What is Law?

The question of, *what is law?* has been addressed by a plethora of legal and political theorists and philosophers over time. A diverse array of answers in the form of theories have been provided for us over t centuries. The aim of this chapter is *not* to engage with this question. Costas Douzinas and Adam Geary in their book *Critical Jurisprudence* (2005) offer a convincing interpretation of the history of this question. As they aptly point out, it has been proved over time, that the answer to this question, provides us with a restricted jurisprudence or theory of law, one that is focused on '…[interrogating]…the essence or substance of law.' (Douzinas and Gearey 2005: 10) and '…assumes that there is a number of markers or characteristics that map and delimit the terrain and define what is proper to law' (Douzinas and Geary 2005). As the authors point out such reflections of law fail to relate to questions of justice, rights, subjectivity(gender, race, sexuality, class), ethics, politics, aesthetic, colonialism and the economy. Indeed restrictive jurisprudence utilises the question of *what is law?* to create a *pure* uncontaminated understanding of what law is (e.g. Kelsen, Hart). Critical Jurisprudence instead encourages an engagement with law that is of a general kind, or as they point out it is a *General Jurisprudence* it returns legal theory to '…all those issues that classical philosophy examines under the titles of law and justice' (Douzinas and Gearey 2005:10) that have been translated by the authors into contemporary concerns around of rights, subjectivity etc. By addressing the general aspect of law the authors aim to open up law to the 'ontology of social life' (Douzinas and Geary, 2005:11) and show how legality is prolific and 'touches all aspects of existence and leads to the modern versions of the classical *ars vivendi*, the art of living, of which law and ethics was a central part.'

(Douzinas and Geary 2005: 11). Questions of justice and ethics for example, are proposed to be addressed through questions around rights, subjectivity etc.

Looking at law from the perspective of the general, challenges the analysis that restricted jurisprudence has introduced (analysis of principles, rules, legislation) and insisted upon as being either the main work of the institution of law or, more generally should be the main preoccupation of legal scholarship. As philosophers and political theorists have noted law does have an operational function, that is, it does not merely work mechanically 'free' from the governmental institutions that surround it (legislative, executive bodies) but rather at times operates in a purely executive fashion, to drive the political agendas of polities (Agamben, Butler), with differential consequences on populations (refugees, women, precarious workers etc.,). Philosophically we may say that the restrictive jurisprudence school of thought by preoccupying itself with the question of *what is law?* has invested itself to retrieving the *essence* of law. Differently, the general jurisprudence school of thought has invested itself with the philosophical and dialectical question that asks us to consider *who is law?*; who is recognised within law, and who is excluded, who in other words becomes law.[1] By pointing to differential treatments in law, and non-recognition instances, general jurisprudence we may say reacts to the restrictive jurisprudential understanding of law-which presents law as a machine operating justly, in the sense that any malfunction in the machinery of delivering justice, judicial mechanism, can be adjusted through alterations of rules. On the contrary it general jurisprudence, points to the impossibility of such claiming by *showing to us who* is *not* law.[2] These two schools of legal thinking share nevertheless one thing in common, an attachment or investment in law[3]. Restrictive jurisprudence is concerned describing and preserving the law, while general jurisprudence desires every part of life, being captured within the ambits of law. In both

occasions life concerns are not seen to reside or could possibly reside outside a juridical order, nor could they imagined to be attended to outside the legal imagination.

It is neither, with the *what is law*? nor, with the *who is law*? question that I find anarchists concerned with, but rather with the Nietzschean[4] question, which I paraphrase here, of 'how shall *law* be overcome?'. This question does not imply, that law will be usurped and turned into an apparatus that is in the image of anarchism-the question does not a reactive engagement to law. This is a frequent misunderstanding and interpretation of anarchist engagement with law. Most often, even in today, anarchist actions are interpreted as resistances or transgressions to law and order, see for example the reactions that the 'Black Bloc' had relating to their symbolic deformation of buildings and police scuffles during the anti-cuts campaigns in 2011. They were called by Kit Malthouse, London's deputy mayor as 'fascist agitators'[5], a naming that presents direct action anarchists as a political grouping that wants to usurp (not just challenge the law) and frame it in a fascistic fashion. As Deleuze points out in relation to Nietzsche's question 'how shall man be overcome?', which I am paraphrasing here, it directs us to '*a new way of thinking*', '*a new way of feeling*' and '*a new way of evaluating*' (Deleuze 2013:154). It directs us to the formation of a subject and a way of life, other than the subject that is formed through law or a way of life that is predicated on law. It is important to note that such a subject or, a way of life is not going to come about in some future near – by (not future oriented), but rather it is a subject and a way of life that articulates its existence in the present, albeit this it is not universal or all over present. In other words, the anarchist address of '*how shall law be overcome*?' is indicative of the existence of this subject that thinks, feels and evaluates anew in the present. I called this elsewhere a parallel life[6].

This chapter will posit anarchist articulations that address the question of *'how shall law be overcome?*' In doing so I will be drawing from the archive of speeches of Emma Goldman and writings from Kropotkin. The aim here is to show that the way that these anarchists account for law, demonstrate both, a subjectivity and a way of life that does *not* count upon law to either live and act, and a *critique* of law and legally consumed subjectivity that points to the limits of law that may have not otherwise been addressed by general jurisprudence. In the first instance, what I will be re-articulating is an anarchist ethos, in the sense of an ethics of existence in the Foucauldian sense, and it the second a more nuanced critique of law. The section that follows will offer an anarchist critique of law and the one that immediately after will focus on the anarchist ethos. In some respects, both sections are interrelated and the separation that is made here is somewhat artificial, more specifically as critique here is not be taken to mean criticism with a transformative agenda for law, but rather a departure from law.

Anarchist Critique of Law

In 1917 Emma Goldman and her fellow anarchist Alexander Berkman where trailed for conspiracy against the *Selective Draft Act 1917* which authorised the federal government to conscript young men between the age of 21 to 30 into the army in preparation of the US entering into World War I[7]. Goldman and Berkman along with other anarchists lawyers and academics have organised various events, including a debate at Harlem Casino on the eve (18th May 1917) of the passing of the draft Bill attended by around 10,000 people to inform citizens of the perils of war and of the devastation that World War I was already spreading across Europe and why they stood against conscription. They have also published on the 1st of June and 2nd of June 1917 in their respective

magazines, *The Blast* and *Mother Earth* an essay against conscription[8]. As they insisted in their trial, the aim of their gathering at Harlem Casino and Goldman's essay 'No Conscription League' (Goldman 2000:398-99) was not to discourage or, influence young men from registering. Rather, the wanted to create the space whereby they could disseminate through information about the perils of World War I and conscription, as well as to enable young men to make an informed decision regarding the draft[9]. Both Berkman and Goldman insisted on this point. In his closing speech to the jury Berkman explained why he would not advice anybody not to register:

> I would never advice anyone to do a thing which does not endanger me. I am willing to resist tyranny. If I were willing and ready to resist tyranny, I might advise other to do so, because myself would do it. I would be with them and the responsibility. But I was excepted from that registration business. I did not have to register. I was beyond the age. I was not in danger. And would I advice anyone to do the thing which does not put me in danger? I would advise people once in a while, if I thought it necessary to do things, dangerous things; but I would be with them. Never would I advise anybody to do a thing that is dangerous and I not be there or not be in danger. That is why I did not advise people no to register.
>
> (Berkman and Goldman 2005: 54)

And earlier, in his introductory speech to the jury, he argues that the decision to register or not to register was left up to conscience of each young man (Berkam and Goldman 2005: 28). Emma Goldman in a letter, that Goldman send to Mary E. Fitzerald her secretary and anarchists associate and was presented by Fitzerald in first non-conscription meeting that took place on the 23rd of March 1917, and was also presented in court, eloquently explains why she will not urge young men not to register: '…I do not advice or urge young men to refuse to register; As an anarchist, I could not do that, because that would be taking the same position as the Government, by telling someone to do this or that. I refuse to advise young men to register, it must be left to the

individual.' (*Goldman [&] Berkman v United States*: Transcript of Record 1917 Sept. 25 Supreme Court of the United States: 241).

As it is well known both Goldman and Berkman were found guilty of conspiring against the draft and were exiled to Russia in 1919. This was not the first time that Emma Goldman found herself in a court of law. She had been previously been arrested and trailed, in 1893 she was incarcerated for a year at Blackwell Island Penitentiary for 'inciting a riot' (after a speech she gave in Union Square in response to the unemployment that plagued the US at the time) and in 1916 she was convicted for breaching the Comstock Law of 1873[10] which criminalised the circulation of information around Birth Control, for her lectures on the topic. For the latter conviction she had the option to pay a fine of $100 dollars or spend two weeks in prison. She chose to spend two weeks in the Queens County Penitentiary[11]. Goldman never feared the law or its institutions and turned her appearances in court into propagations for anarchist principles. Shulman writes with respects to her trial where she stood accused of breaking the Comostock Law:

> On April 20 Emma's case went to trial. Emma defended herself. Three staid judges presided over an overflowing courtroom. Emma, as always, was expected to put on the best show in town.
>
> After some witty exchanges with the prosecution, Emma turned her trial into an eloquent defence of birth control. Her closing speech to the court lasted for one rapturous hour. "If it is a crime," she concluded with passion, "to work for healthy motherhood and happy child-life, I am proud to be considered a criminal".
>
> (Shulman 1971: 170)

Similarly when arrested for the conspiracy against the draft Emma Goldman turned the court room and the trial into a space where anarchism would be propagated (Goldman 1970: 614). As Goldman informs us in her biography *Living My Life* (1970) they, herself

and Berkman, '…did not believe in the law and its machinery, and [they] knew that we could expect not justice.' (Goldman 1970: 613).

Indeed in this trial Goldman gave a remarkable speech[12] to the jury where she propagated not only what anarchism stands for but also her understanding and limitations of law. She points out at first that the charge that was made against them is hypocritical, a 'trumped- up charge' in Goldman words (Berkman and Goldman 2005: 61). And then, she goes on to describe the law as an institution that curbs change and can't no matter how much it attempts to regulate the flow of life which is ever changing (Berkman and Goldman 2005: 62-3).

In describing the charge of conspiracy against herself and Berkman as fraudulent, Goldman desires to expose us to the hypocrisy of the law, and its inability to operate as an apparatus without politics[13]. How can Goldman accuse the law of being hypocritical? Let's see how she accounts for law's hypocrisy, or how she 'adorns' law with the characteristic of hypocrisy:

> To charge people with having conspired to do something which they have been engaged in doing most of their lives, namely their campaign against war, militarism and conscription as contrary to the best interest of humanity, is an insult to human intelligence.
>
> (Berkman and Goldman 2005: 57)

For somebody to be charged with conspiracy it is required to be proved that there is an agreement between two or more parties to commit an offence and at least one of the parties does an act towards the achievement of an offence. Berkman and Goldman were charged as I have already noted with conspiracy against the draft, and more precisely for conspiring to encourage men of conscription age not to register for military service. They were charged with section 37 of the *Criminal Code*. For them to be found guilty of the

charge, it required firstly to be proved that they agreed amongst themselves to encourage men of conscription age not to register. This would have fulfilled one part of the actus reus or conduct of the charge that required evidence of an agreement to do as such. Furthermore, the charge required the proof of a breach of US law. Init would have they would be breaching US laws as, on the 18th of May 1917 the Congress had passed *The Selective Service Act 1917*. The prosecution would have needed to prove at least one overt act, or that one of them would have done something (i.e., circulating pamphlets that said so) that would have demonstrated that they were encouraging young men not to register. The prosecutor Mr Content addressed the charge the charge to the jury as such:

> The general conspiracy section of the United States law, Sec. 37 of the Criminal Code, in plain English is this: When two or more conspire to commit an offence against the United States and one or more of such persons does any act toward the accomplishment of the conspiracy-what we call an overt or outward act-then the act is complete and that is a conspiracy. Conspiracy simply means two or more persons acting in an unlawful agreement; that is to say, a conspiracy is two or more persons acting in concert in an unlawful plan, either to accomplish something lawful by lawful or unlawful means. If any one does any act looking toward the accomplishment of the conspiracy, whether he finally succeeds or not, the crime is complete by the commission of the so-called "overt act".
>
> (Berkman and Goldman 2005: 23)

The prosecution presented as evidence of their "overt acts" for conspiring against the draft, the gathering at the Harlem Casino of the 18th of May, and the publication of the essay, 'No Conscription League' in *Mother Earth* on the 1st of June and *The Blast* on the 2nd of June of 1917. Goldman considers the charge hypocritical as we have seen in our earlier quotation. There are two main reasons that provoke her to characterise the law as such. Firstly, it was was a well-known fact that as anarchists both she and Berkman were against militarism, nationalism and war. In other words their political beliefs and previous activism demonstrated that they were opposed to such endeavours. This well-known fact to her eyes on its own did prove that they did not had to come to an agreement as to the dissemination

of information against militarism. Secondly, they were accused for committing and offence, i.e. encouraging men of the age of conscription to break the law or disobey. On the 18th of May when they were talking at the Harlem Casino the legislation had not passed. It passed while they were in 'conference'. So on the 18th of May at least they could have not have committed an offence when *The Selective Draft* had not been passed. Even if we suppose that they did found out while in 'conference' that the draft had been passed, they never suggested to eligible drafters to object, but rather as they repeatedly stated they merely presented them with their views against conscription in order to enable them to make their own decisions as to whether they would register or not. In her essay 'The No-Conscription League' (2000) for example, presented in court as we have seen as evidence to the conspiracy charge, she explains what was the role of the No Conscription League; the league was a platform of support for those who have already or were about to make the decision not to register and a space where opposition to militarism, the killing of fellow human beings could be debated (Goldman 2000: 398). Furthermore this platform was necessary as it was a matter of democratic necessity to have the conscientious objector recognised. Such democratic recognition, was granted in European countries such as England (Goldman 2000:398).

Critical Legal theorists[14], that promote a general jurisprudence as a critique of law and an account of the law, tend to show the contradictions and inconsistencies in law. Costas Douzinas and Ronnie Warrington in an early essay[15] for example point out to the paradoxical and contradictory ways in which law delivers justice. They focus on cases where refugees apply for asylum in the UK. As they explain in such occasions law demands that refugees need to prove that their fear of prosecution has to be 'well founded'. In turn this 'well-founded' fear would need to be '…satisfied by showing (a) actual fear and (b) good

reason for this fear…'(Douzinas and Warrington 1991: 121).Douzinas and Warrington (1991) argue that it is paradoxical that law is demanding 'fear' an irrational feeling to be proved through reason. Their critique shows clearly that law operates this paradox and they suggest following the thought of Jacques Derrida that justice based on standards that do not take account the subject before the law, the refugee in this case and how they experienced fear of prosecution, leads to injustice. What Douzinas and Warrington perform in this essay, is precisely what general jurisprudence aspires to do, for example for law to include the subject and its singularity within its ambits. Simultaneously because the exclusion of the subject and its experience of a situation for example in this case its experience of persecution) law fails to deliver what is sets out to do via its legal documents (statutes, case law), namely justice. Goldman's critique of law and the trial nevertheless can be distinguished from critical legal studies, and consequently from the brand of general jurisprudence that Douzinas and Gearey are putting forward. How can this distinction be drawn?

Goldman shows us that law has been hypocritical in charging them conspiring against the draft as through-out her life she has written about and run actions that demonstrated that she did not believe or supported militarism. Moreover in challenging the evidence presented against her and her fellow accused Berkman she exposed us *not* only that the law does not account for the subject but also that law builds its accusations on inaccurate facts. That law reaches its conclusions, from charging, to trialing, to judgment, based on inaccurate or un-true facts. Goldman exposes us to the methods in which it reaches its justice, which are not based on truth. While general jurisprudence points to the exclusive practices of law, Goldman and anarchist in general, point to the illegalities that law engages with. There is a fundamental difference between these two critiques. The first, general

jurisprudence accuses law for being exclusionary and aspires to 'correct' the law through pointing to its exclusions. The second, the anarchist critique, does not aspire to correct the law, as it has observed and demonstrated that laws' practices are based on non-truth. Goldman and her fellow anarchists I would suggest expose to us that law itself is criminal. It is not coincidental that Goldman closing speech to the jury, begins by telling the jury that their arrest, bail and trial is 'a three act comedy' (Berkman and Goldman 2005: 57). From the start she alerts the jury, the press (as you recall from the moment of their arrest Berkman and Goldman as they had no faith in the criminal justice system, they had decided to use the court room as a theatre where they would propagate anarchist principles) that the trial was fictitious.

Anarchists like Goldman did not aspire to rehabilitate the law also for other reasons. As Goldman points out in her closing speech to the jury 'Progress is ever renewing, ever becoming, ever changing--*never is it within the law*.'(my emphasis)(Berkman and Goldman 2005:63). Law is not imagined as the space where radical ideas and practices can accommodated within, but rather a space where the status quo is preserved. Why? Goldman eloquently suggests that,'[t]he law is stationary, fixed, mechanical, "a chariot wheel" which grinds all alike without regard to time, place and condition, without ever taking into account cause and effect, without ever going into the complexity of the human soul.' (Berkman and Goldman 2005: 62-63). The law, as Peter Goodrich has shown in *Languages of Law* (1990) is tradition or rather it preserves tradition. Goldman points out that if the jury looks into all the significant social, scientific and cultural transformations that have taken place over time they will note that all of them took place against the law. On the contrary, the law always considered new ideas and figures propagating them, as criminals, as it does to anarchists, 'we are criminals even like Jesus, Socrates, Galileo, Bruno, John

Brown and scores of others. We are in good company, among those whom Havelock Ellis, the greatest living psychologist, describes as the political criminals…, as men and women who out of deep love for humanity, out of a passionate reverence for liberty and an all-absorbing devotion to an ideal are ready to pay for their faith even with their blood. (Berkman and Goldman 2005: 63).

It is not only Emma Goldman and Alexander Berkman that point to the hypocricy, untruthfulness, woody qualities and un-inovative character of law. It is not only Emma Goldman and Alexander Berkman that suggest that for a radical transformation of society we don't need critiques of the type generated by general jurisprudence. On the contrary such critiques sustain the operation of law, they provide both the critical citizen and the less critical one, with hope for transformations within the law, for a hope for example that a better ethical attitude towards excluded or disavowed subjects will happen within law. It is not only these two great anarchists activists of the early 20th century that do not see law as the accommodator of the force of life and through their vision and actions offer us a critique of law that desires the 'destruction' of law. Kropotkin also in his reflections of the relation between nature and anarchism offers us similar conclusions.

Let us follow his thought briefly here. In his essay 'Law and Authority' (2002) Kropotkin in presenting us with why law is both *useless* and *hurtful* in society (Kropotkin 2002: 212). His characterisations off law as *hurtful* and *useless* arrived after a quick history of modern law. Kropotkin suggests that pre-modernity humans did not need law. Everyday affairs were arranged through 'customs, habits and usages' (Kropotkin 2002: 201). And Kropotkin elaborates that, humans who like the animal kingdom were social by nature, managed to arrange their everyday affairs through the customs, habits and usages because such

practices were see as being useful to the preservation of humanity (Kropotkin 2002: 202). Such practices Krotopkin insists '…are anterior to all law' and religion (Kropotkin 2002: 202). Instead, '[t]hey are found amongst all animals living in society. They are spontaneously developed by the very nature of things, like those habits in animals which men call instinct'. (Kropotkin 2002: 202). The debate as to the scientific validity of Kropotkin's understanding of the state of nature does not interest me. We may though imagine some readers objecting to the emphasis that Kropotkin puts on nature, or the natural way in which 'things are done'. Indeed we can imagine a critique emanating from post-structuralist feminist philosophy, more precisely such critique may emanate from work that derives from the philosophy of Judith Butler. As it is well known Judith Butler as early as in *Gender Trouble* (1990) and in *Bodies that Matter* (1993) has put into question philosophical and feminist accounts that present gender as the cultural construction of sex, creating in this way two genders men and women and leaving un-problematized that sex may not be a 'natural' category. Moreover, Butler, through the theory of performativity, has shown that claims to natural categories, do not pre-exist the very utterance that makes such claims (Butler 1993; Loizidou 2007:35-42). Following Butler thus we may say that Kropotkin's reference to a natural state of life is a performative speech act that by its very enunciation creates or brings to being a 'natural' state of life. Such a criticism though would be short-sighted. It does not take into account the fact that Kropotkin's nature or rather state of nature is not 'natural', it is rather presented as an amalgamation of *techne* and nature (physis). It is not dissimilar to Heraclitus[16] aphorism about nature. Heraclitus aphorism, "Nature loves to hide", has been interpreted to mean that nature is not bereft of technology, and more precisely nature holds within itself a technology of appearance (growth) and disappearance (decay or destruction) (Hadot 2006). Kropotkin, similarly thinks of nature *as* technology. It is

noticeable that when Kropotkin talks of 'customs, habits and usages', which for him are practices that both cement and preserve the social, are presented as practices that develop over time, they grow (appear) and decay (disappear) depending on the role they play in social preservation. They are not therefore static practices but rather ever-altering working towards accommodating the social. Indeed, when Kropotkin refers to humans developing these practices (customs, habits, usages) out of instinct, as animals out of habit (Kropotkin 2002:202), he brings to our attention firstly that human instincts are *not* a given but rather they are 'cultivated' over time to '…keep society together in the struggle it is forced to maintain for existence.' (Kropotkin, 2002:202). Secondly, human instinct is unlike animal habit. While, animal's preserve themselves through habitual or automatic practices, we know for example that bears hibernate over the winter period in order to preserve heat, human instincts which develop spontaneously and contribute to human preservation requires a struggle, thinking or a mastery over how we to live together. It is not coincidental I propose that Kropotkin puts the word of instinct in proximity to the problematic of co-existence and in relation to animal habits. I want to suggest that we may interpret through this proximity and interrelation of words that his understanding of the state of nature is one that requires different techniques, in animals a technique of automatic preservation and in human animals requires contemplation or reasoning. Let's not forget that that the word spontaneous, the attribute that Kropotkin gives to human instincts, comes from the latin *sponte*. As Sara Ahmed is reminding us in her forthcoming monograph *Wilful Subjects* (2014), the etymology of the word *sponte* refers us to 'willing' or 'of one's free will' which in turn direct us to the process of thinking, of reflecting and understanding, attributes that since Kant we designate to the will.

Even if we do not engage in this debate, on whether Kropotkin's 'state of nature' is an amalgamation of both nature and the culture it suffices to note that his understanding of the state of nature is very different from those painted by contractarian political theorists such as Hobbes. As Saul Newman (2012) points out Kropotkin's understanding of the state of nature is diametrically opposite to the one offered by Hobbes. The state of nature was not seen as a threat to humanity. On the contrary, Kropotkin and '…anarchists see as the basis of ethical community…' (Newman,2012: 313). Indeed, Kropotkin in this particular essay suggests the 'state of nature' operates as to sustain and maintain sociality. On the contrary, the introduction of law is seen as a disturbance to social cohesions. Law's become useless and and hurtful, because they do not serve the society but rather 'the ruling class' (Kropotkin 2002: 203). These law's which Kropotkin divides 'into three principal categories: protection of property, protection of persons, protection of government' (Kropotkin 2002: 212) stabilise and petrify (inscribe) customs that accommodate the ruling class at the expense of society (Kropotkin 2000: 205-6) or those they oppress. The law is injurious or hurtful therefore because they serve the interests of few and not society at large. If we take for example, one of the categories of laws that Kropotkin refers us to, the category of law that protects the government, we notice as he suggests that all administrative laws, from tax laws the 'organisation of ministerial departments and their offices' (Kropotkin 2002: 214) serve to create and sustain agencies of the state which in turn will be invested in protecting the 'privileges of the possessing classes' (Kropotkin 2002:212). For Kropotkin laws protecting the person, primarily criminal laws that appeal to the whole social body or cater for the security of the whole social are being breached because of the unequal distribution of wealth vested in private property (Kropotkin 2002: 215). They are as he suggests mainly property related crimes. Indeed even if we look at as something as crude the British Crime

Survey 2013 we can note that '[t]heft offences accounted for 50% of all police recorded crime (1.9 million offences) in 2012/13 and 60% of all incidents measured by the CSEW (an estimated 5.2 million incidents) for the year ending March 2013' (Crime Survey for England and Wales 2013:42)[17]. For Kropotkin the answer to the disappearance of crimes against persons does not lay in better laws nor in more severe forms of punishment, but rather in the abolition of, private property (which he considers as the root to most crimes against the person) and punishment (Kropotkin 2002: 215-6). Punishment, for example capital punishment, has been statistically proven as he argues that does not decrease homicides. Consequently then, if law can't protect the whole of social body, but instead sustains and expands upon the power of the ruling class, for Kropotkin it becomes injurious law. Why? It subtracts from the social body the equal distribution achieved in the state of nature and moreover it denigrates the positions and welfare of those the ruled. Secondly, Kropotkin describes law as being useless or without value precisely because it fails to deliver justice and equality to society. And as law can't deliver what it promises, Kropotkin proposes, 'No more law! No more judges!' (Kropotkin 2002: 315)

Unlike the critique of general jurisprudence offered by Critical Legal theorists, a critique that as Newman (2012) aptly observes 'aim[s] at the anarchic deconstruction of law and propose a contestation of legal authority and violence' (Newman 2012: 310) anarchists, or at least the examples of early 20th anarchists that I have recalled above, call for the vanishing of law. Anarchists call for the complete destruction of law because they understand law's very constitution is stepped in its inability to capture the flow of life and changes in life. Why? Because ,'[t]he law is stationary, fixed, mechanical' (Berkman and Goldman 2005:) Goldman tells us, and it is as such in order to provide the power holders '…permanence to customs imposed by themselves for their own advantage' (Kropotkin 2002: 205). Moreover law is

deceptive (Goldman), law is useless and injurious (Kropotkin). A legal form of life in other words does not correspond with the practices or ethos of law itself. While critical legal scholars such as Douzinas and Gearey may point as we have seen to this non-correspondence between legal forma and legal operation, their resolution to this violence is to include, bring within the boundaries of law, those aspects that have been excluded, ethics, justice etc., Their response is not necessarily paradoxical. Critical legal studies (UK) has vested itself in a rehabilitation of law and not its destruction, or more precisely critical legal studies have invested themselves in making central the margins of law. Let's not forget that Derrida's philosophical writings have been extremely influential to this movement[18]. Derrida himself never saw himself as an anarchist though he put to task the very idea of arche. In an interview given to Lorenzo Fabri in the journal of *Critical inquiry*[19], Jean-Luc Nancy points out that Derrida was not vested in rehabilitating a certain type of politics, nor in proposing a new politics but rather in undoing the foundations of politics, in search for another way of thinking the questions of authority, freedom, sovereignty:

> Not one more politics, but another thought of politics, or else another thought than politics, if politics is inextricably linked to the arche in general (or else one must rein-terrogate from top to bottom the theme of the arche in general—the an-archy of the arche…
>
> (Jean Luc Nancy 2007: 435)

As such pre-packed political theories would have undermined his very search. And moreover, '[h]e tried to be truly philosophical in politics, rather than applying or reconstructing a "political philosophy." It could be said that, for him, not only communist politics, anarchist politics, and so on were outdated' (Jean Luc Nancy 2007: 433). Nevertheless while Derrida may have not been attracted to anarchism as ideology, we can't suggest that the Critical Legal Studies movement, by rehabilitating whatever falls outside

the law within the law, where challenging the very an-arche of arche. On the contrary such rehabilitation merely adapts the outside of law within the form of law. At its best it reconstitutes law otherwise, without averting the criticisms as to its injurious, static and useless character, attributes that the aforementioned anarchists thinkers have shown to us to be operational within law.

Goldman, Berkman, Kropotkin on the contrary I want to argue show to us that in order to undo arche (authority, law, beginning) one has to begin from a different set of values.

Ethics of Existence or Parallel Lives

I have suggested at the start of this chapter that Anarchists do not offer a critique of law, but moreover show to us of a way of life that is it not lived in accordance to law. I have also suggested that this way of life, formulates an ethics of existence or an art of living akin to the practices that Foucault identified being present in Greek and Roman life, such as parrhesia[20] or 'freely speaking' one of many such arts of living that included dietetics[21] . These practices revealed to Foucault that Greek life was mostly concerned with the care of the self, and moreover that their ethical existence was primarily concerned with the here and now and not some 'afterlife'. The ethical self was concerned with mastering oneself and not subjugating oneself to a juridical order[22]. In doing so, one's attention was turned away from traditional morality (concerned with the analysis and production of an authentic self) and towards the question of how the self emerges in 'relation that one has to the creative activity.'[23] So parrhesia, like dietetics, is concerned with turning ones life into art by a self-mastering subject, an anarchic subject. It is impossible in this piece to demonstrate the aray of practices that lead us to an anarchist art of existence. Instead I will focus on two

vignettes, that are indicative of self-mastery and parrhesia. Foucault suggests that an art of existence is constituted by practices that are distant from the juridical order. The first vignette draws on Kropotkin's understanding of how this self-mastery can be achieved. The second is drawn from Emma Goldman's life. The second vignette aims at showing the practice of parrhesia in an anarchist ethics of existence.

Kropotkin proposes that, '[l]iberty, equality and practical human sympathy are the only effectual barriers we can oppose to the anti-social instincts…' (Kropotkin 2002: 218) that law perpetuates. At the start of his essay 'Law and Authority' (2002) Kropotkin writes:

In existing States a fresh law is looked upon as a remedy for evil. Instead of themselves altering what is bad, people begin by demanding a law to alter it. If the road between two villages is impassable, the peasant says: -"There should be a law about parish roads." If a park-keeper takes advantage of the want of spirit in those who follow him with servile observance and insults one of them, the insulted man says, "There should be a law to enjoin more politeness upon park-keepers."…In short, a law everywhere and for everything! A law about fashions, a law about mad dogs, a law about virtue, a law to put a stop to all the vices and all the evils which result from human indolence and cowardice.

(Krotopkin 2002: 196-7)

As we have seen Foucault identifies that an ethics of existence require certain practices, practices that both enact and pursue one's desire of self-mastery and a better life. As I have already explained above such life, such better life is anticipated to be fulfilled without the guidance of the juridical order. Such practices, like parrhesia that I will talk about in relation to Emma Goldman more importantly demonstrate also that there is a possibility to live life without law. An ethics of existence is present in anarchism, an ethics of existence that opens

us to parallel possibilities that avoid both the injuries of law that Kropotkin identifies and the hypocrisy of law that Goldman so passionately alert us in her court speech to the jury that I earlier traced in this chapter. Kropotkin also, in the above quotation, provides us with an insight into an anarchist ethics of existence. An anarchist ethics of existence, Kropotkin requires humans to solve everyday problems by themselves, without routinely and habitually turning to law. We can understand Kropotkin's references to 'liberty, social practical sympthathy and equality' as the busters of law, through his call for self-mastery. 'Liberty', one of the antidotes to the perils of law, is not only required to break the law, but it can be achieved precisely through the practice of self-mastering our everyday disputes, can be achieved through thinking together (practical social sympathy) what is at stake in a dispute. Kropotkin puts at the core of an anarchist art of living, self-mastery. This self-mastery will undo the habitual ways of solving our social disputes by turning to law (his repetitive tone of our calls off law hint to the habitual and bereft of thinking reliance on law). It is important to note that the reference to 'liberty, social practical sympathy and equality' as the busters of law are not *ideals* for Kropotkin but rather they are embedded in practices, in the way in which he observed anarchists practiced their lives. By pointing that we can 'alter ' what is bad , by suggesting that such an alteration requires the practice of habit busting (Kropotkin 2002: 197-201), I would like to suggest, Kropotkin grounds what may appear ideals in practice, and in turn provides us a with what an anarchist art of living or ethics of existence entails.

Kropotkin anarchist art of living finds its more paradigmatic artist in Emma Goldman. Her attitude towards the law, that her jury speech in the 1917 trial that I trace above is an emblematic of the way she lived her life away from law, in disobedience to law and in non-fear of law. Her jury speech in its totality is an example of parrhesiatic speech or 'speaking

freely' one of the practices that Foucault identified as associated with an art of living away from Law. I have dealt with the parrhesiatic aspect of her jury speech elsewhere (Loizidou 2012:). Before introducing you to another instant where Goldman talks truth to power power let's see what else Foucault is telling us about parrhesia. Foucault wrties about parrhesia:

refers both to the moral quality, the moral attitude or the ethos, if you like, and to the technical procedure or techne, which are necessary, which are indispensable, for conveying true discourse to the person who needs it to constitute himself as a subject of sovereignty over himself and as a subject of veridiction on his own account. So, for the disciple really to be able to receive true discourse in the correct way, at the right time, and under the right conditions, the master must utter this discourse in the general form of parrhesia…What is basically at stake in parrhesia is what could be called somewhat impressionistically, the frankness, freedom and openness that leads one to say what one has to say, as one wishes to say it, when one wishes to say it, and in the form one thinks is necessary to say it. The term parrhesia is so bound up with the choice, decision, and attitude of the person speaking that the Latins translated it by, precisely, libertas.'[24]

On the 6th of April 1908 Emma Goldman was returning to the US from Canada. At the borders she was stopped and questioned by the Board of Special Inquiry for Immigration. The purpose of the questioning was to establish to what extent Goldman held a US citizenship. The US government wanted to deport Goldman, who was born in Konigsberg, on the basis that her citizenship, granted via her marriage to Jacob A. Kersner (which the US government that he was not a naturalised because he presented a false birth certificate in

his application of naturalisation). The hearing concluded that regardless to whether her husband Jacob A. Kersner there was not enough evidence to conclude that Goldman was an 'alien' and in breach of the US naturalisation act () Inspector Robbins one of the three inspectors that questioned remarkably places his decision, and finding that Goldman was telling the truth, from her demeanour and answers that she gave: 'From the general attitude of Miss Goldman before the Board, and her evident willingness to answer questions, and her manner of answering those questions, I am inclined to the belief that she is telling the truth' (: 311).

Emma Goldman's answers to the Board where indeed open, honest and frank, hiding nothing and being afraid of nothing. Moreover she demonstrates that she is a master of her own beliefs and her life. Let's consider some of the answers that she gave to the board.

When Emma Goldman was asked by the Chairman of the Board Carr whether she can 'swear to tell the truth' (307) she answered: ' Being an atheist, I will only affirm, not swear'. Carr upon hearing this he asks:

Q. Do you consider an affirmation binding both legally and morally?

And to this Goldman answers.

A. I certainly do. It is just like giving my word of honor, and I would stick to it.

(p.307).

Like in trials, Goldman was asked about her beliefs. What follows is an exchange with Carr regarding her beliefs.

Q. As an anarchist, I understand that you believe in no Government? Is that correct?

A. Exactly. I believe in man governing himself. Each man.

Q. Do you believe in the overthrow of existing governments by force or violence or otherwise?

A. I believe in the method laid down by the Constitution of the United States, that when the government becomes despotic and irksome the people have the right to overthrow. You will have to hold the Government of the United States responsible for that. The Government of the United States was formed by the people uprising to crush a despotic power.

A. It is in the Declaration of Independence instead of the Constitution but the Constitution provides for it too.

Q. Do you believe that the Government of the United States has reached such a stage you describe now?

A. Well, the people haven't reached the stage of overthrowing I, and therefore I suppose they are satisfied.

I don't think I need to say how these answers demonstrate both her 'freely speaking' and her self-mastery. Goldman in these answers reveals to us, anarchist politics require an anarchist ethos. An ethos that requires to speak the truth, as the auditor sees it irrespective of whether the receiver of truth may be power or law per se. Goldman embodies in these answers how life could be lived without law. It is of course a life that it is parallel to the one offered by law, it is a life that can't be absorbed by the juridical ordered, it can't be included as the critical legal studies suggest as a corrective and governing principle of law. For as Goldman points out anarchism believes in each one governing him/herself.

I

.

[1] Point out that you are enabled to observe this analysis via deleuze.
[2] The theory of general jurisprudence, is represented by both socio-legal and critical legal scholarship.
[3] In relation to restrictive jurisprudence this point was raised by Peter Goodrich. See P. Goodrich, "The Critic's Love of The Law: Intimate Observations on an Insular Jurisdiction" *Law and Critique*, 1999, vol. 10 (3), 343-60.
[4] See F. Nietzsche *Thus Spoke Zarathustra*,London: Penguin, 2003.
[5] http://www.guardian.co.uk/society/2011/apr/01/anarchists-anti-cuts-march, see also the red top coverage of such actions http://www.mirror.co.uk/news/uk-news/marchers-turn-on-troublemakers-118795
[6]
[7] http://ucblibrary3.berkeley.edu/Goldman/Writings/Speeches/170709.html
[8] See E. Goldman 'No Conscription League' in P. Glassgold (ed) *Anarchy! An Anthology of Emma Goldman's Mother Earth*, Counterpoint, New York, 2000.
[9] The prosecution rested in proving that Berkman and Goldman conspired against the draft, and specifically conspired in influencing young men not to register. Berkman and Goldman in their closing speeches to the jury and during cross-examination argued that they did not attempt to stop young men to register. Instead they wanted to inform them why compulsory conscription was against anarchist ideals. Anarchists considered themselves to be anti-militarists and anti-nationalists.
[10] http://sunsite.berkeley.edu/goldman/Exhibition/birthcontrol.html
[11] http://sunsite.berkeley.edu/Goldman/Guide/chronology0119.html

[12] http://ucblibrary3.berkeley.edu/Goldman/Writings/Speeches/170709.html or A. Berkman and E. Goldman (2005) *Trial and Speeches of Alexander Berkman and Emma Goldman: In the United States District Court, in the City of New York, July, 1917* (New York: Elibron Classics).
[13] Here include the distinction between politics and the political.
[14]
[15] C. Douzinas and R. Warrington, '" A Well-Founded Fear of Justice": Law and Ethics in Postmodernity' , *Law and Critique*, R. 1991, vol. 2(2), 115-147.
[16] Here I am referring to Heraclitus aphorism, "Nature loves to hide". Pierre Hadot in his extensive interpretation offered in P. Hadot *The Veil of Isis: An Essay on the History of the Idea of Nature*, Cambridge Massachusetts, London, The Belknap Press, 2006 points to the technologies of appearance and disappearance or destruction that this aphorism vests in nature (physis).
[17] http://www.ons.gov.uk/ons/dcp171778_318761.pdf
[18]
[19] J.L.Nancy ' Philosophy as Chance: An Interview with Jean Luc Nancy', interview by Lorenzo Fabri *Critical Inquiry*, 2007, vol.33 (2), 427-440.
[20] Michel Foucault, The Hermeneutics of the Subject Lectures at the College de France 1981-82 (New York: Palgrave Macmillan,2005), 373
[21] Paul Rabinow (ed) The Foucault Reader (London, New York: Penguin Books, 1991), 348.
[22] Rabinow, The Foucault Reader, 348.
[23] Rabinow, The Foucault Reader, 351.
[24] Foucault, The Hermeneutics of the Subject Lectures at the College de France 1981-8,.372.