CRITIQUE OF HABERMAS'S CONTRIBUTION TO THE SOCIOLOGY OF LAW

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I. INTRODUCTION

In his discussion of modern society,[1] Habermas begins with Weber's thesis of a universal rationalization process within which the rationalization of law plays a central part. Thus his starting point is the classical thesis of the formal rationalization of law as advanced by Weber (1960; Schluchter, 1979). Habermas tries to show that Weber's theorizing is deficient because he underestimates the specific historical role of the materialization of law (1981, Vol. 1: 332). Additionally, such theorizing does not allow us an adequate grasp of some recent developments that proceduralize law (Teubner, 1983, 1984; Eder, 1986). From the perspective of Weber's theory of formal rationalization, the processes that materialize and proceduralize law appear to be aberrations from the normal path of modern legal development. Habermas suggests that, far from being deficient, these processes are necessary forms of law in the process of modernization. The appearance of deficiency proceeds from Weber's attempt to separate morality from law and to conceptualize a moral-free law, a corollary of Weber's plea for a value-free science. Habermas concludes that formal rationalization is an inadequate model of law operating in the modern welfare state. Thus a new model is in order.

In addition to questioning Weber's normative rationality in regard to the materialization and proceduralization of law, Habermas also takes a stand against Luhmann (Habermas 1987). Luhmann's sociology of law attempts to continue Weber's theoretical project of stripping morality from law. The amorality of law is to be continued at the level of the welfare state (Luhmann 1983). Thus Luhmann argues that the function of law is not to realize justice but to try to regulate the environment of the legal system by restricting itself to reproducing the identity of the legal system.

[1] Habermas's work on law is found in some early work on "Naturrecht" (Habermas, 1971), in *Zur Rekonstruktion des Historischen Materialismus*, (Habermas, Chap. 8, 1976), in *Theory of Communicative Action*, (Habermas, Chaps. II. 4, VII 1981), recently in an article entitled, "Legitimität durch Legalität?" (Habermas, 1987) and in some unpublished manuscripts. His work on law links his more philosophical and sociological writings with his political writings.

LAW & SOCIETY REVIEW, Volume 22, Number 5 (1988)

Should law begin to construct the just society, it would no longer function but degenerate into a mere cognitive institution (such as politics). According to Luhmann the moral quality of law has become obsolete.

Contrary to both Weber and Luhmann, Habermas insists on the normative implications of law: on its moral basis (Habermas, 1971, 1987). There is no law possible without some reference to moral standards that legitimate it. Thus the theoretical work of Habermas can be understood as an attempt to grasp the moral nature of a law that has lost its traditional moral foundations in a religious world view or some other metaphysical order. And the situation becomes more complicated when this modern law that has lost its metaphysical grounds must develop into a law regulating highly complex societies. Both Weber and Luhmann argue that modern law has become independent of morality and that this is the specificity of its modernity. There is, as Weber (1960) puts it, legitimacy through legality or, as Luhmann (1969) puts it, legitimacy through legally defined procedures. Habermas counters that even modern law cannot be separated from morality. Not only is the practice of law permeated by moral points of view, but even theories on the amorality of modern law assume a moral perspective.

Habermas's strong emphasis on an internal rationality of law is the basis for his normative claims about modern law.[2] These normative claims result from his reconstruction of the moral principles inherent in the internal rationality of modern law. Thus Habermas's sociology of law appears to be an attempt to develop with the means of sociological concepts a new philosophy of law.

In the following I will first discuss the relationship between morality and law as conceived by Habermas. The problem is how legality can claim legitimacy, a question that Weber tried to solve with his theory of the formal rationality of modern law. Habermas's solution is the idea of a procedural rationality. Second, I will examine the relationship Habermas sees between law and society within a normative conception of modern law. The relationship between system and lifeworld—this central Habermasian distinction—will be approached from the perspective of a law claiming procedural rationality. Habermas's theory that the role of law is to interface between system and lifeworld will then be discussed along with some aspects of his conception of a "Rechtsstaat" suited for complex societies. Finally, I will launch some sociological criticisms against a too normativistic view of procedural legitimacy and show that the current discussion on modern law is

[2] The following remarks concentrate on the German discussion concerning a sociological theory of law. Its protagonists are Luhmann and Habermas above all others. Younger authors are mentioned in the text. A comparison with similar discussions in the United States has not been attempted. For an attempt in this direction see Frankenberg (1987).

itself part of the development of modern law. My assumption is such that theoretical conceptualizations of modern law offer a new legitimating base of law.

II. MORALITY AND LAW

A. Weber's Theory of Legal Rationalization

The problem Weber intended to solve was how modern law could claim legitimacy when religion and tradition had lost their legitimating force. Is law possible beyond morality or has law found another relationship with morality? Weber solved this problem by arguing that formal rationality underlies modern law. Formal rationality is defined by its being (a) general, (b) abstract and well defined, and (c) calculable (Habermas, 1976: 260ff.).

This conception of a formal rationality underlying modern law amounts to a conception of modern law as being one where morality is reduced to an ethical minimum. What is interesting is not the psychological complexity of human beings nor the moral ideals they may hold, but their overt behavior. This is because it must be coordinated with the overt behavior of others on the basis of the subjective rights they have as human beings (the natural rights of man) or have achieved by contract (the subjective rights of property).

Habermas notes that this model is far removed from practical reality (Habermas, n.d.). It is an idealization of nineteenth century bourgeois law. As soon as we look at the historical reality of law we encounter quite a lot of material law (e.g., the Polizeyrecht) and the laws of inquisitory procedures (Eder, 1986). Together with some formal law these make up historical reality. Why then has it been so prominently characterized through the model of subjective rights? Habermas himself mentions one reason. The model of formal rationality easily serves as a background against which changes in modern law can be identified. In other words it serves as an ideological description of modern law.

The adversary model entitles social actors to some material rights. It has been claimed by those less well off in society, (i.e., in the nineteenth century by the working class), as well as by the petty bourgeoisie, as authoritating protection for petty commerce and production against the menace of expanding industry. These processes have been subsumed under the title materialization that, as seen from the perspective of formal rationality, means being (a) particular, (b) concrete, and (c) uncalculable. These three criteria are an inversion of the model of formal rationality. Material rationality is therefore seen by those thinking in Weber's terms as the eclipse of formal rationality. The present proceduralization of modern law continues to be the dissolution of formal rationality. It replaces the judicial imposition of legal consequences with informal procedures such as bargaining and hearing for settling dis-

putes and making decisions. The standard of being calculable law will be destroyed.

The deformalization of modern law has continued since its condemnation by Weber in the beginning of twentieth century. Weber simply pronounced this path of development negative (as one headed toward the "iron cage"). Against this theoretical background the reasoning of Habermas *and* Luhmann marks a significant theoretical improvement. They use the model of formal rationality only as a starting point for their own endeavors to grasp theoretically the rationality of modern law. For Habermas, Weber is an example of how theorizing about law cannot—although Weber's methodological presuppositions postulate it can—be value-free. For Luhmann, Weber still adheres to a conception of rationality that is related not to society but to the individual. Habermas and Luhmann test their new models by how well they explain changes that have occurred in law with the advent of the welfare state.

B. "Juridification" and the Rationality of Law

In recent years the connection between law and the welfare state has been discussed under the heading "Verrechtlichung" (juridification) (Teubner, 1984). What is at stake is the rationality or irrationality of Verrechtlichung (Habermas, 1981, Vol. 2: 522ff.; Maus, 1986a). Measured against the standard of formal rationality it is nothing but irrational. But this is not a very productive stance for describing and differentiating between the rational and the irrational side of this evolution. How then would we evaluate the rationality of modern law vis-à-vis the complexity of modern life? How would we describe the rationality of a deformalized law? Such questions necessarily arise within the discussion concerning the increasing juridification of modern social life. The problem Habermas poses is how the rationality of modern law can be upheld while the legal control of social life increases. How can the spreading influence of law be controlled by those subject to it?

In practice another type of legal rationality has developed that offers a completely different solution to the problem of the rationality inherent in material law. There is a new natural law basis underlying the judicial review of statutes (Denninger, 1977: 31ff., 65ff.). This practice is a reaction to the impossibility of adhering to fixed standards of formality while simultaneously expressing distrust of legislators. Here the question of morality in law arises explicitly. In judicial decisions the superimposition of a higher normative order of values on law shows that there is a legal reality that uses morality as a basis for the rationality of law. Against this moralization of law the argument of a traditionalistic regression to standards of rationality typical for early modern times remains

pertinent. The use of self-evident moral values is reminiscent of a neo-classical version of the premodern natural law.

But how can a morally grounded rationality of law beyond this type of moralizing law be controlled? Is there an alternative to the claim that an objective order of values in the world underlies law? Such an alternative can be found—and this is the central point of Habermas' theory of modern law—in the model of a morally grounded rationality that accepts that there is no ontological world that can give us an objective foundation for legal practice (Habermas, 1971). Such a model must take a reflexive stand against this ontological moral reasoning. Such a reflexive model does not demand eternal values; rather, it asks what conditions must be fulfilled to stake the moral validity of such values. The question of rationality refers to the moral adequacy of the processes that generate normative statements and legitimating values. This amounts to a rationality that is not embedded in the values as such but in the *procedures* that generate such norms and values (Habermas, 1987: 11).

This procedural perspective allows Habermas to go beyond the confines of the idealizing radical-democratic model and to outline a model of imperfect procedural rationality (Habermas, 1987: 13). The rationality of law is to be sought in the procedural norms that control the production as well as the application and revision of legal norms.

But in present-day discussion there are at least two contradictory approaches to a model of procedural rationality (Eder, 1987: 9ff.). Some argue that the control over law by citizens should be minimized by a strongly formalized procedure of law-making (as proposed by the conservative jurists joined to some extent by Luhmann). Others argue that the control should be maximized by formalizing the legislative and judicial production of law (as proposed by those arguing within the radical-democratic tradition joined to some extent by Habermas). Procedural rationality in this general sense can be conceived of in two different ways: as a specific form of moral reasoning, and as a mechanism that forces those engaged in a procedure to accept the rules of the game. One is rationalistic and the other is empiristic. This is the fundamental cleavage separating the approaches of Habermas and Luhmann. Thus the idea of procedural rationality of modern law is the starting point for two contradictory approaches to a theoretical grounding of a sociology of law. This idea allows a new answer to Weber's classic question of what legitimizes legality. Procedural rationality becomes the key to a sociology of law beyond Weber.

C. *Procedural Rationality*

A model for reconstructing the rationality of modern law thus must be sought with the idea that the rationality of modern law is not manifested in the semantic aspect of law but in its pragmatic

aspect. It is not the result of legal practices, but the process of producing legal decisions—the legal practice as such—that is at stake. The key to this type of rationality is not the form of law, but the procedure of law-making. Two models that originated in the nineteenth and the early twentieth century are possible candidates for such a procedural rationality: the crystallized formal legal order model and the self-controlling legislator model. The first involves a proceduralistic interpretation of formal law. The second involves a proceduralistic interpretation of material law. Each hints at a new model of rationality suited to modern law. Both the formalist and the radical-democratic tradition can be read as attempts to explicate a proceduralistic justification of law.

Habermas now maintains that the rationality of procedures cannot be handled in an objectivistic manner. For what goes on within legally defined procedures are forms of legal reasoning, not simply forms of interactive constraints imposed on the participants in a procedure. Here Habermas diverges most fundamentally from the way Luhmann poses the problem (Luhmann, 1969). Legal reasoning has a rationalistic quality in itself that can be reconstructed in a systematic manner and that suggests what can be called procedural rationality.

The complexity of the world enters into this legal reasoning as a factor that must be assimilated into the legal discourse. Increasing complexity forces legal reasoning to "balance" ("abwägen") the empirical relevance of some item for revising a normative standard. The structural properties of legal reasoning are merely a special case of the structural properties constitutive for moral argumentation as such. The institutionalization of moral argumentation by law is the key to the procedural rationality of modern law. Procedural rationality is bound to a logic specific for communicating about norms: to the logic of moral argumentation (Miller, 1986). Legal discourse is necessarily bound to it. The function of legal systems then can be seen to be reproducing this type of argumentative discourse. Legal systems institutionalize the social conditions of argumentative discourse.

The morality inherent in procedural rationality is different from the morality ascribed or implicit in formal and material rationality. It is a morality that does not prescribe any moral standards. Free of any concrete moral prescriptions it does not give us answers about how to behave. It does not presuppose a universally valid system of values. A procedural ethic is a formalistic morality that only guides us in how to find some moral norm. Attempts to construct a procedural ethic characterize the present-day discussion on moral philosophy (Rawls, 1971; Kohlberg 1981; Habermas, 1983: 53ff.) Habermas's theoretical treatment of modern law allows us to bridge the gap between this philosophical discussion and the sociological analysis of law. This philosophical discussion appears to be the key to the inner rationality of modern law. It elaborates

on the very structures that can be reconstructed as that inner rationality of law.

These hints at an elaborate discussion about a procedural ethic in philosophical discourse should make it clear that the notion of a procedural rationality, as a theoretical approach to analyzing law, has far-reaching consequences. Without analyzing the structure of legal discourse the rationality of law cannot be grasped. While Luhmann and others might try to diminish this inner rationality of legal discourse, they are ultimately forced to choose between mere force or power as the explanation for the functioning of legal reasoning on all levels of legal reality. But convincing others that legal decisions are legitimate cannot be based on mere force except by institutionalizing systematic distortions of procedures of moral argumentation that in the long run destroy the empirical legitimacy of law in a society.

But Luhmann's argument that law not only follows an inner logic but also must fulfill some functions in its environment reveals a gap in the discussion so far. The function of law to reproduce its own rational presuppositions in legal reasoning must be related to another function constitutive for law: the function of system integration. This point made against a rationalistic perspective introduces a system-theoretical view that Luhmann expanded into a general sociology of law, (Luhmann, 1983) and that also has been taken up by Habermas (1981).

III. LAW AND SOCIETY

A. The Role of Systems Theory in Law

The system-theoretical approach to the study of modern law analyzes the conditions that allow the law to survive in an increasingly complex environment. Within the functionalist tradition the rationality of law appears to be connected with the mere reproduction of the legal system as such. Systemic rationality is defined by the capacity of legal norms to regulate not only its own reproduction but also the reproduction of its environment. The more complex society becomes the more flexible law must become to meet this criterion of rationality. Modern law meets this criterion by being "positive law," law that can be changed from one day to the next if the legal prescriptions regulating its change are obeyed (Luhmann, 1983: 207ff.). Habermas has taken up this theoretical challenge by arguing that such a functional analysis of law must be combined with a reconstruction of the rationality structures guaranteeing the legitimacy of law. He sees the legal system to be an interface between what he calls the lifeworld (that incorporates moral principles) and the objectified structures of social reality (Habermas, 1981, Vol. 2: 524, 534). This opens up a macro-sociological perspective on law that Habermas uses for the specific purpose of reconstructing the rational structure of modern law.

Thus Habermas requires a conception of rationality that can do justice to the fact that law is also part of social systems based on power and money. Law is thus a medium for the reproduction of the modern state and the modern economy. This functional aspect makes law a medium for coordinating social actions. Law is the mechanism of bureaucratic control in state organizations and private social organizations. But Habermas speaks of state and economy in a way leading to a false idealization, because the state and the economy are related to the lifeworld not only by the medium of law but by many other mechanisms (from corruption to social protest). There is no pure systemic world in social life, even not in the modern state and the modern economy. But the problem of how to relate these two logics of social life to each other proposed by Habermas remains valid.

To clarify this function of adapting to and surviving in such an environment, Habermas proposes differentiating between law as an "institution" and law as a "medium" (Habermas, 1981, Vol. 2: 536). The former refers to its function of social integration, to its normative ordering of the social world. The latter refers to its function as a medium for the distribution of power and money in society, through those social structures that make up the system integration of society. That fact that law is both an institution and a medium allows Habermas to explain how law gives a normative context to the mechanisms of money and power.

Habermas argues that this double logic of social reality crystallizes in law. This view of law separates him from those, like Luhmann, who regard the law as something homologous to power and money as well as from those who reduce the law to the manifestation of the moral life of a people. The philosophical battles seem to have been waged and won against the legal theories of the latter. It is against the former, therefore, that Habermas concentrates his efforts to lay the foundations of a sociology of law. Thus Habermas presents a conception of law that defends a moralistic conception of law while simultaneously criticizing the overmoralization of law in present-day legal practice. This allows him to make a more refined assault on amoralistic theories of law. Located beyond the old battle between idealism and materialism, what appears is a theory that tries to escape the idealistic fallacy while at the same time rejecting the functionalist solution to the problem of normative claims that are inherent in law.

How far Habermas succeeds in this double-distancing remains to be seen. The important point is that he tries to conceptualize and develop the double function of law: the function of reproducing claims of normative validity, and the function of reproducing social relations mediated by power and money. This double functional reference of law is one of the examples most used by Habermas to represent a fundamental conceptual distinction: that between system and lifeworld.

B. System and Lifeworld

Distinguishing between system and lifeworld, Habermas proposes a two-layer concept of society whose distinctive feature is the concept of "lifeworld" (Habermas, 1981, Vol. 2: 182ff.). Lifeworld is understood to be what participants in communicative action presuppose as their intersubjectively shared background. Systems are integrated by mechanisms such as the market. Lifeworlds are integrated by the mechanism of mutual criticism or by an existing collective agreement on what is communicated (i.e., by a consensus).

Law is an interface between system and lifeworld, an area where both aspects of social reality interpenetrate. Within law therefore the border between the two must be redrawn continually. Law presupposes a lifeworld in order to function. At the same time it must restrict its regulative function to the sphere of systems. As soon as it crosses this border it destroys its own communicative basis and begins to "colonize" the lifeworld (Habermas, 1981, Vol. 2: 489ff.). When law penetrates social relations beyond the spheres of power and money relations, according to Habermas it destroys the basis of a communicatively structured lifeworld.

Thus the central problem in upholding the rationality of life is to organize law in such a way that it acquires the institutional means to introduce forms of moral reasoning into the spheres regulated by power and money. Law must develop institutional forms that bind systemic processes to the mechanism of legal reasoning. And the institution in which Habermas sees the fullest incorporation of such a law is the institution of the *Rechtsstaat* (Habermas, 1987: 8f.). The idea of a Rechtsstaat is based on the separation of powers, each of which is based on the principle of impartial procedures of legal decision-making. Impartiality guaranteed by procedural norms marks the classical conception of the Rechtsstaat. Habermas revives this concept on a more encompassing level. He does not see the Rechtsstaat as the manifestation of universal values alone (such as the rights of men), but as an institution whose procedural forms of which determine both the rationality of law and those areas of social life regulated by it. The Rechtsstaat is updated by being the incorporation of procedural rationality.

Luhmann's reasoning follows the same path of asking how procedural norms reproduce (or do not reproduce!) the legitimacy of legal norms. His answer, however, is that formal procedures guarantee the acceptance of legally defined norms (1969). On the contrary, Habermas attempts to combine the moral concept of the Rechtsstaat with the functional effectiveness of formal procedures in the legal system. Thus the reconstruction of the morality of law leads Habermas to renew an old plea embedded in the idea of the constitutive role of the Rechtsstaat: the liberal plea for rights of freedom and a public life free of state control.

C. *Law and the Development of Modern Society*

Luhmann is probably right in arguing that there is a certain illusion embedded in the idea that the rationality of modern law is guaranteed by moral reasoning. Moral reasoning is unquestionably part of the legal discourse. But moral reasoning never escapes the context of power and money which it serves to reproduce. Luhmann sees legal reasoning as a mere mechanism of the "autopoietic" reproduction of the legal system (1983: 354ff.), thereby losing sight of the very specific function moral arguments play in law. To the same extent that Habermas idealizes moral argumentation in law, Luhmann underestimates it.

IV. A SOCIOLOGICAL CRITIQUE

A. *The Problem of Stages of Legal Development*

A very general assumption, inherited from Weber, that legal development in modern society proceeds in stages (Eder, 1981), lies behind all of Habermas's reasoning concerning modern law (Habermas, 1981, Vol. 2: 525ff.). Habermas accepts the widespread idea that there is a first phase characterized by formal law, followed by one of material law. This second phase is today being replaced by a new kind of law, that may be called reflexive or procedural law. Formal law presupposes legal subjects with inborn rights that are coordinated by rules of prohibition: by the law of torts, penal law, and procedural law. Material law means that positions are attributed by law (e.g., a right to receive additional income). Procedural law points to the phenomenon that law becomes disconnected from the classical legal institutions (especially the courts) and begins to be enacted in informal social contexts that relate to law only through some procedural norms that guarantee the acceptability of such decisions (Eder, 1987).

There is a general ambivalence concerning the empirical status of this theory of stages of legal development. Does it refer to real historical stages or to normative descriptions of law characteristic of historical periods of modern legal development? Sometimes these stages are depicted as real stages, sometimes as ideas that organize the perception of the development of modern law. It is a moot question whether the object of theoretical treatment is real stages or ideal constructions of stages, whether we are dealing with reality or ideology. This ambivalence becomes a key to a critique of these assumptions of stages of legal rationalization.

The empirical critique says that there is no empirical ground for this theory of stages of modern legal development. There is no formal law that defines an early phase of modern law. There is as much material rationality in early modern law as formal or procedural rationality. And this critique also holds for the second and a presumed third stage. Thus the theory of stages condenses to a

theory of the stages of reasoning about law; it is here that questions on the sociology of knowledge come in. The interesting phenomenon is that the development of modern law has been described theoretically in terms of such stages.

This changes the status of a theory of stages of legal development. Such a theory is an attempt to explain the development of the ideals attributed to law. Such a theory does not explain anything. But it becomes the best point from which to begin sociological explanations, because it forces us to name those actors that attribute such ideals to law. The problem then is to explain why these theoretical descriptions concentrate on one aspect and ignore the other. Why has formal law become the cognitive key to the bourgeois law of the late eighteenth and nineteenth centuries? Why has material law become the cognitive key to late nineteenth and twentieth century law? And why has procedural law become the cognitive key to late twentieth century law?

B. The Authority of Modern Law

The more modern law loses its formal qualities the more it needs cognitive representations for its reproduction (Eder, 1987). The theoretical construction of law has become one of the major factors reproducing law. Thus ideology has become more than merely a false consciousness. It has become the necessary condition of reproducing modern law. This explains why there has been so much emphasis on legal theorizing and so much conflict over the normative description of law. These normative descriptions function as a normative input available to the lay public to rationalize their adherence (or nonadherence) to law, to professionals to rationalize their legal practices, and to theoreticians to rationalize their positions as producers of their own indispensability (Bourdieu, 1984a).[3]

This critique leads us to the core of the problem in the relationship between the manufactured image of law and its real functioning. It especially invokes the question of how the image of law as an interface between system and lifeworld is related to the real base of legal practices. The question of how the inner reality of law (its theoretically produced image) and its outer reality the social context for which and in which law is used are related to each other normally ends up in relativistic answers. If there is no longer anything mystically inherent in law, then the standard or the model of an inner rationality of law fades. Then there are as many inner rationalities as there are interests in law.

But a sociological description of such relationships does not

[3] The European discussion concerning a sociological theory of law seems to receive a new impetus in the work of Bourdieu and his collaborators in Paris; see his programmatic statement in *Actes de la Recherche en Sciences Sociales* (Bourdieu, 1986).

have to end up in moral relativism. There are differences in the way people or groups of people use legitimating descriptions of law to try to give law some moral value. The empirical problem is revealed when we use arguments that either imply constraints operated by systems or by some kind of inner logic or rationality. But who exerts such constraints?

No moral argument exists that could not be used for strategic purposes (Bourdieu, 1984b). And there is no strategic action that could not become the object of argumentative debate and criticism. There is no market outside norms and vice versa. There is a general interdependence wherever there is social life. Habermas reminds us that we should not underestimate the normative restrictions. Thus we are left with the following questions. Why do and when do people or groups of people begin using norms for their purposes? Why and when do they begin moral arguments about norms?

The hermeneutic approach, which tells us something about content and structure of normative claims, can be "objectivated" by systems analysis. This tells us something about the objective reality to which law refers. The type of objectivation attributed to systems analysis is a necessary, but not a sufficient condition of sociological objectivation. And rather than pursue that objectivation Habermas stops before beginning to objectify. The lifeworld is his standard of reference when system analysis must be carried out. Instead of looking for who produces illusions of social reality and by what means Habermas postulates a social world without illusions: the lifeworld. But why could not this world be one that consists of nothing but illusions? And a law that stops operating where the lifeworld begins contributes to the reproduction of the very illusions constitutive for the existence of law as an institution.

Thus Habermas opens up an exciting perspective on law but avoids the necessary consequences. For we can do more than merely act as superjudges of existing law, experts in those procedural configurations that must lead to a rational modern law. We can question the need for illusions to reproduce the authority of modern law. Such questioning avoids the relativistic conclusions tied to sociological reductionism. It gives us a criterion for differentiating with regard to the rationality of law. This criterion is no longer a positive one, one that always implies knowing the right law. It is a negative criterion, one that gives to the strategy of sociological disillusionizing a rational dimension that is genuinely sociological. This is not philosophical skepticism. Rather, it is a radical break with philosophical approaches to law. Using a negative criterion leads to a social critique of the normative claims of modern law—and this is the antithesis of the cynicism of an observer who sees illusions as functional for the existence of modern law (Bourdieu, 1984a). Such cynicism is self-destructive because it undermines the belief in law that law itself describes as being the

functional prerequisite of law. Sociological demystification also demystifies the cynicism that is the complement of moralism. It opens up a genuinely sociological critique of law.

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