]...and the...[public domain(s)]...understanding [is needed] that...only if clear boundaries can be drawn between...respective domains of free action, is...the only solution...yet discovered to the problem of...individual [private] freedom...[will there be]...absence of conflict....There can be no law in the sense of universal rules...of conduct which does not determine boundaries of the domains of freedom by laying down rules that enable...[people]...to ascertain where...[they are]...free to act. This...[is]...long...self-evident and needing no proof"[RO p107].

Also; "The [private] individual domains which the rules of just conduct protect will have to be referred to again and again, and the manner in which such domains are acquired, transferred, lost, and delimited will usefully be stated once and for all in rules..."[MSJ pp34-35]. Moreover, "...in this book we are mainly concerned with the limits that a free society must [and can legitimately] place upon the coercive powers of government,...with the aim of securing individual liberty to all..."[POFP p41]. Furthermore, Hayek refers to what he sees "...as the morality of the rules which...prevent the...infringing [of] the protected [private] domain of others"[POFP pp44-45]. To be found elsewhere are phrases such as "...rules of just conduct delimiting private spheres..."[POFP p48], and "...a very good illustration of one of the basic contentions of the present book...is chiefly to devise effective limits to governmental powers..."[POFP p51]. And finally:

“There are also probably several fields in which government has not yet given...private individual[s] the protection...[they]...need...if...[they are]...to pursue...[their]...ends most effectively....One of the most important of these seems to be the protection of privacy and secrecy...with respect to which government has so far clearly failed to provide appropriate rules or to enforce them....The delimitation of some such fields in which the individual is protected against the inquisitiveness of...neighbours or even the representatives of the public at large, seems to me an important requirement of full liberty”[POFP p63].

Now, the essential content of the eight quoted passages in the last paragraph, are significant here for at least two reasons. A clue to one such reason, is provided by the fact, that those quoted passages are taken from some (aforementioned) books published by Hayek, during a period extending from 1944 to at least 1979. For although the last four of them, originally appeared in the (aforementioned) 1979 publication The Political Order of a Free People, they reappeared (as did indeed all but one of them) in one of Hayeks’ later (aforementioned) publications. This latter publication is: Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy (1982). So, in short, the eight quoted passages in the last paragraph considered together, give an initial indication of a strand of thought running constantly through his work during a period starting at least as far back as 1944, and ending no sooner than 1982.

The relevance of (D) to arguments defended by Hayek in the aforementioned publications, is therefore perhaps obvious by now. For if (C) is true, then (D) may be rendered apparently more plausible. But (E) and particularly perhaps (F), cast serious doubt on (D). (G) purports to explain why (D) may be false. And (G) does so, in a way that is consistent with Hayeks’ general position. (H) is, in a sense, an elaboration upon (G). For (H) uses (G) to close the gap as it were, between public and private concerns. (I), albeit somewhat tentatively, questions the idea that there can ever be (morally) neutral legislation in Hayeks’ sense. Hence (I) questions one of Hayeks’ key claims. (J) and (K) purport to explain why (I) may be true. (L), simply points to the need to find some non-arbitrary way of distinguishing between private and public concerns. Hence the relevance of (L) to Hayeks’ agenda is perhaps obvious by now. Finally, the rest, (M) right through to (T) that is, explain the implications of no non-arbitrary way of distinguishing between private and public concerns being possible. It may be added here, that all such implications, are contrary to what Hayek believes, the implications of the positions he defends in The Mirage of Social Justice (and indeed elsewhere) are.

2.3. is relatively short. It is a comparatively brief statement, of a problem not addressed in 2.1, or in 2.2. But like the problems outlined in 2.2, it is relevant to the issues arising from any alleged distinction between public and private concerns. The problem stated in 2.3, is of both a logical and temporal nature. Unless it can be solved, there would seem to be no non-arbitrary way of (always) stipulating what does and does not affect the public domain; hence, there would seem to be no non-arbitrary way of (always) distinguishing acts that are of public concern from those that are not. 2.4 considers and rejects, (perhaps one intuitively) tempting way to try to solve the problem stated in 2.3. This way of trying to solve it, entails adopting the view, that only immediate term effects need to be taken into account when trying to decide what does (not) affect the public domain; as such effects are the easiest to predict. The argument of 2.4, tries to show that this view is mistaken, by appealing to a certain distinction. This distinction, is between relatively general and relatively more specific related effects. The conclusion will be, that there are no grounds to believe, that more immediate effects can be predicted more confidently more often than less immediate ones, or indeed vice-versa, regardless of whether or not the term 'immediate effects' can be non-arbitrarily defined. 2.5, simply offers more support for this conclusion. And 2.6, is a relatively brief interim summary of 2.3, 2.4, and 2.5. However, 2.7, is an extension of the argument of 2.3, and more particularly 2.4, and 2.5. For a key claim in 2.7 is this. It is impossible in principle, to stipulate any effects, that are so temporally distanced from whatever caused them, that, it would necessarily follow that no one could feel as confident as it is perhaps (on inductive grounds) possible to feel, about being able to predict them. And another key claim in 2.7, is the following. Under certain logically possible conditions, some person(s) could not with reasonable inductively-based confidence, predict certain effects, no matter how quickly they followed on from whatever caused them. Furthermore, this can be shown to be so, without even appealing to the aforementioned distinction between relatively general and relatively more specific, related effects.

In 2.8, and 2.9, a number of actual and hypothetical cases are discussed in an attempt to cast doubt on the claim that, there can be some morally neutral manipulation of legislation. So, 2.8, and 2.9 considered together, in a sense, state less tentatively what is only mildly suggested by (I) above. The arguments of 2.10, involve an attempt to cast doubt on any conceivable claim to the effect, that if some outcome of a manipulation of rules seems statistically unlikely to occur, prior to such manipulation and from the point of

view of whoever manipulated them, then to that extent the latter is not causally or morally responsible for that outcome in the view of most people. As such, the arguments of 2.10, echo, further underline, and support the arguments of 2.9, as well as those of 2.8. However, the arguments of 2.10, involve an attempt to cast doubt on another conceivable claim. The latter claim is this. If some outcome of a manipulation of rules, seemed statistically unlikely to occur, prior to such manipulation, and from the viewpoint of whoever manipulated them, then to this extent, the latter may, in the view of most, occupy a morally neutral stance with respect to such an outcome. In this sense also, the arguments of 2.10, echo, further underline, and support the arguments of 2.9 and 2.8.

The argument of 2.11, echoes, further underlines, and supports the arguments of 2.8, 2.9, and 2.10. It does so by exploring further, some implications of an analogy at least implicit in the arguments of 2.10. This analogy is between rule manipulation and (dangerous) risk taking. And the argument of 2.11 is this. There is no essential morally relevant difference, between at least some rule manipulations on the one hand and (dangerous) risk taking on the other; or at least it is not obvious that most people (would) believe that there is. Indeed, the argument of 2.11, effectively is, that some rule manipulation is itself a kind of (dangerous) risk taking; or at least that is, most people who reflected sufficiently on the matter may view it as such. The conclusion of 2.11 therefore is this. Some rule manipulation, carries the same moral implications as (dangerous) risk taking; or again, as most people who reflected sufficiently on the matter may see it.

2.12 is an attempt to add further substance to the arguments and conclusions proposed and defended in 2.8, 2.9, 2.10, and 2.11. It does this by stating relatively briefly, what in everyday contexts, may or would count as being a partial cause of an outcome. And the conclusion it offers is this. Given that some manipulation of rules, prescribe what is and what is not allowed under certain circumstances, then this would usually be deemed sufficient for attributing the role of partial cause of any behaviour complying with what is thus prescribed, to whoever so manipulated. Moreover, this is so, even if it were believed by all thus attributing, that such behaviour was carried out by persons other than whoever manipulated the rules in question. Hence, 2.12 can be seen as an attempt to cast further doubt on a certain aforementioned claim. The latter claim (to recall) is this. If some outcome of a manipulation of rules seemed statistically unlikely to occur, prior to such

manipulation, and from the viewpoint of whoever manipulated them, then to that extent the latter is not (as most would see it) casually responsible for that outcome.

2.13 considers two kinds of cases. Each are discussed previously, at various points, from and including 2.8 through to and including 2.12. Both kinds of cases, involve the manipulation of rules. But, only one kind involves the manipulation of legislation. The argument of 2.13, is that there is not (necessarily) any morally relevant difference between the two aforementioned kinds of cases. Or, at least, this may well seem to be so, from the viewpoint of anyone who reflected upon the moral implications of each sufficiently enough. By appealing to the notion of what is morally permissible, the conclusion invited is this. Some cases of rule manipulation, that do not involve manipulation of legislation, are not necessarily morally neutral. This is because, they are implicitly based upon the notion of what is (not) morally permissible. All cases of manipulation of legislation, are some cases of rule manipulation. Also all cases of manipulation of legislation, are cases of rule manipulation that are based upon the notion of what is (not) morally permissible. Therefore, no cases of manipulation of legislation are morally neutral. So, 2.13, like 2.8 and 2.9, undermines the claim that there can be morally neutral manipulation of legislation. 2.14, furthermore, is simply a summary of some of the main arguments and conclusions of 2.8 to 2.13 inclusively. Whilst 2.15, spells out some of the negative implications of those arguments and conclusions, for any alleged distinction between public and private concerns, and so also for Hayeks' position, which depends upon some such distinction.

2.16, picks up the theme of the discussion of 2.3 to 2.7 inclusively. It does this by summarizing and reinforcing the gravity of the logical and temporal problem(s) discussed in those earlier sections. 2.16, also provides a good starting point for the particular kind of discussion in 2.17. The main conclusion of 2.17 is this. In terms of ordinary belief and discourse, what does or may (not) count as being of public concern, depends upon epistemological circumstances that in principle can always change; and hence so can judgements of what does thus count. Furthermore, the main conclusion of 2.17 is supported by the argument of 2.18. For the argument of 2.18 is this. Ordinary belief and discourse, arguably makes a distinction between two different types of effects. One type is: Merely potential effects. The other is: Actual or real effects. But within the latter category, are two sub-classes. In one sub-class, are actual or real effects that have already

taken place. However, in the other, are actual and real effects that have not. So, ordinary belief and discourse, it might be said, applies a three-fold classification of effects. (It may be said here, that it applies a four-fold one. As it may be claimed, that apart from those just suggested, it considers some proposed effects to be not even potential effects. But, to simply assume a three-fold classification here, will not affect the argument one way or another. Besides, to thus assume, will make the argument less cumbersome to express). So in one class, are merely potential effects. In another, are real effects that have not yet (at least) happened. And in another, are real effects that have. Due to the changeable epistemological circumstances discussed in 2.17, ordinary belief and discourse, can classify any given type of effect, differently over time. So, a given type of effect that it classifies as merely potential, at one time, it may classify as real but not yet transpired at a later time, and as real and having already happened at a still later time.

The arguments of 2.17 and 2.18, provide direct support for the main conclusion of 2.19. Furthermore, the latter conclusion is this. There is no type of act, which by the very nature of it precludes the logical possibility, of it (ever) being considered by ordinary belief and discourse, to be of genuine public concern. This conclusion is supported, by giving hypothetical examples of types of acts, which by the very nature of them, may initially seem to be amongst the most obvious examples of types of acts that do thus preclude, and then showing that they do not necessarily thus preclude at all. If this conclusion is right, it again undermines any allegedly non-arbitrary distinction between (types of) acts that affect the public domain on the one hand, and (types of) acts that do not on the other.

Several of the arguments levelled at Hayek in the second main chapter, appeal to the notion of ordinary belief and discourse. (Indeed, the reader has perhaps noticed this by now). But the purpose of this appeal must not be misunderstood. For, the purpose of it, is not to try to show, that ordinary belief and discourse is a reliable basis upon which to solve philosophical problems. Rather, the purpose of it is this. At least some of the arguments defended by Hayek, in effect, appeal to some notion of ordinary belief and discourse. And one aim of this thesis, is to try to show, that insofar as it makes sense at all to appeal to such a notion to attempt to solve philosophical problems, any such attempt, would not necessarily yield conclusions that Hayek would have wished to accept. The



arguments in 2.8 through to 2.19 inclusively, constitute an attempt to show, that this may well be true in the case of one particular philosophical problem.

However, 2.20, is an attempt to show, something quite different. For it attempts to show, that the notion of ordinary belief and discourse, is not one that can necessarily be clearly defined. Furthermore, it attempts to do this as follows. The notion of ordinary belief and discourse, if it can be defined at all, needs to be defined in terms of some notion of what a distinct human community is. On one plausible interpretation, Hayek defines the latter notion in terms of the notion of a legal community. But, the notion of a legal community is unsatisfactory. So is any other notion that may be used, in an attempt to define what a distinct human community is. Hence, since the notion of a distinct human community, cannot be clearly, and non-arbitrarily defined, neither therefore, can the notion of ordinary belief and discourse. Also, Hayeks' defence of moral relativism is thus undermined. For, moral relativism, is itself, ultimately dependent upon a non-arbitrary definition of 'distinct human community' being possible. Besides, moral relativism, seems inconsistent with certain other claims made by Hayek. (see also 1.3).

The shape and content of the third main chapter has already been indicated (in B). It consists of twenty five sub-sections. These are numbered, 3.1 to 3.25. Each sub-section gives an exposition of some claim or argument by Hayek in The Mirage of Social Justice. Each of these arguments are responded to, either within the sub-section they appear in, or in some other following sub-section(s). For example, the argument appearing in 3.9, is responded to with a counter-argument appearing in 3.10. Although, each of the arguments by Hayek appearing in chapter three, are intended by him to be related to all the others by him appearing in it, as they are presented in what follows, they can be treated individually. Or, at least as far as is possible, the present author has tried to present them so as they can be treated as such. In this sense, their manner of presentation, differs fundamentally to the manner in which those presented in the second main chapter are. Hence, unlike in the case of the latter, it will be hopefully unnecessary to spell out the relationship of each of the former to one another here.

Chapter four is relatively brief. The arguments of it, yield the following conclusions. First, there are or may be several 'ordinary' notions of what a prediction is. Second, if so, some of these are mutually incompatible. Third, this serves as another example of the

unreliability of 'ordinary' belief and discourse as a basis upon which to arrive at persuasive conclusions. Fourth, some 'ordinary' notions of what a prediction is, are or may be mistaken and confused. Fifth, for they mistake what a prediction is, for what a correct prediction is. Sixth, this happens, perhaps because 'ordinarily' people associate the concept of a prediction, with what they can correctly predict rather than with what they cannot successfully predict. Seventh, they thus associate, for correct predictions are more useful to their aims than incorrect ones. Eighth, the idea that correct predictions are thus more useful, is one Hayek in a sense implicitly accepts. Ninth, for he justifies his 'rules of just individual conduct' on the basis of what can and cannot be ordinarily predicted. Tenth, one dubious implication of his position, is that most of the time, people believe that predictions of a relatively general kind are easier to make than those of a relatively less general kind (see 2.5). Eleventh, they choose their rules of conduct on the basis of this belief. Twelfth, it is not obvious, that they do choose such rules on the basis of such a belief (see 2.5). Thirteenth, and finally, the view that they do, is not one that even Hayek holds to consistently.

## CHAPTER 1 CONSTRUCTING HAYEK

### 1.1. WHY 'THE MIRAGE OF SOCIAL JUSTICE'? JUSTIFYING AN ARBITRARY CHOICE

First, it may be apt to briefly reiterate some points already made in the introduction. What follows, consists of a critique of several key aspects of F. A. Hayeks' (1976) work The Mirage of Social Justice. Even at this early point, those sufficiently familiar with Hayeks' career as an author in the field of politically-related theory, may be tempted to raise at least one particular question. This is as follows: Why critique The Mirage of Social Justice rather than any one (or several) of Hayeks' other related publications? There are several reasons for this choice. One is as follows.

Hayeks' career in the aforementioned field, spanned some sixty or so years and too many publications to make it possible to critique them all in a way that would do each due justice in a thesis of this prescribed length. Now, it would, in view of this, be easy at this point, to simply say, that the choice of The Mirage of Social Justice as (the main) subject matter for the present critique is purely arbitrary. Then perhaps, no more by way of justification for this 'arbitrary' choice may be added, other than that any other choice(s) would be equally arbitrary. This kind of answer, may be further justified however as follows.

Hayek was just one of several authors, within a certain (so-called) liberal tradition. This (so-called) tradition spans several hundred years. One aim of this thesis, is to offer some critique of that (so-called) tradition. Given all this, it would be possible to satisfy that aim in several ways. At least some are as follows. First, a critique of one publication by some other(s) in the aforementioned tradition. Second, a critique of more than one publication by some such other(s). But the first of these, would possibly face the kind of question being addressed here now. It would avoid facing it, only if the author(s) concerned had either produced just one publication, or produced just one worth critiquing. But either way, it would be unusual. The present author is not aware of any actual examples of

either; except for possibly a relatively small number of former graduates. Besides, it is perhaps not obvious, what for present purposes, non-arbitrarily counts as being worthy of critique. Indeed, it is presumably because this may not be obvious to all who are sufficiently familiar with Hayeks' publications in politically-related theory, that at least some of them might ask the question raised above (in the first paragraph).

If however, in order to satisfy the (aforementioned) aim, of offering some critique of the (so-called) liberal tradition, a critique is provided of more than one publication by some author(s), it is not obvious that such a question could be thus answered any less arbitrarily. There is more than one reason for this. One is as follows. Unless all the publications by the author(s) concerned are critiqued (and whether or not this can be done will depend on the number of publications involved) then the problem (again) arises of justifying non-arbitrarily the choice of those that are indeed critiqued. And as just suggested, it is unclear that this can be done by appealing to some non-arbitrary notion of what is (not) worth critiquing. For again, it is equally unclear, that there can be any such notion that is non-arbitrary. Also, there would be the problem of justifying non-arbitrarily, the choice of author(s) critiqued. It is not obvious that this is possible. As it is no more obvious that a non-arbitrary definition of some-worthy-of-critique-author(s) can be given. So, perhaps the only way to avoid the latter (suggested) arbitrariness would be to critique all the relevant authors. In the case of a thesis of this prescribed length, this, at best, would be hard. For it would involve critiquing every past and present author in the (so-called) liberal tradition. Or at least it would involve critiquing all such authors known to the present author. But there are too many of them to make this task realistically achievable in what follows, or indeed perhaps in a finite lifetime. This task would be made no easier by the fact that the boundaries of the liberal tradition (like those of perhaps all political traditions) itself are (arguably) fuzzy. So, it may be hard (if not impossible) to non-arbitrarily define where liberalism begins and ends. Hence, it may be impossible, to non-arbitrarily calculate the exact number of past and present liberal authors, even given an infinite lifespan. Indeed, as A. Heywood (1992 pp15-18) notes:

“The term ‘liberal’ has been in use since the fourteenth century but has had a wide variety of meanings. ...Liberalism cannot always be easily distinguished from rival...political ideologies...The character of liberalism [has] changed...Liberalism became increasingly conservative...Liberal ideas...could not stand still...progress...led liberals to question, and...revise, the ideas

of...liberalism...This...led to...[different]...traditions of thought within liberalism...as a result...liberalism is an...ideology, embracing contradictory beliefs...”.

Heywood (1992 p18) goes on to say: “ There is, nevertheless, an underlying coherence...at the heart of liberal thought...”. It will, however, be argued at various points in what follows, that there is insufficient evidence of coherence at the heart of Hayeks’ thought, underlying or otherwise. But the essential point here is this.

If the present choice of The Mirage of Social Justice as the (main) subject matter for critique is arbitrary, it is no more arbitrary than any other possible choice(s) of critique that have been considered so far would (have) be(en). Or at least, this is so, given that one present (aforementioned) aim, is to offer an example of a critique of the (so-called) liberal tradition. For if and at least to the extent that, what has just been said (in the last two paragraphs) about some certain other possible choices(s) of critique is correct, then the present choice of The Mirage of Social Justice, would seem to be no more of an arbitrary way of trying to satisfy that aim, than would be any other such possible choice(s).

Besides, a more general point may be made here. This point concerns a certain arbitrariness of choice(s) perhaps inevitably involved in producing any written work that is finite in length. For any such work will have some general subject mater(s). The general subject matter of the present thesis for example may be referred to as: Politically-related theory. But ultimately, no choice(s) of any general or indeed particular subject matter(s) may be non-arbitrarily defensible. Furthermore, this is so, for essentially the same reasons why the choice of The Mirage of Social Justice as the (main) subject matter for the present critique, has, in effect already been suggested to be no more or less non-arbitrarily defensible, than some certain other possible (aforementioned) choice(s) would (have) be(en). These reasons have already been given. So, for the sake of brevity, at this point, no more will be said about them than this. Essentially the same line of reasoning, which may be used to try to show, that the present choice of The Mirage of Social Justice as the (main) subject matter for critique is arbitrary, may be applied (equally as well or badly) to try to show that some certain other possible (aforementioned) choice(s) of author(s) and/or publication(s) and/or subject matter(s) would (have) be(en) just as arbitrary. Given this, and if again the former choice is arbitrary, it is only arbitrary, for the

same reasons, and so in the same sense(s) that any such latter (aforementioned) choice(s) would inevitably (have) be(en).

Finally, it may be recalled, that in some previous sentences (see p19-20) the phrase ‘(so-called) liberal tradition’ appears. The ‘so-called’ appears in brackets in this phrase for a reason. An indication of what this reason is, has already been given. For, it has already been suggested, (on page 20) that it may be hard (if not impossible) to non-arbitrarily define where liberalism begins and ends. And this suggestion, for reasons hopefully clear by now, can be used as a (partial) basis for justifying (at least what may seem to be) the arbitrary choice of The Mirage of Social Justice as the (main) subject matter of the present thesis. So, the strength of the way(s) of justifying it used so far, depend(s) (partly) on that suggestion itself being true, or at least defensible. Hence, perhaps it may be apt here, to try to show that it is at least defensible, even if it is not possible to demonstrate conclusively that it is true. After all, Heywoods’ aforementioned claim, to the effect that liberalism has ‘an underlying coherence’, may give reason(s) to doubt that it can be conclusively demonstrated. So, even more so perhaps, might R. Eccleshalls’(1984, p38) claim that his “...aim is to show that there is a distinctive, relatively coherent liberal viewpoint”. Yet, what Eccleshall himself says elsewhere, might be taken to imply, that perhaps the most distinctive thing about any liberal viewpoint is that it will ultimately turn out to be relatively incoherent. For although Eccleshall (1984, p49) goes to some lengths to “...sharpen the difference between liberalism and...conservatism and socialism...” he (1984, p50) grants that

“...from an historical perspective we can treat liberalism as a succession of [different] strategies...[and that]...the history of liberalism is [so] rich and varied. Themes common to liberals of different generations are not [therefore] immediately apparent”.

And though in his very next sentence, Eccleshall, (1984, p50) suggested that “...the identity of the ideology is established through an examination of the varieties of English liberalism...”, in the final section of the same chapter, he (1984, pp70-71) contends that

“...rival political programmes have often been constructed by means of raids upon ideas...initially formulated by liberals...[and that] Liberalism...since its inception, is especially vulnerable to this sort of ideological pillage...and...the [twentieth]...century has seen a convergence of Western liberalism and socialism”.

Again, some ten years later, Eccleshall (1994, p55) has this to say. "Now, as in earlier centuries, those whom we [legitimately] identify as liberals may not describe themselves as such". This may be taken to imply, that liberalism is so ill-defined, that it is more than possible to be a (so-called) liberal without even knowing it. Eccleshall (1994, p56) then continues as follows. "The free market, like the idea of liberty...[is endorsed by liberals]...and is one of those slippery concepts that has been put to various uses". This again may be taken to imply, that the slippiest concept of all is liberalism itself. It is true at least, that the notion of the free market is one cherished not only by so-called 'liberals'. Indeed, as Eccleshall (1994, p56) puts it "...liberals...and...conservative[s]...have used it...".

In the next paragraph however, Eccleshall (1994, p56) echoes his own words of some ten years previously, stating that "socialists can with [even] greater legitimacy claim to have inherited the mantle of liberalism". Further on, Eccleshall (1994, p56) refers to

"... 'market' and other forms of socialism...[having]...been a feature of liberal thinking...[consequently]...One criticism of...liberalism...was that it was socialist...The...charge is...made...[therefore]...that the [liberal] doctrine...became indistinct and incoherent".

After explaining why he believed that charge to be false, Eccleshall (1994, p57), interestingly goes on to say this.

"A more plausible view is that...socialists, with...attachment to economic competition, are liberals in disguise and that...[this]...will ensure the survival of the [liberal] doctrine...even though those engaged in the struggle [to help ensure the survival of it] may not be labelled liberal".

Now apart from perhaps doing little or nothing, to inspire confidence in Eccleshalls' (1994, p55) "...principle argument...that the coherence [and distinctive features] of liberalism...[can]...be detected...", the content of the quoted passage making up the last sentence, is somewhat reminiscent of a certain previous suggestion somewhat to the contrary. This previous suggestion (to recall) is to the effect, that due to the difficulty (and perhaps impossibility even) of defining non-arbitrarily what liberalism is, even some at least so-called liberals will not necessarily know if they are 'real' liberals or not. (And

if it is impossible to non-arbitrarily define it, they necessarily cannot know this). For, Eccleshalls' notion of socialists who are liberals in disguise, seems, on one plausible interpretation, to imply, that there are people who are believed by themselves and others, to be socialists, but who are really in fact liberals. Moreover, given that Eccleshall explicitly states that such people 'may not be labelled liberal' without adding 'except for by themselves' (or some semantically equivalent phrase), then such an interpretation is, if anything, only rendered all the more plausible. So if Eccleshalls' notion of socialists who are disguised liberals thus interpreted is right, it may be tempting to conclude, not only that some so-called socialists are really liberals without knowing it, but also that some so-called liberals are really socialists without knowing it.

But, whether or not, any temptation to conclude the latter should be resisted, will depend upon whether or not 'socialism' itself can be non-arbitrarily defined. If it can, it should not be. However, if it cannot, it should be. No attempt to settle this issue will be made here. For it, at best, would be of merely indirect relevance to do so. Hence, no more will be said about it here than the following.

Any conclusion, to the effect that some so-called liberals are really socialists, necessarily presupposes that a non-arbitrary definition of 'socialism' is possible. On the face of it at least, it may appear to be just as risky to simply presuppose this, as it would be to simply presuppose that a non-arbitrary definition of 'liberalism' is possible. Indeed, V Geoghegan (1994, p91) says this.

"The key problem in defining socialism...is that of adequately...showing what unites socialists without minimising the tremendous differences that separate them... 'essential' characteristics will be few because once one starts eliminating those many areas over which socialists disagree, relatively little common ground will remain".

Geoghegan (1994, p92) then goes on to suggest this.

"Any attempt to provide a definition of socialism...is inevitably going to involve an element of compromise. It is, in other words, necessary to have a certain definitional modesty. It will not be possible to produce a definition of socialism that does full justice to similarity and difference; generalities will have to be qualified (as in 'this of course does not apply to socialism brand X'); saving phrases will constantly [have to] appear (such as 'most socialists', or 'there was a



tendency among socialists', or 'socialists by and large'). So long, therefore,...a degree of flexibility is employed, it will be possible to make general statements about socialism without assuming an underlying essential identity".

If Geoghegan is right, and if it is not possible to non-arbitrarily define 'liberalism' either, then it would seem to make no more or less sense to make a claim that necessarily presupposes a non-arbitrary definition of 'socialism', than it would be to make one that necessarily presupposes a non-arbitrary definition of 'liberalism'. Hence, it ultimately, would appear to make no more or indeed less sense to suggest that some (so-called) 'liberals' are 'really' socialists, than it would be to suggest, as Eccleshall does, that some (so-called) 'socialists' are 'really' liberals. Given this, a still further conclusion may be drawn. It is as follows.

Assuming that due to the fact that 'socialism' cannot be non-arbitrarily defined, in at least the sense that, the boundaries of socialism cannot be definitively identified in a way that would show what essentially distinguishes it from (so-called) liberalism and/or some other political ideologies, then this apparently provides a plausible explanation as to why Eccleshalls' claim that some (so-called) 'socialists' are 'really' liberals may be true. For if the boundaries of socialism cannot be thus defined, then it is perhaps relatively easy to understand, on the basis of that alone, how and why some so-called 'socialists' are really liberals. It is, apparently on that basis alone then, perhaps equally easy to understand how and why some people who are really liberals can wrongly believe themselves to be socialists. But, there are problems with this. They furthermore, are closely related. The first has been cited already. And it is (to recall) simply the following.

The explanation just suggested, as to why Eccleshalls' aforementioned claim (that some (so-called) 'socialists' are liberals) may be true, depends for plausibility on the acceptability of the premise, that 'liberalism' can be defined non-arbitrarily, in at least the sense that it has been assumed already, that socialism cannot. In other words, that suggested explanation, depends for plausibility, upon the premise that 'liberalism' can be defined, so as the boundaries of it, can be definitively identified in a way that would show what essentially distinguishes it from (at the very least) socialism and (ideally) any other political ideologies also. However, for it to be possible to thus define 'liberalism', it would necessarily also need to be possible, to define 'socialism' in a way that would definitively show what essentially distinguishes the latter from (at the very least)

liberalism, and (ideally) any other political ideologies as well. Initially, this may seem surprising. But, in order to non-arbitrarily define 'liberalism' in the way just suggested, it would be necessary to thus define, not only where the boundaries of liberalism begin and end, but also thus define where the boundaries of (at the very least) socialism and (ideally) any other political ideologies begin and end too. If this last point needs clarifying, this clarification may be provided by means of an analogy.

Suppose it is claimed that there are two particular countries. Also suppose, that one is called X, and the other is called Y. Again suppose, that X and Y, are generally thought to be immediately next to one another. Hence, it is generally thought to be unnecessary, to travel through a third country in order to get to X from Y, or vice-versa. But now further suppose, that the borderline between X and Y, has not been clearly and non-arbitrarily defined. Or at least, let it be supposed, that it has not been thus defined to the satisfaction of at least most persons. Consequently, at least some such persons, are uncertain whether they themselves, and/or certain others, live in X or live in Y. Now, in order to remove their uncertainty, it would be necessary to non-arbitrarily define, the relevant borderline to their satisfaction. This however, would necessarily involve, not only thus defining where X begins and ends, but also where Y begins and ends also. Indeed, under the circumstances just imagined it would be logically impossible to thus define X, without thus defining Y also; and indeed vice-versa.

If the analogy just given is appropriate, then so too are the following conclusions. Given that 'socialism' cannot be defined, in a way that non-arbitrarily distinguishes it from 'liberalism' and/or any other political ideologies, then this would, at best, only apparently provide a plausible explanation as to why Eccleshalls' aforementioned claim that some (so-called) 'socialists' are 'really' liberals may be true. Indeed, given that 'socialism' cannot be thus defined, this would provide a still more plausible explanation as to why that claim of Eccleshalls' may well be false. For unless the boundaries of socialism, can be identified in a way, that would show definitively where socialism begins and ends, then ultimately, (and at least as far as anyone could possibly tell) there would be no (objective) basis upon which to understand how and why some so-called 'socialists' are really liberals. Neither would there be any (objective) basis, upon which to understand, how and why some people who are really liberals can wrongly believe themselves to be socialists. This is because, without any definitive, objective basis for deciding where socialism

begins and ends, then it is entirely a matter of subjective point of view, firstly, whether or not socialism in any meaningful distinctive sense(s) exists at all, and if it does, where the boundaries of it begin and end. But if the boundaries of it are purely a subjective matter, then the boundaries of it, can be as more or less extensive, as anyone subjectively sees fit. For this reason alone, there would be no objective basis for calling any so-called socialist 'really a liberal', and there would necessarily be no such basis, for believing that there are persons who are really liberals who mistakenly believe themselves to be socialists. Yet, the apparent plausibility of the explanation offered above, as to why Eccleshalls' claim that some so-called 'socialists' are really liberals may be true, rests (partly at least) on one particular assumption. That particular assumption, it will be reminded, is this. Socialism cannot be non-arbitrarily defined. So, there are or can be, some people who are so unwittingly confused as to what socialism 'really' is, that they may believe wrongly that they are socialists, whereas they really are, or might be, liberals. Now, apart from being unconvincing for the particular reasons just given (in this paragraph), there are other reasons to doubt the plausibility of any explanation as to why Eccleshalls' aforementioned claim (that some so-called 'socialists' are actually liberals) may be true, provided that explanation is based on the assumption that 'socialism' cannot be non-arbitrarily defined. They are (or at least include) the following.

The assumption that 'socialism' cannot be non-arbitrarily defined is, at least on the face of it, only as plausible (or implausible) as the assumption that 'liberalism' cannot be. So, any explanation as to why Eccleshalls' claim (last cited in the previous paragraph) may be true, that is based on the former assumption, is only as good or bad an explanation, as a (in the relevant sense) similar one based on the latter assumption. For, if it is plausible to suggest that some liberals (can) mistakenly believe themselves to be socialists, because 'socialism' cannot be non-arbitrarily (and hence is too ill-) defined, then it is (at least on the face of it) equally plausible to suggest that some liberals (can) mistakenly believe this, because 'liberalism' cannot be non-arbitrarily (and hence is too ill-) defined. It is only if, it is arbitrarily simply assumed, that 'liberalism' can be thus defined, whereas 'socialism' cannot be, might it perhaps be suggested otherwise.

But even on the latter (and for reasons already given, logically impossible) assumption, if there are liberals who wrongly believe themselves to be socialists, the true explanation for this, would (at least in part) necessarily still have to be, that such liberals are as much (if

not more) confused as to what the true nature of liberalism is, as they are about the 'true nature' of socialism. (Indeed, on the latter assumption, socialism would not, in any objective sense, even have a true nature). For, it is one thing to establish, that the true nature of liberalism can be non-arbitrarily defined in a way that non-arbitrarily distinguishes it from all other political ideologies, but entirely another to establish that every liberal will know and understand what that non-arbitrary definition is. Also, another point is worth adding here. Even if it is instead assumed that both 'liberalism' and 'socialism' can be non-arbitrarily defined in a way that non-arbitrarily distinguishes them, not only from each other, but also from all other political ideologies, although this would be to bypass the logical problem(s) mentioned earlier, arising from the assumption that only one of them (liberalism, say,) can be thus defined, it would still be the case, that there would be (on the face of it at least), two equally plausible, albeit inevitably incomplete explanations, as to why some liberals may mistake themselves for socialists. One would be, that they may still misunderstand the true nature of socialism, as they do or may not comprehend the relevant non-arbitrary definition. The other would be, that they may still misunderstand the true nature of liberalism, as they do or may not comprehend the non-arbitrary definition of liberalism. Each, considered by itself, is inevitably and necessarily incomplete. For, as already indicated, if there are any liberals who mistake themselves for socialists, they necessarily must misunderstand the true nature of liberalism. And by dint of the same logic, they must necessarily misunderstand the true nature of socialism also. So, both of the latter aforementioned explanations are needed to adequately explain any such (potential) mistake. However, both considered together, would equally adequately explain why some socialists may mistake themselves for liberals. Hence, there is, purely to that extent at least, no non-arbitrary grounds for believing, that the latter mistake occurs any more or less often than the former and converse one, if indeed either occur(s) at all.

But, again, there would seem to be sufficient grounds to doubt that either 'socialism' or 'liberalism' can indeed be non-arbitrarily defined in a way that non-arbitrarily distinguishes them from each other, as well as from other political ideologies. And the practice of using (say) the term 'liberal' rather than '(so-called) liberal' serves to disguise that fact. This point may be underlined further as follows.

The aforementioned A Heywood (1992, p18) states that: "There is...at the heart of liberal thought...a fundamental commitment to...freedom...". Hayek would applaud this

statement. Indeed, in The Mirage of Social Justice, the latter maintains that "...it is very important to...maintain a free society" [M. S. J. p106]. But the problem is, that a fundamental commitment to an analysis of the 'true' meaning of the word 'freedom', may well reveal, that although (so-called) 'liberals' champion the cause of 'freedom', so do some conservatives, and so too do some socialists. So, the difference between these conservatives, socialists, and (so-called) liberals, is not to be understood in terms of a disagreement over whether or not 'freedom' is desirable. For they all agree that it is. Rather, it is best understood in terms of a disagreement over how best to achieve and/or preserve it. Hence, a fundamental commitment to freedom, should not (necessarily) be taken to denote a clear, definite unambiguous, and internally consistent political agenda. (As will be presently shown, it certainly should not necessarily be taken to denote this in Hayeks' particular case). The aforementioned disagreement is described by R. Eccleshaw (1984 pp31-32) as part of an

"...ideological war of words...over a long historical period...at any given moment, focus [is] on a struggle to attribute different meanings to shared political terms. The concept of freedom, for example, is much in vogue...Its precise meaning depends upon the particular ideological lens through which it is viewed. Conservatives [have] use[d] the word...socialists [have] use[d] it...Each gave a particular ideological twist to, and so radically altered the meaning of, the concept...It is possible to trace the development of a particular ideology through the various meanings which its subscribers have assigned to specific concepts...liberalism, for example, is often said to have been transformed by a change in the meaning of freedom. Early liberals tended, like modern conservatives, to equate freedom with minimum government; whereas their successors tend, like socialists, to believe that...liberty will be enhanced by...political control...such semantic changes may be dramatic enough to convey the impression of ideological incoherence. Viewed historically, a particular ideology may embody such conceptual variety that it appears to lack a core identity; indeed, some commentators argue that it is futile to [even so much as] search for such an identity".

From the content of the last quoted passage, it may be tempting to infer, what by now might seem to be an obvious conclusion. And that conclusion it this. The word 'freedom' is a fluid term, which in the history of political discourse, has been used to peddle a variety of different, (and arguably at least) mutually conflicting ideological agendas. So, as it has been thus used at any rate, 'freedom' is a word, the meaning of which, is (arguably at least) no more clearly defined than the boundaries of the liberal tradition itself. Indeed, the aforementioned A Haworth (1994, p3) refers, on one plausible interpretation at least, to a certain kind of set of ideas, that have been embraced by all (so-called) liberals (Hayek included) as "...any body of...ideas in which central importance is

attached to freedom”. Haworth, then goes on to suggest that these ideas are ‘libertarian’ in one sense of that word. If Haworth is right in this, then in one perhaps vague and general sense, Hayek was a libertarian. But, Haworth (1994, p3) also claims that “ ‘libertarianism’ is a word with two meanings...[and that]...libertarianism in...[this]...second sense...maintain[s] three central theses”. Now, it would be of no immediate relevance here, to explain what Haworth believes these theses are. It will be sufficient at this point, to say simply that, all three of them have been embraced by some (so-called) liberals; and at least two by Hayek himself. Here however, it may be added, that all three, considered together at any rate, place key importance on peddling the notion of freedom.

Now, again, if Haworth’s suggested second sense of ‘libertarianism’ is right, if he is also right to claim that it maintains the aforementioned three theses, and finally if it is also correct to say, that a sufficient condition for being a liberal is an adherence to at least one such theses, and/or an adherence to Haworth’s suggested first sense of ‘libertarianism’, then the following further conclusions may be drawn.

First, all (so-called) ‘liberals’, including Hayek, are ‘libertarians’ in Haworth’s first sense of that word. And second, at least some (so-called) ‘liberals’, including Hayek, are ‘libertarians’ in Haworth’s second sense of it. Third, all (so-called) ‘liberals’ who are ‘libertarians’ in Haworth’s first sense of that word are so, (partly at least) because all (so-called) ‘liberals’ champion the cause of freedom. Therefore and fourthly, Hayek is a liberal as well as a ‘libertarian’ in Haworth’s first sense of that word because freedom is a cause he champions. Fifth, some (so-called) liberals are ‘libertarians’ in Haworth’s second sense of that word, (partly) because they adhere to at least one of the aforementioned theses, in an attempt to champion the cause of freedom. Therefore and sixthly, Hayek is a liberal, as well as a ‘libertarian’ in Haworth’s second sense of that word, because he adheres to at least one such thesis, in an attempt to champion that cause. Interestingly however, Haworth (1994, p5), goes on to say

“...readers should take warning...they should take particular warning that I am absolutely not against freedom. On the contrary, I am for it. Libertarians (in the second sense of the word) think they are for freedom but they don’t know what freedom is. In reality, their doctrine is so contrary to freedom that it ought to be entitled ‘anti-libertarianism’”.

From the content of this last quoted passage, the following conclusions may be legitimately drawn, (still assuming that is, the sufficient conditions for being a liberal suggested in the last paragraph).

Firstly, Haworth is a 'libertarian' only in his own first sense of that word. Secondly, if the claims that Haworth makes in the last quoted passage are correct, then his two senses of 'libertarianism' are mutually incompatible. Thirdly, all liberals, including Hayek, if only in that they are 'libertarians' in Haworths' first sense, champion the cause of true freedom. Fourthly, some liberals, including Hayek, in that they are 'libertarians' in Haworths' second sense, mistakenly believe themselves to be championing the cause of true freedom. Therefore, and fifthly, some liberals, including Hayek, simultaneously hold two mutually incompatible notions of what freedom is; one right, the other wrong. Sixthly, hence some liberals, including Hayek, are genuinely confused about what freedom really is.

What all this in turn suggests is at least two things. First, within the (so-called) 'liberal' tradition, there is no more of a clear idea of where the boundaries of freedom begin and end, then there is of where the boundaries of that tradition itself begin and end. (Indeed, perhaps it is (partly at least) because the boundaries of the former have not (within that tradition) been clearly identified, that the boundaries of the latter itself have not been either. Secondly, if the choice of the present critique is somewhat arbitrary, then, for reasons hopefully clear by now, this may well have something to do with the inherently arbitrary nature of the general subject matter of it.

Finally, it will be reminded, that one aim of this thesis, is to offer some critique of the (so-called) liberal tradition (see also page, I). Now, in view of this, a certain question may be raised at this point. It is this. How can one hope to satisfy the aim of critiquing some (so-called) general subject matter, if the boundaries of that (so-called) general subject matter itself, cannot be clearly and non-arbitrarily identified? But this question misses the point. For, part of the aim of the present critique, is precisely to show that the (so-called) general subject matter of it may not be clearly and non-arbitrarily identifiable, as indeed has been argued here. (The themes of this sub-section will be explored further in 3.12).

## **1.2.WHY 'THE MIRAGE OF SOCIAL JUSTICE' MAY NOT BE SUCH AN ARBITRARY CHOICE.**

But the present particular choice of critique can be justified more directly, hence perhaps more substantially, and in a way that will hopefully render it less (if not completely non-) arbitrary. Moreover, this hopefully more substantial justification, is, for reasons eventually explained, only made possible in view of something about the general nature of (the content of) at least most of Hayeks' publications in politically-related theory. More specifically, it is only made possible, because the general nature of those publications exhibit some noticeable and significant degree of thematic constancy. Or at least they do so, if a sufficiently detailed comparison is made of the content of them. So, in order to render persuasive any further justification of just one of them as the (main) subject matter for the present critique, it may be apt here, to offer something by way of illustrating the aforementioned thematic constancy. Or again, at least this may be so, given that it is precisely such thematic constancy which serves as the sole basis of the particular kind of further justification eventually offered here. Furthermore, illustrating the aforementioned thematic constancy, may result in discussion that is longer and more detailed than might be expected. This is because, arguably the best and perhaps only effective way of illustrating it, is by giving some explicit and clear examples of it, partly in the form of a sufficiently detailed analysis of passages quoted from a number of the relevant original texts.

Finally, to forestall a possible objection, it would not be enough in order to render as persuasive as possible, the aforementioned (further) justification, to simply state that there exists some noticeable and significant degree of thematic constancy of the kind already suggested. For, as it will be shown presently, there is some room for debate as to exactly how pervasive this thematic constancy is. This in turn is due perhaps to certain differences of emphases and arguable inconsistencies even, in (some of) the content of Hayeks' aforementioned politically-related publications. And again, this will only become evident given a sufficiently rigorous and relevant kind of comparative analysis. So, although it would make for a shorter and less detailed discussion to do so, it would not necessarily be inappropriate to do something by way of such an analysis, in order to address (at least some of) the aforementioned differences of emphases, arguable inconsistencies, as well as the thematic constancies underlying them.



### **1.3. HAYEKS' AGENDA: DIFFERENCES OF EMPHASES, ARGUABLE INCONSISTENCIES, AND (UNDERLYING) THEMATIC CONSTANCIES.**

To begin with, The Mirage of Social Justice apart, the present author is familiar with several of Hayeks' other publications in politically-related theory. Some of these are articles. Others are pamphlets. The rest are books. One of the articles is called: 'The Trend of Economic Thinking' (1933). Another is called: 'Economics and Knowledge' (1937). Yet another is called: 'Freedom and the Economic System' (1938). A further one is called: 'The Economic conditions of Inter-State Federation' (1939). And one other is: 'The Use of Knowledge in Society' (1945). The Pamphlets include the following. A Tiger by the Tail: The Keynesian Legacy of Inflation (1972). Full Employment at Any Price? (1975). Choice in Currency: A Way to Stop Inflation (1976). The Denationalisation of Money (1976). 1980s Unemployment and the Unions (1980). And: Knowledge, Evolution and Society (1983). Finally, the books include the following. Prices and Production (1931). The Pure Theory of Capital (1941). The Road to Serfdom (1944). Individualism and Economic Order (1948). The Constitution of Liberty (1960). Studies in Philosophy, Politics, and Economics (1967). Rules and Order (1973). New Studies: In Philosophy, Politics, Economics, and the History of Ideas (1978). The Political Order of a Free People (1979). Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy (1982). The Fatal Conceit, The Errors of Socialism (1988). The Trend of Economic Thinking (1991). And : The Fortunes of Liberalism (1992).

Now, for reasons already indicated (in (1.2)), and to be explained further presently, it may be appropriate here to quote the aforementioned A. Haworth (1994, p115) who says: "Hayek's last book, The Fatal Conceit, ...continued to pursue and elaborate upon the themes of his earlier work. In fact, Hayek's central concerns and positions remained remarkably constant throughout his long and productive life".

As already indicated, (in the last paragraph but one) in the four years or so following the publication of The Fatal Conceit, The Errors of Socialism, Hayek published at least two further volumes; one in 1991, the other in 1992, the year of his death. So, Haworth is quite wrong to refer to The Fatal Conceit, The Errors of Socialism as 'Hayeks' last book'.

But this inaccuracy apart however, the view expressed by Haworth in the above quoted passage, is one shared by the present author. Indeed, at least as far as Hayeks' career as a writer in the field of politically-related theory is concerned, the fact that a work he published in 1991, bears exactly the same title as an article he published some fifty-eight years previously in 1933, may be taken as indicating more than just (or not even) a coincidental similarity of terminology. Again, the title concerned is 'The Trend of Economic Thinking'. Furthermore, the trend of Hayeks' economic (as well as political and moral) thinking, did show a noticeable constancy from at least as far back as 1931 up until the time in 1992 when he could think no more. This however, is not necessarily to deny, that an assessment of all of Hayeks' aforementioned publications (and perhaps others) would leave room for some debate as to whether or not such publications, considered together, constitute (an attempt to provide) a unified, and internally consistent theoretical approach to political, moral, and economic issues. Indeed, given the number and volume of (at least some) such publications, it is perhaps inevitable that there will, at the very minimum, be a difference of emphasis in some of them in comparison to some certain others of them. In fact, one example of such a (suggested) difference of emphasis, may be given by reflecting with sufficient diligence upon the content of just two of the aforementioned publications. Furthermore, the more recent of these, The Mirage of Social Justice (1976), was published no longer than three years or so after the less recent of them, Rules and Order (1973). This perhaps is especially worth stressing. As it may be suspected, that if the published writings of some person(s) spanned a period of as long as sixty years or so, then any difference of emphasis (arguably at least) evident in some such writings that were published within the same (relatively short) three or so year period, might be taken as indicating the serious possibility of still more (pronounced) shifts of emphases becoming apparent as a result of a sufficiently diligent and more comprehensive analysis. This sufficiently diligent and more comprehensive analysis, might moreover, take into account all of the (at least relevant) published writings of the person(s) in question. The difference of emphasis between the latter two aforementioned publications in particular, is somewhat indicated by the fact that in the earlier of them, Hayek has more to say about what he calls: "The tenets of Cartesian rationalism" [R.O. p9], than is the case in the later of them. Furthermore, Hayek himself, suggests a difference of emphasis (or perhaps more accurately: emphases) between his The Constitution of Liberty (1960) on the one hand, and at least four of his later and aforementioned publications on the other. These latter publications, are (or at least include) the following. Rules and Order (1973).

The Mirage of Social Justice (1976). The Political Order of a Free People (1979). And: Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy (1982).

It may, at this point, and perhaps belatedly, be pointed out, that the most recent of the four publications just mentioned, is just a single volume edition of the other three (and originally) less recently published ones. The latter three, having been originally published as three separate books. Indeed, as may well be gathered by now. Moreover, it is in the preface of the just aforementioned 1982 single volume edition, that Hayek expresses a statement of relevance here. For, it is by means of this statement, that Hayek suggests the aforementioned difference of emphasis (or emphases) between The Constitution of Liberty (1960) on the one hand, and (at least) the four just cited and later publications on the other. This statement is as follows.

“Perhaps I should also again remind the reader that the present work was never intended to give an exhaustive or comprehensive exposition of the basic principles on which a society of free...[people]...could be maintained, but was rather meant to fill the gaps which I discovered after I had made an attempt to restate, in The Constitution of Liberty, for the contemporary reader the traditional doctrines of classical liberalism in a form suited to contemporary problems and thinking. It is for this reason a much less complete, much more difficult and personal but, I hope, also more original work than the former. But it is definitely supplementary to and not a substitute for it. To the non-specialist reader I would therefore recommend reading The Constitution of Liberty before...[reading]...the more detailed discussion or particular examination of problems to which I have attempted solutions in these volumes. But they are intended to explain why I still regard what have now long been treated as antiquated beliefs as greatly superior to any alternative doctrines which have recently found more favour with the public”  
[L.L.L. pXIX].

It is perhaps self-evident, how and why the statement making up the last quoted passage, is Hayeks’ (intended) way of suggesting or indicating the latter aforementioned difference of emphasis (or emphases) between The Constitution of Liberty (1960) on the one hand, and at least four of his later (and again aforementioned) publications on the other. If so, it is perhaps certain phrases included in it that makes this difference especially self-evident.

An example here may be, the way in which Hayek refers to the substantial content of the aforementioned 1982 single volume edition as "...meant to fill the gaps which I discovered [had remained] after... The Constitution of Liberty..."[L.L.L. pXIX]. For although this last quote is an edited and modified version of the original, nevertheless it (arguably, to say the very least perhaps) is a faithful (albeit partial) representation of how Hayek intended to characterize the role to be played by that same 1982 volume in relation to The Constitution of Liberty (1960). Given this, whatever Hayek intended the exact nature of that role to be, it is perhaps reasonably clear that he intended to say things in the former that he never said some twenty-two years earlier in the latter. Furthermore, such an interpretation of what Hayek intended here, can be somewhat vindicated by his reference to the former as "...definitely supplementary to and not a substitute for [the latter]..."[L.L.L. pXIX]. And, it is vindicated still further perhaps by what Hayek himself says in the very next sentence. For (to recall) in it he goes onto "...recommend reading The Constitution of Liberty before...[reading]...these volumes"[L.L.L. pXIX]. Again, it will be reminded, that as already in effect explained, the phrase 'these volumes' in the last quoted passage refers to the following three publications. Rules and Order (1973). The Mirage of Social Justice (1976). And: The Political Order of a Free People (1979). If moreover, there still is, at this point, any further need to vindicate the view that Hayek intended a difference of emphasis (or emphases) between the content of these latter three publications (when considered together at least) on the one hand, and the content of The Constitution of Liberty on the other, then his (aforementioned) description of all of them (thus considered at any rate) as comprising a "...more detailed discussion or particular examination of problems..."[L.L.L. pXIX] may well provide it.

However, neither would it be necessarily inconsistent with a certain previous claim, to grant that Hayek intended the difference(s) of emphasis (or emphases) in the kind(s) of way(s) just suggested. This previous claim, is, it may be recalled, the following. At least some of Hayek's aforementioned publications, considered together, constitute (an attempt to provide) a unified, and internally consistent theoretical approach to political, moral and economic issues. Indeed, if any vindication of this latter claim is needed, then effectively some has already been provided. For, it may yet again be recalled, that Hayek refers to Rules and Order (1973), The Mirage of Social Justice (1976), and The Political Order of a Free People (1979) as being "...definitely supplementary to and not a substitute for [his] The Constitution of Liberty (1960)..."[L.L.L. pXIX]. Moreover, if as already suggested

(in the last paragraph), this latter quoted passage, somewhat supports the view that Hayek intended the aforementioned kind(s) of difference(s) of emphasis (or emphases), then equally, and perhaps just as self-evidently, it somewhat vindicates a different but logically compatible view. This latter view, is that Hayek intended the four publications concerned here, (and implicitly alluded to in again the last quoted passage) to form (at least part of) some sort of unified, internally consistent agenda. Furthermore, sufficient familiarity with all four of them, will indeed reveal such an agenda to be concerned with issues of a political, moral, and economic nature. And that the last quoted passage, indicates that Hayek intended that such an agenda be not only (partly at least) made up of all four of them, but also that it be (part of) a unified, internally consistent theoretical approach, is perhaps all too obvious. Or it would be perhaps, to someone who came to accept, that one piece of written analytical work, cannot be intended to be 'definitely supplementary to' another, if the former was intended to be logically inconsistent with (and maybe even a logical refutation of) the latter. As to someone who accepted this, it would perhaps be equally obvious, that only if one such work is intended to be 'a substitute for' some other such work, can the former be intended to be logically inconsistent with (and maybe even a logical refutation of) the work it is an intended substitute for.

Again, whatever difference(s) of emphasis (or emphases) that may exist between the content of (at least some of) Hayeks' aforementioned publications and perhaps that of some other(s) besides, it is arguable that his essential methodology and fundamental epistemological position remained (by and large) constant until his death in 1992 and from at least as far back as 1952. (Although, as will be suggested presently, there is yet again some room for debate with regards to exactly how constant and consistent his epistemological position and methodology remained).

For example, it was in 1952 that one of his hitherto unmentioned books was published. This book bears the title of The Sensory order: An Inquiry into the Foundations of Theoretical Psychology. The content of the latter publication is based (at least partly) upon epistemological foundations that are somewhat Kantian in flavour. For a sufficiently rigorous analysis of it, will reveal a rejection of the idea that it is possible to have direct knowledge of the (or any external) physical world. So, no such world can be known as it is according to Hayek. Or again, such was Hayeks' view at least as far back as 1952. This view amounts to a rejection of Naïve Realism. However, some twenty-one years

later in 1973, Hayek can be found to be making claims that are not strictly consistent with a wholesale rejection of Realism of the 'Naïve' variety. He writes for instance of:

"The study of the relatively simple phenomena of the physical world, where it has proved possible to state the determining relations as functions of a few variables that can be easily ascertained in particular instances, and where as a consequence the astounding progress of disciplines concerned with them has become possible...which give us much insight into the general character of some phenomena..."[R.O. pp15-16].

Again, it is perhaps obvious why the content of the last quoted passage is not altogether consistent with a rejection of Naïve Realism. Or at least this will be so, to anyone sufficiently familiar with the relevant literature. Indeed, to those thus familiar, the content of the last quoted passage may seem more consistent with an acceptance of Naïve Realism than with a rejection of it. The kind of reference to 'the physical world' appearing in it, might for example seem particularly significant here. So may the inclusion in it of the suggestion that certain features "...of the physical world...can be easily ascertained..."[R.O. p15]. For anyone sufficiently familiar with the relevant literature, will be all too aware that the rejection of Naïve Realism involves rejecting (or at least doubting) the aforementioned notions that it is possible to have direct knowledge of the (or any external) physical world and that it is possible to know (any part of) it as it is. Furthermore, Hayek also makes claims which suggest, that by 1973, he favoured a rejection of Scientific Realism in preference to a wholesale rejection of Naïve Realism. These claims are as follows.

"The chief reason why modern...[people have]...become so unwilling to admit that the constitutional limitations on...[their]...knowledge form a permanent barrier to the possibility of a rational construction of the whole of society is...[their]...unbounded confidence in the powers of science. We hear so much about the rapid advance of scientific knowledge that we have come to feel that all mere limitations of knowledge are soon bound to disappear. This confidence rests, however, on a misconception of the tasks and powers of science, that is, on the erroneous belief that science is a method of ascertaining particular facts and that the progress of its techniques will enable us to ascertain and manipulate all the particular facts we might want....The limitation of knowledge with which we are concerned is...not a limitation which science can overcome. Contrary to a widely held belief,...the powers of science are...limited by the...impossibility of ascertaining all the particular facts which we would have to know if its theories were to give us the power of predicting...events...science...[cannot]...enable...us to overcome the fact that no mind...can take account of all the...facts...Indeed, in its endeavour to explain...science encounters the...barrier of factual ignorance when it comes to apply its theories...it...will never produce...a full explanation...because we can never know all the...facts which according to these theories we would have to know in order to arrive at...concrete conclusions...But,

of course, we will never be able to...because science has no means of ascertaining all the...facts that it would have to possess to perform such a feat...another related misconception about the...power of science...is...that science is concerned exclusively with what exists and not with what could be. But...science consists largely...of...a study of what is not: a construction of hypothetical models of possible worlds which might exist...All scientific knowledge is knowledge not of...[necessary truths]...but of hypotheses [some of] which have so far withstood systematic attempts at refuting them”[R.O. pp15-17].

The content of the last quoted passage, may well seem then, at the very least, to be somewhat reminiscent of certain objections sometimes levelled at Scientific Realism. These objections have, unsurprisingly perhaps, been expressed by several writers in several different ways. Some such writers include cultural and/or literary theorists as well as philosophers. And some examples of these are the following. M. Foucault (1972), J.F. Lyotard (1984), and P.K. Feyerabend (1975, 1978, 1987). For at least some of these writers, Realism of any sort is unacceptable. Such writers moreover, contend that ‘truth’ is no more than a linguistic construct. Furthermore, science is claimed by them to be a language game, and scientific truth is only truth in terms of some scientific language game. This view is opposed but nonetheless expressed as follows by C. Norris (1996 pp 167-168),

“...realism of any variety is an option scarcely to be thought of...it has become an article of faith... ‘truth’ is a wholly linguistic...construct, and ‘science’ just the name that attaches to one (currently prestigious) language-game or discourse. Hence...a...disregard for ideas and values like truth, rationality, or progress ...concerning itself with...undecidables, the limits of precise control... incomplete information...[the]...nonrectifiable , and...languages’ reserve of possible utterances...[being]...inexhaustible...therefore it is no longer a question of truth ...but rather a question of the sheer...power of [per]suasive utterance, that enables scientists to...produce proof...so...the best (indeed the only) criterion for scientific ‘progress’ is that which seeks to...judge...without criteria...with all those authoritarian constraints imposed by notions of scientific ‘truth’ and ‘method’...what results from...a deep suspicion of science...takes the form of ...questing-back into...various...epistemes...or structures of linguistic representation that have characterised the natural...sciences...Their history is marked...by a series of ruptures, or ‘epistemological breaks’, which make it strictly impossible to compare them in point of scientific truth, accuracy, scope, or explanatory power. The only meaningful comparisons to be drawn are those that operate...between the various disciplines that constitute the field of accredited knowledge at any given time...chief interest is...most deeply bound up with...dominant (period-specific)...discourse...”

In the last quoted passage, there are several phrases, which (more or less at least) attach the same significance (or perhaps more accurately: insignificance) to the scientific

enterprise as certain phrases appearing in the last passage quoted (in the previous paragraph but one) from Hayeks' Rules and Order. For instance, the reference by Norris to 'science' as 'just the name that attaches to one (currently prestigious) 'language-game'' is rather reminiscent of Hayeks' aforementioned claim to the effect that modern people have an "...unbounded confidence in the powers of science"[R.O. p 15]. Similarly, the references by Norris to 'undecidables', 'the limits of precise control', and especially perhaps 'incomplete information' are, when read in appropriate context at least, likewise reminiscent of Hayeks' contention that "...the powers of science are...limited by the...impossibility of ascertaining all the particular facts..."[R.O.p 15]. Again, when read in appropriate context at least, the reference by Norris to the 'nonrectifiable' is reminiscent of Hayeks' claim that "The limitation of knowledge...is...not a limitation which science can overcome...because science has no means of ascertaining all the...facts"[R.O. pp 15-16]. Also, and yet again, when read in appropriate context at least, the references by Norris to a reserve of 'inexhaustible' possible linguistic utterances, 'various epistemes' and different 'structures of linguistic representation', are perhaps no less reminiscent of Hayeks' remarks about the "...construction of hypothetical [scientific] models of possible worlds which might exist..."[R.O.p 17]. Finally, and once again, if read in appropriate context, the references by Norris to 'various disciplines that constitute the field of accredited knowledge at any given time' and 'dominant (period-specific) discourse' somewhat resemble Hayeks' comments concerning "...scientific...hypotheses which have so far withstood systematic attempts at refuting them"[R.O.p 17].

What the content of the above passage(s) quoted from the work of Norris (1996), has in common then with (some of) the views of science expressed by Hayek in Rules and Order (1973) is this. Both (to state the very minimum) suggest that Scientific Realism is problematic. And this, (partly at least) on the grounds that scientific accounts change over time, and also (partly at least) on the grounds that such accounts are (arguably and) inevitably incomplete. Neither in the above passage(s) quoted from the work of Norris, nor in the aforementioned views of science expressed by Hayek, is there any indication of a willingness to accept a view according to which, although such accounts change, science moves ever closer to discovering the true fundamental nature of reality as time goes by. Indeed, Hayek states, that it "...is a...misconception about the aim...of science...that science is concerned exclusively with what exists..."[R.O.p 16]. (The emphasis in this last quoted passage, is the present authors' not Hayeks'. It furthermore, has been inserted



into it in order to underline a certain distinction. This distinction, is between two quite different but perhaps easily confused claims made by Hayek. One is the claim (first cited in the last paragraph but two) to the effect that there is a limit to the power of science to wholly concern itself with what exists. The other is the claim that it is not the aim of science to thus concern itself anyway; which, it may be thought, is a pretty good job, since if it is powerless to so concern itself, then it is bound to fail to satisfy such an aim).

However, the claim in the last quoted passage, is inconsistent with what Hayek contended some twenty-nine years earlier. For, in a certain aforementioned book published in 1944, Hayek refers to "...all the sciences...dealing...with...the disinterested search for truth..."[R.S. p19]. And, in the eleventh chapter of that latter publication, he effectively argues, that such a search cannot be conducted efficiently, except under certain conditions. What these conditions are, are of no (immediate) relevance here. But what is of (immediate) relevance, is, what would seem (on one perhaps plausible interpretation) Hayeks' (once implicit) view that a 'disinterested search for truth' is, in principle, neither impossible nor necessarily bound to end in failure. For given that Hayek indeed intended such a view to offer an accurate portrayal of the natural scientific enterprise in particular, then to that extent, it is a view that is not obviously consistent with a rejection of Scientific Realism.

Purely on the basis of what has been said so far, it may be tempting then, to draw the following conclusions. First, at one stage at least (in about 1944), Hayek subscribed to, or at any rate did not necessarily reject, Scientific Realism. Second, at least at one other later stage (in about 1952), Hayek rejected Naïve Realism. Third, at least at one other still later stage (in about 1973), Hayek did not altogether reject Naïve Realism, but neither (to put it mildly perhaps) did he altogether accept Scientific Realism. (The word 'about' appears in brackets in each of the last three sentences, to allow for the possibility, of Hayeks' relevant view(s) changing sometime between his first formulating it (/them) and it (/them) being published).

Now, given sufficient philosophical ingenuity, it may be possible to persuasively reject Naïve Realism, and yet at the same time, accept some meaningful sense of Scientific Realism, without encountering any necessary contradiction. Whether or not this is possible however, is an issue that cannot be settled without a more detailed philosophical

discussion of a relevant kind, than it would be appropriate to engage in here. For it is not the present aim to try to convincingly (or even for that matter, unconvincingly) settle such an issue. So, naturally, it would be of no (immediate) relevance to attempt to do so. Therefore, simply for the sake of argument, it will be simply assumed here, (perhaps precariously of course) that it is possible, without encountering any necessary contradiction, to accept some meaningful sense of Scientific Realism, and at the same time reject Naïve Realism. If this is simply assumed, then, to that extent at least, there is no necessary inconsistency between Hayeks' position as of (about) 1944, and his position as of (about) 1952.

At this point, an objection may be raised. For, it may be argued, that to simply make the assumption just suggested (in the last paragraph) is too precarious. To do so, (the argument may continue) would amount to a suspiciously convenient cooking of the books; or at least it would do so, given the present ultimate purpose. This purpose, is (to recall) to try to show, that the choice of Hayeks' The Mirage of Social Justice as (the main) subject matter for the present critique, can be justified (at least partly) on the grounds, that most (if not all) of (the content of) Hayeks' publications in politically-related theory, when considered together, exhibit(s) some noticeable degree of thematic constancy. (Or again, at least this is or would be the result of a sufficiently detailed analysis of an appropriate sort. See also (1.2) above. Although, exactly how detailed this sufficiently detailed analysis would need to be, is another question). So, it may be apt at this point, to reiterate that (unsurprisingly perhaps) the strategy being used here in order to try to fulfil this purpose, is (by means of such an analysis) precisely to exhibit that (aforementioned) thematic constancy to a significantly noticeable degree. This strategy, (at least as it is being applied here) involves attempting to show, that a sufficiently detailed comparative analysis of (the content of) most if not all of Hayeks' aforementioned publications, when considered together, reveals an attempt to provide a unified, internally consistent theoretical approach to political, moral, and economic issues. It does not involve an attempt to show that Hayek was successful in attempting to provide this.

Besides as far as the present author is aware, if it is not immediately obvious that a rejection of Naïve Realism can be rendered consistent with an acceptance of a meaningful sense of Scientific Realism, it is no more immediately obvious that it cannot either. So, if it is precarious to simply assume that it can, equally, it is precarious to simply assume the

opposite also. Hence, perhaps the most advisable stance here, would be to simply assume neither. But, to simply assume neither here, as far as the (aforementioned) immediately present purpose is concerned, would make no significant difference. For, simply assuming neither here, would serve that purpose just as well, as simply assuming that a rejection of Naïve Realism can be rendered consistent with an acceptance of some kind of Scientific Realism. This is because, to simply assume neither, would, in effect be to simply assume the following. As far as can be gathered, a rejection of Naïve Realism, has not been shown to be necessarily inconsistent with any conceivable and meaningful form(s) of Scientific Realism.

Here, it may be reminded (yet again), that the (aforementioned) immediately present purpose is this. The substantiation of the claim that (the content of) most if not all of Hayeks' previously cited publications, (potentially) comprise some (intended) thematic constancy in a particular sense. Moreover, this is in the sense that he arguably intended (the content of) most if not all of them, to represent (part of) an attempt to provide an internally consistent theoretical approach of some kind. Given this, and given also the simple assumption that a rejection of Naïve Realism, has not been shown to be necessarily inconsistent with any or some conceivable and meaningful form(s) of Scientific Realism, then that assumption is itself no more necessarily inconsistent with (an attempt to achieve) that purpose, than is the equally simple, but different and more bold assumption, that a rejection of Naïve Realism is definitely not inconsistent with any or some meaningful form(s) of Scientific Realism. So, from all this it follows, that on the basis of either of those (simple) assumptions alone, it cannot be deduced that there is any necessary inconsistency between Hayeks' position as of (about) 1944, and his position as of (about) 1952.

It may be apt here, (again for reasons presently explained), to quote more passages, each one taken from one of the four aforementioned books published by Hayek during the period from 1973 to 1979. For between them, they indicate further constant strands of thought in Hayek's work at least throughout that period. Hayek (1979) for instance, rejects S Freud (1910, 1915, 1917, 1938). Exactly what it is about Freud that Hayek objects to, is however, of no immediate concern here. But what is clear, is that it is not the fact that Freud claimed that human actions can be explained in terms of the unconscious. This is evident from what Hayek (1973) says. For example,

“...most rules of conduct ...are observed in action without being known to the acting person in ...explicit ...form. ...this action is not the result of the acting persons being capable of ...stating ...such rules... Although such rules come to be generally accepted ...by example and imitation ...neither those who set the examples nor those who learn from them may be consciously aware of the existence of the rules which they nevertheless strictly observe ...in the learning of ...morals ...we are guided by rules [instilled in us] which we know how to follow but are unable to state ...so long as they are not articulated in words and therefore ...are not discussed or consciously examined” [R.O. p19].

Elsewhere, Hayek claims that “...all moral ...rules ...members of ...society obey, in part unconsciously...” [M.S.J. p27]. And in a somewhat similar vein he writes

“Rules for ...conduct ...were ...more often learnt [thus enabling those learning them] to do the right thing without [consciously] comprehending why it was [or is] the right thing, [to comply with such rules, thus people are] ...often served better by custom [rather] than by [conscious] understanding.” [P.O.F.P. p157].

Again, and no less explicitly, he contends

“There can ...be no doubt that many neural processes through which stimuli evoke actions do not become conscious because they proceed on literally too low a level of the central nervous system ...this is ...justification for assuming that ...[there are] ...neural events determining action to which no distinct conscious experience corresponds... If my conception is correct ...we are not aware ...of much that happens in our mind ...what we consciously experience is only a part, or the result, of processes of which we cannot be conscious ...we ...[are not] ...conscious of all ...which govern[s] our thinking.” [N.S. p45].

The four quoted passages in the last paragraph, between them, indicate then, a strand of (in a sense) Freudianism in Hayek’s writings from 1973 to 1979. But this is not the only other constant strand running through Hayek’s work during that time. Indeed, each of his aforementioned writings that were published during that period at least, provide still further evidence of an attempt by him, to present part of a single internally consistent thesis. Writing in 1982 for instance, Hayek, alluding primarily to three of them, says, “At last this work can appear in the [single volume] form it was intended to take when I started on it nearly twenty years ago.” [L.L.L. p xv]. This last quoted passage, is the opening sentence of the aforementioned one-volume edition of what was originally published as three separate volumes during the period 1973 to 1979. Presented in single volume form, they are intended to provide Hayek’s statement of the liberal principles of justice and

political economy. Furthermore, in the opening paragraph of the preface to a work he published some three decades before, Hayek (1944) says "...all I have to say is derived from certain ultimate [moral] values. I hope [to] have adequately discharged ...a ...duty: To make it clear beyond doubt what these ultimate [moral] values are on which the whole argument depends." [R.S. p v]. A sufficiently close reading of this earlier publication (The Road to Serfdom (1944)), will reveal the 'whole argument' it comprises as advocating the same (so-called) liberal principles of justice and political economy as the ones he champions in his later aforementioned publications dating from 1973 to 1982. It will reveal also, a defence of such principles that is in most if not all essential respects, similar in content and kind to that presented in each of those latter publications. To take just one example illustrative of this similarity, the 'ultimate [moral] values' referred to in the last quoted passage, turn out to be embodied in "The rules of ...[a] ...common moral code ...[that is] ...general in character." [R.S. p43]. Indeed, they are those values upon which according to Hayek,

"...thought seems to have made little advance since David Hume (1739, 1740, 1748, 1751, 1777) and Immanuel Kant (1785/1786) and in several respects it will be at the point at which they left off that ...analysis will have to resume. ...[For] ...they ...came nearer than anybody has done since to a clear recognition of the status of [those] values as ...the indispensable foundation of all ...civilisation..." [R.O. pp6-7].

The analysis moreover, resumes with Hayek maintaining the following. There are generally

"...applicable rules [which] define ...whether an act was just or unjust. All features of the particular [contrary, conflicting, subjective, moral viewpoints] must be disregarded which cannot be brought under a rule that once it is stated is accepted as defining just conduct. The important point here is ...that the rule ...when articulated it is accepted as corresponding to general usage ...what has ...guided the sense of justice ...when ...stated, is recognised as expressing what ...[people] ...have long felt, [and] is as much a discovery as any discovery of science ...[moral] rules ...are [to be] treated ...as ultimate values, indeed as the only values common to all and distinct from the particular ...[different moral viewpoints] of ...individuals. This is what is meant by ...such adages as ...let justice prevail even if the world perish. Only if applied universally ...will they serve the permanent preservation of ...a timeless purpose... Those rules ...are common values... And however much we ...dislike ...applying the rules in a particular case, ...rules of just conduct are ...not concerned with the protection of particular interests ...all pursuit of particular interests [are and] must be subject to ...a law which is concerned with the permanent and general; ...rules of just

conduct [are and] should not be concerned with ...temporary and particular ends..." [M.S.J. pp16-17].

Hayek's conception of the logical status of ethical judgements and moral values, at least throughout a period starting from 1944 and ending in 1976 is hopefully indicated somewhat by the latter four quoted passages. However, to those sufficiently familiar with Hayek's publications in the field of politically-related theory, it may seem that he does not offer an altogether clear unambiguous account of the logical status of such judgements and values. But, if so, this is because Hayek's conception of them, is (arguably) itself not entirely clear, unambiguous and coherent. It is not because his conception of them changed. The reasons why this is (arguably) so, are explained elsewhere (see 2.20). Although, they have already been briefly indicated in the main introduction. They are however, of no immediate relevance here. Rather, the immediately relevant point is this. Insofar as the latter four quoted passages, indicate any degree of coherence, clarity and unambiguity in Hayek's conception of the logical status of ethical judgements and moral values during the period from 1944 to 1976, they also indicate a certain constancy in the type of terminology he used. This constancy can be detected by comparing some phrase(s) from any one and/or some of them, with some other phrase(s) included in any one and/or some of the others. For example, the phrase 'ultimate values' appears in two of the last five passages quoted above from work published by Hayek from 1944 to 1976. And phrases such as (or at least similar in meaning to) 'common generally applicable general rules of just conduct' also appear in two of them. In one of the latter, some such phrase appears no less than five times. Finally, on at least one plausible interpretation, the suggestion that the aforementioned rules are (in a sense) permanent and the basis of all civilisation, appears no less than four times in various places throughout the last five passages quoted above. Although, that suggestion is (arguably) not made equally explicitly in all such places.

So, if the aforementioned constancy in the kind of terminology used by Hayek from at least 1944 to 1976, is indicative of a corresponding constancy in his thinking during that period, then the following conclusion may seem tempting. If Hayek's conception of the logical status of ethical judgements and moral values is unclear, ambiguous and incoherent, then there is a certain constancy with which such unclarity, ambiguity and

incoherence manifested itself in his work from 1944 to 1976 at any rate. So, during that time at least, there is (arguably) a sense in which Hayek was consistent if nothing else.

The aforementioned constancy in terminology and (arguably) thought, exhibited by Hayek from 1944 to 1976 continues into his later work. This is evident in certain claims by him during the period from 1978 to 1982. For instance, he speaks of "...irreplaceable values, to which we owe ...social order and ...civilisation." [N.S. p13]. Elsewhere, he contends that "Civilisation ...rests on the fact that ...individuals have learnt to restrain their desires ...and submit to generally recognised rules of just conduct." [P.O.F.P. p7]. Similarly,

"...in any society there will ...exist ...agreement on general principles ...those common principles on which we know well how to act and which ...lead different persons to agree in their judgement ...we usually agree on particular moral issues, only because we agree on the rules applicable to them." [L.L.L., V3, p19].

There are other examples of constant strands of thought evident in Hayek's work throughout the aforementioned period from 1938 to 1988. Indeed, there are (arguably) so many that it would perhaps take a discussion of an unusually, if not inappropriately, extensive length to cite them all here. However, hopefully enough has been said even so far, to give some substance to the earlier claim, that throughout his career as an author in the field of politically-related theory, Hayek's views and his ways of defending them, remained, by and large at least, essentially the same. Given this, the present choice of just one of his several publications in this field, as the main subject matter for critical analysis, will hopefully be rendered at least less arbitrary than initially might seem to be the case, particularly perhaps to anyone who is not sufficiently familiar with his work, to have noticed the aforementioned constancies evident in it as well as others besides.

In view of such constancies, any arbitrariness the present choice of The Mirage of Social Justice (as the main focus of critique), may still have, will be less significant than it might have been, if one aim of this thesis was to offer an entirely comprehensive treatment of all the publications of some author whose views as expressed in them, had changed essentially over time. Besides, it is not as if no reference is made at all to several other of Hayek's aforementioned publications. Such reference is indeed made at various points later in this thesis, (See for example, 3.8, 3.9, and 3.11). This is done, partly because at least some arguments Hayek uses in The Mirage of Social Justice, he also expresses with

equal if not more vividly, in one or more of his other aforementioned works, (see for example, 3.11). And it seems eminently sensible, when faced with a choice of more than one way of expressing an argument, to opt for the more vivid, hence powerful way of doing so. For if the more powerfully an argument is expressed, renders it (apparently) all the more convincing, then, given present purposes at least, this will be especially appropriate. As one such purpose, is to try to show, that even when expressed in comparatively vivid, powerful and (apparently) convincing terms, the arguments from The Mirage of Social Justice, that are addressed in this thesis, are ultimately unpersuasive. None of this, is to be taken to mean however, that each such argument will be expressed just once, in the form perhaps of only a single quoted passage, taken from no more than one of Hayeks' aforementioned publications. Indeed, on the contrary! Several such arguments are expressed several times. And this, in the form of several quoted passages. Some such passages, that express the same argument(s), will be taken from the same publication, (see for example, 2.20). But others will be taken from more than one, (see again for example, 3.11). This will serve to substantiate still further, the previous claim, that Hayek' views and his ways of defending them, show a significant constancy throughout his publication career, (see pp, 32-47). So, any repetition this inevitably will involve, will not be entirely to no avail. For, it will, by a method of multiplicity of examples, serve also to remove even further, any look of arbitrariness the present choice of The Mirage of Social Justice may still have.

Some of the arguments addressed in this thesis, will not be expressed in the form of any quoted passages whatsoever. Rather, they will instead be expressed (almost) exclusively in the words of the present author, (as is true of several of those expressed in the third main chapter). This is perfectly consistent with the aforementioned purpose, of trying to express them in the most vivid, powerful and convincing terms possible. For that is not necessarily always possible, by (exclusively) quoting from the text(s) within which the argument(s) in question were originally or previously expressed. Finally, and more importantly perhaps, no matter how they are expressed, to the extent that the arguments in any one of Hayeks' aforementioned publications are essentially the same as those in any one and/or all of the others, then the following conclusion may be reasonably drawn. To the extent that the arguments in any one such publication (eg The Mirage of Social Justice), can be shown to be unpersuasive, the (essentially same) arguments included in any and/or all other such publications can be shown to be unpersuasive also.



## Chapter 2

Some exposition of and reflection on key selected aspects of Hayek's agenda

### **2.1 Hayek on: The public, the private and the legitimate role of government as being a neutral one**

Hayek begins by making a claim about what the tradition of freedom entails. It entails he suggests, a principle according to which "coercion ...is permissible only ...in the service of the ...public good." [M.S.J. p1]. This he continues, reflects an emphasis on the essentially public nature of legitimate governmental interference in people's lives. Further, as such, it is a principle that opposes the use of government power to obstruct (and to promote) exclusively private interests. (Here 'exclusively private interests' is intended to mean those interests that do not affect the public good). Thus, right from the start, it is clear that Hayek interprets this principle as attributing a certain sense of neutrality to the legitimate role of government. For, on such an interpretation, (that except when the public good is threatened) governments ought not show favour to one person's interests over another's.

### **2.2 Some general problems concerning any alleged distinction between the public and the private**

But, problems arise immediately a distinction is suggested between private and public interests. Any resistance to such a distinction, based on a conviction that there are no essentially exclusive private interests, may, for example clearly be seen as a threat to personal liberty. Further, the fear of such a threat may be grounded in some kind of 'natural rights' doctrine, according to which there are certain areas of people's lives that should be free from governmental meddling; such meddling against the will or without the consent of the people concerned being seen as a kind of assault on them, or viewed as (partly) stripping them of their dignity as autonomous agents. On this view then, some matters essentially are (and so ought remain), private not public issues, and as such, they are matters for individual choice, best left to private conscience rather than public legislation. A tempting conclusion to draw from this, perhaps, is that there are some matters which very much require a personal morality approach. Another might be, that the more closely bound up with individual conscience an issue is, the less it is appropriate subject matter for legislation.

The latter conclusion however, would not necessarily perhaps command unanimous acceptance. For clearly, people take personal stands on many issues. A conscientious objector refusing to be conscripted is just one case in point here. Someone refusing to pay a tax that s/he considers unfair would be another. Presumably, such people in taking their stands, are guided by their own individual conscience. But, in being so guided, they do not necessarily wish the issues upon which they take a stand to be exempt from public legislation. The sometimes very public demonstrations of individual conscience is evidence enough of this perhaps. Examples of this in Britain in past years, include public outcries against social security benefit cuts, the Gulf war, and the poll tax. One further example would be the violent and bloody demonstrations during the 1960's and early 70's in several countries, against the Vietnam war. And, no doubt, examples here could be multiplied.

In at least some such cases then, the public outcry of individual conscience, was not necessarily aimed at removing the issue from the domain of public legislation; rather it was arguably at least aimed at reshaping legislation. So, any temptation to think, that the closer to individual conscience an issue is, the less it is suitable subject matter for legislation, evidently is not one necessarily likely to be felt by everyone. Indeed, some may well feel, that the closer to individual conscience an issue is, the more it is a matter of public concern. Besides, it is hard to see how a link between individual conscience and public legislation can be denied completely. Furthermore, this is so, even if there are issues, that essentially require private individual conscience to pass a final judgement upon. Those who claim that there are, would presumably wish (what they see as) the right of people to exercise their conscience in this way, to be protected by legislation. However, if so, then it would be inconsistent for them to suggest, that with respect to some matters people are entitled to do as they see fit, whilst denying even the remotest link between individual conscience and public legislation.

The point just made, is, of course, a perfectly straightforward one. It is quite simply, that it is precisely the (alleged) closeness of an issue to individual conscience that may make it seem a matter of urgent public concern, at least in-so-far as what may be viewed as the right to unimpeded personal free choice is itself very much a public issue. This being so, then just because it is appropriate that a given issue be ultimately decided upon by an

individual's feelings, conscience, personal morality and philosophy etc., it hardly entails the conclusion that it is an altogether intrinsically private issue, indeed any more than the question of whether murderers should be hung is an intrinsically scientific issue about the law of gravity.

To remove (or refuse to implement) certain legislation does in a sense of course permit people to choose for themselves. As such, it may be seen as refraining from passing any final judgement on any substantive moral issue; leaving people to make their own minds up; thus respecting their dignity as autonomous agents. Also, any decision to remove (or refusal to implement) legislation on any such issue may be viewed as adopting a neutral stance concerning it. But, it would be surprising to find that such a decision did not reflect someone's opinion on the issue in question.

Again, although there is perhaps an obvious sense in which less legislation allows more room for individual choice, it is fairly clear that in some contexts the absence of it may be widely viewed as constitutional and moral regression. What for example, would be the response of members of ethnic minority groups (as well as many others perhaps) to a removal of laws designed to protect such groups from racial abuse, on the grounds that those laws restricted freedom of choice? (Not that Hayek is to be interpreted as being opposed to such laws).

Any belief that it would be appropriately neutral to oppose legislating on some given issue, possibly reflects the philosophically contentious assumption, that save for the standard the individual sees fit there are no guidelines determining how people ought to think and behave with regards to that issue. However, as will be argued later (see also 2.12), it is far from obvious, that a decision to either remove or refuse to implement legislation, would necessarily be (viewed as) any more an impartial one, than a decision to either implement it or refuse to repeal it.

The suggested distinction between private and public interests coupled with the notion of the essentially public nature of legitimate governmental interference in people's lives clearly then, carries with it the implication that a decision to legislate on a given matter is right only if the matter in question is an essentially public matter; and of course likewise with respect to a decision to refuse to repeal a law. But here an obvious question arises:

What criterion or criteria can be appealed to in order to distinguish essentially private matters from essentially public ones? Without some philosophically sustainable way of mapping out the boundaries of the essentially public (and private) no ultimately persuasive attempt to distinguish public matters from private ones would seem possible. Further, this being the case, then unless it can be convincingly shown that all matters are essentially private ones, and that therefore there can never be legitimate governmental interference in people's lives, then theoretically at least there is no area of human affairs in which a government cannot legitimately interfere; although there may - for various practical reasons - still be areas in which no government would wish or be expected to meddle, (however, the manner in which a government may legitimately meddle would still of course be another issue to be addressed). Also, if the extent of legitimate governmental interference is theoretically unlimited, then of course there is no moral issue that essentially requires private individual conscience to pass a final judgement upon. (Nowhere in the rest of this thesis will there be an attempt to definitively map out the boundaries of the public and the private in some philosophically sustainable way. Rather, it will be argued instead, that from the point of view of ordinary belief and discourse, there is a sense in which any proposed distinction is bogus. Especially, it will be argued that from such a point of view, there is no (type of) action, which by its very nature could never be one of public concern. If this is right, then from such a view, there may indeed be, in principle, no area of human affairs in which a government cannot legitimately interfere. However, the purpose here, of the appeal to the notion of ordinary belief and discourse must not be misunderstood. It must not be taken as suggesting that the present author believes that any philosophical problem(s) can be solved by appealing to such a notion. Yet, at the same time, the appeal to the notion of ordinary belief and discourse here, is not therefore inappropriate. For at least on one plausible interpretation, Hayek himself appeals to such a notion, as a (partial) basis upon which to try to substantiate the (alleged) distinction between the public and the private. And besides, one purpose of the present work, is precisely to try to show, that this alleged distinction cannot be philosophically sustained by appealing to any such notion.)

It may on the other hand, be suggested however, that strictly speaking no government legislation can be wholly justified on (non-arbitrary) moral grounds. And, it may be continued, this would become particularly clear if some persuasive way of drawing up the boundaries of essentially private morality were to be found which yielded the conclusion

that such boundaries are unlimited. Governments should then allow personal freedom of choice within these unlimited boundaries. Crime therefore - on this view - is not to be seen as synonymous with some objective immorality; again at least not if it were somehow established that such boundaries are limitless. For if the boundaries of private subjective morality are without limit, then there can be no principles of objective (im)morality upon which legislation could be based and in terms of which crime could be defined; and this for the very good reason, that in the event, no such principles would even exist.

An implication just drawn of course, is that the boundaries of personal morality if and once clearly identified, may turn out to be so broad and all-encompassing as to exclude the possibility of any legitimate government interference in issues concerning (im)morality. However, short of this actually becoming the case, and given (for the sake of argument) that governments do not have the right to legislate on all matters of (im)morality, the problem of how and where such boundaries are to be drawn remains; and again unless it is solved, no persuasive appeal of any specific kind to a distinction between private and public morality can be made. Further, it would be vague and question-begging to suggest that private morality is concerned only with thoughts and acts that have no effects (beneficial or harmful) on public life, whereas public morality is concerned with those that do.

### **2.3 Some initial problems for identifying and foreseeing effects on the public domain**

Part of the vagueness here concerns how to decide what does and what does not affect public life. However, the vagueness is also due in part to a possible ambiguity in the way the word 'affect' is to be interpreted here. It can either be taken as simply meaning actually affect, or as potentially and actually affect. If the former, then the same kinds of problems arise that are often raised in objection to consequentialist ethical theories. (Again, not that Hayek is necessarily to be interpreted as wishing to be seen as subscribing to any such theory). Moreover any time such problems are raised, they only serve to highlight a further ambiguity. For does 'actually affect' mean actually affect in the immediate term? Does it mean actually affect in the short term? Or does it mean actually affect in the long term? Also, what exactly is meant by the phrases 'immediate term', 'short term' and 'long term'? For instance, precisely how much (or little) time needs to have elapsed between the performance of an action and it having some effect(s) on public

life, for it to be the case that that action affected public life in the immediate as opposed to short or long term?

It is not obvious that the sort of non-arbitrary stipulation required here to solve this problem will ever be possible. But even if it were, and it were for instance suggested that only actual effects on public life in the immediate term need to be taken into account (partly perhaps, on the grounds that any effects that may take place beyond that are too difficult to predict) problems (to be discussed presently) would still remain. As, it may at least seem unreasonably short-sighted to merely cite as relevant the immediate term effects and arbitrary as well of course, especially perhaps if it could be shown that effects beyond the stipulated immediate term are by no means always harder to predict than those within the stipulated immediate term.

#### **2.4 That the comparative generality not the relative immediacy of an outcome can make it easier to predict**

At any rate, it would not seem to follow necessarily, that the less immediate the effect(s) of some or any event(s), the harder it is (/they are) to predict. Within certain frameworks of reference, it may seem that it is (in a sense) the greater the generality of a prediction that makes it more likely to turn out to be correct, rather than the greater (or smaller) the temporal distance of the event(s) being predicted from whatever caused it (/them). For example, consider the following hypothetical case.

The leader of a nuclear power orders an atomic bomb to be dropped on the capital city of an enemy country. This order is carried out. Let it be supposed, that the person who ordered this atomic attack was, at the time of doing so, aware of certain facts. Such facts included the size and population of the target city, as well as the amount of radioactive fall-out that will (likely) result from the explosion of the particular type of atomic bomb used in the attack. It may be further supposed, that s/he had previously ordered several similar attacks on other cities of more or less the same size and population as the present target, and in each of those previous attacks the same type of atomic bomb was used as the one used in the current assault. Finally suppose, that s/he has access to data on certain of the (apparent) effects of those earlier explosions. S/he discovered from such data that, each member of the populations of all the cities that had been the targets of the earlier atomic attacks, had consequently either died or become inflicted with some physical

deformity or other, by no longer than up to one year after the relevant explosion had taken place. From that same data, s/he also discovered several other (perhaps unsurprising) facts. Firstly, the deaths (apparently) resulting from the previous explosions did not occur simultaneously. Indeed, some such deaths took place as relatively soon as within an hour of the relevant explosion. Others however, did not take place until as relatively late as a year after it. The other deaths occurred on a daily basis throughout the one year period immediately following the atomic attack that (apparently) caused them. It may – for the sake of brevity – be simply added here, that the manner in which the aforementioned physical deformities manifested themselves, followed a similar temporal pattern to the one exhibited by the aforementioned deaths.

Under the circumstances just described, the person who decided that the atomic attacks were to be carried out, may perhaps feel reasonably justified in engaging in a little inductive reasoning. By means of this reasoning, s/he may feel equally justified in drawing some conclusion(s) with respect to what s/he could and could not predict with a reasonable degree of confidence. For example, s/he may, understandably perhaps, feel reasonably (if not perfectly) confident in being able to make a prediction of a relatively general sort. Such a prediction s/he may express as follows: 'If an atomic bomb of type A, is exploded in the centre of a city of size X, the population of which numbers Y, then a year after the explosion, some of the population of that city will be physically deformed and the rest will have died'. There are however, certain other conceivable predictions of a more specific and (in that sense) less general kind, that neither s/he nor anyone else armed with no more relevant information than that which s/he discovered from the aforementioned data, would probably feel inclined to venture with any reasonable degree of confidence at all.

S/he for example, would probably feel unable to reasonably confidently predict which particular inhabitants will have died one year after the atomic explosion, and/or who in particular of them will still be surviving by then but suffering from a physical deformity. Furthermore, s/he would feel unable to make with a reasonable degree of confidence therefore, certain other even more specific types of predictions. For if s/he felt unable to predict with reasonable confidence, which particular inhabitants of the city would be dead a year after and as a result of the atomic explosion, and/or which would be alive but physically deformed a year after and as a result of it, then presumably s/he would feel

similarly unable to predict which particular individuals will have died (say) one hour after the explosion, which particular people will be dead (say) six months after it and so on. Again, in the event, neither would s/he with reasonable confidence, feel able to predict which particular persons will start to show outward signs of physical deformity (say) one day after the explosion, which will one month after it, and so forth.

If moreover, according to the information s/he had obtained from the aforementioned relevant data, such physical deformities were various in kind, then neither would s/he feel able to reasonably confidently predict which particular individuals would suffer which particular deformities; and things would not necessarily be any different (indeed to say the least perhaps) whether or not s/he felt able to predict which particular persons will be alive and physically deformed a year after the explosion, and even which particular people will start to display outward signs of it at which particular times.

What the above imaginary case suggests then is this. It can under certain circumstances, be perfectly reasonable to feel confident about making a prediction of an outcome of a relatively general sort, without at the same time, feeling anything like the same degree of reasonable confidence about making predictions of a more specific nature concerning certain finer details. And this may be so, even (and particularly) when there is a sense in which the truth (or otherwise) of the relatively general type of prediction, is somehow dependent upon the occurrence (or non-occurrence) of outcomes or events the finer details of which cannot be predicted reasonably confidently due to a lack of (knowledge of) sufficiently detailed data.

Yet in the imaginary case as just described, there is also a perhaps clear sense in which the outcome of the relatively general type, will have to have post-dated several, if not at least most, of the outcomes or events upon which it is dependent in order that it transpired to be the case at all. For although it is perhaps obvious in such a case, that the relatively general outcome cannot have transpired to be the case until all of the outcomes or events upon which it is thus dependent have also fully transpired, it is arguable (indeed to say the least) that it would be somewhat misleading to make a certain claim of strict simultaneity of happening here. It may seem tempting to make this type of claim in a case such as the present imaginary one for example; and this on the following grounds.



The relatively general outcome could not have transpired completely, until the exact point in time had been reached by which each and all of the inhabitants of the city had either died or shown outward signs of physical deformity. In other words, that outcome would have completely transpired, no sooner or later than the precise point in time at which, the last (of the) inhabitant(s) to die or become outwardly physically deformed had either died or become thus deformed. Furthermore, since under the circumstances, this would necessarily be the case, there may arise perhaps a conceivable temptation to claim that that outcome and (all) the necessary condition(s) for it transpired simultaneously. Sufficient reflection however, would reveal how wrong such a conceivable claim would be. This moreover, is not merely because the circumstances of the case would be such that a relatively general outcome accurately describable as 'all the inhabitants of the city have died or become outwardly physically deformed by time  $t_1$ , as a result of an atomic explosion which took place one year before  $t_1$ ' necessarily requires that such an explosion did indeed take place one year before  $t_1$ . For such circumstances entailed (to recall) a certain temporal sequence of deaths and occurrence of outward physical deformities, all of which needed to have transpired sometime no later than  $t_1$ , but not necessarily (and not, let it again be supposed, in fact) all simultaneously at  $t_1$ , in order for the aforementioned general outcome to have transpired also, at or by  $t_1$ .

However, to say that reasonably confident predictions of a relatively general type are possible, even when the truth (or otherwise) of them is dependent upon the finer details of non-simultaneous occurrences that cannot in practice be predicted with similar confidence, may, after some reflection, seem to do no more than express a fairly obvious truth about quite a commonplace temporal and epistemological state of affairs. It may at least seem, not too difficult to think of several other imaginary and actual cases the temporal and epistemological circumstances of which are relevantly similar to those portrayed in the above hypothetical atomic explosion example. Indeed, such conceivable cases may be infinite in number. If this is so, it would be necessarily pointless to try to list or recount them all. Nevertheless, perhaps something may be done to fortify the present point. This furthermore, may be achieved by demonstrating the arguable ease in which at least two or so more examples of cases can be conjured, each of which involve an epistemological and temporal state of affairs, essentially and relevantly similar to the aforementioned.

One of these is perhaps particularly easy for common intuition to appreciate. Or at least, this is arguably true of contemporary Western intuition. For in the contemporary so-called Western world at any rate, the idea that cigarette smoking endangers life and health is widely promulgated enough so as to make it perhaps at least familiar to common intuition and even maybe, by and large acceptable to it. It may be possible for example, for some person(s) armed with certain statistical data, to feel justifiably and reasonably confident about making a prediction of a relatively general sort concerning the annual mortality rate amongst people who smoke cigarettes. For instance some such person(s) may thus accurately predict that in any given calendar year, x number of cigarette smokers will die. But they will not at the same time, necessarily be able to reasonably confidently predict, which particular cigarette smokers will (make up the x number that will) die in any given calendar year. In order to make the latter prediction with a reasonable degree of confidence, it might well be felt that certain information would be needed that has not necessarily been acquired thus far. This information, it may be presumed, would, in principle (help to) explain why some cigarette smokers die sooner and/or at a younger age than others, why some of them die sooner and/or at a younger age than non-smokers, and (by implication) why others do not. Until such information is provided, exactly what causal factors this information will be information about, is, necessarily, it might be thought, a matter of speculative guesswork. At the same time however, any speculative guesswork to the effect that such causal factors might well include social class, age, number of cigarettes smoked, number of years spent smoking, and genotype, amongst others, may seem highly plausible to common intuition.

A third case (unlike the above two) does not involve the issue of, (or the contrast between) relatively general as opposed to more specific outcomes in the human social world, with respect to what might (not) be felt to be predictable with reasonable confidence. Instead, this third case, illustrates the contrast between relatively general as opposed to more particular outcomes in that part of the natural world that is of special interest to botanists. Nevertheless, like the first two cases described above, it illustrates the contrast between relatively general and more particular outcomes, in a way that underlines the difference between what might be felt to be predictable with reasonable confidence and what might not be. It thus has in common with those first two cases, what has been already alluded to as 'a commonplace epistemological and temporal state of affairs'. Consider for instance, the case of trees under certain changing climatic conditions. By a process of inductive

reasoning, it may be possible to feel able to predict as confidently perhaps as virtually anything can be predicted at all, that by the end of the autumn season all trees in Britain (say) will have shed all their leaves. However, there may, at the same time, not be anyone who feels reasonably confident enough to make certain other predictions of a relatively less general and more specific kind. These latter predictions may include, foretelling which of several trees would be completely shed of leaves, first, second and so on, which particular leaves of which particular trees would be shed first, second, and so on, and the precise flight path of each individual leaf during the time between being shed by a tree and landing on the ground.

The fourth and final case to be discussed here, does not necessarily involve animate phenomena at all. It is one that is of particular interest perhaps to physicists, and is known as Heisenberg's Uncertainty principle. And it is a principle that will be known to anyone who is sufficiently familiar with that seemingly perennial metaphysical debate in philosophy known as the free-will/determinism problem. This principle moreover, provides as clear cut a case as any perhaps, of the kind of epistemological state of affairs common to the three cases previously discussed. For according to it, whilst reasonably confident predictions of a relatively general sort, concerning macroscopic events may well be possible on inductive grounds, it does not necessarily follow from this (indeed to understate the case perhaps) that similarly confident predictions of a more particular kind about ultra-microscopic events will (in practice at least, ever) be possible. The source of the difficulty expressed by the principle, is the apparent impossibility of being able to predict the velocity and/or position of an electron in orbit. Furthermore, this apparent impossibility is sometimes contrasted with the comparative ease in which reasonably confident and accurate predictions of a relatively general type can sometimes be made in macroscopic physics for example. The electrons in orbit otherwise alluded to as 'ultra-microscopic events', when considered in sufficiently large numbers or mass cease to be the (exclusive) concern of microscopic physics. For once thus considered, they fall under the scope of macroscopic physical science. If analysed within the framework of macroscopic science, what on the level of micro-physics can be viewed as millions of individual sub-atomic events, can be conceived of as making up a mass of a perhaps smaller number of events, at least some of which are open to ordinary, everyday (and thus non-scientific) observation. Thus conceived, this apparently and relatively easier to

predict mass of events, consists of an averaged out positioning and velocity of the seemingly impossible to predict sub-atomic events.

The above account of the relation between the macroscopic and microscopic world has a logic to it that is similar to that to be found in the three earlier examples. This may perhaps seem obvious, if in the atomic explosion example, the individual deaths and deformities can be indeed seen as being microscopically related to the aforementioned and relatively general outcome, in one essentially similar sense to the manner in which electrons in orbit are related to (say) some leaf (or leaves) floating in the air before falling to the ground and after being shed by some tree(s), and/or the way in which the floating of some leaf (or leaves) can be seen as related to a certain outcome known as some deciduous tree(s). The relevant sense of similarity suggested here, also holds between the above smoking case on the one hand, and each and all of the other three cases on the other. It is furthermore, the type of similarity which suggests that the more general a prediction is, then the easier it is to feel able to venture it with reasonable confidence. In other words, it suggests a correlation. The correlation thus suggested is a positive one. It is between the generality of a prediction, and the ease with which people feel able to reasonably confidently make it, such that the more general the prediction, the more people feel able to do so.

### **2.5 That comparatively general outcomes are not always easier to predict**

However, there are conceivable circumstances under which it may be doubted that the correlation is a perfect one. All that is required in order to appreciate this, is to imagine a situation that involves someone who (believes that s/he) has more relevant and reliable data on some given specific case than s/he (believes that s/he) has on some more general and related fact(s).

For example, suppose person A quits cigarette smoking. Suppose also that person B discovers this. Finally suppose that B believes rightly after been given some data on A, that A has quit smoking on several other occasions only to start again a year later. If so, then B may, feel reasonably confident in predicting that A will start again one year after quitting. But at the same time, B may not feel reasonably confident at all about making a prediction of a relatively general type concerning some, in a sense, related outcome; i.e. about the number or percentage of those people who will stop smoking for at least the

second time, and who will start again (no later than) a year afterwards having done so before. For B might believe that some (former) smokers may have significantly more will-power than A, and that therefore, just because A will start again a year after quitting, others may not. This may be especially so, if B has no (conscious) knowledge of statistical data of a more general sort (apparently) indicating the percentage of people who have stopped smoking for at least the second time, who have (not) started again by a year later. If this were so, B may conclude that (apart from differences in will-power) there may well be several relevant and significant differences between (former) smokers that s/he (B) does not necessarily have (full) knowledge of, and that therefore s/he is unable to venture the relevant aforementioned and comparatively general prediction reasonably confidently. S/he may for instance, seriously speculate without feeling entirely sure, that such factors including comparative age, the number of cigarettes smoked per day, the number of years spent smoking, and the precise amount of times the habit has been (unsuccessfully) kicked previously, might all influence (if not decisively determine) whether or not any one given (number of) smoker(s) will start smoking again no later than a year after stopping. If, furthermore, B gained knowledge of general statistical data according to which fifty per cent of them start again by no later than a year after stopping, this may make her/him less (than) reasonably confident about venturing too definite a prediction with respect to the specific case of A. Conceivably however, s/he may just as easily conclude otherwise. For, despite having acquired knowledge of the aforementioned general statistical data, s/he might conclude from it, that whatever conceivable factors can be correctly cited to explain the difference between those (former) smokers who start smoking by no later than a year after quitting on the one hand, and those who do not on the other, this can or will only reveal personal experiences and qualities common to all the former, that are lacking in the case of each of the latter. And more specifically, B may believe, that whatever such personal qualities and experiences happen to be, it is (almost) certainly the case that person A has neither the kind of experiences nor qualities sufficient to resist the temptation to resume smoking for longer than a year after quitting.

What has just been proposed then, is none other than this. There are conceivable circumstances under which, someone may feel reasonably confident about making a prediction about what will (not) happen in some one given case, without, at the same time, feeling confident at all about venturing a prediction of a more general sort concerning what will (not) happen over a larger number of (in some sense(s)) similar cases.

Furthermore, this is conceivably albeit not necessarily because, someone might feel that evidence of a comparatively anecdotal kind, relating to no more than what will (not) happen in some one case, is more persuasive than evidence of a more general (and perhaps purely statistical) kind relating to that same case as well as others that are in some (arguably) relevant sense(s) essentially similar to it. This may not necessarily be so, for the someone in question, may not even know of any such more general evidence. If so, s/he might formulate some conclusion(s) concerning what will (not) happen in some one given relevant case, purely on the basis of comparatively anecdotal evidence. Of course, if s/he were to formulate some such conclusion(s) at all without knowing anything about any relevant evidence of a more general type, then comparatively anecdotal evidence would be all the evidence s/he would have to go on, if indeed s/he formulated it on the basis of any kind of evidence at all. In which case, s/he also may feel more confident in predicting an outcome of a comparatively less general and possibly more temporally immediate sort, than s/he would in predicting one of a comparatively more general and possibly less temporally immediate sort, and this for reasons which by now are perhaps obvious.

But whether or not someone is sufficiently or more, persuaded by any evidence of a comparatively anecdotal type, like in the way just suggested for example in the above smoking case, will or may also depend upon that someone's perception of the personal traits of whoever it is anecdotal evidence about. It will not therefore, necessarily depend only upon whether or not s/he also knows of evidence that is more general and which s/he believes to be less persuasive. For it is conceivable, that s/he will find the relatively anecdotal evidence at least as, or even more persuasive than the comparatively general evidence. Yet, at the same time, s/he still may conclude, that such anecdotal evidence alone, provides an insufficient basis upon which to venture a reasonably confident prediction about what will (not) happen in the relevant individual case. S/he may for instance, believe, that such a prediction, needs to be based upon a combination of relevant anecdotal evidence and reliable information about the personality traits of the person(s) it is evidence about. This combination, s/he may believe, outweighs any force that evidence of a more general nature might have. In this sense, s/he can be viewed as being possibly somewhat similar to a detective investigating a murder for example. For a detective is perhaps unlikely to be impressed by conceivable evidence of a general statistical nature, according to which only less than one per cent of convicted murderers are convicted of

murdering (either of) their parents if in some particular case, the clinical psychological and forensic evidence suggests strongly enough that some persons have indeed been murdered by their biological offspring. Indeed, it would perhaps be positively worrying to discover that a detective or maybe still worse a jury, did find someone innocent purely on the basis of such a statistic, particularly in the event of this relevant clinical evidence being produced.

Now, if it does not necessarily follow, that there will always appear to be a stronger case for being guided by evidence of a relatively general kind than there will be for being guided by evidence of a less general kind, when the problem is to decide what really happened in the past, then there is no reason to believe that things are necessarily any different when it comes to trying to decide what is likely to happen in the future. By now, enough has possibly been said to establish this point. But in case it needs further support, it may be merely necessary to speculate on the probable widespread reaction to a murder squad detective, who after discovering clinical evidence of a relatively specific kind, which s/he believed overwhelmingly suggested that someone had been murdered by her/his biological offspring, x (say), but nonetheless decided not to press charges against x, on the grounds that it can be reasonably safely predicted that a conviction against x will not be secured, since there is evidence of a relatively general statistical type according to which less than one per cent of convicted murderers are convicted of murdering (either of) their parents.

There is at least one other issue, which for a certain purpose may be tempting to address at this point. This is the issue of what exactly is to count as anecdotal evidence. More particularly, and in part, this issue is raised by the question of whether or not personality traits are to thus count. On one conceivable view they are not. This is the view, the truth of which may seem to have been already presupposed. For, it may be recalled, that in the last paragraph but one, it were suggested that some person(s) may conclude that anecdotal evidence alone is an insufficient basis upon which to venture a reasonably confident prediction about what will (not) happen in some individual case; and that some such person(s) may believe that such a prediction needs rather to be based upon a combination of anecdotal evidence and information about the personality traits of the person(s) it is evidence about. A problem arising for such a view, is whether or not any clinical psychological evidence can legitimately count as the appropriate kind of anecdotal

evidence. If it can, another problem is thus raised. This moreover, is the problem of how to decide which clinical psychological evidence can be allowed to count as anecdotal evidence of the appropriate type. For to the extent that some clinical psychological evidence merely reveals personality traits, then it cannot count as appropriate anecdotal evidence; at best such clinical evidence can only supplement the anecdotal evidence. But if all clinical psychological evidence can be shown to reveal nothing other than personality traits, and if it can be shown also that no such traits can legitimately count as appropriate anecdotal evidence, then no such clinical evidence can thus count either; in which case, the aforementioned problem of how to decide which can and which cannot is removed.

The question of what legitimately counts as appropriate anecdotal evidence raises several other related issues also. Like the ones just cited in the last paragraph however, none are of central or direct relevance here, given that is, present purposes. Although, for the purpose of deciding for example, how best to conduct a criminal investigation they may be of very direct and central relevance indeed.

One very central purpose of the above discussion however, indeed as already indicated, is to try to show, that it does not necessarily follow that any person(s) will always feel more reasonably confident about predicting some outcome(s) or effect(s), the more immediate the outcome(s) or effect(s). Indeed, the immediately relevant conclusions that may be drawn from the above discussion of hypothetical cases, may be summarised as follows.

There are conceivably at least, circumstances involving (what may be seen as) a single relatively general outcome as well as several (what may be seen as) less general outcomes. The less general outcomes, do not all fully transpire simultaneously. But, some if not most, do so before the aforementioned relatively general outcome does so. The less general outcomes are related to the relatively general one. For each of the former is a necessary condition for the latter. The latter, but not one of the former, is such that, some person(s) are epistemologically placed so as to be able to predict it in advance with reasonable inductively based confidence. In the circumstances just described, some if not most of the less general outcomes are then, not only temporally prior to the more general one, but are such that it is at least less likely that any person(s) will be able to confidently predict them beforehand, than will some person(s) be able to thus predict the more general one. So under such circumstances, there is a sense in which (at least some of) the less



general and more temporally immediate outcome(s) will be less predictable than the relevant more general and less temporally immediate outcome. The logic of such circumstances is present in four hypothetical cases already discussed (in 2.4). And this is not only because, individual deaths, deformities, electrons in orbit and shed leaves floating in the air, are the kind of occurrences that are, (or at least can be) in some aforementioned sense, microscopically related to an outcome that is more general than those occurrences themselves. For it is also because, some, if not most of them, pre-date the general outcome they are thus related to. However, as argued above, there are circumstances under which a relatively less general outcome may seem easier to predict than a related and more general one.

## **2.6 The problem of non-arbitrarily stipulating 'immediate term effects'**

However, even if it did necessarily follow, that any person(s) will always be more confident in predicting any outcome the more immediate that outcome is, it is not obvious that it will ever be possible to stipulate in non-arbitrary terms what precisely is meant by the phrases 'immediate term effects', 'short term effects' and 'long term effects'.

Furthermore, and again, it seems that such a non-arbitrary stipulation is required in order to solve certain aforementioned problems already raised by the apparent vagueness of (the difference in meaning of) the terms 'public effects' and 'purely private effects'. (See also 2.3). But as suggested already, (in 2.3) even if such a requirement were somehow met, and it were for instance suggested that only actual effects on public life in the immediate term, need to be taken into account when deciding what does and does not affect the public sphere, problems may still remain. For as stated previously such a suggestion may be partly at least, grounded in a view according to which, any effects that may take place beyond the stipulated immediate term are too difficult to predict with reasonable confidence. And to recall some earlier points, it may appear to be unreasonably short-sighted, to cite as relevant only the stipulated immediate term effects, as well as arbitrary of course, especially perhaps if it could be shown that, in some case(s) at least, effects beyond the stipulated immediate term are by no means always hard to predict with reasonable confidence after all (in 2.3). At any rate, and it may be reminded yet again, that several cases have already been discussed in a way which (to put it mildly) suggests that people can be epistemologically placed such that they can feel more reasonably confident about predicting a general outcome or effect than they can less general ones, particularly, and perhaps especially indeed, in some instances when all the latter are in a

sense (thought by such people as being) related to the former. Yet in such instances, most of the less general ones may well be more temporally immediate than the more general one.

### **2.7 Why the problems of non-arbitrarily stipulating 'immediate term effects' do not matter**

Neither does it matter what precise time period constitutes the non-arbitrarily stipulated immediate term. For whatever it exactly is, it presumably is a fixed length of time applicable to all cases. (Or at least it would not seem obviously unreasonable to presume this). Suppose it to be a year. If so, then the more general outcome imagined in the aforementioned hypothetical atom bomb case for example, counts as an immediate term effect of an atomic explosion. It would however be easy enough to imagine all the details of the atom bomb case, being exactly the same as they were described above, with the sole exception that the person who ordered the atomic attack, discovered from the relevant data that the resultant deaths and deformities took place over a longer period than a year. Given this, it may well, in a sense, not seem to matter precisely how much longer than one year this longer period is. For, no matter how much longer it is, and it is logically possible that it be several thousand years or even longer, it would not necessarily make any difference to the extent to which anyone who knew all the other relevant details of the aforementioned data, would feel reasonably confident about predicting the relevant general outcome accurately.

It would perhaps seem intuitively unacceptable of course, to suggest that the stipulated immediate term is as long as (say) one hundred or more years. But, the central point here is this. Any attempt to justify the claim that only effects in the immediate term need to be taken into account when deciding what does and does not affect the public domain seems unpersuasive; or at least it does so, if and to the extent that it relies on the view that any effects beyond the (and even non-arbitrarily stipulated) immediate term are too hard to predict with reasonable (inductively based) confidence. And this is not only or even mainly because the above atom bomb case provides as clear a case as perhaps any, of a situation which involves (possible) effects that intuitively would appear to very much affect the public domain were they to transpire. For indeed, even if that were not the case, it would still provide a clear example of a situation demonstrating the impossibility even in principle of stipulating some effects that are so temporally distanced from whatever

caused them, that it would necessarily follow that no one could ever feel reasonably confident on inductive grounds of being able to predict them. This furthermore, would seem to be so, no matter how small or otherwise be the exact time period in terms of which the immediate term were to be non-arbitrarily defined. Things, if anything, may seem otherwise, if there were sufficiently strong reason(s) to suspect either that it is necessarily or (even just) generally in fact the case, that the more temporally remote an outcome is the harder any person(s) will find it to predict. The aforementioned logic of the circumstances evident in four hypothetical cases in the form they have been discussed already, (in 2.4) suggests however that it is neither necessarily nor generally in fact the case. For at any rate, although all such cases, have been alluded to as 'hypothetical', each of them have been deliberately selected, precisely because they all, at the very worst, at least correspond closely enough to what generally is in fact the case to make it reasonable to suspect that there is no factual let alone necessary correlation (one way or the other) between the temporal remoteness (or otherwise) of an outcome and the confidence (or otherwise) with which it can be predicted in advance. That there is no such necessary correlation, may (if this is still needed) be underlined further by showing how things would appear to be in a situation which did not involve (possible) effects which would seem to affect the public domain at all, and more importantly perhaps did not involve the aforementioned distinction between a single relatively general outcome, and several related and less general ones either. This will hopefully be sufficient to forestall any conceivable objection to the effect that, there is a necessary positive correlation between the temporal immediacy of an outcome and the degree of confidence with which it can be predicted, in any case not involving an appeal to such a distinction. The above hypothetical example of trees shedding leaves under certain climatic conditions would with some modification, certainly provide as clear an example of such a situation as it is perhaps possible to offer. Further, in case it may be objected that it does not, provide an example of effects which would not (seem likely to) affect the public domain, as people may be harmed by bumping their heads, for example, as a result of walking over and slipping on leafy public footpaths, it may be simply imagined that the trees in question are located on an otherwise uninhabited planet. If they were thus located, it may be further imagined that the climatic conditions on this planet, vary so suddenly, so much and so often, that no inhabitants of any other planets who may come to observe trees under such conditions, could feel reasonably confident about making any inductively based predictions whatsoever concerning the pattern, timing and sequence of the leaf shedding

process. In this sense, any (potential) observers of such trees, would be in a somewhat similar epistemological position in relation to the relevant leaf shedding process, to that which has been occupied by micro-physicists in relation to sub-atomic events. A dash of imagination therefore, may also reveal a fundamental difference between the epistemological position of physicists in relation to sub-atomic events, and that of any (potential) observers of the aforementioned imaginary trees in relation to the pattern, sequence and timing exhibited by those trees in shedding leaves. And not only is it a difference of essentially the same epistemological kind obtaining between such (potential) observers and the epistemological position occupied by general statisticians in relation to the precise eventual fate of an individual smoker who, in some perhaps relevant senses, is, by and large, if not entirely, unknown to them. For it is also a difference of essentially the same epistemological kind, that obtains between those same (potential) observers and the epistemological position occupied by botanists in relation to the process of trees shedding leaves in certain places like Britain for example, in the season of autumn on the planet known as Earth.

As already suggested, (in 2.4) by averaging out sub-atomic events in the world of micro-physics, scientists can sometimes predict with a reasonable (inductively based) confidence, what will happen on the level of macro-physics. This is because, on the macro-level a regularity is sometimes apparent to them, that is never apparent to them on the micro-level. Similarly, to the compiler of general statistics on the annual mortality rate amongst smokers, a recurrent pattern may emerge each calendar year on a comparatively macroscopic and general level. Yet for reasons already explained, this general statistician will not necessarily feel reasonably confident about making a prediction on the (in the related and relevant sense) more microscopic matter of the exact time of death of any one individual smoker. Analogously, the aforementioned botanists, may reasonably confidently predict the macroscopic pattern of the leaf shedding process(es) they observe, without feeling able to predict these processes when they are conceived of purely in microscopic terms, with any reasonable degree of confidence at all. For thus conceived, such processes may exhibit no perceptible, regular, predictable pattern whatsoever. In contrast however, it is possible to imagine, that no (potential) observers of the aforementioned imaginary leaf shedding process taking place on some other hypothetical planet, under the logically possible climatic conditions described above, may feel reasonably confident about making any predictions of even a relatively macroscopic

let alone microscopic kind concerning that process. For the relevant causal climatic conditions, may (seem to them to) be too irregular to make any such predictions inductively sustainable. So much so indeed, there may seem to be no realistic possibility of an averaging out in microscopic terms in order to make things predictable in macroscopic terms. This, it may be supposed, is because, on the macro-level, the imaginary leaf shedding process like the relevant causal climatic conditions, seems just as irregular as it does on a micro-level. The imaginary leaf shedding, on the imaginary planet, even if viewed purely macroscopically, is such that a tree may at times, have a full complement of leaves, then an hour later, as far as anyone could reasonably confidently predict, either have none, or the same number of them, or some fraction of that number. For, trees on this planet, sometimes seem to shed no leaves for some years at least. At other times, they shed some or all of their leaves several times a day. While at others, they remain leafless for years or more.

Any attempt to justify the claim, that only effects in the immediate term need to be taken into account (for whatever purpose) in a case like the imaginary leaf shedding one just discussed, would then seem doomed to fail. Or at least this would seem so, if yet again, the attempted justification for such a claim is, wholly and none other than the notion that except in cases that involve no appeal of the aforementioned kind, to the distinction between some single relatively general and comparatively temporally remote outcome on the one hand, and several related, relatively less general, and comparatively temporally immediate outcomes on the other, there is a necessary positive correlation between the temporal immediacy of an outcome and the degree of confidence with which it can be predicted. For, the above hypothetical example of leaf shedding, in the imaginary, but logically possible and modified form that it has been presented in the last paragraph, does not appeal to that same aforementioned distinction, in order to successfully show that no such correlation exists. In that sense, it is unlike, the atom bomb case, the smoking case, the Heisenberg's Uncertainty principle case, as well as the leaf shedding case as it were originally presented in its unmodified form (in 2.4).

## **2.8 The problematic distinction between the 'public' and the 'private' revisited: the BOT case**

But now simply suppose it were discovered that the leaves of the (imaginary) trees contained two chemicals c1 and c2. Also suppose, it were further discovered, that c1,

when injected into people suffering from cancer, appeared to have the effect of completely curing them. If this were so, then contrary perhaps to what has been suggested already (in 2.7) the trees on an even otherwise uninhabited planet, in growing leaves would no longer provide such a clear cut case of things that could only produce effects which could not affect the human public domain. Or at least, they could, in growing them, be seen as producing effects that might affect the human domain, especially if humans gained access to them. Whether or not they could, in growing them, be legitimately described as producing effects that might even in principle affect the public domain, is strictly another issue. It is furthermore, an issue that raises again, the problematic distinction between public and private interests, and hence the difficulty of finding some criterion or criteria that can be appealed to in order to make such a distinction philosophically sustainable (See also 2.2). For at any rate, the following situation is easily imaginable.

Some botanist from Earth, known as BOT (say) discovers the cancer curing property of the chemical c1, in the leaves of the trees located on the aforementioned otherwise uninhabited planet. No one, other than BOT has the technological knowledge or means to gain access to c1. Everyone, including BOT, realises this. BOT takes advantage of this for the purpose of her/his own personal financial gain. S/he seeks and is granted a patent on c1, making it illegal for anyone other than BOT to use c1 without BOT's permission for as long as BOT is alive. The patent is granted on the grounds that BOT discovered the cancer curing property of c1 first. BOT now has the legal right to exercise a market monopoly on c1. In so doing, BOT exercises her/his other legal right to be the sole judge of the retail price of c1. BOT sets this price so high, that only a minority can afford it. For according to how BOT has calculated, s/he has come to believe that in order to make the amount of profit that s/he finds desirable, s/he cannot set the retail price any lower. And in thus setting it, BOT knows that most cancer sufferers will not be able to afford it.

Now independently of any debate of a possibly technical philosophical sort, about how, if at all, purely private interests can be non-arbitrarily distinguished from public interests, it is perhaps easy to appreciate intuitively, that the kind of situation just described may be viewed as being one of legitimate public interest and concern. In that sense, it is somewhat similar to the atom bomb case already cited and discussed above (in 2.4). For it is easy enough to appreciate, how any decision to drop an atom bomb with the intended consequence of harming and killing people, may be viewed by most as very much a matter

of public concern, and thus not at all one most appropriately left, exclusively and ultimately, to the private conscience(s) of any person(s) who might be contemplating making such a decision. Or at any rate, any persons who considered themselves likely to become deformed or deceased as a result of such a decision being acted upon, and who did not wish to become either, would presumably not view that decision as one most appropriately left entirely to the conscience(s) of any person(s) contemplating making it. Likewise, it is perhaps just as easy to appreciate, how BOT's decision to sell c1 at a price that is too high for most cancer victims to afford, may be viewed as a matter of public concern, and thus not at all one most appropriately left, exclusively and ultimately to BOT's conscience. Again, any cancer victims, who believed that they could never be able to pay BOT's asking price, and who wished more than anything to be cured, would presumably not view that asking price as a matter to be left entirely to BOT's conscience, even if anyone else did.

In both these cases, it is perhaps easy enough to envisage, issues being raised upon which people may take, what they and/or others may consider to be, very strong personal stands. To the extent that it is appropriate that they be thus considered, such people may be rightly said to be guided by their own individual conscience. This being so, each of the hypothetical cases discussed in the last paragraph have something in common with the actual cases mentioned already. It may be recalled that, it was suggested earlier (in 2.2) that just because people can and (arguably to say the very least perhaps) have been guided by their own individual conscience when taking stands upon issues such as war, taxes and benefit cuts, it hardly necessarily follows from this, that such people imagine such issues to be essentially private ones, and neither does it necessarily follow therefore that they wish them to be exempt from the public domain. Again, it may be recalled, that it has also been suggested already (in 2.2) that, the sometimes very public demonstrations of individual conscience with regards to such issues, is sufficient evidence that, not everyone will necessarily believe that the closer to individual conscience an issue is or may feel, the less it is of appropriate public concern, and thus the less it is suitable subject matter for public legislation.

Now, if for example the BOT case actually materialised and became well known to most, there is perhaps no reason to necessarily expect, that it would be less likely to cause public demonstrations and outcries of individual conscience than say either the Gulf War in the

nineteen nineties or the Vietnam War in the nineteen sixties and seventies in fact did. Indeed, in the contemporary world, cancer and knowledge of the often terminal effect of it is sufficiently widespread, to reasonably expect that the BOT case may cause such demonstrations and outcries on an international scale, at least as large as the international scale of those actually witnessed against those wars. So if it is reasonable to assume that those latter, were not aimed at trying to show that the issue of war did not legitimately fall within the domain of public concern, the same would seem to apply to the BOT case, indeed and again in the event of any such case actually arising. And if anything, there is perhaps even more reason to suspect that the BOT case would incite public demonstrations of individual conscience on a widespread scale greater than those incited by the introduction of the poll tax (say) in the United Kingdom during the early nineteen nineties. This furthermore, being for the obvious reason, that unlike that particular tax, cancer is a disease that is rather cosmopolitan in the sense that it does not restrict itself to directly affecting only people who live within the constitutional boundaries of one country. Although, the introduction of the poll tax of course, had a cosmopolitan flavour to it, in that it was a piece of legislation designed to apply to United Kingdom resident citizens, irrespective of their national, racial or ethnic origin. And once again, if it is reasonable to assume that those public demonstrations incited in Britain against the poll tax, were aimed not at trying to show that the introduction of it was an issue that could not be legitimately encompassed within the realm of the public domain, but were aimed instead at trying to show the opposite, then, in that sense, things would be no different in the BOT case should it ever actually arise. Also, if it is safe to assume that those demonstrations incited by the poll tax were aimed at re-shaping relevant government legislation rather than trying to show that the introduction of it was not suitable subject matter for such legislation (and indeed, it is, in one perhaps obvious sense, hard to understand how anyone could coherently even attempt to show this, as it was introduced by legislation in the first place) then it would seem equally safe to assume that any demonstrations possibly incited by the knowledge of BOT's market monopoly on c1, may well be aimed at changing government legislation concerning rights to patents.

The only conceivable sense in which the aforementioned demonstrations incited by the poll tax may be interpreted as attempts to show that the introduction of it was not suitable subject matter for legislation, is perhaps as follows. At least some who engaged in those demonstrations, did so to express their objection to being legally obligated to pay the poll



tax. They (or at least some of them) did not necessarily object to paying it on a (more) voluntary basis. For example, some of them at least, conceivably did not necessarily object to the paying of it, provided that those who did not pay it, were not threatened with legal sanctions as a result, and those who did could decide for themselves how much to pay and how often without being similarly threatened.

But, it would of course, be precarious to simply assume, that any of those who took part in those demonstrations did so for the reason(s) just suggested. Besides, even if they did, at least two more points would be still worth stressing.

Firstly, it is hard to see how an analogous interpretation, of the motives of anyone who may participate in a demonstration incited by a situation that is in at least one sense relevantly similar to the BOT case, could be made to stick. As it would be clearly pointless to thus participate in order to see to it that BOT (say) be given the legal right to decide for her/himself how much consumers will pay for c1, since to recall, under the circumstances described above, BOT would already have that legal right. Hence things would only seem otherwise from the viewpoint of someone who did not or would not know that BOT had it. Therefore and secondly, even if at least some who participated in the poll tax demonstrations, did so, to try to show, that in the aforementioned sense, (the introduction of) such a tax was not suitable subject matter for legislation, then in so doing, they would not necessarily be rejecting entirely the notion of a link between private individual conscience and judgement on the one hand, and government or public legislation on the other. Rather, they would thus be only serving to vindicate a certain claim made previously (in 2.2). For in demonstrating in support, of what they believed to be, the right(s) of people to exercise their own essentially private conscience, in order to pass a final judgement upon whether or not they should pay the tax, and if so, how much and how often, they would presumably have wished some such alleged right(s) to be protected by legislation. More specifically, they presumably would have wished the then existing relevant legislation to be reshaped, just as surely as they would have done, had their aim instead been to not only have such legislation repealed, but also to have it replaced by legislation making it illegal for any future governments to introduce a poll tax, either on a compulsory or voluntary basis. This is because, in wanting the former repealed, they presumably would wish (or at least not necessarily object to) it being replaced by legislation conferring upon people the legal right to pay or not pay the tax

voluntarily. Furthermore, if they did so wish, it indeed would have been inconsistent of them to at the same time deny any link between the right of people to decide for themselves to pay or not pay it, on the one hand, and on the other government or public legislation. Similarly, the same line of reasoning would appear to apply, if BOT or any other person(s), denied any link between the right of the former (under the circumstances suggested above) to decide for her/himself what the retail price of c1 will be on the one hand, and such legislation on the other. Indeed, in the event of any public demonstrations being incited by, and as a form of protest against, BOT's legal right to a market monopoly on c1 arising, it would not necessarily seem unreasonable to expect that BOT's consequent reaction would be to claim that the legal right s/he has to retain such a monopoly is very much a public issue, in the sense that the right to exercise unimpeded individual free choice under certain circumstances should be protected by legislation. If so, then to that extent, although BOT may believe that the issue of the appropriate retail price of c1 is one that s/he alone is entitled to pass a final decision upon, there is a sense in which even s/he believes that it is not an altogether intrinsically private issue.

## **2.9 Why neither the implementation nor the removal of any legislation can never be morally neutral**

It may be recalled that earlier (in 2.2), it were suggested that to remove certain legislation would or may legally permit people to make and/or at least act in accordance with their own final judgements upon, some substantive moral issue(s). An example here would be the removal of legislation making abortion illegal. The removal of such legislation legally permits people to make their own minds up as to whether or not to abort. In some countries (e.g. Britain) abortion is legal only up to so many weeks of pregnancy. However, it is conceivable, that in such countries, legislation making abortion illegal only so long after the onset of pregnancy, will also be eventually removed; indeed just as legislation making all abortion illegal has been removed in certain countries (e.g. Japan). If all legislation making all or some abortions illegal were removed, then this would be an obvious case of less legislation allowing more room for individual choice. Those removing it, might to that extent, be viewed as refraining from passing any final moral judgement upon the rights and wrongs of some or all acts of abortion. For instance, if by removing it, they made all abortions legal, they may consequently come to be seen, as thus adopting a morally neutral stance upon the substantive ethical issue(s) of abortion itself. This furthermore, may be especially so, if they were (seen also) to resist pressure from

anti-abortion lobbyists, to implement or reintroduce legislation making some or all abortions illegal.

But, in contrast, the above hypothetical BOT case, suggests that under some conceivable circumstances at least, to remove, refuse to implement or refuse to reintroduce certain legislation, would legally prohibit some people from making, or at least acting in accordance with their own final judgement(s) upon some substantive moral issue(s). This would clearly be so, if the legislation giving BOT the legal right to fix the retail price of c1 according to (only) his/her own judgements were removed. It would be equally so if there were a refusal to implement it. And, it would be no less so, if it were not reintroduced after it had been implemented and repealed.

In the BOT case then, it was the existence or implementation of legislation, that gave BOT the legal right to fix the retail price of c1 according to (only) her/his own judgement. It was not therefore the absence of it. Thus what is shown, put roughly perhaps, is this. If how morally neutral (if at all) a stance adopted by (say) some (would be) government legislator(s) is with respect to some substantive moral issue(s), is to be measured in terms of how much that stance allows people the legal right to make their own minds up on some such issue(s), then it cannot necessarily (and/or as a general rule of thumb) be measured in terms of how much (if any) relevant legislation exists, or in terms of the presence or absence of such legislation. Furthermore, it therefore follows, that if how non-interventionist a stance taken by some (would be) government legislator(s) is with respect to some substantive moral issue(s), is to be measured in terms of how morally neutral (in the above aforementioned sense) that stance is, then the same applies. That is, how non-interventionist (if at all) such a stance is, cannot be measured in terms of how much (if any) relevant legislation exists, or in terms of the presence or absence of such legislation. Or at least it cannot necessarily be thus measured. Furthermore, it is not even obvious that it can be thus measured as a general rule of thumb. For even if it is true, that the more non-interventionist a stance (taken by the aforementioned) is, the more morally neutral (in the aforementioned sense) that stance must be, it does not necessarily (and/or even perhaps as a general rule of thumb) follow, that the more non-interventionist (such) a stance is, that the less (or indeed the more) that stance advocates the implementation of relevant legislation. Such a non-interventionist stance, if it is to be defined in terms of (the aforementioned kind of) moral neutrality, is (partly at least) to be identified rather by

the specific type(s) of legislation it does and/or does not advocate. The non-advocation of legislation making abortion illegal would indeed be a possible symptom of such non-interventionism. But so too would be the advocacy of legislation giving some person(s) the exclusive legal right to decide what the retail price of some commodity will be. Even in the case of abortion, there are conceivable circumstances under which, the advocacy rather than the non-advocation of legislation by a government, would seem to be required in order for that government to take and/or maintain the relevant kind of non-interventionist stance.

Consider for example, the following hypothetical scenario. In some country CO (say), there is no legislation relating to abortion whatsoever. That is, in CO no law has ever been passed, that explicitly states that abortion is legal, but neither has one ever been passed explicitly stating that it is illegal. So in CO there is a perhaps obvious sense in which abortion may be said to be legal by omission. Indeed, just as the same may be said, about what would be considered to be a type of act, which if performed under certain circumstances at least, has no moral significance at all. An example here might be, tying one's shoe laces whilst being at home alone.

In CO then, some people may and do practice abortion without fear of prosecution. However, they practice it in fear, it may be imagined, of being publicly ridiculed and even physically attacked by a militant anti-abortion group. There are, it may be imagined further, members of this anti-abortion group, who are prepared to publicly ridicule and/or physically attack anyone who they believe or even suspect to have been involved in the practice of abortion. Consequently, pro-abortion activists (as they are known) and others lobby the government to pass a battery of legislation. This legislation, would, it is proposed, explicitly establish the legal right to abortion. It would also, it is further proposed, impose mandatory and especially severe penalties on anyone found to have ridiculed and/or physically attacked any person(s) because the latter have been involved in the practice of abortion in some way. Finally, the government of CO pass such legislation. It does so furthermore, only partly because by physically attacking those who they believe to have been involved in the practice of abortion, the anti-abortionists were breaking an already existing law, making all physical attacks of the kind carried out by the latter illegal. But it does so, also because of an allegedly incorrect belief apparently held by the anti-abortionists. This moreover is the belief that abortion is illegal since it, by law,

counts as murder of some person(s). It may be imagined, that the legislation explicitly establishing the legal right to an abortion was implemented especially to counter such a belief. And it may also be imagined, that the implementation of it, was itself based upon a certain controversial view. This is the view that abortion does not amount to murder of some person(s), since neither a human embryo nor a human foetus is a person. Any debates however, generated by this view, are of no (central) concern here and so may be bypassed.

The points that are centrally relevant here are these. It was by implementing legislation explicitly stating that abortion is legal that the government of CO adopted a (in an aforementioned sense) non-interventionist stance, and not by in any way, opposing the advocacy of such legislation. Again, if non-interventionism here is to be equated with moral neutrality, and if moral neutrality here is to be equated with allowing people to act in accordance with their own wishes with regards to some substantive moral issue(s), then to the extent that the government of CO passed legislation legally permitting and/or reaffirming the formal right of people to have an abortion if they so wish, that government adopted a non-interventionist morally neutral stance. Indeed it, in the event, adopted such a stance, no less than any government would by or in passing legislation giving BOT (under say, the circumstances imagined and described already at least) the exclusive legal right to fix the retail price of c1. It is perhaps easy to imagine the legislation giving BOT this right, being passed under circumstances similar to those equally hypothetical ones under which the aforementioned government of CO implemented legislation explicitly stating that abortion is legal. For, it is perhaps not hard to imagine, that before the former legislation were passed, BOT was able to fix and adjust the retail price of c1 entirely according to her/his own judgement without fear of prosecution. This, it may be for the sake of argument supposed, is because there was no relevant legislation explicitly stating that any legally rightful owner(s) of any given commodity, cannot be the sole judge(s) of the appropriate retail price of that commodity. It may be supposed further, that the aforementioned circumstances under which BOT discovered c1, gives BOT sole legal ownership of c1.

Now, at this point, some unnecessary repetition may possibly be avoided. This may be done, if for example, instead of 'anti-abortionist lobby' one reads 'anti-capitalist monopoly lobby' and rather than 'pro-abortionist lobby' one reads instead 'pro-capital

enterprise monopoly lobby'. For if so, it would be easy to construct a hypothetical scenario in the BOT case, that is analogous point by point to the one already constructed (in the last paragraph but one) in the case of abortion. Provided moreover, that such a scenario was added to each of these cases, both or either can be used to highlight another problem. This problem concerns the difficulty that sometimes at least may arise, of deciding non-arbitrarily when the stance of a government is and/or is not genuinely non-interventionist, in that it is morally neutral to the extent that it legally permits people to act as they see fit with respect to some morally substantive issue(s).

Reconsider yet again, the aforementioned abortion case for instance. As already suggested, the government of CO, in passing legislation explicitly granting the legal right to abort, acted in what may be called a morally neutral way. But the circumstances under which it were passed, may give grounds for questioning the view, that in passing it the government of CO were genuinely adopting a morally neutral stance. For the circumstances under which it were passed, suggested a sense in which the government of CO, was prepared to defend as morally permissible any un-coerced hence legal decision to abort. It is being assumed here, that the government of CO passed it in the belief that it had or has moral significance and for no other reason(s) of a purely practical nature for example; like for instance the belief that a law making some or all abortion illegal would be too hard to enforce with sufficient consistency anyway due to the often (virtually) insurmountable problems in policing and detecting acts of abortion.

Yet intuitively, it may seem odd and inconsistent even, to claim that a given act is morally permissible, whilst at the same time, claiming to have a morally neutral stance towards that act. For intuitively, it may seem that a stance of genuine moral neutrality towards a given act, would necessarily perhaps entail an uncertainty as to whether or not that act is morally permissible. And what applies here, with respect to any suggested morally neutral basis of a law giving people the right to decide for themselves whether they ought on possibly moral grounds to have an abortion or not, would seem to apply equally appropriately to the following. The repeal of a law making abortion illegal in the suggested name of moral neutrality. An implementation of a law giving the exclusive legal right to some person(s) to fix the retail price of some commodity, on again the suggested grounds that there is a significant and meaningful sense in which the

implementation of it is a morally neutral gesture. Finally, the repeal of a law denying some person(s) that right; again on the same suggested grounds.

Any government who repealed and/or implemented legislation in exactly (and at least one of) the ways just described, whether in the purported name of moral neutrality or not, would indeed seem to be effectively adopting a stance, which in a sense, is essentially similar to that evident in a certain kind of moral defence of a particular idea of justice. A moral defence of this idea of justice is offered by K Joseph and J Sumption (1979), and it goes like this.

Success and/or otherwise in the market-place is an accurate and fair indication of personal individual merit and/or otherwise respectively. For any social and/or economic inequalities that may arise as a result of market forces, are indicative of natural human differences. Those with a relatively high degree of natural skill and/or energy will achieve relative affluence and/or a relatively lofty social status. But those with relatively little natural skill and/or energy will not thus achieve. So the results of market forces have a natural justice about them. It is morally legitimate and appropriate to respect this natural justice. Hence, it is morally illegitimate and inappropriate to disrespect it, by attempting to distribute and/or redistribute social status and/or material wealth in a manner different to the manner in which relatively deregulated market forces do, will, or would thus distribute.

Now, it would appear, that once it is accepted that the social and/or economic inequalities arising from deregulated market forces are (for whatever reason(s)) morally legitimate, then it may seem that this is paramount to accepting that such inequalities are (more than) morally permissible. Indeed, that they are, is on one very plausible and perhaps most natural interpretation, the view held by the aforementioned K Joseph and J Sumption (1979). And if this is their view, then again, it may seem intuitively odd to attribute to them also, a stance of moral neutrality with respect to social and economic inequalities that are generated by relatively deregulated market forces. As it is perhaps arguable, that a stance of genuine moral neutrality with regards to such inequalities, would entail an uncertainty as to whether such inequalities are morally permissible or not. Or it may be thought, that such a stance involves having no definite view one way or another on the question of whether or not these inequalities are morally permissible. Moreover, if the

above interpretation of them is correct, it is certain that Joseph and Sumption do have a very definite view on it. In case this should still be doubted, more evidence may be provided by pointing to Joseph's active opposition during the nineteen seventies and nineteen eighties, to any trade union activity which he believed to be incompatible with what he saw as the naturally just social and economic inequalities generated by market forces. Such active opposition, it might plausibly be held, is hardly the most persuasive sign of moral neutrality; again not that Joseph and Sumption themselves necessarily intended to be interpreted as trying to show any sign of it where social and economic inequalities are concerned.

If ordinarily then, moral neutrality is thought of (partly) in terms of a (deliberate) disinclination or reluctance to either actively support or oppose one side or any other(s) in a moral dispute, Joseph and Sumption's stance on social and economic inequalities would not ordinarily count as a neutral one. And if this supposed ordinary view is both consistent and correct, the stance of the government of CO (in the above hypothetical abortion case) insofar as it passed a law making abortion legal would not count as morally neutral either. Or at least it would not, given furthermore, that it were passed under exactly the same circumstances suggested previously. For those circumstances were such that the government of CO may perhaps ordinarily and arguably with some plausibility, be viewed as adopting a moral stance which is not (altogether indeed if) at all neutral with respect to abortion. After all, that stance opposed the moral stance of the anti-abortionists. Further, although this opposition to the anti-abortionists may, for reasons already suggested, be claimed to be morally neutral, it is at any rate, not obvious perhaps that the latter would see it as such.

Neither would it be necessarily very convincing, for the government of CO to claim, that in making abortion legal thus explicitly giving people the formal right to make their own minds up as to whether or not they should abort, it were nonetheless exhibiting a morally neutral stance, on the grounds that to give people this right is not by definition to force them to make a definite decision one way or another. It may be contended for instance that, by giving people such a right, it does not necessarily follow that anyone upon whom this right is conferred, will ever decide to abort any more indeed than it necessarily follows that anyone given it will ever decide otherwise; after all it is logically possible that no person(s) having such a right will ever abort, equally it is logically possible that all



such person(s) will abort at least once. There is therefore, in this significant and relevant sense (it may be claimed) no way that any party conferring this right could be certain beyond all conceivable doubt how things will eventually transpire.

However, by way of reply here, four certain other hypothetical cases that have already been discussed may be reconsidered. All four to recall, were presented as plausible examples of a certain kind of epistemological situation, that is arguably at least commonplace enough, to suggest a response to the possible line of argument just presented in the last paragraph. For to recall again, it is the kind of epistemological situation that is such that, anyone as a result of finding themselves in it, may feel reasonably confident about making some prediction(s) of a comparatively general sort. And in the above hypothetical abortion case, there is nothing to necessarily suggest, that those legalising abortion will never eventually find themselves in essentially that same kind of epistemological situation. Indeed, this is perhaps to understate the case. To appreciate this, what in part is required is an intuitive estimation of the likelihood of no one having an abortion after it were legalised. In the particular above hypothetical case of CO, all other things being equal, the intuitive estimate would surely be that it is not very likely at all. (The 'equal' clause here is intended to take care of conceivable circumstances, such as to take one example, there being an informal cultural taboo against abortion in CO, strong enough to deter anyone from practising it anyway, be it legal or not). So (and all things again being equal), all that is then required, is a further intuitive estimation of the likelihood of no person(s) who legalised abortion, ever coming to believe correctly that some person(s) exercised the legal right to abort. In the above hypothetical case of CO at least, the intuitive estimate would again, surely be that that is not very likely at all. Hence the intuitive likelihood is that the person(s) who legalised abortion, will, at least some time after (if not before) doing so, feel reasonably confident enough to make a prediction of a relatively general sort. This prediction may be expressed as follows: 'Some person(s) the identity of whom is as of yet unknown, will at some as of yet unknown future time(s) have an abortion'. It is it may seem, only if it is assumed, that even though the person(s) who legalised abortion had discovered that some person(s) had already aborted, the former would nevertheless never feel reasonably confident about making such a prediction, could it be realistically doubted that it may indeed be reasonably confidently made by her/him (them). But, unless it is also assumed, that whoever legalised abortion was plagued by a Humean style of scepticism concerning the

notion of inductive reasoning (or plagued by some other relevantly similar philosophical idea(s)) it would instead appear to be realistic to expect whoever legalised it, to feel that such a prediction can be made with reasonable confidence. This indeed, would seem no less a realistic expectation in this hypothetical abortion case, than it would seem (and has effectively already been suggested) to be in all and each of four other previously discussed hypothetical cases, namely the atom bomb case, the smoking case, the leaf shedding case and the case of Heisenberg's uncertainty principle. Given all this, it may be tempting to draw the following conclusion.

As it can be reasonably expected, that the government of CO, would feel, after explicitly legalising abortion, reasonably confident in being able to predict that some persons will exercise the legal right to an abortion, it does not seem altogether convincing to claim that in legalising it, that government were expressing a morally neutral stance towards it on the grounds that no members of it, could be certain beyond all conceivable doubt, that anyone would actually exercise the legal right to abortion, and this in turn on the grounds, that the legalisation of abortion in itself, still leaves open the logical possibility of no one actually exercising it. After all, consider for example yet another hypothetical scenario.

### **2.10 Why the statistical improbability, of an outcome may still undermine claims of moral neutrality**

Imagine there is an illegal organisation. This organisation is a necrophiliac club. It is known simply as NC. And it were originally set-up by someone known as 'chief necrophiliac', or more simply still as 'CN'. CN lays down the conditions for membership of NC. (Just as governments decide what is legal and what is not). The conditions are these. All membership of NC must be voluntary. (Just as all legal abortion in CO is voluntary). Members of NC will meet one night a week. When they do, each except CN will consume only one glass of wine which they will take from a table. On this table, there will be twice as many glasses of wine as there are NC members not counting CN. So after every NC member excluding CN has consumed one glass of wine, there will be half the original glasses of wine left on the table. One tenth of the original number contains a drug, known simply as 'death' or more simply as 'D'. All NC members know this before choosing a glass of wine to drink. But none of them know before choosing which contain it and which do not. For all the glasses of wine look the same to the naked eye. Even CN does not know which of these glasses contain D. However, what all NC

members including CN do know is this. If wine containing D is consumed, the consumer of it will die more or less instantly. Any NC member who dies as a result of consuming D, will be mutilated, cooked and eaten by the other NC members.

The hypothetical scenario just described, is effectively and in large part at least, rules of what might well be thought of, as a very sordid game. However, it is a game, the rules and possible effects of which, were voluntarily agreed to by everyone participating in it. And more particularly, the rules of this game allowed everyone thus participating, to pull out if and whenever they wished. So even though those rules were laid down by one party, namely CN (just as the law legalising abortion was; namely, by the CO government), they were rules that no one was forced to comply with, again, in that they were rules of a game that again no one was forced to participate in (just as similarly, the legalisation of abortion in itself, forces no one to actually have an abortion). Now, bearing all this in mind, suppose the following events transpired.

A member of NC dies as a result of drinking D. The police discover this and arrest CN. CN is charged with (knowingly) causing death by misadventure. But CN pleads not guilty. Furthermore, CN defends this plea in court as follows. In devising the rules of NC, CN adopted a morally neutral and hence, in a sense non-interventionist stance, towards any relevant substantive moral issue, concerning the rights and/or wrongs of people dying as a result of risking their lives, at least under the circumstances the members of NC risked them. For in devising them, CN simply allowed the members of NC to act in accordance with their own wishes with regards to such an issue. Thus CN, was merely acknowledging their right, to risk (or to die by risking) their own lives in the way they did if they so wished. However, to acknowledge that they have this right, is not by definition, to force them either to exercise it or to not exercise it. Also, from the fact that CN acknowledged it, it does not necessarily follow that any NC members will exercise it. For although a condition of NC membership is the exercising of it, given that NC membership is entirely voluntary, it does not necessarily follow from the fact that the right of people to become NC members was acknowledged in the way CN acknowledged it, that there will ever be anyone who will actually become members of NC in the first place. Moreover, even if there were, people can withdraw their membership anytime. And indeed, should any NC member(s) become struck with a fear of death, and as a result refuse to run the risk of consuming a fatal drink, then any such member(s) will (according to the rules of

NC membership) have effectively withdrawn their membership. Again, even if some people both exercised their right to become NC members, and to run that risk, it still does not necessarily follow from this, that any of them would die as a result of running it. So, CN could not have been sure beforehand, beyond all conceivable doubt, that as a result of running it any of them would die. In devising the rules of NC membership, CN did not bring about all the conditions that were necessary and sufficient for the death of any NC member. Now, for x to be the exclusive cause(s) of y, x must be all the conditions necessary and sufficient for y. Since nothing CN did amounted to all the necessary and sufficient condition(s) for the death of anyone, CN is not guilty of causing death by misadventure.

The above hypothetical defence of CN's 'not guilty' plea, would not (indeed to say the least perhaps) necessarily be likely to convince a jury. This is partly because the jury may conclude that it appeals to inappropriate epistemological considerations. Jury members may conclude for instance, that CN nevertheless, was, at the relevant time(s), epistemologically placed so as to be able to predict with reasonable confidence that some NC member(s) would eventually die as a result of consuming a drink containing D. Under the circumstances, the chances on any one given occasion, of any one NC member consuming a drink containing D, were let it be supposed, no more than twenty to one. But it is not obvious, that these odds would be long enough to persuade the jury that CN could not have predicted the death of some NC member(s) reasonably confidently. Besides, it does not matter how long such odds were. Or at least, it is not clear that jury members would and/or should consider them relevant to the question of CN's guilt or otherwise. For they may reason as follows.

Although on any one given occasion, the chances of any one NC member drinking D were as long as twenty to one, there is a certain intuitive sense in which, the more often the risky practice which the NC members engaged in is repeated, the more likely it becomes that at least one of them will eventually drink D and consequently die. After all, the chances of buying a winning lottery ticket on any one given occasion when just one is purchased may be several million to one. Nevertheless, intuitively, there is perhaps a sense in which, the more often one buys a lottery ticket, the more likely one is to eventually buy a winning one. Indeed, the chances of anyone winning a lottery draw on any one given occasion, may be several million to one. Intuitively however, there is a

sense in which the more often a lottery draw is made, the more probable it is that someone will eventually win it. And the jury may conclude, that the kind of reasoning applicable to the chance(s) of a winning lottery ticket prize draw for example, applies equally well to the issue of the chances of some NC member(s) dying as a result of drinking D.

Furthermore, the jury may come to the conclusion, that NC members took the risk of dying as a result of this often enough, to make someone who is aware of the relevant facts feel able to reasonably confidently predict, that some NC member(s) would die as a consequence of drinking D eventually.

### **2.11 Why the logical possibility of an outcome may alone be sufficient to undermine claims of moral neutrality**

Even if however, the jury were persuaded (either rightly or wrongly) that NC members acted out the life-risking drinking ritual just once, this may still be insufficient to convince that jury to accept CN's plea of 'not guilty'. Although if the jury were thus persuaded, and were somehow persuaded also (again either rightly or wrongly) that no NC members ever intended to act it out more than once, that jury might well be more, if not completely, inclined to accept CN's claim that there were no grounds upon which it could have been predicted with reasonable confidence, that any NC member(s) would die as a result of drinking D. For in the event, the jury may still reject CN's plea, on the grounds that the acting out of such a ritual just once makes for the (logical) possibility of some NC member(s) dying as a result of drinking D, and furthermore, that it is this rather than the logical possibility of none of them dying as a result of a one-off acting out of it, that is the crucial consideration here. So if CN could not have been sure beforehand, beyond all conceivable doubt that none of them would die, then equally, neither could CN have been any more sure beforehand that any of them would not. Neither perhaps, would it be surprising if the jury rejected CN's plea on the grounds just suggested. To appreciate this, all that is possibly required, is some reflection upon the probable verdict of a jury, after being presented with the facts of yet another hypothetical, and in some relevant sense(s) essentially similar case.

Suppose for example, some person A was driving down some road R one night at time  $t_1$ . In doing so, A is knowingly and intentionally breaking the legal speed limit. Now A had never driven down R before. But A somehow discovered prior to doing so, that only very rarely did anyone ever drive down R at time  $t_1$ . So A, understandably perhaps, may feel

reasonably confident in predicting, that by driving down R at t1 at a speed exceeding the legal limit, s/he (A) would not collide with an oncoming car. Against all statistical odds however, on this very first occasion that s/he does so, A as a result is involved in a fatal collision with another car that was travelling in the opposite direction and within the legal speed limit. Person A is arrested on two charges. One is breaking the speed limit. To this, A pleads guilty. The other is manslaughter. To this, A pleads not guilty. S/he does so, on the aforementioned grounds of the statistical improbability of the collision happening. Unsurprisingly perhaps, in court, the jury return a unanimous verdict of guilty, although every member of that jury accepted fully A's claim that the collision was statistically improbable.

## **2.12 The role of the notion of a 'partial cause' in everyday contexts in the attribution of moral responsibility and the denial of 'moral neutrality'**

Furthermore, even given that CN did nothing that amounted to all the conditions necessary and sufficient for anyone's death, this may not be enough to persuade a jury that CN was not even a partial cause of death. Indeed, certain details of CN's very own conceivable defence, may only serve to persuade the jury otherwise. For to recall, CN admitted devising the rules of NC. And in so doing, CN, was at least in the possible if not probable view of the jury, making it more likely that some person(s) would die as a result of engaging in some life-risking venture(s). This moreover, is the type of view that may convince the jury that CN was a partial cause of death. The jury may, unsurprisingly perhaps, agree that CN was no more than a partial cause of it; and this on the grounds that,

- the relevant deceased person died as a result of voluntarily risking her/his own life.

The view that, under the aforementioned circumstances, CN was (even) a partial cause of death is conceivably at least, philosophically controversial. As it is a view, which potentially at any rate, might give rise to several related philosophical debates. One is the aforementioned (see section 1.4) free will/determinism debate. Another is the controversy over whether or not reasons are causes. This latter controversy is, in turn, perhaps especially closely related to the question concerning the nature of a cause (or causation). All these debates are potentially technical ones. But, it would serve no immediate or centrally relevant purpose(s) to enter into either of them here. The immediate and centrally relevant point here, is rather this. Perhaps any jury fully aware of the circumstances, under which the NC member died, would probably conclude that the

latter's death was partly caused by CN; in the sense that CN contributed to, or encouraged it. For in some everyday contexts perhaps, phrases such as 'contributed to x' and 'encouraged x' are taken to be, at least roughly semantically equivalent to 'partly caused x'.

### **2.13 Why the notion of moral permissibility undermines claims of moral neutrality**

Finally, it is far from clear that, CN's claim to have been exhibiting a morally neutral stance in setting up and devising the rules of NC, is likely to convince a jury that therefore CN was not morally responsible in any way for anyone's death. This is because, the jury might doubt that CN's claim to moral neutrality here is a credible one. And this, for essentially the same reasons, why it might be doubted, that passing a law legalising abortion is indicative of a genuinely neutral moral stance. Such reasons have already been explained. So hopefully, it will merely be necessary to restate them here, only as extensively as to make clear some important analogies between the NC case on the one hand, and some other aforementioned cases on the other, with respect to the issue of moral neutrality.

The circumstances under which CN devised the rules of NC, may suggest that CN was prepared to defend as morally legitimate and thus morally permissible any un-coerced and voluntary decision by someone to risk her/his own life in the way NC members did. Intuitively, however, it may seem oddly inconsistent to claim that to risk one's life in this way is morally permissible, whilst at the same time claiming, to have a morally neutral stance towards such deliberate life-risking acts. So what applies here, with respect to the relationship between the notions of moral permissibility and moral neutrality in the case of such life-risking behaviour, would seem, once again, to apply no less to all the other cases previously discussed, (in 2.2, 2.8, 2.9, and 2.11). Hence if, and to the extent that, there are grounds to doubt CN's claim to having (adopted) a morally neutral stance towards such behaviour, then equally there are no grounds to necessarily accept any similar claim made on behalf of any party who (say) either, repealed a law making abortion illegal, implemented a law making abortion legal, implemented a law giving some person(s) the exclusive legal right to fix the retail price of some market commodity, or repeal a law denying some person(s) the exclusive legal right to fix it. Again, in the CN case, it is perhaps arguable, that a stance of genuine moral neutrality with respect to deliberate life-risking acts would entail an uncertainty as to whether or not such acts are morally

permissible. As such, it entails no definite view one way or the other on the question of whether or not such acts are morally permissible; or to put it perhaps differently: Ought on moral grounds to be permitted. Given however, that (as suggested in 2.10) part of CN's defence appealed to a notion of acknowledgement of people's (alleged) rights to risk their own lives at least in the way NC members did, it is far from clear that CN would, at the same time, be able to claim to be uncertain as to whether or not the exercising of such (alleged) rights is morally permissible without being guilty of some inconsistency. Indeed, given that CN's defence in part appealed to such a notion, it would seem to necessarily follow, that far from being uncertain about the moral permissibility or otherwise of people exercising those (alleged) rights, CN's defence did entail the very definite view that the exercising of them is morally permissible. Otherwise, it is not obvious why CN devised the rules of NC in the first place.

#### **2.14 That it can be doubted that there can ever be a morally neutral manipulation of rules specifying (un)acceptable conduct**

By now, enough has hopefully been said to show, that in devising the rules of NC, it can be legitimately doubted that CN exhibited a morally neutral stance towards the kind of acts those rules were intended to facilitate. Furthermore, to the extent that the reasons offered as to why this may be legitimately doubted, are essentially the same as the reasons offered as to why similar doubts may arise in some certain other aforementioned cases (e.g. the BOT case and the abortion case) the following conclusions may seem tempting. The latter cases, insofar as they do or may entail implementing and/or repealing laws prohibiting and/or permitting some certain type(s) of act(s), involving the manipulation of rules of what in some given set of circumstances is (not) acceptable conduct, are no different to the CN case. In the CN case, reasons were found to doubt that such manipulation amounts to moral neutrality. Essentially the same reasons were found to doubt this in those certain other aforementioned cases (again, the BOT case and the abortion case for example). All this may well make one wonder, whether there can in principle, ever be a situation that involves a morally neutral manipulation of rules specifying what is (not) acceptable conduct.

#### **2.15 Why the dubious notion of a morally neutral manipulation of rules of (un)acceptable conduct undermines Hayek**



This last point, is just one that has particular relevance here. For Hayek is not opposed to all government legislation. And as indicated already (in 2.1), Hayek attributes a sense of neutrality to the legitimate role of government. So from this, it would appear to follow, that Hayek attributes a certain sense of neutrality to all legitimate government legislation. But, if certain arguments presented so far are plausible, then to the extent that any government legislation is somehow (and inevitably) related to issues that are (intuitively at least) moral issues, it is doubtful that any such legislation can ever be neutral in the sense of being morally neutral. Therefore, unless it can be shown, that Hayek has successfully demonstrated that (and how) some non-moral sense of neutrality can be attributed to the legitimate role of government, then it is not clear that any (attempted) attribution of neutrality to such a role can even be given intelligible content, let alone be sustained. Furthermore, it is not obvious to say the least perhaps, that Hayek has successfully demonstrated this. Hence, any definition of the legitimate role of government (legislation) couched (partly) in terms of (some notion of) moral neutrality, may appear to be no less confused than what Hayek claims a certain kind of definition of 'public good' to be (see also 3.3). Also, however, to the extent that Hayek's own definition of 'public good' relies (partly) upon some same notion of moral neutrality as the one already considered and doubted here, then Hayek's is a definition of 'public good' that may be doubted too. Again, what applies here to Hayek's definition of 'public good' would seem to apply equally to Hayek's account of 'social justice'.

Even prior to a detailed consideration of how Hayek attempts to provide a sustainable account of the terms 'public good' and 'social justice', one thing at least is hopefully clear from what has already been said in 2.1. This moreover is, that Hayek's definition of 'public good' at least, is based (partly) upon a maintained distinction between public and private interests. If however, certain aforementioned considerations (in 2.3, 2.6-2.14) are plausible, it is not obvious any such distinction can be maintained. Or at least it is not obvious, that it can be coherently maintained whilst at the same time proposing that there can be a government who may legitimately pass and repeal legislation, (see 2.8-2.14).

In terms of Hayek's attempted distinction between public and exclusively private interests, it is in relation to the latter kind of interests that a government's appropriate and legitimate role is (morally) neutral. However, even if the aforementioned kinds of problems arising from the notion of morally neutral implementation and/or repealing of legislation are

completely ignored, other problems remain. Further, although these remaining problems have, to some extent been discussed already (in 2.3 and 2.6-2.7), at this point, the gravity of them may be stressed more fully.

### **2.16 How deciding what does (not) affect the public domain can be too temporally problematic**

These remaining problems are again temporal ones. In order to stress the gravity of them more fully than it has been so far, it may be useful to recall certain points made previously (in 2.3 and 2.6-2.7) regarding the seriousness of the challenge they present to any attempt to arrive at a non-arbitrary stipulation of a certain sort. Such an attempt involves trying to discover some definitive meanings of three phrases. Hence, it entails also, trying to discover some definitive difference(s) between these phrases with regards to what they each actually mean. These phrases, are yet again the following: 'immediate term public effects', 'short term public effects' and 'long term public effects'.

Now, it has been argued already (in 2.3 and 2.6-2.7) that it is not obvious that either of these latter three phrases can be non-arbitrarily defined. It was also effectively argued that this would become no more obvious, even if an attempt to non-arbitrarily define the meanings of phrases such as 'public effects', 'public interests' and 'public morality' turned out to be successful. In order to be successful, it would seem to have to result in a non-arbitrary definition of 'private effects', 'private interests' and 'private morality' also. That, in turn, would seem to have to necessarily involve a non-arbitrary definition of the difference between the public and the private with respect to effects, interests and morality. But again, the difficulty of defining non-arbitrarily the (difference between the) phrases giving rise to the aforementioned temporal problems, since it is one that exists quite independently of the problem of defining non-arbitrarily the (difference between the) public and the private (see also 2.7), it is one that may be appropriately addressed without any attempted technical philosophical analysis of 'public' and/or 'private'. However, ironic though it may at first seem, in order to bring out the relevance and seriousness of such temporal problems as fully as is perhaps possible, there is an arguable sense in which, it would be useful to suppose, that they do not even exist. So much has already been supposed, it may eventually be recalled. Nevertheless, to suppose as much again will reveal problems so far unmentioned.

Let it be supposed then, as it were before (in 2.3 and 2.6-2.7) that a non-arbitrary definition of the (difference between the) phrases 'immediate term public effects', short term public effects' and 'long term public effects' has been discovered. Also, let it be supposed as before, that in deciding whether or not to implement and/or repeal legislation in the name of some notion of the public good, any government need only take into account immediate term public effects. At this point, it may be reminded, that the idea of thus deciding in some such name, is, simply for the sake of argument, being assumed to be wholly philosophically unproblematic. It may also be pointed out here, that the exclusive concern with immediate term public effects, rather than short and/or long term ones in the argument about to be presented, will do nothing to detract from the power of that argument. This is because, the problems raised by this argument, for any government in deciding whether or not to implement and/or repeal legislation on behalf of some notion of the public good and/or moral neutrality, would be no more likely to be solved by appealing to some definition of short or long term public effect(s), than they are likely to be by appealing to any definition of immediate term public effect(s); and this for reasons that will hopefully become readily apparent. The above hypothetical BOT case, would appear to provide a potential basis upon which such problems might be raised. In order to explain why, it may be useful to reiterate some earlier points.

The non-arbitrary definition of 'immediate term public effects', would presumably stipulate a specific, precise, given, time period, (see also 2.7). This time period may be some number of years. It may be one year. Alternatively, it may be some number of years. Or it may be just one month. Again, it may be either some number of weeks or only one week. Perhaps, it may be either some number of days or a single day. Maybe it is some number of hours. It may be one hour. May it be some number of minutes? Could it be just one minute or even less? Whatever, the precise period stipulated here, it presumably must apply to all cases which (and because they) involve some decision(s) to (not) implement and/or to (not) repeal legislation in some name of moral neutrality and/or the public good. Otherwise, the stipulated period, would, it may seem, not be non-arbitrary. Now, if this indeed is required for the non-arbitrariness of that stipulated period, there are conceivable circumstances under which, even if this requirement is recognised, it would be a requirement that would serve no use in practice or in principle.

To recall, apart from the cancer curing chemical c1, the leaves of the imaginary trees in the previously discussed hypothetical BOT case, contained another chemical c2 (see 2.8). Suppose that c2 had a (potentially) neutralising effect on the cancer-curing properties of c1. Also suppose, that during some given time period t1, as far as anyone could tell, c2 lost the potential to have this neutralising effect, only if and for (say) the first five minutes after, the leaves containing it had been shed 'naturally' so to speak. So if these leaves were either intentionally plucked from the trees, or not put into incubation within and/or no later than five minutes after having been shed 'naturally' let it be supposed, c1 would no longer be effective as a cancer cure, for then all the cancer-curing properties of c1 would be neutralised by c2. It may be supposed, that if they were incubated no later than five minutes after they had been shed 'naturally', the artificial warmth involved in the incubation process would counteract the otherwise aforementioned neutralising effect of c2, thus preserving the cancer-curing properties of c1, long enough for c1 to be extracted from the leaves and used to cure people of cancer. Finally suppose, that during t1, as far as anyone can tell, the following would also seem to be true.

The amount of c1 needed to cure any person(s) of cancer, could only be extracted from several thousands of leaves. Hence, in order for any to be cured of it by some injection(s) of c1, there would need to be at some point(s) in time, several thousands of leaves containing c1 that had been shed 'naturally' from the aforementioned trees for no longer than five minutes. But given the nature of the irregularity of the leaf shedding process on the hypothetical and otherwise uninhabited planet described above (in 2.7), it may well be that during t1, there will be no person(s) who will feel able to predict with reasonable (inductively based) confidence that there will ever be some such point(s) in time. So, during t1, there may well be no person(s) who will feel able to predict with reasonable (inductively based) confidence, whether or not the aforementioned irregular process will ever actually lead to a state of affairs that could or would affect any human interests, private or public. For, no person(s) would, during t1, or indeed from any one given moment to the next, feel able to reasonably confidently predict beforehand, how many if any leaves containing c1, will have been shed 'naturally' for no longer than five minutes at some or any future point(s) in time. Furthermore, it would again, not matter how small or brief the exact time period constituting the non-arbitrary definition of 'immediate term effects' is, no person(s) would, during t1, or at any given moment to the next, feel able to reasonably confidently predict, whether or not any of the relevant 'natural' leaf shedding

processes will ever actually result in a state of affairs, that is of genuine public concern rather than being of exclusive private concern. (This, to be reminded again, is still assuming the discovery of non-arbitrary definitions of the terms 'public' and 'private', and therefore is assuming also the discovery of a non-arbitrary distinction between the meaning(s) of those terms).

It may here be appropriate to stress, that the point just made in the last paragraph is not merely a repetition of a certain other earlier (and possibly similar sounding) point (in 2.7). For the purpose (to recall) of raising the earlier point, was to try to show the following.

Even a non-arbitrary definition of 'immediate term effects', cannot be appealed to in order to try to justify not taking into account effects lying outside the immediate term when deciding what does (not) affect the public domain. This therefore, is so, especially if, the effects lying outside the immediate term, are effects such that some person(s) may feel able to predict them with reasonable confidence beforehand. For there is something arbitrary about only taking into account what are non-arbitrarily immediate effects in deciding what does (not) affect the public domain. Or at least this is so, if some non-arbitrarily non-immediate effects are as reasonably foreseeable as the non-arbitrarily immediate effects. In contrast however, the purpose of the more recent point (made in the last paragraph) is as follows.

Even a non-arbitrary definition of immediate term effects, cannot be appealed to, in order to justify not taking into account effects beyond the immediate term, when deciding what does (not) affect the public domain, on the grounds that the latter effects will not always seem to some or any person(s), to be predictable with a reasonable degree of confidence beforehand, whereas the former always will. Furthermore, the reason for this, is not merely or necessarily because, within certain epistemological frameworks of reference, it would seem that it is (in a previously suggested sense) the greater the generality of a prediction, that makes it more likely to turn out to be correct, rather than the greater or smaller the temporal distance of the event(s) being predicted from whatever caused it (/them). Neither is it necessarily, or even at all because, within certain other epistemological frameworks of reference, predictions of a comparatively less general, hence more specific kind (some of which may be about what will (not) happen in no more than one given case) seem (for reasons suggested in 2.5) to be able to be made, with as

much, if not more, reasonable confidence than may a prediction of a more general (and in an aforementioned sense, related) sort. Although, to recall (in 2.4) it is true, that within the former epistemic frameworks, it may sometimes at least, be the case, that the more temporally remote effect(s) and/or outcome(s) seem more reasonably confidently predictable, than some less temporally remote one(s), whilst in terms of the latter epistemic frameworks, it may sometimes at least, be the case that the opposite is true. That is, in terms of those latter frameworks, the more immediate effect(s) may seem more reasonably confidently predictable than may some more temporally remote one(s). Perhaps a tempting conclusion to draw from this is the following.

There is no reason to necessarily believe, that as a general rule of thumb, that more immediate effects are predictable with greater reasonable confidence than are less immediate ones. Neither is there any reason to necessarily believe, that as a general rule of thumb, the less immediate effects are predictable with greater reasonable confidence than are more immediate ones. So, there is no more reason to necessarily believe, that more immediate effects are (felt to be) predictable with greater reasonable confidence more often than are less immediate effects, than there is to believe that the opposite is the case, or indeed to believe that predictions of a more general type, can be made with more (felt) reasonable confidence more often than can predictions of a less general type, or again to believe that the converse is true. Furthermore, the above hypothetical example, of a leaf shedding process that is (seemingly) too irregular, for any person(s) to feel able to predict, any of either the macroscopic or microscopic details of it with reasonable confidence, is a logically possible illustration of a case, such that, the most immediate effects are just as unpredictable with any (felt) reasonable confidence at all as are the less immediate effects. So this latter example is, in at least one respect, essentially different to, the (say) previously discussed hypothetical atom bomb case. For, it will again be reminded, (see also 2.4) that in the atom bomb case, it was the (more general and) less immediate outcome and/or effect that could be predicted with reasonable inductively based confidence, whereas the (relevant, related, less general, more specific and) more immediate outcome(s) and/or effect(s) could not be predicted with such confidence at all. This is why the atom bomb case, is hopefully a clear vindication of the previous point to the effect that, even a non-arbitrary definition of 'immediate term effects' cannot be appealed to, in order to justify not taking into account anything other than the most immediate effects, as a basis for deciding what does (not) affect the public domain, when

such effects are not as reasonably foreseeable as non-arbitrarily less immediate ones (i.e. short term effects, and long term effects). But in the hypothetical leaf shedding case, neither the (more general and) less immediate outcome(s) and/or effect(s), nor the (relevant, related, less general, more specific and) most immediate one(s), could be predicted with any reasonable inductively based confidence whatsoever. And that is why, this latter case, is hopefully an equally clear vindication of the later and different point to the effect that, even a non-arbitrary definition of 'immediate term effects' cannot be appealed to, in order to justify not taking into account anything other than the most immediate effects as a basis for deciding what does (not) affect the public domain, when such effects are, like all the non-arbitrarily less immediate (i.e. short and long term) ones not at all reasonably foreseeable.

But there is still a further point that may be made here. If, in the BOT case, the leaf shedding process is assumed to be too irregular to enable anyone to predict with reasonable inductively based confidence, what turn that process (no matter how macroscopically it is viewed) will take, then the following conclusions may be drawn. Firstly, it does not matter how brief the time period in terms of which the notion of immediate term effects is (even) non-arbitrarily defined, it will always be logically possible to conceive of a case involving effects that intuitively are (or would be) of public concern, but which cannot be accommodated by the relevant definition. Here, in response, it may be suggested that only effects that are actual (in the sense that they have already taken place see 2.18) and which fall within the non-arbitrarily defined immediate term period, need to be taken into account, when deciding what effects do (not) affect the public domain (see 2.3). And it may be continued, it will always, in principle, at least be possible to identify effects of events retrospectively. However, as will be argued later (see section 2.19), in retrospect, any type of act may be (ordinarily) deemed to be of public concern.

### **2.17 Some further epistemological considerations underlying 'ordinary' views about what does (not) the public domain**

There is however, at least one thing, that the latter case and the atom bomb case have in common. This furthermore is, that a certain point made previously, (see 2.8) would seem equally applicable to both. That point is simply this. Both such cases, involve effects of a certain type. These effects that is, are of a type such that, if and to the extent that they

could all be predicted in advance with reasonable inductively based confidence, are equally likely perhaps to be considered as some effect(s) affecting the public domain. In other more explicit terms, if the atom bomb case involves some effect(s) that intuitively at any rate, would amount to as clear cut a case as perhaps any effect(s) that (potentially) affect(s) the public domain, (given again that the effect(s) in question here, can be predicted with reasonable inductively based confidence) then the same would seem to apply equally well to the hypothetical leaf shedding process in the above BOT case, if that process was instead not too irregular for any person(s) to feel able to predict some of the details of it with reasonable inductive confidence.

The potential analogy suggested here, between the atom bomb case and the BOT case, again merely requires a change in detail to the latter in order to be fulfilled. Furthermore, it is a change of detail that is especially easy to imagine. For it entails little or no more than, some reference(s) to what has been described already as 'a commonplace epistemological state of affairs' (See section 1.4). And this state of affairs, to recall yet again, involves some person(s), being epistemologically placed so as to feel reasonably confident about predicting a general outcome or effect, without feeling similarly confident about predicting a comparatively less general and (in an aforementioned sense) related outcome or effect. As suggested already (in 2.4) in the atom bomb case, it involves some person(s) being thus placed so as to feel reasonably inductively confident about predicting a certain comparatively general outcome or effect describable as: 'All inhabitants of city X, will have either died or become physically deformed, by a year after, and as a result of an atomic explosion in X,' without feeling similarly confident about predicting a relatively less general and (in that same aforementioned sense) related outcome or effect, describable (say) as: 'One particular inhabitant of X, person A (say), will die two months after, and as a result of, an atomic explosion in X'. Analogously, in the BOT case, the aforementioned commonplace epistemological state of affairs, involves some person(s) having enough reasonable inductively based confidence, in making a prediction of a certain comparatively general outcome or effect. Moreover, this outcome or effect, may be describable (say) as follows. 'At some specifiable time(s), during (say) the British calendar year, all the trees on some specifiable and otherwise uninhabited planet P, will have 'naturally' shed enough leaves containing a (potentially) cancer curing substance c1, so as to make an amount of that substance available, that would be sufficient to cure some or any person(s) of cancer'. Yet, at the same time, no person(s) may feel similarly



confident, about making a prediction of a relatively less general and (again, in an aforementioned sense, related) sort. This latter prediction, may be describable (say) as: 'One particular leaf, L (say), containing c1, will be shed 'naturally', by or from some particular tree, TR1 (say), at some particular time t1, on some otherwise uninhabited planet, P1 (say)'.

If a case like the hypothetical BOT case, did actually materialise, in a manner analogous (in the sense just described in the last paragraph) to the aforementioned atom bomb case, then for some reasons already offered (in 2.8) the former may well be viewed by most to be a matter of public concern as much as indeed the latter. On the other hand, if a case such as the former actually materialised, in a manner disanalogous (in that same sense suggested in the last paragraph – see also 2.7) to the atom bomb case, then the following may conceivably be argued.

With respect to the problem of what does (not) affect the public domain, the BOT case is relevantly and fundamentally different to the atom bomb case. For the BOT case involves no effect(s) that any person(s) can predict with reasonable inductively based confidence, whereas the atom bomb case does. Hence, the BOT case, unlike the atom bomb case, involve(s) no effect(s) that may or necessarily would affect the public domain, as far as any person(s) could, with reasonable inductively based confidence, predict. (It will be reminded again here, that it is still being assumed, simply for the sake of argument, firstly, that a philosophically sustainable definition of the (difference between the) terms 'public' and 'private' has been discovered (see also 2.7 and 2.16) and secondly, that BOT has the aforementioned patent on c1 (see also 2.8).

The conceivable line of argument just suggested (in the last paragraph) is not however, necessarily altogether persuasive. For a conceivable response to it may go as follows.

If a case such as the hypothetical BOT one, actually materialised in a manner involving no effect(s) that any person(s) could predict with reasonable inductively based confidence, then at least two conclusions may be fairly safely inferred from this. Firstly, there would, in the event, still be no reason(s) to believe that the inability of any such person(s) to thus predict, can itself be similarly predicted to turn out to be a permanent epistemological state of affairs. As eventually, some such person(s) may discover some relevant and hitherto

unknown environmental variables. This discovery, may bring about a relevant shift in the epistemological position of some such person(s) in relation to the leaf shedding process on the aforementioned otherwise uninhabited planet. Furthermore, this shift may enable some such person(s) to predict with reasonable inductively based confidence, the times at which there will (not) be enough 'naturally' shed leaves containing c1. Hence it will or may enable some such person(s) to thus predict, the times at which there will (not) be the amount of c1 available sufficient to cure some or any person(s) of cancer.

Now unless the epistemological shift just suggested here, can be shown to be a logical impossibility, (and it is, to say the least, not clear how this could ever be shown) it may be sensibly claimed, that in the event of such a shift actually taking place, a certain situation will have consequently arisen. And it will be such that, it renders the BOT case, as clear cut a case of genuine, legitimate, public concern, as (say) the aforementioned hypothetical atom bomb case would (for reasons suggested already, perhaps be widely regarded to) be.

But any view, according to which, it is a necessary requirement that the aforementioned epistemological shift actually takes place, in order that the BOT case be even potentially thus rendered is contestable, for reasons explained presently (in 2.19). However, for now it will be simply said that there is a certain sense in which, any such view may (necessarily need to) appeal to some notion of actual effects as opposed to (merely) potential effects. The sense in which it may thus appeal, might be explained in a manner, which by this point, may be easy to anticipate. And it is simply as follows.

### **2.18 How ordinary belief and discourse distinguishes between actual and merely potential effects as a basis for deciding what does (not) affect the public domain**

Only events and/or states of affairs of a certain kind are to be classed as being of genuine, legitimate, public concern. Also, only events and/or states of affairs of that same certain kind, are likely to be considered by most if not all, to be of such concern. The certain kind of events and/or states of affairs in question here, is moreover this. That kind of events and/or states of affairs, which produce(s) some effect(s) of a certain type. Furthermore, this certain type of effect(s) is this. The type of effects that some person(s) can feel can be predicted with reasonable inductively based confidence. Only the latter type of effect(s), it may be still further suggested, can realistically or intelligibly be classified as some

actual (as opposed to merely potential) effect(s) that can be thus predicted beforehand, insofar indeed as it is intelligible at all to think in terms of some effect(s) that will not transpire until some future point(s) in time, and yet nevertheless may still be considered to be some actual (rather than simply potential) effect(s).

The idea suggested here by this, is, in short, that of actual effects that have not yet transpired. Another is, that of merely potential effects, which of course because they are potential and not actual effects, have by definition not yet transpired.

One perhaps obvious difference between actual effects on the one hand, and potential effects on the other, is at least this. Whether or not it is, in any final analysis, intelligible to claim that some effect(s) not yet having transpired is (/are) in any meaningful sense actual rather than merely potential, no effect(s) in order to count as actual effects necessarily have to be some effect(s) that have not as of yet materialised. However, the question here is, precisely whether or not it is intelligible to make such a claim. An answer to this, may (for better or worse) be attempted by way of speculation on the nature of relevant, everyday, discourse and belief, (see also 2.2.). Such speculation moreover, might well yield the conclusion that it would not obviously or necessarily be incorrect to suggest, that in terms of everyday discourse or belief, it is implicitly at least accepted, that some effects are somewhat more than merely potential effects even if and when they have not as of yet transpired, and that therefore there is something more 'real' and to that extent more 'actual' about them in contrast to effects that are merely potential. If so, then neither would it be obviously nor necessarily incorrect to suggest that in such terms, a distinction is sometimes made between (what are considered to be in a sense) two different types of 'real' or 'actual' effects. On the one hand, it may ordinarily be seen as appropriate to suggest that there are those 'real' or 'actual' effects that have not as of yet transpired, and on the other, those that have. This is different to the distinction that may be drawn (and perhaps widely accepted to obtain) between (some) effects none of which have yet taken place, but some of which are or may be (more likely to be) considered as 'actual' or 'real' effects on the one hand, and on the other, those that are not (perhaps so likely to be) thus considered.

The former distinction, is between effects that are necessarily 'actual' or 'real' on the one hand, and those that are (in a sense) only contingently so on the other. For it is obvious

perhaps, that if an effect has already taken place, then there is a sense in which that effect is 'real' and/or 'actual'. And it is so, in a sense in which, no effects that have not as of yet at least, transpired are. However, the aforementioned suggested distinction between 'real' and/or 'actual' effects and those that are merely potential, may appear to be none other than a distinction between effects that will probably, if not almost certainly take place, and those that are not (as) likely to occur. Perhaps the best evidence in support of the view that this latter distinction is part of ordinary belief and discourse, can be provided by the following examples.

Consider for instance, the mortality of (say) human bodies. In terms of contemporary ordinary belief and discourse, no live human body will escape (as it were) the effect of death as a causal upshot of (what in such terms counts as) inevitable biological ageing, if indeed nothing else, e.g. accident, illness etc. So, in such terms, the event of death counts as an 'unavoidable' eventual effect, even and perhaps particularly given, that in some particular case(s) it has not yet happened. Hence, there is a sense in which, death is an event that counts as an 'actual' or 'real' effect, whether or not it has in some particular case(s) happened yet. Indeed, in terms of contemporary ordinary belief and discourse, death is as much conceived of as being a certain inevitable effect lying in the future in the case of live human bodies (say), as either of the following are conceived of as being certain effects that have happened in the past.

One is the birth of such bodies as the causal upshot of certain biological processes. As contemporary ordinary belief and discourse would indeed have it, just as there can be no death without birth, there can be no birth without death in the sense that there can be no birth which is not part of a causal chain of events or processes leading to eventual death. There is of course, a sense in which the link between birth and death is a logically necessary one. For in order that the death of a human body takes place, it is logically necessary that the birth (or at least the conception) of that same human body has taken place. It is, to say the least perhaps, not as clear however, that there is a logically necessary link between birth and death in the reverse direction. Anyone for example, who seriously entertained as a real possibility the discovery of an elixir of life, would presumably at least doubt that there is. If furthermore, one were discovered, any person(s) once having learned of it who had hitherto held the belief that if the birth of some human body has taken place, then it is logically necessary that the death of that same human body

will take place, would presumably abandon such a belief. Also, if the discovery of an elixir of life became known to most people, and if such a belief is or ever has been in accordance with ordinary, common thinking and discourse, it may at least be reasonably expected that it is a belief which would consequently fall out of line with relevant everyday ideas. As then, it may reasonably be expected, that relevant ordinary, common thinking and discourse would dramatically change.

But as things stand at the time of writing, it is perhaps not wholly inaccurate to suggest, that with the possible exception of anyone who may place (most) serious faith in cryogenics, the notions of birth and death are so closely associated in the minds of just about everyone, that even if the former notion does not by dint of logical necessity imply the latter notion, in the same aforementioned sense that the latter logically necessitates the former, from the viewpoint of the relevant, ordinary, common thinking and discourse, it is in at least one respect, questionable how much significance (indeed if any) this really has. For, from such a viewpoint, just as it may be safely inferred from the fact that some human body has died that some human body has been born (or conceived), it may from the fact that some human body has been born, be equally safely inferred or predicted that some human body will die, or again so much would seem to be so in the contemporary world. And even given, that the former inference can be made by dint of logical necessity whilst the latter cannot, this is perhaps hardly likely to have the effect of shaking the confidence with which the relevant contemporary ordinary common viewpoint, feels able to infer or predict that some human body will die from the fact (or upon the basis of the belief) that some human body has been born (or conceived). It is not even clear that anyone like the aforementioned who (apparently) may have enough faith in cryogenics, to want to have their bodies frozen in order to secure for themselves a longer (perhaps immortal) life are an exception here. For those with such faith, would not necessarily be any less confident than at least most others would perhaps be, in predicting the death of the bodies they ordinarily at any rate, refer to as their own. Rather what perhaps distinguishes them from those lacking such faith is this. They do not believe that death is (necessarily) the permanent end of secular life, whereas those without such faith do. If so, then what is thus suggested, is no more than the difference between two different beliefs. One is the belief that the state of being dead is irreversible. The other is that it is not. Perhaps only if a faith in cryogenics as a way of securing an immortal secular life is interpreted as being indicative of, or paramount to, a belief that in some sense, a human

body, if and once frozen, within a certain period of time even after having been clinically defined as dead, is not 'really' dead, could it be plausibly suggested that such a faith is necessarily in conflict with, a belief that physical death is an inevitable outcome of secular life. For to thus interpret such a faith, would be to necessarily conceive of it as being indicative of, or paramount to, a belief that in some sense, a human body, if and once cryogenically frozen, within a certain period of time after being clinically defined as dead, is still alive. However, there may well seem to be nothing immediately obvious to especially recommend conceiving of it in that way, in favour of conceiving it in a certain different and perhaps obviously conflicting manner, according to which cryogenic freezing creates the potential for making any cryogenically frozen human bodies temporarily rather than permanently dead.

Other examples that may potentially at least support the view, that the distinction between 'real' and/or 'actual' effects that have not yet taken place but will probably do so on the one hand, and merely potential effects which by definition have not yet taken place and are not as likely to do so on the other, is (or may become) part of ordinary belief and discourse, might be provided by at least some of the previously discussed hypothetical cases. So in order to avoid unnecessary repetition here, in what immediately follows, no more will be reiterated about those cases than what is hopefully needed to reinforce and illustrate this.

Consider again the atom bomb case. It has, to recall, been implied already, that anyone who knew the details of certain relatively general data, may well feel able to make a prediction of a relatively and correspondingly general sort with reasonable inductively based confidence, (see 2.4 and 2.7). This prediction, it may be reminded, might be expressed at least roughly as follows: 'An atom bomb of type A, has exploded in the centre of a city of size X. The population of that city numbers Y. Therefore, a year after the explosion, each member of that population will be either dead or physically deformed'.

Of course three sentences appear between the single quotation marks in the previous paragraph. But only the third of those sentences is explicitly in the form of a prediction when considered in isolation from the first two. Both of the first two, considered independently from the third at least, are factual statements or claims. Thus considered, neither constitute(s) any prediction(s). Rather, taken together, along with the details of

some certain aforementioned relatively general data, they suggest a (possibly partly) factual basis upon which the third may be ventured. Further, if the factual claims made by the first two, along with such details were accepted by at least most people to be true and correct, it may be reasonably expected, that in terms of ordinary, common, belief and discourse, the third would be considered to (eventually turn out to) be (verified as) true also. Indeed, in that event, the third may be thus considered as strongly and by as many as the current prevalent belief in the mortality of human bodies. In that sense, and to that extent, there are certain conceivable epistemological circumstances under which, a prediction expressible as 'a year after an explosion of a certain type in a certain (type of) place, each member of a certain specified population of people will be either dead or physically deformed' may become as firmly entrenched in ordinary, common belief and discourse as the belief in the mortality of human bodies is at the time of writing. If furthermore, such a prediction did become thus entrenched, it would to that extent, therefore be somewhat analogous to the belief in the mortality of human bodies. And if, as (and for reasons) explained already, the latter belief implies a sense in which some event(s) (i.e. death(s)) count(s) as some 'actual' or 'real' effect(s) whether or not some such event(s) (that would count as some death(s)) has (or have) already taken place, then the same applies to such a prediction. Such a prediction that is, (to put it perhaps more accurately) would then (for essentially the same reasons) imply a sense in which some outcomes (i.e. deaths and physical deformities) may count as 'actual' or 'real' although they may not yet have transpired. (This is consistent with views about the essential nature of predictions suggested in 4.1.) Moreover, since and to the extent that it is a prediction (partly) based upon evidence of details of certain aforementioned data (apparently at least) revealing the nature of the already transpired and relevantly similar outcomes in past and relevantly similar cases, it is a prediction that is also (potentially) indicative of an aforementioned distinction that may be part of ordinary, common belief and discourse. This again, is the distinction between 'actual' or 'real' effects that have already transpired on the one hand, and 'actual' or 'real' effects that have not on the other.

Reconsideration of the atom bomb case however, might well reveal something indicative of that other kind of aforementioned distinction that may be found in ordinary, common belief and discourse. To recall, this latter distinction, is effectively a way of dividing up into two different classes, only those effects that have not yet transpired. In one class are only 'actual' or 'real' effects. The other class comprises only potential effects. For

reasons already suggested (in the last paragraph) included in the former class then, is a prediction of a comparatively general sort. In the latter class however, are predictions of a less general and (in a sense) more specific and particular kind. As effectively claimed earlier (in 2.4) such predictions include ones that might be expressed roughly as follows. 'This particular person X will die exactly one year after (and as a result of) the atomic explosion in the city of which X is an inhabitant'. 'Some particular person Y will show outward signs of physical deformity precisely six months after (and as a result of) the atomic explosion in the city Y is an inhabitant of'.

Again, perhaps indeed probably no person(s) having no more than a certain source of relevant information, would feel able to venture either of the latter two predictions with any reasonable inductively based confidence at all. The source of relevant information alluded to here, of course is to recall again, certain aforementioned data of a comparatively general sort upon which is (partly) based a certain aforementioned prediction of a correspondingly general sort, which unlike the two just suggested above (in the last paragraph) may be made by some person(s) with such felt confidence. Or to put it differently, so much is so, given a certain epistemological framework. If the latter two were to be ventured at all, they would be so, with far less reasonable inductively based confidence than may or would the aforementioned relatively general sort of prediction that is (partly) based upon correspondingly general data of again the aforementioned kind. It is still of course being assumed here, that the only kind of data known to anyone about the effects of atomic explosions is indeed of such a correspondingly general sort (see 2.4).

Given this then, there would or may seem to be, at least one difference between a relatively general prediction expressible as '...a year after and as a result of the explosion, each member of a specified population will be either dead or physically deformed' on the one hand and a relatively less general prediction expressible as '...X will die exactly one year after and as a result of the explosion' on the other. And this difference, is simply the degree to which one prediction can be made with reasonable inductively based confidence as contrasted with the other. The relatively general one, may (under the aforementioned epistemological conditions) be made with so much such confidence, that it may be felt by anyone making it to be a racing certainty. Just as again, the eventual death of all live human bodies is ordinarily felt to be. On the other hand, the relatively less general prediction may (under the same aforementioned epistemological conditions) be made with



so little if any reasonable inductively based confidence, that it may well be felt by anyone (including whoever might venture it) to be no more than a wild guess. This difference in the degree of reasonable inductively based confidence, with which the more general prediction may be made compared to that which the less general one might be, is then, of a kind that might illustrate and even explain any distinction that can possibly be found in ordinary common belief and discourse between 'actual, real' effects that have not yet taken place, and 'merely potential' effects that have not taken place yet either. Indeed, at this point, it may be interesting and relevant to speculate upon how often in ordinary, everyday discourse, a phrase such as 'I know what will happen now that this has been done' is expressed. It may be equally interesting and relevant here, to speculate upon how often in such discourse, a phrase is expressed such as 'It is anyone's guess what will happen now that such and such has been done'. On one perhaps plausible interpretation, the word 'what' in the former phrase, might be intended to denote an effect that is certain to happen and to that significant extent is 'actual' or 'real'. Whereas on a perhaps equally plausible interpretation, the word 'what' in the latter phrase, might be intended to denote several effects, neither of which is certain to happen, but all of which are equally (un)likely to happen, hence all of which are equally potential effects. The word 'what' as intended in the former, and with regards to the atom bomb case, might denote the aforementioned relatively general effect roughly expressible as 'a year after the explosion, all members of the population of that city will be either dead or physically deformed'. As intended in the latter, and with regards to that same case, it might denote at least the aforementioned less general (possible) type of effects (along with others) that are roughly expressible as follows. 'Some person(s) Y will develop some deformity D six months after the explosion'. 'This particular (group of) person(s) Y will die... etc.'. And so on.

In order to offer further support for the aforementioned view, that in ordinary belief and discourse, a distinction is made between different effects, such that some are classified as 'real' or 'actual', the rest 'merely potential' but none of which (are considered to) have happened yet, it (hopefully) might well be unnecessary to say much more than has already been suggested here. So for now at least, and in the interests of offering such support, no more than the following will be said.

Essentially the same sort of epistemological points and considerations that have just been suggested to (potentially) apply to the atom bomb case in an attempt to offer such support,

equally (potentially) apply to the aforementioned smoking and leaf shedding cases. The particular kind of attempt to offer such support that has been suggested here, is (partly at least, and arguably to no insignificant extent) dependent upon a certain (key) and perhaps obvious idea about a (very possibly) commonplace epistemological state of affairs. It is the aforementioned idea of reasonably confident inductively based predictions of a relatively general type being possible, even when the truth (or otherwise) of them is dependent upon the finer details of occurrences none of which can be predicted with similar confidence. Exactly how this idea is (potentially at least) applicable to cases such as the smoking and the leaf shedding ones, has been indicated already (in 2.4). And to the extent that it is thus applicable, such cases (it may for now be simply said) as well as at least several conceivable others, indeed offer a perhaps substantial source of support for the view that ordinary common belief and discourse distinguishes between effects in the aforementioned suggested way(s).

But now if ordinary common belief and discourse thus distinguishes, further problems arise for any attempt to offer a definitive account of the (or any alleged) difference between issues or situations that are of genuine public concern on the one hand, and those that are of purely private concern only. Such problems are interrelated. One has already been cited. For, to recall, it has already been suggested, that if a case such as the aforementioned hypothetical BOT case, actually materialised in a way involving no effect(s) that any person(s) could predict with reasonable inductively based confidence, then the inability of any person(s) to do so, may not be a permanent epistemological state of affairs (see 2.7). Moreover if it turned out not to be, then the BOT case, will or may be, rendered as clear cut a case of legitimate public concern, as (say) the aforementioned hypothetical atom bomb case would (for reasons suggested already, in 2.8, perhaps be widely regarded to) be.

### **2.19 Why potentially any type of act and/or state of affairs may be ordinarily considered to be of genuine public concern**

Now arguably, the hypothetical BOT case, when imagined or construed in one of the aforementioned ways, provides perhaps the most extreme type of example conceivable of a situation involving no effects that anyone can predict with reasonable inductively based confidence (see 2.7). So if a case, even as in that sense, extreme as the hypothetical BOT case, thus imagined or construed, does not exclude the logical possibility of an

epistemological shift from such a situation to one involving some effect(s) that some person(s) can predict with reasonable inductively based confidence (see 2.17), this may result in a certain suspicion. This suspicion, may amount to a serious doubt, that there can ever, in practice or even in principle, be a case so extreme as to amount to at one point in time, a situation involving no effects that anyone can predict with reasonable inductively based confidence, whilst at the same time, excluding the logical possibility, at some future time, of such an epistemological shift taking place. Hence, even if there are any cases, (hypothetical or actual) amounting to such a situation, then as far as anyone can possibly ever tell, there can never be any case(s) that (by their very intrinsic nature) will necessarily not ever eventually and in terms of ordinary belief and discourse, affect the public domain.

The phrase 'in terms of ordinary belief and discourse' here (in the last sentence) might without any (intentional) change in connotation or meaning, be replaced by a phrase such as 'become to be seen by most'. So, in other words, the former phrase, as used here at least, is to be defined and understood in terms of the latter. Furthermore, this use of the former, is perfectly consistent with a certain feature of the approach employed so far to the problem of distinguishing issues that are of legitimate public concern from those that are not. For thus far, the approach to this problem has (in part at least) involved a deliberate focus upon (hypothetical) situations that most if not everyone may or would agree, involve(s) some (possible) effect(s) that are of legitimate public concern (see 2.8). Also, the interchangeable use of phrases such as 'in terms of ordinary belief and discourse' and 'seen by most as' here, is also equally consistent with a certain aforementioned notion. This notion, is the implicit idea, that there is something consequentialist in the way in which ordinary belief and discourse (or most people) distinguish issues that are of public concern from those that are of private concern only (See 2.8). Indeed, this perhaps might be still further underlined. For intuitively, it may not be necessarily inappropriate to suggest, that ordinary belief and discourse, would distinguish between cases such as the aforementioned hypothetical atom bomb and BOT cases on the one hand, and a case such as for example, someone, whilst completely unobserved by any other person(s), tying her/his shoe-laces on the other. So not only, as already suggested, is it arguably the case that common belief and discourse distinguishes 'actual real' effects that have transpired from those that have not, as well as all the latter from merely 'potential' effects (see 2.8), it may equally arguably be the case, that such belief and discourse, also distinguishes between cases that in principle, may involve some effect(s) which (actually or potentially)

impinge upon the public domain and those which do not. If so, neither may it seem necessarily inappropriate to suggest, that in terms of such belief and discourse, unlike the aforementioned atom bomb and BOT cases, someone tying her/his shoe-laces whilst completely unobserved, would not count as an example of a situation involving some such effect(s). Given this, it follows, that any serious doubt that there can never be any case(s), which, in terms of ordinary belief and discourse, necessarily will never affect the public domain would seem somewhat misplaced. This moreover, is contrary to a certain previous suggestion to the effect that there cannot be some such case(s) (See 2.2). For just as the hypothetical BOT case, (again, when imagined or construed in one of the aforementioned ways) provides perhaps the most extreme type of example conceivable, of a situation involving no effect(s) that anyone can predict with reasonable inductively based confidence (see 2.7), then someone tying shoe-laces completely unobserved, provides perhaps the clearest type of example conceivable, of a situation involving no effect(s) that could, even in principle (let alone in practice) be of genuine public concern. Or at least this would seem to be so, if and/or given that, there indeed could ever be any situation(s) involving no such effect(s) at all. In turn, this may lead to a suspicion, that there can after all, both in principle and in practice, be several conceivable cases, amounting to a situation, which at some given point in time, and as far as ordinary, common, belief is concerned, necessarily excludes the logical possibility of involving at some future time(s) some effect(s) of genuine public concern. Another such conceivable case, might be someone combing her/his hair whilst unobserved. (The present author is indebted to Miss Catherine Ann Barrow of the Manchester Metropolitan University, for these two examples, as well as the following hypothetical scenarios based upon them).

A little reflection however, may suggest, that even the aforementioned lace tying and hair combing cases, do not necessarily (by their very nature) logically exclude even the possibility of producing some effect(s) that would, in terms of ordinary belief and discourse, count as being of genuine public concern. If so, and if also (as suggested in the last paragraph) such cases (at least superficially) may well seem to provide the clearest conceivable examples of situations involving no effect(s) that could (again in terms of ordinary belief and discourse), even in principle be of public concern, then this may make it tempting to draw a more general conclusion. This conclusion is again furthermore, in direct contradiction to any suggestion to the effect that such cases do not merely seem to thus provide, but actually do so. In other words, it is a conclusion to the effect that, not

only do such cases not provide examples of conceivable situations involving no effect(s) which in terms of ordinary belief and discourse, could, even in principle, be of public concern, but also that there can never be any cases that could thus provide.

From what has just been suggested, it may be gathered then, that one perhaps plausible line of reasoning that might be adopted in an attempt to arrive at the conclusion that as far as ordinary belief and discourse is concerned, there can never in principle, be any conceivable cases of human actions which by their very nature necessarily logically exclude any effect(s) of public concern, is somewhat analogous to a line of reasoning that might be adopted to try to establish a certain other aforementioned conclusion. The latter conclusion (to recall) is this. In principle, there is no conceivable case, involving at one time no effect(s) that anyone can predict with reasonable inductively based confidence, that by the very nature of it, necessarily logically excludes the possibility of at some future time, some effect(s) some person(s) can thus predict. And, (to recall again) the line of reasoning that may be used to arrive at this conclusion is the following. Even perhaps the most extreme type of example conceivable, of a case, involving at one time, no effects that anyone can predict with reasonable inductively based confidence (see 2.7), does not, by the very nature of it, necessarily logically exclude, the possibility of at some future time, some effect(s) some person(s) can thus predict (See 2.17). Therefore, in principle, there is perhaps no such case that could thus exclude. Moreover, this (as it might be roughly at least expressed) 'if even the most extreme x will not do it, then no x will do it' line of reasoning, if it is an acceptable way of providing support for the view that there can be no such case, then perhaps it is an equally acceptable way of providing support for the view that, in terms of ordinary belief and discourse, there can, in principle, never be any conceivable cases of human actions, which by their very nature, necessarily logically exclude any effect(s) of public concern. For the following may equally perhaps be argued.

Even the most extreme type of example conceivable of a case, which in terms of ordinary belief and discourse, may initially and superficially seem, by the very nature of it, to necessarily logically exclude any effect(s) of public concern, can, as a result of further reflection, be seen to not thus exclude. If furthermore, even the most extreme (in again the sense of being initially and superficially the most apparently obvious) example(s) of such a case do not thus exclude, then this may give grounds for doubting that any conceivable case could. Now given that the aforementioned lace tying and hair combing cases, count

as at least plausible candidates for being amongst the most extreme of those examples, and given (as suggested already) that neither thus exclude, then one obstacle standing in the way of providing such grounds, is to explain how and why both do not necessarily logically exclude any effect(s) of public concern (even) in terms of ordinary belief and discourse. An attempt to remove this obstacle may be as follows.

Reconsider first, some person A (say), tying her/his own shoe laces whilst completely unobserved by any other person(s). Suppose that A did not tie them as tightly or carefully as s/he usually did. (It may be imagined here, that A was in a rush to get to work on time. For s/he awoke later than usual, having not heard the alarm clock go off). Consequently, whilst driving to work, the lace of the shoe worn by A on the foot that s/he operates the car brake pedal with, works loose. But A fails to notice this. Indeed, s/he is so sufficiently preoccupied with thoughts of getting to work on time, that s/he also fails to notice, that the loose lace has somehow become trapped under the opposite foot, i.e. the foot that A never uses to operate the brake pedal with. S/he is approaching traffic lights. These lights turn to red as s/he is doing so. So s/he tries to stop the car. But s/he fails to. For s/he cannot make contact with the brake pedal using the foot s/he has up to now always used to contact it with. And this is because, the lace of the shoe which s/he is wearing on that foot, is trapped in the manner already suggested. As a result of all this, A's car bypasses the red traffic light, crashes into other cars causing death and injury to several other people.

Consider now, some person B, (say) combing her/his own hair, whilst completely unobserved by any other person(s). Without knowing it or intending to, B does so in a style similar to the hairstyle worn by some famous celebrity C (say). Consequently, and again without knowing it or intending to, B looks to some people, remarkably like C, and some, from certain distance(s) and angles of view, even mistake B for C. So when B is walking outside sporting the aforementioned hairstyle, s/he is mistaken for C by some fans of the latter who dash carelessly across a busy road hoping to get an autograph. One further result of this, is that some are hit and killed by oncoming traffic. Another is, that some car drivers are killed. The latter, it may be supposed, become involved in fatal crashes and collisions with one another, as they swerve in an attempt to avoid hitting the aforementioned autograph hunters who suddenly run out onto the road in front of them.

Now if either one or both of the latter two cases actually came about, and if each of the aforementioned details of either one or both of them, became known to at least most people, then the suggestion(s) about to be made would seem to be plausible. For any such suggestion(s), if appropriately applicable to one of them, would, for some reason(s) that will hopefully become apparent, appear to be no less appropriately applicable to the other. So in making the suggestion(s) in question here, it will, in what immediately follows, be only necessary, for the most part at least, to make explicit reference to just one of them. The choice of which one, will be inevitably arbitrary. But the arbitrariness here, will do no philosophical harm. As again, and particularly because, whatever following type of suggestion(s) can be appropriately made about the aforementioned lace tying case, can be made equally appropriately about the aforementioned hair combing one. Or at least this may be seen to be so, once the essential nature of the suggestion(s) in question here is understood.

It has for example, been implied already, at various points previously, that independently of any debate(s) of a possibly technical philosophical sort, about how, if at all, purely private concerns can be non-arbitrarily distinguished from public concerns, it is perhaps easy to appreciate intuitively, what kind of situations, would, in terms of ordinary belief and discourse, and at some given time(s), count as being very much of genuine public concern (See for example 2.8). The aforementioned hypothetical atom bomb case, (as well as others) has, to recall, already been cited as being as clear cut an example of such a situation as it is perhaps possible to imagine (See 2.8). Furthermore, the essential argument(s) offered previously, in order to try to show exactly why this is so, would, potentially at any rate, appear to be equally useful in an attempt to demonstrate precisely why the aforementioned lace tying case (say), is not by the very nature of it, fundamentally different to the aforementioned atom bomb case (say) in the sense that is of immediate relevance here. In other words, if the kind of argument(s) just alluded to, successfully show(s) why the aforementioned hypothetical atom bomb case (say), is as clear cut an example of a situation, which in terms of ordinary belief and discourse, would count as being of public concern, then, equally, the same kind of argument(s) may be used to successfully show why no case(s) of someone tying her/his own shoe laces whilst completely unobserved (say), necessarily cannot be some equally clear cut example(s) of such a situation.

Suppose for example, that the kind of hypothetical scenario described above, involving person A causing death and injury to other people as a result of not tying her/his own shoe laces as tightly as s/he needed to in order to stop them working loose as s/he is driving, became an actual daily type of occurrence. Also suppose, it became sufficiently regular to alarm government officials into commissioning a formal inquiry into the cause(s) of rising incidences of road injuries and deaths. This inquiry is conducted. The results of it suggest, that one of the main causes of the rise in fatal road incidents is loose shoe laces. Eventually these results become known to (most) everyone. Under such circumstances, it would perhaps be easy enough to appreciate how and why unobserved shoe lace tying may be viewed by most if not all as being of public concern. Again, under such circumstances, it would perhaps be equally easy to appreciate, how and why, most if not all, may not agree, that choice of method(s) of shoe lace tying is most appropriately left entirely and ultimately to the private judgement(s) and conscience(s) of those doing the shoe lace tying. Or at least it may be easy enough to appreciate, how and why, any persons who might consider themselves particularly likely to become eventual victims of any possible future fatal road incidents, may well not agree that ultimately deference should be made here to individual conscience(s) and judgement(s). And if as suggested already, (most) everyone came to know (or believe) that driving with loose shoe laces is a main cause of a rise in the number of such incidents, then it would not be entirely unreasonable to suspect that (most if not) all people would consider themselves equally particularly likely to become eventual victims of such future incidents. Indeed, with perhaps the sole exception of people to whom certain conditions apply, there may seem to be no reason(s) why any particular person(s) should feel any less likely to become some eventual victim(s) of such future incidents than any other particular person(s). Such conditions are (or at least include) the following. Firstly, those who are unaware of the conclusion of the aforementioned hypothetical inquiry to the effect that loose shoe laces is a main cause in the rise of fatal road incidents. Secondly, those who are not unaware of it, but doubt the credibility of it. Thirdly, those who are neither necessarily unaware of it nor necessarily doubt the credibility of it, but do not consider themselves (very) probable future victims of injurious and/or fatal road incidents. At least, some of these latter, may for instance, reside in an area where relatively little or no motorised transport is ever seen let alone used, and may not conceive of themselves as ever residing somewhere where it is. Fourthly, those who are neither necessarily unaware of, nor necessarily doubt the credibility of any conclusion to the effect that careless shoe lace tying is a main cause of (a



rise in) injurious and fatal road incidents, and moreover do not necessarily reside in such an area, but for some other reason(s), do not consider themselves very likely to ever be injured, killed, or in any way(s) even involved in any such incident(s).

## **2.20 The problem of 'community' and the problems of making sense of Hayek's notion of ordinary belief and discourse**

However, it is of course, also easy enough, to imagine a community within which each one and all of the above four conditions, apply to a mere minority of the population. Although the term 'community' here is a problematic one. Thus, it is akin to at least one certain other term. This latter term is 'nation'. For both 'community' and 'nation' are, (indeed, to say the very least perhaps, potentially) ambiguous terms. And this (potential) ambiguity can be highlighted by considering what precisely, if anything, the terms 'community' and 'nation' mean. In so considering, the fundamental problem that necessarily arises, involves trying to discover some criterion or criteria, that a number of people would need to simultaneously satisfy, in order to definitively count as members of the same 'community' or 'nation'.

Still, and yet again, to try (even successfully) to discover some such criterion or criteria would serve no immediately relevant purpose here. So, for now, at least, the problem(s) of trying to do so, may be bypassed (although they are addressed later in this section). It would, at this point, be sufficient, given the immediate relevant purpose(s), to introduce some notion of uniform legal entities. This notion, given the same such purpose(s), may then be used as the criterion in terms of which it may be decided, whether or not some or any persons simultaneously count as members of the same community. And as intended here at least, it is none other than a notion, that in some perhaps meaningful sense, helps constitute the (or at any rate a working) definition of what a legal community is; even if it does not provide a comprehensive, definitive and completely persuasive definition of what a human community is.

The definition of 'legal community' as intended here, is relatively straightforward. For, it can be explained in the following simple terms as: Some persons each of whom are bound by the same formal (set of) prescriptive law(s). Each such person, precisely since s/he is thus bound is a legal entity; and all such persons who are thus bound, are uniformly

bound, in that it is the same law(s) that they are all bound by. Hence, the aforementioned notion already alluded to as 'uniform legal entities'.

So the term 'uniform legal entities' alludes to a (in a sense, somewhat) relational and/or relative notion. For it alludes to the notion of some relation(s) of some relative sort(s). It refers to the notion of some relation of some persons (relative) to some (set of) law(s). Also, in terms of that notion, the relation of some persons (relative) to some such law(s) is the same. In other words, some such law(s) apply(s) uniformly to some number of persons. Given all this, all that is needed in order to conjure up a meaningful, intelligible and immediately relevant sense of 'community' is to imagine a set of circumstances no less factually commonplace than the following. Some number of persons, each of whom is legally bound by the same formal (set of) prescriptive law(s). In short, the sense of 'community' that is being suggested here to be not only meaningful and intelligible, but also immediately relevant, is to be understood in terms of several people all of whom have at least one thing in common. This moreover, is simply no more than that, there is or be, at least one formal prescriptive law that all such people are legally bound by.

Given at least the sense of 'community' just suggested (in the last paragraph) then, it is not hard presumably to imagine a community of which only a minority of members satisfy at least one of a certain aforementioned four conditions. For these conditions (first suggested in 2.20) are, (perhaps along with some conceivable other(s)) such that any person(s) to whom at least one of them apply, form(s) some part(s) of the same (legal) community as some other more numerous persons. So, given the aforementioned and closely associated notions of 'legal community' and 'uniform legal entities', and thinking of them in the ways already suggested (in the last paragraph) it is perhaps relatively easy to comprehend how some person(s) to whom at least one of those conditions apply, can be some part(s) of the same (legal) community as some other and more numerous persons to whom none of them apply. Therefore, although the term 'community' is (potentially at least) ambiguous, and although it is arguable (indeed to understate the case perhaps) that not enough has been said here to remove this (apparent) ambiguity, nevertheless hopefully enough has been said so far, to forestall a certain conceivable objection, which given the present immediately relevant purpose(s) would only serve as something of a red herring. This conceivable objection may be expressed as follows.

It is meaningless to talk and/or think in terms of 'a community' at all, unless the term 'community' is, or at least can be, defined without ambiguity. Hence, it is also meaningless to talk and/or think in terms of 'a minority (or majority) of the population of a community' unless it can be thus defined. For, the objection may continue, it is meaningless to talk and/or think in terms of a minority (or majority) of the population of a community, in the absence of some clear (if not definitive) idea of exactly what it is a minority (or majority) of the population of.

If such an objection were not something of a red herring, then given the immediately relevant purpose(s), it might transpire to be especially damaging. This is because (and as already pointed out in 2.8, 2.17 and 2.19) a central key feature of the present approach to the problem of distinguishing issues that are of genuine public concern from those that are not, involves concentrating upon (hypothetical) situations that in terms of ordinary belief and discourse would count (or at least may eventually come to be seen) as being precisely of such concern.

And to recall, in terms of the present approach to that same problem of thus distinguishing, the notion of ordinary belief and discourse is (to be taken to be) synonymous with the notion of 'seen by most as'. Unless however, the notion of 'seen by most as' is to be taken as being synonymous with the notion of 'seen by most people in existence as', then the notion of 'seen by most as' must be understood here (again, for present, immediately relevant purpose(s)), as being synonymous with the (or some) notion of 'seen by most of the members of a given specifiable community as'. Furthermore, there is arguably at least one good reason why here, (and yet again, for present, immediately relevant purpose(s)), the notion of 'seen by most as' is not to be taken as being synonymous with the notion of 'seen by most people in existence as', but rather, as being synonymous with the notion of 'seen by most members of a given specifiable community as' instead. Reflection upon some of what Hayek himself has had to say, may furthermore, serve to explain exactly what that reason is.

For instance, he writes of "...rules of individual conduct which serve...the preservation of the overall order." [M.S.J. pp2-3]. And with respect to such 'rules of individual conduct', he suggests that "...agreement is...possible..." [M.S.J. p3]. He continues by claiming that this "...agreement can to a great extent be achieved...between...members of a Great

Society...” [M.S.J. p3]. Furthermore, Hayek writes in terms of “...agreement and [indeed] peace in such a society [being] possible ...[and] ...the possibility of extending an order of peace, beyond the small group ...to the members of the Great Society ...due to the discovery of a method of collaboration...” [M.S.J. p3]. Further on, Hayek says of “...the discovery that [it was of] an order ...which persuaded people ...to agree...” [M.S.J. p4]. Again “Such agreement became possible...because of the fact that...we can assume it to...serve as [a] common means...” [M.S.J. p4]. This moreover “...is recognised ...[in] ...practice in many instances ...deliberately...” [M.S.J. p4]. Also, “...in order to make agreement ...possible.... Whenever we agree ...we deliberately ...[and] ...readily agree ...that it would be in the interest of all if ...in agreeing on ...a rule, we say that ‘it is better for all of us if...’ ” [M.S.J. p4]. So in doing so, “...we mean ...that we are certain that ...on the basis of our present knowledge, it gives us all a better chance ...than [we] would have ...if a different rule had been adopted.” [M.S.J. p4].

Hayek then proceeds in the following vein. “The rules of conduct which prevail in a Great Society are thus ...designed ...for people ...because they help [them] to deal with certain kinds of situations.” [M.S.J. p4]. (The emphasis in this last quoted sentence is Hayek’s and not the present author’s). These “...rules of conduct ...are thus ...designed ...[and] ...developed ...through a process ...in which we ...decide on a procedure ...based ...on ...and ...preserved ...as a sense of the importance of observing certain rules.” [M.S.J. p4]. Hence “...why one [set of] rule[s] rather than another was adopted and passed on...” [M.S.J. p4].

“...the choice of the appropriate set of rules ...for most ...persons ...will ...be based on the importance ...to those directly concerned, [and] will be made according to the importance to [them of] the successful pursuit of ...the preservation of the overall order.” [M.S.J. p3].

These “...rules of conduct [have been] developed by a group...” [M.S.J. p5].

“...Such rules have prevailed ...the ...rules became generally adopted. In fact, ...these [rules] were adopted ...and ...together determine the order of action in ...Society.... The whole system of rules ...must remain to us the inherited system of values guiding ...Society.” [M.S.J. p5].

It is, for reasons that will be explained presently, worth singling out some more passages of Hayek’s writings. Consider for example the following. Hayek refers to “...the small

‘face-to-face society’, in which every member knows every other...” [M.S.J. p12]. Such a society, he claims, is fundamentally different to what he calls “...the Great or Open Society...” [M.S.J. p12]. For at least one thing, the rules of conduct prevailing in the former type of society do according to Hayek, differ essentially to the rules of conduct prevalent in the latter type. The way(s) in which Hayek believes that they essentially differ, is not of immediately relevant or central importance here. But what here is of such importance, is Hayek’s claim that whatever the (other) essential difference(s) existing between the rules of conduct prevalent in the ‘small face-to-face society’ and those prevailing in the ‘Great Society’, these two otherwise fundamentally dissimilar types of rules have the following in common. And this “...common element [is] in the thinking of all... members... of a... society.” [M.S.J. p12]. That is “...the common element in the thinking of all will be ...attachment to the ...rules prevailing in that society [in particular of which they are members]...” [M.S.J. p12]. Furthermore,

“...it is of course obvious that what ...[is] ...common to the views and opinions of ...people ...who are members of a ...society must be ...attachment to particular ...rules prevailing in that society which will guide its members in their actions and will be the distinguishing attribute of its peculiar civilisation. What we call the tradition or the national character of a people, and even the characteristic ...features of ...a country, are ...manifestations of rules governing both the actions and the perceptions of the people. Even where such traditions come to be represented by concrete symbols - a historical site, a national flag, a symbolic shrine, or the person of a monarch or leader - these symbols ‘stand for’ general conceptions which can be stated only as ...rules defining what is and what is not done in that society.” [M.S.J. pp11-12].

Again: “What makes ...[people] ...members of the same civilisation and enables them to live and work together in peace is that ...their efforts ...are guided and restrained by the same ...rules.” [M.S.J. p12]. So, “...conventional rules tell them how they will be able and be allowed to ...act...” [M.S.J. p12]. An “...act of will, is always ...[guided by] ...common rules which ...are social ...and ...reconciles ...individuals and knits them into a common and enduring pattern of a society ...[as] ...they respond in accordance with the same ...rules.” [M.S.J. p12]. Moreover, and

“...for this reason there can exist ...agreement between them ...if they belong to the same culture or tradition, a far-reaching similarity in their opinions - an agreement ...which leads to the approval or disapproval of the conduct of particular persons according as they do or do not conform...” [M.S.J. p13].

Furthermore: “As the range of persons extends among whom some agreement is necessary, to prevent conflict, ...agreement will increasingly be possible only on certain ...aspects of the kind of society in which they wish to live.” [M.S.J. pp12-13]. And,

“...in ...the more extensive society ...similarity in their opinions ...refer ...only to the manner of acting, ...therefore ...an opinion will tell us merely what rules to observe ...and values ...we ...understand to refer to ...[what is] ...generally regarded as desirable. By ‘desirable’ in this connection we thus mean ...a lasting attitude of ...persons ...the law or the rules of just conduct [which] serve ...values, namely the preservation of a kind of order.” [M.S.J. pp13-14].

Further on, Hayek contends that “...the observance of rules, or the holding of common values, ...secure, ...a pattern or order of actions...” [M.S.J. p14]. “Our whole conception of justice rests on the belief that ...the discovery of rules ...once they are stated, command general assent.” [M.S.J. p15]. “If it were not for the fact that we often ...agree on general principles ...the very idea of justice would lose its meaning.” [M.S.J. pp15-16]. “...the most characteristic feature of morals and law as we know them - is ...that they consist of rules to be obeyed...” [M.S.J. p21].

Elsewhere, Hayek refers to “...‘moral relativity’...” [M.S.J. p26]. He maintains that “...‘moral relativity’ is ...clearly connected with the fact that all moral (and legal) rules serve an ...order which ...members of the society obey...” [M.S.J. pp26-27]. “There can ...be no absolute system of morals independent of the kind of social order in which a person lives...” [M.S.J. p27]. “...undoubtedly, many forms of ...societies ...rest on very different systems of rules.” [M.S.J. p27].

It is hopefully clear, from the content of some of the quoted passages above (in the last five paragraphs) that Hayek, on at least one plausible interpretation, effectively offers a solution to the aforementioned problem of defining non-arbitrarily (if indeed this is at all possible) what a community is. Or, to state the essential nature of the problem differently: What (if anything) makes some or any person(s) some member(s) of the same community as some or any other person(s)? Furthermore, the solution Hayek may be plausibly interpreted to be offering to this problem or question, would seem similar to, if indeed not exactly the same as, the solution offered here already (although not without reservation) by the present author. For Hayek's like the latter's, constitutes, and is couched in terms of, the (or at the very least a working) definition of what a legal community is. And

although Hayek himself does not use the terms 'uniform legal entities', and 'legal community' in the sense(s) they have already been used here by the present author, (indeed, Hayek does not use the terms at all), the present authors' use of it, is, by and large at least, consistent with Hayeks' suggested solution to the problem of defining what a community is. That is why, it were suggested before, that although the term 'community' is (potentially at least) ambiguous, and although it is (at least) arguable that not enough has been said here by the present author to remove this (apparent) ambiguity, a certain conceivable aforementioned objection would, if raised, only serve as something of a red herring in view of the present, immediately relevant purpose(s). For again, given that it is indeed meaningless to talk and/or think in terms of a 'community' unless the term 'community' can be non-ambiguously defined, and even and given also that unless it is thus defined, no claims fundamentally based upon, and for that reason, essentially reliant upon, some notion of 'community' are unproblematic, what this shows is this. If there is something problematic about trying to define the term 'community', in suggesting that the meaning of that term is synonymous with the meaning of the term 'legal community', then not only would this seem to indicate that there may well be something very unsatisfactory about the attempt by the present author to thus define 'community', but it would seem to indicate the same no less, about Hayek's aforementioned and suggested attempt to do likewise. That this is so, is however a strength of the suggestion by the present author that the terms 'community' and 'legal community' are synonymous in meaning. But, at the same time, it is a weakness of Hayeks' approach, that he can be plausibly interpreted as effectively treating such terms as though (he believed that) they mean the same. For one aim here of the present author, is not to try to show that they do. Rather, it is to try to show, that even if it is supposed that they do, certain other claims made by Hayek, that would appear to be in some measure at least, based upon the supposition that they do, would still not be necessarily acceptable. Nevertheless, though for that reason, it would be responding to a red herring to do so, it would not here be entirely without justification to offer some indication as to why such a supposition might be problematic, before explaining why certain claims made by Hayek, are still dubious, even if it is assumed that that same supposition is correct. As it is clear perhaps, that such claims will be rendered even more dubious, if and to the extent that, any supposition(s) they are (partly at least) based upon are rendered dubious also. And the supposition that the terms 'community' and 'legal community' mean the same may be rendered dubious as follows.

Perhaps it is not wholly inaccurate to suggest that the term 'community', in ordinary belief and discourse, is frequently enough, used interchangeably with certain other terms, to give rise to the suspicion that as such belief and discourse would have it 'community' can mean (if it can mean anything precise at all) at least one of a number of (themselves ill-defined) notions. Apart from the aforementioned 'nation', such notions include at least the following.

Firstly, a number of people all living within a certain specified (or at least specifiable) geographic region. Secondly, a number of people with a shared history. Thirdly, a number of people with some shared religious belief(s). Fourthly, a number of people, whose first language is the same. Fifthly, a number of people all of whom have some shared tradition(s). Sixth, several people each subscribing to some system(s) of value(s). Added to this might be the notions of 'country' and 'state', as well as of course, the aforementioned notion of 'legal community'.

Just how problematic the term 'community' is, might be demonstrated further, by considering some real factually-based dilemmas that arise from any attempt(s) to define what a community is in terms of at least one of the notions cited above in the last paragraph. The first of these dilemmas, may become apparent by considering the case of the (so-called) Soviet Union as it was (known) up until 1991, in the light of the first in the above list of such notions. For it may at first seem that there is nothing especially problematic in talking and/or thinking in terms of a pre-1991 Soviet Union community, so long as 'community' here in this case, is defined as people living within a certain geographical area extending from part of eastern Europe to the northern half of Asia. Neither may it at first seem especially problematic, to define 'pre-1991 Soviet Union Community' (partly at least) in terms of people with a shared history. Or at least this might initially seem so, if an attempt to give content to the phrase 'shared history' here is made by reference to some event(s). One candidate event here might be the overthrow in 1917 of the Tsarist regime during the Russian revolution. Another might be, the subsequent establishment of a so-called communist regime. Yet another might be the Russian conquest of Eastern Europe. And, there well may be several other events, which may be suggested to be (part of) the shared history of (all) people who are members of a or the 'pre-1991 Soviet Union Community'. Conceivably, it may also be suggested, that



'pre-1991 Soviet Union Community' may be (partly) defined linguistically; that is in terms of the Russian language; the official language of the U.S.S.R.

Furthermore, an attempt to define 'pre 1991 Soviet Union community' may be in terms of people subscribing to some system of values, or yet again, such an attempt may be in terms of the aforementioned notion of a legal community.

But to attempt to define 'pre 1991 Soviet Union community' on the aforementioned geographical grounds is problematic. For before 1991, the so-called Soviet State consisted of fifteen republics. Each of these republics had (at least roughly) discernible geographical borders. So, the question arises: Was the pre 1991 Soviet Union, one community or at least fifteen? There is no obviously non-arbitrary answer to this. Any attempt to define the 'pre 1991 Soviet Union community' in terms of people with a shared history is also problematic. For one thing, the notion of shared history, in this context at least, is ambiguous. It may be taken to mean, all and only people affected by certain historical events. In this case, like the ones cited in the previous paragraph for example. However, arguably at least, there are (and have been) people affected by those events, who would not obviously at any rate, count as members of any pre 1991 Soviet Union community. At least most people living in the (once) West Germany between 1945 and 1991 might be just one case in point here. Alternatively, the notion of people with a shared history, may be taken as meaning people with a sense of shared history. If the first suggested sense of 'people with a shared history' appeals to objective considerations, then the latter appeals to subjective ones. For the latter may be taken to mean, all and only people who believe that they are (or have been) affected by certain historical events, and/or believe those events to be significant in some particular way(s). Again however, there are (and have been) arguably at least, people who would not obviously (believe themselves to ) count as members of any pre 1991 Soviet community, and yet would believe themselves to (have been or still) be affected by such events. Amongst such people, may, once again, be those living in the (once) West Germany between 1945 and 1991. Furthermore, since the pre 1991 Soviet Union consisted of over a hundred linguistic groups, any attempt to define all people within those groups as members of the same pre 1991 Soviet community, on the grounds that each are Russian language users, would be problematic to say the least perhaps. So too would any attempt to thus define in terms of the aforementioned notion of a legal community. This may be done by

suggesting that, all and only people who are formally bound by the prescriptive laws laid down by the supreme Soviet (the highest governing council and legislative authority in the Soviet Union) count as members of any pre 1991 Soviet community. For it is not obvious that the values enshrined in those laws were accepted and always abided by all such people. Soviet dissidents provide a case in point here. As although, at least some of the latter, were in one perhaps obvious objective sense once formally bound by the aforementioned laws and values enshrined in them, subjectively they at the same time, presumably rejected them. Thus is raised again, a question already implicitly raised. It is this: In deciding whether some persons belong to the same community, what if any are the most important, objective considerations or subjective ones? This question is important. As it is not obvious that a non-arbitrary answer to it will ever be possible. And as just indicated, there will be cases such that a conclusion based on objective considerations will be incompatible with one based on subjective considerations.

Yet another factually based dilemma, reveals how problematic appealing to the notion of shared religious belief(s) can be in attempting to define what a community is. For instance, it may be suggested, that all Arab people (irrespective of geographical location) are part of one Arab community, if and to the extent that they (all) subscribe to the same Islamic religion. But this suggestion, was effectively called into question, by for example, the Iraqi invasion of Kuwait in 1990. One at least attempted justification for that invasion, was the claim that since historically Kuwait was a province of Iraq, everyone living within the borders of the former, were or are, members of the same (Iraqi) community, as those living within the borders of the latter. Consistent then with that particular defence of the aforementioned invasion, is the idea of all Arab people living within the borders of both Kuwait and Iraq, being part of a single Iraqi community, that is somehow a numerically distinct community, from any that other Arab people who do not live within the borders of either may be part of. Inconsistent with it however, is the idea that all people living within the borders of Kuwait, are part of a Kuwaiti community, that is numerically distinct from any community which those who do not live within those borders may be members of. Yet there are followers of the Islamic religion, living outside the borders of both Iraq and Kuwait.

Any attempt to define 'community' in terms of 'shared tradition' would also raise a problem. For 'shared tradition' could be taken to mean either shared religious tradition,

shared historical tradition or shared linguistic tradition, amongst perhaps several other things, like for instance shared cultural tradition. However, if and to the extent that, 'shared tradition' can be taken to mean either one, some or all such things, then it is a notion that cannot be usefully appealed to in an attempt to define what a community is. This is because, for reasons explained in the last three paragraphs, to attempt to define 'shared tradition' in terms of either one, some or all such things, would be to attempt to define it in terms of notions which themselves cannot serve as a non-problematic basis (or bases) for deciding what a community is. Furthermore, the notion of a shared cultural tradition, is in that sense no less problematic. Or at least this is so, if and to the extent that, the latter notion is to be defined in terms of either religious and/or historical and/or linguistic cultural tradition(s). And as already indicated, it is not obvious, that the notion of a nation can be successfully appealed to as a way of defining what a community is. For, the term 'nation' to the extent that it has any meaning at all, can, only it seems, be defined in terms of either one, some or all, of the aforementioned problematic notions.

Several more examples of the kind of factually based dilemmas discussed in the last four paragraphs, could be offered to show how arbitrary it is to define 'community' in terms of either one, some, or all of the aforementioned notions. To the extent that, Hayek, at least on one plausible interpretation can be seen as defining 'community' in terms of one such notion, his is a position that is unsatisfactory. Indeed, as hinted at already, it is evident from at least some of the earlier passages quoted from his work, that it would not be necessarily wrong (to understate the case perhaps) to interpret him as effectively defining 'community' in terms of one such notion, ie the aforementioned notion of a legal community. The problematic nature of this latter notion, may be stressed more fully than it perhaps has been so far. For this purpose consider the two following examples.

The first is a factual one. Before the 1979 Iranian revolution, there were several people who lived outside the borders of Iran, who (arguably at least) considered themselves to be part of the one same Iranian community, as at least some persons living within the borders of Iran. Yet the former were not formally bound by the same legal system as the latter. Some of the former for example, since they were living in Britain, were formally bound by the British legal system and not that of the Shah of Iran.

A second example is hypothetical but logically possible. Suppose there is a person X. Also suppose that except when s/he is on a one-week annual vacation, X lives in a state of America known simply as A. During the one-week vacation, X lives in another state of America known simply as B. Also suppose that A is immediately next to B. Further, suppose the following.

X has an illness. According to the law of A, anyone with this illness is required to take a daily injection of a substance known simply as S. It may be imagined, that the authorities of A (unlike the authorities of B) believe that anyone with X's illness will become violent without daily injections of S. However, the law of B prohibits anyone under any circumstances intentionally having or taking injections of S. For the authorities of B (unlike the authorities of A) believe that injections of S cause cancer.

Now B starts the aforementioned vacation period as s/he has done for several years previously, by hitchhiking from A to B. S/he gets to the border between A and B without managing to get a lift. Upon arriving at it s/he collapses and loses consciousness as a result of fatigue. X's collapsed body has landed on the ground in such a way, that exactly half of it is lying in A and exactly the other half of it is lying in B. The authorities of both A and B somehow discover, that before collapsing, X had not had an injection of S. Subsequently, the authorities of A wish to arrest, charge and prosecute X after the latter has regained consciousness. And this on the grounds that X is guilty of unlawful negligence, whilst the latter was located within the borders of A, and was hence a member of the legal community of A. Furthermore, the authorities of A, tried to strengthen their case, on the grounds that X lived for most of the year in A, is a registered citizen of A, and therefore is more of a member of the legal community of A than s/he is a member of any other legal community.

But the authorities of B disagree. They do so on the following grounds. When X was discovered in an unconscious state, as much of X lay within the border of B as within the border of A. So, when X was discovered s/he was as much a member of the legal community of B, as s/he was a member of the legal community of A. Eventually, both authorities agree to try to settle their disagreement diplomatically. They also agree that until such a settlement is reached, X's body should not be moved. However, all attempts

to reach such a settlement fail. This is unsurprising, since it is not obvious that a non-arbitrary way of reaching such a settlement is possible. Furthermore, it would be no less unsurprising if the law of A also stipulated, that anyone with X's illness, who whilst temporarily located in another state, intentionally neglected to be injected with S for more than twenty four hours, was consequently to be arrested upon returning to A.

A sufficiently close analysis of the latter hypothetical example, will reveal a further problem with the notion of a legal community as a basis for defining what a community is. For such an analysis will reveal, that the authorities of A attempted to support their claim that X was primarily a member of the legal community of A, partly at least on geographical grounds. To recall, their argument (at least in part) was, that X was primarily a member of the legal community of A, firstly because X was located for most of the year within the borders of A, and secondly let it be supposed because, at the time of being found unconscious, half of X was similarly located. Again, the authorities of B attempted to support their claim on geographical grounds similar to the latter.

Now, although the latter example is hypothetical, it is somewhat and partly indicative of what is actually the case. As by and large at least, what determines which legal community a person is a member of, is the geographical boundaries within which they live. So for example, if someone lives within the geographical boundaries of that place known as France, then s/he will be a member of the legal community of France. Given all this, it seems that attempts to define what community someone is a member of, in terms of the notion of a legal community, will ultimately (and by and large at least) amount to disguised ways of attempting to thus define on geographical grounds. Hence, all the aforementioned problems, that plague any attempt to define 'community' on such grounds, will also plague any attempt to thus define in terms of the notion of a legal community.

By now then, it is hopefully clear, that any attempt to non-arbitrarily define (whether or not persons are members of the same) 'community', may well turn out to be unconvincing. But then if so, it will also be hopefully and equally clear, that any philosophical claims, if and to the extent that they are reliant upon some non-arbitrary way of so defining, will be unconvincing too. As explained already, Hayek makes just such claims. The one however, that has been of main concern here (in this section), is to the

effect that ultimately, what is and is not of legitimate public concern, can be understood in terms of liberal values and principles that are enshrined in rules of just individual conduct that at least most people accept and live by. Nevertheless, what Hayek (to recall) means by 'most people' here is not: Most people in existence. For as indicated already, on one perhaps most plausible interpretation of what Hayek means by it is: Most people in a given (kind of) community. And, if this is right what Hayek, again, on a perhaps most plausible interpretation of him, means by phrases such as 'most people in a given (kind of) community' is: In terms of the ordinary belief and discourse of a given (kind of) community. The aforementioned reference Hayek makes to 'moral relativism' cited in some of the earlier quoted passages, provides some vindication of this. From these passages it is clear that Hayek defends moral relativism. However, if and to the extent that moral relativism is reliant upon some non-arbitrary way of defining (whether or not persons are members of the same) 'community', then for reasons already explained, moral relativism, may ultimately amount to an unconvincing philosophical claim. Besides, Hayeks' (at least apparent) defence of moral relativism, is arguably inconsistent with what he says elsewhere. For instance, he says:

“...all I have to say is derived from certain ultimate [moral] values. I hope [to] have adequately discharged...a...duty: To make it clear beyond what these ultimate [moral] values are on which the whole argument depends.”(R.S.p V)

This latter quote, to recall, also appears in the first chapter of this thesis, (see 1.3). But it is worth repeating here. For it is indicative of an arguable inconsistency in his stance concerning the status of moral values and judgments (see again 1.3).

Again he speaks of “...applicable rules [which] define... whether an act was just or unjust. All features of ...[contrary, conflicting, subjective, moral viewpoints] must be disregarded ...[for they] ...cannot...[define].... Just conduct. The important point here is ...that ...[such] ...rules...are....ultimate values ...This is what is meant by...such adages as ...let justice prevail even if the world perish. ...they serve ....a timeless purpose ...”(M.S.J pp 16-17).

The content of the latter two quoted passages may make it tempting to conclude, that far from being a moral relativist, Hayek is propounding some form of moral absolutism. To the best of the present authors' knowledge, nowhere in Hayeks' work is there a persuasive attempt to resolve the apparent inconsistency just cited.

Simply for the sake of argument however, both the aforementioned problem of apparent inconsistency, and the problem of non-arbitrarily defining (persons as members of the same) 'community' might be ignored. But even if they are, other problems remain. For as argued already (in section 2.19) in terms of ordinary belief and discourse, there is no (type of) act that by its very nature could never be viewed as being of public concern. Furthermore, there is no necessary reason to think that this is any less true of ordinary belief and discourse in what Hayek describes as 'the more extensive society', than it is in what he describes as 'the small face to face society'. Hayek otherwise refers to the former as 'the Great society'. It is clear that what he means by a 'Great society', is roughly at least, so called advanced, Western commercial and industrial societies, eg Britain, France, and the USA. So given all this, and given particularly that certain previous arguments (in sections 2.18 and 2.19) are persuasive, then as far as ordinary belief and discourse in such societies is concerned, then no attempt to distinguish once and for all, acts that are of private concern only, from those that are of public concern, will be convincing.

**CHAPTER 3**  
**DECONSTRUCTING HAYEK**

**3.1 Hayek on: The source of the confusion over what 'public good' means.**

Hayek claims that the term 'public good' only apparently resists precise definition.

Therefore, it is nevertheless precisely because of this that any interest might possibly be deemed a public one. This makes "...it possible ...to make large numbers serve purposes in which they are not interested" [M.S.J. p1].

According to Hayek, the apparent ambiguity of 'public good' arises mainly from a certain confusion. This confusion involves equating the public good with the sum total of all private interests. Such interests are hard to identify. Thus, they are hard to aggregate. So the confusion is compounded further. Hence, it seems increasingly harder to alleviate. For no government can know what all private interests are. Neither can any other party. (From here on, 'party' can be taken as denoting either one person or a group of people). No government can know therefore how to satisfy them all. Likewise with respect to all other parties.

For Hayek then, the apparent ambiguity of 'public good' can be explained in terms of a kind of confused ignorance. Moreover, such ambiguity so explained, accounts for the uncertainty about what is (not) a public issue. It also accounts for an uncertainty about what is (not) in the public interest. Ruling groups sometimes exploit these uncertainties for their own ends. They do this by persuading those inflicted with such uncertainties. Once persuaded, those thus inflicted, feel that their uncertainties are (largely) removed. But, what they may have become convinced of is or may be different. For they may have been persuaded that it is in their (or the public) interest to support some government policy. Yet it may not be. Their support of it, may be exclusively in the interests of whoever implemented it.



### **3.2 Hayek on: Why people should use their own knowledge to meet their own needs and purposes.**

Hayek appeals to the same notion of confused ignorance to try to substantiate further claims. He uses it upon which to base the claim that "...individuals are to be free to use their own knowledge for their own purposes..." [M.S.J. p2]. Also he states, "...in ...welfare societies the great majority and the most important of the daily needs of the great masses are met as a result of processes whose particulars government does not and cannot know" [M.S.J. p2]. His view is that state welfare is an attempt by governments to directly satisfy presumed particular needs. In other words: It is a (number of) method(s) contrived by governments to so satisfy. Such governments thus assume too much. As they wrongly assume that they know some of the (what they presume to be) positive effects of state welfare. However, the crux of this attack on state welfare is that they cannot know of any such (presumed) effects. And this again is because, people (in receipt of state welfare) use methods (largely) unknown to governments of directly meeting their needs. So governments do not (for the most part) know that state welfare effectively provides for those needs. Indeed, (for the most part) they cannot know.

From the claims cited so far, Hayek proceeds to draw what may seem a quite natural conclusion. He contends that people in what he calls a 'Great Society' ought to live in certain conditions. Government is required to secure and preserve such conditions. Indeed, these are the most important legitimate government functions, as Hayek sees it. As such, they provide the key to what he believes the 'public good' consists in. They also offer the first clue to how he distinguishes between private and public interests. The conditions concerned, are those of a spontaneous (economic) order. Under them, people will have the chance to satisfy their own and each others' needs. In trying to so satisfy, they will use methods (best) known to themselves, (or at least as well known to themselves as anyone else). But again, they will be (largely) unknown to government.

### **3.3 Some reasons why Hayek's claim that people should use their own knowledge for their own purposes may be arbitrary.**

At this point, certain further remarks may seem appropriate. From the premise, that people are to an extent ignorant of each other's interests, purposes and needs, Hayek, on one plausible interpretation, draws a certain conclusion. This conclusion is that a person her/himself is therefore, to that same extent, at least as good a judge as any other person of certain matters. Such matters include that person's own interests, purposes and needs. They also include the person's own chosen methods for trying to satisfy them. Presumably, this is (partly at least) why Hayek believes that people should be at liberty to decide upon their own interests, purposes and needs. It is also presumably (partly at least) why he believes they should be free to select their own methods of trying to satisfy them. Significantly perhaps, none of this of necessity implies, that the first person perspective is necessarily epistemically best placed. All that is effectively claimed is this. Suppose person A (say), decides s/he (i.e. A) has interest/purpose/need x. Next suppose, A believes Y to be the best method of achieving x. Accordingly, A decides to use Y in order to try to achieve x. But imagine now, that person B (say), disagrees with A her/himself. Contrary to the latter her/himself, B believes that A's true interest/purpose/need is P, rather than x. Furthermore, B holds the view that even if x were A's true...etc., then Q not Y would be A's best method of achieving x anyway. Hayek, on one plausible interpretation, concludes from this, that prior to A performing the relevant act(s), there is nothing that necessarily suggests that A's judgements are any better or worse than B's. So, he maintains, it would be arbitrary and indeed unjust not to allow A to exercise her/his own judgement.

As it stands however, this line of reasoning is unpersuasive. For what it amounts to saying is this. If A and B disagree over the best route to x, and if in advance of putting the judgement of either to the test, it seems that neither A nor B is, in any relevant epistemic sense, the better placed, then it would be arbitrary and unjust not to allow A's judgement instead of B's to be expressed in practice. What is noticeable about such reasoning, is that it uses premises which facilitate just as well or badly, a conclusion contrary to the one it ends with. For, if those premises render one of these conclusions reasonable, then they just as easily render the other one reasonable also. Or more to the point perhaps: If they render one arbitrary and unjust(ified), they so render the other too. Hence, appealing to the notion of comparative epistemic position in the way Hayek arguably appears to, is

insufficient by itself to substantiate his conclusion that a person should be left free to decide what her/his true interests ...etc. are, and how best to satisfy them. And this, (again, on one plausible interpretation) for the simple reason, that the manner of his appeal here, does not carry the implication that the (relevant) judgement(s) of the person whose interests ...etc., are in question, necessarily occupy a uniquely privileged epistemic position.

The points just made, may indeed be further underlined by considering a hypothetical case. Once again, this will involve two people. Like in the first case presented above, they disagree with one another as to the best way to satisfy a given aim. And like in the first case, prior to putting each of their proposed solutions to the practical test, there is no (apparent) difference between them in any relevant epistemic sense. Before any such test is conducted that is, neither of them, occupy any uniquely privileged epistemic position in any relevant sense, as far as anyone can tell. Indeed, let it be supposed that, the only arguably significant and relevant disanalogy between the present hypothetical case and the one presented (in the previous two paragraphs) above, is this. In the above case, one of the people involved has a vested personal interest of a very direct sort in making and acting according to the correct judgements. This much is fairly obvious perhaps. For, it is at any rate, not obvious how it could be more to the advantage of anyone to make so much as a single misjudgement upon what is or is not in her/his own better interest (say), than it would be for her/him to pass a correct judgement upon the matter in the first place.

However, in the present case then, let it be imagined that neither of the two people concerned have any vested personal interest of the same direct kind in making any correct judgement(s) at all, let alone in judging correctly in the first instance. An example illustrative of this, would not perhaps be hard to conjure. Part of what is required here, is to imagine a circumstance under which, two people are asked to pass judgement upon some matter that both have relatively very little interest in, or knowledge of. And once this requirement is satisfied, it will be necessary merely to imagine two quite different (perhaps mutually conflicting) judgements being passed.

Suppose for example, that both persons C and D who have little or no interest in or knowledge of motor mechanics, are asked to pass judgement upon the most frequent cause(s) of car engine failure and how best to prevent it. Person C, let it be said, responds

by saying 'leaking petrol tanks'. But person D suggests that it is 'blocked up carburettors'. Now, under the circumstances described, unless at least one (and ideally both) of these responses is put to the practical test and/or empirical evidence is in this or in some other way(s) gathered in support of it, it would be purely arbitrary and clearly epistemically unjustified to simply assume that one of them is more likely to be correct than the other. It would, under such circumstances, be indeed ludicrous for example, to decide, in the absence of any supporting evidence, that C's rather than D's proposed solution to the problem ought to be used as a guide for future practice, and that therefore car petrol tanks are to be redesigned in a way that will reduce the possibility of them leaking thereafter. For under those circumstances, it is obvious, that there is nothing to especially recommend either one of the two proposed solutions in preference to the other. The fact that neither C nor D have any vested personal interest in proposing a solution that will eventually be shown or at least be considered to be (the more likely) correct has, in one (arguably) important sense no bearing on the matter at all. For even if C (say) was the designer of a new (and apparently more leak-resistant) type of petrol tank, and stood therefore to make considerable financial gains as a result of it being widely accepted that all previous designs should be replaced, this would be in no way relevant one way or the other to the question of the epistemic worth of C's proposed solution to the problem of reducing the frequency with which car engines break down. As it is all too obvious perhaps, that if C's proposed solution can be shown to be either true or false at all, then this can be shown without needing to establish anything about C's psychology; and more particularly, without establishing whether or not C had any ulterior motives in proposing the solution s/he did, or how much C knew about car engines. Although, there is perhaps an intuition, which suggests that there is a sense in which how much or little someone knows about a given matter, does bear some relevance on the question of how reliable or otherwise any judgement passed by that someone on the matter in question is likely to be. For intuitively perhaps, it may seem perfectly reasonable to suggest that the more a person knows about a given issue, the more likely it is that any judgement s/he passes on it will be reliable; and the less s/he knows, the less likely ...etc. Or at least so much may well seem to be the case, with respect to issues that common intuition would perhaps deem to be open to an objective analysis, and which admit of objectively true and false judgements. And given that there are any such issues at all, the question of what is the most frequent cause of car engine failure, (in principle at least) would appear to count as one just as surely as any other. In this sense, there would seem to be an intuitive difference between such an issue

as this on the one hand, and certain other issues on the other hand; indeed as many writers on the philosophy of aesthetics for example have suggested.

However, there is perhaps another equally common intuition that implies a certain distrust of (even) 'expert' judgements. The latter, partly arises perhaps (or at any rate is possibly sustained) as a result of perceived disagreement even amongst those deemed to have specialist knowledge on the matter in contention. It demands, possibly as a still further consequence, that even the judgements of those whose ostensible knowledge of the matter in question is comparatively extensive, should therefore be subjected to examination, before being considered entirely acceptable. And again, the fact that one judging party has a strong vested personal interest in having her/his judgements generally accepted, in preference to all others would or should not in itself be sufficient to ensure that it would gain general acceptance. Further, even if it were, it would not be sufficient to show that such general acceptance were not epistemically arbitrary; again prior to that judgement being put to the test.

#### **3.4 Some possible further implications of the fallibility of common intuition.**

If the remarks just made are on the right track, a still further implication might reasonably be drawn. And this is, that whenever there is disagreement, no appeal to common intuition can be relied upon to persuasively settle the issue. For as anyone sufficiently familiar with the relevant literature will know, there are several good philosophical arguments which underline the fallibility of human intuition, relatively common or uncommon. Besides, history also highlights the epistemic fallibility of common intuition. One of the more often rehearsed considerations, and one which might be taken to be particularly applicable to certain points made above, is however partly philosophical and partly historical. This moreover, points to the mutually conflicting nature of human intuitions. It is still further, a conflict which not only manifests itself, when taking into consideration the quite different intuitions that have been cherished within one given epoch and/or culture compared to some other(s). Indeed, sometimes, the same individual might feel torn perhaps by mutually conflicting intuitions.

#### **3.5 Intuition and 'expert' judgements.**

However, an intuition suggesting a positive correlation between knowledge and reliability of judgement, and one amounting to a certain distrust of 'expert' opinion are not

necessarily mutually conflicting. As it is perfectly coherent of someone to be simultaneously guided by both intuitions, provided that s/he holds to each with (in a sense) less than total conviction. For no contradiction is encountered, by holding as a general rule of thumb, that the greater the knowledge, the more likely the opinion is to be correct, and also at one and the same time hold that even the most (apparently) informed judgements are subject to legitimate doubt until tried and tested. This is because, anyone simultaneously guided by this combination of intuitions, is, in effect, simply denying that any suggested positive correlation between knowledge and reliability of judgement is so perfect as to never admit of exceptions. Thus, to that extent, s/he holds to the intuition suggesting such a correlation, but, in a sense, does so with a conviction that is less than total.

It is moreover, precisely because s/he accepts the possibility of exceptions to (what s/he sees as) a general rule here, that s/he intuits a need for even the most 'expert' of judgements to be put to the test. And to that (perhaps comparatively minimal) extent s/he may be reasonably said to be somewhat distrustful of 'expert' opinion. Hence, s/he may, in other words, be said to be guided by an intuitive distrust of it; albeit not a very strong one perhaps. But if so, then s/he still has it, no matter how slightly. Given this however, her/his distrust of it falls far short of dismissing it entirely. Indeed, s/he may well still be intuitively inclined to give 'expert' opinion the benefit of the doubt under certain circumstances, rather than suspend judgement until relevant evidence is produced. As might be anticipated, the kind of circumstances in question here are as follows.

Suppose in the above hypothetical case, (see section 3.3) C's opinion rather than D's is widely considered to be the (more) 'expert' one. It here, may well be imagined, that C, is not as previously suggested, someone with little or no knowledge of car mechanics. Rather, C, unlike D, is instead widely recognised as an experienced designer of several efficient types of car engine. To give C an intuitive benefit of the doubt under such circumstances, and in advance of (dis)confirming evidence being produced, may itself seem intuitively reasonable. And this, might still seem to be so, even if it were also equally widely known or believed that C had the ulterior motives already suggested for passing the judgement s/he did. At any rate, a distinction between someone's motives for expressing a given view, and the question of whether or not it is (more likely to be) true, is quite easy to defend on fairly basic philosophical grounds. Moreover, anyone who

applied this distinction to C rather than sit on the fence in the absence of (dis)confirming evidence in view of D's (apparent) inferior knowledge of car mechanics, would not, in the interests of sustaining internal consistency, necessarily need to abandon entirely, any intuitive distrust of 'expert' opinion s/he may (otherwise) have. But, if s/he did have it, and refused to abandon it, s/he could not apply any such distinction to C, and simultaneously retain internal consistency, unless s/he either held it with less than total conviction, or refused to give C the benefit of the doubt over D after all.

The most extreme possible intuitive trust of 'expert' opinions combined with an intuitive and complete disregard of them, would however, necessarily amount to a mutual conflict of a sort. This much is self-evident. Hayek clearly holds no extreme faith in 'expert' opinions, at least not with respect to the questions of what someone's true interests are, and how best to satisfy them. Indeed, it is possible to infer this, from the fact that he believes that neither the first nor (any) third-person perspectives (necessarily) occupy a uniquely privileged and infallible epistemic position with regards to such questions. That this is Hayek's view of the first-person perspective is clearly reflected when he states that "...society does rest and must rest on constant undesigned frustrations of some efforts... etc" [M.S.J. p2].

### **3.6 Ultimate and instrumental intentions.**

From the last quoted passage, it is evident that Hayek believes that there is an inevitability about some human failure to realise goals. In other words, it is bound to happen, that some will sometimes fail to attain them. And the frustrations of those who fail, are undesigned (at least) in that those who thus suffer such frustrations, neither intend nor necessarily believe that they will suffer them beforehand. That is, a person, generally at any rate, will embark on a project with some particular aim(s) in mind. Again, s/he will also choose some method(s) which s/he believes will be the most likely to be successful in helping to achieve the aim(s) in question. Presumably, s/he will not, in the event, believe that the aim(s) s/he is trying to achieve will be necessarily impossible to achieve. Neither presumably, will s/he believe that any method s/he selects, is necessarily bound to result in failure. Such presumptions may indeed seem hardly surprising. As, there may well appear to be no point at all in trying to achieve a given aim by using a particular method, whilst also believing that both the aim and method in question necessarily represent a lost cause. Also, they are presumptions which would seem to apply equally well, and for

essentially the same kind of reasons, to what people intend with respect to their aims and methods of achieving them, as they do to what they believe about them. For, it would seem to make no more sense to intend to achieve x (say), whilst simultaneously believing that x cannot be achieved and/or intending not to achieve x. Likewise with respect to the method(s) of achieving some aim(s).

There may however, appear to be relatively exceptional counter-instances to (some of) the claims just made. Or at least this might seem to be so, with respect to what a person believes to be an attainable aim, and also with respect to what method(s) an agent believes can be used to attain it. Person E for example, might believe it to be impossible for anyone to run a mile in one minute. Now suppose E is an Olympic sprinter under the coaching tutelage of person F, who in contrast believes that it is possible for a person to run a one minute mile, provided that certain preparatory coaching and training methods are applied. But E remains unconvinced by the arguments F presents in support of this view. Person F becomes extremely insistent however, that E is erroneously over-pessimistic. Indeed, so extreme becomes F's insistence, that E reacts with an equally extreme determination to show that F is wrong. Accordingly, E complies with F's preparatory coaching methods. After thus complying to the letter, E finally takes to the running track, and runs as fast as s/he can over a distance of a mile. This might be interpreted as a clear case of someone trying to achieve something whilst believing that that something cannot possibly be achieved. For E, (apparently) tried as hard as s/he could to run a mile in (no more than) a minute, whilst being fully convinced that no person could possibly do it. Also, by implication, it might be interpreted as an equally clear case of someone using (coaching) methods to try to achieve something whilst believing that those methods are bound to fail. Conceivably, a similar interpretation might be made of E's intended aim and (chosen) methods of trying to achieve it.

If these kinds of interpretation are correctly applicable to some cases, then there are after all genuine exceptions to the rule, that no person will try to achieve an aim (by using some certain method(s)), unless s/he believes the aim can be achieved (by using some such method(s)). These types of interpretation in other words, suggest a fundamental difference between two essentially different kinds of cases, which appears to make good any claim that there are deviations from the standard case.



However, there is another possible interpretation of such apparently deviant cases. And it renders such 'deviations' as not quite so deviant at all. Further still, it does so, (partly) by appealing to a certain distinction. This moreover, is a distinction between ultimate and non-ultimate intentions. By appealing to this distinction, it may well be possible to show, that any postulation of deviant cases here, arises from a failure to take into account all of the relevant aspects of the acting agents' psychology. Granted, it is true for example, that person E in the latter hypothetical case, might, in a sense be said to be acting from an intention to use F's coaching methods, in order to fulfil an intention to run a mile in one minute, and that in acting from these intentions, s/he is acting in a somewhat paradoxical and perhaps relatively unusual way. Given that is, s/he also has the belief that no intention to run a one minute mile can possibly be satisfied, as well as the intention to show that it cannot be done.

But it is (partly at least) this latter intention which holds the key to removing the appearance of paradox here. As it is this latter intention, to prove F wrong, that is E's only ultimate intention. So it is this which fundamentally distinguishes it from the other related but non-ultimate intentions E had. Such non-ultimate intentions may be otherwise described as: 'instrumental intentions'. For they are intentions to perform acts which will be (hopefully) instrumental in serving the purpose of satisfying the ultimate intention. This ultimate intention once again, was to fail to run a mile in no more than a minute and thereby prove someone wrong. And if there is a difficulty in understanding how (say) an intention to run a mile in no more than a minute, can possibly be instrumental in serving the purpose of satisfying such an ultimate intention, then this difficulty may be the result of misconceiving the true nature of the former. For, (arguably) this former intention is not (most) appropriately described as an intention to run a one minute mile, in the first place. Neither, perhaps is it (most) appropriately described as an intention to try as hard as possible to run a minute mile. For, if it were (most) appropriate to describe it in this way, then E simultaneously had both the intention to try as hard as possible to succeed in running it, and the (more ultimate) intention to try as hard as possible to fail to run it. That indeed does look paradoxical. And the paradoxical look of it, is hardly made less acute, by the notion thus implied, of someone's act of running constituting and simultaneously not constituting an attempt to traverse a given distance within a given time period.

If however, the instrumental intention here, is described differently, the look of paradox soon disappears. For instance, if instead of describing it as an intention to (try as hard as possible to) run a mile in (no more than) a minute, it is described as (say) an intention to run as fast as possible for a minute, then there is perhaps less difficulty in understanding how it may be instrumental in serving the purpose of the (more) ultimate intention. It thus becomes less tempting to interpret it as a case of someone trying to achieve something whilst believing that it cannot be achieved. As, in terms of an alternative description, one of E's instrumental intentions was to run as fast as s/he could. It was not, (and s/he did not, strictly speaking, even have) an intention to run a one minute mile.

Other implications of the alternative description are these. Person E did not intend using (coaching) methods whilst believing they were bound to fail. As E intended to use such methods to enable her/him to run as fast as possible, s/he did not necessarily intend to use them to run a mile (within) a minute. The true nature of instrumental intentions is to be understood by reference to other related mental states. In the present case, the related mental states, are of course, the belief that it is impossible for any person to run a one minute mile, and the intention to show that it cannot be done. Just as the nature (and so the most appropriate description) of an act, is best understood perhaps, by reference to the (ultimate) intention from which it is done, and thus is an attempt to satisfy that intention, then likewise with some (namely instrumental) intentions themselves. For the true nature of instrumental intentions, is also best understood (in part) by reference to the (ultimate) intentions that give rise to them. The nature of E's act(s) of using F's preparatory coaching methods, and running... etc., so understood, become(s) some act(s) of trying to show that F's claim that it is possible... etc. is wrong. In other words: Trying to show that no person(s) can run a mile in (no more than) a minute. And similarly, with respect to E's intentions. One of these (yet again) is an instrumental intention to try to run as fast as possible for a minute. The other: An ultimate intention to try to show that F's claim that ...is wrong.

### **3.7 Rationality, the possibility of unconscious beliefs, and self-interest.**

All this is indicative of a more general point that a person's mental states are not insulated from one another. Hence, they are not to be understood as such. They are related to each other in a certain way. Or at least, this is (arguably) so to some extent. To the extent that a person is rational, there will be some semblance of internal consistency between her/his

beliefs, intentions, desires, etc., as well as indeed between the various acts that person carries out. Also, to that same extent, there will be some internal consistency between those acts on the one hand, and the beliefs, desires, intentions, etc., that give rise to them on the other. None of this necessarily implies, that in the case of any given person, at any given time, there will be perfect internal consistency in the senses just alluded to. Indeed, as already granted, (see 3.4) a person can be torn between mutually conflicting intuitions. Likewise, a person may for example, harbour two mutually conflicting beliefs. The possibility of unconscious mental phenomena is of course an especially relevant one here. For it increases the likelihood of someone having mutually conflicting beliefs. (However, if E in the above imaginary example does believe that s/he performed an act of trying to prove F wrong, whilst also believing that s/he performed an act of trying to run a mile in one minute, then s/he holds mutually conflicting beliefs whether or not s/he holds one of them unconsciously). At any rate however, it is not obvious how the prospect of unconsciously held beliefs decreases the probability of some such beliefs mutually conflicting. This is because, if a person at a given time, has (say) two beliefs about some matter, and if s/he holds at least one of them unconsciously, then (presumably) s/he will be unaware of any possible mutual inconsistency between them. If however, s/he were consciously aware of holding both, things would be different. For only then, would s/he be able to detect the (possible) mutual inconsistency. And if s/he did detect some such inconsistency, (or even merely believed that s/he had), then provided that s/he were sufficiently intolerant of what s/he (believed s/he) had discovered, s/he would presumably abandon one or both of the mutually conflicting beliefs. If s/he abandoned both, s/he may eventually replace them with some entirely different belief(s).

The idea that people can have mental states without being consciously aware of having them, is of course, nothing new. Neither is it one Hayek rejects (see also 1.3). Indeed, some of the remarks just made (in the last paragraph) about how such an idea bears some relevance to the possibility of someone holding mutually conflicting beliefs, may seem somewhat trite. However, the possibility of unconscious mental states, along with the possibility of someone having mutually conflicting beliefs, bear relevance also to certain points made previously (see 3.1 and 3.2).

For example, if the possibility of unconscious beliefs is generally speaking to be taken seriously, then there is no immediately obvious reason why it should not be taken equally

seriously with respect to a person's belief(s) as to what is (not) in her/his (better) interests. Moreover, if in this respect, such a possibility is taken (equally) seriously, then no person her/himself can necessarily be relied upon to be an infallible or even the best judge of what even s/he believes to be in his her/his own interest(s) and/or how best to satisfy it (/them). It may appear to follow further from this, that Hayek's above-cited claim, (in 3.1) to the effect that people can be made, (by ruling groups) to serve purposes in which they are not interested, is (if anything) rendered more plausible. For if people do not necessarily consciously know themselves what is (not) in their true interests, then this it may seem would make them more open to being persuaded that something (some government policy say) is in their interests whether or not it actually is, than would be the case if they did consciously know. The basis for the (apparent) heightened plausibility of Hayek's claim here, may be explained as follows.

If it is true, as Hayek (on one plausible interpretation at least) suggests, that the less people know about their own and each other's interests, the more open to a type of persuasion they are, then this would seem to be no less true, if they did know (more) about their own and other's interests but without knowing about them consciously. The implied inverse correlation here, between a lack of a certain kind of knowledge and being open to a type of persuasion, if it is accepted as genuine, then it seems reasonable to postulate a similar inverse correlation between a lack of conscious knowledge of that same certain kind and being open to such a type of persuasion. If again, the possibility of unconscious beliefs warrants serious consideration, and if as already suggested, such a possibility makes the probability of a person holding mutually conflicting beliefs genuinely greater, then further remarks may seem appropriate here.

It would for example, seem perfectly reasonable to suggest, that a person is genuinely confused about a certain matter, to the extent that any beliefs s/he has concerning it mutually conflict. Further, once this is accepted, there is no immediately obvious reason why it should not be accepted with respect to a person's beliefs about what is (not) in his/her own interests. It therefore follows, that the possibility of the unconscious (once granted) increases the probability of a person having mutually conflicting beliefs concerning her/his own interests. Hence, by implication, the probability is thus increased of a person being genuinely confused about them. As all it would then seem to be required, for it to be true to say that a person is in this way confused, is this. The person

concerned, has two (say) beliefs of the relevant kind, that are mutually conflicting, at least one of which is held unconsciously, therefore concealing their incompatibility from s/he who holds them. This is not to say, that for a person to be confused about her/his own interests, it is necessary that at least one or some of the beliefs s/he holds concerning them, s/he must hold unconsciously. To claim this would indeed be false. For it is easy to imagine someone holding (say) two such beliefs consciously, and thus feeling confused about the nature of her/his own interests. Rather the claim here is, that the possibility of the unconscious perhaps makes this confusion (derived from mutually conflicting beliefs) more probable. At any rate, it may well make it no less probable. And bearing in mind the previous point, that any recognition and resolving of the mutually conflicting relation which may exist between some beliefs, requires that the person who holds them be conscious of holding them, then the possibility of the unconscious might seem to make the persistence of the confusion more (or no less) probable also.

Further, and for the sake of brevity, most if not all of the points made here concerning the implications of the unconscious for a person's beliefs about (and possible confusion over) what is (not) in her/his own interests, have broader applicability. As they are equally applicable, to a person's belief about (and possible confusion over) what others believe to be in their own interests.

Finally, if, and to the extent that the points made here (along with those made earlier, in 3.3, 3.4, 3.5, and 3.6) are plausible, then although they (as already suggested, in a sense) strengthen at least one of Hayeks' claims (see 3.1), they serve to cast further doubt on at least one other of them (see 3.2). The former once again, is the claim, that if people are not (consciously) aware of, and hence in a state of confusion over what is (not) in their interests, then some ruling group(s) can and do (seek to) satisfy their own aims by exploiting such confusion, making those people believe that something is in their (the latter's) interest, when really it is (or may be) only in the interest(s) of the ruling group(s), (see 3.1). And the second is the claim that people should use their own (presumably conscious) knowledge (and beliefs) to satisfy their own purposes, needs, and interests (see 3.2).

### **3.8 Needs and interests.**

At this point, some related issues of contention might be usefully addressed. One of these, is whether or not peoples' interests are the same as their needs. There is perhaps an intuition which suggests they are not. For intuitively, (or in terms of ordinary belief and discourse, see 2.8, 2.17, 2.18, 2.19 and 2.20) it may seem appropriate to distinguish between two fundamentally different classes of desire. In one class, there are those desires that need to be satisfied if the person is to survive. These are intuitively easy to identify. They include the desire for food and water. Within the other class, are desires that do not need to be satisfied in order for the person to survive. Included in this latter class, would be a desire for entrepreneurial success. Those in the first class may be called essential desires. The second class may be said to include only non-essential desires. This suggested intuitive distinction may appear to be justified on quite practical grounds. For, it may be suggested, it is essential for the first class to be satisfied in order for any in the second class to be. However, although such a distinction, so contrived might seem to have a certain (albeit) all too obvious plausibility, it is far from clear that it is philosophically sustainable. There are several reasons for this.

The first is somewhat evocative of the earlier and in a sense more general point that intuitions are not an obviously reliable guide for settling contentious issues, as some are mutually conflicting (see 3.4). And to get an idea of how this point might be applicable here, it may be useful to consider whether sexual desire for example, is to count as an essential or non-essential one. For there is perhaps an intuition, which suggests that it is a basic essential desire, hence need. But if so, such an intuition does not necessarily comply with the criteria for distinguishing between essential and non-essential desires (and thus needs and 'mere' interests) suggested by some other intuition, according to which, the desire for food is an example of the former, whilst the desire for entrepreneurial success is an example of the latter. For sexual desire need not be satisfied in order for a person to survive. And it need not be satisfied in order for (at least some intuitively) non-essential desires to be satisfied. Indeed it is not immediately clear, what criterion or criteria an intuitive classification of sexual desire as being essential, could comply with.

It is perhaps arguably significant to note, that certain statements Hayek makes, give reason to suspect that he implicitly accepts that there are essential human needs/desires, and to that extent at least, these are to be distinguished from non-essential interests/desires, hence

to that same extent, he (on one plausible interpretation) accepts the aforementioned and suggested intuitive distinction between them. For instance, he speaks of ensuring 'security against severe physical privation'. Indeed, a noticeable amount of the content of the third chapter of his 1944 publication The Road to Serfdom comprises an argument to this end. In it, he says that his "...argument is...not an argument for leaving things just as they are" [R.S. p27]. And with respect to the aforementioned end, he does not "...deny that where it is impossible to create the conditions necessary to make competition effective, we must resort to other methods of economic activity" [R.S. p27]. This activity includes "...an extensive system of Social Services..." [R.S p28]. But nowhere does Hayek even attempt to provide a philosophically persuasive way of distinguishing essential needs from 'mere' interests. Furthermore, it is not clear that it would be altogether persuasive to suggest, in accordance perhaps with ordinary belief and discourse, that the former have to be satisfied for individuals to survive whilst the latter do not. Moreover, this is, as already indicated, because, it is perhaps equally in accordance with ordinary belief and discourse, to suggest that sexual desire is an example of an essential desire, although the non-fulfilment of it does not lead to death, in the same relatively direct way that the non-fulfilment of (say) a desire for food does.

### **3.9 Hayek on: Unforeseen consequences providing no basis for intervention.**

If certain problems, questions, and points raised before (in 2.2, 2.9-2.15 and, 2.17-2.20) are substantial ones, it would from the point of view of ordinary belief and discourse at least, be clearly insufficient to attempt to re-affirm the distinction between private and public concerns by denying altogether that the effects (actual or potential) of actions are strictly crucial to it. Such a denial may take the form of a claim that it is the intentions with which agents act (rather than the effects - potential or actual - of their acts) that are all important when deciding whether or not what someone did is of legitimate public concern. Indeed, Hayek's resistance to interventionist government legislation being applied to the workings of a market economy, is, in part, grounded in some such view. He claims for instance that in such an economy it would be inappropriate for any authority via legislation "...in the name of 'social justice' or any other [moral] pretext..." to impose "...some pattern of remuneration based on the ...needs of... individuals...". [MSJ p68]. And he further contends, that this is (partly) because the (relatively) untampered market

process will itself yield patterns of remuneration which were not intended by anyone involved in it (at least insofar as they complied with rules of just individual conduct) [MSJ p70].

So essentially, the kind of claim Hayek is making here, is that if an agent performs some act(s) yielding unwanted and unfortunate consequences for some other(s), this alone does not warrant the imposition of government legislation, no matter how much such an imposition would make it less likely that that act will with all of its attendant and unhappy results be repeated; for the agent concerned may not have intended such consequences, or even foreseen them.

### **3.10 A test case: An incompetent surgeon.**

But, such a claim is based upon a confusion. For although there is perhaps some intuitive plausibility in any Kantian-like view to the effect that intentions are centrally important when morally evaluating agents and their acts, this is entirely different from claiming that they should be attributed equal weight when deciding whether or not a given act is of genuine public concern and therefore whether or not it is appropriate subject matter for government legislation. Further, this is not due merely to the practical difficulties sometimes involved in establishing an agent's intentions (and indeed another reason why Hayek is reluctant to accept as legitimate the application of interventionist legislation to the market place is precisely that "...the aims [and intentions of]...different individuals must be mostly unknown to those who...enforce the rules..." [MSJ p2]). For after all, such difficulties also arise when the aim is simply to provide a moral evaluation of agents and their acts. Rather, the difference here is quite a fundamental one. This is because, it is intuitively easy perhaps to understand why people's moral assessment of someone (say) who killed unintentionally may well be less harsh than their moral assessment of one who killed intentionally. However, it is perhaps nowhere near as intuitively easy to understand, why anyone would believe a claim that intentions are of analogously central importance when deciding what is and what is not of genuine public concern. And this is perhaps particularly so, if such a claim is taken as saying: Only acts performed with some intention(s) to bring about certain kinds of (arguably) public effects are of such concern. Further, this can be seen by considering what the intuitive response is likely to be to a medical authority (say) who refused to introduce or enforce legislation, to prevent a surgeon who had made a series of fatal mistakes from performing any further operations,



on the grounds that the latter did not even foresee let alone intend killing anyone. The intuitive response to the surgeon and the latter's deeds would again, probably be kinder than it would be to one who killed intentionally; or at least it probably would be if it were shown or believed that at the times in question the surgeon did everything s/he reasonably could have done in order to perform the operations safely. Furthermore, the likelihood is, that it would also be kinder than it would be to the medical authority who insisted on maintaining a non-interventionist stance, particularly perhaps if it became widely known that the surgeon, armed with the sincere conviction that the fatal errors had made her/him wiser and therefore extremely unlikely to make the same mistakes again, intended to continue performing operations. Under such circumstances, the intuitive response of perhaps most people, would at worst, be that the surgeon, rather than being armed with some sound conviction, is an incompetent blunderer (albeit a comparatively morally blameless one) inflicted with a poor sense of judgement. And indeed, it is conceivable that, some sort of case may be made out for saying that this would be the most appropriate kind of response to the medical authority who refused to intervene on the grounds of being impressed by the sincerity and underlying rationale of the surgeon's expressed conviction.

However even (and perhaps especially) if people generally reacted to the medical authority in this way, they may well wish to see them removed from office, and replaced by one which in such cases is inclined to exercise what they consider to be sounder judgement. Furthermore, it is far from obvious, that if the medical authority were to claim that its non-interventionist stance were a morally neutral one, that this would be acceptable to popular intuition; and it would be even less acceptable to it, if that authority were to admit that there was every reason to expect the same disastrous consequences if the surgeon continued to perform operations.

What the above example brings out then, is that if it is intuitively plausible to regard intentions as centrally important where moral evaluation of an individual is concerned, it can (at least sometimes) be intuitively implausible to so regard them where the related issues of public morality and legislation is concerned. An authority refusing to legislate in the circumstances described above, despite expressing a belief that more misfortune would follow if they did not do so, far from being generally seen as adopting a morally neutral stance, would instead perhaps be widely viewed as adopting an immoral one; being just as

and perhaps even more morally responsible than the surgeon for any future fatal mistakes that may take place.

Further, if Hayek's view is interpreted in the way suggested above (and that indeed would appear to be the most natural interpretation of it) then it hardly escapes the spectre of consequences; for the reference to public consequences clearly remains on such an interpretation, and thus they still play (albeit less directly than they arguably ought to) an important and essential part in distinguishing acts that are of public concern from those that (he alleges) are not.

There are however, differences between the case of the blundering surgeon on the one hand, and on the other, Hayek's view (at least on the above interpretation of it) that the lack of foreknowledge and/or intention on the part of agents... etc. makes their acts unsuitable subject matter for legislation. One difference is as follows. In the one case, there would clearly be grounds for saying that the perpetrator of the acts in question was incompetent. Indeed, even if it could be demonstrated beyond all reasonable doubt that at the time of the fatal errors s/he did everything within reason to perform the operations safely, it would still not be altogether clear, that no charge of incompetence could therefore be made to stick. For it might later be discovered, that during the time of the operations the surgeon was suffering from some permanent impairment of mental faculties, that no one (including the latter) knew of and which is of a kind liable to make anyone inflicted with it, make mistakes when performing delicate tasks requiring utmost precision. If this were the case, there is a genuine and obvious sense in which it can be said that the surgeon was not competent enough to perform the operations. And once the source of the incompetence (along with the circumstances under which it manifested itself) is understood, there is also a real sense in which it can be claimed, that working within the limitations of the damaged mental powers, the surgeon did do everything that could be reasonably expected to avoid error. Also, if (as already suggested) the surgeon indeed insisted on continuing to perform operations (the latter let it be imagined, being so mentally impaired s/he is unable to accept that s/he has any such mental impairment at all) there would be a sense in which it could be said that s/he was no longer sufficiently competent to make a sound judgement on the matter, along with a sense in which it may be claimed that under the circumstances s/he is making the best judgement on it that s/he can be reasonably expected to make. Indeed, it is again, precisely for these reasons, that

people would wish any final decision here to be taken out of the surgeon's hands and deferred to someone likely to pass a sounder final judgement. And, it is for those same reasons, that people may well become distrustful of an authority whose response (for whatever reason) was not to pass any such final judgement at all.

However, on Hayek's view, there need be no equally obvious sense in which it can be said that an agent's incompetence (rather than malicious intent) led the latter to perform an act yielding untoward consequences for others, whilst it can still be the case that interventionist measures by a third party designed to prevent the act and its consequences happening again would still be unwarranted. Now, at first glance, there is another reason why this view might strike someone as being rather an odd one. Or at least, such a view may well have a peculiar ring to it from the viewpoint of anyone who (for reasons already suggested in 2.2) not only believes that when it comes to issues regarding (im)morality at least, there are no theoretical limits to legitimate government interference, but also holds the belief that the kind of incompetence exhibited by the surgeon, would (all other things being equal) render anyone inflicted with it less morally culpable than someone who is not for the negative consequences of any acts s/he performs as a direct result. For, it may understandably seem odd to such a person, to propose that it would be right for the relevant authority to 'clamp down' on those who (are liable to) bring about such consequences albeit not by performing any act that is (as common intuition would perhaps at least suggest) immoral, and yet wrong for the appropriate authority to do likewise to those who (in one sense at any rate) are (if anything it might be thought) more morally culpable for the (consequences of the) acts in question, as the latter unlike the former cannot (it might seem) be morally excused on the same grounds of unwitting incompetence. Put simply, the charge of peculiarity here, may be based on a view, that if it is right to legislate against acts that are not immoral, it is surely right to legislate against those that are, all other things being equal (e.g. all the acts under consideration are equally likely to have untoward public effects).

Central to such a (possible) view then, is (roughly) the idea of some kind of correlation between the extent (if any) of the immorality of an act, and the extent (if any) that it is appropriate subject matter for legislation. Further, the suggested correlation is such that, (all other things being equal) the greater the extent of the immorality, the more it is appropriate to legislate against it. Again, if it can be shown that those acts which Hayek

believes are not proper subject matter for legislation, are (if anything) more (or at least closer to being) immoral than the acts of the imaginary surgeon (discussed above); and if a non-interventionist stance is indeed accepted with respect to the former but rejected with regards to the latter, then any such suggested correlation is effectively denied. But, if it is presumed that even Hayek would not wish the surgeon's acts to remain untouched by public legislation, and given also that he would not level any charge of immorality at the surgeon, then to that extent, (if his position is read in a certain way) then his is a position which carries the implication that there indeed is no such correlation. And if so, this may appear to be at odds with what he says elsewhere.

For, it will be reminded, (part of) his dislike of interventionist legislation is grounded in the view that it is not warranted in cases where the act(s) in question cannot be correctly described as immoral; which again they at least as far as market transactions are concerned - according to him - cannot if they comply with the rules of just individual conduct [MSJ p70]. However, anyone who rejects interventionist legislation in certain cases, (partly) on the grounds that in such cases no immorality has been committed, is (to that extent) clearly implying that it would make a difference if some immoral act(s) had been performed. As the implication here would seem to be, that in the event of some immoral act(s) being performed, then there would be some (indeed more) justification for interventionist legislation. Hence, (read in a certain other way) Hayek may seem to be suggesting that there is some correlation (of the kind suggested above) between the extent of the immorality of an act and the extent to which it is appropriate subject matter for legislation.

Of course, it needs again to be reminded, that Hayek does not accept that the acts which he specifically stipulates as inappropriate subject matter for legislation are immoral; and once more this on the grounds that their consequences were unforeseen let alone intended by anyone. And so, if this is a position that can be made to stick, then the perpetrators of such acts are no more to be morally blamed for either performing them or the consequences of them, than is the imaginary incompetent surgeon for the (consequences of the) acts s/he performed. Further, given again that Hayek would not favour a non-interventionist stance in the case of the surgeon, then it would still not be wrong to accuse him of in a sense rejecting the above suggested correlation between the immorality of an act and the extent to which it is appropriate subject matter for legislation. For, then he

would be advocating non-interventionism in the one case, but not in the other, even though the perpetrators of the acts in question in each case he would (presumably) claim to be equally morally blameless. And indeed, it is very reasonable to presume that he would grant that the surgeon was morally blameless. For, if as Hayek himself claims, the fact that an agent did not intend or foresee the consequences of her/his acts is sufficient to render the agent concerned morally blameless, then on his very own thesis, no correct charge of moral responsibility could be made against the surgeon. So, even taking into account the central and intuitively acceptable importance Hayek attaches to what agents intended or foresaw in assessing their moral culpability, the appearance of contradiction is hardly removed. Further, it seems that the only way he can remove it, is by adopting the very counter-intuitive non-interventionist stance in the case of the surgeon.

There is reason to suspect however, that he would not wish to adopt the latter stance in such a case. For he speaks of stopping

“...the use of certain poisonous substances...[and providing]...certain sanitary arrangements...and...other...things...which affect social welfare; ...[such as]...certain harmful effects of deforestation, or of some methods of farming, or of the smoke and noise of factories...”[R.S p 28-29]. Moreover, this requires “...an appropriate legal system...”[R.S p28]. These quoted passages, are, for reasons that are perhaps obvious, hardly consistent with (and hence not indicative of someone who would necessarily adopt) a non-interventionist stance with respect to effects that harm persons, whether or not those effects were caused knowingly and/or intentionally.

But either way any differences that might exist between the acts of the imaginary surgeon on the one hand, and the perpetrators of those acts which Hayek wishes to be untouched by legislation on the other, may, in at least one sense, turn out to be not so nearly as important as the similarities between them. For even if it is accepted, that in neither case did the agent(s) concerned perform any immoral act(s), then for reasons already suggested, this alone may not be sufficient to show that non-interventionism is warranted in either of them. This being the case, and if there are grounds for being distrustful therefore of an authority adopting a non-interventionist stance in the one case, then equally there are grounds for being distrustful of an authority advocating non-interventionism in the other. It seems fair to suggest, that no one armed with the relevant facts, would (all things being

equal) be inclined to have an incompetent surgeon perform an operation on them. For presumably, it would seem to be an overly-risky transaction to enter into. And, the same line of reasoning that may well lead someone to this conclusion, should (in the interests of consistency if nothing else, it might be thought) also disincline them (all things being equal) to enter into any market transactions likely to result in untoward consequences for themselves, with persons that is, who have persistently through their actions inflicted such consequences on others. (The 'equal' clause in the first case is designed to cover such possibilities as someone urgently needing a life-saving operation but is unable to find a surgeon who can perform it in time other than the incompetent one. Under such circumstances, it is obviously understandable why the risk would be considered worth taking. In the second, it is designed to cater for such possibilities as someone with little left to lose anyway, engaging in a risky business venture (with some affluent persons) and who stands to make an enormous financial gain (at the expense of the latter) on (say) a ten per cent chance of the risk paying off for them).

### **3.11 Hayek on: Unforeseen consequences to some particular persons providing no basis for intervention.**

So far, the treatment of Hayek's reasons for opposing interventionism has been arguably somewhat crude and oversimplified. But even if a charge of crudity and oversimplification is justified here, the crudity and oversimplification has been deliberate. For such a crude oversimplified treatment of Hayek, nevertheless brings out especially clearly something of the essence of one objection he raises to interventionist measures being applied to a market economy. It also helps to capture something of the essence of how such an objection might be countered. Needless to say however, a crude oversimplified treatment of any position, always carries the risk of failing to do it justice; insofar as the position in question may consequently not be presented in its most defensible form. Still, as will presently be shown, even if the above treatment of Hayek is refined in a way that (arguably at least) offers a more faithful representation of his view, it is a view that will ultimately still look unconvincing.

First, it is important to grasp exactly what Hayek means when he says of the acts which he claims are not appropriate subject matter for legislation, that their consequences were not foreseen or intended by anyone. On one possible superficial interpretation, Hayek might simply be taken as suggesting that no one intended or even foresaw that such acts would

produce any painful consequences at all, let alone intended or foresaw that they would have harmful effects on some particular person(s). In other words, in the market place, individuals willingly enter into transactions with one another, and there is nothing morally objectionable about such transactions if they are conducted according to the rules of just individual conduct [MSJ pp31-44, 62-78]; but the actions which such transactions involve will sometimes have unfortunate consequences (for the perpetrators of them as well as others) that no one (could have) foreseen let alone intended.

Now, what according to Hayek, amounts to an act that complies with the rules of just individual conduct, put roughly and succinctly is: an act that does not involve lying, cheating, fraud, promise-breaking, theft, robbery, violence, etc. (And 'robbery' for instance here means robbery in perhaps its most explicitly obvious sense only. So excluded here is any perhaps metaphorical sense of the word found in phrases like 'that's daylight robbery' or 'you were robbed there pal', used to express the beliefs that something is over-priced and that someone has (albeit willingly) paid more for something than it is actually worth respectively). So what on the simple-minded superficial interpretation Hayek is saying then is this: Market transactions conducted within the rules of just individual conduct have unfortunate consequences that no one could have known, expected, predicted or intended in advance; so any such consequences whenever they do thus arise, always come as a complete surprise to everyone, and this quite irrespective of the particular identities of the specific persons who come to suffer them; hence the possibility of anyone knowing, expecting, predicting or intending untoward consequences (via market transactions so conducted) to some person(s) in particular is one that does not even arise to begin with.

Given such an interpretation of Hayek however, it would perhaps be tempting to respond to him with the simple suggestion that it is a matter of common knowledge that market transactions do not have to involve any lying, thieving, fraud, etc.(in the non-metaphorical sense indicated above) for them to yield unhappy consequences. But (as again it will be presently shown) Hayek 's position is indeed a little more subtle than that interpretation would have it. Besides, his position so interpreted, would seem to be too easy to refute by appealing to relatively recent history. Indeed, evidence for this, can be provided by reflecting upon the development of certain ideas within the very (so-called) tradition of political liberalism which he locates himself. For there have been subscribers to it, who

have been all too acutely aware for instance, of the unfortunate consequences that can be (and are) induced by the market. Adam Smith (1776) in urging resistance to legislative interference in the acquisition of wealth, claimed that governments had no business in redistributing resources to those inflicted with market-induced poverty from those who had reaped great material and financial rewards from their market transactions. (Here, it is being assumed that poverty is unfortunate and untoward. This is perhaps consistent with ordinary intuition. Indeed to say the least! It, for now, is also being assumed, that there is some intuitive sense of what poverty is. To that extent, it is being for now, further assumed that there is some intuitive sense of what it is to be unfortunate, and what it (in part) means to be inflicted with (some of) the market-induced untoward consequences. Although such assumptions are philosophically problematic, it is not obvious that they necessarily conflict with ones Hayek himself (at least implicitly at points) makes; indeed as will be suggested again presently).

Again, T. R. Malthus, (1798) claimed that in a laissez-faire market economy, the income of the poor was (due to population expansion) unlikely to rise above subsistence level. Neither Malthus nor Smith harboured high hopes of eliminating poverty from economies with a constitutionally limited government. Malthus was however, no more inclined than was Smith to advocate relieving poverty via a (more legislation) regulated market economy. But, during a (roughly) sixty year period from the 1880s to the 1940s, a (then) fresh kind of approach to the problem of market-induced poverty emerged and developed within the (so-called) liberal tradition. This approach involved abandonment of the earlier liberal ideal of a laissez-faire market economy. And it was replaced by an endorsement of an extensive social welfare programme and an expansion of the constitutional powers of government in order to tackle poverty. T. H. Green (1881) claimed for instance, that governments had a duty to help emancipate the poor from squalor. This, he believed, could be achieved by a tax on inherited wealth. A. Toynbee (1882) in the spirit of Green, summoned governments to rescue the poor from indecent social conditions. This sentiment was echoed further by A. Marshall (1890). The latter did not share the pessimism of the classical economists Malthus and Smith about the prospects of bettering the lot of the poor. Instead, he entertained seriously the possibility of a base of material comfort well above the poverty line, and he envisaged an enlarged state, with a government mounting a positive assault on poverty. L. T. Hobhouse (1905) like Marshall believed that a more interventionist response in the form of deliberate policies by



government to poverty was legitimate. One policy J. A. Hobson (1902) favoured was provision of welfare benefits to be financed by taxation of private property. And later, J. M. Keynes (1936) and W. Beveridge (1945) argued the case for mixed economy welfare capitalism; for the use that is, of a centrally organised and extensive network of social welfare to fight squalor and want.

Any temptation to believe then, that the (so-called) liberal tradition is by and large, one which has been supported by only those who are (and have been) naively impervious to the poverty engendered by unfettered capitalism must be resisted. So must the temptation to believe, that it has only been supported by those, who evidently have been inclined to deny that market-induced poverty (and again to that extent market-induced misfortune) exists in some objective, or at any rate, intuitively recognisable sense. And again, what is true in this respect of the members of the (so-called) liberal tradition cited above (in the previous paragraph) is not obviously or necessarily any less true of Hayek himself. Indeed, this is arguably at least to understate the case, for reasons outlined later (in 3.12). More relevantly here perhaps, it is no less true of Hayek on the one hand, than it is of earlier classical liberal economists like Smith and Malthus on the other.

However, to return to an earlier question: What exactly does Hayek mean when he says that since the consequences of an act were not foreseen or intended by anyone, that act is not appropriate subject matter for legislation? The answer put simply is this. Suppose some particular person A is relatively unsuccessful in the market place. Also suppose, all market transactions A ever engaged in, were conducted according to the rules of just individual conduct (i.e. such transactions did not involve any lying, cheating, fraud, etc, in any aforementioned literal sense). Further suppose, that no one could have predicted with any reasonable inductively-based confidence beforehand, that A in particular, would have suffered any market-induced misfortune. Again suppose, that no one intended beforehand, for A in particular to suffer such misfortune. Finally suppose, that some government legislators, could have predicted with reasonable inductively-based confidence beforehand, that some persons would suffer such misfortune, they just did not know in advance the particular identity of those who would suffer it. Hayek [M.S.J. ch3] claims, that since they did not know the latter, they had no moral obligation to intervene beforehand to try to prevent any such misfortune.

However, this claim of Hayeks' is not necessarily persuasive. And this can be shown by appealing to a distinction already drawn (in 2.4). Reconsider the aforementioned atom bomb case. Further, suppose some person B, accidentally explodes an atom bomb. Also suppose, the resultant radio-active fall-out, is of a kind, that only adversely affects people of certain genotypes. Again suppose, that such genotypes constitute a minority of persons likely to be affected by the fall-out. Further suppose that B knows all this. But what B does not know is the identity of the persons who will probably be affected. Finally suppose, that B has the power to stop the fall-out before it adversely affects anyone. However, B does not use this power to do so. Possibly no one would morally excuse B for not doing so, purely on the grounds that the latter could not have predicted the particular identities of those eventually affected.

### **3.12 Inconsistencies and Incoherencies**

Earlier, it was pointed out, that Hayek wished to ensure against severe physical privation (see 3.9). It was also pointed out earlier, that Hayek does not adopt a completely non-interventionist stance with respect to harmful effects on persons, and that according to him, 'an appropriate legal system' is required in order to deal with them (see 3.10).

However, he also, refers with some reverence to

“...a...spontaneous and uncontrolled...order of economic activities...[and a] ...subsequent elaboration of a consistent [and presumably convincing] argument in favour of economic freedom...”[RS pp11-12].

Nevertheless, he grants that such freedom, “...led to the discovery of very dark spots [of want] in society...”[RS p 12]. Further on, he effectively refers to these dark spots as 'evils' that people “...become increasingly unwilling to tolerate...[as they]...appeared both unbearable and unnecessary” [RS p 12]. And Hayek writes about what he calls “...the growing impatience with...liberal policy [as well as] the just irritation with those who used liberal phraseology in defence of antisocial privileges...”[RS p 12].

Additional evidence of Hayeks' rejection of complete non-interventionism, may be found in the following phrases. For instance, he claims: “There is nothing in the basic principles of liberalism to make it a stationary creed, there are no hard-and-fast rules fixed once and for all” [RS p 13]. But having said that liberalism comprises 'no hard-and-fast rules',

curiously in the very next sentence, Hayek makes the (at least apparently) contradictory claim about a

“...fundamental principle [of liberalism being] that in the ordering of our affairs we should make as much use as possible of the spontaneous forces of society, and resort as little as possible to coercion, [and that this principle] is capable of an infinite variety of applications” [RS p 13].

If the first of the last two quoted passages is read in one literal way, then it may be taken as suggesting, that there is nothing in the content of liberal doctrine that is necessarily constant, and that therefore liberalism does not intrinsically entail or comprise any particular distinctive creed(s) or fundamental principle(s) by which it can be distinguished from any other political doctrine(s) but rather, it is an infinitely fluid doctrine that can be made to represent just about anything, indeed if it can (be made to) represent anything at all (see also 1.2). Yet, the second of the two quoted passages, suggests that liberalism does comprise a fundamental, and hence presumably permanent principle, and thus to that extent, there is something in the content of liberal doctrine which is necessarily constant after all. However, if the ‘fundamental principle’ alluded to in the second, ‘is capable of an infinite variety of applications’, then it may seem tempting to conclude, that the content of it also, is infinitely fluid, and that it too therefore, can be made to represent anything at all. In short, all the points just made (earlier in this paragraph) about ‘liberal doctrine’ would then seem to be equally applicable to the ‘fundamental principle’ supposedly underlying (and essential to) it. For, what counts as making as much use as possible of the spontaneous forces of society, at one time and/or in one place, and /or in one context, may not be the same, as what counts as making as much use as possible of them, at, and /or in some other(s). Again, this at the very least, would (logically) seem to (have to) be so, if there really is no limit to the variety of applications to which the aforementioned ‘fundamental principle’ can be put. As, it is furthermore, a principle, which (to recall) in part states, that as much use as possible should be made of the spontaneous forces of society, and in (other) part states, that as little use of coercion should be made as possible. Therefore what has just been said about making as much use as possible of the former, would seem to apply equally to making as little use as possible of the latter.

Still further evidence of Hayeks’ rejection of complete non-interventionism, is provided when he claims that

“...nothing has done so much harm to the liberal cause as the wooden insistence of some liberals on certain [even] rough rules of thumb, above all the principles of laissez-fair” [RS p 13].

From this quoted passage, it seems that Hayek is opposed to the idea of liberalism involving so much as any even general rough principle(s), let alone a single fundamental, clearly defined and unchanging and/or unchangeable principle of the kind already suggested (in the last paragraph). So, for reasons by now hopefully apparent, this appears (at least) inconsistent with any claim (Hayek makes) to the effect that liberalism (necessarily) entails any fundamental principle(s).

From the last quoted passage, it also seems reasonable however, to infer at least one further conclusion. And this is, that, there is at least one sense in which Hayek would appear to reject the stance of both the aforementioned Adam Smith (1776), and T.R. Malthus (1798). Moreover, this so, although Hayek, more than once, refers to the former with some reverence. For instance, Hayek contends that

“...in...a...spontaneous order...what...is generally regarded as ‘social’ or distributive justice has (no) meaning...and...[it]...is...wholly incompatible with, that [same] spontaneous order which Adam Smith called ‘the Great Society’,...”[RO p 2].

As already indicated, (see section 2.20), the term ‘Great Society’ is one used by Hayek himself with perhaps noticeable frequency. But, it can be seen from the last quoted passage, that Hayek was not the first to use it to refer to a spontaneous economic order. Also, sufficient familiarity with Hayeks’ writings, (or at least some of those published from 1973-1976) may reveal the influence Smith had upon Hayek. The latter, goes on to suggest for example, that

“...it is only by constantly holding up the guiding conception of an internally consistent model which could be realized by the consistent application of the same principles, that anything like an effective framework for a functioning spontaneous order will be achieved” [RO pp64-65].

This last quoted passage, is perhaps especially significant. And this is not merely because, it (arguably at least) is yet another example of a statement by Hayek, that is (or seems at any rate) directly at odds with his (Hayeks’) aforementioned claim, that “...in the basic principles of liberalism...there are no hard-and-fast rules fixed once and for all” [RS p13]. For in his next two sentences he claims that “ Adam Smith thought that ‘to expect, indeed, that freedom of trade should ever be entirely restored in Great Britain is...absurd...’ Yet seventy years later, largely as a result of his work, it was achieved” [RO p65].

According to Hayek, the work of Smiths', which was largely responsible for the restoration of free trade in Great Britain, was also, (to a noticeable extent at least) an expression of those same aforementioned principles which he (Hayek) believed required "...constant application...[in order]...that...a functioning spontaneous order...be achieved"[RO pp64-65].

However, despite the (aforementioned and apparent) reverence with which Hayek refers to Smith, and despite also the (aforementioned and apparent) influence Smith had upon Hayeks' work, it is, by now, hopefully evident from some of the earlier quoted passages, (included in the first four of the last five paragraphs), that to the extent that Hayek rejects complete non-interventionism, he is more in the liberal tradition of the previously cited T.H. Green (1881), A. Toynbee (1882), A. Marshall (1890), J.A. Hobson (1902), L.T. Hobhouse (1905), J.M. Keynes (1936), and W. Beveridge (1945). Also, Hayek, is in the tradition of each of the latter, as well as indeed that of Smith and Malthus, in the sense that, he (Hayek) accepts, that a spontaneous market order, cannot always be counted upon to provide for all human needs and/or interests. Again, Hayeks' (aforementioned) reference to 'very dark spots' (cited in the last paragraph but four) suggests this. In fact, Hayek describes himself as "...the last person to deny that increased wealth and the increased density of population have enlarged the number of collective needs which government [as opposed to any spontaneous free market mechanism] can and should satisfy"[N S P P E H I, p111].

Elsewhere, he claims,

"...that...government ought to use its power of raising funds by taxation to provide a number of services which for various reasons cannot be provided...adequately by the market. Indeed, it could be maintained that, even if there were no other need for coercion,...there would still exist an overwhelming case for giving the...authorities power to make...[people]...contribute to a common fund from which such services could be financed. The contention that where the market can be made to supply the services required it is the most effective method of doing so does not imply that we may not resort to other methods where the former is not applicable. Nor can it be seriously questioned that where certain services can be provided only if all beneficiaries are made to contribute to their costs, because they cannot be confined to those to pay for them,...the government should be entitled to use such coercive powers" [P O F P pp41-42].

The last quoted passage, is perhaps the most extensive and vivid illustration given so far by the present author, of an interventionist stance adopted by Hayek, (which was first indicated in 3.10). Furthermore, despite Hayeks' expressed hostility to (socialist) planned economies, the last quoted passage, may give reason to suspect, that as far as the question of government economic intervention is concerned at least, there is less fundamental difference between advocates of such economies on the one hand, and Hayek on the other, than the latter at times seems to claim. Rather, any difference between them here, appears to be merely one of degree. Some perhaps clear examples of statements by him, which seem to suggest that he believes this difference is indeed a fundamental one (rather than one of mere degree), are amongst the following. "The idea of complete centralisation of the direction of economic activity still appalls most people,..." [RS p31]. As far as the present author is aware, Hayek offers no (conclusive) evidence to support the claim, that the idea of such centralisation does or ever did appal most people. He instead ventures to give 'explanations' as to why (he thinks) they are appalled by it. One of them at least, hardly counts as any such explanation at all however. For it is somewhat tautologously couched in terms "...of the horror inspired by the idea of everything being directed from a single centre"[RS p31]. Or at least this is so, if it is assumed that if someone is appalled by something, then it is a pretty safe bet, that s/he will be inspired by horror at the very thought of it. The second (aforementioned and suggested) explanation, is couched in terms "...of the stupendous difficulty of the task...of [directing] everything...from a single centre" [RS p 31]. At this point, it may be suspected, that if the difficulty here, is really as stupendous as Hayek seems at least to believe, then there is relatively little chance of a wholesale centralisation of all economic activity ever coming to pass. Hence, there is correspondingly little or no point in anyone worrying about it ever doing so. Yet, Hayek himself worried to a perhaps noticeable extent about this. Indeed, after writing "...of the stupendous difficulty of the task...of [getting] everything...directed from a single centre" [RS p 31], in the very next sentence, Hayek claims that "...we are nevertheless rapidly moving towards such a state [of complete centralisation]..." [RS p 31]. Certain parts of Hayeks' work, is, furthermore replete with (what seem to be) similar sounding warnings. For example, after dismissing the "...need...[to]...be a prophet [in order] to be aware of impending dangers" [RS p 1], he goes on to refer to "...the...contempt for...liberalism,..." [RS p 2] as one such danger. Moreover, he alludes to (what he sees as) "...the...determination that...organisation...achieved for purposes of

defence shall be retained for the purposes of...the...[implementation of]...socialist policy...” [RS p 2]. He continues, by contending that,

“...the people whose views influence developments...are now...[in 1944]...all socialists. If it is no longer fashionable to emphasise that “we are all socialists now”, this is so merely because the fact is too obvious. Scarcely anybody doubts that we must continue to move towards socialism,...It is because nearly everybody wants it that we are moving in this direction...it...is...people whose convictions...give it [socialism] an irresistible momentum...” [RS p3].

Again:

“According to the views now dominant the question is no longer how we can make the best use of...spontaneous [economic] forces... We have...undertaken [instead] to dispense with the [spontaneous economic] forces...and to replace the...mechanism of the market by collective and “conscious” direction of all social forces to deliberately chosen goals” [RS p 15].

Also,

“...the concept of socialism...is often used to describe...the ultimate aims of socialism...most socialists hope to attain these ends...In this sense socialism means the abolition of private enterprise, of private ownership of the means of production, and the creation of a system of “planned economy” in which the entrepreneur working for profit is replaced by a central planning body. There are many socialists...who...believe in those ultimate aims of socialism...who are...certain that they must be achieved, whatever the cost... “economic planning”...is the prime instrument of socialist reform,... We must centrally direct economic activity if we want to make the distribution of income conform to current [socialist] ideas of social justice. “Planning”, therefore, is wanted by all those [socialists] who demand that “production for use” be substituted for production for profit...the term socialism...for many people stands for an ultimate ideal. It is...preferable to describe...and to regard socialism as a species of collectivism or “planning” ...What our [socialist] planners demand is a central direction of all economic activity according to a single plan, laying down how the resources of society should be “consciously directed” to serve particular ends in a definite way...modern [socialist] planners...choose...to employ...planning our common affairs...a...central direction and organisation of all our activities according to some consciously constructed “blueprint”. The socialists of all parties have appropriated the term planning for planning of the latter type and it is now generally accepted in this sense” [RS pp 24-26].

Finally:

“It is important to be quite clear about this: the modern movement for planning is a movement against competition...a new flag under which all the old enemies of competition have rallied...under this flag...it is socialist propaganda for planning which has restored to respectability...opposition to competition...What...unites the socialists...is this common hostility to competition and their common desire to replace it by a directed economy...the term...socialism...[is]...generally used to describe the...future form...of society...all the changes we are observing tend in the direction of a comprehensive central direction of economic activity,...[a]...universal struggle against competition...” [RS pp 29-30].

Of the eleven quoted passages in the previous paragraph, the last eight of them, are indicative of Hayek's perception of the political climate in Britain during (at least the final two years or so, of) the second world war. At least some of the content of at least some of them however, does not suggest that Hayek, was, during that time at any rate, entirely untroubled by the prospect of a future centrally directed economic order. Neither does it suggest, that Hayek, during that same time at least, (necessarily) believed such a prospect to be an unlikely one. And this again, despite his aforementioned claim concerning "...the stupendous difficulty of the task...of [directing] everything...from a single centre" [RS p 31], which, it is perhaps worth stressing, was also expressed by Hayek, in the very same 1944 publication, as the ones that can be found in the last eight quote passages in the previous paragraph.

Furthermore, and again as already pointed out, (in the last paragraph but one) in that aforementioned 1944 publication, Hayek also claims, that "...complete centralisation of...economic activity...appalls most people..." [RS p 31]. Now, far from offering any (conclusive) evidence in support of this claim, (again, see also the last paragraph but one) Hayek makes some other claim(s) which suggest(s) that rather than appalling most people (in Britain during at least the last two years or so of the second world war), the idea of complete economic centralisation is one which most (such) people found positively appealing. If Hayek's aforementioned reference to what he perceived as the (then contemporary British) 'contempt for liberalism', is not a sufficiently vivid illustration of this, then it may be worth reflecting perhaps further upon, some of the content of at least a number of the passages from his work quoted previously (in yet again the last paragraph but one). For example, Hayek, to recall writes of "...the determination...for...the...[implementation of]...socialist policy..." [RS p 2], "...the people who...influence developments...[being]...all socialists" [RS p 3], "... "we are all socialists now", this...fact is...obvious" [RS p 3], "Scarcely anybody doubts...we must...move towards socialism...because nearly everybody wants it..." [RS p 3]. Now, it may seem to be running the risk of appearing petty to point out, that if taken strictly literally, the last two quoted passages (in the previous paragraph) contradict one another. For the first of them says, that everyone (in Britain at sometime(s) at least during the second world war) is (or was) a socialist. But, the second of them, suggests, that merely most (such) people (were or) are. However, if any charge of pettiness is justified



here, it may, at the same time be based upon the (possible) view, that it is not necessary and even inappropriate to interpret both of the last two quoted passages literally. For, the first of them, it may be continued, at worst, merely reflects an imprecision of language use by Hayek. Furthermore, it may be suggested, it reflects indeed, no less than an imprecision of thought not to recognize this. In other words: it is an imprecision of thought, preventing anyone who may be inflicted with it, from reading appropriately between the lines. However, no appeal to read between the lines, would necessarily be sufficient to render consistent some (at least) of the other (apparent) inconsistencies elsewhere in Hayeks' work. Consider again, for instance, the following phrases. "According to...views now dominant the...mechanism of the market [must be replaced] by collective and "conscious" direction of all social forces to deliberately chosen goals" [RS p15]. "...most socialists...want...the distribution of income to...be "consciously directed" to serve particular ends..."[RS pp 24-26]. And, "...all...socialists want...central direction and organisation of all our activities according to some consciously constructed "blueprint" " [RS pp 25-26]. Now, if the content of the last three quoted passages, is considered along with the aforementioned claim, that at least most people in Britain in 1944, were socialists, it would thus be possible to formulate the following syllogism.

(A) At least most people in Britain in 1944 were socialists.

(B) At least most socialists in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity.

Therefore,

(C) At least most people in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity.

It may be objected here, that the above syllogism does not necessarily follow as it is not genuinely deductive. For, it may be added, it is logically possible, for (A) and (B) to be true, and (C) to be false. Indeed, this would be so, if (say) fifty one per cent of people in Britain in 1944 were socialists, and (say) fifty one per cent of socialists in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity. As then, less than half the people in Britain in 1944, consciously and deliberately aimed to have all economic activity centrally directed.

But, any objection, of the kind just suggested, aimed at showing that the above syllogism is not genuinely deductive, can be used to highlight further weaknesses in some of

Hayeks' claims. For after all, (A) amounts to as accurate a statement as it is perhaps possible to give, of Hayeks' view of the amount of people in Britain who in 1944 were socialists. And (B) amounts to, as accurate a statement as it is perhaps possible to give, of Hayeks' view of the amount of socialists, who, in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity. Again, any statement, which includes, as part of it, the phrase 'at least most' is inherently ambiguous. Furthermore, to recall, the inherent ambiguity of (A) has effectively already been suggested, (in the last paragraph) when it was claimed, that strictly speaking, it is contradictory to claim something of the order that everyone wants X at t1, and, at the same time, claim that only nearly everyone wants X at t1. Moreover, and unsurprisingly perhaps, the aforementioned inherent ambiguity of (B), is no less indicative of essentially the same kind of contradiction on the part of Hayek. Indeed, and yet again, a comparison of for example, the content of the last two quoted passages (in the previous paragraph) would provide an illustration of just such a contradiction. Or, at least, this is arguably so. As it may seem, no less like running the risk of appearing petty, to point out, that, if taken strictly literally, the latter two aforementioned passages contradict one another, than it may seem like running the risk of doing likewise, by pointing out that, phrases relevantly semantically similar to, 'everyone wants X at t1', strictly speaking, contradict, phrases relevantly semantically similar to, 'nearly everyone wants X at t1'. Here, for the sake of brevity, it may simply be said, that essentially the same (kind of conceivable) thinking, suggested already (in the last paragraph), appealing to the idea of reading between the lines in the case of the latter two kinds of statements, may be drawn upon also, in the case of the former two kinds of statements. And this, in order to try to show, that if and given that, the aforementioned charge of pettiness is justified in the one case then it is equally justified in the other. However, even if the kind of charge of pettiness suggested here, is somehow found to be entirely convincing with respect to both such cases, (and there seems no immediately obvious, non-arbitrary reason why it should be found to be) it would no more necessarily follow, that certain other (apparent) inconsistencies in Hayeks' work, would be thus rendered consistent and hence persuasive, than they would be, if such a charge, were instead, found to be entirely convincing with respect to just one of them. The reasons for this are as follows.

Reconsider (A) in the above syllogism. Now, as reasonable interpretation as perhaps any, of an appeal to read between the lines, in order to arrive at the 'true precise' meaning of

(A), may be the following: Most (as opposed to all) people in Britain in 1944 were socialists. If so, then, as reasonable interpretation as perhaps any, of an appeal to read between the lines, in order to arrive at the 'true precise' meaning of (B), may also be: Most (as opposed to all) socialists in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity. Indeed, it may be claimed here, that if it is accepted that (A) is most reasonably interpreted as just suggested, then, in the interests of rational consistency, it is to be accepted that (B) is most reasonably interpreted as just suggested also. Or again, at least this is so, in the absence of some overriding reason(s) to think otherwise. But, as indicated already (by means of the last three quoted passages in the previous paragraph), and as will be emphasized still further presently, there is no overriding reason to think otherwise at all. For, a sufficiently close reading of relevant parts of Hayeks' works will reveal, that if some of the content of it, suggests that he (Hayek) believed that all socialists in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity, at least just as much of it perhaps, suggests that the latter believed that merely most of them did.

If then, (A) and (B), in the above syllogism, are interpreted in the way just suggested (in the last paragraph), another syllogism may be formulated, which might initially at least, seem like a slight modification of the first one. This other syllogism, is the following.

(A1) Most people in Britain in 1944 were socialists.

(B1) Most socialists in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity.

Therefore,

(C1) Most people in Britain in 1944, consciously and deliberately aimed to centrally direct all economic activity.

As is perhaps all too obvious, the (A1) in this second syllogism, replaces the (A) appearing in the first. It is also perhaps equally obvious, that the (B1) in the second syllogism, replaces the (B) appearing in the first syllogism. And perhaps no less obviously in both these cases, the replacing involves no more than deleting the phrase 'at least' from the start of the replaced sentence. Because the replacing here, involves no more than simply that, this is (partly) why perhaps, the second syllogism, may seem, initially at least, like a mere slight modification of the first one. But if so, this modification is neither trivial nor insignificant. For, this modification, is such that, it makes (A1) less ambiguous than (A). Also, it makes (B1) less ambiguous than (B). For

(A1) unlike (A), definitely rules out the possibility of all people in Britain in 1944 being socialists. And (B1), unlike (B), rules out the possibility of all socialists in Britain in 1944 consciously and deliberately aiming to centrally direct all economic activity. But, a combination of (A1) and (B1) does not rule out the possibility of (C1) being true, even if (C1) does not follow deductively from such a combination. Also, given the explicit nature of the content of some of the passages quoted above from Hayeks' The Road to Serfdom, it is not even obvious that much arbitrary reading between the lines is required to be persuaded, that (C1) is a conclusion that the latter himself would have necessarily rejected; indeed, to understate the case perhaps. Besides, neither (A1) nor (B1) are entirely unambiguous. For (A1) does not specify exactly how many people in Britain in 1944 were socialists. And (B1) does not specify exactly how many socialists in Britain in 1944 consciously and deliberately aimed to centrally direct all economic activity. Again, nowhere in the latter publication, does Hayek specify either. Furthermore, nowhere in it, does he provide empirical support for either (A), (A1), (B), or (B1).

However, despite his aforementioned rejection of complete non-interventionism, Hayek (1944, p31), has this to say.

“Both competition and central direction become poor and inefficient tools if they are incomplete; they are alternative principles used to solve the same problem, and a mixture of the two means that neither will really work and that the result will be worse than if either system had been consistently relied upon”.

The content of the last quoted passage suggests that Hayek believed, that there was at least one worst thing than complete centralization; namely, a partly centralized control of resources. It also suggests that he believed, that either complete centralization or complete decentralization were preferable to part centralization. Assuming, he never accepted complete centralization, then all this appears to suggest, that he believed that complete decentralization is preferable to part centralization. But this, is not obviously consistent with a rejection of complete non-interventionism.

### **3.13 Hayek makes an appeal to history.**

Having indicated what he believes the most important basic government functions are, Hayek (M.S.J. ch1) goes on to make a claim based upon a selective appeal to the history of ideas. For effectively, he tries to reinforce his position by citing the views of only those

he considers to be like-minded. Perhaps his aim here, is to cloak his position with historical credibility. If so, it is unsurprising that he does not at this point even mention a certain line of thinkers stretching back at least as far as *Plato*. For what such thinkers have in common is this. They all believe(d) that legitimate government functions are more extensive than Hayek claims them to be. So it is also unsurprising perhaps, that he restricts his appeal to the Stoics, Cicero and J Harrington (1658) as examples of those who 'well understood through most of history' that they are not.

### **3.14 Hayek on: The impossibility of agreement on particular aims forming the basis of the 'Great Society'.**

Hayek (M.S.J.ch1) addresses the problem of actually choosing the most suitable rules upon which the 'Great Society' must be based. At this point, he rejects one kind of proposed consequentialist solution to this problem. According to him, this involves considering several different sets of rules. The particular predictable effects of each set will need to be taken into account. Then, the set which provides the most positive over negative effects will (need to) be chosen. Hayek's rejection of this strategy is (partly) based upon reasons already explained: Such effects are for the most part unpredictable. He claims that "...most of the [particular] effects on particular persons of adopting one set of rules rather than another are not predictable." [M.S.J. p3]. (This claim is somewhat similar in style to his attack on welfarism, cited in 3.2).

In countries like those of contemporary Western Europe for example, different particular aims are pursued. Hayek suggests that by and large only those who pursue them know what they are. He explicitly states that "...most ...particular ends ...will not be known except to those who pursue them..." [M.S.J. p3], (see also, 3.2 and 3.3). For this reason alone, there cannot, Hayek maintains, be anything-like broad agreement upon which particular aims are most worthy amongst those who pursue them. The guiding idea here seems to be this. People cannot significantly agree with one another on some matter(s) (largely) unknown to them. On Hayek's view, it is since and precisely because any one person will inevitably be (largely) ignorant of most human aims, that no one person will be able to engage in a comparative evaluation of them. And unless (most) people can thus

engage in the first place, then there is no possibility of (most of) them evaluating (most) human aims in (more or less) the same way.

But it is also Hayek's view, that even if people were not (largely) ignorant of most human aims, this would make it no more likely that they would (broadly) agree on the relative importance of them. If their ignorance were somehow removed; if also some decision on the relative importance of aims were made; then in the event of that decision and the effects of any practical application of it on such aims becoming widely known, it is a decision that would make the relevant kind of agreement even less possible. For presumably, those whose aims were thus given relatively high priority, would view any such decision comparatively favourably. In contrast however, those whose aims were thus deemed relatively worthless, would presumably take a comparatively dim view of the decision in question. And any attempt to force people to comply with this decision would, Hayek maintains, fail. It would result in dissent and an open conflict of interests rather than harmony and peace.

It will be stressed here, that Hayek believes that a peaceful (broad) agreement on the relative importance of particular aims is not, for the reasons just given, possible except within small(er) communities. Just exactly how small a community would need to be for such agreements to be possible within it is not spelt out. But what is fairly clear, is that Hayek does not believe it is possible between (most) inhabitants of contemporary so-called advanced countries; e.g. Britain, France, the U.S.A., etc. Neither does he think it possible between (most) inhabitants of what he calls 'the Great Society'.

**3.15 Hayek on: The 'Great Society' made possible by an agreement upon means.** Hayek (M.S.J. ch1) maintains however, that peace is possible in other than small(er) communities. But it will be so, only if people are required to agree upon means rather than particular aims. These means will potentially serve several different (and indeed presumably any legitimate) human projects. And if they are to command general acceptance, they would also presumably need to be seen as such by most. For, it is not obvious, why any persons should want to accept them, unless they believed that by doing so, their chances of achieving their aims would be increased; or at any rate not decreased.

Hayek further claims that the required agreement on means has actually taken place. People, he suggests, discovered that the only way they could be assisted in achieving their various and completely different aims, is precisely by entering into just such an agreement. Hence, it may seem that Hayek can be located within a contractualist tradition which includes T. Hobbes (1651), J. Locke (1690), and more recently J. Rawls (1971). He states "...that an order definable only by certain abstract characteristic [i.e. the rules of individual conduct which help create the spontaneous (economic) conditions] ...persuaded people pursuing wholly different ends to agree on multi-purpose instruments which were likely to assist everybody." [M.S.J. p4]. If this is intended to be interpreted as an exact historical account of how a certain agreement were reached, then certain questions may appear to legitimately arise.

### **3.16 Implicit and explicit agreement.**

But before raising them, it will (for reasons which will hopefully become clear) be helpful to draw a distinction. The distinction is between an explicit and implicit agreement. For present purposes, an explicit agreement is as follows. Some party, A (say), agrees to X (say). But A does so, only after and indeed as a result of a process of conscious, deliberate consideration (if A is a group of people, this process will involve relevant discussion between group members). More specifically, the process will entail weighing up the possible pros and cons of agreeing to X and acting accordingly. Whilst engaging in this process that is, A will consider (to some extent at least) the possible advantages and disadvantages to (ideally) everyone likely to be affected if the agreement were made and acted upon. (Ideally, A would thus consider, all who might enter into and act upon the agreement at any rate). Also, A would likewise have considered any (and ideally all) realistic and possible alternatives to X. In contrast, and for present purposes at least, an implicit agreement is as follows. Some party B (say) agrees to Y (say). But B does so, not after or as a result of any relevant conscious, deliberate consideration and/or discussion. Briefly, no careful weighing up of pros and cons, possible (dis)advantages, or realistic alternatives has been carried out. Rather, B, it may be said, agrees to Y in a comparatively unthinking way. For B, perhaps wholly as a result of socialisation, generally acts in accordance with Y.

It may seem, that Hayek rules out the possibility of an explicit agreement upon the rules which form the basis of the 'Great Society'. For as already noted, (in 3.14) he rejects at

least one possible kind of consequentialist strategy for choosing such rules. And there is something distinctly consequentialist about the above account of an explicit agreement. (It is not to be construed here, that such an account is Hayek's. But, for reasons explained presently, nothing hinges upon this. For on any reasonable definition of 'explicit agreement', Hayek's claims concerning how the agreement upon means became possible can be rendered questionable).

At least some of the questions arising from Hayek's (apparently) historical account of how the agreement upon means was reached, may be legitimately asked, however the agreement is intended to be interpreted. They arise that is, whether the agreement is taken to have been either explicit or implicit. And they arise, whether or not any attempt is made to question Hayek's key claim that such an agreement was reached in the first place. Although at some point(s) in what follows, this claim will be called into question.

### **3.17 Some questions concerning the conditions of agreement.**

It may for example, seem fair to ask: Were those entering into the agreement in question, (largely) ignorant of one another's particular aims at the time of doing so? If they were, then how varied such aims (possibly) were at the time would presumably have been (equally largely) unknown to them. Each one of them, would therefore (at best) have been aware of a relatively small number of the actual particular aims of a relatively small number of (other) people who were party to the agreement. So, in the event, how varied (or otherwise) the range of the particular aims of those party to it were, would, as far as any one of them could tell for sure, be only as (in)extensive as the range of those s/he knew about. Further, if any one of them, knew of a mere limited range of such particular aims, then how could any one of them have known that they were entering into an agreement of a kind likely to improve the prospects of all (legitimate and) actual human aims being satisfied? Or to put the question differently: In the event, how could they have known they were agreeing to something likely to improve everyone's prospects of achieving their aims?

### **3.18 Hayek on: The alleged necessity of a belief in the justice of rewards.**

According to Hayek (M.S.J. ch3), there are certain erroneous (and closely related) beliefs, both as to how the free market originally came to be seen as broadly acceptable, and why the inequalities it engenders first came to be tolerated. These are, that material inequality



is acceptable if (largely at least) based on merit; and, since an unfettered free market ensures so far as is possible that it is; the (unfettered) free market satisfies the requirements of 'social justice.'

It is of course, debatable as to how pervasive these beliefs now really are. But it is, Hayek contends, sometimes claimed, that it is (at least partly) because such beliefs are widely held, that the free market manages to sustain itself. And, he further contends, that it is, at times, also claimed that the free market owes its very origin to the broad acceptance of those beliefs.

But, Hayek claims, the latter claim is as erroneous as the belief that it is a claim about; for, on the contrary, the free market originated and developed, after centuries of unsuccessful attempts to give 'social justice' some (philosophically satisfactory) content. These attempts, amounted (partly at least) to efforts to find 'just' rewards for services and commodities offered; and 'just' prices to be charged for them. It was only after the futility of such efforts became apparent that it was realised that all justice demanded was that prices and rewards be determined by just individual conduct, on the part of those competing in the market place.

Arguably, those who find the market place very personally rewarding, may be tempted to believe that individual entrepreneurial success can ultimately be justified on moral grounds. It may equally be the case that those who find it especially unrewarding, might be just as inclined to believe that no moral justification for such success is possible. The continuance of the free market, according to Hayek, requires that to a significant extent, the belief be widely held that the size of eventual rewards is based (largely) upon merit. Otherwise, presumably, it would soon be widely regarded as morally intolerable; and as such, it would become the source of mass unrest and dissent. This apart, nothing is likely to make people more industrious and competent, than the belief, that their relative and eventual position, is primarily their own responsibility. This is why, such a belief, is encouraged by institutions of education; and Hayek effectively suggests, that the encouragement of that belief can be justified on utilitarian grounds. For he says, that much moral and material progress has resulted from the acts of those who are guided by it. He further claims that such progress benefits most.

However, Hayek cautions that care must be taken, not to encourage too much the belief that the free market order distributes rewards purely (or even largely) upon the basis of merit. For if institutions of education, (and other - would be - manipulators of public opinion) are seen to over-encourage such a belief, this may yield at least the following negative consequences. The first is, that those who (either rightly or wrongly) consider themselves as under rewarded by the market mechanism, in relation to their merit, will be unconvinced by such over propagation of a belief. Hence, they will become distrustful of all institutions responsible for it, and sceptical of the (moral) credibility of a free market order which (as it may appear to them) draws sustenance from it. Moreover, dissent and unrest may result. So, it is not in the interest of the continuance of the free market at least to (try to) create the general impression that the best or only conceivable defence of it, is that it distributes rewards (largely or purely) on the basis of merit. Second, if this impression is successfully conveyed, it may incline those who enjoy high rewards to believe that they are congenitally superior to those who make do with more modest ones. Although presumably, the former, in order that they become so inclined, would need to believe that the impression conveyed here, contained at least a large element of truth.

### **3.19 Some further possible implications of a belief in the justice of rewards (a response to 3.18).**

Lofty self-esteem, if manifested by those enjoying high rewards, may moreover, have further knock-on and negative effects. One is that the higher their own (apparent) self-regard, the lower they may come to be regarded by others. And this, perhaps especially by those who again, do not believe that high rewards are, (for the most part at least) indicative of merit. As these latter, will possibly view such high self-regard as being somewhat misplaced; and they may thus become resentful and contemptuous of those who they see as being 'guilty' of it.

But if there is reason to think that dissent and unrest may arise amongst some, as a result of (any strong encouragement of) the belief that the free market distributes rewards (largely) according to merit, then there is equally good reason to think that such dissent and unrest may not be restricted merely to those who doubt the meritocratic credentials of the free market order. As even some of those who entertain no doubts about it at all, may find it quite discomfoting to be drawn to the conclusion that their relatively scanty rewards are (largely) a consequence of their own personal incompetence. For, at least,

those who do harbour such doubts, may console themselves with the thought that if their rewards are meagre, then this is not (largely) due to any personal failing, but rather, it is (largely) down to bad luck! Or, it is explicable in terms of factors, that could not have been foreseen. In this way, the latter may remain at peace with themselves, even when their rewards are comparatively modest. However, for those who the market rewards modestly, and who believe (perhaps reluctantly) that such rewards are (more or less) an accurate indication of merit, it will be hard to find refuge in such (otherwise) consoling thoughts, as, they will find it impossible to escape the conclusion that bad luck played little or no part in their relative lack of success. (Or at least this will be so, assuming consistency between (some of) their (relevant) beliefs; and indeed, perhaps in some cases, this is not a very safe assumption to make; as there are possibly those who attribute their market successes to their own personal acumen, and yet when hit by hard times, cast themselves as victims of ill fate. People who 'explain away' their own varying fortunes in this broadly inconsistent way, are perhaps equally likely to exhibit the same kind of inconsistency (albeit in reverse) when offering an 'explanation' of the various and varying fortunes of others. For, others, may be cast as 'simply lucky' if they enjoy handsome rewards, and 'stupid' or 'incompetent' if they do not.

Those who believe that their modest rewards are (largely) due to their own personal shortcomings may moreover, come to view such shortcomings as congenital. If so, the thought that there is nothing they can do about it, is hardly likely to make them try harder for richer pickings in the future. (And this contrary to Hayek's suggestion (see also section 3.18) that nothing is likely to make people more industrious, than the belief that personal merit is what (largely) determines the size of rewards in a free market). Rather, they may come instead to the view, that it would be futile for (people as congenitally limited in talent as) themselves to indulge in more robust efforts to gain higher rewards. For more robust efforts such as these, on the part of people so short on natural gifts, will inevitably fail, so it may be thought. So, they may consider it wiser to cut short their losses, and resign themselves to their 'inferior destiny'. Further, such resignation of will, is perhaps especially likely to occur amongst those whose every previous attempt to 'better their lot' has ended in failure. As these latter have thus more reason to suspect, that nature has not equipped them for the rough-and-tumble of the free market than those who are at least able to cherish memories of better days. And this, no matter how few the better days here recalled; and no matter how faint their recollection of them.

Once people have resigned themselves to what they see as their inevitable humble fate, at least two further consequences may result from this. Some of them may look with what they believe to be 'due' admiration and respect upon those more affluent and hence 'superior and deserving' than themselves; and with no (other) secular consolation at hand, they may (as some such have often done) seek for it elsewhere; e.g. in the promise of more generous rewards in an afterlife, for the slender ones endured in this one. But others, may look with envy and resent on the more prosperous; as they lament bitterly about how nature has dealt them an unkind hand. They may even lobby for more interventionist legislation designed to bring about greater equality of outcome. For they may object, that any system of distribution based (largely) on a genetical lottery, is an arbitrary way of meeting what is required by 'social justice'.

Indeed, it is, partly at least, because of (some of the kinds of) possibilities such as those just considered, that Hayek himself suggests that there is a very grave and genuine problem confronting policy-makers in education. For he claims that it needs to be decided whether education policies ought to nurture the (clearly incorrect) belief that personal merit is most likely to lead to 'due' rewards, or whether they should foster the (more realistic) view, that rewards (or the lack of them) are also the result of luck (or the lack of it).

However, as is perhaps evident from parts of the previous discussion, either way the risks seem equally great. And the risks carried by one option, would seem just as great as those carried by the other. So, to the extent that all things being equal, truth telling is inherently preferable to wilful deception, then the better option here clearly would be, not to exaggerate the extent to which the free market approximates a genuine meritocracy.

### **3.20 Hayek on: Differing moral evaluations of some financial reward to a given enterprise.**

According to Hayek [M.S.J. ch3] opinions vary with respect to which enterprises are deserving of the higher rewards. Hayek typically however does not, cite any conclusive empirical evidence which indicates exactly how varied they are. Instead he argues as follows.

He claims that a party will not necessarily resent the fact that some particular other(s) enjoy(s) a higher income. Indeed, generally, people tend to be very selective in the way they direct resentment towards others who have 'struck luckier' than themselves in the market place. They are inclined to cite as 'undeserving' those engaged in activities, they fail to comprehend, dislike or believe to be in some way(s) damaging; and those engaged in activities they understand, like or believe to be in some way(s) commendable, they consider 'worthy' or perhaps 'undervalued by society' even. Only those who do not find the comedian's jokes funny, since they fail to detect the subtlety in them, or who find them 'a little below the belt' and so a threat to 'the moral fibre of society' are likely to cite her/him as 'overpaid.' Indeed, those finding them particularly lacking in humour and/or intolerably offensive, may perhaps even consider starvation wages for the comedian an over-payment. But those amused by the comedian's jests, will never grudge the latter's 'well earned fortune for bringing joy to the hearts of the masses.' And anyone who finds these jests 'too offensive for the consumption of decent people' are likely to be dismissed as 'pathologically touchy' and who thus 'take life too seriously.'

In summary, the point Hayek seems to want to make here, is partly at least, that no person(s) will accuse some other(s) of being overpaid for providing some service(s) or whatever, if the former finds that what is being provided, has some (say entertainment) value. This he expresses by saying "I have never known ordinary people grudge the very high earnings of the boxer or torero, the football idol or the cinema star or the jazz king..." [M.S.J. p77]. And, he claims that ordinary people, on the contrary "...seem often even to revel vicariously in the display of extreme luxury and waste of such figures compared with which those of industrial magnates or financial tycoons pale" [M.S.J. p77].

### **3.21 A response to 3.20**

However, it may be suspected that the main reason why Hayek makes such statements, is that 'the man on the Clapham omnibus' (as it at least once used to be sometimes put) is a species with which he has had only the most passing acquaintance. It is, in this connection, perhaps significant at least, that Hayek offers no evidence in support of them, that does not seem somewhat anecdotal. (Indeed, the (exclusively) first personal nature of the first one, is clearly explicit in the very terminology in which it is couched). It may, at any rate, be pertinent to ask how often might the boxing fan, for example, be heard to say, 'It was a good old bruiser, but it was not worth that price.' Or how frequently can the fan

of a pop idol be heard to protest 'S/he is great, but no one deserves the money s/he gets while others are starving'? Further, although the fan of (say) movie stars, may sometimes be heard to say 'I would not mind their money' or 'Let's not knock it mate, after all you know as well as I do, if we were in their position, we would not say "no" to it,' it may, (notwithstanding Hayek) be well worth reflecting upon how often similar kinds of statements are also made about industrial magnates, and the like. For it may be the case, that 'ordinary' folk are nowhere near as reluctant as Hayek imagines to raise moral objections to the decadent lifestyles of those whose talent they enjoy and thus otherwise admire. Also, it may be, that they are no less inclined, to admit to wishing to be like the wealthy industrial magnate, as they are to harbouring similar fantasies about stars of stage and screen. Indeed, perhaps there are those critical of any lifestyle they consider too decadent, no matter who is leading it; who yet at the same time, will be among the first to say 'Mind you I wouldn't refuse it if it were offered to me.' Moreover, it is not obvious that this kind of criticism, would not necessarily be detected amongst some of those workers, who possibly find much fault with the 'over generous' financial rewards, enjoyed by their employers, on the grounds that such rewards are more than what is required to induce the latter to (continue to) invest in the enterprise in which they (the workers) are employed. And yet again, it is possibly the case that some such workers at least, who will or might never agree to a cut in their own salaries, might also sometimes be heard to say 'I love my job so much, I'd do it for far less.' The nurse or doctor who is possibly 'not doing it for the money' but because 'I have a vocation for it' is perhaps a potential case in point here. Still another kind of conceivable hypocrisy might be evident, amongst those who may level charges of dishonesty at people who 'could not have got that rich without being a swindler.' And if there are some who level these charges, they may, at other times be heard saying, 'I'd do it, if I thought I'd get away with it;' and possibly some who say 'Anyone would do it if they thought they wouldn't get caught' really meaning to say 'Everyone would do what I did, if they believed they would escape detection,' as they attempt to offer, what they believe to be an adequate (sounding) justification of some act(s) of theirs, which clearly do violate the rules of just individual conduct. There is at any rate, nothing logically impossible about any of these speculations.

### **3.22 Hayek's attack on welfarism revisited.**

From the claim that any one party can know relatively little about the interests of others, it may seem a fairly natural move to the conclusion that no one party can know

comparatively much about the ways in which others satisfy their interests either. And, indeed, in what (to recall) appears to be the very first sign by him of a direct attack on those who subscribe to policies that are more interventionist than he thinks wise or even necessary, this is a move that Hayek seems to want to make (see also 3.2). (The targets of his attack here are perhaps not too hard to identify. They would (at least) include, all brands of socialists, Keynesian liberals, and conservative collectivists). And in doing so, he makes it fairly clear virtually from the very outset, that his distaste for 'over-interventionism' is not derived solely from a fear of totalitarianism. As it will be reminded he suggests, that even in societies where such policies are applied, e.g. in the form of welfare provision, the actual effects of these policies are largely unknown. More specifically, what is (supposedly at least, claimed to be) largely unknown here, is the extent to which people's needs (and perhaps more especially, their most pressing ones) are met by welfare provision; and presumably, to the extent that a good case for welfare provision needs to be based on the knowledge that it has certain intended effects, then a good case cannot be made for it.

### **3.23 Reflections on 3.22.**

This argument against state welfarism, has a style to it that contrasts sharply to perhaps a more typical line of attack on welfare provision. For if Hayek here is appealing to some notion of the largely unknown effects of welfare provision (which incidentally, is perhaps not one that many of those in receipt of it may find especially persuasive), others in the classical liberal (as well as some in the libertarian Conservative) tradition, have often appealed to the quite contrary notion of the known and (largely) negative effects of it; e.g. sluggishness, over-dependency, the demotivation of the otherwise energetic, economic stagnation, etc. One distinctive feature of classical liberalism, is Social Darwinism of the kind defended by H. Spencer (1884) for example. Social Darwinian liberalism entails (by and large at least) opposition to social welfare, on the grounds that it encourages the aforesaid 'negative' effects. This kind of opposition to social welfare is reflected in so-called New-Right libertarian conservative thinking in the last two decades or so of the twentieth century. In Britain, during much of that period, it is a style of thinking exhibited by the Thatcherite and Majorite administrations. (Again, however, perhaps many in receipt of such provision, are hardly likely to agree that the effects of it are largely bad ones).

It may seem, that for anyone basically sympathetic to Hayek's antagonism towards welfare provision, only one of these two lines of argument is available. For to the extent that Hayek has committed himself to the view that the effects of welfare provision are largely unknown, then the argument that it produces a balance of bad effects over good effects, would not appear to be available to him; and this for the very simple and obvious reason, that if the effects of it are largely unknown, then there is no way of telling whether they are, on balance, good, bad, or indeed indifferent ones. Conversely, anyone who claims (as for example did Keith Joseph (1976)) that the effects of welfare provision are mainly bad, would thus seem to have effectively rejected the view that the effects of it are largely unknown. The point here is quite a straightforward one. Anyone (largely) opposed to welfare provision, cannot have it both ways. Either its effects are (largely) known or (largely) unknown. And if the former, then no case against it on the grounds that its effects are (largely) unknown would seem possible. But if the latter, then no case against it on the grounds of its (largely) known effects, (whether these again, are held to be on the whole, good, bad or indifferent) would seem possible.

### **3.24 Hayek on: Why levels of reward cannot be decided upon the basis of what the majority or minority think.**

The structure of contemporary free market economics is clearly very complex; and according to Hayek [M.S.J. ch 3], if the level of rewards for each and all of the different commodities and services offered, were decided on the basis of what even most people believed they ought to be, no such economy could function. So, it is if anything, still more likely to have dysfunctional consequences for "...the complex structure of the modern Great Society [as Hayek calls it]..." [M.S.J. p77], if they were decided by what a minority believed what they ought to be; and worse still if they were decided by what any one particular person believed they ought to be. For what any number of persons believe they ought to be, will be determined by their understanding of what is of 'most value' to people generally; but too often, this perhaps in turn, is largely at least a reflection of what they themselves value. At any rate, it would be easier maybe for a given number of persons who all find the comedian's jokes funny (say), to persuade themselves and each other that 'surely anyone who heard them would die laughing,' than it would be to persuade others of this who failed to detect any humour in them at all. Further, as any finite or given number of persons will between them, have only a limited understanding of what is of most value to others, then (all things being equal) the smaller that number, the more limited their



understanding will be. (The 'equal' clause here, is intended to allow for the possibility at least of some given group having more understanding of what others value than a group larger than it; as it may be that the former has more empathetic members, and/or generally has greater access to relevant information). For, group members, will be able to 'pool together' their different individual experiences, interpretations and understanding of what others value. And, thus, from this 'note comparing' process, in which each group member makes a contribution, an aggregate picture will emerge. Further, this picture will illustrate to all of them what each group member values most. Although again, what any one group member values most will not necessarily be the same as what any of the others value most; and the larger the group, then the more likely it is to actually be the case, that the values of any one given of its members will differ from some other(s) in it. Or, at least this is so, if the individual members of it are selected randomly. As otherwise, they may be selected on a basis that would pretty much ensure that they would all express allegiance to the same hierarchy of values. E.g. it is perhaps easy to imagine the extreme probability of this, if being inflicted with a life-threatening illness (say) was the sole prerequisite for being permitted entry into the group; since then, it would be perfectly unsurprising to find that a life-saving drug is what each of those selected valued most. But again, the larger the randomly selected group, then by the very nature of the case, the greater the input into it is likely to be in terms of variety of different individual experiences, interpretations and understandings of what others value. And the aggregate of these experiences etc., which will emerge from the 'pooling together' or 'note comparing' process, will form a picture of the range of hierarchy of values that will be far less limited in scope than that formed by the aggregate of the experiences to be found in any much smaller group(s). Whatever, the size of the group, however, such 'note comparing' or 'pooling together' will not only provide each group member with a greater understanding of the values of those others within that group. Rather, it will also afford them more understanding of the values of some others outside of it. For the input of each group member during the 'note comparing' process, will include not only information about her/his own particular values; but also her/his interpretation, and understanding etc., of the values of others that s/he has encountered in past experience but who are not a part of that group of which s/he is now a member.

But although it may be that (all things being equal) the larger the group the more it will exhibit a greater range of different and conflicting values between its individual members,

it, at least is by no means inconceivable, that even amongst those in a group so large as to include most people in what Hayek calls the 'Great Society,' there may be detected some general agreement about the relative importance of certain particular commodities etc. And if so, and if indeed some such general agreement were detected, then according to Hayek, even that would not be a sufficient basis for legitimate government legislation. E.g. even if the majority, agreed that 'social justice' requires that a medical scientist be paid more than a stand up comedian (say), to introduce legislation to try to ensure that the former is in fact rewarded more handsomely than the latter, would be misguided. For, it would be to yield to an appeal to 'social justice,' which merely reflects the prejudices of the majority; and thus it would constitute a kind of tyranny of the majority.

### 3.25 A response to 3.24

In summary, this latter point may be put by saying, that even the general applicability of any given notion of what 'social justice' requires, is not (necessarily at least) enough to make it philosophically sustainable; and if it is not philosophically sustainable, it cannot serve as a legitimate basis for legislation. (Here, the term 'general applicability' is understood as meaning what is generally agreed upon). However, if this be an accurate interpretation of Hayek's point [M.S.J. p77] it may appear somewhat inconsistent with what he says elsewhere. For as already noted, for Hayek, what makes appeals to 'social justice' unsustainable, is (partly at least) their general inapplicability; and thus he, at one point would effectively seem to be using general applicability as the (or at least a) criterion for deciding whether or not any appeal to 'social justice' is sustainable; and after coming to the conclusion that no such appeal could satisfy this criterion, he, (partly at least) on that basis, concludes that they are all unsustainable. Yet, now in saying that even the general applicability of an appeal to social justice, is itself insufficient to guarantee its sustainability, it may appear he is thus implicitly rejecting a criterion he has already himself proposed. For on the one hand, he seems to want to claim that no appeal to 'social justice' can serve as a satisfactory guide for legislation, for it is unsustainable since it cannot satisfy the general applicability criterion; and yet on the other, he seems to want to say that even if it did or could so satisfy it would not matter anyway, as this would still not make it sustainable.

It may be however, that the inconsistency is more apparent than genuine; for possibly, a faithful interpretation of Hayek here, would render him as saying that the satisfaction of

the general applicability criterion is a necessary but not sufficient condition that any appeal to 'social justice' must fulfil in order that it be sustainable; and as no such appeal can so fulfil then none are sustainable. This interpretation, it may at least be thought, would remove the look of inconsistency. And, it does this, by effectively limiting the role of the satisfaction of the general applicability criterion to that of just one necessary condition for the sustenance of any appeal to 'social justice,' as opposed to casting it as the sole necessary and sufficient condition for it. What in perhaps more simple terms this means of course, is that Hayek may be taken as saying that their general applicability, is just one reason why appeals to 'social justice' are unsustainable; and whether it is right to take Hayek as saying this, depends on how much work he intends the general applicability criterion to do. Further, if the most he wants to claim on behalf of it, is that it is merely just one necessary condition ...etc., then even in the event of some appeal to 'social justice' satisfying it, he is under no obligation to grant that such an appeal can be sustained.

But of course in that event, his claim that no appeal to 'social justice' can be generally applicable, would be falsified; and as he certainly does make this claim, perhaps it is curious in a sense to interpret him as proposing the general applicability criterion as merely one necessary condition (among some other(s)) for the sustainability of any appeal to 'social justice.' For to so interpret him, would be to effectively take him of course, as suggesting more than one criterion that any appeal to 'social justice' must satisfy in order for it to be sustainable. And this in turn, may lead to the suspicion that even he believes it necessary to suggest more than one such criterion here, just in case some appeal to 'social justice' is found to satisfy one of them; e.g. the general applicability criterion. For it is clear, that if some appeal to 'social justice' did satisfy the general applicability criterion, and if that criterion be the only one that any such appeal needs to satisfy in order to be sustainable, then the claim that no appeal to 'social justice' is sustainable would be incorrect. So, it may be thought, that despite his claim that no appeal to 'social justice' is generally applicable, it can be taken as a sign of his own limited confidence in such a claim, if he is to be interpreted as also suggesting some other reason(s) in the form of some other criterion or criteria as to why no such appeal is sustainable.

## Chapter 4

### **Theoretical themes on related issues as bases for further lines of attack.**

#### **4.1 The nature of prediction.**

It is by no means clear that Hayek's view of what people ordinarily believe is in fact a reflection of what all or even most people believe for all or much of the time. In particular it is unclear that, in terms of ordinary belief and discourse, there will always and inevitably be a distinction between public concerns and private concerns (see 2.2, 2.18 and 2.19). Even the most apparently innocent and 'private' act can, given the right circumstances, come to be perceived by many people as a matter of legitimate public concern (see 2.19).

Further, it has been suggested (see 2.5), that any temptation to think otherwise may be based upon the contentious view that predictions of a relatively general sort can be made with reasonable, inductively based confidence more often than can predictions of a relatively less general and related sort.

So the foundations of any view, based on considerations derived from the nature of ordinary belief and discourse, are shaky to the extent that any account of ordinary belief and discourse is contentious. Hence, the foundations of Hayek's position are undermined. And they can be undermined further if it can be shown that what is (arguably) the 'ordinary' view (or one ordinary view) of what a prediction essentially is may in fact be mistaken. This possibility can be made explicit by means of the following examples.

Suppose some tennis player B, came to and expressed a view about the outcome of an initial selection procedure used to form playing partnerships in a forthcoming doubles tournament. Also suppose, that when doing so, B did not know that the results of it had already been produced, sixty seconds earlier (say). Indeed suppose, that when doing so, B believed that those results would not be produced until the following day. Now, in the event, it might be argued, that to deny that (to all practical intents and purposes) B had made a prediction here on the grounds that s/he arrived at and expressed the relevant view

after the results were produced, would be to reflect the aforementioned narrow and fundamentally mistaken conception of what the essential nature of a prediction is. Granted, it is true, that there is an obvious sense in which B's view here, was not a view about what will (not) happen. If it were for example, a view which B arrived at and/or expressed just two minutes before s/he did do, (i.e. sixty seconds before the results of the selection were produced instead of sixty seconds after they were produced) then presumably anyone maintaining that for a view to count as a prediction it must satisfy a certain condition, would also maintain that B had here effectively ventured a prediction.

The condition in question here, stipulates that in order to count as a genuine prediction at all, the view must temporally precede the relevant event and/or state of affairs etc. A necessary condition that is, for any given view to count as a prediction is that it be historically prior to whatever it is a view about. However, even if B's view of the results of the selection procedure is supposed to have not satisfied this condition, if it is understood by reference to certain relevant psychological factors, it, (so it might be contended) can still be seen to plausibly qualify as a prediction of certain details of what it is a view about. It more especially, can be seen to plausibly qualify as such, if it is understood by reference to certain of B's psychological states relating to a state of affairs that (albeit) in one sense has already come about, but in another (perhaps more crucial) sense, has not yet come about. Just why B's view of the outcome of the selection can be seen to plausibly count as a prediction of that outcome, even if it did not satisfy the aforementioned allegedly necessary condition, can be understood that is, by reference to some clearly psychological state(s) of ignorance on the part of B with respect to the relevant state of affairs. And in that respect, there are at least two arguably relevant senses, in which some such psychological state(s) of B, are states of ignorance. For B was ignorant of the fact that the results had even been produced. Hence, given that B was ignorant in that sense, it necessarily follows that s/he were also ignorant in the (at least) one further and second sense that s/he were unaware of the finer particular details of the results of the selection procedure. So when B arrived at a view about the precise details of those results, from B's subjective viewpoint, things seemed exactly as if such results had not yet even been produced.

It is perhaps not entirely absurd to suggest, that anyone who in the event, still insisted that B had nonetheless not ventured a prediction, on the grounds that the aforementioned

(allegedly) necessary condition had not in this case been satisfied, is adopting a stance on the matter that reflects the following guiding idea. Such a condition, once satisfied, logically precludes any possibility of certain factors playing any part in shaping relevant views concerning the outcome(s) in question. Moreover, such factors include whatever may make someone have a different view of some given outcome(s), than would have been the case had the aforementioned (allegedly) necessary condition been satisfied. For instance, if it were satisfied in a tennis player selection case, it would have been logically impossible for B (say) to have acted in a certain kind of deceitful way. This can be shown by considering the following.

Suppose B had entered a competition. Further suppose, that in order to win this competition, B needed to guess correctly the results of the aforementioned selection procedure. If before B guessed, those results had been produced, it would have been logically possible (it may be contended) for B to try to cheat; to attempt that is, to find out the details of those results before giving an answer. And (it may be continued) in the event, it would have been logically possible for B to have found out such details. But if B guessed before the results were produced, things would clearly be different. For then, it would not have been logically possible for B to cheat. It would however, have still been logically possible for B to have tried to cheat. As B may still have formed the incorrect belief that the results had been produced. But any attempt on B's part to cheat, that might have been made upon the basis of such a mistaken belief, would have obviously ended in inevitable failure.

Nevertheless, one point conveyed by the line of reasoning exhibited through this latter example, is perhaps an equally obvious and general one. It is simply that, what is (not) rendered logically possible by any give example of an imagined state of affairs, will depend upon the precise details of the state of affairs imagined in the first place. Moreover, it would have been no more logically possible for B to so much as attempt to cheat, even if the result in question had already been produced before s/he ventured a guess as to their details, provided that when doing so, s/he believed that the procedure yielding them had not yet been completed. Indeed, in the event, B would be far less inclined to even try to cheat, than s/he would be if s/he believed wrongly that the results had been produced. And whether s/he believed wrongly that they had been produced or wrongly that they had not, then by the very nature of things, the only other beliefs about

them s/he could have possibly had when s/he made the relevant guess would have had one thing in common. This moreover, is that either way, none of them were the kind of beliefs B could not have had anyway prior to the results being produced. Hence, in the event, no relevant guess by B, would have been of a kind s/he could not have made anyway before the results were produced. Of course, all this would follow necessarily if they had not been produced until after s/he formed the relevant belief(s) and ventured the relevant guess. But equally, it would follow necessarily even if they had been produced before s/he formed the relevant beliefs and made the relevant guess, if s/he, when doing so, were convinced that they had not been produced.

So, it may appear plausible to suggest, it is considerations based upon essentially psychological factors rather than objective temporal considerations, that are to be appealed to, in order to define the nature of a prediction. However, anyone still wishing to dispute this may argue as follows. There is a fundamental and relevant difference between someone who on the one hand, is about to form some belief(s) and venture a guess about the nature of a past outcome, and someone, who on the other, is about to do likewise with regards to a future outcome. For it would be still logically possible (at any rate) for the former to arrive at the kind(s) of belief(s) and venture the kind of guess about the outcome in question, that s/he would not be able to if that outcome lay in the future rather than in the past.

This possible line of argument however, is simply another perhaps disguised way of reasserting one that has already been rehearsed. But it might be worth further consideration, if only to explore yet another possible line of response to it. Such a line of response may go as follows.

It is obviously true that simply from the (presumed) fact that someone has expressed a judgement on some given outcome, it does not necessarily follow that that someone could not have, before expressing that judgement somehow have found out all the finer details of that outcome. Another way of expressing this might be to say that the notion of someone expressing such a judgement does not in itself conceptually entail the notion of that someone having not found out what such an outcome was, in the same way as (say) the notion of blue conceptually entails the notion of colour; or indeed, in the same way that the notion of someone expressing a judgement about the results of (say) tennis matches

before those matches even begin (or at least before they end) conceptually entails that someone having not found out such results prior to expressing any judgement as to all the finer details of them. It is perhaps upon the basis of this kind of appeal to conceptual entailment, from which may arise any reluctance to abandon the position, that for any view, claim or judgement to count as a genuine prediction, it is logically necessary that it be temporally prior to whatever it is a view, claim, or judgement about. Furthermore, in advance of considering any philosophical arguments that may be advanced in favour of it, it might seem more intuitively acceptable to adopt it than it would be to reject it. For to reject it, may appear to ultimately yield the counter-intuitive consequence that someone can be correctly said to be able to predict an event that had already taken place (say) hundreds of thousands of years previously. However, it will be argued presently, to accept it unconditionally may also yield some equally counter-intuitive consequence(s). But, prior to doing this, the notion of conceptual entailment might be appealed to yet again. This time however, the suggestion will be, that it can be appealed to in such a way as to cast doubt upon the very position apparently strengthened by the nature of the first (aforementioned) appeal to it. Such a suggestion might proceed as follows.

From the (presumed) fact that someone has expressed a judgement about all the finer details of any given state of affairs, it neither necessarily follows that that someone had somehow found out, before expressing that judgement, the precise nature of such details, nor that s/he prior to expressing it, had not found this out. So, if it is a fact that s/he has expressed such a judgement, and if it is also a fact, that s/he (say) had somehow already found out the precise nature of all the finer details of whatever s/he has passed such a judgement upon, then even the most rudimentary philosophical considerations suggest that there are here thus two very different facts about the world that are contingently, and not necessarily, related. Neither fact necessarily or conceptually entails the other. And the same applies to the relation between the (presumed) fact that s/he has expressed the kind of judgement of interest here, and the (presumed) fact that s/he had not found out prior to expressing that judgement, all the finer details of whatever s/he passed that judgement upon. Things are no different moreover, with respect to the relation between the (presumed) fact that s/he has expressed such a judgement, and either the (presumed) fact that the state of affairs that s/he has passed that judgement upon had already arisen before s/he passed it, or the (presumed) fact that it had not arisen until after s/he had passed it.



What all this shows is, that the (presumed) fact that someone is expressing a judgement about the nature of some state of affairs in the world, no more conceptually entails the (presumed) fact that the state of affairs in question has not yet taken place, than it conceptually entails the (presumed) fact that whoever is expressing that judgement has not already somehow found out all the finer details of whatever that judgement is about. This being so, to insist that the state of affairs that the judgement is being passed upon, must necessarily post-date any judgement that is to count as a genuine prediction of it, would be arbitrary. It would, in a sense, also be question-begging. For again, although it is obviously true, that if any state of affairs did post-date any judgement that were passed upon it, this would logically preclude any possibility of whoever passed it having somehow found out the full nature of the state of affairs in question before passing it, the following (indeed as already pointed out) is equally obviously true. If someone, when passing such a judgement, were fully convinced (either rightly or wrongly) that the state of affairs upon which s/he is passing the same judgement has not yet come about, then the possibility of that someone having (at the time of passing it) already somehow found out the full nature of that state of affairs is thus logically precluded. So, arguably there is not necessarily any fundamental and/or relevant difference here, between someone who on the one hand, is about to form and/or express a judgement about all the finer details of a past outcome, and someone, who on the other, is about to do likewise with respect to a future outcome. As again, it no more necessarily follows, that the former would be able to form and/or express the kind of judgement(s) about such details that s/he would not have been able to form and/or express had the outcome in question lay in the future, than the same necessarily follows in the case of the latter.

There can be no legitimate doubt that some condition(s) necessarily need to be satisfied for a judgement, claim, belief or view to count as a prediction. Further, given that it is the case that the condition(s) concerned must in turn logically preclude the certain possibilities already alluded to above, it would seem that there are (at least) two equally plausible candidates here. As either one of the two conditions discussed above, would seem to be able to perform the essential function of logically precluding such possibilities as well as the other. Hence the arbitrariness involved in simply plucking for one in preference to the other. So if one is chosen in preference to the other, without encountering such arbitrariness, the choice here must at least be shown to be sustainable by means of argument. One such argument may proceed as follows.

Even intuitively, it would seem all too obvious, that if someone has ventured a prediction, then s/he necessarily has made a judgement. Further, like all beliefs, desires, wishes, etc. any prediction will necessarily have the property of being 'other-directed'. Any prediction that is, will necessarily have the property of being directed onto something other than itself. As clearly, just like any belief (say), any prediction will necessarily be about something. But the something that the prediction is about, need not necessarily even have come about. As may be anticipated, another way of expressing all this might be as follows. A prediction conceptually involves a judgement. All judgements, and thus all predictions are other-directed. However, if other-directedness in the sense just indicated above, is taken to be an essential property of, and thus conceptually entailed by the notion of a prediction, then it would seem that it would necessarily have to follow, that whenever there is a prediction, there would have to be (what may be called) a 'corresponding event and/or state of affairs' serving as the something other than the prediction, which the prediction is nevertheless directed upon. In other words, a something other than the prediction, is a necessary condition for there being a prediction at all. Now given, that the something other here, is whatever (event and/or state of affairs) the prediction is about, this raises a logical problem for the view that a prediction must necessarily temporally precede whatever it is a prediction about. Or at least, this would seem to be so, under certain easily conceivable circumstances. For example, imagine that someone at time t1, expresses the judgement that there will be an earthquake in England at time t3. Now suppose the judgement turned out to be correct. In the event, it would seem intuitively reasonable in retrospect, at least, to suggest that the judgement in question here, not only counted as a prediction, but also counted as a correct prediction. But from the view that something other than a prediction, serving nevertheless as the 'object' upon which a prediction is directed, (i.e. in this case, the earthquake in England at t3), is a necessary condition for there being a prediction (that there will be an earthquake in England at t3) at all, an interesting result follows. And this, as will be argued later, has nothing whatsoever to do with the fact that there is something rather question-begging about such a view so expressed. Although granted, that view, expressed as such seems effectively to offer a (partial) definition of a prediction which reads as follows. A prediction is something which is directed onto an 'object' other than a prediction, but which nevertheless is an 'object' that a prediction is directed onto. That indeed, does sound question-begging! And the question-begging here, furthermore appears to be twofold. As the view in question

here, expressed in the aforementioned way, seems to no less offer the following (albeit partial) question-begging definition of an 'object' of a prediction. An 'object' of a prediction is an 'object' that a prediction is directed onto.

Nevertheless, it would be perhaps easy enough it may be thought, to remove the appearance of question-begging here. This is perhaps why it would simply seem to serve as a red-herring to attempt to locate the source of any logical problem potentially arising from the view in question here, exclusively within any question-begging nature it is perceived to have. For instance, it might be claimed that a non (or at least less) question-begging way of expressing such a view without distorting the essential content of it, may read as follows. Something other than any given judgement, serving nevertheless as an (or the) object upon which some given judgement is directed, is a necessary condition for that or some given judgement to count as a prediction.

Now apart from being arguably a non (or at least less) question-begging way (than the alternative aforementioned one) of expressing a certain idea, this (latter) way of conveying such an idea carries with it (at least) one further advantage perhaps. And this perhaps is that it helps to bring out more explicitly (than does that same alternative aforementioned way of expressing the idea in question) the point effectively already made, that although a prediction conceptually entails a judgement, a judgement does not conceptually entail a prediction. It thus, helps to underline yet again, the point that some condition(s) need(s) to be satisfied for any judgement to count as a prediction. Further, in so doing, it again naturally invites the question of what the condition(s) concerned could be. Moreover, it by implication, usefully leaves open the possibility of eliminating as a sufficient condition for some given particular judgement to count as a prediction, the existence of some 'object' that is itself not part of any judgement, but which the particular judgement in question is directed onto. As it merely cites the existence of an 'object' upon which a judgement is directed as a necessary condition for that judgement to count as a prediction. Thus, it implies that some judgements are not predictions if or precisely because there are any that do not satisfy that condition, without, at the same time, going as far as to claim that if some judgement does satisfy it, that judgement necessarily counts as a prediction.

One arguable demerit of it however, is that if it no longer provides a seemingly question-begging (albeit partial) definition of what a prediction is, (and it will be argued

presently that it still does) it now may appear to offer a question-begging (albeit perhaps partial) definition of what a certain category of judgement is. The category in question here, includes only 'object'-directed judgements. This more especially is to say: Judgements directed onto some 'object(s)' existing independently of and thus external to whoever is passing the judgements in question.

An example of one such judgement would be: The earthquake in England at t3 measures (or measured) 8 on the Richter scale. If this judgement were passed by someone on the basis of (say) observing (or having observed) the relevant Richter scale measurement, it would clearly not count as a prediction. It in the event, would thus be unlike any judgement to the effect that the earthquake in England at t3 will measure 8 on the Richter scale, which obviously would count as a prediction, at least if it were made by someone prior to t3. What however, these two judgements do (ostensibly at least) have in common is the following. Each is a judgement that is directed onto some 'object' external to whoever may pass it. And the 'object' in question here is: The earthquake in England at t3. The reason however why, any view that is expressed in a way as to suggest that an essential (even if only partial) characterisation of a given category of judgements, can be given by alluding to some 'object(s)' external to whoever may pass such judgements, is question-begging, is because such a view, so expressed, would appear to say the following.

A certain kind of judgement is something which is directed upon an 'object' other than a judgement, but which is nevertheless an 'object' that a judgement is directed onto. And again, the question-begging seems twofold. As what appears to be effectively proposed here, is the following definition of what an 'object' of a judgement is. An 'object' of a judgement is an 'object' that a judgement is directed onto. If and once, it is clearly understood that the phrase 'is directed onto' here, can be translated without loss or alteration of meaning into 'has an object', then the question-begging nature of the last sentence becomes more explicit perhaps. For that sentence can now be seen to read as follows. An 'object' of a judgement is an 'object' that a judgement has as an object. Moreover, the same applies of course, to the aforementioned definition of an 'object' of a prediction. As this latter definition also, may be translated to read as follows, without loss or alteration of meaning. An 'object' of a prediction is an 'object' that a prediction has as an object.

However, to the extent that any view is expressed in a manner as to provide a question-begging definition of a certain category of judgement, it does, to that same extent it may be suggested, inevitably also provide a question-begging definition of a prediction. Or, it may be continued, this would seem to follow from the presumably correct premise that all predictions are indeed included within the given category of judgements. For then in order to provide a comprehensive definition of the nature of a prediction, it would appear to be necessary to also provide a comprehensive definition of the nature of any judgement that falls within the relevant given category of judgements. The possible line of reasoning exhibited here is, in other words, as follows.

If all predictions are included within a given category of judgements, then the nature of predictions can only be (fully) understood by appealing to, and (fully) understanding the nature of judgements falling within or constituting the given category. Given this, any (even partial) definition of the nature of judgements within that category, that is question-begging, will, if and once it is appealed to in order to provide a definition of the nature of predictions, render the latter definition (even if only partially) question-begging also. Hence, the aforementioned view, that something other than any judgement, serving as an 'object' upon which some judgement is directed, is a necessary condition for that judgement to count as a prediction, at best merely removes from such a view, any initial appearance of only providing a question-begging definition of a certain category of judgement, but not of a prediction. As a sufficiently close analysis of it, will reveal perhaps, that it provides a question-begging definition of the latter also. Such an analysis, may reveal that is, that the view in question here, effectively offers the following (partial) definition of a prediction. A prediction is a particular kind of judgement that is directed onto some 'object' other than a judgement (and hence prediction), but is an 'object' upon which is directed a (particular kind of) judgement rightly classified as a prediction.

Now, as far as it goes, any such attempt to (partially) define a prediction, would seem no less question-begging than the following conceivable attempt to (partially) define what (say) a sick human being is. A sick human being is a particular type of organism in a condition of illness, this condition being moreover a condition of that particular type of organism rightly classified as a (sick or ill) human being. The question-begging here is threefold. First: 'Being sick' is defined in terms of being 'in a condition of illness', when it

is clear that 'a condition of illness' and 'being in a sick condition' are synonymous in meaning. Second: 'Human being' is defined as 'a particular type of organism', and the sentence in question, effectively defines the 'particular type of organism', as 'a human being'. So, firstly then, such a sentence, not only effectively defines 'being sick' as 'being ill' and 'being ill' as 'being sick', but also, it secondly and effectively defines 'human being' as 'a particular type of organism' and 'a particular type of organism' as a 'human being'. To merely that extent it effectively says no more than 'being sick is being sick' and 'a human being is a human being'. Consequently, and *thirdly*, it defines 'sick human being' as 'a particular type of organism' in a condition of illness', and 'a particular type of organism in a condition of illness' as 'a sick human being'. So, all it effectively amounts to saying is: 'A sick human being is a sick human being'. And as already suggested, in any relevant respect(s) things are essentially no different in the case of the aforementioned conceivable attempt to provide a (albeit partial) definition of a prediction in terms of a judgement directed onto some 'object(s)' existing independently of and externally to whoever passes such a judgement. For if for ease of expression, the kind of judgements in question here can simply be referred to as 'external object-directed judgements', such an attempt amounts to saying the following. A prediction is a type of external object-directed judgement, such a judgement being moreover, of a type rightly classified as a prediction. Hence, this as far as it goes, is to say no more than: 'A prediction is a prediction'.

Such (potentially) question-begging considerations apart however, it will be argued later, that it is not even a necessary condition for a judgement to count as a prediction, that the judgement in question be external object-directed. It will be further argued, that if and to the extent that this can be shown to be so, the link between the notion of what a prediction essentially is on the one hand, and objective temporal considerations on the other, becomes (if not completely broken then at least) somewhat severed. More especially, the view that a judgement must necessarily temporally precede whatever it is a judgement about, in order for it to count as a prediction of whatever it is a judgement about, thus becomes seriously undermined. And a reconsideration of the (twice) aforementioned 'earthquake' example, may serve to show how such a view can not only be undermined on logical grounds, but on intuitive grounds also.

To recall, it has effectively already been suggested, that with respect to the 'earthquake' example, a certain interesting result follows from citing as a condition for a judgement to

count as a prediction, that the judgement in question be external-object directed. At this point, this suggestion may be developed further. More especially, it may be developed in such a way as to explain exactly how and why the link between the concept of a prediction on the one hand, and objective temporal considerations on the other, (in the particular sense last indicated in the previous paragraph) might be undermined on grounds both logical and intuitive. This is because, if it is necessary that any genuine prediction is external object directed, then it would, upon reflection, seem to follow, that when, at, or during the time someone expresses a judgement to the effect that some particular event will happen at some future time, that judgement is not a prediction. For, at or during the time it is expressed, it is not an external object directed judgement. Hence, when being expressed, it does not satisfy at least one condition it (according to one possible aforementioned view) would necessarily have to satisfy in order to count as a prediction. The reason moreover why, it when being expressed, does not so satisfy, is simply that by the very nature of the case, there is, (strictly speaking) no 'object' for it to be directed onto throughout the time it takes to express it. In the event for instance, of A at t1 expressing the judgement 'there will be an earthquake in England at t3', A at t1 is expressing a judgement, the only possible (eventual) 'object' of which is an event (an earthquake) that may or may not take place at some future time (t3) in some specific place (England). But the important point here is this. At or during t1, there was by definition, no earthquake at t3, for the judgement in question to be directed onto. So, from the view that a prediction is necessarily external object directed, it follows necessarily that A at t1, did not make a prediction. Indeed, from such a view, it necessarily follows that it is impossible for anyone to think or say anything about any (possible) future event(s) or state(s) of affair(s), that would, prior to, and/or unless some such event(s) or state(s) of affair(s) came about, count as a prediction of it or them.

This latter conclusion, although it would clearly seem to be the logical upshot of the view that predictions are necessarily external object directed, is of course, highly counter-intuitive. Moreover, just exactly how counter-intuitive it is, may be underlined perhaps by imagining the following situation.

Suppose, at some time between t1 and t3, t2 (say), people were told of the judgement passed by A at t1. Also suppose, that at t2 those same people were asked whether or not they thought that the judgement passed by A at t1 counted as a prediction. It would

perhaps be a fairly safe bet here to suggest, that most if not all those people would give an affirmative response to such a question. This being so, it perhaps indicates that to the extent that it makes sense to talk in terms of the 'ordinary' idea of what a prediction is, there is at least one logical upshot of the view that predictions are necessarily external object directed, that is clearly in conflict with such an idea. And just how acute the conflict is here, can be underlined still further.

For according to at least one 'ordinary' idea of a prediction, there is the possibility of false predictions. But one logical consequence of insisting that a prediction is necessarily external object directed, eliminates the possibility of false predictions entirely; thus implying that all predictions are necessarily correct predictions. It would, for example, seem to follow logically from so insisting, that nothing short of an earthquake taking place in England at t3, would provide the judgement A passed at t1, with the right or appropriate 'object'. That is to say, that only an earthquake occurring in England at t3, would provide the judgement in question with the 'object' it requires (as it were) in order to qualify as a prediction. As ordinary, common intuition would have it however, to claim this would be to make the fairly obvious mistake of confusing what is required for a judgement to count as any kind of prediction at all, with what is needed for a judgement to count as a correct prediction. According to ordinary common intuition that is, the non-occurrence of an earthquake in England at t3, would not be sufficient in itself to show that A's judgement at t1 did not count as a prediction, but rather only that it did not count as a correct prediction. So if common intuition is reliable here, it is not necessary that a judgement be external object directed in order to count as a prediction; thus implying that whatever makes a judgement a prediction, has to be established by appealing to factors that have nothing to do with, and therefore are perfectly independent of, whether or not any given judgement is directed onto some external 'object(s)'. And if a prediction does not necessarily have to be directed onto an external 'object', then there is no external 'object' that a prediction must necessarily be temporally prior to. For there is (perhaps by now) an all too clear link between the view that a prediction is necessarily external object-directed on the one hand, and the view that a prediction is necessarily temporally prior to the external object(s) it is directed onto on the other; and this not least in the sense that if the former is false, then it necessarily follows that the latter is false also. From the former it moreover follows, that a judgement (since as already explained it cannot when expressed count as a prediction) can, at best, only be correctly said to count as a prediction, in retrospect, if indeed it could ever



be called a prediction at all. This is to say, that it could only become a prediction after some time has elapsed since being expressed, more particularly, it could only become such, if and/or when it (so to speak) comes to acquire its 'object'. So since in the 'earthquake' example, it follows from the view in question here, that A's judgement at t1, could not have counted as a prediction of anything at all, let alone a prediction of a particular kind; and since also it thus follows that that judgement could only have become a prediction at t3, and even then only if an earthquake occurred in England, the implication of such a view is that (at least in one sense) it is necessarily true that a prediction cannot be temporally prior to what it predicts after all. Hence, there would appear to be at least one sense in which the view that predictions are necessarily external object directed, is implicitly inconsistent with the view that predictions necessarily temporally precede whatever they predict. For again, on the former view, the implication is that there are no judgements that are predictions unless and/or until there is (or are) some external object(s) upon which judgements become directed. And this seems effectively to imply that a judgement becomes a prediction at (and not so much as a fraction of a second before) the very instant there arises or occurs some object(s) upon which it is or has become directed. So either way, and whether or not predictions are necessarily external object directed, there would be some logical basis for denying that they must necessarily be temporally prior to any external object(s) that any judgements(s) may become directed onto.

The conclusion that thus emerges here, is that any given prediction, and whatever event(s) and/or state(s) if affair(s) the given prediction in question predicts, necessarily start to become facts about the world (and therefore necessarily begin to 'happen' so to speak) simultaneously. Such a conclusion seems clearly irreconcilably at odds with the view that predictions are necessarily temporally prior to whatever they predict.

However, at this point, an attempt may conceivably be made to show that the kind of irreconcilability just suggested is more apparent than actual. It may, for example, be proposed that there is another sense, quite different to the one suggested above (in the last paragraph) in which it could in retrospect be plausibly claimed, that the aforementioned judgement A expressed at t1, counted as a prediction. Furthermore, it may be continued, unlike the first suggested sense in which such a retrospective claim might be made, the following conceivable sense of it renders the view that predictions are necessarily external

object directed, perfectly consistent with the view that predictions are necessarily temporally prior to whatever they predict.

For instance, it may be suggested, that if at  $t_1$ , A passed what transpired to be a correct judgement to the effect that there will be an earthquake in England at  $t_3$ , then that judgement was a prediction when A expressed it at  $t_1$ , it is merely the case that no one was in a position until  $t_3$ , to call it a prediction and be completely certain of being correct in so doing. Put more briefly then: A's judgement was a prediction at  $t_1$ , but it only became possible to designate it as such with complete certainty, retrospectively at  $t_3$ .

In an attempt to make such a conceivable suggestion look (more) intuitively plausible, a search may be conducted, the aim of which would be to find an apparently analogous case; this is to say, a case of an event taking place at some specified time ( $t_1$  say), of which it would seem intuitively (at least) correct to say even if only retrospectively (at  $t_3$  say) that the event which occurred at  $t_1$ , fell under some description,  $D$  say, at the time it took place. The reason moreover why it would be (arguably) significant to show how such an attempt might be successful, is that the suggestion in question here, still yields the counter-intuitive consequence that it would be impossible for anyone prior to  $t_3$ , to tell with complete certainty whether or not the aforementioned judgement passed by A at  $t_1$ , counts or counted as a prediction. For although it may seem to be a suggestion, which offers a way of showing how it might be possible to claim on the one hand, that predictions are necessarily temporally prior to whatever they predict, and on the other, claim that predictions are necessarily external object directed without encountering any contradiction, it nevertheless carries with it the intuitively implausible implication that it would be impossible for anyone at  $t_2$  (say) to tell with absolute certainty whether or not that judgement so counted. Indeed, to that extent, it is a suggestion that may appear to fare no better than one of the views it might be designed to try to salvage in the first place; namely, the view that predictions are necessarily external object directed. Hence, even if the aforementioned apparently (essentially and relevantly) analogous case can be found, it may perhaps do nothing to detract from the power of any objection(s) to such a suggestion, based upon an appeal to the counter-intuitive nature of it.

The appropriate and apparently analogous case here, might be found by considering how descriptions are ordinarily applied to (and within the realm of) intentional human action.

Suppose for example, at t1, C stabbed D. Also suppose, C did so with the intention of killing D. Suppose further that C died at t2. Here, it may be imagined that C committed suicide rather than risk imprisonment after coming to believe that s/he might be arrested for stabbing D. Finally suppose, that D died at t3 as a result of being stabbed by C at t1.

Now, it may be argued, that this latter example upon reflection (potentially) shares enough common ground with the 'earthquake' case, to render the suggestion that is of central concern here, less intuitively unacceptable than it may initially seem to be. It may for instance be plausibly said, that anyone familiar with the basic details of the 'stabbing' case (as they have just been outlined) would be left in no doubt that C killed D. Neither would anyone who is familiar with them, necessarily be in any doubt that C murdered D. Indeed, this is perhaps to understate the case. For the conclusion that C murdered D, is at the very least, an exceedingly tempting one to accept upon the basis of the knowledge that C stabbed D with the intention of killing D. Moreover, perhaps no one familiar with the relevant details here would wish to reject the following conclusions.

Firstly, C's act of stabbing D, C's act of killing D and C's act of murdering D, count as numerically one and the same act. Secondly, since this is so, C's act of stabbing D at t1, was also an act of killing D at t1, as well as an act of murdering D at t1. Another way of expressing this therefore might be as follows. At t1, C carried out an act, variously describable as 'stabbing D', 'killing D' and 'murdering D'. The implication of such conclusions then, is that given the details of the case, common intuition would suggest that C killed and murdered D at t1, just as surely as C stabbed D at t1. And common intuition would suggest as much, partly upon the basis of the knowledge that D's death at t3 was caused by being stabbed by C at t1, and (again) partly upon the basis of the knowledge that C stabbed D with the intention of bringing about D's death. Further, the fact that D's death did not occur until t3, is perhaps unlikely to persuade common intuition otherwise here. Such a fact is unlikely for example, to convince anyone armed with the other facts of the case, that C killed and murdered D at t3 rather than at t1. Indeed, if anyone, armed with all the relevant facts of the present case, were somehow convinced of this, it would effectively be exactly as if, the person concerned had become convinced that a person whilst dead could carry out an act of killing and murdering another person. And the notion of anyone performing any type(s) of act(s) posthumously, is perhaps as counter-intuitive a notion as it is possible to imagine.

Neither would the claim that until t3, no one no matter how familiar with the relevant details of the case, could with complete certainty correctly describe the act of stabbing D performed by C at t1, either as an act of 'killing' or as a 'murder', be necessarily likely to make a difference here. The claim, that is, that the descriptions 'killing' and 'murder' could strictly speaking, only be applied to C's act retrospectively, would not necessarily be likely to convince anyone familiar with such details, that C's act of killing/murder took place at t3 rather than at t1.

In the present case, although it might be suggested that the event of C's own death occurring prior to D's, may be cited to explain any intuitive reluctance on the part of those suitably informed to accept that C killed and murdered D at t3, it would seem far from clear that the possibility of such reluctance would be in any way diminished had C outlived D, or even if C did not but everyone simply believed C died after D became deceased. Anyone harbouring such reluctance then, would not necessarily be any more inclined to shed it by considerations relating to the precise timing of C's death, than s/he would be either by considerations relating to the precise timing of D's death, or again indeed by the claim that the descriptions 'killing' and 'murder' could strictly speaking only be applied to the former's act once the latter had died. For provided again, that s/he knew all the relevant details and believed the latter claim to be entirely correct, the probability is, that s/he would nevertheless consider causal factors to be the genuinely decisive ones with respect to the precise time at which C killed/murdered D.

However, the 'stabbing' case is only apparently relevantly analogous to the 'earthquake' case. So ultimately it fails to show what it may conceivably be used to show (i.e. how it might be possible to claim on the one hand that predictions are necessarily temporally prior to what they predict, and on the other that they are necessarily external object directed, without encountering any contradiction, or giving rise to any counterintuitive consequence). This is because, in the 'earthquake' case, no relevantly analogous appeal to causal factors would seem even possible let alone intuitively plausible as a way of deciding when A's prediction (that an earthquake will occur in England at t3) took place. Indeed, more than that, no such appeal would even seem to offer a possible basis for deciding whether or not A (in passing the judgement that an earthquake will take place) ventured a prediction at all. For if in the 'stabbing' case it is (most) intuitively plausible to

conclude that C's act of killing/murdering D, took place when C stabbed D (partly) on the grounds that D's death was caused by C's (intentional) act of stabbing, it is hardly plausible at all to conclude in the 'earthquake' case that A's act of predicting took place when A passed the relevant judgement on the grounds that that judgement caused the earthquake; and this for the clearly very good reason that earthquakes are not caused merely by people thinking and/or saying that they will happen; or at any rate (and to preempt any possible claims to the contrary, which might be made on behalf of some perhaps comparatively extreme form of 'mind over matter' thesis, that is unlikely to be intuitively acceptable to most contemporary people anyway), there is no conclusive evidence to show that they are.

And again, if in the 'stabbing' case, it is, on the same such grounds, (most) intuitively plausible to conclude that C's act of stabbing D is or was numerically identical with C's act of killing/murdering D, it would not on those grounds be plausible in the slightest to conclude in the 'earthquake' case that A's act of judging is or was numerically identical with A's act of predicting; this once more because of the lack of conclusive evidence to show that earthquakes can be caused merely by any act(s) of passing some judgement(s). Hence, if A's act of judging can be shown to be numerically identical with, and thus otherwise describable as 'A's act of predicting', then it can only be shown to be such upon the basis of considerations that are quite independent of what A's act of judging did or did not cause. Furthermore, there is at least one reason why anyone who wished to claim that C's act of stabbing is numerically identical with (and so happened at the same time as) C's act of killing, would also wish to claim that A's act of judging is numerically identical with (and so happened at the same time as) A's act of predicting. An indication of what this reason is has already been given. For, to recall, it was suggested before that to deny that C's act of stabbing is numerically identical with C's act of killing would, under certain circumstances, yield a counterintuitive conclusion, that a posthumous killing had taken place. However, equally to deny that A's act of judging is numerically identical with A's act of predicting (as does for example A Goldman (1970)) would under relevantly similar circumstances also yield the no less counterintuitive conclusion that a posthumous prediction can take place. As it would be easy to imagine A at t1 saying 'there will be an earthquake at t3' then dying at t2 before an earthquake occurred at t3. Yet one of the advantages of not denying that C's act of killing is numerically identical with C's act of stabbing is that the counterintuitive conclusion that C performed a

posthumous killing is thus avoided. Similarly, one of the advantages of not denying that A's act of judging is numerically identical with A's act of predicting is that the counterintuitive conclusion that A performed a posthumous prediction is thus avoided.

One purpose of the above discussion has been to show that there are arguably a number of 'ordinary' notions of what a prediction essentially entails. Another has been to show also that, once the logical implications of such notions are explored, these notions are mutually incompatible. If this is right, it serves as further evidence of the unreliability of appealing to the idea of such 'ordinary' notions to provide a philosophically sustainable case for any given position or conclusion. Since we have seen (see for example 2.20 ) that Hayek attempts to do just this, frequently, this last general point is of special relevance here.

A more specific purpose here has been to try to show that, insofar as there are ordinary notions of what predictions essentially entail, these notions are somewhat confused. At least part of this confusion amounts to mistaking the notion of what a prediction essentially is for the notion of what a correct prediction essentially is. Of course, if it is indeed the case that people make this particular mistake, then the fact that they do requires explanation. What might be the source of the error? On the face of it, there is no obvious reason why people should make a mistake at all, or if they do so, why make this particular mistake? Why might they not, instead, mistake the idea of what a prediction essentially is for that of what an incorrect prediction essentially is?

One plausible explanation, perhaps, is this. As Wittgenstein (1953) suggested, in everyday discourse we learn the meaning of terms not (usually) by learning their definition, but by learning how to use them in certain contexts. It might tentatively be suggested, therefore, that we learn the meaning of the term 'prediction' in the course of performing a certain activity, that being, the activity of attempting actually to make predictions. Thus, our understanding of 'prediction' is very closely bound up with the goal of this activity, i.e, making successful predictions. (Since clearly it is not usually our goal to make unsuccessful predictions, and it is at least doubtful that it is even meaningful to attempt to do anything, including making a prediction, unsuccessfully.) Thus to the extent that ordinary belief and discourse reflects on the essential nature of prediction, it does so in a rather selective way. In so reflecting it is predominantly guided by experiences of successful or correct predictions.

In places, it would appear that Hayek is prepared to accept this specific point himself. Certainly, his justification for the rules of just individual conduct (and his claims about their basis in our 'common' or 'ordinary' notions) relies heavily upon assumptions about which types of prediction we can make reliably, or which types of prediction we at least commonly think we can make successfully. For instance, he states:

“Man has developed rules of conduct... because he does not know what all the consequences of a particular action will be. And the most characteristic feature of morals and law as we know them is therefore that they consist of rules to be obeyed irrespective of the... effects of the particular action.” [M.S.J. pp20-21].

Here Hayek is claiming that people's choice of the appropriate rules of conduct is guided by what they (think that they) can successfully predict. The implication is that most people, most of the time, believe that they can only successfully predict outcomes of a relatively general sort and their choice of rules of conduct is guided accordingly. For another implication of the above passage is that most people, most of the time, do not choose to abide by rules of conduct on the basis of the belief that they can successfully, and as often, make predictions of a relatively less general sort.

Now to recall, it has been argued already (see 2.5) that there is no reason to believe that outcomes of a relatively general sort can be predicted more confidently, more often, than outcomes of a comparatively less general kind. If this is right then any claim to the effect that they can is doubtful. So too is any conclusion based upon this claim about what rules of conduct most people, most of the time, find most morally acceptable.

What is more, Hayek himself does not accept this claim consistently. For he appeals to arguments incompatible with it. For instance he states that:

“Man is... a rule-following animal... a purpose seeking one. And he is successful... because his thinking and action are governed by rules... adapted... to the particular facts that he knows...” [R.O. pp11-12].

In this case our choice of rules seems to be quite explicitly guided by the assumption that the consequences of particular actions are better known, or more likely to be successfully predicted, than outcomes of a relatively general sort. In each case, Hayek assumes that our views about which rules are generally morally acceptable are closely linked to our

beliefs about which rules will, in fact, enable us to achieve our goals most successfully. The difference between the stances expressed in the above two quotations is as follows. In the first one he appears to suggest that our choice of rules is based upon our belief that we can make successful predictions of a relatively general sort more often than we can make successful predictions of a relatively less general and more specific kind. However, in the second one, he appears to suggest the opposite.

On the basis of what has been said so far, the following criticisms may be levelled at Hayek's view concerning the rules of just individual conduct:

1. They seem to rest upon epistemological foundations that are inconsistent with each other.
2. Even taken separately, the assumptions which provide the epistemological foundations are very questionable, since there is no clear cut answer to the question of whether or not people are (rightly) more confident about predictions of a specific, or of a general nature. Rather it is the case that people are sometimes (rightly) more confident about predictions of a general nature, and at other times they are (rightly) more confident about predictions of a particular nature.
3. The aforementioned rules are treated as morally binding in the following sense. People cannot legitimately reject them, even if they come to believe that doing so would, in a given instance, be likely to help them achieve their aims. (For instance, if a person or group discovered that he/they could successfully use coercion against another person or group, they would, on Hayek's view be wrong to do so. A society that enshrined such behaviour in its laws and traditions would be criticised for being unjust.) Yet given the pragmatic foundation supplied for the rules it is not clear why this should be the case. If we only follow the rules because we believe that doing so is likely to help us achieve our ends (leaving aside for the moment the questions about what foundations we might have for that belief) then surely we have grounds to reject them whenever they do not seem to serve that purpose. (Hayek himself accepts that this is the status of other, less universal rules, such as those specific to particular market transactions.)
4. Even if Hayek is right to claim that we accept the rules of just individual conduct because, we believe, doing so is likely to help us achieve our ends, it is not clear what the possible grounds for this belief could be. In the 'Great Society' we do not know,



Hayek claims, what the aims or needs of most citizens are for most of the time, so it is impossible for any individual, Hayek included, to know whether a given set of rules function successfully to satisfy these needs and aims.

5. In any case it is by no means clear that Hayek is right in his assumption about what we do believe. He states that most people, for most of the time, are not consciously aware of why they behave in accordance with the rules of just individual conduct. But if so, then there is no strong first person epistemological foundation for drawing conclusions concerning the beliefs which form the basis of this behaviour. Given the general ignorance which people have of one another's motivations in the 'Great Society' (see point 4) it is not clear how there can be any strong third person epistemological foundation for such conclusions either.

## Main Conclusion

The ultimate aim of this thesis, has, in a sense been modest. For, no attempt has been made here to provide an intellectually defensible politically-related theory. Rather, the aim has been to try to show that Hayeks' politically-related theory (if indeed this is the best way to refer to the subject matter of this thesis) is not intellectually persuasive. And, perhaps it is easier to show why a theory will not work, than it is to show why one will. The rejection of Hayeks' theory (as it will from now on be referred to) has been attempted in several ways. Some of the main ones have been as follows.

The first main chapter, was, to an extent, an extension of the main introduction. For, the former, offered further justifications, to the ones offered in the latter, of the present choice of the main subject matter of critique. However, the former in doing so, tried to demonstrate that the (so-called) 'liberal' tradition *within which Hayek located himself*, is incoherent thus at best difficult to define non-arbitrarily.

In the second main chapter, a framework of ideas was presented and defended, in order to undermine any (alleged) distinction between public and private concerns. This involved appealing to some notion of 'ordinary' belief and discourse. It was shown by appealing to such a notion, that there may not be a type of act such by the very nature of it, could never be the kind of act that would be (generally seen to be) of public concern. Hence, in this way, one way of attempting to distinguish between private and public concerns is rendered dubious. This was shown to be especially relevant. For it was also shown, that Hayek attempted to distinguish between private and public concerns by appealing to some notion of 'ordinary' belief and discourse himself. So, to that extent, the second main chapter was an attempt to refute Hayek on his own terms. However, that chapter, also attempted to show, that the notion of 'ordinary' belief and discourse cannot be non-arbitrarily defined, for any attempt to define that notion, could only ever be in terms of other notions that are also impossible to define non-arbitrarily. Therefore, one main conclusion of the second main chapter was that Hayeks' way of attempting to distinguish between public and private concerns, fails at least on two counts.

The third main chapter, consisted of an exposition and critique of, several arguments from Hayeks' The Mirage of Social Justice. Some such arguments, were found to be inadequately supported by empirical evidence. Other such arguments were found to contradict certain others.

Finally the fourth main chapter, attempted to reinforce some arguments levelled against Hayek in the second and third main chapters. For the fourth main chapter (in part) constituted an attempt to cast futher doubt upon the idea that ordinary belief and discourse could be relied upon to sustain philosophical positions also. But it did so, in a way that revealed or at least suggested, further inconsistencies between some of Hayeks' arguments and claims.

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