David Friedman on Statelessness
Guest: David Friedman
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WOODS: As I indicated to you, I would like to do a non-standard interview. Instead of the two of us chit-chatting about various things, which maybe we can do some time, what I would like to do—because I have found you to be an engaging public speaker, and you're quick on your feet, and you can anticipate objections and reply to them very well—is to be like the average Joe on the street, who just happens to encounter you at a social engagement, and I want to see how the conversation would go. I want to see how you answer questions that I get sometimes, and I bet you can answer them more glibly than I could. So, in a way, I'm just trying to mooch off your brain here a little bit. Okay, are you ready?

FRIEDMAN: Yes.

WOODS: Okay, so here I am, Mr. Joe Blow.

I'm part of a tax reform association, and we're trying to get tax rates lowered to 15 percent for everybody. We think that's fair, and that's the best kind of system, where everybody's paying 15 percent to the government. What do you think, David Friedman?

FRIEDMAN: I think that's better than what we have, and worse than ten percent. Ten percent is worse than five percent, and you can go on from there.

WOODS: I'm surprised to hear you say that. Go on from there—what exactly do you mean? You don't mean that we could have a system with zero percent taxation?

FRIEDMAN: Yes, eventually. I think the things that government does now consist of a whole lot of things that we'd be better off not doing at all, and a few things that, over time, we can find private ways of replacing. I think the laws against marijuana make us worse off. Tariffs make us worse off. Most forms of government regulation make us worse off.

On the other hand, it is important that we have some way of protecting ourselves from crime and settling disputes, but those are things which I think, to some extent, are done privately and could be done entirely privately.

WOODS: All right. Well, let me try to take one of the easier issues for you to deal with, and then I'll deal with crime and all those other issues.

I just read in *Salon* the other day—and surely David Friedman isn't going to tell me that *Salon* is misleading me—that, in order to create prosperity, everybody knows we need a large bureaucratic structure guiding the economy. So we do need that.

FRIEDMAN: Actually, that experiment was done. As you may remember, the Soviet Union collapsed a few years ago. That was a system where they had a large bureaucratic structure that was trying to run the economy, and it didn't work very well.

A large society, even one a good deal smaller than this, is much too complicated for anybody to run from the center, and the only ways that work are decentralized systems in which I make decisions for me, and you make decisions for you, and we interact through the kind of voluntary arrangement you are part of every time you go into a grocery store or accept a job.

WOODS: Well, I can accept that, because as you say, there seems to be some sound empirical support you can draw on for that. But it seems to me a little worrisome that we would be proposing the possibility, even in theory, that we could live without an institution that has done a pretty good job of keeping us more or less safe and secure from internal and external aggressors.

FRIEDMAN: I think the internal aggressors are an easier problem, and that national defense, defending against foreign countries, is, I think, a hard problem for a society without a government, although not, I hope, an insoluble one.

Let me start with the easier problem first. The difference between the two is that protection against crime is something you can provide to individuals. You can say, "If you haven't paid your annual fee for having a cop come when you call, nobody will come when you call." Whereas, protection against foreign governments—it's very hard to stop only the missiles aimed at me and not the ones aimed at my neighbor. So that's a more difficult problem.

As far as crime prevention is concerned, I would imagine in the long run, a society where there were lots of private firms that sold the service of protecting people, that you would be a customer of one of those firms, and if you didn't like the product they provided, you'd switch to another firm.

Like the present police—saying police protect you is really a little bit misleading because, in practice, what prevents crime is not that there is a policeman on every corner, since there isn't, but rather, insofar as it is prevented, the fact that people who might be criminals are afraid they'll end up getting arrested and going to jail if they do. That can be done privately as well as publicly.

In addition to having people providing you with the equivalent of police protection, you also need laws. You also need some rules to decide who is or isn't in the wrong, what you get punished for, and so forth. And in the system I imagine, those rules are going to be negotiated between the private rights-enforcement agencies.

If you imagine that I'm a customer of one agency, you're a customer of another, and one morning I discover my television set is missing—the camera that my rights-enforcement agency prudently installed in my living room has a picture of you carrying the television set out. So they call you up and ask for my television set back, and you say you've never seen my television set, and that, if they try to use force to make you give it back, you also have a rights-enforcement agency that will protect you. That's the scenario that people usually come up with in some version, and so why the kind of system I'm describing can't work.

The trouble with that scenario is that these are private firms, and fighting each other is very expensive. It also gives very unpredictable results. So it's in the interests of the two firms to agree in advance on a private court that will settle such disputes, and you will then have law that is being created on the market by private courts, being sold to the rights-enforcement agencies, which in turn are, in effect, reselling it to their customers. And that means a market with market incentives to try to generate services and legal rules that people like.

That's a very short description of something I describe in considerably greater length in my book, *The Machinery of Freedom*. You can get a free PDF of that to download from my web page, or you can buy it online from Amazon. I'm working on a third edition, but what you can get now is the second edition.

WOODS: Well, I have to admit that is a sounder, more substantial answer than I expected to hear at a cocktail party, but I'm grateful for this.

Now I guess what I would be still concerned about, though, my being Joe Blow here, is when you say "the system I imagine." It makes me think that this is a system that a bunch of philosophers developed in their studies, which may come out well in their studies, but if we applied it in the real world, we may find that it doesn't really work all that well, and that we might in fact long for the government systems that we had given up.

Is there anything practical in the real world you can point to that would indicate this would work?

FRIEDMAN: Let me start by saying that I think your basic argument is a good argument. One of the reasons why I'm a very conservative anarchist is that I don't think one can be certain of one's ideas of what will work, and therefore I'd be in favor of gradually eliminating the government, not doing it overnight. But there are quite a lot of real-world examples of things that have elements of this.

Let me take the one which is perhaps the biggest, although not very visible, one in our society. If you have an auto accident, the question arises of whether you or the other driver was responsible. And in practice, that question is never going to go to the court. Very rarely goes to a court. It's decided by the insurance companies. The insurance companies are in the same position that my rights-enforcement companies would be in, in that they have a dispute

between them. Each of them would prefer that the other company be held liable. They know they are going to have these disputes many times in the future. The equivalent for the insurance company of fighting is litigating, because it's expensive to go to court. So instead, the auto insurance companies have worked out various rules of thumb among themselves by which they decide which driver is liable, and thus which insurance company has to pay. So that's a very large-scale example of a bunch of private firms that have disputes with each other that could settle the disputes in an expensive way by suing each other, but, in fact, have worked out a better solution.

That's only one example. I could go on to give other examples. For example, as you may or may not know, in eighteenth-century England, on paper they had our legal system. That's what our legal system descended from. But they didn't have police or public prosecutors. So, if you were the victim of a crime, it was up to you, or somebody you hired, to find out who did it, to bring the witnesses to court, and to convict them. That system worked tolerably well for quite a long time in a very successful society. There were people called thief takers, who were in the business of catching thieves. So that would be a second example.

A third example, going farther back, but a society that I've always found very interesting, is Saga period Iceland. Iceland was settled starting in the ninth century, somewhat more than a thousand years ago, and they worked out an interesting legal system in which they had a legislature. They had a law code, and they had courts, but there was no public enforcement. So after you got your verdict, if the defendant who the court said owed you 50 ounces of silver didn't pay, you went back to the court. The court declared him an outlaw. He had two weeks to leave Iceland. If he didn't, it was legal for you to kill him. And it was illegal for anybody else to defend him. So if they did, you could sue them, too.

And, again, if people are sufficiently curious, you can find a chapter in *Machinery of Freedom*, in an old article that I published in *The Journal of Legal Studies* many years ago, sketching how that system worked.

There are quite a lot of other examples historically of societies in which various parts of what we think of as basic government functions were actually done privately.

WOODS: People generally think that you need to have law first, so that you can have the market. And you are suggesting that law emerges bottom up from the market. This reverses the order in which I think people instinctively think these things have to occur.

FRIEDMAN: Well, if you actually look historically, I think it is pretty clear that law of the form that we are used to—legislation, law created by states—is a relatively late development.

I think most of the historical legal systems we know about seem to have started out as a decentralized system, in which you have sort of customary law being privately enforced—what is sometimes described as a feud system, in that the ultimate enforcement was my threat to

attack you, if you didn't pay me what you owed me, and then later developed a legislative law on top of that.

I'm actually working on a book at the moment on legal systems very different from ours. And I think there is pretty clear evidence that not only Anglo-American common law, but Jewish law, Islamic law, Roman law, possibly Chinese law—I'm less sure about that—all started out as decentralized systems in which people were essentially defending their own rights, and then gradually have legislated law of some form or other superimposed on top of them.

So I think just historically that the kind of law we are used to is a fairly late development. And similarly the idea of public law enforcement—the fact as I said, England, just roughly a little over 200 years ago, didn't have a police force. That was all being done privately.

WOODS: Now no one would say that the system we have now is one in which the wealthy have no particular influence, and the wealthy are just as likely to be found guilty as the regular schmoe. I mean, anybody watching a celebrity trial knows that the celebrity seems to get a lesser sentence and greater consideration.

So nobody is saying we have a perfect system now, but I think the concern would be that if you had a market system, there'd be no way to prevent the super wealthy from being able to exert their influence over the private courts. Is there any way to prevent that, or shield against that?

FRIEDMAN: Let me make a couple of related points. The first is that the really big inequality at the moment is not so much between the rich and the poor as between the government and everybody else.

As you probably know, the Director of National Intelligence committed perjury. He told a lie to Congress in sworn testimony some time within the last year. He admitted doing it, although not in so many words. What he said was he had told as much truth as he could. And there is no chance at all that he will be indicted for perjury, which happens to be a crime.

Barry Bonds, on the other hand, who was a prominent and wealthy person, got into a whole lot of trouble for doing essentially the same thing, except that he didn't admit that he had lied—although it may well be that he did.

So I would say that the first big inequality in our present system is that, since criminal law is controlled by the state, and you don't get a trial unless somebody charges you and indicts you, the state always has the option of simply ignoring crimes that are committed by people whom they approve of, as in the case of the perjury that was done in order to hide what the National Security Agency was doing in terms of spying on the population.

I could offer quite a lot of other examples. The one that originally struck me a very long time ago, when I was a graduate student in Chicago, was that a group of Chicago policemen came to the door of an apartment full of sleeping people, and opened fire through the walls, killing two

people. The people inside were Black Panthers, whom the Chicago police didn't much like. The police claimed that the Panthers had shot first, but no evidence was ever offered for that. None of the policemen was ever charged with murder, which was pretty clearly what they had committed. They did get sued, however. That is, the city, state, and county, I think, ended up settling with the survivors for a several hundred thousand dollar damage payment, because tort law, where you sue people, is partly under private control. It's the victim who gets to sue, whereas criminal law is entirely under public control.

So, I think my first answer is that my system eliminates the really big inequality, which is that, as I like to put it in a historical context, if the king controls criminal punishment, the king's friends can get away with murder. And in the particular case I described, they did.

The second point, though, is if you look at how markets function, not very much of what they produce is aimed at the super rich. GM doesn't mainly make gold-plated Cadillacs. The big market is usually in the middle, for people who have some money, but not huge amounts. A court which routinely gives unjust verdicts in favor of rich clients isn't going to be very popular with anybody else.

If you look in our society, at where the inequality is greatest, it's not on the market. The two things with regard to which poor people in America are worse off are police protection and education, both of which are being provided by the state. If you go to a poor area of the inner city, the grocery stores have the same goods as in the rich areas. The quality isn't quite as good, and the prices are a bit higher, and there is a smaller selection, but it's not a huge difference. I've lived in such areas, or at least shopped in such areas occasionally. On the other hand, people in those areas don't have the option of going to a school nearly as good as a suburban school, and they don't have the option of walking around at night, as I can do, in reasonable safety, with confidence there'll be no crimes. So I think, on the whole, government does a rather worse job of providing services to the poor than the market does, not a better job.

WOODS: Now, in closing, I'd like to ask you more of a personal question. The one time we met was in Brazil, and I didn't get up the guts to ask you, but I want to know how you personally came to these views.

Of course, you were born into a very significant family. Your father was Milton Friedman, a man of many merits. But he did not believe in anarchism the way you do. So, obviously, you learned some things from your father, but at what point, or what argument, or what book, was it that made that thing go off in your head where you said, "No government at all would be the ideal"?

FRIEDMAN: I think the answer is the science fiction novel by Robert Heinlein called *The Moon is a Harsh Mistress.* Basically, my view when I was 15 or 16, when I went away to college at 16, was that you needed a framework provided by the government with everything else being private. More or less what was referred to as the classical-liberal, minimal-government-functions view. I wasn't entirely happy with that, but it seemed to me it was the best that I could manage.

And what Heinlein did was to provide a plausible fictional account of a society where law and law enforcement were privately enforced. It was a science fiction story. The society was set on the moon. I won't go into the details. It's actually quite a good story in many ways. And since I thought that it was impossible to do that, giving me a believable example of any society that did it meant that it wasn't impossible. It might not be practical. That would be more complicated. So I started thinking about what the equivalent of his system would be in the kind of world that I lived in, the kind of society I lived in. And out of that developed the ideas for my first book.

WOODS: And when was *The Machinery of Freedom* first published?

FRIEDMAN: In 1971, I think. I think it's copyright '71. It would have been around there. So it's about forty years ago.

WOODS: Can you give us a sneak preview of the types of things going into your third edition? How is it changing?

FRIEDMAN: The third edition I will probably leave what's there pretty nearly untouched, and do what I did with the second edition, which was to add additional material.

The additional material—some of it involves ideas in the original book that I've thought through more carefully and added more detail; in particular, ideas about the nature of rights and the nature of government. I've got an essay which I think I've got linked to my blog, if people are interested in it, called "A Positive Account of Property Rights," and it's really about rights in general. It's an attempt to understand rights, not as either a moral or a legal category, but as a description of how human beings behave. And from that answer the not-all-that-simple question of, "Why do you call some things governments and not others, what are the defining characteristics?" So that's one thing I think I've worked through in more detail.

I've also got a number of things that I've written since in various contexts. Some of them were blog posts. Some of them were articles in which I have additional ideas that I think are relevant.

One of the chapters in the first book was on national defense and described it as the hardest problem, and I've got some more ideas of possible ways of solving that problem, so there's a chapter on that.

My plan at the moment is sometime reasonably soon—I hope in the next month or two—to get drafts of all the additional chapters written and put up on my website for comments, and then to go on from that to polish those drafts and consider the comments and assemble those into another book.