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Karl Renner on Stability, Change, and Service in Entire Legal Systems

Joseph Drew
josephdrew4920@verizon.net

A century ago this year, World War I broke out, and one of its most dramatic results was the breakup of the Austro-Hungarian Empire. Onto the world stage burst a social theorist and lawyer named Karl Renner, the first Chancellor of the democratic Republic of Austria. Then, after World War II, he almost singlehandedly re-created a newly-freed Austria as a democratic country; for his labors, he was elected the first President of the new Central European democracy. Today, Renner is known widely as the father of the country. His bust is found in front of the parliament, and the location is called Dr. Karl Renner Ring (Street).

Renner should also be known as a pioneering expert on the theory of law and as the man who was able to adapt and modernize legal theory and practice, reconciling democratic socialist and advanced capitalist views of law. He enabled us to see that law could serve as an instrument of human betterment and that socialists, democratic socialists, could thrive and lead in an anti-communist Western world.

The comparative study of law and legal systems across civilizations owes much to his pioneering work. Both in his reformulations and applications of legal analysis and in his systematic generation of a theory of the development of modern society, Renner ranks among the greats in the history of social science-based jurisprudence.

In addition, he developed theories of past, present, and future class structures, means of domination and conflict, and the levels of integration and conflict of norms and institutions in a series of works fundamental to modern European social thought. And he made both the ideas of Legal Positivism and socialist sensibilities workable and compatible within a completely democratic framework.

In scholarship he helped bridge the gap between widely varying positions, just as in politics he led Austria into a restructured social and political system totally based on freedom and amenable to Western traditions and cultures yet accepted by almost all political parties.

The scholarly Renner can be seen as two writers.

- The “young Renner” concentrated on the exegesis of socialist theory and was concerned particularly with the relationship between law and society.
- The “later Renner” brought forth, long before Mills, the concept of the “service class” and maintained that the peaceful evolution of this class as a “working class” would culminate in a harmonious, almost one-class society.

The theoretical, young Renner dealt with the relationship of law and economics. The intellectual father of socialism, Karl Marx declared as a fundamental principle of socialism that law was one of the elements of the "normative superstructure." As such it merely reflected the "material base" of society, which is to say, economics. This was where Renner's thought began. The principal work of Dr. Renner dealing with the subject, and the only one of his major works available at present in the English language, is called *The Institutions of Private Law and their Social Social Functions*. The original German language work, published in 1929, is entitled *Die Rechtsinstitute des Privatrechts und ihre soziale Funktion*.

Renner Was Grounded In Marxian Thought ...

Thus, his early works should be seen as a critique of the basic writings of Karl Marx. Marx, like many capitalist theoreticians of today, claimed that economics underlies all other visible parts of life; it constitutes the motor of history.

Marx famously asserted in the *Preface to A Contribution to The Critique of Political Economy* that "the economic structure of society (is) the real foundation on which rise legal and political superstructures and to which correspond definite forms of social consciousness."

Further, Marx stated in the same passage that "the distinction should always be made between the material transformation of the economic conditions of production which can be determined with the precision of natural science, and the legal, political, religious, esthetic or philosophic -- in short, ideological -- forms in which men become conscious of the conflict and fight it out."

Starting from this view of the basic relationship between one part of the superstructure, law, and its "real foundation", economics, Renner began to develop his systematic analysis. But, as a lawyer in Central Europe, he was also a Legal Positivist. Law was a long-lasting coherent entity.

In the end, Renner wound up breaking new ground, finding for socialists and democrats a set of solutions that Marx himself might not have greeted happily but which worked. Today, vast numbers of Europeans and others are social democrats; their views of law owe much to the reformulation of socialist thought as cast by Karl Renner.

But He Changed The Implications of Marxist Thought on Law and Society

Renner did not blindly accept all of Marx's ideas, especially the theoretical Marxian notions concerning the relationship between property and class conflict. Property since the Middle Ages has constituted a basic institution of law and it is central to how individuals relate to one another. Marxist theory maintained that property was a basis of conflict between adversarial classes, most recently, between the bourgeoisie and the proletariat.

Renner, however, felt that in the century or so since the "bourgeois revolution," the class structure of European society had changed a great deal, becoming more complicated than Marxism had anticipated and necessitating an innovation in Marxist thought.

The new social structure of Europe in the post-feudal world "puts alongside the capitalist, who owns and functions, the other one who owns but does not function...what is more, it also produces the non-capitalist who exercises capitalist functions, who, therefore, does not own but (who) functions as a capitalist." (From Renner, *Die Wirtschaftsfals Gesamtprozess und die Sozialisierung*.)

Ralf Dahrendorf, the late eminent German-British social philosopher, was a Free Democrat German political leader, head of the London School of Economics, Member of the British House of Lords, and author of the monumental work *Class and Class Conflict in Industrial Society*.

He studied the thoughts of the young Renner, a man whose career was similar in many ways to his own. He observed that by labeling the controlling manager as a capitalist, Renner had separated successfully class conflict from its Marxian root. Thus, Dahrendorf pointed out, private property and the assertion that a society based on communal property is a classless society lose their traditional meanings. (Ralf Dahrendorf, 1959, p. 84.)

This, I think, informs much of the contemporary analysis of elite leadership and the significant sociological question of "who rules?" in advanced industrial society. In a sense this development has been viewed by an entire succession of theoreticians, from the Industrial Revolution on. Writers from Comte and Saint-Simon to Weber, from Pareto and Mosca to Michels and Schumpeter and Pirenne, from James Burnham to Raymond Aron and T.B. Bottomore, from C. Wright Mills to William Domhoff, to Digby Baltzell and to Suzanne Keller. All have worked in the vineyard that Renner ploughed so productively, enabling analysis of an old query in a reformulated and more productive vein – old wine in a new bottle.

And in many ways, Renner changed permanently the meaning of socialism, certainly for Europe. What, he asked, is socialism? Socialism, in his definition, was “an urgent demand for a human society that acts in freedom and in full consciousness, that creates its norms in complete independence.”

Renner wrote that in modern times what he called “complementary institutions” were displacing “principal institutions.” That is to say, property -- private property -- has been supplemented in the modern era “by complementary institutions which take over its real (I would say, original) functions.” (Renner, p. 295.) Moreover, complementary institutions of public law had forced private institutions of law into the background.

To Renner, “private law,” meant that which is being transformed, addressing thus the ownership of land and movable property, contracts, mortgage and leases, and marriage and succession. By contrast, “public law” referred to that type of law dealing with the organization of the state or of local governmental bodies.

Renner argued that the state is moving ahead to administer and to regulate these new and formerly private areas, so that “new norms are made year by year in increasing numbers in the form of statutes, orders, and instructions of the administrators of the state.” (Renner, p. 297.)

Thus, increasingly, “owners” were being deprived of the technical disposal over their property. Did the owner of a railway station have the right to deny potential passengers access? Or stop trains leaving “his” station for some destination? No. The common will had now, from the point of view of the law, subjected property, and other institutions of private law, to its direct control via the government.

By this analysis Renner shattered Orthodox Marxism’s view of “the real foundation” and “superstructure” and he also departed from traditional Marxian notions of the institutions of private law. The “general will of society” had become the new ruler, taking the place of the “full capitalist” who formerly had prevailed with an iron hand, part of a dominant class in the earlier days of industrial society. Renner argued that the law was gradually becoming objective, following the norms of society as a whole and not of a ruling class. The revolution, therefore, recedes in Karl Renner’s thought into the background, melts away. Rational, objective government -- serving the will of the people -- makes it unnecessary.

“The general will defines the aim for society and thereby for the economy, and all functionaries pass over from the service of a master to the service of the whole.”

So, Renner found that “economic democracy supplements political democracy.” Dahrendorf says that “this, of course, is Rousseau versus Marx -- a contest that produces some fascinating results... from the separation of ownership and control, the extension of citizenship rights and quality, the institutionalization of class conflict, and the emergence of the ‘new’ middle class.”

Renner infers the arising of two large and non-antagonistic social classes: a service class and a working class. As a result, “Renner’s theory of class structure has many traits which appear well compatible with the changed realities of post-capitalist society and which it will therefore be useful to bear in mind.” (p. 95.)

Renner Also Modified the Ideas of Legal Positivism

As a lawyer from a poor family born, raised, and trained on the European Continent, Karl Renner was educated in the positivist school of law; he was to become in his adult life also a significant modifier of it. The school of thought known as Legal Positivism developed in eighteenth and early nineteenth century Continental Europe. It was, as Friedman writes in *Legal Theory*, “a jurisprudential reflection of the age of liberal capitalism.” (Friedman, pp. 148-9.)

Legal positivism asserts that there is a logical consistency to the system of laws as a whole. There is one immutable body of legal norms; it exists *sui generis*, constituting what Durkheim would call “a social fact.” It is almost impossible to eliminate social facts. For example: the Roman Catholic Church exists as a social fact, even though no one present at the founding of the church still remains in it. A social fact is like a hotel; people come in and people go out, but the structure remains permanently.

The existence and content of law of course depends on man’s social existence – law is socially constructed *ab initio*. But whether or not a given norm is legally “valid,” and thus whether it forms a legitimate part of the law of that system, depends on its sources, not its merits, said Renner. As a legal positivist, he had to emphasize the stability of legal forms. But he also saw and described the greatly changing economic and social conditions of post-Industrial Revolution Europe, changing much more rapidly than feudal Europe ever had. How to square this circle?

As a legal positivist he could declare the legal norm (of property, for example) continually existing but he could also, in an innovative break, note that this norm existed “indifferent to its social function.” It could, in fact, serve new functions, new purposes.

Renner thus agreed with legal positivism's basic assertion that the forms of law don't change, but he concluded that their functions did. Therefore, the economic effect (is) extraneous to the definition of a legal concept. "Institutions such as property, contract succession by inheritance, are "neutral, 'colorless,' and 'empty frames.' They are neither 'feudal' nor 'capitalist' nor 'socialist.' Their juridical analysis cannot teach us anything about their social or economic effect." (Renner, Introduction, p. 2.)

As the famous nineteenth century English jurist and expert on legal positivism, John Austin, said, "the existence of law is one thing; its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or not be conformable to an assumed standard, is a different enquiry."

A later British jurist, Oxford's Professor of Comparative Law, Otto Kahn-Freund, noted in a discussion of the role of legal positivism in Renner's writings that "The absence of major legislative regulations which affected the economic system engendered an atmosphere in which the normative framework of society appeared to be stable and its conceptions fixed." But then:

"The First World War administered a mortal blow to the conceptual Utopia. The events that followed, inflation and catastrophic unemployment, gave it the *coup de grace*."

"The concepts of property and of contract were thrown into the melting pot, when the institutions of private law, like their counterpart, the *laissez-faire* economy, proved unable to safeguard the life and expansion of society." (Renner, p. 37.)

Legal positivism did not develop in or dominate the Anglo-Saxon schools of law. Rather, as Max Weber noted in *Economy and Society*, it was a form of rationalization of the law which, since the rise of Romanist university education, had remained a characteristic of thinking in Central Europe." (Renner, p. 15. From Weber's *Wirtschaft und Gesellschaft*, p. 509.)

In Continental law, the thought processes were influenced by natural law and oriented toward a systematic structure of rights and duties. We may say, wrote Renner, that it rested upon general principles. In Anglo-Saxon law, we deal with "a method of argument whose primary preoccupation is with remedies, not with rights; with procedural form, not with juridical substance." (Renner, p. 15.)

Renner nonetheless modified this Continental legal positivism: While in Anglo-Saxon countries a change in legal norms might occur and then be followed by judges' altering of rigidities in the law to meet the new norms, on the Continent such had not been the case. There was only one answer for legal positivists: legislative relief.

Karl Renner greatly admired the work of the American Supreme Court justice, Oliver Wendell Holmes. Holmes, writing in *The Common Law*, said that the growth of law is logical in form. “The official theory is that each new decision follows syllogistically from existing precedents.... The very considerations which judges most rarely mention, and always with an apology, are the secret roots from which the law draws its juices of life. I mean, of course, considerations of what is expedient for the community concerned.” (From Holmes, pp. 35-36.)

This is Holmes's celebrated “paradox of form and substance in the development of the law” and one which Renner followed.

How did Renner square the second circle, the one between Marxist dogma and legal positivism? How, given all the profound social, economic, and political changes he observed in Europe, could he explain away the fundamental Marxist assertion that it is the economic foundation that is central; law is a mere part of the superstructure that reflects economic reality?

Easy. He argued that there is a time lag between the transformation of the underlying, foundation, the (economic) system, and the development of changes in the law (the superstructure). During the lag “norms which at an earlier period of history may have been a true mirror of social relations, “may cease to be an adequate expression of factual conditions.” Renner concluded that the state should not legislate morality, as we would call it today, for vast changes in the legal system would not bring about revolution in the substructure or in the way we live. To Renner, only evolution could do this.

Marxism is based on a “dialectical” approach to the movement of history, a development built on Hegelian thoughts and methods. This involves the clashing of thesis, antithesis, and synthesis. The so-called "dialectical" method that the innovative Marxist Renner said he employed in his analysis, however, was actually based on at least two levels of sophistication.

- First, he utilized the notion of a “factual substratum” and a “normative superstructure.” This for him “probably represents the Marxian method,” Dahrendorf drily observed.
- Second, as a legal positivist, he worked with a “discrepancy between the normative content of the law (which is static) and its social and economic function (which is dynamic).” (Renner, p. 7.)

Prof. Kahn-Freund observed that for Renner "the legal institution is (seen as) a rigid abstract ... of crystallized imperatives ..." and as Renner wrote in his works, there are few disappearances of institutions of law. Legal institutions do not fade away, losing all their functions totally. Rather, they experience a transformation of functions.

This is the heart of Renner's legal, jurisprudential innovation.

Renner wrote of the impact of economic forces and consequent social changes upon the functions of legal institutions. He asked: How it is possible that a legal institution, for example "property," can mean the same thing in 1750 as it does in 1900, and yet, in the latter year, it can produce economic and social effects almost opposite to those it did back in 1750?

How can one account for the functional transformation of a norm which remains stable? he asks, in essence. "What, in particular, is the technique used by a developing capitalist society in order to adapt precapitalist and early capitalist legal conceptions to the needs of high capitalism without changing these conceptions themselves?"

"How does society use the institutions of the law, what does it ask of them, how does it group and re-group them? How does it put them to new services without transforming their non-native content? How has property been able to become the legal framework of a capitalist economy?" (Renner, p. 1.)

Renner's Reformulation of Continental Law

Renner started his study of law and its change with history. "It will be our task," he wrote, "to show that the historical development of the law, and the growth of individual laws and their decay, flows from the disparate development of legal and economic institutions; also, that the change in the social functions of legal institutions takes place in a sphere beyond the reach of the law and eventually necessitates a transformation of the norms of the law." (Renner, p. 52.)

A legal institution "regulates the factual relationships of living beings and successive generations; it regulates facts which are in a constant state of flux and it is, like law in general, nothing but one aspect of the subject matter which it governs." (Renner, p. 53.) The special work of legal institutions is "to serve as cogs in the mechanism of the production, consumption and distribution of the social product."

Yet society and law evolve. Are legal institutions like natural phenomena and subject to the laws of nature? The Western World had experienced the advent of Darwinian science within his lifetime, although I have not read of Renner acknowledging this. But he surely did ask himself, basically, what forms of law were best adapted to the new social environment.

At first, says Renner, we might think that there is an analogy between the laws of nature and the rules of law; the former control the relations among natural objects, the latter regulates the affairs of men. Both seem to operate as superhuman powers. The world “would seem to be divided into a realm of reason and a realm of nature, the first governed by rules of law (side by side with the rules of morality) and the second by laws of science.” (Renner, p. 45.)

Yet, says Renner, when we switch from a discussion of natural to human legal systems, we note that the indicative voice changes to the imperative.

“Every norm in its indicative form assumes a fetish-like character, akin to a law of nature, transcending the individual, superhuman, even divine. If the norm is resolved into imperatives directed to the individual and telling him ‘you ought’ ‘you ought not,’ ‘you may’ ‘you can,’ ... it appears immediately less unnatural, though still not acceptable as self-evident.

The analogy between the law of nature and the legal system is now meaningless, for nature knows neither controlling common will, nor an individual will that is controlled.” (Renner, p. 46.)

Renner grandly surveys history. “The ancients usually spoke in direct imperatives when they recorded their norms in stone and metal, on papers and parchment, e.g., the codes of Hammurabi, the Mosaic Decalogue, and the Twelve Tables of Rome.”

“Such imperatives are the elements of the legal order. They are addressed to the individual and claim his obedience. Aiming at the will, they limit or enlarge, break or enhance the individual will and hence confront it as an extraneous will.”

“This relation of will is fundamental to the law; there is no mystery about it, nothing metaphysical, supernatural or divine. From the psychological and physical aspect, the highway robber who attacks the wayfarer in the wood with the alternative command of ‘your money or your life,’ attempts to impose his own will upon that of another person in the same way as the law seeks to impose its own authority, with its instant readiness to apply civil sanctions or with the threat of punishment and criminal sanctions.”

How the authority of another person (the “heteronymous will”) is imposed upon the wishes of an individual (the “autonomous will”) is a matter of common experience.

“There is, however, this mysterious difference: that in modern times all law is laid down, in the name of all the citizens, by the state, conceived as an entity. Instead of one man’s will prevailing over the will of another, the common will is regarded as imposed upon that of the individual. How the common will arises -- for it is clearly not the *volonté générale*-- is one of the fundamental problems for jurisprudence.” (Renner, p. 47.)

He uses this conundrum to vitiate, attenuate, or simply put, to alter dramatically, the most fundamental Marxist dogma about the “superstructure” within which law resides, and about the movement of history.

As Man Changes, Law Changes

Some formerly felt, however, that legal institutions are given *per se*, that they remain unchanged, even if man and matter continually undergo change. Renner responds to this Scalia-like “originalist” objection.

At first, the answer seems to be in the affirmative, for “right must always remain right.”

For centuries, the law was considered divine, immutable and constant, like the deity itself. The mere idea that man should engage in an attempt to change the law was considered blasphemous. Even one who came into this world to change the whole order of humanity believed himself in duty bound to say that he had come not to destroy the law but to fulfill it.

For thousands of years all change in the law was carried out in the belief that men had at last arrived at the right interpretation.

The thesis that man can create the law has gradually been accepted, at first in the form of state parliamentarianism within the narrow confines of the various countries.

Today, every school child knows that parliament exists in order to make laws. But we can still not explain satisfactorily how it is possible that parliaments can obtain a right to legislate; if it is accepted that parliament makes all laws by virtue of the constitution, the question remains, who gives them the right to legislate?

Indeed, these are most controversial questions. Parliament exercises its rights to make laws in the name of the community. It is a mere organ, it is argued, through

which society expresses itself. But it is still obscure exactly how society makes its new laws. (Renner, p. 54.)

Renner explains.

“We can only develop a complete theory of the law if we supplement positive, legal analysis with an investigation of the two adjoining provinces, the origin and the social function of the law. These three, together, form the whole of legal science.” (Renner, p. 54.)

If legal institutions are not related to the rules of nature and they do not remain rigid over time, to what, then, is their real content related? Legal institutions have a two-fold nature, Renner believes, according to their constituent norms on the one hand, and to their social significance on the other.

“Both can and must be taken into consideration. From the lawyers' point of view legal institutions are norms or imperatives molded into assertions, printed or written on paper, more or less adequately expressed. Their existence compared with that of men of flesh and blood is as insubstantial as that of railway shares compared with the permanent way or rolling stock of a real railway, or that of treasury notes compared with real bars of gold.” (Renner, p. 52.)

Renner argues that social life is complex in character. “It is not so simple that we can grasp it, open it, and reveal its kernel like a nut, by placing it between the two arms of a nutcracker called cause and effect.” (Renner, p. 56.)

The economic and the social functions of legal institutions make up a single process. According to Renner, “a legal institution is a composite of norms. If in the change of economic systems it has remained constant, but its functions have increased, diminished, changed, or disappeared, then we speak of a change in the functions.” (Renner, p. 75.)

For example: “Let us consider the vestals that had to keep the fire ever burning on all the hearths of the community. We may well imagine that as long as they existed, the sum total of the laws relating to them remained unchanged and the relevant norms remained constant. With the discovery of flint and steel, however, all economic functions of the vestals were taken over by a substitute. Here we should be entitled to say that an economic revolution -- the discovery took place in a sphere outside the law -- deprived the legal institution of its social function, made it redundant, and led to its final abolition.” (Renner, p. 75.)

The reverse can be true, as well.

We may imagine that a legal institution retains its function and economic significance, though the norms which make it up have been transformed. Imperatives may have been added, taken away or altered, yet the essence will have remained of what was commanded. This, too, is neither unthinkable nor unhistorical.” (Renner, p. 75.)

We can see in legal development the transformation of the legal norms and thus of the functions. But the function is, nonetheless, necessary for society.

However much the functions of legal institutions may change, no function can remain unfilled permanently without involving the destruction of society itself. If a function is no longer served by one legal institution, another must be substituted for it; there is no vacuum in the legal system.... Legal institutions can, within certain limits, take each other’s place. As a rule, however, new institutions are required. (Renner, p. 76.)

And this is central for comparative law and civilizational studies: “The organic character of the legal order is the fact that the totality of legal institutions existing at a given time must fulfill all general functions. This means that the law is an organized whole determined by the needs of society. Every legal institution, as part of it, is more or less closely related to all others; and it is its function, not the content of its norms, which makes for this connection.” (Renner, p. 76.)

The line of argumentation, I think, is quite like the Functionalist school of American sociology, the articulation of whose elements arose at Harvard and Columbia a half century later.

Four Theses on Change in a Legal System

In his sociological analysis of functional change Renner develops four theses on the relationship between law and economics, i.e., societal development. We see how far he has moved Marxist thought from *A Contribution to The Critique of Political Economy* in these four theses.

Renner believes that he has shown -- in his analysis of the legal institution *par excellence*, i.e., property, that “while there have been extensive alterations over a short period of time,” this “drastic transformation” has not been accompanied by “noticeable modifications of its legal structure.” Hence, he generates the first thesis:

Fundamental changes in society are possible without accompanying alterations of the legal system. (Renner, p. 252.)

Next, the existence of society depends upon a determined, historically conditioned legal order. This legal order does not cause social change but neither does it prevent changes in the underlying infrastructure, either. The essential character of the social process as preservation and reproduction of the species undergoes continual change while the form of the law is constant.

Thus, the second thesis:

It is not the law that (usually) causes fundamental economic (or social) development. (Renner, p. 252.)

Third, Renner argues that we might feel ready to conclude that the legal superstructure is absolutely independent of its economic foundation or that changes in the legal system come from non-economic sources. This is not quite true, Renner argues, and hence the third thesis:

Economic change does not immediately and automatically bring about changes in the law. (Renner, p. 253.)

The fourth and final thesis is the basis for much of the theory he later developed more extensively and for which he was so vilified by many orthodox Marxists. Functions of legal institutions, he has shown, change only gradually, and imperceptibly, “like the growth of grass, according to the law of all organic development. Thus, the change of functions can be recognized only at an advanced stage and only by historical comparison. It can be recognized only when it has matured.”

This thesis, then, is:

Development by leaps and bounds is unknown in the social substratum, which knows only evolution, not revolution. (Renner, p. 253.)

How very far had mainline, once revolutionary, socialist thought progressed in the near century from Marx to Renner, in the period during which the many peaceful, gradual solutions to the age-old clash of property with labor became evident.

Renner does not believe that the law can, *ipso facto*, command new behavior. Any valid law can be changed, he says, yet it does not itself change society or bring about social evolution. There are external limits to the “efficacy” of norms -- laws can only command people, not nature. Also, laws can be addressed to individuals, not groups. Finally, the law can express its commands only through the instrument of human beings. Law aims at “the control of the organic texture of nature, of the interconnections among men, and between men and matter.” (Renner, p. 256.)

A final example of social change is given. Renner considers the reward to public servants in the early Middle Ages. A vassal then was given an office and land. Later on, in the Middle Ages, trade and money became more important, so salaries were paid. The office became less important and was abolished (i.e., “the nobility”) in the bourgeois revolution. In the course of time the intention of the original norm “is no longer achieved. In fact, the trend of development due to economic laws which are inherent in the substratum is more powerful than the power of the law.” (Renner, p. 259.) So Renner warns against what he calls the “Archimedes law of the Lawyer.” This translates as: “give me the lever of legislation and I shall move the world.” (Renner, p. 259.)

Why? Because legislation cannot totally change reality. In the following sentences it seems like he is directly disabusing Marx of the latter’s dogmatic rigidity.

Even if the dispossessed classes ran a successful revolution today, he argues, tomorrow the same individual would have the actual detention of the goods. Were the state to abolish all private ownership, he says, property would retain all its functions and it would still have the same social effects as private property had generated. “So, the new law would have failed and the faith in legislation would be shattered as an illusion. The agrarian constitution of contemporary Russia is an irrefutable proof of this argument.” (Renner, p. 260.)

Thus, Renner has shown that the functions of the law and of legal institutions have changed quantitatively and qualitatively over time. What is needed now is simply for social scientists to examine the place that legal institutions occupy in society.

Renner writes: “A lawyer may be interested in it during his leisure hours, but he must not allow this interest to intrude upon his work anymore than the botanist as such may be concerned with the economic use to which others put the plants he studies under the microscope.” (Renner, 2.) Questions of the social effect of legal norms transcend the legal structure. However “interesting these social repercussions may be to the lawyer as a sideline, they are the province of the economist and the sociologist.” (Renner, p.248.)

The “job for jurisprudence today is to investigate the political and economic forces which make laws and become norms, i.e., the practical, sociological causes of them.” (Renner, p. 297.)

Renner sums up his work on this matter. “The legal expert who has accompanied us in our observations will have made the surprising discovery that law and economics, though appearing to be indissolubly bound together, if considered as static at any given moment, yet undergo unequal development in the course of history. Contradictions and contrasts emerge, and their mutual relations are seldom reversed.

Thorough examination of the vast field presented by civil law for inductive investigation soon leads to the discovery of common characteristics within this dialectical development. It thus becomes possible to read its laws from these facts.” (Renner, p. 251.)

So what Renner did was to transform increasingly obsolete socialist thought about law into a set of concepts thoroughly acceptable to democratic people – a much more accurate formulation, I think, than both (a) outdated orthodox, rigid Marxian and (b) Andrew Ure-type high capitalist statements about the relations between the economic foundations of society and the legal reflections of them.

He showed that the structure of law is such that countries cannot easily legislate what societies have not yet accepted. The practices generated by society precede the codification legal institutions provide; a social fact, the institutions remain, but just as hotel guests come in and go out, so, too, the service the institutions of law provide changes over time.

In a sense, Renner modernized, vindicated, and legitimated socialism for the West by making it a more true reflection of reality; underlying social causation exists, he argued, and law only reflects that supposed foundational reality. But on the other hand, it is also Marxism stood on its head, because at the level of superstructure legal institutions persist even in spite of changes in the basic underlying, causal foundation (whether it be a Weberian “ideational” or a Marxian “material,” economic one, or both). One might ask: which is foundation and which is superstructure? And does economics really form the basis of history, the pattern and meaning of our times? Or is Max Weber correct – do both “ideas” and “material factors” – plus other considerations – move history? And why must there be a social revolution when evolution will better serve the needs of the entire population?

Renner the politician led his country from monarchy through to a republic based on democratic socialism which would meet the dreams of the people yet be thoroughly compatible with Western democratic ideals; much of Austria's enormous economic success in this post-war era came as a result of his prodigious efforts. Much of the European Union's success, likewise, arises from this reformulation of democratic social thought.

Not long after the Nazis were finally destroyed, Renner was able to convince all allied occupying powers, both the U.S. and the U.S.S.R., to accept Austrian “neutrality” and withdraw from the country, way before this was the case in Germany. So, too, in his intellectual life he led the way from conflict-based Marxist starting points to more widely accepted conclusions; he directed his political theory to the development of classes, now social classes, that would not be antagonistic but instead cooperative; and, finally, he provided a much admired theoretical basis for understanding the changing

nature of law and its relationship to society, offering an advance on the fundamental and rather static assumptions of both Marxism and Legal Positivism.

With good reason, textbooks on law and society rank Renner alongside Durkheim and Maine. This eminent thinker surely is worthy of attention by comparativist scholars in their attempt to understand the complex relationship between law and society both worldwide and through the years since mankind surrendered the hunter/gatherer way of life and adopted civilization.

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