

## Reply to Mark Friedman

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I thank Mark Friedman, and the editors of *Reason Papers*, for giving me an opportunity to say more clearly and more concisely what I take to be the key mistakes in Friedman's arguments for individual rights and the minimal state.

Friedman, following Robert Nozick, argues that the fact that (normal adult) persons have rational agency is what explains the *partial* libertarian side-constraint:

- (p) It is (normally) impermissible to use a person merely as a means for the benefit of other persons.

There are two main points at which the argument fails.

The first is the transition from an agent's rational agency to his right to exercise his rational agency without interference, subject only to the equal rights of other rational agents. Rational agency is a factual status. Having a right is a moral status. To get from the former to the latter we need to add some premises about *value*. Friedman makes a number of suggestions, the most promising of which are:

- (i) Rational agency is valuable.
- (ii) Appropriate deference to rational agency entails granting the right in question.

However, (i) will not do. From "A is a rational agent" and "rational agency is valuable," the most that seems to follow is that we ought to take *some* account of the value of the rational agency of A in our decisions. How much attention we should pay to the value of the rational agency of A depends upon *how* valuable rational agency is. Furthermore, however great is the value of the rational agency of A, it seems it might always be open to trade-off against some marginally greater value. Why should we not use A merely as a means, or even destroy A, if we can thereby create a slightly more valuable B (or B and C)?

Friedman's (ii) implies (i) because *appropriate deference* to rational agency makes sense only if rational agency is valuable. Adding (ii) as a premise will plainly get us from rational agency to a right to exercise rational agency, but only because it is wholly *ad hoc*: it simply affirms the connection

between the two. But we seek an explanation for *why* (ii) is true. As we have just seen, the mere fact that rational agency is valuable, even highly valuable, does not explain it.

The second main point at which the Nozick/Friedman argument fails is that there are two problems with the right to exercise rational agency without interference, subject only to the equal rights of other rational agents:

- (a) It differs from the partial libertarian side-constraint, (p).
- (b) It is not a right that persons have.

I illustrated these problems with an example. I see that Joe intends to ask Annie for the next dance, but before he does, I ask Annie to dance and she accepts. I interfere with Joe's exercise of his rational agency, preventing the execution of his plans. But I do not use him merely as a means for the benefit of other persons. I do not use him as a means at all. Furthermore, my action is morally permissible, despite interfering with Joe's exercise of his rational agency.

I suggested an alternative route from rational agency to (p) along the following lines.

- (1) Persons are marked by *critical rationality*, which enables them to ask: (q) What sort of life will fulfill me? [Premise]
- (2) A person can discover the answer to (q) only by making guesses and testing them. [Premise]
- (3) Testing proposed answers to (q) requires the person who asks (q) to experiment with different ways of life and to evaluate the results in the light of her sense of fulfillment. [Premise]
- (4) If a person is to discover the answer to (q), she must be free to direct her own life. [From (2) and (3)]
- (5) A person achieves fulfillment if and only if she discovers the answer to (q). [Premise, perhaps "true by definition"]
- (6) If persons are to achieve fulfillment, they must be free to direct their own lives. [From (4) and (5)]
- (7) The function of morality is to facilitate the achievement of the value of the fulfillment of all persons, so far as is practically possible. [Premise]
- (8) Morality requires that persons be free to direct their own lives. [From (6) and (7)]
- (9) Persons have the moral right to direct their own lives. [From (8)]
- (10) It is impermissible for a person to be used merely as a means for the benefit of others. [From (9)]

A caveat, which requires further argumentation,<sup>1</sup> says that the right specified in (9) is not absolute. It is permissible to use a person merely as a means for

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<sup>1</sup> See Danny Frederick, "Pro-tanto versus Absolute Rights," *Philosophical Forum* 45

the benefit of others only in those relatively rare cases in which the value of doing so is *very large* in comparison with the wrong done to the victim. That gives us (p). A further step explains why the right of persons to direct their own lives requires that they are permitted to acquire and exchange private property with minimal restrictions.

I think that Friedman is largely right in his explanation for the legitimacy of the minimal state. What I find gratuitous and puzzling is his addition of an element of consent when he talks of citizens “collectively forgoing” their personal conception of rights and their preferred legal procedures. The idea that all members of a society would agree to forgo something, or even that there is anything they would all agree on, is not only preposterous, but unnecessary for the explanation and may even be inconsistent with it. I would spell out the explanation in a rule-consequentialist way. The depredations of feuding warlords would grossly undermine general human fulfillment. Therefore, morality requires that a state has the right to enforce laws consistent with the conditions required for general human fulfillment. Consequently, a minimal state has political authority. Such a state does not cease to have political authority if some people do not think it has political authority, or act as if it does not, any more than a dog ceases to be a dog if some people think it is a stone or treat it as if it is a stone. So the political authority of a minimal state does not require that its citizens agree that it has political authority or that they all act as if it does. The minimal state retains its political authority even if its citizens become befuddled by Karl Marx or John Rawls and set out to destroy it. Indeed, since a minimal state will respect freedom of expression, it will thereby enable open discussion about rights and the role of the state, and it will thus facilitate vigorous discussions about alternative conceptions of rights and whether the minimal state has political authority. Such an outcome seems inconsistent with the sort of “collective forgoing” to which Friedman mistakenly appeals.

There is much that is valuable and enjoyable in Friedman’s book, despite the mistakes I have discussed (and others besides). There is no book of philosophy (or of science, for that matter) that is not full of errors. We learn by making mistakes and correcting them. So I should end by conceding that I may be mistaken in what I think are mistakes in *Nozick’s Libertarian Project*.

