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Essay

Max Weber, Talcott Parsons and the Sociology of Legal Reform: A Reassessment with Implications for Law and Development

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INTRODUCTION

This essay examines the influence of Weberian thought on a particular strain of policy discourse on law and development that emerged during the mid-twentieth century in the United States. In particular, this article focuses on the role of Weber in the work of Talcott Parsons, who developed Structural-Functionalist sociology. Parsons' work became the foundation for a generation of sociologists, and laid part of the methodological groundwork for contemporary discourse on law and development.

Over the past few decades in the social sciences, a new wave of Weberian scholarship (the "New Weberians") has arisen that seeks to repair some of the distortions in Parsons' earlier reception of Weber.¹ An early and prominent example of this alterna-

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1. See, e.g., Peter Lassman, *Power, Politics and Legitimation*, in CAMBRIDGE

tive Weberianism arose from the work of three sociologists: Jere Cohen, Lawrence Hazelrigg, and Whitney Pope ("Cohen et al."), who stridently critiqued the "Parsonized" understanding of Weber.² Cohen et al. took Parsons to task for downplaying Weber's understanding of power relations in society, as well as Weber's acknowledgment of the importance of material dynamics, in favor of a reading that coincided with classical liberalism's relative neutrality with respect to the role of government, and in favor of an overweening emphasis on "ideals" as a determinant of economic growth.³ A later strain of alternative Weberian analysis, unlike Cohen et al., accepts the methodological focus on ideals, but seeks to situate the idealist analysis within an appreciation of power relations. This second strain of analysis, reflected for example in the work of Kieran Allen, Sven Eliaeson, Nicholas Gane, and Peter Lassman, inherits a sensibility from the line of critical theorists beginning with the Frankfurt school.

This article seeks to apply these insights to a legal analysis of Weber. In doing so, this article follows and seeks to merge two trails established by two prior works of legal scholarship: David Trubek's *Max Weber on Law and Capitalism*,⁴ and Duncan Kennedy's *The Disenchantment of Logically Formal Rationality, or Max Weber's Sociology in the Genealogy of the Contemporary Mode of Western Legal Thought*.⁵ Trubek's article, written in 1972, explains Weber as an intellectual precursor of contemporary law and development theory; written ahead of the bulk of New Weberian scholarship, it anticipates and engages a critical re-reading of Weber.⁶ Kennedy's article, written in 2004,

COMPANION TO WEBER 83, 86 (Stephen Turner ed., 2000).

One obstacle to understanding is the peculiar reception history of Weber's work. Much of post-Second World War social science has worked with a rather simplified and misleading account of Weber's intentions, and often, until very recently, as a result of the incomplete character of translation, with a fragmentary knowledge of his work. Consequently, Weber's central concepts have frequently been assimilated to the language of the modern social sciences in an uncritical manner.

Id.

2. Jere Cohen, Lawrence Hazelrigg & Whitney Pope, *Deparsonizing Weber: A Critique of Parsons' Interpretation of Weber's Sociology*, 40 AM. SOC. REV. 229, 229 (1975) [hereinafter Cohen et al.].

3. *See id.*

4. David M. Trubek, *Max Weber on Law and the Rise of Capitalism*, 1972 WIS. L. REV. 720, 720 (1972).

5. Duncan Kennedy, *The Disenchantment of Logically Formal Rationality, or Max Weber's Sociology of Law in the Genealogy of the Contemporary Mode of Western Legal Thought*, 55 HASTINGS L.J. 1031, 1031 (2004).

6. Trubek, *supra* note 4, at 737 n.31.

dives more squarely into the New Weberian project in the humanities and social sciences of critically reassessing the reception of Weberian theory.⁷ However, because it was written as a general exposition of Weber's role in contemporary legal thought, it does not apply itself to the *problematique* of law and development. Inspired by both works, the objective of this article is to understand how a critical re-reading of Weber might impact the particular field of law and development.

I. WEBER'S CENTRAL INSIGHTS

Weber's most influential analyses relating to the role of governance and growth are: (1) the analysis, in Part I of his *Economy and Society*, of three "ideal types" of rule—traditional, charismatic, and *rationalen*, with *rationalen* being the type of rule characteristic of modern Western society;⁸ (2) the analysis, in *The Protestant Ethic and the Spirit of Capitalism*, of the way in which religious values supported the development of capitalistic practices in Western Europe, through the association of religious virtue with capitalistic practices such as saving, investment, and profit, and as a comparison with certain other societies, such as China and India, that attained significant levels of technology but did not undergo industrialization;⁹ and (3) the rise of bureaucracy as the expression of both the "disenchantment" of modern society inherent in its drive towards rationalization, and its "reenchantment" through the establishment and inculcation of relationships between groups vying for power.¹⁰

A. THEORETICAL INSIGHT #1: "IDEAL TYPES" OF GOVERNANCE

While Weber's work was ultimately deemed a cornerstone of sociology, he was in fact trained as an economist; therefore, his work often investigated the social dimensions of economic activity.¹¹ In his historical and comparative sociology, Weber sought

7. See generally Kennedy, *supra* note 5.

8. 1 MAX WEBER, *ECONOMY AND SOCIETY* (G. Roth & R. Wittich eds., Ephraim Fischhoff et al. trans., 1968) (1956) [hereinafter *ECONOMY AND SOCIETY*].

9. See generally MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Talcott Parsons trans., 2nd Impression 1948) (1904) [hereinafter *PROTESTANT ETHIC*].

10. See *infra* notes 75–86 and accompanying text.

11. Richard Swedberg, *Max Weber as an Economist and as a Sociologist: Towards a Fuller Understanding of Weber's View of Economics*, 58 *AM. J. ECON. & SOC.* 561 (1999).

to explain why "the modern system of industrial (or 'bourgeois') capitalism emerged in Europe, but not other parts of the world . . . European law had unique features which made it more conducive to capitalism than were the legal systems of other civilizations."¹²

Weber employed a methodology of "ideal types" in his sociological history, seeking to identify and categorize societies on the basis of a heuristic framework. Though elements of each category were present in every society, Weber believed that such a framework would aid in understanding the distinctive qualities of particular societies as well as their relationship to each other. Particularly influential was Weber's framework of systems of governance¹³—what he called *Herrschaft*.

The starting point for this framework was the sense that modern Western governance was characterized by a commitment within its legal systems to the goal of "logically formal rationality." Per David Trubek's fine summary, legal thought is "*rational* to the extent that it relies on some justification that transcends the particular case, and is based on existing, unambiguous rules"; it is "*formal* to the extent that the criteria of decision are intrinsic to the legal system"; and it is "*logical* to the extent that rules or principles are consciously *constructed* by specialized modes of legal thought which rely on . . . systematization, and to the extent that decisions of specific cases are

12. Trubek, *supra* note 4, at 722. Trubek's discussion of Weber remains the authoritative treatment in the American legal academy of the Weberian understanding of the role of law in development. I discovered Trubek's work as a law student, and am indebted to him for showing me that such topics had been and could be successfully incorporated into one's career as a lawyer and legal scholar. Most of the citations that follow in this section refer to Trubek's essay, but Trubek in turn relied primarily on three sources: Max Rheinstein, *Introduction to MAX WEBER ON LAW IN ECONOMY AND SOCIETY* (Max Rheinstein ed., Edward Shils & Max Rheinstein trans., 1954); REINHARD BENDIX, *MAX WEBER: AN INTELLECTUAL PORTRAIT* 385-457 (1962); and Weber's essay, *Sociology of Law*, which appears in 2 *ECONOMY AND SOCIETY*, *supra* note 8, at 641-900. The advantage of Trubek's treatment is not only that it synthesizes these disparate sources on Weber's sociology of law, but also that it reorients them in a way readily accessible to a legal, as opposed to a sociological, disciplinary perspective.

13. In employing the term "governance" here, the objective is to use a term that in contemporary English can describe modes of socially authoritative decision making without necessarily interjecting an explicitly normative sense of whether they are politically valid or desirable. Thus the emerging literature on governance approaches the topic from a range of perspectives: the attempt to categorize and describe neutrally existing systems of governance; the critique of current systems; and the proposal of new systems of governance or improvements in current systems. Weber's own sense of *Herrschaft* has changed over time, and is one of the foci of recent re-readers. See *infra* Part II.C..

reached by processes of specialized deductive logic proceeding from previously established rules or principles."¹⁴

Logically formal rationality in the law aided the tendencies in European society towards capitalistic economic growth in two primary ways. First, it weakened the hold traditional ruling classes had on the levers of power, and as such allowed relatively autonomous groups—critically, capitalists and workers—to emerge.¹⁵ Second, it channeled the exercise of legal power into predictable processes and results, thus enabling market actors to rely on contract and property rights to structure their interactions and to achieve greater efficiency therein.¹⁶

Written in the early twentieth century, Weber's concepts of logically formal rationality and the rise of capitalism will seem eminently familiar to legal scholars today: they have become touchstones in the field of law and economics. Freedom from interference in legal outcomes by "irrational" sources, whether they be status-based pressure (what some might describe as a variant of "corruption") or equitable considerations, has been argued to be central to the ability of market actors to operate efficiently. Predictability, flowing in part from this freedom from interference, but also from the commitment to formal rationality, has also been argued to be crucial to efficient market activity. Thus, according to Weber, "the rationalization and systematization of the law in general and . . . the increasing calculability of the functioning of the legal process in particular, constituted one of the most important conditions for the existence of . . . capitalistic enterprise, which cannot do without legal security."¹⁷

Logically formal rationality, as a central characteristic of modern Western governance, could be contrasted against modes of governance visible in other societies. The "traditional" mode based its authority on claims to customary or familial status: an "established belief in the sanctity of immemorial traditions and the legitimacy of those exercising authority under them."¹⁸ The "charismatic" mode, which based its authority on the claims of a

14. Trubek, *supra* note 4, at 730. As Trubek pointed out, the English common law system constituted an important counterfactual example for Weber's hypothesis. See *id.* at 746–48.

15. *Id.* at 744.

16. *Id.* at 742–43.

17. ECONOMY AND SOCIETY, *supra* note 8, at 883. For a more detailed working out of the relationship, see generally David Trubek, *Towards a Social Theory of Law: An Essay on the Study of Law and Politics in Economic Development*, 82 YALE L.J. 1 (1972).

18. ECONOMY AND SOCIETY, *supra* note 8, at 215.

particular ruler to a special authority based on that ruler's extraordinary qualities,¹⁹ bears a family resemblance to the "cult of personality."²⁰

B. THEORETICAL INSIGHT #2: PROTESTANT VALUES AND THE RISE OF CAPITALISM

Weber's essay *The Protestant Ethic and the Spirit of Capitalism* sets forth what is undoubtedly his most widely influential concept, reaching beyond the academy to everyday conventional wisdom. Written contemporaneously with a voyage to the United States,²¹ Weber sought to explain why, notwithstanding the general characteristic of "rationalism" in the law amongst European societies, capitalistic behavior had taken root more strongly in some as opposed to others within this group. In particular, Weber sought to explain the reasons why those "districts of highest economic development" were at the same time most amenable to Protestantism and "revolution in the Church."²²

Weber rejected the explanation that "the greater participation of Protestants in the positions of ownership and management in modern economic life may . . . be understood . . . simply as a result of the greater material wealth they have inherited."²³ He also rejected as simplistic the notion that success in capitalism flowed from a "secularization of all ideals through Protestantism."²⁴

Rather, Weber argued that the particular intensity of capitalistic behavior among some—especially Calvinist—

19. Weber defined charisma as:

[T]he quality of a personality, held to be out of the ordinary (and originally thought to have magical sources, both in the case of the prophets and men who are wise in healing or in law, the leaders of the hunt or heroes in war), on account of which the person is evaluated as being gifted with supernatural or superhuman or at least specifically out of the ordinary powers not accessible to everybody, and hence as a "leader."

Id. at 241.

20. *Id.* at 244 ("Within the sphere of its claims, charismatic authority repudiates the past The only basis of legitimacy for it is personal charisma").

21. Part One, setting out "The Problem" of greater economic development in Protestant societies and Luther's idea of the calling, was published in 1904 just before Weber's trip to the United States. Part Two, elaborating on the "Practical Ethics of the Ascetic Branches of Protestantism," was published shortly after his return. See JOHN PATRICK DIGGINS, *MAX WEBER: POLITICS AND THE SPIRIT OF TRAGEDY* 93 (1996). For an examination of Weber's views on America, see *id.*

22. PROTESTANT ETHIC, *supra* note 9, at 36.

23. *Id.* at 37.

24. *Id.* at 40.

denominations arose from an alliance of religious virtue, on the one hand, with economic gain, on the other.²⁵ Within this worldview, economic gain was expressive of religious virtue. As such, the pious individual was obligated by his religious calling to maximize his material gain.²⁶

This conceptual shift constituted what Weber called a “reversal” of the “natural relationship.”²⁷ “A man does not ‘by nature’ wish to earn more and more money, but simply to live as he is accustomed to live and to earn as much as is necessary for that purpose.”²⁸ The Protestant ethic of which Weber wrote, however, contradicted this “traditional manner of life” and “traditional rate of profit.”²⁹ In holding that “[e]conomic acquisition is no longer subordinated to man as the means for the satisfaction of his material needs,”³⁰ this shift laid the foundation instead for a “new spirit, the spirit of modern capitalism.”³¹

The Protestant ethic arose from a foundation of “rationalism” which characterized more generally the trend within European societies. This rationalism was filtered through Martin Luther’s conception of the calling, in which “the valuation of the fulfillment of duty in worldly affairs [w]as the highest form which the moral activity of the individual could assume”;³² that is, one’s religiosity manifested itself in engagement with, rather than “monastic” disassociation from, worldly activity.

According to Weber, Luther’s conception of the calling remained “traditionalistic The individual should remain . . . in the station . . . in which God had placed him, and should restrain his worldly activity within the limits imposed by his established station in life.”³³ The later Calvinist, Baptist and Methodist denominations within Protestantism would, however, press into new service the notion of worldly activity as indicative of grace: worldly activity now not only *manifested* one’s salvation, but actually *proved* one’s worthiness of being saved.³⁴

25. See *infra* notes 39–52 and accompanying text.

26. See *id.*

27. PROTESTANT ETHIC, *supra* note 9, at 53.

28. *Id.* at 60.

29. *Id.* at 67.

30. *Id.* at 53.

31. *Id.* at 68.

32. *Id.* at 80.

33. *Id.* at 85.

34. *Id.* at 121 (discussing the contribution by Calvinism of the “idea of the necessity of proving one’s faith in worldly activity”). Primary to the development of this approach, according to Weber, was the Calvinist idea of predestination. Although at first blush the idea that “some men and angels are predestinated unto ev-

These perspectives required the individual "methodically to supervise his own state of grace in his own conduct, and thus to penetrate it with asceticism."³⁵ The notion of asceticism as a prerequisite to salvation required an intense unification and "rationalization of conduct within this world . . . for the sake of the world beyond."³⁶

This drive to rationalize and unify one's conduct according to ascetic principles lent itself to, and meshed with, the rationalistic emphasis of capitalism on the measurement of production for the maximization of gain.³⁷ Thus, "[t]hat powerful tendency toward uniformity of life, which to-day so immensely aids the capitalistic interest in the standardization of production, had its ideal foundations in the repudiation of all idolatry of the flesh."³⁸

The "accumulation of capital" was aided not only by this emphasis on uniform and disciplined conduct, but also at least as importantly by the "ascetic compulsion to save" as a form of abnegation of worldly enjoyment and therefore an indication of grace.³⁹ "Waste" was the "deadliest of sins."⁴⁰ By contrast, "wealth" was harmful "only . . . as a temptation to idleness and sinful enjoyment of life."⁴¹ Hence, saving and investment indi-

erlasting life, and others foreordained to everlasting death," *id.* at 100 (quoting the Westminster Confession of 1647), would appear to render moot any possible contributions through one's conduct to salvation or damnation, the doctrine developed into two tenets which would place worldly conduct at the center of salvation. Weber explained:

On the one hand, it is held to be an absolute duty to consider oneself chosen, and to combat all doubts as temptations of the devil, since lack of self-confidence is the result of insufficient faith, hence of imperfect grace

On the other hand, in order to attain that self-confidence intense worldly activity is recommended as the most suitable means.

Id. at 111-12. Although Baptism and Methodism rejected the doctrine of predestination, Weber argued that they reached the same endpoint by alternative means: in the case of Methodism, the "aspiration to the higher life . . . served . . . as a sort of makeshift for the doctrine of predestination." *Id.* at 142-43. In the case of Baptist doctrine, the "immense importance . . . attributed by the . . . doctrine of salvation to the role of the conscience as the revelation of God to the individual gave . . . conduct in worldly callings . . . the greatest significance for the development of the spirit of capitalism." *Id.* at 150-51.

35. *Id.* at 153.

36. *Id.* at 154.

37. *Id.* at 157.

38. *Id.* at 169.

39. *Id.* at 172 ("The restraints which were imposed upon the consumption of wealth naturally served to increase it by making possible the productive investment of capital.").

40. *Id.*

41. *Id.*

cated both that virtuous industriousness had generated profit, and that virtuous piety had led to the refusal to enjoy that profit in the form of personal consumption. Saving and investment became principal indicatives of virtue, at the same time that they furthered capitalistic ends.

Finally, Protestant asceticism gave a particular moralized underpinning to the emergence of waged workforces employed by capitalist entrepreneurs. To begin with, according to Weber, ascetic literature generally condoned the "idea that faithful labour, even at low wages, on the part of those whom life offers no other opportunities, is highly pleasing to God" and ultimately "the only means of attaining certainty of grace."⁴² In addition, Protestantism "legalized the exploitation of this specific willingness to work, in that it also interpreted the employer's business activity as a calling."⁴³ The pressure imposed by employers upon workers to achieve increasing profits not only failed to offend, but actually furthered, this particular conception of virtue. Thus, both with respect to the capitalistic labor force and with respect to the capitalistic employer, Protestant asceticism provided a special motivation: "The emphasis on the ascetic importance of a fixed calling provided an ethical justification of the modern specialized division of labour. In a similar way the providential interpretation of profit-making justified the activities of the business man."⁴⁴

Surrounding the content of this analysis, Weber established several caveats. First, the integration of Protestant asceticism into capitalistic life was not anything intended by its authors: "the cultural consequences of the Reformation were to a great extent . . . unforeseen and even unwished-for results of the labours of the reformers. They were often far removed from or even in contradiction to all that they themselves thought to attain."⁴⁵

In a second caveat, Weber specifically discouraged an interpretation of his work that privileged religious or cultural values above other causal dynamics of societal change. On the contrary, in view of the "interdependent influences" of "material basis," "forms of social and political organization," and "ideas," it would be "foolish and doctrinaire" to assert that "capitalism . . . could only have arisen as the result of certain effects of the

42. *Id.* at 178.

43. *Id.*

44. *Id.* at 163.

45. *Id.* at 90.

[Protestant] Reformation."⁴⁶ Weber emphasized that it was "not [his] aim" to substitute for a one-sided materialistic an equally one-sided spiritualistic causal interpretation of . . . history."⁴⁷ Rather, the goal of *The Protestant Ethic and the Spirit of Capitalism* was much more modestly to "as far as possible clarify . . . what concrete aspects of our capitalistic culture can be traced to" religious movements, keeping in mind the interdependence of material, social, political and ideational "relationships."⁴⁸

As a final caveat, Weber argued that, although religious asceticism had helped to give rise to the "spirit of modern capitalism" through its emphasis on "rational conduct on the basis of the calling,"⁴⁹ the capitalistic system "no longer need[ed] the support of any religious forces."⁵⁰ To the contrary, "[s]ince asceticism undertook to remodel the world and to work out its ideals in the world, material goods have gained an increasing and finally an inexorable power over the lives of men as at no previous period in history."⁵¹ Weber's view of the societal end-point of this trajectory was indeed somewhat gloomy: religious asceticism ultimately gave rise to a dynamic that undermined its own importance in the production of wealth, so that all that remained was the latter. It was in the United States, which had inspired Weber to write *The Protestant Ethic*, that he saw this dynamic most clearly: "[i]n the field of its highest development, in the United States, the pursuit of wealth, stripped of its religious and ethical meaning, tends to become associated with purely mundane passions, which often actually give it the character of sport."⁵²

This last point is perhaps most surprising from the point of view of the popular reception of Weberian thought. *The Protestant Ethic and the Spirit of Capitalism* did not set out to celebrate either modernism or capitalism. Indeed, Weber ended his study on a decisively somber note:

No one knows . . . whether at the end of this tremendous development . . . there will be a great rebirth of old ideas and ideals, or . . . mechanized petrification, embellished with a sort of convulsive self-importance. For of the last stage of this cultural development, it might well be truly said: "Specialists without spirit, sensualists without

46. *Id.* at 91.

47. *Id.* at 183.

48. *Id.* at 91-92.

49. *Id.* at 181.

50. *Id.* at 72.

51. *Id.* at 181.

52. *Id.* at 182.

heart; this nullity imagines that it has attained a level of civilization never before achieved.”⁵³

C. THEORETICAL INSIGHT #3: THE “IRON CAGE” OF BUREAUCRACY

The “tragic vision of history”⁵⁴ suggested by Weber’s gloomy assessment of modern capitalism at the end of *The Protestant Ethic* is perhaps most expressly elaborated in Weber’s writings on the bureaucratization of modern government. Perhaps because Weber’s writings on bureaucracy remain somewhat less familiar than his “ideal types” and “protestant ethic” insights, they appear to form his most intricate observations (this set of insights also seems to prefigure many of the arguments of critical theorists writing later in the twentieth century).⁵⁵ This theoretical intricacy and relative unfamiliarity means that somewhat more attention will be given here to describing this particular theoretical insight.

1. *Bureaucracy, Rationalization and Disenchantment*

In *Economy and Society*, Weber identified bureaucratic government— “general rules, hierarchy, full-time officials, specialized training, and so on”⁵⁶—as a central feature of the process of

53. *Id.*

54. DIGGINS, *supra* note 21, at 10 (attributing to Weber a “vision of history, religion, society and politics” that “contains several dimensions of tragedy”). Diggins links this tragic sensibility with Weber’s appreciation for the writings of Nietzsche and Simmel, within German philosophy, and also in Weber’s knowledge of the “themes of Attic tragedy.” *See id.* Weber’s description also, in some ways, resembles Durkheim’s rendition of *anomie* in modern life. *See generally* EMILE DURKHEIM, *THE DIVISION OF LABOUR IN SOCIETY* (George Simpson trans., The Free Press 1947) (1893).

55. *See, e.g.*, NICHOLAS GANE, *MAX WEBER AND POSTMODERN THEORY: RATIONALIZATION VERSUS RE-ENCHANTMENT* 81–150 (2002) (demonstrating, *inter alia*, analytical similarities between Weber’s writings on rationalization and re-enchantment, and those of Foucault, Baudrillard and Lyotard); NILS GILMAN, *MANDARINS OF THE FUTURE* 55 (2004) (alluding to how the Frankfurt School employed “Weber’s (and Freud’s and Nietzsche’s) cultural pessimism about an administered world to criticize American mass culture”); Kennedy, *supra* note 5, at 1076 (“To a degree that has continually surprised me . . . Weber’s sociology of law, in conjunction with his general sociology of disenchantment, seems to lead to the conclusion that much critical legal studies work, in the skeptical vein, has been reinvention, or adaptation to view non-Weberian purposes, of Weberian wheels.”).

56. Jon Elster, *Rationality, Economy and Society*, in *CAMBRIDGE COMPANION TO WEBER*, *supra* note 1, at 21, 22.

societal rationalization:⁵⁷

From a purely technical point of view, a bureaucracy is capable of attaining the highest degree of efficiency, and is in this sense formally the most rational known means of exercising authority over human beings. It is superior to any other form in precision, in stability, in the stringency of its discipline, and in its reliability. It thus makes possible a particularly high degree of calculability of results for the heads of the organization and for those acting in relation to it. It is finally superior both in intensive efficiency and in the scope of its operations and is formally capable of application to all kinds of administrative tasks.⁵⁸

Bureaucratization not only grew out of the rationalization process, but constituted the only realistic way of administering the complex societal forms that accompany it.⁵⁹ Because "logically formal rationality" in society also accompanies the emergence of capitalism, it follows that bureaucratic administration is ultimately necessary for the preservation of the formally-rational legal system that allows capitalism to thrive.⁶⁰ Indeed, bureaucratization in governance was none other than an application of the same principles of rationality and technological progress that produced industrialization.⁶¹ Bureaucratic rationality also represents the triumph of "instrumental rationality"⁶² over "value rationality," the latter being Weber's term for "con-

57. *Id.*

This whole process of rationalization, in the factory as elsewhere, and especially in the bureaucratic state machine, parallels the centralization of the material implements of organization in the hands of the master. Thus, discipline inexorably takes over ever larger areas as the satisfaction of political and economic needs is increasingly rationalized.

ECONOMY AND SOCIETY, *supra* note 8 at 1156.

58. *Id.*

59. *Id.* at 224 ("The needs of mass administration make it today completely indispensable. The choice is only between bureaucracy and dilettantism in the field of administration.")

60. *Cf.* MAX WEBER, FROM MAX WEBER: ESSAYS IN SOCIOLOGY 212 (H. H. Gerth & C. Wright Mills eds. & trans., Oxford Univ. Press 1958) (1946) [hereinafter ESSAYS IN SOCIOLOGY] ("To this extent increasing bureaucratization is a function of the increasing possession of goods used for consumption, and of an increasingly sophisticated technique of fashioning external life—a technique which corresponds to the opportunities provided by such wealth.")

61. *Id.* at 214 ("The decisive reason for the advance of bureaucratic organization has always been its purely technical superiority over any other form of organization. The fully developed bureaucratic mechanism compares with other organizations exactly as does the machine with the nonmechanical modes of production.")

62. Elster, *supra* note 56, at 23 ("[T]he substantive rationality of legal and bureaucratic institutions [in Weber's thought] is a form of instrumental adaptation. Whereas individual value-rational action is oriented towards a specific behavior without regard for its consequences . . . substantively rational action is guided by its consequences.")

scious belief as a value for its own sake."⁶³

Bureaucratic governance, "guided by instrumental reason," therefore "lies in stark contrast to pre-modern forms" of governance—traditional and charismatic—which confer validity on value-rational grounds.⁶⁴ As a triumph of instrumental rationality, bureaucratization represented modern capitalism's vanquishing of the Protestant Ethic. Whereas Protestant asceticism at one time provided a justification of certain kinds of rationalistic, maximizing behaviors as *ends in themselves*, modern capitalism supplanted these justifications with those that valued such behaviors for the maximizations they produced.⁶⁵

This was one of the paradoxes that Weber underscored: the way in which the very religious values that helped to propel modern activity in the form of industry in the economic sphere, scientific inquiry, and even the rule of law ultimately created institutions that would destabilize the values that birthed them. In "depicting this movement from God . . . to the disenchantment of religious forms," Weber "adheres to a Nietzschean thesis: the highest values devalue themselves."⁶⁶

This devaluation of values was what Weber called the "dis-

63. WEBER ON LAW, *supra* note 57, at 24–25. As Weber explained in *Economy and Society*, social behavior could be explained in four possible ways: (1) "instrumentally rational," or consequentialist, grounds; (2) "value-rational" grounds; (3) "effectual" grounds, or "specific affects and feeling states"; or (4) "traditional" grounds, that is, "ingrained habituation." *Id.*

64. GANE, *supra* note 55, at 25 (discussing "rationalization and disenchantment" in Weberian theory). Gane explained:

Both these types of domination are personal rather than impersonal forms of rule, and neither is grounded upon a system of rational law. On the one hand, traditional authority . . . proceeds 'by virtue of age-old rules and powers' On the other, charismatic authority, while based on personal devotion to the leader or hero (prophet), is foreign to rules and proceeds through the repudiation of past authority.

Id. at 25. "[Both] traditional and charismatic authority . . . are orders of personal authority that demand unlimited personal obligation [With rationalization both] tend to be replaced by the impersonal rule of the modern (capitalist) bureaucratic state." *Id.* at 26; see also ESSAYS IN SOCIOLOGY, *supra* note 60, at 229 ("[T]he . . . apparatus [bureaucracy], with its peculiar, 'impersonal' character . . . is easily made to work for anybody who knows how to gain control over it. A rationally ordered system of officials continues to function smoothly after the enemy has occupied the area; he merely needs to change the top officials.").

65. See, e.g., DIGGINS, *supra* note 21, at 26 (describing Weber's theory of capitalism as a "sociological phenomenon springing up originally from religious convictions, which would eventually give way to secularization as the entrepreneur continued to demonstrate his qualifications as a Christian by his business integrity").

66. GANE, *supra* note 55, at 21 (quoting FRIEDRICH NIETZSCHE, THE WILL TO POWER 9 (Walter Kaufman & R. J. Hollingdale trans., Random House 1978) (1901)).

enchantment" of modern society. In his discussion of "Modernization as Societal Rationalization," Jürgen Habermas quotes a passage from Weber's little-translated essay entitled *Zwischenbetrachtung* or "Religious Rejections of the World and Their Directions":

The rational knowledge to which ethical religiosity had itself appealed followed its own autonomous and innerworldly norms. It fashioned a cosmos of truths which no longer had anything to do with the systematic postulates of a rational religious ethic On the contrary, rational knowledge had to reject this claim in principle . . . although the science that created this cosmos seemed unable to answer with certainty the question of its own ultimate presuppositions.⁶⁷

Much as with his analysis of the Protestant Ethic, Weber's theorizing of bureaucracy hardly celebrated modernity. Rather, Weber literally despaired of the rise of bureaucratization. In his remarks to a 1901 academic conference in Vienna, Weber exclaimed:

The passion for bureaucracy . . . is enough to drive one to despair . . . but what can we oppose to this machinery in order to keep a portion of mankind free from this parceling-out of the soul, from this supreme mastery of the bureaucratic way of life⁶⁸ I only wish to challenge the unquestioning idolization of bureaucracy.

Disenchantment resulting from bureaucratization thus constituted one of the "baleful consequences" arising from the "no-blest impulses" of modernity.⁶⁹

2. Bureaucracy, Irrationality and "Anti-Formalism"

The "baleful consequences" of rationalization and bureaucratization extended beyond the disenchantment of modern life.

67. 1 JÜRGEN HABERMAS, *THEORY OF COMMUNICATIVE ACTION: REASON AND THE RATIONALIZATION OF SOCIETY* 229 (Thomas MacCarthy trans., Beacon Press 1984) (1981). Thus, Weber showed how disenchantment was hydraulically related to modern processes of analysis with more dynamic methodology than Durkheim's *anomie*, which identified a similar malaise in modernity, but attributed it to the pre-eminence of individualism over group identity, rather than to the very means of reasoning within modernity.

68. Max Weber, *Remarks Delivered to Colleagues in the Verein für Sozialpolitik* at the Vienna Meeting (1909) (translated as *Max Weber on Bureaucracy* in JACOB PETER MAYER, *MAX WEBER AND GERMAN POLITICS: A STUDY IN POLITICAL SOCIOLOGY* 125 (Farber & Farber 1956) (1944)) [hereinafter *Max Weber on Bureaucracy*].

69. Alan Sica, *Rationalization and Culture*, in *CAMBRIDGE COMPANION TO WEBER*, *supra* note 1, at 54, 54 (citing Benjamin Nelson, *Discussion on Industrialization and Capitalism*, in *MAX WEBER AND SOCIOLOGY* 161, 167-68 (Otto Stammer ed., Kathleen Morris trans., Oxford Basil Blackwell 1971) (1965)).

Indeed, in a turn of analysis reflected by later critical theory, Weber showed how the terrain of a rationalized governance ultimately became susceptible to a peculiarly modern form of irrationality.

This irrationality flows from the very dynamic that generated rationalization, namely the “devaluation of ultimate values.”⁷⁰ In addition to producing the rationalized world of “stable calculations,” rationalization allows for:

[The] emergence of a polytheistic and disordered world of competing values and ideals. For with the rise of modern scientific (or “rational”) knowledge, religion is, for the first time, challenged by the disparate claims of other life-orders (*Lebensordnungen*), the economic, political, aesthetic, erotic and intellectual, which, with the onset of modernity, separate out into relatively autonomous realms⁷¹

Scientific rationality has both displaced prior ultimate means of assessing values and failed by its own terms to provide a replacement: the result is that competing non-scientific value systems persist at the same time that they are unable to establish supremacy according to the overarching scientific logic. “The transition to modernity is thus a paradoxical one, for it brings new ‘rational’ means for controlling and systematizing life while at the same time inaugurating an endless struggle between (and within) opposing value-spheres.”⁷²

This paradoxical tendency towards irrationality surfaces even within the modern legal system, premised on “logically formal rationality.” Within the legal system, the proliferation of values resurfaces as the “rise of policy analysis.”⁷³ The devaluation of values destroys the “immanent” quality of law—that is, natural law becomes replaced by positive law.⁷⁴ Habermas summarizes the turn to policy: “[f]rom the perspective of a formal ethic based on general principles, legal norms . . . now count as mere conventions that can be considered hypothetically and enacted positively.”⁷⁵

On the one hand, the demise of “immanent” constraints on

70. GANE, *supra* note 55, at 29.

71. *Id.*

72. *Id.*

73. Kennedy, *supra* note 5, at 1071.

74. ECONOMY AND SOCIETY, *supra* note 8, at 874–75 (“The disappearance of the old natural law conceptions has destroyed all possibility of providing the law with a metaphysical dignity by virtue of its immanent qualities.”); *see also* Kennedy, *supra* note 5, at 1065 (“Positivism becomes the theory of lawmaking because natural law is implausible in theory.”).

75. HABERMAS, *supra* note 67, at 162–63.

lawmaking increased the authority of lawmakers to act as arbiters between "mere" norms. On the other, the modern system expressly turned to lawmakers as the positivist authority for resolving such conflicts. Hence lawmakers, in Weber's understanding of "politics as a vocation," are torn between the "ethics of conviction," in which action was justified on "value-rational" grounds or "immanent norms," and the "ethics of responsibility," in which lawmakers consider the outcomes of their decisions on an instrumentally rational basis that must take into account political "responsibility for the predictable consequences of the action."⁷⁶ This tension is exacerbated, Kennedy writes, by the "dynamism of the capitalist economy [which] generate[s], constantly, increasingly, legal gaps or conflicts involving large economic and political stakes."⁷⁷

The result is that the peculiar tendency of irrationality in modern society is reflected in the "anti-formal tendencies of modern law."⁷⁸ Of modern law, Weber concludes: "In the great majority of its most important provisions, it has been unmasked all too visibly, indeed, as the product or the technical means of a compromise between conflicting interests."⁷⁹

3. *Bureaucracy, Democracy and Power*

Weber's conceptualization of conflicting interests in modern life understood politics as a struggle for power.⁸⁰ In opposition to the Marxian view of modern power politics as essentially class-based, Weber argued that power could be measured and distributed according to class, status, or party.⁸¹ Although such struggle could take multiple shapes, Weber nevertheless insisted on an analytical lens that acknowledged the "violence of this struggle and the violence of political power."⁸² Indeed, Weber defined the state as "that human community which (successfully) lays claim to the *monopoly of legitimate physical vio-*

76. MAX WEBER, *THE METHODOLOGY OF THE SOCIAL SCIENCES* 16 (Edward A. Shils & Henry A. Finch eds. & trans., 1949); see also GANE, *supra* note 55, at 64-69.

77. Kennedy, *supra* note 5, at 1067.

78. *Id.* at 1064.

79. *ECONOMY AND SOCIETY*, *supra* note 8, at 875; see also GANE, *supra* note 55, at 40-41; Kennedy, *supra* note 5, at 1066.

80. *ECONOMY AND SOCIETY*, *supra* note 8, at 1415 ("The essence of politics is struggle.").

81. *ESSAYS IN SOCIOLOGY*, *supra* note 60, at 180-95.

82. GANE, *supra* note 55, at 74.

lence.”⁸³ This perspective demonstrates the influence on Weber’s theory of Nietzsche’s writings, not only in the analysis of disenchantment as the “devaluation of values,”⁸⁴ but also in the analysis of governance as power struggle.⁸⁵ Thus, Weber stated in *Economy and Society* that “[w]ithout exception every sphere of social action is profoundly influenced by structures of dominance.”⁸⁶

The political struggle that Weber analyzed in modern society was subject to two competing dynamics: bureaucratization, on the one hand, and democratization, on the other.⁸⁷ Bureaucratization reproduced a form of social oligarchy. Due to the large scale of organizational complexity required to govern in modern bureaucracies, power tended to consolidate in hierarchical form favoring technocratic elites.⁸⁸ At the same time, the “leveling of distinctions” based on traditional status in modern society produced a dynamic of democratization.⁸⁹ These two dynamics could produce tendencies in two possible directions: “either ‘administering’ the mass of citizens deprived of rights and freedoms like a herd of cattle in a bureaucratic ‘authoritarian state’ with pseudo-parliamentarianism, or else including the citi-

83. Lassman, *supra* note 1, at 90 (quoting MAX WEBER, POLITICAL WRITINGS 310–11 (Peter Lassman & Ronald Speirs eds., Cambridge Univ. Press 1994 [hereinafter POLITICAL WRITINGS])).

84. Lawrence A. Scaff, *Weber on the Cultural Situation of the Modern Age*, in CAMBRIDGE COMPANION TO WEBER, *supra* note 1, at 99, 101; *see also* FRIEDRICH NIETZSCHE, THUS SPAKE ZARATHUSTRA 11 (Thomas Common trans., Modern Library 1995) (1883). The coda in Weber on “specialists without spirit” is Weber’s version of those “last men who invented happiness” pilloried in Nietzsche’s prologue to *Zarathustra*. Scaff, *supra* note 84, at 101. Nietzsche said:

I will speak of the most contemptible thing; that . . . is the last man! . . . “What is love? What is creation? . . . What is a star?”—so asketh the last man and blinketh. The earth hath then become small, and on it there hopeth the last man who maketh everything small. . . . “We have discovered happiness”—say the last men, and blink

NIETZSCHE, *supra* note 84, at 11.

85. KIERAN ALLEN, MAX WEBER: A CRITICAL INTRODUCTION 7–8 (2004).

86. *ECONOMY AND SOCIETY*, *supra* note 8, at 941.

87. *ECONOMY AND SOCIETY*, *supra* note 8, at 267. Weber placed bureaucracy within the governance category of “logically formal rationality,” and democracy within the category of “charismatic” authority; “[e]lective officials whose legitimacy is derived from the confidence of the ruled and who are therefore subject to recall . . . are not ‘bureaucratic’ types.” *Id.* at 267; *see also id.* at 219.

88. This observation of Weber’s was subsequently developed by fellow sociologist Robert Michels as an “iron law of oligarchy” in modern societies. *See generally* ROBERT MICHELS, POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY (Eden Paul & Cedar Paul trans., The Free Press 1964) (1915).

89. Scaff, *supra* note 84, at 106.

zens as participants in the state."⁹⁰

Both types of governance—"pseudo-democracy" and "participatory democracy"—were entirely possible outcomes of the modern rationalization process. Indeed, between the two, Weber appeared to believe the former to be the more likely outcome.⁹¹ The threat to democratic governance from modern rationalization stemmed not only from its tendency towards bureaucratic hierarchy, but also from the cultural acclimation of citizens to their role as "little cogs, little men clinging to little jobs and striving toward bigger ones" within the "machinery" of modern bureaucratic capitalism:⁹²

That the world should know no men but these: it is in such an evolution that we are already caught up, and the great question is, therefore, not how we can promote and hasten it, but what can we oppose to this machinery in order to keep a portion of mankind free from this parceling-out of the soul, from this supreme mastery of the bureaucratic way of life.⁹³

In other words, concerted effort was required to maintain even the viability of democratic government in the modern state. Weber clearly viewed modern bureaucratization as both inevitable and in many ways distasteful. Weber also saw democracy as under threat from the modernity's more central feature, bureaucratic rationalization in government. Weber saw this dynamic most clearly in his own country, where the post-Bismarckian state appeared to have choked off real democratic participation.⁹⁴

From the foregoing characterizations, one might infer Weber's allegiance to a contractarian set of ideals regarding the normative foundation for democratic governance and the rule of

90. *Id.* at 106 (quoting Max Weber, *Zur Politik im Weltkrieg: Schriften und Reden, 1914-18* [On Policy During the World War: Writings and Speeches 1914-18] in MAX WEBER GESAMTAUSGABE 396, 396 (Mohr Siebeck 1984).

91. See *infra* notes 104-107.

92. Weber on Bureaucracy, *supra* note 68, at 126-27.

93. *Id.* at 128.

94. Sven Eliaeson, *Constitutional Caesarism: Weber's Politics in their German Context*, in CAMBRIDGE COMPANION TO WEBER, *supra* note 1, at 131, 136. Weber very much was responding to the political context of Germany: the danger of domination by the feudalistic Junker class, who were "anti-modernist and backward-looking" and dependent on economic protectionism by the state; the weakness of the bourgeoisie, coupled with their "antipolitical" tendencies ("in part to a long tradition of Romantic skepticism about the Enlightenment, and in part to a sense of impotence resulting from the failure of the liberals to unify Germany in 1848"). *Id.* Weber expressed worry about whether "the German bourgeoisie has the maturity . . . to be the leading political class"; and dislike of the working class and its journalist leaders who were *poseurs*. *Id.* (quoting POLITICAL WRITINGS, *supra* note 83, at 23).

law, and a commitment to the normative egalitarianism found in social contract theorists of the modern state such as John Locke and Jean-Jacques Rousseau. Such an inference would be mistaken, however. Weber does not appear to have shared the focus of these Enlightenment theorists on the normative necessity of universal political liberalism. Sven Eliaeson has written that:

[Weber] was a liberal in the sense of being deeply concerned about the individual as an autonomous cultural being But he did not defend this as an universal principle . . . [and] [i]ndeed he did not think that this was feasible for ordinary people, governed by the necessity of making a living This was an aristocratic notion of autonomy rather than a principled universalistic one.⁹⁵

This indifference of Weber's to Enlightenment ideals,⁹⁶ and their foundations in the political philosophies of classical antiquity,⁹⁷ manifested itself, secondly, in a sharply circumscribed understanding even of "real," participatory democracy.

Weber asserted that "[t]rue democracy means . . . submission to a leader whom the people have elected themselves."⁹⁸ Thus, the choice between "participatory democracy" and "pseudo-parliamentary democracy" appeared to boil down to the difference between "a leadership democracy with a 'machine' and [a] democracy without a leader, which means rule by the 'professional politicians.'"⁹⁹ Thus, Weber played an important role in ensuring that the Weimar constitution allowed the president to be elected directly by the people rather than parliament,¹⁰⁰ but at the same time held a very limited view of the people's ability to hold the president accountable at any but the most general level.¹⁰¹

95. *Id.* at 137.

96. Alistair Hamilton, *Max Weber's Protestant Ethic and the Spirit of Capitalism*, in *CAMBRIDGE COMPANION TO WEBER*, *supra* note 1, at 151, 163 (describing the lack of influence of Locke on Weber).

97. Lassman, *supra* note 1, at 91 (describing Weber's rejection of Aristotelian classifications of government in favor of his own "command"-based typology).

98. ALLEN, *supra* note 85, at 171 (quoting D. BEETHAM, *MAX WEBER AND THE THEORY OF MODERN POLITICS* 236 (1974)).

99. *Id.* at 142 (citing Max Weber, *The Profession and Vocation of Politics*, in *POLITICAL WRITINGS*, *supra* note 83, at 351. This quote resembles that from Eliaeson. See *supra* note 94.

100. WEIMARER VERFASSUNG [WEIMAR CONSTITUTION] art. 41 (1919).

101. Hence the following recorded exchange between the reactionary General Ludendorff and Weber, "Ludendorff: What is your idea of a democracy, then? Weber: In a democracy the people choose a leader whom they trust. Then the chosen man says, 'Now shut your mouths and obey me. The people and the parties are no longer free to interfere in the leader's business.'" The exchange between Weber and

Thus, Weber's understanding of democracy stemmed from a pragmatic, rather than a normative, orientation. Weber saw democracy—at the aforementioned “plebiscitary” level—as necessary to break the chokehold of the landholding interests who were stalling Germany's capitalist economic growth. Democracy, Weber believed, could help to mobilize Germany's relatively weak bourgeoisie.¹⁰² In this sense, democracy in Germany's particular context could help to propel capitalism. The converse relationship—that capitalism would automatically give rise to democracy—was not a Weberian hypothesis. Moreover, the relationship between democracy and economic growth that Weber desired would not naturally arise but rather had to be pursued through concerted reform.

Lufendorff, according to Eliaeson, came at the end of the World War I when Weber was trying to convince Lufendorff to “give himself up to the Allies.” Eliaeson, *supra* note 94, at 146–47. After the quoted passage above, “Weber added that thereafter the people can rule and say ‘to the gallows with the leader.’” *Id.* Nevertheless, Weber's endorsement of “leadership democracy” generated strong criticism after World War II, particularly in Wolfgang Mommsen's charge that Weber's theory served “to make the German people inwardly willing to acclaim Adolf Hitler's leadership position.” *Id.* at 144 (quoting WOLFGANG MOMMSEN, MAX WEBER AND GERMAN POLITICS 1890–1920, at 410 (Michael S. Steinberg trans., 1984) (1959)). Although Weber died in 1920, his express opposition during his lifetime to anti-Semitism and to racism, as well as his defense of academic freedom, suggests that he would have opposed Nazism. See DIGGINS, *supra* note 21, at 271.

Nevertheless, Weber undoubtedly left some ambiguity as to the relationship between popular accountability and “leadership democracy.” For example, in addition to Article 41 enabling direct presidential elections, Weber also supported Article 48 of the Weimar constitution, which “granted the president extraordinary powers in times of crisis,” although Weber's role in relation to Article 48 is a matter of dispute while his role in promoting Article 41 is accepted knowledge. Eliaeson, *supra* note 94, at 142. Though Weber himself did not expressly resolve the ambiguous relationship between popular election and extraordinary presidential power, one “author who devoted much of his thought to resolving the constitutional ambiguities that Weber bequeathed to German posterity was Carl Schmitt.” *Id.* at 147. Schmitt foresaw that “Weimar parliamentarianism could not withstand” a “totalizing party” such as the National Socialists. *Id.* “The presidential leader, Hindenburg, came to a parallel conclusion, and used Article 48 to install Hitler in power. Schmitt, in short, filled the lacunae in Weber's constitutional thinking. How Weber himself might have filled it will,” according to Eliaeson, “forever remain unclear.” *Id.* One final clue perhaps lies in Weber's somewhat surprising support for a “strong parliament” as a corrective “to balance the power of the bureaucracy.” *Id.* at 142. Weber appears, therefore, and contrary to his own dichotomous phrasing, to have supported both “parliamentarian democracy and plebiscitary rule.” *Id.* at 143. The best explanation for this, according to Eliaeson, is that Weber “envisioned balance, much like in a monarchical system.” *Id.*

102. See ALLEN, *supra* note 85, at 15–31.

II. TALCOTT PARSONS AND “STRUCTURAL FUNCTIONALISM”

Talcott Parsons is widely understood to have been the most influential American sociologist of the twentieth century.¹⁰³ Parsons was also an influential advocate for Weberian theory in the U.S. scene, translating both *The Protestant Ethic* and *Economy and Society* into English. Parsons’ advocacy included his inspirations by Weber in formulating his distinctive brand of sociological theory, which ultimately became known as “structural-functionalist” theory.¹⁰⁴ Finally, Parsons also sought to connect some of his theoretical conclusions to U.S. foreign policy, playing an active advisory role from the 1930s to the 1950s as the United States developed its approach towards newly decolonizing states.

The result of these combining factors was Parsonian influence on ensuring the importance of Weberian thought in development theory, policy, and praxis in the mid-to-late twentieth-century United States—and also ensuring the reception of Weberian thought in a particular form. The next sections will seek to demonstrate how the three theoretical influences described above arose in Parsons’ own theory, and how they replicated themselves throughout the development discourse of this era.

A. FROM “IDEAL TYPES” TO “EVOLUTIONARY UNIVERSALS”

Parsons is often credited as being concerned above all with building a “general” theory of social action as a foundation for sociological analysis. Parsons’ first step towards this end in his work *The Structure of Social Action*.¹⁰⁵ The first step in Parsons’ own universalist analysis, however, was an extrapolation of “generalized”¹⁰⁶ and “systematic” theoretical precepts from Weber’s analysis of “ideal types.”

Parsons was careful to establish that Weber himself shied away from “systematic” analysis, ensuring that the systematiza-

103. PETER HAMILTON, *TALCOTT PARSONS* 13 (1983) (“Looking at the development of American sociology over the past fifty years, one is immediately struck by the scale of the contribution Talcott Parsons made . . . Parsons reformulated the nature of sociological enquiry . . . and . . . gave it . . . a theoretical *programme*, which it lacked before.”).

104. Though structural-functionalism had fallen from grace by the 1970s, at its peak the approach enjoyed widespread influence within sociological theory.

105. TALCOTT PARSONS, *STRUCTURE OF SOCIAL ACTION* 601–04 (The Free Press 1949) (1937) [hereinafter *STRUCTURE OF SOCIAL ACTION*].

106. *Id.* at 601, 640.

tion of Weber's analysis was identifiable as Parsons' unique improvement. Before setting forth a systematic theory, Parsons devoted some time to delineating the lack of systematic analysis in Weber,¹⁰⁷ much of which was intentional on Weber's part. Parsons observed Weber's opposition to the idealistic or intuitionist strain of German theory.¹⁰⁸ By contrast, Weber sought to embrace an inductive, and ultimately empirical, approach.¹⁰⁹ Parsons gives a careful account of Weber's balancing of the commitment to identifying general principles with the awareness of the limitations of those principles:

A general ideal type is such a construction of a hypothetical course of events with two other characteristics: (1) abstract generality and (2) the ideal-typical exaggeration of empirical reality. Without the first of these last two elements, the concept might be applicable only to a single historical situation; without the second it might be merely a common trait or a statistical average.¹¹⁰

Although Weber's analysis of ideal types seemed to embody universalizable implications, Weber himself stopped short of making those explicit. It was left to Parsons to clarify the relationship of the "universal to the particular" in Weber's analysis.¹¹¹ In doing so, Parsons declared it "necessary, in order to clarify the implications of his position, to go beyond Weber's own analysis."¹¹²

In *The Structure of Social Action*, Parsons sought to build a more "systematic classification of ideal types."¹¹³ In doing so, Parsons introduced his own "generalized theoretical account" of society under a "structural" analysis of "systems of action" and "systems of elements."¹¹⁴ Indeed, Parsons' desire to construct a "total, general theoretical system"¹¹⁵ would irritate many of his contemporaries.¹¹⁶ The irritation may have become further in-

107. See *id.* at 601-41.

108. *Id.* at 602.

109. *Id.* at 602 ("Weber throughout emphasized that scientific concepts do not exhaust concrete reality but involve selection and are hence in this sense unreal.")

110. *Id.* at 605-06 (footnote omitted).

111. *Id.* at 614.

112. *Id.*

113. *Id.* at 640 (footnote omitted).

114. *Id.*

115. Edward C. Devereux, Jr., *Parsons' Sociological Theory*, in *THE SOCIAL THEORIES OF TALCOTT PARSONS: A CRITICAL EXAMINATION* 1, 1 (Max Black ed., 1961) ("Parsons has stood virtually alone in his concern with the construction of a total, general theoretical system.")

116. *Id.* at 1. Devereux explains:

In his Dedication of *The Social System*, Talcott Parsons describes himself

flamed by Parsons' own rather abstruse language,¹¹⁷ requiring several iterations both by the author himself¹¹⁸ and by commentators to gel into the influential "structural-functional" sociological theory of social action.

Methodologically, Parsons' "structural-functionalist" theory straddled German and Anglo-Saxon theory,¹¹⁹ seeking to blend the "analytical elegance" and dynamism of economics, with both the concreteness of positivists and the cultural sensitivity of idealists.¹²⁰ Thus, Parsons sought a transhistorical, general "analytical theory"¹²¹ of society that was both dynamic and respon-

as an incurable theorist. On this point even his severest critics would hasten to agree. Certainly he has done a great deal more theorizing than any other contemporary American sociologist; and it is probably also true that he has done rather less of anything else.

Id. The philosopher Max Black derided Parsons' theories as tending towards "aphorisms" such as "[w]henever you do anything, you're trying to get something done." Max Black, *Some Questions About Parsons' Theories*, in *THE SOCIAL THEORIES OF TALCOTT PARSONS*, *supra* note 115, at 268, 279.

117. See Devereux, *supra* note 115, at 1-2 ("Parsons has been explaining his own theories in his own words these many years, but the evidence is rather impressive that he has not always succeeded in making himself understood.")

118. See Chandler Morse, *The Functional Imperatives*, in *THE SOCIAL THEORIES OF TALCOTT PARSONS*, *supra* note 115, at 110, 113 ("The relation of structure to process was far from clear in early versions of the Parsonian model. But as the model evolved, the relationship acquired an increasingly definite form . . .").

119. See Devereux, *supra* note 115, at 2, 4-5.

120. Parsons' goal was to combine the "analytical elegance" and the "action frame of reference" of economists (while rejecting their focus on rationality), the focus on "physiological parameters of personality and human behavior" of the positivists (while rejecting its elements of "mechanistic determination"), and the "analysis of cultural configurations and of the role of ideas, values, and norms" from the idealists (without the "cultural relativism which . . . blocked general theory"). *Id.* at 19.

121. Feraro explains the Parsonian understanding of the term:

The *structural* type of [conceptual] scheme specifies concepts that refer to the types of units or parts and the relations among them that constitute the generic structure of a category of empirical system within the scope of a theoretical framework. The corresponding general propositions are statements of uniformities in the behavior of concrete parts and relations, as these are conceptualized. Parsons calls such general propositions *empirical generalizations*. The *analytical* type of [conceptual] scheme specifies analytical elements or variables, the values of which characterize concrete components of the empirical system. The corresponding general propositions are statements of uniformities in the analytical relationships among such elements. Parsons calls them *analytical laws*. An *analytical theory*, finally, is a system of analytical laws. One important implication of these distinctions is that the formulation of an analytical theory must be based upon an accompanying structural type of conceptual scheme as well as an analytical type. The reason for this is that an analytical law presupposes elements that characterize the various components or concrete entities comprising an empirical system and these components have to be concep-

sive to culture.

Within this structural account, Parsons emphasized the importance of methodological dynamism, as expressed on two different levels: first, the fundamental unit of analysis was the "unit act,"¹²² and the sociological theory itself was a theory of social *action*.¹²³ Second, Parsons embraced a "voluntaristic theory of action," which assumed a critical role of agency in determining how individuals committed "unit acts" against the complex backdrop of his structural-functional analytical framework.¹²⁴

Parsons posited that social action occurred against a backdrop of structural, universal features of the social system.¹²⁵ The three fundamental structural sub-systems were: "the personality systems of . . . individualized actors";¹²⁶ the differentiation and organization of social role;¹²⁷ and "the culture system."¹²⁸ Of

tualized in structural terms (i.e., in terms of ideas about the types of concrete units and their relations). It is because of this methodological implication that Parsons exerts so much effort in his early work to provide a general conception of the structure of empirical social action systems that can become the basis for a later analytical sociological theory of these systems.

THOMAS J. FARARO, SOCIAL ACTION SYSTEMS: FOUNDATION AND SYNTHESIS IN SOCIOLOGICAL THEORY 82 (2001).

122. *Id.* at 88–93. The "unit act" was defined to include the following elements: (1) an actor; (2) an "end" (that is, "a future state of affairs toward which the process of action is oriented"); (3) a situation "differing from that to which action is oriented (the *end*) and including two elements, those which cannot be altered by the actor—*conditions*—and those which he can control—*means*"; and (4) a "specific *mode of relationship* between the elements of the *unit act*, so that 'in the choice of alternative means to the end insofar as the situation allows alternatives, here is a 'normative orientation' of action.'" PETER HAMILTON, TALCOTT PARSONS 70 (1983) (quoting STRUCTURE OF SOCIAL ACTION, *supra* note 105, at 44); *see also* FARARO, *supra* note 121, at 88–93.

123. *See, e.g.*, STRUCTURE OF SOCIAL ACTION, *supra* note 105; PARSONS ET AL., WORKING PAPERS IN THE THEORY OF ACTION (1953).

124. *See* STRUCTURE OF SOCIAL ACTION, *supra* note 105; PARSONS, THE SOCIAL SYSTEM (1951) [hereinafter SOCIAL SYSTEM]; FARARO, *supra* note 121.

125. *See* Devereux, *supra* note 115, at 53 ("Structure, as Parsons sees it, represents at best a convenient way of codifying and talking about certain apparent consistencies in social phenomena [But in order to avoid reification we must employ the] conception of dynamic equilibrium.").

126. *See* Morse, *supra* note 118, at 105 ("[T]he personality systems of . . . individual actors, consisting of internalized 'need dispositions' and therefore of potential 'motivational commitments' to various types of goals and to various patterns of behavior").

127. *See id.* ("The social system, or structure of social organization, consisting of defined roles and their associated and institutionalized (=internalized and shared) role-expectations (= 'expected performances' and 'sanctions'). . . .").

128. *See id.* ("[T]he culture system, consisting of the heritage of knowledge, beliefs, ideas, technologies, mores, customs, habits, laws, values, standards, norms, together with the symbols, both tangible (artifacts) and intangible (language, the

these three interdependent sub-systems, Parsons saw culture as the most dispositive.¹²⁹

In *The Social System*¹³⁰ and *Toward a General Theory of Action*,¹³¹ Parsons developed the “functionalist” side of his methodology. In addition to taking place against this structural backdrop, he now asserted, social action was directed by a set of four “functional imperatives, or ‘problems’ which must be met adequately if equilibrium and/or continuing existence of the system is to be maintained.”¹³² The four problems are those of: (1) Goal Attainment, or “keeping the action system moving steadily toward its goals”; (2) Adaptation, or “properly perceiving and rationally manipulating the object world for the attainment of ends”; (3) Integration, or “holding cooperating units in line, of creating and maintaining ‘solidarity,’ despite the emotional strains involved in the process of goal attainment”; and (4) Latency, or ensuring that “units have the time and the facilities, within a suitable conditioning environment, to constitute or reconstitute the capacities needed by the system.”¹³³

These imperative problems at the societal level create social sub-systems, each to address the respective basic functional imperative: for example, Goal Attainment manifests in the political system; Adaptation manifests in the economic system.¹³⁴ Each sub-system can be analyzed further in terms of these functional imperatives: for example, the economy can be analyzed in terms of Goal Attainment (the “Production sub-system”), Adaptation (the “Investment capitalization sub-system”), Integration (the “Entrepreneurial sub-system”), and Latency (the “Economic commitments sub-system”).¹³⁵

Social action was determined within the structural framework of personality-social role-culture and driven by the functional imperatives of goal attainment-adaptation-integration-latency. Parsons’ last major theoretical contribution was to posit that social action was additionally mediated according to a set of five fundamental “pattern variables” for interpreting the

arts) that represent them.”).

129. *See id.* (“No one of these systems is entirely independent of the others. The culture system is the major binding element.”).

130. *See* SOCIAL SYSTEM, *supra* note 124.

131. TALCOTT PARSONS, TOWARD A GENERAL THEORY OF ACTION (Talcott Parsons & Edward A. Schils eds., 1951).

132. *See* Morse, *supra* note 118, at 113.

133. *See id.* at 113–14.

134. *See id.* at 121–22.

135. *See id.* at 140–41.

social situation, mediating potentially conflicting concepts, and producing the ultimate social orientation in which action occurred.¹³⁶

The functional imperatives are transhistorical and universal, and the social response to them is evolutionary in nature: societies evolve towards ever-higher levels of structural "differentiation" in the management of social roles.¹³⁷ Although Parsons' theory was universalist in that it posited that all societies would traverse roughly the same set of structural-functional changes, this progress was far from inevitable. In fact, societies could fail to progress if their cultures did not adapt sufficiently to environmental conditions:¹³⁸ the term "evolution" implies a race for survival of the fittest among societies and cultures. Hence Parsons' theory of "evolutionary universals": adaptations

136. See Devereux, *supra* note 115, at 38–42. The framework for structural analysis is comprised of the pattern variables, guided by three principal criteria:

First, the variables should be completely general and permit comparisons between groups of any sort whatever and across cultures Second, the variables should be relevant for the action frame of references Finally, the variables should be relevant for the analysis of the functional problems about which system differentiation takes place The outcome of Parsons' thinking about these matters was the now-famous set of pattern variables These were a set of five dichotomous variables conceived as constituting universal and basic dilemmas confronting any actor in any social situation. Parsons argued that each variable represented a fundamental problem of orientation which the actor would somehow have to resolve either one way or the other; moreover, he would have to come to terms with all five before arriving at any determinate orientation 1. Affectivity [e.g. marital bond] -Affective neutrality [e.g. customer bond]; 2. Specificity [customer] -Diffuseness [marital]; 3. Universalism [cognitive]-Particularism [cathectic]; 4. Quality-Performance; 5. Self-orientation-collectivity-orientation

Id. (emphasis omitted).

137. See Morse, *supra* note 118, at 143. Morse explains:

These four functional problems represent four distinct (yet interdependent) social 'ends,' and constitute the basis of four corresponding rationalities, the simultaneous application of which is responsible for the ways in which social systems function. Within a rather undifferentiated social system, such as a primitive family or tribe, consistency among the four rationalities and their application is achieved by the institutionalization of role patterns together with the opportunity for adjustment by direct settlement of conflicts When a society becomes highly differentiated . . . the possibilities of inconsistency become far more numerous The degree of consistency achieved is a determinant of the stability or instability of the system, any inconsistency among the four types of rationality or their application being a particularly important source of conflict and, potentially, of change.

Id.

138. Jackson Toby, *Introductory Chapter* of TALCOTT PARSONS, *THE EVOLUTION OF SOCIETIES* 1, 20 (Jackson Toby ed., 1977).

are universally required in order for societies to progress to modernity.¹³⁹

This neo-Darwinian (or more accurately, neo-Spencerian)¹⁴⁰ perspective also implied the urgency of *policy intervention* for those societies that had to date failed to produce the requisite cultural change for economic development. As one Parsonian remarked, “[t]here ought to be interest also in the application of evolutionary theory to the *practical* problem of modernization: without economic and social development some considerable proportion of the . . . persons on the planet have a bleak future.”¹⁴¹

Parsons’ reading of Weber’s *The Protestant Ethic* through his own structural-functionalist lens helped him to conclude from this theory that “American society constituted an evolutionary breakthrough; it displayed a higher level of organized complexity than any other.”¹⁴² It was at this stage that Parsons’ methodology reached its zenith,¹⁴³ disseminating through Parsons-trained academic appointees to the rapidly expanding field of sociology from the 1930s to the 1960s.¹⁴⁴

In one highly influential application of the pattern variable analysis, Parsons, working with his frequent collaborator Edward Shils, further streamlined the “pattern variables” into a general division between “traditional” and “modern” society.¹⁴⁵ The dualistic distinction between tradition, on the one hand, and modernity, on the other, would be picked up by W.W. Rostow¹⁴⁶ and employed generally in the development policy of the time. Thus, Parsons’ work helped to establish the groundwork for modernization theory. In his drive to develop a universalistic account of economic growth and its relationship to governance, however, Parsons explicitly elided those aspects of

139. See *id.* at 10–20

140. For a discussion of Herbert Spencer and social Darwinism, see Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451 (2000).

141. Toby, *supra* note 138, at 20.

142. See Frank J. Lechner, *Talcott Parsons*, in THE ENCYCLOPEDIA OF RELIGION AND SOCIETY (William H. Swatos ed., 1998).

143. See HAMILTON, *supra* note 103, at 28 (“The influence exerted by Parsons’ theoretical work over American sociology . . . cannot be overestimated. Within the general context of sociological orthodoxy at the time, normally referred to as *structural-functionalism*, Parsons reigned supreme.”).

144. See *id.*

145. See generally TOWARD A GENERAL THEORY OF ACTION, *supra* note 131.

146. Walt Whitman Rostow, *Toward a General Theory of Action*, 5 WORLD POL. 530, 530 (1953) (reviewing TOWARD A GENERAL THEORY OF ACTION, *supra* note 131).

Weber that contradicted this objective.¹⁴⁷

Parsons believed that his general theory essentially extended and perfected the insights of Weber's theory of ideal types. Parsons asserts that "if Weber had developed such a systematized general theory, 'he could hardly have failed' to realize that functionalism represents the most viable approach."¹⁴⁸ Subsequently, however, New Weberians have demonstrated the ways in which Parsonian universalism not only misapplied Weber's typology but, more seriously, misunderstood Weber's overarching project. In *Deparsonizing Weber*, for example, Cohen et al. strongly opposed Parsons' reading of Weber as a nascent functionalist, arguing that Weber himself "rejected functionalism."¹⁴⁹ They argued that Parsons dramatically simplified Weber's analysis and criticized Parsons for treating a factor as "decisive rather than . . . one of several important considerations."¹⁵⁰ This simplification formed the ground floor in the one size fits all edifice.

B. THE DETERMINISM OF "VALUES" IN MODERNIZATION

In *The Structure of Social Action*, Parsons argued that Weber and other prominent social theorists had converged on the centrality of "cultural norms and beliefs—in other words, values" as an explanation for social action.¹⁵¹ While the "conditions of action" and other environmental factors played an important role in determining social evolution, culture was the ultimate cause.¹⁵²

147. See *STRUCTURE OF SOCIAL ACTION*, *supra* note 105, at v–vi. In the introduction to *The Structure of Social Action*, Parsons notes that his study is not interested in "the separate and discrete propositions to be found in the works of" the authors he considers—primarily Weber, Durkheim, Alfred Marshall, and Vilfred Pareto—but in "a single body of systematic theoretical reasoning the development of which can be traced through a critical analysis of the writings of this group, and of certain of their predecessors." *Id.* at v (emphasis omitted). This amounts to an admission that these writers are being read for the ways in which they support a theory that Parsons himself wishes to develop.

148. Cohen et al., *supra* note 2, at 230 (quoting Talcott Parsons, *Introduction to MAX WEBER, THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 29 (Talcott Parsons ed., A.M. Henderson & Talcott Parsons trans., 1947)) (emphasis added by Cohen et al.).

149. Cohen et al., *supra* note 2, at 230.

150. *Id.*

151. GILMAN, *supra* note 55, at 74.

152. Toby, *supra* note 138, at 8. "[These other factors] do not thereby give direction to change; direction is given by cultural values." *Id.* Thus, for example, "Parsons explains the ultimate failure of the Roman Empire in terms of the inability 'to develop a dynamic religious system which could legitimate and strengthen the

Defenders of Parsons were careful to point out that Parsons' structural-functionalist theory did not focus on beliefs to the exclusion of other factors.¹⁵³ Yet Parsons himself described his work as "culturally determinist."¹⁵⁴ Although the "institutionalization of values" was "a contingent process," the "normative pattern" of those values provided "a society its identity" as the "single most important functional[ist] facet."¹⁵⁵ As Parsons argued, the "concept of values provides the focal center for analyzing the organization of [social] systems, of societies and of personalities."¹⁵⁶ It was Parsons' theory that influenced writers such as David McLelland to focus on the "achievement motive" in culture as an explanation for effective social adaptation.¹⁵⁷ Parsons' theory of culture and social change also posited a universalistic theory of societal evolution in a "sequence of stages"¹⁵⁸ —a characteristic that would surface fully in one of Parsons' most important intellectual heirs, W.W. Rostow.

Parsons' belief in the centrality of cultural beliefs and values as an explanatory factor for social change overstated the role of culture as articulated by Weber. Certainly, Weber saw himself and his work as opposed to the economic determinism of what is sometimes termed "vulgar" Marxism.¹⁵⁹ At the same time, however, New Weberian scholars have emphasized that Weber also accepted much of the fundamental wisdom of Marx's approach. That is to say, Weber's theory both diverged and converged with Marxian analysis.¹⁶⁰

enormously expanded societal community." *Id.* at 9 (citing TALCOTT PARSONS, *SOCIETIES: EVOLUTIONARY AND COMPARATIVE PERSPECTIVES* 92 (1966)).

153. *See id.* ("[Parsons] does not mean that cultural developments are the only or even the main source of social change."). Toby specifically distinguished Parsons' cultural determinism from the more exclusively cultural explanations of theorists such as Ruth Benedict. *See id.* at 9; *see generally* RUTH BENEDICT, *PATTERNS OF CULTURE* (1934).

154. PARSONS, *supra* note 152, at 113.

155. Lechner, *supra* note 142, at 353.

156. GILMAN, *supra* note 55, at 82.

157. *See generally* DAVID MCLELLAND ET AL., *THE ACHIEVEMENT MOTIVE* (1951).

158. Toby, *supra* note 138, at 20.

159. *See* Guenther Roth, *Global Capitalism and Multi-Ethnicity: Max Weber Then and Now*, in *CAMBRIDGE COMPANION TO WEBER*, *supra* note 1, at 117, 118. Roth explains:

Weber disclaimed an "inner sympathy" with capitalism, as against the champions of older laissez-faire doctrines, he defended, as a "rather pure bourgeois," the imperatives of the capitalistic market place against its many detractors from the right and left.

Id.

160. *See* ALLEN, *supra* note 85, at 26–30; FRANK PARKIN, *MAX WEBER* 94–95,

The clearest example of Weber's careful blending of historical materialist insights with his own analysis might be his well-known statement that "very frequently the 'world images' that have been created by 'ideas' have, like switchmen, determined the tracks along which action has been pushed by the dynamic of interest."¹⁶¹ Weber posits that ideals form channels of discourse through which social change is driven by material interests: the image is one of indelible interaction between ideal and material factors, rather than of the lone importance of ideals.

Rather than emphasizing the exclusive role of "values" as engendering capitalistic growth, Weber is proposing a much more specific role of "ideals." In analytical terms, the statement sees ideals as *necessary* but *not sufficient* to effect historical change. The "dynamic of interest" pushes social activity along one "ideals" track over another. Without this dynamic of interest, therefore, ideals could not take hold and flourish. At the same time, this statement tells us, ideals ultimately play the shaping role, the mold into which underling interests drive social action.

Thus, Weber states that "not ideas, but *material and ideal interests*, directly govern men's conduct."¹⁶² Weber sought to explain the important role that norms play in shaping behavior, resisting an explanation of social action that looked solely to the structure of the economic "means of production." Weber's understanding of norms seemed imbued by a distinctly dimmer mood than that of Parsons. Weber explicitly recognized the subordinating role that norms could play in effectuating the domination of members of society to the ruling elite.¹⁶³ Indeed, in this conceptual interrelationship between dominant norms and material interests, Weber's theory might be read against the work of subsequent critical theorists in a new light. For present purposes the main point is that Weber's theory viewed material interests as a centrally important factor, interacting with "ideal interests" and driving social action along the "tracks" laid by those ideal interests to shape history.

By contrast, New Weberian scholars have pointed out that Parsons drained much of the influence of the non-normative from Weber's theory. Cohen et al. argue that, "[i]n attempting to assimilate Weber's formulations of his own version of action

104 (1982).

161. ESSAYS IN SOCIOLOGY, *supra* note 60, at 280.

162. *Id.*

163. See *infra* notes 189–201 and accompanying text.

theory, Parsons asserted that a 'focus of interest on the normative aspects of action systems' was basic to Weber's scheme According to Parsons, . . . '*there is no such thing as action except as effort to conform with norms.*'¹⁶⁴

Thus, while Parsons argued correctly that Weber focused on the normative aspects of action, he exaggerated by asserting that norms are *central* to Weber's conception of social action. On issues where Weber made no mention of norms or explicitly denied their importance, Parsons claimed (to the contrary) that norms were important to Weber. When Weber stated that norms were of *varying* importance, Parsons asserted their central importance. When Weber nominated other factors as being primary, Parsons elevated norms to a position of centrality and deemphasized nonnormative factors. The consequence is that Weber's conception of action theory was distorted.¹⁶⁵

The New Weberians suggest, by contrast, that in Weber's analysis, self-conscious value-orientation is only one type of social action.¹⁶⁶ Moreover, Weber felt that value-rational action was both potentially antagonistic to, and constrained by, the instrumentalities of modern statehood.¹⁶⁷

How does Weber's analysis of the Protestant ethic in driving

164. Cohen et al., *supra* note 2, at 231 (emphasis added in the original) (citations omitted).

165. *See id.* at 231. Cohen et al. state that:

According to Weber . . . [a]ction may be determined on instrumentally rational, value-rational, affectual or traditional grounds. That is, the actor's orientation may be determined principally by his "expectations as to the behavior of objects . . . and of other human beings," by his conscious belief in [a] value for its own sake," by his "specific affects and feeling states," or by "ingrained habituation." Weber also noted three types of subjective meaning common in social action: usage, custom and complex interests. That is, an action may be performed repeatedly because of current use, because of long familiarity, or because of stable opportunities for realizing interests.

Parsons perceived all three of these types of subjective meaning as essentially normative. In addition, he viewed as essentially normative three of the four categories for orientating action: traditionalism, instrumentally rational action and value-rational action However, a category-by-category analysis shows that traditional behavior, usages and customs are primarily habitual, while instrumentally rational behavior and complexes of interests are largely orientated to expediency rather than to norms. Only value-rational behavior is primarily normative in any of the senses intended by Parsons.

Id. (citations omitted).

166. *See* ECONOMY AND SOCIETY, *supra* note 8, at 24–25 (describing four types of social action: value-rational, instrumentally-rational, affectual, and traditional).

167. *See id.* at 25.

capitalism, a striking example of value-rational conduct, mesh with this analysis of the types of social action? The value-rational conduct that gave rise to effective capitalistic conduct would, like all other types of religiously motivated behavior, come to be constrained by the very state and society that arose initially out of that behavior.¹⁶⁸ This was one of the paradoxes that Weber underscored: the way in which the very religious values which initiated modern activity—industry in the economic sphere, scientific inquiry, and even the rule of law—would ultimately create institutions that would destabilize the values that birthed them. This destabilization of values was what Weber called the “disenchantment” of modern society, described above.¹⁶⁹ Given Weber’s attention to disenchantment from value-rational action, Parsons’ interpretation of this typology of social action as value-driven is curious. This emphatic focus on ideals seems to be inspired more by the *Protestant Ethic* than by the source of the typology itself, *Economy and Society*.

The rather exclusive attention to ideals also manifested itself in Parsons’ analytical distance from material conditions as causes of social action and determinants of social relations. Weber, by contrast, specifically warned that his intention was not “to substitute for a one-sided causal materialistic an equally one-sided spiritualistic causal interpretation of culture and of history.”¹⁷⁰ Cohen et al. observed that “[w]hile we cannot be certain whether Parsons misunderstood the target of Weber’s critique of ‘Marxian historical materialism,’ he clearly missed its *substantive point*. Weber quite clearly retained the interest category (including material interest) as a central motive for action and as an important social force.”¹⁷¹ Weber rejected only those accounts which gave *exclusive* attention to material interests, but still viewed material interests as centrally important.¹⁷²

In particular, the excision of “non-normative” or material interests in Weber served to underscore and possibly to distort Weber’s discussion of the role of Protestant “values” in producing capitalistic behavior. Whereas Weber sought to describe

168. See DIGGINS, *supra* note 21, at 26 (“From the ‘simple people’ of rural America Weber would develop a theory of capitalism seen as a sociological phenomenon springing originally from religious convictions, which would eventually give way to secularization as the entrepreneur continued to demonstrate his qualifications as a Christian by his business integrity.”).

169. See *supra* notes 66–69 and accompanying text.

170. PROTESTANT ETHIC, *supra* note 9, at 183.

171. Cohen et al., *supra* note 2, at 236.

172. *Id.*

Protestantism as one particular historical source of a more general phenomenon, the Parsonian approach tends to cut away and deemphasize this historical and analytical complexity. Combined with Parsons' attraction to universalistic and prescriptive analysis, this approach can end up simplifying Weber's thesis into the proposition that Protestant values not only helped generate capitalistic behavior, but that they are actually "necessary" for capitalism to take root as a general matter. This proposition in turn generates the corollary that cultural values in beliefs have independently driven social change not only in the case of Western capitalism, but explain more generally the success or lack thereof of capitalistic enterprise in non-Western societies. Thus Cohen et al. could conclude: "For Parsons, revolutions in consciousness, not the inexorable unfolding of technological power or the contradictions of class society, provided the critical turning points in history."¹⁷³

An endorsement of capitalistic and scientific values from a normative perspective was part of Parsons' self-conscious understanding of the intention behind his work. In his introductory description of the objectives of setting out a systematic theory of social action, Parsons made clear that the focus of this theory was "the interpretation . . . of 'capitalism,' 'free enterprise,' 'economic individualism,' as it has been variously called."¹⁷⁴ Parsons was partially motivated by a special plea directly from Friedrich von Hayek, who saw Weber as an "ideological forerunner" for a theory of economic growth that eschewed "public regulation" suggested by Marxian and Keynesian policies.¹⁷⁵

Just as the argument for deregulatory politics served as an important and explicit counterpoint to advocates for socialist statist policy, Parsons' argument for the importance of beliefs served as an important and explicit counterpoint to proponents of the view that the primary deficit in the developing world was the absence of capital. The latter formed an important part of dependency theory, which argued that colonizing countries had extracted capital from colonies in addition to establishing market patterns that created economic dependency of the peripheral

173. GILMAN, *supra* note 55, at 93.

174. STRUCTURE OF SOCIAL ACTION, *supra* note 105, at vi.

175. ALLEN, *supra* note 85, at 7 (citing Talcott Parsons, *The Circumstances of My Encounter with Max Weber*, in *SOCIOLOGICAL TRADITIONS FROM GENERATION TO GENERATION* (Robert K. Merton & Matilda White Riley eds., 1980)).

colonies on the metropolitan center.¹⁷⁶

Streamlined in the service of a particularly American version of capitalism, Weber's analysis was stripped of insights that in fact might have predicted many of the lessons that were learned the hard way from the application of the "evolutionary universals" model that developed. The desire to create a viable and clearly opposed alternative to socialism in the cold war era likely inspired Parsons and others simply to elide and underplay the role that material dynamics played in Weber's own theory. Again, the solution threw the baby out with the bathwater: by gravitating towards an idealist explanation for capitalist development, the Parsonians set themselves up for policies that were not only misguided but ineffective.

C. THE CORRELATION BETWEEN MODERNIZATION AND DEMOCRACY

Parsons argued that the "necessary breakthroughs" for modernization included the contemporaneous rise of capitalism and democracy: "the institutionalization of the authority of office, the use of market mechanisms for mobilizing resources, a generalized legal order, and the democratic association."¹⁷⁷ Parsons did not devote much attention to exactly how democracy would arise or how it would operate. Rather, Parsons assumed a naturalistic relationship between modernization and democracy—as the former emerged, the latter would naturally take root. In his 1964 essay, *Evolutionary Universals in Society*, Parsons explicitly applied evolutionary theory to identify centralized political legitimacy, the emergence of political rationalization through bureaucracy, and "the democratic association with elective leadership and fully enfranchised membership" as naturally co-evolving hallmarks of modernity.¹⁷⁸

The casual assertion of the link between modern bureaucracy, capitalism, and democracy may have stemmed from the fact that Parsons did not analyze the role of power in his list of functional imperatives.¹⁷⁹ Rather, Parsons expressed a highly

176. See ANDRE GUNDER FRANK, *THE SOCIOLOGY OF DEVELOPMENT AND THE UNDERDEVELOPMENT OF SOCIOLOGY* (Pluto Press 1971). For an explicit denunciation of Parsonian methodology, see *id.*

177. Toby, *supra* note 138, at 12–13.

178. Talcott Parsons, *Evolutionary Universals in Society*, 29 AM. SOC. REV. 339, 353, 355 (1964).

179. See Morse, *supra* note 118, at 151. Morse notes:

Had he regarded power in this way, Parsons might have seen that effective

idealized version of the actual functioning and social role of the institutions of political democracy such as the electoral franchise.¹⁸⁰ This was consistent with his orientation in terms of political and economic theory, and with his objective of counteracting oppositional theories then competing for allegiance in the realm of international economic policy.¹⁸¹ Thus, "pessimism was the aspect of Weber's thought that . . . Parsons had labored so hard to downplay in *Toward a Theory of Social Action*."¹⁸² Whereas Weber viewed the establishment of modern capitalistic bureaucracy with "despair,"¹⁸³ Parsons seemed to see it from a much more optimistic vantage point as a necessary outcome of desirable evolutionary progression in society.

Although Parsons recognized power as a factor in Weber's analysis,¹⁸⁴ he nevertheless underplayed that aspect in multiple ways. The first was through his own selective culling of Weber's theoretical concepts. As Cohen et al. observed, Parsonian theory holds that "common values are the *sine qua non* of the social order."¹⁸⁵ Parsons' reading of Weber not only emphasized normative interests driving individual activity at the expense of internally identified non-normative factors such as material interest, as discussed above, but also emphasized those normative interests at the expense of externally determined non-normative factors, such as coercion: "Parsons' great stress on the alleged importance of the 'common value' in Weber's work forced a fundamental reordering of Weberian perspectives on the significance of ideas and interests in social action, and eventually resulted in misinterpretation of Weber's perspective on domination."¹⁸⁶

The Structure of Social Action accomplishes this re-ordering

social goals are of necessity those that are desirable from the standpoint of the powerful. This might have led him to [investigate the] *hierarchical* definition and enforcement of social goals[.]

Id.

180. See Andrew Hacker, *Sociology and Ideology*, in THE SOCIAL THEORIES OF TALCOTT PARSONS: A CRITICAL EXAMINATION, *supra* note 115, at 289, 298–301.

181. See *id.* at 290–91. Hacker notes that although Parsons' "conservative' bias" has been oft remarked on, it is actually more of a classical liberalism: "it is the ideology of John Locke and John Stuart Mill, the ideology of political liberty and a free society." *Id.* at 291.

182. GILMAN, *supra* note 55, at 55.

183. See Max Weber on Bureaucracy, *supra* note 68.

184. STRUCTURE OF SOCIAL ACTION, *supra* note 105, at 658, 717; Talcott Parsons, *Max Weber and the Contemporary Political Crisis*, 4 REV. POL. 62 (1942).

185. Cohen et al., *supra* note 2, at 236.

186. *Id.*

partially through omission. Most of Parsons' treatment of Weber focuses on his sociology of religion, lending force to the collective-value, normative analysis. Only a small portion of *Structure of Social Action* focuses on Weber's treatment of power. Yet power ultimately played a central role in Weber's analysis of modern governance. As noted above, Weber's theory was inflected by a Nietzschean sensitivity to "structures of dominance."¹⁸⁷ New Weberians Kieran Allen and Cohen et al. have argued that a "correct understanding of Weber's general sociology is impossible unless founded on a faithful reading of this theory of" power.¹⁸⁸

This bowdlerizing tendency in Parsons' reception of Weberian analysis was perhaps most famously displayed in his translation of Weber's ideal types of governance, or *Herrschaft*.¹⁸⁹ The term forms the basis for Weber's classic and perhaps best known analysis: his formulation of the ideal types in social structures as deriving from forms of power or *Herrschaft* that are "traditional," "charismatic" or "formal-rational" in nature.¹⁹⁰

The plain, unvarnished definitions of *Herrschaft* in contemporary German-English dictionaries—as "rule" or "dominion"—seem to capture the term's blending of coercion by the elite together with some basic level of acceptance, if not full consent, by the masses.¹⁹¹ On the other hand, English translations of Weber's *Economy and Society* have tended to err on the side of either coercion or consent, construing *Herrschaft* as "authority," which highlights consent, or "domination," which highlights coercion. Guenther Roth, in his translation of *Economy and Society*, chose to translate *Herrschaft* as "legitimate domination."¹⁹² Roth's translation mirrored that of Reinhard Bendix, who in his book of Max Weber explicitly discussed the difficulty of translating *Herrschaft*, and preferred the term "legitimate domination."¹⁹³

187. ECONOMY AND SOCIETY, *supra* note 8, at 941. See Lassman, *supra* note 1, at 83.

188. Cohen et al., *supra* note 2, at 237; see also Allen, *supra* note 85, at 15–32.

189. See *infra* notes 198–214.

190. See Guenther Roth, *Introduction* to ECONOMY AND SOCIETY, *supra* note 8, at lxxxviii.

191. The Cambridge Klett Comprehensive German Dictionary defines *Herrschaft* as "power, rule, reign." CAMBRIDGE KLETT COMPREHENSIVE GERMAN DICTIONARY 381 (2003). Similarly, *Langenscheidts Taschenwörterbuch Englisch* defines *Herrschaft* as "rule, dominion (über); mastery, power, control." LANGENSCHIEDTS TASCHENWÖRTERBUCH ENGLISCH 927 (1956).

192. See Roth, *supra* note 190, at lxxxviii.

193. Bendix, *supra* note 12, at 481. In his section on Legal Domination, Bendix

Parsons, however, preferred the term "leadership."¹⁹⁴ Parsons' rendition of *Herrschaft*, therefore, plays up the "consent" side of the term even more than the word "authority." In a review of Bendix's "intellectual portrait" of Weber, Parsons explained:

The term [*Herrschaft*], which in its most general meaning I should now translate as "leadership," implies that a leader has power *over* his followers. But "domination" suggests that this fact, rather than the integration of the collectivity, in the interest of effective functioning . . . is the critical factor from Weber's point of view The former interpretation [does not represent] the main trend of Weber's thought, though he was in certain respects a 'realist' in the analysis of power. The preferable interpretation . . . is represented especially by his tremendous emphasis on the importance of *legitimation* . . . *legitime Herrschaft* [was] ¹⁹⁵ for Weber . . . overwhelmingly the most significant case

Thus, Parsons endorsed "leadership" as the most preferable translation of *Herrschaft*. The New Weberians have explored at length the difficulties of translating Weber's *Herrschaft* into English. In particular, Cohen et al. devoted extensive discussion to Parsons' misuse of the term. Cohen et al. dispute that Weber's "prime emphasis was on either (1) leadership in the interest of effective collectivity functioning or (2) legitimation."¹⁹⁶

begins with a footnote describing the difficulties of translating Weber's term *Herrschaft*:

It is difficult to find an English equivalent for the German term *Herrschaft*, which emphasizes equally the ruler's exercise of power and the follower's acceptance of that exercise as legitimate, a meaning which goes back to the relations between lord and vassal under feudalism. The English terms "domination" and "authority" are not equally apt, because the first emphasizes the power of command whether or not consent is present, while the second emphasizes the right of command and hence implies the follower's acceptance almost to the exclusion of the ruler's very real power. Weber wished to emphasize that both power and consent are problematic, but as a realist in the analysis of power he would have been critical of any translation that tended to obscure the 'threat of force' present in all relations between superiors and subordinates. For these reasons, I prefer the term 'domination.'

Id. Bendix puts his finger on a difficulty of translation in Weber's concept subtly blending—and conceptually requiring—both the notion of coercion and the notion of consent. *Id.* When unpacked in this way, the seemingly intended meaning of the term *Herrschaft* remarkably comes within striking distance of Antonio Gramsci's concept of hegemony. Indeed, some Frankfurt School scholars would employ Weberian concepts in their critiques of modern society.

194. See *infra* note 205.

195. Talcott Parsons, *Reinhard Bendix's Max Weber: An Intellectual Portrait*, 25 AM. SOC. REV. 750 (1960) (book review).

196. Cohen et al., *supra* note 2, at 237.

Rather, Cohen et al. argue that "Weber did not suggest that dominant persons act to integrate collectivities in the interest of effective functioning. Rather, he treated such individuals as acting in terms of their own ideal and material interests as they perceive them."¹⁹⁷

Moreover, Cohen et al. found Parsons' emphasis on legitimation as "no more convincing than Parsons' related attempt [concerning] leadership."¹⁹⁸ Cohen et al. argue that, whereas Parsons emphasized the importance of "belief in legitimacy" in explaining the basis of power in social structures, Weber allowed that *Herrschaft* could be based in "physical coercion; habituation to which at least under certain conditions Weber applied the label 'discipline'; rational calculation of interests, a specific version of which is founded in relationships of expertise; and belief in the legitimacy of perceived order."¹⁹⁹ Thus, Weber wrote:

It is by no means true that every case of submissiveness to persons in positions of power is primarily for (or even at all) oriented to this belief [in legitimacy]. Loyalty may be hypocritically simulated by individuals or by whole groups on purely opportunistic grounds, or carried out in practice for reasons of material interest. Or people may submit from individual ²⁰⁰weakness and helplessness because there is no acceptable alternative.

Weber's view of *Herrschaft* thus appeared to contain much more normative complexity than the term "leadership" connotes. As subsequent New Weberians have pointed out, these difficulties in translation probably have had at least as much to do with the Anglo-American tradition of political thought as with linguistics. While Cohen et al. critique the lack of attention to "nonlegitimate" rule in Weber's thought, at least as problematic was the understanding of the term "legitimate" itself. Weber's understanding of the term appears to have been strictly positivist, referring to the actual willingness of subjects to obey authority rather than to any normatively valid basis for their obedience. "Weber's uncanny ability to equate authority with power flew in the face of the more optimistic outlook of western political philosophy which assumed that the Enlightenment's legacy had resolved the problem by defining all legitimate authority as

197. *Id.* at 238.

198. *Id.*

199. ECONOMY AND SOCIETY, *supra* note 8, at 53-54, 212-14, 942-46.

200. *Id.* at 214.

deriving from voluntary consent."²⁰¹

Lassman elaborates on Weber's understanding of legitimation, arguing that it was "not concerned with the normative question of whether or not that body of rules ought to be considered legitimate."²⁰² This approach was shaped by Weber's methodological affinity both with "legal positivism and post-Nietzschean skepticism."²⁰³ Eliaeson further explores the difference between Anglo-American political thought and Weber's post-Nietzschean, anti-Hegelian approach:

For an Anglo-American . . . [l]iberalism means "freedoms," enshrined politically as rights and protected by various institutional methods which limit state authority The core problem of liberalism is state power: limiting it, controlling, or alternatively of justifying its political role which is to be determined by constitutions and by democracy or more broadly by consent arising through discussion. Weber, however, was far removed from all of this. He had no sentimental attachment to either democracy or parliamentary forms. 'Rights' barely exist as a concept in his texts, and when they appear they do so as a valuable residue of past fanaticism Indeed, he showed little affinity even with German liberalism, which made its own distinctive contribution to the liberal tradition with the idea of *Rechtsstaat*, the ideal of a state of laws not of men . . . Weber hardly used the word *Rechtsstaat*. The explanation for this is that the word itself has natural-law connotations. And natural law was alien to Weber, who was very pronounced in favor of what we might call legal positivism—or, maybe better, legal realism, since there were lingering elements of natural law in the legal positivism of his day²⁰⁴

In sum, Weber's view of *Herrschaft* reflected much greater ambivalence about the role of power in securing governmental authority. This view was in turn likely shaped by the post-Nietzschean philosophical tradition out of which Weber wrote.

201. DIGGINS, *supra* note 21, at 62.

202. See Lassman, *supra* note 1, at 87. Lassman notes:

This is a point where many of Weber's critics argue that he has unjustifiably altered the generally accepted meaning of the concept. Weber ignores the argument that a concept such as "legitimate" has implicit normative implications and cannot, therefore, be used in a "neutral" manner. According to Weber's critics to describe a regime as legitimate must be to refer to a valued achievement other than the contingent fact that its citizens appear to obey its laws or just happen to believe it to be legitimate.

Id.

203. See *id.* at 87–88. Lassman continues: "Weber was, in many ways, influenced by both legal positivism and post-Nietzschean skepticism. He was not concerned with the problem of which regimes are normatively legitimate, but with a different question: . . . 'how can modern regimes legitimate themselves or be held to be legitimate?'" *Id.* at 88.

204. Eliaeson, *supra* note 94, at 136–37.

Parsons, in attempting to transpose Weberian concepts for an American audience, may also have altered them to reflect the different philosophical climate of American social and political thought. The consequence, however, may have been to obscure some important implications of Weber's writings regarding the likely consequences of legal reform efforts.

D. PARSONS AND U.S. FOREIGN POLICY

[The] confluence of U.S. foreign policy needs and the ambitions of Parsons and his collaborators would provide the foundation for a social scientific theory of social change . . . Parsonian theory would provide a basis for uniting the particularistic studies being made in Area Studies programs into a single, coordinated research and policy agenda.²⁰⁵

In formulating that agenda, Parsons was particularly motivated by the desire to provide an "American alternative to Marxism," as his theory would subsequently come to be called.²⁰⁶ In this cold war context, Parsons sought to portray Weber—and his theories about capitalism as interpreted by Parsons—as "above political conflicts."²⁰⁷

Parsons explicitly situated his analytical framework of evolutionary universals in the policy divide between capitalism and socialism. The notion that the major engine of growth and development lay in the "beliefs" of members of society found important support in Max Weber's exposition of the role of Protestant ideals in spurring capitalist development in Western Europe.

Parsons was motivated to establish the universality of his theory at least in part out of the same concerns that animated his endorsement of normative factors, namely a desire to exclude and delegitimize rival Marxian accounts of economic growth. In fact, Parsons declared "special reasons" for downplaying the role of nonnormative interests, and underplaying the problematic conceptual role of democracy, in his reading of Weber.²⁰⁸ These reasons also related to his desire to deprive and delegitimize rival accounts.²⁰⁹ In particular, excising We-

205. GILMAN, *supra* note 55, at 73.

206. ALLEN, *supra* note 85, at 7 (citing ALVIN WARD GOULDNER, *THE COMING CRISIS IN WESTERN SOCIOLOGY* 177 (1970)).

207. *Id.* ("Weber thus entered the canon of American sociology as a 'value free' sociologist.")

208. See Talcott Parsons, *On "De-Parsonizing Weber,"* 40 *AM. SOC. REV.* 666, 668 (1975).

209. See *id.* at 666 (seeking to "clarify . . . the relation between economic theory

ber's sociocultural "pessimism" from his own theory allowed Parsons to "craft a Weberian theory that permitted [the] image of American modernity as a wonderful thing."²¹⁰

Parsons sought not only to emphasize the importance of capitalist beliefs, but also to situate this causal variable in a universalist analysis of economic growth and social change. Central tenets of modernization theory were that: (1) there is a universal path towards economic development which features the emergence of a highly differentiated social structure; (2) this path features the centrality of free market entrepreneurs; and (3) states that wish to succeed in economic development should do as much as possible to free constraints on entrepreneurs and investors.²¹¹

The *dependentista* development theorist Andre Gunder Frank observed that, although Parsons himself was not primarily focused on the developing world:

Arguably "development" was the field in which Parsonianism became the most influential, even though it was rather far removed from his own immediate concerns. It was Parsons who translated Weber into American . . . and it was [not] post-War but Cold War America that used Parsonized Weber to conquer the post-colonial Third World in apparent competition with the Soviet Union and China.²¹²

Parsons thus ultimately enjoyed his greatest influence in development theory. Based at Harvard's Department of Social Relations (DSR), Parsons was able to work with contemporaries to shape an agenda for social science that could be immediately transferred to U.S. foreign policy initiatives.²¹³ The DSR, un-

and sociological theory.").

210. GILMAN, *supra* note 55, at 55.

211. This was the view, for example, represented by Hayek's reading of Weber.

212. Posting of Andre Gunder Frank, to franka@fiu.edu (March 18, 2002), available at <http://rrojasdatabank.info/agfrank/agfmsg14.html>. Frank was a central proponent of dependency theory, and also was perfectly aware of the interconnections between Parsons, as an interlocutor of Weber, and modernization theorists such as W.W. Rostow.

213. GILMAN, *supra* note 55, at 73. Gilman's description of the influence of Parsons in the emergence of this scholarly agenda is worth quoting at length:

U.S. foreign policy needs and the ambitions of Parsons and his collaborators would provide the foundation for a social scientific theory of social change, which would eventually come to be known by the name modernization theory. [Parsons' Department of Social Relations or DSR] would shape modernization theory First, Parsons articulated more fully than any other contemporary American scholar . . . the concept of modernity that would provide a fundamental, if usually implicit, template for both intellectuals and policy makers in their understanding of the desirable direction and ultimate goal of change in the postcolonial world. Second, [DSR] mem-

derwritten by the Carnegie Corporation, sponsored scholarly exchanges with Edward Shils and others at the University of Chicago for the purpose of establishing a single, general account of modernity in the social sciences.²¹⁴

This account contained all of the qualities described above. The definition of modernity as occurring through evolution along a single, universal path, characterized and spurred primarily by social "values," and leading to a highly "differentiated" social structure in which bureaucratic governance, modern capitalism, and democracy all naturally co-existed. Parsons viewed the United States as occupying the apex of this evolutionary trajectory. "Moreover, since historical change had to come from outside the system, Americans were obligated to go out and help other societies get moving toward greater differentiation."²¹⁵ Parsons' prescriptions for "help" were "welcomed with especial warmth in development studies."²¹⁶ The application of Parsonian analysis to the objective of economic development would produce one of the leading policy frameworks of the mid-to-late twentieth century, Modernization Theory.²¹⁷ Modernization Theory, in turn, would shape later approaches to legal reform, carrying forward central tenets of Parsonian theory.

CONCLUSION

This paper constitutes a preliminary consideration of how a critical re-reading of Weber might impact the field of law and development. While the scope of this paper is limited to a reassessment of Parsonian sociology in the context of legal reform, the paper demonstrates the need for a more thorough account of the implications of contemporary re-readings of Weber for law and development discourse.

bers helped redirect postwar social theory away from social critique and toward the creation of a descriptive . . . theory of human action This social theory would help justify the creation of technologies of social reform, mostly applied to non-Western countries. Third, the DSR was the institutional fountainhead for the promotion of Parsonian social theory, which provided the foundation for modernization theory. . . . [T]he DSR provided an institutional presence for the employment and training of students of modernization. Most of the sociologists associated with modernization theory had some affiliation with the DSR as either professors or collaborators.

Id.

214. *Id.*

215. *Id.* at 88.

216. *Id.* at 79.

217. *Id.* at 73.