

ristic analysis that has its point of departure in the logical interpretation of meaning The distinctions Weber draws between . . . status and purposive contracts express the same fundamental distinction between facts and values, a distinction ultimately rooted in [Weber's] commitment to the principle of positivity.³⁷

The modern voluntary contract—specialized and of limited scope—and the legal ideas that create and enforce it, seem to be expressions of a conception of knowledge and of the world that Weber accepted. Yet Weber could, as Kronman tells us, be scathingly critical of the idea of contractual freedom and the social relations it engenders. He spoke of the free contract in terms that call to mind not Adam Smith, but Karl Marx. Weber says that modern contractual relations lead men to look only to the commodity rather than to each other as human beings; they involve no obligations of brotherliness, no sense of reverence, no spontaneous human feelings.³⁸ Such relations, Weber says, are “contrary to all the elementary forms of human relationship,”³⁹ and are “an abomination to every system of fraternal ethics.”⁴⁰ Moreover, Weber notes that the expansion of freedom of contract does not effectively bring equal benefits to all, and denies effective freedom to many. Weber observed that the legal freedom granted workers to contract for their labor means nothing if they are subject to the actual discipline of the factory. Kronman quotes Weber: “‘A legal order which contains ever so few mandatory and prohibitory norms and ever so many “freedoms” and “empowerments” can nonetheless in its practical effects facilitate a quantitative and qualitative increase not only of coercion in general but quite specifically of authoritarian coercion.’”⁴¹ Is there any way to harmonize Weber's philosophical defense of freedom of contract with the critique which these passages suggest? In the end, Kronman admits that there is not. Weber is simply ambivalent, if not inconsistent.

Thus, Kronman's work suggests that Weber has not, as many once thought, synthesized and transcended classical nineteenth century liberal and Marxist views of law. Rather, he has both restated and distanced himself from either account. The *Sociology of*

37. Pp. 107-08.

38. 2 *ECONOMY AND SOCIETY*, *supra* note 1, at 636.

39. *Id.*

40. *Id.* at 637.

41. P. 115 (quoting 2 *ECONOMY AND SOCIETY*, *supra* note 1, at 751).

Law restates, critiques, and elaborates competing creeds in legal thought. While it does not yield to their simplifications, it fails to replace or transcend them. Kronman puts it very well:

Weber's own ethical evaluation of legal-rational authority and the formalistic mode of administration associated with it is, as I have noted, an ambiguous one. At times, Weber seems to view the growing predominance of legal-rationality as a great achievement and liberation—the triumph of reason in human affairs. At other times, he speaks of the same phenomenon in terms which suggest, instead, that legal-rationality—and in particular, the modern bureaucratic order which he considered its highest expression—inevitably leads to a kind of enslavement and stultification of the spirit, a form of public life from which all passion and nobility have been eliminated, an empty materialism that he described, with intense feeling, as an 'iron cage'. . . . The ambiguity of Weber's ultimate judgment regarding the ethical significance of legal rationality, indeed, the ambiguity of his judgment regarding modern European civilization as a whole, reflects an underlying ambivalence on his part concerning the positivistic theory of value presupposed by all legal-rational authority structures and the conception of personhood associated with it.⁴²