ИСТОРИЧЕСКАЯ СОЦИОЛОГИЯ И ЦИВИЛИЗАЦИОННЫЙ АНАЛИЗ

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HISTORICAL SOCIOLOGY & CIVILIZATIONAL ANALYSIS: RECLAIMING WEBER'S FRAMEWORK

ИСТОРИЧЕСКАЯ СОЦИОЛОГИЯ И ЦИВИЛИЗАЦИОННЫЙ АНАЛИЗ: ВОССТАНАВЛИВАЯ КОНЦЕПЦИЮ М. ВЕБЕРА

Монументальный труд Макса Вебера «Экономика и общество» давно признан работой по «исторической социологии». Невероятно широкая канва этой работы, охватывающая пути развития четырех цивилизаций, помешала социологам применить ее как исследовательскую программу. Вместе с тем сам Вебер в последний год жизни описал такой проект в «Предварительных замечаниях» к «Сборнику эссе по социологии религии». Эти замечания содержат программу изучения различий в области права, экономики, науки, технологии и политики с цивилизационной точки зрения и заслуживают особого внимания в наши дни.

Ключевые слова: *историческая социология, Вебер, цивилизация, модерность, культура, цивилизационный комплекс, наука, Запад.*

Max Weber's great sprawling work, *Economy and Society (E&S)* (Weber 1968), has long been viewed as a work in "historical sociology." Certainly the breadth of Weber's inquiries, extending across the world and back to ancient societies, confirms that view. At the same time it has to be recognized that the E&S text as we have it, is an edited admixture of "old" and "new" manuscripts that Weber worked on at different points in time, but whose connection and integration remains highly problematic(Schluchter 1989; Mommsen 2005; and among others Adai-Toteff 2011). My interest, however, is not in an attempt to decipher "what Weber really meant," or to provide a broad overview of Weber's oeuvre and how it changed during the last years of his life. I am interested, rather, in some of Weber's last thoughts, his "Preliminary Remarks" to his *Collected Essays in the Sociology of Religion*. These were made ready for publication

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during the last year of his life. I want to suggest that in this commentary Weber was moving toward what I shall call, a *civilizational point of view**.

For in that essay, Weber laid out what I shall call a *civilizational* framework of analysis that contrasted profound developments in "the West" with other parts of the world. Furthermore this statement is clearly connected to Weber's publicly announced intention to explore and understand the "singularity of the Occident" (Schluchter 1989: ch. 12).

Because of the relativist multiculturalism (that assumes all cultures are equal in wisdom and achievement) that has taken hold in the Western academy, and the current wave of globalization, the substantial developmental differences between "East" and "West" that Weber laid out are now seen as arbitrary distinctions of a bygone era. I shall argue to the contrary that indeed there were fundamental breakthroughs, unique to the West, in the political, legal and scientific spheres, starting in the Middle Ages, that were not equaled by any civilizational area outside the West up until the end of the 20th century — and perhaps not then. Moreover the *historical* evidence of those differences has never been stronger than it is today. In addition, those cultural developments remain vital parts of the Western political, legal, and scientific legacy, which as Weber maintained, had (and still have) a *universal* significance. Whereas Weber remained ambivalent about the Western developmental trajectory because of his fear of creating a "house of self-imposed bondage,"** I shall argue that there is much to be revered in the Western developments that remains indispensable for human rights and global harmony today.

Historical sociology

Before turning to Max Weber's problematic, it may be useful to sketch an overview of Historical Sociology. As it seems to me, Historical Sociology should be defined only by its time-frame of analysis. That is, sociologists who undertake analyses that are deemed historical in nature are generally using historical records or datasets that extend back in time beyond whatever is thought to be contemporary. In practice this probably means going back at least 50 years from the present to explore and analyze events and processes over an extend period of time. This extended period of analysis must be maintained in order to discern the emergence of some particular pattern, mechanism, or longer term trend. Otherwise, this kind of analysis is not bound by any particular methodology, other than being *comparative*. That dimension derives from sociology's own mission, which is to identify patterns, trends, or trajectories that can only be discovered by comparing two or more empirical situations. Ideally, of course, one would like a larger *sample* of cases to analyze so that a minimum of two is only a lower boundary condition which some would reject as inadequate. But the comparative dimension remains essential.

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* The idea that this essay, written during the last months of Weber's life, is a singular clue to his "main aims" and pointing in the direction of civilizational analysis was first suggested by Benjamin Nelson (Nelson 1974).

** I use Wolfgang Schluchter's preferred translation of *stahlhartes Gehäuse* that Parsons translated as "an iron cage." Personal communication October 17, 2013.

For example, do political revolutions have some underlying patterns of emergence, participation, duration, and outcome? To answer such a question one might analyze the historical record surrounding the American revolution of 1776, the French revolution of 1789, the Russian revolution of 1917, and the Iranian revolution of 1979, or some combination of these (Skocpol 1979). Whether or not one uses quantitative measures depends on the available records, and above all, on the ingenuity of the researcher.

We can also stipulate that the use of what Weber identified as "ideal types" is required in sociological analysis where generalizations about groups, social classes and socio-economic patterns must always be identified by abstract descriptors. Sometimes such historical entities are called "historical individuals" in which case we are alerted to the conceptual (and some would say) artificial nature of such descriptors. That is inescapable*.

In the long run, whether or not such conceptual devices are accepted depends upon the network of evidence brought to bear. Controversy will always play some part, just as the long accepted term "capitalism" often requires further specification, as Weber knew.

As an illustration of how quantitative barriers to research in historical analysis may be overcome, consider the question of whether or not the availability of legal experts and the proximity of legal schools had any effect on economic activity in the German territories of the 14th and 15th century. Several ingenuous historical researchers managed to identify German historical records that allow quantitative measures of university and law school foundings and the possible influence of such entities on the founding of new markets. Two groups of scholars have in this way attempted to quantify the effects of university and law school foundings on the "commercial revolution" of the Middle Ages(Cantoni, Yuchtman 2012; Shäfer, Wulf 2014). More examples of this sort could be cited.

But we should notice that the innovative aspect of this research is the postulation, perhaps even the *conjecture*, that historically there was a connection between *legal* development and *economic* development. The task then was to operationalize possible indicators of these two terms (legal structures vs economic markets), and the researchers found historical records that could be used for that purpose. In other words, the postulated *theoretical* connections opened the way for using certain technical operations on historical data.

One could insist on Weber's *verstehende* argument, that the data analysis must be interpretively meaningful to the actors in question, but that would put unhelpful restrictions on the use of abstract quantitative indicators not known to historic actors.

In a word, there are no inherent *methodological* limits on what kinds of analysis, quantitative or qualitative, descriptive or content analyzed, that impede comparative historical sociology. One may not be pleased, for example, by the radically slimmed down and narrowly devised indicators chosen by an economic historian, but the limits are variously contingent.

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* The long and complicated background to this was discussed by Weber in his many essays on this subject (Weber 1975, 1977, 1949). For further commentary see (Huff 1984).

Let me turn now to the challenging canvas of issues that Weber articulated in the remarks that he placed before his *Collected Essays in the Sociology of Religion*. Trying to understand this turn in Weber's thinking raises both theoretical questions about "Why the West?" and questions about the historical evidence that impinge especially on Weber's *Sociology of Law*.

Weber's Sociology of Religion and Sociology of Law

There are two major paths of inquiry in Weber's writings that are paramount for the present inquiry. The first is Weber's work on his *Collected Essays in the Sociology of Religion*. The second is Weber's *Sociology of Law* which was published as Chapter 8 of E&S.

Leading Weber scholars such as Wolfgang Schluchter, Guenther Roth, and Wolfgang J. Mommsen, among others, who have deeply excavated the trajectory of Weber's inquiries, have established the fact that from an early stage of Weber's writings (and not later than 1909) Weber realized that his thesis about the role of religion in Western capitalist development (in *The Protestant Ethic and the Spirit of Capitalism*, 1904/05) begged to be tried out with other religious traditions, namely on the religions of China (Confucianism and Taoism), with Indian Hinduism as well as Islam, and ancient Judaism. Between 1913 and 1915 Weber undertook and partially completed a set of comparative studies of non-Western religious traditions against the backdrop of Weber's understanding of the nature and impact of the Protestant ethic. The essays that were sufficiently complete he sent off for publication in the *Archiv für Sozialwissenschaft und Sozialpolitik* beginning in 1915(Schluchter 1989: ch. 12, see appendix II for a chronology of the publications).

While the guiding hypothesis of these comparisons was that only ascetic Protestantism had produced an inner worldly economic ethic, compounded by strivings for salvation, Weber broadened his inquiry to include a range of unique cultural features that encompassed political, scientific and artistic developments. Nevertheless, the thrust of Weber's collected works concerning "economic ethics" suggested that deep in Western history there had been a "setting of the tracks" (ibid., p. 428), shaped especially by religious convictions, but of course, also economic and status group strivings. This suggests that till the end Weber saw the key to Western cultural developments mainly in the tensions of religion, conditioned by external factors. His essay titled, "Religious Rejections of the World and Their Direction" is a *tour de force* illustrating how interactions between religious inclinations and worldly involvements lead to rationalizing impulses designed to reconcile religious convictions and the world as it is. In addition Weber argued that in general religious convictions give rise to images of the world and the social order, and in the attempt to reconcile those different images, religiously motivated actors use a variety of rational arguments to complete their religious visions against the counter forces of a profane world.

In the end, Weber could not bring to completion either the full complement of studies of religious ethics or his masterwork called *Economy and Society*. The two projects did go along together but they were so demanding that neither could be brought to the conclusion that Weber intended (Schluchter 1989: ch. 12, 411–472; Mommsen 2005: 70–100). From roughly the Fall of 1919 to his death in June 1920, Weber busied

himself with the task of collecting and revising his *Collected Essays in the Sociology of Religion* (comprising three volumes, a fourth never written). Furthermore, we know from Weber's own letter to his publisher (on October 25, 1919) that his attention had come to focus on the *singularity of the Occident*. In the publisher's announcement of the forthcoming collected work, Weber made it clear that in these essays on religion and economic ethics he was keen to determine on what "the economic and social singularity of the Occident" is based, "how did it arise and especially, how is it connected to the development of the religious ethos" (Schluchter 1989: 425). By the latter he meant ascetic Protestantism. It seems that Weber weighted rather heavily the religious variable in this long-term development.

But in thinking about this grand project of singularities, in which Weber clearly included political, scientific and artistic developments, it is surprising that Weber totally neglected the influence of Greek rationalism, both that flowing out of Plato (especially his *Timeaus*) that was enthusiastically embraced by Medieval Christianity (but rejected by Islamic religious philosophers), as well as Aristotle's grand corpus that had been fully adopted and ensconced by Europeans in university curricula all across Europe*. I shall say more about each of these below.

Secondly, it is equally surprising, above all from a *comparative and civilizational* point of view, that Weber finds very few virtues in the *Western legal tradition*, other than what he called its *formal legal rationality,* something Weber himself remained profoundly ambivalent about (Kronman 1983; Kennedy 2005). In other words, Weber does not mention any of the uniquenesses of the Western legal tradition, such as its creation of a formal system of *due process* (called the *ordo iudicarius* by medievals) (Pennington 1998; 1993), an early notion of human rights (Tierney 1997; Pennington 1997), the juridical foundations for legal autonomy and self-governance, though he does allude to written constitutions and parliaments. This list of legal singularities stands out especially in comparative *civilizational* contexts, as I shall show shortly. Although Weber gave hints of these developments, the *Rechtssoziologie* was unfinished and unpolished.

Sociologists in the past have often praised Weber's legal/historical insights, but for the last two decades or more, legal scholars have raised many doubts about Weber's *Sociology of Law*. Several of these scholars have pointed out that it contains "a vast hodge-podge of ideas and observations," lacks "polish and organizational unity," does not provide a theory of legal development, and seems to contain "a series of isolated essays (Kronman 1983: 2; Trubek 1985: 920)**. Yet Anthony Kronman does find a deeper unity of philosophical commitments in Weber's *Sociology* of *Law*. Still, this does not rescue the work from its outstanding flaws. In fairness to Weber, it seems likely that the work was unfinished and that he would not have wanted it to be published in this form.

Insofar as comparative law is concerned, Weber's sections on Indian, Chinese, Islamic, Persian, and Jewish law seem exceedingly brief and sketchy (Weber 1968, Vol. 2: 816–830). Although Weber's discussion of Canon law is far and away more informed and nuanced than, for example, his discussion of Islamic law, leading scholars

* I have spelled out many of these themes in (Huff 2003 (1993); 2000).

** For other criticisms by legal scholars, see (Berman, Reid, Jr. 2000).

such as Harold Berman and Charles Reid find that Weber is too much engrossed in his putative models of legal development to grasp the virtues of Canon law, for he "understates the enduring significance of the Canon law for the development of Western legal history" (Berman, Reid 2000: 230). This is a major defect in Weber's *Sociology of Law* that prevents him from recognizing the immense significance of the *revolution of the Middle Ages*, on which more below.

Still another defect of the *Rechtssoziologie* is the placement of a major insight (and guiding conception, one would think), regarding long-term legal development. This concerns the sequence of stages of legal evolution that Weber postulated, yet this appears only toward the end of the work, nearly two hundred fifty pages later. There Weber explains "the general development of laws and legal procedure" as passing through four stages: first the charismatic, legal revelation through "law prophets"; second, empirical creation and finding of law by legal honoratiores, i.e., law creation through cautelary jurisprudence and adherence to precedent; third, imposition by secular or theocratic powers; fourth... systematic elaboration of law and professionalized administration of justice by persons who have received their legal training in a learned and formally logical manner (Weber 1968, Vol. 2: 882).

Islamic and Chinese law probably do not conform to these stages and in any event, they did not create legislative bodies that could introduce law through deliberative legislative action.

The intention here is not to diminish Weber's legacy but to highlight some conceptual and empirical problems so that they can be studied and remedied. The task then is to lay some groundwork so that we can reclaim an emended Weberian framework. That framework would fully account for religious as well as legal factors, all ensconced in a *civilization analytic*. I shall turn now to some themes in Weber's essay prefaced to his *Collected Essays in the Sociology of Religion*.

Weber's Comparative Civilizational Problematic

What is most notable about Weber's prefatory essay is its repeated trans-European stresses, its multiple comparisons between developments in the West (*im Okzident*) and those outside Europe, especially in China, India, and the Muslim world. Plainly enough, Weber asserted that

> A product of modern European civilization (*Kulturwelt*), studying any problem of universal history, is bound to ask himself to what combination of circumstances the fact should be attributed that in Western civilization (*im Okzident*) only, cultural phenomena have appeared which (as we like to think) lie in a line of development having universal significance and value (Weber 1958: 13).

Weber then goes on to enumerate the many spheres in which these unique patterns of development occurred. They included philosophy, theology, law, and science, as well as the artistic world of music and architecture. Moreover, even in those comparisons regarding "trained officials" in government and law, Weber never made a comparison of *countries* or areas *within* Europe. Every one of them concerns comparisons with other "civilizational areas" (*kulturkreises*) and the West, not comparisons between Germany and England or France, etc. Likewise, with regard to economic development and in particular, the decisive separation of the household from the business enterprise

(where we can easily imagine significant variations between northern and southern Europe), Weber made a *civilizational* comparison, that is, a comparison between Europe and non-Europe. When he added historical details, it might involve developments in Florence or in Britain, but it was the comparison between Europe and elsewhere that he highlighted.

Also striking is the fact that the range of phenomena that Weber singles out for analysis does not fit easily within Weber's explicit conception of "social action," behavior that is guided by meaningful references to means and ends, or "reasons and motives." Instead, Weber focused on *collective trends and entities* that seem very unlikely to be explained by reference to universal motives. For these outcomes appear to be unique to the West, and that is what most struck Weber. We shall never know what course of inquiry Weber would have taken up had he lived beyond 1920 (and his 56 years), but it is possible that in his last year of life, Weber moved in a new direction, though articulated in earlier statements and inquiries. This direction broke the methodological bounds of what he most proudly placed at the beginning of *Economy and Society,* his discourse on "Basic Sociological Terms."*

The range of cultural forms that Weber highlighted in the prefatory essay that were unique to Europe is truly extraordinary and reaches beyond the steady judgment of any single scholar trained today, or perhaps in any age. Consequently, I shall focus here on a condensed set of distinctions mentioned by Weber. It is also necessary in some cases to reformulate Weber's claims in order to make their references clearer.

Among the first of these distinctions Weber mentions a "rational jurisprudence" infused by the unique structure of Canon Law that Weber correctly observed has no parallel in Indian, Islamic, or Chinese law. This assertion becomes even more profound when one realizes that this whole legal structure was also built upon the unique foundations of Roman Civil Law, again an intellectual structure of unparalleled originality and scope (Schaivone 2012).**

Secondly, Weber mentions *institutions of higher education,* which he noted, have only "superficially similar" structures and designs. Islamic *madrasas*, as we know, were not legally autonomous entities, did not incorporate the study of the natural books of Aristotle as did the European universities, and were animated by an entirely different ethos (Huff 2011: ch. 6).

Third, Weber stresses the unique pursuit of *modern science*, though modest beginnings can be found in India, China and the Islamic Middle East.***

Fourth, Weber refers to the creation of *parliaments,* and the process of electing political representatives. Although Weber does not add any qualifying notes, he refers to "written constitutions" which are likewise uniquely Western creations, deeply embedded in the breakthrough to *legally autonomous entities* (that Weber did not

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* It comprises Chapter 1 of *E&S* (Weber 1968, vol. 1: 3-62) and is very different from his earlier "Kategorien" essay of 1913.

** How different Western law is from Chinese and Islamic law is discussed in (Huff 2003: ch. 4 and 7; 2010: 148–150) and in other forthcoming essays.

*** For any qualifications that one might add, given new studies of the late 20th century, see (Huff 2003, 2010).

surmise), and which were, in effect, able to write their own rules and regulations. Nothing comparable existed in Islamic, Indian, or Chinese law.

Fifth, Weber identifies the daily press, the invention of newspapers, once again a unique European invention of the early 17th century (Huff 2011: 305 ff; Raymond 2003; the summary overview of this development see in Starr 2004: 23–46).

Finally, Weber moves to his quarry, the uniqueness of the emergence of modern capitalism in Europe. I shall only assume that this proposition is universally accepted by scholars today, but will suggest that the medieval legal revolution had something to do with that development.

Outline of a Civilizational Frame of Reference

How then can we reclaim Weber's grand vision within a viable framework that transforms his claims into a historically grounded, empirical and comparative conceptual unity? The first step toward this end is to articulate a framework of analysis *not* based on *country* (nation-state) comparisons, but on composite units that may usefully be used to make *civilizational comparisons.* If we can do that, then we can proceed to a new narrative that would revive Weber's claims, while opening a broad new (civilizational) agenda of comparative analysis.

The most insightful and promising conceptual advance along these lines was forged by Weber's contemporary, Emile Durkheim and his nephew, Marcel Mauss in 1913. This is found in their long-neglected "Note on the Notion of a Civilization" published in 1913 (Durkheim and Mauss 1971: 809–813). In their short essay Durkheim and Mauss hit upon three seminal ideas indispensable for the new *civilizational analysis* of the last three decades. Without those insights viable criteria for classifying cultural groupings as "civilizations" or as societies are absent. Consequently, other writers doing civilizational analysis tend to follow the pattern established by anthropologists and ethnographers who mainly try to identify any distinctive cultural group, ancient or modern, and call that group a "civilization" without utilizing the deeper analytic insights of Durkheim and Mauss. What Durkheim and Mauss noticed was that social phenomena that are not strictly attached to a determinate social organism do exist; they extend into areas that reach beyond the national territory or they develop over periods of time that exceed the history of a single society. They have a life which is in some ways supranational (ibid.: 810).

Here the defining criterion is a *transnational* or supranational emergence that goes beyond the original group that generated the symbolic capital. Consequently, the authors claim that, "*A civilization constitutes a kind of moral milieu encompassing a certain number of nations, each national culture being only a particular form of the whole*" (ibid.: 811).

There is a poignance to this observation written on the eve of World War I, at a time when Europe had been experiencing a long period of peace and comity. That peace and tranquility was not to be regained until the last two decades of the 20th century and the emergence of the European Union. In that context, Durkheim and Mauss articulated a social and cultural unity that Europe as a civilization came to be. Moreover, Durkheim and Mauss observed that not all social phenomena have the same ability to be transported, to be *universalized* to other social or national groups.

They laid out a major task, still unfulfilled, which is, to explain on what this "unequal coefficient of expansion and internationalization depends." Put differently, this idea of a "coefficient of expansion" possessed by some social phenomena suggests the striking process of *universalization*, without which civilizations and civilizational phenomena would not exist. Moreover, it is important to consider the degree to which the universalization of civilizational complexes has been a voluntary process in contrast to an imposition by an expanding empire. From today's perspective, we know that even those civilizational configurations that have the ability to be assimilated over time and over vast stretches of territory also have their limits; and yet certain of these phenomena, whether they be described as aspects of "Westernization" or "globalization" seem to have still more potential to expand voluntarily around the globe.

In Benjamin Nelson's reformulation of these seminal ideas, civilizations are composed of "the governing cultural heritages of 2+n societies, territories [or] areas which generally enjoy or have enjoyed a certain proximity" to each other (Nelson 1973: 82; Huff 2012: ch. 5). Furthermore, what gives a civilization in this sense an identity is the existence of a set of shared *civilizational complexes*, such as religious commitments, legal concepts and processes, intellectual categories and modes of logic. Sometimes Nelson referred to these cultural phenomena as the "directive structures" that shape human thought and action (Huff 2012: ch. 2).

However, one could also refer to these internationalizing and *globalizing* transformations as contributions to "world culture" and "world polity." Considered in this light there have already been impressive moves in this direction, attempting to describe and understand the *construction of world culture* as elements of the Western tradition became firmly established in the emerging global polity (Boli, Thomas 1999; Driori et al. 2003).

Although the scholars working on this research program have not articulated an appropriate civilizational context, and have seriously truncated the requisite historical time frame needed to unravel these developments, they are aware of the need to "study the origins, expansion, and characteristics of the world polity," to understand how these cultural elements evolved out of Western civilization and served to create a "coherent world culture, society, and set of institutions that might plausibly influence nation [states]." Furthermore, they are keen to explore "in which substantive areas [of] world society norms [have] been clearly worked out, codified, and institutionalized" (Schofer, Mceneaney 2003: 47). It remains to be seen how this agenda could be fulfilled without paying more attention to the early legal foundations of international law that underlie virtually all international business and diplomatic negotiations worldwide.

Furthermore, it is evident that, though the exponents of this research program refer to *world culture*, they point out that the participants recorded in the datasets of international organizations come "mainly from Europe and North America" (Boli 2001: 6261). This suggests that in fact *this* world culture is basically *internationalized European* culture among countries that have historically been part of "Europe overseas." The task of studying the spread of European (or global culture) to non-Western civilizational areas, to China, the Islamic world, Russia, Central Asia, and the Indian subcontinent, has hardly begun.

That said, it is evident that serious scholars with highly sophisticated methodological techniques have lent considerable currency to this effort of exploring how transnational phenomena expand across the world. The task remaining is to more fully understand the nature and uniqueness of the *early modern Western transformation*, what I shall call the *revolution of the Middle Ages*. Only by grasping that extraordinary transformation can we begin to adequately compare "East and West," the nature of Western developments and those of other parts of the world.

The Revolution of the Middle Ages and the Rise of the Universities

In what follows, I shall synthesize several strands of European history that coalesced at the core of the European experience. As it seems to me, these crystallizations laid the foundations for Europe's institutional uniqueness, above all its deeply rooted legal structure. Unfortunately, many scholars who have written with great insight and authority about this period have entirely neglected the singular *legal* history of Europe and its centrality to all the developments of that era (for this neglect, see Bisson 2009; Moore 2000; Mitterauer 2010). Hopefully in the future that history, which includes the foundational ideas of human rights, due process of law, and constitutional democracy will not be so neglected.

Any broad evaluation of the social, legal, and political development of Western Europe that took place in the twelfth and thirteenth centuries will show that it witnessed sweeping legal reforms, indeed, a *revolutionary reconstruction*, of all the realms and divisions of law — feudal law, manorial law, urban law, commercial law, and royal law — and therewith the reconstitution of medieval European society. It is also true that neither Islamic law nor Chinese law passed through an equivalent radical transformation*. Consequently neither of those systems of law ever recognized the broad variety of competing *legal jurisdictions* found in Europe; for example, *commercial*, *urban, public,* and *professional* jurisdictions were recognized throughout Europe,** but not in Chinese or Islamic law.

It is this great legal transformation that laid the foundations for the rise and autonomous development of *universities*, but also the pursuit of *modern science*, the *rise of constitutionalism and parliamentary democracy*, the foundations of what we know as *due process of law*, the very idea of *elective representation* in all forms of corporate bodies, the *legal autonomy of cities and towns*, and a vast array of additional legal forms unique to the West.

At the center of this development one finds the legal and political principle of treating *collective actors* as a *whole body* a corporation (*universitas* is the medieval Latin term). The emergence of corporate actors was unquestionably revolutionary in that the legal theory that made them possible created a variety of new forms and powers of association that were distinctly European.

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* I discussed these different legal systems in (Huff 2003), especially chapters 4 and 7. I am currently working on separate essays to outline these differences more completely.

** The foregoing assessment was first announced by Harold Berman in his landmark study (Berman 1983).

Furthermore, the legal theory of corporations brings in its train organizational principles establishing such political ideas as *constitutional government*, *consent in political decision making*, *the right of political and legal representation*, the *powers of adjudication and jurisdiction*, and even the power of *autonomous legislation*. Aside from the scientific revolution itself, and perhaps the Reformation, no other revolution has been as pregnant with new social and political implications as the legal revolution of the European Middle Ages. By laying out the conceptual foundations for *new institutional forms* in legal thought, it prepared the way for the two other revolutions — the scientific and the economic.

Consider for a moment what this idea of *autonomous legislation* means. It means that some *public body* — some corporate entity, some group of citizens — is capable of composing and promulgating *new laws* that transcend Biblical injunctions, customary law, Quranic legal prescriptions, or even edicts issued by an Emperor in China. But of course, that power of autonomous legislation did not exist either in Chinese or Islamic law of the early modern period.

Some Phases of Development

Let me now sketch out some stages of the European legal and social revolution. Because this period has not been studied *sociologically* and systematically as a case of *social, political, and intellectual revolution*, it is difficult to determine where one should begin. So I shall start in AD 1000.

Around 1000 AD commerce began to revive in southern Europe and then to spread northward. This was conjoined with the rise of commercial fairs and the rise of new cites and towns. But there was also a profound wave of economic growth in the Hanseatic cites in the north centered on Hamburg and which expanded south and eastward at the same time (among others see Bartlett 1993: 292 ff.).

First, however, we need to focus on some earlier far reaching intellectual developments. As we may recall, back in the early 6th century AD the Emperor Justinian told his legal experts to radically trim down and consolidate the existing Roman legal code, and especially to prune away the unending commentary of judges and scholars. The end result was the Roman *Corpus Juris Civilis* — the Roman Civil Law — that Justinian put into effect across the empire in 534 AD. However, the code did not fair well in the Western empire because it was collapsing. Consequently, with the collapse of the Roman Empire in the West (after 476), the *Corpus Juris Civilis* was lost, not to be recovered until about 1070 AD. But when it was found and recovered it jolted legal scholars into action.*

At first the scholars did not understand it and so commentators known as the Glossators set about writing marginal commentaries, perhaps correcting grammar, explaining the new conceptual terminology, but most of all, trying to master the 2000 pages of this extraordinary legal system. But they also began teaching it. It is in the circle of these early legal scholars that we indeed find the earliest seedbeds of the universities. Notice also that these legal scholars were *civilian or secular scholars* who

* There is now a vast literature on the recovery and transformation of the Corpus Juris Civilis; among others see (Brundage 2008a; 2008b; Hoeltlich, Grabler 2008; Radding 1990).

were free to move around as they were not committed to a particular town, much less a building. They were a *community of scholars and students*, most of whom came from outside town and even outside Italy. They could move on a moment's notice to another town where social, legal, and economic conditions might be better.*

By 1200 these legal scholars had become a distinct literate class of specialists; they had mastered the Roman legal corpus, and in a great many ways, had modified, systematized and transformed it into a new *legal science* which was now being taught for the first time in universities across Europe. The initial leading center of this new science of law was at the university in Bologna. These legal scholars were known as the civilians, that is, the ones who taught the new science focused largely on secular issues and everyday social and economic causes.

But at the same time, a scholar and monk by the name of *Gratian* took it upon himself to rethink the whole amorphous body of laws then known to him, and to create what he called a *Harmony of Discordant Canons* — first issued in about 1140. Here the word *canons* simply means "rules," but especially rules that had been adopted by the Christian Church, which in a very short period of time became a standard legal text used all across Europe, though the Church never officially promulgated it.

What Gratian had done was to collect legal texts from Church councils, papal letters, the writings of Church Fathers, passages from the Bible, and a host of secular sources such as Roman and German law. His great effort was designed to point out the contradictions in these legal rules, to remove them, and to find the underlying legal principles that ought to prevail.

All of this is an example of what Max Weber (other scholars) called the *rationalization* process; i. e., the process by which legal rules and procedures were made *more coherent, consistent, and rationally* explicable.**

Now Europeans had a legal science based on new texts, all of which became what legal historians call the *ius commune*, the common law of Europe that began to spread from south to north, to Germany, Britain and Scandinavia. Moreover, law students across Europe now had to learn both the Canon Law and Civil law, because (1) the Church universal had courts all across Europe, and (2) lawyers specializing in the civil law might be called upon to defend a case in an ecclesiastical court.

Here then we have the first and second legs of this medieval revolution. First we have a *new legal science* that was being taught in the free floating schools (later universities) and applied across Europe in both secular and ecclesiastical courts. To the degree that this new legal system established new institutional foundations for the emerging European civilization, it was legal scholars in the schools who underwrote this whole development.

Second, the medieval legists recognized the legal rights of collective actors, that is, legally *autonomous entities*, sometimes called "fictive personalities." Among these we

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* On the complicated early history of this university, see (Hyde1972; Rashdall 1936).

** In contrast, Islamic law never went through such a systematizing and rationalizing process. Instead legal scholars accepted that there were at least four schools of laws and any individual could choose the one he wished. Today some say that there are eight schools. On the schools of Islamic law, see (Schacht 1960; Rahman 1979: ch. 4; Hallaq 2005; Vikør 2005).

find cities and towns, charitable organizations, professional associations of doctors and lawyers, as well as merchant guilds — all of which *could create* their own rules and regulations. These new entities were treated as *collective individuals*, and they had a whole new *bundle of rights: the right to own property, to sue and be sued, to make their own rules and regulations, i.e. to act as legislative entities.* Such entities had the right to be represented by attorneys in courts, and before the king's court regarding taxation (Post 1964; Berman 1983).*

Furthermore, these entities were said to be governed by the principle of "*what concerns all should be considered and approved by all*" — a Roman maxim (Berman 1983: 221; Post 1964, ch. 4: 51 ff.). While today we think of corporations as primarily significant for commercial enterprises, their original impact was in the sphere of *public law* where their presence radically transformed the whole basis of political, constitutional and economic life in Europe. For it was the presence of these new entities that established the foundations for *parliamentary democracy*. Indeed, the first European parliament was founded in 1188 in Spain, quickly followed by many other regional parliaments in Spain, then in Portugal, Sicily, southern France, Paris in 1298, then the Estates General in 1302 as parliaments became a pan-European institution (van Zanden, Buringh, Bosker 2012; Strayer 1970). Indeed, the effort to establish constitutional regimes in which *the people* were deemed to have a legitimate voice was a great struggle carried on broadly across Europe from the Middle Ages onward with the final culmination in the revolutionary new political thought of Scotland, Holland, France and then England in the 16th and 17th centuries.**

Unfortunately, Max Weber misread this broad transformation and hence completely overlooked the revolutionary restructuring of all the domains of legal, political, and economic action of the time. Mistakenly, Weber saw the rise of independent cities and towns as "non-legitimate domination" (his chapter 16 in E&S). Instead of recognizing the effects of the Papal Revolution (associated with the Gregorian Reforms of the 11th century and thereafter), that, when carried out, granted legal autonomy to a broad range of social, political, economic and intellectual groups, Weber speaks of the *usurping* of legal rights. According to Weber, "The urban citizenry... usurped the right to dissolve the bonds of seigneurial domination; this was the great — in fact, the *revolutionary* [Weber's emphasis] — innovation which differentiated Occidental cities from all others" (Weber 1968, Vol. 2: 1239). But the breakthrough was really the invention of the legal fiction of a *legally autonomous entity* (a corporation or whole body, *universitas*) with the broad bundle of rights mentioned above. Weber does discuss this issue of fictive legal personalities, but he does not see the broader ramifications, nor discover that it is exactly this *concept* of *legal autonomy* that was missing in Islamic, Chinese and other legal systems.***

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* For the absence of any of these structures and procedures in Islamic law, see the sources in the note above, and especially (Schacht 1974: 398; Huff 1993: 224–227; Makdisi 1981).

** This path has been traced out by, among others (Skinner 1979: esp. vol. 2; Gorski 2001).

*** For a discussion of this and references to the Islamic legal sources, see (Huff 1993: ch. 4, pp. 225–227), and well as (Berman 1983; Post 1964; Schacht 1974; Makdisi 1981). For Weber on corporations and fictive entities, see (Weber 1968: 705 ff.).

Third, the canonists and civilians established new principles of *due process of law* that applied to all individuals who were involved in legal proceedings. By the end of the 12th century this new system had been formally articulated as the *ordo iudiciarius* (the system of legal procedures) (among others see: Pennington 1993; Reynolds 2003: 347–366; Brundage 1995: 205). According to this legal doctrine (which was established in court cases and Papal decretals), every trial must involve a *plaintiff and a defendant, advocates for those two parties, the appearance of witnesses, the presence of court recorders such as clerks, proctors and notaries who record the names of those present at the trial,* what each person said, and if written evidence were presented, it too would be redacted into the court record. Again, this was established legal procedure by the end of the 12th century — all worked out by legal scholars usually attached to the schools and emerging universities. Such *formal* legal requirements had not been articulated in Islamic or Chinese law then or later.*

In addition, the procedures established the right of any accused person to be notified of a complaint, the *right* to appear in court and testify, and, above all, *to be represented by a legal expert*. By 1200 it was firmly established that anyone appearing in a court could elect to have legal assistance and was well advised to do so. But if he did not do so he was forewarned, as one writer put it in 1169,

> If someone is brash enough to presume to rely on his own devices even though he is inexperienced and does not wish to have an advocate, let him do so. Everyone is free to muck up his own case (Brundage 2008: 152).

Here then we have the outline and details of due process of law, assumed to be universal, that must be applied in all legal proceedings — all set out by the end of the 12th century.

But — fourth — this process went even further toward the establishment of additional legal principles that applied to the Prince and Pope alike. The most important case establishing that these principles applied to the Prince as well as ordinary citizens concerned King Henry of Luxemburg and Robert of Naples. In 1311 King Henry moved to be crowned Emperor of the Holy Roman empire and in doing so intended to displace Robert of Naples and his kingdom. In the process Henry condemned King Robert, declaring him to be a traitor and an outlaw to the Empire. Pope Clement V did not agree with these declarations and tried to mediate between the two parties (this case has been spelled out in considerable detail by (Pennington 1998, 1993)).

Luckily — or unluckily — Henry died (in 1313) before he could move to displace Robert forcefully; but Pope Clement V stepped forward with legal opinions curtailing such presumptuous condemnation of an adversary. The Pope solicited opinions from the best legal scholars and all of them averred that the *right of self-defense*, both physical and legal, was a *right* granted by *natural law* and hence it could not be taken away. Hence King Henry's rulings were without merit and were annulled. Furthermore, Pope Clement went on to issue several more legislative rulings, clearly stating what

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* I have set out some of these strong differences in (Huff 2012a). For the complete absence of such formal safe guards of due process in contemporary China, see the August 2012 case of Madame Gu, accused of murdering a British business man. Her lawyers were removed, no defense was possible, and no court recordings (written or voice) were permitted (Jacobs 2012: 1).

due process of law entails and how it must not be abridged. In his final ruling, indeed a constitutional document called *Saepe contingit,* he established these principles, which of necessity must be upheld by the Prince. Legal scholars have concurred that this legal ruling of the very early 14th century was "the most important single piece of medieval legislation in the history of summary judicial procedure" (Kuttner 1964: 427).*

In a word, by the opening of the 14th century, European law had established legal principles restricting the actions of the Prince, but not only that, the Pope. The principle that the Pope too is subject to natural law and may not abridge a defendant's right of self-defense was established in a notorious case involving the Medici's and the attempt of the Pazzi family to eliminate them violently. The result was that Pope Sixtus IV (who had condemned Lorenzo de Medici without a trial) had to back down while acknowledging that, just as Adam of the Bible had to respond to God's summons to judgment, so too "neither Pope nor Prince could dispense with this part of the judicial process because no one can ignore a precept of divine law."** In other words, the earlier legal principles that restricted the actions of the Prince applied in the same way to the Pope. Neither he nor the Prince could issue summary judgments without actually holding a trial. Here again we find unique European contributions to international legal development and above all, the idea of *legal* restraints on the highest officials***. No such legal restrains on rulers emerged in Islamic or Chinese law.

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* Technically, the ruling concerned «Summary proceedings» which are special proceedings held in unusual circumstances, possibly entailing threats of violence and or public harm.

** This is the judgment of the 15th century legal scholar Francesco Accoli, said to be the greatest legal scholar of his time; as paraphrase by Pennington (Pennington 1993: 188), also see (Martines 2003).

This case occurred in 1478 and concerns what has been called the Pazzi Conspiracy. This bloody episode took place in April 1478 when members of the very wealthy Florentine banking family, the Pazzi's, tried to assassinate the Medici's while in Church on a Sunday. They did kill one of the Medici brothers in the Cathedral, but leader of the family, Lorenzo the Magnificent, escaped and proceeded to declare war on his enemies, including the Papal State. However, some of supporters kidnapped an Archbishop who was soon hanged. Pope Sixtus IV summarily condemned and excommunicated Lorenzo without a trial, despite Lorenzo's claim that he was innocent.

*** Islamic law under the Ottomans reveals stunning arbitrariness. For example, in the special Ottoman state courts, the so-called *mazâlim* courts that are supposed to right the wrongs of other courts of the 18th and 19th century, there were no restrictions on the behavior of the Sultan. As one scholar has put it, "The Sultan makes his verdict freely, he is not bound by the Shari'a rules in any way, he does not need to hear both parties — or even one of them — before passing his sentence." (Vikør 2005: 191–193). This is a profound level of arbitrariness yet it follows from the fact that there is nothing in the Shari'a that would place restraints on an Islamic ruler, since such an official had never been imagined in the Quran or the sayings of the Prophet Mohammad. The Shari'a "had never developed the necessary procedures or writs that would bring the prince or executive power to account for actions committed outside the law" (Ziadeh 1968: 149). All of this suggests that there is nothing in Islamic law that could properly be called the basis for constitutional law (Jackson 1993: 785).

Now in recounting this legal history I do not suggest that the people of Florence in the 15th century were particularly law abiding — they most definitely were not. Nevertheless, a precedent had been established and future rulers who wished to be regarded as lawful occupants of elective or appointed office had to abide by such rules. Of course it took time for the rule of law as we understand it to become widely and deeply established; nevertheless, the institutional apparatus had been constructed, civil and ecclesiastical courts had been established all across Western Europe. And let us not forget that the lords of England forced King John of England to submit to the *Magna Carta* (in 1215) which, likewise, restricted his sovereign powers and required the establishment of a jury system for legal proceedings.

Law, Commerce, and Self-government

Before turning to the universities, it is important to note that the revolution of the Middle Ages that I announced at the outset was indeed a society- or civilization-wide transformation. This new legal regime had powerful implications for every aspect of social, political, and economic action, so I need to say something very briefly about the impact on ordinary business transactions. Of course, the spread of the new legal science, both Canon and Civil, spread unevenly across Western Europe, but the trend and result is clear.

From a legal point of view it is imperative for those engaged in business dealings that they have a secure sense of their rights to ownership, the possibility of regulating trade, and the availability of legal officials who can authoritatively adjudicate business conflicts. As legal scholars know the very foundations of business transactions establish what are sometimes tedious conceptions that spell out what kinds of transactions can be carried out, the limits of individual and collective action, what happens to collective assets when people die, and so on.

What happens, for example, if a business partner dies? Islamic law dictates that if any partner dies or withdraws, the partnership of the enterprise completely dissolves,* whereas European business partnerships and corporations have lives of their own.

Moreover, economic historians have shown that during this same period of time, the 12th and 13th centuries, and especially in Holland and the Low countries, villages and urban conclaves were forming in which people were acting collectively to *self-govern*, to regulate collectively-owned grazing grounds known as "the commons," to regulate grinding mills, riverways, and other assets that were considered jointly owned by the community. Such communities formed their own judicial bodies, bought, sold and rented property, hired clerks, even an occasional police officer and other agents who worked for the collective public enterprise (among others, see De Moor 2008; Bavel 2010a: 60–66; 2010b).

To us moderns this seems normal, but the fact is that this kind of *legitimate* communal self-organization, *bound by law with articulated rights* and prerogatives, was a wholly new thing not witnessed elsewhere. This whole new legal arrangement proved to be a boon to the rise of early modern capitalism, to the broad commercial revolution

* The classical statement of these rules is (Udovitch 1970). For further analysis of the effect of these restrictions on economic development see (Kuran 2012).

of the 13th and 14th centuries and that would include all sorts of new *collective* trading entities. These would include extra-familial *firms* (otherwise known as legally recognized companies), as well as *joint stock* companies and *formally organized banks* whose records constituted legal documents available to public scrutiny (in addition to Bavel's work noted above, see (Lopes 1977; Roover 1953a, 1953b; Usher 1934)). Clearly, the legal revolution of this time had very far reaching consequences for political, economic, and intellectual development.

Indeed, recent scholarship has added considerable weight to the assertion that Europe's legal revolution in all its dimensions contributed measurably to the economic ascendance of Europe in the early modern period in comparison to other parts of the world (for estimates of world economic development, see: Maddison 2008). Whether one attributes a causal link between the new legal science or the rise of the universities and the teaching of the new legal system, the evidence suggests that the availability of the new legal conceptions, lawyers, and courts greatly facilitated economic growth in Germany and other parts of western Europe.*

Universities and the Scientific Agenda

As the previous discussion has suggested, the universities were both a product of, and *agents* of the great legal revolution that swept across Europe during this era. Ever since the late 19th century, scholars have referred to this great revival and renewal as "The Renaissance of the Twelfth Century" (Haskins 1927; Rashdall 1936: esp. vol. 1). One aspect of that renaissance was the rise of the universities which was the product of a *demographic* and *educational revolution* that has no better description than the following:

> At the beginning of the century [i.e., 1100], numerous urban schools appeared in Western Europe to challenge the supremacy [that] monastic schools had enjoyed since the early Middle Ages. These new schools dominated the intellectual scene until the beginning of the next century, when those at Bologna and Paris were transmuted into universities (Baldwin 1991).

We should recall that the Cathedral schools taught the *seven liberal* arts (i.e., grammar, rhetoric, and logic along with *arithmetic, geometry, music, and astronomy*); but a new crop of scholars, drawn from all over Europe began traveling to the centers of learning, usually the cathedral schools where they had heard outstanding scholars were teaching. Of course this movement had begun even in the 11th century, but in the early 12th we have many reports of outstanding scholars, in small towns around the periphery of Paris (such as Chartres, Laon, Reims), who were attracting these foreign visitors. It is said that the students "traveled to hear of new techniques and new texts, [as well as] the manner of applying them to the study of law, medicine, the Bible, or the nature of the physical world" (Southern 1991: 116). On the one hand, we have these young people showing up uninvited to study with a learned master, causing a certain amount of conflict and friction with the local towns people in the context of the need for food, lodging and of course, drink.

* For a test of the proposition that legal rules and legal scholarship had an impact on European economic development see (Cantoni, Yuchtman 2012; Shäfer, Wulf 2013).

On the other hand, some of the scholars themselves, including some of the tutors of the aspiring students, had ambitions to create their own following and set about doing so by challenging the masters in the cathedral schools. The most famous of such people we usually hear of was Peter Abelard (d. 1142), who first challenged Master Anselm at his school in Laon (about 30 miles outside Paris). When that did not work, he set about making his name in Paris, starting in about 1098, by attempting to dispute and displace William of Champaux who was the leading scholar at the school of Notre Dame in Paris. Abelard was just one of many outstanding scholars who emerged during this time and challenged the authorities with regard to every aspect of religious and classical learning. Abelard is, of course, the author of the famous *Sic et Non* — "Yes and No" — treatise that listed many opinions of the Church fathers and other religious texts which were clearly in conflict with each other. Some of the scholars of the time thought Abelard was just being a skeptic, undermining Church authority, whereas his real mission, he claimed, was to get to the truth, to use dialectic and the tools of reason and logic to sort out the truths of faith. In the end, this powerful use of the tools of philosophy actually turned theology into the "queen of the sciences."

As many scholars have pointed out, in the 12th and 13th centuries the large band of religious philosophers around Paris transformed Christian thought into a science of theology. Among the pioneers one finds Master Bernard of Chartres (d. after 1115); Anselm of Canterbury (1033–1109); John of Salisbury (d. 1180); Hugh of St Victor (ca 1096-1141); and Peter Lombard (d. ca 1160). The story of the transformation of Christian religious thought, under the powerful influence of philosophical thought, into systematic theology has been told by many scholars (Chenu 1968; Knowles 1962; Grant 2001: ch. 6; Copleston 1962; for another version of this transformation see Gilson 1956: 37–55). The thrust of this transformation, beginning in the late 11th century is revealed by Anselm of Canterbury's bold move to use reason to demonstrate the truth of faith and to transcend the authority of Scripture. Anselm said that he took this path because of the request of fellow monks; and so he composed a treatise,

> in order that nothing in Scripture should be urged on the authority of Scripture itself, but that whatever the conclusion of independent investigation should declare to be true, in an unadorned style, with common proofs and with a simple argument, be briefly enforced by the cogency of reason, and plainly expounded in the light of truth (St. Anselm, *Proslogium; Monologium; An Appendix in Behalf of the Fool by Gaunilon; and Cur Deus Homo,* cit. in Grant 2001: 54).

This ascendance of rational argument over the plain simplicity of the Scriptures never emerged in Islamic religious thought and still remains an impediment to religious innovation in Islam.*

Still another powerful spur to this rationalistic strand in Christian religious thought is found in Peter Lombard's "Sentences" (ca. 1150), pointing the way toward

* The fundamental problem is that *kalam*, "theology," was never released from subservience to *fiqh,* the strict legal interpretation of the tenants of Islam. It was not destined to become, as in Christianity, the *queen* of the sciences (Chenu 1968). The stagnation of Islamic theological thought is also stressed by F. Rahman (Rahman 1982: 151–154); just as Islamic ethics were also aborted (ibid.: 154 ff.).

reconciling biblical passages with philosophical questioning. Subsequently his theological reflections became the most cited text for the next several centuries, all the way to Luther who also commented on it (among others see Rosemann 2004; Colish 1994; Grant 2001: 209–212).

In this sense, the 12th century witnessed a multidimensional *intellectual revolution,* including a *theological* revolution, as scholars emerged who pioneered new ways of thinking about every aspect of law, religion, the natural world and the tools of logic. The result was the gathering of many students in places like Paris, which in turn attracted more scholars who created their own following of students. Nevertheless, these scholars and their students remained outside the control of the official schools sponsored by the cathedrals. These itinerant scholars coopted the teaching of many subjects, bringing new methods to bear, taking the educational process out of the hands of church officials who had dominated education up to that point.

As a floating community of scholars with lots of student followers, they could easily move on, leave Paris, or a particular location, if Church officials tried to interfere or if the locals (landlords, shopkeepers and restaurant owners) treated them or their students badly, which did happen from time to time. It was out of this fear of such flight that officials in Bologna (Italy) enacted laws forcing scholars to swear an oath that they would not leave town.

What became the *University of Paris* was this floating community of scholars and their students (perhaps 2-3000 students at the end of the 12th century) who quietly banded together forming a corporation — a *universitas* or a *studium generale* and that gave it a perpetual state of *legal autonomy* (Post 1934). With their experts on Civil and Canon law among them, the scholars knew how to use the legal instruments of the day, and thus used them to garner the masters a broad bundle of rights, such as the ability to make their own rules and regulations, to establish matters of curriculum, to sue and be sued, and of course to own property — and much more.

Furthermore, whenever public conflicts arose the King and other officials, including the Pope, were eager to confirm the rights and privileges of these scholars, for they brought fame and recognition for Paris and to the Church. The King did so by granting various charters to the scholars that gave them privileges and immunities that also compensated for being foreigners with diminished legal rights, though they did have what is called the *benefit of clergy*. These privileges and immunities included exemption from local taxes, freedom to teach and to move about in the city, and perhaps most important of all, immunity from the obligation to pay the unpaid bills of a countryman who had left the city in debt. Not least of all was the right to be tried in an ecclesiastical court if one should be arrested for a misdemeanor or more serious offense.

In brief, the University of Paris evolved into the most prestigious university of its time in Europe and became a model for others. Of course, there were many other patterns and different universities specialized more in one subject or another, but in all cases, whether establishing a new law school or a new medical college the same legal structures were put into effect, granting the new freedoms of inquiry while encouraging the perfection of the new modes of thought that were blossoming all across Europe. From the 12th century onward to the middle of the 17th century, there was a continuous

rise in the founding of universities all across Europe. If one plots the number of these institutions across Europe from that time, one will get a graph with a line rising at a step forty-five degree angle (Riddle 1993: 54). It was a European-wide phenomenon.

The New Curriculum

But now let us take a closer look at the curriculum that began to emerge as these new educational institutions formed across Europe. In Paris the Masters created four Faculties: the Faculty of Theology, that of Law, Medicine, and the Arts. While Paris was preeminent in the study and teaching of Theology, Bologna outshone it in Law, and in Medicine the university in Montpelier has generally been rated higher. Nevertheless, the great scholars in logic, philosophy, and theology in Paris carried the day in refashioning the arts curriculum so that the study of the natural sciences stood out.

In effect, the longstanding Arts curriculum (composed of the *trivium* and *quadrivium)* was transformed into the Three Philosophies: Moral Philosophy (or Ethics), Metaphysics, and Natural Philosophy (Grant 1996: 47 ff.). This adaptation was an equally transformative outcome that reorganized the old Arts curriculum of the cathedral schools into a progressive and indeed, *scientific n*ew orientation. It did this by introducing into the curriculum the so-called "New Aristotle," especially his *natural* books. What the Europeans did was to *institutionaliz*e a whole new curriculum of naturalistic studies. These inquiries raised all sorts of questions about the natural world. The same method of compiling questions and working out answers that had been used in the study of Law and Theology was now employed with equal vigor in the study of the natural world.

For example, in naturalistic studies scholars asked "whether the world is round... whether the earth moves... whether it is possible that other worlds exist, ... whether the existence of a vacuum is possible," etc.* What the founders of the new universities did was to place at the *center* of this new curriculum the *natural books* of Aristotle which included his *Physics,* [his book] *On the Heavens, On Generation and Corruption, On the Soul, Meteorology, The Small Works on Natural Things*, as well as biological works such as *The History of Animals*, *The Parts of Animals, and The Generation of Animals.* It is with these books, Professor Edward Grant observed, that we find "the treatises that formed the comprehensive foundation for the *medieval conception* of the *physical world and its operation*" (Grant 1984: 78). This was indeed a core experience that was essentially scientific. Put differently, the Europeans *institutionalized* the study of the natural world by making it the central core of the university curriculum (Weisheipl 1984: 438–439)**.

Moreover, this curriculum was unique in the educational history of the world because the Muslim world prohibited the introduction of Aristotle's natural books into the center of its teachings in the madrasas, while the Chinese did not have a philosophical tradition equivalent to Aristotle's natural books; nor did it mandate the study of naturalistic questions for the state-sponsored Civil Service Examinations that served to select scholars to become government officials (Huff 2011: ch. 4; Elman 1994).

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* The long list of such naturalistic questions, see (Grant 1974: 199–209).

** This is a revised and expanded edition of (Weisheipl 1964).

Despite this impressive reorganization of higher learning in Europe during this era, some have claimed that the medieval and early modern universities inhibited the study and pursuit of science; yet when we look at this question from a *comparative and civilizational* point of view, there is no evidence of such retardation. By and large those who have raised these criticisms have based their claims on a faulty understanding of Aristotle and his work, and on anachronistic and unrealistic comparisons between medieval and modern universities. Or more plainly, the comparisons have been made on the basis of caricatures of medieval scholars rather than what those scholars actually laid out.

Moreover, if one looks carefully at the record, one will see that there is a direct continuity between many of the questions raised by the 12th and 13th century naturalists and the experimental pursuits that were carried out in the 17th century during the scientific revolution. These included experiments with magnetism and the discovery of electricity, the study of pneumatics, air pumps, and the vacuum, and of course, all the postmortem examinations of human bodies that had been going on in universities across Europe since the 13th century (and earlier),* and were also encouraged even by Church officials.

If we look at the actual comparative and historical record,** what we find is that the teachings of the universities from the 12th century onwards served to inculcate a spirit of scientific inquiry — that is, it instilled a fundamental *intellectual curiosity* that was to persist all the way to the present, while conversely, that same spirit of innovative inquiry did not take hold outside of Europe. *In the case of European universities, one might even suggest that the effect of studying natural philosophy there, in the period leading up to 1600, was so strong that many of the pioneers of the 17th century revolution were highly educated laymen, not scholars attached to the universities.* This is not to suggest that the universities of Europe had become less important, but rather that *the ethos of science* had jumped the bounds of strict university identification. This assertion of the effects of the medieval university legacy might seem a controversial claim, so consider the following test of the proposition.

A Test Case

A few years back I came up with what I consider an acid test of this proposition. It concerns the invention of the telescope by a Dutchman in 1608. Just as soon as this invention appeared, people like Galileo, but not only he, quickly saw its importance for astronomical inquiry. It was in fact a *discovery machine*, though of course it had to be improved (as it was) and focused on new astronomical phenomena, which is what Europeans did throughout the 17th century as the scientific revolution unfolded.

As we recall, Galileo used the telescope to discover the rough cratered surface of the Moon, the four satellites of Jupiter, the phases of Venus, and a bold conjecture about the rings of Saturn. Consequently, the arrival of the telescope and Galileo's early

* For an overview of European medical education and postmortem examinations, see (Huff 2003: 189–208).

** The direct connection between the medieval Aristotelian study of the science of motion and Galileo has been traced out by (Clagett 1959; Moody 1957, 1966).

astronomical announcement of his discoveries (in 1610) set Europeans on fire with excitement. They wanted to know, are these claims of Galileo true or mere fabrications? So other astronomers, religious scholars, merchants, and ambassadors quickly acquired their own telescopes and set about testing Galileo's claims. Within a year of Galileo's announcement (it was called the *Starry Messenger*), all of these discoveries had been confirmed both by other scholars and Church officials. What was controversial was the claim that these surprising results — the cratered surface of the Moon, the Satellites of Jupiter and the phases of Venus — were fully supportive of the Copernican worldview, which they were.

Some Church officials disputed that, but they did not dispute the observational reports of Galileo that Roman College officials themselves had seen. Indeed, Galileo was feted at the Roman College in 1611, before some religious reactionaries who knew nothing of Galileo's work, raised a number of fundamental metaphysical concerns. The controversy went on for some time but the fact remains that the telescope's arrival provoked a new series of inquiries all over Europe, and this led to the transformation of the *practice of astronomy*, turning it from a slow plodding inquiry into a *new science* looking for more astronomical discoveries. And of course there was a race to make bigger, more powerful telescopes (Huff 2011: ch. 2, 3).

But then, we ask the question, what if the telescope were taken to other parts of the world, to China, India and the Ottoman Empire in these same early years of the 17th century? As I have spelled out elsewhere (ibid., ch. 4–5), nothing happened. Telescopes became available all over Mughal India from 1615 onward; Europeans translated a report on Galileo's observations into Chinese and published it in Peking in that same year, while a new (Keplerian) telescope arrived in China in 1619; and we know that telescopes were available all over the Ottoman Empire as early as 1630 when a European merchant was executed for looking at the Royal harem with his telescope.*

Yet neither the Chinese (with lots of tutoring by the Christian missionaries), nor the Mughals, nor the Ottomans found the telescope to be particularly useful as a scientific instrument. Neither did they make any improvements on the telescope or use it in any way to advance the science of astronomy as practiced in those civilizations.

This contrasting set of outcomes I attribute to the very different educational systems of Europe in comparison to China and the Muslim world. As I noted earlier, it was the unique European commitment to the study of the natural world that resulted in the *instilling of a broad sense of intellectual curiosity* that made the difference.

Now someone might say, this is just a one-off case concerning astronomy. So I looked at a half dozen other fields of inquiry: optics, anatomy, microscopy, hydraulics and pneumatics, and electric studies. Here again we find no advances in those fields outside of Europe in the 17th and 18th century.

If one were to make a roster of outstanding contributors to the leading edge of the scientific transformation in Europe in the 17th century and sought counterpart achievements in other parts of the world, there would be no equivalent to the advances in astronomy of Galileo, Kepler, Descartes, Huygens, or Newton; in electrical studies,

* For more details on this episode of the telescope's transmission around the world, see (Huff 2011: 130–133).

no William Gilbert, Otto von Guericke or Francis Hawksbee; in pneumatics and hydraulics no Torricelli, Blaise Pascal, Robert Hooke or Robert Boyle; nor any counterpart in microscopy and anatomy to William Harvey, Marcello Malpighi, Regnier de Graaf, Jan Swammerdam or Antoni Leeuwenheock. This is the short list of stellar scientific pioneers but it makes our point.

Now I do not make these assertions in order to tout the extraordinary European advances that should be well-known, but rather to correct false impressions that are conveyed by revisionist titles such as *Islamic Science and the Making of European Renaissance* (Saliba 2008: 77–79; Huff 2008); *The House of Wisdom: How Arabic Science Saved Ancient Knowledge and Gave us the Renaissance* (Khalili 2010); *The Eastern Origins of Western Civilization* (Hobson 2004)*; or *The Central Asian Origins of Science in the Medieval World* (Beckwith 2012; Haff 2013b); or *Relocating Modern Science* (Raj 2007; Huff 2011a). Both old and young readers will no doubt be impressed by these overstated titles that bear little resemblance to the historical record. The singular achievements of Europe cannot be denied or dismissed as arbitrary, for without them we would not have the modern scientific revolution, the industrial revolution, the benefits of modern medicine, not to mention the digital revolution of the late twentieth century.

Conclusion

I have suggested that in Max Weber's essay written as his "Preliminary Remarks," prefaced to his *Collected Essays in the Sociology of Religion*, Weber asked questions that required a frame of reference that was *civilizational* in scope. He was concerned with cultural and institutional structures that extend beyond any particular nation-state such as Germany, France, or England. His focus was on comparisons between Europe and elsewhere. For his large scale entities he tended to use the great world religions — Christianity, Islam, Confucianism, and Hinduism — as the units of reference, though clearly he also considered Christian Europe as a cultural entity with singular properties.

I also suggested that Weber's conceptual anchoring could be improved by explicitly adopting a civilizational frame of reference such as that articulated by Durkheim and Mauss in which *civilizations* are composed of "the governing cultural heritages of 2+n societies, territories [or] areas which generally enjoy or have enjoyed a certain proximity" to each other (this is Nelson's reformulation: Nelson 1973: 82; reprinted in Huff 2012: ch. 5). Furthermore, what gives a civilization in this sense an identity is the existence of a set of shared *civilizational complexes*, such as *religious* commitments, *legal* concepts and processes, *intellectual and philosophical* commitments and modes of logic.

Viewed in that way and using Weber's own list of uniquenesses we find considerable evidence to support his underlying distinctions. Moreover, the phenomena that Weber selected for study, legal systems, structures of higher education, parliamentary and constitutional democracy cohere as unique structures of the West, all of which were also tied to the emergence of modern science and modern capitalism.

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* For many of the defects of Hobson's account, see (Duchesne 2011; Huff 2014).

The forgoing analysis makes a credible case that most of the singularities of the West that Max Weber pointed to in his essay of 1920 are strongly supported by the best scholarship of our time. Weber did not get everything right, not should we have expected him to. Nevertheless, his distinctions are not arbitrary but are rooted in historical fact and are tied to the unique ascendance of the Western world.

The transformation of Europe in the 12th and 13th centuries set Europe on a track of *economic, scientific, and political development* that did not happen elsewhere. There were *institutional* divergences in virtually every sphere. Although it may seem surprising, the legal revolution of the 12th and 13th century produced revolutionary long-term institutional divergences. That revolution produced a new *legal system* (and science of law) with vastly expanded conceptions of human *rights and relationships* that transformed virtually every area of vital importance to Europeans: *commerce, public institutions such as legally autonomous cities and towns, professional associations, universities and the unfettered pursuit of science*. Behind it all was a carefully thought-out conception of *due process of law* that quickly spread all across Europe. All of these changes also gave birth to *constitutionalism and parliamentary* democracy—and much more. Those innovations remain even today as engines of change around the world, surely deeply embedded within what is called globalization.

Future research within such a *civilization analytic* might ask why other major civilizations of the world — Islam, China, India, and Russia, for example, and their indigenous religious traditions of Islam, Confucianism, Buddhism, and Hinduism — not only did not produce modern science, but also why they did not give rise to modern constitutionalism, parliamentary democracy, the concept of human rights, due process of law, and the public sphere supporting freedom of expression. Likewise, much remains to be studied as to why the long-surviving Byzantine Empire did not take the path of Western Europe, especially with regard to law and constitutionalism, but also the study of natural science. Moreover, there are indications that a civilization analytic is more likely to provide useful insights into economic development than standard economic indicators, once the horizon extends out past five or ten years of the business cycle (Huff 2012b).

Finally, the apparent failure of the ongoing "Arab Spring" suggests that all these questions are far from resolved in the Muslim world of the Middle East and cry out for comparative analysis within a civilization analytic suggested here.

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