ANARCHY AND LEGAL ORDER

This book elaborates and defends the idea of law without the state. Animated by a vision of peaceful, voluntary cooperation as a social ideal and building on a careful account of nonaggression, it features a clear explanation of why the state is illegitimate, dangerous, and unnecessary. It proposes an understanding of how law enforcement in a stateless society could be legitimate and what the optimal substance of law without the state might be, suggests ways in which a stateless legal order could foster the growth of a culture of freedom, and situates the project it elaborates in relation to leftist, anticapitalist, and socialist traditions.

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Anarchy and Legal Order

LAW AND POLITICS FOR A STATELESS SOCIETY

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For

Kevin Carson, Stephen R. L. Clark, Sheldon Richman,
Jeffrey Cassidy, Annette Bryson, and Wonil Kim
Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, that was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, “What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet art styled emperor.”

– Augustine of Hippo (354–430)

When Adam delved and Eve span, Who was then the gentleman? From the beginning all men by nature were created alike, and our bondage or servitude came in by the unjust oppression of naughty men. For if God would have had any bondmen from the beginning, he would have appointed who should be bond, and who free. And therefore I exhort you to consider that now the time is come, appointed to us by God, in which ye may (if ye will) cast off the yoke of bondage, and recover liberty.

– John Ball (1338–81)

Those who make laws, appropriate wealth in order to secure power. All the legislative classes, and all the classes whose possessions depend not on nature, but on the law, perceiving that law alone guarantees and secures their possessions, and perceiving that government as the instrument for enforcing obedience to the law, and thus for preserving their power and possessions, is indispensable, unite one and all, heart and soul to uphold it, and, as the means of upholding it, to place at its disposal a large part of the annual produce of labour.

– Thomas Hodgskin (1787–1869)

[A] very large portion of the people of this country do not believe that the government is doing “equal and exact justice to all men.” And some persons are earnestly promulgating the idea that the government is not attempting to do, and has no intention of doing, anything like “equal and exact justice to all men”; that, on the contrary, it is knowingly, deliberately, and wilfully doing an incalculable amount of injustice; that it has always been doing this in the past, and that it has no intention of doing anything else in the future; that it is a mere tool in the hands of a few ambitious, rapacious, and unprincipled men; that its purpose, in doing all this injustice, is to keep—so far as they can without driving the people to rebellion—all wealth, and all political power, in as few hands as possible; and that this injustice is the
direct cause of all the widespread poverty, ignorance, and servitude among the great body of
the people.

– LYSANDER SPOONER (1808–87)

When Warren and Proudhon, in prosecuting their search for justice to labor, came face
to face with the obstacle of class monopolies, they saw that these monopolies rested upon
Authority, and concluded that the thing to be done was, not to strengthen this Authority
and thus make monopoly universal, but to utterly uproot Authority and give full sway to the
opposite principle, Liberty.…

– BENJAMIN R. TUCKER (1854–1939)

The State’s criminality is nothing new and nothing to be wondered at. It began when the first
predatory group of men clustered together and formed the State, and it will continue as long
as the State exists in the world, because the State is fundamentally an anti-social institution,
fundamentally criminal. The idea that the State originated to serve any kind of social pur-
pose is completely unhistorical. It originated in conquest and confiscation—that is to say, in
crime. It originated for the purpose of maintaining the division of society into an owning-and-
exploiting class and a propertyless dependent class—that is, for a criminal purpose.

– ALBERT JAY NOCK (1870–1945)

What we call a government is after all nothing but a group of individuals, who, by a variety
of sanctions, have acquired the power to govern their fellows. The sanctions range from the
fraud of divine right to that of sheer conquest; from the imbecility of hereditary privilege
to the irrationality of counting voters. In most cases the extent to which these sanctions
produce capable legislators, judges, and administrators will not bear critical examination.
Nominally, government exists and functions for the public. Actually it exists and functions
for the benefit of those who have in one of these absurd ways acquired power to govern.
It is accepted mainly because of the sheer inertia of great masses of people. Ostensibly, of
course, it is accepted because it confers a sufficiency of visible benefits upon society to make
the officials who operate it tolerated in spite of the selfish and idiotic exercise of the powers
conferred upon them.

– RALPH BORSODI (1886–1977)

My political opinions lean more and more to Anarchy (philosophically understood, meaning
abolition of control not whiskered men with bombs)—or to ‘unconstitutional’ Monarchy. I
would arrest anybody who uses the word state (in any sense other than the inanimate realm
of England and its inhabitants, a thing that has neither power, rights nor mind); and after a
chance of recantation, execute them if they remained obstinate!

– J. R. R. TOLKIEN (1892–1972)
You’ve asked me, “What might you be?” Now I answer you: “I am a Wobbly.” I mean this spiritually and politically. In saying this I refer less to political orientation than to political ethos, and I take Wobbly to mean one thing: the opposite of bureaucrat... A Wobbly is not only a man who takes orders from himself. He’s also a man who’s often in the situation where there are no regulations to fall back upon that he hasn’t made up himself. He doesn’t like bosses—capitalistic or communistic—they are all the same to him. He wants to be, and he wants everyone else to be, his own boss at all times under all conditions and for any purposes they may want to follow up. This kind of spiritual condition, and only this, is Wobbly freedom.

— C. WRIGHT MILLS (1916–62)
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About the Author
Preface

The “anarchistic socialism” of Benjamin Tucker and the “Ricardian socialism” of Thomas Hodgskin lie behind this book, which is in significant part an attempt to defend contemporary descendants of their ideas. As I seek to articulate an anarchist position that is identifiably leftist, anticapitalist, and socialist, while also hospitable to robust possessory claims and to mutually beneficial exchange as a valuable variety of peaceful, voluntary cooperation, I am deeply grateful for the intellectual inheritance I have received from Tucker and Hodgskin and those who learned from and dialogued with them—Voltairine de Cleyre, Lysander Spooner, Dyer Lum, Herbert Spencer, and William B. Greene, among others.

I've dedicated Anarchy and Legal Order to six people from whom I have learned and continue to learn about politics and philosophy.

- Kevin Carson’s brilliant synthesis of ideas from diverse radical traditions and his ability to draw effortlessly on a wealth of material from economics, history, political philosophy, and organizational theory have grounded an approach to anarchism that I realized could accommodate both my visceral antiauthoritarianism and my opposition to exclusion, subordination, and deprivation. He continues to stimulate and challenge me, and to exemplify an enviable commitment to scholarly productivity. This book would be unimaginable without the inspiration his work has provided.
- As a source of insight during my dissertation research, as the external examiner of my dissertation, and as a continuing interlocutor in subsequent years, Stephen R. L. Clark has served as an exceptional model of clear thinking and elegant writing, of the effective integration of moral passion and reflective faith.

1 I direct those who are convinced that Spencer does not belong in this group to a number of essays by Roderick T. Long, all available via his website, Praxeology.net, http://www.praxeology.net. Cf. Thomas Hodgskin, Book Review, The Economist, Feb. 8, 1851, at 149 (reviewing Herbert Spencer, Social Statics [1851]).
with careful analysis. He was among the first anarchist thinkers to help me see that the authority of the state was indefensible. Stephen’s nimble mind ranges over a remarkable range of topics, and I remain delighted by the ongoing opportunity to learn from him about all of them, even when we disagree.

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Preface

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My parents did not live to see this book published, and no doubt each would have responded to it with mixed feelings. But they deserve repeated thanks for bequeathing me a passion for freedom, a skepticism about authority, and a disgust at elite mischief—all of which are, I hope, deeply embedded in this book.

Anarchy and Legal Order builds on, even as in some ways it departs from, the account of ethics in economic life I developed in Economic Justice and Natural Law. It differs especially in allowing the anarchist ideas that played minor roles in the earlier book to occupy center stage and in focusing specifically on the moral limits on the use of force—and so on the development of a natural-law version of the moral requirement of nonaggression.² Credit for the refinement of my position goes first of all to Kevin Carson, who addressed a number of pointed questions to me about the links between Economic Justice and my more explicitly anarchist work, but I am also grateful to the other participants in an author-and-critics session devoted to the book that took place at the 2011 San Diego meeting of the American Philosophical Association’s Pacific Division—Roderick Long, who organized the session, as well as Douglas Den Uyl, Douglas Rasmussen, David Gordon, and Jennifer Baker. Carson also provided detailed, helpful comments on a draft version of Anarchy and Legal

2 Other differences include (i) greater development of the desiderata underlying just possessory claims and the implications of these desiderata, (ii) a clearer distinction between the justifications for the use of force with and without consent, (iii) a change in focus from direct legal mandates to the indirect impact of institutional change as the central means of fostering workplace democracy and nondiscrimination, and (iv) an explicit acknowledgment of the importance of mechanisms for encouraging social change quite apart from the legal system.
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All of the author royalties I receive for this book will be donated to AntiWar.com. This exceptional source of news and inspirer of activism, cross-ideological but staffed by a disproportionate number of anarchists, performs a vital service by promoting peaceful, voluntary cooperation in a conflict-ridden world, and I urge all those who find my arguments in Anarchy and Legal Order appealing to support it.