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# Anarchism and the Law

Alma Melgarito

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Good afternoon to each and everyone here. Well, here we are finally in the context of this symposium and because the comrades suggested that I give a small talk about the relationship or rather, I should say, the non-relationship between anarchism and law, or the possibilities and limits of the use of law as a tool of action in insurrectionary anarchist practice. What I am about to say is a very individual set of my reflections on this issue, so what I say now should not be regarded as a position taken by groups or collectives in which I collaborate occasionally. Good. I also want to say that what I am going to talk about now are just a few notes that we can use to think about law from the anarchist point of view.

I'd like to start by quoting the words of Alfredo M. Bonanno, who in *A few notes on Sacco and Vanzetti*, reminds us that; "the concept of innocence and guilt is **not** an objective fact **but** is a measure imposed by the class struggle. The legal techniques and police procedures that establish whether a person is guilty or innocent are part of the **culture of power**."

Now I'm putting on the table a question that has been included in contemporary anarchist discussion in Mexico, especially in light of the recent arrests of comrades and follow-

ing the media harassment witnessed in AGAINST THE CONTENTS OF ANARCHIST EXPRESSION in recent times .. and the question is ... **is anarchism a crime?**”

**Well, with the first blunt question** I’m tempted to also respond strongly and thus I WILL: **Question. Is anarchism a crime? Yes, of course BUT of course it is and not only is it, but it must be ...** Now, let me explain. I could defend this idea from my experience as a lawyer and as an anarchist with arguments in terms of ethics by saying, for example that this is simply because if we know that the sum of the conduct that threatens the reproduction of capitalist society is considered by modern law as crimes, what follows that there can be nothing more ethical in this world than to be regarded as a criminal.

But beyond arguments in terms of ethics, I want to dedicate this talk to making a critique of the strategies and categories in which the domination of the legal form of capitalist society is expressed, ie, in which the state expresses itself, in order to destroy it analytically. I understand this review then, as a reflective moment of praxis itself.

Well, having said that, the first thing that springs to mind when we begin our analyse is that the initial question should be reformulated. Because it can bring us to try to respond from the darkest places of instrumental rationality. And excuse me but I’m up to here with that. Then let’s find another way of thinking. Thinking that destroys, cuts, breaks the continuum of the concept and the continuum of domination because only with this break is it possible to produce the combination.

I start from the idea that Thinking is a moment in the antagonistic form of existence. And from this point of view, **the concept, then, is struggle** (it is not that the concept thinks the struggle). The traditional idea is that knowing means getting closer to the object. That knowing is to separate subject and object. Critical theory does not agree with that. This does not imply abandoning rigour, **but** implies producing categories

What is the law. Issue of violence. Permanent conflict ... WE ALL make THE LAW...

THEORY OF POWER ... OVER OUR OWN LIVES ...

So the concept is struggle. Understanding this is very important (because it is not that the concept thinks the struggle), but **the VERY concept is the struggle**. And so, we have a first distinction between the critical theory of law and traditional one. Because the traditional theory of law offers CONCEPTS OF LAW AS IF it were "SOMETHING NEUTRAL, OBJECTIVE, IMPARTIAL, AND, SOME EVEN DARE TO SAY ... THAT ... the law seeks JUSTice, that its purpose is to achieve the common good" . In this regard, a law teacher always makes the same – bad – joke ... he says that if it were true that the law is looking for a common good, than, after so many centuries it should have finally found it. No???

In contrast, for a critical look at law right, the law is ...THE ORGANIZATION OF VIOLENCE. It is not that the law is helped by violence, but **the law itself is the organization of violence. Law administers social violence. It establishes who is allowed to use violence against whom.**

and involves recognizing categories that are part of antagonistic reality. That knowledge is part of struggle.

I'll just put that thought on the table, but maybe it's better to leave the epistemological discussion aside, because now I want to focus on the issue before me at this time, which is the relation between anarchism and law. For now I just want to make the invitation to think, in a different way. One that does not vertically separate subject from object. And how? Well, for example, it could be ... not thinking of ourselves any more as anarchists, – **as anarchists** – but thinking of ourselves, as compa Gustavo says, of being,- **being anarchists**, and to this I would add; **making -making anarchy here and now – making permanent conflict here and now.**

Well, as I said, I'll leave the epistemological question for another time. I also want to give a warning before starting. Whenever I talk about law I will be referring here to modern law. Modern law is what we know to be centralised in the figure of the state, which divides the public from the private. And the state is, for me, the form of capitalist society. I give this warning because for me, multiple laws coexist within the same territory. Some of them are not centralized and, I maintain, not capitalist. Indigenous laws for example. And this way of seeing the world of laws I call **legal pluralism**. But that is also the subject for another talk.

Now let's have fun destroying our initial question. Is anarchism a crime? Well, this certainly brings us to play now with the notions of crime, the state, and of modern law. What is a crime? A compa always tells me: in Chile, I prefer to steal than be stolen from ... and personally, me too. We recall that for Proudhon, "the real theft is property". But to analyze this sentence and extract all the wealth it contains, it is enough, comrades, to make a brief historical journey that reminds us of how much we hate this social technology that was invented: the state. This is because the notion of crime is linked to the

invention of the state. That's why what I want to stress here is how judicial power was formed.

Here we must ask something very simple. Why does law — modern for example, say what it says and not something else? Why is killing someone with a bullet considered a crime for the law, but if you kill someone through starvation it is completely legal, and morally acceptable?

So, we know that the judiciary did not exist in the Middle Ages, because at that time settlements were matters resolved between individuals. Only those who held any traditional, magical or religious power were asked to check the regularity of the proceedings, but it was not asked, — like today people beg the judges, — that someone, the judge for example, by exerting hierarchy, do them justice.

So, there was a judiciary that was in the hands of those who wielded political power or the power of weapons. The accumulation of wealth, the power of weapons and the establishment of a judicial power in the hands of a few is a unique process that was strengthened in the late Middle Ages and reached maturity with the formation of the first medieval monarchy, in the second half of the twelfth century. It is at this moment that a number of entirely new phenomena in relation to feudal society appeared: a justice that doesn't contemplate litigation between individuals, and an unquestioning acceptance of certain rules of settlement. From this time on, individuals no longer have the right to resolve their disputes themselves, but, are forced to submit to a power foreign to them, imposed on them as a judicial and political power.

And so was born the figure of the attorney, representing the king, ruler or lord, who replaces the victim, who is presented as the TRUE plaintiff. And then comes the notion of infringement. Before that, while the legal drama unfolded between individuals, it was only a question of damage caused to another individual. And law was the continuation of private vengeance. But now, the offence is no longer harm done by one individual

- First ourselves as bodies, finite, concrete, living here and now. And this means fleeing abstractions, idealizations, mystifications that only manage to blind us. For example, to believe in abstract justice prevents us from exercising just relationships in the practical sense. I reproduce here what was said by Hinkelammert in the *terms of absence*. Then, just as believing in equality in the abstract prevents us from exercising relations of concrete AND REAL equality, in daily life, **believing in the law in the abstract prevents us from building different forms of regulations, real, from below.**
- And the second is NOT TO FLEE. NOT TO BE AFRAID. Fear paralyses, prevents us from acting, and it is good to be cautious but if in something we can agree with Hegel it is that if the slave is a slave it is because ... he is afraid to die.

But, by fear I am also referring to the fear that many anarchist comrades have of the language of law. Do not fear, we've seen that to know the language of the enemy, in full awareness of who the enemy is, of course, can be very useful

So I end with a quote from the author with whom I began: Alfredo Bonanno who in Notes on Sacco and Vanzetti tells us that:

[...] Reality is precisely this complex thing that cannot be reduced to the result of a legal procedure. The latter will always be arbitrary and founded not on evidence but on strength, not on logic but on power. A difficult way of reasoning? Perhaps, yes, but if you do it once you never forget it.[...] A.M.BONANNO

What is the state , Permanent conflict ...WE all make THE STATE...

The alternative use of the law is a very viable weapon when one uses it fully aware that these are arguments that although they have a certain social power, the fact remains that the real struggle is in how we organize concrete human beings here and now to attack this system of things.

Because as law and language make us partakers of the reproduction of hegemony and domination, **I think they can also** be part of a plot that challenges this hegemony and domination.

And accepting the above definition it is possible for one to start to understand that law is a field of confrontation, **and not** the end result of the struggle. Then, yes, let's face it ... modern law is prescriptive discourse generated by the power bloc, so of course, it is favourable to their interests, BUT ... it can also be used as a battlefield against such claims of dominance. But there are many battles and weapons to use and get to know.

Good. So I applaud the organisation of this symposium. The existence of an informal anarchist space to share experiences and arguments among those of us in the struggle. Where we can climb over the many walls that domination imposes as social divisions such as nations, languages, races, genders, generations, ages.

I belong to a generation that sometimes gives the impression that it lost utopia. I say, **gives the impression** because this appearance was disseminated by the mass media that strive to make us believe that fall of the Berlin Wall also meant the end of history. And that now, all you have and will ever have is the totality of law dominating human beings. And nothing could be farther from the truth. Because capitalism has not mastered everything, and history does not have an end. No. So this is NOW, we are here again. Like the cicada.

In conclusion, I want to put on the table two keys that I find important to think about in order to escape the trappings of state fiction, and they are:

to another, but an injury committed against the order of the state. Thus the state confiscates judicial proceedings and we see how Western monarchies were founded on the appropriation of justice. Moreover, because of the religious connotations in the process of inquiry, damages in the legal context would begin to be treated as quasi-religious moral damage. Even today we find in criminal law words of clearly religious origin, we find the penal codes full of words like blame, guilt, shame ... etc. These words are used to negate the ability of individuals to exercise power freely for themselves. A guy regarded as the great theorist of modern criminal law, a guy who boasts of being very "rational" said, NULLA POENA SINE LEGE... and so the word crime is invented.

Well, in short, we have a two trends in feudal society: on the one hand, the concentration of weapons in the hands of the most powerful, who tend to prevent their use by the weak. And guess what? **To defeat someone is to deprive them, deprive them of their weapons.** And on the other hand, simultaneously, we have actions and lawsuits that were and are no more than a way of making assets circulate.

Thus we come to current criminal law: As we know it, we are prohibited to solve our own affairs for ourselves. Disputes are decided by the state, which replaces the victim. And also we do not have weapons. Weapons are used and regulated by the state. So ... the law, says Foucault, is a way of continuing war.

Well, to this I say: yes WITH THE RISE OF THE STATE, WHAT HAPPENED WAS PRECISELY THAT we were expropriated of the ability to resolve our issues by ourselves. Let's bring back the ability to resolve our issues by ourselves. **LEGAL PLURALISM.** And if they expropriated our weapons and the ability to use violence, **LET'S TAKE THEM BACK AGAIN,** let's regain our ability to use violence.

The weapon for example ... of theoretical-philosophical critique ... is of course ... good. Here a parenthesis ... resolve our

own affairs? Take up arms? We have an example that doing this is really possible and concrete here on the mountain of guerrero ... at least it is for me and we can discuss at another time if you'd like: it is called a system of security and justice crac-pc.

Returning to our initial question: is Anarchism a crime? Well, if the word crime is an invention of the state to name any conduct that undermines capitalist reproduction, and if anarchism as a political philosophy and as permanent conflictuality is a number of ways of acting with a common denominator- hatred of the state ... then one would have to conclude that yes ... I am a criminal, and ... it is a great honour.

Well, as a result of this process of double expropriation that is the state which begins to take shape around the XII century, we have the emergence of some EQUALLY diabolical characters: lawyers, who had the role of managing and reproducing this new order that was taking shape. And this is also true today. Here, allow me, I have to make a parenthesis ... I have to say it: I could die of tenderness when people in social movements, when they are detained in contexts of protest approach me as a solidarity lawyer and ask me: What can we do? Close the street? Shout? Do a sit-in?? And I cannot help but think: MM I DO NOT KNOW ... As an anarchist, I could not tell anyone what to do or not do, because that would be a contradiction. I just act in accordance with my way of thinking without ever supposing myself a mediator or negotiator between the state and protest. But the fact is that lawyers are characters upon which people confer enormous power to shape their lives. Whenever people have a problem, or want to do something, what do they do?? Consult a lawyer!!! Even my friends, knowing that I am a lawyer, come to me and say: Hey Alma I can't stand my family, what can I do? I tell them ... You see ... let's have some tequilas. The people ask me: how do you see it... we want to do this DIRECT action what do you think?? ?????? What do I think?? Fucking great!!! So!!!! ... people are

just too used to law and lawyers shaping their behaviour. **But** I do not think I contribute to that. So please, if you want to do something, do not ask me what I think about it. Better to invite me to do it with you.

But then those those who are lawyers and anarchists at the same time, are a living a contradiction?? Well, No. For me, the contradiction exists in human beings who, being lawyers, ie, knowing the law of the state, and being aware that continuing this political-economic system means suicide for humanity itself, do not choose to be anarchists. Now that is a contradiction.

On the contrary, as an anarchist and lawyer at the same time, I can say that if we have the need for direct action with all available weapons, being a lawyer I have a weapon that is called *Alternative use of law*. The alternative use of law is a theory born in the seventies both in Latin America and Italy. It is a struggle to interpret existing national and international legal texts to give us ground to defend our cause, using the very language of the state. In some cases this can be a big help. In cases of comrade prisoners, for example. Even sometimes just to present oneself as a lawyer to a public prosecutor, a lawyer's professional card has helped me to get in, talk with comrades, preventing them from being tortured, or avoiding further torture if they have already been tortured, and so on.

Well, like all weapons, this weapon has its limits, of course. For example, there are times that even as a lawyer it is difficult to have access to court records to know what comrades are accused of. But rest assured that if it is A WEAPON THAT I have in my hand and I know how to use it, I will use it as often as necessary. In the same way I use all the weapons I have at hand whenever necessary. Another example, I'm obsessed with indigenous matters. In these cases, the mere fact of citing international conventions such as art.169, the right to free and informed consultation, has contributed to helping to curb the attempts of some mining companies stealing nature in some mining concessions in indigenous territories in Mexico. Good.