

The Anarchist Library
Anti-Copyright



Anarchism and Law

Alexei Borovoy

Alexei Borovoy
Anarchism and Law

Retrieved on 15 January 2011 from quod.lib.umich.edu

published by:
Friends of Malatesta
Box 72, Bidwell Station
Buffalo, NY 14222

theanarchistlibrary.org

Contents

The Problem of Law and the State	6
Imposed and Spontaneous Codes	8
1. Godwin	9
2. Proudhon	9
3. Bakunin	10
4. Kropotkin	10
5. Tucker and the Individualists	11
Conclusion	12

Let us openly admit that anarchism admits social norms. The norms of a free society resemble neither in spirit nor in form the laws of contemporary society, the bourgeois society, the capitalist society. Neither do they resemble the decrees of a socialist dictatorship.

These norms will not seek the detachment of the individual from the collectivity, neither will they serve such abstractions as a “common good” to which the individual must sacrifice himself. Anarchist norms will not be a torrent of decrees from a higher authority. They will¹ come organically from the restlessness of the spirit which feels in itself the force of creation, the thirst for the creative act, for the realization of its desires in forms accessible to men.

The guarantee of this order of things will be the responsibility for our own liberty and for the liberty of others. Like all social orders, it will have to be defended. The concrete forms of this defense cannot be indicated in advance. They will correspond to the concrete needs of the society at the given moment.

The characteristic trait of anarchist individualists is their acceptance of private property. The problem they face is the following: can they accept the monopoly of the individual over the product of his labor? If they reply negatively, they give society the right to infringe upon the individual. They have therefore chosen the other response and therefore reintroduce the private ownership of land and the means of production.

From the principle of egoism as the sole motive force of men, Tucker derives the law of equal liberty for all. The limit of the power of each is found precisely in this egoism. The source of social norms based on the will of all is the necessity to accept and honor the liberty of each. Thus the anarchist individualists not only accept certain social norms, but they tend to defend them.

Therefore, in anarchist individualism, as in anarchist communism, we are faced with the tragic impossibility of resolving the incompatibility of the individual and society, the choice between absolute individual liberty or the necessity of a harmonious society.

If anarchism accepts this incompatibility, it turns to the principle which is the proper basis of its theories: the principle of the equality of all members within a free organization. If anarchism does not accept this, it must then accept other social norms.

Conclusion

This article follows from the fact that anarchism is not an imaginary dream, but a reality which gives logic and a realistic sense to the revolt of the human spirit against violence. To be anarchist one does not have to speak of fictions such as “absolute, unlimited liberty” and the negation of duty and responsibility. The eternal contradiction, the incompatibility of the individual and society, is insoluble, because it is rooted in the nature of man himself, in his need for independence and his need for society.

Biographical Note: Alexei Borovoy. Brilliant Russian Anarchist theoretician, writer and orator. Professor of Political Economy at Moscow University, prior to and after the Revolution, until ousted by the Bolsheviks. Known and respected throughout Russia, where he had great influence among workers, students and intellectuals. In 1920 the students of Sverdlov petitioned the university administration to permit a series of debates on “Anarchism versus Marxism,” Borovoy representing the Anarchist viewpoint. The local Communist Party, designated the famous Bolsheviks, Bukarin and Lunacharsky, to defend Marxism. The Central Committee of the CP of Russia at the last minute overruled the local CP and forced cancellation of the debates.

Because of his great popularity, the Bolsheviks postponed the silencing of Borovoy until 1929 when he was arrested and deported to Viatka, Siberia, where he died in 1936, the victim of persecution, cold and hunger.

* * *

In literature concerning anarchism there is a general opinion that anarchism, which negates existing society and existing legal codes, has an equally negative position concerning social codes in general. This opinion is absolutely false.

The reasons for this error are:

1. confusion over the problem of the relationship between social codes and the State in the writings of anarchists themselves;
2. the variety of definitions of society and social codes in the writings both of anarchists and of their critics;
3. rash statements by certain anarchists who, because of a certain sociological naivete, are sincerely convinced that anarchy is the absence of any sort of regulation;

4. the laziness of those who consider themselves critics of anarchists but do not bother to learn even the essential elements of anarchist thought;
5. finally, conscious distortion, characteristic of the philosophy called “scientific socialism.”

The Problem of Law and the State

The problem in which we are interested can be presented as follows: Can a society exist in which nothing limits the individual, where all regulation is an affair of the individual and not of the collective will?

Anarchism favors the establishment of a society

“of brothers, each of whom contributes his share, living harmoniously, not because of a legal system which severely punishes those who disobey, but because of the force of interpersonal relations, the inevitable force of natural laws.” — Reclus

How restrictive are these natural laws? Do they permit of a society in which each individual is free to do as he pleases, or on the other hand, do they require the existence of a State for the preservation of an orderly society?

Impartial sociologists have found that the State (the authoritarian society with an established power) is not the first form of human society. The State appeared as the result of complex phenomena: of a particular material and intellectual culture, of the progressive differentiation of society, of conquest and at the same time of a progressive consciousness of the advantages of solidarity among large groups. The same sociologists have pointed out the parallel growth of the institution of power, which progressively engulfs

society. In this case, the recalcitrant can always be banished. But in a communist society this can be a terrible punishment, even for the perpetrator of a despicable crime. Unless, of course, the banished criminal simply finds another commune. We must find other solutions.

5. Tucker and the Individualists

In his philosophical constructions, Tucker follows the reasoning of Stirner and Proudhon. From Stirner he takes the principle of the absolute sovereignty of the individual; from Proudhon he takes his methods for achieving a free society constructed on the principle of individual agreement.

Like all extreme individualists, Tucker rejects all imposed organization. From there he launches a violent attack on the State:

“The State is the greatest criminal of our time. It acts not for the defense of its most important unit, that is, the individual, but on the contrary, to limit him, to oppress him, to attack him.”

Tucker vehemently criticizes all monopolies: government, the classes it protects, money, laws. Against monopolies he opposes the principle of unlimited competition:

“General and unlimited competition leads to absolute peace and true cooperation.”

From there begins the battle of the anarchist individualists against state socialism — they reproach it as being the victory of the mob over the individual. Under state socialism power arrives at its culminating point, monopolies wield their greatest power. At the same time, the anarchist individualists fail to distinguish between state socialism and anarchist communism. For them, the latter is a phase in the development of state socialist doctrine.

3. Bakunin

No one has written such passionate criticisms of the State as Bakunin. For him the State is an absolute evil:

“The State is an immense cemetery, the scene of the suicide, death and burial of all manifestations of individual life or collective life — briefly, of life. It is the altar for the sacrifice of liberty and wellbeing, and the more complete this sacrifice is, the more perfect is the State. The State is an abstraction which destroys the life of the people.”

But the State, he insists, is a “historically necessary” evil, in the same way that the bestiality of the first humans or the theological imagination of men is necessary. But the State must disappear. It must be replaced by a free society built on the basis of total autonomy; starting with the small commune and building toward a worldwide union joining all men. The relation between different organizations will no longer be violent — it will be imposed not by law but by the free consent of all. The voluntary commune — that is the source of Bakunin’s social norms.

4. Kropotkin

Kropotkin, like his predecessors, accepts social norms in relations between men, for example, the obligation to fulfill a freely accepted contract. In “The Conquest of Bread,” for example, he deals extensively with the objections to and false notion of anarchist communism. In his answers he shows himself to be above all a humanist, believing more in human nature than in logic. He correctly insists that the most effective way to deal with antisocial behaviour is to find and remove the reasons for its existence. Meanwhile, such problems as the refusal of some men to work or the refusal to submit to a collective decision can appear even in the most perfect

functions which previously belonged to local and autonomous social organisms. If some of these functions have been better executed by the new power, others have been executed badly and with a constant disregard for the fundamental rights of the individual.

The process of governmental hypertrophy is well described by Durkheim:

“The governmental power tends to pre-empt all forms of social activity. Among them it is obliged to take upon itself a considerable number of functions for which it is unsuited and which it executes in an insufficient manner. Its passion for bringing everything under its jurisdiction is matched only by its inability to regulate human life. It expends enormous amounts of energy which are totally out of proportion to the obtained results.

“On the other hand, men obey no other collectivity before the State, because the State proclaims itself the only collective organism. They acquire the habit of looking upon society as having a perpetual dependence on the State. And meanwhile, the State is situated very far from them, it remains an abstract entity which cannot exercise an immediate influence, so that in a great part of their lives they move in a void.”

It is on this terrain — the tendency of the State to engulf all things, the human person, his social needs, to paralyze his will with threats and sanctions, that the anarchist revolt is born.

Anarchists seek to abolish the State and in general to replace it, not with chaos, but with anew form of organization. They seek to organize society not on the principle of class power, but on the principle of mutual aid.

Imposed and Spontaneous Codes

There has not been a single society, even prior to the birth of the State, that has not made certain demands upon its members. While specific regulations may vary from society, some form of regulation is always necessary.

Aside from legal codes, there exist in all societies what can be called codes of convention. Shtamler points to these:

“In rules of ethical conduct, in interpersonal relationships., in collective norms such as the chivalric codes of the Middle Ages or the codes of the guilds.”

The force of these codes is perhaps greater than the force of laws. The fundamental difference is that these codes are based on a collective accord:

“Men consent to a collective agreement, perhaps an unconscious one, like the majority of social phenomena, but an agreement nevertheless.”

Meanwhile, legal codes are created by a specialized body, detached from society, having as its primary aim the preservation of the established order, which imposes its “sovereignty” without regard to the needs of individual human beings. Genuinely collective codes, based on the free agreement of human beings, can be correctly called anarchist codes. This is recognized by the foremost representatives of anarchist thought, and follows necessarily from the fact that neither social organization nor social progress are consistent with unlimited individual liberty.

After this brief theoretical exposition, we would do well to see what the more important anarchist thinkers have to say about the role of collective codes in future society.

1. Godwin

According to Eltzbacher, Godwin opposes all forms of social regulation. However, while he opposes government in all its forms, he speaks of communes as organizations for the collective benefit of all, and points out the necessity of accepting such organizations. Considering the possibility of anti-social acts on the part of particular members of a commune, he speaks of a committee of wise men which would have the power to punish these people or expel them from the group. Furthermore, he envisages regional conferences for the discussion of conflicts between communes and for the necessities of defense against the attacks of common enemies. He feels that such institutions would be much more effective than existing ones. Thus he favors the replacement of existing legal codes with the regulation of society by communal organizations.

2. Proudhon

There are many seeming contradictions in the work of Proudhon concerning centralization and the State. One can call the institutions advocated by Proudhon “anarchist” and “federalist,” but these institutions carry with them certain governmental characteristics. Even the word “anarchism” is used by Proudhon in two senses: one is the ideal, the vision of a society totally without coercion; the other is simply a form of organization characterized by a preponderance of individual liberty. Proudhon compromises the ideal of anarchism even further. He envisions a society built largely on the principle of centralization, and his federalism follows largely from the overt recognition that anarchy is impossible. In realizing that a realistic solution of social problems must start with a principle of federalism, he makes a realistic compromise between anarchy and democracy.