

Excerpt from “État, droit et légitimité”, in *Actualité de l’anarchisme, L’Homme et la Société*, 1997/1-2, N° 123-124

Proudhon and Law

I wish to pay tribute to the work of Pierre Ansart,
who has been decisive in my interest
in Pierre-Joseph Proudhon.

ANARCHISM IS RARELY PERCEIVED as a theory and a practice tending to create a new Right; yet this aspiration is constantly found, in the texts of great theorists or under the pen of activists. This Right is first of all that of “standing up against oppression and exploitation”.

“The right of every individual to stand up against oppression and exploitation is imprescriptible. Will he alone be against all that his right to demand and revolt remains inviolable.¹”

Beyond the individual right to revolt, libertarian reflection is based on a social reality which, in Proudhon's words, gives the individual a morality “superior to his individuality”: Justice is “inert in a solitary existence” – which means that justice is a social phenomenon. It should come as no surprise that a man who asserts that “property is theft” gives the problem of law a priority place in his thinking. More generally, it can be said that all the struggles of the labour movement since its

1 Émile Pouget, *Les Bases du syndicalisme*, p. 18, 1910.

beginnings have been based on claims of Right: a Right to be established.

Proudhon had noted that politics was the alienation of the collective force specific to social life, while capital was the alienation of the collective force of labour. Proudhon defends himself from any accusation of idealism in his approach, affirming that “Justice does not create economic facts, (...) it does not ignore them (...). It limits itself to noting their true and antinomic nature”².

Just as in economics the combined strength of many people far exceeds the simple addition of the strength of each individual who makes up the group, social law is not reduced to the simple addition of the rights of the individuals who constitute society. The rules that animate society, whether explicit (like law), or implicit (like customs) are the result of a confrontation between antagonistic forces that have reached a momentary equilibrium. These rules can be formed precisely by “conscious, combined, deliberately associated forces”, of which power is the centre.

Revolutionary syndicalism and anarcho-syndicalism, at the beginning of the XXth century, took up this idea again, in an approach perfectly described by Jacques Toublet :

“Among the themes of revolutionary syndicalism that were gradually forgotten, we also find the idea recalled by Merrheim, during the debates in Amiens³, and of pure Proudhonian tradition, according to which the purpose of syndicalism is, among other things, to break the current legality

2 Proudhon, *De la Justice*, 3rd study, vol. II, éd. Marcel Rivière. p. 149.

3 A reference to the congress of Amiens of the CGT, 1906.

and to give birth to a new right, to prepare the code of regulation of the emancipated labour society. The autonomy and sovereignty of the basic bodies of the social edifice, the dual territorial and professional structure, the federative links that are created between the constituent parts elaborate practice and law, based on the demand for freedom and justice, of the new world, in the face of the centralized bourgeois state and its right to defend owners. The elements of the federalist syndicalist movement also weave together legal procedures for consultation, debate, decision-making and the settlement of disputes, which are conceived according to a different model from the centralist regalian and Jacobin tradition ⁴.”

The “root” of Law is to be found first and foremost in every individual, who demands that his or her dignity be respected. But collective justice, social law, is not the sum of individual demands. If we consider that it is possible to consider the Right either as a particular claim or as a universal requirement, anarchism undeniably places itself in the second hypothesis, with the particularity that the rights of the individual are the consequence of his duties towards society. Proudhon as well as Bakunin insist that the individual is nothing without the society that produced it.

Justice is not a form without content, it is a reality that is revealed in social practice, and more precisely in economic relations. The achievement of Justice will be possible in a society in which the sovereignty of producers is established. As

4 Jacky Toublet, “L’anarchosyndicalisme, l’autre socialisme”, Préface à *La Confédération générale du travail* d’Emile Pouget, Éditions CNT Région parisienne 1997.

a spontaneous creation of social practice, Law acquires in the society where it has “preponderance”, as Proudhon puts it, a regulatory function protecting against oppression. Justice will not be a closed system, it will be an incessant movement adapting to changing social relations. “We will never know the end of the law, because we will never stop creating new relationships among ourselves”⁵.

The concept of Justice implies the reciprocity of contractual relationships, including the acknowledgement of the specificity of the collective fact as well as the freedom of the subject. It is essentially a relationship of reciprocity, of acknowledgement of the other. When Law is not based on a relationship of force, when it is not the justification of force, it is the form in action of Justice: it becomes a social force, in that it supports the claims of society. Justice is a “cohesive force”, says Proudhon ⁶

Revolutionary action is meaningless if it is not supported by the consciousness of its legitimacy, the sense of Right, which participates in the formation of the working class and its constitution as a historical subject ⁷. Law is therefore not a principle transcendent to the social sphere insofar as it expresses social equilibriums, which diverge according to time and place, but its formulation participates in social dynamics: what is on the agenda today, according to Proudhon, is the establishment of an economic law which would supersede the law of war and force, on the one hand, and political law based on governmental constraint on the other hand ⁸. In an anarchist society, this new Right, based on the balance of economic and

5 *De la justice*, 1re Étude, vol. 1, éd. Marcel Rivière, p. 328.

6 *La guerre et la Paix*, éd. Marcel Rivière, 1927, p. 121

7 *De la capacité politique des classes ouvrières*, éd. Dentu, p. p. 184.

8 *La guerre et la paix*, éd. Marcel Rivière, 1927, pp. 76-83.

social forces, is the condition for an egalitarian democracy in which the idea of Justice acquires “the force of law”⁹.

Justice must, however, remain immanent to reality, to social action. It becomes the moment when social practice recognizes itself in its authenticity. Justice is a constant movement by which society adapts itself to progress, according to its experience. That is why it has no end. Law cannot become a closed and fixed system, because the rule of Law is a state of constant revision of relationships, of contracts, whose purpose is not to create order, but to create new relationships time and time again.

Law is a modality of action. Before being a codification, it appears as an individual and collective demand; it is an act in which man as a social being establishes a relationship with others, by which men recognize themselves in their equality and dignity, in the reciprocity of their interests¹⁰. As an eminently social phenomenon, it can only be addressed in relation to the society in which it is constituted. It is therefore not separable from the social antagonisms that develop within it, and it is a manifestation of the power relations that confront it.

Law is an expression of social spontaneity in all its contradictions, but, as a body of texts that regulate life, it is only the tip of the iceberg. In line with Proudhonian thought, Bakunin detects behind the codified positive law another, more lively law, the implicit right of the “non-state classes”, which is gradually building up underground and is awaiting its time.

9 *De la capacité politique des classes ouvrières*, édition Dentu, 1865, p. 86

10 Proudhon, *De la justice*, 2nd study, vol. I, éd. Marcel Rivière, p. 419.

Perhaps is it time for the revolutionary movement to abandon the reluctance it may have to integrate arguments of legitimacy and law into its thinking and propaganda. It could wonder whether the absence of a credible project for the popular movement is not, in part, precisely linked to the absence of awareness of people's collective rights. It is time to formulate a new legitimacy, so that "Justice be constituted in force".

René Berthier