

LAW AND SOCIAL THEORY (LAWS2820)

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Class 1.1 *WHAT IS SOCIAL THEORY***Introduction – What is social theory?**

- Social theory is a particular way of asking theoretical questions, which tries to explain why things are as they are by examining the social practices and institutions that shape the way that people live.
- Some of the questions addressed in this course:
 - What social functions are played by legal systems and the modern legal system in particular?
 - How does law intersect with other social systems, practices and forms of power?
 - How is the legal system influenced by the economy and how does it shape the economy in turn?
 - What is the relationship between the legal system and political acts (state, bureaucracy, classes and social movements)?
 - How does law shape, and how is it influenced by socially dominant ways of thinking, such as ideology, rationality, or beliefs about class, gender and race?
 - What drives change in the legal system?
 - Is it, for example, the practices of lawyers, politicians or social movements?
 - Is it the evolution of ideas?
 - Or economic imperatives?
- One of the most important things about social theory is that it provides a way of better understanding the world in which we live.

David Lyon, 'Modernity and its Discontents', *Postmodernity* (Buckingham: Open University Press, 1994), 19-34

- What is modernity?
 - The philosophes declared that a dispute between the anciens and modernes was being resolved in favour of the latter - Modern, post-medieval civilisation, based supremely on Reason, was superior.
 - Modernity refers to the social order that emerged following the Enlightenment.
 - The Modern world is marked by its unprecedented dynamism, its dismissal or marginalising of tradition, and by its global consequences.
 - Relates to the belief in progress and the power of human reason to produce freedom.
 - Its discontents spring from the same source - unrealised optimism and the inherent doubt fostered by post-traditional thought.
 - "Who says?" (authority questions) and "who am I?" (identity questions) are posed in new and urgent ways.
- Peter Berger characterised modernity as the whole constellation of characteristics typical of 'modern' societies.
 - He questioned how far this could be exported to countries that had not yet modernised.
 - Previous dominant assumptions included the view that modernisation was an inevitable and desirable process that required the right set of factors.
 - 'Underdeveloped' countries could thus be 'developed' by following a Western formula.
- WW Rostow said the following criteria would need to be met to 'take off' into modernity:
 - Mechanical assistance for labour

- Dependence on inanimate energy sources for power
- The labour market
- Workers supervised under one roof
- The 'entrepreneur' would have to exist.
- The entrepreneur acts as an intermediary between foreign traders from more commercially advanced societies and rural peasants; he is the harbinger of modernity.
- Tradition is the set of rules given by the village community, religious and cultic life, or the elders or kings who held sway.
- Modernity replaces such rules with new ones relating to the routines of factory life or the regulations of the bureaucratic organisation. In doing so, questions of authority and identity are raised.
- Modernity is all about the massive changes that took place at many levels from the mid-sixteenth century onwards, changes signalled by the shifts that uprooted agricultural workers and transformed them into mobile industrial urbanites.
- It questions conventional ways of doing things, substituting authorities of its own, based in science, economic growth, democracy or law.
- Identity is given in traditional society; in modernity it is constructed.
- Anthony Giddens:
 - Modernity should not be viewed as the outcome of some single overriding factor, but as a cluster of institutions.

Modernity's Achievement

- In the space of a few decades a transformation began in Europe that would alter the world in unprecedented and irreversible ways.
- These changes altered the routines of daily life, our social interactions, and the distance at which we do things - the consequences of these changes are deeply social.
- The causes of these changes are also social - the main social force being capitalism.
 - Constant quest for new raw materials, sources of power and technologies.
- Karl Marx, The Communist Manifesto
 - "the bourgeoisie cannot exist without constantly revolutionising the instruments of production, and with them the relations of production, and with them all the relations of society... Constant revolutionising of production, uninterrupted disturbance of all social relations, everlasting uncertainty and agitation, distinguish the bourgeois epoch from all earlier ones."

Differentiation

- The emerging industrial society was characterised by a steadily increasing division of labour, in which tasks became progressively more specialised.
- Emile Durkheim:
 - This process of differentiation lay behind a new principle of social integration, what he called 'organic' rather than 'mechanical solidarity'.
 - The latter relied on coercion and the heavy hand of tradition, whereas the former developed out of the growing interdependence fostered by division of labour.
 - This is an optimistic view not shared by Marx.
- Differentiation spreads to all social spheres - work, home, leisure, religion.
- Talcott Parsons:
 - New subsystems are constantly evolving, both differentiated from each other and better able to adapt, thus ensuring that as modernity progressed it would be better able to cope with its own problems.
 - Problems of how to coordinate/integrate a complex society

- Answer lies in the creation of a meritocracy - remove old barriers to social involvement and let them achieve what they can in a free market for skills and abilities.

Rationalisation

- Max Weber
 - Rationalisation (meaning the gradual adoption of a calculating attitude towards more and more aspects of life) was key
 - Authority derived more and more from calculating rationality and less from tradition.
 - The acme of efficient, productive organisation was the bureaucracy.
 - A tendency for machine-like precision has spilled out into art, music, work, accounting, laws, etc.

Urbanism

- Massive migration from farms and villages to the sites of industrial production spelled great social shifts.
- George Simmel:
 - Punctuality, calculability, exactness are forced upon life by the complexity and extension of metropolitan existence.
 - In the city, differentiation, commodification and rationalisation was writ large.
 - Identity was no longer found in the community - instead the society of strangers.
- Le Corbusier:
 - The city was reconceptualised from the vantage point of the car driver.
 - The city would be build for cars - no pedestrians or sidewalk cafes would obstruct the flow of traffic.
 - The elimination of the street would also eliminate crime and rebellion.

Discipline

- A goal of modernity is to rationally exclude and eliminate the criminal - this follows from the classificatory, controlling impulse seen in sphere after sphere.
- This also relates to the rise of the military as a specialist aspect of the new nation-state (eg. uniform, drills, strict hierarchies, divisions of rank)
- Distinctive disciplinary tactics also emerged from this period onwards.
- Michel Foucault
 - The Panopticon prison plan is the epitome of modern discipline.
 - Causes prisoners to be 'the bearers of their own surveillance'!

Secularity

- Betham's panopticon represented a self-conscious alternative to religiously rooted ways of dealing with offenders.
 - A secular parody of an all seeing god.
- Modern industrialism seemed to displace the influence of the churches in Europe both by displacing people from their older, communal contexts and by offering new principles of social organisation.
- The French Revolution dethroned God, proclaiming the arrival of the second state, but many observed that the modern form was reminiscent of religion.

Modernity's ambivalence

- Modernity became the first mode of social organisation to achieve global predominance.
- The disruption caused to traditional cultures was viewed as little more than the temporary abrasion caused by transition to new circumstances.

- Eg. according to Durkheim, class struggle was not an endemic feature of capitalism (as it was for Marx), but the marker of a stage, preceding new forms of cooperation.
- Weber feared that rationalisation would eventually crush the human spirit.
- Simmel sensed that the society of strangers would produce new social isolation and fragmentation.

Alienation and exploitation

- Karl Marx
 - The constant upgrading of technology, the quest for market dominance, the increasingly global tentacles of capital were all aspects of a system designed to divide between those who profited and those who had nothing to lose but their chains.
 - Workers were alienated from their own humanity and exploited by an insatiable lust for profit.
 - The world was becoming dominated by a system of impersonal, objective relations rather than the familiar face to face ones of traditional societies.

Anomie and loss of direction

- Durkheim:
 - Traditional ties of family, kin and neighbourhood, torn by new mobility and lack of conventional regulation, were replaced only by a sense of uncertainty, loss of direction and a feeling that the individuals were somehow on their own.
 - Without a normative basis or source of authority for society, the moral order would collapse.

The iron cage

- Max Weber
 - The reign of rationality, applied equally in the social as in the natural environment, would produce the disenchantment of the world.
 - While modern liberal society was meant to free people for involvement in more diverse ends, these actually faded into obscurity as people became enslaved to supposedly neutral technologies and techniques.
 - The bureaucratic official was the epitome of modernity - bound by rules of rational procedure and untainted by 'irrational' considerations of race, religion, generation or gender.

The society of strangers

- Charles Baudelaire:
 - Modernity is the transient, the fleeting, the contingent; it is the one half of art, the other being the eternal and the immutable.
- Engels:
 - He saw in the 'great city' of London, the 'isolation of the individual - a narrow-minded egotism' that was nothing less than the 'disintegration of society into individuals, each guided by his private principles and each pursuing his own aims.

Control

- Charles Taylor - the three malaises of modernity:
 - Individualism - confines us to the 'solitude of our own hearts' and removes the heroic dimension of life, the purpose worth dying for.
 - Instrumental reason - reduces everything to a cost-benefit analysis, represents a further loss of autonomy.
 - The fear that 'soft despotism' will take over political power, bureaucratically organised and unhindered by disinterested individuals busy seeking their own.