The Authority of Public Opinion – why Weber declined to take part in the conversation


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Abstract

During the second half of the 19th and early 20th centuries the role of public opinion became a focus of debate for political and social theorists. Although sociologists disagreed whether public opinion was a threat to order they agreed that it exercised an important influence on the working of modern authority. Yet despite his interest in the substantive issues raised in this debate, Max Weber wrote very little about public opinion. His silence on this subject is surprising since public opinion was widely represented as essential for the legitimation of political rule. This essay argues that Weber’s reluctance to take part in this conversation may have been influenced by the irresolvable questions raised by the ascendancy of public opinion for his theory of domination.

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A New Religion?

Even before the emergence of sociology as a professional discipline the issue of public opinion was of serious concern to thinkers trying to make sense of the emerging modern society. Political theorists, philosophers, political economist and early sociologist attached great significance to the workings of opinion. Rousseau, Kant, Hegel, Locke, Hume, Bentham, Mill, Tocqueville were some of the key thinkers who wrote about the public opinion or one of its cognate terms such as opinion, general opinion or mass opinion. Although these writers offered different accounts of the role of public opinion none of them contested the view that this was a force that had a powerful influence on the exercise of authority. They took it for granted that political and cultural life had become more public and that governments were forced to account for their actions to a larger and more heterogeneous group of people.

By the late 18th century the consent of public opinion was perceived as essential for the working of authority. Political theorists and social scientists conceptualised the rise of this force as the corollary of the decline of religion and traditional hierarchy. In the years leading up to the French Revolution public opinion was increasingly regarded as ‘a new source of authority, the supreme tribunal to which the absolute monarchy, no less than its critics, was compelled to appeal’(Baker 1994 : 168). By the 19th century the pre-occupation of the European political elites with the weakening of traditional and religious sources of legitimation invariably led to reflections about the power of public opinion. Frequently public opinion was represented as the functional equivalent of religion and therefore of fundamental importance as a source of authority.

Napoleon’s words ‘Opinion rules everything’ summed up a widely held sentiment that influenced the thinking of Europe’s political elites. In his capacity as Austrian envoy to Napoleonic Paris in 1808, Metternich wrote to his foreign minister that public opinion was like religion, ‘most powerful’ since ‘it penetrates the most hidden recesses where administrative measures have no influence’. The French diplomat Charles Maurice de Talleyrand reported from the Congress of Vienna in 1815 that formerly ‘the secular power could derive support from the authority of religion’ but that ‘it can no longer do this, because religious indifference had penetrated all classes and become universal’. Talleyrand concluded that ‘the sovereign power, therefore, can only rely upon public opinion for support, and to obtain that it must seek to be one with that opinion’(Jaeger 2010 : 30) According to this interpretation, public opinion could legitimise forms of behaviour – obedience, acts of loyalty and duty – which Max Weber was to associate with value-rational action. (Thomas 1984: 222)

The historical context of the modern preoccupation with public opinion is indissolubly linked to the growing belief that the difficulties associated with the exercise of traditional authority were linked to the rise of a new powerful forces associated with modernity – of which public opinion was one of the most significant. In numerous nineteenth century accounts the ascendancy of the power of public opinion was contrasted to the diminishing capacity of tradition and religion to endow governments with legitimacy. The influential British observer, James Bryce wrote that ‘it is only by rare exception that a monarch or an oligarchy has maintained authority against the will of the people’ (Bryce 1895: 278). Bryce’s comment expressed the widely shared belief that claimed that public opinion was a counterweight to
arbitrary and absolutist political rule. Indeed numerous philosophers and political thinkers – from Rousseau to Burke – ‘attributed sovereignty to public opinion and to the public itself’. (Splichal 1999: 61) In effect public opinion was seen as not only a challenge to the prevailing form of domination but also as an important source of authority in modern society. (Gordon 1992: 883)

While in early modern times rulers and states claimed divine will and tradition as the source their authority, 19th and 20th century parliamentary governments insisted that their government was founded on the consent of the public. The German sociologist, Tonnies, for one drew the conclusion that the influence of public opinion had displaced that of religion but they both served similar social functions. From this perspective public opinion represented what Weber could have characterised as a rationalised form of religion. Tonnies stated that religious leaders and their institutions had lost influence to the leaders of public opinion, such as scientists and teachers (Hardt. & Splichal 2000: 84). The 19th century German historian Barthold Georg Niebuhr likened public opinion to an instrument of divine revelation:

‘Public opinion is that opinion which in spite of the difference in individuals and of the very different conditions or situations in which they are placed, is so unanimously expressed, and merely represented by one man after another, that it may be taken as the utterance of universal truth and reason, and even as the will of God itself’. (cited in Shepard 1909: 42).

Others too tended to associate public opinion with mystical properties. In his assessment of this force, the British jurist Albert Dicey remarked ‘all of us are accustomed to endow public opinion with a mysterious or almost supernatural power’ (Dicey 1920: 1).

By the early 19th century the ‘concept of public opinion had entered the main current of political theory’ writes one of the most authoritative discussions on this subject (Palmer 1967:247). Although everyone agreed that it was a ‘phenomenon of great force and significance in political life there were fundamental disputes about the ‘virtue and competence of public opinion’ (Palmer 1967: 247). The premise of public opinion as rational was always disputed. Opinion was frequently depicted as non-rational or even as irrational. Discussion about whether opinion could be taken seriously as a form of reasoned judgment or knowledge led to the formulation of distinctions that were anticipated in the Platonic contrast between opinion and knowledge.

With the gradual democratisation of political life and the expansion of the size of the electorate sections of the liberal elite grew anxious about their ability to influence and guide public opinion. From the middle of the 19th century public opinion was increasingly represented as threat to the prevailing order or at least as a volatile and unpredictable force that required careful management. It is in this period that the theory of the tyranny of public opinion gained influence. It was depicted by social commentators such as J.S. Mill and Tocqueville as representing a greater threat to the individuals than the coercive laws of the state (Hardt. & Splichal 2000: 25) Tocqueville for one took the view that the opinion of the majority in the United States was far more powerful than that possessed by absolutist monarchs because it had the capacity to mould the moral and psychological outlook of the individual. (Tocqueville 1998: 103-104).

Sociology and the problem of order

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As a discipline, nineteenth century sociology was significantly influenced by the so-called problem of order – and attempted to engage with prevailing conservative anxieties about the consequences of the changes unleashed by the rise of secularism, the French Revolution and the Industrial Revolution. (Nisbet: 1979) Interest in the question of social control drew social theorists towards studying the meaning of mass or public opinion. The American sociologist Robert Park wrote that ‘we are interested in public opinion, I suppose, because public opinion is, in the long run, the sovereign power in the state’. (Park & Burgess 1921: 829). Given the foundational status attached to public opinion, sociologist sought to find ways of guiding it in the right direction. ‘The fact that there is a widespread belief that the ruling power in public affairs, as well as in social life, is public opinion, makes it desirable that the nature of public opinion itself – how it is constituted, who forms it, the way in which its influence is manifested, the ways in which it may be guided – be carefully studied’, wrote one American sociologist in 1895. (Jenks 1895: 158) His colleague hoped that ‘sociologists who are profoundly concerned in the formation and guidance of public opinion’ may find ‘means of controlling that engine and force, the daily press, in the interest of righteousness and moral progress’. (Yarros 1989: 382).

Late 19th century American sociology was actively engaged with analysing the role of public opinion in society. Accounts of the problem of social control and order often touched on this question. Leading sociologists at the time recognised that public opinion possessed a formidable power to place individual under social pressure and gain their conformity. The issues that concerned these sociologists touched on the status of public opinion. They posed questions like was it a force of stability or did it threaten the prevailing order. They were interested in probing the relation of opinion to truth, knowledge and science. Was its rational or irrational? What was the source of public opinion and could it be influenced under the guidance of political leaders, enlightened thinkers and scientists. Questions were also asked about the relationship of public opinion to the state and political authority. Could it provide a countervailing force to the use of arbitrary state power? Did it threaten the state or endow it with authority? (Ross 1896)

The early sociological literature was characteristically ambiguous on the meaning and workings of public opinion. It tended to adopt a paternalistic approach which drew a sharp contrast between the prejudice and folk-knowledge of the masses and the opinion of a select elite. From this perspective the ideas associated with general opinion were either produced or cultivated by the elite. This assumption was systematically elaborated through what is probably the first systematic study of public opinion. William MacKinnon’s 1828 study provided an early sociological account of how different classes influence the constitution of opinion. According to his analysis the quality and influence of public opinion was contingent on the size of the upper and middle classes relative to the lower orders. (MacKinnon 1971: 15). Although this belief in the capacity of the educated classes to guide the opinion of the masses was often contested it continued to influence liberal contributions on this subject. As one of the leading American sociologist, Franklin Giddings wrote at the turn of the century; ‘yet, however republican in spirit a community may be, and however intelligent its members, its public opinion is moulded by a few leading minds’.¹

Sociologists were particularly in interested in the capacity of public opinion to act as a form of social sanction and pressure; a vehicle for the transmission of a community’s moral outlook. Edward Ross, the influential American sociologist regarded public opinion as possessing significant potential for social control (Ross 1896). This was also a question that interested the German sociologist, Ferdinand Tonnies. In his classic 1887 study Gemeinschaft
und Gesellschaft, Tonnies argued that in contrast to older traditional communities the social order was based upon a ‘union of rational wills’ which rested on ‘convention and agreement’. It was ‘safeguarded by political legislation’ and found ‘its ideological justification in public opinion’ (Tonnies 1955: 261) Along with many nineteenth century social and political theorist, Tonnies regarded public opinion as an ultimate source of authority and authoritative behaviour. He took the view that while religion still retained influence over community life; public opinion had come to assume authority over the state. He noted that ‘public opinion condones policy and legislation as effective and clever or condemns it as ineffective and stupid’ (Tonnies 1955:253). Tonnies had little doubt that public opinion, with its claim to forming ‘scientific and enlightened opinion’ had gained considerable cultural and political power. He regarded the press as a ‘weapon’ of public opinion which was in ‘some respects, superior to the material power which the state possesses through their armies, their treasuries, and their bureaucratic civil service’. (Tonnies 1955: 256). Tonnies believed that public opinion could be used to promote sectional interest and could pass ‘easily from the demand for freedom (for the upper classes) to that of despotism (against the lower classes). Moreover he raised the concern that this rational and enlightened opinion often lacked the capacity to influence the masses. ‘The makeshift, convention, has but little influence over the masses’ he observed and added that ‘the state, to them is an alien and unfriendly power’ (Tonnies 1955: 269). From this perspective public opinion had the capacity to legitimise authority but only up to the point. The idea that public opinion was essential but could not be taken for granted became a key assumption in sociological deliberations of the subject.

Max Weber, of course was aware of the important role the public opinion played in German political life and he was also concerned about the influence of a powerful press over it. (Whimster: 2010: 132). In his report to the first meeting of the German Sociological Society in 1910 he called for the launching of a major research project to study this subject.(Weber : 1998) He described his proposed study of the sociology of the press as necessary for tackling one of the ‘great cultural problems of the present’ (Weber 1998 : 111). One of principal research theme proposed by Weber was the ‘production of public opinion by the press’ and from the outline of this proposal it is evident that Weber regarded public opinion as a target of manipulation. He regarded the press as the key influence on public opinion and on the constitution of cultural and moral attitudes. And yet, despite the significance that Weber attached to the role of the press in modern cultural life Weber wrote very little about the sociology of public opinion.

The absence of any serious reflection by Weber on public opinion has been noted by Bastin (2009), who stated that Weber only used this term four times in all of his political writings. ‘The notion of public opinion features for instance for instance very little in Weber’s writings, whereas for contemporaries like Gabriel Tarde (1901) or Ferdinand Tonnies (1922) it characterises democratic modernity and helps to make the press part of the very fabric of the social order’ argues Bastin (2009 : 131). At first sight his reluctance to take this conversation seriously is puzzling. During the 19th and early 20th century German social theorists were in the forefront of analysing the relationship between modernity, the mass media and public opinion. Many of the early German social theorists of the press – Albert Schaffe, Karl Knies, Karl Bucher – were contemporaries of Weber (Hardt 2001) Moreover many of the earliest attempts to analyse the emergence of public opinion in a wider cultural setting were by German political and social theorists. Weber would have been familiar with the work on this subject of his fellow sociologist Ferdinand Tonnies, the historian Hermann Oncken or the studies of Wilhelm Bauer (Palmer 1967: 230).
One would have thought that someone who regarded the relationship between science and politics with great interest would have engaged with the conversation on epistemological status of opinion. In the 19th century the classical Platonic contrast between opinion and knowledge had given way to a variety of contrasting positions that regarded it as anything from a sentiment associated with reason to that of irrational prejudice. In some of his asides in his writings Weber expressed a clear distrust of public opinion. He was sceptical about the capacity of the public to think for itself and he ‘dismissed Mill’s famous defence of the tolerance of the expression of public opinion’ (Eliaeson 2000: 137). He was suspicious of the role of the press. Bastin claims that Weber saw in the economic imperatives of the production of information powerful factors which simplify and manipulate the individual Gesinnung’ (Bastin 2009: 136). Yet, despite adopting a very clear assessment of the impact of the press on public opinion he did not apply his formidable sociological insights to an explicit discussion of this subject. This reluctance is all the more surprising since in his political writings he continually relies on the insights of commentators such as Bryce, who wrote at length on the subject of public opinion. In fact some of the ideas that Weber elaborates in his essay ‘Politics as Vocation’ about professional politicians and the transformation of politics are linked by Bryce to what he calls the ‘fatalism of the multitude’. These points are made by Bryce in a chapter titled ‘Public Opinion’, a chapter that Weber had not only read but recommend to Michels. (Pombeni 1994: 331).

One theme that reoccurs in Weber’s writings is of course the rationalisation of modern society. Yet the association of the rise of public opinion with the convergence of reason based rule was widely commented upon in the 18th and 19th century. Tonnies perceived public opinion as a form of rationalised religion and claimed that reasoning would gradually displace belief as the basis for public life. Given Weber’s interest in the disenchantment of the modern world with its attendant consequence of loss of meaning, the study of public opinion was an obvious area of interest to him. Weber’s most poignant remark about the loss of meaning is made in his lecture ‘Science and Politics’ when he refers to Tolstoy’s unanswerable question about the meaning of death. Weber would have been familiar with Leo Tolstoy’s essay, The Kingdom of God, which was published in German in 1894. Chapter 10 of this essay is devoted to the subject of public opinion and its potential to serve as a moral force. With a tone of melodrama, Tolstoy noted that ‘the power transcending all others, which has influenced individuals and nations since time began, that power which is a convergence of the invisible, intangible, spiritual forces of all humanity is public opinion’ (Tolstoi 1894 : 266). It is puzzling why Weber appeared to take such little interest in this theme.

The question of the relationship between the many and the few, which was historically one of the principal themes explored through the discussion of public opinion was also a subject that Weber addressed. Weber adhered to what he called the ‘law of small number’, the belief that public life is always dominated by small networks of people. ‘Everywhere the principle of the small number – that is, the superior political manoeuvrability of small leading groups determines political activity’ (Weber 1918: 174). He regarded the operation of this ‘law’ as not only a sociological fact but also as his normative preference of ‘how things should be’. The relationship of the many and the few was of central concern to participants in the conversation on public opinion. In the course of the debate contributors argued about the capacity of ordinary people to grasp the insights of knowledge and of moral truths. Liberal thinkers were continually preoccupied with the ability of the educated elites and experts to guide the behaviour of the many. They were interested in the capacity of the many to become educated and reasonable. For example, John Austin, the utilitarian legal philosopher believed
that much of ethical science would have to be taken ‘by the multitude on authority, testimony or trust’. But he hoped that ‘the multitude might clearly understand the elements or groundwork of the science, together with the more momentous of the derivative practical truths’. (Austin 1832: 76-77) Others, like Tocqueville adopted a more pessimistic approach and feared the tyranny of mass opinion. Weber no doubt had a view on this subject but one which was only expressed in asides.

Weber of course was very interested in the related issues of power, authority and legitimacy, which is why his lack of engagement with the question of public opinion is most puzzling. In the years leading up to his elaboration of his sociology of domination, public opinion was widely discussed as the source of authority and a force that was indispensable for the legitimation of the exercise of power. So why is this powerful influence on the working of authority missing from Weber’s discussion of legitimation?

**Weber on the problem of order and leadership**

By the late nineteenth century the ascendancy of democratic politics and of the influence of public opinion was increasingly portrayed as either a threat to or as the basis for authority (Dicey 2005, Bryce 1895 and Ross 1896). This was an issue that also preoccupied fin-de-siècle social theory. On what grounds can social and political order flourish was the question that dominated classical sociological theory. Emile Durkheim believed that public opinion had become the ‘source of authority’ and stated that ‘it might be even asked whether all authority is not the daughter of opinion’ (Durkheim 1968: 208). Along with many nineteenth century social and political theorists, Tonnies regarded public opinion as an essential source of authority and authoritative behaviour. He pointed to the influence of public opinion in authorising behaviour and enacting rules and laws and stated it ‘brings the morality of Gesellschaft into rules and formulas’ (Tonnies 1955; 269). Gabriel Tarde was more pessimistic about the ascendancy of opinion and wrote that it was a ‘misfortune’ that opinion ‘has become omnipotent’ (Tarde 1969: 300).

Despite his interest in the development of mass society and the sociology of domination, Weber did not join this conversation and did not really address many of the fundamental questions to do with the role of public consent in the exercise of authority. Unlike many of his contemporaries he was far more worried about the failure of German political leadership than with the threat from below. His writings indicate that he perceived the problem of order through his preoccupation with the disorientation of Germany’s ruling elites and the impact of bureaucratisation. Weber did not share many of the prevailing elitist fears about the ‘revolt of the masses’. Whilst avoiding the cruder forms of crowd theory, Weber clearly disdained the collective. In his political journalism, he took the view that only the individual leader was capable of heroic deeds and that the most useful contribution that the masses could make was to acclaim and elect such charismatic figures.

Although he did not elaborate a theory of public opinion or a sociology of the masses, Weber’s remarks and asides indicate that he regarded the demos as unstable and volatile because they were dominated by irrational emotions. But unlike crowd psychologists and classical elite theorists, Weber regarded the masses and the propertied with equal contempt. Writing about threats facing post-war Germany he wondered whether ‘the emotional effect of the blind fury of the masses will activate the equally emotional and senseless cowardice of the bourgeoisie’ (Weber 1978: 1461). Weber had an ambiguous relationship to the democratisation of German political life. He regarded democratisation as the precondition for
modemising Germany’s political system. But his support for democracy was based on the pragmatic assumption that this was the most suitable institution for legitimating and cultivating effective and charismatic leaders. His student, the Hungarian Marxist philosopher, Georg Lukacs remarked that ‘Weber’s idea of democracy lapsed into a Bonapartist Caesarism’ (Lukacs 1980: 610).

Weber reacted to the growth of mass democracy with concern. He was worried about the displacement of liberal parties controlled by ‘eminent leaders’ by mass political parties. He felt that given the peculiar weakness of the German bourgeoisie it would be difficult if not impossible to construct institutions of modern liberal constitutionalism (Eliaeson 2000:135). As far as he was concerned parliament had ‘lost its character as a political arena for independent personalities and became a place where partisan struggle worked themselves out before the court of public opinion’ (Mommsen 1984: 185) Weber’s distrust of public opinion led him to advocate what he called the ‘Caesarist transformation of leadership selection’. As Mommsen observes, Weber ‘approved of it, even at the cost of rationality and objectivity in the formation of public opinion’ since he believed that this was the only way to ‘bring about rule by independent and genuinely qualified leaders’. (Mommsen 1984: 186). Drawing on his understanding of the taming of the *demos* in ancient Athens by a demagogic figure, Weber stated that ‘mass democracy’ had ‘always bought its successes since Pericles time with major concessions to the Caesarist principle of leadership selection beginning at the times of Pericles’.(Mommsen 1984:187)

For Weber, Pericles personified the Caesarist political leader with a calling. In his idealised account such leaders combined integrity with charismatic leadership. Weber’s commitment for cultivating charismatic leaders who possessed intellectual integrity stands in sharp contrast to his indifference to the wider public’s level political culture. In his famous 1918 lecture ‘Politics as a Vocation’, Weber stated that although plebiscitarian leadership leads to the “soullessness” of their following and their ‘intellectual proletarianization’ this is ‘simply the price paid for guidance by leaders’ (Weber 1958:113). Weber looked to the force of charismatic authority either exercised by an individual leader or through the ascendancy of a new spiritual aristocracy in a half-hearted attempt to create a focus for the obedience of the public. Weber simply did not countenance the possibility that a democratic public ethos could provide a stable foundation for social order.

After the upheavals surrounding the 1918 German Revolution, Weber opted for a form of ‘leadership democracy’ which allowed for the emergence of charismatic leaders. He argued that through their involvement in a plebiscite the people’s verdict provides the foundation for the authority of the leader. From this perspective elections serve as a formal act for endowing charismatic authority with legitimacy (Mommsen 1981: 114). This leadership is ‘indirectly’ based on the consent of the ruled but this consent has no intrinsic significance in the post plebiscite era. Weber regarded democracy as an instrument for electing leaders and regarded ‘democratization’ as a means for legitimising leadership. In contrast to Robert Michels whose problematic was how to check the consolidation of the power of elected leaders, Weber was far less concerned about this development. Indeed, Weber was far more preoccupied with the ‘opposite problem, namely to make sure that the leaders will effectively lead’ (Mommsen 1981: 111).

Weber was sceptical about the capacity of the masses to think for themselves. He believed that the German working class was politically ‘infinitely less mature than the clique of journalists who would like to monopolise its leadership would have it believe’ (Kelly 2003:
It was this belief that motivated his proposed research project into the survey of the press. The premise that newspapers moulded and shaped ‘mass judgments and mass beliefs’ influenced Weber’s thinking on this subject (Weber 1998: 119).

Outwardly, Weber appeared convinced that since small numbers will inevitably rule the many there was no danger ‘from the majority of the mob associated with extending the suffrage and giving reign to democracy’. Drawing on his study of history of the different forms of domination led him to embrace the conviction that the few inevitably dominate the demos. Weber’s views on this subject are clearly influenced by classical Greek debates about the relation between the ‘few and the many’. It is worth recalling that Pericles – Weber’s principal exemplar of a charismatic leader – was frequently described as a leader who succeeded in representing the rule of one man as the rule of the many (Ober 1998: 94).

Weber took the view that only exceptionally able, charismatic leaders were in a position to contain the dispiriting effect of bureaucratic domination. Towards the end of First World War he criticised those who blamed Germany’s misfortune on either ‘autocracy’ or on a conspiracy of ‘international democracy’. As far as he was concerned what Germany lacked was ‘leadership of the state by a politician’, by which he meant leaders who were motivated by a calling to serve Germany and were prepared to struggle to realise their objectives.iii

The crisis of meaning

Weber’s estrangement from a democratic ethos was fuelled by his concern with the power of bureaucratisation and rationalisation to deprive public life of any meaning. He concluded that rationalisation and bureaucratisation smothered public life. Influenced by Nietzsche’s diagnosis of the death of God he came to interpret ‘the process of secularisation as one ‘which has rendered human existence meaningless’. (Turner 1992:188). In his discussion of the disintegration of natural law he suggest that value-rational oriented action sooner or later gives way to the legal-rational instrumental standpoint(Weber 1978 : 873-875). At times overwhelmed by the sensibility of cultural pessimism he seemed to imply that in a disenchanted world the project of constructing a new ultimate source of meaning can only result in monstrosities’ (Villa 2001 : 241).

Nor did he believe that science, which had displaced religious and traditional thought could provide meaning to the existential questions facing humanity. He claimed that ‘increasing intellectualization and rationalization do not indicate an increased and general knowledge of the conditions under which one lives’. And he seemed to suggest that rationalisation and scientific advance lacked the capacity to generate ‘ultimate’ values (Weber 1919a pp. 139 & 144). His analysis indicated that capitalist modernisation had unleashed a process of rationalisation which undermined custom and tradition. Implicitly he understood that the erosion of tradition was not paralleled by the emergence of a mental outlook disposed towards accepting values that bound them to the prevailing order. So what would replace custom and tradition as the source of authority? According to his theory of domination, belief in the legitimacy of the political order grounded in legal and rational norms displaced the justification provided by tradition. However, he had little faith in capacity of rationally devised rules to influence and inspire the public – which is why in his political writings he tended to bank on the charismatic and inspirational potential of leaders to maintain legitimate order.iii In effect Weber ended up with a theory, where charisma, ‘in some shape or form’ became ‘the source of all authority’ (Baehr 1998: 248). This was certainly the conclusion
drawn by Weber’s American populariser, Talcot Parsons, who claimed that the ‘quest of the source of legality always leads back to a charismatic element’. He added that ‘Weber’s fullest treatment of legitimacy leaves no doubt that there is no legitimate order without a charismatic element’. (Parsons 1968: 665).

Weber had little doubt that the German political order lacked the support of tradition needed for authority and for a political class to act authoritatively (Weber 1917: 107-123). Others in his position would have called for the return to tradition. But Weber was far too sensitive to the working of society to look for an escape into the past. In 1917 he observed that the problems confronting his society ‘cannot be solved by distilling the “German spirit” from works of the past, however great their value may have been’ (Weber 1917: 123). So what was his solution?

Weber had no persuasive answer to this question which is why so much of his ideas about the problem of authority faced by early 20th century society are rarely made explicit in his sociology. Weber’s analysis suggested that the rationalisation of society could erode old sources of meaning without creating the conditions for as Villa observed, ‘a new, integrative source of ultimate cultural authority’ (Villa 2002: 193) Weber’s impressive historical study of different forms of domination provided him with important insights into the workings of authority. But in the absence of clarity about how authority could gain meaning in his own time, Weber drew back from offering a sociological account of what constituted the foundational source of authority in his time. Instead what he offered was a relatively abstract conceptual framework for making sense of how rule is justified and rendered legitimate. Weber sought to bypass the problem posed by the absence of an integrative source of cultural authority through assuming that the capacity to dominate signifies its legitimacy.

However, Weber was also aware of the limited potential that legal-rational rules have to inspire belief in the legitimacy of the political order. He did not appear to believe that the modern state possessed a source of foundational authority. His concept of legal-rational legitimacy lacks plausibility as a force for authorising political rule. As one of Weber’s critics writes, he had ‘great difficulties in pinning legal legitimacy down to beliefs and normative compliance, partly because procedural regularities in legal-decision making do not provide a satisfactory alternative to substantive justice and natural law’ (Turner 1992: 200). The rational-legal lacks the cultural and moral resources possessed by tradition to motivate and influence the public. As one legal sociologist observed the law is ‘rather cold and bloodless’ and ‘cannot replace traditional authority in the expressive, emotional sense’. He added that it ‘is possible to worship the idea of law; but law does not hold authority in the modern world because of its grip on the emotions’ (Friedman 1994: 112 & 118). Weber was all too aware of the limited capacity of rational legal norms to inspire the public. ‘Compared with firm beliefs in the positive religiously revealed character of a legal norm or in the inviolable sacredness of an age – old tradition, even the most convincing norms arrived at by abstraction seem to be too subtle to serve as the bases of a legal system’ he wrote. (Weber 1978: 874).

Moreover the law itself needs to draw on cultural resources external to itself to render it not just valid but morally compelling. Beetham claims there are ‘substantive and moral questions about the content and justification of law itself. (Beetham 1991a: 5). He has gone as far as to claim that the failure to ‘provide any account at all of the normative (as opposed to the juridical) legitimation of the law’ actually ‘invalidates Weber’s account of legitimacy’ (Beetham 1991: 40). However, it can be argued Weber did give, albeit a brief account of the
normative legitimation of the law. However he regarded this project as doomed because it would sooner or later give way to the legal rational. ‘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’ concluded Weber (1978: 874-875). His analysis of the limits to value-rational oriented action could also be applied to popular consent. Weber grasped that formal law instrumentally applied through rational-legal domination lacked the capacity to instil in the public a sense of duty and obedience. However as Thomas wrote, value-rational oriented activity, precisely because it is rational ‘must issue finally in legal domination’. (Thomas 1984: 238.).

Weber’s critics claim that legality is ‘not sufficient to justify supreme authority’ so ‘some substantive principle is required’ (Spencer 1970:130). This point is elaborated by Habermas in his 1986 lecture ‘How is legitimacy possible on the basis of legality’? He argues that the law on its own cannot legitimate itself. ‘Despite all the authority that the sciences have been able to muster in modern societies, legal norms still cannot achieve legitimacy merely by the fact that their language is made precise, their concepts explicated, their consistency tested, and their principles unified’ (Habermas 1986: p.226). And he added that Weber’s assumption that an independent, morally neutral rationality intrinsic to law counts for the legitimating force of legality has not stood up (Habermas 1986: 241). Indeed Habermas has argued that the emergence of a ‘law-based state’ depends on ‘the binding of all state activity to a system of norms legitimated by public opinion’ (Habermas 1992: 82). In this case legal norms themselves are required to draw on the legitimacy of public opinion. Weber recognised that such a state’s legitimacy rests on ‘authorization by the constitutional norms of the state’. (Weber 1978: 644) But how authorisation works and what is the source of these norms is not discussed.

Weber was far from insensitive to the demand for attempting elaborate a normative foundation for the legal system. In his sociology of the law he writes of the subversion of the formal law by substantive concerns. He drew attention to what he characterised as the ‘insoluble conflict between the formal and substantive principles of justice’. (Weber 1978: 893). He took the view, that although this conflict remains unresolved the tendency towards the rationalisation of domination prevails. Weber points out that even ‘increased scepticism towards the dignity of the particular rules of a concrete legal order’ have ‘effectively promoted the actual obedience to the power, now viewed solely from an instrumentalist standpoint, of the authorities who claim legitimacy at the moment’(Weber 1978: 875).

Without any moral or normative content it is far from evident how belief in legality gives meaning to authority. As Grafstein stated “belief in legality” amounts to an empty verbal resolution of the substantive problem of accounting for obedience under conditions of diversity’. He added that ‘Weber simply fails to establish an adequate motivational basis for submitting to varied decisions that are grounded by their mode of genesis rather than their content’ (Grafstein 1981: 468) If that is so, it was not because Weber was indifferent to the question of motivation. His elaboration of the concept of value-rationality has an orientation towards to motivational attributes such as ‘duty’, ‘honour’ or a ‘call’. Such qualities refer to ‘the way in which an act may inwardly be experienced as incumbent, obligatory or supererogatory’ (Thomas 1984: 222). The problem facing Weber was his conviction that substantive (ultimate) values such public consent or liberty could not provide the foundation for rational legal authority.
Far too few of Weber’s critics have looked seriously at the inner workings of legal rational authority. At least Friedman is prepared to probe and to ask the question of ‘what is the source of the power of the law’. Part of his answer lies in the domain of procedures, such as elections through which consent and choice is expressed. But he believes that legal procedures are important because they allow for authority to be chosen or at least appearing to be chosen by the public. He writes that ‘reduced to its essential elements, the modern state rests on the authority of law, and law rests on the authority of choice’ (Friedman 1994: 39). Friedman concludes that the displacement of traditional forms by rational legal authority creates a problem since the law is ‘a limited authority’ (Friedman 1994:53). In other words traditional authority is not replaced by one that has equivalent influence – something more than just impersonal rules are needed for the constitution of authority.

It is likely that Weber sensed that rationalisation had eroded the old order and its values and that the new values associated with an instrumentalist orientation lacked the capacity to motivate obedience of authority. He had little faith in the capacity of mass democracy to foster a culture that could provide enlightened norms and values that would provide foundation for genuine political authority. Hence, from this perspective public opinion could only serve as an unwelcome reminder of the scale of problem confronting authority. Weber may have been overwhelmed by the implications of his pessimistic account of modernity, so that he could not help but draw back from conceptually explaining the disassociation of meaning from domination. Consequently he did not explicitly elaborate the relationship between authority and popular consent nor attempt to outline the kind of foundational values that could motivate action in a constitutional democracy.\(^{vi}\)

Weber regarded public opinion as a volatile, self-serving and ultimately destructive force that had to be harnessed so that its influence could be used to consolidate the personal authority of the ruler. He believed that public opinion diminished the rationality of governing institutions and the administration of justice to a point where its regressive influence was potentially greater than that of ‘the “star chamber” proceedings of ‘an absolute ruler’. His scepticism towards popular consent – he described the will of the people as fiction - as an important source of authorisation led him to opt for persons who have authority\(^{vii}\). Yet he sensed that public consent was vital to the working of modern society, which is why he advocated plebiscitary democracy.\(^{viii}\) Weber was convinced that ‘under the conditions of mass democracy, public opinion is communal conduct born of irrational “sentiments”’ and that it lacked any independence since ‘normally it is staged or directed by party leaders and the press’(Gerth & Wright Mills 1958 : 221). Yet political authority could not be constituted without it. His reluctance to explore the sociology of public opinion may have influenced by his own disenchantment with the possibility of exercising authority founded on popular consent.

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NOTES

\(^1\) From F. Giddings, principles of Sociology, p.139 cited in Ross (1896) p.765.

\(^2\) As Hardt and Splichal write ‘ever since the Enlightenment, public opinion has bestowed an aura of legitimacy upon policies, decisions, convictions, or even wars’. See Hardt and Splichal (2000 : 13).

\(^3\) Weber (1918) pp.159-163. For Weber, authentic political leaders were ones who ‘live for politics’ rather than those who ‘live from politics’. See Weber (1918) p.190.

\(^4\) Weber’s 1919 lecture ‘The Profession and Vocation of Politics’ clearly shows this preoccupation., See Weber(1919), especially pp.312-313.

\(^5\) He wrote that the ‘continued exercise of every domination’ depends on its capacity to appeal to ‘the principles of its legitimation’ (Weber : 1978 954) From this standpoint, effective domination is a marker of its legitimacy.

\(^6\) It is worth noting that the two main sources of authorisation in contemporary society – public opinion and science – remain external to Weber’s sociology of domination.

\(^7\) In 1908 he wrote to Michels: “Such concepts as ‘the will of the people’, the genuine will of the people have long ceased to exist for me; they are fictions”.

17
Duran observed, ‘Weber was undoubtedly well aware of the fragility and inadequacy of a kind of legitimacy grounded only in reality and it was this that led him to consolidate it through other mechanisms like that of plebiscitary democracy and to seek in the calibre of politicians an element to ensure that those with political power showed themselves to be fully responsible’. (Duran : 2009 90).