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Law and Economics: the Menger Brotherhood in 1900s Vienna

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Abstract

Max, Carl and Anton Menger were brothers, born in an officer's family in Galicia, Austro-Hungarian Empire. Max became an entrepreneur and a politician, the latter two professors at Vienna University, in Economics and in Law respectively. All three not only witnessed, but illustrated the process of modernization. Examining their role and international fame, this essay scrutinizes their reactions to legislation and economic development as these underwent systemic and dynamic changes.

JEL Classification

A12, B15, B3, K20

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Austrian School of Economics – Austro-Hungarian Empire – Consumer Legislation – Economic history – Law and Economics – Menger, Anton – Menger, Carl – Methodology of Social Sciences

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Introduction: the Relevance of Law and Economics

In the last third of the nineteenth century, Carl Menger, the Viennese founder of the Austrian school of economics, was the main opponent of Gustav von Schmoller, the leader of the Young German Historical School:² they fought for dominance over the world of German-speaking Academia in Austria and Germany. Schmoller's institutional reign did not prevent Menger from winning the day: economics as a *pure science* would grow further. Carl had two brothers: Max, the elder, was a powerful entrepreneur and a liberal-conservative deputy to the Austrian Parliament. Anton, the younger brother, has remained famous to this day as a lawyer and as a socialist, both anti-Marxist and pro-consumers rights. Like some followers of Schmoller he illustrates accurately the nickname "Socialists of the Chair" (*Kathedersozialisten*) that was given to pro-labor movement academics.

The Menger brotherhood incarnated almost perfectly a new modernizing era in the Vienna of the 1900s until World War I. From Prussia, Schmoller kept under control the German Academia, still embedded in *Kameralwissenschaften* (old Mercantilist, Cameralist-style social sciences and economics). Through the *Verein für Socialpolitik* Schmoller had co-founded in 1872 in Eisenach, the Historicists' influence bypassed the German Parliament (*Reichstag*) allowed only limited-power by the Emperor. But in Austria, influence was less and the modernizing process slower. Yet, Carl Menger enjoyed a major role as counsellor to ministers and tutor to the Crown prince (Hayek 1968, Alter 1990, Caldwell 1990, Campagnolo, 2008b, Streissler, 1989). Anton's guidelines helped forging the first code promoting consumers' rights. Carl died in 1921, Anton later, and Schmoller had died in 1917 while both the Austrian and the German Empires went under with defeat in World War I (while the Russian Empire fell prey to internal revolution in 1917). An era came to a close.

It is this era when Law and Economics were intertwined and fought for pre-eminence in the Imperial State Councils that we shall recall in the present essay. That was a time when academics were closer to ministers than ever and indeed almost as powerful as them.³ They were sometimes themselves directly appointed like, for instance, Carl Menger's disciples Eugen von Böhm-Bawerk and Friedrich von Wieser, ministers before and during WWI in Austria. Law and economics were first intertwined at academic level, and we shall say a word of the academic structures at the times, but their complementary nature especially paved openly the way to further political development: lawyers and economists, bred in the same environment, were stimulated in competing for directing imperial policies. Carl and Anton Menger illustrate *par excellence* this closeness, as well as the sometimes difficult relationships that emerged when they disagreed on methodology (methodological individualism *vs.* a holist sociological approach) and on final aims to reach (pure science *vs.* socialistic relief of misery). These discrepancies took a dramatic aspect because of major upheavals in a quickly (neither always quickly nor easily) changing era of modernization.

In the following pages, we display some features of the evolution of Central Empires in order to understand better law and "national economics" (*Nationalökonomie*) related in that pair of specific works, by brothers Anton and Carl Menger. Sections that follow are:

1. *Symbol of a modernizing Empire in Law and in Economics: the Menger brotherhood*
2. *Context in the field of Law: German-speaking Academia and Legislation*
3. *Context in Economics: modern production and battles of a modernizing world.*
4. *Reactions to changing times.*

² Karl Knies and Wilhelm von Roscher represented the Older German Historical School: see Knies, 1853

³ In terms of influence, especially when they had direct access, like Carl Menger, to the imperial family. As indicated the economist tutored Crown Prince Rudolf, taking him on a tour of Western Europe. The lectures he gave to the heir (who would not succeed to the throne, due to the Mayerling tragedy) have been published in English translation : *Carl Menger's Lectures to Crown Prince Rudolf of Austria* (Streissler and Streissler, 1994)

1. Symbol of a modernizing Empire and the role of Law and Economics: the Menger brotherhood

Second of three brothers, Carl Menger became famous as a *Kameralwissenschaften* Professor at Vienna University, and then as the unanimously recognized founder of the “Austrian School of Economics” (as it was later called). Yet, one must keep in mind that Anton, the younger brother, was a Professor of jurisprudence at the Vienna University, and most famous throughout Europe for his book: *The Right to the Whole Produce of Labour* (*Das Recht auf den vollen Arbeitsertrag in geschichtlicher Darstellung*, published in 1886. Carl Menger had already published in 1871 his *Principles of Economics* (*Grundsätze der Volkswirtschaftslehre*).⁴

Anton’s success came from the large scientific debate he raised about private property, which he condemned in his own, non-Marxist way, both against free-traders (*Freihändler*) and internationalist social-democrats (mostly Marxists). Anton’s book was translated into French by Alfred Bonnet (with an Introduction by renowned philosopher Charles Andler)⁵ and in English by Herbert Foxwell (London, 1900), thus being available in the three main dominant languages of science. Foxwell was a distinguished economist who succeeded Jevons at the Political Economy Chair of University College in London in 1881.⁶ The English translation of Carl’s 1871 *Grundsätze* would only be translated, by Dingwall and Hoselitz, for New York U. Press in 1950,⁷ and the 1883 *Untersuchungen*, by Nock, in 1963 and partially only under the title *Problems of Economics and Sociology* (Urbana, U. of Illinois Press).⁸ Carl’s main works would even wait much longer for translation into some other languages.⁹

Max, the elder, did not leave written works in the way his brothers did. A quite powerful entrepreneur and a liberal-conservative deputy to the Austrian Parliament, he did neither serve like Carl as a prominent civil-servant, counsellor to the Government and private preceptor to the Crown-Prince, nor defended like Anton socialist views and the first pro-consumers rights movement. But all three brothers appeared as brilliant restorers of hope in a modernized 1900s Vienna – before the final collapse came with the First World War.

One must here recall how Vienna was populated with innumerable artists (painters, musicians, poets, writers, all of whom changed their fields with long-lasting visions orienting the arts to this day), scientists and inventors (from the most theoretical, like Boltzmann, to inventing genius, like Tesla, who went to exile only to get recognition in the USA as a competitor to Edison), philosophers (Brentano, Mach among others), proponents of ‘new sciences’ like psychoanalysis, in the office of Dr. Freud, at Bergstrasse 89 – and “social scientists”. The Menger brothers are of the last kind: *Geisteswissenschaftler*, they incarnated chances and expectations of modernizing Austria. Incidentally, they also re-embodied the past as Carl was a fierce collector and a bibliophile, brilliant reader of the Classics of Ancient times and Enlightenment period – when, one century before, Austria had rivalled the France of philosophers and Adam Smith’s Scotland in displaying newer ideas in the arts and the

⁴ The publishing company was Wilhelm Braumüller in Vienna, not as well known as Duncker & Humblot, where Carl would publish his *Investigations into the Method of the Social Sciences With Special Reference to Economics* (*Untersuchungen über die Methode der Socialwissenschaften und der politischen Ökonomie insbesondere*) in 1883.

⁵ *Le droit au produit intégral du travail*, Paris, Giard & Brière, 1900.

⁶ The English translation of Anton’s book was reprinted in 1962 in New-York (Kelley Publishing House.)

⁷ Reprinted by Libertarian Press Incorporated, 1994.

⁸ Full translation only in 1985: *Investigations into the Method of the Social Sciences With Special Reference to Economics*, New York and London, New York UP, English translation by F. Nock, revised and ed L. Schneider

⁹ For instance, in French, the first full translation of the *Untersuchungen* happened in 2011, after 128 years ! See G. Campagnolo (2011), 578 p., presentation and translation of C. Menger, 1883 (Leipzig, Duncker & Humblot).

Humanities. Although the Austro-Hungarian Habsburg Monarchy indeed appeared decaying in many ways the 1900s, hopes for renewal were conveyed by personalities like the three brothers. And success came: for Carl, as the founder of a school of thought; for Max, as a successful *entrepreneur* (a new kind of human character in a sense – see Campagnolo and Vivel, 2011 and 2012); for Anton, as lawyers, even today, and the educated public of the time, all knew his name. The so-called ‘Austrian School of Economics’ was less known, even to the educated public than non-Marxist brands of socialism, and Max was less known outside of Austria, but all three were honoured and admired from different standpoints and audiences. Indeed, many paths towards the future were open in the imperial capital

Until defeat in WWI led to dismantling of the Empire, Vienna was not only the capital, but *the* main city of Central Europe, “*Paris der Mitteleuropa*”. It was also a proverbial stance that “Vienna’s streets [were] more paved with theories than with asphalt”! Great expectations could be cherished there, but many chances were left by before even starting to realize. To some extent, the same happened to the endeavors of the Menger brothers: Carl, the high civil-servant and founder of an indigenous school of pure economics saw his dreams partly crushed by Schmoller’s German Historical School, Anton could not hinder the progress of Marxism and Max was participating in new trends, not orienting them.

Carl’s wish was to build a school of thought that would restore economics in the direction of *pure* and sound theoretical science, as a solid basis for economic policies in touch with the reality of the times: that hurt the claim to a German “special path” (*Sonderweg*)¹⁰ and Menger’s school never became dominant. In his fight against Schmoller’s anti-theoretical views, Carl purposefully advocated theory rather than compilation and laid the ground for the Austrian School of Economics during the *Methodenstreit* (Dispute Over Methods) that would change the practise of economics – but later on, in the twentieth century. Anton’s proposals for legislation, though attracting much attention were not all easily implemented, quite the contrary. They could not achieve the same kind of influence the Germans had. In the next two sections, we will discuss this point, with respect to, firstly, Academia in Law Faculties and legislation passed, secondly, economic changes and the role of the new science.

¹⁰ As gives proof his letter to the *Kultusministerium* (then in charge of Universities and higher education) (letter dated March 19, 1903, now found at *Wiener Staatsverwaltungsarchiv*), Menger intended to build a counterpart to the German School and counterbalance its influence in raising his claim to a science directed towards theory rather than a “realistic-historical” approach.

2. Historical Context in the Field of Law: Academic and Legislative

Almost like everywhere, the Faculty of Law of major universities was one of the highest places for education and openings in future high-level careers, and education in Law also comprised basic economic sciences. In the last third of the nineteenth century the latter gradually got independent, but quite late in some cases – like in Paris. In Vienna, typically, the curriculum of a freshman at the University would start with the most classical authors of political economy (Smith, Ricardo, Say, Mill) along the lines of a *laissez-faire* interpretation – soon discussed as an interpretation which, to further science (he would be told) needed be completed with thorough knowledge of economic history. Stress would gradually be put on actual socio-economic phenomena of the past and of the “real world”. Historical studies would be the focus of a thesis and successful fieldwork may lead to a presentation at the *Verein für Socialpolitik*, the main and arch-historicist German-speaking academic association in the field, under the supervision of Gustav Schmoller (President of the *Verein* for most of the time since its inception in 1872).

The academic establishment in German universities thus strongly reproduced its own kind and the career-system was long and selective enough to prevent innovation at deeper methodological level, while giving many incentives to do serious groundwork for economic recommendations related to regional studies, specific industries and matters of regulation. That was especially true if students intended to further studies in *economics*: academics and civil servants shared parts of the curriculum, incorporating common frameworks and later working together on State matters and *Staatswissenschaften*, like *Verwaltungswissenschaft* (science of administration), *Polizeiwissenschaft* (politics, governance), and other branches of a system inherited from more ancient so-called *Kameralwissenschaften* (*Cameralistic Sciences*). Yet, all students would have first encountered economics along “orthodox” lines of Classical political economy. *Kathedersozialismus* (*Socialism of the Chair*), as it was called, was only a further development, and not a revolutionary one, yet strongly call for reforms.

Historicists were close to *Kathedersozialismus* but it mostly meant sending researchers to do fieldwork, then reported to the *Verein*, academic and governmental circles (to public opinion as well through the press). The message was: *not only* socialist parties are indeed preoccupied with living conditions of all classes, especially the workers, and academics care about “real life”, a matter of prime importance when thinking of relief system for the poor and the impaired, or for improving workers’ or consumers’ rights and condition. The idea, which one may date back to seventeenth-century Pietist religious movement, that educated and well-behaved labor force was more productive was also at work.

The works of the *Verein* were credited with a degree of confidence unattained by any other association. “Lobbies” (although the word did not exist) at the *Reichstag* had to take into account recommendations made at *Verein* Congresses.¹¹ Often the influence of the *Verein* by-passed the Parliament – thus keeping safe from parliamentary games the *Verein*, that grew so much in Prussia and the German *Reich* as to make its legislative recommendations not only aim at protecting lower-classes (thus also protecting upper-classes from revolutionary threats

¹¹ Each Congress of the *Verein* was dedicated to one (or more) major themes (corporate and factory laws, courts and boards on trade-matters and taxation *pro persona* in 1873, old age and disability insurance funds, profit sharing, punishment in case of breach of labor contract and progressive income taxes in 1874, reform of apprenticeship education in 1875, municipal taxation in 1877, adult professional education in 1879 etc.). Contributions were collected and published in volumes dealing with the topic, and other thick volumes were also produced, that included the results of fieldwork and surveys: many became reference for economists, managers and governments. Sheer figures on the activity of the *Verein* are impressive: from 1872 to 1914, it had published 140 volumes of so-called *Schriften*. The most “productive” authors were Schmoller and Lujo Brentano but the number of contributors is very large, from all social sciences and humanities: see D. Lindenlaub, 1967 and E. Grimmer-Solem, 2003.

– as Bismarck understood well), but also at improving all over production frameworks and the industry. The ‘Made in Germany’ label, first a mockery (by the British), became synonymous for quality (and remains to this day) – the economic aspect will appear in the next section. Here are some pieces of legislation that were indeed passed.

- the reform of the (German) code for industries: the former code was too blatantly in disfavor of the workers and archaic – Austria would follow;

- health and safety regulation in many industries, factory liability for sickness and injury for industrial workers (employers were little reluctant to accept coercive regulation, as it worked well for them who they abode by these terms, and workers found more “secure” environment and provided employers with improved labor force;¹²

- restrictions and regulation on women labor, child labor, apprenticeship; also, improvement in trades education – German-language education had stressed strong technical skills traditionally in technical high-schools (*technische Hochschulen*) built at first under the influence of Pietism;

- legislation on consumption and consumers’ rights– in that field, Anton Menger was decisive in Austria as he wrote the first “code of consumption” for the empire, still known to this day;

- notable decrease in legal working hours inscribed in labor-contract (*Lohn Vertrag*): that piece of legislation answered a lasting demand and undermined a major argument of revolutionary socialists and anarcho-syndicalists all over Europe. Karl Marx’s ‘demonstration’, in *Das Kapital*, of the extraction of surplus-value, based upon counting hours of work as measuring “labor force” used by proletarians, warned governments that if they did not deal with that topic unrest would follow with revolutionaries having direct influence on the masses;¹³

- a reform of Chambers of commerce in the “*Korporationen* (corporative) spirit” infusing German thought: no longer akin to medieval guilds (*Zünfte*) but modern and organized institutional buffers against unnecessary professional uncertainty *and against* reckless cut-throat competition that would endanger industries, as it existed in Britain and would overcome the USA. Regulation was regarded in German-speaking countries as quite positive, even asked for by employers, at times. Even free-trade was promoted, an environment with a high level of quality in products, safety in production, etc. was sought. The ability to understand “qualitative” facets of manufacturing undoubtedly contributed to the fame that “Made in Germany” products acquired all over the world;

- legal protection for workers on strike and regarding taking part in unions – which often implied political involvement in German countries (differently from French or Italian anarcho-syndicalism). Conservative, but also liberal parties generally opposed the “Socialists of the chair” on the claim that “socialism” *strictly speaking* was a crime. Thus,

¹² Example of law on health insurance: “Aid to be provided to the sick and ill shall include: 1. from the time that illness has been stated, free care by a physician, required medicine, as well as glasses, bandaging, and other curative appliance; 2. in the case of temporary industrial disability, for each working day from the third one that follows the day that the illness was stated, financial aid, to the amount of half the daily wages that earns, in that same place, an ordinary daily worker. Care to the sick will cease at the latest at the end of the third week that follows the moment when the illness was stated.” (1883 Act on health insurance, article 5, *Reichstag*, our translation). This concerned “persons earning their wages or salaries in the following industries: 1. mines, saltworks, mineral digging and refining facilities, quarries and pits, factories and ironworks, railroads and shipping companies in waterways within the nation, building sites and construction companies; 2. in all craftsman works and other fixed location based industrial employment; 3. in the industries where use is made of steam-machines, or machines driven by natural forces (such as wind, steam, gas, hot air, and so on), unless that use does not consist exclusively of the temporary usage of a machine that does not belong to the usual appliances...” (same piece, article 1, our translation).

¹³ Clearly the situation in France for almost half a century as, in fact, despite minor pieces of legislation, it was only in 1936, with *Front Populaire* government that a major reduction of working-time was passed.

Schmoller and his followers fell victim to the *Anti-Socialist Law* Bismarck had the *Reichstag* pass in 1878. But, as the *Verein* proposals of 1877 received large public and academic approval, the law affected little the unions in general,¹⁴ and the *Verein* in particular, that on the contrary received new supporters.¹⁵

That last point may best illustrate the increasing influence of a *Verein* that had indeed always been viewed favorably by many lawyers, law-makers and civil servants, among whom members of ministries, cabinets and civil administrative central offices. Many attended its conferences and some joined the closer knit association called the *Staatswissenschaftliche Gesellschaft* (Society for State Science) created in 1883 by Schmoller precisely for the purpose of mixing populations of academics and high civil servants.

Generally speaking, the quantity and nature of innovative and labor-protective legislation passed in Germany during the imperial time put it ahead of any other country in Europe. One must also stress a quite general acceptance by employers is a judgement rather pervasive among historians of German capitalism.¹⁶ Austria was following that path as well, with more reluctance from traditional circles. But even a hard-core social democrat like Adler reckoned that living in the Austro-Hungarian empire meant enjoying one of the most civilized ways of life in Europe and the world. Without necessarily sharing such enthusiasm, clearly the pieces of legislation passed in that context are undercut some of the revolutionary claims – and when Red became ‘red’ (*rote Wien*) it mostly meant that more effort would be put on providing better living conditions for the underprivileged, *not* that revolution would assuredly follow.

¹⁴ In his fight against the unions, Bismarck authoritatively decreed in 1878 that they be disbanded but they were soon rebuilt as workers’ mutual-help associations.

¹⁵ See Boese, Franz and Grimmer-Solem (who cites how Prof. Oppenheim switched sides, p. 185). In general, the evolution in and around the association (opponents, mediators and representatives) make its history most interesting to see how Law and Economics then evolved.

¹⁶ See Michel Hau: the role of a long tradition of technically-skilled, somehow educated labor-force added to standards of safety that finally *helped* raising productivity levels and reliance (workers themselves knew they could trust the hierarchy without fearing sickness and disease).

3. Historical Context in the Field of Economics: a modernizing world

The Austrian economy was modernizing, with delay. New strata of society were emerging, slowly. New recruits among civil servants (besides traditional officers' ranks) and among academics (more independent to old faculties: for instance economics emancipated from Law). Productive capacities developed and daring capitalist entrepreneurs appeared – their role was analyzed by Friedrich von Wieser, a disciple of Carl Menger (see Campagnolo and Vivel, 2011 and 2012). To a large extent, their endeavors melted in the legendary negligence (*Schlamperei*) of the Central European bureaucracy (talentfully described by Bohemian capital Prague's inhabitant, Franz Kafka). The observer could see a new wave of modernity emerging for the 1900s in the arts and sciences – but it hardly overwhelmed the whole of society and more than often conflicted with it. Let us first recall some elements of the founding years of German and Austrian industrialization, the so-called *Gründungszeit*, and then get to the reactions that Max, Carl and Anton displayed when facing the changes.

In pre-1866 (defeat of Austria to Germany at Königgrätz) and pre-1870 years (before the unification of Germany proclaimed at Versailles in defeated France), some inspired entrepreneurship and well-managed interventionism on the part of the Prussian state had already insufflated life into modern sectors of capitalist industries, under the protection of the Customs Unions known as *Zollvereine*. Entrepreneurship was key to the *Gründerjahre*. Not only historians acknowledge it, but documents by arch-rival British competitor, as the report of the *Committee on Commercial and Industrial Policy after the War* (to House of Commons, 1918): as early as 1900, the German Empire was world's first exporter of manufactured products *before* the British Empire.¹⁷ Austria, although lagging behind, developed its capital region and Bohemian provinces. The label “Made in Germany”, forged at first to stigmatize non British manufactured products, became (and remains) a label of quality.

Basic industries were essential in achieving high consumer products exports. Some figures: in 1913, Germany came just after Britain and the US for coal production (260,000,000 tons) and second *before Britain* (since 1900) in pig-iron (16,7 million tons) and steel (17 million tons). Electric and chemical industries were first in the world, newly created Nobel prize pointed to German chemical science. The major production areas are well-known: *Ruhr-Gebiet*, industrial heart, Silesia, for coal, Sachsen + capital-region Berlin in mechanical industries. Particularly strong was the degree of concentration, both vertical and horizontal: *vertical* as illustrated by famous *Konzerne* (trust companies) bearing the war-effort later on and already literally “forging” the nation around Krupp (70,000 workers in 1913), Thyssen (he had bought in 1900 many Lorraine region iron mines, after the 1870 French defeat) and Ugo Stinnes (with coal in the Ruhr, steel in Lorraine, chemical industries all over, shipping companies, paper mills supplying his numerous newspapers, etc.). *Horizontal* concentration is exemplified by chemical or electric industries, like *Badische Anilin* and *Siemens*, extending their market to China after *Kaiser Wilhelm* helped crush the Boxer rebellion in 1900 and got Shandong coastal area as a counterpart (and bringing beer to East Asia).

Konzerne combined smaller companies and big business rather than destroying small industries, and created numerous regulations for the market – mainly for the benefit of producers, not of consumers. Anton Menger's interest in this latter issue started from his reaction on realizing that fact. For instance, in Rhine-Westphalien, the *Syndicat* founded in 1893 by Kirdorf *fixed* prices: a shareholding company whose shareholders were the owners of coal mines processed the allocation of shares proportionally to the productive capacity of each mine; the syndicate bought *all* the coal of its members, and sold it to the best price according

¹⁷ Source: House of Commons Reports, London, 1918.

to market-conditions, either higher or at dumping price. The incentive to regulate production according to market situation being quite strong, in case of excess supply by a member, the latter received a fine, and discipline was thus implemented. Profit was shared according to quantities of shares owned. Profits were huge. Every five years, shares were redistributed according to productive capacities. In 1913, this *Kohlensyndicat* grouped 64 shareholders and produced 53% of *all the coal produced* in Germany. Today, anti-trust laws exist in order to prevent such contracting, but it then was a model to hundreds of cartels in other industries, like potash (*Kalisyndicat*) or steel (*Stahlwerksverband*, founded in 1904).

The general attitude entertained by German entrepreneurs towards industrial workers and rules contributes to explain great results. Historian of German economy Michel Hau writes:

“If one wishes to compare German and English kinds of capitalism, then one notices the readiness of German entrepreneurs to abide by laws elaborated within the framework of their own industry. During the nineteenth century, better than their British counterparts, did they succeed in combining the *bourgeois* value of individual civil freedom and the sense of efficiency that must run collective undertakings, as well as a constant sense of ethics in business. That fact – abiding to “rules of good behavior” –allowed them to cut costs and, therefore, played a positive role during industrialization. It is the paradoxical effect of a situation where behavior, though dictated by old traditional beliefs, indeed stimulate economic growth and, thus, modernized German economy and society”.¹⁸

Were such values shared in Austria? There were differences in ways, notably related to the strong influence of the Catholic Church (like in France and Latin countries). But reference to traditional technical education was inherited from Leibnizian as well as Pietist values (mentioned above) even if Austria clearly deserved specifications due to the variety of parts in the Empire, the German language being dominant only in a *minority* of the territory. Traditional values related to agricultural ancient practises, social (*serfdom*) and economic (old productive systems), still dominated, etc.

Values of common origins also proceeded from older days; like ‘imperial Cameralism’. Becher, Hörnigk and Schröder had defined its lines in the sixteenth century, along a broad *ars gubernatoria* or *Polizeiwissenschaft* including applied economics, fiscalist views and governance rules of thumb pervasively used by government officials. The ideas of ‘common good’, ‘economic fairness’ also inspired by pre-eminent Aristotelianism from the Academia and Catholic influence on the Court remained in industrial and urban recommendations of the nineteenth century formulated in Austria (see Foreword by B. Schefold: Campagnolo, 2010).

The Menger brotherhood wanted to overcome Austria’s weaknesses. Austria was lagging behind. Reasons, though, were less these old views than late investments by the state in new sectors requiring large infrastructure (and lumps of money) before profitability appeared. Ability to shape rules of conduct within each new industry was only effective around Vienna and Bohemia, which favorably faced international competition. Social consensus emerged, as noted above, between the government and Adler’s Social-democrats. Yet Austrian workers enjoyed less benefits than their German counterparts, and the *Biedermeier* lifestyle typical of Vienna ‘small bourgeoisie’ was routine, rather than entrepreneurial spirit. The conclusion is that while German industry ran high along Friedrich List’s educational protectionism,¹⁹ Austria was following only some aspects and British products could smash most of the first Austrian industries. In a sense, List’s inspirational thoughts around Pangermanistic nationalism found little appeal in the multinational, still agrarian Austro-Hungarian empire with a bureaucracy and a military that paraded and balled on the music by the Strauss family.

¹⁸ Hau M., 1994, p. 286. Our translation.

¹⁹ List had first lived in the USA as an entrepreneur. His *System of National Economy* (1840) remains the Bible of so-called ‘educational protectionism’. Today in emergent Brazil, Russia, China, India, List is read again.

4. Vienna: Reactions to changing times

Although Austrian imperial politics is not directly our topic, it is relevant, after law and economics, to examine some of the reactions of the academics, especially the Mengers, to these changes. Whereas right-wing parties were basically insensitive to modern economics (the cast of noble large proprietors from the Eastern parts basically wanted to go back to a *status quo ante* the liberation of serfs!), conservative and social-democrats were themselves statist and interventionist, though in contrasting ways. In Germany, this feud was illustriously represented by Count von Treitschke and leader of Historicist School, Schmoller, who fought,²⁰ either in the name of older *Polizeiwissenschaft* as an earlier form of *Machtpolitik* (power-politics) or for a ‘reasoned’, seasoned ‘imperialism’ based upon works produced by the *Verein*. While Prussia waged war (1866, 1870, 1914), ‘sabre-rattling’ policy was pathetic in Austria as Vienna aligned itself on Germany *after* losing control of the German-speaking sphere. In the frame of *Macht-politik*, Austria was left with no room. Finally, internal issues, namely multinational and socio-economic, would occupy the whole space of its politics.

Here, comparing the reaction of the Menger brothers with those of another Professor at Vienna University, Lorenz von Stein, will help: Stein had introduced fieldwork sociology in Germany and heralded revolutionary events of 1848 in the first editions of his book on the social movement in France. Stein announced that ideas he picked in Paris would make their way in German-speaking territories and, in 1848, he himself took part in the events as a representative for the disputed provinces of Schleswig-Holstein, bordering Denmark and claimed by the latter, Prussia and Austria: Stein opposed Prussian annexion, and, after the Frankfurt Parliament was dissolved, he had to flee to Austria. That impacted his studies as he would provide Viennese circles with his doctrine of state, a ‘social monarchy’ (*soziales Königtum*) to accompany industrialization and soften social evils that unavoidably go with it (proletariat and *lumpen-proletariat*). Stein read Marx but aimed at *preventing* revolution, like many German reformists,²¹ not far from Schmoller: active in Vienna, Stein saw there progress in the form of pieces of *social legislation* to be implemented in the workers’ daily life.²²

Stein knew Carl Menger and provided him with a letter of recommendation when Carl applied for the *Ordinarius* Chair of Economics previously occupied by Hans von Mangoldt at Vienna University. While Carl Menger’s controversy with Schmoller was open (the famous “Dispute over methods”, the *Methodenstreit*), his *negative* appraisal of Stein would therefore remain secret: Carl wrote the necrological notice of Stein, and his words were warm.²³ But, as a matter of fact, the reality of his judgment was quite different: as his personal library (located in Japan) tells, Menger annotated the copy of Stein’s *Lehrbuch* he owned mostly with negative comments, like: “it would be possible to paraphrase this sentence like that: words only cover thought and so-called science is here made to render the well-known unrecognisable and the rather simple incomprehensible”. Also, in his copy of his own *Grundsätze*, Carl added: “Stein belongs to that kind of writers, fortunately rare in Germany, who confront a competent reader with hare-brained ideas that he puts forwards inadvertently and pretends to lecture that reader from a moral stand”.²⁴ Stein’s style was clearly “unscientific” to Menger’s eyes. Stein defended a cause (‘social monarchy’), *not* science. Menger similarly reproached Schmoller and... his own brother. In his eyes, they all

²⁰ See in particular, Schmoller G., the Open letter to Herr H. von Treitschke, *Über einige Grundfragen der Socialpolitik und der Volkswirtschaftslehre*, Leipzig, 1898.

²¹ Marx was the left-wing exception among Historicists authors in that perspective.

²² And indeed his works were reckoned – see references. Carl Menger annotated Stein’s *Lehrbuch*.

²³ See Menger’s *Gesammelte Werke*, vol. III. That fact led K. Mengelberg, in her presentation of her translation of Stein’s 1842 work sees it as *sincere* shows enough how Menger concealed his opinion, shown in archives.

²⁴ Menger C., 1871, copy of the *Grundsätze* located at Hitotsubashi (Japan), p. 112. See Kauder 1957 and Campagnolo 2008a.

unfortunately missed the point of science, using the same kind of *wrong* methodology, in law as in economics – he saw well how they diverged, but indicted their approach. But Carl never pronounced publicly against his brother (hints in archives and tales from family friends about how ‘cold’ relations had gotten) or Stein, whereas he did much against Schmoller. Stein, Schmoller, and Anton held non-Marxist views but united in some old beliefs of Classical political economy, shared by almost all Historicists.²⁵

While Schmoller swore only by empirical historical studies, Stein retained some hue of Hegelianism, and Anton pursued more practical legislative goals but all sort of joined in practicalities: economic policies, social legislation, and so forth. The monarchy wished for as ‘social’ retained that administration should correspond to a community understood as a block where the nature of economic activity practised by individual human agents was not grasped. They reflected ‘collective concepts’ (*Kollektivbegriffe*), while Carl maintained that applied economics could be forged only upon *theory*, which required ‘methodological individualism’ as its basis. Much of the “Dispute Over Methods” revolved around this confrontation, where Carl Menger and Max Weber agreed. German historicists had set forth a belief in “collective entities” as *legitimate* objects of socio-economic studies rooted in earlier Mercantilism and Cameralism, helping forging German unity but not helpful in multinational Austro-Hungary (Campagnolo, 2010, chap. IV and V). *Machtpolitik* is not science, said Carl Menger – and there, he got his brother’s approval.

A gap nevertheless thus appeared between approaches to the nature of the economic agent and Carl Menger was building the Austrian School of Economics from his Viennese chair *against* the German school. In contemporary terms, he debated the nature of individual preferences and behavior. More than the reference to ‘revealed preferences’ (and the usual mathematical curve that is tacked onto it), he defined modern economic (marginalist) reasoning, while Historicists did not see the difference between these views and more *naïve* stands of British Classical political economy. Both Menger and Schmoller judged each other unbelievably stubborn. But they failed to reckon that they both condemned the Smithian notion of *self-love* as only *part* of the economic problem: an ontological stand, while Menger argued for a *methodological* reform of economics. Menger was no less harsh than Schmoller against Classical political economy. Anton did not follow those debates: his views were embedded in basic classical political economy and followed mistakes inherent to it! A much more elaborate pattern was needed for *pure* economics, namely the analysis in terms of *Real-typen*: Weber would endorse (labelling them *ideal-types*) from Carl Menger

Altogether, the orientation that obtained in Prussia was nevertheless an empirically-based *Machtpolitik*, not Carl’s theoretical views, but more practically convenient reform tracks to the ‘capitalist spirit’ (as Max Weber would soon call it). **That spirit of enterprise was illustrated by Max, the eldest in the Menger brotherhood. But governance modernization remained long overdue: legitimacy was given to its try by Stein** (*Verwaltungslehre*, 1865 to 1869, in the years around the defeat of Austria on the battlefield). Against clerical and bureaucratic influence, against the Catholic traditional imperial Court of the oldest emperor in Europe, Stein tried a narrow path and Carl Menger saw it. He disagreed with Stein’s views as well as with his own brother Anton’s ideas, but kept preferably that for himself because they all truly supported a much needed process of modernization against even more erroneous practises: after all, Stein, due to his understanding of sociological matters, from his youth days, was aware of true needs and, unabated, pursued his task, gaining fame,²⁶ although his ideas were neither as ‘scientific’ as Carl wished, nor as successful as Anton’s.

²⁵ Marx also rehashed some Ricardian credos on labor-value, the role of capital, the nature of the entrepreneur and the laborer, the respective proportions of rent, profit and wages...

²⁶ Stein became famous as far as Japan! Among diplomatic missions that *Meiji* imperial government of Japan sent to Europe, young bureaucrats came to Stein, including Hirobumi Ito, who was to become one of the most

5. Conclusion

“The idea lying at the basis of all those judgments [about economic life] is always the same: we order human beings within groups and series according to some given points of view, according to their qualities, their actions, their forms of labor, their origins, their wealth; and what they are given to do as well as what they are entitled to must be corresponding to those series”.²⁷

Thus spoke Schmoller, Carl Menger’s foe: the idea that law and economics are in a sense two “styles” adopted (and adapted, not only in literature, but in law and in human sciences as well)²⁸ around orientations of collective traditions had much appeal during the last third of the nineteenth century. Philosophical, legal and historical traditions mixed in supporting collective views. What was missed in the process was the notion of individual action, material relationships over goods and services, as well as the entrepreneurial function – in a nutshell, what would make the new brand of economics reflected by Carl Menger the bright and open way to the future of pure economics.²⁹ Also, it provided what could indeed have saved the decaying Austro-Hungarian empire if it had only modernized at a pace as fast enough to keep in touch with powerful Germany and arch-dominating Britain.

1900’s Vienna was about political entanglements, but also splendid innovations in the arts and sciences. The examples and the ideas put forth by the Menger brothers, Max regarding entrepreneurship, Carl concerning pure economics and Anton in favor of consumers’ rights legislation, these obtained only partly in such context, while it is undoubted that they showed relevant, though somewhat divergent, ways to a more powerful economy. On the contrary, talk about national consciousness, the identity and destiny of the *Gemeinschaft* (community) through common beliefs could help but little: in Germany, that could orientate behaviors by individuals, economic concepts being thus turned into a nation-building undertaking. But in multinational, still agrarian, bureaucratic and military empire?

Yet, the bedrock of social legislation that had been achieved previously and culminated around the 1900s would clearly remain. The attempts at modernization had renovated some mediating forces and the ceaseless confrontation of the Modern and the Ancients had not been in vain. If one considers the task at hand, what Stein and the Menger brothers achieved, although divergently, was of some effect.. Now, when the Central empires fell down, although the whole construct of institutions (such as imperial offices and agencies) collapsed, the social demands that had already been passed into laws were still implemented. In Austria, the remnant of the dismantled empire after the signature of the 1919 Treaty of Saint-Germain-en-Laye (Versailles concerned the German *Reich*); Karl Renner would install a Republic – although quite feeble, as the future would show. The influence of these pieces of legislation were to last in daily life, and in the minds of the population, of ‘red Vienna’, at least until the nightmare of hyper-inflation years and extreme-parties political unrest.

Indeed, a period has gone by – *vorbei*, as they say in German – but some of hopes related to it, such as stimulating law and economics simultaneously as disciplines and counselling actions to the Government would remain: the works of the Menger brothers and the relations, at times difficult, between them thus left their imprint to last, till our days.

modernist Prime Ministers of the Rising Sun. Their goal was to learn with him modern monarchic legislation, constitutional and administrative practices that mixed *authoritarian* power and *social* reform.

²⁷ Schmoller, “Die Gerechtigkeit in der Volkswirtschaft” (“Justice in the economy”), *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reich*, 1881/5, pp. 294-318 Our translation.

²⁸ About the concept of *Wirtschaftsstile*, see B. Schefold, Fischer Verlag, Frankfurt-am-Main, 1994.

²⁹ That was not only noticed a posteriori, but felt in the period itself (see Kaulla 1906).

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