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The Freedom Not to Act

Milton Friedman[†]

Editor's Note: The Good Samaritan Paradox poses the question of whether someone has the freedom not to rescue another person. This fundamental question, addressed by Nobel laureate Milton Friedman nearly 40 years ago, is more than a matter of political theory or moral philosophy, for the core question being debated in antitrust law, intellectual property law, and the regulation of network industries since the early 1990s has been the extent of a firm's duty to assist its rivals (or others) by sharing its proprietary assets, especially its inventions and information in industries subject to rapid technological change. The following exchange occurred between Professor Friedman and a student, J. Gregory Sidak, on February 9, 1978 at Stanford Law School, during the question period following Professor Friedman's lecture, *The Role of Government in a Free Society*.*

J. GREGORY SIDAK: One of the types of freedom that was implicit in your talk was the freedom for an individual not to act as well as the freedom for an individual to act. And this, in light of your discussion of externalities and market failure, reminded me of the problem in law that's called the nonfeasance-misfeasance distinction. The typical example is the Good Samaritan Paradox. And that simply is, if I'm walking alone on a beach, and I look out in the water and there's somebody drowning, does society have the right to impose upon me the duty to rescue that person in the water? In other words, am I no longer free not to act?

And so the question I'd like to ask you, Professor Friedman, is, Under what circumstances may government in a free society impose upon an individual a duty to act?

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* To view the video recording of this exchange, see DVD: Lecture 4 – The Role of Government in a Free Society 1:14:30 (Harcourt Brace Jovanovich 1978), http://www.freetochoose.tv/program.php?id=mfs_4&series=mfs, excerpted by Liberty Pen, *Milton Friedman – Freedom Not to Act*, YOUTUBE (Mar. 14, 2011), <https://www.youtube.com/watch?v=q84y08nu74I>.

MILTON FRIEDMAN: Note the shift you've made. You started with society and ended up with government. Are those synonymous?

J. GREGORY SIDAK: That's a rhetorical question that has an implied answer.

MILTON FRIEDMAN: It sure does. Let's go back. Let's go back. Because what you're really asking is a very fundamental question, and we can leave aside the legal aspects of it. The real question is, what's the case for believing in freedom? In particular, is a man free to sin? Because this is what you're really saying: If I see you about to sin, am I free to let you sin?

If I know that you're sinning, the answer is no. The justification for freedom is that we don't know. And who are we to judge for our fellow man? Humility—the belief that, after all, I can try to persuade you, but I can't force you—must ultimately rest on the recognition of the limitations of our knowledge. We don't say that there isn't such a thing as sin. All we say is we can't be sure we're right when we think it.

Now you see this man walking on the beach. Do I—how can anybody force him to go out and rescue that fellow? And is it right to force him? You know, that's a problem, and it's not easy to face—what we want to do.

We want freedom, in my opinion, first, because we cannot know—we can never be sure we're right—and therefore we have no right to force our views on other people; and second, because the thing that's really important is the individual's own values and his own beliefs. If you're not free to sin, then neither are you free to be virtuous. Virtue is a meaningless concept unless an individual has a free will to choose between one act and another.

You and I might think very, very well of that individual if he jumped in and tried to rescue the man sinking. And we will impose that value on him through the social process whereby we construct values and transmit them to one another. A good society will certainly be one in which people in that position will be strongly inclined to move out and try to rescue the man. But that's a very different question from saying that, if the society is bad, we can make it good by using force to drive him out there to bring the other man in.

I'm not sure that's an answer to your legal question, but it's an answer, I think, to the moral question.