

## Week #1 – Marx, Weber, and Durkheim

- founding socio-legal thinkers
- key writers on state, society, economy, and law
- each has a different (but influential) understanding of law in society
- wrote in 19<sup>th</sup> century Western Europe: economic, political and technological upheaval and change → shift from agrarian to industrial society
- the state becomes more complex, contested, and fractured → but more involved in everyday life

### A New Role for Law

- law shifts from being seen as ‘natural’ (God/Sovereign) and instead is seen as socially constructed and changeable
- the ontological status of law thus changes
- law becomes a tool of the State, rather than an expression of the God’s will
- law becomes a critical aspect of governance, used intentionally by the State to regulate society
- this leads to *juridification*: the proliferation of law which introduces on all aspects of social life
  
- Marx, Weber, and Durkheim respond to these new changes

### Marx

- key concern is the critique of capitalism
- state not neutral but constituted by economic forces (material)
- law is an **ideological** mechanism for the State to protect the material interests of capital
- law entrenches the capitalist system which serves the interests of the elite
- if law enshrines inequality, then the idea of the ‘Rule of Law’ and equality before law are built on false pretences

### Weber

- modern societies are more complex and less governed by traditional authority
- law fills this vacuum by providing a ‘rational-authority’ to manage social complexity
- for Weber this produces a paradox: increased efficiency, rationality, profitability, and growth on the one hand but disenchantment, erosion of values, and loss of freedom on the other
- “iron cage” of law

### Durkheim

- Key concern is that “the old gods are growing old or already dead, and others are not yet born” → a shift in authority
- In the wake of traditional authority and the collapse of natural law, state law emerges to fill this gap by giving an “authoritative voice to morality”
- law functions as “secular morality”
- law as a ‘black box’ for social morality that can be studied “scientifically”

Classical understanding of the why and how of law:

- Marx, Weber, and Durkheim have state-centric theories of law
- Marx → law as a political tool that entrenches capitalism
- Weber → law as a product of modernity; key for a 'rational' modern society
- Durkheim → law is a social bond that facilitates cohesion and an expression of 'social' morality

### Week #1 Readings

Deflem M (2008), *Sociology of Law: Visions of a Scholarly Tradition*. Cambridge, Cambridge University Press, 15-74.

- **Marx**
  - "views the legal system in function of its role as an instrument of control serving bourgeois interests" (p.27)
  - the capitalist legal system contributes to and "legitimizes, the inequalities that exists as a result of capitalist economic conditions" (p.27)
  - law "applies individualised rights of freedom, which benefit those who own whole disfavoring those who are without property" (p.27)
- **Weber**
  - argues "that modern societies are marked by an increasing influence of purposive-rational action and a relative loss of traditional action." (p.40)
  - "rational-legal domination is based on a system of laws and is the typical form of legitimacy in the context of the modern state" (p.42)
  - "domination in the modern state is legitimated by legality" (p.43)
  - for Weber, "the only validity of law ... is that which derives from the subjective considerations of the members of a community" (p.44)
  - "Rationalised law is formal and abstract, exemplifying the disenchantment of the modern world" (p.46)
  - "The formal rationalisation of law implies that laws are codified, impartial, and impersonal" (p.46)
  - "regulation through procedure" (p.54)
- **Durkheim**
  - his major concern is "to discover empirically how social solidarity is maintained in modern society despite the growing autonomy of the individual that has resulted from the division of labor" (p.59)
  - he "argues that mechanical societies gradually evolved into organic societies made up of functionally different organs, each of which performs a specialised role." (p.60) → "the individual acquires special status both in terms of rights and responsibilities" (p.60)
  - "Violations of the collective consciousness will ... be treated as offenses by individuals against individuals." (p.60)
  - "Durkheim studies law as the visible symbol of social solidarity" (p.62)
  - Focuses on the "evolution of law from a repressive to a restitutive system" (p.62)
  - "legal regulations [in modern society] are more abstract and general so they can apply universally to all individuals while not leveling the differences that exist among them." (p.62)
  - "In organic societies, law is secularised and highly codified" (p.62)

- "in contemporary society, crimes against the person and against personal property arouse the greatest resentment and receive the harshest sanction because they violate a morality that places the qualities of the individual above all else" (p.63)
- "laws in democratic organic societies regulate relationships in bilateral terms as a contract among two or more parties, all of whom are considered equal before the law" (p.66)
- "punishment in modern society becomes typically a deprivation of liberty" which aims to reintegrate "the individual back into society and restoring social relations" (p.66)
- "Durkheim placed a premium on the increasingly individualist nature of the collective consciousness" (p.74)