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7. IN A CONTINUOUS WAY

PURPOSE OF PRESENTATION

In understanding Max Weber's definition of rights, it is important to understand that rights need to be ensured 'in a continuous way'. In understanding how rights can be ensured in a continuous way, it is important to understand the concept of 'predictability'. In examining why predictability is fundamental in society, we will first take a look at how the "Bourgeoisie" used this notion in ensuring their rights. Next we will examine Max Weber's ideas on rationalization for a better understanding of the subject.

HISTORY OF DEMOCRATIC EVOLUTION AND THE BOURGEOISE

A Historical Background

The French Revolution occurred in 1789. Before 1789, France was a society based on feudalism. It was hierarchical and maintained the fixed order of the ancient time. There were three main classes called Estates; the clergy members, the aristocrats and the civilians including peasants, workers and the middle class. The middle class people were called the bourgeoisie.

According to the socioeconomic theory, the bourgeoisie is the social order that is dominated by the middle class. The term arose in medieval France, where it referred to the inhabitants of walled towns. These townspeople practiced arts and crafts and occupied an intermediate position in the economic and social scale between the rural landlords and peasantry. With the introduction of mechanical power into urban industry and the growth of the factory system, the medieval craftsmen began to separate into two classes – employers and employees. This growth of a new kind of class-consciousness restricted the idea of bourgeoisie to the employers; the employees were called the proletariat.

In the age of absolute monarchy, where the king is the law, most bourgeoisies were not able to exercise commensurate political and social influence. In fact, the nobility oppressed them politically and economically in effort to protect and retain their domination over the people. The bourgeoisie wanted a society which, guarantees free economic and political activity.

The peasants and workers had trouble with the upper class as well. They were poverty-stricken. While the upper class enjoyed high culture and luxurious life, they were burdened with high tax and suffered from land hunger. So they, along with the bourgeoisie, brought about a revolution in opposition to the monarch and the privileged.

The revolutionists succeeded in reforming society. The King, Louis XVI was put to death and feudalism ended. After years of struggling to create a better place to live in, in 1792, the National Convention declared France a republic country. They also established the constitution based on human rights; however, the law, in many ways, reflected only the interests of the bourgeoisie who had become the dominant class after the revolution.

The revolution and its success have affected the world and brought about a new era, which is very much like today's world. In recent times, the word bourgeois is used to characterize a concern for material interests and respectability, with a tendency toward mediocrity.

Contributions to the History of Democratic Evolution

Through the French Revolution, all Frenchmen were declared equal and free, and all citizens had equal rights before the law. Public office and employment were open to all, and taxation was based on the ability to pay. The major benefit of the French Revolution was that it inspired people in other parts of Europe to modernize their own countries. This revolution is a great landmark to modern democracy. The table below illustrates the fundamental changes it has brought to the society.

ABSOLUTISM	DEMOCRACY
Monarch has absolute power.	Government is based on will of the people.
Monarch combines political and religious power through divine right.	Separation between church and state.
Rulers selected by family line.	Leaders selected by popular vote.
Subjects must accept and obey authority of monarch.	Citizens have the right to question or criticize government.
Government exists for its own sake; people exist to serve the monarch.	Government exists to serve the people.

The French revolution, however, resulted in bourgeois republican government after the Napoleon era. Therefore, it lacked factors that contribute to modern democracy, as we know of it. There was a clear distinction between the bourgeoisie and the proletariats and the two parties were at opposing ends.

Political Significance

The distinction between the bourgeoisie and the proletariat became politically important in the early 19th century in the course of the reaction against the indiscriminating democratic idealism that flourished during the French Revolution.

Even in modern times, the class distinction of bourgeoisie and proletariat is important because the capitalist economy still relies on Aristotle's system of class distinction among three classes: the upper, the middle, and the lower. Aristotle's system labeled the middle class as the bourgeoisie and furthermore, it stressed the importance of the middle class in a well-ordered state.

Historical Significance

The bourgeoisie and the proletariat are constantly opposing each other in the capitalist system. This was the main reason for many social revolutions that occurred in history, such as the French Revolution and the communist take over of Russia. Social clashes occur as these two groups try to control the means and modes of production.

In the Light of Rights

French people brought about the revolution in order to guarantee their interests, and they succeeded in building a new state-nation, which was a republican country based on a constitution. Their constitution and other laws acknowledged their interests and natural rights as legal rights. Through legalism people could predict what were or were not their rights.

Legalism supported the development of capitalism by providing a stable and predictable atmosphere; capitalism encouraged legalism because the bourgeoisie (capitalist class) were aware of their own need for other types of government structure. Law assures rational prediction through contractual obligation, and restrains selfishness (failing to perform some agreement for personal gain).

PREDICTABILITY

Prediction is used in all branches of science. In natural sciences, prediction has to do with a hypothesis, derived from observation of nature itself. Through repeated manipulated experiments using possible variants, this hypothesis becomes a law or principle. This makes it possible for a prediction to become a general fact. This process characterizes the ultimate goal of science.

In social sciences prediction takes on a more distinct role, because it is almost impossible to carry out manipulated experiments. Therefore, it is harder to find a set law

in human behavior or social phenomenon. This means prediction is all we can rely on before we reach a conclusion about events that actually occur during the course of time.

Legal predictability works in a similar context as in the social sciences. Legislation, in one sense, can be a hypothesis, and subsequent judicial process can be seen as repeated experiments, which ultimately create a legal fact. This in turn is reflected in legislation. Through this process people get to trust the legal system.

Max Weber's Ideas on Rationalization

Rationalization as an ideal type and as an historical force appears in much of Weber's writings. He regards the development of rational forms to be one of the most important characteristics of the development of Western society and capitalism. Weber views traditional and charismatic forms as irrational, or rather non-rational. The latter may rely on religion, magic, or supernatural power as ways of explaining the social world. Authority may also be derived from these. Therefore, there is a lack of systematic form of development.

In contrast, rationality consists of a set of social actions governed by reason or reasoning, calculation, and rational pursuit of one's interests. Instrumentally rational action and value-rational action are predominant social actions. These two main types of social actions correspond to two predominant patterns of social action.

Substantive Rationality

This type of rationality exists as a manifestation of the human capacity for value-rational action, and as such is characterized by the degree to which the pattern of conduct is organized according to the application of rational calculation to the furtherance of definite goals or values. Lutheranism and Calvinism, for Weber, are paradigmatic examples, as are Buddhism and Hinduism. Friendship, whenever it involves adherence to such values as loyalty, compassion, and mutual assistance, also constitutes a substantive rationality.

Formal Rationality (also called instrumental or means/end rationality)

This type of rationality exists as a manifestation of the human capacity for instrumentally rational action, and as such is characterized by the degree to which the pattern of conduct is organized according to the rational calculation of means and ends. The paradigmatic examples for Weber are modern capitalism and bureaucracy. Both are characterized by the following four features: (a) Calculability; (b) Efficiency; (c) Predictability; and related to predictability, and (d) Control of Uncertainty. Machine

technology epitomizes these four principles and thus tends to replace human technology whenever possible. Also, rules, laws, and regulation universally applied "without regard to persons" are concrete manifestations of formal rationality.

1. Calculability (Counting and Quantifying)

Results can be calculated or estimated by adopting assumptions and considering the methods by which results will be achieved.

2. Efficiency

People have various ends, and attempts are made to find the best means to achieving these ends.

3. Predictability

Things operate in the same way from time to time and place to place. This is because people are subject to certain rules and regulations of certain structures and authority. Established procedures and ends along with this suggest that the results of social action can often be predicted, perhaps not precisely, but certainly with probabilities attached to the outcomes.

4. Control over Uncertainties

Though this can never be perfect, rules and methods are adopted to deal with many possible contingencies. Rules are set up not so much to deal with specific, but attempt to be generic, dealing with a variety of possibilities. These allow outcomes to be constrained within certain limits thereby reducing uncertainties about outcomes, especially, the uncertainties posed by human error.

5. Non-Human Technology

Technologies such as tools, machinery, and information technologies make more reliable predictions. That is, these technologies are constructed with certain purposes, and so, as long as they assist in achieving the desired ends, the results are generally predictable.

We can say that rationalization is the process by which rational action becomes predominant in the social action of individuals and rationality becomes predominant in the patterns of action, which are institutionalized by groups, organizations, and other collectivities. Weber was particularly interested in the rise of instrumentally rational action

among individuals and formal rationality in organizations in the modern west.

Why it is Fundamental in Society

Weber's Emphasis on Capitalism

Capitalism is 'rational' in the sense that it bases decisions on calculations of likely return. This presupposes some degree of predictability, in particular a predictable legal system. Capitalism also supposes that there are free markets for products and for labor and other factors of production, and that these markets are wide – given wide markets and some predictability innovation in search of profit gets under way.

Among the social preconditions of the original development of capitalism are a predictable legal system, and behind that a state bureaucracy; and (to establish wide markets) a habit of treating all people as having rights and as possible partners in law-regulated commercial dealings. In some societies a strong distinction is made between insiders and outsiders: one does not drive commercial bargains with insiders, and one does not respect the rights of outsiders much. Behind the legal order is the notion of universal citizenship – that residents are mostly citizens with rights, not subjects at the ruler's discretion. The legal order also requires a bureaucratic state to enforce the law – professional administrators and jurists. The bureaucratic state arose partly by natural selection, because such states can supply larger armies with better weapons. (Weber notes the analogy between capitalism, in which workers do not own the means of production, bureaucracies in which bureaucrats do not own their offices or means of administration, and armies using centrally supplied and team-operated weapons.)

Rational Legal System

Predictability is discussed as one of the characteristics of 'rule of law.' For an ideal nation, arbitrary government power needs to be checked, rights need to be protected, and substantive justice must be preserved in the long term. Thus, procedural justice in rule of law is emphasized

A formally rational legal system, according to the western legal tradition, also results in justice that we desire. This kind of justice is called formal or procedural justice, which "connotes the method of achieving justice by consistently applying rules and procedures that shape the institutional order of a legal system." More specifically, formal or procedural justice consists of several principles:

1. The legal system must have a complete set of decisional and procedural rules that are fair.
2. The fair rules of decision and procedure must also be pre-fixed and pre-

announced.

3. These decisional and procedural rules must be transparently applied.
4. These decisional and procedural rules must be consistently applied.

When these four conditions are satisfied, western judges and lawyers will say that they have achieved a certain kind of justice, which is called formal or procedural justice

More specifically, formal or procedural justice has at least three values.

1. Without fair and just procedure, there is no guarantee that the end result will be just (that is, substantive justice cannot be guaranteed). As such, procedural justice is seen as a necessary condition for substantive justice. This is why the western legal tradition places a much higher value on formal or procedural justice than its East Asian counterpart, which puts more emphasis on substantive justice.
2. Formal or procedural justice is a condition for constraining government arbitrariness and protecting individual rights. When the government is required to follow pre-fixed, transparent and fair procedures before it can deprive a person's life, liberty or property, the danger of government arbitrariness is substantially reduced and the prospect for wrongful deprivations of individual rights is also significantly diminished.
3. As Max Weber points out, procedural justice results in consistency, predictability and calculability that are desirable aspects of economic and social life

Applications

Society is built on certain beliefs and faith among the society's members. As interaction between the members premise on these beliefs and faith, and as such interactions are the elements that constitute a well functioning society, certain faith and interactions need to be protected in order to ensure that the society functions properly. The question of protecting such faith and interests is the question of ensuring predictability, and the strongest means to ensure this, is by law.

In the same line of argument, nowadays, different social groups have different interests and make various kinds of social mutual relationship to maximize their own interest. Along this line, we can think about the new definition of "Bourgeoisie" in this era. If the strongest means to ensure common beliefs and faiths is law, and law is closely connected with member's interest, Bourgeoisie can be explained as "a class or group of people who are more influential to the legislation."

Predictability allows people to trust the legal system and therefore, people act accordingly to it. This means they will abide by the law. Because the law affects the

people, they act by the legal statements and try not to infringe other's rights. Another thing is that predictability confines the behavior pattern of the government. As it is a principle of the constitution and other laws, it guides the government to act uniformly. So people will know exactly what to expect from the government. This means people can monitor government actions and point out wrongs, requesting correction.

CONCLUSION

1. In the history of democratic evolution the class that came up with the concept of predictability were the bourgeoisie. They succeeded in building a new state–nation, which was a republican country based on a constitution. Their constitution and other laws acknowledged their interests and natural rights as legal rights. Through legalism people could predict what were or were not their rights. Furthermore, Legalism supported the development of capitalism by providing a stable and predictable atmosphere; capitalism encouraged legalism because the bourgeoisie (capitalist class) were aware of their own need for other types of government structure.
2. Predictability is part of Max Weber's theory on rationalization. Rationalization as an ideal type and as an historical force appears in much of Weber's writings. He regards the development of rational forms to be one of the most important characteristics of the development of Western society and capitalism. Rationality consists of a set of social actions governed by reason or reasoning, calculation, and rational pursuit of one's interests. He especially stresses formal rationality which is characterized by (a) Calculability; (b) Efficiency; (c) Predictability; and related to predictability, and (d) Control of Uncertainty.
3. In understanding why predictability is fundamental in society, he emphasizes capitalism. He points out that the social preconditions of the original development of capitalism are a predictable legal system, and behind that a state bureaucracy; and (to establish wide markets) a habit of treating all people as having rights and as possible partners in law–regulated commercial dealings.
4. Predictability allows things to operate in the same way from time to time and place to place. This is because people are subject to certain rules and regulations of certain structures and authority. Established procedures and ends along with this suggest that the results of social action can often be predicted, perhaps not precisely, but certainly with probabilities attached to the outcomes. Therefore, predictability allows people to trust the legal system. People know what their rights are, which are again the reflection of their interests. Another thing is that predictability confines the

behavior pattern of the government. Thus, through predictable, rational legal systems they know that there is a certain consistency, predictability and calculability. Ultimately predictability allows rights to be guaranteed in a continuous way.