Ivars Kronis, Kristaps Zariņš

Riga Stradins University

MAX WEBER'S THEORY OF LAW HISTORY AND POLITICAL VIEWS OF RELIGION[1]

This manuscript is a revised and supplemented work that was published in the RSU (Riga Stradins University) scientific journal Socrates (Socrates 2022, 3 (24)) under the title "Legal Doctrine of Max Weber's Sociology of Religion" and available at https://doi.org/10.25143/socr.24.20 22.3. The basic task remains the same – to study Max Weber's school of the sociology of law.

Belatedly, this work is dedicated to the prof. Max Weber's (hereinafter – Weber) commemoration day of the centenary and is focused on understanding the sociological structure of the state and canon (religious) law. To better evaluate Weber's most favored views on the economic ethics of religion, by comparison, and due to the interaction of the opposites and sets of viewpoints expressed in them, in this work, the discipline of human rights will also be analysed, which will closely identify Weber's asceticism about the spirit of normative Protestantism and the ethics of capitalism. On the other hand, in a conventional discourse and a review of the theory of social stratification, through the so-called theory of degrees and directions of rejection, the essence of Weber's idea is best understood by examining how religion influenced the formation of an approach to contemporary law, by comparing it not only with the constitutional system of Latvia but also with other countries and their respective constitutional framework and traditions, meanwhile, considering the view that by observing the peculiarities of the era of Weber's lifetime, the work would have a more modern character.

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Therefore, the purpose of the research is to establish and identify the ideas expressed by Weber regarding the value scope of social classes, layers, and typology of religion, by analysing them – conventionally, but specifically – through the doctrine of lex nature. Additionally, the purpose of the present work is to define the general structure of Weber's philosophical thoughts and views on law, to find and identify the asceticism of the sociology of religion, interspersed with the theory of conflict and domination. However, the relevance of the research is rooted in the fact that the methods of Weber's scientific approach are used to analyse the state's institutional and orderly system-theoretical dependence on the bureaucratized forms of public authority, where the justification for the structured actions of the legitimate state derives from strictly defined and authorized rules of orders and ordinances. Therefore, as the socio-legal aspect of religion, the constitutional experience of countries, including Latvia, is also analysed, but only comparatively, and accordingly, in the context of social and legal norms, the bipolarity of church and religious dogmatics is studied. The current relevance, argumentation, and question of equality of the separation of the state and the church are also evaluated. In this regard – from the point of view of the social philosophy of law developed by Weber – no other research has been carried out on the national scale in Latvia, making this work unique among the analysis of other legal scholars and sociologists.

Wherever this study refers to purely legal dogmatic problems, the authors have relied on the literature on the history of the church and law and, to some extent, on the past of the dogmas formed by it. Furthermore, the authors primarily refer to the documentation obtained from Weber's law sociological argumentation and controversial perspective, which clarifies the typology of the sociology of religion. To the possible extent, the authors also delve into the primary sources of the history of law, but due to their linguistically specific style of expression and peculiarities, per the objective to study Weber's views on the socio-historical genesis of the state and canon law and their nature, which includes evaluation of sociological understanding of the law of the canon and religious norms, textual identification of primary sources is not examined in more detail, however, the most important ideas expressed in Weber's works are explored and compared with those of other prominent representatives of this field.

Therefore, the objective of the research is to select and analyse the common and different features expressed in the works of Weber and other authors, which would most clearly characterize the doctrinal views of Weber's sociology of religion and law postulate, or, as Weber would say himself, to mark as specifically as possible that part of the norms of the "manifesto of rights" which most typically applies to the masses of society, as opposed to the legal consciousness of the individual. Consequently, the place and role of the church and religion in the cognitive process of the state, society, and individual would be "fixed". In

addition, another objective of the article, among others, is to illustrate, using the methods of sociological research, the most significant pillars of the ideas of the history of law and the colourful nature of the brightest ideas of the world cultural heritage, and doing this by observing the most visible and vivid views in Weber's works and analysing them in the cross-section of legal forms by using the critical thinking, which is characteristic of the present era.

However, in the part of the normative analysis of the law codification, the authors focus on the analysis of the social environment of law and church law instead of their general perspective; thus, the work is mainly based on the ideas of the outstanding sociologist Weber and theses of his concepts, boldly preserving the style of the thought revealed in Weber's main text and means of expression. For those who are familiar with the most important works of canon law, including church law, the part of the material analysis of the norms could be new precisely from the point of view of this work and the specifics of the analysis included, namely, this legal discipline is examined through Weber's studies, works of other researchers and novelties about law, as well as the place of sociology of religion found in these works.

Keywords: *church law, canon law, sociology of religion, sociology of law, legal norm, ideal norm, legal phenomenon,* iure divinum*, lex nature, conventional norms*

Sources, Background of the Law, and the School of Religion

The state, as an institution of law, and the connection between the religion and the Christian doctrine of pre-condemnation, by its very nature, excludes the possibility that the state could support the religion by showing intolerance, as it happens in various aspects of human rights, where there is broad pluralism, and a man is the absolute embodiment of these rights. The divine rights cultivated by the Christian faith, which in reality manifested as the infallibility of the church, merge or completely disappear in front of a man as a phenomenon of creation, and, if it is presumed that man is absolute and unique, then his rights are also unquestionable and as absolute as the man himself (Kēnigs 2010).

However, the church denies this idea since it recognizes only divine authority in everything, including laws, as they have emerged from God, for example, the Old Testament, the books of Moses, and others. Moreover, the

spirit of canon law and its substance clearly speak of it. Therefore, the state, when analysed from the point of view of the doctrine of Christian texts, cannot be 'doomed' because it is a form of perfection and the true embodiment of the social environment of the society.

From the perspective of the Christian scriptures, which also constitute the main sources of customary law, such as the 10 Commandments, the Christian society is eternally sinful and condemned and therefore seeks forgiveness of eternal sin. The fact that, in the end, the final judgement is made neither in this life nor with the legal methods used by the state creates a complex situation. From the point of view of legal principles this would be absurd because it would mean that the guilt of a person is presumed from birth, and also, the guilt can be redeemed (compensated) only in a specific, genuinely sacred way – through a religious institute intended for the forgiveness of sins. This guilt is omnipresent even though, in law, there is no such form of presumption of guilt; it would be an abstract and utopian idea even for the most fanatical advocates of legal absolutism (Kēnigs 2010).

On the other hand, and as Sigmund Freud aptly points out in "Civilization and Its Discontents", it is the church with its Christian dogmatic which directly calls for this premise of eternal sin and confession of guilt so that a man becomes obedient to the commandment and responsible regarding the universal moral law. To a certain extent, it is precisely the law that frees them from this culture of guilt and upbringing, as opposed to the 'salvation of soul', placing them on both sides of the pact of 'international reconciliation', where the law deals with purely ethical questions because they are inseparable, namely, questions of guilt in the past, where the reality is relative but determinable, or of guilt in the future, where, as they say, everything is relative, but ignorance and fear, no matter how absurd, follow a transcendent commandment, as well as profane law (Weber 1949).

Despite attempts for this abstract doom and the status of the eternal sin, thus the imperfection of law, the reflection comes up against the role of religion in the legally constituting and undoubtedly primary document

of the state – the constitution, similarly as for the church – to the source of its religion, the Bible. The only difference is that while the clauses established in the constitution do not directly and individually affect matters of faith, morality, and conscience, the judgements contained in the texts of the holy scriptures and values, such as the Bible (Old Testament and New Testament), are the source of both, law, and morality (condition of what is good, what is happiness and what is the right action). For example, in the context of comparative international constitutional law, this religious aspect is quite well established in the constitutions of different countries, including Latvia (see, for instance, "God bless Latvia" contained in the preamble to the Constitution of the Republic of Latvia, as well as Article 6 of the Constitution and the 1st Amendment of the Bill of Rights of the United States of America and II Amendment of Bill of Rights of the United Kingdom). Moreover, the social and legal aspects of religion can also be seen in other essential documents of the state, the ceremonial laws, and customs, such as the national anthem and oath, which, despite being symbolic, are essential conditions for the existence of the state.

In contrast to Weber's culture of civil disobedience (resistance) in everything, where it is necessary to obey a person, the law, or God, prof. Otfried Höffe (hereinafter – Hoffe) identifies one form of justice – God's or Biblical justice. It is a prerequisite for the existence of law and for justice. There is no need for Weber's idea of *sovereignty*, as, since the Greek times, it also includes elements incorporated in the law, such as peace and happiness (Hefe 2009). Further illustrating Weber's idea of domination and civil disobedience, Hoffe concludes that, in Christian legal thought, the right to resist is thoroughly questioned. Hoffe writes that Sophocles's play "Antigone" advocates the right to resist, while Socrates considers it unjust to resist an unjust punishment if he has previously been in principle with his community. In Christianity, the right to resist arises from the conflict between the requirement to obey God-appointed superiors (pope, bishops), meaning to obey God more than a man or the state (ruler) (Hefe 2009).

By creating the architecture of church law, Weber asks questions and seeks answers that relate to the genesis of value and law and the

characteristics of 'association'. In other words, did the phenomenon of the origin of law begin with the emergence of the social consciousness of the society and the usurpation of the power of some authority over it, and later resulted in the strengthening of the individual's autonomous rights in the absolute element and form of human rights? Nevertheless, as theologians point out, law perhaps has a dimension of Christian values, which manifests as divine verticality because the basic moral legitimation of law can be found in religious texts. Its first and main cause is God (*ius Divinum*) as its primary source, which proves that there is a successive *homo religiosus* in the light of *imago Dei* (the man as the image of God). The mentioned above would indicate that law, despite its general nature, should be legitimate and generally recognized. According to Weber, a sociologist of civilization, the element of recognition is common for both law and religion, and it is a prerequisite of their existence because it is based on the idea of religion and moral principles. On the other hand, the *lex* (law) does not have such a 'craving' for moral and religious precepts, since its task is not to 'speak' and argue in the language of morality and religion (Weber 1949).

As stated by Matthias Koenig, the basis of human rights denotes absolute rights, the validity of which cannot be justified by referring to the traditions, customs, or laws of a particular society that have formed historically but which can be declared as legitimate demands of *all* people. The universality of human rights, as evidence of natural rights, is contrasted with the particularism of cultural and religious traditions. In the classical school of natural law, it is argued that natural law is part of a comprehensive system of rules about the rights and obligations through which a man shows his nature – whether it is characterized by the image of the man as God or by reason and free will (Maritain 1951; Finnis 1998).

Another way – which is directly related to schools of Immanuel Kant, John Locke, and Jean-Jacques Rousseau – of justifying universally applicable human rights, therefore, does not start with the objective nature of a man, but with the subjective, non-religious, cognitive abilities of a man and the principles of the legitimate legal system derived from them. The

most influential argument of this contract theory, as opposed to the religious contract with God, was formulated by the American philosopher John Rawls. In "Theory of Justice", which was certainly directed against the once prevailing utilitarianism of Anglo-Saxon moral and legal philosophy, Rawls defines justice as 'Fairness'. The core of his modern argumentation, similar to religious beliefs, is a hypothetical construction of a situation of choice (initial state), in which individuals, due to rational self-interest, agree on the principles of the social system, while just like in Biblical mysticism, at the same time being 'behind the veil of ignorance', and therefore not knowing their specific social position (Mandie 2009).

Jürgen Habermas, in his theory of discussion, similarly to Rawls, when examining the institutional form of human rights and national sovereignty obligations, primarily considers the national constitutional state and the civic institute of the national state as the constitutional will of society. Namely, in his view, the application of human rights, the same as religion, goes beyond the borders of a national state and points to world citizenship in the process of being born, just like the Christian idea of 'God's children', however, their universal applicability would be legitimate only if human rights were also connected at the global level with a democratic legal system, which is not yet possible, while in a Christian-minded world, it is no longer possible (Habermas 1996; Merkel and Croissant 2000).

On the other hand, Weber views the ambivalence of human rights as a change brought by the Modern era, as compared to the civilizations of the Axial era (Eisenstadt 2000) and points to the paradoxical consequences of the institutionalization of human rights – a rationalized state apparatus and legal system (Bielefeldt 1998). Koenig concludes that, by considering the dominance of the global human rights discourse, in addition to the rapid decline of the proportion of religion, it is the right time for a critical reflection on the role and place of human rights in society. It can help keep the symbolic form of human rights open to new and more detailed versions, different justifications, and understanding between cultures. It makes the incompleteness of the institutionalization of human rights conscious and thus promotes the renewal of their emancipatory promise (Kēnigs 2010).

Several other philosophers, such as Edmund Husserl, modern times' representatives Martin Heidegger and Jean-Paul Sartre, have already mentioned *homo religiosus* as a method of research phenomenology. In contrast to *homo religiosus* they mention the existence of *homo saecularis*, who lives in the present without any remainder. The only difference between these two is that, contrary to a sworn secularist, *homo religiosus* does not allow himself to be blinded by the fleeting brilliance of the present moment, as he remains in the shadow of the *ulpa Dei Maxima* (God's wrath), thus turning every moment of his life into a reflection of eternity, which is brightly paraphrased by Immanuel Kant in his work "The Metaphysics of Ethics", thus creating the so-called highest moral criteria (Kant 1996).

Similarly comparable would be social and religious norms, where the former is secular and practical to the extent possible, as opposed to the objective rational values expressed in religious texts as a source of law.

For example, Romans, when concluding that ethical elements can be found in every legal system, defined law as the art of good and just (*ars boni et aequi*); therefore, the law is associated with the art of morality and virtue. It is precisely the idea of Roman law, which is expressed in the Institutions, part 3 of the codification *Corpus Iuris Civilis* of the Eastern Roman Emperor Justinian I, and is based on the idea that all men are born free and therefore have the *lex nature* prerogative to be free, that discredits through times biblical moral principles, not to mention the existence of a single national morality.

Moreover, in the early Middle Ages, this fundamental idea, interpreted by theologian and scholastic Thomas Aquinas (*Sanctus Thomas Aquinas*), transformed into the dimension of biblical values, creating the ideal law in the ideal state that is under the authority of the church (similar to Plato's utopian state). However, with the rise of humanist ideas and their spread in Western Europe, the same law became more specific and evolved into subjective (natural) human rights, even providing respect for human dignity.

As Otfried Hoffe points out in his work "Justice", in the legislative giant *Corpus Iuris Civilis* (collection of civil, non-ecclesiastical law), which is the most important compilation of Western law, at the beginning of the

prominent Digests, all legal claims are formulated in the form of three basic principles. They were associated with the Roman jurist Ulpian (*Domitius Ulpianus*) for centuries. The aforementioned corresponds well with the legal tradition started by the Romans, namely, at the very beginning of the Digests in *Corpus Iuris Civilis* the great jurist Ulpian expresses a seemingly eternal truth: "*Juris praecepta sunt haec: honeste vivare, alterum non laedere, suum cuique tribuare*" or "*The precepts of the law are these: to live honestly, to injure no one, and to give every man his due*" (Hoffe 2006), which is entirely incompatible with Christian values, the biblical view, especially the Old Testament, and the idea expressed by Weber about the *Protestant type and the spirit of capital* as a social dilemma, because it is denied both by the religious approach of the infinite and eternal humility and by capitalism's equally eternal servitude to property or material values.

In comparison, Cicero (*Marci Tulli Ciceronis*) writes in his work "On the Republic" ("*De re publica*") that the state or Republic must always and everywhere be placed in the first place – "*to place the good of the fatherland before all else*" (Ciceronis 2009), meanwhile, the capitalism requires the idea of property (*dominium*) to be placed above everything and to serve only for it (in the name of increasing capital). However, one must keep in mind that, speaking in parables, as it is stated by the introductory part of the Digests in *Corpus Iuris Civilis*, the ruler (the state) shall humbly bow before God, that is, before the Pope, because the final settlement (...) will be made only on the day of reckoning. With such a motto, the collapse of the ancient world began, and also began the 'quiet revolution', when the state no longer holds its power and power is not its only goal anymore, because the state begins to obey in every aspect of its guardian – the church, which according to the idea of the church, is capable of exempting from God's punishment the sinful and therefore the infinitely guilty citizen, nation or even a ruler. It also creates a division between the early medieval approach and the Renaissance way of thinking, or such was the enormous social convergence of the time because, for example, the ancient Greeks had no religion; instead, there were various cults, while the 'sacred' (*hieros*) world is separated from the 'profane' (*hosisos*) world.

In other words, God has his world, but man's world is in his own hands, i.e., 'political' life is completely 'desacralised' (Weber 1949; Šuvajevs 1999).

In his views, Weber goes even further and considers that modern political technology is characterized by the fact that religion itself is also transformed, and, as a result, the capitalistic 'spirit' is formed, that is, the main objective of the corpus of law is incorporated through brutal dualism – to look at the body, soul, and spirit (*corpus, animus, spiritus*). This opinion of Weber – because it cannot be any other way when talking about state affairs – is further developed by prof. Michel Foucault. He proposes a cult of the ethical continuity (doom) of the church, an imperfect (therefore, immoral) person and equally imperfect and punishable actions resulting from the idea of sin, which follows the command: "*Go get slaughtered, and we promise you a long and pleasant life*" (the central motto of the medieval church and the state in the fight against decline of obedience), in contrast to the 'rule of law', a concept established by Albert Dickey of the Enlightenment: the basis of legality and justice is precisely the sinful person. Moreover, in the search for a legal state concept (*Rechtsstaat*), religion was noticeably replaced with other paradigms. For example, Viennese doctor Johann Peter Frank in his 1779 essay "A System of Complete Medical Police" no longer sees the presence of religion and God in state affairs, as he writes: "*The general object of police science is public order*" (Šuvajevs 1999).

Weber calls such public order a 'prison' by referring to Shakespeare's Hamlet. According to him, this ensures the formation of individuals who "*become nervous and soft if this order is disturbed for a moment, and helpless if they are taken out of their complete adaptation to this order*". On the other hand, national socialist Roland Freisler, considering Weber's 'ruthless insight into the realities of life', after Weber's death, in the 1930s, found a generally accepted definition. It reads as follows: "*A state governed by the rule of law is an organized form of national life that embraces all national life forces to ensure the right to life internally and externally*" (Weber 1949).

Clearly, the church and religion are generally ignored, and their quintessence is lost. However, it took several hundred years before some of the

most prominent critics of the unity of church and state from the early Renaissance and decadence, Thomas Hobbes, with his brutal ethics, and John Locke, seeing the essence of happiness in the state affairs (law), could arrive to such a remarkable 'forgetfulness' of church and religion in the field of state and law.

Nonetheless, returning to the systematic aspect of the church, when looking at the socio-legal issues of religion and views based on human rights, where everyone can be an atheist or a believer regarding their personal beliefs, but in the common public legal space they all certainly meet some religious ceremony, then it must be concluded that the influence of religion is felt in traditions, as well in law, which is based on the values derived from them. Especially evident the mentioned above is in Western Europe's culture, in the deeply rooted traditions of these nations, and everywhere where the beliefs of the Christian faith prevail.

A culture based on religious values is formed as well as one based on human rights beliefs. In the background of the traditions of the Christian worldview, purely religious holidays are widely accepted and celebrated in the form of positive norms – official holidays celebrate several thousand-year-old events that are utterly religious and have no connection with the secular world at all (birth of the prophet, resurrection); an official anthem of religious content is sung, which even contains an indication of how it is an official prayer (in the case of the National Anthem of Latvia – the solemn prayer of the people, Law on the National Anthem of Latvia, Article 2). Thus solemn (symbolic) oaths are taken (e.g., on the Bible or the constitution), and, finally, these religious texts and manifestos stemming from them are carefully enshrined at the constitutional level in an otherwise profane world. As a result, atheistic beliefs and traditions remain in the minority against such a background. Besides, for example, the institution of the oath is a purely moral paradigm, an ethical standard for a particular action; it is not an ordinary material legal norm since its origins are purely religious, symbolic, and ceremonial.

The question arises, what are the sources of such a discipline of cultural law, a religious law, seen as a form of expression of traditions, which

cannot be measured in the same way as pure canon law, and how such wide recognition can be found, even among people completely unrelated to faith? Furthermore, what is the primary source of the moral expression of these values – is it in Greek and Roman centuries-long philosophical reflections, widely known unwritten moral views of natural rights or religious texts, in the reflections of law (similarly, as a reflection of ideas in Plato's allegory of the cave), which form the legal opinion and consensus of the last millennia basic source codes?

Also, Immanuel Kant, as a devout Protestant, when answering the question about the act of faith and law as the critical focus point of civilization, in dramatic and harsh language, responds by, at the same time, marking a new period in the history of religion and law: "*Assuming that the just moral law is to be taken by man as a command from God, the just man may say: I want the God to exist!*" Man, no longer reverently bows his head before God's throne but expresses, as Weber says, 'in act of power and command' the power of his will – the power to order and command Him (God) to exist. Neither St. Augustine nor Thomas Aquinas would have thought to assert such a thing; when speaking about God, they speak humbly and in a language of longing. On the other hand, Friedrich Nietzsche, in response to Gottfried Wilhelm Leibniz's so-called 'question of questions': "*Why is there something rather than nothing*?" puts a question at the centre of human history: "*Can a person live without God?*" and comes to an epiphany: "*[..] I want God not to exist so that my existence belongs only to me [..]*". Hence, the view of contingent things and their considerations, as John Locke, the founder of humanism, mentions with 'clear language' and 'common sense' language, leads to the principle of sufficient reason and the neo-Kantian George Wilhelm Friedrich Hegel's idea that 'reason' is, in his words, which 'by itself' determines all the necessary needs for certain rights formulated in laws.

In response to this, Weber concluded that in contrast to the Roman school of law and the West, where pragmatism is rooted from the time of Thucydides and its prehistory is used, nothing would indicate a rational legal theory in any other culture in the world. In other earlier civilizations,

in prehistory, there were no strict legal systems and forms of legal thinking that characterized Roman law and Western law based on the former. Such a phenomenon as canon law is also known only in the West (Vēbers 2004).

Thus, for example, Roman law was deeply rooted in the Catholic lands of Southern Europe and later in the whole Western Europe. The rationalization of private law, if it is interpreted as the simplification of legal concepts and the division of legal material, reached its highest development in the Roman law of late antiquity and, on the contrary, was the least developed in the countries that reached the highest degree of rationalization, including England, where the renaissance of Roman law failed (Vēbers 2004).

Weber quite well captures the 'image of American culture' created by Benjamin Franklin, leader of the American independence movement: *"From cattle you get fat, from people – money"*, or, as Weber says in his work: *"The merchant may conduct himself without sin but cannot be pleasing to God."* This translates well together with the statute transferred to the canon law on *"Deo placere vix potest"* ("it is hardly possible to please God"), which refers to the actions of merchants and, the same as the evangelical text about usury and other 'misfortunes' of law and morality, was considered real and therefore an important source of knowledge of socio-legal nature (Vēbers 2004).

Calvinists, on the other hand, saw a form of ideal the norm in the law, which is impossible to achieve, but must be constantly striven for (Cambridge University Press 2006). Regarding Calvinism, we can also mention the views expressed by Thomas Aquinas in his work *"Summa Theologica"*, cognitive theory, and its religious character, which aims at the settlement and concreteness of the status of social law, but only by religion one may dictate the sceptre of state power (The Western Australian Jurist, C.Y. Lee). However, in Luther's teachings, we find the opposite – liberation from following the written letter of the law as a divine privilege of believers (Vēbers 2004).

When taking a closer look at the pact of recognition of religion and rights, it is appropriate to mention the insights expressed by Weber's

contemporary, Francis Pieperi, the founder of modern Christian dogmatics, in his work "Christliche Dogmatik" (Mueller 2003) or a summary of this work under the same title "Christian Dogmatics", which was dedicated to the memory of Francis Pieperi by John Theodore Miller, a prominent professor of systematic theology at Concordia Seminary in St. Louis (Mueller 2003). Namely, in his work "Sociology of Religion", Weber expresses the observation that the internal interests and the element of recognition of rights require the 'highest' salvation benefits, which were not universal laws at all. Such a state as immersion in nirvana, when religious misery or religious dreams could develop into a popular cult, could not become an element of everyday law because there is an obvious inequality in the qualification of religion, which was recognized even by the Calvinist doctrine of predestination with its particularity of grace. Weber points out that the most highly valued benefits of salvation – the ecstatic and visionary abilities of shamans, magicians, ascetics, and various God-inspired people – were not at all available to everyone, instead their acquisition is determined by 'charisma', which in some cases could be awakened, and as is also the case with churches both internally and in the political scene in total.

Particular attention should be paid to the legality element of the law, the authority of its origin (the autocrat's inequality with the Protestant ethic), the definition of sin or its general description (*De Peccato in Generere*), will, guilt, and the socio-religious review of punishment. Weber points out that the church, as an institution, tries to organize the religiosity of the masses and to replace the qualifications of the virtuoso religious order with its own monopolized means of salvation. According to its nature and its own interests, the interests of the priests, as well as the officials of the state bureaucracy, the church must be a 'democratic' institution of salvation in the sense of universal accessibility. It must strive for universal grace, eternal atonement of guilt and punishment, and recognize the sufficient ethical value of all those who are subject to its power. According to Weber, in this case, from a sociological point of view, one can see a complete parallel between the bureaucracy's fight in the political sphere to the 'political fights of the aristocracy of the ranks' (Vēbers 2004).

It can be pointed out that explaining the statements of the Bible as 'paragraphs of the book of laws' is an old and relatively straightforward interpretation of the cultural tradition of Roman law. However, not always a casuistically accurate citation of the Bible, but more as a revelation of the legitimate source of the moral law in the primordial scope of its existence, which leads to the same goal that gave rise to canon law. Notably, "*For the Reformers, the Commandment appears to be an ideal norm, while the Lutherans, on the other hand, find the Commandment oppressive as an unattainable norm.*" Lutherans condemned the reformers for 'slavish servitude to the law' (Mueller 2003). Therefore, as a codification of natural moral laws, the Decalogue, remains the norm of human behaviour. From the average point of view of canon law, morality free from laws and rational asceticism oriented to the Commandment was also excluded; the Commandment remained as the structure and the *ideal norm*, but the law has only a 'discrete' character (Vēbers 2004).

The Convergence of Law and the School of Religion

Observance of a principle "*extra ecclesiam nulla sallus*" (Toteff 2016) cannot be ensured by the state in its social reality. In other words, the inability of any state to ensure the functioning of the norm (both law and religion) because the mentioned principle literally means: "*(..) there is no salvation outside the church*". The state was unable to save the believers with it, but the concern for God's glory forced the church, a 'believers' Church', to look for a basis in legal norms, which, on the contrary, were created by heretics and unbelieving Romans or legal scholars until the early Middle Ages (Toteff 2016).

Over time, it became impossible for the state to intervene in various matters, such as appointment and transfer of clerical positions, which, on the contrary, were described in detail by the norms of canon law. Thus, for example, the leader of the English Revolution, Oliver Cromwell, together with John Brown, constituted the church as a socio-legal unit (Ferguson 2013) or even an institutional body. He was an advocate for universal

religious freedom, where the state has no resemblance to the church, as had been accepted since the early decadence of Roman law. His concept of 'holy parliament' – the separation of church and state because they (the people of faith) were pietists for positive religious motives and represented the influence of that, similarly as *Roger Williams*, guided by the same considerations, did – advocated for unconditional, unrestricted religious toleration and the separation of church and state (Vēbers 2004).

One does not have to look far for an example, as in the resolution of the English Baptists of Amsterdam (1612 or 1613), the demand for freedom of conscience appeared for the first time as a defence of one's positive rights against the state. It reads: "*The magistrate is not to meddle with religion or matters of conscience (..) because Christ is the King and lawgiver of the Church and conscience*." (Weaver 2015).

During the Hellenistic era, in the Roman Empire, and in Islamic lands, religious tolerance prevailed for a long time, limited only by considerations of public order, which were based on laws, even if they were not always compatible with the canon law texts. As, for example, Philipp Jakob Spener points out, it is about the fundamental rights of Christians, which were guaranteed by the apostles when they formed the first Christian congregations. Also, the Puritan opinion developed about the place of individual people in the church and the legal sphere of their activity, which derives from *jure divino* and therefore is an inalienable and unshakeable right. No matter how ahistorical the positivist (philistine) critique of the idea of 'fundamental rights' may be, no matter how trivial it sounds, in the words of Spener, one must ultimately be grateful for everything, even for what the fiercest modern 'reactionary' considers to be his individual freedoms and minimum rights (Spener 2019).

The Arminian eristic position of the idea of extending state sovereignty to church affairs was represented by the monopoly of autonomously created state sovereignty, which corresponds with the political interests of the law of that time, which were pragmatically but tendentiously rooted in the church law culture already during the Renaissance. In addition, an ardent follower of the idea of Arminianism, or prof. Jacob Arminius of

Leiden, dr. iur. Hugo Grotius (*Huig van Groot*) was a great philosopher of law and lawyer, who in his work "*De iure belli ac pacis*" (1625), expresses, among other things, the idea that war is a crime if it is not a means of protecting law. It was Grotius who distinguished law from religion and emphasized the principles of natural law, which are immanent in the nature of a man who is a social being (Švābe et al. 1927).

It is also known that Friedrich Nietzsche's supporters, based on fundamentally similar reasons, have attributed a positive ethical meaning to the idea of eternal return, leaving the church in the background, compared to the formation of the state. Erasmus (*Desiderius Erasmus*), a Dutch humanist who declared the dogmatic 'law of mind', which is based on the characteristics of humanism and a man as a sovereign being, who can decide and determine his own rights, contrary to the church's divine law policy, points out that the collision is created exactly in this aspect of the interaction between religion and law (Švābe et al. 1927).

It must be noted that the Quakers saw the relationship between church and state in the first centuries as ideal. Robert Barclay strongly represented this idea with his concept of "Inward Light" – because for them, as well as for many pietists, in terms of purity, doubts were not created by the church as an institutional formation since it drew its sources from the theological works tested for hundreds of years (Chauncey 2015).

However, within the framework of an unbelieving state or under the influence of 'under the cross' of an institutional church, other defenders of Christian values and rights, such as Calvinists *faute de mieux* (from French meaning 'for lack of something better') were also forced to engage in the separation of church and state, similarly as it was done by the Catholic Church in analogous cases (Hoffmann 1902). They considered that the rules of the church do not affect civil society and its relations. However, initially in the first formations of the congregations and later in the church, there was a living principle that resulted from the fact that a prohibition was established to enter any, even business, relations with people excluded from the church. Puritan legal formalism leads to entirely adequate consequences – complete trust in the law, and the law not only as

a norm, but also as a social need, or: "*In civil actions it is good to be as the many, in religious, to be as the best*" (Adams 2018).

The principle of Puritan opinion that "*Natural reason knows nothing about God*" was impossible to consistently implement in reality, because there was a living principle: "*Moral and perpetual statutes acknowledged by all Christians*", as a result of which it was precisely the ethnos of cultures or peoples that preserved religious traditions in all its vastness, thus trying to close the gap that simple state power or domination dictated by the state apparatus could not provide (Barclay 2002). Law, without doubt, also contains ethical provisions, through which, if one can say so, the Christian ethical-legal maxim and the embodiment of the moral spirit permeates the principle: "*Do unto others only as you would have them do to you*", which is also a law of morale for any atheist (Kant 1996).

Since Kant, there have been discussions about legality and compliance with what justice or, more broadly, morality requires, which, in that aspect, also coincides with Christian justice. Thus, it is not about compliance with positive law and positive legality but rather moral legality. Ancient philosophy even discusses both aspects. Plato, for example, accepts compliance between personal and political justice, while Christian, as well as Islamic and Judaic theories in medieval times, are much more interested in personal justice. Weber calls it more precisely as 'spirit of capital'; moreover, the so-called rulers' manuals mainly talk about a righteous ruler, whose source is an authority-based and prophesied discourse about the transcendental origin of power. In any case, as Hoffe points out, starting from Plato, Aristotle and until John Stuart Mill's writings "*On Liberty*", the condition for the functioning of rights is a search for an exit from the tyranny of the majority, which Weber describes as the fear of unwanted submission to some group authority. When the legally constitutive morality of justice and law disappears, following Augustine's idea about *de civitas dei*: "*Justice being taken away, then, what are kingdoms but great robberies?*" and without finding the perspective of faith and morality for justice, the spiritual, as well as the worldly order of law and legality, and its pillars, would collapse (Hefe 2009).

Thus, the place Protestant teaching intended to give to the '*lex nature*' (natural law) is shifting. The existence of 'general rules' and a moral code became fundamentally unavailable because everyone has an individual right to a God-given conscience. The formalism of Puritan ethics is a clear consequence of trust in the law since legal order is reduced to formal legality, in the same way, that 'truthfulness' (*Redlichkeit*) or 'righteousness' (*Uprightnes*) for nations with a Puritan past does not mean the German 'honesty' (*Ehrlichkeit*) but something specific and completely different – formally and reflectively transformed consolidation of rights in the form of laws, as was carefully practised by the pioneers of Roman law from the times of Ulpian (Vēbers 2004).

However, the Puritan understanding of 'legality' as a test of *chosenness* without a doubt created more important motives for positive action than the Jewish understanding of legality as keeping the commandments because of internal and external ethical considerations and the relationship to tradition in observing social norms and determining legality was more like unscriptural law, a principle regarding the laws that are not based on the precepts of Judaism, and that everywhere else can be 'permitted what is forbidden' and the only positive and true law is the one that derives from the Old Testament for these two components of internal and external ethics.

Sermon on the Mount and School of Christianity

Christianity, which was originally the teaching of wandering artisans, in contrast to Judaism, in the early Middle Ages and later under the influence of Puritanism, as already mentioned, paid much attention to the fact that Christian norms should replace ethical norms and that these, in turn, should be carefully collected (codified) and declared in writing, for example, through rules of the church or laws of the state. This approach with such individual local interpretation of law often encountered a problem: a happy person in the sense of law is rarely satisfied with obtaining happiness itself. They also want to be happy in the sense of *law*, and,

moreover, by referring to the thesis that the law must ensure 'happiness', they want to be sure that they deserve it – first of all, in comparison with others, they want to believe that the less fortunate received it by merit and finally that happiness itself is 'legitimate' and they aspire to be 'legitimate' together with it (Vēbers 2004).

The rational need for elements of the theodicy of suffering and death, such as the death penalty as a legally enforceable form of punishment, was clearly expressed in law. Regarding this, any hierocratic church fights it with virtuosic religiosity and ethical dogmas, i.e., it, in the form of an institution, organizes a community of 'grace' of moral forgiveness, which has nothing to do with state laws. Theodicy means (from Greek – *Dikaios*) a righteous ruler, organizer, and seeker of truth and justice, who acts with philosophical and religious considerations, which, according to the doctrine of "The Justification of God", belong to those views that see and explain the foresight of the norms given by God, which cannot be solved by law, but only by religion. Hierocratic power, in this context, is understood as the power of the church, which, according to the Greek *hieros kratein* (sacred ruling), tried to gain supremacy over the secular state power (Švābe et al. 1927).

Weber says that the church, as a legitimate institution, seeks to replace the acts of state power with its own monopolized but supposedly democratic means of salvation. He is not talking only about democratic means since a democratic state, similar to what was pointed out by Socrates, who denied democracy at its very foundations, is an absurd form of government: *"A ship that is not governable because all decisions are subject to the vote of all those who travel with this ship"* (Tamney 1984), instead by means that have a monopoly on the order of power dictated by the administration. However, provided that it is a universal institution of 'grace', the Christian values it preaches are recognized, and obedience to its authority is based on its, firstly, religious texts, and secondly, law derived from them, and it has a direct connection with articles of faith included in religious texts. Nevertheless, in the field of ideas of general law, the church remains solely and exclusively faithful to the legal order established by the state.

Weber states that from the sociological point of view of the law, one can see a complete parallel between the bureaucracy's fight against the order, the political rights of the aristocracy, and the forms of state and the church's rule of law. 'Rational', as a belief in some important 'canon', was the highest artistic ideal of the Renaissance; rational, as a rejection of all traditional ties and belief in the power of *naturalis ratio* (natural reason), was also a vision of the world of the legal order of this period, despite the features of Platonic mysticism and the preachers of the Christian faith supported by the church (Sereno 1997).

The nature of church disciplines and canon law through the religious nature of worldly asceticism, as Weber called it, linking it also to various elements, such as professional ethics and professional jurisprudence, brings along a problem that has been little studied until now, one of the reasons being the effect that church discipline is not always spread uniformly. Therefore, the police control of the lives of the faithful in a way that borders along the lines of the inquisition is realized in the domain of the state church. In a hierocratic union – in the church, the shepherds (pastors) of its congregations represent a certain 'competence' determined by the regulations. Church leadership or pontificate is, in its true sense, the same thing as the service established since the pontificate of Innocent III, where the separation of the position of 'ex cathedra' (rank) from the circle of private law is the same as any other bureaucratic technique that is not 'revolutionary' connected with the jurisprudence of all existing earlier forms of Roman law because it is guided by the dual character of the principle: "*it is written – but I tell you (..)*", or it represents the highest threshold of the competence of infallibility – to interpret anything that can be interpreted at all (Vēbers 2004). This idea is based on the following considerations, which, among other things, are based on Weber's widely described concepts of dominion or ruling and their types.

Namely, Weber compares a clergyman and his 'competence' with an official, who is also a servant of power, yet only secular. Both never exercise this power as their own rights, but always on behalf of an impersonal 'institution', in the interests of people's coexistence subject to some

normatively formulated regulations, regardless of whether they are determined or not, but ascertained according to criteria corresponding to the regulations. A clergyman, who is subordinate to the hierarchy of 'superiors' in clarifying and identifying legal issues, turns to the church administration 'by instances' similarly as officials do in public administration. Thus, religious communities (including the church) belong to a union of dominion, a hierocratic association whose power is based on giving or refusing grace. It answers the question: *"What legitimate justifications does the power claim?"* This means that 'power' is like a 'command', which is not a personal authority, but a consequence of an impersonal norm, and the very act of the command is following a norm (Vēbers 2004). In other words, as Weber puts it: *"(..) regarding power, the legitimacy of commands is based on rationally formalized, agreed upon or authorized* (authorize – impose by force; to determine or issue unilaterally, for example, a constitution authorized by a monarch means that he has unilaterally issued and declared it (Švābe et al. 1927)) *regulations, but the legitimacy of the formulation of these regulations, in turn, depends on a rationally formulated or interpreted 'constitution'"* (Weber 1949).

Even more, it is the process of traditionalism and long-term domination or ruling based on a charismatic leader and an organization followed by the community, its disciples, and followers, who would first become officials and only then priests (Weber 1949). The church, as a unique institution, is just as relevant to its local regulations of social life and their subordination to internal canon norms, as opposed to a bureaucratic apparatus of state power, which does not consist in any part of canon norms, is a proof that the modern Western 'state', with the triumph of formalistic legal rationalism in it, as well as the emergence of the Western Church, was in significant part work of lawyers, the main, though not the only, form of which was the *bureaucratic* rule.

This domination structure's representatives are state officials, pastors, and laymen. In addition, the submission takes place for the legitimacy of one's rights, an impersonal *duty of service*, which, similarly to the right to power, as Weber points out, is a 'competence' that is determined by

rationally adopted norms (laws, basic texts, regulations) in such a way that the legitimacy of domination manifests itself in the legality of general, purposefully thought-out, correctly formulated and announced regulations (Vēbers 2004).

In the legislation of Western countries, when viewed in the context of the church, the result tends to the ratio of coercive force with which legal ruling or domination can be exercised through legislation, and it is not based on ethical 'rights', even if their objective criteria could be clarified, but rather on the 'State', which has a monopoly on 'legitimate violence'. For example, in the Sermon on the Mount: "*(..) do not resist an evil person*" (Matthew 5, 39), its opposite will be: "*You must promote the execution of the law, even by force, and you will be responsible for illegal actions*" (Vēbers 2004). The entire process of the internal political functions of the state apparatus in the field of law and administration is ultimately regulated pragmatically, based on objective state considerations: with an absolute end in itself, that is, the law serves the existence of the state, which is an entirely meaningless position in religion, because canon norms do not require preserving or transforming the internal or external division of power, but determine only the traditions established from religious sources in the law.

When describing power and violence, Weber points directly to the central role of the Sermon on the Mount, where either one or the other is correct, and asks: "*Is it really the case that at least one world ethic could have been able to put forth the same commandments in terms of content for erotic and commercial, family and service relationships, relationships with one's wife, vegetable seller, son, competitors, friend, the accused?*" Meaning what is the essence of the Sermon on the Mount? It is the fight that exists everywhere: "*For all who draw the sword will die by the sword.*" The Sermon on the Mount refers to the absolute ethics of the Gospel – a much more serious matter than those who willingly suffer these commandments can imagine. It is no joking matter. The commandment of the Gospel is absolute and unequivocal: one must give everything they have – everything, absolutely everything. It can be said that it is a socially meaningless requirement

until it is implemented for everyone. For example, taxation, extortion with taxes, confiscations, in one word: applying pressure and order against everyone. However, the problem is that the ethical commandment does not ask about it at all; it is its essence compared to the state law. According to Weber, the religious norm "*Turn the other cheek!*" is also debatable, without asking why someone else would have deserved to be hit. This would mean that in everything, at least in the will, one should live like the apostles, St. Francis (Italian clergyman, the ideologue of the 'poor', later declared a saint), and those alike. Only then is ethics meaningful and expresses respect – respect for humanity, both religious and legal. Weber continues by implying that the cosmic ethic of love says: "*Resist not evil with force*," but power, politics, and law have the exact opposite message: one must resist evil (injustice) with force, otherwise they will be held responsible if evil (crime) prevails. Absolute ethics also do not ask about the consequences or '*discredited will be peace and not war*' – these are the consequences of absolute ethics. This also applies to the causality of jurisprudence: the tandem of law and ethics is not a cab that can be stopped at any moment to get in and out of it as one pleases. Then, Weber concludes regarding the Sermon on the Mount: "*All or nothing, that is the true meaning, but something else must become trivial*," a norm which is understandable by theologians but useless in law (Weber 1949).

Summary and conclusions

When analysing the institutional church, Weber sees the structure of canon law as a 'shading' of the sociology of the school of religion. Accordingly, the modern state is something like the papal curia, which can better prevent various conflicts with the help of priest, but in the case of the state, with the help of bureaucratic lordships. This means that the church is an administration that is characterized by the following features, which, in addition, coincide with the features of the state and the system of understanding and education existing in it:

1. Differentiated management rank as an institutional and legally defined structure;
2. Conditional rationalization of cult and dogma as a form of reduced obedience to the norm;
3. Claim and universal dominion as a social necessity or the need for universal rights;
4. Creation of a rational system and successive rule as a set of elements of guaranteed rights;
5. Relationship of loyalty between those who serve and those who rule as a sovereign who serves the social consensus of power and religion;
6. The conditionality of religion and law versus the spirit of capital and the Protestant ethic.

On the other hand, the comparison made in the second part of the work with the tradition of systematic schools of constitutional law in other countries shows the so-called legitimate hierarchical and recognized features of religion and the similarity of the church, or historically, the similarity of the state with the ancient forms of church administration that have existed throughout the ages. According to Weber, their recognition and legality lie in the vast diversity of culture and values, and philosophical views, where human rights, as well as church law (canon law), have something in common and something different, notably in the broad dimension of the expression of freedom of law. If there is a 'cult' of norms and obedience in the sociology of religion, as dictated by a collection of laws, where one article follows another, then the asceticism of general ethical actions is relevant in the context of human rights, as opposed to the church's dogmatic maxims of sociology. Latvia, with its constitutional history, is no exception – the guidelines of Latvian legal norms follow the generally accepted scope of the idea of the core of the state; still, on the contrary, Weber believes that they work best in real life of society if they

have been incorporated with some help, such as 'a commandment', through authorized orders and with the help of their 'dominion'. Therefore, the transformation of Weber's ideas is strongly reflected in the overall legislative activity by following the principle of 'objective power' and the concept of *'leges imperfectae'*, that is, to interpret everything that can be interpreted in the realities of social life, including, in Latvia.

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Ivars Kronis, Kristaps Zariņš

Rīgas Stradiņa universitāte

MAKSA VĒBERA TIESĪBU VĒSTURES TEORIJA UN POLITISKIE UZSKATI PAR RELIĢIJU

Kopsavilkums

Vēbera pētījumi un uzskati par reliģiju un tiesību attīstību, to atšķirībām un vēsturiskām tradīcijām veido vienu no Eiropas sociālo paradoksu un novērojumu būtiskāko atskaites punktu. Tieši īpaši jāuzsver, darba specifikas dēļ, tajā noteikto aprakstu objektu īpatnības par dažādām paradigmām par reliģijas, tiesību un baznīcas kultūrtiesisko filozofijas telpu. Darbā arī tiek pievērsta pietiekama uzmanība aktuālai jurisprudencei, tiesību filozofijai un to vēsturiskai konverģencei salīdzinājumā ar citu laikmetu ievērojamāko domātāju darbiem. Šo pētījumu noteikti var apskatīt arī esošo un pastāvošo tradīciju garā, tas arī noder, lai analizētu un pārvērtētu mūsdienu sociālos, reliģiskos un politiskos aspektus. Dažādi kultūras vērtējumi un īpatnības, ja tās apskata caur Vēbera darbu un uzskatu prizmu, var būtiski atšķirties no tradicionālās skolas jautājumā par filozofijas un reliģijas lomu sabiedrībā, tāpēc šis darbs sniedz būtisku pienesumu uzskatos un aktualitāti, jo minētos procesus apskata no cita – Vēbera atziņu skatpunkta. Līdzsvarota un kāda konkrēta diferencēta un institucionāla regulējumu un reliģijas varas struktūra, tās birokrātiskā vertikāle kā kultā, dogmā reducēta norma – tā ir viena no Vēbera uzskatu aktualitātēm,

kura smeļas savas idejas vēsturiskās formās, vēstures saturā un pagātnes dialektiskajā domāšanā. Toties tā saucamais *objective power* un *leges imperfectae* tā arī paliek nākotnes pētījumu aktuāls objekts, kuru pats izcilais sociologs un reliģijas pētnieks ir atstājis kā neatrisinātu mīklu nākamajām paaudzēm. Kā Vēbers saka, "rotaļa ar šiem instrumentiem" rada nepārprotamu tēzi par saprašanās un pakļaušanas kultūru jeb "saprasto" un "pakļauto" kultu mūsdienu Vakareiropas domāšanā, kā lielāko spēlētāju jeb "vaininieci" šeit minot tieši kristīgo domāšanu, tās veidoto kultūru un šīs reliģijas iedibinātās tradīcijas, kuras gan valsts, gan baznīcas strukturētais birokrātiskais aparāts pielāgo dzīves situācijām un nākotnes izaicinājumiem. Turklāt ievērību pelna Vēbera un citu ietekmīgu filozofu viedokļi par kapitāla garu un protestantisma ētiku. Puritānisko uzskatu, kalvinisma vadlīniju izpēte veido lielāko šī pētījuma ieguvumu, proti, šķietami nesavienojamas lietas un marginālo uzskatu kopums tiek pētīts, to saistot ar reliģiju, kristietību, tās radīto baznīcu un kultu dogmu kultūru, kura iznākumā reducējas uz sociālo vienību oktorētu varas pavēli, neapstrīdamu likumu kā pasaulīgo bausli. Šķiet, daudzi un dažādi pasaules filozofi ir pievērsuši lielu vērību šim apstāklim, taču viens no spilgtākajiem šīs disciplīnas viedokļa un domu paudējiem, kurš radīja arī mācību par reliģijas socioloģiju, ir tieši Vēbers, kuram par godu, atceroties viņa simtgadi, ir tapis šis raksts.

Atslēgvārdi: baznīcas tiesības, kanoniskās tiesības, reliģijas socioloģija, tiesību socioloģija, tiesību norma, ideālā norma, tiesību parādība, iure divinum, lex nature, konvencionālās normas.