BOOK REVIEW

Reconstructing Max Weber's Sociology of Law

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Max Weber is not always thought of as a legal theorist. Yet he did produce a major essay on the role of law in capitalism. This work has been widely cited, but not fully understood. Weber is insightful, but often delphic. He is hard to classify. He seemed to reject the liberal and the Marxist legal theories of his time, while drawing on both. He displayed an immense erudition in legal history and comparative law, and he was a social thinker of unassailable stature. It is no surprise that those who discovered Weber's sociology of law have treated it as a text worthy of careful scrutiny.

Armed with this faith, scholars have set out to interpret the section of Weber's monumental Economy and Society that is actually called the Sociology of Law.¹ But this text is neither self-con-

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¹ Although Max Weber wrote about law at several points in his career, the most extended discussion is contained in Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie which was originally published posthumously in 1925. The definitive German text, which differs from the original in many regards, is the 1956 edition. An English translation, based on the 1956 German version and edited by Guenther Roth and Claus Wittich, was published in the United States in 1968 under the title Economy and Society: An Outline of Interpretive Sociology. This version was reissued in 1978, and it is to the 1978 printing that the subsequent citations refer [hereinafter cited as ECONOMY AND SOCIETY]. Chapter VIII (in the English text), which deals with law in economy and society, was given the title the Sociology of Law by Weber's widow, who had the task of assembling the parts of the incomplete text after his death. Id. at LXXXI n.85. Kronman's study takes this chapter as the central text, but interprets it in light of Weber's other writings on law in Economy and Society and elsewhere.
tained nor finished. It was but a small part of a larger work, which Weber was working on at his death and is hard to make sense of in isolation from the whole. The existing text called the Sociology of Law seems to be a series of isolated essays whose interrelationships are hard to grasp. It is a struggle, therefore, to solve the two key problems in interpreting this work: How do the parts of the Sociology of Law interrelate? And how does the Sociology of Law fit into Weber's overall work? Unable satisfactorily to resolve these dilemmas, and thus fully to understand his legal theory, scholars have been forced to incorporate bits and pieces of Weber's thought into their accounts of law, while maintaining the hope that further exegesis would unveil the synthesis they sought in Weber's work.

I. A Key to the Cipher

All this may change now that Anthony Kronman has published his study of Max Weber as jurist. This book, produced for the series Jurists: Profiles in Legal Theory, is an intellectual tour de force. It is the best study of Weber's legal thought published in English, presenting complex material with incredible clarity. It is important not just for legal theory, but also for philosophy and the social sciences. Kronman, a lawyer and philosopher by training, not only has created an interpretation of the Sociology of Law that interrelates its separate parts, but also he has offered an account of how Weber's legal thought relates to Weber's ideas on social science, ethics, and even religion.

Kronman offers original answers to some of the central problems that have plagued interpreters of Weber's legal thought. He employs philosophical analysis to explain how the text on law fits together as a whole, and how it is related to other aspects of Weber's work. Rather than locating the underlying structure of Weber's ideas in legal concepts, sociological or economic analyses, or historical experience, Kronman asserts that Weber's ideas about law have a philosophical coherence which relate them to the larger body of his thought. For Kronman, Weber's apparently disparate ideas about law can best be understood and systematized if they are seen as deriving from views Weber held about the nature of knowledge, ethics and human action.

The project seems somewhat improbable. Given the obvious confusions and contradictions in Weber's text—which Kronman
documents—can we hope to find any key that would render the text coherent? And if there were, why should we think that the Rosetta Stone for interpreting Weber’s *Sociology of Law* could be found in philosophy? After all, Weber thought of himself as a social scientist and eschewed systematic philosophical analysis. Kronman’s effort to employ philosophy as an interpretive tool was a gamble. But it paid off. The method helps clarify passages which have long remained obscure. In arguing that the key to Weber’s ideas about law lies in his existential ethics and epistemology, Kronman has produced the most comprehensive and coherent account of the *Sociology of Law* to date.

II. Weber’s Theory of Law in Society

Kronman suggests that Weber questioned many of the ideas about law in society prevalent in Weber’s time. Kronman discusses ways in which the fragmentary text of the *Sociology of Law* can be read as a unified whole. Yet, he also brings to light flaws that cast doubt on the faith that Weber produced a satisfactory alternative social theory of law.

Weber confronted two very different accounts of law. He certainly was aware of the “liberal” story, which presented legal development as the evolution of human reason and the realization of liberty and equality. In this account, law arose from popular struggle, and reason was employed to overcome prejudice and tyranny, and to perfect liberty and equality. But Weber also understood the views held by many nineteenth-century followers of Marx, which were diametrically opposed to the “liberal” story. In this rather mechanical version of Marxist legal theory, law is presented as nothing more than the “reflex” of underlying economic relationships. Legal development was determined by the relationships of production and law served the interests of capital by simultaneously promising liberty and equality while effectively operating to deny them.

There is no doubt that Weber rejected the liberal and Marxist approaches. For example, unlike those who stressed economic determinism, Weber recognized that the legal order had a degree of autonomy from economic relations. Yet Weber also realized that economic factors significantly influenced legal development, and that the economically powerful had greater influence on the law than the weak and dispossessed. He understood that many of the cherished liberal notions about the rule of law and its social
role were as much fiction as fact. Weber also understood that the liberal promises of “freedom” under law—for example, through freedom of contract—could in certain historical circumstances lead to subjugation rather than to the perfection of liberty. It is because there are passages in which Weber said all these things that he has represented a third way in social thought about the law. His approach seems to avoid the oversimplifications found in both the liberal and Marxist accounts of law in his time, and, to some extent, in our own. These hints of an alternative vision lead scholars to conclude that Weberian legal sociology might offer a more cohesive, powerful, realistic, and historical approach to understanding the law’s role in society.

This hope has helped drive the substantial enterprise of “Weber interpretation” in legal studies. Whether they started as liberals and moved toward ideas developed in the Marxist tradition, or began with Marxist notions and found a need to modify the classical Marxist account of law, legal scholars who have struggled with Weber’s fragmentary text, tortured prose, immense erudition, and occasionally inconsistent use of terms have done so because they hoped to find “a better idea.” Impressed with the many pithy quotes and insightful observations they found scattered across the unruly landscape of the text called the Sociology of Law, and awed by the incredible reach of Weber’s scholarship, these scholars hoped that the answer to the Weber riddle would enrich the understanding of the role of law in society.

Much has been learned from these efforts. The struggle to make sense of Weber’s discussion has forced scholars to clarify and develop their own beliefs about law in society. Weber’s ideas have been appropriated by those who see themselves as classical liberals, modernization theorists, or critical scholars. All this is

2. Robert Gordon has provided an excellent discussion of the limits of these two accounts of law in society, and a description of current efforts to go beyond them. Gordon, New Development in Legal Theory, in The Politics of Law: A Progressive Critique 281 (D. Kairys ed. 1982). Roberto Unger’s Law in Modern Society (1976) [hereinafter cited as R. Unger] should be read as an effort to retell the story outlined in Weber’s Sociology of Law from a perspective which transcends liberal, Marxist, and “Weberian” approaches.


useful, but it has failed to produce a uniquely "Weberian" approach to the social theory of law. Still, this approach has remained an aspiration, and has inspired the numerous efforts at Weber interpretation that continue to this day.\(^5\)

Kronman's work, however, presents the disturbing possibility that Weber never produced a theoretically powerful synthesis of prior theories of law in society. And what if Weber did successfully distance himself from all the obvious and simplistic accounts of "the rule of law" present in the European thought of his time, but failed to produce a coherent alternative? What if Weber's Sociology of Law is more an unstable amalgam of observations that derive from several different and probably incompatible traditions, rather than the outline of a new theory of law in society? The answers to these questions would help in understanding why Weber has been appropriated by people with such different views, but at the same time would cast doubt on the value of further effort to reconstruct his thought.

These are the questions that Kronman's excellent book forces us to confront. Kronman's Max Weber represents a paradox of the type Weber himself would have loved. This book shows that ideas about law can be reconstructed in a way that makes Weber seem more coherent than many had taken him to be. But in producing the most comprehensive and understandable account of Weber's legal thought, Kronman has brought to light a fault line that seems to cut through Weber's work: Striving to show Weber's clarity and consistency, Kronman has unearthed Weber's theoretical incoherence.

The basis for this conclusion, and for my view that Kronman's book itself illustrates Weber's famous dictum about the paradox of intention and result, lies in an analysis of Kronman's development of his thesis on the thematic unity of Weber's ideas. He analyzes the major concepts and parts of the Sociology of Law from the viewpoint of Weber's philosophical ideas. In a meticulous reconstruction of the major themes of the Sociology of Law, Kronman provides a brilliant reinterpretation of Weber's famous fourfold typology of legal "reasoning," which Weber divided into

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"formally irrational," "substantively irrational," "formally rational," and "substantively rational" modes of thought. Kronman explains what Weber meant by "formally rational" legal thought. He analyzes Weber's views of how formally rational legal thought relates to the ideals and institutions of capitalism. Further, Kronman explains how Weber's discussion of freedom of contract develops and fits to other parts of the Sociology of Law; and he helps us understand the relationship between Weber's famous threefold typology of legitimate authority—traditional, legal-rational, and charismatic—and his concept of modern law. In these and other aspects of Weber's legal thought, Kronman finds an underlying unity that embodies a set of fundamental philosophical commitments.

Kronman also recognizes that to demonstrate the unity of Weber's thought, he must grapple with passages that seem to contradict the interpretation he wants to provide. It is not that Kronman cannot find support in the text for Weber's dominant themes: Kronman is a meticulous scholar who carefully documents his central thesis, but who also recognizes that Weber often contradicted himself. Thus, even though the central thesis Kronman presents is well supported, one could create a different story from other passages and statements in the text. Kronman knows this and tries to leave nothing on the cutting room floor. Indeed, he often introduces and analyzes passages that are most problematic for his own account, and harmonizes apparent dissonance, but also recognizes that some conflicts cannot be construed away.

In his search for the basic principles that underlie Weber's thought, and in his struggle to provide a harmonious interpretation, Kronman has revealed even more than intended. At the end of the book he finally reaches the conclusion that many of Weber's thoughts about law were contradictory. The book which sets out to show the unity of Weber's Sociology of Law, and which accomplishes this goal better than any prior interpretation; also becomes the final proof of the conclusion that Weber did not have a well-defined, coherent theory.

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6. Pp. 72–95; see also 2 Economy and Society, supra note 1, at 656–57.
III. RECONSTRUCTING WEBER ON FORMAL RATIONALITY IN MODERN LAW

Kronman observes that "it would not be too far-fetched to describe the entire corpus of Weber's substantive writings as a sociology of modernity. The Rechtsoziologie [Sociology of Law] is only a part of this larger enterprise." This observation is central to the structure of Weber's work on law. Weber's writings on law represent the effort to identify what is unique about the legal traditions of the West and to relate these unique features to the development of capitalism. Indeed, for Weber, the problem of "modernity" was the problem of Western history. Although in our times the problem of modernity has become a universal question, in Weber's it was seen as a question of why the West took a unique developmental path. Thus, as Kronman suggests, Weber's Sociology of Law should be read as addressing two questions: First, in what ways are the legal systems of the West different from those in other civilizations? And second, what is the relationship between the unique features of Western law and the rise and expansion of the capitalist economic system?

Weber identifies many features of the Western legal tradition which, he thinks, warrant explanation. Among these are the rise of purposive contract, the gradual replacement of special (local and group) law with uniform national rules, and the growth of an autonomous legal profession. But the unifying thread of the Sociology of Law is Weber's analysis of how Western law has become "rationalized," how it has come to take on certain features which Weber described as logical, formal, and rational. In Weber's view, the logical, formal rationality of continental European legal systems marked the highpoint of Western legal "rationalization." This form of legal thought, he suggested, was conducive to capitalist development because, inter alia, it provided the "predictability" and calculability which Weber thought capitalist enterprise requires.

Anyone who has read Weber on the nature of logically formal rationality understands the immense difficulty which these terms present. Weber's famous four-fold classification of the categories of Western legal thought is set forth in the first section of the Sociology of Law. In that dense, but central, passage, Weber divides legal thought into four types: formal rational, formal irra-
tional, substantive rational, and substantive irrational.\footnote{Weber's description bears quoting at length: Both lawmaking and lawfinding may be either rational or irrational. They are \textit{formally} irrational when one applies in lawmaking or lawfinding means which cannot be controlled by the intellect, for instance when recourse is had to oracles or substitutes therefore. Lawmaking and lawfinding are \textit{substantively} irrational on the other hand to the extent that decision is influenced by concrete factors of the particular case as evaluated upon an ethical, emotional, or political basis rather than by general norms. "Rational" lawmaking and lawfinding may be rational in a formal or substantive way. All formal law, formally at least, relatively rational. Law, however, is "formal" to the extent that, in both substantive and procedural matters, only unambiguous general characteristics of the facts of the case are taken into account. This formalism can, again, be of two different kinds. It is possible that the legally relevant characteristics are of a tangible nature, i.e., that they are perceptible as sense data. This adherence to external characteristics of the facts, for instance, the utterance of certain words, the execution of a signature, or the performance of a certain symbolic act with a fixed meaning, represents the most rigorous type of legal formalism. The other type of formalistic law is found where the legally relevant characteristics of the facts are disclosed through the logical analysis of meaning and where, accordingly, definitely fixed legal concepts in the form of highly abstract rules are formulated and applied. This process of "logical rationality" diminishes the significance of intrinsic elements and thus softens the rigidity of concrete formalism. But the contrast to "substantive rationality" is sharpened, because the latter means that the decision of legal problems is influenced by norms different from those obtained through logical generalization of abstract interpretations of meaning. The norms to which substantive rationality accords predominance include ethical imperatives, utilitarian and other expedient rules, and political maxims, all of which diverge from the formalism of the "external characteristics" variety as well as from that which uses logical abstraction. However, the peculiarly professional, legalistic, and abstract approach to law in the modern sense is possible only in the measure that the law is formal in character. In so far as the absolute formalism of classification according to "sense-data characteristics" prevails, it exhausts itself in casuistry. Only that abstract method which employs the logical interpretation of meaning allows the execution of the specifically systematic task, i.e., the collection and rationalization by logical means of all the several rules recognized as legally valid into an internally consistent complex of abstract legal propositions.}{supra note 1, at 656–57 (emphasis in original).}
meaning” and those that adhere to external characteristics of the facts; and

3. legal systems which keep law and morality separate and those which merge them.9

Legal thought is logical, formal and rational, therefore, when it stresses the general over the particular, it employs “the logical interpretation of meaning,” and separates law and morals. While the first and the last of these features are relatively clear, what does Weber mean by the term “the logical interpretation of meaning”? Here again, Kronman makes an important contribution by providing a persuasive interpretation of this concept, which has been a puzzle to Weber scholars. In doing so, Kronman illustrates his interpretive method, for the analysis rests on showing the relationships between Weber’s legal ideas and his broader philosophical commitments.

To understand how Kronman conducts his interpretation, one must first understand the context in which the examined term is used. “[T]he logical analysis of meaning” is used to distinguish formal rationality in legal thought from substantive rationality, as well as to contrast a rational approach to formalism from an irrational one. Thus, while for Weber all formal legal thought considers the “unambiguous general characteristics of the facts of the case”10 and employs logical analysis, primitive (irrational) formalism considers only their extrinsic symbolism—for example, the “seal,” while modern (rational) formalism employs logical analysis. But in the Weberian scheme, formal rationality must also be sharply distinguished from substantive rationality. The former develops norms “through logical generalization of abstract interpretations of meaning.”11 The later employs ethical and utilitarian values to reach legal decisions. The formal versus substantive distinction in Weber’s Sociology of Law suggests that he believes in a technique, called “the logical analysis of meaning,” which permits resolution of legal questions without reference to substantive norms of an ethical or utilitarian nature.

Interpretation of Weber’s terms first requires a definition of the word “meaning” in the text. Modern European law is both “formal” and “rational,” and like primitive types of formal law,

10. 2 Economy and Society, supra note 1, at 656-57.
11. Id. at 657.
modern law is concerned with "meaning." But the meaning that primitive law employs comes from the world of "sense data" or facts. "Meaning" has a different sense for rational (modern) law. To answer the question of meaning, Kronman utilizes Weber's most basic philosophic ideas. Kronman notes that Weber draws a bright line between fact and value, asserting that the world of fact is inherently meaningless and only takes on meaning, or value, for the individual through an act of will. Kronman states that for Weber "values do not inhere in facts and an individual cannot acquire his values by knowledge alone: [H]e must create them, must legislate them into existence, by imposing his will on a morally neutral world." 12

Kronman calls this philosophical notion the "positivity of values." 13 Starting with Weber's ideas on the nature of the social sciences, Kronman constructs Weber's general philosophical position. 14 He then shows that these ideas reappear in a different guise in the Sociology of Law: They express Weber's views about the nature and function of the "science" of law. The first of these ideas has to do with the scope of social science. Based on the positivity of values, Weber reaches the conclusion that science must be "value free." This does not imply that social scientists are totally without value concerns. It means simply that as a science, sociology cannot resolve controverted questions of value. 15 Weber asserts that these matters are ultimately questions of individual choice, beyond the reach of reason, and thus outside "science." The second idea is the notion of "purposive action" and its methodological implications. 16 Kronman stresses that Weber's idea of social action treats "the actor's own idea or mental representation of the end toward which he is striving as a . . . cause of his conduct . . . ." 17 This notion, that sociology must account for subjective intent, is incorporated into Weber's basic definition of the field which "is a science concerning itself with the interpretive understanding of social action and thereby with a causal explanation of its course and consequences." 18 Ac-

12. P. 86.
18. 1 Economy and Society, supra note 1, at 4.
tion, in turn, exists only when "the acting individual attaches a subjective meaning to his behavior . . . ." 19

Weber’s emphasis on the importance of subjective intent in sociology has parallels in his theory of law. Kronman demonstrates this notion as he develops the analysis of formal rationality in law, and "the logical interpretation of meaning." Weber suggests that because modern legal theory recognizes the positivity of values, it must accept two corollaries: that extrinsic facts are not inherently meaningful, and that only human purpose or intent can give meaning to events. Thus, Kronman argues that when Weber speaks of the analysis of meaning in modern law, he is referring to a form of legal thought that relates legal meaning to particular human purposes or intentions. 20 Kronman notes that "the logical analysis of meaning also places human beings at the centre of things by assuming that facts have legal significance only insofar as they are related to purposive human attitudes." 21 Since values create meaning, and values are chosen for a purpose, then the evidence of human will, or intention, in the facts of a case determine their legal meaning.

Weber’s reference to human purpose might be taken to suggest that modern legal rationality is equivalent to what Unger has called "purposive" legal reasoning. 22 In purposive legal reasoning the decision to apply a rule is dependent on the judgment of how best to accomplish the purposes ascribed to the rule. Postrealist legal thought characterizes all law as a human enterprise with a purpose, and suggests that legal reasoning should focus on discovering the appropriate way to further the purposes ascribed to the rule in question. From this vantage point, one might be tempted to read Weber as suggesting that the logical analysis of meaning requires judges to decide cases by examining the relationship between the facts and the "purpose" of the law. All those who have struggled with Weber’s text know that this reading would be dead wrong.

The reason that Weber cannot be talking about "purposive" legal reasoning in this sense is that such reasoning must employ substantive criteria, for example, "ethical" or "utilitarian"

19. Id.
20. P. 86.
22. R. UNGER, supra note 2, at 194.
norms. To the extent that law is the instrument of a purpose, that purpose will necessarily reflect some conception of the good. For example, if the doctrine of unconscionability in contracts is designed to offset disparities in bargaining power—a goal which reflects an idea of equality—it is possible to employ notions of purpose and a detailed analysis of the value of equality, in the effort to decide or to interpret concrete cases. But this cannot be what Weber had in mind when he spoke of formal reasoning, because the example employs ethical and utilitarian norms. For that reason, this type of legal reasoning would, in Weber’s terms, be substantive, and not formal.

To make sense of the formal quality of modern law, therefore, it is important to understand a further implication of Weber’s philosophical commitments: the close relationship between the “positivity” of values and the notion that values are ultimately arbitrary. Kronman notes that when Weber stressed that values are the result of the will, he also meant to contrast his view with the classical notion that values can be discovered through the exercise of reason. Reason, Weber felt, cannot be employed to determine values or create meaning. It follows that if modern law is to be truly rational in a Weberian sense, it must avoid value choice.

Kronman sets forth the ideal of formal justice in a succinct passage:

Negatively understood, a formal legal system is one that eschews all ethical ideals based either upon a conception of the good or considerations of distributive justice; positively understood, a formal legal system is one that seeks to guarantee individual freedom—to open opportunities and liberate capacities—by maximizing the predictability of the legal order itself.

All “formality” in law, Weber tells us, involves the explicit avoidance of value-choice. Primitive formalism achieves this by employing external signs—for example, seals—as evidence of legal meaning: The facts provide the answers, so no value choice must be made. But how does modern formalism avoid the choice of values?

To answer this question we have to analyze further Kronman’s reading of the term “the logical interpretation of

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23. 2 ECONOMY AND SOCIETY, supra note 1, at 657.
25. P. 95.
meaning.” This phrase describes a form of legal thought which gives factual events legal meaning but eschews imputing any purpose, or *telos*, to the law itself, and thus avoids making arbitrary choices between values. The *intent* in question is the will of the individuals whose behavior is subject to the law. Kronman notes that “the logical interpretation of meaning . . . seeks to give effect to the purposes and intentions of individual actors . . . .”26 The human purpose to be gleaned through the logical analysis of meaning, therefore, is not that of the legislator, but that of the parties to the transaction in question. In contract law, this means looking at the intent of the contracting parties; in criminal law, it means deciding whether the accused had the requisite criminal intent.

Kronman’s juxtaposition of Weber’s epistemological and legal ideas helps explain why Weber found the idea of a formally rational science of law to be appealing. If law could take full account of the subjective purposes and values of people whose relationships it affects, while remaining agnostic on all values and avoiding the imposition of values on those who have not freely chosen them, it would be “rational” in the way Weber understood rationality. Moreover, by eschewing value choice and value imposition, a formal system would provide the maximum respect and scope for individual choice.

Kronman clearly finds the idea of a formal legal system appealing. Construing a particularly dense passage in which Weber comments on the idea of formal justice, Kronman notes that only a truly formal system of law can be calculable. The introduction of “substantive” ends into the legal order, Weber suggested, will inevitably lead to particularistic decisions which make it difficult for people to know in advance the outcome of legal questions.27 Accepting this “trade-off” notion as valid, Kronman then sets forth the ethical argument for formal versus substantive justice. Formal justice, he suggests, enhances individual opportunities, promotes self-determination and helps ensure individual freedom.28 But to achieve this, Kronman asserts that the law must give up such substantive goals as redistributing income or realizing some conception of the good. If one values individual freedom highly, Kronman observes, one might well be prepared to

27. P. 93.
28. P. 94.
accept this cost.  

The question lingers, why did Kronman struggle so hard with the sacred Weberian texts to produce a story that has been told before, even if it hasn’t been told any better? Is this, one might ask, all that one of the century’s major social thinkers had to say about law? If, behind the tortured prose, the immense erudition, the world-historical vision, Weber was nothing more than a precursor of Fredrich Hayek—who at least had the virtue of writing clearly—why bother about him at all?

The answer to this question lies in the way Weber incorporated the critique of formalism into his thought, thus bringing into question the very philosophical notions on which formalism rested. The “Hayekian” strand of Weber’s thought is not the whole story, for, as Kronman makes clear, Weber’s Sociology of Law included criticisms of the idea of formal law. These include the practical criticism that formal thought in law, while appearing to uphold the intent of the transacting parties, may actually defeat it, and the moral-political criticism that formal law benefits those with power and wealth at the expense of the “have-nots.” Weber also raised questions about whether the ideal of formal rationality in law could actually be realized in practice. Thus, Weber notes that the very desire to base legal action on the intent of the parties forces courts into highly particularistic forms of reasoning which erode law’s clarity and predictability. Formalism, in this sense, contains the seeds of its own destruction. Further, Weber felt that modern law would become ever more technical and remote from the actual understanding of the people: Law might in this sense become part of the “iron cage” of domination that Weber feared was the “fate” of the modern world. Kronman summarizes Weber’s idea that modern law may lead to a loss of individual autonomy:

[T]he rationalization of the law has limited individual autonomy by subjecting the layman to an increasing dependence on legal specialists—a consequence that parallels the similar loss of autonomy in the capitalist factory and modern bureaucratic organization . . . . The modern legal order, too, represents a

29. Id.
31. See 2 ECONOMY AND SOCIETY, supra note 1, at 885.
32. See id. at 812–13. Kronman discusses this point at p. 94.
33. 2 ECONOMY AND SOCIETY, supra note 1, at 884–85.
34. Id. at 895.
'shell of bondage', an 'iron cage' in which the individual's power of self-control is increasingly limited by the continuous and irreversible growth of 'the technical elements in the law'—a process that resembles (indeed, is merely one aspect of) the 'irresistible advance of bureaucratization' characteristic of modern political and economic life.35

Kronman's reconstruction of Weber's thought not only renders it more accessible, but also reveals its full complexity and highlights its contractions. By making clear that Weber fully understood the criticisms of formalism, Kronman reveals a side of Weber that establishes him as a precursor of what we today call "critical legal studies."36 Indeed, by showing the deep-rooted nature of Weber's reasons for admiring formalism, Kronman helps readers to appreciate Weber's ability to step outside and to criticize the formalist paradigm. By showing the close relationships between formalism in legal thought and Weber's own philosophical commitments, Kronman also helps readers appreciate the appeal which classical legal science must have had for Weber, and the struggle he must have had to free himself from it.

IV. WEBER ON FREEDOM OF CONTRACT: AN ILLUSTRATION OF CONTRADICTION IN MODERN LAW

Weber's discussion of the importance of contract in modern law is a major theme in the Sociology of Law. In this part, Weber seeks to contrast the typical contract of pre-modern times (the status contract) with the current day contract (the purposive contract). Where most interpretations of Weber's text have stressed the functional importance of freedom of contract for a capitalist economy, Kronman emphasizes the philosophical meaning of the modern law of contract, and relates this to Weber's views about modern law. The law of purposive contracts, Kronman suggests, expresses the spirit of logical formalism and the philosophy that it embodies:

The only justification for enforcing such a [purposive] contract is that the parties' agreement expresses their intention to do something which the law permits them to do if they wish. In this sense, the 'new orientation' created by the contract has no intrinsic legal meaning of its own; its juristic significance derives entirely from the intentions and purposes of the parties. Thus . . . purposive contracts are based upon a method of ju-

ristic analysis that has its point of departure in the logical interpretation of meaning . . . . The distinctions Weber draws between . . . status and purposive contracts express the same fundamental distinction between facts and values, a distinction ultimately rooted in [Weber’s] commitment to the principle of positivity.  

The modern voluntary contract—specialized and of limited scope—and the legal ideas that create and enforce it, seem to be expressions of a conception of knowledge and of the world that Weber accepted. Yet Weber could, as Kronman tells us, be scathingly critical of the idea of contractual freedom and the social relations it engenders. He spoke of the free contract in terms that call to mind not Adam Smith, but Karl Marx. Weber says that modern contractual relations lead men to look only to the commodity rather than to each other as human beings; they involve no obligations of brotherliness, no sense of reverence, no spontaneous human feelings. Such relations, Weber says, are “contrary to all the elementary forms of human relationship,” and are “an abomination to every system of fraternal ethics.” Moreover, Weber notes that the expansion of freedom of contract does not effectively bring equal benefits to all, and denies effective freedom to many. Weber observed that the legal freedom granted workers to contract for their labor means nothing if they are subject to the actual discipline of the factory. Kronman quotes Weber: “‘A legal order which contains ever so few mandatory and prohibitory norms and ever so many “freedoms” and “empowerments” can nonetheless in its practical effects facilitate a quantitative and qualitative increase not only of coercion in general but quite specifically of authoritarian coercion.” Is there any way to harmonize Weber’s philosophical defense of freedom of contract with the critique which these passages suggest? In the end, Kronman admits that there is not. Weber is simply ambivalent, if not inconsistent.

Thus, Kronman’s work suggests that Weber has not, as many once thought, synthesized and transcended classical nineteenth century liberal and Marxist views of law. Rather, he has both restated and distanced himself from either account. The Sociology of

38. 2 Economy and Society, supra note 1, at 636.
39. Id.
40. Id. at 637.
41. P. 115 (quoting 2 Economy and Society, supra note 1, at 731).
Law restates, critiques, and elaborates competing creeds in legal thought. While it does not yield to their simplifications, it fails to replace or transcend them. Kronman puts it very well:

Weber's own ethical evaluation of legal-rational authority and the formalistic mode of administration associated with it is, as I have noted, an ambiguous one. At times, Weber seems to view the growing predominance of legal-rationality as a great achievement and liberation—the triumph of reason in human affairs. At other times, he speaks of the same phenomenon in terms which suggest, instead, that legal-rationality—and in particular, the modern bureaucratic order which he considered its highest expression—inevitably leads to a kind of enslavement and stultification of the spirit, a form of public life from which all passion and nobility have been eliminated, an empty materialism that he described, with intense feeling, as an 'iron cage'. . . . The ambiguity of Weber's ultimate judgment regarding the ethical significance of legal rationality, indeed, the ambiguity of his judgment regarding modern European civilization as a whole, reflects an underlying ambivalence on his part concerning the positivistic theory of value presupposed by all legal-rational authority structures and the conception of personhood associated with it.42

V. A Fatal Flaw

In the end, Kronman is forced to conclude that Weber's work on law is fundamentally contradictory. He has shown that the Sociology of Law has much greater coherence than most of us imagined, and demonstrated that much in this text reflects basic philosophical ideas found throughout Weber's work. Still, Kronman admits that it contains many passages that are at odds with the main theme, and concludes that Weber's philosophical ideas are either not as clear-cut as one might have thought, or Weber's commitment to them is less fundamental than one might have expected. Kronman notes: "There is . . . something in Weber's writings that can almost be described as an intellectual (or moral) schizophrenia, an oscillation between irreconcilable perspectives that helps to explain why he has found supporters as well as detractors on both the Left and Right."43

In Max Weber, Kronman demonstrates the existence of these "irreconcilable perspectives." Ironically, his ability to accomplish this is strengthened by his skill in demonstrating more the-

42. P. 56.
43. P. 185.
matic unity in Weber than prior interpreters have demonstrated. Kronman highlights the contradictory and critical strands in Weber's thought by understanding the dominant themes that unify the work. Kronman helps show how the ideal of legal formalism is connected to an epistemology that denies any rational knowledge of value, and to a will-centered, individualistic conception of the self. He thus makes readers aware that when Weber accepted the various critiques of legal formalism which have been sketched out above, he necessarily brought these epistemological and ethical notions into question. Thus Weber was, in a deep sense, at war with himself. Today, when scholars question the conventions of contemporary academic culture which seem to derive from Weber, such as the idea of a neutral legal order and a value-free social science, they will find the seeds of their own doubts cast by Weber himself.

How then should we assess Weber in light of this masterful reconstruction of his legal thought? I suggest our approach will change. In the past, many scholars have looked at Max Weber's *Sociology of Law* in the way that early Renaissance architects regarded the buildings of Roman antiquity. Awed by the achievements of the Romans but unable fully to understand the architectural principles they had followed, the Renaissance builders copied what they could see, incorporating bits quarried from the ruins into their buildings. It was only with the rediscovery of Vitruvius Polio's first-century B.C. treatise on architecture that it became possible to understand the logic of Roman buildings. Those who have struggled with Weber might have hoped that Kronman would do for the social theory of law what Vitruvius did for Renaissance architecture: provide a key to the classical tradition and thus reveal its underlying principles. Kronman gives us the key, but it reveals that there are no principles after all.

Still, Kronman leaves us with an appreciation of the importance of Weber's accomplishment and the significance of the text he has reconstructed. Even if Weber can give us no final answers, he has posed many of the central questions which a socially-oriented theory of law needs to address. If he produced no new synthesis, at least he rejected many of the simplistic stories of his time, stories that are still with us today. Weber remains an important starting point for those who search for answers to these questions, and Kronman has produced an excellent guide for that part of the quest.