
Weber's Thoughts In Relation To Medieval Legal Systems Across The Globe: Opinion Essay

In this essay, I will discuss Weber's thoughts in relation to medieval legal systems across the globe, and how the law has developed alongside the dimensions of polity, economics and aspects of society. I will draw attention to legal issues which have developed through modernity, and how the 21st century has faced issues in relation to legal development. In our postmodern era, we live with and use a different capitalist system compared to what was once in place, known as bourgeois capitalism. Modernity has created globalisation of national industries; however, this free market, promising constant need for supply to meet persistent demand on a global scale was not always the case. Societies weren't always grounded upon consumerism, with government intervention of fiscal activities. The 19th century philosopher defined capitalism as 'Where we find property is an object of trade and is utilized by individuals for profit-making enterprise in a market economy, there we have capitalism'. Weber explores industrial capitalism through the perspective of the law and religion - he was faced with much criticism.

Although Weber had not established a complete definition of what he believed 'law' to be, many academics have compiled his thoughts together to create a variety of descriptions; one believes Weber's conception entails "a system of standards, maxims, principles or rules of conduct to some degree accepted as an obligatory by the persons to whom it is addressed, and backed by a specialised enforcement agency employing coercive sanctions. To the extent that sanctions are applied in accord with a system of rules, law is said to be rational". This explanation highlights what Weber identified as legal characteristics, which made a suitable environment for capitalism to develop and expand throughout Europe, specifically. Weber quintessentially aimed to understand the role and reasoning behind the emergence of industrial (or bourgeois) capitalism, specifically within Europe. The Weberian framework identified a plethora of dimensions observed in correlation with the capitalist system, formulating possible relationships and explanations between capitalism and religion, politics, social structures, legal structures and broad European societies in general. This shares similar thoughts with Durkheim's functionalism, which views society as an organism, dependant upon 'inter-connected multiple structures that work to form a state of equilibrium'. Weber believed that this kind of sociological observation required the separation of empirical methods and information from normative implications. The sociologist suggested that the European legal system had particular features which allowed for the implementation of capitalist ideals, and this is what he explored throughout most of his work. Capitalism had not developed in other organised nations with normative regimes, therefore his studies looked into why Europe was so unique.

Despite the premise of these studies revolving around the capitalist economics of Europe, he aimed to understand the influence of non-economic factors, prioritising the needs of the legal profession and the political sphere instead. In comparison to other global civilisations across vast periods of time, the European legal system had greater structural formality, which Weber believed to make the legal system more 'rational'. There are four central concepts which encompass Weber's definition of a capitalist legal order - these being organised coercion, legal legitimacy, normativeness and rationality. A capitalist legal order, in Weber's eyes, was comprised of specific characteristics that made it unique to other legal orders in existence during the same period. It was the fact that the legal order remained separate from political bias,

and that the legal rules during this time were consciously fashioned, rather than created accordingly to achieve equilibrium with primal traditions. It was this kind of norm formulation, or law-making, that induced change from traditional sacred laws, handed down from the bible and other religious scriptures, to more secular ideals. The system became more autonomous from religious and political pressure, ensuring that the state could restructure any laws that had become outdated or irrelevant. Implementation of said laws, law-finding, became focussed upon applying solutions to specific legal dilemmas, rather than falling dependant upon one being who yielded power. In secular developments on the law, specialised groups appeared (barristers and solicitors), and application of the law became more formal as a result. The capitalist legal order was applied on a universal, equal level, ensuring levels of predictability. It is important to identify that the basis of legal decision-making is Weber's description of formal rationality. Formal rationality is what other civilisations, like China, were lacking. Europe had been built based on legal heritage, rooted in Roman legal traditions, feudal organisation and religious beliefs. China's patrimonial bureaucracy was 'deliberately subjected to institutional disabilities by the patrimonial ruler', therefore the 'thinly spread' leadership created a unique form of democracy not witnessed previously, and completely different to power displayed in Europe.

A legal order is guaranteed by the probability that physical or psychological coercion will be applied by a staff of people to bring about compliance or avenge violation. This can be seen in our police forces today, whereas, in medieval Europe, coercion was used by landowners in order to extract rent during serfdom, therefore it could be suggested that there was no specific 'staff', but rather individuals took this force for compliance upon themselves. Coercion may arise in many forms, but Weber rejected the presumption that law is essentially guaranteed through threat of violence. In today's world, there are many different forms of coercion that deter or punish behaviour seen to be undesirable in our society. Coercion is what distinguishes the law from societal conventions, but in order to be effective both must be legitimate. What must be differentiated here are laws and conventions. Conventions are upheld by societal morals, and rejection of these morals may result in ostracisation. Conventions are often based upon religious foundations, whereas laws are based upon the modern needs of the people. However, evidently there is some overlap; John Salmond's intersecting circles highlight how moral insights and laws overlap occasionally, for example, 'thou shalt not kill' is a religious verb from Hebrew, Judaism, the New Testament and many other religious writings. Weber saw law as legitimate orders. Individuals within the social structure abide by legitimate orders due to norms enforced through coercive sanctions. It is the two components of coercion and legitimacy that create societal authority and power - this is why individuals in a given society may feel obligated to follow laws, due to the normativity of laws in place.

The European legal system is said to have risen coincidentally with the introduction of the modern bureaucratic state, whereby roles and positions are delegated to state officials rather than elected individuals. It has been said there is a dialectic relationship between the two components, perhaps explaining the unique qualities within this legal order from others. Alongside coercion and rationality is legitimacy and normativeness. Legitimate and normative orders are considered to be socially structured systems which contain bodies of normative perceptions, that, to some degree, are subjectively accepted by members of society as bonding for their own sake without regard for purely utilitarian calculations of the probability of coercion. Weber defined differences between his distinctive forms of legitimacy; traditional legitimacy, charismatic legitimacy and legitimacy through legal enactment. Weber assessed legitimacy on the basis of the level of authority the order holds, and the norms in place within society. Norms are 'rules of conduct towards which actors orient their behaviour', and authority is

characterised by a relationship between two or more actors in which the commands of certain actors are treated as binding by the others'.

Weber argued that the highest form of legitimacy was one which exercised full binding order upon actors subjected to follow it. Traditional legitimacy is where the legal order, or norms within, exist because it has always existed within the given society. It is the norms in place that influence the leader of the society. For example, Queen Elizabeth II has been subjected to particular norms her whole life; these same norms have been taught to all of her relatives. Our modern era sees a society led by the state rather than the monarchy, and this demonstrates major changes brought about through post-modernity. In contrast to traditional legitimacy, charismatic legitimacy is regarded as the most ideal form of authority for an individual leader, as it allows them to adapt their own normative orders with which their subjects must comply. An extreme example of this kind of legitimacy is the effect of David Koresh, where 'the prophet, so long as he retains his charisma, can destroy old norms and create new ones. Koresh used his charisma and understanding of religious values to gain power, allowing him to commit child abuse and rape within his own cult. He subjected the actors within this 'society' to a legal order, where he was the supreme leader. The final form of legitimacy that will be mentioned in this essay is legitimacy through legal enactment - this is most commonly seen today, especially within the English legal system. When a law is implemented and is seen to be rational, the law itself becomes a legitimate piece of legislation that will hold dominance over individuals and laws in the future. Legal enactment may influence the moral values of the public, for example, the legalisation of gay marriage through The Marriage Act 2013 wasn't agreed upon by all, and now it is more socially acceptable in Britain than it ever has been before.

It is the collective belief in particular norms that aid the establishment in legitimising the legal order in place. For example, the moral belief that murder is wrong has been legislated and criminalised - this is done to benefit the majority. It can be argued that most laws we see today are based on moral beliefs - this forms the basis of natural law theory, embodied by St Thomas Aquinas and Prof. Lon Fuller. The fact that many laws embody moral and religious views supports Weber's ideas with regards to the protestant ethic, and its role in the development of capitalism. It was the ethics of religion that influenced people to perform labour for their own personal benefit, creating a more active workforce, resulting in a more active economy. This still exists today, but arguably on a more secular basis.

Rationality is one of the most important points of discussion according to Weber. In his view, a rational legal system created conditions of malleability and calculability. Rationality measures the degree to which a legal system is capable of formulating, promulgating and applying universal rules. Weber attempted to compare and differentiate particular non-economic dimensions of legal organisation through breaking down types of rationality through his own typology of legal norms. He established four main types of rationality: logical formal rational, substantive rational, formal irrational and substantive irrational. The first kind of rationality, logical formal rationality, can be likened to characteristics of the U.S. Constitution, and forms the rationality seen in European legal order. This old legislation covers most areas of human action, and it is possible to relate almost every legal situation to something dictated in the constitution. Every law is synonymous with the constitution, and everything that isn't may be considered legally irrelevant. In this instance, like cases will get like decisions, meaning that common law holds precedent. Substantive rationality can be observed within the medieval Chinese society. This form of rationality upholds general rules, which are based upon religion or political belief. The external ideology within Chinese patrimonial bureaucracy was enforced through

confucianism, to replace legalism, by one divine emperor. The legal order was biased, in favour of religious beliefs. This rationality is also observed in the recent adoption of Sharia law in Brunei. Other forms of rationality (or lack thereof) include formal irrationality and substantive irrationality; the former may be likened to the practice of shamanism, which is one of the oldest religious practices, known today for administering the hallucinogenic substance of Ayahuasca in Latin America. Their aim is to enable altered states of consciousness, in order to understand the afterlife or spirit world. This type of rationality is intrinsic and mysterious to others outside of the legal order. It is not based upon dimensions like politics, or the economy, as their values are based upon revelational beliefs. The final form of rationality that was discussed briefly by Weber is substantive irrationality, but decisions are not decided on a general basis, rather on observable dimensions, on an individual basis. This can be seen within true communism, which previously caused extreme famine when implemented. Regardless of career path and skillset, every individual receives equal welfare. This has obvious faults in practice, and this may be why many nations across the world prefer a capitalist system.

Weber was also faced with various critiques due to a lack of stringency in his writings. For example, there is contradiction between logical formal rationality and the need for democratic order. In order to keep pace with modern activities, there needs to be a system in place to enforce laws and regulations quickly. In England, legislation is delegated down to members, who have not to be elected by the general public. This is an indication that Weber's logical rationality is not capable if we wish to instill democratic order. Also, there appear to be inconsistencies between Weber's perception of logical formal rationality and the creativity of legal systems to adapt substantive concepts needed to maintain the economic structure in place. This form of rationality believes the law to be a gapless system, however it is impossible for the law to remain consistently compatible with the activities of millions of citizens. Therefore, according to Weber, the economic structure today is not met with the conditions required for it to develop or even sustain itself. In application, this could explain the 2007 economic crisis, and how banking law and the regulation of subprime mortgages could have been developed further. Marx would suggest that the mortgage crisis occurred due to the separation of supply and demand that mortgages rely upon, and it was during this time that many believed Marxism was on the rise, as he had predicted in his studies. However, Weber demonstrated that the spirit of capitalism, and the urge to accumulate wealth and assets, is overriding of other factors. Boltanski and Chiapello (1999) indicated that, despite criticisms from younger generations, many young people felt that they could take advantage of capitalist opportunities to advance themselves either creatively or in relation to self-definition and development. It is clear that even though we are in a new and digitally advanced epoch, Weber's protestant perspective with regards to capitalism is still applicable, despite class conflicts and opposition.

Alongside this, Max Weber's dependency upon protestantism in being the key characteristic towards the development of capitalism may not be wholly dependable. As St Thomas Aquinas stated, 'there seems to be no essential difference between the doctrine of the Catholics and the Puritans on this point [of capitalism]', it seems that during this period prior to industrialisation, the Roman Catholic Church and the Protestant church were attaching the same moral values to contributions of labour and production. Observations show that protestant figureheads, like Luther and Calvin, were ultimately against the ethics of capitalism, as 'Calvin... condemns unlawful gain obtained at a neighbour's expense, and the amassing of wealth.', and Luther held patriarchal views on trade, education and many other aspects of society, disagreeing with new economic ventures. With disregard to religion, Fanfani (1936) goes forth to suggest that Europe had developed a capitalist spirit prior to the Puritan revolt. As well as this, society has become

far more autonomous and secular in recent decades, therefore with lack of religion and subsequent coercion, we understand that law is the primary constraint upon individual actions. The law is predictable and applied systematically to moderate economic activities in response to economic selfishness. It is arguable that religion has no correlation with capitalistic advancements in today's world. R. H. Tawney also suggests that capitalism may have existed back in the 15th century, where stable foundations for the economic system may have been set in Venice and Florence prior to its development in Holland and England later in the 16th century, which had been simply held as an economic migration. However, many also believe that the French revolution of 1789 was a catalyst in sociological developments, with England being the first to establish democratic order, and in turn, develop economic stability. Tawney, aside from this, also believed that Weber's thesis was too vague and simplistic, as he had failed to understand the codependency of the protestant ethic and the capitalist spirit, and how both influenced one another. This can be reflected onto our current system of legalism and capitalism, therefore suggesting a missing discussion with regards to this interrelationship.

Looking at the U.K. historically, we can also see that Calvinism had restrictive elements which created poverty, particularly in Scotland, due to its relentless enforcement of morals by church and the state. As Buckle (1857) claimed, 'to wish for more than was necessary to keep oneself alive was a sin...and was a violation of the subjection we owe to God.', it is clear that different strands of Protestantism prioritised different means in strides for economic development, therefore creating uncertainties within Weber's dependence upon Protestantism as the leading religious practice which advocated such criterion necessary for capitalism to exist.

In conclusion, Max Weber's concepts with regards to capitalism in Europe, although disorganised, provide many assumptions were accurate when looking into Europe's legal history. Through modernity, it is clear that capitalism as Weber understood it to be has evolved into a global concept, that is heavily regulated by law, rather than by medieval religion. Legalism replaced Protestantism; however societal norms still remain enforceable upon individual actions. In essence, norms and personal beliefs have created issues with the highly structured legal system in place. On the contrary, it is arguable that this system is far more effective than the authoritarian system in place previously, enforced through religious expectations. Today, our system is transformed by organised coercion, legal legitimacy supported by normativity within society, and is able to apply rules and regulations universally, meaning that there is a strong degree of formal rationality. Weber's typologies were accurate in defining the growth of capitalism, and why it developed in Europe, achieving global reach through modernity. Although some may argue its lack of temporal validity, Weber's predictions were surprisingly accurate, and his typologies can still be applied today.