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**CONTRIBUTIONS TO THE SOCIOLOGY OF LAW:
A CRITICAL READING OF MARX AND WEBER**

**A Thesis presented in partial fulfilment
of the requirements for the
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ABSTRACT

The purpose of this thesis is to aid the process of understanding the sociology of law - what it has been and what it can be. It is most important to consider to what extent can law and sociology to contribute in the real human struggle for economic, social and political freedom.

There are points of convergence and important differences between the legal and the sociological approaches to the study of law and society. Today, interdisciplinary research is increasing at different levels of law and sociology, and a new analytical perspective, a contemporary sociology of law, has emerged.

In order to point out new directions within this field of enquiry, we try to grasp the differences and interstices between the approaches made by law and sociology. Both perspectives are important in the analysis of the dual nature of law, that is, as a product of society and as a system making itself felt in society.

Our concern in this thesis is with law as a social phenomenon from a sociological perspective, and in particular, with the contribution of

Marx and Weber to an understanding of the relationship between law and society.

The most important aspects of Marx's and Weber's contributions to the sociology of law have to do with philosophical and epistemological considerations. What Weber and Marx thought about human nature and how they conceived science is still fundamental to contemporary developments in the sociology of law.

The critical discussion of Marx' and Weber's work attempts to show how partially conflicting and yet complementary sociological perspectives can contribute to a theoretical and conceptual convergence of sociological and legal approaches to the analysis of law and society.

Traditionally Weber and Marx have been seen as belonging to two totally opposed philosophical positions. However, we explore here premises which they share, in the hope of opening a new dialogue between their legacies.

The approach made here is tentative and certainly incomplete. There are no conclusive remarks which force a particular synthesis upon otherwise 'incommensurate' positions.

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INTRODUCTION

Every beginning is difficult, holds in all sciences (Marx, 1969:227).

This thesis is concerned with the establishment of some theoretical perspectives for the Sociology of Law. The work is not historical in the (narrow) sense of a narrative description but it takes into account the fact that social reality and human activity are historically situated; sociology cannot transcend history.

Using mostly textual methods we will compare, through a critical scrutiny of texts, Marx's and Weber's contributions in regard to the analysis of law from a sociological perspective.

The selection of the problem and the decision to use qualitative methodology is inspired by the recently rediscovered importance of research on law and society within the social sciences. In the Western world there is a strong movement towards the sociologically oriented study of law, although the very notion of "sociology of law" is somewhat vague and indefinite. There is still a discussion as to whether this field of study constitutes an autonomous branch of the legal discipline, a method of legal research, or a branch of Sociology.

The reasons for selecting Marx and Weber are twofold: 1) because their contributions constitute the critical and basic intellectual roots for the contemporary analysis of law and society, and 2) because we believe that a renewed dialogue between these sources can reveal new potentials for theoretical reconstruction and development. Marx shows the significance of human being's¹ social position as producers in a way that has not yet been recognised in law while Weber reveals the continuing relevance of liberal notions of individual freedom in the legal tradition.

Weber developed his "Sociology of Law" in his major work: Economy and Society. Marx's contribution to the topic has to be found in the different works of Marx and Engels. There is not a ready-made Marxist sociology of law and the simple aggregation of their writings on law does not produce a coherent analysis of legal phenomena. However, with the impact of developments within Marxism - particularly in the last fifteen years - many explorations and enquires have been produced on the topic.

Themes like the law-power relation, the law-domination relation and the law-state relation within capitalist societies are some of the topics which have recently been debated. The relations between the economic and the juridico-political instances, the effects and limits of state intervention, the meaning of a "relative autonomy" of the legal form and /or of the political sphere are examples of the problems social scientists are analysing now, both from Marxist and non Marxist perspectives.

To be sure, the topic of socialist legality is not to be found among the writings of classical Marxists. However the general demand for liberty and equality in liberal bourgeois and in socialist states, gives this topic a great significance. Left-wing intellectuals in many countries make claims for personal rights and liberties.

Contemporary analysis, especially Marxist, has directed attention to the effectivity of the non-economic levels (particularly the ideological and the political levels) in the reproduction of capitalist social relations. Law is significantly located within both ideological and political levels. The treatment of these themes and related topics has also been influenced by Weber's sociological contribution. It is argued here that the substantive themes of his work are central to the current trend of theoretical analysis in law and society and to the social and political problems modern societies are facing.

This thesis does not include a discussion of the historical and political transformations affecting Marxist or Weberian legacies. It concentrates on the analytical aspects that have been developed lately by those interested in the study of law and society.

Marx's and Weber's works are neither poor in ideas nor rich in clarity of exposition. They offer guidelines at many different levels and points of departure for many interpretations. In the case of Weber's legacy, concepts such as "economic rationality" and "charisma" have been used in different ideological contexts both for and against democracy and freedom. Thus, the hazards of interpretation Weber

presents are formidable. One thing is sure though; Weber and Marx have been taken as representing two politico-ideological positions that are antithetical: Liberalism and Socialism, which taken in themselves do not constitute unitary fronts. Given this and the remarkable succession of themes and writings of Marx and Weber- as well as the many versions of their works - it would be an oversimplification to treat their views as compact bodies of doctrine. But for the special purpose of this thesis, their contributions are treated as more or less coherent wholes. The existence of discontinuities in their work is recognised - particularly in the work of Marx. These occasional ruptures do not however invalidate or render inconsistent their general theoretical orientations. Neither Marx's nor Weber's views are expressed in one part of their work in a way that is fundamentally at odds with their views as expressed in another.

It is well known that these two contributions exhibit significant dissimilarities as well as similarities. They also have an interesting, albeit indirect, historical connection with each other. The thesis focuses on those complementary points which could be subsumed into a new perspective. Weber tried to show the inadequacy of some Marxist conclusions but he also elaborated on some Marxist analyses and developed a complementary method. However in stressing the comparable and complementary aspects we do not attempt any heavy-handed marxisation of Weber. In fact, what makes the discussion more fruitful is that Weber is not a Marxist.

The development of the sociology of law has to be achieved within the context of a healthy critical debate between Marxist and non-Marxist analysis of the legal forms; and within the non-Marxist theory Weber's contribution can easily accommodate serious comparisons with Marx.

Furthermore both sets of insights are informed by powerful philosophical concerns, which could induce us to conceptually revise our way of thinking about the world. In regard to the sociology of law it must be admitted that problems about justice, law, freedom and state power belong to the realm of philosophical problems which require us to make moral decisions and to justify them.

The discussion which follows is exploratory, theoretical and personal, and suggests neither the universality of objective analysis nor the personal bias of subjective prejudice. It also implies that the working theory to be used does not correspond to any particular "school" or single trend. The research strategy can be stated simply as the critical reading and interpretation of the selected authors and certain of their followers and commentators. Yet a 'symptomatic' reading has never been a simple process. The works of Marx and Weber should not be regarded as scripture and certainly they are not transparently meaningful.

We do not claim here to have the one "true" interpretation of Marx's and Weber's discourses. However, our ultimate objective is to discover the "true meaning" of what they said. This work is

necessarily tentative, partial and certainly far from exhaustive. Some may reasonably argue that relevant topics have been omitted altogether. Our purpose will have been served, however, if we have indicated new questions important for the sociology of law.

This thesis is arranged in five chapters. Chapter One provides an overview of current theoretical perspectives in the so-called sociology of law. The differences and interstices between the "sociological movement in law" (as developed within the legal disciplines) and the "sociology of law" (as developed within sociology) will be stressed in order to set the problematic to be discussed later within this latter strand.

In Chapter Two the major contributions of Marx and Weber in regard to the study of law from a sociological perspective will be discussed, but emphasising Marx's work. The pivotal point of the critical discussion is Marx's and Weber's philosophical conceptions of human reality since a conception of man is always at stake in any juridico-political discourse. In this Chapter the controversial humanist element of Marx's thought will be revised in a way that challenges current views. Our position is that Marx's humanism was not just a stage he passed through on the road toward a "scientific" analysis of man and social reality. His humanism is the very foundation of an integral unity in Marxist theory. His humanism - a "real" humanism - is based on the recognition that men make their own history and history discloses to us nothing other than their action. But he also recognised that, being "free" to make history, some men are

much freer than others.

Weber's and Marx's conceptions of freedom are also crucial elements in the discussion. To both of them freedom is something "valued", as likewise it has a value in legal discourse. Within liberal and socialist legalities contemporary goals include as central the idea of a free man in a free society.

In Chapter Three the emphasis is on Weber's work and the analysis will be centred on his position on science and reality, but always in a critical comparison with Marx's position on the same issues.

Chapter Four is a short exposition of Weber's sociology of law and connected themes. Because Weber has made such a distinctive and coherent contribution on the analysis of law from a sociological perspective, it is important that we give it special treatment.

Chapter Five indicates some of the themes and authors, particularly those working in a Marxist framework, that have been developing some of Marx's and Weber's views on the issue. Their influence, especially Weber's, is felt both in a conciliatory and in a contradictory way, suggesting that their legacy is still very much alive within contemporary analyses of law and society. Marx's and Weber's contributions taken as wholes cannot be applied uncritically to the present socio-historical reality. But the fundamental issues they stated and the frameworks they utilised remain relevant

At present there is a great diversity of approaches to the analysis of law and society among both Marxist and other perspectives and there are many levels of analysis. Among the increasing theoretical strands there are hot confrontations and disagreements; and many of the problems would appear insoluble. In fact, there are no "final" solutions to scientific questions. Accordingly the present discussion can be further criticised and modified, and is open to new problems that may appear in historical reality and in scientific knowledge. As Weber (1974:56) said: "We cannot work without hoping that others will advance further than we have".

NOTES

1. To avoid awkward transliterations, the terms 'man' and 'mankind' are used in this thesis, though the difficulties arising with such usage are acknowledged. The terms 'man' and 'mankind' are intended to refer to both sexes, in the sense of human beings and persons. These terms have been retained as the discussion is mainly concerned with eighteenth and nineteenth century social thought. In spite of the fact that this usage is rooted in judgments that are clearly exclusive of women the terms have nonetheless become established as generic ones.

CHAPTER I

THE SOCIOLOGICAL MOVEMENT IN LAW AND THE SOCIOLOGY OF LAW

In the Western world regardless of the differences between concrete socio- historical formations, and despite the differences between ideological and political positions, the importance of the legal phenomenon is acknowledged by all social scientists. Law as a recently rediscovered area of enquiry has generated a variety of hypotheses and insights.

The importance of the legal phenomenon has been reinforced by a wider-ranging concern with the changing form of the capitalist state in which an expanded part is played by law and legislation.

One of the historical events that has forced analysts to pay attention to the place of law in contemporary Western thought - that is to say in the Anglo-Saxon world, Eastern Europe, Western Continental Europe and the Ibero-American world- is the emergence of the 'Welfare state'. The transition from the 'nightwatchman state' to the industrial 'welfare' or interventionist state is certainly one of the momentous events in recent history. As a general phenomenon the

Welfare State has provided a vast field of study for scientific analysis; from the legal perspective, the legislative power of the modern Welfare State shapes or guides the behaviour of citizens in many ways, touching their lives in numerous and varied forms. The modern state promises - with the aid of legislation - a social reconstruction in which the needs of individuals and the requirements of society are both satisfied under the rule of law.

Within the legal discipline awareness of the important part law plays in contemporary society has increased since the Second World War. This is seen in a general trend towards the study of the relationships between law and society. Today, legal scholars regardless of their philosophical position accept the assertion that law is always a human creation, that is to say, a social phenomenon. It is also true however that the acceptance of this premise does not preclude the existence of many different and sometimes clashing perspectives on the relation between society and law. Some scholars see the law as "a paramount instrument of social order"¹ (Friedman 1964:10), while others see it as the principal form of social control. These same scholars would also envisage the law as an instrument of social change. Still others see the legal form as representing the interests of the ruling class. Some see the law as the highest achievement of civilization; in Fuller's words (1968:3) "the foundation of human dignity and freedom", while others view the law as "man's confession of ineradicable perfidy". There is no intention here to mediate among these various conceptions of law, since under specific circumstances all of them can be justified. They reflect the complex relations between law and society. What is

important is to point out that even to those who advocate the 'natural law' theories², the human origin of 'given' law is fully accepted.

Furthermore, it has also been accepted that the law is linked to man through its purpose as well as its destination. This awareness has led to the certainty that a better knowledge of law, as Knapp (1978) points out, might contribute to a knowledge of man's place in society, since law is never addressed to man in isolation from society. Its knowledge may contribute, especially, to an understanding of the relationship between man and the modern state.

Among legal scholars the strict and impartial administration of justice and the observance of laws by the citizens in accordance with legally established statutes, is known as the 'rule of law' by British and American authors, and as 'primaute de la loi' by the French. In the socialist countries is called 'Socialist legality' and in the Federal Republic of Germany by the notion of 'rechtsstaat'. The common denominator, taking into account the big differences between these concepts, is the tendency to study and analyse the problems presented by the relationship between the individual and the state. The law is analysed as a guarantor of the fundamental rights of man against the abuse of power. This is particularly important in societies in which, despite the apparent material abundance, there has been a failure in the achievement of 'freedom' and 'equality', ideals which were going to be obtained through the legal order. Consequently, there also has been a crisis in the legal order. The crisis, which has been growing parallel to the legal intervention of the state, has induced a

re-evaluation of the legal order and of the ideals it was supposed to achieve. In this perspective the centrality of law is apparent. From a legal point of view the law is, and is therefore self-evidently important (Hunt,1976). It is seen as the only means for sustaining a just relationship between human beings and, particularly, between them and the state. In this regard Bankowski and Mungham (1976:9) say that "...The law is seen as a framework within which we live out our lives and which sets the parameters for freedom, becoming the most important thing in the world. Consequently life without it becomes inconceivable". Thus, between different and sometimes opposite conceptions of law, there is a common factor.e.g.whether the law is seen as representing the rule of reason or that which is just because it has always been so. It is cutting, in different directions, deeply into human life. Regardless of the 'legal way of thinking'³ - whether based on the traditions of Roman Law or on those of Common Law - there has been a quest for new horizons in the legal thought. This new trend, generally called "the sociological movement in law" is directed,in its broadest sense, towards an analysis of the relationship between law and the social context. Hunt (1978) uses the term to cover both "sociological jurisprudence" and the "sociology of law",as facets of the sociological movement. In this thesis, however, the expression refers only to the sociological orientations within the legal discipline.

This trend in the legal discipline has a wide and general acceptance and it is in part the result of a powerful anti-positivist legal⁴ current.

This trend regarded as the duty of legal scholars not only to know and analyse the law in force, but to regard law as a social phenomenon to be developed. Accordingly, as Friedmann (1961:37) says, the law come to be seen primarily in instrumental terms.

Even before the first World War the growing pressure of new industrial and technical developments, of new social and political philosophies, had led jurists of many countries, independently of each other, to think about law in new terms: to see it primarily as an instrument of social evolution. Legal logic and techniques came to be seen as elements, but by no means the sole, or even the predominant factor, in the unending race between law and new social problems.

Once this 'instrumental' aspect of law was perceived it was no longer possible to think in terms of an 'elegantia juris', of a heaven of internally consistent legal concepts. Law broke away from legal positivism and from 'speculative philosophy'⁵, and became socially oriented. However, we do not agree with Knapp (1978) that in the upsurge of the sociological trend "legal science became social science"- or with Hunt(1978:6) that "the two facets of the sociological movement- jurisprudential and sociological tendencies-...have not had an autonomous development". Hunt (1978:6) substantiates his hypothesis that the unity between the jurisprudential and sociological tendencies (in his view the two facets of the sociological movement in law)

...exists not because of any inherent or necessary linkage between the parent disciplines of jurisprudence and sociology; nor, in passing it may be observed, is there a basis for the view that the different intellectual traditions should necessarily give rise to markedly different substantive positions. The unity stems from the view of law and its relationship to the social system that is embodied within the substantive jurisprudential and sociological theories which have been incorporated in the sociological movement in law.

The point to be developed below is somewhat different. Our position is to insist upon the differences and the lacunae existing between the 'sociological movement in law' - as the trend developed within the legal perspective - and the 'sociology of law' - as a concern of sociology. Although from a prescriptive point of view we agree that both strands should converge and that the resulting field of enquiry has to be nurtured by both -jurisprudence and sociology- ,from a descriptive point of view this has not yet occurred. However, in stressing the differences in the development of these two discourses, a clearer perspective of the sociology of law will emerge. Paradoxical as it may sound, in order to achieve this unity, it will be necessary first to grasp the interstices and the theoretical contradictions that separate the two discourses under analysis.

The differences to be made do not mean that there is a clear-cut distinction between the two terms we have already used. Sometimes they are used interchangeably or synonymously, and most of the time without precision. Thus, as far as the legal discipline is concerned, there is still disagreement as to whether it is best to talk of 'sociology of law', 'sociological jurisprudence', 'socio- legal studies' or 'law and society research'. In this thesis the term 'sociology of law' has two meanings: (1) the analysis of law from a sociological standpoint and (2) the discourse that analysing law and society has recently been developing among legal scholars and sociologists as an inter-disciplinary endeavour. On the other hand the term the 'sociological movement in law' shall be referred, in a broad sense, to all the law and society studies made primarily from a legal

standpoint. Its main characteristic lies in the fact that the approach has been conducted within legal frameworks. According to Hunt (1978:3) on the contrary:

The sociological movement in law can be identified as an intellectual trend which emerges at the end of the nineteenth century and which can be followed through to modern sociology of law. It takes as its specific orientation that which subjects the phenomenon of law to sociological analysis. It is the specific project of developing an analysis of law within the context provided by sociological theory and method that constitutes the essential characteristic which serves to distinguish it from earlier trends, especially within continental jurisprudence and in political theory which located the analysis of law in its social context.

It is acknowledged that the sociological movement in law developed within legal knowledge in the period covering the close of the nineteenth century and the first third of the twentieth, and that it was born in Continental Europe within continental jurisprudence (Knapp, 1978; Friedmann, 1964). The movement spread through Europe, being especially important in Germany, where it was represented, among others, by the Sociological School of the Austrian lawyer Eugen Ehrlich. In France, sociologically oriented works of the time were, for example, those of Francois Geny and Leon Duguit (Knapp, 1978; Podgorecki, 1974). In Scandinavia, the acknowledged founder of this approach is Axel Hagerstrom (1953). In the United States, the Sociological Jurisprudence, or the 'New Jurisprudence', also called 'American Legal Realism'⁶, although much younger than its European counterpart - and passing through a number of phases - is also part of this sociological movement, as defined previously.

The sociological movement in law developed within jurisprudence, the legal discipline in which the law as object of study appears as a pregiven reality confronting the subject, and to which the subject's construction ought to conform. Hunt is correct when he says the sociological movement has changed the object of study from the law itself to society; but the point is that it is still society as seen through the law. Jurisprudence takes law as "absolutely given" within an intrinsically a-social and a-historical matrix. Depending upon the theory (or theories) sustained, laws are given by God or by a 'personified' nature (for natural law), or by the sovereign, the state (personified) or somewhat personified body such as the Supreme Court (for positive law), as Stewart (1981) explains it.

What is said above does not mean that within jurisprudence and jurisprudence itself, legal provisions have not been related to specific historical and social circumstances. For example, as early as the sixteenth century, there was a humanistic movement - among Continental legal thinkers - against the exegetical tradition (a literal approach to interpreting legal texts). This movement was however obscured by the trend of the exegetical analysis. Undoubtedly social and historical considerations appeared within this movement, but only as contents of actual and potential legal norms. In other words, the sociological premises were always at the service of the law. Jurisprudence, in Stewart's opinion (1981), sees law simultaneously both as an object of knowledge and as a frame in which to think. This is why Justice Holmes (1841-1945), one of the founders fathers of this sociological jurisprudence, addressed his students (Stewart, 1981:113)

saying that the way to gain a liberal view of law:

...is not to read something else, but to get to the bottom of the subject itself. The means of doing that are, in the first place, to follow the existing body of dogma into its highest generalizations by the help of jurisprudence; next, to discover from history how it has come to be what it is; and, finally so far as you can, to consider the ends which the several rules seek to accomplish, the reasons why those ends are desired, what is given up to gain them, and whether they are worth the price.

It can not be denied, however, that the scope of interest of jurisprudence has been modified during this century. Thus, from an analysis of very abstract problems such as the validity of norms, or subjective and objective law, etc., attention has shifted toward law as a means of 'social engineering', or of 'social reform'. In the United states, for example, during the years of the New Deal, as a consequence of the the Great Depression of the 30's, a very important movement of social reform took place and the greatest interest was displayed by legal scholars as well as judges and lawyers, according to Knapp (1978).

In general the position taken is that law was an instrument in man's service, a means of integrating and preserving the social order. Some sociological procedures were introduced but merely as tools to study the functioning of particular legal institutions. Thus, the coexistence of sociological approaches alongside traditional habits of legal thinking meant that sociology was given an auxiliary role (Podgorecki, 1974). Hunt (1978:6) is also of the opinion that the jurisprudential and the sociological strands do not have equal weight within the movement because this has taken place "...within the domain

of jurisprudence into which Sociological concepts and perspectives have been imported". However, at the same time Hunt (1978:10) asserts that "It is misleadingly simply to suggest a model in which Sociological Jurisprudence is seen as arising from the Jurisprudential tradition, while the sociology of Law has its roots in the sociological tradition". Hunt has attempted to resolve this apparent conflict by asserting that the two roots have grown together, as if the sociological approach was simply grafted into the developing field of sociological jurisprudence. Thereby developing the sociology of law as a unified field.

Today interdisciplinary research is increasing at different levels of law and sociology, but the existence of multiple "paradigms"⁷ within sociology and different intellectual traditions in both fields has given rise to 'false problems' amongst scholars. For example, as to whether sociology of law is a branch of the legal discipline or of general sociology (a reductionist view), or as to whether sociology of law must be speculative or empirical (a false dichotomy). The position taken here is not concerned with the establishment of a 'sub-discipline's' theoretical respectability, nor with the establishment of boundaries between academic fields. In our opinion there is no problem of professional 'jurisdiction' between the two. What matters are the points of intersection between the theory and practice of law, on the one hand, and between theoretical and empirical sociology of law on the other. Once these dualities (of theory and practice) have been understood not as classical dichotomies but as complementary concerns, the perspectives and horizons of the sociology

of law would be more clearer. That is to say ,we must approach the problem from a dialectial perspective where the interaction of two opposite factors produces a new concept that negates the old one and while at the same time conserves it as a particular form of its own expression (Ricoeur, 1978). In other words, a dialectical approach rejects any perspective which implies a division into two mutually exclusive parts, into irreducible elements, but recognises the distinctiveness of each concept.

The sociology of law did not evolve from the branch of sociological jurisprudence known as Legal realism, as sustained by Hunt (1978) and Nonet (1978). Sociological jurisprudence is a valuable asset to the sociologist, but sociological perspectives on the law antedate the movement among legal thinkers. The founding fathers of sociology wrote about the law and analysed it extensively as a relevant characteristic of society. Marx, Spencer and Durkheim, for example - from different sociological perspectives - made of law a valid and important object of study.

More recently, Talcott Parsons, taking his lead from Weber's concepts established an explicit theory about the social order by developing a formal system of concepts and explanations focused on the law and legal institutions in society (Grace and Wilkinson, 1978). The analysis of law as a social phenomenon has been established at the core of sociological theory. Contemporary analysis of law and society, regarddless the name we give to this field of study, has in our opinion two different historical sources. Each of them has nurtured the

discourse with different perspectives. One strand is rooted in general sociology, the other in the legal discipline. There is today a search for a new paradigm⁸ that may cause these strands to converge. If this does eventuate, such a paradigm must include sociological and jurisprudential perspectives, as well as theoretical research and methodology. However, there are some considerations to which we must give priority regardless of their temporal sequence. It is hardly novel to suggest, for instance, that the quality of empirical research - in any field - depends upon the quality of theoretical research.

Sociology, as we shall try to show, can enlarge the intellectual horizons of the normative-legal thought, and broaden the concern of this discipline beyond the limits of its specialised institutional domain. Today, the distance between 'sociology of law' and modern jurisprudence has surprisingly diminished. There is also a very interesting and controversial connection between jurisprudence and neo-Marxist theories of law. Finally, and perhaps most importantly from the point of view of sociologists, there is a convergence between the concerns of the sociology of law and those of general sociology. This is apparent in the four central themes present in contemporary sociology of law, outlined by Fryer et al. (1981:10) which are:

1. the coercion-consent dichotomy;
2. the ideological dimension of law;
3. Legality and the form of law, and
4. Law and the state.

Although a purely sociological perspective on law and society would be incomplete, the 'sociological movement in law' also lacks a conceptual structure for the comprehension of society and the legal institution within it. Any attempt to point out new directions for the sociology of law must be based upon the different historical forms the field has taken. The point is not merely to reconstruct exactly the past or present state of knowledge, but to envisage prospective studies.

A clear understanding of the temporal succession of discourses could throw light on the sociology of law, but such an analysis would not be sufficient to explain how it has developed. While certain known relations and historical differences imply a particular temporal direction, there are others that are temporally neutral (Foucault, 1972). In other words, we propose to develop neither a purely logical schema of simultaneities, nor a linear succession of events in the following pages. This means that we do not see the history of the sociology of law as a mere succession of events without any effect of coincidence and superposition. In doing this there is not a denial of the narrative character of history but the recognition of how other perspectives can be juxtaposed.

Because the frontiers and boundaries of this or any branch of science are never fixed once and for all, we are not concerned with the subdiscipline's theoretical or practical preeminence. We do not claim with Fuller (1968:3) that "the law is the oldest and richest of the social sciences" begetting and devouring every other discipline, as

proclaimed, amongst others by Saint-Simon and Quetelet. Within a "relational" mode of interpretation in which both oppositions and analogies, "ruptures"⁹ and continuities are taken into account, we shall stress the significance of interdisciplinary relations and enquiries, particularly from the point of view of prospective theoretical constructions.

In stressing the significance of interdisciplinary relations we do not refer only to exploring the common boundaries of knowledge. It is more important that the two disciplines share the same epistemological question concerning the relations between law and human society. We think that epistemological issues should play a more important part than in the past in formulating the ways in which the new sociology of law frames its questions, forms its arguments and draws its inferences. The legal approach toward the epistemological question of the relationships between law and society has been made on a different plane from sociology. As shall be explained below, the former analyses the relationship from 'inside' the legal order while the latter attempts to explain it from 'outside'.

Law and Society From a Legal Perspective.

The sociological positions taken within the legal discipline vary widely but have as their common denominator a view of the law as a social phenomenon, arising out and acting upon the society that produces it (Knapp, 1978). It reflects the very widely held conviction

that a better knowledge of law as a social creation can contribute to the knowledge of man's place in society. The general direction of the movement has been towards an instrumental concern with the efficient and rational operation of the legal system. This instrumental perspective involves the need to know how social forces act upon law. Thus, Stone (1966:5) says on the issue: "sociological Jurisprudence, and any study which seeks to bring Social science knowledge to serve legal problems, address themselves to the influence of social, economic, psychological and other non-legal factors on the process in the concrete content of legal propositions". Despite the many changes in the social formations of the West, ranging from the crisis in Capitalism to the growth of radicalism within the sociological movement in law ¹⁰, this instrumental position persists.

It could be argued that this is true only in regard to "Sociological Jurisprudence" but not in regard to the "American Legal Realism", which according to Hunt (1978) preceded contemporary sociology of law. We emphatically reject the hypothesis contained in this suggestion that there is a linear succession from "Sociological Jurisprudence" to "American Legal Realism" and hence to the sociology of law, or even between these last two. There are of course points of confluence, opposition and affinity. Two kinds of explanations for these conjunctive and distinctive phenomena are apparent: (1) sometimes they result from temporally synchronic events and (2) sometimes from developments within different ways of thought. The reason is that the disciplines of law and sociology were, as a general tendency, open to the influences of similar social trends but closed to

one another as fields of practice and enquiry. In the United States we have an example of the first phenomenon, where the use of survey methods by the Legal Realists coincided with the spread of such a method among sociologists. Lazardsfeld (1970:65) writes that the survey movement within sociology began in America in the 1930"s and that "...due to the economic and politic events in European countries, the survey movement temporarily developed into a virtual American monopoly". Thus, there is rather an 'overlapping' than a succession.

In the work of Roscoe Pound (1870-1964), one of the most famous exponents within the sociological movement (1945;1942), it is interesting to observe the same features we have been pointing out as an example of the second phenomena. Working from a legal standpoint, he did not open up but enriched this perspective. Hunt (1978) says of Pound's work that "...the self-ascribed label of "Sociological Jurisprudence" is misleading. More accurate perhaps is the label which Pound uses less frequently, namely, "Functional Jurisprudence"". His aim was to use social science, particularly sociology to enrich and make more effective the legal discipline. Yet his primary concern like that of Justice Holmes, cited earlier, was "our revered common law".

The subsidiary status of sociology in Pound's jurisprudence is acknowledged by Hunt (1978) and Patterson (1960) amongst others. The former recognises that the influence upon Pound of the early American sociologists had a contradictory effect in the development of his work. Instead of an increasing recognition of the sociological perspectives on law he turned to the effect of law upon society, or to the social

consequences of law rather than to the social determination of law. Although Hunt (1978:21) recognises that "Pound does not grapple with the wider problems posed by a sociological orientation, he also asserts that "Pound's efforts may be regarded as a pre-condition of the Sociological study of law", arguing also that "American Legal Realism provides a bridge between Sociological jurisprudence and the Sociology of Law" (Hunt, 1978:37).

It is our belief that the American Legal Realists, although challenging the claim to rational absoluteness of law - a claim which follows from the very presupposition of an absolute subject - accepted legal concepts as furnishing a natural framework of thought for their socio-legal theories. Llewellyn, who along with Frank is one of the main exponents of such a movement (Hunt, 1978), comes to see law as constituting an impregnable "world of its own". Legal Realism was even more pragmatically oriented than Sociological Jurisprudence. The Realist concern with theory for example, was related with the use of it within an instrumental perspective which led to a social utilitarianism. A perspective that was in retreat in the social sciences in the late twenties and early thirties, the time the writings of the Realist appeared (Hunt, 1978). Sociology was seen to show how the existing socio-economic order could be preserved, even though in its earlier stages the movement constituted a strong attack upon the legitimacy of political order. Clearly the Legal Realists were not analysing law and political power, law and domination, law and ideology, law and the economic order as did sociologists like Marx and Weber.

It can be argued that this 'integrationist' perspective was indeed 'borrowed' from a sociological discipline that at the time showed a strong commitment to quantitative methods within a consensus 'model'¹¹. However, although the Legal Realists viewed law as an agency of integration, they did not work upon that 'model' from a sociological perspective but rather they used sociological methods in their aim to reform society through the law. This point of coincidence was due in part, on the one side to the specific socio-economic circumstances of the United States where both Functionalist Sociology and Legal Realism flourished, and in part to the philosophical stance of positivism which generally permeated the scientific discourse of the period.

More important than to discuss the meta-theoretical positions of the Legal Realist is to point out that the problems they analysed were based on jurisprudential conceptions and theoretical legal considerations. We, of course, acknowledge that no researcher in any field is ever completely objective, but is always at the same time committed to some philosophical or ideological stance. In regard to the legal profession the point is particularly important, since jurists are not schooled to be ethically neutral or to refrain from commonly held value judgements.

A significant part of the intellectual heritage passed on to initiates is, apart from the text law book, a common sense law concerning what is 'appropriate' in both the context and purpose of the law. This "largely unconscious" everyday knowledge of the legal is

taken for granted as a meta-theoretical given "i.e.what everyone knows is proper in law" as expressed by Bankowski and Mungham (1976:85). Such common sense knowledge not only combines judgements of fact and value. It also strongly reflects the dominant ideology.

Characteristically Legal Realists like Llewellyn show a concern with jurisprudential questions, that are full of "traditional ideology" in Hunt's words (1978:51). Finally then, the sociological approach within the Legal Realism was, apart from the very general assumption that there is a relationship between law and society, an "eclectic empiricism" influenced by the philosophical positivism of the period.

Although distinguishable, there is a parallel between 'scientific' and legal positivism in the setting of limits to enquiry. Thus legal positivism concentrates attention on law at the point where it emerges from the institutional processes that brought it into being. How it was made and what directions of human effort went into its creation are irrelevant. However there is a crucial difference between the two. Within 'scientific' positivism 'purpose' is unacceptable as an explanation of the behaviour of inanimate matter whereas within legal positivism 'purpose' cannot be easily excluded (Fuller, 1968). In daily practice what positivists do about purposes and mistakes in legislation is to say that they do not belong strictly to the law but to politics, sociology and ethics, for example. Legal positivism limits itself to the knowledge of the rules of law established by the lawmaker and to their formal analysis as a consistent guide to daily conduct.

To both legal and 'scientific' positivism the 'hard facts' became the core of their work, making of the collection of data an end in itself. In this regard Hunt (1978:56) says that "...The Realist may be credited with having made the use of statistics and statistical method a regular and accepted part of the study of legal phenomena".

The Sociological movement in Law - sociological jurisprudence and Legal Realism - recognises the existence of the relationship between law and society and the assertion that law is a product of society. What the movement has not questioned is the existence of the legal system itself as an essential part of society.

The Sociology of Law - as an analytic effort to understand and explain the law in society must first be critical rather than instrumental. Furthermore with the mere use of sociological methods, the specific nature of law is not in question. As a scientific field of enquiry the sociology of law has to be defined by what it has tried to explain and by the types of questions posed, rather than by its sources of data. It is not claimed that the sociology of law is or ought to be theoretical, but that its theoretical stance must inform its application to empirical research. Likewise there is no call for only a sociological approach but rather for a sociology of law that is jurisprudentially informed.

We do not call for an unquestioning utilisation of existing sociological theories. We agree with Hunt (1976:29) that "...The major question that need to be posed to those concerned with the sociology of

law is not simply the call for "theory", but rather to raise the question, what theory?". We also suggest that the analysis and interpretation of legal norms have to be subordinated to a knowledge of the socio-economic context which determines the law. It is fair to say that the sociological study of law by jurists requires a comprehension of sociological perspectives. Then, an understanding of the nature of the legal phenomenon itself is a requirement for sociologists specialised in the study of law. In this way both perspectives are complementary; the legal phenomenon would lose its specificity if its particular nature were not properly grasped. It is necessary to look to society for the origin of law but it is also necessary to look to law itself as having specific properties of its own,"even when it springs from society and returns thereto" (Ricoeur, 1978).

This brief discussion of Legal Realism suggests that this branch of the movement was not, as Hunt (1978) suggests, a bridge between the juristically oriented sociological jurisprudence and today's Sociology of Law¹².

"Sociology of Law" and the Legal Stance.

Those who agree with us that these sociological and juridical strands must be distinguished, emphasise the sometimes clashing and sometimes parallel conceptions of the role of law and of legal research. In the opinion of Treves (1977) the juridical approach to the sociology of law cannot be encompassed as a branch of general

sociology. He sees juridical sociology as a general reaction against formalism within the legal discipline¹³, aimed at meeting the practical needs of legislation and jurisprudence. In this regard Treves (1977:121) makes the point that:

the jurists think of such research as a tool to serve the practical purposes of legislation and jurisprudence, and they see sociology in law, namely sociology within the ambit of Jurisprudence.

In his opinion there is a distinction between the juridical sociology of law and the sociological sociology of law which is seen by sociologists as a branch of General Sociology.

According to Treves (1977), Geny¹⁴ asserted that legal scholars must carry out "free scientific research" when the fountains of positive law proved to be inadequate. According to the radicals Bankowski and Mungham (1976:111) this too is a form of positivism which would "conflate reationality and...make knowledge dependent upon those trained in science accepting it". Such positivistic scientist would presumably view life more 'objectively' and be more 'value-free'. One of the classical examples of this sociological trend of enquiry among jurist was the 1908 "Brandeis Brief"¹⁵, in which Louis Brandeis based his case on research findings and statistical data. Edmund Cahn (Treves, 1977:155) showed his concern about relying on such data analyses when he pointed out that "...shrewd, resourceful lawyers can put a Brandeis Brief together in support of almost any conceivable exercise of legislative judgment".

A parallel use of statistical analysis by sociologists attempting to influence government policy and legislation would be obvious to any knowledgeable observer, but the stance of the jurist can be clearly distinguished from that of the sociologist. On this point Knapp (1978:962) sees sociological jurisprudence as a method of legal thinking and as a legal methodology which can be applied just as much in legal science as in legal practice and to be "distinguished from sociology of law, which is a branch of scientific activity observing and studying the law as a social phenomenon". Such a posture can also be found in Schiff (1981), who sees Sociological and juridical approaches as involved in a debate. Although he suggests a complementary view of sociological and juristical interests in law as a social phenomenon, he acknowledges their different perspectives. The debate he talks about covers the subject-matter to be studied, the methods to be applied, and the means by which it is to be evaluated. He goes on to say (1981:164) that:

the argument is, on the one hand, that sociology of Law determines what law is and Jurisprudence then develops its inquiries on the basis of a subject-matter received from the Sociology of law; the main support for this argument being that 'effectiveness' is a prerequisite of the existence of a legal order, and effectiveness is a fact which can only be established by social scientific and not philosophic methods. The contrary argument puts the view that jurisprudence establishes what law is, and that sociology of law should develop its inquiries on its received object of study. The main support for this argument lies in the normative nature of legal phenomena, that the nature of law cannot be discovered by use of social scientific methods.

The sociological movement in law has departed from legal dogmatism without transcending the exegetical tradition as such and the references

to society and history do not suffice to overcome the orientation toward specific legal aims. Stewart(1981) agrees that the sociological movements in Jurisprudence are on a different plane from Sociology of Law. The former is somehow 'inside' the legal discipline and committed to an immanent adjustment of the legal order, the latter is somehow attempting to describe the legal system from 'outside'. Within the sociological movement the importance of the law is still derived from something intrinsic to law itself, although there is a recognition of the existent relationships between law and society. Law is seen as part of a wider frame of reference but is still the fundamental part.

Hart (1961) insists on a similar distinction between sociological and legal scholarship. From this perspective Jurists hold an internal point of view while sociologists hold an external one. The internal criteria is that one held by a person who accepts norms as a component of the group to which the norms refer and who, with a prescriptive attitude, uses them as guidelines for his/her own conduct. The external criteria is, on the other hand, that of the observer who, with a descriptive attitude, confines himself to analyse both the regular and uniform behaviour among the members of a given group and also the deviations from such behaviour.

Still others, Treves (1977) for example, see distinguishing characteristic themes: sociologists toward theoretical research and legal scholars toward practical results.

The Sociological Movement within Socialist Legality.

In the West Marxism is a force within the sociological movement in law but in the Soviet Union there is no longer a need for such a movement. In theory at least, the law has become a social instrument that serves man in society and there is no question of a normative order that could be considered apart from man's socio-economic relations. The Marxist-Leninist theory of law, which is regarded as science, was born in Russia after the First World War and later was spread first throughout the U.S.S.R. and then throughout the other Socialist countries. Though not universally regarded as part as the Western tradition focused on in this thesis, Marxist-Leninist legal science once developed in the Soviet Union has had its influence both on Western Marxist thought and on the legal disciplines of many Western countries.

Based upon a philosophical conception of human society and law, it employs the Dialectical and the Historical Materialism¹⁶ for examining the dynamic relations between the state and the law (Knapp, 1978).

In the West a Marxist approach to law would belong undoubtedly to the sociological movement. Both the Western Marxist perspective and the Socialist legal Science share common theoretical and philosophical grounds. Both regard law as an element of the social superstructure ultimately determined by the material conditions, that is by the economic relationships peculiar to the given society. It could be said

that socialist Legal Science has been sociological since its earliest days. However, as indicated by Knapp (1978) sociology, within the Marxist-Leninist legal conception, is not placed on the same plane as Historical Materialism. It is regarded as only one of the methods used within the framework of Historical Materialism.

Although Soviet Legal Science has always seen law, the state and its institutions in a close relationship with society, this relationship has been dealt with only on the most general level of sociological theory, that is, within the limits of considering the basic conditions and social functions of the state and law as a whole (Podgorecki, 1974). The social significance of legal institutions and detailed regulations have been given only lip service rather than any systematic study. One of the causes of this situation is the lack of sufficiently developed sociological theories and sociological research methods according to Podgorecki (1974). This is why socialist authors prefer the term of the "concrete sociological study of reality", a term that means that the general framework is given by Dialectical Materialism and by Historical Materialism. This latter involves the application of Dialectical Materialism to an understanding of society.

In socialist countries today it is accepted that there is no contradiction between the Marxist tradition and 'concrete' sociology (or empirical social research). For example, public opinion polls are now very common and the methodology, according to Lazardsfeld (1970) is very similar to that in the Western countries.

We must remember that Marxist-Leninist legal Science is a 'militant' science (in the sense that it is also constituted as political doctrine) and that as such it is different than Marxist perspectives in the West. Soviet Legal science not only rejects non-Marxist theories (points of departure, theoretical conceptions and politico-practical implications) but also exposes all deformations of Marxism-Leninism, especially in the form of 'revisionism' that occur not only in the West but also within Socialist countries (Knapp, 1978). Despite these and other differences what is important to point out here is the insistence of the necessary place of some conception of 'the rule of law' within socialism.

Influences and Rationales for the Sociological Movement in Law.

It has been widely recognised that there is a tendency towards conservatism in the legal discipline due to diverse and interplaying factors, such as the high status of most lawyers, the traditional character of legal thought itself and because social stability itself is a paramount objective of law. Besides, the professional socialization of lawyers provides them not only with a knowledge of norms and techniques but with a set of norms, values and informal relations within the profession that tends to sustain traditional professional structures (Schiff, 1981; Suschnigg, 1981; Bankowski and Mungham, 1976). The legal profession has preserved an institutional solidarity, and a closed caste-like recruitment that systematically facilitates the "reification of law". As Cain (1976:235) puts it "law

is ideologically constituted; that is the character of all reified constructions"¹⁷. This reified object, or final product, is taken for granted and is seen as something natural and obvious. Law is seen by lawyers as a framework which sets the parameters of freedom and justice, becoming the most important thing in the world; the extreme but logic consequence is that life without law is inconceivable.

Conservatism may have slowed down or influenced the directions taken within the legal profession but it has in no way kept it from undergoing changes, particularly, as has been noted, since the end of the nineteenth century. One of these changes we have been analysing here is the so-called - in general - the sociological trend, which although not uniformly accepted in the West, represents a very important field within the legal discipline¹⁸. It is possible to say that today the sociological movement is a world wide movement.

There are many ways of accounting for this change, both intrinsic and extrinsic to law as a profession; thus, no simple or a linear explanation of the phenomenon would be sufficient. Nonetheless a review of Bankowski and Mungham (1976:1,3) is rewarding. They explain the movement as a reflection of the changing market situation in which lawyers find themselves :

It is a new and welcome addition to their income when traditional areas of business are drying up: helping people "pays"...So, "socio-legal studies", law for the poor and welfare law are enjoying a boom creating a vast new market for the legal academic...The new field has produced many would-be social reformers, but no new Renners¹⁹.

Although this argument is acceptable as a partial explanation, it does not provide a complete one. The argument rests on an instrumental view which sees lawyers and law merely as instruments of a ruling class. In their view the aim of the sociological movement is to bind poor people who are supposed to be the beneficiaries, more closely to the domination of law. The use of law "...has the effect of increasing the domination of law over people's lives" (Bankowski and Mungham 1976:69). In their opinion, as one of the several electives open to the liberal lawyer, radicalization can be explained in terms of work opportunities. When discussing curriculum reform they acknowledge the great emphasis on social reform and social policy, but say the main reason for such a reform is that it opens a market for law teachers. The authors add that Lawyers do not understand anything new about the social context within which the law operates, nor do they develop any critical theories of law and society. What happens, in their opinion, is that "as bourgeois legality goes into crisis and shows what it really is, then the need arises to bring the law down to earth and to legitimate it with science" (Bankowski and Mungham 1976:3,104).

Although we already pointed out the non-problematic view most lawyers have of the law, especially within a jurisprudential framework, we do not share the position above in the sense that the new trend can be explained just from a consumerist standpoint. This is not to deny the pragmatic character of the movement, which has been determined mostly by the pressures of a fast changing society; a society that demands from lawyers a sort of analysis different from the traditional approach. There are many examples in the economic area or in the field

of welfare legislation where the lack of rights for minority groups and for women produced a schism within the profession as lawyers became aware of gross deficiencies in traditional legal services.

The pragmatic character of the recent movement is apparent. Legal scholars do not attempt any comprehensive understanding and explanation of the law as a social phenomenon. Rather they focus on actions using the law as an instrument of social change. This has a dual aspect, as Nagel explains (1970): where a given social change is recognised as a force promoting legal change a specific legal change is promoted to achieve a social change. Of course this pragmatism does not imply any lack of theoretical works on problems within the sociological movement in law. Furthermore, pressures for legal reforms not only come from 'consumers' of law but from the state itself in its increasing legal interventionism. The modern welfare state is in itself a vast and crucial field of research for both lawyers and sociologists, as is shown by the vast literature on the topic.

However narrow this frame and despite differences within the movement, there is a common concern in regard to the study of the relationships between law, state and society. In seeing law as an essentially social phenomenon, that is, not only a product of society but also a force making itself felt in society, the epistemological barrier between what is and what ought to be comes into clearer focus as a problematic. Thus a new paradigm in which tensions between the spheres of the is and the ought to be have to be understood as the base for a better integrated sociology of law. Neither a purely legal nor a

purely sociological approach is sufficient. Law is not only a social phenomenon, it is also a normative one. We mean here that law has a dual nature, both as a normative and as a social phenomenon and we further suggest that the knowledge of the is constitutes a pre-condition of the knowledge of the ought. In this sense, a sociological approach has to be made first or given priority in order to make a general analysis of the concrete social formations within which the law operates as a normative system²⁰.

Theoretical and Practical Trends within the Sociological Movement
in Law.

In addition to the cross-cutting influences mentioned above, there are differences within the movement concerning the appropriate type of sociological input. At one extreme we have the 'theoretical trend' in which the most general problems in law are analysed in sociological terms and at the other extreme where the only recourse is to sociological methods. This is not to say that there is any opposition between theory and method but to point out that the latter 'practical trend' has been the dominant one within the movement. Those jurists who use sociological methods do so in the contexts of juridical theories and therefore should not be thought of as a-theoretical empiricists. As we have said before, the differences between juridical and sociological approaches to law involve an epistemological problem: what theory and from what perspective (Stewart, 1981; Hunt, 1978).

More important than the tendency to borrow methods from the natural sciences (a tendency in both sociology and law) is the increasing awareness of the need for a theoretical standpoint. Theory has a dual function as a point of departure and as a general framework for the presentation of a problem. Hence the tendency within the sociological movement to use sociological methods in the absence of sociological theories has been called "applied legal sociology" (Knapp, 1978). The difficulty from our point of view is that the recognised need for theory has not led most jurists to recognise the need for a sociological perspective much less a sociological theory, and that this lack of sociological theory is now a characteristic of the sociological movement throughout the West. Those like Knapp (1978) who advocate eliminating the dividing line between the tasks of the lawyer and the sociologist, would presumably transform the jurist into a social scientist. The prescription we are writing advocates more specifically that in the relation between law and society, the law must be developed within a sociological framework for the understanding of social relations.

Finally, it is important to note that the gap we are trying to clarify is the one between an adequate theoretical conception of society and the relatively neutral methods used to study social events. Within the legal discipline the sociological movement has been essentially a methodological event rather than a theoretical one. It has been methodological not in the sense of the theory of methods but precisely because of its concentration on the use and application of sociological techniques, such as the analysis of statistic data, public

opinion, surveys and interviews.

Again we are not denying the existence of theoretical issues or the trend to relate theory and methods in the legal discipline. What is needed is an interdisciplinary effort to place the theories and methods of both disciplines in their proper perspective - and that means given priority in this relation to the sociological one. Although we are not pursuing a definition of the sociology of law, we are nonetheless willing to say that progress within the sociological movement requires more than a supplementary dose of sociological methods. Regardless of what happens in the relationship between the sociological and legal disciplines, progress in the sociological movement will require a theoretical event of revolutionary proportions.

Sociology is not a specialization based solely on the use of "The Method", regardless of the content, problem or area. Though we are offering no unified sociological theory, it is incumbent upon us to do for general sociology and the sociology of law what we have done above, namely to issue parallel denials. We agree with Mills (1959:59) that "abstracted empiricism" is an approach whereby "...any area can be sociologized" but such approaches to sociology lack substantive propositions and theories. Mills is not targeting a straw man here. The posture he is attacking would make sociology a "mid-wife" to a series of specialised fields. This posture assumes that the Method is such that it does not require traditional scholarly knowledge of the area to be converted. It just consists as Lazardsfeld (1955:62), one of the main exponents of this trend in American sociology says "...in

applying scientific procedures to new areas".

Sociology of law is not to be conceived as a theoretical field of enquiry far apart from the practical problems of law; on the contrary, there is a need to develop a firm connection with substantive problems, that is, real (as they arise out of history) and practical problems that have to be approached from a combination of theoretical and methodological perspectives since neither method nor theory is an autonomous domain.

Such work is best done if the sociology of law is conceived as an interdisciplinary field of inquiry. The legal disciplines belong undoubtedly to the vast domain of the Social or Human sciences and, as each of them advances, its interactions with the others have been intensified. We have to recognise the increasing fluidity of boundary lines which makes, for example, the legal discipline necessarily close to other fields of knowledge. These relations have been recognised within the sociological movement. For those of us who claim that the legal discipline is not confined to the analysis of positive law and its interpretation, co-operation and cross-breeding with philosophy, Political Science, History, and Sociology, amongst others, is necessary.

It is within an inter-disciplinary conception of the social Sciences that the sociology of law must emerge as a composite realm, combining the intellectual equipment of both sociology and law. This does not mean a claim for a "marginal domain", status that according to

Fryer et al. (1981:9) is given to it in Britain where the field "has barely reached the level of a recognised sub-discipline of sociology. It occupies a marginal place in the organisation of academic Sociology and just as precarious position on the fringe of legal education". The aim here is for a new style of analysis, a "putting into perspective"; that is, using Foucault's terms (1972:137) an "interdiscursive network" which can not be defined in advance and whose limits and points of intersection (between law and sociology) can not be fixed once and for all. There is as yet no distinctive world of concepts, methods and theoretical choices for the sociology of law as such but, neither has the same content or the same practical function as does general sociology or the Legal disciplines.

The 'Dualism' of the Legal Order- the Normative and Empirical
Classification.

Yet another basis for differentiating between law and society lies in the fact of their structural features or their traditional orientations as scientific discourses.

The development of the legal system, although it can be factually analysed as a social formation, may also be regarded as a normative phenomenon, as is recognised by Schiff (1981) and Catsberg (1957). Yet this dual character has been rejected by some, who like Kelsen (1881-1973), deny the law's reality or facticity. He regards the "science of Law" as a normative science, which studies the legal rules,

i.e. what "ought" to be, whereas Sociology he considers a "natural science" which describes human behaviour "as it is" (1945). In his view the methods are fundamentally different: the sociology of law follows the method of the natural sciences based on the principle of causality, while juridical sciences follows the method of the normative sciences based on the principle of imputation. The 'Pure theory of law' developed by Kelsen's school makes a very sharp distinction between the subject-matter, objectives and methods of legal disciplines and those of sociology. In one of his works cited by Schiff (1981:155) he adds that:

A sociological concept of law is just as impossible as a mathematical concept of the physical phenomenon of the freely falling body. Hence every attempt to create sociology of law must result in simply speaking, in a general way, of social phenomena.

Our contention is that this dual nature of law must be grasped. Law is a distinctive social construction that shows relative autonomy within the social context. As a normative phenomenon the subject matter of law contains values and is concerned with the logic of norms or rules of conduct but as an empirical phenomenon the law is concerned with the facts of human conduct in relation to the law and with the explanation of related social phenomena. Though one cannot derive logically values from statements of fact nor facts from normative values, it is nonetheless possible to combine normative and empirical assumptions to derive instrumental value judgements about 'good' laws and 'good' human relations.

One can argue, of course, that this dual character of the legal disciplines has its parallel in sociology which has a general concern with social constructions. Though there is a debate upon ethical neutrality within social science, the vast majority of sociologists are still, like their founding fathers, involved in the practice of making normative judgements about social relations. Upon, for example, the appropriateness of social inequality and how best to create and to implement policies of social justice. Though legal disciplines may have conserved their traditional orientation to the law as a normative system and sociology may have retained its historical orientation to social phenomena, neither field has ever been 'purified' or transformed with principles or methods that justify such simple or straightforward classification.

From a sociological standpoint law has been a major concern for classical sociologists. However in their work (except for that of Max Weber) the law does not constitute a neat and self-contained area and tends to be spread throughout their writings. In the case of Max Weber who did develop a systematic sociology of law, other themes were developed concerning human society as a whole. Classical sociologists like Durkheim and Marx analysed law as one of the social phenomena in its relationships with society. They did not see society as a subject-matter important for the explanation of law but saw law as something historically important for the explanation of society. Although jurisprudence (especially sociological jurisprudence) has developed an approach to law as a social phenomenon, it has never really explain law. The reason is that sociological jurisprudence

lacks an adequate theoretical and methodological base upon which to develop such an explanation.

Legal Subjectivism. A Theoretical Humanism.

Our contention is that one of the main reasons for this lack of explanatory power within legal disciplines lies in the kind of logic that the legal disciplines have been relying upon.

The logical structure of law traditionally has been seen as a complete structure and closed system which using merely formal logic, could ignore the 'subject' and the social contexts as a matter of principle. Today it is acknowledged that it is impossible to isolate a form of research, however logical its structures, as if it were a kind of absolute, with no interdisciplinary contacts or relations of significance.

In the case of law, it is not sufficient to know that a particular form of legal reasoning is logical, because we need to understand legal systems in relation to social contexts and more specifically in relation to the individual subject. The 'rule of law' in capitalist countries and 'socialist legality' in the socialist countries, both require a conception of the citizen which itself entails a subjective, personal foundation for ethical and political thought.

This idea of the 'citizen' has its roots within Continental philosophy. It assumes that the knowing subject is the same as the responsible subject, on whom all ethical and political thought is based. Hence the subject and the citizen coincide. But within this 'humanist' philosophy and regardless of its source (Cartesian, Kantian or Rousseauan) the notion of a person is built upon some notion of an autonomous ego (either pure, transcending or acting). Based on Christian individualism, the person is, a priori, a pre-social and a pre-historic self. This subject has 'natural' rights which derive from a Universal which absolutely transcends history and not from a historic union with the human species.

There was a 'transcendental' unity underlying this idea of theoretical subjectivity and the ethical, political individual, which was the vehicle for humanism. The result was a humanism conceived as a version of caritas, a "sentiment of humanity" based on the implicit view of man as natural man or a priori man.

From a very different standpoint Marx in his Economic and Philosophic Manuscripts of 1844 declared that:

Man is a particular individual and it is precisely this particularity that makes him, as an individual, a truly individual social being.

Marx then recognised the existence of particular individualities as one of the basic determinations of human essence. This is not to say that Marx (trained in Hegelian dialectics) equated the essence of man to individual human existence, neither that he identified a given

individual with the aggregate of social relationships which constitutes him. In principle, the essence of any concrete thing is irreducible to any simple definition (Ricoeur, 1978). Marx recognised that since human beings are essentially social, they also have a "personal life". However he changed completely the method, giving to the traditional concepts of 'subject' and 'humanism' another dimension.

He added the class standpoint of proletarian humanism which make differences and oppositions between individuals belonging to different social classes more essential than any natural kinship. He also added the historical standpoint. To Marx the essence of man is not a vague abstraction inherent in a particular individual, but an aggregate of historically determined social relationships. In other words, the historical aggregate of social relationships characterises in a more concrete manner the essence of man as the social essence of mankind.

In this way he "superseded" Rousseauan and Kantian conceptions of humanism although the concept did not disappear from within the Marxian discourse. In fact, Marxism has been called a "scientific humanism" (Della Volpe, 1978).

Within the sociology of law there is a necessity to recognise the interrelation between the legal subject and the legal system and to place both within a social context. Without this recognition there would be no theoretical basis on which the 'legal subject' can oppose the abuse of political authority. A legal subject must be presumed to exist for without it all legal phenomena would be meaningless. The law

presupposes the existence of a responsible individual who can be punished or rewarded, deterred or encouraged to act in an appropriate manner. Even within socialist legality references to a legal subject are paramount. Therefore it is valid to place this problematic of the legal subject, which is basically a philosophical problem, within a general discussion of the sociology of law. In most western countries this problematic is linked to the analysis of the main differences and similarities between marxism and liberalism since these are two of the most important philosophical conceptions of men and the world. In particular, for instance the contemporary concept of a legal subject relies upon a liberal humanistic conception of man, which presents him as an autonomous, responsible and free individual.

For some Marxists this liberal tradition has been completely "superseded" by the Marxist tradition, specifically in connection with the analysis of the relationships between subject and society, citizen and state. For these theorists it is necessary for the sociology of law to be developed within a Marxist framework, in order for it to gain sufficient explanatory power. It is our contention that the liberal tradition of the West is not totally exhausted in regard to the explanation of the relationships between subject and society, citizen and state.

Within this context we shall raise the problem of integrating humanistic and scientific approaches to the phenomena dealt with in the sociology of law. There are many who like Della Volpe (1978) see no

contradiction between humanism and science in Marxism. However, others like Althusser (1969) emphatically reject the possibility of a scientific humanism. In his opinion a truly scientific viewpoint excludes all vestiges of humanism, not only the philosophical humanism of the young Marx, but theoretical humanism in general. To be sure, Althusser does not deny the necessity of Marxist humanism. What he denies is the possibility of merging science with an ideology like humanism. He insists on the "epistemological cleavage" between science and ideology and therefore relegates to the field of ideology all moral and philosophical forms. To him the ideological content of socialist humanism, including such concepts as "alienation", "fetishism", "whole and complete man", are justified only by their practical function, namely that they give rise to new forms of economic, political and ideological organisation. This is particularly true for the phase in which "the dictatorship of the proletariat withers away and is transcended" (Althusser, 1969:237). What he rejects is not the presence of such an ideology (without which it is impossible for any society to exist) but the possibility of a scientific ideology and with it that of a scientific humanist view of the world. In Althusser's view, Marxism is humanist only insofar as it is a practical political and social movement, as a revolutionary praxis, but never as a scientific theory.

The fact that Marx rejected as "non-scientific" and sentimental the criticism of capitalism on the grounds that it was incompatible with humanity, did not prevent Marx from calling his theory "real humanism". At present within socialist systems much legislation is undertaken in the spirit of humanism. There are certain rights of the

bourgeois juridical order which are not in conflict with the general goals socialist authorities pursue and which have therefore been incorporated into the socialist legal order. Liberal ideas concerning rights for individuals have been encompassed within a socialist legality that has always made room for theoretical humanism. The point we are making here is that there are many versions of humanism. The underlying question concerns giving primacy to those anthropological grounds which treat the individual and the community without regard to social distinctions arising from economic and political relations- as if such distinctions lacked legal significance.

Humanism and the Social Sciences.

Philosophical anthropology situates the unity of mankind above and beyond social differences and social situations. Although essential, this view of man does not provide a key to the history of social differentiation or to the varying position of individuals in society. Thus, it is necessary to remove the debate from its anthropological soil, and to look for more critical grounds on which to base humanism.

In contemporary philosophy the anthropological basis of humanism (e.g. derived from a Cartesian philosophy of the subject) is confronted by the use of models of intelligibility, of current use in the human sciences.

Weber's "verstehen" method of understanding typically has been opposed to the explanatory models characteristic of the natural sciences. Within this dichotomous conception the two models have been seen as irreconcilable. Today, although there are still vestiges of the old debate, understanding and explaining are no longer seen as opposed.

With the latest developments in linguistics, psychoanalysis and structural anthropology, another model of intelligibility has come to the fore in the human sciences. This so-called "semiological model"²¹ has a marked influence on the discussion of humanism because the problem of meaning is seen from an entirely different point of view than that of the subject's intentional aims. The model based on structural linguistics asserts that scientifically language is essentially an autonomous entity of internal dependencies, in short, a structure. Thus, for structural linguistics language is self-sufficient and is a system which precedes the speaking subject. It is easy to understand why this new model has set certain philosophers off in a deliberately anti-subjectivist, anti-humanist direction: self-reference and world-reference disappear simultaneously.

Within this line of attack on the foundations of humanism it is important to point out the convergence of linguistics and psychoanalysis, and linguistics and structural ethnology or anthropology. For example, the work of Jacques Lacan in his interpretation of the subject's unconscious and the work of

Levi-Strauss (1969,1968) on kinship systems are relevant within this approach.

What is crucial for our purposes is to point out that there is a new approach to the notions of system and the speaking subject and to the notion of humanism, which is demanding a correlative revision of these notions. Furthermore, this trend is not exclusive to the philosophy of language but also influences political philosophy, and the sociology of law. If anti-humanism can be sustained, then there will remain no theoretical basis on which the legal subject can oppose the "abuse of political authority". So, the pretensions of both, system and individual, objectivity and subjectivity, understanding and explaining have to be explored. The implications of a victory for the anti-humanist are too far reaching to be contemplated either with any certainty or equanimity on the part of legal or social scientists.

In thinking about the general theory of sociology of law many concepts, not strictly sociological or legal emerge. This is so because as Foucault (1972:137) said:

It shows how scientific knowledge is diffused, gives rise to philosophical concepts, and takes forms perhaps in literary works. It shows how problems, notions, themes may emigrate from the philosophical field where they were formulated to scientific or political discourses.

With this in mind and with the conviction that some of the so-called "liberal" contributions to the sociology of law are not historically exhausted, a discussion of the work of Marx and Weber to the field is initiated in the following chapter.

NOTES

1. This perspective, in which law is not significant in and of itself, but is seen as one of the forms of social control has been developed by some jurists as well as sociologists. Among the jurists, this perspective has played a significant role in American Realism, and among the sociologists, in Durkheim's sociology for example, the social control perspective is dominant. For further details see Hunt (1976:25 and ff).

2. In very simple terms, it can be said that those who advocate 'natural law' theories believe that there is an ideal system of law 'given' or dictated by God, by the nature of man or by nature itself. The advocates claim this system as universal, being the same for all societies and for all periods of history and whose rules can be discovered by reason and reflection. From the classical (e.g. Aristotle) to the scholastic (Aquinas) and the modern (e.g. Grotius, Blackstone) conceptions of natural law, there are many versions, including both 'revolutionary' and 'conservative' trends. The modern version rests ultimately on the capacity of human reason. See Fuller (1968:116) and Hart (1961), especially chapter IX.

3. With this term we mean, in general, the special training of the lawyer which operates within a high degree of abstraction and which "while their outlines may frequently alter, nevertheless retain the

abstract form which has been theirs throughout the ages and has to some extent survived social transformations" (see Knapp, 1978:929).

4. This trend opposes legal positivism in the sense that this latter includes theories that are not concerned with the origins of law but simply with the fact that law exists, or possibly, that it is valid. It tends to interpret the law in force rather than deal with the general problems of law.

5. At the time of this change within the legal discipline, the philosophy of law was dominated by neo-Kantianism which took little interest in positive law and was mainly focused on the ontological, epistemological and methodological problems of law. The second half of the nineteenth century was marked by the existence of two rival trends: "legal positivism" and the "speculative philosophy of law" or neo-Kantianism. See Knapp (1978).

6. Stewart (1981) and Knapp (1978) use the term as involving the so-called American Legal Realism. Knapp says that within the general trend of "sociological jurisprudence", some exponents such as Llewellyn and Frank called their doctrine, at least for a time "Legal Realism". Hunt (1978:37) holds a different opinion. He says American Realism is a "...way station between sociological jurisprudence and contemporary sociology of law". For additional sources on this sociological trend within the legal discipline see, for example, Pound (1945,1942), Cardozo (1921) and Frank (1930).

7. Thomas Kuhn's research on scientific paradigms (1970) was applied in sociology in the early 1970's by Friedrich followed by Lakatos and Musgrave, Lodahl and Gordon, Phillips, Effrat and Ritzer. In 1973, the paradigmatic approach was applied to the field of criminology by Chamblis followed by Reasons and in 1976 was applied to the sociology of law. See Reasons et al.(1978)

8. Ritzer (1975:189) defines a paradigm as: "a fundamental image of the subject within a science. It serves to define what should be studied, what questions should be asked, and what rules should be followed in interpreting the answers obtained. The paradigm is the broadest unit of consensus within a science and serves to differentiate one scientific community or sub-community from another. It subsumes, defines, and interrelates the exemplars, theories, and methods/tools that exist with it".

9. In Foucault's opinion (1972:177),"rupture is the name given to transformations that bear on the general rules of one or several discursive formations".

10. According to Hunt (1980), within the sociological movement there is, at present, (as a product of the particular period which spans the late 1960's and into the 1970's) a current which can be called "the radical critique". Hunt's defines it as " a self-conscious challenge to orthodoxy which takes the form of a denial of orthodox thought. The essential challenge is to the assumption of the desirability and naturalness of law".

11. The word 'model' has been used here on purpose. The very notion of a 'model' as a theory to be tested against 'facts' is itself a product of functional social theory with roots deep in the positivist tradition. See Hunt(1980) .

12. We acknowledge, however, that in the United States, there has been a continuous link between this sociological movement of the thirties and the present sociology of law.

13. Treves (1977:122) identifies three different types of formalism within the legal discipline: legal formalism, conceptual formalism and jurisprudential formalism. The first relies upon a "purely logical function" of the judge's activity while the second one relies on the determination and definition of juridical concepts. By jurisprudential formalism he refers to the american line of thought which at the beginning of the century entailed that law was to be studied, not on the basis of precedents and rationes decidendi, but through a predertemined selection of cases to which a normative was attached.

14. The French jurist Francois Geny (1861-1959) was one of the first and most important, within the legal discipline, to promote a new sociological conception of law. In one of his works, Libre Reserche Scientifique, Geny deals with the problem of providing a new method of "Free scientific reseach" to replace the traditional of legal research and interpretation.

15. Louis Brandeis, in his capacity as an advocate, before the U. S. Supreme Court, prepared this famous brief. Treves (1977:155) says : "the matter at issue concerned the validity of a law limiting the hours of work for women, and the Brief employed predominantly sociological arguments, relied on American and European statistical data, used reports of expert committees, factory inspectors, health officials and so on".

16. According to Eric Fromm (1961:9) Marx himself did not use the terms "historical materialism" and "dialectical materialism"; what he spoke about were the "materialistic basis" of history and the "dialectical method". In contemporary marxist philosophy dialectical materialism is the most fundamental doctrine. It is viewed not only as a theory of knowledge, but also as a practical scientific method for the understanding and the revolutionary transformation of nature and society. Historical materialism, another of the cornerstones of Marxism, is also known as the materialistic interpretation (or conception) of history. It basically consists in the application of dialectical materialism to the explanation of historical events, processes and developments in society. See Wilezynski (1981:146,230).

17. The four components of legal ideology, according to Cain, are reification, reverence, righteousness and rectitude. See the interesting analysis of the "social organisation of the Bar" in England made by Cain in Carlen (1976:226-249).

18. The preference, in this thesis, for the use of the term 'legal discipline' instead of 'legal science' is due to the fact that this latter does not have a definite content or exact boundaries. To some law is not a science, while others use the term in plural, i.e. "legal sciences", meaning: a) the various sciences which fall within the domain of law, but approach it from different perspectives, for example, the sociology of law, etc. and/or b) the various branches of the legal disciplines, for example, Constitutional, Administrative, etc. (Knapp, 1978:933). In this thesis we shall try to avoid the use of the term science in reference to law, except as it is required to discuss historical developments.

19. Karl Renner, an Austro-Marxist theorist, dedicated his work to the analysis of law and society. His main concern was civil law in particular, and in general societal legal institutions. He dealt with the impact of economic forces and social changes upon the functioning of legal institutions. See Renner (1949).

20. This is not to say that explanations of the facts are ultimately more important than the normative order. On the contrary, it can be argued that those evaluative judgements wherein the good society or the good law is at issue are judgements that are always presupposed in some theory of society or the law. As Berlin (1969) says, if the ends of society (or law) were agreed upon, then all political and moral problems could be reduced to technological problems of social engineering.

21. Semiotics or semiology has itself always been considered a social science, or even a branch of sociology. The semiological model is now widely used by the various forms of philosophical structuralism.

CHAPTER II

MARX'S AND WEBER'S WORK. PARALLELS AND TENSIONS

Modern sociology of law must start with a critical analysis of the work of Marx and Weber. A critical comparison of the two contributions allows an explanation of such apparent dichotomies as understanding vs. explanation, idealist vs. materialist etc., which still underly almost every theoretical debate within the social sciences. It also assists in understanding the premises of the sociology of law. In the first instance, law sees the individual subject as the central focus of its operation and in this regard the conception of man in Marx and Weber becomes a fundamental point of analysis. Their contributions on issues such as ideology - and its operation within society - domination, power, and of course on law itself, are also of fundamental importance. Furthermore, a critical analysis of their work invites not only a sociological but a philosophical debate, for some basic assumptions do not belong strictly to the sociological or legal field. The question of a valid theory for the sociology of law can not be resolved without considering certain philosophical premises.

According to Mills (1959) the traditions of liberalism and marxism provide inadequate explanations of the world if taken by themselves. Despite the fact that Marx and Weber represent these two different traditions, their theories share many assumptions and values and are rooted on the same philosophical legacy. Firstly, for both liberalism and marxism, increased rationality is held to be the prime condition of increased freedom. As Mills (1959:166) comments in his Sociological Imagination:

The liberating notion of progress by reason, the faith in science as an unmixed good, the demand for popular education and the faith in its political meaning for democracy - all these ideas of the Enlightenment - have rested upon the happy assumption of the inherent relation of freedom and reason.

Both Marx and Weber were influenced by similar philosophical legacies, although each one developed his own perspective and concentrated by way of rejection or agreement, on different works. Thus, it is well known that Marx (1818-1883) worked specifically - but not solely - on Hegel, Proudhon and Feuerbach while Weber (1864-1920) made specific reference to Rickert, Simmel and Dilthey¹. But rather than to simply point out the specific influences upon Marx and Weber, it is more important to note that the philosophical tradition of the Enlightenment and the Idealist German tradition provide a common foundation for their work. It is also relevant to point out that the total lack of reference to some writers does not mean that Marx and Weber did not know their work. On the contrary, some such influences, though not explicitly acknowledged, nevertheless have been evident in their writings. Some present day commentators see Weber's lack of any reference to Durkheim as an example of this tendency not to

give explicit acknowledgement. Similarly, Marx's references to Rousseau are scarce but in fact bely the great importance of Rousseau in Marx's writings.

Both Weber and Marx worked within a common theme in the Hegelian tradition. The theme is, as Bauman (1978:22) calls it "history coming to understand itself". Both directed their analysis to the capitalist society of their epoch but at the same time both were striving for an analysis that would enable them to anticipate future developments of society. Although facing relatively different 'adversaries' and committed to different specific tasks, Weber could draw from the findings of Marx and his 'sociological interpretation' of the Hegelian theory of history and knowledge. In this endeavour Weber takes Marx's sociological theory as a point of departure for his own sociology of law, although Marx never developed a sociology of law as such. To some extent, then, a fruitful comparison between Marx and Weber can be engaged in because they share some fundamental premises.

It must be said however that to stress or to point out some common features of Marx's and Weber's work, does not mean to say that they have the same personal philosophies of life or that they developed the same scientific and ideological positions. A useful first step, then, would be to compare the elements of each theorist's philosophical underpinnings. This because we think that there are certain categories in the field of knowledge which defy 'scientific rigor' as it has been commonly understood. These presuppositions, which are dependent neither on perception nor on objective knowledge, bring into play a

philosophical conception of man and reality. These regulatory principles are not 'epistemological obstacles' as Bachelard (1968) calls them but 'undemonstrables' since science alone does not give access to reality. As Foucault (1972:183) asserts:

Knowledge is to be found not only in demonstrations; it can also be found in fiction, reflexion, narrative accounts; institutional regulations, and political decisions.

In comparing Marx's and Weber's contributions some writers have stressed the differences and oppositions rather than the common or complementary premises. Here, taking the opposite direction, we will instead attempt to show Marx's and Weber's affinity.

Although it is an elementary point it is important to reiterate that Weber knew Marx's work very closely, to the point that some authors assert, as does Zeitlin (1968:111) that "Weber's total life's work was shaped by his debate with Marx". Apart from Marx there are other influences important to cite for our purposes because of their direct connection with modern Western legal thought, namely Nietzsche and, particularly, Kant. This is not to say that Weber was either a Marxian, a Kantian (or neo-Kantian) or a Nietzschean. His merit lies in his originality which, at the same time, utilises, contradicts and hones certain ideas of these predecessors, particularly those of Marx. But to think that Weber's work is either a distorted shadow of Marxism or its contradiction would be a serious mistake. In fact Weber has provided for modern social scientific thought a certain conceptual base within which debates over confirmation, explanation, understanding and so forth have proceeded, as suggested by Bergner (1981).

To call Weber "the bourgeois Marx" is too simplistic. In connection with our present discussion it is important to stress that Marx and Weber seem to represent two very different lines of thought: those of liberalism and socialism. Scholars have tended to analyse and acknowledge solely the differences between these two conceptual systems. However, at a deeper level there is an historical and conceptual link between them which we will try to bring to the surface. There is not a complete break between the two traditions. With reference to Weber's work, some Marxist concepts have been utilised, while others cease to be of use. What Weber did with some Marxian concepts was to enrich their heuristic content, bringing to light greater degrees of explanation. In this way there is not a replacement or a "supercession" of theories; it is, rather, that some of Marx's concepts appear only as aspects of the explanation in Weber's new concepts. Weber attempted to do a better approximation of the truth with his new conception.

We contend here that the two different traditions, liberalism and socialism, in their reference to politico-legal manifestations are centred on the notion of a free and equal subject within a democratic society. It will be argued that democracy is a pivotal concern of the nineteenth century but the contemporary preoccupation is with distributional values, with justice and perhaps even equality, as Levine (1981) suggests. It can also be argued that liberalism in a capitalist society is incompatible with democracy. In addition neither liberal nor Marxist traditions constitute a unitary discourse. Although important, such issues are beyond the scope of the present

study. But in connection with our purposes here we will simply argue that despite the eclecticism and imprecision of political discourse - or perhaps because of this - both liberal and Marxist traditions consider a 'free' and 'equal' subject as focal point of their political and legal thought.

However a distinction has to be made between 'egalitarian' liberty as is conceived by the socialist legality (although it was firstly expressed by Rousseau) and the 'civil liberties' of liberal capitalist democracy. While the latter were conceived as a guarantee for the members of "civil society" (which is in reality a class society of individual producers) the former type tends toward the universal guarantee for all. For example, freedom of conscience, press and religion goes beyond 'bourgeois' liberties because they express a universal demand for the right of every human being to the social recognition of his/her personal capacities (Della Volpe, 1978).

This fundamental theoretical change was possible because of Marx's contribution. He transformed the 'bourgeois' system of rights by re-shaping the legacy of thinkers like Rousseau, who called for an egalitarian recognition of every merit and personal condition. What is important to point out is that Marx takes note of the Rousseauan conception that historically provided only an egalitarian classist solution. The inadequacy of Rousseau's egalitarian liberty derives from his concept of the person which is based on an abstracted individualism.

In accordance with Marx's conception of man, socialist legality tries to establish the universal validity of freedom, far from the incomplete bourgeois conception centred on the individual 'citizen'. The purpose is that the juridical instance become 'real', losing its formality as it becomes combined in a totality of economic and social instances; then, a 'social' freedom rather than a political freedom will be achieved in which each individual develops fully his/her own capacities. This universal demand for equality as Engels² comments in the Anti-Duhring (1959:146,147)

...must not be merely apparent, must not apply merely to the sphere of the state, but must also be real, must also be extended to the social, economic sphere. And especially since the French bourgeoisie, from the great revolution on, brought civil equality to the forefront, the French proletariat has answered blow for blow with the demand for social, economic equality, and equality has become the battle - cry particularly of the French proletariat.

This demand for equality and freedom in Engel's words indicates that both legalities, the Western legality (based on liberal philosophical premises) and the socialist legality (based on Marxist-Leninist theory) have something in common. Both show a demand for equality in regard to certain constitutional guarantees of each person-citizen. To be sure, socialist legality stresses the necessity of a socio-economic equality rather than a political equality; however this does not preclude the civil equality which was brought about by the liberal revolution. In this sense, it is possible to say that there is an historical extension which therefore is not completely exhausted of the bourgeois juridical superstructure into the socialist state itself. Furthermore, the individual as subject in law (although founded

on different philosophical premises) is the common fundamental element of both Western and Socialist legal discourses.

The Legal Subject: Fundamental Category within the Legal Order.

Modern law relies on the individual subject as the basic unit of its discourse. It establishes and justifies its categories by referring them to the attributes and wills of subjects as if such attributes corresponded with the nature of man. Law purports to 'represent' (because it has apprehended) the 'essence' of man while recognising his natural attributes. Thus a certain conception of man is always at the bottom of any juridical theory.

In the West, liberal philosophers like Locke, Rousseau, Kant and Hegel have influenced modern philosophy of law with their understanding of man. Despite the differences and cleavages in their contributions, they present a very similar conception on which law is based: namely, every man is a subject in law, that is free and equal with respect to all other subjects (Edelman, 1979). The main characteristic of this conception is the speculative and hence unreal character of the assumption of an original man, completed once-and-for all, and therefore naturally free and equal.

Rousseau (1961:612), confronting the problem of political society, based his theory on ethical and metaphysical premises, warning us that "everything depends on not destroying the natural man in adapting him

to society". The main difficulty of this formulation consists in having to base political society on the myth of absolute and 'imprescriptible',³ rights of natural man. He tried to resolve this by his famous Social Contract (1960), which influenced the development of a humanitarian equality of the Christian type in the area of civil or political law (Della Volpe, 1978). Rousseau is credited with emphasizing the common humanity of men over and above their membership of a delimiting citizen body (Runciman, 1965).

On the other hand, the Kantian concept of the "dignity of man" consists of an obligatory recognition of the dignity of the intelligible or rational-pure being, or in other words, an obligation towards humanity in an a-historical, a-social person as Della Volpe (1978) shows. Kant talks about the human dignity of pure interiority, abstracted from the exteriority and worldliness of social coexistence. This is why for both Rousseau and Kant, the role of law consists solely in delimiting the freedom of each subject. A legal relation is therefore a relation between two or more subjects (Edelman, 1979; Della Volpe, 1978). Society does not enter into their conception as a necessary precondition for individual subjects.

A conception of Man and Reality within Philosophies of the Subject.

This theory of man is completely speculative and is based on a general philosophy of the subject which contradicts historical reality. Man is conceived in terms of reason, and the subsequent focus of study

is behaviour, action, and the expressions of this reason. Although the capacity of reason is abstractly acknowledged by philosophers to be that which distinguishes men from animals, this capacity is translated into expressions which are able to be treated by methods suitable to the study of matter in motion (Bergner, 1981). What is decisive in this way of thinking about man is the state of one's mind which is not however determined by practice. Thus the material world, the world of speech and action presumed to be free from the necessity of grounding its practice. In this regard, action and thoughts, like body and mind are seen as separate, and thought and practice would seem to lack any connection. According to this approach human ideas do not directly transform either man himself or the external world. The only practical effect knowledge has upon social reality is through the application of ideas to the comprehension of the laws of nature which includes human nature. This means that the role of human thought is passive to apprehend the regular and recurring patterns governed by law rather than active to transform humanity. We can say with Bergner (1981:24) that this conception is characterised by a concern with "being" rather than "becoming".

Another characteristic of this approach is to establish the individual man (or the individual will) as the level at which equivalencies between units will be found. This individualism (not to be confused with "methodological individualism" used for its heuristic value) or "social atomism" was founded on the belief that individual human will was the 'essential' element to be investigated in any study of social reality. A human science which did not study the human

individual as the basic unit of analysis would confound the scientific study of man. This explains in part why 'humanity' (and the derived humanism of the sort) stands for those characteristics which are shared by all members of the species and by virtue of which men are distinguished metaphysically from what else there is in the world. Humanity is understood in terms of what is common to all men, irrespective of their standing in the social hierarchy.

A Conception of Man and Reality from a Historical Standpoint.

To think of men in terms of history, to develop propositions about man that were not only prescriptive or ethical, and to analyse empirically men in their environment is the result of a historical perspective, especially of German historians, who also were influenced by the mood of Romanticism (Bauman, 1978). Thus, in the latter part of the eighteenth century, in Western Europe, many thinkers became deeply impressed by the significance of historical change and by the development of new technological, social and intellectual capacities. The discovery, through a historical scholarship, made the task of accounting for these diverse forms problematic for the earlier theory of human nature. With the historical perspective, what is unique, temporal and local becomes more valued than what is common or universal. In trying to comprehend the totality of the elements of people's life and the interconnection and mutual determination of different factors in social life, the idea of 'culture' (particularly national cultures) assumed great importance. In placing greater

importance to such uniqueness, the historical perspective necessarily challenged the purely abstract concept of human nature. The concept was used in the sense that it pointed to a potential which was in the process of continual realisation. In relation to the great value of the particular, the importance of novel facts and concrete reality becomes evident (both in the construction and validation of theory).

It is of great importance, for instance, to know of the various social classes in a given political order. Even the most speculative philosophers of history have a concern for the particularity of empirical reality. Thus Marx (1968) says about Hegel that one can find more truth about particular stages in Hegel than in any of the social or political thinkers of the sixteenth or seventeenth centuries. It appeared that no generalisation about human nature was sufficient to account for a proper understanding of human life.

Historical thinkers found meaning and explanation in history itself which was seen as an ordered process of meaningful and understandable change. Thus, human nature was seen as essentially 'progressive' and man as a perfectible being. This account is just a sketch of the main ideas of the period (sixteenth to nineteenth centuries) which can help us understand the work of Marx and Weber. For example, it must be understood that the doctrine of progress rested upon a more complex, and fully elaborated view of man and the world than we have considered above. Furthermore this account is focused upon different conceptions of man because this is a crucial issue in relation to the legal subject. By the same token it is also crucial

for any discussion of the sociology of law.

The historical definition of man's nature was, however, so abstract and general that in trying to account for everything, it explained very little at the level of particular occurrences. Furthermore the concern for culture and nationhood (particularly in Germany) understood as a "fully spiritual phenomenon" according to Bauman (1978:24), led to a change in the historical subjects. Although the individual psyche still served as their prototype, 'the people' became the agents of history. It was necessarily then a very ingenious transformation of the subject which accommodated their concept to their new purpose, as Bauman (1978:24) says:

What had been an individual's property became a supra-individual power; what had been the individual Seele turned into a collective Geist, and later Kultur; what had been a name for individual autonomy and freedom became the theoretical expression of the individual's submission to a larger community, the Volks- or Zeitgeist submission to a larger community, the Volks - or Zeitgeist which no individual could transcend, as only inside it could he fulfil his individuality.

The historical standpoint spread all over the continent but it was in Germany where it became dominant. With Hegel we have arrived at the "revolutionary result" that every man is a subject of law, that is, from the localised subject in law (a la Kant) we have moved towards the universal subject in law (Edelman, 1979). This understanding poses the subject as determinant, from which developed the fundamental category of (bourgeois) law: all men are equally subjects. For Hegel the subject is a concrete, universal self-sufficient being. Hegel believed that when the subject and object confront each other within

the act of cognition they are not entirely dichotomous once they are viewed in an historical perspective. However intimately spirit and nature are related for Hegel (as man is not essentially, but only accidentally distinguished from the remainder of the world), he gives the spiritual element in the relationship clear superiority over that of the natural. Spirit creates nature, and nature is by no means its highest creation. He gave an historical dimension to the two revolutionary ideas of Kant: that the 'object of knowledge' is essentially distinct from the 'object of reality'; and that the subject of cognition is and must remain an active agent (Bauman, 1978).

A Conception of Man and Reality within a Sociological Perspective.

It was after the post-Hegelian intellectual revolution that a sociological conception of man took shape. The struggle, conscious or unconscious, with the great influence of Hegel took place throughout the European Continent. In France, for example, we had the work of Comte and Proudhon and in England the work of J. S. Mill, but it was again in Germany that the influence and the challenge of Hegel's work was most intense. Not only Marx but also Feuerbach, Kierkegaard, Stirner and Von Stein produced works, which taken together displaced the Hegelian system (Runciman 1965).

It was Marx who, developing his own theory in critical opposition to the old and young Hegelians alike, translated the Hegelian theory of history and knowledge from the philosophical language to the language

of sociology (Bauman 1978; Runciman 1965). Marx realised that the problem of historical understanding, if it was to be resolved, must be approached as a sociological problem. He advocates a 'practical sociology' in the sense that it must draw practical conclusions from its discoveries, turning intellectual analysis into social practice.

In direct opposition to Hegel's dialectical conception of the relationship between social existence and social consciousness, Marx turned the Hegelian dialectic upside down. He developed a theory of man, society and history which for our purposes is of crucial significance in examining the theory on which the category of the subject in law had been constructed. Being aware of the difference between a metaphysical and a sociological discussion of politics, his basic theme (as it was also for Weber) was the encompassing reality in which men are placed (specifically Western capitalist society), a reality which is not simply natural but also social. Against the Hegelian philosophy of "Absolute Spirit" and in accordance with the German philosophy of the time (which concentrated upon the human being as exemplified by Feuerbach's transformation of pure philosophy into philosophical anthropology), Marx developed his theory of man.

Some of Marx's and Weber's Basic Philosophical Premises.

Since it is man himself in the whole of his humanity who is at stake in any social enquiry, and because a conception of man is necessary from a juridical standpoint, we will explore Marx's and

Weber's idea of man as the basis of the forthcoming theoretical reflection. As Marx (1979:72) himself expressed in his Critique of Hegel's Philosophy of Right: "to be radical is to grasp things by the root. But for man the root is man himself".

Furthermore, it is on this theme that the major intellectual traditions of the West come to a most exciting confluence. As Mills (1959:158) states:

..."the generic image of man", "the nature of human nature" inherited from the Enlightenment has at present been brought into question by the absence of a real democracy in many parts of the world, by ethnographic relativism, by the great potential of irrationality in human beings and also by the very rapidity with which women and men can apparently be historically transformed. In our time what is at issue is the very nature of man, his limits and his possibilities.

In comparing some themes of Marx and Weber we do not call for a theory of compromise or eclecticism but for the development of a different and more adequate theory and practice of politics and law in society. On the one hand, there is not any single 'formula' to draw on for an impartial selection of the views between which compromises are to be negotiated. On the other hand, it is doubtful whether some fundamental assumptions admit of much in the way of compromises. At the same time, however, it would be rather naive to talk about their works as mutually opposed or to classify any of them in one extreme of a dichotomy, such as 'individualist' or 'collectivist', because such categories are neither closed nor neatly defined. Reality is fluid and so are the contributions of Marx and Weber, but this does not imply that the work is inconsistent or eclectic. However, as a methodological

device, useful as a first stage in providing our discussion with a clear set of social and political ideas, a certain amount of crude 'dichotomism' will be utilised.

The purpose of marx's and Weber's work was not merely to achieve a more accurate description of social reality but to theorise types of society that do not yet exist. In this connection their writings provide a promising starting point for a modern sociology of law, both from the theoretical and practical perspectives .

Marx's Conception of Man.

In developing his theory of man, Marx transformed the essentialist view of things. Fewer and fewer qualities are granted to be intrinsic to things; relations instead become more central. 'Human essence' is not formulated as an abstraction inherent in each single individual but as something dynamic, that is conceived of as "the ensemble of social relations". The man Marx talks about is a real "flesh and blood" human individual, a physical organism with physical needs. Men survived and developed like all other natural organisms only by interacting with nature by way of producing their means of subsistence. But, for Marx, men produce not in isolation from one another but by interacting and cooperating with one another; the labour process is not only natural but social. Man is no longer conceived of as an abstract entity isolated from his historical and social conditions. In criticising Feuerbach, Marx says (in the Sixth Thesis) that Feuerbach regards the

human essence as an abstraction shared by every member of the human race. As Engels (Cain and Hunt, 1979:133) expressed in Ludwig Feuerbach and the End of Classical German Philosophy:

In form he [Feuerbach] is realistic since he takes his start from man; but there is absolutely no mention of the world in which this man lives; hence, this man remains always the same abstract man who occupied the field in the philosophy of religion. For this man is not born of woman. He issues, as from a chrysalis, from the god of the monotheistic religions. He therefore does not live in a real world historically come into being and historically determined. True, he has intercourse with other men; however each of them is just as much an abstraction as he himself.

The concept of the developing relation of man and nature which was present in Hegel's historical perspective stands in opposition to Rousseau and Kant's 'quasi-historical' concept of man's development in nature. For Rousseau, our relation to nature is not the source of mankind's problems - instead, what is at issue are such things as human nature, man's free will and his perfectibility. However, in some writings, Rousseau questions the notion of man as a fixed species and he even explores the relation of men to apes as Bergner (1981:58) comments. This ambivalence is also present in Kant, who emphasises in some of his writings the strict differences between human and nonhuman nature, while in others he argues the interdependence of both.

These doubts, not unexpectedly, had repercussions on the most basic premises of the concepts to come, particularly those who shared an historical perspective. On the one hand, they gave rise to the antitheses between 'nomothetic' and 'ideographic' disciplines in German idealism (as the corollary of the 'opposition' between the world of

nature and the world of the mind), while on the other hand they became Hegel's problem without Hegel's solution. Thus the legacy from Hegel was the question of the relation and opposition between the natural world and the spiritual world within a dialectical continuity and from an historico-philosophical standpoint.

For Marx the world of nature and the world of man are both in a continuing and interrelating process of change. History becomes not merely description but a science⁴. Marx never conceived history to be opposed to the natural sciences nor, of course, was it seen to be opposed to the social sciences. History appears, on the one hand, as a natural process subject to laws and, on the other, as a universal historical drama in which human beings are both actors and authors (Ricoeur 1978:1268). It is precisely this conception of history, as a process developed by the activity of individual human beings, which shows the importance of the subjective factors; history has two facets: one is turned toward mass processes, and the other toward the personal, the human. The analyst has to interconnect these two worlds, penetrating and recreating their organic unity.

Marx recognised (through the method of dialectical materialism) the unity of principle between the characteristics of objective reality and the knowledge of that reality. The foundation of this philosophy (a "scientific" philosophy) is the theoretical analysis of social activity; that is, the specific and universal human activity which transforms nature and man himself.

Within this Marxian perspective problems such as the relation of consciousness to reality, of the ideal to the real, are 'solved' because the ideal is taken not as an independent essence but as a specific expression of the reality of social man. The subject of knowledge is not an incorporeal mind that knows himself. It is not the "theoretical and practical reason" of German Idealism but man as total being whose manifestations are real and vital activity for the production and reproduction of life.

In looking to the full development of man's creative capacities as the goal of historical progress, Marx unveils one of the most controversial elements in this theory of man: the 'humanist' element of his thought.

The Marxist Humanist Perspective

We will argue that Marxism is a form of humanism, which is nevertheless quite different from any kind of philosophical anthropology that situates the unity of man above or beyond social differences. Marx follows Feuerbach in transforming Hegel's philosophical idealism by putting man rather than God at the centre of the process as Campbell (1981) suggests. But Marx's humanism was different from that one founded on anthropological grounds because for him men do not have a fixed nature, rather they have potentials which are developed within an historical process. This is why the anthropological study of man - although providing a necessary point of

departure - does not allow a complete understanding of the history of mankind or of the position of the individual in society. This is also why Marx broke with Feuerbach, whose great achievement, he believed, was to make "the social relationship of "man to man" the basic principle of his theory" as is suggested by Zeitlin (1968: 96). However Feuerbach's anthropological materialism ignored the decisive influence of the class situation of men and the active, creative side of human activity. Marxist humanism is of course, also very different from the Christian and liberal humanism based on a "natural" and "abstract" man.

This humanist element is especially characteristic of his early work⁵: The Critique of Hegel's 'Philosophy of Right' and Economic and Philosophic Manuscripts of 1844. However, in these works the philosophical and moralistic tones are basic elements which do not undermine their scientific character. By the very nature of his dialectical logic his vision is a philosophical-scientific one, which tends towards a complete comprehension of the world and of man's place in that world. Furthermore, by emphasizing the philosophical elements we will be able to understand why statements of prescription and statements of facts are inextricably linked in his work, and why he has a humanistic perspective (Runciman, 1965)

Some interpreters of Marx assert that this humanist element is only found in his early work. Our suggestion is that his humanism does not entirely disappear from his later work but rather his efforts were concentrated on different topics. Moreover we cannot divide Marx himself but take neither more nor less than the whole of Marx. Within

a dialectical perspective change and even opposition between the "young" and the "mature" Marx must be expected. This does not mean a complete split or separation rather a methodological distinction. Furthermore as Lowith (1982,69) suggests:

Marx's early writings are and remain fundamental even for Capital, and if the first chapter of Volume I of Capital is a "result", the vital im pulse that produced can be found already in a discussion in the Rheinische Zeitung of 1842.

This means we are not following Althusser's theory (1969) of the "epistemological break", according to which The German Ideology represents a turning point towards an alternative system of materialist, non-humanist concepts. Although acknowledging that it is a very important heuristic device for the analysis of Marxist's work, we do not share the idea that his early writings are an "obstacle" to a scientific view of Marxism. We suggest that the problem is more about what we consider to be 'scientific' (and science) rather than whether humanism is invested with a scientific character.

We think that Marxism has room for a theoretical humanism and that this element is one of the basic components of his total theory. In asserting this, we also reject one of the most common misunderstandings with regard to Marx's conception of man, namely that he overlooked the individual human being by considering man solely as identified with society, therefore removing his unique human nature. This objection is based on a misinterpretation of the dialectical materialist view of the unity of the individual and society⁶.

A Dialectical Perspective and the Social Sciences.

The dialectical perspective is of fundamental importance for the social sciences in general and for the sociology of law in particular. In logical terms it is closely related to the ultimate concern of social scientific explanations, namely to ascertain the primacy of the individual or the collectivity. In this respect, the basic assumption of Marxist logic - with its dialectical synthesis - suggests that this is a "false" problem since such an opposition does not exist in reality. Marx rejects the commonly assumed opposition between the individual and the group. Furthermore, the basic assumption of a dialectical synthesis provides the necessary philosophical grounds with which to dispose of the problem, since this cannot be solved merely by a sociological resort to empirical reality (that is, by way of a scientific 'hypothesis' based on empirical data). Moreover, the problem of the relationship between the individual and the group, like that of the subject and the object of knowledge, becomes relevant in any discussion of "explanation" and/or "understanding" in the social sciences. For most of those who, thinking in dichotomous terms, advocate the individual as the ultimate subject matter of the social sciences, the task is to understand meaningful behaviour. On the other side, there are those who adhere to the viewpoint that causal explanation (observation, explanation and prediction) is the real objective of the social scientist, and this view is closely connected with the status of explanation in the natural sciences.

The issue is whether there is a unity of logic between the natural and social sciences as Popper claims (1957), or whether the social and the natural sciences are two completely different realms, as in Winch's (1958) opinion. Finally, it is perhaps possible, as Weber claimed (1949:43):

... to combine certain features of verstehen with certain features of causal explanation because although there is a unit of logic, aims and procedures are different between natural and social sciences.

In this debate, on the one hand, between the merging of the human in the natural, and, on the other, the accentuation of man's specificity is also relevant to consider the problem of evaluation within the social sciences. The difficulty here is that philosophically sophisticated theorists like Marx and Weber take positions which bridge the normal divisions that still separate modern social scientists. Though Weber made a powerful argument in favour of ethical neutrality for social scientists, many who emphasise 'understanding' and advocate the 'verstehen' method are positively committed to an evaluative approach to society and its problems. On the other hand, those who currently emphasise the unity of methods for both natural and social sciences, tend to assume that they are value-free or regard their values as irrelevant. The point is, however, that there is no clear or simple association between the evaluative stance taken and the perspective held on social science or the method of enquiry adopted.

We must remember that it was Weber who raised the question of evaluation: for if social phenomena are meaningful, their meaning is essentially practical, and all social phenomena have a value. Likewise

if understanding is the understanding of meaning, it also involves a perception of value⁸.

It is precisely Marx's dialectical materialism, which he applied to the relationships between the individual and society, that also helps to grasp the relation between the general and the particular, or explaining and understanding.

The 'individual' within a Humanist-Marxist Perspective.

The distortion of Marx's concept of man mentioned above (by which it is claimed that Marx overlooked human individuality) is based on a misunderstanding of Marx's original thought. In contrast to idealism, he recognised that individuals were, in reality, unique and particular, whose emotional life could not be reduced to a phenomenon of class consciousness. What he rejected was the assertion of a human essence transcending social differences. The differences, oppositions and contradictions between human beings were for him the base of his humanism; that is to say his humanism was based on a "class" standpoint. It must be clear that Marx never identified a given individual with the aggregate of social relationships which constitute him or her. Because, for Marx, historical process is dialectical social phenomena are richer than any conceivable essence. Marx enriched that humanism that was based on the unity of the anthropological essence of mankind. He added the concept of "social essence" within an historical viewpoint which does not reject

individuality or personal action but which does seek to avoid the limitations of the liberal humanism. In doing this, he recognised a relative freedom of choice, a relative independence in each human being, who nevertheless is shaped - in the last instance - by anthropological, historical and social circumstances. He saw the individuality of human beings manifested in all spheres of life, especially in the inner and subjective 'personal life', to which things mostly entirely inconsequential to society, become fundamental (Ricoeur, 1978). Marxist humanism differs in many important respects from other branches of humanism. Thus, for example, liberal humanism believed that the task of transforming men into fully individual human beings could be largely or exclusively achieved through education and political freedom. Marx holds that a free and independent man could only exist within a socio-economic context which allows the full development of the individual by allowing the full development of society and vice-versa.

Marxist Humanism and the Concept of Alienation.

To illustrate the humanist element in Marx's thought, we can take the concept of alienation, a concept which also shows why a "legal subject" merely based on political freedom is a fragmented concept; it is incomplete. The concept of alienation has both a sociological⁹ and a philosophical content. The latter content is derived from a philosophical notion of the proper nature of man. Man is conceived not only a "noumenal", or purely rational, moral man (the Kantian

conception) but as a phenomenal or empirical, economic, historical and social being. In Marx's discussion of the labour process, though based on empirical content, the concept of man remains basic to the explanation. Words like "human" and "dehumanization" are crucial, as pointed out by Runciman (1965). The main concern of Marx was a "human emancipation of humanity". If man is understood as a commodity, as a thing and, in short, as something non-human, there is a contradiction with labour understood as the specific action of the individual. In capitalist society this contradiction becomes manifest according to Marx (1969:79), who says in the first volume of Capital:

And for a society based upon the production of commodities, in which the producers enter into social relations with one another by treating their products as commodities and values, whereby they reduce their individual private labour to the standard of homogeneous human labour - for such a society Christianity with its cultus of abstract man, more especially in its protestant developments, Protestantism, Deism, etc, is the most fitting form of religion.

Marx is concerned about the deterioration of labour-power which has been robbed of its human, moral and physical conditions of development and function by the capitalist mode of production. The Christian cultus of an abstract man, then, creates the illusion of restoring humanity to the individual. Although this does not mean that Marx's conception of man rests on man-as-labourer instead of man-as-reasoner, it means that his discussion rests on a 'real humanism'. Alienation has reversed the relationship which distinguishes man from the animals by transforming man's human activity of work into a semblance of animal existence, by which he becomes capable only of producing and reproducing his/her physical survival. The reduction

from homo faber to 'animal laborans' that the capitalist system has imposed on men as a consequence of alienation leads to the dehumanization of man, who has become (especially the workers) "a beast reduced to the strictest bodily needs" (Marx 1961:30).

Marx's revolutionary reply to the Hegelian idea of alienation consisted in the transformation of a phenomenon exclusively of the mind into a social phenomenon, so that it became subject to analysis within a specific socio-historical context. This means that, although the philosophical premises remained, the problem was now analysed as a sociological phenomenon, in contrast to Hegel and Feuerbach's conceptions which regarded the alienation of man as if it were divorced from the world of concrete things and beings. Marx's class standpoint revealed more fully than any prior perspective the social significance of alienation. Theorising from a class standpoint shows that the historical content of alienation cannot be grasped outside the real socio-economic contradictions of society. This is why we cannot consider Marx's concept of alienation as an ephemeral or merely speculative exercise of his early work. There is an organic link between his philosophy (which is a scientific philosophy) and his analysis of the historical process of class struggle. Alienation emerges within the historical process. It is not something given once and for all.

Marx did not see man as determined (or deduced) from his ideas or consciousness but as possessing physical and mental faculties, a concrete creature who has to produce material things in order to live.

To be sure he gives a decisive place to the productive forces within social life but always he points out that the most important productive force is man himself with all his potentialities. Thus, economic alienation constitutes the basic one, on which other forms of alienation appear; for example, political alienation is the consequence of economic alienation. This does not mean that for Marx man is just an "homo economicus" - instead, he takes man in his integral being. It is the whole man that is the concern of Marx's thought and therefore his aim was man's total liberation.

He criticised Hegel precisely because his 'bourgeois citizen' was regarded as "the concrete form of representation that is called man" as commented by Della Volpe (1978:53); this is a fragmented understanding.

The fragmented Liberal Conception of Man and the Legal Subject.

What Hegel called man is merely a member of civil society; he did not altogether dismiss the concept of man as such and in general, but he recognised it only with respect to civil rights. Hegel's man is just a formal representation of man, and therefore like the concept of man on which modern western law is based. In fact, the legal subject is a formal and partial representation of a specific category of men: the bourgeois individual. Man is regarded as a self-contained entity, who represents neither the whole of society nor even himself as a whole because he has been taken merely as a juridical person. Hegel

(1942:190) says in the Philosophy of Right (1942:190) that:

In law, the object is the person, from a moral standpoint the subject, in the family the family-member, in civil society as a whole the citizen (as bourgeois). Here, from the perspective of needs, it is the concrete form of the representation which is called man; hence it is here and only here that we speak of man in this sense.

Thus, when we talk about 'civil liberties' we mean - in an historical and technical sense - the liberties of the bourgeois individual. When we talk about 'egalitarian liberties' (as initially posed by Rousseau) we mean an universal demand for the social recognition of personal qualities and abilities. This latter type of liberty has a social rather than an individualistic character and tends toward the universal validity that could not be achieved through a class based legality.

Modern law is, like Hegel's concept, based on a theoretically fragmented notion of man which permits only a partial representation of humanity. This conception, at the same time, was an expression of the real situation during Hegel's time: a society in which only the humanity of the bourgeoisie would be recognised but in which men were alienated from themselves without recognising it.

It follows that a legal system which is based on an incomplete conception without addressing the whole man, represents just that aspect which it chooses: in capitalist society, this is the bourgeois individual producer. On the other hand, a legal system based on the notion of a real, integral man could aspire to a more universal

validity.

A legal system based on this latter conception would integrate both types of liberties in an universal demand. There is no opposition between civil and egalitarian liberties. What happens is that the former legal system represents only a small fraction of society (the male middle class possessor), while the latter represents the entire society.

Thus it can be understood why certain civil liberties (habeas corpus, for example) can be put together with egalitarian liberties and also why, at present, both systems have an apparent common ideal subject: a free and equal individual within a democratic society. Both kinds of legal approaches have undertaken this task in a spirit of humanism; but the content of each one's humanism is different because it is based on a different concept of man. A segmented and abstract theory of man causes a legal system to be too ineffectual to materially alter man's condition in society. In neglecting to recognise the struggles of mankind and the potential of human forces, such legal rules are only applicable to a certain category of individuals. Beyond this category human beings are merely abstractions upon whom rights can be conferred only as "accidental concessions". Thus, the legal subject does not take into account any form of social struggle, and as a consequence, it does not recognise that legal rights have to be created and fought for. On this issue, Marx (Cain and Hunt, 1979:22) states that:

In regard to civil law, the most liberal legislations have been confined to formulating and raising to a universal level those rights which they have found already in existence. Where they did not find any such rights, neither did they create any. They abolished particular customs, but in so doing forgot that whereas the wrong of the estates took the forms of arbitrary pretensions, the right of those without social state appeared in the form of accidental concessions. This course of action was correct in regard to those who, besides right enjoyed custom, but it was incorrect in regard to those who had only customs without rights.

The paragraph above means liberal legislations have been 'one-sided' in their treatment of the customary rights of the poor. That is, legislation has been careless and passive rather than creative. Marx made this clear by taking as an example some legal transformations within the monasteries in Germany. He (1979:22) goes on to say that

The monasteries were abolished, their property were secularised, and it was right to do so. But the accidental support which the poor found in the monasteries was not replaced by any other positive source of income. ...The custom, in the case of the poor, was not recognised as a right neither was a right created for them.

Marx knew that 'bourgeois' and 'human being' were not equivalent as Hegel thought, and he revealed the subjective particularisation of man in bourgeois society. In his view man has to be taken in his totality and in relation to the real world as part of nature. In this connection his critique of man in bourgeois society culminates in a critique of society and the economy. In this sense man has no nature apart from that with which he is endowed by his social position. It is the "totality of his social relations" which has to be taken, and this varies from society to society as Campbell (1981) points out.

In the Preface to a Contribution to the Critique of Political Economy (see Cain and Hunt, 1979:52), Marx asserted that:

The general result at which I arrived and which, once won, served as a guiding thread for my studies, can be briefly formulated as follows: In their social production of their life, men enter into definite relations that are indispensable and independent of their will, relations of production which correspond to a definite stage of development of their material productive forces. The sum total of these relations of production constitutes the economic structure of society, the real foundation on which rises a legal and political superstructure and to which correspond definite forms of social consciousness.

Marx's Conception of the 'Total' Man.

From the point of view of historical materialism social being is material because it takes shape, exists and develops independently of social consciousness. Social life in its more general form is the union of social consciousness and social being. Social consciousness is essentially different from mental consciousness, which is a property of highly organised matter. Social consciousness presupposes the existence of mental consciousness and represents a higher level in its development. In other words, the possibility of the mental is conditioned by the existence of the brain on one side, and on the other, by the existence of the outer material world. 'Social consciousness' requires, in addition, the presence of the social being of mankind which is not merely a natural but a socio-historical product (Ricoeur, 1978).

Individual consciousness and social consciousness do not have a separate existence. The unity of individual and social consciousness does not efface the essential differences between these dialectical opposites. Individual consciousness takes on the nature of personality, is subjective in form and cannot contain within itself the multiplicity of social consciousness (Ricoeur, 1978).

What determines social life is social being, or the material life of society which is founded on material production. That is, social life can not be reduced to a natural process going on outside human existence as Marx and Engels expressed in The German Ideology (1960:7): "The nature of individuals thus depends on the material conditions determining their production".

Material production is not an external necessity. It is not, simply because life without it is impossible but because production also means the production of social relations. Material production is responsible, not only for what mankind is, but for its entire development. Therefore, by material production Marx and Engels did not mean merely objects of consumption but also definite social relations. These are fundamentally economic, but also - though in a mediated manner - political and ideological.

In The Poverty of Philosophy (Cain and Hunt, 1979) Marx says that it is men who establish their social relations in conformity with their material productivity. Men also produce principles, ideas and categories, in conformity with their social relations. Therefore these

ideas, these categories, far from having an independent, and 'eternal' existence, are intimately connected with the material activity and social intercourse of real men. Ideas neither exist nor do they change by themselves or by some possibilities of their own. It is living men who, along with the material conditions of their existence, change themselves, their thinking and the products of their thinking :concepts do not have existence apart from living men. The fact that the whole man and not his consciousness is Marx's concern differentiates Marx's materialist thought from Hegel's idealism and, by the same token, from a vulgar economic interpretation of his theory.

For Marx the relation of the ideal to the real can be correctly understood only if the ideal is taken as a specific expression of the reality of social man. In relation to this Marx says in his Grundrisse (see Cain and Hunt, 1979:128) that:

Every form of production creates its own legal relations, forms of government, etc. In bringing things which are organically related into an accidental relation, into a merely reflective connection, they display their crudity and lack of conceptual understanding.

Marx shows here that things which are organically related should not be analysed as if they were accidentally related. To treat the mode of production and legal relations as accidentally related would reveal a complete lack of conceptual understanding.

Marx's Concept of Man and Political Alienation.

In connection with the concept of man as a total being, Marx rejects the specifically political bourgeois expression of self-alienation as just as incomplete as the man it refers to. Human total emancipation has to be not only political but also, and fundamentally, economic.

Those essays that, in Marx's time, formulated systematically the notion of human self-alienation in its socio-political expression (like Bruno Bauer's essay On the Jewish Question) are based on the 'private' existence of the bourgeois man; a man who, by virtue of that private character, therefore has no true political character at all. The contradiction appears because the state, separating the people from the community, abolished the political character of civil society. The existence of man as a purely individual citizen is an existence lying outside his communal existence. As Lowith (1982) notes, what Marx rejects is the division between particular and general interests. This falsely divides people into private and public beings and gives predominance to private existence. Marx explains in "On the Jewish Question" cited by Cain and Hunt (1979:136) that:

Man as a member of civil society, unpolitical man, inevitably appears, however, as the natural man. The droits de l'homme appear as droits naturels, because conscious activity is concentrated on the political act. Egoistic man is the passive result of the dissolved society, a result that is simply found in existence, an object of immediate certainty, therefore a natural object.

...Finally, man as a member of civil society is held to be man in the proper sense, homme as distinct from the citoyen, because he is man in his sensuous, individual, immediate existence, whereas political man is only abstract, artificial man, man as an allegorical, juridical person. The real man is recognised only in the shape of the egoistic individual, the true man is recognised only in the shape of the abstract citoyen.

In combating 'one-sided' concepts of man he never denied the existence of a political expression, nor did he disregard the full range of possible human activities. Though man does not merely exist as a political being, he is nonetheless capable of political expression. Finally then, man can also express an individual standpoint although this always occurs in the context of his social class position.

It is precisely these processes of differentiation and integration of reality which are currently at the base of Marxist interpretations of science. Both in the social and in the natural world reality takes the form of specific and concrete phenomena. For example, Marx differentiated the state from society in so far as he acknowledged that political activity was a possible concrete expression of human activity. What he rejected was the consideration of political activity as if it were the epitome of human manifestations. Moreover in "On the Jewish Question" (Cain and Hunt, 1979:136) Marx rejects that " a person's distinct activity and distinct situation in life were reduced to a merely individual significance".

Political Alienation and Marx's Theory of the State.

Neither Marx nor Engels developed an explicit theory of the state. These authors, as Poulantzas recognised (1973:19) "did not specifically discuss the region of the political at the level of theoretical systematicity". Thus, different positions on political issues can be found in their writings. The treatment of the state, which starts from a heavy reliance on the distinction between state and civil society, disappears after The German Ideology.

The 'young' Marx severely criticised Hegel for placing the state, the constitution and the laws above man. This tendency which regarded laws, and not human beings, as essentials in social life is connected with Hegel's view on the relation between state and society. In his Philosophy of Right he appears to be saying that civil society is something separated from the state, but he rather concludes that without the state civil society is incomplete. As suggested by Runciman (1965:30), civil society is, to Hegel, subsumed under the state as a "sort of inferior predicate". In Marx's opinion, making man look upon laws and constitutions as things of a divine origin made man alien to political life as such.

In accordance with Marx's historical materialist conception of the world, the state was conceived as a product of social relations at specific stages of development, never as a realisation of an ideal of the unity of society. In this regard Marx is connected with Rousseau

and also with Aristotle and much of the classical tradition, because, in contrast to liberalism, he did not presuppose a singular, radical separation of the political from the social. Liberalism regards politics not only apart from society but also subordinated to it. Liberals assume, as did Locke, that the social order engenders and supports political arrangements, not the other way around, as Rousseau contended. In this subordination of politics to society, the liberal position is compatible with Marx's, although his conception and explanation is far more complex. Marx did not simply subordinate politics to society. He "also gives effect to a notion of the "relative autonomy" of the state but in a practical and untheorized form", as suggested by Cain and Hunt (1979:147).

The question of the 'relative autonomy' of the state and, in a wider perspective, a 'relative autonomy' of the political instance, is of great importance for the sociology of law. Today, neither the state nor law are seen by Marxist theorist as simple instruments or tools of a dominant class (as they have been seen in orthodox Marxism). Law is seen as having a certain relative influence on society. These possibilities for the analysis of the political instance within a Marxian perspective have been brought about lately by some interpreters of Marx who emphasise the part the state plays beyond its class character. Current approaches to the law acknowledge that in the problematic relationship between 'coercion' and 'consent' law is not merely a coercive apparatus wielded at will by a 'malevolent' ruling class.

It is widely shared that the 'instrumental' interpretation of the state was due in part to the fact that Marx and Engels were so preoccupied with current problems and polemics against Hegel that the further implications of their revolutionary conception remained largely undeveloped.

Marx gave central significance to the fundamentally 'private' character of man within the bourgeois state. This particular status of man, as commented already, had therefore by virtue of its private character, no political character at all. As a result, the bourgeois state abstracted itself from the real, that is, private life of its citizens, just as they, as individuals, abstract themselves from the state. Bourgeois society and its product, the bourgeois state, are therefore the realised principle of individualism. It is a society formed just by a collection of radically independent individuals. In this type of society, that lacks community, the individuals are "atoms" essentially independent of one another and of society, bearing only extrinsic (contingent and strictly instrumental) relations to one another. Individual existence is the goal for which everything else is only a means. Against that individualism, Marx stressed (in accordance with his conception of man) the intrinsic value of human beings. But this is not a feature peculiar only to Marxism. For example, Kantian idealism is particularly sensitive to this point. Kant insisted on a radical distinction between things and persons - where things are mere instrumentalities but persons are ends in themselves (Levine, 1981).

Human Emancipation within a Marxist Perspective.

Genuine human emancipation (not just a political emancipation) is, for Marx, freedom in the Hegelian sense, that is, a freedom within the highest degree of community, by contrast with the apparent freedom of the "isolated individual". For Hegel (1944:139) individual freedom is conformance to collective necessity. He goes on to say that:

When the state of our country constitutes a community of existence; when the subjective will of man submits to its laws the contradiction between Liberty and Necessity vanishes.

Marx, by contrast, transforms this notion into 'real' freedom, not an abstract reflection of freedom or an illusory claim, but one which can be possible and concretely realised in history. Thus, Marx's view here is different from Kantian philosophy which remained a philosophy of moral intention, rather than an account of freedom's realisation in history. Rousseau and Hegel before Marx - and in contrast to Kant - took a different course by defining freedom and social institutions respectively in such a way that the need for each can be deduced from the other.

Marx saw freedom as a project of mankind and as such realisable in history and this is compatible with his concept of man. It is not merely the capability of saying yes or no. It is not the isolated man turning into himself who has direct access to this capability but man as a social being who conquers freedom. Within this frame political activity cannot, in our opinion, be seen as secondary or optional but

as one of the main practices of men. The point is that political emancipation is not enough - especially in the narrow sense in which the political is usually defined. Men have to transform the existing social relations thereby constructing a new society. To be sure, it is man himself with his creative talents who develops history, who changes nature and who also changes his own nature through a necessary, though unconscious and spontaneous, process. This unity between the changes in external nature and in the nature of man, between subjective conscious human actions and their objective result is the basic starting point of historical materialism, which precludes all forms of essentialism. For example, within the realm of politics, rights have to be gained because rights are generated out of practices, rather than appertaining to men as such. Rights then, since they are not natural, have to be fought for and need to be guarded.

Marxist freedom is very different from what liberal ideologists have been proclaiming since the French Revolution. In spite of some 'revolutionary' ideals brought about by liberal thinkers, the bourgeois conception of man leads historically to the development of individualism and hence egoistic and acquisitive patterns. In this sense it does not have room - even at the theoretical level - for an historical realisation of freedom. Marx, in "The Eighteenth Brumaire" shows "the internal contradiction confronting bourgeois legal ideology when the issue is faced of realizing freedom in the material world" (Cain and Hunt, 1979:112).

Freedom within the Legal Discourse.

The discussion of freedom is of great importance in connection with any legal system. To be sure, freedom as an end is at the core of modern law; law is regarded as the sphere within which freedom is realised. Furthermore law takes freedom as a presupposition: the subject in law is a free individual. It is that abstract freedom which makes possible, explains and legitimates the existence of the 'free' worker within a capitalist society. Such legal conceptions, of course, leave us blind to the notion of human freedom based on possessing the means of production. The liberal tradition fails to grasp this point because freedom is seen as the ratio essendi of moral law while law is considered the ratio cognoscendi of freedom (I know I am free because I am aware of my obligations; conversely, I can do my duty because I am free).

On this particular point of freedom, Marx's discussions based on his conception of man unveils the formality and 'one-sidedness' of the legal perspective. Marx developed further the thought that Hegel initiated. While Kant's legacy of the actual relationship between freedom and obligation is still valuable as a point of departure, Hegel replaced Kantian formalism by a dialectic dealing with the stages in the realisation of freedom. Hegel thought that the extent to which freedom can be achieved depends on the increasingly concrete content of the historical and cultural reality in which this freedom is embodied. However Hegel's conception of man was still speculative, conceiving of

a merely rational being whose mind is placed at the core of reality.

Freedom and State Power.

It is at this point, that we see again a connection with the political phenomenon par excellence, namely the state. In contrast to Hegel's idea of the state as the highest of the ethical communities combining the essence of family and civil society, Marx's concept of the state is based on class antagonism and power. This power, according to Engels (in Cain and Hunt, 1979:156) "...arising out of society but placing itself above it, and alienating itself more and more from it, is the state".

This problem of state power is also particularly important in Weber's analysis of the state. In fact, this is the leitmotif that runs through all Weber's political sociology. According to Weber (1968), the distinctive characteristic of the state is that it can successfully claim the monopoly of the legitimate use of physical force. Both in Marx's and Weber's perspective power is indeed at the heart of the political phenomenon of the state. On the other hand law presupposes and addresses itself to a 'free' individual. The meeting of the individual and the state via legislation is one of the important points of analysis today both for sociologists and lawyers, and more specifically for sociologists of law. In analysing the relationship between the 'sovereign' power of the state and the individual, a conception of freedom and a conception of man are at stake. In this

regard both Marx's and Weber's contributions are crucial. Not only did they analyse the concrete phenomenon of the capitalist state, they also provided a conception of man on which to base a sociological analysis (although Weber did not fully develop a conception of man).

Both conceived the state as a product of society and saw freedom as a possible human achievement within the historical process. Whereas Marx stressed the fundamental transformation of man's collective conditions of existence to achieve freedom through revolutionary action, Weber stressed the possibilities for responsible individual freedom within the domain of everyday life. These conceptions should not be seen merely as rival theories since there is considerable potential for their complementary development. A careful comparative analysis will show points of convergence that can possibly herald a period of cross-fertilization between the two positions.

According to Marx's conception of man as a perfectible being yet alienated within capitalist society, political power has to disappear when men organise society according to principles which serve real human requirements. That is a society in which through the control of the environment, human beings will be free and the state will wither away. He anticipates this transcendence of the state by communist society in the Manifesto of the Communist Party (1959:29) when he says:

When in the course of development, class distinctions have disappeared and all production has been concentrated in the hands of a vast association of the whole nation, the public power will lose its political character. Political power, properly so called, is merely the organised power of one class for oppressing another.

It is important to note that Marx did not mean the disappearance of any public power; rather, as he expressed in the Manifesto " public power will loose its political character". Marx believes alienation and political power will both terminate when man has absorbed into himself the abstract citizen; for it is the conflict between civil society and the state that strikes Marx's attention. Marx,like Rousseau,is concerned with the revolutionary tension between citizenship and membership in civil society. But Marx, unlike Rousseau, did not see in political citizenship the final answer; for political power is alienation. For Marx political emancipation ,although incomplete in itself, does represent a step further along the road to human emancipation, especially within the prevailing situation of Marx's time. For him this does not mean that political emancipation,which is at the level of ideology and expresses itself mainly through law,is a completely autonomous domain. Neither does it contains in itself an economic change. It means rather, that economic change can be brought about with the help of political and legal changes. Hence the need for political and legal changes is acknowledged. The following paragraph of Engels in Ludwig Feuerbach and the End of Classical Philosophy (Cain and Hunt, 1979:120) illustrates this.

The state is not an independent domain with an independent development,but one whose existence as well as development is to be explained in the last resort by the economic conditions of life of society,..[Once the state has come into being,it]...makes itself independent vis-a-vis society, and, indeed the more so, the more it becomes the organ of a particular class, the more it directly enforces the supremacy of that class. The fight of the oppressed class against the ruling class becomes necessarily a political fight, a fight first of all against the political dominance of this class. The consciousness of the interconnection between this

political struggle and its economic basis becomes dulled and can be lost altogether.

Thus, Engels recognised that in the historical process the interconnections between the different spheres and the material, economic base become more and more complicated, while the economic basis itself becomes more obscured by the role of political and legal ideology. By giving legal forms to economic facts, lawyers and politicians made of the legal forms everything and nothing of their economic content. In acknowledging this necessary link with the economic sphere, Marx (and Engels) do not deny the distinctiveness nor the importance of such instances. What Marx criticised was the constitution of the modern state - with its class character - as a distinct polity placed in apparent opposition to the sphere of the 'private and personal' and to civil society (Corrigan and Sayer, 1981).

Marx and Engels always emphasise the intimate relations between law and the state, precisely because neither the law nor the state can be analysed as simple reflections of the economic sphere. They can not be reduced to a purely economic structure.

Marx distinguished between 'civil' and 'political' society and the state. He offered a full-scale analysis of how and why the state is related to society under different economic conditions. Marx recognised that the state became a real power and that the legal forms became a system which finds its substantiation in itself. Thus we are arguing that for Marx law and the state are not merely 'epiphenomena'. They were never regarded as a simple and direct reflection of economic

conditions. As Engels expressed himself in a letter to Comrad Schmidt (see Cain and Hunt, 1979:57):

As soon as the new division of labour which create professional lawyers becomes necessary, another new and independent sphere is opened up which, for all its general dependence on production and trend, has also a specific capacity for reacting upon these spheres. In a modern state, law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression which does not, owing to internal conflicts, contradict itself. And in order to achieve this, the faithful reflection of economic conditions suffers increasingly.

Marx and Engels recognised the indispensability of state action through the law suggesting that the law was not a simple derivative phenomenon. In the same letter above, Engels adds that:

The reflection of economic relations in the form of legal principles is likewise bound to be inverted; it goes on without the person who is acting being conscious of it; the jurist imagines he is operating with a priori propositions, whereas they are really economic reflections; everything is therefore upside down. And it seems to me obvious that this inversion, which so long as it remains unrecognised, forms what we call ideological outlook, influences in its turn the economic basis and may, within certain limits modify it.

Of course, this paragraph does not invalidate the 1859 Preface's conclusion that "neither legal relations nor political forms [can] be comprehended...by themselves". Although Marx and Engels asserted that the ultimately determining factor in history is the production and reproduction of real life, they did not assert more than that. The confusion that resulted from this statement was later clarified by Engels in a letter to J. Bloch (see Cain and Hunt 1979:56):

Hence if somebody twists this into saying that the economic factor is the only determining one, he transforms that proposition into a meaningless, abstract, absurd phrase. The economic situation is the

basis, but the various elements of the superstructure - political forms of the class struggle and its results, such as constitutions established by the victorious class after a successful battle, etc, juridical forms, and especially the reflections of all these real struggles in the brains of the participants, political, legal, philosophical theories, religious views and their further development into systems of dogmas - also exercise their influence upon the courses of the historical struggles and in many cases determine their form in particular. There is an interaction of all these elements in which, amid all the endless host of accidents (that is, of things and events whose inner interconnection is so remote or so impossible of proof that we can regard it as non-existent and neglect it), the economic movement is finally bound to assert itself. Otherwise the application of the theory to any period of history would be easier than the solution of a simple equation of the first degree.

The quotation above surely clarifies that, for Marx and Engels, the economic factor is not the only determining one. It also shows that law - as one of the elements of the superstructure in constant interaction with the other elements - exercises its influence upon the course of history. It also points out that the nature of law is problematical and therefore that law cannot be seen merely as an instrument in the hands of the ruling classes. An instrumental conception of law represents, then, a very simplistic interpretation of the reflections of the economic conditions and the relations and interactions of all the elements of the social world. Law is not so readily manipulable. Furthermore, as Edelman (1979) suggests law has been historically an active force in the constitution of subjects and not merely a formal recognition of subjects or rights already constituted.

If our interpretation of Marx is sound, law constituted for him a very important point in his total analysis, particularly in relation to western capitalism. He took law seriously, but to do so does not mean to take it for what it claims to be but to recognise its specificity and historical importance.

What sets off Marx's position from that of Weber's is his emphasis upon the withering away of the state and the 'final' freedom from human servitude within a communist society, and not his analysis of the concrete capitalist state. Weber too portrayed the state as anything but a benign and tender instrument of rule. However, he did not make 'prophesies' as he claimed Marx does in the Communist Manifesto (Weber, 1972:205).

The power of the state, according to Marx, is based on the material life of individuals, which by no means depends merely on their will. Their mode of production and form of intercourse are the real basis of the state; they create the state and not the other way around. Those who rule must give to their will an universal expression as the will of the state and this expression is the law. The 'will', as such, does not play a big part in determining the existence of law and the state in Marx's view. He says that the will (of both the class which rules and the classes which are ruled) is the expression of other relations upon which state power rests. Thus the actual relations of people create state power. There is not any purely independent existing will which can also be purely arbitrary. As Marx and Engels expressed in The German Ideology (1976:54)

Hence the state does not exist owing to the dominant will, but the state, which arises from the material mode of life of individuals, has also the form of a dominant will. If the latter loses its domination, it means that not only the will has changed but also the material existence and life of the individuals and only for that reason has their will changed.

Marx's analysis of the state in The German Ideology is illuminating in terms of the sociology of law for it shows how the "will of the state" is basically the will of the classes in power. Thus, the content of law is closely determined by the material (property) relations of society. Although this is not just a simple or direct relation, it involves a crucial factor to be taken into account within any legal theory. It breaks the illusion that the will of the state is the result of the general will. He goes on to say in The German Ideology (1976:90) that:

Since the state is the form in which the individuals of a ruling class assert their common interests, and in which the whole civil society of an epoch is epitomised, it follows that all common institutions are set up with the help of the state and are given a political form. Hence the illusion that law is based on the will, and indeed on the will divorced from its real basis - on free will. Similarly, justice is in its turn reduced to statute law.

This view did not originate with Marx as he himself acknowledged in the same text (1976:90) when saying that:

The modern French, English and American writers all express the opinion that the state exists only for the sake of private property, so that this view has also been generally accepted by the average man.

This explanation challenges the illusion that the will of the state reflects the will of the people but it does not deny the existence of individual human will. What it says is that human will alone has little influence in changing the world unless the material possibilities of change have developed. It means that the will (of individuals and of groups) does not exist independently of the real world, and is always in connection with it. It is not a distinct spiritual, metaphysical entelechy.

For Marx, there is an unity between changes in external nature and changes in the nature of man. Thus when men, consciously and deliberately, change the natural world, they, unconsciously and spontaneously, change their own nature. There is a necessary relation between material production and spiritual life. This is why Marx (and Engels) say in The German Ideology (1976:90) that:

The same visionaires who see in right and law the domination of some independent existing general will can see in crime the mere violation of right and law.

But, for Marx if there is not 'independent' will either general or particular, and no 'free will' or subject(s) endowed with a "free will", it is also clear that economic forces alone do not determine social development. Hence there is room for certain variable and relative freedom (for individuals and groups), freedom always dependent of material conditions that set limits but do not determine social and individual expressions in a direct or simple manner. It is mankind itself, in its multiple social relations, which creates the objective conditions that determine its development. It is men, in their

relations with nature and between themselves that create and develop the forces of production and reproduction (that is of their means of production and also of themselves, the most important productive force). In this sense, there is scope for individual freedom in Marx's interpretation of the historical process, as long as we understand that it is always linked to the real material possibilities of the world.

Marx cannot be called an economic determinist. On a philosophical plane, the unity of the being expressed in a dialectical and socio-historical process of 'subjective' and 'objective' precludes such an interpretation. The process is objective because it occurs independently of the consciousness of those who actively participate in it, and because as a process it has been conditioned by the previous development of society. The natural condition of human existence is objectively historical. The process is, at the same time, subjective because men make their own history in the sense that their works and efforts can do and effect the direction and speed of development. Human activity creates, re-creates and changes the productive forces it has at their disposal and these changes are the result of conscious efforts and perceived needs produced by previous productive forces. Neither objective nor subjective nature is immediately given to men; both must come into being in a process wherein subjective and objective are mutually transformed one into the other. (Ricoeur, 1978).

Freedom and Historical Necessity. The Source of a Permanent Debate.

The relations between the activity of the various groups in society and the objective trend of the socio-historical process is one of the most important issues within the Marxist perspective in relation to the problem of freedom and necessity. Marx does not deny individual activity or personal possibilities. What he rejects is action that is isolated and the tendency towards egoistic rather than communal action. As Campbell (1981:133) suggests the problem is not an inconsistency within a "causal deterministic" conception of history, and "independent" individual human choice. Both can be maintained and both are expected to interplay within society. However, one of the apparent inconsistencies in Marx's thought arises with the question of whether he may not have under-estimated the potential of individual action. It is possible that action can be guided by conditions other than the immediate material conditions. That is, by phenomena that are relatively autonomous with respect to those conditions.

For Marx there is a close relationship between man's way of being and the way of being of social reality. This relationship is, of course, paradoxical and problematical and, what is more important from Marx's perspective, it has a practical nature constituting a real problem of life.

Within Marx's view of man there are no universal truths about motivations. Individuals have the potential of being either selfish or

unselfish, good or bad, depending of the social circumstances in which they live. Men can develop their productive capacities choosing a way to do it within the limits and possibilities society provides them. Two 'assumptions' are important to point out. First, the potential of mankind is never exhausted; in other words we can always expect more from ourselves. Secondly, this assumption united to the possibility of action and choice presupposes a human rational capacity. These basic philosophical premises constitute an 'optimistic' view of man who, within certain conditions (that he himself constructs) will achieve historically the fullness of his capacities.

This leads us to what can be called the 'utopian' or 'ideal' part of Marx's conception: the Communist society within which men, in a communal achievement, will develop their full capacities. This view is compatible with his conception of the social world in which the history of mankind is a drive to total universality. In the process, the true, universal, human nature will be disclosed. However, in our opinion, it is not very compatible with his dialectic view which suggests that the path is infinite. The potential of mankind and of nature are always there; therefore these potential infinities are never fully converted into reality. This also means that there is never an all powerful humanity or nature, and by the same token a complete, perfect science. It is important to realise that this apparent contradiction refers to the certainty of a complete, total development of human capacities within a specific, final type of society. It is also important to remember that this conception was very much in accordance with the ideas of progress and evolution of the nineteenth century.

Rather than suggesting where Marx was right or wrong, we simply have attempted a general presentation of his conception of man, in order to stress those points we consider of interest for the sociology of law.

NOTES

1. There is not total agreement on the importance of Rickert's influence on Weber's work. While Runciman (1972) says that Weber's references to Rickert "...seem in part to have been dictated by politeness to a family friend", Burger (1976) is of the opinion that Rickert's influence is crucial to Weber's work.

2. When citing Engels' opinions, we are aware that they are not identical to Marx's. We do not treat them as being one. However, as expected of Marx's close friend and occasional collaborator, their position is not only similar but, sometimes, Engels adds or clarifies some of Marx's assertions. For the purposes of this thesis the differences between Marx and Engels are of no importance.

3. "Imprescriptible rights" means, in legal terminology "rights, which, however long disused, cannot be lost by reason of prescription (q.v.) or lapse of time" (Walker, 1980:603). In other words, these imprescriptible rights are incapable of being either lost or acquired by usage or prescription; they do not depend on statute or agreement.

4. It is important to remember that the treatment of history constitutes one of the main differences between the West and the Socialist countries. In the West history and sociology are separated disciplines; history is not sociology, no matter how close a relationship is established.

5. Marx's early work has received increasing attention since the 1920's due especially to the work of the Hungarian Marxist Georg Lukacs who was a student of Marx and a pupil of Weber. In his opinion, which he later disowned, Marx was a true humanist.

6. We must remember that in dialectical materialism, dialectic logic appears as that part of philosophy which deals with the fundamental laws of reality . Since reality can be (simply) defined as matter in movement, these fundamental laws are the laws of the movement of the whole; that is, they are valid for thought as well as for nature, for individuals, as well as for society.

7. It must be remembered here that Weber's work has led to many different, and some times clashing interpretations. On the topic under discussion we can find, for example, T. Parsons's interpretation, which belonging to the general orientation of "functionalism" tries to establish a conceptual complementarity between explanation in terms of norms and causal explanations in the so-called "Sociology of Action". (See Parsons, 1967; 1951).

8. The American sociologist Wright Mills (1959:130) follows closely Weber when in his Sociological Imagination he states that: "no problem can be adequately formulated unless the values involved and the apparent threat to them are stated. These values and their imperilment constitute the terms of the problem".

9. According to Runciman (1965:50) "The concrete sociological meaning [of alienation] - which depends upon the interpretation given to certain crucial terms - can be given with reference: a) to the worker's relations both (economically) to the products of his labour and b) to the persons (socially) controlling the conditions of the labour process.

CHAPTER III

MARX'S AND WEBER'S WORK. HUMANISM AND SCIENCE

In regard to Marx's conception of man the humanist element has been emphasized. He argued that men are active and social beings who historically tend toward the full realization of their possibilities. Marx looked to the full development of man's creative capacities as the goal of historical progress.

However, according to some scholars, to attach such a humanist label to Marx's theory is to reject its scientific content, since 'humanism' is merely an ideology. In Althusser's view, for example, science does not have room for humanism. To him marxism is humanist only as a practical, political and social movement, never as a theory. "As a science, however, historical materialism, as exposed in Marx's later works, implies a theoretical antihumanism" (Althusser, 1979:314).

We argue that this is true only if humanism is understood as an "abstract" humanism which reduces the relations of production, political and ideological social relations to "historized" human relations, i.e., to inter-human, inter-subjective relations. However

Marx himself criticized this abstract humanism; a critique that enabled him to call his theory "a real humanism".

Our position is that scientific humanism constitutes one of the basic aspects of Marxist theory. As it has already been indicated, the essential relations which are the subjects of Marx's critical science are precisely those which lead to fundamental social change when affected by revolutionary intervention. This intervention, as a life-affirming vision of the world, is an "historical optimism" in the sense that it is human action which creates history. Existing structures and processes which constrain the actions of groups and individuals are also influenced in their course of development by human intervention. Of course, these conscious purposive activities of men, as the forces which intervene in the making of history, are not merely the forces of each generation; nor are they merely the forces of isolated unique individuals; they are human forces conditioned continuously by historical processes. Human action can produce an outcome that would otherwise not occur (Ricoeur, 1978).

Within this frame science is necessary in order to facilitate the understanding of the world and therefore its change. Science then is conceived not just an intellectual activity alone but as a set of rules which connect intellectual activity to the actual development of social relations. For Marx critical science is an integral part of a wider revolutionary framework. In other words, it is not enough an intellectual activity but also the actual development of social relations. In Bauman's interpretation (1978:50), for Marx "the road to

true understanding leads through a social, rather than a methodological revolution".

In accordance with the Gramscian conception of practice, we can say that science is a form of social practice since practice is not an "applied" as opposed to "intellectual" activity. Science is itself a "practico-intellectual" activity.

Max Weber: A Theoretical and Methodological Revolution.

Marx was committed to social revolution but he did not deny the importance of theoretical and methodological revolutions within science. Max Weber clearly emphasised theory building and methodological development within the scientific realm. In regard to methods Weber differs from Marx but is not necessarily in opposition to him since both sought a social science that could accurately assess social reality. In working on this Weber generalised and revised Marx's method although their points of departure were different (Zeitlin, 1968). It is true that Marx, in order to change the world needed to understand it and to interpret it scientifically. Engels said of him at his graveside that:

Marx was a man of science. But this was not even half the man. Science was for Marx a historically dynamic, revolutionary force...Marx was therefore a revolutionist.

On the other side Weber was, before anything else, an intellectual who always draw a separation line between science and other activities. He choose to dedicate himself to the scientific enterprise but was always tempted to politics as a passionate vocation. What he always rejected was not the 'ideological', 'irrational', 'affective' side of men but the irresponsible mix of such elements within a scientific presentation. This does not mean that for Weber science is "free from presuppositions". On the contrary, science is in itself, as a social construction, a system which presupposes that the rules of logic and method are valid; this is not the real problem in his view. Science presupposes that what is yielded by scientific work is important in the sense that it is "worth being known". The real problem, then, lies in the fact that "...these presuppositions can not be proved by scientific means". He writes (1974:143) that:

It can only be interpreted with reference to its ultimate meaning, which we must reject or accept according to our ultimate position towards life.

To Weber, science was not merely an intellectual enterprise neither was it disconnected from the real world. It was conceived as a separate order of rational, abstract knowledge, with clear (but not closed) rules for relating to and affecting the real world. For Weber science was not the only way to know the world nor was it a sufficient means for "mastering life". He did not deny the possibilities of scientific knowledge; he just made it clear that, for him, science does not answer all questions. He saw science as it was: as a social construction which can contribute to but can not solve our "ultimate" problems. At the same time, he pointed out that men have developed

other different orders, such as art and religion. These are also meaningful and important when we consider their social manifestations and consequences. Thus, in his opinion, in order to change the world science is a 'necessary' but not a 'sufficient' element. Weber thought that it was men themselves, taken as individual beings, who could give their own accounts of the ultimate meaning of their conduct. Within this perspective, Weber (1974:138) saw science "as the most important fraction of the process of intellectualization which we have been undergoing for thousands of years". It is a means for self clarification and knowledge of interrelated facts. Weber expressed in a speech delivered at Munich University in 1919 (1974: 153) that:

[Science]...is not the gift of grace of seers and prophets dispensing sacred values and revelations, nor does it partake of the contemplation of sages and philosophers about the meaning of the universe. This, to be sure, is the inescapable condition of our historical situation. We cannot evade it so long as we remain true to ourselves.

In working toward a better understanding of what science is and can offer to men, Weber's intention was neither to refute Marx nor to take his work as a dogma. As a critical scientist, Weber could not take Marx's conception for granted. Our contention is that Weber accepted many of Marx's premises enriching some and clarifying or showing the inadequacies of others (See Zeitlin, 1968; Runciman, 1965).

We can say that while Marx worked mainly on the content of social science, Weber worked on its form by associating scientific preoccupation with methodological clarity (Bergner 1981). Weber,

unlike Marx, worked for the development of the formal demarcation (space and territory) of the "new" field of sociology. Yet, like Marx, he was concerned about the philosophical bases of social sciences and concentrated much of his work on the European capitalist society of his time, stressing the uniqueness of the Western history. Both identified capitalism as constituting the determinant characteristic of the modern world (Hunt, 1974:94).

Whereas Marx explained dialectically how concepts and reality are related and how both change (albeit unevenly), Weber centred his work upon the theoretical understanding of such historical relationship but emphasised that concepts and reality constitute two different orders. They were both, however, preoccupied with objective knowledge and historical interpretation.

For Weber, within the historical process of the West, a better understanding and interpretation of reality through scientific knowledge was possible because of the changes already brought about by the advent of capitalism. To be sure, both Marx and Weber vested their hopes for the growth of objective understanding of history with the historical development taking place in the West, but Marx stressed the "veil" capitalism puts upon reality, preventing men from grasping the truth. Capitalism with its rupture between subjective intentions and objective effects, subjective beliefs and objective realities, although brings some progress in scientific knowledge and understanding, leads to deception and self deception. In Marx's view capitalism, like other systems of class domination, inhibits the process of objective

understanding. Weber, on the contrary, stressed the possibilities of objective analysis of reality despite, or better, because of what capitalism brought about. For Weber, the crucial part capitalism assigns to rational-instrumental action is one of the signs of 'maturation' the world itself shows which allows a better understanding of reality (Bauman 1978). Furthermore this process of rationalization has its structural affinity to 'rational' science and to 'objective' reason itself. Thus, Weber dedicated himself to the grasping of the process of knowledge, emphasizing the 'personal' or 'subjective' part in such a process. Weber did not deny the unity of principle between the objective reality and the knowledge of this reality. What he emphasized was the necessary conceptual separation of these orders.

Weber's Scientific Contribution. A New Perspective.

Weber's work reveals a new facet in the complex relations between concepts and reality, between subject and object. This was possible, in part, because of the historical period to which Weber belonged to. Applying Marx's concept of "historical specificity", or "historical concreteness" in Weber's terms, any given work, author or society is to be understood in terms of the specific period in which it develops. In comparing Marx and Weber this has to be taken into account. That is, we have to understand Marx and Weber in their historical time, which involves not only the apprehension of the specific structure of Marx' and Weber's historical period but also of their personal and particular circumstances and the intersections among them. As Mills (1959:143)

puts it: "Social science deals with problems of biography, of history, and of their intersections within social structures".

In Weber's case he knew and worked not only upon Marx's legacy; as a "child of his time" he also confronted Hegel's philosophy. Even at the end of the nineteenth century Hegel's influence was very important, although most of the thinkers referred to his work by way of a strong criticism. Included in these anti-Hegelians we find, among others, Nietzsche, Rickert, Tonnies, Simmel, and Max Weber.

Weber tried to distinguish himself from historical idealism on the one hand, and from sociological naturalism on the other, as these were the strongest influences at the time. He wanted to be distinguished from sociological naturalism because of the spectacular absence in this scientific account of the category of purpose, will or intention. We must remember that social science developed, throughout the nineteenth and well into the twentieth century, as Bauman (1978:10) says: "in the shadow of the triumphs of natural science". The problem of the "relativity" in the study of the social phenomena and the presence of subjective social action were not considered important within the realm of social sciences. Paradoxically, as Bauman (1978) says, this view was attained within very different perspectives. Thus, neither positivist nor orthodox Marxists considered the subjective aspect of social life as problematic; for some Marxian interpreters the subjective aspect was a concern of speculative philosophy, not of science. The common assumption was that no significant difference exists between the situations in which the natural and social sciences

operate.

Moreover, the economic, social, and political events, particularly in Germany, with the establishment of a modern liberal society and of the German state, were also of great importance for the development and direction of Weber's work.

At the time in which Weber lived and wrote, the idea of progress and the questions concerning the rate, the direction and the meaning of historical change were giving way to new problems and the idea of progress seem to hold less promise, especially in countries like Germany. In the realm of politics, the atomised liberal political state did not realise the promise of an integrated relation between man and the state, an idea central to political thought in Germany since Kant took from Rousseau the idea of self-legislation. In Weber's Germany not even the prospect of a socialist society was widely seen as a promise of significant and desirable development. To Weber himself, for example, socialism - in its political form - did not represent a positive alternative to liberal society but merely a more complete and systematic expression of some of its elements, as is pointed out by Bergner (1981).

Within this socio-political climate, nurtured by the intellectual German tradition, reflection upon social reality took a distinctively German character.

As pointed out above, Hegel's philosophy played a crucial role in the development of both social and historical knowledge. Weber, like Marx before him, worked upon and against Hegelian premises. Both, Marx and Weber understood that the conditions for a more truthful interpretation of reality are brought about by history and that such conditions did not exist in the past. Both were concerned about meaning and explanation in history. In grasping the problems, Marx developed the methods of dialectical materialism and the historical materialism, while Weber developed the "verstehen" method and the Ideal Types. Both Marx and Weber contributed to a sociological perspective that provided insights beyond those of historico-philosophical theories of the past.

Weber approach to the task was influenced by the work of Dilthey, who argued that history has no one single starting point and that we give meaning to the events and occurrences of life. In the light of Dilthey's legacy, Weber then engaged directly with the scientific analysis of social life. Weber believed in the possibility of the objective understanding of an essentially subjective reality.

He was also influenced by a renewed interest in Kant's philosophy at that time. Kant offered a model of the relation between philosophy and the special sciences. Post-Kantian German philosophy had lost interest, as Bergner (1981) says, in the work of the special sciences and either opposed scientific method or popularised it into a metaphysic. In contrast, one may find in Kant's philosophy the legitimation of nonscientific ,as well as scientific ways of treating

reality. By questioning the conditions of validity of science it also explores its limits. The neo-Kantians criticised the post-Kantian philosophy arguing that they had advanced only one side of Kant's philosophy, (idealism, realism, etc) in the attempt to comprehend the whole. To escape from that "maze of confusion" as the neo-Kantian Otto Liebmann expressed, they returned to Kant (Bergner, 1981:59)

A Conception of Man and Reality from the Historical Standpoint.

The historical standpoint presupposed a close and changing relation between men and the rest of the world; both nature and the human species were in a continuing process of change and it is the task of theory to account for this change. In a historical perspective the world was seen as a unique series of events which had to be understood in relation to each other and as a whole. Theory does not aim to grasp how particular events or patterns may repeat (or seem to repeat) themselves. The forms within which change occurs were not a problem, nor were the particular events because the aim was to understand the development of the whole. The historical thinkers, basing their work on these premises, offered a means by which to make sense of the whole and its particulars. They also replaced the knowledge of being for the knowledge of becoming.

However, in grasping the problem of knowledge and reality, particularly in Germany, the so-called neo-Kantian philosophers found that the knowledge of the whole conceived as becoming was as

problematical as the whole conceived as being. In their task of clarification they developed a specific philosophical standpoint from which Weber drew some ideas, while repudiating others.

A Conception of Man and Reality from a neo-Kantian Perspective.

The first critique the neo-Kantian proffered against the historical standpoint concerns their treatment of concepts and reality as identical in their search for the 'essence' of the world as becoming. It is precisely this new confounding of concepts and reality that the neo-Kantians opposed, as Bergner (1981) points out.

For the neo-kantians, our experience suggests to us that no matter what we conceptualise and no matter how limited, the particularity of reality cannot be captured by our concepts. They concluded that all conceptualisation is an act of intellectual synthesis or 'creation'. Therefore concepts ought not to be expected to correspond to the apparent particularity of what is given in reality. The search for 'reals' and 'essences' can not be satisfactorily solved. Reality is heterogeneous and unlimited and cannot be reduced to a single substance by empirical science. Empirical science must accept the ultimate heterogeneity of reality for its purposes, and must proceed by arbitrarily isolating and demarcating in thought certain elements from one another. In other words, it must classify, typologise and fix boundaries which reality does not give us.

Such is, albeit superficially, the background to the work of Weber, who, following the neo-Kantians, said that life presents us with an infinite multiplicity of emerging and disappearing events. He found (1949) that reality is both extensively and intensively without limits and that our perception of reality cannot be expressed exhaustively in a judgement.

The Weberian Position on Science and Reality.

Weber although influenced by these ideas developed his own position against the positivism and against the naive realism of most of the Marxist scholars at that time. Marx himself was a realist but not a naive realist; and it was this latter tendency which Weber sought to critique.

In Weber's view, history reveals no meaning; its course can only be given meaning by the concepts (forms) we actively impose upon it¹. Here, he follows Dilthey² who argues that historical events do signify things to those who enact and endure them.

In regard to the critique of naive realism Weber, like Simmel, is opposed to the simple and non-dialectical Reflection Theory. According to Simmel, naive realism holds that it is possible to produce an intellectual 'reflection' of reality which is not distorted (Bergner, 1981). Simmel says that the mistake lies in seeing an identity between the knower and what is known. In Simmel's opinion there is no

possibility for the historian to eliminate the 'self' in the writing of history. All historical writing must be selective work, predicated upon abstractions from the totality of a subjective reality. As a consequence, the full plurality of causal factors is never completely exhausted in any historical work. In Bergner's opinion, historical materialism represented for Simmel an excellent example of 'naive realism' for it presupposes that there is a direct representation of those aspects of reality which are effectual in the socio-historical world. In our view, what Simmel criticised was a naturalistic interpretation of the process of knowledge, such as was found in pre-Marxist philosophy but not in the Marxist Reflection Theory. In fact, it is the Reflection Theory that distinguishes historical materialism from pre-Marxist materialism. Knowledge, from the point of view of dialectical materialism, involves active human participation in a process of selection directed to an end³. We will not discuss here the materialistic Reflection Theory but simply point out that Weber is also critical of the interpretation of historical materialism Simmel condemned and in this regard his views are very close to those of Simmel.

For Weber the essence of reality cannot be captured by concepts (not even by the concepts developed by special sciences) because there are no such essences to be captured. Our concepts are mental constructions which do not reproduce reality. This position does not invalidate his search for an objective understanding of reality, particularly of the culturally meaningful reality of the modern capitalist world. Weber, like Marx, believed in the possibility of a

certain kind of objective knowledge. For Marx the resolution of problems posited in the process of knowledge is a practical problem which is not due to weaknesses of the intellect, and therefore can not be rectified by operations of the intellectual alone. Weber, in our opinion, accepted this premise but addressed to a different aspect of the same problem.

Both Marx and Weber agreed that objective reality exists independently of consciousness. As Bergner says (1981,80):"It is not that we as human beings create reality from whole cloth,for we do not". But Weber made clear, since the beginning, that concepts do not reveal us the intrinsic form of the world, for it has no intrinsic form apart from that given by our concepts.

Scientific Concept Construction. One of Weber's Basic Themes.

In explaining the relations between concepts and reality Weber examined science, as one particular manifestation of the Reflection Theory. In so far as scientists strive for objective truth, science more adequately reflects reality. science is shaped by the active, goal-directed and selective character of cognitive processes, and by the development of special methods for research and verification (Weber, 1968).

But to work on conceptual and theoretical analysis does not mean an absence of empirical reference. Weber always insisted on this

aspect, as we shall see below. Both Marx and Weber rejected the naive empiricism which regards experience and perception as a sufficient ground for knowledge. According to both of them knowledge of reality is achieved through reason rather than merely the perception of data.

Science in Weber's Thought: A Conceptual Interconnection
of Problems.

In our opinion both, Marx and Weber, shared the view that to work scientifically upon empirical reality does not mean to take facts in a direct or crude fashion, as if they were immediately 'given' to us. It is through an orderly process of selection and conceptual construction we arrive at a scientific account of reality. As Weber expresses in The Methodology of the Social Sciences (1949:68):

" It is not the "actual" interconnections of "things" but the conceptual interconnection of problems which define the scope of the various sciences".

To both Marx and Weber, rational concept-formation was at the core of the process of knowledge, a process which is quite clearly distinct from the 'real' object.

Weber insisted upon logical clarity and conceptual order and upon the logical differences between different categories, for example between nomological regularity (of an event) and the epistemic norm

(about that event). In his view (1977:78): "whoever conflates "laws of nature" and logical "norms" is a scholastic in the strictest sense of this word". We can not confuse facts and knowledge about facts; which does not deny that knowledge about facts always has a substantive character; that is, it has an empirical character. This is in contrast, for example, with the knowledge of the ideal axiological validity of a set of norms. They represent two completely different cognitive purposes, both equally valid. Where the knowledge of empirical action as a 'fact' and the causal explanation of this fact is being considered we must construct concepts and hypotheses which have to be compared within the facts. Formal propositions, however abstract, always have some substantive content and are dependent on empirical verification. Even the 'highest' generalisations of a science remain empirically dependent. They are not a- priori principles of knowledge and therefore they cannot occupy the status of epistemological categories.

To Weber then the process of knowledge takes place entirely in cognitive acts, although he acknowledges that the definitive problems of the socio-cultural sciences are empirical, as he expresses in The Critique of Stammler (1977:11)

Sciences are founded and their methods are progressively developed, only when substantive problems are discovered and solved. Pure epistemological or methodological reflections have never yet made a decisive contribution to this project.

Weber definitely breaks with naive realism which sees the sensuous content of consciousness as revealing the full nature of things. At

the same time he breaks with empiricism as such. In his concept of reality there are no 'essential' characteristics, or 'natural' objects given to us, therefore he precludes 'a priori' principles of knowledge. If we cannot know any 'original' and 'concrete' things in the world, then the sciences of empirical reality, including sociology, cannot be based on the origin or representative fidelity of its concepts. In the distinction he makes between concepts and reality, subjects and objects of knowledge, Weber focuses upon the individual human being as the only capable of meaningful social action. Groups or aggregates can be treated for certain purposes "as if" they were individual beings. But as in legal discourse this is nothing more than an allowable theoretical fiction.

On this issue Marx seems to predicate exactly the opposite. In the Preface to the First German Edition of Capital Marx (1968:230) writes in reference to the capitalist individual, and

to prevent possible misunderstanding, a word. I paint the Capitalist and the landlord in no sense couleur de rose. But here individuals are dealt with only in so far as they are the personifications of economic categories, embodiments of particular class-relations and class-interests.

Marx does not deny the individual but stresses for methodological purposes, in this case that men are personifications of economic categories, that is, social creatures shaped by socio-economic circumstances. In this sense, the difference between Weber and Marx must be sought in the former's stress on "individual responsibility" which is at odds with Marx's view. In the same text (1968:230) Marx added that:

My standpoint, from which the evolution of the economic formation of society is viewed as a process of natural history, can less than any other make the individual responsible for relations whose creature he socially remains, however much he may subjectively raise himself above them.

The subject of Marx's analysis was modern bourgeois society and its relations of production. Hence he focused upon the categories which express these relations. In accordance with his epistemology the treatment of men as "economic categories" is an heuristic device.

Weber, in contrast to many Marxist interpreters of the time, understood this perfectly as two important clarifications in his own social theory illustrates. First, he regarded Marx's economic analysis "as a scientific principle of creative fruitfulness" (1949:68), never as a formula for the causal explanation of historical reality. To Weber's epistemology, and in his own words, "the economic, or as it has been inaccurately called the "materialist" point of view is intentionally one sided" (1949:68) The common belief that the task of scientific work was to cure the 'one-sidedness' of the economic approach by broadening it into a general social science Weber believed was mistaken. To scientifically study relationships among persons requires the specification of a substantive predicate, that is, one specific aspect must be selectively focused on. The term 'social' is therefore too general and ambiguous to be a substantive predicate. It is necessary within the limits of scientific knowledge, to take an specific point of view, "from which the significance of given elements of culture can be analyzed" (1949:67).

The second point which Weber made clear was that a precise construction of concepts was indispensable within science and that scientists do not apprehend reality as it is. We must not confuse conceptual abstractions with reality. Concepts do not "'copy' reality, and because of this an internally consistent set of concepts is necessary. If concepts do not express the 'essence' of reality, if they do not allow a representational fidelity, then, an internal formal consistency becomes crucial within science. It is in this sense that Weber predicates, for example, the formal consistency of sociology, "an empirical science of concrete reality". In his own words social sciences seek "to transcend the purely formal treatment of the legal or conventional norms regulating social life" (Weber, 1949:72).

Cultural Significance of the Knowledge of Socio-Economic Reality.

Weber specifically concentrated his work on social-economic knowledge; in other words, knowledge of reality with respect to its cultural significance. This segment of reality, according to Weber, embodies the meanings and significance given it by human beings. Men, as "cultural beings" are endowed with the capacity and the will to take a deliberate attitude towards the world and to lend it significance. Within science the "personal" selection of the problem is the first "subjective" element to take into account. In Weber's view cultural science involves " "subjective" presuppositions insofar as it concerns itself with those components of reality which have some relationship, however indirect, to events to which we attach a cultural

significance" (Weber, 1949:83).

Thus, cultural science rests upon 'subjective' premises because all evaluative ideas are 'subjective'. They are not subjective in the sense of isolated or discontinuous manifestations of atomistic individualities, nor because the results of the cultural sciences are only valid for one person and not for others. They are subjective because the human species through their individual and personal beings are the only ones who can evaluate and give significance to events and things. No matter how common a cultural phenomenon is, to a group, to a nation or to mankind over long epochs, "there exists an infinite gradation of "significance" arranged into an order which differs for each of us" (Weber, 1949:84). It is in this sense that Weber is an 'individualist'. Even though he acknowledges that he is a methodological individualist, he justifiably protests against the generalisation of this position (1978:21).

It is a shocking misunderstanding to think that an "individualistic" methodology implies a certain evaluation of "individualism" (in any possible sense of that word).

He claims that for the purposes of interpretative sociology, even a socialist economy needs to be understood in "individualistic" terms, that is, in terms of the actions of the individuals and the types of "functionaries" who are involved within it. But this does not mean Weber thought man generated his own existence. He accepted that even "antisocial" or "asocial" individuals are a product of social development. What Weber rejected was the extremes of holism and psychologism.

Weber, like Marx, has a conception of man and reality within which both society and individuals are mutually determined. He is interested in the isolated individual only as a logical conceptual construction; his sociology seeks to interpret social action. Weber's definition (1978:7) of social action is "action in which the meaning intended by the agent or agents involves a relation to another person's behaviour and in which that relation determines the way in which the action proceeds". But by taking the standpoint of a sociological understanding of individual social action, Weber suggests a relative "autonomy" of the social subject who is able to perform meaningful action, which is never totally determined by society.

Collective Concepts and the Problem of Reification.

Weber did not deny the importance and the usefulness of collective concepts but he stressed that, from a sociological standpoint, they cannot be treated "as if" they were individual persons. Social systems as states, associations, etc. do not act. To attribute action to social systems Weber saw as proper for other branches of knowledge such as jurisprudence. The legal standpoint attributes rights and duties to collectivities and sees them performing legally relevant actions (Weber, 1978:17). This is not to say that sociology cannot use collective concepts in order to develop an intelligible terminology. The empirical sociocultural sciences employ, for example, legal concepts for terminological purposes. Moreover, they also employ these concepts "for the purpose of what might be called a preliminary

analysis of their own subject matter" (Weber, 1978:136).

Weber also acknowledges another mistaken use of legal concepts within the domain of the sociocultural sciences. He reminds us that cultural man is a possible object of the sociocultural sciences not only to the extent that his actions are legally relevant. Man is not merely "a potential player in the judicial process" (Weber, 1977:135). On the contrary, actual criteria for explanation in the sociocultural sciences can be connected with aspects of reality which are of no legal relevance at all. When using legal concepts for a provisional classification, Weber (1977:136) insists it is always necessary to keep the following point clearly in mind:

Suppose that a political or economic inquiry undertakes to conceive its subject matter in terms of the "problematic" of politics or economics. In that case, legal concepts acquire a facticity that necessarily changes their meaning. Whenever this happens, the inquiry is no longer at the level on which a preliminary analysis is undertaken by employing legal concepts. Nothing would obscure recognition of this point more than the following error. Because of these important functions of the legal conceptual framework, the legal rule is elevated to the status of a "formal principle" of knowledge of human social life. It is very easy to fall into this error for the following reason. The actual importance of the empirically existing "legal order" is very considerable.

What he definitely rejected was any reification of collective concepts. But in stressing that interpretative sociology refers to observable social action of individual persons he does not suggest any kind of psychologism. Weber insists as Durkheim does, that sociology and psychology are separate levels of analysis but there is no clear-cut frontier between them and neither can one claim priority over

the other. He makes clear (1949:89) that we will never deduce the structure of social institutions from psychological laws nor can we explain them by elementary psychological phenomena. Thus, while he never assimilated sociology to psychology he acknowledged the "narrow limits" within which the sociologist is confined. For Weber this, however, does not excuse the interpretative sociologist "from the task of trying to achieve what only he can achieve" (1978:21).

In Weber's view, we must recall here, any conceptual scheme is necessarily limited, or is in his own words "one-sided". It focuses only on certain aspects of reality.

Weber's sociology does not deal with detached, isolated individuals neither with collectivities which "act" above men as if they had "personality". However he did not use the classical liberal duality of individual and society. Weber did not argue that individuals have attributes independent of the social conditions of their existence. He acknowledged the social determination of man but he stressed the social consequences of man's individual activity. On this specific topic there is, once again, a parallel with Marx though not total agreement. Insofar as Marx stressed the mutual influence - society upon man and vice-versa - the two positions converge. The similarity of the two positions becomes debatable if we consider a very well known passage from The Economic and Philosophic Manuscripts (1975:350), which has been interpreted in many different ways. Marx writes:

What is to be avoided above all is the re-establishing of "society" as an abstraction vis-a-vis the individual. The individual is the social being. His life, even if it may not appear in the direct form of a communal life carried out together with others - is therefore an expression and confirmation of social life. Man's individual and species life are not different, however much - and this is inevitable - the mode of existence of the individual is a more particular, or more general mode of life of the species, or the life of the species is a more particular or more general individual life.

Marx's rejection of the re-establishing of society as an 'abstraction' over and against the individual corresponds with Weber's thought in the sense that it is human beings who create and re-create society. From this, does it follow that Marx believed, as do the liberals, that society can be reduced to its individual members? For Marx this perspective, however, is untenable because for him the individual "is the social being". He says (1964:158):

Though man is a unique individual - and it is just this particularity which makes him an individual, a really individual communal being - he is equally the whole, the ideal whole, the subjective existence of society as thought and experienced. He exists in reality as the representation and real mind of social existence, and as the sum of human manifestations of life.

From Weber's sociological posture the above liberal conception is also refuted. Weber assumes the reality of social structures, which as processes of action influence and shape greatly individual action. His analysis of Bureaucracy, for example, is a good illustration. What he warns us against is the tendency to reify concepts; in his view concepts like "class" or "social solidarity" are not to be taken as "real" causes in a "real" chain of empirical events.⁴

The rejection of reification of collective concepts by Weber must not be taken to the extreme of the ontological nominalism, which maintain that only individuals "really" exist whereas groups do not. Weber did not deny the existence and influence of groups and structures upon individuals. In fact, in The Methodology of the Social Sciences (1949,56) he writes that:

...the particular ultimate valued-judgement which the individual espouses is decided among other factors and certainly to a quite significant degree by the degree of affinity between it and his class interests - accepting for the time being this only superficially unambiguous term.

Weber's Methodological "Individualism".

What Weber proposed was a methodological individualism rather than an ontological one. Such a position refrains from making ontological judgments, (that is, judgements about the "nature" of reality or "existence"), and confines itself to advocating a methodological rule as is well explained by Andreski (1981:56).

In this regard Weber tries to obtain a "balance" between the individual and the group without saying that in reality one is more important than the other. This position by no means indicates a "compromise" between antagonistic points of view. "scientifically the "middle course" is not truer even by a hair's breadth" (Weber, 1949:57); it is rather a very important "deconstruction" of a very wide spread but false dichotomy. Furthermore, as a "nominalist" Weber did not posit dichotomies between material and ideal factors, or

between structural or individual principles of explanation.

Marx's assertion that "the individual is the social being", (1975:350) in our opinion creates no contradiction with the Weberian conception of reality. Men as individual beings do not precede the social being; Although individuals exist as particular, empirical subjects they are not pre-existing subjects nor they exist outside social life. At the same time the existence of social life is only possible because of the existence of particular individuals. "Just as society itself produces man as man, so it is produced by him" (Marx, 1975:349). However, in our opinion, Weber argues that this unity has to be "broken", for example, within the process of knowledge. We have to select and fix limits upon the multiplicity of the world in order to gain knowledge (Bergner, 1981). Thus we distinguish between different manifestations of reality through a process of conceptualization. Once we have these concepts we must remember that they are not a 'picture' of reality. Concepts cannot apprehend the 'essence' of the phenomena for there are no 'essences' to apprehend nor can concepts apprehend any empirical existence itself.

Weber does not suggest that individual man enters into social relations by accident or 'accessorily' to his being. In fact he does not present any definition of man. This is not to say he does not have a conception of man but from his perspective this is not a problem to be addressed by science. From a determinedly scientific effort and from his interpretative sociology Weber proposed methodological individualism as an adequate point of departure. This method was

adequate to the goal of interpretative sociology and also adequate to reality, for sociology is an "empirical" science although it is not founded on the intrinsic form of reality.

Weber goes beyond the liberal conception within which individual motivations derive merely from individual interests and needs. Weber does not think that the individual is the sole source and "proprietor" of his/her faculties and powers. In understanding the actions of typically differentiated individual human beings (and only human beings), Weberian sociology does not posit a self-sustained individual (Weber, 1978: 23). Within his scientific account Weber does not, however, offer a constitutive statement about man. As Bergner (1981) points out, he leaves open the question of the 'essential' character of human phenomena.

Different Orders: Concepts and Reality,
Empirical Knowledge and Value Judgements.

Marx, more than Weber, uses concepts he does not define precisely, and these sociological concepts also combine evaluations and factual knowledgements which results in ambiguous formulations. Since his immediate concern was not like Weber's: the construction of precisely defined sociological concepts - some fundamental terms utilised by Marx can be interpreted in many different ways. Besides it is also a very difficult task to make a clear-cut distinction between his analysis of empirical reality and his normative statements. This is not to say

that such a 'confusion' appears only in Marx's theory. The purpose is to stress, in contrast, Weber's insistence on a rigorous distinction between empirical knowledge and value judgements and between concepts and reality. This obligation, in Weber's view (1949), to distinguish valuations from scientific results is in practice extremely difficult. However it is an ideal scientists must always pursue.

On this account, the use of the term "social" in Marx's writings is illustrative. On the one hand, he refers to the empirical society he analyses, while on the other, he uses it as a "normative" referent, or "ideal" in the Communist society. Thus, when he understands "social" as an aggregate of isolated individual actions; that is, a set of external relations, he refers to the social relations in a capitalist society. But because of the externality of such relations, they are no "social" in the "true" sense; they are rather "non-social" phenomena. In contrast, "social" relations or social man can only exist truly in a Communist society in which man's social essence is realized.

On the ontological plane however, this is perfectly understood according to dialectical materialism, since there is a complex dialectical relation between ends and means, between "being" and "becoming". Thus, as Marx himself expresses it in The German Ideology (1976:49):

Communism is for us not a state of affairs which is to be established, an ideal to which reality [will] have to adjust itself. We call Communism the real movement which abolishes the present state of things. The conditions of this movement result from the now existing premise.

The problem arises on the gnoseological plane. It is here that, in our opinion, Weber clarifies the issue distinguishing between the scientific investigation of reality and the infinite reality which can be analysed. While Weber acknowledges the dialectical relationship between objective reality and the knowledge of that reality, he insisted that the two orders must be distinguished. He differentiates between a 'logical' order and the 'real' order although his logic is not equivalent to a purely formal logic without substantive content.

Weber (1949:72) is interested in "an empirical science of concrete reality", but he is not a naive empiricist; knowledge of reality does not have to be identical with concrete reality; science does not contain 'essential' reality.

Ambiguity in conceptualization is also clarified somewhat by the methodological distinction between empirical knowledge and value judgements (Weber, 1949:49). He advocates the necessity of a clear distinction between arguments based upon empirical reality and the projection of an "utopia". He distinguishes between a scientific account and the one's own ideals, which rooted in reality as they are, can become (within specific circumstances) reality. This is not to say in Weber's view (1949:52) science is not critical, or that value-judgements are to be withdrawn from scientific discussion. Criticism is not to be suspended in the presence of value-judgements. Weber's arguments are directed against the confusion of the scientific discussion of facts and their evaluation, and not against the "clear-cut introduction of one's own ideals into the discussion"

(1949:52). He did not consider discussions of evaluations sterile or meaningless "for the recognition of their evaluative character is indeed the presupposition of all useful discussions of this sort" (1949:14). In his view the analysis of value judgements reduces considerably the task of "value-interpretation". Weber characterises the sphere of valuation as opposed to that of empirical science in the logical sense; there is a logical gap between the two. But he also makes quite clear that this demand for value freedom does not imply "any disparagement of the role of values generally" (Bruun,1972:35). Thus, the principle of value freedom does not, in any way, debar the scholar from introducing his/her own private value judgements into a scientific work, nor does Weber prescribe that scientists cannot commit themselves to undemonstrable values (of all kinds) outside their scientific work. What he means is that value statements must be regarded as unscientific. This position reveals the great importance Weber gave to values for the human personality. Weber shows a firm acceptance of valuation, of practical commitment, as an ethical necessity, even for scientists and scholars who are committed to the value of scientific enquiry. Weber recognises that personal ideals or wishes of the individual researcher may affect the estimate of the relative weight of various causal factors, and consequently influence formulation and acceptance of research hypothesis. Weber sees science simultaneously as value-neutral and value-relevant. Ethical and moral considerations are more important to Weber than theoretical or methodological principles⁵. He states in The Methodology of the Social Sciences (1949:60) that:

" an attitude of moral indifference has no connection with scientific objectivity".

Furthermore he also recognises as a task of the sociocultural sciences the prediction of possible future constellations (1949:76). The problem is not to predict but that such a prediction has to be based upon an "objective" analysis of reality. Weber, in his analysis of modern capitalist society, envisages a "pessimistic" future despite (or rather as a consequence of) human rationality. In his view the rational process, particularly in the West, has led to the belief that, in principle, men can through knowledge, master all things. The fate of modern times is characterized by rationalization and intellectualization. Thus, reason has been both a saviour and a tyrant. In Weber's thought it is each individual "meeting the demand of the day" (in human relations as well as in his/her vocation) who can change the fate of our times. He insisted and hoped for an ethic of responsibility along with an ethic of ultimate ends. If this "normative" idea is not fulfilled, the future he foresaw was bleak. As he said in his speech on "Politics as a Vocation" (1974:128):

Not summer's bloom lies ahead of us, but rather a polar night of icy darkness, no matter which group may triumph externally now. Where there is nothing, not only the Kaiser but also the proletarian has lost his rights.

The above quote also indicates that Weber's historical pessimism does not rest on an 'individualistic' perspective. The future does not depend upon the free will of subjective individuals. The intentions of social actors are usually overtaken by historical fate⁶. In his view,

for example, the nature of capitalist relations cannot be explained by inter-personal interactions. Weber (1965:55) sees the capitalist economy as

...an immense cosmos into which the individual is born, and which presents itself to him, at least as an individual, as an unalterable order of things in which he must live. It forces the individual, in so far as he is involved in the system of market relationships to conform to capitalistic rules of action. The manufacturer who in the long run acts counter to these norms, will just as inevitably be eliminated from the economic scene as the worker who cannot or will not adopt himself to them will be thrown into the streets without a job.

Rationality. A Key Theme in Weber's Sociology.

Rationality, particularly instrumental rationality, (zweckrational), is in Weber's analysis, one of the most important features of the West. The importance lies not simply in its very existence but in its 'unique' development and direction. Weber's account of rationality is complex; on the one hand, rationality is seen as allowing and sustaining modern science: "modern science is transparent to reason because it is our own human creation". On the other hand, rationality is seen as a "fate" which has put men into an "iron cage". The bureaucratic process, one of the fullest developments of rational domination of the West is, in Weber's opinion a good example. In his own words (1978,31):

Its distinctive characteristics, which make it so acceptable to capitalism, are developed all the more completely the more it "dehumanises" itself: that is to say, the more perfectly it succeeds in realising the distinctive characteristic which is regarded as its chief virtue, the exclusion from the conduct of official

business of all love, all hatred, all elements of purely personal sentiment- in general, everything which is irrational and resist calculation.

But to him rationalization was not merely a process of politics, limited to bureaucracy. It affected the structure of the modern economy and the state. The force of rationalization, in Weber's opinion, has converted social values and relationships from the primary, communal, and traditional shapes they once held to the larger, impersonal and bureaucratized shapes of modern life. What he fears is an over organisation and a sterile formality in which feelings and values disappear. In a sense, it could be said that to Weber while rationalization has "alienated" modern man it has also become a unique possibility for his own realisation. When Weber talks of man he refers to "mankind" although he acknowledges the unique and distinctive process of rationalization in Europe. In fact, he uses the concept of rationalization to explain many socio-economic phenomena which are not exclusively Western but "universal" phenomena; his studies on religion in the ancient world, Art, warfare, etc. confirm this.

Weber's apparently paradoxical view of rationality has been interpreted in many different ways. It will suffice to point out that Weber neither praised this characteristic nor was against it. In his analysis of the West, because of the rational realisation of events, certain cultural phenomena have represented a direction of development "of universal significance and validity". But he also acknowledges the existence and potentialities of non-rational features in human life. To Weber (1978:21), for example, science is a sphere governed by

rational laws, but the fact that concept formation takes a more or less rationalistic form does not imply that rational motives will always predominate, nor indicates any kind of positive valuation of "rationalism". However, in Weber's opinion, the decisive turning point in the history of Western civilization has been "the emergence of a rational, anti-traditional spirit in the human agents involved" as Bauman (1978:75) point out.

Rationalism, as the product of historical development endowed European civilisation with a degree of universality unmatched elsewhere and at any other time in the past. Western rationalism has brought about an inescapable world wide interdependence, strongly based on modern science and technology. According to Weber, it is the prevalence of this unique (rational) type of human action which has made possible an objective science, an objective knowledge. Weber's opinion is that the possibility of objective, universal knowledge one may possess is historically linked to the emergence of modern capitalism. In his view modern science appeared in the Western world only when it was already advanced on the road to capitalism. There is a fundamental interconnection between these phenomena (capitalism and science) as there is between capitalism and the bourgeoisie, capitalism and the rational organisation of the state, and last but not least, between capitalism and the legal structures of modern society.

However, as noted before, Weber also recognises the irrational phenomena of life, which, from his sociological point of view, have to be grasped by rational-theoretical concepts adequate at the level of

meaning.

Rationality within the Process of Knowledge.

The process of knowledge is for Weber - and for Marx - an active, selective process directed to an end, not a simple apprehension of given data. Weber emphasised that reality does not reveal itself to the investigator. All investigations require selective principles and different sciences have different principles (or categories) which reflect specialised interests and concerns. But since reality is one⁷ for Weber as it is for Marx, sciences analyse different aspects of the same reality so that 'areas' and 'spheres' derive from different perspectives.

Within this neo-Kantian posture, the social sciences, for instance, are not a compound by sub-sciences (each one pursuing an area of social reality) rather, as Bergner (1981:89) writes there are "many cross-cutting approaches, which are continually blending into and out of one another". To Weber, it is the manner in which sciences satisfy their particular cognitive purposes of their selective interests in knowledge which determines scientific specialisation. Our problems and interests define the nature of our sciences. But since our interests and problems change - as part of the changing reality - so does the nature of science. Within the Weberian conception the fruitfulness of Marxism, for example, did not derive from its 'literal' and 'complete' account of the 'essence' of social change, but from the manner in which

it suggested answers to certain questions we put to sociohistorical reality. The questions we put depend upon what problems are found to be interesting or significant by those who investigate. The problems vary, not only with the individual social scientist, but also with the social and economic classes present, and with the whole of the "culture" which informs the work of the social scientist.

This explains in part why Weber rejects the construction of an immutable or even permanent hierarchy of principles for the explanation of sociohistorical phenomena. In the "incessant flux of events" and problematics (1949), the same causes cannot always be considered as the most significant causes of a sociohistorical event. An infinitely large number of factors could be said to be 'responsible' for the existence of any state of affairs which is to be explained.

Weber clarifies this position in one of his speeches at the Sociological Association (1968:LXIV). He says:

I would like to protest the statement by one of the speakers that someone factor, be it technology or economy, can be the "ultimate" or "true" cause of another. If we look at the causal lines, we see them run, at one time, from technical to economic and political matters, at another from political to religious and economic ones, etc. There is no resting point. In my opinion, the view of historical materialism, frequently espoused, that the economic is in some sense the ultimate point in the chain of causes is completely finished as a scientific proposition.

Relationships between Science and Reality.

In Weber's opinion, although the process of scientific knowledge is a mental process, there is always a mutual determination between it and reality. There is an interaction between the scientific and other practices of men and the historical process of development in which those practice occur. For Weber the dual characteristics of science are clear. It is both a specific rational order which develops and contains its own "laws" and also a social product. In regard to the latter he writes(1949:55):

For even the knowledge of the most certain proposition of our theoretical sciences - e.g., the exact natural sciences or mathematics, is, like the cultivation and refinement of the conscience, a product of culture

This also means that science as well as the fundamental premises on which it rests, undergo historical changes in accordance with the character of the culture and the ideas which rule men's minds. The logical consequence of this understanding is Weber's preoccupation with the proper procedure of scientific knowledge in order to attain the truth - rather than a preoccupation with the security of such a truth. Even in the process of enquiry, the scientist "is obviously bound by the norms of our thought just as much here as elsewhere. For scientific truth is precisely what is valid for all who seek the truth" (Weber, 1949:84). He explains that the objective validity of all empirical knowledge rests upon subjective categories, in the sense that they carry the presupposition of our knowledge " and are based on the

presuppositions of the value of those truths which empirical knowledge alone is able to give us. The means available to our science offer nothing to those persons to whom this truth is of no value" (1949:110). According to Ricoeur (1978), we should recognise that in recent years Marxist philosophers have begun to be more critically aware that the criterion of truth in Marxism is not adequately elaborated. They are realising now that, using Kuhn's terminology, the choice between 'rival hypotheses' when necessary, is made not exclusively on the basis of their correspondence to the existent 'practice'⁹. Since it is evident that for any given degree of development of practice there may be a number of corresponding theoretical hypotheses, the choice has to be based also upon other criteria. These criteria (such as the criterion of simplicity, the criterion of a theory's consistency with previously acquired knowledge, etc.), are however derived from practice. Thus, they do not replace the fundamental principle of practice, though they are relatively independent.

In this sense Weber's line of thought developed in similar ways or influenced the development of parameters that Marxist philosophers are presently working on. Moreover, as has been pointed out already, Weber, like Marx, considered science both as a system of knowledge and as a social institution. In the former sense, he stressed the importance of rationally consistent conceptual constructions which, though abstracted from reality, constitute a means of 'objective' knowledge. These scientific criteria of truth are relatively independent and, at the same time are rooted in a meta-theoretical reality. As a cultural product, the problems science takes up, and

also the concepts with which we investigate them, "...are rooted deep in pretheoretical, non rational reality" (Weber, 1949:110).

In Weber's view, scientific knowledge cannot constitute a complete reproduction of empirical reality. The reason, as explained by Burger (1976) is twofold: on the one hand, there is an infinite number of facts; there is an infinite amount of potential mental contents which can be thought of as existing. On the other hand, the human mind is finite, limited; no infinite amount of concrete facts can be contained in it. The conclusion is that scientists must settle for a partial representation of concrete empirical reality. Scientists select from that totality what they want to know because there is nothing in the facts themselves which tells us what part one has to include or exclude from scientific accounts of reality. Along with the selection science has to construct a system of concepts; a system which, by its own nature, cannot be definitive and exhaustive. Reality is conceived by Weber both as quantitatively and qualitatively infinite and as such is subject to an infinite number of variations; it is impossible to arrive at a complete description of the entire reality or of any single phenomenon within it. Since the content of the socio-cultural sciences is part of the infinite and perpetual flux of reality, it is also variable and subject to transformations. This means that for Weber the theoretical and conceptual premises upon which cultural sciences are based are perpetually subject to revision, variation and rejection: as Weber says, the sociocultural sciences are in a "perpetual flux of problematics" and "in a constant redefinition of concepts" (Weber, 1968: 160,161). But as he himself warns us, this should not be

misunderstood to mean that the proper task of the social sciences should be the continual chase for new view points and new analytical constructs. He emphasised that the exclusive end of science was the knowledge of the cultural significance of concrete historical events (1949:111).

The Socio-Cultural Sciences and their Constant
Redefinition of Concepts.

Cultural sciences develop through a perpetual process of reconstruction of those concepts, by which we seek to comprehend reality (Weber, 1949). Weber foresaw the shifts from one system of concepts to another, as it was explained much later by Kuhn (1970) and others in the idea of changing paradigms in science. In order to eliminate uncertainty about the 'essential purpose' of one's own scientific work as a result of such shifts, Weber suggested that the social scientist must become a methodologist. Such methodological discussions can become important only when these shifts occur (1949:116). It is important to emphasise that according to Weber's conception, both theoretical postulates and methodological principles within the socio cultural sciences must be taken as hypotheses. These hypotheses, regardless of their degree of generality, are to be subjected to "empirical verification". They are not a priori principles of knowledge nor do they have the status of epistemological categories (Weber, 1977:73,80). Weber sees clearly the need for confirmation or verification of hypotheses. Although his thinking on

verification did not go very far, especially in comparison with modern social scientific achievements (see Bergner, 1981), it is crucial to stress the importance he gave to confirmation in scientific knowledge. It is a principle he developed mainly in his critique of Eduard Meyer's historical work.

Laws of Knowledge and Laws of Nature: Two Different Problematics.

The hypotheses must be clear and consistent at the level of logic and verifiable at the empirical level. These are two different realms and as such lead to completely different problematics. Indeed, one of Weber's main criticisms of Stammler's work¹⁰ is that, in Weber's opinion, Stammler conflates "norms of logic" and "laws of nature". Stammler repeatedly treats completely independent problematics as if they were the same.

To Weber, the lack of distinction between different categories of knowledge, and the confusion between thoughts and concepts about reality and reality itself, is one of the most common mistakes in science. In his critique of philosophical-historical thought Weber sees the confusion of the historical process with thought about that process as the fundamental problem. Hegel's work provides examples of this confusion, which, says Weber (1949:94), is expressed in three ways.

Firstly in the belief that the "true" content and the essence of historical reality is portrayed in such theoretical constructs or secondly, in the use of these constructs as a procrustean bed into which history is to be forced or thirdly, in the hypostatization of such

"ideas" as real "forces" and as a "true" reality which operates behind the passage of events and which works itself out of history.

This is why, in Weber's view, there are some false dichotomies, which exclude the possibility of any "transition". Any "mediation" between the two poles of the dichotomy is conceptually "inconceivable". The reason for this is that the two poles of the dichotomy represent two completely different problematics and two completely different cognitive purposes, as Weber says in his Critique of Stammler (1977:171).

Weber's argument illuminates any comparative analysis between legal and sociological concepts as belonging to two different realms of knowledge. The constitution of the object of enquiry is determined in each case by the relevance of the facts we want to know. Within a purely legal domain we are concerned with a dogmatic enquiry into the "ideal" meaning of a precept; with the evaluation of empirical action by reference to this standard and with all the legal consequences of the rule. But should we attempt to explain the norm from a sociological standpoint, our concern then is not so much with legality but rather with empirical actions as 'facts' and the causal explanation of these facts. In sociological enquiry we also employ extra-legal criteria and we take those particular properties of the norm, which are relevant to our purposes. In this case, the legal norm is taken not in its axiological 'ideal' sense, but as a set of concepts which have actual consequence in the observable social actions of human beings. In other words, for sociology, a legal order has empirical validity

insofar as it is a causal determinant of concrete human conduct. In this sense the legal norm loses, in principle, its status as the 'presupposition' for the formation of collective concepts within sociology.

Within sociological premises law is no longer a regulative principle for the definition of the objects of enquiry; it is rather an objective component of empirical reality. The two conceptual schemes are not equivalent; but it does not follow from this that they are logically independent. As Weber expressed it in the Critique of Stammler: (1977:125)

The relationship between them is not that simple. As we shall see, this is because legal terms are quite regularly employed in conceptual schemes that are of relevance to perspectives which are radically different from the perspective of law; for example, the perspective of economics. Moreover it does not follow from this that this usage should simply be repudiated as a terminological mistake. In the first place, a legal concept may prove to be very useful empirically. Quite often it has functioned and it could function as an "archetype" of the corresponding economic concept.

In this case, the logical relationships under discussion are considerably altered because the facts which are 'relevant' from the legal standpoint are no longer necessarily the components which interest sociologists, or economists, that is, the facts for which we require a "causal explanation" (1977:134). Depending on the object of our investigation, the general causal significance of the concrete "definitive properties" of the empirical legal order is gradually and continually diminished. The definitive properties of other conditions would gradually acquire an increasing causal significance. Weber

understands that the professional jurist is biased in favor of a general conception of cultural man as a potential plaintiff or defendant, but he also acknowledges that a jurist would be quite mistaken if he claimed that cultural man is a possible object of the socio-cultural sciences only to the extent that he is a "potential player in the judicial process". Each field of knowledge is concerned only with certain aspects of reality and, in Weber's conception, the individuality of reality (the unique particularity of each specific event) will always stand beyond all our conceptualisation. Nevertheless, knowledge of the full individuation of reality in Weber's opinion, is the goal - never fully attainable - of the science of reality (Bergner, 1981). In order to accomplish the possible task of science we must employ generalised concepts and even abstract "laws" of social behaviour and the like. For Weber, concepts are not to be taken as mental counterparts of reality, and for this reason, he attempted to resolve the status of concepts according to his gnosiology and epistemology in a manner fruitful for scientific purposes.

The Ideal Types. Weber's Key Methodological Device.

Thus, he developed his 'ideal types' as a methodological device for the social sciences. As their name indicate they are 'ideal' in the sense that neither represent reality nor do they portray the essence of any aspect of empirical reality, however 'small' this aspect may be. Weber's ideal types have, in his opinion, a considerable heuristic value if properly used. Within sociology in particular - as

is the case with any generalising science - the very abstract nature of its concepts means they must be relatively lacking in content as compared with the concrete realities of history. According to Weber (1949:43) the function of any ideal type

is the comparison with empirical reality in order to establish its divergences or similarities, to describe them with the most unambiguously intelligible concepts, and to understand and explain them causally.

Weberian ideal types can be of various classes: static types, dynamic types, "average" types. These concepts, especially in a sociological application, are ideal-typical, not only in their outward form but also in their internal structure. In real life people hardly act in a state of total consciousness of the "intended meaning"; genuinely effective meaningful action is usually a limiting case (Weber 1978).

These methodological devices were intended for application to empirical phenomena, not to imaginary events. They are intellectually constructed but they are taken, though not directly, from real and empirical phenomena. However they do not describe the common elements of a class of phenomena in the real world, but the elements which they have in common in an imaginary world, an utopia, as Burger (1976) explains.

Ideal Types and Legal Concepts.

With regard to theoretical construction, legal concepts and ideal types are similar, however different the legal and the sociological points of view are. Jurists, especially within the Continental legal family, have developed a theoretical and rational system of rules, under which, from a logical standpoint, all possible legal empirical situations must be capable of being subsumed¹¹. From a very different standpoint, as a result of the tendency for the sciences to be concerned with practical rather than logical significance, Weber developed his ideal types. He did not disregard, however, the logical possibilities offered by legal concepts for the process of theoretical construction in science. Weber stressed that the legal and the sociological aims belong to two different realms of knowledge and that, according to the particular focus of each, the methodological use of concepts varies. Thus, for example, jurists take for granted the empirical validity of legal propositions. They do not constitute an instrument generating knowledge, but a logical coherent system which supposedly determines the conduct of a defined group of persons (Weber, 1967:11). The sociologist's task is to compare such ideal types with empirical reality in order to make the characteristics of this relationship pragmatically clear and understandable. They try to determine in each individual case, the extent to which this ideal construct approximates or diverges from reality.

The ideal typical concept would be then indispensable for heuristic as well as for expository purposes, helping us to develop our skills in imputation in research as Weber explains (1949:90). The ideal type is not a description of reality but helps to give expression to such a description. In analysing the theoretical construction of legal thought in the West, both from the theoretical and the historical standpoints, Weber pointed out the logical rationality of legal concepts as a crucial feature of modern law.

NOTES

1. This view is already expressed in Kant's well known remarks on compelling nature to give up its answers to questions we put to it. See also Tonnies, F. (1971).

2. Wilhelm Dilthey (1833-1911) is classified as a neo-idealist, not as a neo-Kantian. His influence on Weber is significant, especially in what "meaning" is concerned. According to Martindale (1960:376-393), Weber tried to accomplish a synthesis between the arguments of Dilthey and Rickert.

3. In elementary terms, the Reflection Theory is the materialistic theory of cognition. Accordingly, human sensory experience, concepts and all other knowledge are basically reflections of the objective existing reality. It is rooted in the assertion that

the external world has its own existence, independent of human consciousness. Marxists emphasise that reflection in mind is not a passive photocopy, but an active and dynamic reflective process. Reflection Theory has important gnoseological consequences especially within contemporary science. At present, Marxist philosophers investigate and work upon concepts such as 'reflection' and 'image' and there is much debate in regard to the theory, however clear the basic concepts are. (See Ricoeur, 1978:1126, 1296 and Wilezynsky, 1981:487).

4. Weber's opposition to any hint of reification of concepts was, according to Runciman (1972:11,30), a reaction against the German 'organicists' or even Durkheim's holism. Durkheim claims that the properties of aggregates are "freely admitted in the other realms of nature" to "reside not in the original elements but in the totality formed by their union". Runciman also says that, however important the differences between Durkheim and Weber are they must not be exaggerated, "as so often happens in social theory, to the point where one of them is required to deny a perfectly obvious truth asserted by the other".

5. Weber did not believe in an 'abstract' moral nature of things existing apart from ethical, responsible human beings. However, this does not imply the non existence of objective moral standards. Furthermore, Weber did not see morality as a purely subjective arbitrary matter.

6. But Weber did not see fate in any deterministic way. As Mills (1959:182), who developed many of Weber's ideas, says: " [Fate]...is

not inherent in the nature of history or in the nature of man. fate is a feature of an historical specific kind of social structure".

7. Weber is on this point following Rickert's theory. Accordingly, the original material, directly experienced concrete reality, is one and the same. "Differences exist only after conceptualization has taken place". Thus, the substantive differences which exist between history and natural science are not of ontological nature. For a detailed account of Rickert's influence on Weber's work see Burger (1976).

8. To Weber " "culture" is a finite segment of the meaningless infinity of the world process, a segment on which human beings confer meaning and significance"(1949,81). The word 'culture' seems to have been employed first in Germany by Nietzsche, according to Bergner (1981:42)

9. In replacing 'practice' for 'sense data' as the criterion of truth Marxist theory contrasts with philosophical empiricism. It holds the neo-positivist principle of verification to be too narrow and limited to particular lines of investigation. As Ricoeur (1978:1125) explains: "Into the content of practice there enter not only sense data but instrumental factors; practice functions as criterion of truth inasmuch as it actually constitutes, itself, the historical process of social development. Practice also subsumes the sense experience of social man, as conditioned by social and historical factors".

10. Stammler, Rudolf (1856-1938). German jurist, heavily influenced by Kant. He set himself against the Marxist theories of economic determinism of law and justice and restated the problem of justice in terms of social order.

11. Legal logic is based on binary oppositions. A particular human action is subsumed or not under the law; there are not intermediate situations. Many principles of law follow this logic. for example, the principle of exclusion, of intra vires/ultra vires, or finally, the principle of non contradiction.

CHAPTER IV

WEBER'S SOCIOLOGY OF LAW

In contrast to Marx who never took law as a direct object of his study, Weber developed a lengthy essay entitled 'Sociology of Law' (Rechtssoziologie) in his master work: Economy and Society.

Although he analysed many different forms of the relationship between the legal order and the economic realm as it was manifested through history, he focused primarily on the relationship between western formal legal rationality and the modern capitalist mode of production. In this connection his "Rechtssoziologie" is especially concerned with the contribution that legal ideas have made to the growth of the capitalist enterprise. From the Weberian sociological viewpoint, the legal order is taken as an empirical fact. Legal norms have the properties of generalisations; they are rules of law, and as such they exist as maxims in the minds of judges. This fact produces, directly and indirectly, empirical regularities in the actual conduct of men in relation to one another and to commodities. This is not to say, of course, that in general, empirical regularities of "cultural life" constitute "projections" of legal norms (Weber, 1977:139). Law

functions not merely as an "ideal" obligation ("norm") but as a "maxim" in the minds of the parties concerned; thus, law can be a sufficient condition, a causal determinant of an empirical regularity.

In this kind of enquiry the question would be: What degree of actual regularity is brought about causally by the attempt to follow the legal maxim? . In the domain of facts the legal norm exists only in the sense of a causally-explained and causally-operative empirical "maxim" of social action. Weberian sociology is not concerned ,then, with the meaning the legal rule has in some dogmatic sense, but with the meaning the agents either actually associate with it in a particular case, or even seemingly associate with it.

Weber regarded the logically formal rationality in the emergence and creation of legal norms as a socio-historical product not present in all times or all places. Specific conditions of the socio-historical process of the West allowed this legal feature to develop¹. As Rheinstein comments in the introduction to Max Weber's Writings on Law (Weber, 1967), within modern Western capitalism, Weber regarded the logical formal rationality of legal thought as the counterpart to the purposive rationality of economic conduct.

Formal and Substantive Rationality in Law. A Constant Conflict.

Within this general principle of logical, formal and rational construction of legal norms and precepts Weber made a very important

distinction between purely formal and purely substantive rational norms, depending upon the connection they have with formal or substantive conditions. The distinction is, of course, an analytical one, with the use of ideal types. In reality such a clear-cut distinction does not exist. There simply cannot exist a completely formal legal system, absolutely logically consistent but devoid of any content. To Weber (1967:63) because "all formal law is, formally at least, relatively rational", the formal rationality of modern law means that only unambiguous general characteristics of the facts of the case are taken into account. However this formalism can be of two different kinds.

The first kind of formalism within law refers to those directly-apprehended external formalities², or logical formalities. Here, the legally relevant characteristics of the fact are disclosed through the logical analysis of meaning (typically finite legal concepts are established and are applied in the form of highly abstract rules). The second kind of formalism refers to substantive rationality. Within law this means that the decision of legal problems is influenced by norms, principles and situations different from those obtained through logical generalisation of abstract interpretations of meaning; that is, by factors outside the legal thought but relevant to it. An example of substantive rationality is, in Weber's opinion, the rise of socialism, which at first meant the increasing dominance of substantive legal doctrines (Weber, 1967:296).

Furthermore Weber found that despite, or rather as a consequence of the formal legal method (which employs the logical interpretation of meaning), there is always a tension between formal and substantive goals. The tension exists despite the fact that within the historical process of the legal order, and particularly within the modern period, there are many anti-formalistic tendencies. The contradiction is evident because, in Weber's view, the particular professional, legalistic, and abstract approach to law is only possible into the extent that law is formal in character. He recognised, then, a constant tension between formal and substantive rationality in law - which results in a tension between formal and substantive justice. In his view, there is an inevitable conflict between an abstract formalism of legal certainty and the desire to realise substantive goals. This 'insoluble' conflict between the formal and the substantive principles of justice exists, he says, even where the respective protagonist of any legal conflict belong to the same class. Legal formalism, by its strict adherence to abstract rules, provides a calculable basis for social action, guaranteeing 'legal' but no real equality.

Thus, although Weber recognised that law was drawn in antiformal directions, (particularly by groups who demand substantive justice), the formal qualities of the law remain. It is the development of the formal qualities of law which has produced peculiar antinomies. The conflict is evident. Demands for legal equality and for guarantees against arbitrariness require formal, rational objectivity, in contrast to subjective (non calculable, a priori) decisions which are based on the unique merits of each case. According to Weber, there is an

immanent incompatibility between the intrinsic necessities of logically consistent formal legal thinking and the fact that the legally relevant agreements and activities of private parties are aimed at practical economic consequences and expectations (Weber, 1967:308).

Substantive justice based on concrete questions, concrete cases and concrete persons, inevitably comes into conflict with the formalism and the rule-bound, detached objectivity of abstract rules. As Weber (1967:355) says, "For this reason it must emotionally reject what is rationally [formally] demanded". In Weber's opinion, law cannot overcome such a conflict within the legal order itself. One way of alleviating such a conflict would be through the change of the actual characteristics of the legal order by assuming a substantively ethical and hence non-formalistic character. Another way, it could be argued, would be to change the status of law to that of an ethical science with empirical foundations. But in Weberian terms both possibilities have to be rejected in principle. The implications of a substantive justice cannot be decided conclusively by ethical principles, because, for Weber, such questions cannot be definitively answered. The plurality of interests, values and postulates leads men into perpetual conflict. Conflict underlies all social relations in Weber's view. There is an eternal conflict between ethical maxims, a conflict which cannot be resolved by means of ethics alone (Weber, 1949:16).

Furthermore, in Weber's opinion, is never the task of an empirical science to provide binding norms and ideals from which directives for immediate practical activity can be derived. Moreover, no science

could alleviate such a tension. However, within the limits of science, and taking into account that people subjectively consider certain legal norms as valid and practically orient their own conduct toward these norms, the analysis of the empirical validity of law could help to contribute to a better understanding of and to a better construction and application of the legal system. From a purely legal perspective the legal order exists in the ideal realm of the 'ought' but from a sociological point of view it deals with the realm of the 'is'. From the sociological perspective, then, 'legal order' assumes a totally different meaning:" It refers, not to a set of norms of logically demonstrable correctness, but rather to a complex of actual determinants (Bestimmungsgrunde) of actual human conduct" (Weber, 1967:12).

However in spite of the relationships between the legal and the sociological , each realm of knowledge develops a different perspective and utilises different conceptualisations in accordance with its objectives.

The Rationality of Legal Concepts: Concept-Construction in the
Social Sciences.

In analysing the legal modern expression of the West, Weber found that it was the formal and the highly abstract character of law concepts which made them 'rational'. He also found that European and American life was rationalised in a specific way and in a specific

sense and, more importantly, he thought that one of the chief tasks of socio-cultural sciences was to explain such a process of rationalisation and to analyse related phenomena (1949:34). Thus, in analysing the legal order both from an internal and an external point of view, (that is, its legal validity and its empirical validity), Weber realised that lawyers elevated their conceptual framework to the status of a formal principle of knowledge of social life. Legal scholars considered their theory as an entirely self-contained (internally gapless) system of rules. In opposition to this tendency, Weber felt that concept-construction in the sociocultural sciences constituted a special case. Concepts had to be different from the laws of natural sciences because the relationship between subject and object, law and reality is unique within historical processes. But, at the same time the construction had to be, as in the legal order, rational and formal because the concepts of empirical sciences must also conform to formal rationality. He therefore wanted to go beyond formal abstractions by way of his ideal types. Here we must remember that for Weber the analysis of the cultural significance of the concrete historical fact is the task of sociocultural sciences. In this regard, the analysis of the general aspects of the phenomena is although highly important and indispensable - a preliminary task (Weber, 1949). In his view the focus of the sociologist is on general features; for the jurist it is on generic features; for the historian, individual features. The cultural sciences, as a whole, are concerned with the analysis of the concrete historical fact.

In the sense of the interest of each discipline, sociology is for Weber a natural science as opposed to history. On the issue Weber (1977:97) explains:

The investigation of empirical reality in the interest of establishing "abstractions" - timelessly valid empirical generalizations ("laws of nature")- may be identified as "natural science" and distinguished from the investigation of the same empirical reality in the interest of establishing the causal conditions for the existence of the "concrete individual entity". In this case, the distinction is based on the kind of question posed by the investigation, and the antithesis of "nature" is therefore "history". Given this distinction, disciplines like "psychology", "sociology", "theoretical socioeconomics", "comparative religion", and "comparative jurisprudence" all fall within the domain of the natural sciences.

Sociology is, in regard to the quest for universally valid and timelessly empirical generalisations, a natural science in comparison to history. However, since sociology is always historically situated, this quest is only a preliminary task. Roth says in the Introduction to Economy and Society (1968:XXX) that Sociological theory - which is historically comparative - provides the researcher with the "dimensional concepts and empirical types that are prerequisites for the kind of comparative mental experiment and imaginative extrapolation within which causal explanation is impossible in history". As commented elsewhere in this thesis, for Weber concepts are logically independent of their historical content. Thus, it is possible to establish a social science -sociology- which is, on the one hand, historical, and on the other, a source of generally valid propositions. Sociologists have a dual task: to develop generalisations while carrying out comparative historical analyses. The purpose of comparative studies is the explanation of a given historical problem. Weber enriched sociology by

giving it the historical substance with which to work.

But, as Weber himself asked in his "Critique of Eduard Meyer's Methodological Views" (1949:131): "which of the events on which we have information are "historical"?. In general, we can answer that the "historical" is that which is causally important in a concrete individual situation. This, in accordance with his concept of reality, which is constituted only by the concrete and particular (1949:29). Moreover, history has as a point of departure the real concrete, "individually-structural" configuration of our cultural life with respect to its significance and its causal relationships. History is then a science of reality and sociology is always an historically-conditioned science. For Weber, as for Marx, history was no merely a descriptive account of facts. He writes in The Methodology of the Social Sciences (1949:135) that

We shall moreover see how inaccurate is the naive popular view that history is the "mere" description of a pre-existent reality or the simple reproduction of "facts".

However connected history and sociology are, each one represents a different category of knowledge. Sociology must interpret the "total culture", in order for the constitutive value relations of a culture to become intelligible. In this sense Weber (using Meyer's terminology) says that this kind of sociological interpretation has its point of departure in what are in essence atemporal relations of historical objects. In other words, these relations have an axiological validity which allows us to understand them (1949:145). This explanation, however, does not suggest a value judgement from Weber's perspective;

what it actually suggests is, rather, that there are various possible relationships of the object to values. In this sense, then, it is a "value-interpretation". This type of interpretation is oriented neither towards the disclosure of facts which are causally relevant for an historical context, nor toward the abstraction of "typical" components which are usable for the construction of a class concept. The logical nature of this value-analysis claims a more or less universal meaning, which is to be sharply distinguished from causal significance. The sociologist, in contrast here with the historian, seeks to formulate general statements about what happens. The historian's aim is to provide a causal analysis and an assessment of individual culturally significant actions, social systems and persons³. Sociology, however, proceeds specially according to considerations of the service it can render through its concept formation to the causal attribution of culturally significant phenomena (Weber,1968:19)

For the most part the sociologist finds the material which serves him as a paradigm in the same human actions which are relevant to the historian (Weber, 1978:23). The main difference lies in the very abstract nature of the concepts of sociology (a common feature of generalising science). This means that the concepts sociology uses: "must be relatively lacking in content as compared with the concrete realities of history" (Weber,1978:23). But in the concrete causal analysis of individual events the historian, as well as the sociologist, proceeds in practice in the same way, that is, using ideal types. In saying that history seeks to understand the concrete reality of an event in its individuality, Weber does not mean history

"reproduces" and explains causally the concrete reality of an event in the totality of its individual qualities. Rather, history concerns itself with the causal explanation of those elements and aspects of the events in question which are of general significance (Weber 1949:70).

Some Similarities in the Logical Procedure of History
and Law.

In the approach of history, Weber sees at work the same logical process which a judge employs in a legal case. "Judges deliberations take into account not the total individualized course of the events of the case but rather those components of the events which are pertinent for subsumption under the legal norms" (Weber,1977). Judges are not interested in all those things which can be of importance for other natural scientific, historical or artistic points of view. Moreover, in the causal analysis there is also a logical similarity between history and law (especially within Criminology). In fact,as Weber says, the theory of the so-called 'objective possibility' has been developed first for legal purposes; the problem of penal guilt and civil responsibility is basically (in Weber's time) a problem of causation. Furthermore, as in history, the jurist enquires into the causal significance of human actions. The jurist is concerned to correlate concrete effects with concrete causes, and not to establish abstract uniformities. But jurisprudence, unlike history, goes beyond a purely causal interpretation according to Weber. Law does not always have to deal with facts which are overt and therefore objectively

discoverable by perception and causal interpretation. Particularly within criminal law, the existence of guilt is established when certain subjective facts or covert events are inferred in regard to the agent (e.g., intent, subjectively conditioned capacity of foresight into the effects, etc). It could be said that law comes close to sociology; it seeks to interpret the subjectively meaningful social action of the agent or agents involved.

It is not necessary to make any further comments on how Weber analysed the relationships, differences and eventual coincidental instances of these different perspectives. It will suffice here to stress the following points in accordance with Weber's position:

Each one of the different types of scientific analysis has a specific and distinct object of knowledge. Each one of them develops a specific conceptual framework adequate to its particular objectives. Each one of them, however, can utilise concepts developed within other realms of knowledge as methodological devices.

The "One-Sideness" Perspective of Scientific Accounts.

According to the Weberian Conception, the concept construction of each field of knowledge can give us only a specialised account of the phenomena under analysis. In this sense, for example, a pure legal, or a pure economical point of view is always incomplete. Concepts are not to be confused with the part of reality they help to analyse. Thus, in

his view, it is mistaken to say that clear-cut concepts are "unreal"; rather, they are "incomplete". If we use, for example, a purely economic evaluation, we have to treat a number of presuppositions as self-evident when they really are not. In this way in order to make any clear-cut economic evaluation the scientist has to leap from the is category to the ought category. Concepts are fictitious constructs that signify a way of looking at reality, rather than "mirroring" or reproducing reality. What must be remembered is that concepts are useful 'fictions' in theoretical constructions, and as Weber explains in the Methodology (1949:44):

Theoretical constructions never do more than assist in the attainment of a knowledge of reality which they alone cannot provide, and which, as a result of the operation of other factors and complexes of motives which are not contained in their assumptions, even in the most extreme cases, only approximate to the hypothesized course of events.

Pure economic theory, as corresponding to its axiomatic character, utilises ideal-type concepts exclusively. This contrasts with sociology, for example, which may and should use the concepts of jurisprudence (as ideal types) in empirical legal studies. Economic theory makes certain assumptions which rarely correspond completely with reality but which approximate it in various degrees. Economic theory asks: How would men act under these assumed conditions if their actions were entirely rational?. Economics then uses ideal-types as a heuristic device for the comparison of the ideal type and the 'facts'. Weber acknowledges a problem in attempting to concretely demonstrate an ideal type by taking material from empirical reality. There is, in his opinion, a temptation to do violence to reality in order to prove the

real validity of the construct. However, in Weber's view, the "problem-confusions" which have occurred frequently within economic theory do not detract from its extraordinary accomplishments. Weber acknowledged the contribution offered by the economic interpretation of history to the fields of history, sociology and social policy. Moreover, the Marxian theory is the most important ideal typical construct from the economic standpoint. He writes (1949:103) that:

...Naturally all specifically Marxian "Laws" and developmental constructs- in so far as they are theoretically sound- are ideal types. The eminent, indeed unique, heuristic significance of these ideal types when they are used for the assessment of reality is known to everyone who has ever employed Marxian concepts and hypotheses. Similarly, their perniciousness, as soon as they are thought of as empirically valid or as real (i.e., truly metaphysical) "effective forces", "tendencies", etc. is likewise known to those who have used them.

The Weberian Conception of the "Socio-Economic" Phenomena.

In the widest sense, the domain of socio-economic phenomena extends naturally through the totality of cultural life. The fundamental socio-economic phenomenon is in Weber's view, the scarcity of goods (1949:64). This means that even the most immaterial need, desire or manifestation is bound up with the application of scarce material means. He recognises the influence, direct or indirect, of groups governed by "material interest" even in the finest nuances of aesthetic and religious feelings; in this case phenomena are "economically conditioned". However, according to the orientation of our research interest, Weber distinguished the following analytical

categories for the analysis of empirical reality: a) (purely) "economic events", b) "economical relevant phenomena", and c) "no economic factors". But, as expressed before, all of them, including non-economic affairs are influenced, in individual instances, by economic factors. If such an instance is of interest we shall call them "economically conditioned", but it is also evident that the economic aspect of a phenomenon is by no means only "economically conditioned" or only "economically relevant" (Weber, 1949:64,65). Thus, a purely economic viewpoint offers a partial picture, a "preliminary" contribution to a more complete historical knowledge of culture. Weber (1949:68) sees the analysis of economically conditioned social and cultural phenomena as a fruitful scientific principle, that free from dogmatic restrictions, "will remain such for a very long time to come".

In Weber's opinion only laymen or dilettantes would hold the peculiar assumption that the need for a causal explanation of an historical event is satisfied only if somewhere, somehow economic causes are shown (or seem) to be operative. He explains that this "monistic" exposition is by no means only an economist's weakness. Monism has developed at some stage in all fields of knowledge, and it has been promoted, not only as a source of scientific knowledge but of "weltanschauungen" as well. Researchers adopt a monocausal position by ascribing a preeminent status to certain elements as if "in the final analysis" all and every cultural phenomena to be analysed are "exclusively" determined by these elements. Weber accepts that in specific cases, it may be of the greatest heuristic value to limit the

investigation to the discovery of the causal importance of for example, religious or economic factors. What is not acceptable is the thesis according to which the totality of cultural phenomena is, "in the final analysis", exclusively determined by these factors (Weber 1977). Nevertheless, he believed that we cannot underestimate the scientific value of a one-sided perspective, which in its "unreality" is helpful but only as a general principle of knowledge.

The Problem of Value-Judgment in Science.

The fact that sociology and economics, for example, are empirical sciences does not prevent, the possibility that the scientists express in value-judgements the ideal which motivates them. But in Weber's view, the scientist must have the capacity to distinguish between empirical knowledge and value judgements. He must fulfill the scientific duty to see the factual truth as well as the practical duty to stand up for his own ideas. Moreover, in affirming the empirical objectivity of science, Weber does not exclude the usefulness of reflections on culture which go beyond empirical facts.

He also sees science, as discussed elsewhere, as both a system of knowledge and a social institution. To accept that science is also a product of culture helps to understand that when a social researcher distinguishes the "important" from the "trivial" (having the necessary perspective for such a distinction), those standpoints do not derive from the facts themselves. The scientist approaches his subject matter

according to cultural values, consciously or even unconsciously held. He also, consciously or unconsciously, relates his subject matter to cultural values. These evaluative ideas are also connected with the "personal" element of the investigator. In Weber's words (1949:82): "To be sure, without the investigator's evaluative ideas, there would be no principle of selection of subject-matter and no meaningful Knowledge of the concrete reality". Accordingly, cultural sciences in Weber's view involve "subjective" presuppositions because all evaluative ideas are "subjective". This does not mean, of course, that research in the cultural sciences produce only results which are subjective in the sense that they are valid for one person and not for others.

In Weber's opinion, (as discussed in Chapter Three), what varies according to each person is the degree of interest of the scientist, interest which is determined by the evaluative ideas that dominate the investigator and his age. This is particularly felt in the use of the method of investigation ;the scientist is bound by the norms of our (cultural) thought. Consequently, in his opinion, the goal of cultural sciences is not the construction of some sort of permanent and universal closed system of concepts. The cultural problems are constantly changing and at the same time the intellectual context from which problems are analysed also changes. This also means that the points of departure of the cultural sciences remain changeable throughout the limitless future. To Weber, the fate to which science is subjected means that what a scientist has accomplished will be antiquated in ten, twenty, fifty years. Scientists cannot work without

hoping that others will advance further that they have (1974). Every scientific "fulfilment" raises new "questions"; it asks to be "surpassed" and "outdated". On this issue Weber's position seems to converge with that of Engels. He writes (1968:309) three years after Marx's death that:

One is always conscious of the necessary limitations of all acquired knowledge, of the fact that it is conditioned by the circumstances in which it was acquired. On the other hand, one no longer permits oneself to be imposed upon by the antitheses, insuperable for the still common old metaphysics, between true and false, good and bad, identical and different, necessary and accidental. One knows that these antitheses have only a relative validity; that that which is recognised now as true has also its latent false side which will later manifest itself, just as that which is now regarded as false has also its true side by virtue of which it could previously be regarded as true. One knows that what is maintained to be necessary is composed of sheer accidents and that the so-called accidental is the form behind which necessity hides itself-and so on.

Weber's Special Contribution to Modern Science.

Two of Weber's most important contributions on science are: Firstly, scientific knowledge, although progressive is always temporary and hypothetical in nature. Secondly, because science is concerned with the relation of concepts rather than things, Weber gave great importance to the formal characteristics of the scientific discourse. The characteristics of contemporary science, with its revolutionary changes at the level of concepts and ideas, has brought about this particular theme of the form of scientific development for both social

and natural thinkers. An example of this is the radical changes which the concepts of space and time, mass and energy have undergone as a result of relativity and quantum physics.

Today Marxist's and non-Marxist's theorists are confronting a sudden breakdown of many 'fundamental' concepts of knowledge. They are facing the problematical character of the 'objective' existence of physical objects whose existence, (Weber would have said), is known to us only on the basis of scientific concepts. In addressing this problem Marxist scientists distinguish two levels of analysis : a) that of the immediate examination or mere identification of the changes which have occurred in the formal structure, and b) that of their meta-theoretical analysis (Ricoeur, 1978). Such a distinction is emphasized by Weber as discussed earlier. Weber's conception also distinguishes between the theoretical and methodological levels of research, based on the premise that the scientists do not have "concrete reality" in their minds but abstract reality in conceptual form.

But not all the changes and processes which affect science take place within the process of knowledge. For example, the problem of the relationship between the abstract and the real object is insoluble within the realm of any given special theory. Moreover, the correlation of knowledge and object goes beyond the process of cognition itself and cannot be solved only within science. The process of knowledge indicates to us what happens in the theoretical, empirical and methodological levels of cognition, but in examining the process of

transition from object of knowledge to knowledge itself, and from knowledge to object, we have to go beyond any theory and enter the domain of meta-research. The problems which arise pertain to the sphere of philosophical knowledge, first of all at the meta-empirical and then at the meta-theoretical level. In this regard Weber reminds us of the limitations of science and of the infinity of reality. Even though empirical reality, i.e. the totality of facts, is the object of science and the goal of science is to establish knowledge of this reality. Furthermore in seeing science as an historical construction Weber recognised that it is rooted in extra-theoretical, value related bases. Science is not "free from presuppositions"; the relationship of scientific work and its presuppositions varies widely according to their structure. "The natural sciences, for instance, physics, chemistry and astronomy, presuppose as self-evident that it is worth while to know the ultimate laws of cosmic events as far as science can construct them" (Weber, 1974:144).

Relativism and Subjectivism within Weber's Work.

In our opinion it would be mistaken to believe that the Weberian perspective leads to an absolute relativity and subjectivity of knowledge. In his concern with the meaning and possibility of knowledge, Weber claimed that scientific knowledge must possess general validity, as recognised by Bergner (1981). With his ideal types Weber stressed the necessity for a logical and methodological consistency in science, as well as the importance of correct concept formation in

order to attain knowledge of general validity. Scientific accounts are judged according to the general standards of the culture which informs the work of the social scientist. Science is not a purely subjective arbitrary process; Weber does not suggest that subjective feelings constitute a guarantee of the truth of any hypotheses. His understanding of the relation between concepts and reality does not obviate the need for confirming evidence for hypotheses. Clearly for Weber the validity of the concepts is not simply determined through their historicity. The existence of concepts although abstracted from reality and applied to historical life are logically independent of their historical content. There is no simple or linear correlation between concepts and historical reality.

Weber stressed the separation between the realm of knowledge and that of reality. In doing this Weber helped to liberate the process of theory construction from a naive compromise with empirical temporality; there is not any "essential" conformity between concepts and reality. But as previously mentioned Weber always maintained the idea that science does depend on reality. What he acknowledges is that "the relationship between the logical structure of the conceptual system in which we present such "ideas" and what is immediately given in empirical reality naturally varies considerably" (1949:96).

Weber rejected the idea of normatively averaging different standards of value. He did not accept that through the synthesis of several points of view, or by following a line between them, practical norms of scientific validity could be achieved. To him, this was "more

dangerous to the freedom of research than the (former) naive faith of parties in the scientific "demonstrability" of their dogmas" (1949:58). Furthermore Weber claimed the aim of social sciences was confirmation in the sense of empirical truth. With regard to this he asserts (1949:58) that:

It has been and remains true that a systematically correct scientific proof in the social sciences, if it is to achieve its purpose, must be acknowledged as correct even by a Chinese -or- more precisely stated - it must constantly strive to attain this goal, which perhaps may not be completely attainable due to faulty data. Furthermore, the successful logical analysis of a content of an ideal and its ultimate axioms and the discovery of the consequences which arise from pursuing it, logically and practically, must also be valid for the Chinese. At the same time, our Chinese can lack a "sense" for our ethical imperative and he can and certainly often will deny the ideal itself and the concrete value-judgements derived from it. Neither of these two latter attitudes can affect the scientific value of the analysis in any way.

It can be argued that according to Weber, the objectivity of a scientific account is specifically limited to factual statements having empirical validity because cultural events are different in different cultures and in different periods of time. In other words, there are no universally valid values shared by all humans. It is our contention that such an interpretation of Weber is not necessarily correct; although Weber does not directly consider this point in his work he did suggest that men (as species) are endowed with the capacity to adopt a deliberate (evaluative) attitude towards the world and to lend it meaning. This human capacity is not just a 'unique' feature of certain cultures. What has been historically 'unique' is the development of such human possibilities in certain cultures. It is this which gives cultures their identity and distinctiveness as historical phenomena.

Values can and have been different historically and culturally, but they can also be universal in the sense of being understood, grasped, and eventually developed by all mankind.

If, paraphrasing Weber, our "Chinese" is interested in grasping the scientific account another human being presents him with, he should be able to do it. Weber does not suppose a lack of 'rationality' within certain cultures. Rather he recognises the multiple and different ways a culture can manifest itself due to human flexibility and to what we can call here the 'voluntaristic' element in the Weberian concept of man.

In connection with the above discussion, it is not the task of empirical sciences to create a common denominator in the form of generally valid ultimate value-judgements. Weber (1949:57) recognises that:

General views of life and the universe can never be the products of increasing empirical knowledge, and that the highest ideals, which move us most forcefully, are always formed only in the struggle with other ideals which are as just as sacred to others as ours are to us.

Furthermore, for Weber the ultimate standards of value involve 'will' and conscience, not empirical knowledge. Weber however does not reject the validity of universal propositions, the knowledge of regulations or the attempt to formulate special laws⁴ within the cultural sciences. On the contrary, he states that the application of a "nomological" knowledge is indispensable in the causal imputation of concrete events to concrete causes. A valid imputation of any individual effect without the application of the knowledge of recurrent

causal sequences would be generally impossible. For Weber the knowledge of such regularities is not the ends but rather the means of knowledge. As Burger (1976) points out, for Weber knowledge of laws is not the only possible form of scientific knowledge. Weber believes that "in the cultural sciences the knowledge of the universal or general is never valuable in itself" (1949:80). This is because of the logical (not ontological) difference between natural sciences and historical sciences. But in relation to concept formation, the logical nature of the concept is the same in both fields.

Weber concludes that an "objective" analysis of cultural events does not need to reduce empirical reality to laws. Yet he does not mean that " "cultural" or psychic events, for instance are "objectively" less governed by laws"(1949:80). This means that fundamentally knowledge of cultural events is inconceivable except on the basis of the significance of phenomena in certain individual concrete situations. As discussed earlier, the significance of cultural phenomena presupposes a shared value-orientation towards these events. The meaning of an event does not coincide with law as such, and we cannot discover its meaningfulness by mean of a "presuppositionless" investigation of empirical data. Weber says (1949:76) that "The concept of culture is a value-concept. Empirical reality becomes "culture" to us because and insofar as we relate it to value ideas". It is the individual researcher with his/her evaluative ideas who selects the subject matter of research according to the events which he/she attaches cultural significance. It is in the sense of the subjective participation of individual researchers that cultural

sciences are "relative". The "free" or subjective element within the selection and treatment of problems is also present in the cultural event under analysis. Cultural events, as any human construction in which more or less deliberate considerations and decisions of individuals have been taking part, call for a "relative" explanation. But as suggested in the discussion above, 'relativism' in Weber's perspective is neither linked to any philosophy of the subject nor to an unqualified relativity of knowledge.

To the extent that Weber recognises a subjective element in cultural events (both in the scientific account and in the event under study), his exposition about science could be called 'relativistic', or more precisely 'not absolute'. He says that cultural sciences are not systematic "... in the sense of a definitive, objectively valid, systematic fixation of the problems which it should treat. This would be senseless in itself"(1949:84). His position can be called 'relativistic' in the sense that he rejects absolute truth and absolute knowledge. In this regard Weber is up to date with modern science, and with the now classical concept which is the background to all contemporary work: that is, a relativistic notion of space-time. Newton's absolute space is definitely ruled out, although we acknowledge that this debate has not come to an end ⁵.

In Weber's view there is no permanent and universally valid classification of reality. In this connection, the objectivity of the cultural sciences is a qualified one, as Weber suggests (1949:10):

The "objective" validity of all empirical knowledge rests exclusively upon the ordering of the given reality according to categories which are subjective in a specific sense, "namely", in that they present the presuppositions of our knowledge and are based on the presupposition of the value of those truths which empirical knowledge alone is able to give us.

To Weber, the objectivity of the social sciences is always related to evaluative ideas, ideas which can not be proven empirically. Since social sciences are empirical sciences, relying on empirical evidence, then value-judgements do not belong to the realm of social sciences and would have to be validated independently. To make a value-judgement involves my "... "taking an attitude" in a certain concrete way to the object in its concrete individuality" (Weber,1949:150). Empirical science seeks for "inter-subjective" agreement whereas value-judgements belong to one's own "weltanschauung". However, in Weber's view the "obligation" of the scientist to separate value-judgements from empirical knowledge does not preclude or invalidate concepts framed with some "practical evaluative attitude" built into them. In some circumstances the incorporation of value laden concepts, however harmless or useful, would be "indeed mandatory" (Weber, 1949:59). Since this is inevitable, another scientific obligation is to make clear, especially to one's self, exactly at which point the scientific investigator becomes silent and the evaluating and acting person begins to speak (Weber,1949:60). In spite of (or rather due to) the 'arbitrary' socio-historical origin of the scientific discourse, Weber discards subjectivism by taking out of the scientific account the 'subjective' value-judgements.

Summing up, according to Weber's concept of science: scientific knowledge is not absolute. Neither is it grounded on 'true' theories. However, the pursuit of truth and objectivity are the principles guiding scientific activity, irrespective of the historical, cultural and social parameters in which it is developed. There are, then, clear objectives and specific rules of scientific activity which make the scientific truth objectively valid within the system of scientific knowledge. Furthermore, in Weber's view, as suggested by Lowith (1982) these guiding principles of science transcend the relativity of history and culture. They are 'universal' to science because they are grounded upon inexplicit, but all-pervading presuppositions of a human kind.

The "Personal" Element as a Causal Component in History.

Emphasising the historical foundation of social science, Weber argues that due to the historicity of what is offered to science, its results will always be contingent (Bergner, 1981).

What is important to emphasise is that value analysis does not yield scientific knowledge as Weber understood it. It is also relevant to note that Weber related value analysis and value-relevance to the capacity of each individual to choose between different viewpoints. The "personal" element within a scientific account is for Weber one of the causal components in history. This Weberian 'anti-deterministic' conviction is not to be taken as a presupposition of the validity of the historical method. Rather, this accords with his position on the

specialisation of perspectives (see Chapter Three), and which warns against confounding the problems of distinctive fields like ethics and science (1949:124). From a scientific point of view, says Weber, "the "personality" enters into history, by no means in its totality but only in its causal relevance for the historical situation" (1949:137). He is aware of the difference between the historical significance of a particular personality as a causal factor and the general "human" significance of the same personality in the light of its intrinsic value.

Weber says that regardless of how people understand the term 'freedom of the will', this is not equivalent to irrationality of action. Neither does he suggest that the latter is conditioned by the former. Moreover, 'to be free' does not mean engaging only in rational actions. Rational actions are those which we are conscious of performing in the pursuit of a clearly perceived end and by "means" which are the most adequate in accordance with the extent of our knowledge (1949:125).

However Weber cast grave doubt upon the individual's capacity to comprehend the full significance of his own actions and to grasp their subjective meaning. Nevertheless the social science researcher is enjoined to proceed "as if" actors behaved in a fully rational and meaningful way. When the historian speaks of the "irrationality" of human action as a disturbing factor, he is comparing historical-empirical action with the ideal of a purely rational (i.e., absolutely purposeful) action and not with the phenomena of

nature (Weber, 1949). Sociologists take social action "as if" it were performed in a purely rationally purposive way; as if the person(s) concerned were able, for technical reasons, to use only these and not other means to achieve their clearly defined ends. It is true that sociologists seek also to comprehend irrational phenomena, like mysticism or inspiration, and to explain the irrational elements in action⁶. In all cases however, it is on the basis of rational presuppositions that sociology (and economics") constructs most of its "laws" (Weber, 1978:23).

In any historical and sociological discussion we have to realise that in real life fully conscious and clearly understood meaningful action is usually only a limiting case. However this does not prevent the sociologist "from constructing his concepts on the basis of a classification of possible "intended meanings"; in other words, as if men acted in practice in conscious awareness of the meaning of their actions" (1978:25).

Social science is developed on rational grounds but its subject matter, Weber argues, covers both rational and irrational motives and actions as long as they have cultural significance. This cultural significance is, from the point of view of the researcher, a guiding point for the selection of a particular phenomenon. But 'cultural significance' is not a product of - nor is it felt and expressed by - isolated, "atomistic" individuals. It is a cultural product. In this sense, 'cultural significance' serves to validate the choice of phenomena for scientific analysis.

'Cultural Significance' and the Analysis of the Legal Order.

Recently, within social sciences, there has been a revival of interest in the analysis of legal phenomena . Weber would explain this interest as derived from the specific cultural significance which people attribute to the law in a given case. At the same time, this cultural significance would logically direct and condition (in a general way) the personal, individual interest of the scientist. But the initial choice of the object of investigation is never scientific in itself; there is no scientific formula for the selection of the subject matter of science.

The selection of a subject matter, for example, "the economic factor" as an object of study in social sciences does not mean, in Weber's view, that such a factor is the 'real' and 'true' one, or the one which " in the last instance is everywhere decisive". Weber adds that (1949:69)

Under the impression of the profound cultural significance of modern economic transformations and especially of the far-reaching ramifications of the "labor question", the inevitable monistic tendency of every type of thought which is not self-critical naturally follows this path.

Weber's interest in law as an object of analysis was grounded in cultural theory and not in any legal perspective (we must remember here that from Weber's point of view the history of law belongs properly to the empirical sciences). Although the significance is changeable

according to the socio- historical values of a culture, law is endowed with a meaning and as such is meaningful to men. Thus, at any moment of history, legal relations are more or less significant and more or less valuable (which does not mean "positively" valuable) within a cultural context. This cultural significance is, of course, completely different from the legal idea of the logical significance of a norm and from the axiological validity of law. That there are two different kinds of significance in law is acknowledged by Weber in that: "The cultural significance of normatively regulated legal relations and even norms themselves can undergo revolutionary changes even under conditions of the formal identity of the prevailing legal norms" (1949:83).

In Weber's view, then, it is theoretically possible to socialize the means of production without making a single change in the legal codes and norms. The statistical frequency of certain legally regulated relationships might be changed fundamentally, and in many cases, may even disappear entirely. According to Weber (1949:83) " a great number of legal norms might become practically meaningless and their whole cultural significance changed beyond identification". From a sociological point of view it is not the legal validity of a norm but its empirical validity which is relevant because legal norms can be a "causal" determinant of empirical conduct. The legal order then would be taken as a "maxim", that is, as an idea of something obligatory, and not as a "standard of value". In the case of sociology it is an empirically ascertainable maxim of the concrete conduct of human beings, a maxim they may follow more or less frequently and

consistently. In the case of law, a "legal order" is constituted by a system of ideas and concepts which the legal scholar uses as a standard of value. Lawyers evaluate the actual conduct of certain people - judges, delinquents, citizens, and so on - from the standpoint of the ideal norm and this determines whether or not their conduct is legal or illegal (Weber 1977,128,130,131).

The "empirical" relevance of law is a cultural creation and the individual cannot avoid becoming a "potential player in the game of law". In other words, the consequences of the "empirical" validity of existing legal orders can not be avoided by anyone. According to Weber (1977:137) it is "impossible for anyone to avoid the constant encounter with facts that are 'relevant' from the standpoint of empirically existing legal orders". The existence of such an order implies that the individual is obliged to adapt his behaviour to this situation, "either on grounds of pure prudence or out of respect for maxims of fair play" (1977:37).

"Legal" and "Empirical" Validity of the Legal Order.

The distinction between legal and empirical validity within the legal order is crucial for the sociology of law. From a sociological perspective, the legal rule is not conceived of as an "ideal" obligation ("norm") which causally influences empirical conduct. Rather, it is the legal rule conceived of as a "maxim" in the minds of the parties concerned. It is not the intrinsic value of law but its

cultural-historical meaning which is important for sociology as a science of empirical reality. From this point of view law occupies a preeminent status in Weber's sociology. In trying to understand causality in history Weber took into account law as a factor which produces a significant cultural effect. Law as a cultural phenomenon has a "meaning" attached to it; that is, practical life is valued by practical actors who are positively or negatively committed to the consequences of the existence of law.

Both the ontological and the logical possibilities of knowledge within the cultural sciences are possible because humans endow certain phenomena with cultural values. It is possible to say that, using Bauman's terminology (1978:230), in Weber's view there are not "context-free meanings"⁷.

Weber's Conception of Man.

Weber's conception of science is closely connected with his implicit conception of man, a conception which exists, we suggest, as a necessary presupposition for his scientific work.

Weber, like Marx, does not believe that man has a fixed and 'original' nature but one shaped according to socio-historical conditions. Both were also very concerned with the modern conditions of mankind and with the possibility of "increasing servitude". To be sure Weber did not see any connection between capitalism and democracy

or between capitalism and freedom. But he saw capitalism as an "unavoidable result of our economic development" (Weber, 1974:71).

Weber, like Marx, was also concerned with freedom and democracy in a modern society. In contrast to Marx, Weber though stressing the possibilities of individuals making choices between different alternatives did not hold a "deterministic" position nor did he interpret the conditioning of history upon people as a law of "necessity". He conceived men and women as the artisans of their own destiny.

In contrast with his bureaucratic and patriarchal ideal types Weber's charismatic leader, in its pure form, is the epitome of freedom. Weber casts the patriarch as the "natural leader of the daily routine" and the bureaucrat as "only the counter image of patriarchalism transported into rationality" (Weber, 1974:245). Conceptually the charismatic leader knows nothing of regulated training or exclusive functional jurisdiction nor does he/she embrace permanent institutions which are independent of persons and of purely personal charisma. The only restraint and the only determination he/she knows comes from "inside". The concept abjures any rational economic conduct and, in this regard, "pure" charisma is the opposite of all ordered economy. However, in our opinion, to analyse the characteristic features of this ideal typical construction does not mean that Weber praised the charismatic leader as if he/she were his "ideal" of man. Weber himself was aware of this possible misunderstanding of his ideal types. He recognises that apart from the logical significance of ideal types

there is another more complicated meaning implicit in such ideal-typical constructions. He knew that unconsciously they can be seen as "model" types, that is, as "ideals" with which reality is compared and evaluatively judged. For this reason Weber warned us of the necessity for a very sharp distinction between the comparative analysis of reality by ideal types, in the logical sense, and the value-judgement of reality on the basis of ideals (Weber, 1977;1949). Ideal types are abstracted from the real world by way of a derivation from an ideal, utopian world. This means that the elements of the ideal types have been abstracted from reality and from the "unclear synthesis" which is found in the minds of human beings. By using the ideal type as an heuristical device, however, the mental construction can become of practical significance. That is, the ideal types become 'ideals' in the sense that they can direct social action. Theoretically speaking ideal types, both as heuristical devices and as 'ideals' are very closely related and constantly tend to merge with each other (Weber, 1977). As illustrated by the charismatic ideal type it is important to note the following points with regard to the above discussion. Firstly, Weber recognised the presence of the features of charisma throughout history. Secondly, he indicated that the waning of charisma generally shows the diminishing importance of individual action. In Weber's view individual action is crucial. He acknowledged the importance of the socio-economic context upon individuals, but he conceived men not merely as social products. He believed individuals could, in a moment, break with all traditional and rational established norms. In this sense, the attitude of a charismatic leader is "revolutionary". It "represents" the ostensible possibility of

"innovation" and change through individual actions and decisions. On the other hand, the charismatic personality can also represent the irrational element in human beings. This "uncontrolable" aspect can make persons gods or demons and this possibility is, in Weber's view, an integral part of human life.

From Weber's ideal types, (particularly from his charismatic leader), we must not infer that he emphasized such characteristics as "ideal" or that he encouraged the existence of "heroes". What he did was to recognise the historical possibility of the content of such ideal constructions, both now and in the future. He envisaged their actualization within proper factual circumstances. Although Weber stressed individual or personal potentialities he did not believe that the so-called heroes or "great men" are the artisans of history. Rather, as a historian, he would not deny their particular historical existence or their particular historical "probability". It was on these grounds that he based his charismatic ideal type.

In addressing the field of ethical questions in his lecture "Politics as a Vocation" (1974:115), Weber feels that the three qualities decisive for a politician are passion, a feeling of responsibility and a sense of proportion. It is not possible to infer simply from this assertion that these are Weber's 'ideal' qualities of man. Weber is aware that he is only talking about one life-sphere, the political, and that he is only addressing those who wish to pursue a political career. However, these qualities re-appear many times throughout Weber's work, as if they were ideal qualities, especially

the sense of responsibility. Responsibility for the consequences of one's conduct, is for Weber "something genuinely human and moving" (1974:127). In this regard it is interesting to point out a difference with Marx. Although Marx also recognised the "subjective" element, he suggested that "the individual can not be held responsible for relations whose creature he socially remains however much he may subjectively raised himself above them" (1968:230).

Weber conceived man as somebody who would make decisions, and this premise was fundamental in his analysis of the process of intellectualisation and rationalisation in the West, especially in relation to science. In this regard, science can help us to consider systematically the consequences of adopting one or another alternatives presented by it, but science cannot decide which to choose. Science does not give answers to "ultimate" questions. Weber does not share the naive optimism of those who believed that the techniques of mastering life rest upon science. Science helps to clarify the means which practical men must employ in order to achieve their ends, but science does not offer a perfect, complete, single paradigm which can itself solves all the problems of social life. In Weber's opinion, the problems of social life cannot be solved once and for all.

Historical change moves towards unknown ends, always allowing new human activities and giving different contents to reality. Even within modern science, one cannot ever hope for complete predictability. Such an expectation would be a rejection of the limits of science, of man himself and of the constant change of reality.

Of course, men are for Weber 'social beings'. He does not conceive a "natural man" isolated from and unencumbered by the complex social and political institutions they themselves create. He recognises man is a complex creature, who also belongs in the world of nature and such complexity makes possible many perspectives on man, including biological, psychological and sociological ones.

In their meaningful relations men are social beings. Weber omits from his sociology human action which is not social in character, like the natural event of a collision between two cyclists, or external behaviour which results simply from expectations about the behaviour of material objects.

Weber is not pessimistic about the nature of man per se because he does not believe man has a fixed nature. However, he does not believe in the necessary "progressive" realisation of a better world for the same reason. He states that progress in differentiation does exist, "but whether it should be assessed as "progress" in the sense of increasing "spiritual richness" is, anyway not a question which any empirical discipline can decide" (1978:93). He conceives man as a being for whom many types of behaviour are possible and who can choose among them. Of course, Weber is well aware of the natural and socio-economic limits and conditions within which men exercise their choices, but he always stresses the possibility of the individual to choose and to evaluate. Men must, in their relationships with reality, evaluate and choose to some extent, from what is possible in order to give meaning to their own existence and to reality itself. But Weber

did not believe in any "omnipotence of the will" nor did he consider the will as the "principle" of any human enterprise⁸.

In regard to "meaning" it is only individuals who act meaningfully and give meaning to nature. Objects can be meaningful to us because we give "significance" to things and events. Meaning can be attached to or "found" in any event or object, "from the metaphysical," "meaning" which the baying of one of Robinson Crusoe's dogs "has" when a wolf is approaching to the very rational meaning of a legal norm" (Weber, 1978:107).

On the issue of meaning Marx says in Capital that "...Things do not have any meaning in themselves; when things appear to be endowed with social or human attributes we are confronting the "fetishism of commodities"" (Marx and Engels, 1969:71). What Weber stresses, in contrast to Marx, is that meaning arises in, and is represented by, the minds of individuals. However affected human beings are by the socio-economic environment they still have the possibility of certain individual creative influences upon the world. Because of this stress some interpreters of Weber see his charismatic leader as his ideal of man but, in our opinion, this is a narrow and mistaken interpretation. His ideal types are grounded in reality and are not merely philosophical speculations. His "methodological individualism" is not based upon a philosophy of the subject. Weber's conception of man is not fragmentary. He thinks, like Marx, in terms of the total or real being, whose manifestations and decisions in life are multiple. But Weber, unlike Marx, clarified that the "total" man in his complex

reality can not be apprehended by a concept nor fully explained by a scientific theory.

Within modern legal thought, the fragmentary conception of the juridical subject can be enriched by a sociological perspective. Sociology can unveil human dimensions of crucial importance for a better construction and more fair application of law. A sociological approach to human beings, which sees them in concrete historical socio-cultural contexts, is a necessary pre-legal consideration law must acknowledge.

Weber's own insistence on separating fact from value and the empirical from the normative sciences is due to the great importance he gave to ethical principles. The logical distinction he emphasised between empirical and normative sciences does not preclude the fundamental relationship existing between them. Weber also recognises an interrelationship between value judgements and judgements of facts, although he emphasised they belong to two different spheres of validity. He also emphasises the logical impossibility to derive a value judgement from empirical judgments of fact. In his view, the modern tension between logical formalism and substantive justice cannot be overcome by either science or ethics taken alone. Weber argues for an ethic of responsibility, and the part scientific knowledge plays in the development of this ethic is very important. Science helps in the task of clarification, understanding and explanation of facts. Science provides the acting person "with the ability to weigh and compare the undesirable as over against the desirable consequences of his action"

(Weber, 1949:53). There is a dialectical relationship, a distant and tense relationship between science and values, between facts and norms. Science indicates that there is not an 'eternal' or 'absolute' ethics, prior to knowledge, for an ethics presupposes the differentiation between knowledge and norms. The implicit tension between science and values and the urgency of an ethical responsibility are, in Weber's view, a sign of our times.

Sociology can help to develop and to stress ethical values by putting into perspective the social consequences of individual actions. sociology, through the analysis of empirical reality, can help law to increase the material content of its formal regulations, alleviating the tension between formal and substantive justice. Weber thought that the Kantian ethical imperatives - regarded by Weber as a good point of departure for the definition of a distinctive ethical value sphere - were extremely abstract and correspondingly formal. He wanted to go beyond formalism with his sociological theory, since to him, the problem of justice could not be resolved at all by recourse to Kantian ethics. Weber's methodological individualism indicates that it is human beings who give meaning to the world and value to legal regulations.

The necessity of taking into account not only our own personal freedom but the freedom of others⁹ is one of Weber's principal ethical commitments. But the act of choice is always, in Weber's view, an individual decision. the individual weighs and chooses from among the values involved according to him/her own conscience and his/her

personal view of the world. As he says (1949:53):

science can make him realize that all action and naturally, according to the circumstances, inaction imply in their consequences the espousal of certain values - and herewith - what is today so willingly overlooked - the rejection of certain others. The act of choice itself is his own responsibility .

NOTES

1. Weber says (1967:303,304) that "from a theoretical point of view, the general development of law and procedure may be viewed as passing through the following stages: first, charismatic legal revelation through "law prophets"; second, empirical creation and finding of law by legal honoratiorees, i.e., law creation through cautelary jurisprudence and adherence to precedent; third, imposition of law by secular or theocratic powers; fourth and finally, systematic elaboration of law and professionalized administration of justice by persons who have received their legal training in a learned and formally logical manner". He clearly stated that in historical reality the theoretical stages of rationalization have not followed everywhere the sequence he outlined.

2. According to Weber this is characteristic of primitive law, in which procedures for setting conflicts of interest between kinship groups are characterised by rigorously formalistic rules of evidence. Questions of evidence should be asked in the proper way and by the proper party. (Weber, 1967:227).

3. In Weber's view history is a science which considers events from the point of view of becoming and not from the point of view of necessity which belongs to what has become. In the assessment of the causal significance of a concrete event, the historian proceeds "in much the same way as the historical individual himself, with all his attitudes of mind and will, who would not "act" at all, if his own action seemed to him to be "necessary" and not merely "possible" (Weber, 1978:112).

4. To Weber the term "law" in the cultural sciences has a different meaning from the "narrower exact natural sense". He is concerned with adequate causal relationships expressed in rules and with the application of the category of "objective possibility" (Weber, 1949:80).

5. The debate between the followers of the absolute vs. relative space was profoundly influenced by the theory of Relativity. Nevertheless conceptions of absolute space are now reappearing.

6. In Weber's opinion, actions of men are not interpretable in purely rational terms. Irrational 'prejudices', errors in thinking and factual errors, 'temperaments', 'moods' and 'affects' disturb men's freedom. In this sense, to Weber, human action, to very different degrees, partakes of the empirical "meaninglessness" of natural change (Weber, 1949).

7. Bauman (1978:230), in his discussion of consensus and truth in science says that " the fullest understanding we can think of is still context-dependent and context-confined". See especially Chapter 10.

8 . Here we are paraphrasing Marx who, criticizing "one-sided" political understanding, said that:"for the heroes of the French Revolution the principle of politics is the will. The more one-sided, i.e. the more perfect, political understanding is, the more completely it put its faith in the omnipotence of the will; the blinder it is toward the natural and spiritual limitations of the will, the more incapable it becomes of discovering the real source of the evils of society". This paragraph is taken from his Critical Notes on "the King of Prussia and Social Reform"" (Marx 1975:413).

9. "The "others" may be individual persons, and may be known to the actor as such, or may constitute an indefinite plurality and may be entirely unknown as individuals" (Weber, 1968:22).

CHAPTER V

CONTRIBUTIONS TO THE CONTEMPORARY SOCIOLOGY OF LAW

Thus far our discussion has shown that Marx's and Weber's contributions are still very much alive, especially in relation to the sociology of law. Marx emphasised the necessity of looking to society for the origin and consequences of law; Weber (acknowledging this) reminds us that law has some specific properties of its own which makes it a distinctive element in modern societies. Both insights are central to the study of legal phenomena.

It must be admitted that both the Marxist and the Weberian conception of man take us away from the idea of 'inborn' rights, 'imprescriptible' rights, and also from the so-called 'human' rights if they are linked to the idea of some fixed, a-historical human nature. What is at stake in both conceptions, whatever the extant differences between them, is 'human freedom', freedom made possible by men themselves in a process of self-creation and self-realisation. Both Marx and Weber believed that men were perfectible and therefore capable of improving their freedom by their own efforts.

Weber's central preoccupation was a free and responsible man; what mattered to him was the quality of human beings as he shows in his assertion that science can neither give us, nor teach us the meaning of our lives. Science is not a value in and of itself. Science cannot create the value which makes it meaningful or useful because it is men who give meaning to the world. It is this preoccupation with men as meaningful and responsible beings which underlies his emphasis on 'understanding' and his 'methodological individualism'. This also allows us to call him a 'humanist', although a word of caution here is necessary.

It is known that the label 'humanist' has been attached, particularly within Continental philosophy to neo-Kantianism; but, acknowledging that Weber took and developed some positions from this stream, the contention here is that his humanism is of a different sort. He, like Marx, posed his philosophical and scientific problems in terms of an historical perspective on human possibilities and limitations. This means Weber's humanism is not grounded in any philosophy of the subject or merely upon anthropological considerations. Like Althusser, Weber does not conceive of man as a 'creator'. He sees him rather as a maker of products who, in his social relations, makes his own history. In this sense, he did not conceive men alone, as a-priori subjects making history; he recognised natural and social limitations, although, unlike Althusser, he did not see human beings as mere agents of the production process. Weber did not situate the 'unity' of mankind above and beyond social differences; he did not ignore the decisive significance of the social situation.

In Marx's case a communist society was not his ultimate aim but an approximation; his ultimate aim was human society in which man has all the conditions necessary for his development and self-affirmation. To both Marx and Weber, the freedom of men was a necessary condition of being human. While Marx stressed the need to overcome the socio-historical limitations on human freedom and the necessity of having real possibilities to choose from, Weber stressed the possibility of making responsible individual choices despite the real limitations placed on us by these contexts. To assert this does not mean that Weber saw man merely as a 'thinking ego'. He conceived man as an entity, a personalized and active agent, in a socio-historical context of meaningful social relations.

Feuerbach's anthropology transformed the concept of man by breaking with Hegelian and other abstract approaches to man, although he was unable to explain man in all his social aspects. Upon Feuerbach's conception Marx developed his own, which represents a turning point in comparison to earlier philosophical ideas. Weber takes off from Marx's conception but, because of new philosophical developments he introduced a problem shift that both limits and enriches the perspectives of social sciences.

Within a sociological perspective, both showed how barren were the pretensions of any metaphysics aspiring to explain and solve the problems of man. Marx and Weber accepted that scientific methods as well as philosophical reflections were necessary in order to deal with the realities of man. Weber went beyond Marx by showing us that

different branches of science have produced knowledge about man that is useful albeit incomplete. There are, for example, physical, biological and psychological approaches to man, each asking questions and adding knowledge through specialised methods. This must not be confused with the tendency of many scientific approaches which attempt to explain man in his totality by exclusive references to the subject matter of its own field. The result is the 'economic man', the 'legal man' as if each one of these aspects reflected the 'essence' of men but which therefore concealed all other aspects or possibilities. It is true that the concept of man as a whole, the 'total' man, must be the premise of such specialised works, although for scientific purposes the results are necessarily 'one-sided'. However, man is not a uni-dimensional or quiescent being in Weber's view. Given man's plurality of interests, ideals and postulates, and his multiple possibilities for development, Weber saw him as a creature in perpetual conflict. Furthermore, Weber saw that the concept of man belongs to the philosophical rather than the scientific realm. Since science was necessarily one-sided and selective in its analytic approach to man, no analysis, however rigorous, and no method, however precise, could give us the meaning of life. But he did think that a scientific approach could be helpful to man in his daily struggle. He stressed that science does not yield absolute certainty although it could assist us in the exploration of the meaning of certainty.

Marx attempted to express the dignity of man and his spiritual needs without ever resorting to ethics or religion. In contrast, Weber showed the ethical and religious aspects of human beings, claiming that

science is just one of man's products; a product which clarifies and gives alternatives. Which of these alternatives we decide to take depends upon other values and upon our conception of what kind of life and society are 'good' or 'better' for man. Our values influence the procedure of our research and even our conception of what scientific facts and laws are; there is no 'pure' science nor any 'pure' knowledge. However values do not originate with or within an isolated individual but grow and depend upon concrete socio-historical realities. In this way to decide something implies a dialectic of fact and norm, knowledge and value, society and individual. Moreover our personal 'welstanschauung' is partially based upon our knowledge of reality.

In their concern with man and freedom, Marx and Weber stressed different aspects which, in our view, are not mutually exclusive. It is another thing to admit that different interpretations of Marx and Weber have led to different conclusions and that, in logical terms, certain positions preclude the discussion of certain topics. For example, within a 'deterministic' interpretation of Marx, freedom becomes an alien ideal. This interpretation conceives necessity in a rigid way, as a set of laws independent of human action which determine the outcome of social processes in a unique way. To discuss freedom would be a verbal game. A Kantian interpretation of Weber's notion of freedom would also be incorrect. Weber does not conceive freedom in an a-historical vacuum or as an apriori condition of human nature. In our view both interpretations are mistaken. Weber, like Marx sees freedom as something created by human beings within the real possibilities of

socio-historical contexts. Though there are differences between Marx's and Weber's positions, it would be wrong to place them in opposite camps.

It is understandable that the concept of freedom is a complex one and that there are many controversies surrounding its content; but it is clear that both Marx and Weber valued freedom. It was in the name of freedom that Marx became a radical critic of society. His concern was freedom on the historical scale, in the sense of the rule of man over his own destiny, and on the individual scale, in the sense of the maximisation of individual choices in the determination of one's own life. Marxist humanism is based on the recognition that men make their own history and history discloses to us nothing other than their action. This latter view was shared by Weber whose interpretive sociology took the individual as a methodological point of departure. Weber's position is not a subjectivist humanism, because he acknowledged the limited autonomy of men as existentially involved in society. It is possible to say that both Marx and Weber would agree with Mills (1959:174) that:

The future is not inevitable, the future is what is to be decided - within the limits, to be sure, of historical possibility. But this possibility is not fixed; in our times the limits seem very broad indeed.

Free Will and the Legal Order.

The problem of freedom and - in 'individualistic' terms - of 'free will' is one of the oldest problems in Western philosophy. Because of

its wide scope, multiple manifestations and changeable content through history, it is almost impossible to formulate it clearly. But our aim is not to discuss the problem of freedom as such but only to point out its relevance in Marx's and Weber's work, and to elucidate the connection between the concept of freedom and the law. It is not our purpose here to say exactly what freedom is; there are numerous definitions of freedom. However, we will make some suggestions that could help us frame basic concepts of the sociology of law.

The problem of freedom is crucial for the sociology of law because whatever content one gives to freedom and whatever system of law one talks about, a conclusion about what it means (if anything) to be 'truly free' would affect one's attitudes to law and likewise to the rest of life. Law is linked to freedom from a double perspective: as a presupposition of all legally valid agreements and actions and as a goal legislation must always take into account. Without discussing here the various concepts of freedom used by jurists and legal scholars, one thing is certain: political rhetoric appeals to 'freedom' in many contexts, and the rhetoric may become embodied in legal principles. As Harris (1980) says, in westernised societies, law is linked to notions of freedom in two ways: firstly, as a presupposition of all legally valid agreements and, secondly, as a goal of human action that legislators and jurists must take into account (to promote or constrain).

Negative and Positive Freedom.

The concept of freedom upon which most bourgeois legal philosophy and practice is based derives from the Kantian concept of freedom. This principle of political freedom is in Kantian terms (Fetscher, 1967:238):

...that no one can force me (in so far as he considers another's person's welfare) to be happy in his way, but each must seek his own happiness in the way that suits him best provided that he permits another the freedom to pursue a similar goal; it is therefore possible to formulate a universal law for the freedom of all which does not interfere with the freedom of each.

As we can see, this Kantian concept refers only negatively to other men, regarding them solely as the unavoidable legal barrier to one's individual whim or caprice. Freedom is then seen as an absolute and taken for granted value, forgetting that freedom is meaningless unless appropriate socio-historical conditions make it operational. In the legal sense, for example, all men are formally 'free' - in a free society - to dine at the best restaurant, there being no law to prevent it.

Following here Sir Isaiah Berlin (1969), it is helpful to draw a distinction between negative and positive freedom. Negative freedom refers to an absence of interference. In Berlin's sense this negative freedom does not mean just the absence of frustration, which may be obtained by suppressing desires. It means the absence of obstacles to possible choices and activities or the "absence of obstructions on

roads along which a man decide to walk". On the other hand, positive freedom means in Berlin's opinion, the opportunities to act, to choose for myself in a way that is free from external constraint. Berlin's positive freedom has to do with the human (anthropological) possibilities to choose rather than with the social real possibilities to act. Both are complementary, one being incomplete without the other. He adds that to work towards just one of those two faces of liberty generates great and lasting evils. For example, in the case of negative freedom, the advocacy of non-interference has supported the strong against the weak; "freedom for the wolves has often meant death to the sheap", says Berlin in the Introduction to his Four Essays on Liberty (1969). This negative freedom would be exemplified by extreme individualism, and within a legal conception, the basic human rights are an example of this face of freedom: freedom of speech, conscience, etc. These examples correspond to a liberal interpretation of rights which sees them as 'natural' rights that do not have to be developed but which merely have to be recognised.

Berlin adds that it has been the positive freedom, which in the last one hundred years, has shown more disastrous implications. Berlin links this positive face of liberty to the question "By whom am I governed?" and, in this sense, to the type of government (authority) a society has. In his view, a "democratic-self government" is the ideal government, "something valuable in itself". As we can see his treatment of positive freedom is still within the vocabulary of an individualistic politics and, although Berlin opened the door to a wider content, in the last analysis, his notion of positive freedom is

based, as he himself says, "on the wish on the part of the individual to be his own master" (1969:131). But if we add to Berlin's conception of positive freedom the social connotation - within a concrete socio-economic context - of real opportunities to choose from, we would enrich this notion of positive freedom. It would be linked to more than a simply "deciding" being which Berlin considers. Instead, it would apply also to the social circumstances that shape the individual's decision.

In Berlin's discussion of freedom and within his liberal claim against "determinism" (historical inevitability), he fails to consider that men possess not only "reason and will"; some possess the power derived from things and commodities while others possess nothing of the sort and have only their labour-power. As Paul Starr (1982:3) has so succinctly put it: "The dream of reason did not take power into account". Insofar as men are treated as possessing only will and reason, as merely deciding beings, their so-called positive freedom is rendered useless.

Positive Freedom. A Sociological Analysis.

In the sense of the real, socio-economic opportunities to act and to choose from, sociology can illuminate and enlarge the concept of positive freedom. Without the sociological component, freedom is more likely to be conceived as something 'abstract' or 'innate' which can be used or controlled but does not have to be created and fought for.

Marx saw that the free development of the human individual is the historical process tied to the socio-economic development of society and to the active cooperation of the other individuals. Even Hegel - before Marx - criticised the limitations of Kant's 'negative' conception of freedom in his Philosophy of History (Fetscher, 1967:240). Hegel says that the state is:

...not an assemblage of people wherein the freedom of all individuals must be limited. Freedom is only negatively comprehended when it is represented as if the individual in his relations to other individuals thus limited his freedom in order that this universal limitation - the mutual constrain of all - might secure a small space of liberty for each.

But it was Marx who most completely pointed out the limitations of the liberal conception of freedom which supposed a very Eden of the innate rights of man where there alone rule Freedom and Equality. Hegel's conception was superior to the liberal one because of his ability to grasp the dialectical relationship of the individual to society, but his conception still remained metaphysical in that it asserted that man finds and can exercise freedom in the Ideal realm, not in the world of workaday personal relationships. Hegel presented the social individual only in the idealist abstract form of subjective and objective spirit, relegating concrete man, as well as the civil society formed by him, to a sphere of lower rank (Fetscher, 1967).

Marx showed that individual freedom could be reached only within and through society and that man has to be conceived in his empirical and concrete life, not as an abstract and isolated citizen. Furthermore he showed that the goal of individual freedom in the

'political state' was going to remain utopian as long as real inequalities in the opportunities for individual development remained. To him it was necessary to transform the "Liberty, Equality and Fraternity" of the purely political citizen into living energies of living men. He elevated 'revolution' in social conditions and relations to the level of an absolute requirement.

Weber was more concerned with the actual daily struggle for existence than with any future unalienated and totally free society. He stressed the 'quality' of the human being, that is his potentialities in the search for freedom, in accordance with his conception of personal responsibility. But Weber was not like Kant. He did not reduce freedom to a purely internal matter of self-determination. The economic element regarding the scarcity of goods along with the Marxist concept of class struggle was taken into account in Weber's work. There are clear links between the Marxian concept of class struggle and Weber's economic approach to class, the scarcity of goods and life chances. Weber's attempt to define and differentiate aspects of social relations results in a very distinctive and complex sociological position. Though some Weberian concepts are in contrast to some less definitive sociological concepts of Marx, the works of latter day Marxists are quite compatible. Althusser and Poulantzas, for example, regard the political and economic spheres of modern capitalist societies as relatively autonomous, in a way reminiscent of Weber. Hence, the fact that current socialists and Marxists have, like Weber, retained much of the liberal conception of freedom seem less strange than it otherwise might. In the near future,

theoretical developments may transform other apparent conflicts and contrasts into equally compatible or complementary conceptions of social reality.

At present in all countries - including the socialist countries - the troubles and issues raised by the crisis of freedom and reason are apparent. At the same time, contemporary goals regardless of the legal system, centre on the idea of free men in a free society. The preoccupation with constitutional guarantees for every person-citizen within socialist and other legal systems points up two different but related phenomena. On the one hand, it shows that a political revolution which establishes the equality of all citizens before the law is not enough because legal freedom is not sufficient for the liberation of man. On the other hand, within socialist states, this constitutional preoccupation was necessary to extend the juridical and constitutional guarantees of the 'citizens' as an undeniable inheritance from the political revolution.

The concept of civil or political liberty founded by parliamentary or political democracy and theorised, among others, by Locke, Montesquieu and Kant, represents basically the personal liberty of the members of the civil society composed by individual producers. The other concept of liberty is that of egalitarian or social liberty developed by social democrats and theorised primarily by Rousseau and later by Marx and Engels. Socialist legality is an attempt to resolve into an historical synthesis some liberal principles which are compatible with the socialist philosophy. In this task a juridical

structure for the implementation of justice and equality is important. Paraphrasing Poulantzas (1973:20), the liberal elements which recur in socialist legality gain a different meaning in this new context; the difference is evident in the acknowledged social character of freedom. However, we cannot deny an historical extension of certain liberal political features into the present philosophy of socialist legality. And, in regard to this theme of social and individual freedom - which is at the core of any legal system - an analysis of Marx's and Weber's contributions is illuminating.

The Theme of the Individual Subject.

A problem arises in the contemporary analysis of law and society when the famous question of the real existence of individual-subjects is analysed. According to some Marxist interpreters (Poulantzas, Althusser), the existence of such subjects cannot be accepted. After explaining that the term "bare individual" Marx used has been utilised by Marx only in a descriptive way, Poulantzas(1973:127) writes that:

...so in the scientific Marxist problematic, this famous real existence of "individual-subjects", which is ultimately the basis of the problematic of "civil society" and its separation from the state, cannot be accepted.

As we already have seen, in Weber's, view the individual always existed as an agent of thought and action. The individual choice of values is at the core of his theory. However as it has been explained, Weber did not use the term 'individual' as if in reality those agents

arise as atomised individuals, to be later inserted into combinations of capitalist relations of production and then gradually to constitute social classes. According to Poulantzas (1973:126) however, this is exactly the way the term "bare individual" has been utilised. He uses this interpretation of what Marx says in the Grundrisse, especially in the chapter on Pre-Capitalist Economic Formations; To Poulantzas the term "bare individual" is an a-theoretical presupposition, an a-historical condition of the Capitalist Mode of Production.

In Poulantzas' analysis, the capitalist law has fostered the concept of the 'individual' through the political institutionalisation of people as juridical subjects rather than as agents of production. To see individuals exclusively in terms of this juridical reality denies the relevance of their economic determination and their class membership as agents of production. In our opinion it is correct to assert that law makes an abstraction of social classes, but on the other hand, as Weber says, individuals do not act and exist only as members of a class nor are they mere "legal fictions". They are more than just the "supports of structures" (in Poulantzas' terms), because they also can change those structures. Weber's contribution, despite the many interpretations one can make of his work, and in contrast to Marx, sees the individual not merely as a 'fabrication' of capitalist law. Although he acknowledged the part social influences play in shaping and limiting the individuals, he maintained that personal, individual actions and decisions were possible and important. At present, these two controversial visions are not seen as basically incompatible because ontologically there is no opposition between

individual and group and also because within modern science neither one of them can claim scientific superiority.

Marx pointed out that the juridical (and ideological) structures produced an "effect of isolation", in Poulantzas' terminology, by concealing from the "agents of production" the particular fact that their relations are class relations. In this sense he showed how narrow the juridical concept was and he enriched it with a sociological perspective; a perspective which allows us to locate and to examine law and legal subjects within the socio-economic relations of a mode of production and the concept of class struggle. Weber, on the other hand, although recognising the 'one-sidedness' of the legal perspective, suggested that the relations and manifestations of individuals cannot be reduced to class relations, and that individual actions are not totally determined by the belonging to a certain socio-economic class. In this sense Weber's work calls for an analysis of the influence of non-class forces and relations in the political arena as well as of the state and its legal forms. At present, feminist movements, racial movements and peace movements would constitute interesting examples in this direction.

The Theme of the Juridico-Political Ideology.

With no further discussion on the topic of the individual-subject or agent/producer within Marx's and Weber's contributions, let us say that in relation to political ideology and capitalism, as Poulantzas

(1973:212) recognised: "There is no better analysis of this dominance of the juridico-political in capitalist ideology than Max Weber's". It is important to note that from a critical perspective, Weber's contribution on the topic is taken into account by contemporary Marxist analysts. Poulantzas (1978, 1975, 1973) has emphasized the relevance of the legal forms and juridico-political ideology in mediating the politics of class struggle. He recognises law as a relatively autonomous and effective sphere and shows the close articulation between law, state and ideology. Within his class struggle perspective, he links these instances within the economic one. Poulantzas (1973:221) also analyses the problem of "legitimacy" acknowledging the importance of Weber's work on the topic, although adding that " after Max Weber, this notion [of legitimacy] was, however, incorporated into the functionalist problematic..."(1973:221).

In relation to the problem and theory of elites, Poulantzas' discussion centred around the problem of bureaucracy. He used Weber's analysis saying that "...although he [Weber] is open to many criticisms, it can be stated with certainty that he has made the most successful attempt at elucidating the problem" (1973:326).

As commented elsewhere, Althusser's work (1979,1969) is notable for its rejection of all moral and political humanism. His position is totally anti-subjectivist and this partially explains his stress on Marx's "epistemological break". In For Marx (1969) Althusser dissociates the mature from the young Marx on the grounds that the latter was enmeshed in a philosophical anthropology founded on the

demand for the restoration of alienated subjectivity. His thesis is that scientific Marxism derives from an epistemological break with all forms of humanism. In this view, Marxism proper is based on a science of structures, forces and shapes which requires no constituting consciousness, no subjectivity, no cogito. Although this approach was worked out in relation to epistemological problematics, it has also been applied in the analysis of political economy, the state, law and ideology. The Althusserian approach argues that a mode of production and, by extension, a society, is a complex structured whole with causal priority over its economic, political and ideological parts. These parts are regarded as relatively autonomous regions, which nonetheless condition each other. The whole structure can be characterised by the dominance of one region (economic, ideological or juridico-political) over the other regions but is subject to economic determination "in the last instance". In this structural whole, the individuals function merely as the passive trager or porteurs (supports) of the social relations entailed in the self-reproduction of the social whole.

Althusser (1979:42) opposes the orthodox conception of economic determinism and he focuses on the specific properties of the several regions as if they were autonomous:

the process of economic production takes place entirely in the economy, even though it implies, and precisely in the specific determinations of its structure, necessary relations with nature and the other structures (legal, political and ideological) which, taken together, constitute the global structure of a social formation belonging to a determinate mode of production.

In his anti-determinist commitment as well as in the relative autonomy he gives to the different spheres or regions, Althusser is close to Weber's position, however far they are from each other in regard to the 'subject/individual' theme (and consequently to an 'interpretative' sociology). In criticising the empiricist conception of knowledge, Althusser (1979:37,38) also develops some of Weber's views. Weber's position on the construction of social science is first elaborated in his criticism of the confusion of the historical process with thought about that process; that is, the confusion explained earlier, of reality and thought about that reality. Althusser develops the same argument, saying that this confusion, which in Hegel takes the form of an absolute idealism of history, is totally clarified by Marx. In Althusser's opinion (1979,41):

When Marx tells us that the production process of knowledge, and hence that of its object, as distinct from the real object which it is its precise aim to appropriate in the "mode" of knowledge, takes place entirely in knowledge, in the "head" or in thought, he is not for one second falling into an idealism of consciousness, mind or thought, for the "thought" we are discussing here is not a faculty of a transcendental subject or absolute consciousness confronted by the real world as matter; nor is this thought a faculty of a psychological subject, although human individuals are its agents.

Althusser (1979:46) also says that Marx (in Capital) "declares that the order which governs the categories of thought in the process of knowledge does not coincide with the order which governs the real categories in the process of real historical genesis". In other words, there is a question as to whether there is an identity between the so-called logical order and the real historical order. We have seen already how Weber posed this problem, which can be well summarised in

his famous sentence "It is not the "actual" interconnections of things but the conceptual interconnection of problems which defines the scope of the various sciences" (1949:68). On the issue, and in accordance with the problematic of the "real" object and the object of knowledge, Althusser says that there is a radical distinction between the order in which "categories appear in knowledge, on the one hand, and in historical reality on the other. There is no one-to-one correspondence between the logical order and the real order" (1979:47). Also within this epistemological problematic, Poulantzas (1973:12), following Althusser, acknowledges a distinction between the "real processes" and the "processes of thought", and emphasises that "no concepts are more real than others". He says (1973:12):

Theoretical work proceeds from a raw material, which consists not of the 'real-concrete', but of informations, notions, etc. about this reality, and deals with it by means of certain conceptual tools: the result of this work is knowledge of an object.

It will suffice to quote Weber, who in "A Critique of Eduard Meyer's Methological Views" (1949:175) says:

...The simplest historical judgement concerning the historical "significance" of a "concrete fact" is far removed from being a simple registration of something "found" in an already finished form. The simplest historical judgement represents not only a categorically formed intellectual construct but it also does not acquire a valid content until we bring to the "given" reality the whole body of our "nomological" empirical knowledge.

The pertinence of these scattered examples should be apparent. They provide suggestive indications concerning the common assumptions extant in Marx's and Weber's work and how an understanding of their

contributions is relevant for contemporary theories of law, the state, and juridico-political ideology, both from Marxist and non-Marxist perspectives.

Some Examples of Contemporary Marxist Theory on Law and Society.

Within contemporary Marxist theory, Bernard Edelman (1980;1979) and Paul Hirst (1979a; 1979b; 1976) have both adopted an Althusserian approach to ideologies and ideological practices to produce interesting and distinctive theoretical frameworks for the analysis of legal phenomena. Again, in both works, the problem of the subject arises. One of Edelman's main topics is the juridical constitution of the legal subject as reflected in bourgeois political philosophy, while Hirst, inveighs against identifying the legal subject with the human subject. In his work Law and Ideology (1979b) Hirst develops a theoretical approach to law via an interesting critique of Pashukanis and Renner who, in Hirst's opinion, must be criticised, not from their deviation from the central canons of Marxism but for their too faithful adherence to the logic and structure of Capital; a logic which, according to Hirst, inaccurately specifies economic subjects as human subjects and which allows Pashukanis and Renner to translate this concept of the economic subject into the realm of law. However Hirst's own results are very close to what he criticised. Hirst re-introduced the economic subjects, by casting them as legal subjects. Weber's work on conceptual construction, his view that concepts do not apprehend any 'essential' components, and his discussion of how different realms of knowledge borrow concepts from each other or use them in common, can

throw light on the analysis of Hirst's 'theory' of law. Hirst claims Weber's sociology involves subjective reductionism because "all social relations are reduced to the plane of inter-subjective relations" (1976:80). In his criticism, Hirst ignores the centrality of the theme of compulsion and fate and the importance that Weber gives to groups and structures in limiting and influencing individual human action.

The Theme of "Legitimation".

The problem of 'legitimation' constitutes one of the pivotal themes in Weber's sociology. It is also of great importance to Marx, whose criticism of legitimating ideologies was part of a theory that challenged the legitimacy of existing social relations in the capitalist world. This centrality of legitimation for social analysis, in connection with law and the state, appears to be well established given the vigor of contemporary and, in particular, Marxist analysis of law. Without saying that Marx's or Weber's contributions constitute 'models' or contain complete theories on law and society, their contributions on the topic still have much to offer. In order to establish a theoretical base for the sociology of law, both works must be analysed comparatively within a critical approach. It makes no sense to appropriate one of their contributions at the expense of the other. Given the complexity of conceptual and theoretical reconstructions, we have sought no simple or partisan solutions. Our contribution hopefully might re-open and reinvigorate a dialogue between Marxian and Weberian contributions to the sociology of law.

Weber's emphasis upon individual choice and personal responsibility leads to a sort of ethical personalism which stresses the development of the individual. In this particular point, the common frontiers with modern legality based on personal freedom are apparent. Legal postulates - with variations according to the different systems - usually owe their recognition, in the last analysis, to the belief in an ethical personalism. Yet, what makes Weber's position crucial for the sociology of law is precisely that he analyses law from neither an ethical nor a moral position. Neither has he analysed law from the point of view of the Dogmatic Jurisprudence or any other legal point of view. What he has done has been to enrich and explain these standpoints from a sociological perspective. Weber treated law as one important element in modern Western society, which in its interrelations with other elements of the social structure, has contributed historically to the development of the capitalist mode of production.

Given the current rediscovery of the sociology of law and the neo-Marxist revival in sociology the significance of Marx's and Weber's contributions to a conceptual scheme is apparent. For these developments to converge and bear new fruit the sociology of law must undergo its own process of theoretical reconstruction. Paraphrasing Althusser, the sociology of law cannot exist unless the theory of its concepts already exists.

In this endeavour an understanding of the philosophical grounds of Marx's and Weber's work is necessary. Epistemological questions are

also very important because they require constant and critical renewal of interpretations in the various domains in question. Very little understanding would be achieved in any analysis of Marx's and Weber's contributions to the sociology of law without taking into account their philosophical presuppositions.

In the light of the entire discussion it should be clear that Marx and Weber share many fundamental premises. The proximity of many of their theoretical developments makes it possible to see more complementary and compatible conceptions and fewer insoluble problems than before. Crude dichotomies such as idealist-materialist, or individualist-collectivist do not adequately reflect the richness of their theoretical positions. Marx and Weber converge on many points. Both of their conceptions of human nature and of man himself are developed along similar lines. They reject an a-priori, 'original' human nature and conceive man within concrete historical and social conditions. This conception precludes any given anthropological humanism and unveils a humanism which accentuates man's specificity under given social conditions. Both recognised a relative freedom in human beings, who are, however, conditioned by anthropological, historical and social circumstances.

Marx and Weber share a genuine philosophical preoccupation with man's place in the world. In this, both are opposed to any idealism. Furthermore, they are against naive realism in the acknowledgement of the distinction between the object of knowledge and the real object. They rejected theories of knowledge based on the obviousness of the

'given' in the sense of that which is immediately visible and observable. In this position, they are also very far removed from empiricism.

Neither Marx nor Weber saw concepts or institutions of mankind as spontaneous creations. These were to be seen as the products of concrete men engaged in the historical 'practice' of living: theoretical practice, social practice, political practice. In his call for practice to be seen as a distinctive form of human activity, Marx's main concern was with mass and group actions, specifically social class actions. Weber, in contrast, stressed individual, personal action. His concern was with the responsibility of the individual. Whereas Marx stressed the necessity of revolutionary social action and the individual commitment to it, for the realisation of freedom, Weber stressed the need for individuals to take responsibility for their daily decisions if they wished to achieve freedom for themselves and for others. In their preoccupation with freedom - social and personal - there is a common frontier in Marx's and Weber's contributions. Both see freedom as something valuable to men; as a project of mankind and as such realisable in history.

This theme of freedom and specifically the so-called 'freedom of the will' is a familiar topic among legal and political philosophers, since the law is regarded as the sphere within which and through which freedom is realised. Notions concerning 'responsible human acts' and 'moral freedom' of the individual, permeate legal propositions of all sorts, regardless of philosophical orientations. Although freedom is

traditionally 'given' in law, it is nonetheless a problematic area, since it is often necessary to establish the conditions under which moral decisions and responsibility can be assumed. Our contention is that the sociological insights of Marx and Weber can and should be considered for the light they can shed on such problems. Both Marx's critique of the incomplete freedom established by bourgeois legality and Weber's analysis of the tension between formal legal discourse and substantive legal goals, imply that purely legal approaches to freedom and justice are inadequate.

Without doubt sociological analyses could broaden and substantially enrich legal perspectives and activities in that substantive domain where lawyers and sociologists share a common concern. The treatment of legal phenomena and the scientific analysis of the conditions which modify and maintain legal institutions are obviously relevant. This does not deny that law is also a normative phenomenon, with distinctive characteristics, making itself felt in society. Jurisprudential and legal developments are also relevant within a more comprehensive analysis of law and society. Sociology of law must be jurisprudentially informed. Marx's and Weber's positions have connections with a wide variety of philosophical reflections on the nature of man and reality. When comparing their works in this broader philosophical content, the debate opens up questions that go beyond those directly concerned with the sociology of law. Due to this fact and also because Marx's and Weber's contributions show at the same time similar, different and sometimes 'incommensurate' theoretical developments, we do not present a synthesis in which their basic

differences would somehow be concealed. Nonetheless we have hoped to bring to the surface here some of those cross-cutting issues and debates, in order to stimulate fruitful contributions for the new perspectives in the sociology of law.

Theory construction within the sociology of law therefore would seem to open up a new approach based on a convergence of Marx's and Weber's works. What is relevant is that these converging analyses seem to demand a parallel and correlative revision of legal premises as well of the classic interpretations of Marx and Weber.

The topics discussed in the context of this thesis hopefully have provided important guidelines in this endeavour. We have scarcely been able to do more than stress the importance of few fundamental themes. The enormity and the importance of the task to be done at the level of theorising within the contemporary sociology of law, is surely obvious and hopefully the dialogue will continue and broaden.

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