

WHAT'S NOT WRONG WITH LIBERTARIANISM:
REPLY TO FRIEDMAN

ABSTRACT: In his critique of modern libertarian thinking, Jeffrey Friedman (1997) argues that libertarian moral theory makes social science irrelevant. However, if its moral claims are hypothetical rather than categorical imperatives, then economics, history, sociology, and other disciplines play a central role in libertarian thought. Limitations on human knowledge necessitate abstractly formulated rules, among which are claims of rights. Further, Friedman's remarks on freedom rest on an erroneous understanding of the role of definitions in philosophy, and his characterization of the "right to do wrong" as a "logical contradiction" reveals a misunderstanding of logic.

There are many problems in Jeffrey Friedman's "What's Wrong with Libertarianism" (*Critical Review* 11, no. 1), but one is so important to his entire critique that I wish to get right to it.

Friedman insists that there is an inconsistency between believing that individuals have rights, on the one hand, and evaluating policies on the grounds of their good or bad consequences generally (setting aside the trivial consequence that the policies may be compatible or incompatible with the asserted rights themselves). Friedman calls the attempt to get around this inconsistency "libertarian straddling," which "tries to marry instrumentalist and intrinsic defenses of liber-

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tarianism while giving primacy to the latter"; he expresses amazement that this straddling allows "the armchair philosopher," "the economist," "the sociologist," "and the political scientist" all to reach "the same conclusion—libertarianism" (Friedman 1997, 435). "Divine intervention might seem to be the only thing that could make sense of this libertarian straddle," he writes, suggesting that perhaps the reconciliation of rights and consequences is delusory.

Friedman writes:

The effect of libertarian straddling on libertarian scholarship is suggested by a passage in the scholarly appendix to Boaz's collection of libertarian essays, *The Libertarian Reader*. There, Tom G. Palmer (also of the Cato Institute) writes that in libertarian scholarship "the moral imperatives of peace and voluntary cooperation are *brought together* with a rich understanding of the spontaneous order made possible by such voluntary cooperation, and of the ways in which coercive intervention can disorder the world and set in motion complex trains of unintended consequences" (Boaz 1997b, 416, emphasis added). Palmer's ambiguous "brought together" suggests (without coming right out and saying) that even if there were no rich understanding of spontaneous order, libertarianism would be sustained by "moral imperatives." But in that case, why develop the rich understanding of spontaneous order in the first place, and why emphasize its importance now that it has been developed? Spontaneous order is, on Palmer's own terms, *irrelevant*, since even if a rich understanding of it yielded the conclusion that markets are *less* orderly or less spontaneous than states, or that the quality of the order they produce is *inferior* to that produced by states, we would still be compelled to be libertarians by moral imperatives. The premise of the philosophical approach is that nothing can possibly trump freedom-cum-private property. (Friedman 1997, 436, emphasis in original)

The best that I can make of this is that Friedman assumes that by "moral imperative" I meant "categorical imperative," for that is the only reading that would make sense of his claim. If an imperative were truly categorical, then it would indeed trump all other considerations. For example, no concern with the consequences of an act could override a categorical imperative to perform the act. Friedman's description could easily lead one to think that I was being very, very sneaky, in "suggest[ing] (without coming right out and saying)" that consequences are irrelevant, but the truth is far less interesting. I did not write "categorical imperative," not because I hoped to slip

something past the unsophisticated reader, but merely because I did not *mean* categorical imperative. Friedman's language implies that I am secretly in agreement with him but won't "come right out and say so" and suggests the existence among libertarian philosophers of the kind of conspiracy attributed to the Pythagoreans, who are reputed to have killed cult members who disclosed the existence of incommensurable quantities, such as the sides of a right triangle, thereby revealing the error of asserting that the universe could be expressed in terms of whole numbers, which was the central tenet of the Pythagorean cult. That would, admittedly, be more interesting than merely discovering that I and other libertarians disagree with Jeffrey Friedman.

Allow me to set the record straight. Not all imperatives are categorical. Some imperatives, for example, are hypothetical. Thus, "If you wish to be strong, you must exercise and eat well" is a hypothetical imperative. Implicit in Friedman's entire essay is the view that all moral claims are *necessarily* categorical claims, and thus, it would seem, that the only (or at least the first) moral philosopher was Immanuel Kant. That may be right, but it is hardly self-evident or a widely accepted claim. Kant (1964, 82) himself distinguished between kinds of imperatives:

All *imperatives* command either *hypothetically* or *categorically*. Hypothetical imperatives declare a possible action to be practically necessary as a means to the attainment of something else that one wills (or that one may will). A categorical imperative would be one which represented an action as objectively necessary in itself apart from its relation to a further end.

Kant limited claims of morality to "the relation of actions to the autonomy of the will—that is, to a possible making of universal law by means of its maxims" (ibid., 107). Only if morality is limited in this or some similar way is it true that consequences are irrelevant to moral or legal evaluation. If spontaneous order is irrelevant, it is not on "Palmer's own terms," but on *Friedman's* terms.

The reason that I did not "come right out and say" that consequences are irrelevant to evaluating claims of morality or justice is that I don't believe that they are irrelevant.¹ Nor do I think that "the effects of libertarianism could not conceivably outweigh the putative intrinsic value of private property" (Friedman 1997, 436). And I am

in pretty good company here: Aristotle, Aquinas, Grotius, Locke, Pufendorf, Hume, Smith, and a few hundred others who fancied themselves moral philosophers would agree. Indeed, some philosophers explicitly ground morality on hypothetical imperatives: given the facts of reality, if you want to achieve X, then you must do Y (e.g., Foot 1972 and Barnett 1998). The empirical investigation of reality is at the foundation of the rights claims of the modern natural-rights tradition (as also of the classical tradition). That is why it should *not* seem an amazing coincidence that a sociologist, a philosopher, a political scientist, and an economist might come to convergent, compatible, or even identical conclusions.² They are all trying to study the same topic: humanity. Is it merely an amazing coincidence that biologists find that the investigations of mathematicians regarding the relationship between the cubic volume and the surface of a sphere explain why unicellular algae are not the size of basketballs (see Thompson 1966)? Or that the chemist and the physicist collaborate and reinforce each other's research into the nature of chemical reactions? These are not surprising because there is one reality that is being studied in different ways by different disciplines. The principle of Ockham's Razor suggests that the singular nature (or unicity) of the topic of study is a more likely explanation of convergent conclusions than a conspiracy among social scientists.

It is only because Friedman assumes (without ever stating explicitly) that moral claims—most strongly claims of right—are necessarily categorical claims that he can set up his opposition between rights claims and consequentialism.³ But not everyone understands claims of right as categorical. If claims of right are understood in other ways, the alleged conflict between rights claims and consideration of consequences disappears.

The modern natural-rights theorists based their claims on behalf of rights precisely on the relationship between rules and good consequences, and advocated regimes of imprescriptible rights rather than regimes of arbitrary power for the very epistemic reasons Friedman invokes in his critique of what he mistakes to be David Boaz's understanding of individual rights (437–38).⁴ As Friedman (1997, 437) states, Boaz makes claims "about the empirical consequences of libertarianism. As such, its validity cannot be known in advance." This is true and important. It is precisely because we cannot know in advance the consequences of each and every action, and thus judge the goodness or badness (hence permissibility or impermissibility) of each

and every act, that we need rules to guide us. It tells moral agents nothing to say "always do what is best" or "always do what yields the best consequences," for such knowledge is normally not available to us. Rights and the rules of justice provide the standard of action, but not the goal. The goal or justification of a system of rights is its good consequences (life, prosperity, peace, cooperation, knowledge, social harmony, etc.), but we find that we cannot aim at those goals directly. Much as economic planning cannot work in the absence of a system of markets and prices, peaceful cooperation cannot come about except by means of a system of rules and claims of justice that we refer to as rights. Attempts to achieve good consequences directly may be self-defeating (see Parfit 1986). Requiring agents to act so as always to attempt to generate the best consequences may very well generate consequences inferior to the consequences generated by requiring agents to follow a set of rules.

In the modern natural-rights tradition, the invocation of the good or bad consequences of rules and institutions plays a role in justifications of the claim that individuals have rights; the question is, at what level do we invoke this justification? Do we ask about the consequences of each and every act, taken singly, or do we ask about the consequences of adhering to *systems of rules*? Surely, only the latter course is open to us, given our epistemic limitations. As F. A. Hayek noted,

rules are a device for coping with our constitutional ignorance. There would be no need for rules among omniscient people who were in agreement on the relative importance of all the different ends. Any examination of the moral or legal order which leaves this fact out of account misses the central problem. (Hayek 1976, 8)

Friedman is quite impressed by the critique of socialism offered by Mises and Hayek, but he seems not to understand that the very same considerations are at the base of the modern natural-rights tradition.

As David Hume (1978, III.II.ii, 496–97) noted,

if men pursu'd the publick interest naturally, and with a hearty affection, they wou'd never have dream'd of restraining each other by these rules; and if they pursu'd their own interest, without any precaution, they wou'd run head-long into every kind of injustice and violence. These rules, therefore, are artificial, and seek their end in an oblique and indirect manner; nor is the interest, which gives rise to them, of a

kind that cou'd be pursu'd by the natural and inartificial passions of men.

Hume—along with others in the modern natural-rights tradition—realized that certain good consequences can only be attained indirectly, by establishing or fostering a system of rights that are action-guiding, i.e., that let agents know what they may do and what they may not do. Hume (1978, III.II.i, 484) was merely stating what was widely understood among writers on natural right:⁵

To avoid giving offence, I must here observe, that when I deny justice to be a natural virtue, I make use of the word, natural, only as oppos'd to artificial. In another sense of the word; as no principle of the human mind is more natural than a sense of virtue; so no virtue is more natural than justice. Mankind is an inventive species; and where an invention is obvious and absolutely necessary, it may as properly be said to be natural as any thing that proceeds immediately from original principles, without the intervention of thought or reflexion. Tho' the rules of justice be artificial, they are not arbitrary. Nor is the expression improper to call them Laws of Nature; if by natural we understand what is common to any species, or even if we confine it to mean what is inseparable from the species.

So evaluation of consequences *does* matter, but it matters at the level of justifying a general system of rights. Precisely because of the limitations of human knowledge that Friedman acknowledges were the downfall of socialism, we cannot normally invoke consequentialism on a case-by-case basis. That is, after all, as Hume (and more recently, Hayek) so strongly emphasized, the justification for rules. It is for this reason that Friedman's stipulated test of the validity of libertarian conclusions sets an impossible standard and misunderstands the nature of the libertarian argument: "Libertarian conclusions require not only extensive evidence of government failure, but an empirically substantiated reason to think that such failure is *always* more likely than the failure of civil society" (412, emphasis in original).

It seems at first that Friedman is demanding a proof that voluntarism (understood as libertarians understand it) is *always* better than coercion. Such a proof would be impossible. But another look indicates that in this sentence all that he demands is to be shown that "such failure is *always more likely*" (emphasis added). If I understand this rather imprecise formulation, I think that such a standard could

be met, if one were to compare real civil societies with real states, rather than real (and therefore imperfect) civil societies with ideal (and therefore perfect) states. On the next page Friedman, however, explicitly sets the standard higher: “the utilitarian libertarian” must show that “*all* government intervention with [property rights] is bound to fail” (emphasis added). Now, what would a proof of that form be like? Well, it would certainly be very different from a proof that “such failure is always more likely.” Friedman goes from demanding a proof that freedom is always *more likely* to work to demanding a proof that freedom *is always better*. As Aristotle noted in the *Nicomachean Ethics* regarding standards of proof in political thinking, “it is the mark of an educated mind to expect that amount of exactness in each kind which the nature of the particular object admits. It is equally unreasonable to accept merely probable conclusions from a mathematician and to demand strict demonstration from an orator” (1094b25–30). It is unreasonable to demand that libertarians prove that respect for rights is superior in every respect and in all possible circumstances to coercion, but not to make the same demand of advocates of statism. No political theory could meet Friedman’s test.

To sum up: there need not be any contradiction between assertions of right and justice and scientifically validated claims about the consequences of different kinds of political and legal regimes. As Boaz (1997b, xx) asked in the introduction to *The Libertarian Reader*:

Do libertarians believe in free markets because of a belief in individual rights or an empirical observation that markets produce prosperity and social harmony? The question ultimately makes no sense. As Hume said, the circumstances confronting humans are our self-interestedness, our necessarily limited generosity toward others, and the scarcity of resources available to fulfill our needs. Because of these circumstances, it is necessary for us to cooperate with others and to have rules of justice—especially regarding property and exchange—to define how we can do so. If individuals using their own knowledge for their own purposes didn’t generate a spontaneous order of peace and prosperity, it would make little sense to advocate either natural rights or free markets.⁶

It would take an essay as long as Friedman’s to answer all of his charges. (It would even take an essay just to note his demeaning and personal attacks on libertarian writers, e.g., the frequent questioning of the motives of libertarian writers, the slighting reference to “the

untroubled sleep and closed minds of libertarians,” the characterization of social scientific research by libertarians as “propaganda,” the suggestion of a conspiracy among libertarian social scientists, and so on.) I will merely consider a few logical and factual errors.

Can We Define Freedom Any Way We Want?

In defense of his preferred understanding of “freedom,” Friedman (1997, 432) writes that “one stipulative definition is as good as another.” Logicians would find this a surprising claim. As Irving Copi (1982, 149–50) noted in his treatment of definitions,

It is not the case that any stipulative definition is as “good” as any other, but the grounds for their comparison must clearly be other than truth or falsehood, for these terms simply do not apply. Stipulative definitions are arbitrary only in the sense specified. [“A symbol defined by a stipulative definition did not have that meaning prior to being given it by the definition.”] Whether they are clear or unclear, advantageous or disadvantageous, or the like, are factual questions.

A stipulated definition that fails to distinguish a thing in terms of exclusive categories, for example, would be disadvantageous and inferior to an alternative definition that does use categories properly. Thus, the stipulated definition of a human being as a “featherless biped” fails as a definition of “human being.” It is not false, but it is *not* “as good” as any number of other definitions. Simply defining freedom as ability, which is the route taken by some of the figures whom Friedman cites approvingly, is an exercise in bad definition, because we already *have* a good word to denote ability. It’s “ability.”

Definitions are tools of the mind. They are more or less useful depending on how well they help us to understand, organize, and affect the world.⁷ Friedman’s rejection of libertarian conceptions of freedom and his rather confusing defense of a (never clearly articulated) alternative definition suffer from the central flaw that they don’t help us to understand the world of human action or to distinguish between different kinds of actions. For example, consider his claim that libertarian-compatible property systems are just as coercive and restrictive of freedom as systems that are *not* compatible with libertarianism. If that were true, then using force to prevent another person from having sexual congress with yourself (conventionally termed

“rape” by those beset with “bourgeois complacency,” as Friedman [1997, 419] characterizes Charles Murray) would be just as much a use of force as is using force to have sexual congress with another person who does not desire it. Therefore there must be no difference between the two, at least with respect to whether one approach is more or less coercive or free than the other. “Raping” is no more coercive than “resisting rape.” Freedom is slavery, after all!

According to Friedman (1997, 428),

Inasmuch as there is just as much of the world to be parcelled out under each system's set of property rules, and the rights governing all of this property are just as coercively enforced in all systems, there is no difference in the 'amount' of coercion—or conversely, the amount of (negative) freedom—under different legal systems, including libertarianism. . . . So, strictly in terms of negative liberty—freedom from physical coercion—libertarianism has no edge over any other system.

For example, Canada in 1944 and Germany in 1944 were equally free and had equal “amounts” of coercion. Friedman cites the venerable authority of G. A. Cohen in support of this remarkable and counterintuitive claim.⁸ But is it in fact true that the system of several property that is found in “capitalist” societies and is largely respected on the basis of custom, morality, and reciprocal respect is indistinguishable in terms of coercion and freedom from the communism that G. A. Cohen spent his life defending, which rests on the constant exercise of terror against a subject population?⁹ Friedman and Cohen argue that it is. It is on the basis of this claim that Friedman concludes that “negative” freedom cannot be the freedom in which we should be interested (the “true” freedom?), and that we should instead plump for “positive” freedom, apparently understood as doing whatever I want to do.

Three hundred years ago Locke labeled such a condition “licence” and distinguished it from “liberty.” As Locke argued in his second *Treatise of Government* (sec. 6), “*The State of Nature* has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions.”¹⁰ Writers in the Whig/classical liberal tradition did not generally consider the freedom or liberty that they sought as mere lack of constraint, but as freedom from subjection to the arbitrary and lawless will of another. In Algernon Sidney's words,

“liberty solely consists in an independency upon the will of another, and by the name of slave we understand a man, who can neither dispose of his person nor goods, but enjoys all at the will of his master” (Sidney 1990, 17). That is why libertarians have always placed so much stress on the rule of law: again, Locke (sec. 57) notes,

The end of Law is not to abolish or restrain, but to preserve and enlarge Freedom: For in all the states of created beings capable of Laws, where there is no Law, there is no Freedom. For Liberty is to be free from restraint and violence from others which cannot be, where there is no Law: But Freedom is not, as we are told, A Liberty for every Man to do what he lists: (For who could be free, when every other Man’s Humour might domineer over him?) But a Liberty to dispose, and order, as he lists, his Person, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own.

(Cf. Barnett 1998, Introduction.)

Libertarianism: Both the Status Quo and Outside of the Mainstream?

Friedman claims on one page to have shown “libertarianism’s extreme cultural marginality” (440) and *also* claims in footnote 7 (463) that libertarian philosophers “portray status-quo property relationships, reconceived as ‘Lockean,’ as natural ones.” On p. 433 Friedman suggests that the libertarian “worldview rests on unexamined presuppositions absorbed unconsciously from the culture of capitalism.” So libertarians are guilty of “willful isolation from the mainstream” (441) at the same time that they are carriers of “unexamined presuppositions absorbed unconsciously” from the dominant culture and hostage to “status-quo property relationships,” i.e., shills for existing (and perhaps sinister) interests. If “the mainstream” is exemplified by the Harvard faculty lounge, Friedman may be right that libertarianism is isolated from the mainstream, but if he has a wider notion of the mainstream, it is hard to see how libertarianism is both marginal *and* the philosophy of the status quo. That would be quite a trick. (It may be that many property relationships in largely liberal societies are just—in the sense that no better titles can be shown than the existing ones—but that is at least partly the result of the efforts of libertarians over the

centuries to defend and extend freedom and justice. The idea that libertarian ideas are a defense of the "status quo" is an insult to the uncounted martyrs who have sacrificed so much to achieve justice in those societies that approximate free societies, to the libertarians who failed because they were murdered by communist, monarchist, fascist, national socialist, and other collectivist states, and to the billions of people who today live in regimes that are decidedly *unjust*.)

Logic and the "Right to Do Wrong"

Friedman evinces amazement that libertarians might believe that one could have "a right to do wrong." His treatment, in a footnote (465 n11), is written as if no moral philosopher had ever thought about the problem. He admits that "many consequentialist reasons for such a right are conceivable," such as the negative effects of civil wars, but argues that it is a "prima facie logical contradiction" to "contend that it is intrinsically valuable to be able to do what is bad—intrinsically valuable, that is, to be able to do what is intrinsically valueless." Friedman exhibits an unusual and unorthodox understanding of the nature of logical contradiction.

A logical contradiction has the form of "p and (not p)" (or " $p \cdot \sim p$ ") (Copi 1982, 314). Thus, for Friedman to make the claim that the conjunction of "I have a right to do X" and "it is wrong to do X" is a logical contradiction, he must argue that "it is wrong to do X" is the same statement as "it is not the case that I have a right to do X," but he claims that as his conclusion, so to make it a premise of the proof is hardly a valid demonstration! There would be a contradiction only if we were to assume as a premise what Friedman presents as a conclusion. It would indeed be a contradiction to affirm simultaneously

"It is good to do X"
and
"It is not good to do X,"

but that is *not* what advocates of a "right to do wrong" affirm. What they affirm simultaneously is

"It is good to be allowed to do X"
and
"It is not good to do X."

The all-important phrase “to be allowed,” present in the first statement and absent in the second, is what distinguishes “the right to do wrong” from a logical contradiction. Under no understanding of the term “logical contradiction” could “the right to do wrong” qualify as a logical contradiction.

There is no logical contradiction in asserting that the free exercise of moral agency is intrinsically valuable. It may not be true, but it is not a logical contradiction. The achievement of a good life on the basis of one’s own choices, rather than on the basis of having been beaten into making the outward motions consistent with doing the “right thing,” may be the only way actually to achieve a good life, for self-direction may be one of the necessary ingredients of a good life. As Aristotle noted in the *Nicomachean Ethics* (1199b 20–21), “it is better to be happy as a result of one’s own exertions than by the gift of fortune,” and it could surely be argued that it is better to be happy as a result of one’s own choices than as a result of the violent interventions of others—indeed, that such “coerced happiness” would not be happiness at all, for “happiness is an activity in accordance with virtue” (*ibid.*, 1098b30). Happiness is not a passive state, but an active one, for “just as at the Olympic games the wreaths of victory are not bestowed upon the handsomest and strongest persons present, but on men who enter for the competitions—since it is among those that the winners will be found,—so it is those who act rightly who carry off the prizes and good things of life” (*ibid.* 1199a4–10).¹¹

Aristotle may be wrong about this, but if he is, it is not because of a “prima facie logical contradiction.”¹² Nor was it a logical contradiction for Tertullian to argue against forced conversion to what he considered the highest truth—the Christian faith—when he argued:

It is a fundamental human right, a privilege of nature, that every man should worship according to his own convictions: one man’s religion neither harms nor helps another man. It is assuredly no part of religion to compel religion—to which free will and not force should lead us. (Quoted in Smith 1991, 97)

For Tertullian, true Christian faith simply could not be acquired through compulsion, but was a gift from God that could only be accepted freely.

There is a long tradition of inquiry into justice and freedom that focuses attention on the faculty of human choice.¹³ In his funeral oration,

Pericles praised Athens for its freedom and connected this with the condition that each citizen was “the rightful lord and owner of his own person”:

Taking everything together then, I declare that our city is an education to Greece, and I declare that in my opinion, each single one of our citizens, in all the manifold aspects of life, is able to show himself the rightful lord and owner of his own person, and do this, moreover, with exceptional grace and exceptional versatility. (Thucydides 1986, 147–48)¹⁴

This concern with the ability of choice, or “freedom of the will,” as it is sometimes termed, is at the foundation of the entire libertarian tradition. Human beings are sources of changes in the world; they have the faculty of choice and can be held accountable for their acts. As Marsilius of Padua (1956, II.xii, 193) noted in 1324,

this term “ownership” [dominium] is used to refer to the human will or freedom in itself with its organic executive or motive power unimpeded. For it is through these that we are capable of certain acts and their opposites. It is for this reason too that man alone among the animals is said to have ownership or control of his acts; this control belongs to him by nature, it is not acquired through an act of will or choice.

Dominium, or self-mastery, was the central feature of the debate over the rights of the American Indians (see Vitoria 1991a and 1991b and las Casas 1992). The advocates of enslaving the Indians argued that they were the “natural slaves” of whom Aristotle had written in his *Politics*, incapable of self-mastery and thus requiring the guiding hand of their Spanish overlords. This was hotly disputed by the protolibertarians of the school of Salamanca. In Vitoria’s words,

Every Indian is a man and thus is capable of attaining salvation or damnation. Every man is a person and is the master of his body and possessions. Inasmuch as he is a person, every Indian has free will and, consequently, is the master of his actions. (1991b, 17)

Vitoria (1991a, 250–51) concluded in his famous lectures of 1539 that the Indians had the same rights as the Christian Europeans:

The conclusion of all that has been said is that the barbarians possessed as true dominion, both public and private, as any Christians. That is to say, they could not be robbed of their property, either as private citizens

or as princes, on the grounds that they were not true masters (*ueri domini*). It would be harsh to deny to them, who have never done us any wrong, the rights we concede to Saracens and Jews, who have been continual enemies of the Christian religion. Yet we do not deny the right of ownership (*dominium rerum*) of the latter, unless it be in the case of Christian lands which they have conquered.

The theme of personal dominium was central to the arguments of the first libertarians, the Levellers. (See, for example, Walwyn 1989 and Overton 1943, esp. 381–82 and 1997.) Locke, too, focused attention on choice and responsibility in the very conception of the human person:

Person, as I take it, is the name for this *self*. Where-ever a Man finds, what he calls *himself*, there I think another may say is the same *Person*. It is a Forensick Term appropriating Actions and their Merit; and so belongs only to intelligent Agents capable of a Law, and Happiness and Misery. This personality extends it *self* beyond present Existence to what is past, only by consciousness, whereby it becomes concerned and accountable, owns and imputes to it *self* past Actions, just upon the same ground, and for the same reason, that it does the present. (1979, II. xxvii, 26)

We own our actions. We can be held accountable by our fellows (see Strawson 1993). As human beings we are rational creatures capable of choice and therefore capable of being held responsible and accountable for our actions. The exercise and development of this faculty is intrinsically valuable. To be able to *choose* the good means that one is also able to choose the bad. Friedman may be baffled by this, but if so, he is simply baffled by reality. Indeed, to attempt to deny the possibility of choice, i.e., to choose to deny it, is to engage in a contradiction, viz. a performative contradiction: examples of performative contradiction are the written statement “Me always write grammatical,” the spoken utterance “I am now silent,” and the choice to deny that choice is possible. It is not libertarians who contradict themselves by asserting a “right to do wrong,” but those who deny the possibility of human choice.¹⁵

With Lack of Charity toward Some

Friedman is remarkably uncharitable in his interpretations of those whom he criticizes. Friedman contends that Charles Murray is guilty of

“bourgeois complacency” (Friedman 1997, 419); he calls his argument “facile” (*ibid.*, 421); and he dismisses Murray’s discussion of the role of achievement as “ruminations” (*ibid.*, 421). In addition, Murray the eudaimonist is labeled “a utilitarian” (*ibid.*, 418) because he is concerned about consequences, which obscures the difference between a consequentialist and a utilitarian (I would say that they are related as genus is to species, but that might make me a “Scholastic,” evidently a term of abuse to Friedman [*ibid.*, 431]), and he ignores Murray’s well-articulated views on the significance of human achievement, which have, after all, been stated in his much longer book *In Pursuit: Of Happiness and Good Government*. (Human achievement is also the subject of Murray’s current research and writing.)

In Friedman’s dismissal of another distinguished libertarian scholar he writes, “it was Milton Friedman who, after all, most famously equated capitalism with freedom” (Friedman 1997, 436). Milton Friedman (1962, 8) did not *equate* capitalism with freedom; he argued something very different, viz. that “On the one hand, freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself. In the second place, economic freedom is also an indispensable means toward the achievement of political freedom.” An important part of Milton Friedman’s case was the concession that “history suggests only that capitalism is a necessary condition for political freedom. Clearly it is not a sufficient condition” (*ibid.*, 10). To say that X is part of Y, or that X is a necessary but not sufficient condition of Y, is not to equate X and Y.

These are by no means the only faults in Friedman’s rebuttal of libertarianism. I leave the others to the reader to find. I will merely conclude by thanking him for allowing me the opportunity to rethink and rediscover just why I find libertarianism as a political theory superior to its competitors, and to offer my criticisms of his arguments in the journal he edits.

NOTES

1. Despite my deep admiration for Immanuel Kant’s achievements, I do not accept his bifurcation between the phenomenal world of appearance and the noumenal world of intelligibility, which is central to his grounding of the categorical imperative, and thus I do not accept his claim that

the intelligible world contains the ground of the sensible world and therefore also of its laws; and so in respect of my will, for which (as belonging entirely to the intelligible world) it gives laws immediately, it must also be conceived as containing such a ground. Hence, in spite of regarding myself from one point of view as a being that belongs to the sensible world, I shall have to recognize that, qua intelligence, I am subject to the law of the intelligible world—that is, to the reason which contains this law in the Idea of freedom, and so to the autonomy of the will—and therefore I must look on the laws of the intelligible world as imperatives for me and on the actions which conform to this principle as duties

(Kant 1964, 121, emphasis in original)

2. One could easily add others. See, for example, the work of the zoologist and libertarian Matt Ridley, *The Origins of Virtue: Human Instincts and the Evolution of Cooperation* (1996).
3. It should be noted that “consequentialism” by itself is not a political theory, nor even a theory of the good. What counts as a good or a bad consequence cannot by itself be determined by invoking consequentialism; there must be some deeper reflection (or “rumination,” to use the term that Friedman uses to dismiss Charles Murray’s considered views on the matter) about what consequences we should seek to achieve or avoid. Friedman’s position, although presented as clearly superior to “philosophical libertarianism,” is naive and unreflective.
4. Friedman subjects Boaz’s defense of individualism to a series of misinterpretations, missing Boaz’s main point, viz., that when we speak of groups deliberating or acting, the group that deliberates or acts is made up of the numerically individuated humans *and* the various relations among them; the group does not constitute another person that is essentially like the numerically individuated persons who make up the group. A forest is made up of individual trees and all of their complex relations; without the particular trees, we would not have a forest, and the forest is not another tree. So, too, for group behavior involving humans. The group formed by Mary, Bill, and Deirdre is not another person like Mary, Bill, or Deirdre. A number of forms of collectivism explicitly deny this, and not merely the extreme forms that might come to mind, but the tamer forms that abound in American universities. For example, the coercive communitarian political theorist Michael Sandel criticizes liberal individualism for relying on an “antecedent individuation of the subject” and proposes instead that “in so far as our constitutive self-understandings comprehend a wider subject than the individual alone, whether a family or tribe or city or class or nation or people, to this extent they define a community in a constitutive sense” (Sandel 1982, 172). Thus, “the bounds of the self are no longer fixed, individuated in advance and given prior to experience” (*ibid.*, 183). A community, nation, class, or state could then be a “self.” Boaz simply tries to bring some common sense to the discussion, for the “self” that is constituted by Bill and Mary would not be the same kind of self that Bill is or that Mary is. Using the same terms (self and

- person, for example) to describe these “wider subjects” is a category error with significant consequences for political theory.
5. As Stephen Buckle (1991, 90) notes, “rather than, as is sometimes held, being a decisive break from the tradition of natural law, Hume’s account depends crucially on distinctions already established by Pufendorf.”
 6. John Locke also considered the issue of the relationship of utility (generally considered) and right in his writings on natural law: “utility is not the basis of the law or the ground of obligation, but the consequence of obedience to it. . . . And thus the rightness of an action does not depend on its utility; on the contrary, its utility is a result of its rightness” (Locke 1997, 133). Both Locke (at least in this text) and Pufendorf argued that the natural law had the sanction of God, through the prospect of reward or punishment in the next life. Thus, Pufendorf (1991, 36) noted that “though these precepts [of the natural law] have a clear utility, they get the force of law only upon the presupposition that God exists and rules all things by His providence, and that He has enjoined the human race to observe as laws those dictates of reason which He has Himself promulgated by the force of the innate light.” Friedman might fasten upon the theological element of Locke’s and Pufendorf’s formulations and argue that, if we don’t agree with their theology, we must reject all of what they said about natural law. But the theological claim is by no means a necessary part of their argument, as Hume realized, nor is it relevant to the question at hand, *viz.*, whether claims of right can be grounded on predictions of consequences and the evaluation thereof. Rights claims, for Locke, Pufendorf, Hume, and indeed for all investigators of the natural law, are necessarily justified by the consequences that follow from their general observance. Justice is necessarily contextual: under the normal circumstances of justice, the rules of justice and property yield overall good consequences, but when those circumstances are radically altered, say, in a natural disaster, then those rules of justice and property either do not apply or are modified appropriately. (See the discussion of “the limits of social and political life” in Rasmussen and Den Uyl 1991, 144–151.)
 7. See the neat discussion of this issue in Kelley 1998, especially 65–77.
 8. Cohen is a noted critic of libertarianism. I address directly his ingenious and intricate but erroneous and confused arguments about the relationship between property in one’s person and property in external objects in Palmer 1998.
 9. Cohen (1995, 250) shared (in an essay written “substantially” in 1989 and published in 1995) his thoughts about one of the most murderous, cruel, and vicious regimes in the history of humanity, the USSR. He notes that he had developed over some years “a pretty adverse assessment of the Soviet Union’s claim to be a socialist society. Some people have therefore found it surprising that I should be saddened by what I perceive to be the impending final abandonment of the Bolshevik experiment. . . . It is true that I was heavily critical of the Soviet Union, but the angry little boy who pummels his fa-

ther's chest will not be glad if the old man collapses." In the footnote to the last sentence, he writes,

Those of us on the left who were stern critics of the Soviet Union long before it collapsed needed it to be there to receive our blows. The Soviet Union needed to be there as a defective model so that, with one eye on it, we could construct a better one. It created a non-capitalist mental space in which to think about socialism.

How many tens of millions of innocent people had to die, and how many hundreds of millions had to live lives of daily oppression, so that G. A. Cohen and his comrades could have "a non-capitalist mental space in which to think about socialism"?

10. The insight is of ancient provenance. Compare with Cicero's observation in *De Officiis*:

All men should have this one object, that the benefit of each individual and the benefit of all together should be the same. If anyone arrogates it to himself, all human intercourse will be dissolved. Furthermore, if nature prescribes that one man should want to consider the interests of another, whoever he may be, for the very reason that he is a man, it is necessary, according to the same nature, that what is beneficial to all is something common. If that is so, then we are all constrained by one and the same law of nature; and if that also is true, then we are certainly forbidden by the law of nature from acting violently against another person. The first claim is indeed true; therefore the last is true. (Cicero 1991, 109–10).

11. Friedman seems to have a very primitive understanding of human action. Two motions of a human body may be described identically in purely physical or corporeal terms, but be very different *actions*, nonetheless. Holding a door for a person in a wheelchair may be either an act of politeness, in the case of a freely chosen act, or, if done only under threat of coercion from the "politeness police," an act of simple submission motivated by fear. A purely physicalist understanding of action, which ignores the intentional dimension of human action, misses these distinctions. Friedman's mistaken claim that it is a logical contradiction to affirm a "right to do wrong" indicates that he does not grasp the important difference between freely chosen and coerced acts. Although two such acts may be comprehended under the same physicalist description, they are not the same acts. (See Davidson 1982, especially the essays on "Actions, Reasons, and Causes," "Agency," and "Intending.") P. F. Strawson (1993) neatly explained the related difference between what he called the "participant" attitude and the "objective" attitude and the inability to sustain the "objective" attitude. The "objective" attitude, as Strawson understands it, is incompatible with the very enterprise of moral investigation or action.
12. The importance of self-directedness is neatly considered in Rasmussen and

Den Uyl 1991, especially 73–75 and 93–96. It is also the foundation of the liberalism of Wilhelm von Humboldt (1993), who began his influential defense of liberty (which included a withering attack on what we now identify as the welfare state) as follows:

The true end of Man, or that which is prescribed by the eternal and immutable dictates of reason, and not suggested by vague and transient desires, is the highest and most harmonious development of his powers to a complete and consistent whole. Freedom is the first and indispensable condition which the possibility of such a development presupposes; but there is besides another essential—intimately connected with freedom, it is true—a variety of situations. (Ibid., 10)

As Humboldt argued, a system of several property is a necessary condition for both freedom and a variety of situations.

13. A great many influential writings on individual rights have focused on what the medieval writers termed “dominium,” or self-mastery; to have dominium means that one can be held responsible for one’s choices, and hence that one has a faculty of moral agency that should command respect. Especially good historical treatments of this tradition can be found in the work of Brian Tierney; see, for example, Tierney 1983, 1988, 1989, 1991, and 1998. For the relationship between the concepts of “objective right” (e.g., “the right thing to do”) and “subjective right” (e.g., “my right to do it”) in later scholastic thinking, see also Brett 1997.
14. Compare also the arguments of Benjamin Constant (1988), who considered the exceptional personal freedom (what Constant terms “modern freedom”) of the Athenians an anomaly in the ancient world and attributed this freedom to commerce and several property.
15. Friedman (1997, 421) asserts, *ex cathedra*, that Charles Murray’s “libertarianism is just as vulnerable as Victorianism was to the discovery that people are not, in fact, solely or even largely responsible for their good or ill fortune.” To what momentous “discovery” is Friedman alluding? More to the point, is he asserting that choice is irrelevant to happiness, or that people are not “even largely responsible” for their own well-being or happiness? Surely no reasonable person would deny that one bears no responsibility for one’s birth, nor that good things can happen to bad people and bad things to good; this was hardly a surprise to “the Victorians,” but has been known for some time. In “the words of the Preacher, the son of David, king in Jerusalem,”

Again I saw that under the sun the race is not to the swift, nor the battle to the strong, nor bread to the wise, nor riches to the intelligent, nor favor to the men of skill; but time and chance happeneth to them all. For man does not know his time. Like fish which are taken in an evil net, and like birds which are caught in a snare, so the sons of men are snared at an evil time, when it suddenly falls upon them. (*Ecclesiastes* 9, 11)

Given that everyone (including Charles Murray) acknowledges this, what are we to make of it? Should we deny the very possibility of choice, or use violence to ensure that people do not bear the good or bad consequences of their own actions, or subsidize any foolish choice that one might make? Or should we recognize the cause and effect relationships of the world of facts and "internalize externalities" by means of institutions such as property? For an excellent contrast between a libertarian understanding of these issues and a socialist (or social-democratic) understanding, see Schmidtz and Goodin 1998. It is hard to imagine a reasonable reader reading both sections of that little book and finding Goodin's arguments more convincing than Schmidtz's. But then, some people believe in astrology, witchcraft, and the goodness of the "Bolshevik experiment," and I find that hard to imagine, too.

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