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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.