

LAW AND ORDER. By RALF DAHRENDORF (The Hamlyn Lectures, Thirty-Seventh Series). [London: Stevens & Sons. 1985. xi+179 pp. Softcover: £6.95; Hardcover: £13.95]

THIS book, which contains, in an enlarged format,¹ the thirty-seventh series of the now-famous Hamlyn Lectures, is, in the author's own words, "a book about social order and liberty";² it is "a contribution to social and political analysis, and more precisely, to the analysis of social conflict and the political theory of liberalism".³ That social order and liberty are subjects of current importance in countries as far

¹ p. 118.

² pp. 256-257.

³ p. 204.

¹ The book is "almost twice as long as the lectures": Ralf Dahrendorf, *Law and Order* (1985) (hereinafter referred to as Dahrendorf), at p.xi.

² Dahrendorf, p. xi.

³ *Ibid.*, at p. 3.

apart as Britain⁴ and Singapore⁵ is undeniable. In fact, one might even argue that such a proposition is trite. Such an argument would not, however, if levelled against the present work, stand up to much scrutiny in the light of the elaborate and well-woven discussion by such an erudite scholar.

A second objective of the book is to “raise questions without giving definitive answers”.⁶ This objective is, I think, achieved though, admittedly, the precise questions raised will of necessity vary from reader to reader. Certainly, as I shall argue below, this book does have the potential for opening several avenues for reflection about the general topic of law and order in the Singapore context.

Professor Dahrendorf begins with a discussion of what he terms “The Road to Anomia”. He describes the widespread problems of law and order today,⁷ particularly in countries such as Britain, Germany and the United States of America.⁸ And he expresses especial concern about the waiver, inadequacy and even non-existence of sanctions for the violation of norms, because anomy ensues and grows, thus leading to problems of social order and freedom.⁹

Lest, however, he be mistaken as subscribing to a form of positivism for which jurists such as Austin and Hans Kelsen are well-known, Professor Dahrendorf acknowledges that sanctions *per se* are insufficient.¹⁰ He also emphasises the importance of what he terms “ligatures” which are ‘social bonds’ in the form of “cultural moulds” of behaviour that “add an element of morality to the validity of norms”.¹¹

⁴ See, *e.g.*, M.D.A. Freeman, “Law and Order in 1984”, (1984) 37 C.L.P. 175.

⁵ See, *infra*.

⁶ Dahrendorf, at p. xi.

⁷ Especially within the “no-go areas” where anomy reigns; these include certain crimes that are not prosecuted or investigated; the problem of youth and the allied problem of the ‘softening’ of sanctions; certain urban ‘territories’ ‘ruled’ by criminals; and massive breaches of the peace (in the main, riots) that make the application of sanctions virtually impossible. See Dahrendorf, at pp. 28 to 37. See, also, generally, Chapter 1, appropriately entitled, “The Road to Anomia”.

⁸ Though Professor Dahrendorf acknowledges that there is at least *some* deviance in every country.

⁹ “Anomia is a social condition in which the norms which govern people’s behaviour have lost their validity. One guarantee of such validity consists in the clear and present force of sanctions. Where impunity prevails, the effectiveness of norms is in jeopardy. In this sense, Anomia describes a state of affairs in which breaches of norms go unpunished”: Dahrendorf, at p. 24. See, also, Dahrendorf, at p. 26: “Anomia then is a condition in which both the social effectiveness and the cultural morality of norms tend towards zero. This in turn means that sanctions are no longer applied and that people’s conscience is, in Durkheim’s words, “incapable of exercising [its] influence”. Given the role of authority in backing up sanctions, anomy is also anarchy.”

¹⁰ And *cf.* Dahrendorf, at p. 115: “. . . while the road to Anomia is payed with impunity, it is not enough to try and re-establish sanctions pure and simple in a world in which anomy has so many concomitant causes.”

¹¹ Dahrendorf, at pp. 25 to 26. See, also, Dahrendorf, at pp. 44 to 45: “Ligatures are cultural bonds associated with certain basic units to which individuals belong by virtue of forces outside their reach than by choice. They lead us into the world of familial ties, membership of society, religion, perhaps age group and gender, and on a less fundamental level, locality, vocation and class as well. One would associate such values as solidarity, but also authority, and faith with these bonds. All ligatures add a dimension of tradition, of living history, to the essentially contemporary quality of norms and sanctions. In any case, ligatures provide the basic certainty without which the normative structure

We are, however, on "The Road to Anomia" simply because the social contract¹² has become increasingly precarious—in Professor Dahrendorf's own words, we sought Rousseau, but found Hobbes.¹³ With modernity came not only liberty and increased options but also anomy and anarchy, thus resulting in a vicious cycle since liberty itself (as well as "ligatures"¹⁴) are ironically put at risk as a consequence of the latter. In what is the "cultural analysis" segment of the book, Professor Dahrendorf criticises the prevailing social image of man, viz. that "of natural goodness and social deformation",¹⁵ as being the root cause of the disintegration of the social contract. This is the approach taken by what Professor Dahrendorf terms the "super-wets", an ostensibly 'liberal' approach, but, unfortunately, one that "tends towards a liberty without meaning".¹⁶

The key, Professor Dahrendorf argues, is to recognize and understand "man's unsociable sociability".¹⁷ He advocates, instead, a Kantian image of man in the context of liberty, law and order:¹⁸

"I suggest that it is an image which leads to the concept of the social contract as the domestication of man's unsociable sociability in the interest of progress, that is of the forever unfinished process of increasing our life chances by our own efforts."

And, conflict, once domesticated, then becomes, as it were, "a creative force of improvement".¹⁹

But—and this is in accordance with his earlier approach as alluded to above—Professor Dahrendorf argues:²⁰

"We need not only the protection of the laws against the unsociability of man, but we also need to build on man's sociability to make the laws work. This is where ligatures enter the picture. A society without ligatures is one faced with the alternative of Anomia or cold power. And of course, this is not an alternative, for the two feed on each other."

In what is the "social analysis" segment of the book, Professor Dahrendorf, whilst recognizing the struggle for democracy and its importance,²¹ describes the dangers posed by the rise of the 'middle

of society could not be sustained, the moral dimension of legitimacy as well as the dimension of meaning for individual behaviour." In fact, sanctions and effectiveness of norms relate more to the concept of legality whilst ligatures relate more to the concept of legitimacy: see Dahrendorf, at p. 26.

¹² Dahrendorf defines the social contract, at p. 89, as follows: "The social contract signifies the unspoken agreement to abide by certain elementary norms and accept the monopoly of violence on the part of a common power set up to protect these norms. This unspoken agreement will never include everybody, though it is binding for all; on the other hand, it could not hold if it was not backed up by the bonds which arise from man's sociability. The wording of the contract is never final."

¹³ See, generally, Chapter 2, entitled "Seeking Rousseau, Finding Hobbes".

¹⁴ See, *supra*, note 11.

¹⁵ Dahrendorf, at p. 53. (Emphasis added).

¹⁶ *Ibid.*, at p. 154.

¹⁷ *Ibid.*, at p. 40.

¹⁸ *Ibid.*, at p. 67.

¹⁹ *Ibid.*

²⁰ *Ibid.*, at p. 79.

²¹ *Ibid.*, at p. 87.

class' or "the majority class"²² on the one hand, and, more importantly, the marginalization and defining out of what he terms the "underclass" for whom the Welfare State simply does not work. This "underclass" is a motley bunch that includes immigrants, the old, and (most importantly in Professor Dahrendorf's view at least) the young;²³ all have in common, however, the fact that they are the 'have nots', the victims of the inadequacy of resources, the impersonal nature of the bureaucracy and the effects of technology. The establishment and entrenchment of the "underclass" bodes ill for society, for with the absence of norms and ligatures,

"... members of the "underclass" are a reserve army for demonstrations and manifestations, including soccer violence, race riots, and running battles with the police, but they are not a revolutionary force. They stand for nothing, even though they may stand against everything."²⁴

And the "majority class"²⁵ does not help "by closing ranks",²⁶ for this "dry" or hard response²⁷ is, in fact, a retrograde step that, so far from making things better, will take us back to the 'dark ages', so to speak.

What, then, is the answer to the problem of law and order? Professor Dahrendorf is direct in his answer, *viz.* "institution-building."²⁸ Sanctions for violations of norms are in fact but "an example of institution-building, its motives, its purposes and effects".²⁹ There is also another element that must be engendered in the sanctioning process, *viz.* "a sense of institutional continuity",³⁰ One has, too, in the final analysis, to take practical action so to speak, and attempt to remedy the "no-go areas",³¹ especially those pertaining to youth; there must also be the re-constitution of the institution of democracy,³² community development and the curbing of riots. In sum, there must not only be "an institutional approach to law and order" but also support of the institutions of the law "by filling the interstices with a sense of community".³³

Professor Dahrendorf does, however, sound a note of warning towards the end of the book — whilst institution-building is imperative, hypernomia or "the wild growth of norms and sanctions and institutions"³⁴ is to be assiduously avoided. In this regard, he takes

²² *Ibid.*, at p. 93.

²³ *Ibid.*, at pp. 103 to 104.

²⁴ *Ibid.*, at p. 107.

²⁵ See, *supra*, note 22.

²⁶ Dahrendorf, at p. 110.

²⁷ *Ibid.*, at p. 155.

²⁸ *Ibid.*, at p. 121. See, also, at p. 125: "Institution-building is the creation, and often the re-creation, of meaningful norms from their principles."

²⁹ *Ibid.*, at p. 129.

³⁰ *Ibid.*, at p. 134.

³¹ See, *supra*, note 7.

³² See Roberto Mangabeira Unger, "The Critical Legal Studies Movement", (1983) 96 Harv. L. Rev. 561, especially at pp. 588 to 602. Though Professor Dahrendorf would not, I suspect, agree with all of Unger's more radical ideas, he does (at p. 139) manifest a kindred spirit of sorts: "Institutions must encourage initiative without denying the mechanisms of control."

³³ Dahrendorf, at pp. 140 to 141. And *cf.* the concept of "ligatures", as to which see, *supra*, note 11.

³⁴ *Ibid.*, at p. 146.

at least one leaf from Robert Nozick's work,³⁵ though he disagrees with Nozick's refusal to go further and guarantee more than just mere protection of life and limb; there must also be "the guarantee of citizenship".³⁶

Stemming the tide of anomy is one aim and an especially important one at that. Professor Dahrendorf, however, looks beyond the 'mere' disintegration of the social fabric, and points to an even more sinister long-term consequence:³⁷

"... Anomia cannot last. It is not just chaos, but also a vacuum which attracts the most brutal forces and powers. My worry is that the road to Anomia will awaken Behemoth as well as Leviathan, and that a new wave of totalitarianism will sweep the world."

I have attempted a summary that probably does not do full justice to the rich texture of the book itself and the complex arguments contained within it. However, I hope to have at least demonstrated that, in its inherent breadth and scope, this book deals with many issues of fundamental importance, and raises even more questions for the reader himself. The discussion of "ligatures", for example, in fact raises issues of consensus-building, and the perennial problem of the subjectivity of values — issues that have manifested themselves in various forms and in the writings of such contrasting jurists as H.L.A. Hart and Patrick Devlin (whose debates on the enforcement of morals constitute a 'classic' in modern jurisprudence),³⁸ and the (more radical) Roberto Unger.³⁹

Another question that is raised concerns the concept of 'legitimacy' in the law. Although he does emphasise the importance of sanctions, Professor Dahrendorf's eschewing of a strictly reductionist approach is to be commended. Clearly, today, pure force and threats as a means of ensuring the continued long-term coherence and survival of a society as well as its legal system is conceived of in many quarters as being neither fashionable nor realistic.⁴⁰ Perhaps, however, the book could have explored the concept of 'legitimacy' in a more direct and exhaustive fashion.

But, perhaps for the reader (and most certainly for the present reviewer), Professor Dahrendorf's exposition also raises a whole host of questions that relate to the Singapore context itself. It has long been the belief (and a justified one at that) that law and order prevails in Singapore. Indeed, crime rates are very low and the Singapore Legislature is quick to attempt to arrest any perceived approach that may lead the nation down "the Road to Anomia". Many recent examples come to mind. In the space of one day,⁴¹ for example, several pieces of legislation were passed in order to combat a sudden increase

³⁵ See Robert Nozick, *Anarchy, State and Utopia* (1974).

³⁶ Dahrendorf, at p. 149.

³⁷ *Ibid.*, at pp. 158 to 159.

³⁸ See, generally, Patrick Devlin, *The Enforcement of Morals* (1965); H.L.A. Hart, *Law, Liberty and Morality* (1963); Hart, *The Morality of the Criminal Law* (1964), esp. at p. 31 *et seq.*; and Hart, "Social Solidarity and the Enforcement of Morality", (1967-68) 35 U. Chi. L. Rev. 1.

³⁹ See Roberto Mangabeira Unger, *Knowledge and Politics* (1975), Chapter 2.

⁴⁰ See, e.g., E.P. Thompson, *Whigs and Hunters* (1975), at pp. 258 to 269.

⁴¹ 26 July 1984.

in the crime rate that had begun since 1978, after a period of relative 'consistency' from 1972 to 1978;⁴² thus was passed the Penal Code (Amendment) Act 1984⁴³ the Arms Offence (Amendment) Act 1984,⁴⁴ and the Criminal Procedure Code (Amendment No. 2) Act 1984.⁴⁵ And the Criminal Law (Temporary Provisions) (Amendment) Act 1984 was passed to extend the operation of the principal Act for another five years, so as "to further suppress secret society activities, drug trafficking and other serious crimes".⁴⁶

The fact, of course, that Singapore, like all other societies, is invariably vulnerable to increased levels of crime and other socially disruptive forces merely reinforces Professor Dahrendorf's point regarding the precariousness of the social contract. To the extent that the Singapore Government and Legislature have manifested vigilance in the control as well as punishment of crime, and to the extent that the Government itself has, and always ought to be, concerned with social equality and justice in the wider context, the future looks bright. One cannot, however, rest content, for many other questions remain unanswered. In the realm of "ligatures", for example, is there, in fact, a 'Singaporean national identity'? To what extent and in what form does social consensus operate in the Singapore context? Even if we could satisfactorily describe the various facets of both the Singapore legal system and its wider context, there would still remain an inquiry into the various causes that contribute to the 'broader picture'.

And law and order, at least in its most basic forms, may be insufficient if one is looking toward a legal system and society that do more than merely 'hang together'. We must, in other words, strive for greater visions. In the sphere of law and legal systems, for example, the struggle for an autochthonous Singapore legal system ought to be sustained.⁴⁷ But, I must stop here (for all these issues (and more) are really the bases for much wider and detailed studies), and conclude with a few remaining remarks on the book now reviewed.

That a slim volume such as this could be so difficult to summarize satisfactorily and, more importantly, could raise such a variety and quantity of complex and fundamental questions speaks volumes for the scholarship and vision of its author. It is a book that will appeal to both legal pragmatists and jurists alike, although the hope is that both will ultimately realize that a *blend* of learning is not only the ideal but, indeed, also the only realistic route toward an enrichment of our legal scholarship and practice.

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⁴² See *Singapore Parliamentary Debates* (hereafter *Debates*), Vol. 44, especially at Col. 1861.

⁴³ Act No. 23 of 1984. And see *Debates*, Vol. 44, at Cols. 1861 to 1881; 1957 to 1974 (26 July 1984).

⁴⁴ Act No. 25 of 1984. And see *Debates*, Vol. 44, at Cols. 1881 to 1883 (26 July 1984).

⁴⁵ Act No. 24 of 1984. And see *Debates*, Vol. 44, at Cols. 1897 to 1903 (26 July 1984).

⁴⁶ *Debates*, Vol. 44, at Cols. 1883 to 1884 (26 July 1984). See, generally, *ibid.*, at Cols. 1884 to 1896. See, also, Act No. 18 of 1984.

⁴⁷ See G.W. Bartholomew, "The Singapore Legal System" in *Singapore: Society in Transition* (Edited by Riaz Hassan, 1976), pp. 84 to 112, at pp. 97 to 109; see also, by the same author, "Developing Law in Developing Countries", (1979) 1 *Lawasia N.S.* 1.