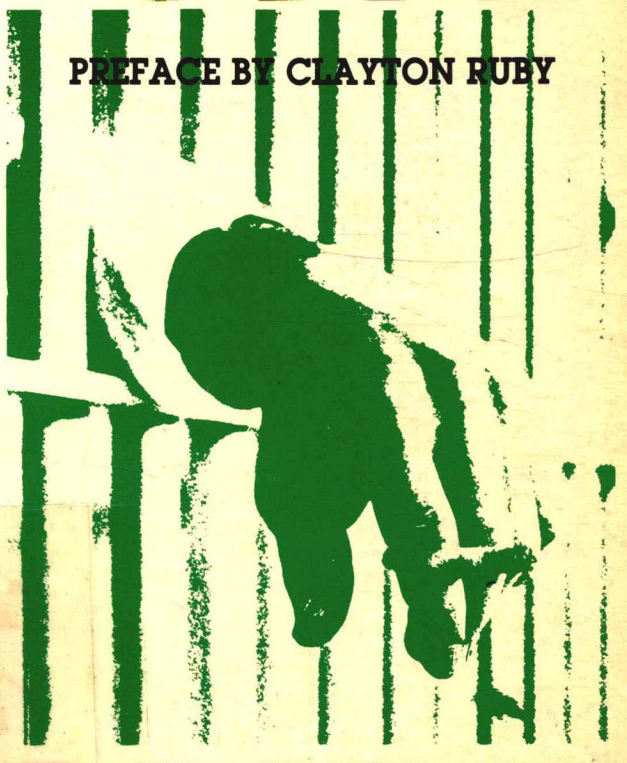


LAW AND ANARCHISM

PREFACE BY CLAYTON RUBY



EDITED BY
THOM HOLTERMAN & HENC VAN MAARSEVEEN

Law and Anarchism

edited by
Thom Holterman
and
Henc van Maarseveen

Preface
by
Clayton Ruby

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Preface

1984 is a good year to read these essays on law and justice in anarchist thought. Not in remembrance of the man who fought in Spain; nor in furtherance of any academic interest in the issues of the past. Issues of peace and of the environment, life and death, are being raised and debated. Large governments and large corporations are being confronted and called to account. The proposition, however, is a reflection of a renewed activism in the streets of Canada. This activity has increased the number of cases with which lawyers must deal as a result of increasing protests, demonstrations and direct action.

Anarchists have no monopoly on direct action, but they do have an honourable and illuminating history of it. Some of the most perceptive debates about the meaning of law, justice and civil disobedience in the context of movements to change society reflect the ideas of Gandhi and take their social shape from the mind of Paul Goodman and many others.

The stress that anarchism places on dividing a monolithic legal and social apparatus into small communities and its emphasis on individual and communal initiatives within existing social structures has never been more important to young people.

It is important to lawyers, too. An irreverence towards authority is a hallmark of many good lawyers. These essays reflect that phenomenon but illuminate it with rigorous analysis. A more thorough and perceptive analysis of the basis for distrust and disquiet is timely. Quite simply, it will make better lawyers and better law. An anarchist understanding of law and its structures must increase the chance that justice will be done, both in and out of court.

Clayton Ruby
Toronto, March 1984

Introduction

If Michael Bakunin could get up from his 1876 grave in Bern, he would be astonished to notice that more than a hundred years after his death his thoughts and ideas are still alive. But he would also see that the world and the people have changed. He would be pleased that his name is better known, that anarchism as an idea is more widespread and vivid than ever before and that there are enough books about anarchism to fill a large library. However, he would be sad too. Anarchism is still only an idea, a theory, all experiments having faded away. States have grown in power and violence. Anarchist theory can offer but a small number of real, operative answers to contemporary problems.

Old-time anarchist stereotypes do not apply to the problems of today. We have to shake off the burden of history and seek new ways. There is a need for anarchist concepts which look at the future. But we must never forget that anarchist history is often falsely or wrongly interpreted and that the nineteenth century founders of anarchism said and wrote many things that indicate solutions relevant to contemporary problems.

One of the main problems is the relationship between anarchist theory and legal thinking. Law has developed into a powerful political instrument. It is used, however, not only as a means of oppression but also as a means of bringing rights to individual people, legal claims for poor people and protection for powerless human beings. The growing idea of law with a human face is complemented by the practice of law as an instrument of repression. The double face of law making people free and making them slaves becomes a scientific challenge to anarchist theory. The primordial question is, then: how does anarchist theory cope with the idea of law?

Leaving aside the old-fashioned concept of anarchism and law, one can try a new approach based on the idea that anarchism cannot ignore and avoid law and that jurisprudence cannot disregard anarchism. Mutual negation is thus replaced by

the concept of a connection between the two. This results in questions such as: is it possible to have an anarchist theory of law and is it possible to have a legal theory of anarchism? At this stage, the extent to which there can be said to be descriptive, explanatory, alternative, critical or development theories in relation to these questions has to be left out of account. The questions in themselves seem to be sufficiently relevant.

In January 1979 a seminar on anarchism and law was organized by the Department of Constitutional Law, Social Sciences Faculty, Erasmus University, Rotterdam. The intention was to clarify the legal aspects of anarchist theories. The 35 papers represented the four main trends in anarchist theory: anarcho-capitalism, anarcho-socialism, anarcho-syndicalism and anarcho-feminism. One of the results of the five days of discussions was the common conviction that the old bias of some anarchists against law has been washed away, but that still it is uncertain how legal thinking can be integrated in anarchist theory and how anarchist thinking can be taken up by legal theory. It was a common thought, too, that legal thinking can be fruitfully inspired by reasoning from an anarchist viewpoint. Particularly interesting was the idea that legal self-help as an anarchist postulate can open perspectives for a new legal organization. However, the seminar, strongly influenced by American and Spanish jurists, showed that there exists no detailed anarchist legal theory; at best there are promising developments.

A selection of the papers of the seminar is published in this volume. Most of them are revised by the authors with a view to this publication. The volume is divided into two parts. In the first are the articles dealing with theoretical questions about the connection between anarchist and legal thinking. The second part contains articles on the ideas of some classical anarchist thinkers about law and rules.

We are very grateful to the authors. They do an excellent job of bringing forward anarchist-legal thinking.

Anarchist Theory of Law and the State

by T. Holterman

Generalized presuppositions

Before attempting to formulate an anarchistic theory of law and State, I think it would be appropriate if I outlined the meaning I am ascribing to these two terms.

A. According to the definition of law which I am using here, the sources of law are threefold: first, accepted and established usage (custom) or practices which autonomous units, either individuals or groups, are struggling to have accepted; second, agreements made by autonomous units (contract law); and third, the semantic codes, which parties use when conducting transactions.

Law is seen first of all as "function" in that it has the capacity to solve disputes (system of arbitration) and to protect, thereby fostering autonomy in homonymy (homonymy signifying the "unity of interests"). Second, because of its structuring capacity, law is viewed as "design." In anarchist thought, the structuring capacity is treated as a socialism dependent on or derived from collective ownership. This form of ownership expresses itself in the form of a coordinating structure (a "unity of interests" in which irreconcilable antitheses are eliminated) and cooperation. Whatever form it takes, such a structure still raises a number of crucial problems, which if they are not solved will probably lead to the ruin of the community concerned:

- 1) how are decisions to be taken on what is to be produced (sociocracy, consent principle, democracy of local councils, otherwise called councils democracy, or elements from it);
- 2) how is production to be coordinated (federalism of feedback mechanisms);
- 3) consumption of essentials (who has the right to take ac-