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Contents & Essays

Editorial Preface

This issue features a critique by Stephen P. Turner of an important paper by Robert Marsh on Weber's analysis of the Chinese legal system. Turner's critique is followed by a response from Robert Marsh. Then we have an article by a young scholar, François Dépelteau, about the sociological imagination. We have also listed all of the books submitted for the Barrington Moore Award since they constitute a nice selection of recent work in CHS. Bakker has enjoyed editing this newsletter during 2000-2001 for a total of six issues.

--JIB

"Weber's conception of the historical individual, though it is framed in the language of Rickert and fits closely with the main themes of Heidelberg neo-Kantianism, is rooted more deeply in the historically prior problem of legal abstraction that is at the core of the Roman Law tradition."

Turner, Stephen P. and Regis A. Factor. 1994. Max Weber: The Lawyer as Social Thinker. London: Routledge: p. x.

Weber, the Chinese Legal System, and Marsh's Critique

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Marsh's interesting article on the Chinese legal system has many merits, which I will unfortunately ignore in what follows, but let me begin by mentioning a few of them. The paper adds to our understanding of a classic text by using the results of more recent historical research in a way that illuminates some deep issues about the nature of law. My critical

remarks relate to the fact that it is representative of a genre of "critiques of Weber" that attempts to catch Weber out in an error, but winds up, I will suggest, becoming entangled in the peculiarities of Weber's ideal typical method. In this case the argument also involves a series of problematic claims about Weber's intellectual motives that, as it happens, are connected to Marsh's interpretation of the ideal-type. Weber's self-proclaimed technique is to intentionally emphasize certain facts in a "one sided way" as a method of analysis, but his point very often is also to conceptually define a domain or conceptual space in which even the most extreme actual cases have elements of the "opposite" conceptual category. The particular ideal type that Marsh's analysis focuses on, the idea of Khadi justice, and the related notion of substantively irrational law, are examples of this. The notion of Khadi justice, which I will concentrate on here, points to a particularly important fact about all political and organizational forms, a fact which is in a sense difficult to access without some such intentional exaggeration.

Weber's Loyalties in Legal Theory

We may begin with Marsh's attempt to supply a series of intellectual motives for Weber. Marsh has Weber taking sides in a dispute over the view that the conceptual elaboration of the law was the most "rational" and therefore the best account of the law, and has him taking sides with this view. This is wrong as an account of Weber's own views, and the error bears directly on the understanding of the ideal types in question, as well as Weber's even more famous distinction between formal and substantive rationality. The philosopher of law closest to Weber, whom he often cited, was his friend and admirer Gustav Radbruch. Radbruch argued for Weber-like accounts of the fundamental value conflicts between justice, certainty, and expedience inherent in all legal systems, or as he put it the "Antinomies of the Idea of Law" (1950: 109-112). This "philosophy of law" idea of the inherent tension between legal ideals is the same as Weber's own "sociological" thinking about these matters, and Weber produced his sociological conception by considering inherent conflicts between legal ideals as they were represented in contemporary legal theory. The conflict between substantive and formal rationality, for example, is a reconceptualization and idealizations of two competing jurisprudential doctrines of the time, Pandecticism, the "conceptual" approach to which Marsh refers, and Interessenjurisprudenz, an "Economic" interpretation of the law that is an indirect intellectual antecedent of current Law and Economics jurisprudence.

Weber discusses the two approaches in his inaugural lecture, at the moment that Weber was transforming himself from lawyer to economist, when he says:

> [O]ne thing is certainly true: the economic way of looking at things has penetrated into jurisprudence itself, so that even in its innermost sanctum, the manuals of the Pandect Jurists, the spectre of economic thinking is beginning to stir. In the verdicts of the courts one quite frequently finds so-called economic considerations being cited once the limit of legal concepts has been reached. In short, to adopt the half-reproachful phrase of a legal colleague, we economists have "come into fashion." When a way of looking at things breaks ground so confidently, it is in danger of falling prey to certain illusions and of overestimating the significance of its own point of view… "(Weber, 1994: 18).

This is a description of the situation in jurisprudence in 1895. The Pandectists in faculties of law were in retreat, and beginning themselves to acknowledge the "economic." The courts themselves – when legal concepts proved inadequate to produce decisions – frequently invoked economic considerations. Weber takes no sides in this dispute, other than this – to avoid reductivism in either direction. He does not deny the claims of the economic interpretation, but points to the danger of overestimating its significance.

His later "sociological" point was that the conflict between the formal and the substantive aspects of the law is a basic feature of legal systems, which is resolved historically in different directions or different circumstances. This was an idea that was parallel to Radbruch's idea that legal systems represented antinomic choices between the legal values of expedience, certainty, and justice, but choices in which the de-emphasized values nevertheless still figured. This is a point well-illustrated by Marsh's own claim that "conceptual" approaches to the law are completely dead. In fact, of course, the element of "construction" which these approaches emphasized is a part of all law, and in some sense necessarily so – if there was no technique of getting from the abstract concepts appealed to in the literal texts of the law to the messy world of actual cases, there would be no "law" in any meaningful sense. But it is also illustrated by the notion of Khadi justice. As one American jurist put it, "the true question…is not whether we should revert to [Khadi justice], but whether (a) we have ever abandoned it and (b) we can ever pass beyond it." As he explains, "the personal element is unavoidable in judicial decisions" (quotations from Jerome Frank in Leiter, 1996: 277. Usually what is meant by this is that there is a personal element, a moment of decision, in the application of the law (cf. similar claims in Carl Schmitt, 1985, 31-33, where it is built into a whole legal theory, "decisionism," and in the more recent Critical Legal Studies Movement, especially in the work of Roberto Mangabiera Unger).

Real and Proverbial Khadis

The quotation from Frank is only one of many available to show that the notion of Khadi justice has a specific history in comparative law apart from Weber's use of it. The idea is a bit of orientalism, a perception of Islam which accentuates its "otherness" at the expense of complexity and accuracy. The image was of the Khadi sitting beneath the palm tree, with no laws to bind him, delivering justice directly. In fact, this image is almost completely mythical, and Weber himself qualified it by saying that it did not represent the "historical" institution of the Khadi, but the "proverbial" one (1978, 1115). What is true about the historical institution during some long periods is "the simple fact that the power of the individual judge to decide according to his own personal opinion (ra'y) was to all intents and purposes unrestricted" and that such things as "a hierarchy of superior courts whose binding precedents might have established the uniformity of a case law system" did not exist (Coulson, 1964, 30).

These were the features that Weber seized on. It perhaps should be noted that, contra Marsh, the historical Khadis had codified Sharia law to rely on for much of what they did, as well as extremely strict evidential rules for some matters, such as judgments about fornication, rules which eliminated discretion and made the process of decision entirely mechanical. Arguably, they were more constrained than the Chinese in

many respects. But, as with all law, there were other matters for which the rules were inadequate, and domains in which there were conflicts of law, and others where the codes barely reached, but over which there was conflict between claimants. Weber's ideal type, based on the proverbial sense of Khadi-justice, focused on the fact of judicial discretion and its role as a surrogate for the development of "lawyer's law."

From the start of his scholarly career Weber had been concerned with the problems that traders in the early days of capitalism had in finding a legal structure for capitalist transactions, such as shipping goods for trade. If the boat sinks, who is liable for the goods? Is it the captain, or is the captain an agent, a servant of someone else? If the captain has goods from many people, whose servant is he, and has his "master" assumed responsibility for the potential losses? Is the captain a thief if he does not deliver the goods? Completely free of liability, since they are not literally owned by him? What if one of the crew dies through an error. Is it manslaughter, or are crew members responsible for themselves? Without the legal fiction of corporations and a series of precedents defining the law of agency, it is difficult to know what laws apply.

These are all problems of "law-finding," that is to say determining what the relevant law is and which concepts apply. There is a traditional distinction between deductive, Continental or "Roman" approaches to law-finding, and inductive or case methods, characteristic of
The common law. (http://members.easyspace.com/rueckner/law-finding/)

In the "deductive" case, the law was found by locating the legal question in a comprehensive classification, and one could apply deductive rules to determine where the case belonged and what law applied; in the inductive case it was done by finding precedents in similar cases. The distinctions were in practice matters of degree, since precedent almost necessarily plays a role in all legal systems, though the exact role differs. In the common law it is central, in others it is less direct, and typically a kind of background knowledge that allowed judges to apply the abstractions of the law to new settings consistently with other judges. But even in common law has been to a large extent rationalized. One needs to prove the "elements" of a crime, for example, such as intention, and lists of elements are codifications of prior practice.

If one is using a code with no systematic structure, one is by definition picking and choosing what law to apply based on no deductive principle. In this specific sense, a code organized in the Chinese manner was by definition required "irrational" law-finding." Deductive law-finding of the Continental or Roman kind, was not possible simply because the law was not organized into a hierarchy of categories. "Empirical justice" based on analogy and precedent, what are conventionally called "inductive" methods, like those of the common law, would be possible. Islamic law had some of this, in the form of books with precedents and opinions. Marsh tells us that Chinese law allowed, though restricted, the use of analogy and judges were allowed to cite precedents in those cases where the applicable law was unclear (2000, 291). And he cites claims to the effect that discretion was constrained by the code and by the case law, and that decisions made on the basis of precedent had to be checked by a higher judicial body in Peking (2000, 292). And there were even a few "leading cases" in which precedents became added to the code by superior courts.

The Core Problem

None of this seemed to matter to Weber, and probably would not have mattered even if he had been aware of it. Why? We may ignore "deductive" law finding, as Chinese law was never organized in a way that made it possible. Consider instead the quotation from Coulson above with respect to the Khadi – was there a "hierarchy of superior courts whose binding precedents might have established the uniformity of a case law system?" The key term is binding precedents, but it must be understood in a very specific context – the problem of the creation of law by lawyers and judges to solve the various puzzles that they problem of law-finding throws up. One approach to law-finding, which we might call the "justice" approach, would be one in which the law that is chosen by the judge to be applied is simply the one which produces the most "justice" or best serves the interests of the community. One could also imagine this being done without binding precedent. In each new case, the judge would consult the law books and pick the law that produced justice, according to his lights or those of the community, but his choice would not bind other judges in the future to judge similarly. This is not how the "empirical" approach of the common law worked, and there was a crucial consequence of this difference which was utterly central to Weber's understanding of comparative law.

The development of legal answers to the kinds of questions listed above in the West occurred through elaboration of the deductive system of the hierarchically ordered Roman law, but also, in a parallel manner, in the common law, through binding precedent and legal fictions. Both amounted to lawyer-made law, and both facilitated capitalism by providing a measure of legal certainty in the relevant domains. Both were voraciously inventive. How did they work? In the case of the common law, fictions plus binding precedent meant that the fiction that a corporation was a person did not have to be invented anew every time a case appeared in court, and similarly, questions of the legal liabilities of agents and their employers did not have to be settled anew. And the law became settled very quickly and precisely. Why? The cases soon amounted to a thicket of binding precedent in previous cases which not only constrained judges in law-finding, but allowed them to make, though analogy, innovations, including novel "fictions," that were binding in the future. The most famous of these, which enabled a case to be brought in London, was that the island of Minorca is located within the parish of Mary-le-Bow in the ward of Cheap in the city of London. This fiction-filled, precedent-choked law was lawyer's law with a vengeance. But new judge-made law could be built on this material, and legal considerations, rather than a sense of justice, could control law-finding to a large extent.

The process produced results that were far removed from any ordinary sense of justice. And only a person trained in the mysteries of the precedents and fictions, that is to say a lawyer, could grasp the "law." But, as Weber's great English contemporary Maitland said, taught law is tough law. From the point of view of capitalism, the tough common law and the rational Continental law worked, precisely because they each could answer questions like the ones listed above, and the many other questions that capitalist transactions raised. Nothing comparable to this development took place in China. Why?

Marsh, inadvertently, supplies answers to this question, and the key to the answer turns out to the point his argument rests on, namely the centrality of the Code in the Ch'ing period. Having a code is not the same as having

legal rationality. Nor does it eliminate discretion. Indeed, in the absence of binding precedent from one case to another together with the existence of a vast thicket of precedent it does the opposite. Decisions have to be made, but they are made on an ad hoc basis, or as Weber puts it his definition of Khadi justice, through "informal judgments rendered in terms of concrete ethical or other practical valuations" (Weber, 1978: 976). This is Weber's definition of Khadi justice. From the point of view of European "lawyer's law" then, the Chinese system was remarkably rigid and limited in it capacity to deal with novel situations. It corrected for its rigidities and limitations with discretion, judicial fiat, or ad hoc additions by the Emperor.

Marsh's burden of proof in showing that Weber had fundamentally misinterpreted the Chinese system, and in showing that it did not have the "Patrimonial" (and therefore "Khadi") character Weber said it did, is high. Having written codes is not nearly enough; so did much Patrimonial law. The true test arises with the complex cases of conflict of laws that capitalism presented. The Roman and Common law passed this test by inventing their way out of the conflicts. In China this was impossible. The system relied on simple applications of the law backstopped by higher courts and the Emperor, who simply decided authoritatively. Marsh does not address the question of the grounds used by the high courts and the Emperor in deciding questioned cases, but the answer can only be that they did so on grounds that are, from a legal perspective, substantive grounds – without deductive law they couldn't do it deductively, and without a thicket of binding precedent, they could not do it "empirically." This leaves Khadi justice. Perhaps, as Marsh suggests, the substantive considerations used in questionable cases were sufficiently organized and rooted in Chinese ideology to be predictable. The legendary aversion of the Chinese to judicial processes, however, suggests that the Chinese themselves did not share his opinion. The cases that Marsh mentions of individuals who repeatedly brought cases to court indirectly confirms the surmise that these courts had a kind of lottery character inimical not only to capitalism but to substantive rationality.

Defeating Weber on the matter of the fundamental character of the Chinese system point carries a high burden of proof. Identifying what Weber would have regarded as superficial similarities between Chinese and Western legal systems is not enough. The big difference – the difference in legal inventiveness – remains. The institutions Marsh identifies were surrogates for an elaborated "lawyer's law" – not its equivalent.

References

Coulson, N.J. 1964. A History of Islamic Law. Edinburgh: Edinburgh University Press.

Editorial Committee of the Association of American Law Schools. 1950. The Legal Philosophies of Lask, Radbruch, and Dabin. Wilk, Kurt (translator). Cambridge, MA: Harvard University Press.

Leiter, Brian. 1996. "Legal Realism." In: Dennis Patterson (ed). A Companion to Philosophy of Law and Legal Theory. Oxford: Blackwell, pp. 261-279.

Marsh, Robert. 2000. "Weber's Misunderstanding of Traditional Chinese

Law" In: American Journal of Sociology 106, pp. 281-302

Schmitt, Carl. 1985(1922). Political Theology. Cambridge: MIT Press.

Weber, Max. 1994(1895). "The Nation State and Economic Policy" In: Lassman, Peter and Speirs, Ronald (eds). Weber: Political Writings. Cambridge, NY: Cambridge University Press.

Weber, Max. 1978. Economy and Society: An Outline of Interpretive Sociology (3 volumes). Roth, Guenther and Wittich, Claus (eds). Berkeley, LA: University of California Press.

Weber and the Chinese Legal System: A Reply to Stephen P. Turner

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At the invitation of Hans Bakker, editor of the Comparative and Historical Sociology Newsletter, Stephen P. Turner has written a critique of my article, "Weber's Misunderstanding of Traditional Chinese Law," American Journal of Sociology, 106(2) (September, 2000):281-302. Turner raises several important issues and I am delighted to reply to his remarks. I hope that readers of this exchange between Turner and myself will first take the time to read my AJS paper referred to above.

The first issue is methodological. In Weber's comparative studies, analysis proceeds by moving between ideal types and actual, historical cases. Weber constructed an ideal type by deliberately emphasizing certain facts in a "one-sided way." But at the level of an empirical case, there may be elements quite the "opposite" of the characteristic emphasized in the ideal type. The main concerns in my original paper were the distinctions Weber made among his four ideal types of legal systems – formally irrational, substantively irrational, substantively rational and formally rational – and how these apply to the particular case of traditional (pre-20th century) China. Turner's contribution to this discussion is to remind us that there are uniformities and well as differences across legal systems. While, at the level of his ideal types, Weber was at pains to distinguish one type from another, he also recognized that certain basic features are inherent in all legal systems. Turner notes several of these. In all legal systems there are value conflicts between justice, certainty and expedience as "antinomies of the law" and conflicts between substantive and formal rationality. While the "construction" of legal concepts is part of an ideal type definition of formally rational law, Western legal systems are not alone in having this characteristic. All legal systems have some degree of construction in their conceptual approaches to the law. While personal discretion is an ideal type definition of khadi (qadi) justice (substantively irrational law), at the moment the judge applies the law to make a judicial decision, the "personal element" is unavoidable in all legal systems. And

while legal precedent is central in the Anglo-American common law, it plays some role in all legal systems.

It is good that Turner reminds us of these uniformities across actual historical legal systems. But we must still come back to the fact that if we only focus on these universals, there is no logical justification for the specification of ideal types. By definition, an ideal type of law-finding. e.g., substantively irrational khadi justice, identifies some core feature(s) which differ from the core feature(s) of another ideal type, say, substantively rational law.

Let us now turn to the case of China during the Ch'ing Dynasty (1644-1912). On the basis of his knowledge of Chinese law, Weber (1951:149, 1978:818) categorized it as khadi justice, closest to the substantively irrational type of law. Thanks to scholarship on Chinese law since Weber's day we now know more than Weber could have about Ch'ing law and the officials in the imperial bureaucracy who administered it. Using this recent research, I asked: in which of Weber's ideal types would someone who knows both Weber's ideal types and the current evidence on traditional Chinese law place China's legal system? Let us work by elimination. Law is formally irrational when means are applied that are beyond the rule of reason – e.g., the use of ordeals, oracles or prophetic revelation to decide legal cases. Though such processes are irrational, the presence of magical elements in the adjudication of the case results in a rigorous formalism (have the magical techniques been scrupulously followed?); thus, the formally irrational type. Neither Turner nor I claim Chinese law during the Ch'ing dynasty was of this type.

Second, law is formally rational to the extent that every decision in a concrete case consists of the "application" of a general rule of law, consisting of abstract legal concepts, to a concrete fact situation. By means of legal logic (not the logic of religious, ethical, philosophical or other ideological systems external to the law) the abstract rules can be made to yield a decision for every concrete fact situation. Law is a "gapless" system of rules. Both Turner and I agree with Weber that modern Western law is of this type, though of course the actual variations between European Continental "deductive" law and the "inductive" common law are much more complicated, and Weber was aware that elements of substantively rational law, of khadi justice in the jury system, etc., were also present in modern Western law. Neither Turner nor I would regard Ch'ing China's law as of the formally rational type.

The dispute between Turner and myself comes down to which of the two remaining ideal types – substantively irrational or substantively rational – the actual Chinese case fits better (or deviates from less). Schluchter (1981:88-89) points out that "Weber did not give equal space. . . to the formal and the substantive rationalization of law. In the Sociology of Law he is primarily interested in formal rationalization, whereas substantive rationalization remains largely residual." Had Weber given more attention to substantive rationality, Turner and I might be able to reach more closure on China's relationship to that type of law. In discussing this thorny issue, let us make comparisons of three kinds: between the substantively irrational and substantively rational ideal types, between two of the relevant historical cases Turner discusses – Islamic and Chinese law – and between each ideal type and the two empirical cases.

The ideal types, substantively irrational and substantively rational law, can be analytically defined on the basis of the variables Weber used in constructing them. One of these variables is the extent to which law-

finding is guided by general rules. Substantively irrational law is low on this variable. Legal decisions are influenced by concrete, ad hoc factors in the particular case, and decisions are made "from case to case." Substantively rational law is high on this variable, but the general rules referred to in legal decisions are general principles of religious, philosophical or other ideological systems outside the law itself. Legal thought is undifferentiated from these other kinds of ideological thought. A related variable is the degree to which legal decisions are based on the personal discretion and pure arbitrariness of the judge, magistrate or other official. Substantively irrational law is high, substantively rational law low on this variable.

Islamic khadi justice is Weber's central example of substantively irrational law. Turner states that in constructing this ideal type, Weber chose to emphasize a proverbial, almost mythical version: the khadi judge delivering justice directly, on the basis of discretion and wisdom, with no laws to bind him. Turner quotes Coulson, a specialist in Islamic law, that in historical khadi law "the power of the individual judge to decide according to his own personal opinion (ra'y) was to all intents and purposes unrestricted" and "a hierarchy of superior courts whose binding precedents might have established the uniformity of a case law system" did not exist (Coulson 1964: 30), and states that these were the features Weber seized on to define his ideal type. Coulson here seems to be referring to the seventh and eighth centuries, the earliest period of the Islamic empire. Elsewhere, when Coulson (1969) describes the longer span of Islamic legal history, he tells us that "The outstanding feature of this [Shari'a] system of procedure and evidence is the way in which it deliberately restricts the scope of the individual [qadi] judge's discretion in the matter of fact-finding" (Coulson 1969:64). "Traditionally, the qadi was hidebound . . . by the precise and detailed complex of legal rules in the authoritative manuals which left him little or no room for personal initiative" (Coulson 1969:107-08).

What I find strange is that Turner does not draw the correct inference from Coulson's observations. If actual, historical Islamic khadi justice restricted the discretion of the judge and compelled him to rely on legal manuals, this means Islamic khadi justice fitted Weber's ideal type of substantively rational law, not substantively irrational law. Further, if Coulson is right about Islamic law, it is similar to the way I characterized Ch'ing Dynasty Chinese law, namely, a system that was substantively rational, not irrational, because it restricted the discretion of the judge by requiring him to base his decisions on the written law Code.

The kind of question we should be trying to answer concerning Islam and China is this: as historical cases, both Islamic and Chinese judges in varying degrees (a) had personal discretion, (b) this discretion was constrained by sacred tradition, and (c) this discretion was also constrained by written Shari'a and Confucian-Legalist law codes. The real question for Weberian theory is: did they have approximately equal degrees of each? Or did China have less of (a) and more of (c) than Islamic law? Since neither Turner nor I have the requisite knowledge of both these legal systems, we must admit that only future research can answer questions like this.

Space prevents me from rehearsing all the reasons advanced in my paper for seeing actual Ch'ing law as closer to Weber's substantively rational than to his substantively irrational type. I do not think Turner has refuted my argument. Like most students of law in the West, Turner displays more knowledge of Western than of Chinese law. The sources he cites are

mainly about Western law. He cites not a single reference to recent research on Chinese law. Yet he presumes to know that Chinese law was more substantively irrational, more like proverbial khadi justice, rather than fitting best the substantively rational type. As a China sociologist it has always amazed me how much more casual Western scholars are in their assertions about China than they would dare to be in advancing claims about parallel Western topics in the absence of language and other relevant competencies.

These issues are obviously not resolved. In discussing them Turner and I are handicapped by the sad fact that there continues to be little interpenetration between non-Western area studies and Weberian theory in the field of law. Schluchter (1996:167) notes that "Max Weber's analysis of Islam has not evoked much response in the literature of Islamic or sociological scholarship." The same is true for Chinese studies. Most China specialists who have studied Chinese law have been ignorant of or uninterested in Weberian theory. A not uncommon attitude among China specialists is that Weber's European orientation blinded him to the real situation and possibilities of the Chinese case, that he was an ethnocentric creature of his time. The questions at issue concerning the nature of Chinese law in the context of sociological theory and comparative analysis will never be answered until scholars with a combination of Chinese area expertise and Weberian theory are trained and come forward to do the necessary research.

References

Coulson, Noel J. 1964. A History of Islamic Law. Edinburgh: The University Press.

Coulson, Noel J. 1969. Conflicts and Tensions in Islamic Jurisprudence. Chicago: University of Chicago Press.

Schluchter, Wolfgang. 1981. The Rise of Western Rationalism. Berkeley: University of California Press.

Schluchter, Wolfgang. 1996. Paradoxes of Modernity: Culture and Conduct in the Theory of Max Weber. Stanford, CA: Stanford University Press.

Weber, Max. 1951. The Religion of China. Glencoe, IL: Free Press.

Weber, Max. 1978. Economy and Society: An Outline of Interpretive Sociology. 2 vols. ed. Guenther Roth and Claus Wittich. Berkeley, CA: University of California Press.

For a Soft, Contextual and Critical Constructionist Imagination in Sociology

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Since its birth, sociology has been deeply influenced, in one way or another, by the positivist model of the natural sciences.1 Many important founders of sociology - H. Spencer, A. Comte and E. Durkheim among the others - tried in their own ways to discover "social laws" by adopting a specific epistemological angle of view: social phenomena are seen as "social things" which are involved in causal relationships. In brief, this kind of positivist perceptions of the social world was clearly determinist, and the social actions were seen as determined by external factors such as the division of labour and other structural changes. The functionalist perspectives also used a similar logic: inspired by biology, these theories explained that social actions are determined by "needs" which become, in sociological and anthropology, "social functions" that other social institutions should fulfill. In one way or another, the main axis of these classical and positivist theories is based on the equation: external and objective factors (functional prerequisites, structural changes, wars, economic crisis, etc.) --> social actions.

These positivist perspectives are still used in many researches in contemporary sociology.2 But they were challenged by many sociologists in the twentieth century. In the last thirty years, some well-known sociologists (P. Bourdieu, 1984, 1977 and A. Giddens, 1984 for instance) have explicitly adopted what we can call a co-deterministic epistemological perspective based on a different equation: external and objective factors (class positions) ?? social actions. These perspectives are based on co-determinist concepts like the habitus (Bourdieu, 1984). In this short article, I would like to focus on a third possible epistemological perspective: the constructionist (or constructivist) theories. Generally speaking, they are based on the equation: social actions ? social realities. For example, ethnomethodologists and symbolic interactionists (Garfinkel, 1967; Goffman, 1974, 1967) insisted that social actors are not only in reaction to their social environments because they are reflexive actors. It means sociologists should look at how social actors construct, maintain or change the social realities according to their perceptions and the methods they use to make sense of their world. More recently, similar epistemological perspectives have been supported by social constructionist theories (Bernstein, S., 2001; Best, J. 1989; Corcuff, P., 1995; Gamson, W. and al., 1992; Hannigan, 1995; Jamrozik and Nocella, 1998; Miller and Holstein, 1993). In that case, sociologists demonstrate that social problems (pollution, contamination, poverty, violence, etc.) are social products. They are socially constructed by social actors whose actions and interactions depend on specific interests and worldviews. As social realities, social problems are created by social actors like individuals, social classes and social movements.

Post-modern and post-structuralist theories have also adopted analogous logics. On the contrary to structuralist thinkers (like Levi-Strauss, 1967) influenced by a linguistic turn in social sciences, and who saw social actions as determined by structural and binary oppositions in language and myths, post-structuralist and post-modern thinkers (like J. Derrida, 1978) reduce actions (or language) to "writing" which does not determine its subjects. Here, actors should be free by liberating themselves from the "closures" produced by "logocentrism" - the search for the truth, the

beauty, justice and so on. Thereby, the goal of social sciences is not to discover social laws, but to "deconstruct" the structured differences which compose social realities. The differences are no more seen as the determining structures of the social universe like in structuralist theories. They are social constructions that social scientists should destroy or deconstruct. In a certain manner, this post-modern position was the foundation of the studies of M. Foucault (1980, 1979, 1975, 1965), in which he showed that "objects" or "realities" such as madness, criminality, sexuality and sickness were produced, in modern times, by "regimes of truth" linked to specific relations of power. Again, there is no determinism here. According to Foucault, the construction of these "objects," usually seem as "natural" objects, reflects different experiences which are the results of contingency, specific interactions, singular events and diverse trajectories.

The development of the constructionist perspectives raises important questions in sociology. Some of these questions are connected with the need to have a better understanding of the evolution of this social science. Are we dealing with a sort of epistemological revolution - the rise of a new quasi-paradigm powerful enough to shake the positivistic foundations of sociology? Is it only a temporary current which will be displaced by stronger neo-determinist perspectives? Or is it simply another fashion in a "science" which cannot produce paradigms or even quasi-paradigms anymore?

These factual questions also raise normative questions. If we attend the development of a "new sociology" as P. Corcuff (1995) said, if there is a (quasi)paradigmatic revolution to the benefit of constructionist theories, is it favourable to sociology? If it is just a new fashion, should we accept that theoretical and epistemological orientations depend on this fashionable trend? J. Alexander (1998: 33-34) said that sociology is based on traditions,3 which are influent because they: are inherited from the past, confer prestige, resources and authority to their supporters, and finally, are founded by intellectually charismatic figures. Can we accept that kind of restrictions to the role of rationality and empirical corroborations in the becoming of sociological currents? Should or can we accept that sociology does not produce paradigms or, at least, quasi-paradigms, i.e. consensual (or quasi-consensual) sets of theoretical statements and methods and epistemological principles which are corroborated of refuted by empirical tests? Is it a sign that sociology is (again) in crisis? If yes, what is the solution to resolve this crisis?

In this short article, I cannot pretend to answer all these important questions. By using a simple and concrete example, I would like to defend the following thesis: a social constructionism can be useful as a critical perspective only if sociologists do not reject two logically connected positivist principles. These principles are the search of the truth and dualism.4

My example refers to a personal experience. In 1998-99, I taught political sociology in Belarus, a country of ten millions of people which is surrounded by Ukraine, Russia, Lithuania, Latvia and Poland. Belarus is an unusual place. This is the only ex-republic of the Soviet Union which is still openly neo-communist. It is also one of the most irradiated places on this planet. During and after the Chernobyl accident in Ukraine in 1986, Belarus received a high level of radiation. The consequences are dramatic: especially in the southern part of the country, the soil is contaminated, like the water, mushrooms, berries, milk and milk products, vegetables, animals, plants, and so on. Of course, the bodies of the people were

contaminated during the accident, and are still contaminated by what they eat and drink. In Belarus, my students were young children during the accident. They grew up in a contaminated post-nuclear environment. And they are still exposed to contamination. Some of them will die from a disease created by the radiation; their children will be contaminated, and the children of their children will also be contaminated.

Of course, the representations of the consequences of the accident are constructed by governments, scientists and other actors who have different agenda and interests. But, as wrote G. Steinmetz (1998: 181) by relying on the works of R. Bhaskar (1979, 1978): "Although there is often a causal connection between social objects and the "knowledge of which they are the objects," the relationship between subject and object is not one of "identity". In our example, it would be cruel and unfair to deny the objective reality of the Chernobyl accident and its dramatic consequences on these people. There is a reality out there. An accident happened and the region is contaminated. We can discuss about the level of the effects of this accident on people and the natural environment, but we cannot seriously deny the existence of the accident and its consequences. By seriously, I mean with rational arguments and empirical facts produced by the use of our five senses. Even the actors who have an interest to hide the effects of the accident do not dare to deny it. There is an important cause to explain this impossibility. In the empiricist logic of John Locke (1995), we can say that the cause is the power of the new reality created by the accident. Interested actors can mould this powerful reality to suit their interests, but they cannot deny it since other rational actors can also use this reality to demonstrate the weakness of the ideological statements of the interested actors. Here, the reality is a pool of real things in which different actors can select and use relevant facts in their discursive struggles. The degree of rationality of the actors can be determined by their respect of the major principles of the empirical and analytic knowledge (like dualism and the search of the truth) when they select and use facts. In this sense, a rational actor who thinks that X does not produce Y is always ready to change his views if a valid empirical test or a fact demonstrates that X produces Y. Of course, different rational actors can disagree on what is a valid test or fact. But they are all rational as long as they recognize that the discovery and the respect of the reality in itself is more important than the defense of realities for self, since the latter are linked with the preservation of ideological, political, economic or social interests. In this sense, the development of sociological theories should not be based on the prestige of its founders or any kind of other interest than the understanding of natural or social realities as they are in themselves.

It does not mean we can confuse natural and social realities. Social realities are not natural realities since they are constructed by social actors who have different agenda, ideologies, values, interests and so on. But, again, does it mean that sociologists should deny the objectivity of the social realities? No, it simply means that sociologists are researchers who try to discover social objects which are constructed by other subjects. And to study the construction and the reproduction of social realities in itself, sociologists have to take into account the influence of realities for self and in itself on social actions. In our example, it implies that the actions and behaviors of Belarusian actors are not only or fully determine by the nuclear accident and its consequences. In effect, of my biggest surprises in Belarus was not to see and deal with the terrible "natural" consequences of the accident. If I can use two Kantian concepts, I will say that my biggest surprise was the following: even if many things are contaminated, and even if people are sick, as a phenomenon, the

Chernobyl accident does not exist in Belarus. It exists as a noumenon, or as an objective reality, but in the consciousness of the Belarusians, it is nothing else than a souvenir. It is an historical event, a tragic episode that most of the people remember only on specific occasions, at the date of the accident, or when a friend or a relative gets very sick. Otherwise, in the minds of most of the people, air, water, the soil, milk, mushrooms, berries, and so on are not contaminated. Their children are not contaminated until they are diagnosed as sick by a physician. The real situation, the real reality, is just too hard to sustain. Most of the people prefer to live in reconstructed and softer reality. In this sense, imagined realities are closely connected with the construction and the reproduction of social realities in themselves. They are partly the effects of the creativity of actions (Joas, 1996) done by social actors who prefer to live in an imagined world, instead of seeing themselves as prisoners of a powerful, desperate and meaningless reality in itself. Many social actors prefer imagined realities where the consumption of vodka or garlic can cure radiation (Belarus), or where their governments are heroes who are fighting against monster and devils (the actual United States for instance). Thus, we can propose the following general equation to understand the construction and the reproduction of social realities in themselves:

> *imagined realities (or realities for self) + realities in themselves --> actions/interactions of/between different individual/collective actors --> construction/reproduction of social realities.*

To summarize, what does it mean for sociologists? Generally speaking, sociologists should stop to oppose positivism and constructionism. These perspectives should be combined in favor of a soft and contextual constructionist perspective. This solution permits us to avoid the determinism of positivism and the relativism of radical constructionism and post-modern perspectives. Furthermore, at this point and in this brief article, we can say these considerations imply that sociologists should respect three principles:

> Principle 1: *Sociological theories should be based on a soft and contextual social constructionist perspective.*

Firstly, by "soft," I mean that we should not deny the existence of the reality as radical constructionists and post-modern thinkers can do. In this sense, in our example, we should distinguish between the environmental problems as natural problems and as social problems. The former are studied as natural effects by natural scientists, while the latter are studied as social products by social scientists. Of course, as we will see, natural scientists can be part of the social construction of social problems. But the recognition of this fact does not imply that pollution, contamination, degradation of the natural environment, etc. are not "natural" phenomena. As John Hannigan (1995) said:

[D]emonstrating that a problem has been socially constructed is not to undermine or debunk it, since "both valid and invalid social problem claims have to be constructed." Similarly, social constructionism as it is conceptualized here does not deny the independent causal powers of nature but rather asserts that the rank ordering of these problems by social actors does not always directly correspond to actual need. To a considerable extent, this reflects the political nature of agenda-setting.

Secondly, by "contextual," I mean that we should recognize the power of

the real reality through the actions and interactions of different social actors. In other words, the study of social problems should integrate the effects of the power that real reality can have through the eyes and the words of the people who are ready to base their perceptions on rationality and empirical facts. Furthermore, when they are based on valid methods and fairness, empirical facts can help everybody to have an imperfect idea of the distance between real realities and representations of the realities. In this respect, sociology can help to distinguish between ideological statements, rational logics and empirical facts in the construction of social realities.

> Principle 2: *Sociological studies are not restricted to empirical and hermeneutic knowledge; they should be based on critical theories.*

If we use the typology proposed by J. Habermas (1971) in Knowledge and Human Interests, we can say that sociology should not only, necessarily or always be connected with an empirical and analytic knowledge dedicated to improve our technical control of the social universe. In our case, it seems to be obvious that sociology should not be used only to adapt the social behaviors of the Belarusians to their post-nuclear world. Sociology can also answer two other needs.

Firstly, on the basis of a hermeneutic and historical knowledge, it can increase our understanding of the subjective dimension of the accident and its aftermaths. In our example, as sociologists we are dealing with the subjective appropriation of the catastrophe; with how the Belarusians interpret the disaster and its consequences. This is all about subjective stories of a real event, and how these social representations influence the actions and the interactions of these people.

Secondly, sociology can and should produce a critical knowledge. Here, through the study of dynamics of constraint, exploitation, alienation and domination, this type of knowledge is connected with an interest of emancipation. As Robert Cox (1992) said, "critical theory stands back from the existing order of things to ask how that order came into being, how it may be changing, and how that changes may be influenced or channeled… Its aim is the understanding of structural change." I would add the improvement of the democratic control of structural changes. In this sense, the goal is not only to interpret the accident and its consequences through empirical and hermeneutic knowledge, but it is to change it in favor of its victims. This goal can be attained only if sociologists succeed in creating links, real links, between relations of domination, exploitation, etc. and the construction of the reality. This leads us to the third and last principle.

> Principle 3: *Sociologists should try to discover the social processes behind the construction of realities.*

The Chernobyl accident was a technical accident caused by the defaults of the nuclear plant but also by social realities such as a soviet belief in the infallibility of the soviet engineers and science. People died and others are dying and will die partly because an ideology was too powerful. Furthermore, during the accident, the Belarusian population was not informed and most of the people did not know that it was dangerous to be where they were, to eat vegetables, to drink water, and so on. They were not informed mainly because the politicians had specific interests to defend. After the accident, millions of western dollars were sent to Ukraine

to help the country to deal with the disaster. Even if Belarus received more radiation than Ukraine, it received hardly no help from the western countries. The main concern of the western governments was to put enough pressure on the Ukrainian government to close the other reactors of the nuclear plant, not to help the victims of the accident. In this sense, the strategy dictated that the money should be sent to Ukrainians, not Belarusians. Today, the Belarusian government minimizes the consequences of the accident on the population. Some scientists were persecuted when they tried to reveal their views on this issue. The western governments do not seem to be very interested to discuss about these consequences. We also have nuclear plants in our backyards.

In these circumstances, sociologists have an important job to do. It is their task to discover and explain how we construct our social realities. The job is to understand and reveal how the environmental problems are managed as social problems. Sociologists should discover how and why different social actors, individual and collective actors (social classes, social movements, counter social movements, governments, international organizations, political parties, pressure groups, and so on) are involved in the construction of social problems and realities through their actions and interactions. For the study of social problems, Joel Best (1989) suggested studying the claims themselves, the claim-makers and the claims-making process. This is only one possible theoretical framework. In this short article, it is important to underline that any emancipation based on a critical theory starts with the understanding or the discovery of the processes of construction of social realities. The second step is to demonstrate and reveal how some individual and collective actors are victims of undemocratic social realities. In our case, the job of sociologists is to understand the social (political, economic and cultural) causes of the Chernobyl accident, and how and why ordinary people in Belarus have been the victims of the management of the consequences of this nightmare.

Of course, the interest of all these discoveries is the following: if we can have a better understanding of the construction and the reproduction of social realities, we can have a better control over them, and we can destroy or diminish the intensity of relationships based on domination, exploitation and alienation. An old positivist principle (knowledge ? predictions ? control) can be reinforced by a soft and contextual social constructionist approach. According to this logic, the utility of sociology should be evident for all the democrats of this world. It does not mean that everybody would support a common theory. But, at least, there would be no crisis of legitimacy, and it would be easier to defend sociological departments and the need to invest resources in sociological researches.

Notes

1. Here, I do not mean there is only one manner to study natural phenomena. My reference is positivism as a model of scientific inquiries based on certain paradigmatic epistemological and methodological principles. More precisely, this model is based on the idea that “the goal of any science is to develop a valid, precise, and verified general theory.” (Holt and Turner, 1970: 2). This general theory should help us to predict and control our natural world or social universe. In this sense, as a political scientist said in 1966, “we would regard the phenomena as “explained” if we could state a relatively simple set of invariant rules or “laws” that would enable us to predict the answers to all the questions on

the polls at time t on the basis of our knowledge of the answers to the questions on the polls prior to time t, and correspondingly, predict the actual voting, communication, or other political behavior of the respondents at time t on the basis of the information gathered prior to time t" (quoted in Holt and Turner, 1970: 3).

2. As wrote G. Steinmetz (1998: 172) about the American human sciences: "Although formal positivists are somewhat difficult to find these days, a watered-down version of positivism is still widespread within U.S. sociology, psychology and political science. It is found in graduate and undergraduate methodology courses, statistics textbooks, and essays in the leading journals. This mainstream positivism is not the logical positivism of Carnap or Schlick nor the Deductive-Nomothetic version associated with Hempel but a less rigid hybrid of empiricist ontology and positivist epistemology. This mainstream positivism is characterized by the search for "constant conjunctions of events" and by an ontological belief in what Bhaskar (1978:69ff.) calls regularity determinism. Science is thought to be built up through empirical generalizations expressed as universal statements of the "covering law" type."

3. Traditions are defined as "patterns of perception and behavior that are followed not, in the first instance, because of their intrinsic rationality, not because they have "proven their worth," but because they are inherited from the past. The traditional status of social scientific schools confers upon them prestige and authority, which is reinforced because they are typically upheld by organizational power and supported with material resources" (p. 33).

4. Dualism refers to the recognition of a separation between the subject (the researcher) and the object (of the research). It is related with the respect of neutrality in the observation of the objects (by a subject who do his or her best to be neutral), but also to scientific realism, i.e. "the thesis that the objects of scientific inquiry exist and act, for the most part, quite independently of scientists and their activity" (Steinmetz, 1998: 174).

References

Alexander, J.C. 1998. Neofunctionalism and After. Oxford: Blackwell Publishers.

Bhaskar, R. 1979. The Possibility of Naturalism. New York: Humanities Press.

Bhaskar, R. 1978. A Realist Theory of Science. Brighton: Harvester Press.

Bernstein, S. 2001. The Compromise of Liberal Environmentalism. New York: Columbia University Press.

Best, J. (ed). 1989. Images of Issues: Typifying Contemporary Social Problems. New York: Aldine de Gruyter.

Bourdieu, P. 1984. Distinction. London: Routledge.

Bourdieu, P. 1977. Outline of a Theory of Practice. London: CUP.

Corcuff, P. 1995. Les nouvelles sociologies. Paris: Nathan.

Cox, R. 1992. Globalization, Multilateralism and Democracy. Providence: ACUNS Reports and Papers 1992-2.

Derrida, J. 1978. Writing and Difference. Chicago: University of Chicago Press.

Foucault, M. 1980. The History of Sexuality. Vol. 1, An Introduction. New York: Vintage.

Foucault, M. 1979. Discipline and Punish: The Birth of the Prison. New York: Vintage.

Foucault, M. 1975. The Birth of Clinic: An Archeology of Medical Perception. New York: Vintage.

Foucault, M. 1965. Madness and Civilization: A History of Insanity in the Age of Reason. New York: Vintage.

Gamson, W. et al. 1992. "Media Images and Social Construction of Reality", In: Annual Review of Sociology 18, June 8.

Garfinkel, H. 1967. Studies in Ethnomethodology. Englewood Cliffs, N.J.: Prentice-Hall.

Giddens, A. 1984. The Constitution of Society. Cambridge: Polity.

Goffman, E. 1974. Frame Analysis: An Essay on the Organization of Experience. New York: Harper Colophon.

Goffman, E. 1967. Interaction Ritual: Essays on Face-to-Face Behavior. Garden City, N.Y.: Anchor.

Habermas, J. 1971. Knowledge and Human Interests. Boston: Beacon Press.

Hannigan, J.A. 1995. Environmental Sociology. A Social Constructionist Perspective. New York: Routledge.

Holt, R.T and Turner, J.E. 1970. The Methodology of Comparative Research. London/New York: The Free Press/Collier-Macmillan Limited.

Jamrozik, A. and Nocella, L. 1998. The Sociology of Social Problems. Cambridge: Cambridge University Press.

Joas, H. 1996. The Creativity of Action. Chicago: Chicago University Press.

Levi-Strauss, C. 1967. Structural Anthropology. Garden City, N.Y.: Anchor.

Locke, J. 1995. An Essay Concerning Human Understanding. New York: Prometheus Books.

Miller, G. and Holstein, J.A. (ed). 1993. Constructionist Controversies:

Issues in Social Problems Theory. New York: Aldine de Gruyter.

Steinmetz, G. 1998. "Critical Realism and Historical Sociology" In: Comparative Studies in Society and History 40(1), January, pp. 170-186.

The 2002 Barrington Moore Award for Best Book

The 2002 Barrington Moore Committee will decide on the best book in the areas of comparative and historical sociology. Books published since January 1, 1999 were eligible.

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Abbott, Andrew. 2001. Chaos of Disciplines. Chicago: University of Chicago Press.

Arrighi, Giovanni and Beverly J. Silver. 1999. Chaos and Governance in the Modern World System. Minneapolis: University of Minnesota Press.

Berberoglu, Berch. 1999. Turmoil in the Middle East. Albany, N.Y.: SUNY Press.

Billings, Dwight and Kathleen Blee. 2000. The Road to Poverty: the Making of Wealth and Hardship in Appalachia. Cambridge, U.K.: Cambridge U.P.

Chew, Sing C. 2001. World Ecological Degradation: Accumulation, Urbanization, and Deforestation: 3000 BC-AD 2000. Walnut Creek, California: AltaMira Press.

Charrad, Mounira M. 2001. States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco. Berkeley, CA: University of California Press.

Collins, Randall. 2000 [1998]. The Sociology of Philosophies: A Global Theory of Intellectual Change. Cambridge, MA: The Belknap Press of Harvard University Press.

Crotty, Raymond D. 2001. When Histories Collide: The Development and

Impact of Individualistic Capitalism. Walnut Creek, California: AltaMira Press.

Demerath N.J. III. 2001. Crossing the Gods: World Religions and Worldly Politics. New Brunswick, NJ: Rutgers University Press.

Drake, Michael S. 2002. Problematics of Military Power: Government, Discipline and the Subject of Violence. London, UK: Frank Cass.

Duina, Francesco G. 1999. Harmonizing Europe: Nation-States Within the Common Market. Albany, NY: SUNY Press.

Glenn, John K III. 2001. Framing Democracy: Civil Society and Civic Movements in Eastern Europe. Stanford, CA: Stanford University Press.

Goodwin, Jeff. 2001. No Other Way Out: States and Revolutionary Movements, 1945-1991. Cambridge: Cambridge University Press.

Guillén, Mauro F. 2001. The Limits of Convergence: Globalization and Organizational Change in Argentina, South Korea, and Spain. Princeton, NJ: Princeton University Press.

Hardt, Michael and Antonio Negri. 2000. Empire. Cambridge, MA: Harvard University Press.

Lachmann, Richard. 2000. Capitalists in Spite of Themselves: Elite Conflict and Modern Transitions in Early Modern Europe. New York, NY: Oxford University Press.

Lamont, Michèle. 2000. The Dignity of Working Men: Morality and the Boundaries of Race, Class, and Immigration. New York, NY and Cambridge, MA: Russell Sage Foundation & Harvard University Press.

Lee, James Z and Wang Feng. 1999. One Quarter of Humanity: Malthusian Mythology and Chinese Realities. Cambridge, MA: Harvard University Press.

Liehbach, Mark I. And Adam Seligman. 2000. Market and Community: The Bases of Social Order, Revolution, and Relegitimation. University Park, PA: The Pennsylvania State University Press.

Huber, Evelyne and John D. Stephens. 2001. Development and Crisis of the Welfare State: Parties and Policies in Global Markets. Chicago: University of Chicago Press.

Mahoney, James. 2001. The Legacies of Liberalism: Path Dependence and Political Regimes in Central America. Baltimore and London: The John Hopkins University Press.

McGirr, Lisa. 2001. Suburban Warriors: The Origins of the New American Right. Princeton, NJ: Princeton University Press.

O'Connor, Orloff and Shaver. 1999. States, Markets, Families: Gender, Liberalism and Social Policy in Australia, Canada, Great Britain and the U. S. Cambridge, U.K.: Cambridge University Press.

Parsa, Misagh. 2000. States, Ideologies, and Social Revolutions: A Comparative Analysis of Iran, Nicaragua and the Philippines. Cambridge, UK: Cambridge University Press.

Ragin, Charles C. 2000. Fuzzy-Set Social Science. Chicago: University of Chicago Press.

Spang, Rebecca L. 2000. The Invention of the Restaurant: Paris and Modern Gastronomic Culture. Cambridge, MA: Harvard University Press.