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Law & Social Theory Cram Notes

1st Edition



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1. INTRODUCTION

A. HOW TO USE CRAM NOTES

The Law & Social Theory Cram Notes are formatted into a step-by-step guide, which you can use as a checklist in your exams to ensure that every element of the exam question is answered. You may find the Table of Contents to be a quick and useful overview of the law to be applied.



2. MODERNITY

A. KEY CHARACTERISTICS OF MODERNITY

There are several key characteristics of Modernity:

1. Decline of the religious world-view
2. Decline of the traditional social order
3. Dominance of secular forms of political power and authority such as conceptions of sovereignty and legitimacy operating within defined territorial boundaries.
4. Dominance of a monetarised exchange economy
5. Two cultural characteristics:
 - a. Historically- the scientific revolution of the seventeenth century and the Enlightenment of the eighteenth century
 - b. Modern social analysis- construction of cultural and social identities as part of the formation process

Modernity is marked by two social institutions:

1. Capitalism and the economic systems of seventeenth Century England
2. Industrial Revolution of the eighteenth Century England

Modernity is further marked by several political phenomena:

1. Rise of democracy although there was a slow germination period
2. French revolution
3. Universal Franchise in England and America
4. French Declaration of Rights

B. THE ENLIGHTENMENT

The Enlightenment is one of the starting points for modernity and modern sociology.

The term modernity refers to the social order that emerged following the Enlightenment and is marked by:

- A particular reliance on rationalisation and reason.
- Its unprecedented dynamism, its dismissal or marginalising of tradition, and by its global consequences. Modernity's forward-looking thrust relates strongly to belief in progress and the power of human reason to produce freedom.
- The massive changes that took place at many levels from the mid-sixteenth century onwards, changes signalled by the shifts that uprooted agricultural workers and transformed them into mobile industrial urbanites. Modernity questions all conventional ways of doing things, substituting authorities of its own, based in science, economic growth, democracy or law. And it unsettles the self; if identity is given in tradition society, in modernity it is constructed.

There are different sociologies of modernity which shall be discussed in more detail below. However briefly:

- According to Durkheim, modern societies are more differentiated than pre-modern society. It is a world of detailed subdivision of tasks and responsibilities.
- Marx's sociology of modernity gives us a world of commodities, ruled by the restless pursuit of profit.
- Weber's vision of modernity is primarily based on rationalisation.



C. PROBLEMS OF ENLIGHTENMENT AND MODERNITY

There are several problems of Enlightenment and Modernity:

- Anomie, loss of direction and the sense of uprootedness from tradition due to the disappearance of boundary markers appear strongly in the work of Durkheim.
- Weber sites two problems:
 - Disenchantment posed by fragmentation of the holistic meaning to life
 - Iron cage thesis- the decreasing freedom and limitation of choice associated from being trapped in rationality

Modernity's ambivalence is later picked up by post modernists such as Foucault and feminism.

3. MARXISM

A. RELATIONSHIP BETWEEN MARXISM AND COMMUNISM

i. IS MARXISM RESPONSIBLE FOR COMMUNISM?

Many regard Marxism to be responsible for Communism. However, to determine the relationship between Marxism and Communism, it is important to remember firstly that Marx is above all a philosopher as opposed to being an economist or socialist. The relationship between Communism and Marxism is not an urgent question today as communism is no longer in fashion.

The burning question is not whether Marx is responsible for Communism or whether Communism is a distortion of Marxism. What is relevant is the study of what it is in Marxism that allows for so many different interpretations and for so many people to appeal to it.

ii. MARXISM AS AN EXAMPLE OF A MULTI-FACETED DOCTRINE

It is important to realise that Marx is not alone in its wide appeal, just as Nietzsche (1844-1900) is regarded as 'responsible' for Narcism. Similarly with Christianity, there are many important differences of interpretation and opinion of the Bible.

Therefore the conclusion to be drawn is that these doctrines are multi-faceted, allowing it to appeal in different ways to different people. Although it is hard to believe that Nietzsche mandates the concentration camps of Germany, there are still traces of Nietzsche to be found in Narcism.

The answer is that in all these theories and doctrines, there are ultimately deep tensions within these doctrines and there is no answer as to who is the true Marxist. One might ask why there are such inevitable tensions and the answer goes back to the initial statement that Marx is ultimately a philosopher and not an economist or sociologist.

B. PHILOSOPHICAL ANTHROPOLOGY AND TOTALIZATION

Philosophical anthropology and totalization is the attempt to explore the totality of the human condition. Marxism is a perfect example of this as it rationally argues everything and appeals to all with its totalizing philosophy. For example, from Marx's criticism of religion and his proto theory of Alienation, we can understand the criticism of law and modern society. Marxism is seductive by its explanatory power but yet dangerous by its general relevance, Marx's provocative writing should therefore be read carefully.



- In a communist society, labour can be regulated so that there is some democratic form of work allocation instead of market forces. Therefore instead of man being enslaved by the uncontrollable market forces, man will have the power to organise themselves so that he can perform different functions without specialising.

There are two problems with Marx's proposal:

- Firstly, he does not show how the allocation may be achieved in such a communist society.
- Secondly, it is argued that without specialisation, we would not know what we are capable of and thus making the allocation process even harder to achieve.

4. **ENGELS**

A. **ENGELS' POSITION**

"According to a materialist conception of history, the ultimately determining factor is the production and reproduction of real life (economics). Neither Marx nor I have ever asserted more than this. Hence if somebody twists this into saying that the economic factor is the only determining one, he transforms that proposition into a meaningless, abstract, absurd phrase. The economic situation is the basis, but the various elements of the superstructure... also exercise their influence..." B. Engels, *Letter to Joseph Bloch* (September 1890)

- Engels is trying to put forward a dialectic argument. Dialectic is the existence or action of opposing forces.
- Although Engels is trying to be dialectical, he is nevertheless putting a primary position on economic forces.
- Engels attempts to emphasise Marxist theory as dialectic (interrelated) however places special emphasis on economics.

B. **QUESTION OF LAW**

There were two main orthodox views on the question of law:

1. economic determinism of law: form and content of law is determined by economic processes
2. class instrumentalists of rules: law is determined by interests of the ruling class

Engels wanted to combat the orthodox views and find a place for law in a system which was more than a reflex of economic systems or class interests.

In his letter to Conrad Schmidt in October 1890 he wrote:

"Similarly with law. As soon as the new division of labour which creates professional lawyers become necessary, another new and independent sphere is opened up which, for all its general dependence on production and trade, has also a specific capacity for reacting upon these spheres."

- This dialectical view later became known as a relative autonomy theory of law.
 - The relative autonomy theory of law is that law is only relatively autonomous but is not completely autonomous.

"...the code of law is blunt, unmitigated unadulterated expression of the domination of a class- this in itself would offend the 'conception of right'."

- To the extent that law clearly favours the rights of one class over another, this offends the conception of right that all classes should be treated equally.



"The reflection of economic relations in the form of legal principles is likewise bound to be inverted: it goes on without the person who is acting being conscious of it; the jurist imagines he is operating with a priori propositions, whereas they are really *only* economic reflections; everything is therefore upside down."

- Engels' use of the word "only" is misleading as his point is that law is *ultimately* a reflection of economics.
- The question is therefore is law a mere a product of economic phenomena or does it have a character (structure, logic or integrity) that precludes it from being explicable in such terms? According to Engels, it seems the answer is likely to be no.

C. ENGELS' FUNCTIONALIST THEORY OF LAW

In Engels' letter to Franz Mehring in July 1893 he wrote:

"That is to say, in the first instance we all laid, and were bound to lay, the main emphasis on the derivation of political, juridical and other ideological notions, and of actions arising through the medium of these notions, from basic economic facts."

- Engels is saying that law has the shape it has as it is functional for economics. Law helps economics and is functionally important for economics. Therefore when a functional view is adopted, one is also adopting a dialectic view as one is saying that there is a causal effect.
- There is still a problem that law is serving economics.

In Engels' 1877 work *Anti-Duhring* he wrote:

"The state was the official representative of society as a whole, its embodiment in a visible corporation; but it was this only in so far as it was the state of that class which itself, in its epoch, represented society as a whole...As soon as there is no longer any class of society to be held in subjection; as soon as, along with class domination and the struggle for individual existence based on the former anarchy of production, the collisions and excesses arising from these have also been abolished, there is nothing more to be repressed which would make a special repressive force, a state, necessary."

- As soon as the proletariat takeover the state, there is no longer a class to repress, the state is therefore no longer necessary. This poor reasoning is an example of crude class instrumentalist.

"The government of persons is replaced by the administration of things and the direction of the processes of production. The state is not abolished, it withers away."

- The idea of Law and State disappearing can be attributed to Marx, but Marx gives much more sophisticated reasons such as de-alienation instead of the crude class instrumentalist reasons given here. It introduces the idea that in Communism, there is no more reason for a State or Law because in a class instrumentalist reading, there is no more class to repress.
- Ultimately Pashukanis gives a much more sophisticated reasoning than that, a reasoning that is much closer to Marx's reasoning.

D. MARX AND THE ISSUE OF TRANSITION FROM CAPITALISM TO COMMUNISM

In Marx's preface to *the Critique of the Gotha Programme*, he deals with the issue of transition from capitalism to communism. Marx describes it as a Communist society 'just as it emerges from capitalist society'. He writes:

"The question arises: What transformation will the state undergo in a communist society...Between capitalist and communist society lies a period of revolutionary



transformation from one to the other. There is a corresponding period of transition in the political sphere and in this period the state can only take the form of a revolutionary dictatorship of the proletariat.”

- There will ultimately be an intermediary period of socialism which marks the first phase of communism.
- Socialism is that period where the proletariat takes over the state, means of production and becomes the dominant class. It will be a period of the dictatorship of the proletariat.
- In 1917, the dictatorship of the proletariat (or over the proletariat) was established; it was not communism as the state still existed. By 1930, it was clear that communism was still a long way off. Instead, it was socialism in the sense Marx used the word, it was not communism.

“Such defects are inevitable in the first phase of communist society, given the specific form in which it has emerged after prolonged birth-pangs from capitalist society...in a more advanced phase (communism proper) there’s going to be no state and no law but there will be some form of normative order.

- Therefore in the transition period of socialism, there will be law and rights still.
- It is only after the period of socialism that ‘communism proper’ may emerge. In this final stage of ‘communism proper’ there will be no state and no law.
- Law will be replaced by ‘some form of normative order’ but Marx does not expand on what this is.

E. MARX AND THE RULE OF LAW

The principal aim of Marxist jurisprudence is to criticise the centrepiece of liberal political philosophy, the ideal called the Rule of Law. No amount of casuistry can conceal the point that the ideology of the Rule of Law is behind the concern for legality and liberty.

The principle of the rule of law as understood in our capitalist society as one of formal justice and equality. The rule of law has three important aspects: government by law, government under law, and rights. The rule of law is the notion that in our society, everyone has equal rights and is treated equally. However, the right to equality is formal, but not substantial. Although the capitalist society seemingly allows everyone to have to right create wealth for themselves or to acquire personal property, there is no substantial equality as there is not equal access to the right. In contrast substantial equality would be concerned with equal access to the right instead of the potential to access the right.

Marx’s preface to *the Critique of the Gotha Programme* also deals with the issue of the rule of law.

“ In a more advanced phase...only then can society wholly cross the horizon of bourgeois right and inscribe on its banner: From each according to his abilities, to each according to his needs.”

- Marx is critical of the bourgeois notion of formal justice and equality. However even in the transitional period of socialism, there will only be formal equality and not substantial equality.
- It is only in the more advanced phase of Communis that the notion of formal equality disappears. Substantial equality, unlike formal equality caters to each ‘according to his needs’ and thus address the issue of access to the right.
- Therefore in communism, one’s right is based upon need and not the legal right to things.
- However Marx does not explain why or how this may be achieved in communism.



5. PASHUKANIS

Pashukanis develops a fundamental theory of law, developing from the fundamentals of Marx's theories. In particular, Pashukanis relies on Marx's economic theory (*Das Kapital*) and his analysis of economics exchange and commodity of economics exchange. Importantly, Pashukanis develops an economic based theory of law.

A. MODERN SOCIETIES

Modern societies are largely peaceful societies: but it is still rife with class conflict between people of unequal material wealth and social power. But these conflicts are not manifested directly in social conflicts because social conflicts are objectively concealed in ordinary relations of market exchange. According to Marx, the normal operations of the market concealed the processes of political exploitation which used to be transparent. Therefore exploitation has retreated behind the opaque veil of commodity exchange.

B. PREMISES OF EXCHANGE BECOME THE PREMISES OF ALL SOCIAL RELATIONS

In Pashukanis' *The General Theory of Law and Marxism*, he states that "the natural premises of exchange become the natural premises on every human relationship and stamp their imprint upon them."

- This may be understood as meaning that the logic of exchange permeates the logic of all social relations and everything exhibits the logic of the commodity.
- The logic of exchange however is not a straight causal theory but is instead a complex relationship.
- Pashukanis considers how the logic of the commodity permeates law and develops the commodity exchange theory of law.

C. COMMODITY EXCHANGE THEORY OF LAW

In Pashukanis' *The General Theory of Law and Marxism*, he further discusses Marx's theory of commodity. Marx's theory of commodity is that commodities only come into existence with market exchange. Therefore, nothing is naturally a commodity. It is only when people want to exchange an object that it becomes a commodity. Commodities are not products of Capitalism but products of market exchange. Therefore an object gains its value when it is exchanged in the market and its value is not an intrinsic value but instead fluctuates with demand and supply.

Pashukanis wanted to show how law is influenced by economics by using Marx's commodity theory:

"Man is transformed into a legal subject in the same way a natural product is transformed into a commodity with its mysterious concept of value...Therefore, simultaneously with the product of labour assuming the quality of a commodity and becoming the bearer of value, man assumes the quality of a legal subject and becomes the bearer of legal rights.'

- Pashukanis is using the commodity theory to explain that man as a legal subject is a creation of our society, just as products as commodities are a creation of the market exchange. Furthermore, man as bearer of legal rights is likened to the market value of commodities.

'In the same way that the natural multiplicity of the useful qualities of the useful qualities of a product is in a commodity a simple mask of its value, while the concrete species of human labour are dissolved into abstract labour as the creator of value- so the concrete multiplicity of man's relationship to an object appears as the abstract will of the owner, while all the



concrete peculiarities, which distinguish one representative of the species Homo sapiens from another, are dissolved into the abstraction of man in general as a legal subject...Similarly, real conditions are necessary for man to be transformed from a zoological being into an abstract and impersonal subject of law, into a juridic person."

- Here, Pashukanis explains that specific conditions have led us to give legal rights to human beings and not animals. Therefore, human rights are not intrinsic but are instead given when one is born into the world. Human rights are thus a social condition.
- The legal subject is thus an abstraction which captures people in different contexts.
- Pashukanis's commodity theory of law is that the actual logic of economics actually generates the logic of law and permeates it. However this is completely invisible and concealed behind the notion of legal rights.

D. LAW AND STATE WILL WITHER AWAY IN COMMUNIST SOCIETY

Marx discussed the withering away of law and state in communism since law and state are instruments of class repression. However, this class instrumentalist argument is considered to be too crude. Pashukanis' *The General Theory of Law and Marxism* offers a more comprehensive discussion on the withering away of law and state in communism:

"The withering away of the categories of bourgeois law does not signify their replacement by new categories of communist law. Similarly the withering away of the categories of value, capital, profit etc, during the transition to socialism, will not mean the appearance of new proletarian categories of value, capital, rent etc....The withering away of categories of bourgeois law will under these conditions signify the withering away of law in general, i.e. the gradual disappearance of the juridic element in human relationships."

- The 'juridic element' is the process of abstraction from human being to legal subject as discussed earlier. Therefore for Pashukanis, the withering away of law is really about the withering away of the juridic element of human beings. When the juridic element has been withered away and people are not completely abstracted down, law will apply in its pure sense.
- Just as the logic of commodity will disappear without market exchange and religion will wither away when people are free, there will be no juridic person when the logic of the commodity exchange disappears.
- This is achieved because the premises of law will no longer exist in communism. When the premises of law no longer exist, there will be no market exchange. And without market exchange there will be no logic of the commodity. Consequently, there will be no law or juridic person because law is permeated by the logic of the commodity.

E. ADMINISTRATIVE REGULATION VS. LEGAL REGULATION

i. LEGAL REGULATION

In the common law system of legal regulation, there are three types of law:

- Statutes
- Case law
- Delegated legislation/ regulations

The common law system of legal regulation upholds the rule of law and protects private rights over public rights. For example if Sydney were to build another airport, there will be large compensation costs involved since the private legal rights cannot be sacrificed.



correspond to it...The most accepted is that which divides law into public and private; the first is for the regulation of the relations of the individual to the State, the second, of individuals among themselves...All law is private in the sense that it is always about individuals who are present and acting; but so, too, all law is public in the sense that it is a social function and that all individuals are, whatever their varying titles, functionaries of society."

- criminal law (penal/repressive) is associated with suffering inflicted on the agent, enforcing a consensus and returning things to the consensus (mechanical solidarity)
- civil law (restitutive) is concerned with maintaining the harmonious interconnections of differentiated functions. For example to make sure that the different parts of the economic system functions well together. It is a way of maintaining an equilibrium.
 - Examples are matrimonial law and discrimination law which are concerned with maintaining harmony between differentiated parts.

"We know under what external forms these two types of solidarity are symbolized, what the body of juridical rules which corresponds to each of them is. Consequently, in order to recognise their respective importance in a given social type, it is enough to compare the respective extent of the two types of law which express them, since law always varies as the social relations which it governs."

- If a society has more civil law than criminal, it is more organic.
- If a society has more criminal law than civil, it is more mechanical.
- Thus according to Durkheim one can get a quick insight into whether a society is more organic or more mechanical simply by looking at the legal system.

L. DIVISION OF LABOUR AS A SOURCE OF SOLIDARITY

In *The Division of Labor in Society*, Durkheim wrote that "at the same time that specialisation becomes greater, revolts become more frequent"

- A complex society cannot have integration around a collective consciousness or strong normative consensus. Only a small tightly knit society can maintain a normative consensus.
- With increasing social complexity, the problem is how to make sure that the differentiated parts re-integrate and maintained in harmony?

However Durkheim is not worried about the loss of collective value. Durkheim believes that if society is not integrated through collective consciousness, there will be another form of integration, for example through interdependence. Durkheim offers the division of labour as a potential source of organic solidarity because the division of labour is able to integrate through interdependence. However Durkheim is critical of the state of the anomic state of the division of labour.

M. ANOMIC DIVISION OF LABOUR

In order to appreciate Durkheim's argument that the division of labour is anomic, one must study the historical background. During the middle of the 19th century, England adopted a laissez-fair approach to the market with minimal regulation. There was virtually nothing that regulated capitalism and all the externalities of capitalism were thrust beyond the economic system onto the social system. The economic system itself would melt down every 10 years leading to the gradual adoption of regulation. Nevertheless the boom-bust cycle continued.

Durkheim states in *The Division of Labor in Society*:

"For organic solidarity to exist, it is not enough that there be a system of organs necessary to one another, which in a general way feel solidary, but it is also necessary that the way in which they should come together be predetermined...Because they misunderstood this aspect of the



phenomena, certain moralists have claimed that the division of labor does not produce true solidarity...They (moralist) have not perceived the slow work of consolidation, the network of links which little by little have been woven and which makes something permanent of organic solidarity..."

- Durkheim is of the view that there is currently no mechanism to maintain the high level of differentiation and division of labour. Thus there will be an anomy.
- In order for the division of labour to not be anomic and produce true solidarity; there must be a mechanism in place in advance to make sure that all the differentiated parts successfully relate to each other.
- Durkheim suggests that law and regulation has the potential to bring about this equilibrium although this process must happen slowly for the law to crystallise.

However there is an anomy because the regulations are inadequate. Durkheim laments that:

'in all the cases described above, this regulation does not exist, or is not in accord with the degree of development of the division of labour. Today there are no longer any rules which fix the number of enterprises...What is clear is that this lack of regulation does not permit a regular harmony of functions. The economists claim, it is true, that this harmony is self-established...But in every case, this is established only after rupture of equilibrium and more or less prolonged disturbances. Moreover, these disturbances are naturally as much more frequent as functions are more specialised, for the more complex an organisation is, the more is the need of extensive regulation felt.'

- Thus Durkheim suggests that the division of labour will continue to be an anomy if there continues to be a laissez fair approach with a lack of appropriate regulation.
- Durkheim believes that there is a present state of judicial indetermination.

N. JURIDICAL INDETERMINATION

Durkheim states in *The Division of Labor in Society* that "The relations of capital and labour have up to the present remained in the same state of juridical indetermination... If the division of labor does not produce solidarity in all these case, it is because the relations of the organs are not regulated, because they are in a state of anomy"

- There is a lack of regulation of differentiated part. These parts need regulation in order to be in harmony with each other.
- Law is the mechanism that is crucial in understanding anomy and it is the law that must closely follow and make sure that changes in the society (such as the increasing differentiation of labour) functions properly. However if one uses law to force change, it is not possible.
- The deeper issue is that anomy is not about law, it is about the fundamental changes which law is meant to properly deal with. Thus law or the lack of it can exacerbate a problem but law cannot cause it. Anomy is really a disjuncture between structure and norm of society.
- Therefore, anomy (social conflict) may be understood as the result of law not adapting to social change.

O. FORCED DIVISION OF LABOUR VS SPONTANEOUS DIVISION OF LABOUR

Durkheim also considers differentiates between forced division of labour and spontaneous division of labour in *The Division of Labor in Society*:

- Durkheim defines the spontaneous division of labour as the state when people are able to do what they are well suited to do.
- Forced division of labour is defined as the state when people are doing what they are not well suited to do.



- In modern society, Durkheim observes that people are not fulfilling their capacities due to the forced division of labour. There are various external impediments which stand in the way of people fulfilling their capacities. These external impediments include class, education, inheritance etc.
 - Durkheim believes that these external impediments are to be done away with and uses law to do away with all these impediments. In this respect, Durkheim does not go as far as Marx who proposes that society should provide to “each according to his needs”.

P. CORPORATION AS INTERMEDIARIES

Durkheim has a pre-occupation with modern society. In particular:

- How modern society handles the problems of modern society
- Whereas earlier societies integrated around strong normative consensus such as morality and religion, modern society lacks an overarching set of normative beliefs. For example, we might be bound together by political systems and independence but there is a lack of normative beliefs. In this sense, modern society is functionally bound together only.
- How is highly pluralist societies normatively bound together as opposed to functionally bound together?

In answering these questions, Durkheim looks at the way people can be integrated around corporations with each corporation embodying a particular ethic. Durkheim’s answer is that normative integration in the modern society may be achieved through representations at the political level through the states. However, the states is a distant entity, it is not convincing that it will provide the means to integration for individuals. Therefore, Durkheim believes that intermediaries are needed provide represent individuals and proposes corporations as the intermediaries.

Corporations as the intermediaries

- It is through the intermediaries of corporations that will promote integration.
- The modern conception of intermediaries (corporations) is civil societies such as the bar association and other trade unions. These are the entry points to the states.
- Therefore, people feel integrated normatively through their association with particular corporate group(s).

7. MAX WEBER

A. RATIONALISATION OF MODERN SOCIETY

Weber views the modern society as highly rationalised. His theory of rationalisation is both within western society and cross-cultural. Weber considers how law is rationalised and develops a theory of rationalisation on many dimensions including:

- societal rationalisation
 - economy/ state
 - politics
 - law
- cultural rationalisation
 - law as knowledge
- personality rationalisation
 - inner personalities



B. FOUR WAYS IN WHICH PEOPLE ACT SOCIALLY

Weber argues that there are four ways in which people act socially.

Non-rational:

1. effectual (emotion and feeling/affection)
2. traditional action such as going to church because it is a tradition but apart from that there are really no other reasons to attend.

Rational:

3. Value-rational action- if action furthers that value such as going to church because you believe in Christ.
 - a. However note that values one pursues are not rational. Values cannot be rationally proven or not. They are chosen by the people. It is the action that supports the value that is value-rational.
4. Purposive rational action- one which takes most effective means to achieve goals/ends and these means can be objectively determined.
 - a. Purposive rational action is the basis for economics. Society through capitalism is moving away from effectual, traditional and value rational action but moving towards purposive rational action.

C. CAPITALISM AND RATIONALITY

In Braubaker's essay on Weber, *The Limits of Rationality*, he discusses Weber's thoughts on rationality:

- Economy is the most dominant feature in capitalist society.
- Capitalism is an example of societal rationalisation.
- Capitalism is not substantively rational because substantive rational is value-rational action.
- Note that Weber is not making a normative judgment as to whether capitalism itself is rational. Instead Weber is of the view that capitalism is formally rational only.

What does it mean to say that capitalism is rationalised?

- Rational simply means free of non-rational impediments.
- Non-rational impediments are:
 - (1) emotion and feeling/ affection
 - (2) tradition/ history
- Therefore capitalism more than any other system tends to free itself of feeling based action and traditional based action. Capitalism awards these two actions.
- The high degree of calculability, impersonality and objectivity makes capitalism rational. Although it is not perfectly so, it is more so than other systems.

D. WHAT IS CAPITALISM BASED UPON?

For Weber, capitalism and markets are based upon:

- purposive rational action (self-interest and calculability)
- parameters which allows purposively rational action such as the use of money as a central medium of capitalism
- development of capital accounting which enables us to know the economic position at any point
- Ownership and control of assets
- Free labour (both worker and employer) therefore allowing workers to move to places where they are needed.
- Freedom of contract of worker.



- Scientific principles of management- such as ways to specialise and maximise efficiency.

All these point to the fact that capitalism is highly geared to purposive action and insulated from the other actions.

E. BUREAUCRACY

Bureaucracy for Weber is a form of governance. It's not just about the States and Government but is instead about whenever there are complex tasks to resolve. Bureaucracy is a way of resolving these tasks.

Beauracracy arose:

- In the west as a way of dealing in a calculable effective manner the organisation of tasks.
- Bureaucracy arise in public and private spheres- they operate exclusively purposive rational logic as they try to achieve those goals and are highly objective. They deal with people not as people, but as a number.
- When society reaches a certain level of bureaucracy and complexity, society has to have this sort of purposive rational action; there is no alternative ways. This is unlike the ideology of Marx.

As we see now, this sort of purposive rational action underpins the economy, the politics and our soul. This is the spirit of capitalism.



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