Criminal Defence and Procedure

Comparative Ethnographies in the United Kingdom, Germany, and the United States

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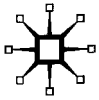

First published 2010 by
PALGRAVE MACMILLAN

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Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

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ISBN-13: 978–0–230–23022–4 hardback

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

10 9 8 7 6 5 4 3 2 1
19 18 17 16 15 14 13 12 11 10

Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham and Eastbourne

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Introducing Procedure

In this book we would like to offer a comparative ethnomethodological study of the criminal defense work in three legal settings: German, American (US), and English. The study is based on the programmatic ethnomethodological premise that in order to fully understand how lawyers work, one needs to examine all the law-relevant activities (for example, dealing with the client, identifying, selecting, and assembling paperwork in the file, conducting interviews, and carrying out arguments in the court) in the course of their procedural path. Importantly, while law-relevant activities are defined in terms of case-making, procedure serves as the condition for the possibility of making a case in the first place. Thus, we presume that by examining case-making, we can understand procedure and its effects on the administration of justice, which in the case of ethnomethodology means "doing law". With the latter emphasis, this study joins a growing area of law-in-action. As an emergent subdiscipline of the sociology of law, law-in-action does not show clearly delineated boundaries, demanding that we begin by first explaining the law-in-action program and second establishing its operational relation to ethnomethodology.

An overabundance of the studies that focus on the rule of procedure tends to overshadow other important issues concerning procedure, including the relationship between procedure as a legal rule and procedure as an observable and explainable activity. In this book, we focus precisely on this relationship. This focus demands a trans-sequential approach that undertakes *procedure* both synchronically and diachronically, in its multi-faceted and multi-sited unfolding. We pursue this thesis empirically with several comparative analyses of ethnographic data. An extensive ethnographic fieldwork allowed the authors to access the dual nature of the procedure in a series of procedural events.

In the following chapters we approach these events as individual studies.[1] At the same time, all the studies in this book belong to a more general frame that can be called "procedural order". In order to understand the manner in which individual studies relate to each other within this order, we find it necessary to preview our analyses by identifying the role of procedure in the discipline of law-in-action.

Furthermore, we suggest that one should approach law-in-action not only as an emergent discipline but also as an interdisciplinary platform for the study of legal practice in the broadest sense of the word. Various contributions made by sociology, psychology, anthropology, ethnology, political studies, communication studies, translation studies, and women's studies, for example, justify this characterization.[2] Regardless of a specific academic affiliation however, all the law-in-action research belongs to the category "basic and qualitative". A common ground for this kind of research is the methodological focus on the local and participant constitution of meaning in and through purposive actions and activities performed by various actors in the legal process (for example, judge, attorney, police officer, plaintiff, witness, or defendant) who relate various legal settings (for example, court, law firm, jail, police station) to each other via the procedural order.

Ethnomethodological law-in-action

The participation of ethnomethodology in the law-in-action research is endemic to the method's objectives. These objectives were predefined by Talcott Parsons and refined by the founder of ethnomethodology, Harold Garfinkel, and Harvey Sacks. It is important to note that all three sociologists had a direct relationship to law by both academic training and legal practice. It is common to credit Parsons with a renewal of sociology which he accomplished by insisting that 'social facts must be understood on the basis of a theory that would rise from the actual circumstances of their production' (Heritage, 1984, p. 9). Known as "Parsonian backdrop" or "bottom up approach", this way of (anti)theorizing posed a challenge to the grand theories of human behavior inherited from the sociological thought of the nineteenth century. The main difference between the two approaches lay in Parsons' view of the human subject as both an active and passive participant in the creation and transformation of his or her environment. This is not to say that normative complexes based on habitualized behaviors did not matter any longer; however, habit was no longer considered as the only adhesive matter that could hold a social order together. As Parsons

claimed, and Garfinkel came to demonstrate, in order for the things to proceed as usual, the participants must utilize various locally constituted means of articulation, which underlined, as it were, explicitly stated social rules of various behaviors. This view contrasted sharply with the instrumentalist approach, which presupposed a passive adherence to the common purpose in question.

At the time, Parsons' theory did not appear to be entirely sound. Its critics would call it voluntaristic metaphysics, insisting that it showed human action to be unpredictable and selfish. In his defense Parsons indeed admitted allowing for certain indefinable vagrancies of human actions, but he also insisted on the normative character of those actions. Apparently a contradiction, the dual property of action will form the backbone of the ethnomethodological method. From this perspective, sociology of law would focus on how 'law's structure matches law's functioning in the modern societies' (Parsons, 1949, p. 370). In his own study of law, Parsons focused on the key actor of any post-industrial legal system, an attorney. For him, the lawyer was a paradigmatic figure because he both represented and manipulated the prescribed legal rules and norms of a juridical system. This might explain the reason why the original ethnomethodological research selected this figure for such a close scrutiny. As someone who stands at the edge of the court system, the attorney fits only too well the ethnomethodological profile of a semi-voluntaristic actor. At the same time, the ethnomethodological emphasis on relational structures clearly stated that the situated order of a social institution could not be understood without taking into account all the relevant activities on the part of all the participants, and not just an attorney.

This insight was advanced by Harold Garfinkel, who began his sociological career with the study of different institutional orders (for example, suicide prevention center and the jury room) in terms of their dealing with various everyday problems. In his pioneering study of jury deliberations Garfinkel showed how legal rules were being employed for practical purposes in an ad hoc manner, following the principle 'if the interpretation makes good sense, then that's what happened' (1967, p. 106).[3] As a result, he managed to reformulate the status of the person (defined as always a member and participant) and the nature of the social world for this person (constituted in situ vis-à-vis other members) by suggesting the existence of a discrete system of locally enacted (ethno) methods. With this reformulation, the social order appeared as a stratified system which is based on some collective activity. The study of collective activity seemed particularly opportune in the legal setting,

which features 'a modified system of the basic rules used in the everyday life' (ibid., p. 104). For the study of law-in-action, this premise meant a continuous focus on the distinction between 'maintaining, elaborating or transforming circumstances of actors' actions' and 'reproducing, developing or modifying the institutional realities which envelop these actions' (Heritage, 1984, p. 180). At the same time, Garfinkel's sociological innovations spawned some well-grounded critique, which we address at a later point in this chapter. Indeed, although undoubtedly Garfinkel pioneered a new perspective on law, he failed to develop a straightforward and relatively clear analytical frame. It is Harvey Sacks, a disciple and close associate of Garfinkel's, who should be credited with this achievement.

The contribution of Sacks to the ethnomethodology lies in his streamlining and therefore reducing the social world at large to one of its most common expressions, that is, conversation or talk. The latter is based on the orderly sequential turn-by-turn production governed by 'a certain procedural rule' (1992, p. 4). Hence, Sacks' treatment of law which exhibited a strong investigative focus on: 'a) management of routinization in their everyday activities and b) management of continuity in court' (1997, p. 43). The first activity focuses on the attorney who suspends the taken-for-grantedness of everyday activities for a problem which can be solved only by nontraditional means. According to Sacks, these means are derived from the everyday immersion in the ordinary. They include emphasis on the written form, coherence, clarity, and so on. By doing so, the lawyer creates a particular legal product that would have otherwise, under ordinary circumstances, not been created. Not that we live in a problem-free world but rather that we do not attempt to solve our problems in a specifically created social environment that brings those features to prominence: 'The legal system provides a complete set of features, which are defined in terms of the particular type of interaction' (ibid., p. 44).

We consider Garfinkel and Sacks to be the stalwarts of the ethnomethodological approach to law. Although their individual contributions to the emergent discipline could only be called indicative, the fact that the legal institution and its actors were deemed a significant subject by the founders of ethnomethodology helped to establish a certain methodological tradition. For our concern with law-in-action, this approach offers several advantages. First, it considers law as what is being enacted, used, and performed in courts, law firms, or judicial chambers. Second, ethnomethodology shifts the concern of the jurists from the normative evaluation of the law's effects toward the practical

(interactional) constitution of law. The question about how laypeople and professional lawyers alike call law into existence moved the analysis inside certain interactions: lawyer–client conferences, plea bargaining sessions, and, most prominently, court hearings. These encounters were approached as what was sequentially produced and therefore subjected to analysis in terms of their sequential production "here and now". The empirical bases for these detailed micro-studies were formed by empirically obtained data: recordings and transcripts of legally defined or legally relevant events. The choices of events for our studies were in part motivated by the main themes of the empirical law-in-action. Below we would like to mention the main themes of the law-in-action research beginning with the study of the courtroom.

The first comprehensive study of the courtroom can be attributed to Atkinson and Drew (1979). The two authors designed their project on the basis of comparing natural talk (or everyday talk) and pre-structured, as in institutional settings, talk. A court, in this view, pre-allocates speech-positions, pre-defines certain rituals and conventions. In reverse, this institutional structuration changes the tasks allocated for the participating members. In the court of law, the latter collaborate differently: some bring stories, others construct cases and deliver arguments and counter-arguments; the common ground for all is based on the pre-established rules of institutional communication. Relying on the transcribed tape-recorded proceedings and field-notes, Atkinson and Drew investigated courtroom activities with an emphasis on the interactional mechanics that 'comprises both the topic and resource in formalizing, specifying and analyzing court procedures' (1979, p. 7). With the help of a mixed ethnomethodological, conversation analytic, and ethnographic methodology they probed those question–answer sequences that could be defined as the most characteristic for the court order. They showed, for example, that the attorneys of both sides managed those in a sequential manner as in soliciting 'shared attentiveness' (ibid., p. 85). This work is undoubtedly seminal for the interactive perspective on law-in-action. At the same time, the examination of the court proceedings can be deepened, expanded, and diversified, especially along the comparative lines, as was proposed by the above authors themselves. For the study of procedure, courtroom research indeed appears to be most promising since procedure is simultaneously actualized and vocalized there. As the primary legal setting, the court of law also appears to be the very place for the study of procedural justice. In addition, as a public venue, the courtroom lends itself easily to an empirical examination.

The public trial in the context of the common law is a case in point. The sheer performativity of the multi-party body interactions, such as witness testimonies and closing speeches, make a public trial appear to be both an event of drama and the source of truth in the last instance. Among the classical ethnomethodological studies of the court as a social order we find several distinct foci: (a) general studies of the social organization of trials in traffic courts (Pollner, 1979), civil courts (Pomerantz, 1984), or – mainly – criminal courts (Feeley, 1992; Komter, 1998; Martinez, 2005); (b) court-related communication events, such as informal mediation (Maynard, 1982; Atkinson, 1992; Garcia, 2000), pre-trial communications (Lynch, 1982), examination of eyewitnesses (Wolff and Müller, 1994; Harris, 2001), especially cross-examination (Drew, 1997; Sidnell, 2004), or expert testimony (Peyrot and Burns, 2001; Shuy, 2001; Burns, 2008); (c) principal players in the courtroom, for example, professional judges (Bogoch, 2000), lay judges (Machura, 2001), defense lawyers (Philips, 1998), and jurors (Musterman, 1986; Manzo, 1993; Diamond and Vidmar, 2001; Hans *et al.*, 2003); and (d) legal language and discourse, for example, verbal deception and formulations (Stygall, 1994; Lebaron, 1996; Matoesian, 1997). Obviously, this list is merely suggestive: the study of courtroom interaction involves many diverse phenomena and components. At the same time the list is fairly representative of courtroom studies insofar as it demonstrates a priority for phenomena that are available for the researcher in terms of recorded speech or talk.

In the wake of the foundational essay on lawyering by Parsons, the figure of the attorney solicited a lot of attention from both Garfinkel (2005) and Sacks (1997), who also addressed the profession of lawyering at the outset of their respective careers, thus laying the ground for a separate subfield of law-in-action. The courtroom studies often touch upon the figure of the attorney; and it is unavoidable considering that he or she is a major player behind both the case and the trial. At the same time, the attorney is often investigated as an actor of his own, outside of the courtroom. The studies of the legal profession involve several themes: (a) running a law firm (for example, Flood, 1981; Flood, 1987; McIntyre, 1987; Travers, 1997; Flood, 2006); (b) managing lawyer–client relations (for example, Hosticka, 1979; Cain, 1983; Flemming, 1986; Griffiths, 1986; Abel, 1997; Hallsdottir, 2006); (c) evaluating attorneys' casework (Kritzer, 1998; Colbert *et al.*, 2002); (d) discussing social functions of private attorneys such as doorkeeper (Danet *et al.*, 1980a; Erickson and Schultz, 1982); or (e) dealing with the ethical implications of lawyering such as altruism (Mungham and Thomas, 1983),

responsibility (Felstiner and Sarat, 1992), power (Felstiner, 1998), honesty (Lubet, 2001), or social distance (Heinz *et al.*, 2003). Two general observations follow from this overview. Firstly, research in a common law environment shows some preference for the attorney and his or her law firm.[4] Secondly, by focusing on the attorney, the scholars cannot help but consider casework.

The criminal case, though, starts earlier than this. This is why the study of the police in the ethnomethodological register is complimentary to the study of both the courtroom and the law office. Both Garfinkel (1967) and Sacks (1972) wrote on the practices of policing, focusing on the ways the police assess potentially volatile situations. As what precedes the public execution of justice, police activities instigate the works of law, as it were, juxtaposing the performative side of law as it is being witnessed in the courtroom with its investigative, secret side. The ethnomethodological studies of the police and its practices include such themes as (a) patrolling and arrest (Black, 1971; Williams, 1991); (b) police interviews and interrogations (Emerson, 1994; LeBaron and Streek, 1997; Komter, 2003; Benneworth, 2007); (c) police and surveillance technology (Meehan, 1993); (d) citizen-police communications (Zimmerman, 1984; Williams and Whalen, 1990; Meehan, 1992; Edwards, 2006). In this strand of law-in-action, the legal matter bifurcates even further. It is considered by law-in-action research before it is set: as upshots of labeling or stigmatizing processes.

Finally, one more research theme needs to be mentioned: record-making has often figured as an essential issue for all the legal settings; it has also been designated as one of the most problematic issues of ethnomethodological inquiry (Zimmerman, 1974; Walker, 1986; Smith, 2005). The significance of creating "records" for law-in-action lies in transforming spoken discourse that belongs to a nonprofessional, that is, the client, and, by default, the realm of the ordinary and mundane, in accordance with the institutional rules of documentation and remembrance (Garfinkel, 1967; Benson and Drew, 1978; Travers, 1997; Komter, 2006). Empirical studies that focus on the activities of documentation and archiving show the capacity of record-making to shape, reshape, and thus alter oral discourse by way of literalizing its "core" for specific purposes of the legal establishment (Lemert, 1969; Jönsson and Linell, 1991; Scheffer, 2003). There are more subthemes that concern ethnomethodological law-in-action research, such as the relation between regulation and legal facts (Goodrich, 1984; Damaska, 2003), records and evidence (Lemert, 1969; Benson and Drew, 1978; Jönsson and Linell, 1991; Matoesian, 1999; Komter, 2006), or problem groups

and police statistics (Meehan, 1993). Although seemingly peripheral to the court studies, the research on the organization of memories turned out to be instructive to our perspective on lawyers' casework.

This brief overview could show how prolific and instructive ethnomethodological law-in-action research actually has been until today. However, there are serious shortcomings that we wish to address in this introduction because they lie at the heart of our own study on *doing procedure*. Firstly, most ethnomethodological law-in-action research abstains from comparative legal studies as can be illustrated by the ethnological and ethnographic tradition (Nader, 1965; Nader and Yngvesson, 1973; Starr and Goddale, 2002) or legal anthropology (Rüschemeyer, 1973; Bohannan, 1997; Perry, 2001; Dupret, 2005). This research tends to carry out case studies focusing on one type of court, one type of lawyer, or one type of police. As a consequence, law-in-action studies tend to underrate differences among court hearings, defense work, or the police.[5] The other concern of the ethnomethodological law-in-action research deals with the tendency to focus only on specific procedural components, while bracketing out others. Court hearings, lawyer–client conferences, plea bargaining sessions, and so on, are analyzed as if they were separated social encounters. Ethnomethodological scholars restrict the prehistory of the encounter under study to concise background information ("after the offence was introduced by...") or a vignette ("in the case of manslaughter, we..."), not unlike the ex post accounts offered by lawyers to the ethnographer in the field. Over-generalization and thematic fragmentation are persistent shortcomings of ethnomethodological law-in-action research. We would like to address these problems with this book by firstly providing an in-depth ethnomethodological comparison of certain activities and secondly by introducing procedure as an analytical meaning-producing frame that evolves from the proximity of interaction.

Integrating procedural events, activities, and roles can be seen as another attempt to 'radicalize ethnomethodology' (Arminen, 2008). Our literature review shows that some innovation came about by way of combining the above themes into a whole of extensive longitudinal studies. Several methodological innovations, such as 'multi-sited ethnography' (Marcus, 1998), 'circulating reference' (Latour, 1999), and 'dialogical networks' (Nekvapil and Leudar, 2006), stand out in that respect. The need to reconfigure ethnomethodology rises from certain self-imposed restrictions common to the method. By restricting their analyses to the management of the "here and now" of (institutional) talk, (pre-structured) conversation, or ambiguous social situations,

ethnomethodologists refuse to deal with complex conceptualizations, bringing upon themselves the critique of excessive empiricism. This omission prompted sociologists to re-evaluate the dependence on the empirical examinations as well as the relationship between the black letter law and law-in-action.

As far as the former is concerned, there have been attempts to move the boundaries of law-in-action farther away from the immediately accessible matters (Maynard, 1989; Burawoy, 1991; Burns, 2005) toward the formation of facts and cases in legal discourse. As for the latter, the most radical example in that regard is the study by Lynch and Bogen (1996). The two scholars investigated the Iran-Contra hearings in the course of many months by using the recordings from live televisual coverage. In a postscript to their minute analyses of the broadcasted examinations, they criticized the analytical focus of ethnomethodological law-in-action studies. They identified a "talk bias" and an orthodox self-restraint toward the verbal (or gestural) interaction. The preference for direct interaction and conversation seemed insufficient for answering the members' (framing) questions of "what is going on here?" Alternatively, Lynch proposed a "post-analytical" turn in ethnomethodology, with an emphasis on conversation analysis. For one, they claimed that the frame of analysis should not be preset. The sense-making machinery should not be restricted to the "proximity" of human interaction. Post-analytical ethnomethodology implies an expansion away from the tight focus on the turn-by-turn exchange. This expansion could lead toward creating various chains of action, inter-textual fields, or dialogical networks.

Lynch's "post-analytical ethnomethodology" leaves open the question of how exactly the researcher can divert from the turn-by-turn sequence in accordance with the members' references and activities. What other frames do members attend to and what other frames help the researcher to make sense of the members' moves? Bogen and Lynch call for eclectic debates to overcome the diagnosed conversation analytical reductionism. Their debates crisscross conversation analysis, discourse analysis, and semiotics. The authors offer explanations in reference to an "inter-textual field", using press coverage, official reports, parliamentary debates, forensic evidence, rhetorical *Gestalt*, procedural rules, and so on. From our micro-ethnographic perspective, these post-analytical extensions seem to be chosen in a random manner. Their explanations of Oliver North's responses, his lies, his forgetfulness, and his counterstrategies resemble intelligent speculations with as little as a hint of some empirical evidence. What is lacking is something

complementary to the orthodox conversation analysis: another tight, definite, and controlled frame of reference. This frame of reference, we suggest, could be procedure. Procedure, next to direct interaction, provides law-in-action research with a solid analytics of what members orient toward, how they do it, and to what effects. In short, what is said here and now might be a pair completion (for example, a yes-or-no-answer), a contribution to the case (for example, an answer in accordance with former instructions or versions), and an anticipation of ensuing procedural stages (for example, a specification that can be quoted in the final sentencing hearing).

In sum, our review of ethnomethodological law-in-action showed the importance and diversity of this research, its relation to law-in-action research as well as the need and the possibility to simultaneously expand and refine ethnomethodology of law. Procedure serves as the key for this refinement. From the point of view of participation, procedure provides, next to the proximities of direct interaction, a meaning producing frame demarcated by beginning and ending, by relevant and irrelevant themes, by admissible and inadmissible facts, and so on. Before we utilize this meaning producing and interpretative frame, the concept of procedure should obtain some analytical modulation in contrast to its common identification with rule, ceremony, ritual, or pattern. Therefore, in the following section we would like to consolidate various senses of procedure into a working definition. In order to construct this definition, we review the very basic sociological sources that could help us outline approximate boundaries of that phenomenon.

The sociological foundations of procedure

For the roots of procedure we would like to return to the nineteenth century which is rightfully considered as the century of jurisprudence. The original focus of jurisprudence was the interpretation of the legal rule. At first sight this focus appears to be antithetical to the law-in-action program and seems to provide little ethnomethodological value for the understanding of procedure. We would like to argue, however, that there is not only an evolutionary link to law-in-action, but more importantly that one cannot fully apprehend the structure and meaning of procedure without taking jurisprudence into account. The importance of jurisprudence for law-in-action consists in establishing the first connection between the idea of law and empirical research. Granted, originally scholastic, this kind of research privileged the exactitude of expression and the narrow range of interpretability. The empirical basis

for the study of legal doctrine was provided by legal statutes and codes. An examination of those was conducted vis-à-vis individual cases and judicial verdicts. Generally, the study of the black letter law, as it became known today, was aimed at improving the effectiveness of law. One way of achieving this task was seen in measuring the effects of legal reforms by two social processes: (a) execution of justice and (b) prevention of deviant behavior. The role of procedure in both processes lay in approaching the written law from the perspective of its execution. Both emphases were imported into the twentieth century under the name of criminology. In the twentieth-century criminology developed into an independent field; however, it did not become the only or even a proper discipline for the study of law. Instead, it was the union of jurisprudence and the critical sociological theory that led to the understanding of law as action.

Several sociological figures contributed to this reorientation. Karl Marx, Emile Durkheim, and Max Weber are the classical trio of scholars who not only predicted the advances of modernity and, with it, the capitalist society, but took great interest in the legal institution as it appeared to be serving the capitalist ideology directly, in a systemic manner (Morrison, 1995). Due to his critical approach, Marx could be named the most vocal critic of capitalism and its governing bodies, including law. For him, law was a means of implicit control designed and maintained with the purpose of serving the bourgeois morality. The stronger the capital, the greater the crime, the more effective the law: 'The criminal produces not only crimes but also criminal law [...] the whole of the police and of criminal justice' (Engels and Marx, 1976, p. 387). Importantly, Marx illustrates this thesis by employing nothing but criminological statistics. He argues that law is instituted to govern the means of production and accumulation of capital, meaning that law is called in to guarantee inequality and class divisions. Law does so by securing legal rights over property relations, writes Engels, who summarizes Marx's point of view by suggesting that 'crimes against property would cease of their own accord where everyone receives what he needs to satisfy his natural and spiritual urges' (1976, p. 248). For Marx, it was clear that procedure was serving the ruling class and for that reason should be considered repressive.

The repressive character of law was further exposed by Emile Durkheim, who in *The Division of Labour in Society* (1933) distinguished between cooperative and repressive law. Providing the analogue structure for the criminal and civil law, the two kinds of law differed in terms of their execution: only the criminal law required the rule of the

sovereign who could guarantee just punishment. With time, the criminal law became the first and only kind of procedural law. The rise of the civil law at the turn of the last century as an administrative alternative to the criminal law added to the procedural regime the rules of arbitration. As a mediating structure of procedure, fair arbitration came to stand for fair trial. This substitution showed the inner power of procedure. According to Durkheim, legal procedure is designed to serve the upper classes because it prescribes the division of labor: 'The real reason for the development of repressive rules [...] lies in the fact that labour is not yet divided' (1933, p. 147). One must also note that, in comparison to Marx, Durkheim was not altogether negative when addressing law; for example, he was convincing in arguing that it provides cohesion to various social structures, including that of the family. He also showed the dependence of a society on legal institutions for moral governance. Two trends in the sociological theory of Durkheim are worth mentioning at this point. One concerned the participation of the actor; the other emphasized the pull of the collective consciousness. One can say that he introduced a helpful distinction between singular and collective agency. The distinction disclosed the dependence of procedural justice on social order and at the same time, by placing a strong emphasis on the division of labor, demonstrated the role of procedure as an organic response to crime.

The same thesis was vocalized by Max Weber who was equally influenced by Marx.[6] Similarly to Durkheim, Weber problematized law as an independent institution; however, his main emphasis lay on the conditions under which law could be maintained and, co-extensively, the law's role in maintaining the capitalist order. For Weber, the notion of rational authority was even more essential than for Durkheim, for it is by rationalizing its activities that law could secure the key freedom promised by capitalism: the freedom of expression: 'The rational conception of law on the basis of strictly formal conceptions stands opposite the kind of adjudication that is primarily bound to sacred traditions' (1948, p. 216). Both kinds of law imply collective responsibility on the part of the involved actors. However, the means by which contractual obligations are secured differ. The formal law is depersonalized law. It thus secures its obligations by way of 'legal empowerment rules' (1968, p. 730). The latter provide the necessary infrastructure. In addition to procedural rules, the capitalist authority is maintained by three stalwarts: (a) professional judiciary; (b) bureaucratization of procedure; (c) codification of the rules and regulations. This tripartite structure plays directly into the kind of a social order which