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# Anarchy and Law

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Clarity, definiteness, and specificity are desired for the enhancement of understanding. But anarchism as a social philosophy suffers from the handicap of not being an affirmative theory about the activities of humans. It is rather a negative philosophy in the sense that it tries to ascertain what is invasive of the maximum amount of liberty for each individual, as such, and to prescribe such behavior. Moreover, anarchism contemplates and embraces the largest variety of individual and social behavior. And further, it is mutable, pertains to change and development; it is a philosophy of movement as distinguished from a condition, a conception of society which is dynamic and “open” as distinguished from a static system of social relations—a *road* and not a *place*.

Unlike various forms of socialism or of *any* prescribed social order, anarchism cannot lay down positive specifications and duties for the individual to perform. Insofar as it does look upon society as an *organism*, it sees it as an organism of an especial nature, *discrete* rather than *concrete*, mutable, living, growing, changing, developing, and the very best it can do in

the matter of specification is to provide the greatest latitude for varied individual action.<sup>1</sup>

Anarchy is thus impossible to conceive as a *system* in the usual sense of this term and perhaps its essential feature is that it denies the feasibility or legitimacy of fitting people to systems. It may be said that an anarchistic society will be composed *of* associations, but will not be *an* association or organization. Any kind of organization requires rules and duties, in order to coordinate the activities of the individuals of which they are composed—else the very aim and purpose of the organization may be contravened. It is the possibility of *seceding* from any cooperative enterprise, and joining others, or reverting to individual independence, which distinguishes anarchism from all other social philosophies existing or imaginable. It is the opportunity for *separation* which is the key to independence and harmony, according to the anarchistic view of human affairs, *not* in any supposed necessity of *combination*, such as *communism*. For all combinations require the use of the *principle* of anarchism in order to make the combination workable.<sup>2</sup> However, as with communism, anarchism does not *proscribe* any *form* of organization, including communistic, for those who voluntarily wish to resort to whatever measures as might prove to be satisfactory and workable for voluntary participants.

Thus it may be seen that any plan or scheme or combination proposed by anyone who deems himself an anarchist, aside from the broader generalizations which deny the use of coercion as a *principle of order*, can only be judged on its merits, or in practice, experience, and usage, and cannot be deemed to be an essential of anarchism, or anything more than the opinion of one or some individuals. And thus it becomes rather difficult for any critic of the anarchist philosophy to make his criticisms

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<sup>1</sup> “Discrete” misspelled as “discreet.”

<sup>2</sup> “Anarchism” misspelled as “anarshism.”

effective, from a general or rational viewpoint. It behooves him to tread gingerly in attempting to ascribe to all anarchists any proposal which is peculiar to only some of them.

Having said all this, and it being obvious that real life consists in affirmations, and not only negations. And anarchists, to be realistic, are obliged to offer proposals regarding human relations, and practicality requires them to offer *plausible means* of changing from any given situation to one more in conformity with their ideals. On all such questions there is no such thing as *the* anarchist position, except of course those which affirm the liberty of the individual to make his own choices and *take the consequences*. But there will be numerous proposals, more or less tentative, made by different anarchists.

On the question of restraining the incorrigibly invasive, of maintaining what is commonly called “law and order”, therefore, anarchism may seem to be highly vulnerable. Anarchists are more concerned with removing the causes of criminal behavior than of punishing the intolerable. But they cannot in all reason evade the problem.

Murray Rothbard’s criticism of the “Spooner-Tucker Doctrine” must be judged within the viewpoint given above. He should realize that the ideas and proposals of these men are their proposals, and did not preclude other proposals. This was certainly the attitude of Spooner and Tucker. And Rothbard should also take more pains than he has of understanding just what precisely were these men’s ideas. He says that “There would be no rational or objective body of law which the juries would in any sense—even morally—be bound to consult”, etc. This is hardly the fact. More common sense would suggest that any court would be influenced by experience; and any free-market court or judge would in the very nature of things have some precedent guiding them in their instructions to a jury. But since no case is exactly the same, a jury would have considerable say about the heinousness of the offense in each case, realizing that circumstances alter cases, and prescribe penalty

accordingly.<sup>3</sup> This appeared to Spooner and Tucker to be a more flexible and equitable administration of justice possible or feasible, human beings being what they are. There were numerous questions and objections to the jury system, as envisioned by Spooner and Tucker, and indeed as originally contemplated when the jury system was established, and these were discussed and argued in quite some length in the columns of Tucker's *Liberty*.<sup>4</sup> The point here is that Rothbard was not quite accurate in his statements about Spooner's and Tucker's position. And it must be recognized and admitted that what is called "the administration of justice" (which in its broader implications affect every aspect of social life) is something that can never be perfect, and that men will simply have to do the best they can.

But when Mr. Rothbard quibbles about the jurisprudential ideas of Spooner and Tucker, and at the same time upholds *presumably in his courts* the very economic evils which are at bottom the very reason for human contention and conflict, he would seem to be a man who chokes at a gnat while swallowing a camel. But of these matters I have commented upon elsewhere.

Due to semantic difficulties caused by the use of a language spawned and grown in regimes based on organized authority, coercion, and violence, it becomes well-nigh impossible to articulately explain anarchism in common vernacular. It becomes doubly difficult, if not impossible, to explain the philosophy of anarchism to those whose basic assumption is that humankind would run amok without some kind of authority. It would be *completely* outside their frame of reference, which is to say that such persons have no *referents* to which one might relate in order to introduce them to the meaning of liberty. They simply cannot imagine that human liberty can exist without some au-

thoritarian enforcing mechanism. Much less can they conceive that such an authoritarian organization is the very thing that is causing social disorder.

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<sup>3</sup> "Heinousness" misspelled as "heinousness."

<sup>4</sup> "Questions" mistakenly spelled as singular.