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"DISENCHANTMENT OF THE WORLD".
THE THESIS OF MAX WEBER'S CONCEPT OF THE SOCIOLOGY OF LAW

| Abstract

▸ *Goal* – the purpose of this text is to present the assumptions that are characteristic for Max Weber's concept of the sociology of law. They undeniably fit into the picture of his vision about the state of contemporary political, economic, legal and social reality, which he collectively described with the term he coined – "the disenchantment of the world".

▸ *Research methodology* – conducted through an analysis of the literature on the subject and by compiling the results of the undertaken analysis.

▸ *Score/results* – Max Weber, conducting an analysis of his contemporary world, tracing the historical changes that led to its formation, and studying the impact of these changes on his spheres of interest, came to the conclusion that with the development of Western civilization, magical explanations of reality gradually gave way to more "down-to-earth" explanations. Ultimately, Weber referred to the process of turning to reason and logic as rationalization. Rationalization, in turn, led to a state of affairs that Weber referred to as the "disenchantment of the world". It should be reiterated after Grosby that "if, in fact, Weber was correct that all magical forces have been driven out of modern life, then there would no longer be a need to constantly ask ourselves about the meaning and sense of human life; there would no longer be any number of ethical disputes and paradoxes with which we are confronted; we would no longer struggle with the doubts that wrap around all action. There would only be a calculation that would determine the most effective ways to problem-free solutions" [Grosby, 2013: 308]. And as is well known, including from autopsy, both individuals and society as a whole continue to ask themselves questions that reason cannot answer.

▶ *Originality/value* – presenting a theoretically observable phenomenon, the grasp of which, however, often escapes observers. The text makes the reader aware of the complexity of the processes that have shaped today's dimension of law. The text aims to make the reader aware that the rationalization of the world has led to the rationalization of law, and, through convergence, the rationalization of law has led to the rationalization and disenchantment of the world.

| **Keywords:** sociology of law, Max Weber, disenchantment of the world, rationalization of the world, rationalization of the law.

1. Introduction

Karl Emil Maximilian "Max" Weber, born in 1864 in Erfurt, was a German sociologist, philosopher, economist and lawyer whose ideas had a great influence on the modern shape of sociology, of which he is considered the father along with figures such as Émil Durkheim and Karl Marx. He rejected the positivist conception of social sciences as natural sciences, however, trying to give them a strict and objective character. He developed the concept of ideal types, and undertook the elimination of value judgments from the methodology, pointing out their destructive influence on the course and outcome of the process of cognition. One of Weber's famous scientific achievements, among others, is distinction of the mode of governance into three pure types: traditional, charismatic and legal. His reflections on bureaucracy, legitimacy of power, politics, the influence of Calvinism on capitalism and social action have influenced various fields of science. Weber's wide range of interests also included law. He was one of the forerunners of approaching it from a sociological point of view. Michał Kaczmarczyk draws attention to Weber's statement with regard to law: "the specific professional sublimation of modern law is possible only through its formally rational character" [Kaczmarczyk, 2003: 69].

It is worth mentioning that while analyzing the social reality that is contemporary to Weber, while pondering the possible future of the development of Western society, Weber also points out that the undeniable trend he sees is a move away from tradition and towards rational thinking and action. Weber called this process *Entzauberung der Welt* – the disenchantment of the world, meaning moving away from interpreting and understanding reality through the prism of magic.

The purpose of this text is to present the assumptions that are characteristic for Max Weber's concept of the sociology of law. They undeniably fit into the

picture of his vision about the state of contemporary political, economic, economic, legal and social reality, which he collectively described with the term he coined – "the disenchantment of the world".

2. The assumptions of Max Weber's sociology of law

According to Weber, legal order, in relation to law in sociological terms, is a social order [Polaczuk, 2010: 56–57]. For the creation of order, however, a rule is needed. Pawel Polaczuk points out that "by the concept of a rule one can understand a norm to which past, present and future events or actions will be referred", and, repeating Weber, he cites that a rule can be considered in the context of "a maxim of action, i.e. a rule subjectively regarded as binding, to which human action will be directed". With this in mind, the legal order according to Weber is formed by norms, which are themselves causes, being catalysts for the formulation of human will and action. Weber points to the possibility that "those acting in a certain social space will orient their actions to the ideas of the norms of the legal order" [ibidem, 57]. These considerations apply to the sociological view of law, as well as the empirical validity of law. It should be pointed out here that "in the case of law in sociological terms, Weber reduces the cognitive interest to the question: does it empirically affect, and how?" [ibidem].

Weber creates a sociological concept of law, focusing primarily on the causes and consequences of the assumption that members of a social community accommodate their actions towards certain social orders. Thus, he draws attention to the validity of legal norms, that is, "the probability that legal norms will be obeyed, regardless of motivation" [Kaczmarczyk, 2003: 62]. Andrzej Kojder, on the other hand, notes that "adherence to norms considered as legal norms and actions adjusted to these legal norms are signs that we are dealing with a legal order" [Kojder, 2010: 54].

Andrzej Kojer points out that Weber notes that "a valid legal order can only refer to a certain factual state of affairs, and this issue is the subject of the sociology of law". At this point, it should be pointed out that Weber's definition of law (i.e. the sociological definition of law) defines law as "a set of factual conditions of human action, for the enforcing of which a special coercive apparatus is appointed" [Kaczmarczyk, 2003: 62]. For Weber, an extremely important aspect of the social order, and through it the legal order (and *vice versa*), is the existence of

the so-called staff, or coercive element, designed to serve as a guarantor [Kojder, 2010: 53]. This is important because the existence of legal order is guaranteed when the coercive apparatus is activated in the event of a violation.

Michał Kaczmarczyk draws attention to another concept that seems to be relevant to understanding Max Weber's concept of sociology of law. Namely, he points to the so-called social action, which is an action oriented in its subjective sense to the behavior of other people. Thus, it is based on certain expectations of others towards individuals. However, those individuals also have certain expectations. This leads us to the statement that "the social action of an individual is based on expectations of expectations" [Kaczmarczyk, 2003: 64].

Weber defines social action as human behavior, however, only if the person associates with it a certain subjective and intentional sense [Weber, 2002: 6]. In addition, Weber describes reality by capturing it through the lens of acting subjects, comparing social phenomena to ideal types he has constructed [Kaczmarczyk, 2003: 58]. Weber distinguishes four pure ideal types of action: purposefully rational, value rational, charismatic and traditional [Polaczuk, 2011: 9–10]. The construct of ideal types was intended to serve as a tool "to subordinate observation and to search for causal relations between actions".

The most relevant type of action from the point of view of the topic under discussion will be intentionally (purposefully) rational action. It is an action where the individual is aware of and acts according to "the goals, means and side effects, while considering rational means in relation to the goal as well as the side effects (…)" [Weber, 2002: 19]. We can understand purposefully rational action intellectually, just as we understand logical or mathematical structures, and therefore purposefully rational action "will be for us perhaps not so much completely unambiguous as sufficiently obvious (…) so that we are given to understand real human action, in the most rational way possible" [Polaczuk, 2011: 10–11]. Weber links a deliberately rational action, oriented to the selection of means through the prism of the goal, with the concept of rationality [ibidem, 12]. Thus, one can make the assumption that rationality is an action based on the calculation of means in view of the goal. This, in turn, leads us to conclude that rationality of action is inextricably linked with rational thinking, and this combination creates a rational lifestyle [ibidem, 18].

Before proceeding further, it is worth mentioning that it was Weber who described the general development of law, indicating that the genesis of its evolution should be traced firstly to the charismatic revelation of law by prophets (i.e. legal prophecies), moving on to the creation and detection of law by legal notables,

through the imposition of law by clerical and secular authorities, to arrive finally at lawmaking by the state and "its development and application by legal scholars with appropriate professional training" [Kojder, 2010: 57]. Such a chronology indicates a transition sequentially from the revelation of law by means of oracles, formulas, divine judgments, and rituals (in which Weber sees the beginning of the long process of formalizing legal procedure), through the empirical creation and application of law by charismatic notables, through the legislation of the secular empire and ecclesiastical authorities, to finally reach "the systematic establishment of law (…)" by people with legal training, as well as lawmaking by state authorities [ibidem, 57–60]. Thus, there was a transition in the process of legal development from "a combination of magically conditioned formalism and irrationality brought by revelations (…) to the logical sublimation and deductive rigor of law" combined with its rational techniques [ibidem, 57]. As we can see, the rationality resulting from action also translates into law and manifests itself in its later stages of evolution, as Weber clearly points out.

With these considerations in mind, it should be pointed out that the main issue of Weber's socio-legal deliberations is "the question of the development of legal rationalism and its significance for the rise of the modern state" [ibidem, 56].

3. Rationality and rationalization of the world and the law

Weber did not approach the term "rationality" in an unambiguous way. It should be noted that it had at least several meanings for him, including his understanding of rationality as "the manifestation of the will of the individual", as a synonym for "intellectual clarity", religious rationalization, i.e. the systematization of religious ideas; "the reduction of individual procedural decisions to a system of established rules", he considered one of the aspects of legal rationality [ibidem, 57]. Adopting the assumption of rationality of actions, on the other hand, was intended to make it possible to understand and explain those actions [Skeris, 1982: 248].

Michał Kaczmarczyk, referring to the Weberian notion of rationalization, points out that it is also a very broad concept, encompassing such processes as secularization, industrialization, bureaucratization, specialization, objectification, disenchantment, dehumanization and the development of capitalism [Kaczmarczyk, 2003: 57]. On the other hand, Richard Jenkins mentions that

"rationalization is an intellectual process - a process of intellectualization that we have been going through for thousands of years, an intellectual rationalization created by science and scientifically oriented technology" [Jenkins, 2000: 20–21]. According to Peter Skeris, rationalization can be understood as "the practice of making sense of reality" [Skeris, 1982: 249].

The rationalization relating to the participation of religious beliefs and the influence of magic (or lack thereof) in everyday life is an example of an even more powerful process of rationalization of many other spheres of life, such as political, economic, legal or aesthetic space. Michał Kaczmarek points out that "the rationalization of lawmaking thus manifests itself primarily in its secularization", and an important step of rationalization is "the emancipation of the sphere of duty from magically guaranteed tradition". Steven Grosby further states that "each sphere has its own criteria or axioms around which it is organized, and is thus rationalized according to the criteria or axioms proper to it" [Grosby, 2013: 303].

To illustrate the process of rationalization, one can recall the vivid observation of George Ritzer, who, describing this phenomenon in relation to modern times, coined the term "macdonaldization", which fits perfectly with Weberian considerations, primarily in terms of the extent to which rationalization continues in the modern world [Jenkins, 2000: 20]. Indeed, it is impossible to disagree with the assertion that the rational-bureaucratic-scientific model has been adopted and successfully adapted across a wide spectrum of human activity, mainly on the grounds that this approach simply works [ibidem].

Having discussed the general conditions of rationality and rationalization, it is worth looking at their correlation with law. Thus, it can be assumed that both rational law and the process of rationalization of law can be observed. According to Weber, rational state law, based on the criteria of rationality and rationalization, is regarded as the result of the process of rationalization of law [Weber, 2002: 593].

The development of legal rationalism was considered by Weber as a factor undoubtedly conducive to the formation of Western civilization [Kojder, 2010: 56]. At this point, bearing in mind that law in Europe, as a social product, was shaped by the processes of civilizational development taking place in it, it is worth mentioning the stages of evolution of law cited earlier in the text, from its revelation by prophets, before its creation and application by notables, imposition by secular and theocratic authorities, to its establishment by the state and people with legal education contributed to the rationalization of law. At first, we had material rationalization, i.e. treating legal issues from the point

of view of political advantage or material justice, to develop eventually formal rationality and a formal system of law. As Andrzej Kojder mentions, "a system of laws is formal if it takes into account only those features of the facts that can be unambiguously subordinated to clearly formulated rules of substantive law and rules of procedural law" [ibidem, 61].

Weber's sociological theory of the rationality of law is marked by the dualism of formal and material rationality [Kaczmarczyk, 2003: 58]. In particular, "the creation and application of law can get away with formal and material rationality" [Polaczuk, 2011: 63]. Thus, the legal system is characterized by two dimensions of rationality. A law is formally rational if the legally relevant will be "only the unambiguous general features of the facts" [Weber, 2002: 501]. Following Paweł Polaczuk, it should be pointed out that "Weber, referring to the notion of formal rationality of law, allows us to assume (…) that this form of rationality is concerned with the form of law – the procedural dimension of its creation and application, i.e. formal law. On the other hand, the law is materially rational (substantive law) if the general precepts in terms of content, such as ethical, political, or utilitarian demands, overcome the formalism of external marks, as well as logical abstraction" [Polaczuk, 2010: 63].

At this point it is worth noting that, according to Kaczmarek, "Weber evaluates positively only formally rational law, the source of which is professional activity, and not the demands of the people, the whims of the ruler or the thoughts of a moralist" [Kaczmarczyk, 2003: 64]. His statement should also be quoted, proclaiming that: "both formally and materially rational law are ideal types, and therefore do not exist in pure form (…). The rationalization of law can therefore consist either in its formalization, which is typical of modern bourgeois Western European culture, or in its materialization, which is characteristic of sacred law" [ibidem, 70].

However, it should always be borne in mind that "the thesis of the rationalization of law is not synonymous with the view that rational law, whether formally or materially, displaces all irrationalism from the legal field" [ibidem, 71–72].

4. Disenchanting the world

Weber borrowed the term "disenchantment" from the German poet, writer, and philosopher Johann Christoph Friedrich von Schiller [Jenkins, 2000: 11], the author of such works as "Ode to Joy", who used the term in his 1795 "Letters

on the Aesthetic Education of Man" to express the disappointment he felt over the distortion of ideas and the escalation of violence that befell the French Revolution and the failure to put into practice the ideas that guided it.

According to Weber, the disenchantment of the world lies at the heart of modernity. In fact, in many respects it is, in his view, identical to the concept of modernity prevailing in the West [ibidem, 12]. Krzysztof Konecki notes that "the disenchantment of the world accompanies the process of society's transition from tradition to modernity" [Konecki, 2003: 173]. The process of disenchantment is the elimination of powers aroused or controlled by magical techniques from our conceptual world, which is a natural consequence of rational development [Grosby, 2013: 301].

Modernity, in the context of the idea of the disenchantment in question, is in turn "the collapse of the assumption of a divine world order and the rejection of the legitimacy of the cosmos", which is "part of the great historical process of the gradual disenchantment of the world" [Nogal, 2017: 23]. Modernity is an achievement of scientific reason.

Weber saw disenchantment as the twilight of the magical and moral universe. Richard Jenkins points out in his essay that this would be evidenced by two points that Weber himself pointed out: namely, the first would be the rupture of the moral, cognitive and interpretive unity that the German jurist and sociologist believed characterized the enchanted pre-modern worldview [Jenkins, 2000: 15]. As a result of this procedure, values hitherto considered ultimate or sublime were removed from the public life, left at most only in the realm of direct and personal human relations. Jenkins stresses that "meaning" ceases to reside in axiomatically shared and publicly reproduced beliefs and understandings, which have hitherto constituted "the epistemological and moral community of duplicating individuals" [ibidem]. It is worth quoting here the words of Jenkins, who believes that: "Weber draws our attention to the disappearance of magic as such, to the presumption that, at least in practice, the world has entered a path at the end of which there will be no more mysteries. He assumes that all things are potentially capable of explanation in terms that are acceptable to rational science and amenable to analysis whose results are predictable. As a result, a religious and magical understanding of the world becomes charming at best, and ignorant and backward at worst" [ibidem, 15].

The disenchantment of the world is, as mentioned before, a historical process through which the natural world and all areas of human existence become experiential and comprehensible as they have become less mysterious. These

areas also become defined (at least in principle) as cognizable, predictable and manipulable by humans, "conquered", tamed and included in the interpretive scheme of the sciences, capable of being rationally managed. In a disenchanted world, everything becomes understandable and tame. As Richard Jenkins notes, the world focuses on the human, and the universe – only seemingly paradoxically – becomes more impersonal [Jenkins, 2000: 12]. Repeating Weber, Steven Grosby points out that the progressive process of intellectualization and rationalization has resulted in the belief that "we can, in principle, control everything by calculation and that, as a result, we are no longer ruled by mysterious, unpredictable forces".

According to Krzysztof T. Konecki, on the other hand, the disenchantment of the world means "a social process in which there is a progressive rationalization and formalization of social relations, leading to their rationalization. The old world order and its explanations are freed from the influence of irrational, supernatural and inexplicable phenomena in the language of scientific determinism. A period of the reign of reason follows, and it is reason that mainly disenchants the world hitherto incomprehensible in the objective language of science. Reason becomes a pure tool for the accurate selection of means and precise prediction of consequences" [Konecki, 2003: 177].

Speaking of disenchantment, it would be appropriate to touch on the related two aspects, which, although different from each other, are completely correlated. For, on the one hand, there is secularization and the decline of magic, while on the other there is the growing scale, scope and power of formalized rationalization of the means and ends of science, bureaucracy, law and politics [Jenkins, 2000: 12]. Secularization appears to be very advanced and progressive among Western communities; participation in formal, organized religion has declined significantly over the past decades [ibidem, 19]. It should be remembered that secularization and disenchantment are autonomous concepts and should not be confused, however, when discussing the topic at hand, it is impossible not to refer to both of them, often linking their meanings.

Wanting to link the concept of rationalization and the disenchantment of the world, one would have to start with an observation made by Michał Kaczmarczyk: "rationalization is a very capacious concept concerning social development, and in Weber's analyses it is mostly associated with any increase in technical skills, regardless of what technical procedures are involved). An example is magic, which is considered an irrational procedure, but according to Weber is, like physics, the result of systematic rationalization (…). Magic is the result of reflec-

tion, it is a more rational technique than the earlier ways of doing things, it is abstractly more consistent because it is subject to a general principle instead of trying out herbs at random. Rationalization takes place wherever a person uses a procedure that requires more methodical preparation than before. This explains why rationalization does not mean a specific end state of some process, but an endless process of applying increasingly systematic and adequate procedures. Since a large part of our actions are value-driven rational actions, a magical action can often have a more rational character than a non-magical behavior. Magic has been preserved to this day in many areas of life; magical significance is, after all, attributed to the sacraments, for example" [Kaczmarczyk, 2003: 59–60].

Wanting to point out the effect of the displacement of magical translations from the reality around us, which is the result of the progressive rationalization of human life in all its areas, one can refer to the observations of Andrzej Kojder, who points out that "the modern state is characterized by a formalized legal order to which a central authority is subject, coercive jurisdiction over a given territory, monopolization of the legitimate use of force and bureaucracy". All these elements were pointed out by Weber as the resultant of the departure from interpreting the world through the prism of higher forces, as the achievements of civilizational progress and the development of reason, as the realized triumph of rationality in the way social life was organized in Western civilization. Moreover, it should be remembered that in the case of law, its disenchantment, that is, the rationalization of law, could only occur when the legal profession was freed from magic and sacred traditions [Kojder, 2010: 63]. And for this, keeping in mind that law is a social phenomenon, there had to be a prior process of rationalization – disenchantment – of social life. The feedback loop of rationalization progressing both in all spheres of human life and in the legal regulations that entwine them testifies to the triumph of secular reason and rational understanding of reality.

5. Conclusions

Since the dawn of history, man has been trying to find an explanation and meaning for the reality around him and his own existence. In the early period of the formation of human civilization, not yet equipped with the historical achievements of future eras, he based all existence, rules and laws governing the world on mystical foundations, on the causal power of *logos*, the absolute, chaos, the

pantheon of gods and their superhuman abilities, trying to subdue by the power of imagination the phenomena that, due to the lack of appropriate tools and limited (compared to modern times) knowledge, he could not explain otherwise.

Max Weber, conducting an analysis of his contemporary world, tracing the historical changes that led to its formation, and studying the impact of these changes on his spheres of interest, came to the conclusion that with the development of Western civilization, magical explanations of reality gradually gave way to more "down-to-earth" explanations. Ultimately, Weber referred to the process of turning to reason and logic as rationalization. Rationalization, in turn, led to a state of affairs that Weber referred to as the "disenchantment of the world".

However, one can encounter opinions in opposition to the theses put forward by Max Weber. Critical literature raises the existence of observable resistance to the desire for a complete "disenchantment" of social life. This is linked to the claim that people cannot function without seeking and making sense of their lives and existence. This is an anthropological fact underlying the Weberian need to justify the recognition of any power or even life itself. And this points to the fact that faith (albeit religious) remains a vehicle for the meaning of existence. And if this is the case, then we are faced with important objections to the disenchantment of the world in relation to the modern world [Grosby, 2013: 303–304].

It should be reiterated after Grosby that "if, in fact, Weber was correct that all magical forces have been driven out of modern life, then there would no longer be a need to constantly ask ourselves about the meaning and sense of human life; there would no longer be any number of ethical disputes and paradoxes with which we are confronted; we would no longer struggle with the doubts that wrap around all action. There would only be a calculation that would determine the most effective ways to problem-free solutions" [ibidem, 308]. And as is well known, including from autopsy, both individuals and society as a whole continue to ask themselves questions that reason cannot answer.

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