

STATELESS SOCIETY: FRECH ON ROTHBARD

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Various members of the academic community have attempted to attack Murray Rothbard's political and economic theories. One attempt made by H. E. Frech III in "The Public Choice Theory of Murray N. Rothbard, A Modern Anarchist" is quite disappointing in that it deals very superficially with many important areas of Rothbard's work. This paper, however, will examine only one of Frech's perfunctory criticisms — his charge that Rothbard's theory of the stateless society is self-contradictory. The reasonableness of Frech's arguments will be determined.

The criticism which Frech levels against Rothbard's exposition of the stateless society is that of self-contradiction. Frech states that according to Rothbard, "A single, ultimate arbiter of conflicts (e.g. the U.S. Supreme Court) is considered non-essential".¹¹ Frech replies: "However, as we shall see, Rothbard's own model of a voluntary society contains such a final arbiter."¹² Frech contends that Rothbard's implicit assumption of a final arbiter underlies his entire discussion of anarcho-capitalist society. Its final arbiter is the collection of individuals that comprise the society.

Rothbard's own statements appear to lend credence to Frech's criticism. In explaining the operation of a free market nonmonopolistic judiciary, Rothbard maintains that when the courts rule according to the established procedure, the resultant decisions "... may 'then be taken *by the society* (italics added) as binding".¹² Frech infers that since society must accept both the procedure and the decision for them to be binding, society is the ultimate arbiter in anarcho-capitalism. This is an incorrect inference, however, since Rothbard's statement is quoted out of context.

The arbiters about which Rothbard writes are

not the existentially ultimate arbiters — that is, the people who compose the society — but the institutional arbiters — the free market courts. Rothbard contrasts the free market judiciary's decision procedure with the state judiciary's decision procedure. In the free market, two decisions pronounced by competing courts could constitute the accepted legal cutoff point. This deviates sharply from governmental procedures in which there is one final decision pronounced by a single court. In short, Rothbard praises the institutional arrangements of the anarcho-capitalist judiciary as superior to those of a government judiciary. Clearly, this is the context in which Rothbard speaks of anarcho-capitalism as having no final arbiter.

The emphasis which Rothbard places on an institutional contrast to the exclusion of any concern with the populace *qua* arbiter is justified. It is self-evident that all judicial decisions — whether pronounced by state judges or by free market judges — are effective *de facto* only if they are not actively opposed by a significant portion of the population. Any decision would be rendered operationally meaningless if the populace considered it so odious as to refuse to abide by it. It is important to note that the possibility that such opposition could occur in any society — anarchistic or governmental — is not unlikely. Thus, it is evident that the existentially final arbiter, i.e. the final existing arbiter, in any type of society is its component individuals. The people judge the desirability and determine the effectiveness of all judicial edicts. Since both governmental and anarcho-capitalist systems share this characteristic it is hardly appropriate for Frech to make this attribute a point of contrast between them. If a contrast is to be made, some unshared aspect must be used. Therefore, Rothbard is

justified in dealing with their respective institutional frameworks — for this is a basis on which the two systems can be contrasted. And it is within this context that Rothbard uses the term “arbiter”.

It is possible, however, that Frech regards “society” as an institution in its own right. “However, the agent which applies this law when there is a dispute is ‘society’, which acts when two courts agree, and accredits legitimate courts, or decides how to initially allocate property on the basis of Rothbard’s principle of first use.” Does Frech anticipate my argument above and attempt to render it impotent by considering society as an anarcho-capitalist institution? I doubt it, but, nevertheless, I will explore that possibility.

I find that Frech’s suggestion is unwarranted. Acceptance of, or at least, passiveness toward the institutions and procedures of a society are necessary preconditions for the existence of that society. The recognition of decisions that result from certain procedures as binding is not a characteristic unique to Rothbard’s system, but is a necessity for any system. This necessity constitutes the very foundation upon which the particular institutions of a social system rest. The fact that the survival of institutions is dependent upon the existence of these preconditions demonstrates sufficiently that the preconditions cannot themselves constitute a separate institution within that society. Thus, Frech’s construing society as a separate institution which accredits the law, the courts, and the principle of first use with legitimacy, when, in fact, such accreditation is the necessary precondition of the system itself, does not withstand logical analysis.

Continuing his critique of Rothbard’s stateless society, Frech utilizes a different approach. He now argues that an anarcho-capitalist society is not really stateless.

Rothbard’s society is simply an unorganized group of individuals who threaten to use force against anyone who violates a widely held principle or interpretation. Further, this group has a monopoly in the sanctioning or use of force. Although this group is unorganized and may vary in composition according to the issue at hand, it meets the definition of a government. Professor Rothbard has provided us with a highly imaginative model of a civilization which has no monopoly in the

supply of defence services but it is not a model of a *stateless* society.

The criticism, in short, is that the populace in Rothbard’s society constitutes a government in and of itself. Frech’s sole criterion in determining whether a government exists is the presence of a monopoly of force — no matter how unorganized this monopoly may be. By logical extension, however, one may also consider a government’s citizenry as constituting a government in and of itself. As I have shown earlier, it stands to reason that even the most oppressed citizenry could plague a government with resistance. The populace could effect the downfall of the constituted government by its own efforts. The citizenry is the ultimate judge of whether a given social system should exist, and by virtue of having this power, possesses a *de facto* monopoly of force.

Does it make sense to speak of a nation as consisting of two governments? Only if one accepts Frech’s definitions as reasonable. The reason why we do not normally speak in such a manner is because when we speak of governments, we usually refer to governments *qua* institutionalized entities. Likewise, when Rothbard writes about governments he refers to governments *qua* institutions — regularized, legalized and institutionalized channels for aggression. Frech takes Rothbard’s argument out of its proper context when Frech uses different criteria in identifying governments. The populace does have an existential monopoly of force, but it does not have an institutionalized, regularized and legalized monopoly of force. If Frech wishes to criticize Rothbard’s society on the ground that it is not really stateless, then it is incumbent that Frech demonstrate that claim within the context of Rothbard’s argument. Otherwise, Frech has no logical grounds on which to base his assertion that contradictions exist within Rothbard’s theory,

Frech’s criticisms are flagrant examples of context-dropping. Frech attacks Rothbard’s theory of the stateless society as self-contradictory by using two different approaches. First, while Rothbard claims that anarcho-capitalism has no monopolistic final arbiter, Frech contends that the individual members of the

society are in themselves the final arbiters. Second, while Rothbard asserts that his system is stateless, Frech replies that the populace in themselves constitute a government by virtue of their possession of a monopoly of force. Both of these approaches are based upon context-dropping and, therefore, are invalid. In addition, any rejoinder maintaining that the people themselves constitutes an anarcho-capitalist institution has been found to be invalid. Rothbard's arguments have withstood Frech attacks regarding their inner integrity.

The only alternatives open to Frech if he wishes to criticize validly Rothbard's theory are either to argue using Rothbard's context as a contextual framework or else to attack the context altogether.

NOTES

1. Frech, H.E., III. "The Public Choice Theory of Murray N. Rothbard, A Modern Anarchist," *Public Choice*, vol. 14 (Spring 1973), pp. 143-154.
2. Rothbard, Murray N. *Power and Market: Government and the Economy* (Menlo Park, Calif.: Institute for Humane Studies, Inc., 1970).