

Reply to Danny Frederick's "Review Essay: Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*"¹

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I wish to start by thanking Danny Frederick for investing his time in reading and carefully critiquing my book.² If all critics were as meticulous and fair as Frederick has been to me, there would be far more **constructive engagement** between philosophers, and much less of theorists fruitlessly talking past each other. I concentrate below on what I regard as the key points raised in his review essay.

In *Nozick's Libertarian Project (NLP)* (pp. 20-29), I reconstruct as a deductive proof what I take to be Robert Nozick's argument for libertarian rights in *Anarchy, State, and Utopia (ASU)*; see especially *ASU*, pp. 29-34 and 48-51).³ This consists of five premises, leading to the conclusion: "The use of force or coercion against innocent persons (those not engaged in aggression or fraud against other persons) interferes with their rational agency and is therefore **morally impermissible**." I note in the introduction that despite the fact that Nozick does *not* present his ideas in this fashion, I have elected to do so because it "makes his premises explicit and allows us to assess the overall strength of his reasoning" (*NLP*, p. 5). Subsequently, when I actually detail Nozick's argument, I caution further that "[p]hilosophy is not a branch of mathematics. These premises are certainly controversial, and cannot be conclusively demonstrated" (*NLP*, p. 29).

I am also quite open about my view that Nozick's argument is built on a foundation of certain widely shared and deeply felt moral intuitions. In

¹ A slightly different version of this Discussion Note appears on Mark Friedman's blog *Natural Rights Libertarian*, September 16, 2014, accessed online at: <http://naturalrightslibertarian.com/2014/09/my-reply-to-danny-fredericks-review-of-nlp-in-reason-papers/>.

² Danny Frederick, "Review Essay: Mark D. Friedman's *Nozick's Libertarian Project: An Elaboration and Defense*," *Reason Papers* 36, no. 1 (July 2014), pp. 132-42.

³ Mark D. Friedman, *Nozick's Libertarian Project: An Elaboration and Defense* (New York: Bloomsbury, 2011); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

this vein, I quote Bertrand Russell's observation that ethical reasoning starts with "the kind of proposition of which proof is impossible, because it is so simple or so obvious that nothing more fundamental can be found from which to deduce it" (see *NLP*, p. 21).

Frederick's critique of my (Nozick's) argument for libertarian rights focuses on the transition from Premise (4) ("Persons are inviolable *because* they are rational agents") to Premise (5) ("Persons have a right to exercise their rational agency without interference, subject only to the equal rights of other rational agents"). I offer two reasons why an agent who accepts the truth of (4) should also accept (5). The first draws on the notion that "[b]ecause the special moral status of rational agents is rooted in their autonomy, appropriate deference [to this characteristic] requires that they be permitted to live the life they choose, so long as they do not infringe the equal rights of others" (*NLP*, p. 27).

The second reason draws on the appeal of "moral impartiality," meaning that there are no special privileges or exemptions that apply to some persons, but not others. So, those who accept the inviolability of persons generally, "may not, without contravening a basic moral principle, demand respect for their own autonomy while denying equal respect to other persons" (*NLP*, p. 28). I further explain that while many egalitarians may purport to accept Premise (4) while nonetheless rejecting (5), they do so on the basis of faulty logic. For example, they draw an indefensible distinction between the stringency of property and other sorts of rights (*NLP*, p. 28). Accordingly, although they may not realize this, if they assent to Premise (4), they cannot consistently reject Nozick's argument for libertarian rights.

Frederick is satisfied with neither justification. He objects to the first on the grounds that Premise (4) does not entail (5) because "Friedman's argument for (4) showed only that rational agency and overridable middling side-constraints are correlated. We are looking to the second part of his argument to provide the *because*" (p. 137; his emphasis). Frederick is right that (4) does not logically imply (5) in some strict sense, but I nevertheless believe that (4) provides a *reason* for accepting (5), at least as far as "reason" is usually understood in moral discourse.

Suppose that Joe is a classical utilitarian who believes accordingly that the wanton infliction of pain on sentient creatures is wrong. I happen to encounter him standing idly by while his small child continuously cries out in intense pain, which could be immediately alleviated by a trivial exertion. What better reason could I give Joe for acting, other than pointing out to him that his inaction violates what he acknowledges to be a valid moral principle?

Analogously, I think that a person who accepts (4) is committed to respect the exercise of rational agency in the same way that the classical utilitarian is bound to promote pleasure and minimize pain. If an agent accepts that other persons have moral status only because they are rational agents, then at least if she wishes to act rightly, the appropriate response to this fact is

not to gratuitously impede the exercise of this attribute. If she lacks good will, then I am afraid no argument will suffice.

As noted, my second argument for the claim that an agent holding Premise (4) should also accept Premise (5) rests on the notion of moral impartiality. Here, Frederick asks first about those who reject (4): “Friedman is supposed to be explaining *why* rational agency grounds side-constraints; he must address his arguments to those who doubt or deny (4), not just to those who already accept it” (p. 137; his emphasis). I think he is demanding too much of me.

Premise (4) is built up from previous premises, all of which ultimately rest on Kantian notions of respect for persons, and particularly Kant’s idea that persons may never be used simply as a means for accomplishing objectives not of their own choosing. Committed utilitarians and those enamored of “social justice” are in the grip of other, inconsistent intuitions, and will thus never accept (4) or (5).

Frederick further contends that my appeal to moral impartiality does not give even those egalitarians who claim to accept (4) an adequate reason to endorse (5) (p. 137). In response to my argument that (as I purport to show in Chapters 2 and 3) egalitarians will not be able to draw a principled distinction between acceptable and unacceptable redistributions, he observes that I draw such lines in Chapter 6, so my argument “falls apart.” However, the redistributions I endorse there are *consistent* with (4), while those proposed by our egalitarian friends are not.

For instance, I argue in Chapter 6 that if no other means are available, coercive taxation to support the *innocent* poor can be justified under either Nozick’s Lockean proviso or by the demands of moral pluralism. The latter approach is consistent with (4) because the “inviolability” referenced there is not absolute. Conversely, I don’t believe that an egalitarian can commit to even a defeasible notion of inviolability, while at the same time endorsing massive social engineering projects that do not target the truly needy, and fail to discriminate between the blameless and the irresponsible.

This brings me to Frederick’s objection that my reconstruction of Nozick’s argument for rational agency does not produce a version of side-constraints that accurately encompasses or defines libertarian rights (p. 138). Frederick notes that respect for rational agency is not coextensive with a prohibition on using persons solely as a means (which Nozick identifies as proposition “*p*,” that is, “a strong statement of the distinctness of individuals” [ASU, p. 34]), and argues with various examples that “focusing simply on exercises of rational agency, autonomy, or free choice will not get us to (p) or to side-constraints that mark the bounds of permissibility” (p. 138). Because Frederick contends that *p* is superior to my formulation of the partial libertarian side-constraint, he offers a friendly amendment along critical rationalist lines (p. 139).⁴

⁴ “Partial” because it does not cover paternalistic aggression; see Nozick, ASU, p. 34.

The issues that Frederick raises are interesting and complex, and they cannot receive here the detailed treatment they deserve. Clearly, reasonable libertarians can disagree about this, but to my eyes the “never simply as a means” and the “separateness of persons” formulations of the libertarian constraint, like Ayn Rand’s Non-Initiation-of-Force Principle, operate at too high a level of abstraction to function as adequate guides to action. I suspect that this concern is what prompts Nozick to ask, “in virtue of precisely what characteristics of persons are there moral constraints on how they may treat each other or be treated?” (*ASU*, p. 48), which leads him to offer the argument I describe in *NLP*. In any case, I am not convinced that what I take to be Nozick’s statement of the libertarian constraint fails adequately to resolve any of the examples Frederick presents, bearing in mind the interpretation given by me in Chapter 6.

With respect to Frederick’s suggested critical rationalist alternative (pp. 139-40), I would just say that I question whether Nozick is committed to the idea that it is exclusively through “pure reason” that “persons discover who they are and then live their lives accordingly.” I fail to see why, for Nozick, experience should not play a vital role. In fact, although Frederick is proposing a very different meta-ethics, the “framework for utopia” described in Part III of *ASU* seems very much in the spirit of Frederick’s proposal, including Nozick’s concern that his framework protect people’s right of exit from communities that no longer meet their needs (see *ASU*, pp. 307-8).

Finally, this brings me to my effort to improve upon Nozick’s defense of the coercion employed by the minimal state in the provision of national defense and domestic security (see *NLP*, pp. 89-100). With respect to the former, I argue that a relatively just and peaceful state threatened with foreign aggression may permissibly compel all citizens to pay their fair share of taxes for military defense. Since all rational agents in such a polity benefit from this public good, would-be free riders commit what I call a “passive form of aggression” (*NLP*, p. 95). Accordingly, it is *not* that their right to these resources is overridden by the necessity of preserving rational agency; rather, the state may prevent them from culpably refusing to pay. I believe that Frederick does not object to this argument.

With respect to domestic security, as Frederick rightly notes, the issue is different. Very briefly, my argument here is that the risk to the exercise of our rational agency comes not from potential free riders, but from the possibility that too many individuals and private protective agencies would insist on enforcing their own conceptions of justice by means of their own preferred legal rules and procedures, leading to widespread, violent chaos. Thus, I claim that in (and *only* in) states “that operate substantially in accordance with F. A. Hayek’s construal of the rule of law,” the government is entitled to “exclude private PAs and independents from the unauthorized administration of justice” (*NLP*, p. 96).

In such communities all citizens are required to forgo their personal conception of rights and their preferred procedures, but they do so as members of a state whose role is strictly limited to promulgating and enforcing only abstract and neutral rules that are consistent with Hayek's political ideal. Moreover, in such a polity, it is possible to reform laws that are shown unduly to limit freedom. Here again, the argument is not that the individualist anarchist's right to enforce justice is overridden by the demands of rational agency, but that no such right exists.

Frederick questions why I need to invoke the idea that citizens in a society governed by the rule of law have "collectively forgone" their individual notions of justice. Why not simply rest my argument on the paramount value of rational agency? As Frederick puts it, "If side-constraints do not permit an exception for state monopoly provision of internal security, they will not fulfill their function of securing our rational agency" (p. 142).

As I hope is clear by now, I agree with Frederick's point, but I am afraid that, as stated, it concedes more than I would like. I do not wish to say that the Hayekian minimal state is engaging in objectionable coercion that is nonetheless acceptable as the price of preserving our rational agency. Rather, my idea is that the individual anarchist would be acting wrongly if he insists on enforcing his own rights. Just as financing the military defense of a relatively peaceful state requires all citizens to pay their fair share of taxes, the rule of law requires all members to accept, subject to reform efforts, the state's monopoly of law enforcement. A contrary judgment would cede to the independent a special privilege surrendered by his fellow citizens (see *NLP*, pp. 98-99).

