



MODERNITY: AN EXPLORATION OF WEBER'S SOCIOLOGY AND ITS INFLUENCES

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RESUMO

Este trabalho visa percorrer de forma crítica a obra sociológica de Max Weber, tendo em vista a sua relação direta com a esfera jurídica, de forma a compreender e analisar os seus principais conceitos e a receção da sua teoria por diferentes autores modernos. Com este propósito, torna-se imprescindível olhar para o trabalho de Weber sob uma perspetiva de conceitos gerais e, em seguida, sob um ponto de vista exclusivamente jurídico. Atentando à problemática da racionalidade jurídico-sociológica que molda o pensamento moderno, sublinha-se a conexão epistemológica com a obra de Jürgen Habermas e Theodor Adorno. A título de conclusão, apresenta-se a visão crítica e pessoal dos autores do trabalho, com especial relevo à questão do inevitável processo de “desrazionalização” do Direito, apontado por Weber, e as suas evidências no contexto político-jurídico atual, ou seja, em relação com um mundo globalizado em que se observa a atividade de entidades jurídicas globais/internacionais.

PALAVRAS-CHAVE

Weber; Adorno; Habermas; Racionalismo; Direito Ocidental; Sociologia do Direito

ABSTRACT

This paper aims to analyse in a critical way Max Weber's sociological works, having in mind its direct relation to the legal sphere, in order to comprehend his main concepts as well as the reception of his theory by other modern authors. For this purpose, it is not possible to deny the following approach to Weber's work: a broader and more general view – general concepts – and a more narrow and specific legal view – legal concepts. With regard to the legal-sociological rationality problem that builds the modern thought, we underline the epistemological connexion between Weber, Jürgen Habermas and Theodor Adorno. As a conclusion of the paper, its authors present their personal and critical opinion on Weber's theory, with special attention to the inevitable process of "unrationalization" of Law – pointed out by Weber – and its evidences in the contemporary political-legal context, that is, in relation to a globalized world in which we can observe the activity of global/international legal entities.

KEYWORDS

Weber; Adorno; Habermas; Rationalism; Occidental Law; Sociology of Law

1. Introduction

Max Weber is many times assessed as one the founding fathers of Sociology. Being the first or not, it is undoubtable that his work has had an enormous relevance to Social Sciences and, with particular interest to this paper, to Law.

From analysis about religion, social phenomena, culture, law and rationality in modern societies, Weber was able to stablish himself as a crucial influence over occidental political and legal systems.

Bearing in mind that the creation of knowledge is a communicative process, it is through the intellectual dialogue (the relation between arguments and counterarguments) that we can enhance our worldviews in the most rational way. That proves the importance of papers such as this, given that the study of Weber's theories allows us to achieve a higher degree of academic self-realization and brings us closer to the possibility of contributing to the construction of a more equal and justice society.

In that sense, this paper aims to clarify some of the author's (legal and non-legal) concepts, in order to present a global view upon his works. Nevertheless, we could not pretend to make a simplistic interpretation of Weber's texts, thus we are led to analyze the impact he has had in other author's conceptions of society – giving special attention to Jüger Habermas's reading on Max Weber.

However, it is not our intention to merely expose his theories and, therefore, we also ought to present our own point of view on some of author's conceptions, which will conclude the paper.

2. Historical Context

In April 21st, 1864, in Erfurt, Prussia, Helene Fallenstein gave birth to the first of her seven children, Maximilian Karl Emil Weber. His father, Max Weber Sr. was a lawyer and a politician, thus his house was always filled with intellectual figures and political conversations. Max and his siblings grew up from the start in this intellectual atmosphere, which was decisive in Weber's formation.

In 1882, Max Weber started his law studies at the University of Heidelberg and was then transferred to the University of Berlin. During his years in university he saw insatiable capitalism growing throughout the world and he felt the urgent need to think and write about the social phenomena that surrounded him.

In the 19th century emerged an economic theory which led the way to the creation of the Historical School of Economics. They held that all the social and economic aspects of human society were a reflex of its history. Therefore, economy and public administration were all products of culture-specific factors. They denied the existence of all universal validity of economic theorems. In 1888, Weber joined the *Verein für Socialpolitik*, an association of social and economic German intellectuals of his time. The "club", as we may refer to it, was mainly held by people who followed the Historical School of Economics. As Weber made his way into that new environment, he became fond of the ideas spread by those professors and became himself a great leader of the Historical School, which played a big part in the fundamentals of his future works.

Two years after joining the *Verein für Socialpolitik*, Weber was put in charge of a research program created by the association about the *Ostflucht*. The area that Halford Mackinder would call *Heartland* (central and eastern Europe) had never seen a single century without territorial conflicts. The Germans and the Poles had always been intricately entangled in disputes. In the end of the 18th century, when Prussia reconquered the territory of West Prussia (immediately connected to Poland), Frederik The Great (king of Prussia) established around 300,000 colonists in the former Polish territory and tried to expel the Polish nobility, which he personally called “slovenly Polish trash”. In the 1830’s, with the growth of Polish Independence Movements, the tension between Prussian and Poles grew stronger and with it the prejudice and anti-Poles campaigns. After the Unification of Germany (1871), under Otto von Bismarck’s control, the attempts of Germanisation of the Poles became even clearer due to a huge migration of Poles to the German urban centers, leading the Polish Question (as the conflict was called) to occupy a decisive place in European international politics in the 19th century. This was the conflict that Weber and his fellow writers were researching.

The Polish Question had such an influence in Weber’s personal life that in 1893 he joined the *Alldeutscher Verband* (The Pan-German League). The League’s main goal was to create and reinforce a German ideology and culture in a specific but nationalistic way. One of its positions was to state against the influx of the Poles immigrants. In one of Weber’s lectures in 1895 he provocatively criticized the Polish Question.

In 1897, after his father’s death, Max Weber started to show symptoms of depression, insomnia and deep mental trauma. For the following five years he struggled between constant institutionalizations and mental health concerns, which made him resign his professorship from Heidelberg University in 1903. During that period, he didn’t publish any work or article.

As Weber got better, the world shaped itself to hold one of the most destructive armed conflicts of all time: The Great War. As we've seen, Max Weber believed in a strong and united German people and argued that the liberal imperialistic expansion could have a role to play in the establishment of the Pan-German ideals. Therefore, he viewed the war as an opportunity (or maybe a challenge to overcome) to reaffirm German's potential as an internationally powerful and dominant state. Weber was, in the beginning of the war, fascinated with the nationalism showed by young German soldiers who bravely signed themselves up to go to the *front*.

When the conflict started, Weber volunteered as a civilian to help the military forces in any possible way. He was assigned to coordinate the army's hospitals in Heidelberg, which he gladly did until 1915. However, as the war escalated and Kaiser Wilhelm II expressed his thirst for expansionism as well as his strict war policies, Weber started to reconsider his opinion on the Great War. He deeply criticized the *Schlieffen Plan* (which aimed the annexation of Belgium) and the unrestricted warfare. His dissatisfaction toward the war context lead him to defend topics such as a constitutional reform, the universal suffrage and the democratization.

As the World War I came to an end, with Germany defeated, a brand new "constitutional wave" emerged within the German people, or at least part of it. In 1919, the Weimar Constitution was implemented in the country and Max Weber worked as an advisor to the elaboration of the document. He defended a popularly elected president and was one the most influential for the creation of Article 48 of the Constitution, which established the provisions for the emergency presidential power. Unfortunately, it was that premise that Hitler used to rule by decree in 1933.

In conclusion, we can observe that, as any other individual, Weber was profoundly impacted by the historical events of his time. From his childhood intellectual environment to

his published papers and political work influenced by geopolitics, he had always present in mind the phenomena and problems of the world, never being disconnected to it. Moreover, it's clear that the author changed opinion or political orientation a few times during his lifetime, which means that his works can never be dissociated from the moment they were written.

3. Fundamental General Concepts of the Author

In one of Max Weber most preeminent books, *Protestant Ethic*, the author puts ethics as being deeply ambivalent, so that Western rationalization does not necessarily goes along with substantive-value rationality.

Rationalization, as Weber introduced, is an unequivocal historical phenomenon, it is a process, taking place in unequal fields of human life, and each field has its own perspective and logic.

As culture is being put as an emancipation of the man in relation to the natural, organically prescribed cycle of life, Weber affirms that each one of these fields, or spheres, may be rationalized in terms of different ultimate values and ends, so what is rational from one point of view may well be irrational from another.

Even though he recognizes that the rationalization conquered in the Western and modern society has brought freedom to the individuals by helping them navigate through a series of complex social environmental procedures and institutions with the use of calculability and probability, enhancing their possibility of choice, the sociologist also

acknowledges that freedom and choice can lead to a petrification of ones thought, since the individual agency is reduced to a “cog in a machine” or trapped in an “iron cage” when formal rationalization is used on the expense of substantive rationalization.

Weber wanted to find more specific and empirically tenable answers to explain situations being experienced in the Modern world. He was concerned about its origins, and the possible directions this modern world was heading to.

The future of rationalization to Weber was not only limited to a mechanical behavior, but also to meaningless behavior, since there would be a flood of thought and a multiplicity of meanings, with each sphere having its own rationality and logic, culminating in a loss of unity and fraternity, since there would be an incredible amount of subjective values and value-fragmentation.

For Weber, modern society is once again enchanted due to its disenchantment. This means that grater values that were once shared by humans due to their communal believes in monotheistic religions had been gradually being replaced by a unified system of meaning and value that pushes religion aside, considering it to be irrational. This line of thought delegitimizes the monotheistic religions as a unifying worldview for the modern world, as science takes its place.

Therefore, it is understood that in primitive times religion was linked to society and its orders, being these metaphysical images of the world actually “born” from rationalization in itself. But as the rationalization of the modern world took place, religion was a subject of its process, and what was once already subjected to the imperative coherence, is now, in the modern world, submitted to such tension that the bond that once existed between its values and society was put to doubt.

For Weber, the consequence of this phenomenon was the establishment of several spheres of knowledge, each with its own principles and subjectivity, becoming autonomous from each other as the religious images dissipate.

Weber considered that aesthetic values, in the modern world, stand in irreconcilable antagonism to religious values, transforming value judgments into judgments of taste, so what is morally reprehensible becomes merely what is tasteless.

Cultural rationalization was centered in the sixteenth and seventeenth centuries, spotlighting Protestantism, humanism and modern scientific evolution as the consequences of the loss of meaning in societies behavior. Social rationalization, was centered in the end of the nineteenth century and focused on the late liberalism and the transit from liberal capitalism to organized capitalism, conceived in terms of a theory of action.

In another of Max Weber most recognized books, *Economy and Society*, the author dissects various of his most acclaimed and studied concepts, examining economic development particularly as part of the general rationalization of life.

In his work, Weber formulated fundamental aspect of social action, and “general ideal types”, which were based on historical types of concerned action. This established two main systems, the capitalism enterprise and the bureaucratic apparatus of state.

The sociologist believed in a “general cultural development”, opposing the idea that the capitalist society was a product of the modern world, and going against theories of historical sameness as well as theories of universality.

To give background to his studies, he used a comparative approach, which was basically constituted of identify similarities, do a negative comparison, a illustrative analogy and a metaphorical analogy. This strategy had the intention of establishing differences between modern and older conditions and the causes of these differences, usually

searching for “casual chains” that connect the two periods and demonstrate their respective similarities.

Weber created other substantive theories to differentiate the degrees of historical specificity of his generically historical sense; Theories explaining the “Individual Ideal Type”, such as the spirit of capitalism, relative to homogeneous inter-related and historical configurations; Theories about relatively heterogeneous configurations, such as the “the economic theory of the ancient states of the Mediterranean”; and Theories that study the historical consequences of an amount of social constellations (“rules of experience”).

The methodology of “ideal type”, according to Weber, is formed by the one-sided accentuation of one or more points of view according to which concrete individual phenomena are arranged into a unified analytical construct

Economy and Society, begins with a focus on social action, which essentially is the relation economic action is concerned with, the want-satisfaction under conditions of low sources and a limited number of possible actions.

According to Weber, there is a relation between the laws and convention and the groups that sustain them on the other hand. Therefore, there are no historical effective ideas and ideals without social interests backing them, is a constant struggle for power between the normative and the coercive, between legitimacy and force, both forces that impact the individuals’ social action.

With this concepts Weber took a stand on historical materialism, recognizing it as a political force but not taking its ultimate claims seriously. He rejected economic functionalism stating that not all social action is economically influenced, and not all groups are relevant to economy, but the persistent ones should in some way meet their respective necessities.

Weber related the want-satisfaction dichotomy to models of expropriation and appropriation, not to models of production. As Marx, Weber analyzed in his economic

studies capitalism, but the second saw the first's concept of mode of production to be blurring the technological and economic aspects of society. While Marx sees the divisions of Weber's so-called spheres of rationality done because of the capitalist enterprise and the structure and superstructure domination system, the author as already explained blames this division on the disenchantment of the world.

4. Fundamental Juridical Concepts of the Author

As already said, Weber indicates in his book, *Protestant Ethic*, that each sphere has a specific rationalization, having innumerable possible outcomes for the interpretations of one determined subject according to different endings and ultimate values. The same thing can be said for the spheres, when the theme is legality, with each one having its own, colliding when their doctrines and fundamentals are put against each other.

The presence of law, with its various forms of coercion, makes a great deal of difference for social action as well. For Weber the impact the law has on economy is undeniable, rather the extent of this impact is discussable and capable of analysis, needing to be calculated for each particular case.

In *Economy and Society*, Weber is able to explain how the modern occidental type of administration of justice has risen on a basis of rational and systematic legislation, bringing the ambiguity of the formal qualities only as a result of recent developments.

For Weber, law and procedure, from a theoretical point of view, have passed through historical stages, at least when talking about the Occident societies.

First, comes the legal revelation, dissipated through the so called “law prophets”. Secondly comes the empirical creation, though the manifestation of cautelary jurisprudence, which opens up space for a third stage, with the imposition of law by theocratic powers when, finally, in the fourth stage, there is an elaboration of a system of law in the modern world, capable and professionalized administrated by individuals who have received legal training to deal with juridical inconstancies in a logical and formal way.

For the sociologist these formal qualities of the law rose from primitive legal procedure from a mixture of magically conditioned formalism and irrationality conditioned by revelation,

it passed through a theocratically or informal substantive, stationing on a logical and deductive way of development with increasingly rational techniques in the procedures.

According to Weber, only the Occident witnessed the fully administration of justice and the stereotyped form of patrimonialism, since it emerged from the patrimonial and feudal struggle for power, as well as the rise of the national economic system, in which the main agents in a first moment got together with the princely powers to overcome estates, just for, moments later, turn against them in revolution.

Weber believed that the Western civilizations were the only ones that were able to resemble the phenomenon that happened with the Roman Juridical system, as “Natural Law” concept was created, eliminating systems of personal laws. He explains that the Roman reception phenomena and the fact that no legal specialists shaped by the last historical law stage has reached anywhere outside the Occident is due not only to political factors, but economical ones as well.

According to him, the role that economy has in the mold of the current law system shared through most western societies comes from the idea of an analytic combination of terminology with a realistic approach to human affairs.

Essentially, the humans are beings whose habits are directly and also strongly motivated by their material and ideal interests, which, at times, get in shock with the conventional order established by the formal law of society, so it's natural to the individual to have a craving to evade this conventional and legal rules.

The logic behind the foundation of this structure is that all societies, in a way, have their juridical system controlled by the economically powerful, which also tend to have a strong influence on the enactment and interpretation of the law.

In this sense, the Rational-legal authority was defined by Weber as a form of leadership in which the leader of an organization or a ruling regime, such as the modern

liberal democracy, is strongly connected with the legal rationality, legitimacy and bureaucracy of this same regime.

This concept comes from Weber tripartite classification of authority: The charismatic authority, characterized by heroism, leadership and religiousness; the traditional authority, such as patriarchs, patrimonialism and feudalism; and the legal authority with the modern law and state bureaucracy.

The traditional ground is a type of power that was present in society for a longer period of time and has the consequence of discouragement of education and rational calculation. According to Weber, this authority is linked to individuals mainly because there is an inheritance of past generations and a religiousness that the society, exemplifying the main power to construct order.

The charismatic ground comes from within the leader and his personality, and the qualities they have to offer to society. It's a specific type of power with no clear structure other than the individual influence in itself, which legitimizes his position as long as they exercise power over society and are able to connect distinct groups.

The rational ground, as already explained, is the one acquired from law. Its power is constructed based on the trust the general people have on their order symbols and the efficiency the rules and mechanisms of justice are dealt by the leader. This authority gives the leader legitimacy to undertake decisions and to set policy. Besides being built on a structure of bureaucracy, the author clarifies that some benefits of the use of logic and systematic approach to the resolution of state problems and decision making are the tendencies toward equal opportunity and promotion of education.

All three derivate from the Ideal type, in which they rarely appear.

The ideal type too has a comparative purpose. It was Weber's solution to the issue of conceptual realism versus nominalism, being his primary answer to the scientific notion of law and to the evolutionary stage theory.

Under the rational-legal authority, an important point dissected by Weber in *Economy and Society*, is the legitimacy that derives from a legal order and the laws that have been endorsed in it, being natural law or legal positivism.

The author defines legal order as a system that legitimates its laws based on other laws already outlined in the structure, as they are already enacted or obeyed, further being enforced by a government that monopolizes their enactment and uses physical force as to legitimize it.

After these measures, if there exists an approval of these laws by society, for the author they are considered legitimized by a "legitimate authority".

Essentially the monopolization by authority of the means of administration and control of taxation with the use of physical force, the monopolization of the legislative, and the organization of a bureaucracy depended upon the central figure are conjectures that have already appeared in other societies and in other times, but only the western one has all the pieces together.

Based on the differences in political development, Weber continues his work, putting the differences between Continental and Common Law methods of legal thought, respectively connected with the internal structure and the modes of existence of the legal profession.

The author saw similarities between the different political developments even though they came from different historical backgrounds. For him, capitalism connected these systems in a way that rules and institutions couldn't, even though it could not be said that

capitalism was the decisive factor in the promotion of a specific form of rationalization of the law.

Common Law presents a picture of an administration of justice which in substantive law and procedure differs from Continental Law as much as it is possible in a system free from theocratic and patrimonial powers, while the first is described by Weber as law-finding, the second is described as an application of legal prepositions logically derived from statutory texts.

The consequences of these differences, both economically and socially are clear for Weber. For the development and sustainability of capitalism, features of Common Law were essential, such as the legal training focused on the hands of a group, which is in active service of the capitalist and private interests being as well sustained by these means, and the fact that the concentration of the administration of justice at courts, and their costliness meant that they would be restricted to a wealthier portion of the population.

To conclude, Max Weber saw a modern state of law with characteristics that appear in a political community, such as a legal and administrative order, that has been created and can be changed by legislation that also determines its role, a obligatory authority over citizens and actions in its jurisdiction, as well as the right to legitimate the use of physical force to ensure the legal legitimation.

5. Reception of Weber's occidental rationalism by Habermas and the influence on the communicative acting

As shown before in his theories Weber tried to explain how a modern state works and, to specify this in a legal context how the legal system is based upon these theories. But while Weber passed away in 1920, his theories remained and were subject to interpretation, critique and amendments by authors or influenced the work of those.

One of those authors reflecting the theories of Weber is Jürgen Habermas, who might be, not only because of being part of the *Frankfurter Schule*, considered as one of the great sociologists of the present time. In his work Habermas created another structure of how the modern state is functioning based on theories of action and rationalism. As part of the process he reconstructed the theories of older sociologists about the modern state, which made him reflect the work of Max Weber in his book *Theorie des kommunikativen Handelns*.

For this reconstruction Habermas examines Weber's position by four main elements. In this process he follows the line of Weber of argumentation. He first comments the structure of the occidental rationalism, followed by the development that is the origin of the process the disenchantment of the antient view of the world and the role that the protestant

ethic played in the development in the occident and ending with the examination of the rationalization of law. However, as the Weber view of the modern state was already explained above, this chapter is therefore not discovering all the details of Weber's theories and instead focuses on some specific views of Habermas about the theory and its consequence for the theory Habermas has developed.

5.1 Occidental Rationalism

For the occidental rationalism, which Weber is trying to describe, Habermas identifies two specific problems, that are needed to be solved in this theory. The first one is the way Weber tries to explain the occidental rationalism, the second point to point out are the universal aspects emerging out of the structure of the occidental rationalism.

1. What Weber is trying to show, when he draws the structure of the occidental rationalism is the characteristic type of acting of the societal structure in the western world. For Weber this means the way how the state and how the capitalistic economy acts. However, the basis for the structure lies according to Weber in the different spheres of values of the modern science and a new consciousness. A controversy arises therein, because Weber sees the two spheres as part of the cultural value spheres, which he puts, how Habermas describes it, across from the "orientation of actions".¹ While Habermas does not openly states, that it is not logical, he asks for a further explanation by Weber.

¹ Theorie des kommunikativen Handelns, Habermas 1. Auflagen 1995.

2. The occidental rationalism is in so far, a universal position, that all cultures show some sort of rationalism in their structure and just moved in another direction than the occidental rationalism. For Weber this means that what is rational from one point of view is at the same time irrational from another point of view.² Habermas is not following this opinion. For Habermas not all aspects of rationalization have also an irrational aspect at the same layer.³

5.2 Disenchantment of world pictures

The process that led to the creation of the occidental rationalism is the process of “disenchantment of traditional world picture” it describes the development from a world, where the gods are present in the inner world to a view, where an Askesis of the inner world exist and gods are only present in the outer world. The urge of the humans to control the inner world, then leads to the creation of the capitalistic economy. The critique, that Habermas raises against the structure, are again based on two main issues that arise from this development.

The first issue is the problem, that Weber needs to explain how the religious ethics become valid for the nonreligious spaces. Weber does this in the way of the protestant work ethics. The protestant work ethics creates some issues on its own, whereby it is examined in an additional part below.

² Habermas, 1.Aufl. 1995 S.256.

³ Habermas, 1. Aufl. 1995, S.256f.

The second issue exists because Weber examines the disenchantment from an ethnical point of view, thereby does not include the development from the point of the other cultural spheres of rationalization, the cultural and the scientific spheres, although he does “assumes the differentiation of all three spheres” for the modern rationalism.⁴ The limitation to only one of the three spheres creates a bubble of unused potential, to explore a more comprehensive explanation.

5.3 Modernization of Society and Protestant ethic in the occident world

The modernization how it happens as the societal rationalization needed special circumstances to activate the cognitive potential, that it happened how it happened. To explain how this happened Weber choose to show that in institutionalization of purpose rational acting and led to the modern society nowadays, with the capitalistic economy and a modern structured state as center. An important condition for Weber is the protestant ethics that existed in the occident. The protestant ethics are however not the solely reason for the modernization, but they allow Weber to show that a part of the origin lies within in the traditional religious world view. The protestant ethic however is not allowed be seen just “as a principle lead moral.”⁵

⁴ Habermas 1. Aufl. 1995, S.256f.

⁵ Habermas 1.Aufl. 1995, S.262f.

This raises for Habermas the question if the protestant ethics only got its importance because it was functional for the capitalistic economy and if the cognitive rationality not only influences, but also other areas of live, because it has primacy over moral and esthetic rationality.

In a second step Habermas shows that according to Habermas the real reason for the Modernization of society is the separation between the different spheres of value itself. This for Habermas only plausible if the focus stays on the tension between the religion and the world itself and does not include communicative ethics. A further point is for Habermas the not used potential of the law in the argumentation of Weber, because only the law allowed the institutionalization of the purpose rationality.

5.4 Rationalization of Law

Following Weber's approach of a modern law the rational tendencies move towards an inner systematic rationality leading to modern law that is more and more formal and based on the work of professional lawyers. The formal approach however leads to the effect, that while in a traditional system the law based on principles of values combine the legitimacy and morality, the modern normative law divides legitimacy and morality.

For Habermas this means that the law needs a "practical justification". The justification and thereby also the legitimacy in modern law is measured in the view of a constitution, as those represent a consent between the people⁶. The need for justification is the aspect where the argumentation of Weber shows weaknesses. For Habermas Weber

⁶ Habermas 1. Aufl. 1995, S. 263 f.

points out the different characteristics, which define the structure of modern law, but he “hides out the principle of justification in favor of the statute principle and identifies it only based on rational acting.⁷

And further Habermas watches the consequence, that Weber does not differ between the ethic rationalization of law and the tendencies of idealization of law and collect them as material rationalization of law, although both movements are directed in different direction.

5.5 Consequences of the examination for the theory of Habermas

Also with the existing issues in way of Weber’s argumentation, Habermas does not consider the argumentation and theory of Weber as basically wrong, but the problems he identified lead him to the conclusions that it is not the purpose rationality, that should be at the center of the explanation of the modern society. Weber is thereby too much focused on explaining only the tendencies of rational acting within the society. Instead Habermas shifts the paradigm to a communicative approach based on a communicative rationality.⁸

⁷ Habermas, 1.Aufl. 1995 S.319f.

⁸ Pinzani, 2017, S.116,

With the theory of the communicative acting Habermas does not want to say that Weber's theory is entirely wrong. What he wants to show is that there is an alternative to the rational acting of Weber's theory, according to which the modernization leads to an elimination of the other types of acting leaving only the rational orientation as the only possible option, which leads to a loss of meaning and freedom.⁹ Focusing on the communicative approach shows the alternative he was searching for.

What Habermas contains is the structure Weber drew of the different subsystems of modern society and also accepts the different spheres of values, which he names as cognitive-instrumental, moral-practical and esthetic-expressive rationality, by reproducing it into his construction of the system and the living world (*Lebenswelt*). This is necessary, because Habermas needs the different spheres to create the opportunity for a communicative intersubjective discourse leading to an understanding between the different spheres.

The communicative acting for the modern law means that on the contrary to Weber's formal view of the law it is based on criticality and justification as representing the intersubjective discourse between spheres of the living, integrating the communicative rationality in the modern law.

Concluding it can be said that Habermas shows that the negative picture that Weber drew, with the loss of meaning and freedom, when the purpose rational acting starts to take over the cultural spheres of life, is not as negative as by Weber proposed. Although Habermas also accepts the rational tendencies of Weber and therefore also draws a negative picture of the modernity, he is able to show an alternative with the communicative

⁹ Der Prozeß der Rationalisierung und die Entzauberung der Welt bei Max Weber und Jürgen Habermas, *Ingo Blaich*, 1999

acting, which as an opposing force might be able to prevent the loss of meaning and freedom as shown by Weber.

5.6 Comparison to Adorno

Although both Adorno and Weber have different ways to approach the way modern society works, on the one hand Weber is “as positivistic and with a universal historical

knowledge”, on the other side Adorno is as dialectic social philosopher.¹⁰ They show one a remarkable similarity when it comes to modern rationality.

Adorno uses the term of “instrumental consciousness”, which is equal to Weber’s term of purpose rationality.¹¹ For Adorno this way to describe the rationality has a positive and a negative impact. A negative one in the area of the construction of the society and positive one in the area of arts. This leads Adorno to the result that he creates the two different spheres, similar to the spheres Weber created with the structure of the state and economy on the one side and the cultural sphere on the other side. Further both see in arts a way of salvation from the rationalization of the modern society¹².

Also with different approaches to the sociology, the result of Adornos studies accept some parts of Weber’s theory and show that they had not only an impact on the supporters, but also on other sociologist.

¹⁰ Eine bemerkenswerte Übereinstimmung: Max Weber und Theodor W. Adorno zu gesellschaftlicher vs. ästhetischer Rationalität; Müller-Jentsch, Walter, *Berliner Journal für Soziologie* volume 27, pages293–301(2017).

¹¹ Eine bemerkenswerte Übereinstimmung: Max Weber und Theodor W. Adorno zu gesellschaftlicher vs. ästhetischer Rationalität; Müller-Jentsch, Walter, *Berliner Journal für Soziologie* volume 27, pages293–301(2017).

¹²Eine bemerkenswerte Übereinstimmung: Max Weber und Theodor W. Adorno zu gesellschaftlicher vs. ästhetischer Rationalität; Müller-Jentsch, Walter, *Berliner Journal für Soziologie* volume 27, pages293–301(2017).

6. Conclusion

Regarding Weber's conceptions of rationality in modern legal systems, and its increasing loss of formality, we believe that his analysis is precise and still actual. In fact, we can today see the "irrationalization" occurring in even more drastic levels. To support that claim, we may look at the new global judiciary organization that has emerged in the 20th century with the rise of international legal institutions, such as the UN and the EU.

It is true that Weber didn't live to see it happening, but we cannot ignore the fact that the empowerment of international communities implies a loss of sovereignty of the states, that transfer it to the institutions. We do not pretend to make any judgment of value of this process, we just point out the confusion (confluency) generated by the overlap of new legal orders.

In addition to the internal judiciary instances of each state, in Europe, there are the European Courts and, above them, the International Courts. The application of this "meta-state" law is not always linear and objective. Many countries delegate to the EU the *Kompetenz-Kompetenz* - that is, to say, the "final word" – which is the case of Holland, and other delegate it to its own national constitution, as does Germany.

In this manner, there's a group of international entities that have political and juridical powers of great magnitude and that claim themselves fair and equal in the way they communicate with every state. However, practice demonstrates that these relations change from state to state, being subjected to the arbitrary will of the political-judicial national bodies. It is, thus, clear the loss of rationality that derives from the creation of those

international judicial institutions. Once more, the process of informalization pointed out by Weber is verified in the present days (if not even stronger than it was when the author published his works).

Apart from that, it is crucial to pay attention to another decisive point in the determination of the loss of rationalization in legal systems. That is the utilitarianist character of our society post-industrialization occidental societies.

The individualist motor and the belief that Law itself is made to serve the interests of a dominant class (as Marx would put it) has built and sculpted the legal systems. That's what Weber means with "economically determined expectations". These economic expectations towards law are not collective, because they don't mean to preserve collective interests, but only the particular interests of those who detain the means of production. Thus, utilitarianism provokes a change in Law in the sense of giving it an always deeper "specialization" – because this process represents a big step to the concretization of the "economically determined expectations", that is, to the realization of the particular dominant interests.

As Weber puts it, the increasing specialization leads to an ever growing "irrationalization" of Law. In that sense, our individualist and utilitarianist spirit (that Weber does not explore fully) of searching in the solution of conflicts a resolution that benefits only one of the parts involved – and, in a general view of Law and society, benefits a specific social class, the one that has the privilege of being able to create the "economically determined expectations" – is itself also responsible for the valorization of informal elements in legal knowledge and legal practice.

Apart from that, Weber's view on the capitalist system and economics was explained on a study of sphere analysis. As already said, Weber arguments were that this division is due to the increasing loss of religion and unity under consensual principals and concepts.

This way, what from a point of view is rational, can be irrational from other point of view, becoming meaningless.

When discussing economics and justice, even though it is understood that there is a problem on the rationality of trying to find a legal agreement between the amount of different world views and principles presented in a global society, when analyzing his studies, we believe that even if the reunion under religious principles did occur, and solve the necessities of logical legal thinking, it wouldn't solve the problem generated by the shock of this rebuilt set of principles with the economical expectations of the market, especially in a heavily capitalist society.

The concept of Marx of putting the division of the spheres, into what he calls as "superstructure" and "infrastructure", it's a much more applicable concept by today standards, to explain the main capitalism way of creating and dividing society, as a way of domination by the ruling class, creating shocks of values and, consequently, problems on adapting to the economic necessities.

In conclusion, Weber's theories not only get their importance because of its validity itself. It is also shown by different authors adapting his concepts into their own theory. Especially the concept of his spheres of the rational world is adapted by different sociologist, like Adorno and Habermas and show the importance of Max Weber for the sociologist that came after him.

Habermas amended Weber although he was accepting his concept of rationalization to show that there is another alternative to the negative view of Weber. Adorno, although he had different approaches, then Weber accepted his structure of different spheres and had the same view on the arts.

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