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What Color Tie Do You Vote For?: Or "Is Economic Freedom Part of Liberty"?

A Critique of Milton Friedman's *Capitalism and Freedom*.

Abstract: Milton Friedman, who recently died, made popular the view that "economic freedom is by definition part of freedom". This view has become widely accepted among conservative and libertarian think tanks in the last decades of the twentieth century such as The Heritage Foundation and the Cato Institute. This essay argues that Friedman's formulation, while rhetorically brilliant and seemingly self-evident, is a fundamental misunderstanding of the nature of freedom. Friedman assumes in a free society the bulk of individual choices are left up to the market, and government is simply the umpire of the game. This essay by contrast argues that this formulation misconstrues the nature of freedom. For the very question of freedom is where to place the boundary between markets and government in the first place, i.e., determining the rules of the game versus moves within the game itself.

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Introduction

There is a view that has gained wide- popularity in the last part of the 20th century and early part of the 21st century that "economic freedom is part and parcel of freedom broadly speaking". This view which has entered into mainstream American conservative thinking is most often associated with and popularized by Milton Friedman, the Pulitzer Prize winning economist. In his *Capitalism and Freedom* (1962 [1982])), an extended essay on the relationship of liberty and economic policy, Friedman argues that a free market economic policy is by definition part of freedom. In his words, "…freedom in economic arrangement is itself a component of freedom broadly understood, so economic freedom is an end in itself."[1] This is one of Friedman's central arguments supporting the claim that free market economic policies are critical for a free society.

By implication, then, anyone who is against free market economic policy is against the American values of liberty and the liberal tradition. As Friedman puts it, "Underlying most arguments against the free market is a lack of belief in freedom

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itself."[2] The justification of free market economic policy, then, is not just that it is sound economic policy (although it may be) but that it is part of what we mean by liberty more broadly construed. Those who really believe in a free society must therefore endorse a free market economic policy. Those who do not endorse such an economic policy are not really true liberals and are abandoning key American values of freedom.

The view that "economic freedom is necessarily part and parcel of freedom" has become an important theme and even a kind of rallying cry in conservative political thought in the last part of the twentieth century. Edwin Feulner (1998, xvii) of the conservative Heritage Foundation traces this doctrine of economic freedom as one of the core emerging theses in conservative political thought that began to blossom in the late fifties and sixties. [3] Recently, in a symposium on Friedman's *Capitalism and Freedom* described the work as "one of the most influential arguments for economic liberalism to appear in the second half of the twentieth century."[4] And for his obituary recently the Wall Street Journal called him "the man who made free markets popular again?"[5] Friedman popularized his ideas of economic freedom in the PBS television series *Free to Choose*. The book by that same name, published in 1980, was on the best seller list for five weeks and played a critical role in popularizing the view that economic freedom is part of freedom. Friedman's ideas about liberty have since been promoted and celebrated by many conservative and libertarian think tanks such as the influential Cato Institute, which named a prize after him in 2001.[6] At the policy level Friedman influenced the thinking and policy of President Ronald Regan. In a speech in 1981, President Ronald identified six individuals who influenced his philosophy: They included Milton Friedman. Friedman was appointed by Reagan in 1981 to the president's Economic Policy Advisory Board in 1981.

Friedman, of course, was not the first or only writer to articulate the notion that freedom implied a laissez faire approach to economic policy. Similar views were developed earlier by F. A. Hayek, another Pulitzer Prize winning economist, whose earlier writings influenced Friedman and the policies of Prime Minister Margaret Thatcher and President Regan.[7] Quite similar views have been espoused more recently by Richard Epstein, a conservative legal philosopher whose writings have apparently influenced some members of the Supreme Court.[8] Hayek, Friedman and Epstein have argued that those who wanted restrictions on the market are not true liberals or the true inheritors of the liberal tradition. In their view, the only true liberals are those who want to restrict government control and expand the markets.

Is Economic Freedom Part of Freedom?

But is Friedman's view correct? Is one abandoning the values of liberty if one does not endorse "economic freedom?" Rhetorically, Friedman's statement is a masterpiece and we have to give credit for the almost seeming self-evidence of the statement. If you are against economic freedom you obviously are not for freedom in general. Isn't that so?

But if one digs underneath the rhetoric there is an exasperating looseness of thinking and even a sleight of hand. The formulation "economic freedom is part of freedom" relies on an overly simplistic and unexamined conception of freedom. But it matters a great deal what we mean by "freedom" and "economic freedom" in the first place. In his essay, Friedman did not examine the concept of freedom in any great detail,

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neither where it came from, how it developed or what it means. He assumed that the idea of freedom is relatively self-evident and unproblematic, which in fact it is not. By leaving the concept of freedom unexamined, Friedman is able to sidestep a number of troubling questions that throw doubt on his argument.

Perhaps we should excuse Friedman for not spending much time thinking about the meaning and justification of the liberty concept since Friedman was an economist and not a moral philosopher. And yet Friedman's thesis in *Freedom and Capitalism* was not that of an economist alone. His thesis was about the meaning of freedom and its relationship to capitalism. Friedman was arguing not that free market economic policies were the best policies in economic terms, but that his economic policies were inherent in what American's should define to be freedom.

Friedman was writing, not only as an economist, but as a moralist and an interpreter of American freedom and liberty. He was giving us a definition of what a free society should be like. We should wonder about this impulse of economists like Friedman and Hayek to theorize and write about the meaning of freedom and liberty. Why should economists be taken as the moral authority on what freedom and liberty mean? Are they our new priests? Indeed, Friedman is tipping his hand to a secret about economics as a discipline: economic policies are not value-neutral science. They are public policy and have an implication for American values and commitments whatever the particular economic policy that is adopted. Adopting an economic policy is not simply taking the best of economic science. It is adopting a world view, with a set of assumptions about values. Since economics always embodies a social policy and a set of values, we should not accept the pronouncements of economists necessarily without debating the moral values embodied in those pronouncements. And we should at least debate whether freedom necessarily includes "free economic arrangements."

Friedman does not really unpack the meaning of his statement that "economic freedom is part of freedom" in great detail, and we have to try to infer what he means by comments he makes subsequently. One way to clarify what Friedman means is to consider how his claim relates to the more familiar definition of freedom as the right to "life, liberty and property."[9] Presumably Friedman is claiming more than the fact that "freedom includes the right to own and dispose of one's property and one's labor." Such a claim would seem non-controversial and uninteresting since most thinkers in the liberal tradition since at least John Locke have thought that entitlements to property and one's own labor are included in liberty. So what exactly is Friedman trying to add to this familiar conception of liberty? We can perhaps try to answer this question by looking at the examples Friedman gives of government rules that violate economic freedom:

As examples, Friedman lists the following scenarios that violate economic freedom: 1) having to pay 10% of your income for social security, 2) not being allowed to follow an occupation of your own choice without professional licensure 3) being forbidden to exchange some of your goods for a watch from a Swiss person due to quotas that prevent such exchanges, 4) being thrown in jail for selling Alka Seltzer at a price below that set by the manufacturer under so-called fair trade laws and 5) the farmer who cannot grow the amount of wheat he wants.

The list is intended to dramatize the way in which our liberal society of has veered off course away from a free society by restricting economic freedom. [10] These kinds of freedoms need special emphasis, Friedman writes, because "intellectuals in

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particular have a strong bias against regarding this aspect of freedom as important".[11] At the end of this list, Friedman reiterates his claim that "Clearly economic freedom, in and of itself, is an extremely important part of total freedom."

Based on this list of examples, we might say that Friedman is offering an interpretation of the liberal's standard definition of freedom as "the entitlement to property and to the ownership of one's labor". Although Friedman does not put it this way, he can be understood as arguing that the right of labor and property should be broadly construed. Government should not be able to tell you how to spend your money, dispose of your goods, or how you should labor (occupation). When government makes laws like these, it violates your individual freedom, your entitlement to property and labor. So now we have at least one way of understanding Friedman's claim that "clearly economic freedom, in and of itself, is an extremely important part of total freedom."

What does "life, liberty and property mean?"

Is Friedman's understanding the only way to interpret the entitlement to "life, liberty, and property"? And if not, why should Friedman's interpretation be preferred? Why should his interpretation count as the only true interpretation of freedom? When we frame the discussion this way, we move beyond Friedman's rhetorical "economic freedom is part of freedom" to a substantive and interesting argument about what is included in the entitlement to life, liberty and property and by what values and mechanisms do we decide. For if there is another way of understanding those elements of freedom then the simple conclusion that "economic liberty is part of liberty" is unrefined and inadequate. Indeed, the real question is what is included in the entitlement and how do we know. This way of looking at the question of freedom is quite different and undermines Friedman's simple distinction between those who believe in economic freedom and those who don't. The progressive liberal thus retorts to Friedman and says "of course we have a right to economic freedom. But what is contained within that entitlement and how do we decide? That is the more interesting question."

If we probe Friedman's examples of freedom violations in more detail, we find that there are indeed a number of troubling questions of this sort that need to be sorted out. Let's start with Friedman's example of a mandatory 10% tax on income for a social security retirement plan. Presumably Friedman views such a rule as violating my right to dispose of my income as I see fit. It is thus violating my right to both my property and the ownership of my labor. I should be able to decide where to invest my income and how to provide for my own long term financial future. Indeed, with that ten percent of my income I might be able to realize a much greater return from personal investments than the returned promised by social security.

But how large is this entitlement or right to dispose of my income? Does it mean that the government has no right to tax me whatsoever and that anything that I earn is my property? Even the early formulators of freedom, such as John Locke, recognized that society had a right to tax.[12] Indeed, if we go back to Locke, who presumably figures as "a real liberal" even in Friedman's mind, Locke was very much cognizant of the fact that we have to "give up freedom to have freedom." Locke understood the paradox that when we come together in society we have to live within social institutions and thus renounce some of our freedoms for the larger benefit of society. As Locke put it,

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> For being now in a new State [ie the state of society instead of the state of Nature], wherein he is to enjoy many Conveniences, from the labour, assistance, and society of others in the same Community, as well as protection from its whole strength, he is to part also with as much of his natural liberty in providing for himself, as the good, prosperity, and safety of the Society shall require:, which is not only necessary but just; since the other Members of Society do the like.
>
> But though Men when they enter into society give up the Equality, Liberty, and Executive Power they had in the State of Nature, into the hands of the Society…yet it being only with an intention in every one the better to preserve himself, his Liberty and Property" [13]

Though Locke was one of the most influential early thinkers in defining the right to property, he nonetheless also argues that government had a right to tax people and did not regard the right to property as incompatible with government's entitlement to tax. "'Tis true, Governments cannot be supported without great Charge, and 'tis fit every one who enjoys his share of the Protection, should pay out of his Estate his proportion for the maintenance of it. But still it must be with his own Consent, ie. the Consent of the Majority… [14] So too the American founders recognized the right of government to exercise taxes and codified this in the American Constitution. Article I, Section 2, regarding the role of Congress states that "representative and direct Taxes shall be apportioned among the several states…" [15] The tradition of liberty, then, has recognized the right of government to tax individuals and does not see this power as incompatible with freedom. Even Friedman himself, the defender of economic freedom, recognized the need for taxes. While Friedman thought taxes needed restructuring and preferred a flat tax to a scaled income tax, he never argued that taxes should be abolished.[16]

But how does Friedman make sense of taxes at all? Why is a flat tax not a violation of an individual's right to dispose of his property or income as he or she sees fit? From the individual's perspective a flat tax is not self-evidently any less intrusive than a 10% tax for social security. Both would seem to be intrusions on an individual's freedom and on the right to own the fruit of one's labor. Why, then, is one a violation of freedom but not the other? Or to ask the question another way, how does Friedman draw a line between types of economic restrictions which he considers permissible and those who he considers a violation of an individual's freedom? We shall have to look elsewhere in Friedman's essay to infer how he might want to answer this question. When he first lists examples of laws that infringe economic freedom, he does not even hint that there is a line to be drawn between economic restrictions that are valid and those that are not. . Instead he castigates liberals for caring more about general liberties than economic liberties. "…economic freedom needs special emphasis because intellectuals in particular have a strong bias against regarding this aspect of freedom as important. They tend to express contempt for what they regard as material aspects of life and to regard their own pursuit of allegedly higher values as on a different plane of significance and as deserving of special attention."[17]

But we now see that the issue is more complex than the way Friedman initially frames it. It is not really adequate to say that "economic freedom is part of freedom." That formulation is so vague as to miss the important and more difficult question. The real question is how do we decide what should count as economic freedom in the first place? What should be included in the right of property and right

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to own one's labor and how do we decide? Why should taxes be compatible with freedom but not a 10% tax for social security? Friedman's statement that "underlying most arguments against the free market is a lack of belief in freedom itself" is clearly rhetorically brilliant but absolutely misleading as an understanding of what the problem of freedom is in a liberal society.

We can raise a similar set of questions about the other examples on Friedman's list. Take for example Friedman's example of the American who is not permitted to trade personal goods for a Swiss watch because of American quotas. How can a government in a free society tell a person they can't trade their own goods with a person in another country? But if we agree with Friedman on this specific example, does that mean that governments are never able to prohibit any kind of exchanges? Of course not. Should we let a man give personal goods to a seven year old child in exchange for sexual favors? Most people would presumably say "no" and might appeal to the need to protect the child or to some notion of social welfare. That adult's behavior then is not protected in the entitlement to property because another value is regarded as more important. The protection of the child "trumps" an adult's entitlement to dispose of property. Property is an entitlement *within certain constraints and conditions.* The only way of distinguishing the case of the watch and the case of the pedophile is by invoking a set of values and meanings that put one into the category "a violation of freedom" and the other into the category "offence to society". There is nothing different in the nature of ownership between the two cases. Both have property they want to dispose of as they see fit. In one case, we might allow it and another case not. And so we see that there is a set of values that get invoked to differentiate an act that constitutes a crime from one that is part of our freedom.

Freedom Does Not Mean Total Freedom

What we have discovered, of course, is that freedom never meant "total freedom" or "absolute license."[18] Already in the writings of John Locke, freedom was understood paradoxically as a set of constraints that made freedom possible. One gives up certain rights to achieve freedom. Indeed, the very nature of social life and of law itself involves restrictions on "absolute freedom." And that is because my actions always have effects and never take place in a vacuum. And my actions have to be limited by protections of your entitlements. What I do can affect you and what you do affects me. To cite the most obvious example, if I want to murder or steal I can't do so, because those acts infringe on your right to life and property. Nor can I buy a human being because we believe each person has a right not to be enslaved. Freedom from slavery for me means limitation of your right to buy me. My freedom and entitlement to life is thus created out limitation of other individuals' power through law. We sacrifice our theoretical "unlimited" freedom for security of law and society. Moreover, we have countless uncontroversial laws that limit our freedom: the fact that we have to drive under a speed limit or drive on a certain side of the road. Law is by definition a set of restrictions on "absolute freedom" in order to protect others from harm or to protect their entitlements to life, liberty and property.

Friedman is clearly aware of this aspect of freedom. "Men's freedoms can conflict, and when they do, one man's freedom must be limited to preserve another's—as a Supreme Court Justice once put it, 'My freedom to move my fist must be limited by the proximity of your chin.' The major problem in deciding the appropriate activities of government is how to resolve such conflict among the freedoms of different

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individuals.[19] "The need for government in these respects arises because absolute freedom is impossible. However attractive anarchy may be a philosophy, it is not feasible in a world of imperfect men." [20] Friedman acknowledges that there is still an important role of government to make the rules and act as umpire. "The existence of a free market does not of course eliminate the need for government. On the contrary, government is essential both as a forum for determining the 'rules of the game' and as an umpire to interpret and enforce the rules decided on. What the market does is to reduce greatly the range of issues that must be decided through political means, and thereby to minimize the extent to which government need participate directly in the game."[21]

Like all theorists of freedom, we see that Friedman must meet the burden of providing a theory of how to draw a line between laws that make freedom possible and laws that are too limiting, between his flat taxes, on the one hand, and the 10% tax on income for social security, on the other, between the seller of the watch and the pedophile. So what does Friedman use to draw the line? What values does he invoke?

The Market Defines Liberty in Friedman

Friedman argues that the market, more than democracy, is a better mechanism for creating freedom. Why so? The market according to Friedman allows better proportional representation than democratic processes. Reiterating and extending a view of the market familiar from the time of Adam Smith, Friedman says "The market allows the voluntary exchange of goods between individuals without coercion" "Exchange can therefore bring about co-ordination without coercion."[22] Hence, "no exchange will take place unless both parties do benefit from it. Co-operation is thereby achieved without coercion".[23] "So long as effective freedom of exchange is maintained, the central feature of the market organization of economic activity is that it presents one person from interfering with another in respect of most of his activities."[24] The market thus "gives people what they want instead of what a particular group thinks they ought to want."[25]

> The great advantage of the market… is that it permits wide diversity. It is, in political terms, a system of proportional representation. Each man can vote, as it were, for the color of the tie he wants and get it; he does not have to see what color the majority wants and then, if he is in the minority, submit. It is this feature of the market that we refer to when we say that he market provides economic freedom. [26]

In contrast to the market which encourages diversity, Friedman says that government enforces conformity. "In politics, contentious decisions come down to a vote and then the political process follows a majority or a two-thirds vote. The political process then imposes a view of the majority on the minority. In this way, democratic political process allows less freedom than the market."[27] For this reason, Friedman wants to maximize the role of the market and minimize the role of government. Friedman acknowledges that the market does not eliminate the need for government. Government is essential both as a forum for determining the "rules of the game" and as an umpire to interpret and enforce the rules decided on. But "the characteristic feature of action through political channels is that it tends to

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require or enforce substantial conformity" "The typical issue must be decided by a yes or no." [28]

We see that Friedman's theory of government and the market underlies how he draws that line between what the government should touch and what it should not touch. "The wider the range of activities covered by the market, the fewer are the issues on which explicitly political decisions are required and hence on which it is necessary to achieve agreement."[29] We'll raise some serious doubts about how Friedman conceptualizes the difference between markets and government in a moment. But before we do that, we now see how overly simplistic is Friedman's initial claim that "economic freedom is part of freedom" and that "Underlying most arguments against the free market is a lack of belief in freedom itself." These statements really say nothing at all unless you know the theory of market and government behind Friedman's definition of economic freedom.

Defining the Boundary of Markets and Government is Part of Freedom

Now that we have dug beneath the rhetoric we know that Friedman is really saying that "You are against freedom if you disagree with my theory of government and markets." Such a claim certainly sounds suspicious for someone who is supposedly defending a diversity of values in the market place. Surely freedom should involve precisely the question of debating what the boundaries between government and markets should be. And surely that very boundary between government and market should be subject to debate and discussion? If there is a diversity of views and values shouldn't those at least shape and influence the debate about what role government and markets should play in our lives? And if the debate goes the other way, and Friedman's view of the market and government is debated and rejected, does that mean the laws adopted are more limiting of freedom? On the contrary, the argument about how to draw the line between government and free markets would seem to be precisely the kind of issue that one wants to debate in a free society. And it is in fact precisely the kind of issue we will want to decide by government and democratic process, precisely the process that Friedman calls "coercive." When Freidman says that "economic freedom is part of freedom" what he really means is that there is only one view (his view) of the relationship of the market and government that is an acceptable definition of freedom. But his assumption that freedom isn't a big enough category to include variations on the relationship of market and government is problematic. Freedom includes living in a society that enables me to have a vote on where to draw the line between government and markets. For an economist to decide for me, without my voting for a particular boundary, is precisely to deny me my freedom. Even if I am wrong about economic policy, freedom gives me the right to vote for an economic policy.

Let's deepen this critique by looking now at Friedman's problematic distinction between markets and government. As we have seen, Friedman argues that the market is essentially a free exchange between individuals, whereas government is essentially a coercive process that imposes the will of majority on the minority. Friedman therefore concludes that the role of government should be minimized and the role of the market should be maximized. But Friedman recognizes that government is still required for some critical decisions:

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> There are clearly some matters with respect to which effective proportional representation is impossible. I cannot get the amount of national defense I want and you, a different amount. With respect to such indivisible matters we can discuss, and argue, and vote. But having decided, we must conform. It is precisely the existence of indivisible matters—protection of the individual and the nation from coercion are clearly the most basic—that prevents exclusive reliance on individual action through the market. If we are to use some of our resources for such indivisible items, we must employ political channels to reconcile differences.[30]

In Friedman's thinking, then, we should let government deal with "indivisible matters" where we must achieve consensus, such as basic things as defense. But even if we accept this boundary between the market and government, it is not yet clear how we make the decision of what is a so-called "indivisible" matter that needs consensus. By what criteria do we figure that out? Isn't the very question of what needs consensus a values-based decision? How do I know for example that a flat tax counts as a matter that government should control whereas a tax for social security does not. By what criteria do we differentiate the two? Or to take other examples from Friedman's later chapters, why should government be involved in one kind of monetary control but not another, or why should government not be involved in licensing professions or setting safety standards. Friedman does not say how we figure out what is "indivisible," and thus has not really answered or even clearly defined the hardest question of freedom: by what values do we make the decisions of what counts as a government matter and what counts as a matter for the market.

"The great advantage of the market" Friedman says "is that it permits wide diversity. It is, in political terms, a system of proportional representation. Each man can vote, as it were, for the color of the tie he wants and get it; he does not have to see what color the majority wants and then, if he is in the minority, submit. It is this feature of the market that we refer to when we say that he market provides economic freedom." [31] But while most of us can readily accept that people should be able to vote for the color of their ties, it is another matter whether we should let people buy and sell based on the color of a person's skin. Yet Friedman argues that we should use the market to let people vote for skin color preference as well. This is because Friedman sees no difference between these two types of activities: "It is hard to see that discrimination can have any meaning other than a "taste" of others that one does not share. We do not regard it as 'discrimination'—or at least not in the same invidious sense—if an individual is wiling to pay a higher price to listen to one singer than to another…The difference between the two cases is that in the one case we share the taste, and in the other case we do not." But it is surely arguable that voting for tie color, or a singer's voice, and voting for skin color are very different types of votes with different potential consequences. A black tie is not harmed if people don't vote for black, but a black man or woman can be harmed. It is not that Friedman is for discrimination but rather that he thinks the market is the most effective mechanism to eliminate discrimination. A person who discriminates has to pay a higher price for such behavior in the market. That point, however, is debatable and of serious consequence for the individuals involved. Given its potential to cause harm, why wouldn't skin color fall into the category of issues that should be decided by the political process, what Friedman calls "indivisible" matters? Isn't the issue of freedom precisely how we decide what goes into which bucket? What is a matter for consensus and subject to law versus a matter that we are willing to leave to the market?

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Markets Themselves Rest on Law

But there is an even deeper and more subtle mistake in Friedman's depiction of the difference between the market and government. Friedman argues that the market represents voluntary exchange but that government represents forced conformity. What this formulation minimizes is that the market only comes into being by being founded on laws that government has already defined. In other words, the perceived freedom of the market and tolerance of diversity is not the product of free markets per se. It is the benefit and consequence of agreements that make the market possible in the first place. And those agreements are embodied in the law that arises out of the democratic process. The very fact that people can exchange goods in the market place presupposes that there are contracts, notions of property, enforcement systems for violations and so forth. Friedman knows this. "First the scope of government must be limited. Its major function must be to protect our freedom both from enemies outside our gates and from our fellow citizens: to preserve law and order, to enforce contracts, to foster competitive markets." [32] Indeed, as Friedman himself notes, even the most basic concept of what is property is something that has to be settled by government.

> An area where government has to be involved is definition of property right. The notion of property, as it has developed over centuries and as it is embodied in our legal codes, has become so much a part of us that we tend to take it for granted, and fail to recognize the extent to which just what constitutes property and what rights the ownership of property confers are complex social creations rather than self-evident propositions. Does my having title to land, for example, and my freedom to use my property as I wish, permit me to deny to someone else the right to fly over my land in his airplane? Or does his right to use his airplane take precedence? Or does this depend on how high he flies? Or how much noise he makes. Does voluntary exchange require that he pay me for the privilege of flying over my land? Or that I must I pay him to refrain from flying over it? …[33]

So what makes freedom possible in the market is the very political process that Friedman defines as enforcing conformity. It is not the market by itself that makes freedom possible. It is the market sitting on top of a set of rules about contracts and property and a consensus achieved out of a political process.

Friedman recognizes this fact but not the full implications for his argument: The freedom of the market is an output and consequence of the very political process that he defines as coercive. It is the underlying consensus about a framework that makes freedom possible in the first place. The market doesn't somehow contain freedom on its own, the way Friedman portrays. The freedom of the market emerges out of the set of rules that govern it. Friedman's own description of government's role recognizes this fact: As he describes it, government is the umpire and creator of the rules. Without a set of rules that are agreed to and settled ahead of time, we can't play the game. It is the political process underneath the market that makes freedom possible. The market itself is very much an effect of freedom, rather than a cause, the way Friedman implies.

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Social Life and the Rules of the Game

The analogy of social life to a game with an umpire is problematic in some ways discussed below. But let's stay with Friedman's analogy for a moment. When we sit down to play chess or when we play baseball, does it really make sense to say that at those moments we are maximizing our freedom? The chess player is free to move pieces to be sure, but only within a set of rules that define the boundaries of freedom. When he or she sits down to play, there is tacit agreement that our freedom to make moves is constrained within a recognized and agreed set of laws. The ball player is free to bunt or swing for the fences, but not to use a metal bat.

There is something puzzling, then, in saying that the freedom of the player is contained in their being able to make moves in the game. This is the mistake that Friedman makes in saying that the market is the place of freedom. I'm as free in the market as the chess player sitting in front of the board. My rook still can't move in diagonal lines but that is fine with me. I agree to play the game by the rules that are established. My freedom therefore is not contained exclusively in the moves I make on the chess board *but also in the fact that I agreed to sit down to play chess in the first place*. Freedom in game playing would then seem to be of two sorts: the freedom to make the moves I want (the kind Friedman talks about) and the freedom to choose the game we play or to make the rules of the game itself, a level of freedom that Friedman overlooks.

For this reason, there is also something odd about Friedman's contention that we maximize freedom by minimizing the role of the umpire (government) and maximizing the role of the market. Do the number of rules of the game affect our freedom when we play? Would chess be a better game or a more free game with fewer rules? Obviously not. The number and kind of rules affect the *type of game* we are playing and whether we enjoy it and want to play again. They do not affect our experience of freedom that we have once we make the decision to play. In his analogy, Friedman apparently does not take seriously enough this constitutive role for the underlying rules of the game and by underplaying it he misconstrues the relationship of the market and government as well.

Government laws shape the nature of the game that we play in the market. Adding new rules or changing the rules does not mean that we somehow lose all our freedom in the market or in the way we manage exchanges. [34] There can be multiple market games that are all compatible with freedom. Indeed, the key issue for the game is its predictability, our agreement beforehand to play by the same rules. Indeed, it is arguable that predictability of law is the core issue in the liberal tradition of freedom. [35]

Government laws provide a background against which we exercise our exchanges and the adjusting of the rules is the mechanism that shapes that experience and the game of the market. Reducing the number of government rules related to the market does not necessarily mean that our freedom gets bigger; it means rather that we are choosing to play a different game. We are opting for checkers over chess. We are not more or less free when we play one game versus the other. Indeed, many people would opt to play chess over checkers even though it has more rules because they think it is a more interesting game. The same is true of social life. Having more social rules does not necessarily mean we are less free. It means only that we have chosen a different game to play.

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Ultimately, of course, the analogy of a game to social life starts to fall apart. The nature of a game is that we play it for fun or entertainment. But the effects of the market can be much more damaging and our engagements in the market are much more serious and consequential. I can always stop playing a game if I don't like it. But it is very hard to quit the market. My livelihood depends on my finding a job and selling my labor. And it is difficult not to depend on the markets of today for food and goods. I can not easily opt out of the market altogether. [36]

Due to the pervasiveness and all-encompassing nature of the market, and the difficulty of saying, "I don't want to play", the underlying rules of the market are much more serious in real life than in games. Since the market is the mandatory framework in which we live, our freedom should include the right to define the nature of the rules of the market. If I have to play, I should have some say in the rules that define the game. And that is what government allows us to do. It is not just "indivisible" matters that government should weigh in on, as it were. For the very question is what should be in the founding rules of the game to begin with. Government is the mechanism by which we settle the rules of the game. And what constitutes the constitutive framework is precisely a question that only the political process can answer. Voting for the color of a tie is much less serious than letting the market decide how skin color is handled or other kinds of harms.

We started with Friedman's contention that "freedom in economic arrangement is itself a component of freedom broadly understood," and that "economic freedom is an end in itself". Though sounding self-evidently true, and though accepted as dogma in conservative and libertarian philosophical circles, we have now seen just how enormously simplistic this claim really is. What lies behind it is really the contention that we should adopt a particular view of the relationship of the market and government and that if we don't adopt that view we are rejecting freedom. But what we have found is that the very question of what constitutes a boundary between the market and government is precisely a question that should be settled by debate and a political process in a free society. It should not be left up to economists to tell us where the boundary should fall. The boundary between what are "rules of the game" and what is "a move in the game" is precisely the kind of question that should be settled by debate and values in a political process. It is flat out wrong to say that "Underlying most arguments against the free market is a lack of belief in freedom itself." The question of where the boundary lies between government and markets is precisely the place where we would expect debates about freedom to occur as people argue about what kind of game they want to play. To miss that point is to miss the nature of freedom in a free society. We would say in contrast to Friedman that "Underlying most arguments *for* a free market is a mistaken assumption that free markets and freedom are one and the same thing." They are not. The degree of the market's freedom is always a question within a free society. But there are many gradations of free markets and there can be multiple ways to draw the line between government and the market and all of them can comfortably sit under the rubric of a free society.

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[1] Friedman, *Capitalism*, 8.

[2] Friedman, *Capitalism*, 15.

[3] See Edwin Feulner, 1998, xvii. See also The Heritage Foundation obituary calling Friedman "The Father of Economic Freedom." http://www.heritage.org/Research/TradeandForeignAid/wm1259.cfm

[4] Wynne (2003, 1)

[5] "Capitalism and Friedman." 2006. In *The Wall Street Journal*. Review and Outlook section. Editorial Published online. November 17. http://www.opinionjournal.com/editorial/feature.html?id=110009260)

[6] See www.cato.org/friedman. Other members of the Cato Institute refer to similar views as "market liberalism There are a host of other think tanks and organizations that either explicitly or implicitly refer to Friedman's ideas. See also for example the libertarian journal Liberty (http://www.libertyunbound.com/) which quotes Milton Friedman on its home page.

[7] Hayek wrote his original Road to Serfdom in the 1940's in a very different context than Friedman wrote *Freedom and Capitalism*. Both men's works were to have an important impact on conservative thought in during the Regan era and following.

[8] See for example the series of books by Epstein (1998, 1995, 2003).

[9] A right or entitlement to "life, liberty, and property" is the standard way of summarizing the meaning of freedom and liberty in the liberal tradition, although the list of rights included in liberty vary among writers and even within the same writer. We shall explore this variation in another essay later. Locke, for example, has several variations on the definition of freedom in his Second Treatise on Government. The first time Locke describes the state of liberty in the state of Nature he describes it as the law that "that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions;…" (II: 6) The reference to health here is intriguing and possibly significant and often ignored in other formulations. Locke refers to the more traditional "life, liberty and property" in describing the limits on the legislator. When people leave the state of Nature, they can only turn over to legislative the power that they themselves have in the state of nature. "For nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, cannot subject himself to the arbitrary power of another; and having, in the state of Nature, no arbitrary power over the life, liberty, or possession of another, but only so much as the law of Nature gave him for the preservation of himself and the rest of mankind, this is all he doth, or can give up to the commonwealth, and by it to the legislative power, so that the legislative can have no more than this. (XI 136, p. 358). Slightly later he uses a slightly different formulation. "men would not quit the freedom of the state of Nature for, and tie themselves up under, were it not to preserve their Lives, Liberties, and Fortunes; and by *stated Rules* of **right and property** to secure their Peace and Quiet (XI: 137, p. 359).

Locke's views made their way into the writings and thinking of early American writers via the English pamphleteers (See Bailyn). In the Virginia Constitution written before the Declaration of Independence George Mason describes liberty this way: "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." It was this formulation that Jefferson had in front of him when he drafted his famous formulation is the Declaration of Independence "*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life,*

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Liberty and the pursuit of Happiness" Most commentators don't believe that Jefferson's elimination of property meant that he was minimizing property as a right (See Meier). Interesting combinations and blends of the Mason and Jefferson versions appear in the State constitutions that are written between the Declaration of Independence and the writing of American Constitution. Interestingly enough the American Constitution says very little about freedom explicitly until the Bill of Rights and several amendments. George Mason refused to sign the Constitution because it lacked a preamble that described rights. But the Federalist papers and other writings before and leading up to the Constitution make it clear that the document was understood to be an embodiment or execution of a notion of rights. The preamble clearly designates the document as intended to "secure the blessings of Liberty." Still the Constitution was only approved by the states with the expectation that a Bill of Rights would follow shortly, as it did in 1791. Not until the Bill of Right is an explicit mention made to the protection of "life, liberty, or property" (Amendment V 1791). But even in the Bill of Rights there is nothing like a general declaration of rights such as made in the State Constitutions or in Jefferson's Declaration of Independence. For discussion of how the Bill of Rights entered the Constitution and debates about its relevance and importance see Amar and Maier).

[10] While this list was clearly targeted to specific examples at the time Friedman initially wrote the book in 1962, Friedman and his devotees still think the overall message about economic freedom is still pertinent. In 2003, Friedman wrote that his overall argument was still relevant, "While the main thesis of Free to Choose has become conventional wisdom, conventional practice, at least in the West, has not changed. Political leaders who cheer the collapse of socialism in other countries continue to favor socialist solutions in their own." Friedman (2003, vii-viii).

[11] Friedman, *Capitalism*, 8.

[12] See Locke (XI:140, 362). All references to Locke refer to the edition of the Second Treatise as printed in Peter Laslett (1988).

[13] Locke IX: 130-131, 353-54

[14]Locke XI:140, 362.

[15] See Amar, *America's Constitution*, 480 and his discussion on Congressional taxes and the subsequent amendment on taxes (106-107, 405-409). "Thus, only a decade after they [i.e., the American revolutionaries] revolted against imperial taxes, Americans were being asked to authorize a sweeping regime of continental taxes, with the decisive difference that these new taxes would be decided on by public servants chosen by the American people themselves—taxation *with* representation.

[16] Friedman, *Capitalism*, 172-173, 198.

[17] Friedman, *Capitalism*, 8.
[18] Dworkin, 1978, 268-278, thinks this issue is so important that he argues that there is no right to freedom at all.

[19] Friedman, Capitalism, 26.

[20] Friedman, Capitalism, 25.

[21] Friedman, Capitalism, 15.

[22] Friedman, Capitalism, 13.

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[23] Friedman, Capitalism, 13.

[24] Friedman, Capitalism, 14.

[25] Friedman, Capitalism, 15.

[26] Friedman, Capitalism, 15.

[27] Friedman, Capitalism, 15.

[28] Friedman, Capitalism, 15.

[29] Friedman, Capitalism, 24.

[30] Friedman, Capitalism, 23.

[31] Friedman, Captitalism, 15.

[32] Friedman, Capitalism, 2.

[33] Friedman, Capitalism, 26.

[34] Friedman like other conservative theorists writes as if there is a stark choice between "freedom" and socialism". But in fact freedom can coexist with many different political forms. There can be many relationships between democracy and markets that all fall under the rubric of a free society. The difference between these forms is not between a society which is free and not free, but between types of free societies. The difference then is not one of freedom but of other values that shape that particular version of a free society.

[35] In various places in his Second Treatise, Locke stresses the importance of predictability of laws and contrasts this to the unpredictability of the monarch's will (XI:136, 137, pp. 359-360).

[36] See Sunstein 1997, 13-31 on preferences being shaped by the market.

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