that business organizations have been getting so much larger, but it is also because other ways of financing have become more comfortable. It would surely be too bad to lose the bill, considering what great expenditures of mental effort have gone into its making.

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Law in Economy and Society. By Max Weber. Edited with an Introduction and Annotations by Max Rheinstein. Translation by Edward Shils and Max Rheinstein. Cambridge: Harvard University Press, 1954. Pp. lxxii, 363. $6.00.

Max Weber's *Sociology of Law* (which is the core of the book in hand) is without question the deepest and richest job which has appeared in that exciting field.

As I look back on these words I am troubled because they are meant to say much (e.g., "deep" and "rich") but they in fact say so little ("deepest" and "richest" as against what?). Let me try to squeeze the net meaning into this: To get, as a man-of-law, to or toward where, as a man-of-law, you want to get, calls for thought not only about your own problem coming up next Tuesday, but also it calls vigorously for thought about what human experience has dug up about how problems of this kind have been handled on a multitude of other Tuesdays or Wednesdays. The results of that kind of thinking men commonly call "theory." Such theory, when put into words, guides and smooths practice, and is in turn constantly re-checked and re-informed by practice and by any newly emerging practical problems. In almost all fields such theory has first been ignored or scorned by the practical expert (say, the seaman up to the fifteenth century, the American farmer of the nineteenth century, the factory production man until the arrival of Ford and Taylor and industrial engineering, and especially the American practicing lawyer from 1880 until today). But every time the sustained quest for such theory has taken hold on any large scale the results have been amazingly fertile. The question is: Why not also in the law? Can we not, in that most vital and practical of areas, substitute such things as celestial navigation for expert coast watching and the hunches of the man who is just "born to it" or who has just gotten it "by experience?" Do we not need, in the work of law as well as in that of corn-growing, to try to find some hybrid product of greater yield, greater toughness against risks, and, above all, one which is more readily and reliably available to *any* lawyer and to *any* of his clients? Who can with reason say that law alone, among the ancient human crafts, is impervious to infiltration of improvement by way of such a quest for "theory?"

It is against such a background that Max Weber wrote this book, from about 1909 to 1913. "Theory" in the legal field had already drifted in Germany, as it

had with us, into the wide-scale gathering, statement, and "correct" interpretation of legal doctrine. That is what the books were about (e.g., Parsons, Bishop, Cooley, Pomeroy, Wigmore, Cyc., C. J.). That is what law teaching was about, whether text-book, case-book or lecture. That is what practically all generalized ("theoretical") thinking was about; not about the *theory* of trying a case, handling an appeal, drafting a document, planning a client's course of action; not about the *theory* of how to do wise judicial deciding, appellate or other; not about the *theory* of how to plan and draft legislation; not about the *theory* of how to organize, operate or remodel an administrative outfit. By the later nineteenth century in this country law school and legal theorist alike had proudly and provincially cut themselves off from the theory and philosophy of government, of business, of economics, of sociology, of international affairs—largely from anything but: "It has been held." The great tradition of Franklin, Hamilton and Kent had thus yielded utterly to the narrow legalism of Story, and had then proceeded to cast off as well the redeeming features which Story had retained: his quest for suggestion among writers of other countries and his willingness to undertake critique and creation.

Weber moved in to recapture for law a body of theory which would bring back into legal living the type of vision and effectiveness which Grotius had once brought to international law, Franklin to his plans for legal education, Marshall to our constitutional law, John G. Johnson or Elihu Root to legal practice. Weber reached in first instance for range; secondly he felt, as had no comparable writer on the legal field before him, the importance and influence of men—not just Justinian, Edward I, Mansfield and Marshall, but the whole profession.

It is significant that Rheinstein and Shils, as they translate and annotate, find it needful to indicate the breadth of Weber's stage and treatment by completely re-titling these chapters chosen from his ranging thought. For Weber did come close to seeing his theme as a theory of human institutions as a whole —so far as an observer can grasp them. He includes the economic aspects, the government aspects, the legal aspects, the religious aspects; and the huge importance to each aspect of the nature of prevailing ideas (e.g., Why is law felt as binding?) or idea-structures (e.g., a "rationalized system" of doctrine) or idea-drives (e.g., accounting, or profit) or of the training and traditions of the personnel who do the job. Before the first war this amazing thinker had worked out these and other matters into a picture of the going whole which marks his work out even among the great.

The original manuscript, written partially during a semi-breakdown and with no observable consultation of references, was put into well nigh the most impossible (but almost impossibly exact) German ever written. It would fascinate a psychoanalyst; it is a sort of free association moving within a rigorous intellectual frame. As an idea begins to roll accuracy immediately demands a longish qualification. The qualification is hardly started before further accuracy demands a carefully elaborated sub-qualification. Phrasing the sub-qualification

forces attention to. . . . And Chinese puzzles put box inside of box for three-quarters of a large page of small print. Weber comes out from under "with his verb in his mouth" and with every word not only necessary but sharp, but the dive has been worthy of a modern submarine. Weber never revised this text. It was printed posthumously (1923, revised 1925) by people who did not understand it well.

Small wonder that the work proved to be too much for Roscoe Pound. Ehrlich "served his need." But Pound was the one man who could have made Weber's reputation in this country—as he had made Ehrlich's. In Germany, meanwhile, sociology had very little standing. There, too (except for history), "law" was still merely doctrine, and a man who talked about men and their work in connection with "law" was rather queer. Weber himself was dead, and the inflation distracted attention. So there was little reverberation.

Shils and Rheinstein have now turned the impossible original German into a rather readable American text, breaking up the sentences and finding amazingly useful equivalents for Weber's technical vocabulary.[1] Rheinstein has used painful patience to run down the sources of Weber's encyclopedic references and occasionally to correct his memory. Repeatedly, where the line of discussion is too foreign in context or assumption to talk easily to an American reader, Rheinstein gives valuable explanatory or supplementary footnotes. He also provides a forty-five page Introduction which tells the reader what he will be in for when he tackles the book itself.[2] The translators have added to the *Sociology of Law* some ten pages from the opening theory and some fifty pages from the "Government" (*Herrschaft*) discussion in the same great treatise, passages well chosen to bring out Weber's thinking.

In result we can truly say that Weber's rich thinking about legal matters, or

[1] I have two major quarrels. One is with the non-translation of *Honoriatoren*. With that term Weber isolates for study the "key figures," the tone-setting group within a legal system, whether compensated or not, and whether or not they are full-time specialists. The term and some of the discussion suggest that reference is being made to "dilettantes," but the substance of the perception reaches much further. Consider, for example, our Great Judges in the grand period, say 1810 to 1860, or for that matter the key officials in an imperial legal system.

The second quarrel is with the rendering of *Herrschaft* as "domination." About half the time that happily ambiguous term is much closer to "government" or "governing" or to control-by-way-of-an-existing-régime—what Pound thinks of as "the order" of a society and what I shall call its going setup.

[2] This Introduction is much more than a critical summary of the text. It frames the text in the context of the huge multi-author treatise on "the economic and the social" of which it was a part, in the context of German thinking in the social disciplines, and in the context of Weber's own sequence of work and method. It contains a useful discussion of Weber's measuring bases (pp. xxxvii–ix) which some misguided American, years back, threw into ambiguity, misuse and misunderstanding by mistranslating *Idealtyp* as "ideal type." Of particular value to the reader is the set of definitions on "domination" and especially the characterization of a "bureaucratic administrative staff" (pp. xxxix–xliii). This last material a reader needs to have in mind at all times as he reads Weber's text. (Weber himself did not keep it adequately in mind, nor did he deal in adequately comparative fashion with the differential effects of different types and degrees of allocating the functions of the "staff" which stands ready to put teeth into the "law" institution.)

indeed about law-government (which he saw and dealt with as a unit), is now available for the first time in any language.

But there is no way of conveying the substance of that thinking in a review. The material itself is a sort of distillation of an envisioned but never written work of perhaps six times the length. Some parts were in mind hardly beyond major outline; others already worked into exciting detail. Further distillation of a distillate has its dangers. Rheinstein's condensation seems to me sometimes to mislead. Thus, for instance, Weber explicitly and formally limits the conduct which he is proposing to consider under "sociology" to such conduct as has subjective meaning for and carries some intention of the actors. This has never made operating sense, and the definition in no way reflects Weber's operating method. In the definition he was trying to make sociology a respectably distinct, non-trespassing discipline, for purposes of German academic good taste, budget, and allocation of professorships. Maybe he did. But he never did his real work by that white-tie-and-tails definition. You would, however, hardly gather this from the Introduction, perhaps because Rheinstein is not by nature a sociologist to whom categories are fluid, as mere measuring poles, but is in greater degree a superb dogmatic systematist to whom a thing really ought to fit either into or out of a category. Consider in contrast how Weber's beautiful line[3] of "insofar as" in dealing with categories leads not to such queries as "Is this Law?" but to "How far, to what degree, and in what aspect may this prove to be worth treating as Law?" This means that his discussion ranges, as it should, over all types of law-government activity or job or machinery or men in any kind of group—always of course with due discrimination according to situation, organization, background of ideology, and the like; though it is true that the discussion is heavily over-oriented toward that more familiar and jealous form of law-government which we meet in the politically organized state.

These illustrations may be enough to suggest how deep and varied a body of stimulus will come to any person who settles down to real reading of the book —or indeed of the Introduction in comparison with the text, for the Introduction has its own power and value. For further indication of content the best I see to do is to follow the book's own table of contents. The basic concepts (Chapter I) introduce as three particularly significant polar conceptual types of control machinery (with fluid transitions) "mere usage" resting on habit, "convention" backed by significant disapproval within a spottable group, and "law" backed by a coercive staff. It is in later development of the importance of the staff and of the differential effects of different kinds of staff and staff-organization that Weber's approach to law-government makes one of its most significant contributions (Chapters V, VII, XII).

The next chapters are on The Economic System and the Normative Orders, Fields of Substantive Law, Categories of Legal Thought, Emergence and Crea-

[3] This treatment is not wholly sustained or consistent. Weber had also been trained in dogmatics. On the conceptual type as a measuring device consult note 2 supra.

tion of Legal Norms, and Forms of Creation of Rights (pp. 11–197). The net is an analytical and developmental survey of the relation of legal thinking and institutions—state, pre-state and, to some extent, extra-state—to government, the economy, and the prevailing lines of ideology. The illustrative matter, drawn on with grasp and with surprising incisiveness, ranges over, inter alia, the full course of Roman Law history; medieval legal, political, and economic history in western Europe; and over many Islamic and Talmudic and English legal developments. Chinese, Greek, and assorted primitive institutions are drawn on at need for illumination, perspective or pungency.

The perhaps dominant theme is the fact and effect, as we move into the modern Western economy, of lines of goal-choice, lines of planning, and lines of technique and technical structure which increasingly involve conscious calculation. The tone of Weber's mind and of his interest in the area of human ways is best communicated by a thoughtful visit to one of the finer museums of science and industry. In the present book one finds illustrated some of the foundation stuff, some of the "scientific approach," and some of the still prescientific knowledge and theory, which have begun to lay some basis for a reliable legal technology generally, and in particular for that practical art which Pound half a century ago called "social" (better "legal") engineering. Of more recent years the sowing of Ernst Freund[4] and Joseph H. Chamberlain has begun to bear fruit, not only in legislative drafting bureaus but in a whole crop of instruction books which give hope of a communicable craft—at least of legislation. Yet no one who watches politicians, public, and bar emoting with inadequate attention to the need for cleanly devised and sharply drawn measures can doubt that such a craft is still in its swaddling clothes—a term I use advisedly because today's growth is being hampered by constricting over-attention to the immediate here and now. The here and now is indeed of the essence. It needs vastly more intensive study than it is getting. But range in history and comparison with other cultures, contemporary or past, is vital too. Such range and comparison offer not only suggestion as to ways, means, goals, and possibilities, but they save much time, grind many ideas to useful edge, and point out in advance of costly local experience many lines of probable waste, unwanted by-products, cost, and pure blobbishness. Frequently they provide useful suggestions as to machinery for whole or partial cure. In a word, legal "industrial engineering" needs them. And

[4] There is no indication that Freund ever knew or suspected the existence of any piece of Weber's almost contemporaneous work. Here in the United States Freund was quietly creating (for anybody else to borrow) the two disciplines of legislation and administrative law. It was a great creative period in regard to seeing a society-as-it-goes-round, and also in regard to the how and to the whither. As I read the writings, men were being moved by the times, but especially in this country under the impact of the first Roosevelt, into Integration of All Intellectual Activity (a) Towards Ends, and also (b) In Terms of How; (c) both being now subject to the kind of accounting and replanning on practice, cost and performance against which a production operation has to stand up. I remind of Dewey, Ross, Ely, Sumner, James, Veblen and Bentley; and in law, Wigmore and the young Pound.

Weber offers them in flowing measure.[5] For instance, beside the passage on the development of procedure and tribunals and their relation to rules, techniques, and personnel (pp. 73–97), Maine is thin gruel and the German writers are either obscure or too over-specialized for convenient use, and the *Journal of the American Judicature Society* material over the decades is both scattered and lacking in a sound background of the theory of institutions. It is a misfortune to our understanding of law and of life that Weber's learning and insight could not have been brought to bear also on the technical and technological lessons to be gathered from the Hitlerian and Soviet operations.

Now it is easy, but it is unwise, to snoot at this technological focus of Weber's thinking. Morris Cohen once quipped, for instance, that Weber's *Sociology of Music*, which originally appeared immediately following the present work, "only left out everything significant in music." True, a study merely of range and change of technical possibilities gives no light on what was done with the lyre or with the Doric mode; but it is true also that we should have no "Well-Tempered Clavichord" if Bach had not been inspired by a scientifically based technical advance; and that it is entirely legitimate to write a book or to devote half a life to the stuff and meaning of some one part of a whole discipline, provided one does not seek to pass off the results as being the whole. Weber makes it clear, by sustained labor and repeated phrasings, that his job in this book deals only with technical conditions, technical means, and technical tendencies in relation to given types of other conditions, ideas, types of economy and the like. There is indeed one implicit ethical drive: Weber does feel that it is "good" for man to know, so far as possible, where he is at, and so to increase his power to move by way of law-government toward effectuating his own purposes or God's. But he does not here undertake to present a "philosophy" or rounded whole view of law-government as an institution. He does not inquire into good or desirable goals, but only, to some extent, into inescapable ones. The results, so far as they go, offer understanding and technology to anybody, no matter what his ideals or purposes may be. It will not do to snoot, I say, at this, nor to disparage it. You can supply your own ideals and purposes, or you can take them from elsewhere; but for moving toward their effectuation you need a

[5] Two shortcomings deserve note. The first is that peculiar attribute of the "law" type of control which, because of the staff at hand, means "a chance" of active sanction. This lends itself handsomely to treatment as another element in the calculations of, say, an enterpriser. But it is queer that an author so interested in technology should not have subjected the "a chance" idea to differential study, discriminating more sharply and more regularly where, when, and why the chance ranged from almost negligible (Cornish smuggling, 1800) through slight (personal property tax in New York City today) through heavy though unlikely (reckless driving, on both civil and criminal sides), and so on into the area of too great a chance even to think of risking.

The second shortcoming is the multiguous use of "rational" in regard to the thinking of persons who act. Thus the use of magical procedures in a culture which accepts their adequacy is the most rational conduct in the world. It is in that situation the techniques, not their use, which need the criticism.

theory of law-government institutions such as Weber is here working on and with. You need no less a sound technology built not on dream or guess or unexamined tradition but instead on a Weber-like theory of law-government institutions plus hard-headed "theories" of practical operation derived especially from cumulative observation and critique of the best jobs done by the best men of the crafts.

What seems to me the second part of the book (pp. 198–356) is set up as follows: Chapter VII, The Legal Honoratiores (the key groups) and the Types of Legal Thought, especially as different types derive from different types of key-groups; Chapter VIII (really a part of VII), Formal and Substantive Rationalization in the Law ("the law" meaning here primarily the body of legal doctrine); Chapter IX, Imperium and Patrimonial Monarchical Power as Influences on the Formal Qualities of Law: the Codifications (here "law" includes administration and the organization of staff, tribunals, etc., and here law-government, as contrasted with the *law* phases thereof, is patently the subject of discussion); Chapter X, The Formal Qualities of Revolutionary Law—Natural Law (the chapter least informed by Weber's greatness); Chapter XI, The Formal Qualities of Modern Law (which gets back again to administrative aspects and to the impact of societal—here especially economic—factors, and which is much more concerned with non-formal or informal qualities than with formal); Chapter XII, Domination (governing); Chapter XIII, Political Communities, in which the government phase of the law-government institution comes in for enlightening attention in its interplay with the law-phase. Chapter XIV is too sketchy to deserve description.

What has been said above will be enough to suggest a little of the living meat placed upon this skeleton. I miss a full presentation of Weber's amazing inquiry into bureaucratic organization and administration[6] which to my taste would have added almost an extra dimension to the material. But one's gratitude at having so much, and in a form so much handier than ever before, forbids the pressing of any such point.

It will have become clear that one of the pieces of "theory" which we still need will not be found in this book—the body of theory which belongs to the skills of each of the crafts of legal work, from spokesmanship on through to chairing. True, the volume is powerful in underpinning each of the crafts; it is rich in suggestion for each; it provides insight and background for each craft, as it does for that vital but neglected discipline, the sociology of institutions. But Weber himself neither gathered the observations nor put them critically into order ready to grasp and use, nor did he isolate for general use the concept of "crafts" within law-government (contrast his treatment of the concepts of the bureaucratic, and of the tradition of a key-group). My guess is that he was simply insensitive to these aspects of life, color-blind so to speak; that he did

[6] Compare note 2 supra.

not see this throbbing material which makes law-government go round, and could therefore neither record it nor put it together. Certain it is that for all his genius he knew little indeed of the arts of persuasion, negotiation, political diagnosis and the like, and that his ineptitude in these crafts frustrated him tragically,[7] for he yearned to be a great political leader as Frederick II yearned to be a great musician.

More important to us is the prospect that this majestic study is unlikely to exercise wide influence—save as *you* labor with it and it excites and influences *you*—for another quarter of a century. Note the fateful sequence. First, in the time of composition, a decade full of ferment in all the Western world and in all of the behavioral or other social disciplines, that era when men were thirsting for such a work as this—in that era this went unpublished. Second, when it did appear it was not only at a time when the climate of interest had completely changed, but was also in a form so forbidding as to baffle any but a few. Third, now that it has become truly accessible this has occurred in the United States, where current sociological thinking is in danger of becoming drunk on figures and blind and deaf to any "qualitative" thinking however sound or rich or deep; while the interest of our men of law has turned away from "integration with the social disciplines" to seek as "theory" the sound theory of our own crafts of practice, an interest almost exclusively American and almost exclusively contemporary. Hence this book, which can be so curiously fruitful for the very work and workers who reject it, may well have to lie around again substantially unused until it gets "discovered" thirty years hence—by which time it may well have been caught up with and partly overhauled. Truly, timing is of the essence of greatness.

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[7] His wife's admiring description of his political achievements, in contrast to what a less naïve eye sees through her words, is lovely but saddening. Consult her *Max Weber*.