HAMLYN
LECTURES

Thirty-seventh series

Law and Order

Ralf Dahrendorf
K.B.E., F.B.A.

WESTVIEW

LAW AND ORDER

by

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Miss Hamlyn bequeathed the residue of her estate in terms which were thought vague. The matter was taken to the Chancery Division of the High Court, which on November 29, 1948, approved a Scheme for the administration of the Trust. Paragraph 3 of the Scheme is as follows:

> "The object of the charity is the furtherance by lectures or otherwise among the Common People of the United Kingdom of Great Britain and Northern Ireland of the knowledge of the Comparative Jurisprudence and the Ethnology of the chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them."

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The Thirty-seventh series of Hamlyn Lectures was delivered at the Institute of Advanced Legal Studies (University of London) in May and June 1985 by Professor Ralf Dahrendorf.

AUBREY L. DIAMOND

Chairman of the Trustees

July 1985

FOREWORD

The title of this little book, *Law and Order*, sounds technical. It alludes to a problem of criminology, and also to a plank in the platform of the political right. The argument of the book however is not primarily technical. It takes the terrors of our streets and the riots on our football grounds as its point of departure, but then goes on to such issues as the disorientation of the young, unemployment, and cracks in the party system. In other words, this is a book about social order and liberty.

As an unreconstructed eighteenth-century liberal, I believe that big subjects must be treated in a lighter vein than more limited ones. I was therefore pleased to be invited to give the Hamlyn Lectures with their distinguished tradition, and their Scheme which emphasises the "privileges" as well as the "responsibilities and obligations" of "law and custom" especially in their English version. While the book is almost twice as long as the lectures, I have kept their format, including the licence which this art form permits to leave an argument suspended in mid-air, change the subject, and raise questions without giving definitive answers. In this sense, the little book is a programme as much as a complete product, and indeed a programme which contains no promise that it will ever be completed by its author.

Easter 1985 R.D.

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1. The Road to Anomia

In Berlin, at the end of April 1945, the signs of decomposition were unmistakable. I was not the only one in our quiet suburban street who had been hiding for weeks in a kind of voluntary house arrest. Next door, a young man who had been on the way to his army unit, had extended his visit to relatives indefinitely to await the end. Now, things were changing. Across the road, SS officers no longer went in and out of the home of the pretty widow and her two daughters; soon their bedsheets would be hung outside their windows to indicate surrender to officers of the occupation forces. Others were less adaptable. The retired military man a little further up the road was loading his gun in order to kill first his wife, then himself because the couple could not bear the moment of national shame. Elsewhere, shots were fired more arbitrarily. A young fanatic wounded a fellow Hitler Youth leader who had dared suggest that Hitler had led Germany into disaster. Was the *Führer* still alive? Suddenly, it

became clear that there was no authority left, none at all.

Rumours started flying. The army stores in the nearby wood had been deserted! Could it be true? The young man next door and I went to see, found the stores without any sign of guards or occupants, grabbed a tray with some 50 pounds of fresh meat and carried it home where my mother proceeded to boil it in the washtub in the basement. The shops around the nearby subway station had been left by their owners! When I got there, dozens, perhaps hundreds of people were dismantling counters and shelves; what goods there had been, had already been taken. The only exception was the bookshop, where connoisseurs were selecting what they wanted. I still have the five slim volumes of romantic poetry which I acquired on that occasion. Acquired? Everyone carried bags and suitcases full of stolen things home. Stolen? Perhaps, taken is more correct, because even the word, stealing, seemed to have lost its meaning.

Then the first Russian officers walked up our street, reminding us that new authorities were not far. They began their rule as the old ones had finished theirs, with a splurge of arbitrary acts of violence, and very occasionally, of sympathy as well. When my history teacher, an anti-Nazi of Prussian convictions, opened the door of his house, he was simply shot dead by a Russian soldier. The elderly lady whom a soldier on horseback asked why she was crying, and who explained that another soldier had just taken her bicycle, stood bewildered when the Russian stepped down, handed her the reins and

softly told her to take his horse instead. The war of all against all was also a state of spontaneous compassion. And of course, both did not last. The supreme, horrible moment of utter lawlessness was but a holding of breath between two regimes which were breathing equally heavily down the spines of their subjects. Like the fearful ecstasy of revolution, the moment passed. While yesterday's absolute law became tomorrow's absolute injustice—and yesterday's injustice tomorrow's law—there was a brief pause of anomy, a few days, no more, with a few weeks on either side first to disassemble, then to re-establish norms.[1]

These are lectures about law and order. I shall presently turn to the contemporary experiences to which this notion ordinarily refers, and throughout the argument, we shall not loose sight of the implications of an emphatic "law and order" attitude and policy. But to begin with Berlin—it might conceivably have been Beirut, or even Belfast—is more than an anecdotal whim. These lectures are not intended to be a technical contribution to criminology or the debate about prisons and the police. They are rather, a contribution to social and political analysis, and more precisely, to the analysis of social conflict and the political theory of liberalism.

Let me outline what I am planning to do, before I return to Berlin and to the facts about law and order. Traditional class struggles are no longer the dominant expression of the unsociable sociability of man. Instead, we find more individual and more occasional manifestations of social aggression. Violations of the law and breaches of public order by individuals,

gangs and crowds are prominent among them. In the first lecture, we shall try to establish the facts and make sense of them so that the underlying social problem becomes apparent. The second and third lectures will be devoted to explanation, or more cautiously perhaps, to understanding the context. On the level of motives and ideas, the declining effectiveness of the law may be described as one of the contradictions of modernity by which we are surrounded wherever we look in the present world, from the Welfare State which actually creates a new poverty to the nuclear threat which reminds us daily of the ambivalence of human reason. We wanted a society of autonomous citizens, and we have created a society of frightened or aggressive human beings. We sought Rousseau, and we have found Hobbes. On the level of social and political forces, the new and as yet barely comprehended conflict is a result of the tendency, on the part of a large majority class, to define people out at the boundary in order to protect its own position. As a result, the dominant issue is not the redistribution of scarce resources within an accepted framework—unless one wants to describe membership of society itself as a scarce resource—but the social contract. Thus our thesis is that law and order present the major subject of conflict in the developed societies of the free world. That this should be so, is the seemingly paradoxical result of a century of applied enlightenment and expanding citizenship rights. The question remains what can be done about the new struggle for the social contract. The fourth lecture deals with solutions, or at any rate answers. Few such answers

have been offered, and some are more frightening than the problem. There is a tendency for the arteries of the official society to harden and for those who have the power to respond with "law and order" measures in the common political sense. It can still be said that "the enemy"—the effective enemy of freedom that is—"stands on the right" (as the German Chancellor Wirth, a man of the centre, put it after the assassination of the democratic politician and industrialist Rathenau in 1922).[2] Whether a liberal view of institutions has a chance against such forces, is an open question; but it must be tried if we do not want to lose both security and freedom.[3]

This is heavy and even opaque language which will become lighter and clearer as we go along. Let us then return to Berlin for a moment, and to the lessons of the experience for law and order. One is that lawlessness did not last. Perhaps it cannot last. It is a fleeting moment of transition rather than a long-term state of affairs. To be sure, in Beirut it seems to have lasted a long time; but then we are told that in Lebanon the apparent war of all against all is in fact a highly structured affair. This is *a fortiori* the case in Belfast. Civil war is something quite different from the erosion and eventual decomposition of law and order. Wherever such decomposition occurs, it creates a vacuum which not only does not endure, but which seems to invite rather elementary norms and sanctions and a very crude exercise of power. One of the miseries of anomy is that it augurs ill for liberty. It creates a state of fear while it lasts, and calls for a state of tyranny as a remedy.[4] Once the

Hobbesian problem of order arises, the solution tends to be Hobbesian as well.[5]

Another lesson of the Berlin story is that it provides a perspective on the dimension of the problem. The fall of Berlin in 1945 produced one of those absolute situations which are as instructive about the human condition as they are rare in human history. Whatever may be felt, or found about the erosion of law and order in the free societies of the world today, is in fact but a rather small step in the direction of a condition which people have lived to see in Berlin, and perhaps in Beirut and Belfast as well. By and large, even New Yorkers live in a fairly orderly world in which there are no deserted army stores to take meat from, and where one cannot simply walk out of bookshops with volumes of romantic poetry. There is no total discontinuity of public authorities, nor is there a temporary suspension of their operation. There are laws, and there is order.

What then do we mean when we speak of an erosion of law and order today? Is there in fact such a process at all? And if there is, does it have to lead all the way to Anomia? Could it not be a temporary aberration, or at any rate a reversible trend? These are big questions. They demand clear answers, and we shall try to give them. However, as we embark on this venture, I must ask the indulgence of those who are experts in the vast literature on deviance, delinquency and their causes. The following argument will be quite elementary, and it is based on equally elementary facts. My only justification is that sometimes simplicity allows one to cut through a tangle of complications and get to the heart of the matter.

The other day I found, in one of those glossy magazines displayed in expensive hotel rooms for the edification of weary travellers, an "Editorial" which ran as follows:

"Have we by now got used to the fact that no woman can go out alone at night, and that our property is no longer safe?

Every one of us lives every day with the fear that ruthless criminals drive up in a van in bright daylight and empty our houses. Yet if we are not alerted by this happening to someone we know, we repress the problem.

Every year, 4.3 million criminal acts occur in the country—an alarming and frightening figure, though only the tip of the iceberg, because the dark figure is many times higher. The cruelty and misery brought about by crime is almost unimaginable, yet pain and suffering are largely ignored.

In the last ten years, the number of criminal acts has increased by 70 per cent., with theft and robbery heading the list. But the number of policemen was only raised by 35 per cent. Small police stations had to be closed for cost reasons; in some cases, the police have to travel twenty kilometres to get to the scene of a crime. By that time the perpetrators have of course long disappeared.

Detection succeeds in only 45 per cent. of all cases, otherwise the police fumble in a fog of detection. Judging by these figures, the state is no longer able to look after our safety and the protection of our property. Such observations