Table of contents

	Introduction		
	I.	Methodological foundations 3	
		The starting point: Max Weber's critique of Stammler 3	
		The ideal-typical method 4	
		Rationality as a fundamental category of	
		Weberian sociology 5	
	II.	Rationalisation of law 5	
		Normative coherence of law 5	
		Empirical validity 6	
		Legitimacy 6	
	III.	Weberian sociology and contemporary law: some	
		key aspects 7	
		Sociology of law and jurisprudence 7	
		Legal pluralism 8	
		Substantive rationalisation of law 9	
PAR		I I Completions	11
Met	hodo	ological foundations	
			13
I		e starting point: Max Weber's critique of Stammler	15
		Rudolf Stammler's concept of social life, the economy	
		and the law 15	
		1.1 Social monism 17	
		1.2 The social ideal 18	
		1.3 Just law 19	
		The importance of the critique of Stammler for Weber 19	
		2.1 The formal preconditions of knowledge 19	
		2.2 The problem of causality in the social sciences 21	
		2.3 The interplay of law and the economy 22	

	Stammler? Karl Diehl's and Hugo Sinzheimer's	
	assessments 26	
II	 The ideal-typical method John R. Commons' critique of the ideal type 31 Talcott Parsons and the Weberian ideal type 37 Modern capitalism: contrasting Sombart's and Weber's analysis 37 The ideal-typical method in light of the theory of action 40 Analytical sociology and Weber's 'unsystematic' theorising 42 Synthesis 47 	30
***		=0
III	Rationality as a fundamental category of Weberian sociology 1. Rationality and modernity 50	50
	1.1 Epistemological presuppositions 51	
	1.2 Levels of rationality analysis 54	
	2. Rationality and sociology of religion 57	
	2.1 Logical consistency of religious representations 58	
	2.2 Rationalisation of the religious sphere and empirical	
	activity: religion and the economy 64	
	2.3 Ethical rationalisation and methodical command	
	of conduct 66	
	3. Rationality and sociology of law 69	
	3.1 Weber's conceptualisation of legal rationality:	
	introductory comments 70	
	3.1.1 The formal/formelle distinction 70	
	3.1.2 Formal-rational law 72	
,	3.1.3 Substantive law 74	
	3.1.4 Irrational law 76	
	3.2 The dimensions of rationality in the sociology of law 78	
	3.2.1 Consistency in representations 78	
	3.2.2 Empirical activity: the influence of law on	
	the economy 81	
	3.2.3 Methodical ethos of conduct and legitimacy 82	

3. How accurate is Weber's methodological critique of

PART	nalisation of law	85
Ratio	Juliansacion of law	
IV	Logical coherence	87
	1. The antinomy of form and substance 87	
	1.1 The formal rationality of law 87	
	1.2 The substantive rationality of law 91	
	1.2.1 Princely and theocratic laws 91	
	1.2.2 Substantive rationality in contemporary	
	Western law 93	
	2. Factors affecting the logical ordering of law 97	
	2.1 Factors internal to the legal sphere 97	
	2.1.1 Developmental logic of legal representations 97	
	2.1.2 Specialised carriers of rationalisation: legal	
	professionals 100	
	2.2 External factors 106	
	2.2.1 Political authority 106	
	2.2.2 Economy and the law 111	
V	Empirical validity	114
·	1. Weber, institutional economics and the law 116	
	1.1 American institutional economics:	
	John R. Commons 116	
	1.2 The German school of 'social law': Karl Diehl 121	
	2. The 'England problem': legal formalism and the emergence	
	of capitalism 131	
	2.1 Rationality and calculability of economic action 132	
	2.1.1 Formal rationality of monetary calculation 132	
	2.1.2 Substantive conditions of monetary	
	calculability 133	
	2.2 Legal preconditions of economic formal	
	rationalisation 134	
	2.2.1 Legal foreseeability 134	
	2.2.1.1 Regarding the sphere of specialised	
	economic activity 135	
	2.2.1.2 Regarding the general structure of the	
	legal order 139	
	2.2.2 Extension of freedoms and individual rights 141	
	2.3 Continental law, common law and legal foreseeability 144	
	2.3.1 The theoretical framework: the autonomous	
	logic of rationalisation of value spheres 144	

	problem' 147	
	2.3.3 The elements of foreseeability in the common law	
	and in Continental law 151	
VI	Legitimacy	157
	1. The demise of natural law 159	
	1.1 The critical theory of knowledge 161	
	1.2 The differentiation of spheres of action 162	
	2. The rational-formal legitimacy of law and the state 167	
	2.1 Obedience as opposed to docility 167	
	2.2 Features of legal-rational domination 168	
	2.3 Identity of law and the state 170	
	2.4 Limits of legal domination in its bureaucratic form 172	
	3. Decisionism and legitimacy 174	
	3.1 Decision, ethics of conviction and the imperative	
	of responsibility 175	
	3.2 Carl Schmitt's concept of decision: a logical extension	
	of Weberian themes? 181	
PART	III	
	erian sociology and contemporary law:	
	key aspects	189
VII	Sociology of law and jurisprudence	191
	1. Two heterogenous spheres of knowledge: the controversy	
	with Hermann Kantorowicz 192	
	2. Three bridges between sociology of law and jurisprudence 199	
	2.1 The social facts of law 199	
	2.2 The logic of social research 205	
	2.3 The ideal types of rational action 208	
	**	
VIII	Legal pluralism	214
	1. Three proponents of legal pluralism: Eugen Ehrlich,	
	Georges Gurvitch and Gunther Teubner 216	
	1.1 Eugen Ehrlich: the legal sociology of non-state	
	associations 216	
	1.2 Georges Gurvitch: the emancipatory potential	
	of social law 221	

2.3.2 The historical perspective: the reception of

Roman law as antecedent to the 'England