

SOCIOLOGY OF LAW AND THE PROBLEMATIC OF THE SOCIAL SCIENCES IN ITALY

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Taking as our starting point Renato Treves's book on sociology of law (1977), we try to give an overview of the way in which a sociological perspective developed in Italy. We deal with sociology of law as an example of this process, insofar as it reflects the ambiguities and contradictions confronting the social sciences in Italy. These disciplines are torn by contradictory forces: on the one hand, they are "naturally" attracted to and stimulated by projects for planning, rationalizing, and modernizing society; on the other, they often find themselves unable to cope with the limitations, precariousness, and abstraction of these projects, and therefore tend to seek refuge within the academic world. However, the urgent need for analyses of Italian social reality has spurred research activity and debate over the role of the social sciences, especially since the end of the 1960s, compelling them to expand their scope beyond traditional academic and scientific boundaries.

In order to convey the context in which Renato Treves's book (1977) has been written and is being read and used by social scientists and law students, it is necessary to say a few words about the history and present status of the social sciences in Italy. We shall also try to outline the various directions taken by sociology of law: its creation, changes, and effects. Some of these directions may appear to depart greatly from the paths followed in other countries and to have little to do with the sociology of law strictly defined. But since they occupy much intellectual and political debate in contemporary Italy—if not academic discourse—we thought it indispensable to include them as a background against which to discuss Treves's book.

I. THE SOCIAL SCIENCES IN ITALY

Italian sociology has not experienced a continuous development. The analytic and scientific study of society was late in taking root and gaining legitimacy, whether in the academic world, in intellectual circles, or even at the level of popular discourse; even today its status is insecure. The historical and social causes of this situation are many, the most evident one being the twenty-year interruption by Fascism, with its effects at both the socioeconomic and cultural levels. Thus we must talk of two distinct periods in the development of social studies,

with little or no continuity between them: before Fascism and after the Second World War.

A. The Social Sciences before Fascism

The period before Fascism is culturally dominated by positivism on the one hand and Croce's idealism on the other. The best known brand of Italian positivism is that characterized by a heavy emphasis on biologism, exemplified by Lombroso's criminal anthropology (e.g., 1878). If it is correct to say that the main impulse behind the analytic study of society has been the dominance of a self-conscious and culturally autonomous bourgeoisie, then the peculiar approach of the Italian intelligentsia is understandable precisely in the context of what has been called an incomplete bourgeois revolution (Gramsci, 1971). The formation of a public opinion, so crucial for the development of a socially inquisitive debate, has been stunted by the uneven development of North and South, directed by a heterogeneous block of forces (Southern landowners and Northern capitalists) holding no consistent ideology. Sociology represents the point of view of a national bourgeoisie founding its hegemony on a complex and national view of economic and social problems—a national bourgeoisie that has waged a successful revolution and learned its own limits and crises. Criminal anthropology, on the other hand, represents the point of view of a social class, the Northern Italian bourgeoisie, that has undergone a passive revolution (Buci-Glucksmann, 1976)—a social class that maintains its power through dictatorial and colonialist methods. This explains the particular way in which the social sciences were born in Italy: sociologically oriented studies emerged under the aegis of positivism, the progressive ideology of all anticlerical forces, still strongly influenced by social Darwinism, but they did not gain autonomy. Unlike social studies in other countries, especially the United States, France, and Germany, those in Italy developed toward the end of the cycle of bourgeois ascendancy. During the crisis of the bourgeoisie and its resolution under Fascism, the social sciences, and especially sociology, disappeared.

We can distinguish many tendencies in positivism, each of which gave a different answer to the common questions of social control in a country experiencing the difficult process of unification. The very emphasis on biological determinism—greater in some circles, disputed by others—must be seen in the context of the anticlerical, antispiritualist battle waged by the progressive intelligentsia. The criminal anthropology of

Lombroso (e.g., 1878) and Ferri (e.g., 1888) are among the better known and academically more legitimate contributions of the period to “sociological” study. In trying to establish the scientific study of the causes of crime, the Positive School also gave rise to a peculiar “revolt against formalism” from which what was called juridical socialism is derived.¹ The aim of this school was the construction of a “positive law” based not on the notion of guilt but on that of “social defense,” for which knowledge of the actual production of crime was essential.²

In general, positivist social thought set itself the task of answering problems of social control. These included not only the question of repression but also that of the necessary conditions for homogeneous development. Within this latter theme the Southern question, and more generally the question of sub-cultural “deviance,” was addressed. Social thought had immediate and explicit political connotations and motivations. Problems of social control, progressive development, social justice, general and specific philosophical and political questions, shaped two debates. On a general theoretical level, the Left discussed the nature of law: whether it must be considered the direct expression of the will of the ruling class or should be interpreted as merely having organic ties with the structure of the relations of production. On a more immediate political level, jurists, magistrates, social scientists, and politicians discussed the relative merits of a general code of laws valid for the whole country as against regional codes better suited to the different social and cultural conditions. These studies and debates did not cohere in an autonomous and self-conscious sociology. Lombroso was a medical doctor, Ferri was a jurist and taught penal law. Their journals³ can be viewed as social science journals as far as general content is concerned, but the two disciplines remained academically separated, without a coherent methodological and theoretical framework. Nor was this considered a problem. Indeed, criminology developed as the clinical study of “criminals” and has remained located within medical schools to this day. Juridical studies developed independently in law schools, where more socially oriented

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1. Juridical socialism was a school of thought at the end of the nineteenth and the beginning of the twentieth century that analyzed penal law as an expression of the interests of the ruling class. Both Lombroso and Ferri were members of the Socialist party.
 2. Social defense, still a dominant school in European criminology, argues that the criminal law cannot be derived from abstract moral principles but can only be justified as the defense of society from criminals.
 3. *Archivio di Psichiatria, Scienze Penali, Antropologia Criminale*, and *La Scuola Positiva*, which appeared from about 1880 until the late 1920s.

tendencies sometimes were (and are) pursued within institutes devoted to philosophy of law and penal law. In other words, the study of social problems, which in other countries became the autonomous science of sociology, in Italy remained fragmented within "traditional" disciplines, coalescing only at the level of political discourse. Another Italian characteristic is the lack of empirical research, an effect of the situation just described. What research was done, apart from the studies by Lombroso which cannot be considered "sociological," was sponsored and directed by government agencies.⁴

Croce's idealism, strongly antipositivist and antimarxist, gained favor and influence in the period of the imperialist adventures of an already unstable bourgeoisie. Croce's historicism, his violent polemic against any empirically grounded study of society, found a fertile ground and, despite its emphasis on reason and rationality, converged with the growing currents of neirrationalism that ultimately shaped the ideology of Fascism.

B. The Social Sciences under Fascism

Under Fascism the development of the social sciences was interrupted. Their contribution to solving the problems of social control is irrelevant to mass reactionary regimes. A dictatorial and authoritarian state does not need long-range strategies of control. Hegemony and acquiescence in the system are achieved by the creation of capillary structures of aggregation throughout the country. These are the most efficient channels through which to generate consensus in a situation dominated by a practice of brutal and open repression. Only those disciplines that can be used by the regime will survive: ethnology plays a role in colonial adventures; folklore studies contribute to the regime's populist ideology; physical and biologicistic anthropology support racist politics; and psychology, dominated by Catholic intellectuals reacting against positivism, serve to define deviance in individual terms—the deviant is a monster motivated only by personal pathology.

4. Examples are: *Inchiesta agraria Iacini* (1877) (on the economic, social, and cultural conditions of rural agriculture), *Inchiesta parlamentare Bertani* (1890) (on the hygienic and sanitary conditions of peasants in Italy), *Inchiesta parlamentare sulle condizioni dei contadini nelle provincie meridionali e nella Sicilia* (1910) (on the economic, social, and cultural conditions of peasants in the South and in Sicily).

C. The Social Sciences after the Second World War

The rebirth of the social sciences during the 1950s was slow and fragmented, and opposed by many. It was a long time before they were legitimated and incorporated into university curricula; even today there is only one autonomous department of sociology in Italy (Trento).

The introduction of modern approaches to social science—influenced by the new economic and social needs of the country—was dominated by many disparate forces: the 1950s reform agencies;⁵ the creation of social service agencies; the emergence of research centers tied to the most progressive industrial enterprises (such as Olivetti); the cultural influence of the Anglo-Saxon world, and specifically direct contact with American social scientists (sociologists and anthropologists) who conducted a good deal of research in Italy during this period. Most of these initiatives were taken by the most progressive sector of the Catholic intelligentsia, often in an effort to counteract marxist cultural influence. Both the marxist Left and the larger part of the Catholic world remained uninvolved in, often diffident toward, and sometimes openly hostile to these initiatives, though for very different reasons.

Most marxist intellectuals grew up within the cultural atmosphere of Croce's historicism, which was hardly conducive to an appreciation of empirical research. This theoretical antipathy was reinforced by strong suspicions about anything thought to come from the United States, and even more by the dominant (stalinist) view that marxism was the only legitimate and comprehensive science of social reality. But if Italian marxist intellectuals scorned and repudiated anything that could turn them away from the study and interpretation of marxism, conceived in philosophical and idealist-historicist terms, communist officials remained in close contact with social reality and were among the very few to try (in party conferences and meetings) to give a concretely grounded yet comprehensive view of the Italian social situation.

The Catholic groups that dominated government and culture in the 1950s, on the other hand, were associated with the least progressive element in the Italian ruling class and with the Church hierarchy. Their opposition to the social sciences was "traditional," an expression of their pervasive antimodernism.

5. *La Cassa per il Mezzogiorno*, the complex development of State participation in private industry.

The social science of that era, therefore, suffered from serious limitations. It slavishly accepted American theories and methodologies, often mechanically applying them to a very different situation. Research efforts were dissipated in microsocial studies, directed to solving particular problems, but lacking a comprehensive conceptual framework and unable to provide one. The social sciences were reluctantly admitted into the academic world, but in a haphazard way, without a consistent program of teaching and research. As a result they retain, to this day, the status of second class disciplines in humanities departments and law schools—alternative, somewhat degrading, choices for philosophy and law students.

All this started to change in the 1960s. The new center-left government came to power with vast projects for social reform. The working class movement, after ten years of defeat and defensive politics, initiated an aggressive and victorious campaign of struggles, culminating in 1969-70. The whole country seemed to experience an accelerated period of modernization, however “fractured” (Seppilli and Guaitini Abbozzo, 1974). The cultural climate warmed to the social sciences, which found support in the short-lived technocratic ideology of those years. Trento’s department of sociology was founded with the money and political backing of the more farsighted segment of the Christian Democrat party, which hoped this school would produce the new technical cadres prepared to lead nationalized industry to efficiency and rationalization. But Trento’s history is emblematic of the failure of “technocratic,” reformist, rationalizing programs in Italy, where reforms have never been introduced by the ruling classes spontaneously but only in response to the struggles of the organized working class. What was to be an instrument for technocratic planning exploded into one of the first and most radical revolts against capitalism and all projects of rationalization, in which students used the tools of the new social science to analyze the situation critically for its revolutionary potential.

The failure of the center-left reformist program, the new wave of student and worker struggles, the growth and spread of antiauthoritarian, antiinstitutional ideologies and practices were the setting in which the social sciences began to acquire a vast new audience and to gain some legitimacy. All over the universities students insisted upon tools to analyze their social situation. They made this demand in all subjects: architecture, psychology, medicine, law, history, etc. Outside the universities, “sociological” analyses were sought by social workers, psy-

chiatrists, jurists, and public administrators. The results were ambiguous. In the first place, because all these demands originated in an extremely politicized milieu, not immune from the traditional marxist diffidence toward empirical research, they were not really demands for "sociology," for the application of "scientific" methods of analysis. Indeed these demands were accompanied by a radical critique of theories, methods, and techniques of the social sciences. Furthermore, these demands assumed the existence of immediate answers that could provide rapid and effective remedies to pressing social problems. Addressed to a cultural milieu and to universities completely devoid of social research, these contradictory requests resulted not so much in a "sociologization" of philosophy or politics, but on the contrary in a "politicization" of "sociology" along the lines most familiar to marxist students in Italy: a disdain for empirical research, indulgence in grand theoretical analyses and philosophical disputes, etc. At the level of practice there was an emphasis on spontaneity, inspired by the ideology of direct participation in the phenomena studied.

When the wave of struggles abated, sociology was often stigmatized as the byproduct (and sometimes, especially today, as one of the detonators) of the chaotic student revolts. The threatened academic "barons" (left and right wing alike) were quick to point out the lack of rigor, the extreme ideologization, contrasting these with the secure academic status of the traditional disciplines. Yet the growth of grass-roots social movements, the spread of antiinstitutional experiments and decentralized social action, together with the process of democratization within many social control institutions (police, magistracy, etc.) provided and still provide a fertile terrain for politicized students of social science. However, just as requests for research should be less vague, less occasional, and allow more space and time for long-range studies, so answers should be less approximate, better grounded scientifically.

The situation today is not terribly promising. Apart from the fact that the university system is collapsing, it has always been unable to provide funds, instruments, or space for social research. Social science courses still find it difficult to attain autonomy; most are taught within humanities, political science, and law departments. On the other hand, philosophers, historians, and jurists are undertaking socially oriented studies. Indeed, many of those who teach sociology originally came from these disciplines. This gives Italian social thought a

strong theoretical and interdisciplinary basis and often, too, immediate political visibility and relevance.

II. THE CASE OF SOCIOLOGY OF LAW

Within the history of social studies in Italy the case of sociology of law may be seen as an example of the dialectic (which influences the emergence of any scientific approach) between economic interests external to the scientific environment and those interests identified more closely with the development of the science itself. Sociology of law is a paradigmatic example of the meaning and role of the social sciences in Italy in the postwar period, both in its subject matter and because of the period in which it was consolidated as a separate discipline.

The subject matter of sociology of law (positive law in society and the juridical system) is, in Italy, extraordinarily impervious to reform and restructuring. Juridical dogmatism and conceptualism on the one hand, and professions of "independence" and "neutrality in politics" on the other, exclude any involvement in or compromise with the changing social reality. Thus the difficult, pioneering task of sociology of law was to proselytize and propagandize in favor of a new way to approach the problems of law, and to introduce destabilizing elements within the dominant ideology and practice of juridical institutions.

Sociology of law in Italy emerged in a period (the late 1950s and early 1960s) characterized by the reformist and rationalizing perspective of the center-left coalition then in government. This perspective reflected the acceleration of neocapitalist economic development and the consequent reduction and resolution of economic, social, and cultural contradictions. Within this general framework the role of sociology of law—as epitomized by the general title of the research program of the *Centro Nazionale di Prevenzione e Difesa Sociale*, "The Administration of Justice and Changing Italian Society"—was to identify and explicate the fundamental problems that had to be addressed in order to initiate reforms and adjust norms and institutions to the changed social reality.

A. The Contribution of Renato Treves

Treves's book (1977) represents both the greatest accomplishment and the failure of this project. The primary importance of this book is not so much for what it says or its intended objectives: "To supply a text, while keeping in mind the needs of the environment and culture, the currents of

thought which have produced it [sociology of law], the main subjects studied, the methodologies followed, the objectives reached" (1977:1). Rather, it is important for what it represents: the end-product of a process of consolidation in Italy of an autonomous scientific discipline: sociology of law.

It is generally acknowledged that Treves has made a fundamental contribution to establishing sociology of law in Italy. It is therefore obviously appropriate that he should supply the official introductory textbook. But this alone would hardly be sufficient reason to attribute a symbolic value to this text. Yet we think it has such a significance by virtue of appearing at a crucial moment for the social sciences.

After the critical debate on the role and function of the social sciences that followed the political awakening of 1968, a feeling of powerlessness has developed among those cultural workers who are socially and politically more aware, which has been accompanied by an "academicization" of the social sciences. Treves's book seems to ignore the ambiguity and conflict inherent in this situation while "instinctively" appearing to choose the security and peace of academic research. Indeed, the book shows rather clearly the end result of the institutionalization and "academicization" of the discipline and the failure of the reformist project, recorded if not admitted, its inability to achieve significant change at the political and institutional levels. The book is an affirmation of identity and autonomy through the delimitation of a specific field of analysis and research, rather than a problematic reflection on the role and tasks of sociology of law.

The first part of the book deals with the historical and theoretical process through which a sociological approach to the law emerges. Treves looks for elements to support the claim of sociology of law to legitimacy as a separate science, equal to other sciences. The second part of the book deals with methods and research techniques illustrated by examples of actual research. This analysis and description of techniques is of limited value since the general problems of sampling, interviewing, and drafting questionnaires are not very different from those of other social sciences. Yet its inclusion serves two purposes: the manifest function of providing a comprehensive view of the discipline and the latent function that, by conveying an image of organic completeness, it formally establishes the autonomy and identity of the new scientific perspective.

The first impression conveyed by this book is that it has been superseded by the critical contributions of recent socio-

logical debates. It appears that the desire to consolidate an ideological and practically relevant corpus, an autonomous model of scientific interpretation, has led Treves to ignore the ongoing debate, and to borrow uncritically the paradigms and techniques of general sociology, overlooking the fact that the parent discipline is in the midst of a crisis. But sociology of law establishes itself as a separate and autonomous discipline precisely when, within the debate on the crisis of sociology, it is recognized that the solution requires efforts to overcome the present fragmentation and specialization, to unify the social sciences (Pizzorno, 1972).

The analytic instruments used by sociologists of law are theoretical and research models of the middle range. Although such models could have made useful practical contributions to the reform of normative structures, they cannot grasp the actual mechanisms and complexities involved in the functioning of contemporary institutions. The research seems to imply that the imperviousness of legal structures to change, the "anachronism" of codes and norms, the formalistic rituals of the exegesis of law—all these are residual, archaic, noxious survivals; whereas it is now clear that their very dysfunctionality is essential to a complex structure of social control. In conclusion, the first impression we get from the book is that it voluntarily remains outside the critical debate on the social sciences, that its aim is rather to enlarge and strengthen the status of sociology of law within the academic world.

A second impression is that the new discipline is already an anachronism, both in its theory and its practice: it appears to pursue the goal of developing and rationalizing Italian society despite the fact that the structural and ideological bases for such a project no longer exist. The ensemble of empirical studies on "The Administration of Justice and Changing Italian Society" (included in the list of references), which constitute the organizing nucleus of the new discipline, were produced during the wave of structural and institutional reform that prevailed during the center-left period. But Treves's book was written ten years after this perspective reached its ultimate crisis, and should have considered the objections to an uncritical presentation of an experience that was clearly outdated. Indeed, after 1968 Italian social contradictions exploded even within the magistracy and cracked the unity of the rationalizing and reformist front. Magistratura Democratica, the left wing tendency within the national association of magistrates, was born in 1968. Thus traditional problems of the backwardness

and inefficiency of the judicial system, and of the modernization of law and its adjustment to the changed social and economic conditions, are no longer the only issues that arise in political and scientific debates. We also see the more fundamental and complex questions of the role and functions of the bourgeois State, its bureaucratic apparatus, and its intellectual-technicians, at the present stage of class conflict.

The sociology of law conveyed by Treves's book, then, is ambiguous and "two-faced." On the one hand, we observe the conclusion of a process of consolidating and institutionalizing the discipline; on the other, we see the failure to attain any goal more ambitious than that of entering the university curriculum. Sociology of law is still tied to an inadequate perspective and thus remains outside the present debate. This does not mean that sociology of law cannot free itself from such an outdated role and practice, and in some cases it has done so. We only wish to insist that the process of constituting a separate discipline within a general approach is not a "natural" product of the division of labor in science nor is it a spontaneous result of the evolution and refinement of analyses and interpretations. The emergence of a new discipline must be viewed in relation to: the socially relevant needs to which it responds within the context of interests bound to the general development of the productive forces; its own, internal, problems of organization and social control; and the more particularistic and "obscure" interests of institutionalization in the academic and professional worlds—interests that, however legitimate and obvious, must not be underestimated or ignored. Thus sociology of law must be viewed both as a new scientific paradigm and as a new field for professionalization and academic prestige. If general needs have changed, this does not seem to lead to a critical reconsideration and more appropriate definition of the role of the new discipline.

B. Sociology of Law as a "Replacement" Ideology

Sociology of law—the application of specific sociological models to the process of constituting norms and to the structure and practices of juridical institutions—emerged as an alternative to abstract traditional juridical formalism, an approach that was more pliant and more open to social demands. Thus, it may be considered a "replacement" ideology that guides institutions in adjusting to changed social conditions by eliminating the more openly anachronistic, reactionary, and repressive aspects of the system. Indeed, it was the

young sociology of law that led the long debate on the "crisis of justice." But within this debate the ambiguous nature of the crisis was never resolved. Although sociology of law defined it as a crisis of efficiency, later analyses and subsequent events have shown how phenomena, superficially considered as causes and effects of a crisis of inefficiency, were in fact totally functional for the dominant political interests. We may then see sociology of law as a "replacement" ideology not only because it tried to marginalize the dominant juridical formalism but also because it was tightly bound up with and functional to a project of rationalizing Italian society that was based on the center-left in politics and on the neocapitalist attempt to eliminate the traditional constraints on the economy. The political failure of this project was due less to the weakness of the modernizing forces and more to the appearance of economic and social contradictions that simply rendered obsolete a peaceful neocapitalist model of social reform.

The crisis of this project of rationalization involved all the social sciences (Balbo *et al.*, 1975) but especially the sociology of law, since this discipline deals with a subject matter characterized by persistent rigidity and conservatism. When, in the late 1960s, the new political demands marked the end of the center-left rationalizing myth, the debate on the role of state institutions similarly marked the end of the interpretive models that had inspired the theory and practice of sociology of law. As the critique of the institutions of the bourgeois state develops, sociology of law is increasingly successful in creating an autonomous space for itself within the world of academic sociology, although its place in this world is still subordinate to the dominant juridical formalism.

The experience of juridical reformism just described, exemplified by the evolution of sociology of law from a reformist movement to an academic institution, was not as schematic as we have suggested. On the one hand the progressive "sociologization" of an increasing number of disciplines (history, for example) serves to validate sociology of law, although the latter persists in defining its domain too narrowly (excluding sociological jurisprudence, criminology, etc.) and in avoiding pressing social problems. On the other hand, sociology of law necessarily participates in the critical history of the institutions and relations of power, if from a relatively autonomous position. This critique has contributed to a growing social awareness of the non-neutrality of the techniques and institutions of the bourgeois state. Within this critique, the scientific and

technical ideologies and practices of the bourgeois state (the juridical system, the police, prisons, psychiatric hospitals, etc.) have been approached and “demystified” by exposing their essential role as supports of the power of the ruling class.

III. THE POLITICAL AND SCIENTIFIC DEBATE ON THE STRUCTURES AND INSTITUTIONS OF POWER

The critique of institutions escaped the narrow definition offered by sociology of law for its own domain and it has not been restricted to certified “sociologists of law.” Indeed this critique was (and to a certain extent still is) the substance of cultural and political debate, going beyond the self-appointed limits of the specifically scientific debate. We may add that in Italy this analysis assumes a form different from that of the American sociology of institutions. Where American sociologists have analyzed institutions from the point of view of their internal functioning and usually in isolation from the external context, discovering “the enemy” in the middle level individual (Gouldner, 1971), Italian students have analyzed the institution as an apparatus of a larger system, to be interpreted and understood in relation to other institutions and to the system as a whole.

In the late 1960s, influenced by the antiauthoritarian stance of the student movement, attention was directed to the most openly repressive institutions: psychiatric hospitals and prisons. These were analyzed from the points of view of their latent functions, their actual operation with regard to both inmates and the rest of society, and their ideological and political relations of mutual support with other institutions of social control (school and family) (e.g., Basaglia, 1968; Jervis, 1975; Ricci and Salierno, 1971; Invernizzi, 1973; Sanna, 1970). These works on specific institutions stimulated a renewed critical theoretical approach to the problem of deviance. Indeed deviance and social control became key subjects for scientific and political debate. Sociologists, anthropologists, psychologists and psychiatrists, magistrates and jurists, social workers, and people involved in community work are all participants in this debate.

A few words may be useful on the specifically scientific production in Italy on the issues of deviance and social control. “Deviance” was discovered first by psychiatrists (or antipsychiatrists), and then by sociologists who were often content to criticize the primarily Anglo-Saxon conceptual framework from which the notion of deviance derived. Finally, “deviance” was

discovered by left wing jurists, who emphasized the historical origins and political significance of the emergence (and operation) of penal law and institutions of social control. A common aspect of these (radical, marxist-oriented) studies is a paradoxical tendency to avoid the level of social reality. Most of this production oscillates between a general theoretical discussion, often extremely acute and politically relevant, and a minute, almost obsessively refined, analysis and critique of laws and their application. In the first case, "social reality" and history risk disappearing; in the second, they function only ideologically, as the "framework" from which laws emerge and from which they get their meaning. The real theoretical danger is that these analyses merely mirror the phenomena they criticize: they reflect an image that is apparently an opposite but in fact is identical. This may serve for purposes of denunciation and be effective at the level of political propaganda. But unless the social sphere is also analyzed thoroughly from a radical point of view, traditional analyses of society tend to be adopted unconsciously by the critic, who remains subordinated to the definitions of the object of study advanced by the dominant social control institutions and to the way this object has been studied and analyzed by traditional social science. These characteristics of the scientific production on deviance are visible in all subjects. In short, we tend to have two types of works: "militantly" relevant works and general theoretical and political analyses. This is due to the cultural situation described above, and specifically to the relatively undeveloped state of marxist-oriented social studies.

It is with these dilemmas in mind that several journals were founded or renewed in content. The purpose of *La Questione Criminale*, for example, is to approach the general problem of deviance in such a way that the phenomena analyzed, the theories used to analyze them, and the social institutions that define and control them are studied interdependently. Other left-oriented traditional law journals, until recently exclusively devoted to the examination of the texts of laws and judicial opinions, have been opened to socially oriented contributions (*Democrazia e Diritto*; *Qualegiustizia*; *Critica del Diritto*). Thus, a new "revolt against formalism" emerges, challenging the legitimacy not only of a particular apparatus of social control, but also of the whole system.

As the process of democratizing institutions continued others were analyzed: the police, the army, the magistracy, and the judicial system. It is characteristic of such critical analysis

that the two best known books on the police were written by a radical judge and by a radical philosophy graduate (D'Orsi, 1972; Canosa, 1976). Both attempt a historical reconstruction of the organization of police forces in Italy, viewed in relation to the needs of the political system, and analyze the norms concerning the police, their training, and their dominant ideology. These works downplay the internal functioning of the organization and the social background, values, and needs of individual police, preferring to emphasize the structure of the organization as it has developed in response to the often contradictory demands of the political regime. Yet they are more than critical histories, since they also describe contemporary police behavior and the laws regulating it. Nevertheless, such an approach, in its concern to demonstrate the repressive functions of these institutions, fails to reveal and interpret their many internal contradictions. This failing is typical of Italian social research on these and similar subjects which, it must be remembered, comes out of a radical background and is usually politically motivated. As antiauthoritarian radical movements are organized within the army by caucuses of leftist draft soldiers, material about their conditions has begun to appear in pamphlets, articles, and letters to newspapers and journals, often written anonymously. Many of the books on the army are collections of this kind of material, often rough analyses intended for immediate political use. But it is in such books that we find original material on how the army is experienced by the soldiers. Other books attempt a more complex analysis along the lines described above: political histories of the institution, descriptions of its organization, analyses of its manifest ideology through training booklets, etc. (see De Benedetti *et al.*, 1971; D'Orsi, 1971; Massobrio, 1974; Sanna, 1973).

Another fruitful approach has been the social historical study of control institutions. Melossi and Pavarini's book *Carcere e Fabbrica* [*Prison and Factory*] (1977) on one level, and Neppi Modona's work (1969; 1973) on another are among the best examples of this approach. In *Carcere e Fabbrica* the emergence of the modern prison is analyzed in relation to the changing relations of production in a way that tries to avoid the risk of economicism, illustrated by the work of Rusche and Kirchheimer (1939), and that of "idealistic structuralism," exemplified by Foucault (1975). Neppi Modona, whose approach might be called sociological jurisprudence, ranges from an analysis of the relationship between political and economic power

and the magistracy in prefascist Italy to a juridical history of the Italian prison system in the nineteenth century.

In order to understand the social, cultural, and political meaning of the numerous works on the magistracy and the judicial system that have appeared in the last ten years, it is necessary to say a few words about the general framework from which they began. The postfascist sociopolitical system of Italy has retained fascist and even prefascist structures within the new democratic social structure, for historical and economic reasons that lie outside the scope of this paper. A fundamental contrast thus pervades postwar Italian history between a very advanced Constitution and the fascist and prefascist legal codes. No comprehensive legal reform has been attempted. Until the end of the 1960s, therefore, struggle and political debate focused on the need to adjust legal codes and legal structures to the Constitution. The protagonists in this battle were the Left and the organized working class. What in other countries might have remained an issue of technical rationalization was, in Italy, strongly politicized and adversarial. The failure of the center-left reformist project, culminating in a wave of working class struggles that radically altered the terms of the conflict and expanded it throughout the social body, resulted in a critical revision and radicalization of this debate. It was no longer sufficient to seek to adjust legal codes and structures to the Constitution, although the Constitution remained a privileged reference point; it was also necessary to analyze why this had not happened, whether it remained feasible and was still progressive, and what, in fact, the Constitution itself meant. This entailed a more abstract analysis of the nature and functions of the State, both in neocapitalist society generally and in Italy. It also meant that the Left, new and old, had to confront its own delay in raising these questions at the practical, political level and in terms of general theory. A revision of the Marxian formulation of the concept of the State was in order. Indeed, in the ten years following 1968 and the end of the center-left experience these questions have assumed such critical political and social relevance that they have become the context in which the question of hegemony is formulated in Italy today. The changes that have intervened at many levels of Italian society may explain this relevance.

The question of general reforms was addressed by the Left with new vigor in the early 1970s. Working class struggles in the work place combined with student revolts, emergent grassroots movements, and the spread of a new consciousness

within the institutions of the State itself to make Italian society take an accelerated turn toward the Left. At the same time the reactionary forces attempted a counterattack at various levels: the so-called strategy of tension (fascist terrorism, obscure bombings, etc.) on the one hand, and the attempt to break up the progressive front through "cultural" battles (the divorce referendum, etc.) on the other. Indeed, social and cultural reforms become the principal arena of struggle and the ground on which the Left created a vast, if fluid, consensus and built a winning strategy, if one that contained contradictions.

Thus impulses and counterimpulses characterize changes in the judicial system as they do changes elsewhere. Although no consistent, coherent reform of legal codes has been introduced, piecemeal changes have occurred under the impulse of both progressive and reactionary forces. New family and labor codes were introduced following the social struggles of the early 1970s. The referendum to abolish divorce was won by the Left. New laws governing the use of drugs have been passed. Just this month (May 1978) a law granting the right to abortion has been passed. On the other hand, the simultaneous enactment of "law-and-order" norms has tended to narrow and render meaningless those partial innovations so painfully achieved. The Italian practice of responding to situations with "special" laws and partial measures shows the absence of any real intention to carry through the reforms and rationalizations. Furthermore, emerging contradictions compel even those who try to formulate long-range models of transformation to redefine their strategy daily.

It is within this framework that specific studies of the magistracy and the justice system acquire a more general meaning. Most are undertaken by left wing jurists, judges, and magistrates trying to show the actual workings of the justice system and to analyze it within the context of broader social phenomena, in order to stimulate radical reform. Thus we have studies on the history of the magistrates' associations and the social background, political leanings, and cultural values of the magistracy (Canosa and Federico, 1974; Pellegrini, 1973; Barcellona and Cotturri, 1974). We have content analyses of the speeches of *Procuratori Generali* (inquiring magistrates) (Santoni Rugiu and Mostardini, 1973) and analyses of the relationships between the magistracy and political power (Canosa, 1977). These studies do not fall within a single discipline. Their aims and animus are broadly political. They analyze economic, social, and juridical elements, often using a historical-judicial ap-

proach. Their common underlying intention is to study specific problems against a more general background in order to avoid the risk of narrow interpretations based solely on the internal analysis of institutions.

IV. CONCLUSION

The increasing political power of the Communist party and its growing proximity to government has stimulated a new debate on the State. The questions of democracy, pluralism, and civil liberties, and the notion of the "transition to socialism" have acquired an immediate political relevance, although they are often discussed at a very general theoretical and philosophical level.

This debate has many aspects: political-ideological (the relationship between hegemony and pluralism), the economic role of the State (arbiter among capitalists and between capital and labor versus entrepreneurial state capitalism). These share a common attempt to reformulate a marxist theory of the State that takes account of the complex transformation of the last ten years, usually by reference to Gramsci. The goal is a theory and practice of transition that corresponds to the specific Italian situation. But if the problem of a "national road" in the transition from a bourgeois to a mass democracy is only analyzed along these lines it runs the risk of remaining confined within a purely ideological and traditional debate when what is urgently needed is a concrete analysis of the Italian social and economic structure. We must reexamine the essential problem of the agents of social transformation in the light of the most recent studies of the processes and structures of late capitalist states. Too strict an adherence to the dogma of the "centrality of the working class" will prevent us from grasping those real elements of conflict that are not immediately present within the productive sphere, for instance, those elements that affect social and generational marginal groups whose lack of legitimation must not be underestimated. The way in which the problems of "law and order" and of social order are approached clearly shows the separation and difference between general theoretical elaboration and everyday political practice. Here, any form of conflict that is "unguided," uncontrolled, and not hegemonized is immediately seen as a dangerous source of disorder and disorganization. The refusal to consider those conflicts emerging outside the traditional domain of the class struggle as fundamental aspects of the crisis of contemporary society shows how the analysis of Italian society has failed to

develop together with the economic and social transformations produced and evidenced by the crisis.

REFERENCES

- BALBO, Laura, Giuliana CHIARETTI and Gianni MORRICONI (1975) *L'inferma scienza. Tre saggi sull'istituzionalizzazione della sociologia in Italia*. Bologna: Il Mulino.
- BARCELLONA, Pietro and Giuseppe COTTURRI (1974) *Stato e giuristi tra crisi e riforma*. Bari: De Donato.
- BASAGLIA, Franco (1968) *L'istituzione negata. Rapporto da un ospedale psichiatrico*. Torino: Einaudi.
- BUCI GLUCKSMANN, Christine (1976) *Gramsci e lo stato*. Roma: Editori Riuniti.
- CANOSA, Romano and Pietro FEDERICO (1974) *La magistratura in Italia dal 1945 ad oggi*. Bologna: Il Mulino.
- CANOSA, Romano (1976) *La polizia in Italia dal 1945 ad oggi*. Bologna: Il Mulino.
- (1977) *Diritto e rivoluzione*. Milano: Mazzotta.
- *CASTELLANO, Cesare, Carlo PACE and Giuseppe PALOMBA (1968) *L'efficienza della giustizia italiana*. Bari: Laterza.
- *CHIODI, Giulio M. (1969) *La giustizia amministrativa nel pensiero politico di Silvio Spaventa*. Bari: Laterza.
- DE BENEDETTI, Fabrizio, Giorgio ROCHAT, Massimo BONANNI, Stefano SILVESTRI, Carlo FEDERICI and Gianluca DEVOTO (1971) *Il potere militare in Italia*. Bari: Laterza.
- *DI FEDERICO, Giuseppe (1967) *La giustizia come organizzazione. Il reclutamento dei magistrati*. Bari: Laterza.
- *——— (1969) *La giustizia come organizzazione. La corte di Cassazione*. Bari: Laterza.
- D'ORSI, Angelo (1971) *Il potere repressivo: la macchina militare. Le forze armate in Italia*. Milano: Feltrinelli.
- (1972) *Il potere repressivo: la polizia. Le forze dell'ordine italiano*. Milano: Feltrinelli.
- FERRI, Enrico (1888) *La sociologia criminale*. Torino: Bocca.
- *FORTE, Francesco and Pier Vincenzo BONDONIO (1970) *Costi e benefici della giustizia italiana*. Bari: Laterza.
- FOUCAULT, Michel (1975) *Surveiller et punir. Naissance de la prison*. Paris: Gallimard.
- GOULDNER, Alvin W. (1971) *The Coming Crisis of Western Sociology*. New York: Avon Books.
- *GOVERNATORI, Federico (1970) *Stato e cittadini in Tribunale. Valutazioni politiche delle sentenze*. Bari: Laterza.
- GRAMSCI, Antonio (1971) *Quaderni del carcere. Il Risorgimento*. Roma: Editori Riuniti.
- INVERNIZZI, Irene (1973) *Il carcere come scuola di rivoluzione*. Torino: Einaudi.
- JERVIS, Giovanni (1975) *Manuale critico di psichiatria*. Milano: Feltrinelli.
- *LEONARDI, Franco (1968) *Il cittadino e la giustizia*. Padova: Marsilio.
- LOMBROSO, Cesare (1878) *L'uomo delinquente in rapporto all'antropologia, giurisprudenza e alle discipline carcerarie*. Torino: Bocca.
- MASSOBRIO, Giulio (1974) *Bianco, rosso e grigioverde. Struttura e ideologia delle forze armate italiane*. Verona: Bertani.
- MELOSSI, Dario and Massimo PAVARINI (1977) *Carcere e fabbrica. Alle origini del sistema penitenziario*. Bologna: Il Mulino.
- *MORIONDO, Ezio (1967) *L'ideologia della magistratura italiana*. Bari: Laterza.
- *NEPPI MODONA, Guido (1969) *Sciopero, potere politico e magistratura 1870/1922*. Bari: Laterza.

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- (1973) *Carcere e società civile in V Storia d'Italia (I documenti vol. 2.)* Torino: Einaudi.
- *ODORISIO, Roberto, Maria Cristina CELORIA, Generosa PETRELLA and Domenico PULITANO (1970) *Valori socio-culturali della giurisprudenza*. Bari: Laterza.
- PELLEGRINI, Edgardo (1973) *Gli ermellini da guardia. Magistratura e repressione in Italia (1968-1973)*. Roma: Savelli.
- PIZZORNO, Alessandro (1972) "Una crisi che non importa superare" in P. Rossi(ed.) *Ricerca sociologica e ruolo del sociologo*. Bologna: Il Mulino.
- RICCI, Aldo and Giulio SALIERNO (1971) *Il carcere in Italia. Inchiesta sui carcerati, i carcerieri e l'ideologia carceraria*. Torino: Einaudi.
- RUSCHE, Georg and Otto KIRCHHEIMER (1939) *Punishment and Social Structure*. New York: Columbia University Press.
- SANNA, Emilio (1970) *Inchiesta sulle carceri*. Bari: De Donato.
- (1973) *Nostro padre l'esercito. La società della caserma*. Milano: Sugar.
- SANTONI RUGIU, Antonio and Milly MOSTARDINI (1973) *I P.G. Linguaggio, politica educazione nei discorsi dei Procuratori Generali*. Rimini: Guaraldi.
- SEPPILLI, Tullio and Grazietta GUAITINI ABBOZZO (1974) *Schema concettuale di una teoria della cultura*. Perugia: Istituto di etnologia e antropologia culturale.
- *TOMEIO, Vincenzo (1973) *Il giudice sullo schermo. Magistratura e polizia nel cinema italiano*. Bari: Laterza.
- *TREVES, Renato (1972) *Giustizia e giudici nella società italiana. Problemi e ricerche di sociologia del diritto*. Bari: Laterza.
- (1977) *Introduzione alla sociologia del diritto*. Torino: Einaudi.