

## Law and Modern Social Thought (LAW 214.2)

### Study Guide: Max Weber

Weber is perhaps the last great social theorist to have attempted sociology on a genuinely world-historical scale. Later and current historical sociologists tend to paint, perhaps wisely, on a less monumental canvas. Weber's range of interest enables us to take advantage of his work as an opportunity to review many of the themes and interpretations we have encountered earlier in the class. However, the first task will be to gain an understanding of Weber's general interpretation of modern western culture, and of the character and social effects of law in the modern West.

Most of the Weber material included the Eisenstadt anthology is taken from Weber's posthumously assembled study of *Economy and Society*. This, unfortunately, is not an easy work. It was created as a broad reference source to guide empirical studies, and much of it reads like a "philosophical dictionary". The voluminous work has an interpretative structure, but it is difficult to discern, especially when encountered as here in the form of selections. The discussion in Giddens or the other recommended introductions to Weber will help you navigate through the Weberian prose.

1) The Protestant Ethic and the Spirit of Capitalism. In addition to the selections from *Economy and Society*, I also have assigned most of Weber's famous study of *The Protestant Ethic and the Spirit of Capitalism*. The *Protestant Ethic* is probably Weber's best-known single work. Although it is in no sense a "simple" work, the *Protestant Ethic* does have the advantage that its structure of argument and explanatory goals are set out with some precision at the outset. Because of its focus and clarity, it is useful a work to use to introduce several of the leading themes of Weber's sociology.

[However, care must be taken not to treat the *Protestant Ethic* as some sort of summation of the whole of Weber's social theory. This can be quite misleading, particularly in trying to assess Weber's relationship to Marx and Marxist sociology. The "critique of historical materialism" was, indeed, a critical element in Weber's *Protestant Ethic and the Spirit of Capitalism*. But it is not the only concern of this study, much less of the whole of Weber's sociological researches.]

For our purposes, one of the major points of interest in the *Protestant Ethic* is in its treatment of the idea of Western rationalism. Weber's comments in the so-called "Author's Introduction" to the *Protestant Ethic* will help you here (but note: this "Introduction" was not in fact composed to introduce the *Protestant Ethic*!). In addition, try to get clear in your mind what Weber means by the forms of social conduct he associates with "worldly asceticism". Why does Weber think of worldly asceticism as so unique? In what sense does worldly asceticism encourage distinctively "rationalized" forms of social conduct?

Also consider what type of historical connection Weber is trying to establish between the Protestant ethic and modern capitalism. You may find it easiest to consider the question: why does Weber not claim simply that Protestantism "caused" capitalism?

2. Rationalization and the Modern West. The identification of Western modernity and forms of social rationalization is a pervasive theme in Weber's sociology. His analysis has attracted considerable comment and dispute. One source of difficulty is that he uses the term "rational" (or "rationalization") in a technical manner: he does not mean to suggest that every "rationalized" social practice is thereby "reasonable" or lacks its elements of "irrationality". Another source of difficulty is that he uses the label "rational" with such frequency that it becomes difficult always to be sure that the term is being used in a consistent and unified manner.

You will encounter claims about "rationalization" at many points in Weber's discussion. In treating "bureaucracy", for example, Weber attributes to it two qualities that connect up to broader themes in his sociology of Western society. He claims that "bureaucracy" is "specifically rational" (Eisenstadt, pp.51-2) and that it has been fully developed only in the "modern" state and economy (Eisenstadt, pp.66-7).

Two specific discussions will help you obtain a better sense of what processes and institutional forms Weber associates with "rationalization", and how he in turn associates this "rationalization" with the modern West. Rationalization, as such, is summarized in the essay on the "Social Psychology of the World Religions," pp.293-4 (photocopy of course reserve). The distinctiveness of the modern West is summarized in the "Author's Introduction" to the *Protestant Ethic* (noticed above).

In reading this material, consider Weber's arguments concerning the distinctiveness of the modern West. Since he recognizes that rationalized practices and institutions can be found in many pre-modern and non-western societies, in what sense is the West thought to be unique with regard to social rationalization? Also, how does Weber try to relate the idea of "rational" as a quality of the intellect to "rational" as a quality of an institution or practice?

3. Sociology of politics, ideal-types, and bureaucracy. One of the more famous parts of Weber's sociology is his three-fold classification of types of domination (see Eisenstadt, pp.46-65; "Social Psychology of the World Religions," pp.294-8 (photocopy of course reserve). The classification is also an instance of Weber's use of "ideal types" in his sociology. In considering the classification, you need to attend to the manner in which Weber relates his idealized categories to actual historical examples, and how the categories are designed to aid the analysis of specific and concrete historical cases.

Weber viewed "bureaucracy" as the normal (though not the inevitable or necessary) administrative accompaniment to "legal rational" authority. A summary account of what he understood by bureaucracy is set out in Eisenstadt, pp.66-77. Read this discussion with special care. Because bureaucracy is such a familiar institutional form in our society, it is easy to neglect the specific features Weber highlights in treating the form. In what senses, according to Weber, is bureaucratic administration "impersonal"? What does he mean in referring to bureaucracy's "leveling of economic and social differences" (p.70)? Why should he view bureaucracy to be largely antithetical to "traditional" or "charismatic" forms of domination?

4. State, economy and law. Weber analyzed at length the manner in which modern politics, modern capitalism, and modern law embodied a common process of rationalization. Much of the analysis concerning modern politics is summarized in the earlier discussion of legal/rational authority and bureaucracy (#3, above). Much of the analysis concerning modern capitalism is found in Eisenstadt at pp.140-50, 154-64. (The case of modern law is dealt with separately below.)

In pursuing this line of analysis, Weber in part sought to observe the causal inter-connection amongst these social arenas: the modern state system required certain economic conditions (Eisenstadt, pp.67-8); the modern economy required a certain type of law (Eisenstadt, pp.140-2).

In addition - and of greater significance - he sought to show that the same type of social development was found in each of these spheres; that they were thematically connected as instances of rationalization. The connection is easiest to trace in terms of systems of bureaucratic administration. The modern state and the modern economy were both “managed” by bureaucratic techniques and organizational structures. There was also a shared form of intellectual rationalization linking the spheres. Note, for example, how Weber invokes “rational capital accounting” as a distinguishing feature of modern capitalism (Eisenstadt, p.141).

5. Sociology of law. A substantial section of *Economy and Society* is devoted to the sociology of law. In contrast to Marx and Durkheim, Weber received a formal education in law and mastered a great deal of western and non-western juristic scholarship. His attempt to provide a social explanation of law involved far greater attention to the details and techniques of a legal order; in some way the discussion recalls the type of concern with technical legal matters found in Maine.

In considering Weber on the sociology of law, it is useful to distinguish several related discussions:

- (a) a general account of the relationship between law and other social formations, especially the economy (“legal order and economic order”, in *Economy and Society*, pp.311-25, 333-8 - photocopy on course reserve);
- (b) the characterization of modern law as a rationalized social practice (note: Weber tends to use the term “juridical formalism” to describe this modern Western form of law). This involves an (implicit) comparison with other spheres of modern rationalism (#2 and 4, above) as well as a comparison with alternative forms of legal ordering and juristic science (Eisenstadt, pp.81-94). This comparative taxonomy is helpfully clarified in Kronman’s study, *Max Weber*, pp.72-95 - photocopy on course reserve;
- (c) an account of the social and economic consequences of modern law, and the related political and juristic challenges against modern legal formalism (Eisenstadt, pp.104-6, 107-25);
- (d) an account of the historical origins of western “juridical formalism” (Eisenstadt, pp.98-103).

We will spend some time in class clarifying this material. In anticipation of the discussion, you might find it useful to consider the material at “a” and “c” in terms of a Weberian response to Marx. According to Weber, what is correct and what is misleading about the attempt to reduce law to the social relations of production? According to Weber, in what sense is Marx correct in attributing a class bias to the legal order of capitalist society?

Weber’s discussion at “d” can be treated as a return to issues encountered in Maine’s discussion of western legal development. To what extent are Weber and Maine invoking a similar set of historical episodes and developments?

6. The paradoxes of rationality. One of the themes of Weber's sociology that has attracted much recent attention is his account of the "paradoxes" and even "pathologies" of western rationalism. At the institutional level, rationalized practices involved enormous gains in the capacity to control and co-ordinate human activities, but entrenched rationalized institutions seemed as effectively to enslave human activity as to empower it (see, for example, the brief account of "discipline" at Eisenstadt, pp.28-39). At the intellectual level, rationalization in the West involved "disenchantment" and the increasing difficulty with which Western culture could ascribe anything but instrumental meaning to human affairs.

Weber's lecture on "Science as a Vocation" (Eisenstadt, pp.294-309) is a celebrated discussion of these issues. In reading the essay, you might consider the manner in which Weber is linking the practice of science, including social science, with the more general cultural pattern he identified in the rationalizing West. Why, compared to (say) Beccaria or Marx did it become so difficult to think of social science as an inherently "empowering" or "liberating" form of knowledge?

#### Weber Study questions:

In the first seminar on Weber, we will cover the material addressed in sections 1 and 2 of the study guide. To assist our discussions, please consider and be prepared to discuss the following questions:

What, in general, was Weber seeking to explain in the *Protestant Ethic and the Spirit of Capitalism*?

Early in the *Protestant Ethic*, Weber cites Ben Franklin's advice for proper conduct in the world. What would Weber mean by saying that Franklin's doctrines embodied a highly "rationalized" form of social existence?

In the "Author's Introduction" to the *Protestant Ethic*, Weber identifies a comprehensive range of practices and institutions as part of "the specific and peculiar rationalism of Western culture". What activities within our present society can you identify that fall outside this process of rationalism?

In the second and third meetings on Weber we will take up the issues addressed in sections 2-5 of the study guide. Our initial concern will be to clarify the material covered in sections 3 and 4 of this study guide. Then we will turn directly to Weber on modern law.

To assist our discussion of Weber's treatment of law, please consider the following questions:

In what ways does the modern western legal order conform to Weber's characterization of bureaucracy? What features of the modern western legal order (if any) seem to depart from this model of bureaucracy?

What features of your legal education and training conform to the Weberian model of "legal rationalism"? What have you been taught in law school (that is, officially taught!) that constitutes a challenge to "legal rationalism" or "juridical formalism"?

In the third meeting on Weber we also will take up the issues addressed in section 6 of the study guide and use this as the occasion to reflect on some of the material examined earlier in the semester.