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LEGAL AUTHORITY AS A SOCIAL FACT

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ABSTRACT. From a sociological point of view, the conceptual and logical relations between the norms of legal order represent empirical and causal relations between social actors. The claim that legal authority is based on the validity of empowering norms means, sociologically, that the capability to enact and enforce legal norms is based on an empirical transfer of power from one social actor to another. With this process, sociology has to explain how a proclamation of legal rights by the creation of empowering norms can lead to the establishment of the factual power of coercion. This explanation reveals that legal authority as a social fact is irrevocably dependent on non-legal power, which is not created by legal empowering norms but is the empirical foundation for all legal authority and state power.

1. POWER BY EMPOWERMENT

In this paper I will use the concepts of 'norm' and the 'validity' of a norm in a sociological sense. Many sociologists define the validity of a norm with reference to the *expectations* people have in regard to the behaviour of others. The term 'expectation', however, is not very useful for this purpose, because it has several meanings. The relevant meaning in regard to the validity of norms is that to expect certain behaviour of others means that one *wants* others to behave in a certain way. For clarification, therefore, I will use the term 'validity' of a norm in reference to the fact that a normgiver wants other actors to behave in a certain way, and that his or her will is effective.¹ I will speak of a *norm-oriented action* if this action

¹ This conception is partly based on Hans Kelsen, *Reine Rechtslehre* (Vienna: Deuticke, 1960), p. 4ff.; Hans Kelsen, *Allgemeine Theorie der Normen* (Vienna: Manzsches Verlags- und Universitätsbuchhandlung, 1979), p. 1ff.; Norbert Hoerster, "Wirksamkeit', 'Geltung' und 'Gültigkeit' von Normen: Ein empiristischer Definitionsvorschlag", in D. Mayer-Maly and P.M. Simons (eds.), *Das Naturrechtsdenken heute und morgen* (Berlin: Duncker & Humblot, 1983),



is determined by the fact that a norm which prescribes this action exists, is valid.

Any sociological explanation of norm-oriented action must include three steps: the first one is to identify the normgiver of the norm in question, i.e. to establish whose will determines the norm-oriented action of the norm-addressee as a causal factor. The second step is to explain why a certain way of acting by the norm-addressee is desired by the normgiver. The third step is to explain how the will of the normgiver attains behavioural effectiveness, i.e. by what means the normgiver realises his or her will regarding the norm-addressee. The explanation of norm-oriented action, therefore, requires the explanation of further action. Not only must the causes of the norm-addressee's action, which is the object of the norm, be specified, but also the causes of the normgiver's action, which consists in the effective enacting of the norm. Such an explanation of the normgiver's action must include an explanation both of the content of his or her will and of his or her ability to assert a will effectively. The following deals with the second aspect.

Sociological theories have come up with a wide variety of answers to the question how normgivers succeed in asserting their will effectively over the addressees of norms. These range from sanctions of all kinds – reprimand, criticism, remonstrance, disapproval, punishments, coercive measures – to ideological and religious indoctrination and education right down to rational argumentation, the appeal to reason and the attempt to convince the addressees of the 'correctness' or 'objective value' of the norms in question. Normgivers are either seen as being rational and deliberating persons, who base their decisions on moral considerations, religious beliefs or empirical interests, or as irrational

pp. 585–596; Norbert Hoerster, "Kritischer Vergleich der Theorien der Rechtsgeltung von Hans Kelsen und H.L.A. Hart", in Stanley L. Paulson and Robert Walter (eds.), *Untersuchungen zur Reinen Rechtslehre* (Vienna: Manzsches Verlags- und Universitätsbuchhandlung, 1986), pp. 1–19; Ota Weinberger, *Logische Analyse in der Jurisprudenz* (Berlin: Duncker & Humblot, 1979) p. 101ff.; Ota Weinberger, *Normentheorie als Grundlage der Jurisprudenz und Ethik* (Berlin: Duncker & Humblot, 1981), p. 35ff. A more elaborate version of my views on a sociological theory of norms is given in Michael Baumann, *Der Markt der Tugend: Recht und Moral in der liberalen Gesellschaft* (Tübingen: J.C.B. Mohr, 1996), p. 45ff.

and emotionally driven people, who are governed by passions and ideologies.

Whichever way one looks at it: Being able to assert one's will over others means – regardless of the way in which this happens – to wield a certain power in relationship to these persons. 'Power' is to be understood here in the widest sense of the word. Unlike Max Weber's definition, according to which power consists in asserting one's own will even against resistance, here power in relationship to other people is meant to cover any time an actor can realise his or her will at all, whether partly or entirely, over other people. This does not necessarily presuppose that particular resistance must be overcome. The actor in question must only be in a position to change the restrictions for others to a relevant degree. Education would thus fall into this category of exerting power just as the 'force of the better argument', the paying of wages or ideological indoctrination would. The possession of power in this sense of the word does not automatically mean occupying a superior position. It can consist in a mutual balance of power. After all, it may also be the case that the normgiver owes the possession of power to the norm-addressee, who has voluntarily subjected himself to the will of the normgiver. No matter what the power of a normgiver may depend on in a certain case, the explanation of norm-oriented action must include an explanation of the reasons why the normgiver possesses this power.

At this point the specific structure of a dynamic system of norms becomes of interest to the sociologist. It is of crucial importance to the question regarding the empirical basis of a normgiver's power, whether the established norm attains validity as a single norm, i.e. isolated from other norms, or whether the norm depends on an empowering norm as an element of a dynamic system of norms.² The consequences from a sociological standpoint can be analysed with the help of a simple scheme:

² For detailed analyses of empowering norms and the structure of dynamic systems of norms, cf. Stanley L. Paulson, "An Empowerment Theory of Legal Norms", *Ratio Juris* 1 (1988), pp. 58–72, and Stanley L. Paulson, "On Ideal Form, Empowering Norms, and 'Normative Functions'", *Ratio Juris* 3 (1990), pp. 84–88.

Empowering norm (EN):	N's will should be followed.
Norm-enacting:	<u>N wants A to do p.</u>
Derivative norm (DN):	A should do p.
Norm-oriented action:	A does p.

The starting point of the sociologist is A's behaviour p. The sociologist's task is to explain this behaviour as norm-oriented action with the help of the validity of DN. For this purpose, the sociologist must identify the normgiver of DN and find out on the basis of which facts this normgiver wields sufficient power in his or her relationship to A to assert his or her will over A. If, however, DN as an element of a system of norms can be derived from EN, then enacting DN is in itself the object of a valid norm, and likewise is norm-oriented action, which must be explained by the validity of a norm, that is to say, by the efficacy of the will of the normgiver of EN. To put it more precisely: As the normgiver of EN wants N's will to be followed, the enacting of DN by N must be explained as norm-oriented action to the extent that N's *ability* to enact norms must be explained by the validity of an empowering norm. In this case, not only is DN the reason why A does p, but EN is also the cause of N being able to enact the norm AN. In other words: EN is the cause that N's will leads to a valid norm, that N's will brings about A doing p.

The sociologist can deduce two important facts from this constellation: first, he or she can identify the normgiver of the norm DN, namely N as the actor who has been expressly authorised as normgiver by the empowering norm; second, he or she can recognise the empirical basis of N's power to enact norms, namely in the person and behaviour of the normgiver of the empowering norm EN, who wants N to have the power of enacting norms. The sociologist knows, therefore, that in this case the power of a normgiver derives from the will of the normgiver of an empowering norm, who has transferred this power to the former. The basis of the power is not the fact that others *must* accept N as an authority, but that others *want* to install it as an authority. N's authority becomes a social fact by the efficacy of the will of other persons.

The normative meaning of an empowering norm and the logical structure of a dynamic system of norms thus have an important empirical significance for the sociologist. They do not only contain

information about qualities of norms as mere thought constructs but also about their relationships as empirically existing factors. The fact that the norms of a dynamic system of norms are made in conformity with other norms of this system means, from the point of view of the sociologist, not only creation of validity in a logical sense but also creation of validity in an empirical sense. The prerequisites for this are, first, that the logical relationship between an empowering norm and the norms derived from it express a factual will according to which a certain actor should possess the power to enact norms, and, second, that the empirical existence of this will is the cause of the empowered normgiver's possessing real power to create norms. In this case, the cause of the validity of norms must be sought in the validity of other norms and the power of normgivers in the power of other normgivers.

The recognition that certain positions of power and the distribution of power can only be explained by the validity of empowering norms, is of the same fundamental significance to the sociologist as the knowledge that certain ways of acting can only be explained by the validity of behavioural norms. The phenomenon of power can only be adequately understood if one takes into account that the will of other actors to create a ruler is a crucial factor in the emergence and the securing of power. The reality of such conferred power consists in the efficacy of norms, i.e. in the fact that, in reality, those norms are followed according to which certain persons *should* have power. Power is, in this case, a product of will and the surface structure of the distribution of power is not a reliable picture of the true power structures.

Thus the empowerment of a person to enact norms can have the consequence that this person exercises his or her power simply by *expressing* that a certain norm should be abided by. This peculiar consequence of the validity of empowering norms leads, especially in legal systems, to the fact that power and the exercise of power are able to disappear almost entirely as tangible facts. Within legal institutions there is only talking and writing. And yet real power is exercised through these unspectacular procedures the ultimate proof being when "those people with the spiked helmets come".³

³ Max Weber, *Gesammelte Aufsätze zur Wissenschaftslehre* (Tübingen: J.C.B. Mohr [Paul Siebeck], 1985), p. 325 (my translation).

2. LEGAL POWER BY EMPOWERMENT

The power of enacting effective norms which deal with the conditions and way of using coercion is power with special weight. It has a multiplying effect, because it is power over the use of physical force. It is equivalent to having power over the means of power. Power of this kind includes the resources of all persons who let themselves be determined by norms of a coercive order in their use of their means of coercion. If effective coercive norms can be enacted, then not only can direct power be exercised over those who, as addressees of these norms, perform the prescribed coercive acts, but also indirect power can be wielded over those who become victims of the coercive acts and indeed, as a rule, much greater power than over the addressees of the coercive norms themselves.

Whoever wields the legal power to enact coercive norms in a social group must, consequently, occupy a central ruling position. Their will is not only effective regarding the actual holders of the means of coercion, but also by having the means of coercion at their disposal in this way, they have an excellent chance of being obeyed by all other members of their social group too. As they can sanction the breaking of other norms with the imposition of coercive measures, they dispose of an extremely effective instrument to assert their own will in general. When the sociologist attempts to answer the question as to the empirical basis of the power to enact the norms of the dominating coercive order in a society, then it is always a question of the basis of power and dominion in a society as a whole.

Against this background, the knowledge that the norms which regulate the prerequisites and methods of exercising coercion are elements of a dynamic system of norms gains a special significance. Our scheme is adapted accordingly:

Empowering norm (EN):	Coercion should be exercised as N wants.
Enacting a coercive norm:	<u>N wants A to use coercion against B.</u>
Coercive norm (CN):	A should use coercion against B.
Norm-oriented action:	A uses coercion against B.

In this case too, the starting point for the sociologist is norm-oriented action which is to be explained by the validity of a norm.

It is a matter of a coercive act which is to be seen as a result of a coercive norm. As this coercive norm can be derived from an empowering norm, the analogous conclusion applies as to the general case analysed above: the empirical reason for the validity of CN is to be found in the validity of EN, N's ability to enact the effective norm CN being a consequence of the will of the normgiver of EN. The specific coercive power of N depends on a transfer of power by another normgiver.

The fact that the norms which determine the imposition of coercive acts in a legal order belong to a dynamic system of norms, implies therefore that the important positions of power, which are connected to the right of determination over the physical means of force, are a product of the validity of norms. More than in other fields, this normative foundation of legal coercion conveys an insight into basic structures of social reality which can easily be concealed under the 'surface structure of power'. As the use of legal power is, after all, undeniably connected to the actual *possession* of the physical means of coercion, the impression can easily arise that the actual possession of these means is decisive for the effective disposal of coercive power. But within the framework of a legal order, the actual possession of coercive means is, as a rule, neither a necessary nor a sufficient condition for the power of decision over the use of these means. The power of decision over their use depends rather on the validity of empowering norms, which demand that force should be used in such a way as is prescribed by the legal authorities.

The legal authority to enact coercive norms, which constitutes truly effective power over the physical means of coercion, is therefore not power which can itself originate in the possession of those means. The fact that coercive means are used in a way an empowered normgiver N wishes cannot be attributed to N's ability to exercise coercion against those who do not apply the coercive means as he or she wishes. Thus, although persons possessing legal authority can enforce their will on other people by the use of coercion, the basis of their own power cannot be the fear of their personal power potential. Without the existence of empowering norms, i.e. without the existence of normgivers who want other persons to assume a certain position of power, the power over the means of

coercion could only be based on the possession of the means of coercion. A legal order transforms the power of coercion and the ensuing dominion into norm-based constructs and legal phenomena. A legal order not only develops norms according to which coercion can be employed, it also *creates* the power to determine these norms. The legal saying that power 'flows' from judicial norms can thus be interpreted in two ways: on the one hand, the normative interpretation that power which can be derived from a legal empowering norm is legally *legitimate*; on the other hand, also the empirical interpretation that such power is *causally* based on the validity of legal empowering norms.

With the development of a legal order, a transition to a legal rule is thus accomplished not only in a legal-normative but also in a sociological and empirical sense, i.e. a transition to power and authority which is not only made legitimate by but is also factually produced by legal norms. A legal order thus creates new positions of power and control instead of only reflecting pre-existing power constellations and justifying them in retrospect. It follows that every legal order represents a first step away from the rule of man to the rule of law, in that control and subordination are not any more the result of previously given power constellations of a personal nature. The legally established and authorised normgiver N is an artificial legal creature, its power a construct of the legal order. Nevertheless, N's power is indeed tangible and real; it represents the efficacy of the legal order.

As a result, however, the phenomenon of power also in the form of coercive power loses its 'innocence' as a strict *factum brutum* on which the sociologist could rely to explain the validity of norms and the success of normgivers. Coercive power is itself a result of the validity of norms. It turns out to be as 'soft' as the norms whose validity was supposed to be explained by reference to this power.

3. THE EMPIRICAL UNITY OF THE LEGAL ORDER

The fact that legal coercive norms are derived from empowering norms provides a sociologist with important information. It identifies the normgivers of these coercive norms and reveals that their power is itself dependent on the validity of norms and thus on the

will of other persons. But the essential empirical basis of the legal power of coercion has thereby not yet been revealed. Those questions which are answered by the information regarding the validity of the derived coercive norms, arise once again with respect to the validity of the 'superior' empowering norm, especially so regarding the basis of power of *their* normgiver. Since, however, the normgiver of an empowering norm has in turn possibly only obtained this power to enact norms through an empowering norm, one does not necessarily reach the hard 'facts of power' when dealing with the normgivers of empowering norms.

From a sociological perspective therefore, there is a repetition of the empirical-explanatory inferences which can be drawn from the interrelationship between empowering norms and norms derived from them. If the empowering norms are iterated in the structure of an order of norms, then this equally applies to the stages included in an explanation of norm-oriented action. It is under such a precondition that not only the power of the authorised normgiver, but also the power of the normgiver of the empowering norm has to be explained by reference to the validity of an empowering norm. Both normgivers – the authorised and the authorising normgiver – are then dependent on the validity of a norm or, rather, the will of another actor for their power.

The iteration of such normative and causal structures presents a complication for the sociologist who, at the outset, solely wished to explain a certain action. Under this condition an action cannot be explained by reference to the validity of a single norm. Instead, to put it figuratively, a whole 'pyramid' of interconnected norms towers over it. Such a pyramid of norms points towards the existence of complex empirical and causal interconnections between different social actors, their will, their behaviour and their resources of power.

On the other hand, the hierarchy of different levels of legal norms conveys important insights into the power structure of a social group. The existence of a plurality of interrelated empowering norms shows that the exercise of power in the framework of a legal order constitutes an endeavour highly dependent on the division of labour. Within a legal order, there are usually a great number of power-holding organs of differing importance. The content of the

empowering norms clarifies the area and extent of their power and allows the identification of the very individuals who are in charge of the administrative organs. Realisations about the organisation and distribution of coercive power in a social group in any case represent relevant information for social science.

It is crucial for sociological considerations that the existence of a hierarchy of different levels of legal norms does not alter the fact that they are all elements of one order of norms. They can, without exception, be traced back to the constitution of this order. From a sociological perspective, the logical unity of a multitude of norms equally represents an *empirical unity* – namely an empirical unity of a multitude of organs of power. The fact that norms as elements in a dynamic system of norms can be derived from the constitution of this order, means empirically that the power of the normgivers of the derived norms also shares a common empirical origin, and that the effectiveness of their will is ultimately dependent on a unified ‘basic will’. The power which is manifested in a legal order and which is exercised through its different organs, possesses a ‘centre of gravity’ in the validity of its constitutional norms from which all power causally ensues.

The constitutional norms of a legal order are not only principles which ensure its unity. At the stage of constitutional norms, also the iteration of the levels of legal norms comes to its ultimate end. What are the consequences for the sociologist? In the search for the fundamentals of power of the legal normgivers, the sociologist, through an ‘ascent’ of their hierarchy, is eventually confronted with those normgivers whose power as organs of the legal order is directly based on the empowerment by the constitution. The power of these highest organs must, in principle, equally be explained as the power of all subordinate legal organs, namely by reason of the validity of empowering norms and the effectiveness of the will of the normgivers of these norms. Consequently, in this case, where we are dealing with the ‘highest’ norms of a legal order, with the norms of its constitution, the power of these organs cannot be explained other than by reference to the effectiveness of the will of those normgivers who create and guarantee the norms of the constitution itself.

The basis for the power of *these* normgivers can no longer be an empowering norm of the legal order. These normgivers as makers

of the constitution have themselves issued the highest empowering norms of a legal order. Their power cannot be delegated by the law. They are not legal authorities. Their power is the indispensable empirical basis for any kind of legal power and authority – most of all it constitutes the empirical basis for the efficacy of the constitutional norms by which the logical and empirical unity of a legal order can be created at all. The empirical basis of power of a legal order in which all legal power and authority is finally rooted, must consequently be of an *extra-legal, purely social nature*. Legal authority as a social fact is irrevocably dependent on *non-legal power*.

The norms of a legal order can stipulate comprehensively whose will is to be decisive for the creation of subordinate legal norms. They cannot, however, regulate whose will is to be decisive for the creation of the constitutional norms of a legal order. Norms can produce and deprive of real power. Norms cannot, however, produce the power on which their own validity is based. Every order of norms can thus stipulate the distribution of power only to an incomplete degree. Whether the normgivers of constitutional norms possess sufficient power to enforce these norms is always a question extraneous to the order of norms concerned and thus a purely factual question of power.

It is at this point in the hierarchy of a legal order that, from a sociological point of view, the iteration of an explanatory ‘hierarchy’ comes to its final end. The ‘border organs’ of a legal order which are immediately authorised by the constitution are the ‘last’ normgivers who can be identified through legal norms and whose power can be explained by reason of a legal empowerment. This does not mean that the explanatory task of the sociologist also comes to an end – arguably the job is only just beginning. With the explanation of the validity of constitutional norms, one reaches a point where nothing more can be ‘learned’ from the description of a legal order. Since the sociologist is now dealing with the explanation of the extra-legal power basis of a legal order, he or she cannot infer from the legal norms where the source for this societal power can be found.

If one wishes to explain the validity of constitutional norms in a legal order, one has to address an explanation of the emergence

and existence of a positive legal order as a whole. This includes the empirical basis of the central positions of power and authority within a society. As long as the identity of the normgivers of constitutional norms, the basis of *their* power and *their* motivations have not been established, the fundamental structure of power and authority in a society will remain in the dark.

Whichever persons are eventually identified as the normgivers of constitutional norms and wherever they derive their power from, they must possess sufficient power to furnish the authorised legal organs with a socialisable basis for the existence of a legal order and legal authority is the empirical transfer of power. The explanatory problem, therefore, does not lie in answering the question why human beings *submit* to other human beings who possess more power, but in answering the question why human beings *transfer* a part of their power to other humans. It is easy to explain why a person follows the orders of someone more powerful. It is far more difficult to explain why a person would want someone else to be powerful. It is, however, this very will which forms the origin and empirical basis of every functioning legal order. The constitution of a legal order delegates power over the employment of physical force to the organs of this legal order. The authors and guarantors of the constitution thus forego the autonomous exercise of their power within the scope of constitutional empowerment and to that extent subordinate themselves to the will of the legal organs and to norms issued by them.

4. OPEN QUESTIONS

Legal authority becomes a social fact by the effective will of a normgiver of an empowering norm. Therefore it has been argued that a sociological explanation of legal authority must necessarily refer to the power, the behaviour and the motivation of the normgiver of empowering norms. But up to now, nothing has been said in regard to the question *how* the normgiver of an empowering norm can make his or her will effective. To this end, it is necessary for this normgiver to enlarge the power of the authorised actor. The claim that legal authority is based on the validity of empowering norms means, from a sociological perspective, that the ability to enact and

enforce legal norms is based on an empirical transfer of power from one social actor to another. But what *possibilities are open to a* normgiver to transfer power to an authorised actor and establish his or her authority as a social fact? The answer depends on the kind of power which the normgiver himself or herself possesses. There are three possibilities:

1. The power of the normgiver may consist in the possession of the factual means of power. For example, the normgiver may possess weapons, material resources or good arguments. If this is the case, a normgiver of an empowering norm can enlarge the power of an authorised actor by a factual handover of his or her means: issue guns or money or teach the skill of making good arguments.
2. The power of the normgiver may consist in power over those persons who, according to his or her will, should subordinate themselves to the authorised actor.⁴ In this case, the normgiver can enlarge the power of an authorised actor by using his or her power to enforce the norms which the authorised actor will enact.
3. The power of the normgiver may consist in the fact that he or she is one of the persons who, according to his or her will, should subordinate themselves to the authorised actor. In this case, the normgiver can enlarge the power of an authorised actor by subordinating himself or herself to this actor and obeying the norms enacted by that other.

In the context of establishing legal authority as a social fact, all three possibilities of conferring power seem relevant. Thus, the group of addressees of the empowering norm of a legal authority also include the normgivers of the empowering norm themselves. The empowerment of a legal authority entails the right to issue norms primarily for the members of its own group. This constellation opens up an elegant way to transfer power effectively in accordance with the third possibility: the normgivers as potential addressees of the will

⁴ I call them the addressees of an empowering norm.

of the legal authority can put sufficient power at the disposal of the authority simply by doing what this authority orders.⁵

Apart from this, each normgiver as an individual also commands a certain potential for coercive force. Combined, this potential would be sufficient to prevail over possible norm-breakers. The normgivers of the empowerment of a legal authority could, thus, achieve an increase in the power of the holder of legal authority by putting this potential at the holder's disposal if need be. They could themselves, therefore, take action in accordance with the second of the above-mentioned possibilities in order to secure respect for the legal authority. The normgivers would have to come to the aid of the holder of legal authority whenever his or her rights are questioned.

This way of conferring power is similar to the previous one insofar as the normgiver of an empowering norm has to bear the costs of norm enforcement in the individual case when the empowerment is to be asserted: either as the addressee who submits to the will of the authority or as the guarantor who enforces the norm and likewise puts the will of the authority into effect.

The necessary empirical transfer of power to make an empowering norm effective, therefore, does not imply that the normgiver disposes of means of power that can be factually handed over to the authorised actor. It is only implied that the normgiver is ready to act in a way which guarantees an enlargement of the power of this actor. However, conferring power remains generally problematical as long as the *right* granted by an empowering norm is based *solely* on the will and the actions of the normgivers. The effectiveness of this right and, thus, the authority of the empowered persons are in this case entirely dependent on the voluntary support of the normgivers. The transfer of a *mere* right to an actor is a doubtful instrument with which to establish that actor's authority successfully.

This is true especially in the case of a legal authority that has to maintain the ability to intervene in people's actions and their spheres of interest, even against their express wishes. It must therefore wield factually effective power. An individual cannot, however, shift

⁵ This comes near to what Hart means by an 'internal point of view' in regard to the rules of legal order; cf. H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p. 77ff.; p. 97ff.

the *factual* power of control over his or her actions to another person. This is, by nature, an inalienable resource which cannot be separated from its holder. If empowered actors do not have additional means at their disposal to make their authority prevail, they remain dependent on the voluntary respect of the norm-addressees or the voluntary help of the normgivers. The social fact of a legal authority which has sufficient power to use force, when this is perceived to be necessary, can hardly be institutionalised in this way.

The crux of a purely normative transfer of rights to an authority consists in the fact that the resources relevant to an actual enactment of these rights can be denied or withdrawn any time. There is, nevertheless, a possibility to prevent this. If relevant resources consist of physically transferable goods, the potential of the empowered actor can also be increased by giving him or her these goods. This would constitute the first of the above-mentioned possibilities.

For legal authority, resources of this kind do, in fact, play a key role, namely in the form of the *physical means of power*. If the legal organs are equipped with sufficiently superior physical means of power, then they are neither dependent on the voluntary respect for their authority nor on the aid of third parties. The empirical establishment of legal authority is, therefore, practically always connected to the possession of a superior power potential which is concentrated in the hands of the legal organs. The holders of legal authority have, as a rule, their own *coercive apparatus*.

The process of transferring power we are looking for would, insofar, consist to a large degree in a process of *factual* transfer of physical goods and resources. It would seem that a fundamental prerequisite for legal authority to become a social fact is only fulfilled when there is a real monopoly of coercive power. The most important difference between the transfer of physical resources and the transfer of mere rights is that the former is not a purely 'normative' procedure based solely on the wish that certain norms will be observed in future. It is a real event which includes a change in empirical conditions and facts. The physical means of power are resources which are completely separable from the respective owner and which can be assigned to other persons as tangible goods. It follows that the empirical existence of legal authority which is based on such a redistribution of physical resources cannot be exhaustively

characterised by a description of *norms*. A description of *facts* must be added.

Such a non-normative, factual shift of power has grave consequences. The actual delivery of goods, especially when these goods are physical means of power, cannot be reversed without further ado. Once a coercive apparatus exists, it is only with great difficulty that it can be destroyed again. The mere *decision* to submit oneself to the rule of another person can be revised again any time against the will of this person B means of power which have been given up or handed over are not easily regained against the will of the ruler. The centralisation of such means has a certain finality and irrevocability. A power relation has become established which is no longer based on voluntary recognition alone, but on a factual power structure. The creation of legal authority as a social fact has, thus, from a sociological point of view a normative *as well as* a factual aspect.

At this point, the sociologist is confronted with a further problem of explanation. If the power of legal authority is not solely based on the normative transfer of rights, but rather on the possession of a coercive apparatus, then the question arises how the holders of this apparatus can be prevented from using their power arbitrarily in their own interest. Or, expressed differently, how can it be brought about that legal authority whose power has emancipated itself from empowering *norms* submits itself to norms which regulate its exercise of this power?⁶

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⁶ I try to answer this question in *Der Markt der Tugend* (n. 1 above), p. 546ff.