Four faces of political legitimacy: An analytical framework

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Max Weber is the sociologist who most famously analysed legitimacy in political relations of domination. His work is often described as a *sociology of belief* as it tries to understand the sociological and historical processes that generate a belief in legitimacy – feelings of obligation and duty. Not only is Weber's work still relevant in itself, it also structures much of the contemporary debate as its theoretical framework forms the background – implicitly or explicitly – of many of the theories we will discuss in the succeeding chapters.

Weber's work is impressive in its scope and depth, but his main work *Economy and Society* (*Wirtschaft und Gesellschaft*) has one major flaw: it is not finished.[1] The unfinished, fragmentary character of the book has fuelled its interpretation with many controversies. In a sympathetic mood, we might find an explanation for the fact that many scholars have lamented Weber's concept of legitimacy in the unresolved tensions in his work and not simply as a result of sloppy reading.[2] We must admit that Weber, driving us at times to intellectual despair, is not always that coherent and that the 'conceptual' first part and the 'sociological' second part of the book are not fully integrated. Given this character of Weber's main work it seems to me that there are two possible ways to proceed. Either we aim for an exegesis in order to capture the full richness of the works or we aim at a coherent reconstruction in order to gain a robust analytical framework, but which, by necessity, loses some of its interesting details. This chapter aims at such latter reconstruction.

A few introductory comments are called for if we want to reconstruct Weber's work. First, Weber is famous for his *social action theoretical perspective* of social order. From this perspective

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[1] After Weber's death in 1920, his wife Marianne wrote to the publisher that the chapters are 'unfortunately unfinished' and she apparently felt the need to add ('dictate') some pages (Andrini 2004:143). Even the intended order of the chapters is severely doubted. Others have claimed that Weber lacked the 'ambition' to finalise his work (Radkau 2011:96, 99). Particularly unfortunate, for us, is the fact that Weber never finished his promised *Sociology of State* (Roth 1978:lxvi; Weber 1978:286). To fill this significant gap some scholars turn to Weber's political writings. This, it seems to me, is not the way to go. Not only did Weber himself try to distinguish clearly between politics and science (see Weber 2012) it also ties his ideas too much to the problematic political context of Germany of those days as well as to Weber's own problematic life-story. Indeed, German nationalism after WOI and the myth of Weber's ingenious resurrection after his psychological breakdown are intimately related, generating the senseless scholarly discussion whether Weber would have approved of Hitler.

[2] Beetham argues that Weber's influence has been "disastrous" (1991a:6). Weber's "amoral" understanding of legitimacy, his emphasis upon elites and his failure to found legitimacy upon the consent of the people is "fundamentally flawed" (Beetham 1991b:34; 1991a:11). Some accuse him of "intellectual or moral schizophrenia" (quoted in Ewing 1987:487), while others claim that Weber's influence is based upon the failure of scholars to really understand his work (Berman 1987:859) and even the young Habermas accused Weber of being an "arch-positivist" content to produce 'technical knowledge' (quoted in Hennis et al. 1994:125).

Weber tries to understand political legitimacy in terms of a value-rational sense of duty towards orders of domination. Weber's social action perspective is predominantly present in the first part of *Economy and Society* (E&S). This part, consisting of conceptual definitions, has received much attention of scholars and has contributed to the categorisation of Weber's work as social action theory. However, this part is not only the most confusing and multi-interpretable part of his work, it also shifts the attention away from a different perspective which is connected to, but independent of action theory. This second perspective, which is mostly present in the substantive second part of E&S, does not so much concern a social action perspective, but rather the relation between *man and the world*. It is not about social action (*Handeln*) but about being-in-the-world (*Existenz*). Within this perspective Weber locates the *sources of normative validity*, the sources of legitimate domination, as well as other seminal notions, such as discipline, self-justification and intellectualisation.

Second, Weber's sociology additionally holds three different levels of analysis. The first level of analysis concerns his famous or infamous *ideal-types*. At this level he analyses legitimate domination in terms of charismatic, traditional or legal-rational ideal-types. The second level of analysis concerns a general model of institutionalisation and institutional development. Especially in his sociology of religion we can see a *circular* social dynamic of institutionalisation and rationalisation running from charismatic revelation, to traditional sanctity and faith, back to a new revelation – a dynamic that is driven by material and immaterial forces, by economic and intellectual needs. At this level we can see how the different ideal-typical forms and sources of legitimacy are related, combined and in tension. Finally, at the third level of analysis Weber takes a *linear* historical perspective from which he proposes his modernisation thesis: the progressive rationalisation and disenchantment of the world. It is at this level – breaking the circularity of the institutionalisation perspective – that he analyses modern society and its politics.

The complexity of a reconstruction of Weber's work on legitimacy, then, must be apparent. Not only is his work not a coherent whole, we must especially be aware of the two different theoretical perspectives of *Handeln* and *Existenz*, and of the tree analytical levels of ideal-type, institutionalisation and modernisation. In this chapter I try to reconstruct Weber's work by, first, analysing political legitimacy from the perspective of social action and, second, by analysing it from the perspective of 'being-in-the-world'.

3.1 Social Action and Social Order

Weber's principle sociological interest concerns the explanation of social order and regularity in terms of social action. What we need to analyse is not only how social action explains social order,

we also need to grasp how Weber understand social order in the first place. Only then can we proceed to examine Weber's notion of legitimate domination.

3.1.1 Subjective Orientations of Social Action

"Action [*Handeln*] is 'social' insofar as its subjective meaning takes into account the behaviour of others and is thereby oriented in its course" (4).[3] The two principle concepts of social action that help to explain social order, then, concern subjective meaning and other-oriented action. Weber recognises four 'pure types' of social action or meaningful subjective action orientations (24). The first, *instrumental rationality* (*Zweckrationalität*), concerns a "rational consideration of alternative means to the end, of the relations of the end to the secondary consequences, and finally of the relative importance of different possible ends" (26). Instrumental rationality, then, is first and foremost about choosing between different ends which are perceived as a given hierarchy of wants, making the choice *conditional* upon secondary effects, upon the "scarcity of means" and upon "the prospective behaviour of others" (65-7; 30). Instrumental rational action therefore always considers the 'material' context, the expected actions of others and the social interest configuration (*Interessenlage*) (26). It is because of this conditional character of 'ends' that we have redefined this type of orientation as *strategic* action orientation and not just as a 'means-to-end' instrumental orientation (see chapter 1).[4] The more an end is perceived as an 'absolute value', the more an end becomes 'unconditional' and the more this end becomes independent of the contextual circumstances, the more such action becomes 'irrational' from the perspective of strategic rationality. The essence of strategic rationality, then, is its conditionality and consequentialism.

A value-rational action orientation (*Wertrationalität*), in contrast, is not about evaluating different ends, but in pursuing one particular end whatever the costs. It concerns non-consequentialism – "[t]he meaning of the action does not lie in the achievement of a result ulterior to it, but in carrying out the specific type of action for its own sake" (25) – and unconditionality – action "independently of its prospects of success" (24). Value-rationality concerns the self-conscious 'conviction' – an 'inner bond' (30) – of the absoluteness of an ideal-value – "unconditional demands" which may concern "duty, dignity, the pursuit of beauty, a religious call, piety, or the importance of

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[3] All reverences concerning Weber are from the 1978 edition of *Economy and Society*, edited by Guenther Roth and Claus Wittich unless noted differently. Original German texts or adjusted translations by me are based upon the 1964 edition of *Wirtschaft und Gesellschaft*, edited by Johannes Winckelmann.
[4] As such, strategic rationality should be clearly distinguished from what Weber sometimes calls 'technical rationality' (67). Such technical rationality is about achieving a given end most efficiently and effective (65). Note, however, that Weber does not use these latter concepts that are nowadays so commonly ascribed to instrumental rationality. He states more diffusely that a 'technical question' is to choose the 'most rational means' to a given end, leaving aside what this rationality entails (65).

some 'cause'" (25, adjusted translation).[5] The essence of a value-rational action orientation, in sum, concerns the unconditionality of a given end and its inner-sanctioned conviction.[6]

The third type of subjective action orientation is *affective-rationality*. Affectively oriented action is determined by present (and not future) "affects and feelings states" (25). Therefore, affective-rationality is not so much about a choice among ends as in strategic action, it is not a conscious commitment to an absolute end as in value-rational action, it is about direct emotional gratification.[7] Weber adds that this 'uncontrolled reaction' is oriented towards exceptional or extraordinary (*ausseralltäglich*) stimuli. This seems to suggest that affective-rational action contrasts with everyday social order. Indeed, as we will discuss later, affective-rationality seems to be the basis of the rule-breaking force of charisma which is 'irrational' from the point of view of order.[8] On the other hand, Weber also recognises social orders based upon emotional solidarity, e.g. the love of the family. Weber seems to call these kinds of bonds 'affectual ties' (213). Weber, then, is not particularly careful in recognising the difference between actions based upon immediate, irrational emotional gratification and upon more durable affective bonds of solidarity and love. In our attempt to understand the relation between social action and social order it seems more reasonable and coherent to understand affective rationality in terms of solidarity, which is neither conditional nor unconditional.

Finally, Weber discerns *traditional-rational* action orientation. The term 'traditional' is unfortunate as routine-rationality would have been more appropriate. Traditional-rationality action is "determined by ingrained habituation" (*eingelebte Gewohnheit*) (25). This type of orientation is, for Weber, a 'borderline' of meaningful social action as "it is very often a matter of almost automatic reaction to habitual stimuli" (Weber:25). As such, the meaning of this action orientation must be perceived in terms of unconscious inner-oriented psychological needs and attachments to routines and everyday stability.[9] Like affective-orientations such routine-orientations are immediate, but in contrast, actors are unconscious of them most of the time.

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[5] '*Pietät*' is consequently translated with 'personal loyalty' where 'piety' seems more accurate.

[6] Even though Weber claims that this inner-orientation of value-rational action means, in contrast to strategic rationality, that the meaning of value-rational action lies in the action itself, it is nevertheless possible to separate means and end to approach a value-rational goal with 'technical rationality'. Value-rationality, Weber claims, can be a "clearly self-conscious formulation of the ultimate values governing the action and the consistently planned orientation of its detailed course to these values" (25).

[7] Weber mentions emotions such as "revenge, sensual gratification pleasure, submission, contemplative bliss, or for working off emotional tensions" (25, adjusted translation). 'Genuß' is translated with 'sensual gratification' where 'pleasure' would do, but more importantly, 'Hingabe' is translated with 'devotion' which makes it difficult to separate affection from religious ideal-values. A more suitable translation, it seems to me, would be 'submission' as in a *submission to passions*.

[8] Weber constantly repeats that 'affectual determined' actions are 'irrational' (see e.g. 6,8,9).

[9] This means that routine or traditional action can hardly be called *social* – something Weber was well aware of: "The line between meaningful action and merely reactive behaviour to which no subjective meaning is

3.1.2 Social Order: Aggregation and Institutionalisation

These four types of subjective action orientations help Weber to explain social order to the extent that they explain *social* action, that is, action "oriented to the past, present, or expected future behaviour of others" (22). Subjective orientations to the expected actions of others explain the stability of "certain empirical uniformities" (29). However is it important to notice that Weber distinguishes – although not explicitly – between *social regularity*, i.e. the aggregation of other-oriented actions, and *social order*, i.e. the institutionalisation of social expectations.

Because social regularity or uniformity arises as actors orient their actions to the expected actions of others, Weber recognises different types of regularity based upon the typical underlying action orientations. If actors orient their actions to each other in terms of routine, the social regularity that arises can be called custom. Custom is explained by the fact that actors 'adapt' their habits to that of others to avoid 'inconveniences and annoyances' (30).[10] Similarly, strategic orientation can produce social 'uniformity, regularity and continuity' in terms of an interest-configuration (*Interessenlage*). When actors strategically pursue "their own typical economic interests" they will orient their action towards the 'expectations' of the "prospective behaviour of others", i.e. they will orient to the social situation in terms of "pure self-interest and the interest-configuration of others" (30, adjusted translation). Weber is less clear about the social regularities that arise from affective- and value-rational orientations. Nevertheless, we can reconstruct from his work that the former can give rise to *solidarity* and the latter to *value patterns*. In discussing religious and military communism Weber notes, for example, that actors orient to each other not in terms of strategic expedience, but in terms of 'mutual solidarity' and 'love' (154). Similarly, he states that "a charismatic community ... is based on an emotional form of communal relationship [*emotionale Vergemeinschaftung*]" (243). It seems reasonable therefore that mutual orientations based upon affective-rationality may produce a social regularity of solidarity. Weber likewise argues that an actor can orient himself to others not in terms of love, but in terms of 'ethical values' - a "specific type of value-rational belief" that govern social action because one feels an inner-sanctioned duty to do so (36).[11] As such, we might conclude that to the extent that actors relate to each other in value-rational terms, social regularity might be explained in terms of normative value-patterns.

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attached, cannot be sharply drawn empirically" and "especially purely traditional behaviour, is marginal between the two" (4, see also 25).

[10] Weber is slightly confusing as his definition of custom can also be read as actors adjusting their actions to custom as a social institution (30). However, custom arises in the first instance because actors mutually adjust their routines to each other.

[11] It must be noted that Weber probably talks at this particular point about institutionalised ethical values: "*Ethische Normvorstellungen*" (36).

In table 3.1 we can see the different analytical types of social regularities based upon underlying subjective action orientations (based upon Bader 1989). However, empirically these regularities do not have to be limited to such typical underlying *symmetry* of social actions. For example, one might orient strategically to expectations that others act affectually.

		Subjective Orientation			
		Traditional	Affectual	Strategic	Value-Rational
Subjective Orientation	Traditional	*Custom*			
	Affectual		*Solidarity*		
	Strategic			*Interest Configuration*	
	Value-Rational				*Normative Value-Pattern*

Table 3.1 – Types of social regularity between actors

However, this aggregative understanding of social ordering is not what primarily interests Weber. Weber is interested in social orders that are more than just the aggregation of action orientations; he is interested in *social orders* that derive their structure from *institutionalised expectations*.[12] As discussed in chapter 1, social institutionalisation means that an actor does not just orient his action towards the expected actions of a particular other (or to the expectations of expectations of that other), but rather, the actor orients his actions to expectations of the *general other*. The social situation is described and prescribed by social expectations that are relatively independent of the actual underlying subjective orientations of the actors involved and, as such, can be said to be *objectively valid*. Unfortunately Weber is less than explicit about this institutional dimension of social order. But without it, it seems to me, his theory of legitimate order and, even more important, legitimate domination cannot be grasped.

This does not mean that this notion of institutionalised expectations is not present in Weber's work. For example, Weber argues that if actors orient their action towards others, these others might be specific persons but "may also constitute an indefinite plurality" of anonymous individuals (22).[13] In addition, when Weber discusses the state, he remarks that "a modern state, precisely as a complex of social interaction of individual persons, consists in the fact that the action of various individuals is oriented to the conception [*Vorstellung*] that it exists or should exist" (14,

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[12] If Weber claims that a social order entails 'conduct' that is "oriented toward determinable 'maxims'" (31), we might interpret that a social order concerns the *institutionalisation* of social expectations.

[13] Weber gives the example of 'money' in relation to which an actor "orients his action to the expectation that a large but unknown number of individuals he is personally unacquainted with will be ready to accept it in exchange on some future occasion" (22).

adjusted translation).[14] Both examples seem to point to orientations towards the general other as something that objectively exists which is the core of social institutionalisation. Without a doubt Weber recognises that a social order can be objectively valid. In the most general terms Weber argues that he wants to draw "a sharp distinction between subjectively intended and objectively valid 'meanings'" (4). When Weber gives the example of the thief who orients his actions to the law, Weber implies that the legal order is not subjectively but objectively valid for the thief. The order is "'valid' precisely to the extent that there is a probability that action will in fact be oriented to it", i.e. action is oriented to the objective 'conception' of order (32-3).[15] The problem, however, is that Weber is frustratingly careless in distinguishing these two types of validity (see also Bader 1989).

When we agree that a social order concerns socially institutionalised – or objectively valid – expectations, we can recognise – based upon the typical social orderings of table 2.1 – four types of *institutionalised expectations*: custom, solidarity, interest-configuration, and value-patterns. And because these expectations are objectively valid individual actors might position themselves towards them from different action orientations. For example, we might conform to the institutionalised custom to wear black clothes at a funeral not out of a typical routine action orientation, but because it is in our strategic interest to do so – maybe to avoid social sanction. Then again, we might conform to the custom because we value-rationally agree with it, i.e. we belief we ought to wear black clothes as other colours would be disrespectful and unethical. Or, finally, we might wear black clothes out of solidarity or loyalty to the group as they have to wear black clothes too. Additionally, we might perceive that a funeral – as a social order – is not only structured or coordinated by institutionalised expectations of custom, but also by institutionalised expectations of interest, solidarity and normative values.[16]

The final question, then, is how Weber understands the *legitimacy of a social order*. When, in our example, is the funeral as an institutionalised social order also a legitimate order? Institutionalised expectations might not just exist objectively for an actor, but he might also partly perceive the order as something that 'ought to exist'. A social order is both descriptive of social action (exemplary or *Vorbildlich*) and prescriptive of social action (obligatory or *Verbindlich*). In other words, for Weber socially institutionalised expectations do not only concern cognitive facts – it is the

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[14] It must be noted that the English translation is less than helpful because it often translates '*Vorstellung*' with 'belief' instead of 'notion' or 'conception'. The 'belief in order' has a whole different connotation than the 'conception of order' (see e.g. 31).

[15] "Für die Soziologie aber ,ist' eben lediglich jene Chance der Orientierung an dieser *Vorstellung* ,die' geltende Ordnung" (33, my emphasis).

[16] For sure, different social orders emphasise different institutionalised expectations or mechanisms of social coordination. We might say that the social order of friendship is pre-dominantly oriented to solidarity, while the market is foremost oriented to interest-configurations. But despite such functional differentiation, every social order also incorporates the other types of social expectations. The market, for example, at least also includes normative expectations and customs, and even expectations of solidarity.

custom to wear black clothes – but also normative demands – one ought to conform to the custom to wear black clothes. But as soon as the institutionalised custom is no longer just a cognitive fact to which one can orient one's actions, but also a normative demand, it belongs to the institutionalised normative value-patterns that coordinate social actions. The *objective normative structure* of the funeral, then, demands that we ought to wear black clothes, be quiet, not be self-interested, pray, and be or appear to be mourning. As is the case for other types of objective expectations, we might orient to these normative demands in terms of routine, solidarity, or expedience. Only to the extent that we value-rationally agree with these objective normative demands can we say, according to Weber, that the social order is legitimate, i.e. its normative structure is not only objectively but also subjectively valid, constituting a 'value-rational sense of duty' (*'Pflichtgefühl' wertrational*) towards the social order (31; see table 3.2 based upon Bader 1989).

	Institutionalised Expectations			
	Descriptive			Prescriptive
	Custom	Solidarity	Interest Configuration	Normative Value-Pattern
Subjective Orientation Routine	*Typical*			
Affective		*Typical*		
Strategic			*Typical*	
Value-Rational	*Agreement*	*Agreement*	*Agreement*	*Legitimate Order*

Table 3.2 – Legitimate order from a social action perspective

Weber's understanding of (institutionalised) social order implies that we should not so much differentiate between a social order and a legitimate social order, but we should differentiate between an *objective* legitimate order and a *subjective* legitimate order.[17] Or as Weber states it, "[a]ction … may be guided by the conception of the existence of a legitimate order" (31, adjusted translation).[18] But only to the extent that actors feels 'a value-rational sense of duty' (*Pflichtgefühl wertrational*) to conform to its maxims is the objective legitimate order also subjectively valid.

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[17] This is not to say, of course, that all social order is automatically objectively legitimate. Not only can a *factual* order be solely guaranteed through external guarantes (see chapter 1), a social order can also be *objective* without or even despite normative demands. In general, Weber, unfortunately, does not distinguish clearly enough between institutionalisation and external guarantes, between validity and factuality (see e.g. his discussion of custom and convention). If different types of orders emphasise different types of expectations the normative expectations may not always be predominant (as in the market) or stable (in unfamiliar contexts). Nevertheless, if not drowned out by external guarantees, social expectations of normativity are almost always present implicitly.

[18] "Handeln, … können von seiten der Beteiligten an der *Vorstellung* vom Bestehen einer *legitimen Ordnung* orientiert werden." It must be noted that Weber continues with: "The probability that action will actually be so governed will be called the 'validity' (*Geltung*) of the order in question" (31). From my interpretation we must read 'validity' as 'objective validity'. This also holds for the next quote: "Only then will an order be called 'valid'

In sum, legitimacy of a social order, for Weber, concerns the subjective validity – in terms of value-rational agreement – of objectively valid normative social expectations that constitute – among other types of objective expectations – the social order.

3.2 Legitimate Domination: Objective and Subjective Validity

After this reconstruction of Weber's understanding of (legitimate) social order in terms of his social action perspective, we can turn to his understanding of domination (*Herrschaft*) as the main form of *political order*.[19] Unfortunately, his work on (legitimate) domination is even more difficult to interpret.

First of all, Weber fails to adequately distinguish between domination and power in general. Weber defines power (*Macht*) as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests" (53). Domination, on the other hand is defined as "the probability that certain specific commands (or all commands) will be obeyed by a given group of persons" (212, 53). Weber, then, understands domination as a command-obedience relation, but fails to define it in terms of socially institutionalised expectations which makes the difference between power and domination rather problematic. For Weber, the only difference between power and domination seems to be that domination does not include force. Domination implies "a minimum of voluntary compliance, that is, an interest … in obedience" (212). Voluntary obedience, however, is a rather limited standard indicating merely some form of internal guarantee, however much restricted externally.[20] Weber is aware that domination easily shades over into power with 'absolutely involuntary slavery' as its boundary case (214).

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if the orientation towards these maxims occurs, among other reasons, minimally also [*mindestens auch*] because it is in some appreciable way regarded by the actor as in some way obligatory or exemplary for him." (31, adjusted translation).

[19] I am aware of the scholarly debate how best to translate *Herrschaft* (see Parsons 1960a:752; Beetham 1991b:35; Roth 1978:62). It is a rather trivial debate as the word *Herrschaft* has multiple meanings in the German language as well (see for a genealogy Brunner et al. 1982). Parsons dismisses 'domination' as it gives too much emphasis upon power of the leader over his subjects and less upon "the integration of the collectivity" (Parsons1960a:752). Parsons also decided to translate 'legitime Hersschaft' with 'authority'. Roth agrees with Parson on the latter, but translates *Herrschaft* in its most general sense with 'domination', because "*Herrschaft* is a structure of superordination and subordination" (Roth footnote 31 in: Weber:62). Translation seems so difficult that Beetham decided not to translate it at all (see Beetham 1991b:35). I use 'domination' where Weber uses 'Herrschaft' and 'legitimate domination' where Weber uses 'legitime Herrschaft'. I try to avoid the concept of 'authority' as Weber himself uses the German concept of 'Autorität' inconsistently (see especially the crucial and often quoted passage concerning the definition of Herrschaft: 212-215; see also Uphoff 1989:300).

[20] The difference between involuntary and voluntary obedience might be quite clear from the subjective perspective of the actor, however, that is not the approach of Weber at this point.

Weber's definition of domination is confusing.[21] As I have argued in chapter 1, only when domination is socially institutionalised can it be analytically distinguished from power in general. I would argue that, in the end, this is also Weber's position. The reason why he overcomplicates things at this time, it seems to me, is that Weber wants to include all kinds of domination, i.e. all possible forms of command-obedience relationships – and second that he did not explicitly recognise that he understands social order both in terms of institutionalised as in terms of aggregative order. This latter difficulty explains why Weber tries to distinguish between two typical forms of domination: the domination of the economic monopolist and the domination of the (political) ruler. Weber first tries to distinguish between mere economic power and economic domination of someone in a monopolist position (214). The reason why Weber, secondly, tries to separate domination of the economic monopolist from domination of the political ruler, it seems to me, is that the domination of the latter is not just based upon the probability of voluntary obedience (*aggregative social order*) but upon his institutionalised position as a ruler (*institutionalised order*).[22]

With this problematic definition of domination at the backdrop, we can analyse Weber's definition of *legitimate domination*, which is one of the most confusing and often (mis-)interpreted parts of his work. To understand the confusion let us first consider his definition in some detail. Weber wants to explain domination, as we have seen, in terms of the social probability that commands of the ruler are obeyed. Although 'external guarantees', especially force, are important to explain the stability of order, 'genuine domination' implies voluntary obedience, i.e. 'internal guarantees' (34-6). This means that the relation between the ruler and the ruled is 'governed ordinarily' not by force, but "by custom and material calculation of advantage" and in 'extraordinary circumstances' by affectual and ideal orientations (213). As such, the internal guarantee of domination concerns an 'interest in obedience' based upon strategic, affective-, traditional-, and value-rational subjective action orientations. And if we expect that a value-rational orientation towards commands connotes legitimate of domination we might be surprised and confused when Weber continues: "custom, personal advantage, purely affectual or ideal motives of connectedness [*Motive der Verbundenheit*], do not form a sufficiently reliable basis for a given domination. In addition there is normally a further

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[21] Weber's definition is even more complicated because in addition domination is internally differentiated in relations between the ruler and his administration, on the one hand, and between the ruler and his general subjects, on the other (212-3).

[22] Indeed, Weber argues elsewhere that the power of the monopolist is not a genuine form of domination in terms of "an authoritarian power of command" (946).

element, the belief in *legitimacy*" (213, adjusted translation).[23] This, then, is a bit of a puzzle as legitimacy is something *additional* to value-rational orientation to obedience.

The puzzle solves itself partly when Weber points out that "domination [does not] voluntarily limit itself to the appeal to material or affectual or ideal motives as a basis for its continuance. In addition every such system attempts to establish and to cultivate the belief in its legitimacy" (213). What Weber seems to imply, then, is that legitimacy does not concern a value-rational orientation towards the command-obedience relation, but rather the value-rational orientation towards this 'cultivated belief' in legitimacy. What is so confusing is that Weber fails to explicate that with this additional 'established' belief in legitimacy, domination changes from a mere aggregative order to a *socially institutionalised order of legitimate domination*. This means that legitimate domination is an objectively valid order that is coordinated, like all institutionalised orders, in terms of the four types of social expectations, i.e. custom, solidarity, interest configuration and normative value-patterns. Legitimate domination specifically concerns the normative expectation that one ought to recognise the validity of the ruler and that one ought to obey his commands. Only to the extent that actors subjectively orient themselves to these objective normative expectations in a value-rational manner can we say that the factual order of legitimate domination is indeed legitimate.

This is, in my opinion, how we should interpret Weber's social action theoretical perspective of political legitimacy. An interpretation that is validated when Weber states: what is important for the 'legitimacy of a system of domination' is not that "every case of submissiveness ... is primarily (or even at all) oriented to this belief [in legitimacy]", rather that "the particular claim to legitimacy is to a significant degree ... treated as 'valid'; that this *fact* confirms the position of the persons claiming authority" (214, my emphasis). Weber, in his typical careless way, separates the objective validity of legitimacy from the question of the subjective validity or belief of this social 'fact'. Furthermore, it is precisely because legitimate domination is objectively valid (factual) that we can understand Weber's confusing claim that an order "which enjoys the prestige of being considered exemplary or obligatory, or, as it may be expressed, of 'legitimacy'" is much more stable than domination based upon mere voluntary compliance (31, adjusted translation). Not only does this statement show that Weber shares the preoccupation of classic normative theory – the relation between domination and the problem of order – but especially that he does not so much explain the stability of a legitimate order in terms of voluntary obedience – in which conditional strategic compliance is less stable than unconditional value-rationality – but that because legitimacy is *objectively valid* it is relatively

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[23] 'Motive der Verbundenheit' is translated with 'motives of solidarity'. Solidarity, however, is a form of social coordination specifically belonging to affectual orientation. Motives of 'connectedness' seems a better translation to underscore Weber's emphasis of value-rational orientation.

independent of subjective value-rational agreement. An objectively valid order of legitimate domination might also be internally guaranteed on strategic, traditional or affective grounds.[24]

It is important to recognise that legitimacy in Weber's account is not an individual affair. Weber is not interested in the subjective validity of domination, but he is interested in *the subjective validity of objectively valid legitimate domination*. It is not about a relation of domination it is about the socially institutionalised order of legitimate domination. Weber, however, is not always aware of the implications of this inherently *social* understanding of legitimacy.

To understand these implications, let us consider the fictive example of the relation of domination between the teacher and his students. To understand the legitimacy of the teacher we should not so much look at the individual motives the students have for obeying his orders, as we should perceive that the legitimacy of the teacher is objectively valid among the students or even beyond this group. As soon as the students enter the classroom they orient their actions to institutionalised expectations, expectations that concern custom, solidarity, interest configurations and normative values. Among these expectations that make up the *social order of the class* are the normative expectations that one ought to recognise the teacher's right to rule and that the students ought to obey. And because not only the teacher's domination but also its legitimacy is socially institutionalised, we can agree that individual students might orient differently to it. A student might, for example, conform to the normative social expectations of obedience out of strategic considerations when he wants to pass his exam and therefore act *as if* he normatively accepts the rule of the teacher – or, as Weber puts it, 'hypocritically simulates loyalty' (214). He might, on the other hand, also conform in terms of traditional orientations, i.e. he conforms to the social norm of obedience out of sheer unthinking routine. Then again, the student might also conform to the norm in terms of affectual action orientations. This does not mean that obedience must be explained by his love for the teacher – although this might be the case – but rather that he conforms to the social norm out of solidarity for the group, i.e. he obeys the teacher because the class expects it of him.[25] Finally, the student might conform to the social normative expectations of obedience because he value-rationally agrees with it, i.e. he *believes* that the teacher has the right to rule and feels an 'internally-sanctioned duty' to obey the teacher. In all four instances legitimate domination is objectively valid, but only in the last instance is domination also subjectively valid, i.e. legitimate.

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[24] However, this presumed stability of objectively valid legitimate power is problematised by Luhmann (see chapter 5).

[25] Weber has difficulty in explicitly recognising such *horizontal* solidarity as ground for accepting *vertical* domination.

Legitimate domination, then, is objectively valid when expectations of domination are socially institutionalised in the normative structure of a social order, i.e. when legitimacy is socially expected. Legitimate domination it is subjectively valid – legitimate proper – when the ruled actually value-rationally orient to these objective normative expectations, i.e. they *believe* in the validity of the right to rule. This is how Weber, never mind all the confusing statements, understands political legitimacy if he is true to his own action theoretical premises. To repeat our earlier conclusion, when it concerns legitimacy, Weber is only interested in socially institutionalised orders of domination and not simply in any command-obedience relationship.

3.3 A Claim to Legitimacy: Validity as Truth

Legitimate domination concerns the socially institutionalised expectations that the ruler has the right to rule and the ruled the duty to obey. To the extent that actors actually value-rationally agree with these social expectations, Weber claims the political rule should be considered as legitimate. The main part of Weber's sociology of legitimate domination, however, focuses on the *claim to legitimacy* of the ruler or ruling party. It focuses on the validity of this claim, i.e. on its truth-claim. It is important to stress that validity in this perspective does not concern, in the first instance, expectations of *social validity* but rather expectations of *truth*.

A claim to legitimacy can analytically be perceived as an argument, justifying *why* one has the duty to recognise the validity (truth) of domination.[26] Weber recognises four typical sources upon which such justification can be validated. One has the duty to recognise the validity (truth) of the claim to legitimacy because it is god's whish, because it is tradition, because it is logical or because it is the law (36). Based upon these sources Weber identifies three ideal-types of legitimate domination: charismatic, traditional, and legal domination (36, 215, 915). It is interesting to note that Weber discards the possible fourth ideal-type of legitimate domination based upon "value-rational faith: valid is that which has been deduced as an absolute" (36). Weber drops this form of

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[26] Do notice, however, that in practice such arguments might not be explicit at all. It is important to recognise that what follows is purely an analytical framework with which to understand empirical complexities. It must also be noticed that Weber is often perceived as an elitist because, among other reasons, his analysis gives the impression that a ruler can just use any argument which the subjects have the duty to recognise as true. However, this is not the case. Weber explicitly states: "Domination (*Herrschaft*) does not mean that a superior elementary force asserts itself in one way or another; it refers to a meaningful interrelationship between those giving orders and those obeying, to the effect that the expectations towards which action is oriented on both sides can be reckoned upon" (1378). Weber's emphasis upon elites' interest in legitimacy and their attempt to "cultivate the belief in legitimacy" does not negate this position (953; 213). The most fundamental mistake in interpreting Weber, in my view, is to think that Weber's concept of legitimacy is just about the claim of the ruler *regardless* whether that claim is acknowledged by the ruled (see e.g. Beetham 1991b:36; Matheson 1987).

domination because he claims its historical relevance can be neglected (37).[27] More needs to be said on this issue, but let us first consider the three forms of validity he did think were relevant.

Weber tries to analyse the "ultimate grounds of the *validity* of a domination" because such 'justification of legitimacy' is sociologically relevant (953). It is sociologically relevant because the specific social structure of a legitimate domination depends upon it (947).[28] Without a doubt, it matters for the way political order is organised and for its internal social dynamics whether it claims legitimacy upon a democratic constitution, upon traditional hereditary status or upon religious revelation. The relevance of the 'ultimate' source of validity then, is not about an increased understanding why specific persons obey, its relevance lies in the specific social and political structure it makes possible (947). As such, Weber wants to analyse and classify the organisational structures and processes of domination based upon the underlying type of claim to legitimacy (*Legitimitätsanspruch*) (213).[29]

The type of validity (truth) that is claimed by the ruler, first of all, has consequences for the *types of proof* the ruler must present in order to validate his argument. The ruler that claims legitimacy upon charisma has to proof his divine 'gift of grace', the traditional ruler has to proof his claims in terms of tradition and traditional laws, while the legal ruler has to proof the validity of his claim of legitimacy upon the 'rational' rules of law. Three features are important to emphasise at this point. First, it is important to recognise that the validity of the claim to legitimacy is *normally expected* to be true by the subjects.[30] However, these normal expectations of validity must occasionally be proven, especially in times of doubt (242). Proof is something that is 'extraordinary', i.e. separated from ordinary or normal life, and something that re-establishes the truth of the claim to legitimacy normally expected to be valid.

Second, proof concerns a *process of truth-finding*, which is more often than not a socially institutionalised procedure. Processes of truth-finding concern extraordinary rituals and symbols

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[27] "The purest type of legitimacy based on value-rationality is *natural law*. The influence of its logically deduced propositions upon actual conduct has lagged far behind its ideal claims; that they have had some influence cannot be denied, however. Its propositions must be distinguished from those of revealed, enacted, and traditional law" (37).

[28] Weber is not interested in legitimacy as "a matter of theoretical or philosophical speculation" but rather in the "very real differences in the empirical structure of domination" (953).

[29] Weber of course acknowledges that in practice claims to legitimacy might appeal to several sources and different types of validity. Legitimate domination, then, might be organised in different "combinations, mixtures, adaptations, or modifications" of the ideal (954, 37).

[30] As such expectations can be socially institutionalised as well, our analysis becomes more complex. Legitimate domination can be objectively valid, i.e. the right to rule is socially expected to be valid, and the validity (truth) can be objectively valid, i.e. it is socially expected that the truth-claim of legitimacy is valid. However, the notion 'objectively valid' in relation with 'truth' often has different connotations.

that proof the validity of a claim on rational, traditional or charismatic grounds.[31] Based upon these institutionalised expectations what is proven as valid is true. Truth, furthermore, is always *objective*, which means that actors have to accept a claim which is proven to be true whether they like it or not. Truth is independent of what they wish to be true – it is *externally* guaranteed. As such, Weber claims that one has the duty to recognise what is proven to be true – "recognition is a duty" (244). This holds as much for mathematical proof as for truth revealed by an oracle or the truth established by the legal accountability or methods of science.

Third, proof can establish both *cognitive* and *normative* truths. Proof can secure the belief that a claim *is* true and the belief it *ought to be* true. This difference, as we will see, is important to understand Weber's analysis of processes of validation. Weber focuses in case of traditional and charismatic domination especially on their *normative* validation, while in case of legal domination he focuses on its *cognitive* validity. The problem, which we will discuss, is that he does not explicate the normative validation of legality and, vice versa, overlooks the importance of cognitive expectations for traditional and charismatic rule. A reconstruction, it seems, should try to resolve these omissions.

3.4 Normative Validation in Extraordinary Processes of Truth-Finding

Let us first understand how traditional and charismatic claims to legitimacy can be proven and how this secures *normative* validity. In general Weber claims, it seems to me, that extraordinary procedures of proof – procedures outside everyday life and its normal concerns – are able to establish normatively valid truth because in some way the *experience* of the truth-finding procedure moves the inner subjective orientations of the witness.[32]

3.4.1 Charismatic Validation

Charisma is proven ideal typically through miracles or heroic deeds (1114). The ethical-prophet, for example, proofs his divine mission and the truth of his revelations by performing miracles. Other forms of charismatic proof might be the "fighting frenzy" and "spells of maniac passion" of the warrior-leader (the 'berserk') or the "epileptoid seizures" and 'trances' of the magician ('shaman' or 'necromancer') (242, 401, 536, 1112). When rituals of proof by means of 'ecstasy' and 'orgiastic

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[31] It is true that Weber claims that pure charisma is alien to institutionalised procedure. However charisma can be institutionalised, for example, in terms of acclamation (see Weber on the 'problem of succession': 246ff.), but also in terms of institutional dogma (see Weber on the church as an 'institution of grace': 454ff, 1122, 1135ff).

[32] Weber seems to suggest that the different types of proof and sources of validity are related to the four typical action orientations. Tradition as a source of validity is related to a traditional orientation, charisma to an affective, deductive reason to value-rational and 'positive enactment' to a strategic orientation (36-7). However, this is not true to the extent that all sources that are capable of providing normative validation produce a value-rational orientation.

intoxication' are already more or less institutionalised in the 'enterprise' of the magician (401, 536), this is even more so for "charismatic adjudication" by oracle (1115) and for the quasi-democratic procedure of charismatic acclamation. The charismatic quality of acclamation lies in the fact that validity (truth) is assumed to be *prior* to the election itself and merely has to be *revealed* through democratic elections – a 'ceremonial' form of charisma (1124).[33] There can only be one right answer "and it is a matter of duty to arrive at this" (267). Once the truth is revealed the minority has a 'moral duty' to yield to the 'right cause' proven by the majority (1126; 215). In other words, the minority does not have a different opinion, its opinion is wrong.

Through such processes of truth-finding – based upon 'calling and trial' – the subjects have the duty to 'recognise' the validity of the claim to charisma (242). But this recognition, according to Weber, is not the foundation of legitimacy (*Legitimitätsgrund*).[34] In our own analytical terms we might say that this recognition of proof only secures *cognitive validity*, similarly to the duty we have to recognise the truth yielded by scientific method. Proof yields cognitive knowledge. The recognition of *normative validity* as the genuine basis of legitimacy is rather explained in psychological and emotional terms: "This 'recognition' is psychologically a matter of faithful, complete personal submission, born out of inspiration or out of despair and hope" (242, adjusted translation).[35]

The claim to legitimacy is normatively validated in charismatic proofs because the witness emotionally surrenders to the revealed truth (1117). Weber tries to find an explanation for this submission in the 'extraordinary needs' of the subjects, needs that "transcend the sphere of everyday economic routines" and which are related to feelings of distress "whether psychic, physical, economic, ethical, religious, or political" (1111-2). We might say, then, that the normative validation of charismatically revealed truth is explained by the *need for existential meaning* that transcends the dread and suffering of ordinary life. A charismatic revelation, according to Weber, must be understood as "a subjective or *internal* reorientation born out of suffering or enthusiasm" which "demands *new* obligations" and a whole new worldview – "a completely new orientation of all attitudes towards the meaning of ways of life and the 'world'" (342-4, 245). The essential characteristic of charismatic revelation, then, concerns the fact that "charisma ... manifests its revolutionary power from within, from a central *metanoia* of the follower's attitudes" (1117). A

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[33] The plebiscite "is not an ordinary vote or election, but a profession of faith in the calling of him who demands these acclamations" (1451).

[34] "If those to whom he feels sent do not recognise him, his claim collapses; if they recognise it, he is their master as long as he 'proves' himself. However, he does not derive his claims from the will of his followers, in the manner of an election; rather it is their *duty* to recognize his charisma" (1112-3).

[35] The translation of this entire part (page 242) is rather unfortunate and gives a distorted impression. For this sentence the original reads: „Diese 'Anerkennung' ist psychologisch eine aus Begeisterung oder Not und Hoffnung geborene gläubige, ganz persönliche Hingabe."

claim to charismatic domination, then, can be normatively validated because the experience of charismatic proof changes the value-rational orientation of the subjects.

3.4.2 Traditional Validation

In traditional domination legitimacy is founded upon the validity (truth) of tradition "resting on an ordinary belief (*Alltagsglauben*) in the sanctity of immemorial traditions" (215). The difficulty of traditional domination is that it entails both ordinary and extraordinary elements which Weber has difficulty to separate. The extraordinary or 'magical' element of tradition concerns its 'sacredness': "The belief in the inviolability of that which has existed from time out of mind" (1006). Tradition, as charisma, "always has a religious aura" (1122). Different from charisma, however, tradition builds upon an already socially institutionalised normative worldview. We might recognise three types of normative worldview in Weber's general sociology.

First, a traditional worldview might contain the idea that society is a valid *organic order* with "natural differences among men" whether 'providentially ordained' or "determined by the impersonal world order" (598). Such worldview is normative to the extent that this stratified society is organised in different status groups (estates) which all are expected to have different functions and 'ethical obligations' (598). It may be clear that normatively valid status differences are potential sources of legitimacy for rulers.

Second, a traditional normative worldview may not so much be about hierarchical and functional status differences, as about the *sanctity of the community*. Communities (*Gemeinschaft*), according to Weber, are primarily based upon "subjective feelings, whether affectual or traditional, that they belong together" and specifically upon feelings of *piety* (*Pietät*) – Weber's core concept for traditional authority (41). Such communal order is the 'antithesis of conflict' exactly because the internal sense of belonging arises through "the emergence of a consciousness of difference from third persons", from outsiders (42-43). What starts as pure routine might culminate in a "community of memories" (903) containing normative perceptions of a 'common descent' or shared destiny or 'fate' (923). A 'communal consciousness' might be a source for "a specific consecration" of the collective (903), a "sense of ethnic honour" or a shared feeling to be the 'chosen people' (391), "anchored in the superiority ... of the culture values that are to be preserved" (925) or in the 'particular pathos' of a community for which "the individual is expected ultimately to face death in the group interest" (903).[36] It holds for all forms of communal solidarity that they are a potential

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[36] Weber claims that nationalism should be considered as a kind of 'pathos' towards a 'national identity' which entails the "pathetic pride in the power of one's own community, or its longing for it" (398), i.e. "the glory of power over other communities" (911).

source of legitimacy for power holders, as these rulers can become the 'bearers' of communal prestige, commanding 'unqualified devotion' (922, 903).

Finally, Weber gives the example of how in a traditional church the original charisma of a revealed religious ethic can be combined with the sanctity of tradition. The two 'antagonistic forces' of tradition and charisma can merge in *dogma*, according to Weber, because they both depend upon 'the belief in sanctity' (1122). Traditional sanctity refers to the unalterable – "the belief in the inviolability of what has always been (*des 'ewigen Gestrigen'*)" (1008) – which also possesses a 'depersonalised' charismatic quality, "an extraordinary quality which is not accessible to everyone and which typically overshadows the charismatic subjects" (1135). Precisely because of the absoluteness and unalterability of dogma it possesses the 'grace of god' (1162).The domination of the church, then, claims legitimacy upon the sanctity of its dogma, which is at least partly traditional.

Legitimacy in traditional domination can be claimed upon organic 'natural' status differences, the consecration of the community or the sanctity of unalterable dogma. What unites these claims is that they are based upon a normative worldview that is already expected in everyday life, i.e. the normative worldview is not revealed as in genuine charisma, it is already *socially institutionalised*. The subsequent question, first, is how these claims to legitimacy are proven and, second, why such proof procures subjective validity.

Proof of traditional legitimacy, it turns out, is a 'symbolic activity' (1139). Indeed, proof *can* be purely symbolic because the normative world view is already expected. For example, in case of the church Weber argues that symbols and rites are means of linking the grace of its dogma to its office (1139). Through rituals such as 'anointing, consecration, or the laying on of hands' (249) a religious mood with redemptory qualities is established "by the sheer sacredness of the manipulation" (530-1). Rituals create a symbolic setting wherein the sanctity of the church is directly experienced by the subjects. Not only do they find salvation through these rituals, but it also revalidates the normative expectations of the validity of the church that were already present. According to Weber, the whole 'pastoral care' must be understood as a "religious cultivation of the individual" (464). Importantly, the original charismatic revelation that provided a meaningful, personal and total relationship towards god is now reduced by the priests to the mere 'external appearance' of symbolic and ritual acts (466).

However, the church might be considered a special case as it is related to the extraordinary need for salvation. But also in case of traditional domination based upon status differences normative expectations are proven symbolically. Indeed, Weber seems to argue that also the 'prestige of ruling groups' (*Herren-Prestiges*) and the 'divine right' of the monarch (*von Gottes Gnaden*) retain a kind of 'charismatic status honour' (*ständischen Ehre*) acquired by heredity (251-2),

which requires "the nurturing of right attitudes … which approximates the character of pastoral care of souls" (846). Status is proven foremost in terms of symbolic *lifestyles* as well as through "artificial and magical means" as in "episcopal ordination" or the 'kings coronation' (1139). Elite lifestyles might, of course, differ historically, but all concern 'a way of life' as "means of self-glorification … [that] establish and preserve the nimbus of the dominant stratum vis-à-vis the ruled" (1090). As later echoed by Elias (Elias 2000), Weber tries to analyse how traditional status groups cultivate 'a code of honour', 'etiquette' and 'dignity' (1090). This might, for example, be 'an artistic style of life', i.e. "[t]he need for 'ostentation', glamour and imposing splendour, for surrounding one's life with utensils which are not justified by utility but … useless in the meaning of 'beautiful'" (1105-6).[37] In such lifestyle 'luxury' is a means of social self-assertion and therefore "an important power instrument for the sake of maintaining one's own dominance through mass suggestion."

The symbols and rituals proving traditional status and prestige, as in the church, are also about symbolic appearance.[38] Through these symbols and rituals the normative and hierarchical social order is proven that was already expected to be true. Likewise, we might suspect that 'bearers' of *communal* prestige can also symbolically prove themselves but Weber is not very outspoken on the issue. However, we might argue that national symbols and rituals such as flag and anthem are important in order to symbolically proof what was already expected. And we might suspect that nationalism or patriotism also requires the 'cultivation' of the proper attitudes as for example through national festivals, sports, the glorification of history, but especially through the 'glory and honour' of war (269).

Claims to traditional legitimate domination are based upon objective normative worldviews which are proven in terms of symbols and rituals that validate what was already expected to be true. The final question, then, is why this proof not only yields cognitive but also secures subjective normative validity, i.e. the fact that I might recognise the legitimate king because he is dressed with symbols of power does not inherently mean that because I recognise the king I feel an inner duty to obey his rule. Weber argues that "[t]he mere fact of the regular recurrence of certain events somehow confers on the dignity of oughtness" (326). The 'organically conditioned regularities' of the traditional world are a kind of 'psychophysical reality', an 'inner orientation' that "contains in itself

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[37] Elite lifestyles might also be less artistic and glamorous and rather, according to Weber, based upon the dignity expected in a more 'patrimonial' or patriarchal relation between the lord and his subjects (1104-8).

[38] Or, as Weber writes: "Here we find that peculiar transformation of charisma into an institution: as permanent structures and traditions replace the belief in the revelation and heroism of charismatic personalities, charisma becomes part of an established social structure" (1139).

very tangible inhibitions against 'innovations'" (321). Weber, it seems, tries to explain the subjective normativity of tradition in terms of an inner psychological orientation that inhibits change.[39]

However, we can also recognise a different kind of explanation in Weber's work. The sanctity of tradition is foremost *experienced* in terms of symbolic rituals outside everyday life where the presence of the *unalterable* 'overshadows' the witnesses. Unlike charisma it does not reveal a new worldview, but one does feel the magnitude of what always has been there, a worldview in which the witness feels he is part of something larger than life. He has a specific role or function in the organic hierarchical society and he is a part of a sanctified nation or a sacred congregation. In short, through the ritual the witness feels part of a permanent truth to which he belongs, however insignificant his specific part. As such, extraordinary symbolic rituals revalidate a hierarchical social order in which the individual finds *existential meaning*. He *belongs* to a powerful nation and to the organic society. Likewise, rituals and symbols in the church cultivate and uphold 'the zeal of membership' (461;464). In ordinary life, on the other hand, the normative validity of the traditional order is objectively expected and the subjects find dignity and honour in doing their part (1104). Traditional domination, then, consists both of ordinary and extraordinary elements. It consists of "tradition-determined relationships as well as of the belief in their sacredness" (337). It is this latter belief that is validated and cultivated in extraordinary symbolic rituals of proof.

3.4.3 Normative Validation and Self-Justification

The importance of these extraordinary processes of proof for legitimate domination is apparent. These processes validate claims to legitimate domination not only cognitively but also normatively. Extraordinary rituals of truth-finding explain the subjective 'belief' in legitimacy, "a belief by virtue of which persons exercising authority are lent prestige"(263). In addition we can see that this subjective validation of truth-claims is for Weber inherently related to 'transcending meanings of life'. In extraordinary proof by ritual the witness *experiences* the sanctity of the traditional order or community he belongs to, or he *experiences* the truth of a charismatically revealed divine mission to which he cannot but submit. In both the witness experiences that he is part of something that is bigger and more important than his own petty life – that his life has a *purpose*. Indeed, Weber claims that the "quest for the transcendental meaning of existence" (1178) "produces the strongest tensions in man's inner life as well as in his external relationship to the world" (451).[40] As such, there

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[39] He also argues that "fear of magical disadvantages reinforces the general psychological inhibitions against any sort of change in customary modes of action" (37, adjusted translation).

[40] For Weber, this inner-tension is especially problematic for intellectuals and explains the need for 'priestly wisdom' but also 'secular philosophy' (451). Intellectuals and the fortunate search for 'psychic comfort' – a form of self-legitimation to deal with their good fortune. But existential needs may also be non-intellectual: for

is a direct relation between the *existential need* for a meaningful being-in-the-world (*Existenz*) and the normative validation of claims to legitimacy in *extraordinary rituals of truth-experience*.

On a more fundamental level we can agree with Luhmann's argument that normative expectations allow a stabilised self-perception in relation to a contingent factual world and in face of disappointments, while, vice-versa, cognitive expectations enable one to adjust one's self-perception to the contingent world; it enables learning (Luhmann 1985:31ff). In Weber's analysis this relation also becomes visible. Under extraordinary circumstances, claims to legitimacy are normatively validated *because* they enable and stabilise 'self-justification' and fulfil the need for existential meaning. Normativity and meaningful perceptions of self are fundamentally linked.

Weber's analysis of types of legitimate domination based upon different claims to legitimacy, then, reveals a whole different social world than is present in his action theoretical analysis. Instead of meaningful *Handeln* (social action) he is more concerned with meaningful *Existenz* (being-in-the-world). In the former analysis focuses upon social validity (institutionalisation) and in the latter upon validity as truth. A reconstructed framework of this latter perspective, it seems to me, needs to distinguish analytically between cognitive and normative expectations of validity (truth), between ordinary expectations and extraordinary proof, and between claims to legitimacy and the existential need for self-justification. In most general terms we might say that if the right to rule is firmly established in social expectations of how the world ought to be, moreover, if the right to rule is inherently related to how subjects perceive themselves meaningfully in the world, then actors will agree value-rationally with an institutionalised order of domination which is normally expected to possess that right. The ruler might occasionally feel the need to proof these expectations in extraordinary rituals of proof. These rituals *cognitively* prove objectively valid expectations that he possesses the right to rule and, at the same time, secure *subjective normative* beliefs by the sheer *experience* of existential meaning – securing validity (social) and validity (truth).[41]

3.5 The Problem of Legal-Rational Domination

This general reconstructed model of legitimacy concerns charismatic and traditional domination. We have, until now, left out legal-rational legitimate domination. Legal truth-claims are neither based upon the charismatically revealed truth nor upon the sanctity of tradition, but upon its '*rational character*' (215). Legitimacy is claimed to be valid in legal domination because domination is valid (true) according to rational, positive and enacted rules. Unlike charismatic and traditional

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the masses the "need for salvation is an expression of some distress" which holds for all 'ideas of justice' as mass religion (491-2).

[41] In his social action theory *truth* is an *external* guarantee, while in this context Weber tries to explain the *inner sanctioning* of truth.

domination, however, legality does not seem to provide a transcendental meaning of life. Legal processes of truth-finding such as procedures of legal accountability and judicial hearings, do not seem to provide us with the *experience* of existential truth. Many have therefore commented that where it concerns legality, Weber fails to explicate how subjective normative validity is secured.

Weber states that the validity of the claim to legitimacy rests upon "the belief in the legality of enacted rules (O*rdnungen*) and the right of those elevated to authority under such rules to issue commands" (215). But this does not help us very much as we are interested in what this 'belief in legality' actually entails. Weber points out that in a legal order of domination, validity (truth) is ideally claimed upon the 'formally correct' character of the enactments that "have been made in the usual manner" (37 adjusted translation). The idea that the 'correctness' of rules can explain the normative validity of legal domination – in other words that legality (legal validity) can explain legitimacy (normative validity) – is a claim that is difficult to grasp. As Beetham cries out: "That individuals derive their legitimacy from a system of law cannot be sufficient *on its own*"; "the so-called legal form of 'Herrschaft' is left suspended without any set of beliefs about the rightful source of authority to underpin it" (Beetham 1991b:39). Also Habermas claims that Weber did not recognise that law needs a 'principle of justification' and that he therefore "shaded out in favour of sheer positivism" (Habermas quoted in Ewing 1987:503; see also Habermas 1996:169). Even Luhmann, who tries to explain how a system of law can be 'self-legitimating' – i.e. how a system of law does not need a principle of justification that lies beyond itself – agrees that the legitimacy of legality is "sociological the weakest" analysis of Weber despite the centrality in his work (Luhmann 1983:28-9).

The legitimacy of legality and whether a system of law is in need of an *external* justification has been a huge battle ground in the sociology and theory of law, which I will not try to reproduce.[42] Instead, I will try to reconstruct Weber's argument. What must be emphasised from the start, however, is that Weber indeed is *in dubio* how to explain the normative validity of legality but that he was convinced that legal domination was a new and inherently modern phenomenon.

Let us first address the confusion, which, in my opinion, concerns two mistakes. First, according to Weber, 'positive enactments' are believed to be legitimate because "it is imposed (*kraft Oktroyierung*) by an authority which is held to be legitimate and therefore meets with compliance" (36, 50-1).[43] It looks as if Weber argues that the belief in the validity of legality depends upon the

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[42] The most famous debate concerned those between Hart and Fuller in the Anglo-Saxon community, and Luhmann and Habermas in the German context (Hart 1958; Fuller 1958; Luhmann 1983; Habermas 1996; Dyzenhaus 1996). For an overview of the first debate see Ketchen 2003, for the latter debate see Přibáň 1997.

[43] Weber also argues that legitimacy can derive "from a voluntary agreement of the interested parties" (*Paktierung*) (36). Voluntary agreement and promise in some way or another produces as inner-duty to uphold one's end of the deal (28,41). Here Weber seems to point to voluntary associations and legal contract. But it

validity of another authority situated beyond or above the legal rule. Indeed, Weber states that "there are very important types of rational domination which, with respect to the ultimate source of authority, belong to other categories" (219). Weber admits, for example, that "at the top of a bureaucratic organisation, there is necessarily an element which is at least not purely bureaucratic" (222, 1123). Although the ruler at the top must relate to the "sphere of legal 'competence'" – i.e. he cannot arbitrarily intervene in the rational cosmos of bureaucratic rule – it seems that at the top domination is claimed upon other sources than legality (220). Weber seems to agree with Habermas that a legal order is in need of some external justification. Although this might often be true *empirically*, this cannot, however, be the case for Weber's *ideal-type* form of legitimate domination. He either has to explain how legality can be legitimate on its own account or his entire approach of ideal-typical legitimate domination has to collapse.

Weber, it seems to me, confuses *rules* with *legality*, which is not one and the same thing. Rules concern generalised expectations. As discussed in chapter 1, expectations might be generalised in the 'material' dimension from person, to social role, to rule or office and to ideal-values (Luhmann 1985:73).[44] A rule can be a legal rule, but also a traditional or charismatically revealed rule. The point is that legality does not claim legitimacy upon *rules* but upon the *rationality* of rules. This, then, points to the second confusion that is present in Weber's work. When Weber claims, as we have seen, that a rule (or office) is valid if it is created *correctly* according to the usual procedures, we might confuse validity in terms of *truth* with validity in terms of *social expectations*.

Without a doubt, social objective validity and the procedures of law are intimately related. For example, in modern democracy we might expect that the law represents the will of the people. But this does not mean, for sure, that what is the will of the people is also the law. A law is only a valid law if it is made according to the *correct* legal procedures. Similarly, we normally expect the decision of judge to be just, but this does not mean that if we think that the decision is unjust, we can ignore it at will. The decision of the judge, within certain boundaries, is *socially valid* regardless of its substance. In other words, Weber's definition of legality in terms of the correctness of procedure can be understood in terms of objective validity, i.e. institutionalised expectations of what is and ought to be considered as law. Correctness in this case points to what Hart calls a 'rule of

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seems to have limited value for the legal state and even for 'formally free' contracts of employment (730) – although, Weber admits, the 'contract theory' of natural law has had its historical usefulness (868).

[44] It is interesting to note that for Weber charismatic domination seems tied to the person, traditional domination to social roles – a 'double sphere' of the personal and social (227) – and legal domination to rules and office. Indeed, it is an important element for Weber's 'rationalisation thesis' that domination is historically increasingly disappropriated from person and tied to office. However, when it comes to the validity of claims to legitimacy this simple classification does not hold as Weber's own analysis shows over and over again. The type of generalised expectations and the type of domination mix in complex ways. A final observation at this point is that Weber, like Luhmann, does not think that the generalised expectation of ideal-values has been historically relevant.

recognition' –institutionalised expectations of how to recognise law as law that enables us to separate law making from other forms of human action and speech (Ketchen 2003:7).

However important such objective validity is from the perspective of action theory, what should concern us here is not the social validity of law and legal decisions but rather the validity of its *truth-claim* – the validity of its claim to legitimacy. For Weber, the truth-claim of legality concerns expectations of rationality. This is best grasped by continuing our last example. If the judge makes a decision of which we consider the content to be just, we not only expect his decision to be *socially* valid but also consider it to be *normatively* valid – it is the right decision. But suppose we later find out that the judge made his decision by tossing a coin or that he made his decision while he was heavily drinking or that he was bribed, our feelings of the *validity of the decision* are shaken – justice, we expect, is not about chance, luck or power. Even when we feel that the substance of the decision is right, the decision-procedure matters, i.e. the procedure is expected to be *rational*. This rational validity of law must be analytically separated from its social validity.

In other words, legal domination claims it has the right to rule because it is rational. This claim of rationality distinguishes it from traditional and charismatic domination, not rules and legal procedures per se. [45] The important thing is not so much the fact that legal domination is rule-based as that it concerns *rational* domination. What should concern us, then, is what this rationality entails.

3.5.1 Legal Positivism: The Materialisation of Formal Law

In Weber's rather extensive sociology of law he tries to show how the inherent validity of *formal* law collapsed into a *materialised* positive law devoid of this kind of inherent validity. At first sight, this seems even more confusing as we are analysing the inherent validity of law, which, as it turns out, already collapsed. Nevertheless, a short analysis of Weber's sociology of law is needed to understand the meaning of rationality in legal domination.

For Weber the origin of the modern legal order was an *intellectual need* to create for the first time in history a 'purely rational law' "free from all historical 'prejudice'" (866). Moreover this intellectual attempt took the form of natural law which tries to deduce a valid social order based upon *formal rationality* instead upon 'religious revelation' or 'authoritarian sacredness'. "Natural law has thus been the specific form of legitimacy of a revolutionary created order" (867). Nevertheless, Weber considered this the revolution itself – the French revolution – a charismatic revolution: the "charismatic glorification of 'Reason', which found a characteristic expression in its apotheosis by Robespierre, is the last form that charisma has adopted in its fateful historical course" (1209). The newly revealed order, we might observe, does not concern the *personal* charisma of the prophet but

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[45] Weber, it seems to me, focusses too much on legality in terms of socially valid rules and procedures, while the real emphasis should be upon this expectation of rationality and how this expectation is proven.

rather an impersonal charismatic revelation based upon deductive reason itself.[46] Deductive reason, then, was historically relevant after all. However, according to Weber, the attempt to install after the revolution an order of domination upon such type of validity claim almost immediately failed (874, 37). It is this failure that Weber tries to analyse. It is an account of how legal experts and intellectuals tried to found legal domination upon formal and deductive reasoning and how this formal structure collapsed under the pressure of material and ethical concerns. But before we can really appreciate it, we must understand what Weber means with formal rationality in contrast to substantive or material rationality.

Weber understands formal rationality as a form of abstraction or *generalisation*. Economic action, for example, can be formalised in terms of money. The value or 'meaning' of money transcends any *particular* economic action or want. Money as a form of formalisation is especially rational in the sense that it allows us to calculate all kinds of particular actions under the same general premise. What holds for economic action in terms of money, also holds for law in terms of formalised abstract rules. Either based upon induction or deduction, formalised laws express an abstract and *internally logical* system to which empirical reality is subsumed. It consists of the creation of a consistent, gapless, integrated system of legal rules and continuous elaboration of "specification and delimitation of the potentially relevant characteristics of the facts" (655). "[W]hat the lawyer cannot 'think' or 'construe' cannot be admitted as having legal reality" (854). What formalism points at, then, is how the particular can be understood in terms of the general (887). However, this does not make such formal rules valid per se.

What makes formal law valid is the inherent connection between *formality* and *morality*. As we have already seen in chapter 2, the classic philosophers explicitly understand moral justice in terms of general or universal interests. Indeed, especially after Kant's categorical imperative, morality is understood precisely in terms of its *semantic form* rather than its substance (888). Moral are those values or interests that hold for all, that are general and universal. Formal law, then, points to the intellectual attempt to create a *legal language* which describes and understands the world in terms of this semantic form of universality and therefore claims to be morally valid. Such formal

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[46] Weber states that all "'ideas' have essentially the same psychological roots ... The decisive difference... is not inherent in the *creator* of ideas or of 'works', or in his inner experience; rather the difference is rooted in the manner in which the ruled and led experience and internalise these ideas. ..." (1116). Reason, then, possessed charisma. Although science is anti-magical, its extraordinary achievements (or promises) take the place of the miracle of the prophet. Science is 'a way to God' (1958b:142; 1978:49). It denounces the traditional order and reveals universal laws and promises this worldly salvation – social justice. Reason is not sanctified by tradition – to the contrary – but by its revelation of absolute truth. It is about "a charisma of self-evident rights that no longer needs a charismatic personification" (Roth 1975:153). Other charismatic elements, according to Weber, are Rousseau's insistence upon the *volonté générale* and the social contract ideology in general, both "influenced by the element of revelation implied in all law, according to which only *one* law could be right" (706).

legal language consists of principles such as equality before the law or that the law must apply to all including the rulers. By describing the contingent world in this formal legal language, by subsuming the particular under the general, substance under form, the world is understood in morally valid terms. This is what the intellectual attempt to create a valid legal order was all about: legal norms "owe their legitimacy not to their origin from a legitimate lawgiver, but to their immanent and teleological qualities" (867).[47]

In contrast to formal law Weber distinguishes material or substantive law ('Khadi-justice'), which allows for *particular* cases to intervene in general laws or rulings. Substantive law and judgements are "influenced by concrete factors of the particular case as evaluated upon an ethical, emotional, or political basis rather than by general norms" as well as "utilitarian and other expediential rules" (656-7). Material law can also be codified and can be considered stable and calculable, i.e. rational. It is important to note, in this context, that common law can be both formal or material law. Even if Weber emphasises the *deductive* tradition of German formal law, he does not deny that formal law might have an *inductive* nature.[48] The main difference between formal and substantive law is that in the latter there are substantive values – on grounds of expediency or ethical ideals – that are 'absolutely binding' *beyond* the rule, while formal law is 'self-contained' and separated from ethics (810-1). It points to a difference between the general and specific, form and substance or object and means.

The dialectical relation between formal and substantive justice is for Weber one of the main driving forces of the historical development of law, explaining the rise and fall of the former (see also Treiber 1985:815). Where it concerns the demise of formal law, first, "there simply does not exist a completely formal natural law" which would be 'devoid of content' (868). This means that intellectual scepticism is already present in the foundations of formal law – foundations that cannot be proven upon deductive reason. As such, when *reason turns upon reason* scepticism must rise.

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[47] Weber traces the origin of modern law in the *intellectual* development of thought contrary to more Marxist approaches that emphasise the importance of bourgeois economic interests. Habermas argues that Weber does not appreciate enough that formal law has a 'legitimizing function' of bourgeois interests (Habermas 1986:224; see also Ewing 1987:490). Weber, however, does not deny the relation between formal law and bourgeois interests, to the contrary (811, 813, 846). Weber was not trying to ignore that fact but was trying to debunk the 'simple' Marxist approach that economic interests explain everything. Just as the Protestant ethic developed through intellectual and religious needs but still made a capitalist ethic possible, so should we consider the inherent intellectual need for rational law (312). This need was not a function of capitalism but did make it possible – although capitalism functions quite as well in 'irrational' material law (814). The relation between intellectual and economic needs in formal law is only *indirect* through the shared interest in calculability against arbitrariness, an interest that was shared as much by nobility as by the bourgeois (see e.g. Doyle 1999, 2002). For Weber, the French Revolution was not imaginable without "the spirit of the jurists" (1958a:94).

[48] Much has been said about the so-called 'England-problem', i.e. the historical fact that legal formalisation was more present in 'Germany' and France than in England, while it was in the latter that capitalism boomed. However, this is not a problem for Weber's legal theory as there is no direct link between economic interests and formal law (see preceding footnote; Treiber 1985:841ff.).

Formal law, according to Weber, is a "self-defeating scientific rationalisation" (889). Second, the formalism of natural law "easily slipped into utilitarian thinking" (870). This 'slippage', Weber claims, can be seen in the "the change of the meaning of the concept 'reasonableness'". Instead of originating in "the eternal order of nature and logic" the concept from the beginning "contained by implication the meaning of 'rational' in the sense of 'practically appropriate'" (870). This orientation towards practical rationality, according to Weber, was especially true for English thinkers – the utilitarians. Third, the fact that utilitarian and practical concerns invaded the legal system has a direct 'class implication'. The materialisation of law due to bourgeois interests, Weber claims, would only be strengthened by socialist counter-theories and actions. It only increases the economisation of law (871) in search for ethical and 'substantive justice' (886). Finally, the disintegration of formal law is in no small part due to the fact that formalised laws are '*lebensfremd*' – mere "consequences of the intrinsic intellectual needs" (855). "[F]ormal justice, due to its necessarily abstract character, infringes upon the ideals of substantive justice" and vice versa (813).

As soon as formal law opens up to substantive interests and ideals of justice it must collapse – in fact, according to Weber, historically it did almost at the moment of origin (874, 37). This means that due to its materialisation and "modern intellectual scepticism in general" formal law has "lost all capacity to provide the fundamental basis of a legal system" (874). The materialisation of formal law means that law is no longer validated by its semantic form but by what it *does*. In other words, the materialisation of law concerns the transformation of law as an inherently valid *object* to law as a valid *means*. It concerns an 'increasing particularism' (880) where legal meaning no longer derives from the deductive logic of rules but from the 'intended meaning' of concrete situations (881), the evaluation of attitudes (884) and from social function and expedience. For material law, only the economic and utilitarian 'meaning' of the law counts (885). As Weber concludes, "*legal positivism* has ... advanced irresistibly. The disappearance of the old natural law conceptions has destroyed all possibility of providing the law with a metaphysical dignity by virtue of its immanent qualities. ... it has been unmasked all too visibly, indeed, as the product or the technical means of a compromise between conflicting interests" (874-5, my emphasis). Due to the collapse of the metaphysical dignity of formal law, modern law is "now viewed solely from an instrumentalist standpoint" (875). We can safely conclude that the rationality of modern positive law as in bureaucracy concerns *instrumental rationality*.

We would expect, then, that if the *rationality* of legality is *instrumental*, successful claims to legal domination must relate to the goals and ends it pursues. However, this is not the case. Not only because these goals have to do with non-sacred and profane *utility*, with interest competition and pragmatic compromises or with material profit and organisational stability – with profane, pragmatic

and material goals that do not provide the dignity of normative validity; not only because Weber discards the possibility of a value consensus that might externally validate instrumental law, as politics is inherently strategic and conflictive; but foremost because external goals just cannot explain the normative validity of legality without destroying legal domination as an *ideal-type*.

3.5.2 Instrumental Rational Validity

The puzzle that Weber's analysis provides, is how to understand that legal domination can validate its claim to legitimacy upon *instrumental rationality*. A first important insight is that a legal order, in contrast to traditional and charismatic orders, is a social order that can rationally adjust to historical, social, economic and political circumstances. A legal order is a *cognitive* order that is able to adapt to and learn from the factual contingencies of the world. A legal order does not establish a normative worldview but a cognitive 'disenchanted' worldview. A legal order is, in Luhmann's terms, a 'reflexive' order (1989:141). This means, secondly, that in normal life we expect that the rules of law or of the bureaucracy we work for are instrumental rational, that they have utility. This expectation is independent of the specific end or goal of the rule in question. Indeed, often we do not even know what the precise goal is but we nevertheless expect the rule to be rational. Useless, arbitrary or irrational rules are anathema in legal domination. Thirdly, this also means that our expectation of rationality is partly cognitive – I expect the rule to be rational – and partly *normative* – the rule ought to be rational. Imagine, for example, that one has a job to fill in reports that by the end of the day are thrown away without anybody looking at it. Most people would have difficulty with such a 'useless' job. Although they might keep it because it pays good money, the job in itself does not make sense. It is even probable that one starts to reason why it *could* make sense; indeed, it *has* to make sense! It is this normative expectation of rational validity that is the key to understand legal domination.

Many writers have tried to show that Weber mistakenly claimed that bureaucracy with its hierarchical organisations of rules and offices is the most rational organisation. But this critique misses the point. Anybody that has ever worked in a bureaucracy knows that it is not that efficient and never works as it is *supposed* to.[49] The point is not that bureaucracy is efficient but that we *expect* it to be and, moreover, that we think it *ought to be* (Hilbert 1987:71). If bureaucracy fails it, is often fixed not with less but with more rules.[50]

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[49] Weber was well aware of the 'red tape' of bureaucracy (223).

[50] Weber notes: "When those subject to bureaucratic control seek to escape the influence of the existing bureaucratic apparatus, this is normally possible only by creating an organisation of their own which is equally subject to bureaucratisation" (224).

However, if we want to understand the source of these normative expectations, we fail to find it in extraordinary rituals of proof. Legal domination is therefore inherently different from traditional and charismatic domination. But a ruler who claims the right to rule based upon rational rules for sure has to proof this claim occasionally. Weber, it must be said, does not really discuss processes of legal truth-finding, but we might propose that in his view such processes concern the *symbolic* procedures of accountability.

Although procedures of accountability are complicated affairs in their own account, we might recognise that political actions or decisions must occasionally be accounted before a *forum*. For example, the prime minister has to account for his actions in parliament or the manager in court or in some collegial body.[51] However, not all procedures of accountability necessarily concern a form of legal accountability where actions or decisions are judged according to positive law. Which norms are appropriate depends on the *type of forum* in which accountability is demanded (Bovens & Schillemans 2009:26-7; see also Bovens 2005). Instead of the norm of legality, a forum might base its judgments on ethical norms, democratic norms or norms of efficiency or effectiveness (see Elzinga 1989:70). As such, it is not about legal accountability per se, but about *legal procedures* of accountability which, we might say, are 'symbols of controllability' (Bovens 1990:129). Indeed, whatever the norm, accountability concerns a symbolic 'incantation of control' (*bezweringsformule*) that proves *expectations of rationality* for the entire legal or bureaucratic order (Van Gunsteren 1989:106).[52] It is a process of truth-finding that proves that legal domination can be expected to be rational and not *arbitrary*. This is why it is disturbing when a judge makes his decision with irrational means, quite independent from whether his decision was right.

Symbolic procedures of accountability prove claims of legal rationality which the witness has the duty to recognise. The problem is that cognitive expectations might be proven – i.e. rules are not arbitrary but rational – but that accountability procedures do not prove normative validity, i.e. because rules are instrumental rational one feels a duty to obey. Unlike the procedures of proof of charismatic and traditional domination, legal proof does not *move the soul* as when one feels the sanctity of unalterable tradition or as when a whole new meaningful worldview is 'suddenly awoken through drastic means' (322). Legal-rational proof remains a cognitive rational affair. The legal-rational order of domination is *disenchanted*. It does not serve our extraordinary or existential needs.

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[51] It is interesting to note that Weber does not consider democratic elections as a form of accountability, but rather a ritual that re-establishes the charismatic component of democratic dogma (1146).

[52] It is possible that legal-rational proof becomes purely symbolic and presentational as for example the badge and uniform of the police shows. In social psychology this phenomenon received quite some attention, especially due to the Milgram-experiments (Milgram 1963; Blass 1999, 2009; Blass & Schmitt 2001; Miller 2009; Burger 2009). Other experiments showed how 'symbols of authority' – especially uniforms – are cultured symbols that activate obedience (Bickman 1974; Bell 1982; Bushman 1984) or how obedience in hierarchical organisations becomes sheer unthinking routine (Hofling et al. 1966).

Although the legal system no longer claims legitimacy upon the inherent validity of law itself as law is increasingly materialised through social, political and economic conflicts, we are still dependent upon it as there is nothing to replace it. Weber argues that we cannot fall back upon traditional or religious worldviews, which "the postulates of formal legal equality and economic mobility" helped destroy (1209).[53] We are dependent in our modern culture upon bureaucracy and legal rule (975, 223). The only thing left is the 'logic' of legalism itself, even if that logic does not have any inherent validity (885). Modern man, for Weber, is stuck in an 'iron cage' (2001:123).[54] In a Hegelian mood Weber argues that just as "an inanimate machine is mind objectified", providing it "with the power to force men into its service and to dominate their everyday working life" this also holds for that other machine, 'the bureaucratic organisation' (1402). Both machines are "busy fabricating the shell of bondage which men will perhaps be forced to inhabit someday" (1402).[55] In this cage modern men "crave not only religious experiences, but experience as such" as "precisely the ultimate and most sublime values have retreated from public life" (1958b:143, 155). "As intellectualism suppresses a belief in magic, the world's processes become disenchanted, lose their magical significance, and henceforth simply 'are' and 'happen' but no longer signify anything" (506).

Here we finally come to the core problem of the legitimacy of legality. Where in traditional and charismatic domination the extraordinary processes of truth-finding and truth-experience are able to explain subjective normative validity (truth), processes of legal accountability seem only to yield cognitive factual knowledge. The question, obviously, is why legal domination is legitimate if its normative validity cannot be explained. According to Luhmann, the 'unsupported readiness' to accept the legitimacy of law, an "acceptation, almost without motivation, similar as in cases of [factual] truths, is the sociological problem" (Luhmann 1983:28). Yet it is exactly this 'unquestioned' and 'unmotivated acceptance' of legal legitimacy that is "a character of the modern political system" (ibid.: 32, 29). The acceptance of legitimacy as a 'self-evident' *fact* depends, according to Luhmann, upon a specific form of 'consensus' (*Grundkonsens*) or 'social climate' (*sozialen Klima*) (Luhmann

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[53] This analysis is echoed by Habermas. However, where Weber thought that legal formalism collapsed under pressure of materialisation and intellectual scepticism, Habermas thinks it collapsed because the legitimacy of law ultimately shifted from public reason to the justice of the free market, which it could not autonomously bear as it is crisis ridden and often unjust. Notwithstanding these differences, both Weber and Habermas point out that with the destruction of tradition and religion as a source of legitimacy, modern legal authority could not fall back on it (Habermas 1975:34-40).

[54] The famous concept '*Stahlhartes Gehäuse*' was translated by Parsons with 'iron cage'. Baehr (2001) eloquently traces how this metaphor was used by the Protestant Bunyan, and that if Weber wanted to refer to this metaphor explicitly he could have used Nietzsche's '*eiserner Käfig*'. The crucial differences between an 'iron cage' and a 'casing as hard as steal' are: 1. steel is man-made and therefore, in contrast to iron, a symbol of modernity; 2. a cage can be opened to free those inside, while a casing cannot (Baehr 2001). The metaphor therefore holds the transformation of humanity due to modernity, not the imprisonment of it. Nevertheless, due to its widespread currency, I will also translate it with 'iron cage' in this dissertation.

[55] Weber adds: "This might happen *if* a technically superior administration *were to be the ultimate and sole value* in the ordering of their affairs" (1402).

1983:29, 34). But this, it seems to me, is an unsatisfactory explanation.[56] Although Weber would probably agree with Luhmann that the validity of legality is about factual cognitive truths, the core question is why this would in any sense secure subjective normative validity.

To understand the normative validity of legal domination from a Weberian perspective, it seems to me that we should not look at the *extraordinary* procedures of truth-finding, but change our perspective to the *normal expectations* of validity. It is from this perspective that Weber tries to explain why the bureaucrat feels an inner-sanctioned duty to obey the hierarchical rules of office – why the bureaucrat feels a duty to obey out of duty's sake. The core concept which with to explain normative validity of legality is *self-discipline* in ordinary life.

3.6 Cognitive Validity and Self-Discipline

Extraordinary rituals of proof in traditional and charismatic orders move the soul of witnesses and inherently validate subjective normative expectations. These rituals explain the ideal-values of subjects and, as a consequence, their value-rationally orientations to the objective normative order. However, quite separate from such normative validation, rituals of truth-finding also proof cognitive expectations; these processes not only yield subjective normative but also cognitive factual knowledge. Such cognitive knowledge contains normal expectations that the ruler *is* divine, the ruler *holds* an elevated status or that the hierarchical legal order *is* rational. When we analyse these everyday cognitive expectations, Weber is able to explain feelings of duty upon a different social mechanism. Duty is not explained by normative validity (truth) and extraordinary rituals of proof, but rather by *cognitive* validity (truth) and mechanisms of *self-discipline*.

3.6.1 Mechanisms of Self-Discipline

Weber defines discipline as a form of power: "the probability that by virtue of habituation a command will receive prompt, automatic and schematic obedience" (53, adjusted translation). Weber's principle example of 'rational discipline' is the mass army in which 'blind obedience' and the 'unconditional suspension of all personal criticism' is secured by drill, training and education in a context of 'compulsory integration' (1149-50). According to Weber "military discipline is the ideal model for the modern capitalist factory" and, of course, also for "the bureaucratic state machine" (1156). It is safe to conclude that Weber understands discipline in a context of rational bureaucratic domination and considers it a power instrument to 'uniformly condition the masses' (1150). However, Weber's definition is unsatisfactory. First, Weber unnecessarily limits the notion of discipline to legal domination. As I will claim, it is also present in charismatic and traditional

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[56] To be fair, Luhmann does recognise that the 'inner consistency' of the legal system and 'symbolic-ceremonial' actions are important factors of legitimacy (*Legitimierungfaktoren*) (Luhmann 1983:36).

domination even in Weber's own work. Second, Weber's rather crude top-down 'Taylorist' approach contradicts his own much more subtle theories of ascetic *self-discipline*. In what follows I will combine these two insights and show how self-discipline can be a source of *subjective normativity*.

Self-discipline, in most general terms, concerns the inner-self sanctioning of an actor, i.e. the actor commands himself that he *ought to* do A even if he feels an urge to do B. From the start, then, it is clear that self-discipline is closely related to subjective normative validity. Secondly, we have to understand self-discipline within a social order that is *externally guaranteed*. This is what Weber means when he points to the context of 'compulsory integration' in the mass army. As discussed in chapter 1, a social order might be externally guaranteed through force, social factuality or factual truth.[57] Especially factual truth should interest us at this moment. Indeed, we can say that if an actor normally expects the order of domination to be cognitively valid – i.e. to be divine, traditional, or rational – this order is externally guaranteed by factual truth. What self-discipline points at, I try to argue, is that an actor might *meaningfully* relate to a *externally guaranteed factual order* and this relation might be a *source of normativity*.

When we reconstruct Weber's work, we can distinguish three types of self-discipline depending on the type of cognitive validity (truth) that is normally expected. First, in a charismatic order of legitimate domination the actor normally expects the ruler to possess extraordinary and even divine qualities. In relation to this *omnipotent power* the individual actor might obey because he fears vengeance. Obedience out of fear, however, is not about some strategic rational calculation of cost and benefit; it is an irrational fear as vengeance is expected to be terrible and total. Fear explains why the actor disciplines himself to the will of the ruler. However slight the chances might be that the ruler will notice his transgressions, the consequences are unthinkable. We might say that the actor internalises *the terrifying gaze of the omnipotent*. The disciplinary effect of fear is not that articulate in Weber's work. However, Weber does recognise how the supreme power of the Prince has a charismatic quality, especially "the power to dispose over life and death" (904, see also 922).[58] We are also reminded of Foucault's work when he describes how the Prince proves his terrifying power by obliterating the body of the condemned upon the scaffold (Foucault 1995:32-69).[59]

However, the supra-human or divine power of the ruler might not only inspire fear but also hope – hope for salvation. In Weber's framework the need for this-worldly or other-worldly salvation is especially important for charismatic domination. Salvation is born out of "promises of

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[57] It must be noted that Weber does not explicitly recognise these three different forms. Of course he does recognise 'physical and psychological coercion' (34), but the other two forms are more implicit. However, Weber constantly emphasises the force of 'social dependency' (*Sachzwang*) and also the duty to recognise objective truth.

[58] In his sociology of religion a similar argument can be found when Weber discusses the 'amoral' god of the peasant in comparison to the 'ethical' rationalised god of the bourgeoisie (1179).

[59] Indeed Foucault is heavily indebted to Weber's work (Foucault in Rabinow 1984b:248; Foucault 1991:79).

redemption from oppression and suffering" and out of "liberation from the senseless treadmill and transitoriness of life as such", that is, out of meaninglessness (527-8). However, the *factual expectations* that the ruler has the power of salvation might explain obedience, but does not necessarily seem to explain an inner-sanctioned duty to obey. We might obey the rules of the casino, for example, because we *hope* to win a large sum of money but such obedience can solely be explained in strategic terms. What we should recognise, however, is that hope can also be about *faith,* which allows the individual actor to give meaning to his own life. Disciplining oneself in terms of sheer faith in the capabilities of the leader allows a form of *self-justification*. Weber argues, for example, that the authoritative relation between the church and the laity is based upon such faith – "an attitude of utter trust" (569, 1201). This faith must be understood as an unconditional surrender and confidence in the authority of the church to guarantee the salvation of souls - '*fides implicata*' (566). This 'unlimited trust' may result, according to Weber, in a "proud virtuosity of faith" (567, 522). In other words, because the actor proofs himself in terms of unconditional surrender and utter faith, he finds dignity and pride. Through self-discipline the actor finds existential meaning. Ultimately, the basis of self-justification through self-discipline, in Weber's work, rests upon the 'demonstration' that one can 'transcend' human nature, the temptations of the flesh and the world (539-40). Self-justification is based upon *self-denial*.

Second, we can trace this same mechanism of self-discipline in relation to the normal expectations of a traditional order. As we have seen, traditional domination is based upon status differences. If an actor expects this distribution of status to be factually true – either socially or in terms of traditional truth – we might argue that he obeys this order out of feelings of shame. Shame accounts for a form of self-discipline to avoid the public humiliation of transgression. We might say that the actor internalises *the gaze of the public*. The actor sanctions his own actions in light of what is socially expected of him. Weber is not overtly concerned with the disciplinary mechanisms of shame, but it is the basic mechanism he uses to explain convention. Convention, Weber argues, is not based upon 'coercion' or "any direct reaction other than the expression of approval or disapproval on the part of those persons who constitute the environment of the actor" (320). He further mentions how one of the disciplinary aspects of Protestant sects concerns the 'mutual control' of the public gaze in which "a man must hold his own under the watchful eye of his peers" (1206). Even bureaucratic discipline is partly explained by the sheer "possibility of public criticism" (968).

Weber is, however, much more outspoken when it comes to the positive side of shame: honour. Indeed, holding one's own under public scrutiny is a "basis for self-respect" (1206).[60] In Weber's framework 'the integrating component' of traditional domination is status honour (1105). Status is that "typical component of the life of men that is determined by a specific, positive or negative, social estimation of *honour*" (932). An actor might find dignity by sanctioning himself in light of a lifestyle and a positive 'ethos or code of honour' – whether this concerns his social *role* (function) or more an artistic 'cult of the personal' (1075, 1105, 1107). Importantly, 'men of honour' are able to prove themselves, precisely because they commit to this ethos even when it is strategically irrational.[61] The ideal concerns the man who rather faces death than to dishonour himself (and his family) by breaking a promise. Again, self-justification is based upon self-denial.

Thirdly, a subject of legal domination cognitively expects this social order to be *rational*. For sure, this does not mean that society consists of one single type of rational knowledge as Weber specifically tries to argue that society consists of different value spheres, all with their own rationales and objectives. But in general we can say that an actor might discipline himself in relation to such rationalities out of feelings of *guilt*. Guilt relates not to what is normal in terms of social expectations but in terms of factual truth. We must remember that the rationality of legality concerns expectations of rational *knowledge* (expertise). As Weber states, "bureaucratic administration means fundamentally domination through knowledge" (225).[62] The point is not so much that legal rules prescribe what normal conduct *ought to be*, as that it describes what normal conduct *is*. Rational rules describe, for example, the normal conduct of a dutiful bureaucrat, of an eager student, of a law-abiding citizen, or describe hygienic sexual relationships, wholesome diets and healthy exercises.[63] An actor sanctions himself to this factual knowledge out of feeling of guilt because he knows that his transgressions or urges are abnormal and irrational. We might say that the actor sees himself as an object and even a project of rational knowledge. The internalised *gaze* is that of himself, of his *conscience*. We are clearly reminded of Foucault, who argued that as our subject becomes an object of 'observation' and 'examination' of external institutions, it also turns into an object of knowledge for ourselves (Foucault 1995:188-9, 304). The actor examines his own actions and thoughts with a body of knowledge he expects is rationally true. The core of this type of

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[60] Weber argues that "this [public] basis for self-respect spread within increasing secularisation from the sects into all walks of American life" (1206).

[61] All men of honour 'abhor the acquisitive drive', Weber claims (1008). Status is a market distortion as "the market ... knows no personal distinctions: 'functional' interests dominate it. It knows nothing of honour." (936).

[62] Or again: "The primary source of the superiority of bureaucratic administration lies in the role of technical knowledge which ... has become completely indispensable" (223).

[63] As such, there are different rationalities – different knowledges – depending upon the specific value sphere or social system.

self-discipline is that normal conduct is no longer about social *appearance* – the symbolic presentation of self – but about *being* normal.

Weber traces this type of self-discipline based upon guilt especially in his sociology of religion. Without giving a full analysis of Weber's sociology of religion, I will point out some of the social mechanisms that Weber thought to be foundational for the rise of the notion of guilt. The historical development of guilt, according to Weber, must foremost be understood as an offshoot of the *intellectual* attempt to understand religion in non-magical terms. The intellectual – priests and lay-intellectuals – opposed the superficial 'external appearance' of the symbolic rituals in the church and faith as the "the death of intellectual pride" (465,567). He tried to recapture the original charismatic meaning of the prophetic revelation that necessarily had undergone a 'recession' when it was institutionalised in the church (465-6). The intellectual longs for 'individual salvation' (1166) and embarks on a "quest for the transcendental meaning of existence" (1178).[64] This intellectual quest is driven "by an inner compulsion to understand the world as a meaningful cosmos", to recapture the original charismatic meaning not contaminated by material needs of daily life (499).[65] The *paradox of the intellectual*, however, is that he tries to find a charismatically meaningful world and his relation towards it but that his rational method destroys the magic needed (505). In Weber's work this intellectual paradox is the force that explains religious and institutional change: how religion increasingly becomes a rationalised ethic in which God changes from an amoral to a rational being (1179);[66] how the meaning of piety changes from the importance of appearance in 'good works' to the importance of being good (533);[67] how the rituals of church change from something outside normal life (the magic of sacrament) to rituals that probe into normal life (confession) (531); how the meaning of sin changes from something that can be forgiven through magical rituals to the unforgiving knowledge of predestination (409, 461, 575);[68] and how the church changes from an

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[64] Maybe the most important question that drives the intellectual religious quest is the 'problem of theodicy': how to reconcile good and evil, the material and the immaterial world (519; see also Treiber 1985:815). A question that only became possible with the rise of sin and evil.

[65] Where for the masses the "need for salvation is an expression of some distress" – which holds for all 'ideas of justice' as mass religion – the fortunate, Weber claims, search for a 'psychic comfort', a self-legitimation of their good fortune (491-2). When the fortunate turns to religion, it is for a justification of "the *right* to this happiness, the consciousness that he has earned his good fortune" (491, my emphasis).

[66] Weber understands the 'rationalisation of religiosity' especially as a 'bourgeois' effort. They transfigure the a-moral gods of the peasant into "ethical powers which will rewards good and punish evil" (1179). These ethical needs rise not just from intellectual needs for self-justification, but also, according to Weber, from the material need for calculation and obligation – the growing "importance of the reliability of the given word" (430).

[67] 'Good works', Weber argues, concern the 'concrete intent' of a particular action, without the view that there is some general "uniform quality of personality" behind it in contrast to "individual actions as symptoms and expressions of an underlying ethical total personality" (533, 1199).

[68] The doctrine of predestination, according to Weber, is the intellectual answer to the problem of theodicy in that the world is rational and just from the viewpoint of God, but it may be irrational from the viewpoint of human beings (572). As such, we see that the intellectual quest turns out to be *irrational*, in the sense of

universal institution into a 'community of saints' from which one can be rejected (1204-7). The intellectual search for true religion, then, is what explains why symbolic appearances and magic sufficed less and less and why, in contrast, true knowledge of the relation between oneself and a rational God is what really matters. What really matters is who we truly *are* in relation to goodness and sin.

Guilt is born with the factual truth of a rational God. One is not just guilty when one behaves unethical but also when one has impure thoughts or inclinations. Sin is no longer about what you do, but who you are. This type of guilt, Weber argues, is also present in 'modern secular man' (576). In the direct analogy to rationalised religion, we might say that the knowledge of a rational God is replaced with the knowledge of a rational social order. "Not that he has *done* a particular deed, but that by the virtue of his unalterable qualities ... he 'is' such that he *could* commit the deed – this is the secret anguish borne by modern man" (576).

The intellectual attempt to recapture the original charismatic meaning of religion also explains how individuals find existential meaning in terms of self-discipline. By submitting oneself to rigorous rational rules an individual can prove himself and find dignity in terms of his *vocation*. Weber traces such self-discipline and self-justification from the '*world-fleeing*' bodily suffering of the ascetic (1143, 538) to the rationalised total-order of the monastery (1172-3)[69]; from the monastery to the '*inner-worldly*' rationalised ethic of the Protestant (543)[70]; and from the Protestant ethic to the *secular* rationalised vocation of modern man, especially the bureaucrat (1200, 2001:124-5).[71] In

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undercutting its own understanding as God becomes incomprehensible. Furthermore, Weber claims "[i]t is a 'merciless' attitude because there is no significant 'forgiveness'" (576).

[69] The ascetic monk, notably the Jesuit, who subjects himself to a rational asceticism in the form of "an exclusively disciplinary method" is for Weber the "first *professional*" (1172). He "lived in a methodical fashion, he scheduled his time, practiced conscious self-control, rejected all spontaneous enjoyments and all personal obligations that did not serve the purposes of his vocation." (1172-3). Nevertheless, monastic asceticism does not necessarily have to become methodically rational, that is acquiring charisma through 'methodical practices'. Weber sees also their artistic and scientific non-economic achievements as having a different charismatic foundation by being extraordinary (1169).

[70] Where the world-rejecting ascetic tries to transcend the temptations of the world and the body by withdrawing from it, in a literal sense, the inner-worldly ascetic sees the sinful world as a place in which he has to prove himself – the realm in which he has to prove his 'religious charisma' "by means of rational ethical conduct"(543). The Protestant ethic is rational in the sense of systematic conduct and of a "rejection of everything that is ethically irrational, aesthetic, or dependent upon his own emotional reactions" (544). It produces a religion devoid of magic and life as a 'vocation', i.e. a self-conscious duty found in a calling (1199). It is possible to read Foucault's work as a critique on Weber's preoccupation with Protestantism. Foucault argues that the counter-reformation of the Catholic Church yielded the same kind of self-disciplinary mechanisms (1978; see also Taylor 1984).

[71] Weber famously traced the historical origins of the modern 'capitalist spirit' – but not capitalism itself – to the rise of this Protestant ethic (Weber 2001 [1920]). Much has been said about this thesis, even in Weber's own days (Radkau 2011:96; see also Giddens 2001:xviiiff.). The Protestant ethic, for sure, is not the cause of capitalism nor is capitalism the source of this religious ethic. Both religious and economic spheres have their autonomous dynamics. Weber's main point is that the "rigorous ethics of bourgeois rationalism" (1194) – an ethic favourable to capitalism – has a religious origin that disintegrated in modern capitalism but not the ethic

other words, individuals can find meaning and dignity by disciplining themselves in terms of rules prescribed by a rational order or rational God. Weber signals the rise of disciplined modern man with an inherent "sense of duty and conscientiousness" (1149-50) and a sense of calling (958). Self-justification is once again based upon self-denial. Actors find dignity in a calling and the *knowledge* that they *are* virtuous, that they *are* a dutiful bureaucrat or a law-abiding citizen and that they possess a healthy sexual relationship and lifestyle. It is not what others might think of them, it is what they know to be true about themselves. Important, however, is that one expects the knowledge to which one disciplines oneself is rational. One does not find dignity by submitting to useless or irrational rules – one would rather feel stupid or embarrassed.[72] And as such, we can see the important difference with honour, for which the demand of usefulness is rather unimportant.[73]

The dignity of vocation explains why the bureaucrat does his *duty out of duty sake*. It is a form of self-justification in a rationalised cognitive world. Self-justification by ascetic self-discipline spreads from the monastery into general society with the rise of a cognitive rational order and the intellectual need for meaning. It is in these terms that we can understand Weber's disenchantment thesis as the *bureaucratisation of society*. Foucault argues along similar lines how disciplinary techniques leave the confines of specific institutions and "spread throughout the whole social body, the formation of what might be called in general the disciplinary society" (Foucault 1995:209). For sure, Weber is aware that finding meaning in individual vocation does not come easy as the intellectual paradox remains present in secular life and easily slips into scepticism or despair.[74] The 'need for meaning and experience' can therefore also result in different means to cope with a disenchanted reality. However, these methods are 'world-fleeing' or necessitate intellectual death.[75]

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of duty itself (2001:124, 259, see also Ewing 1987:502). Indeed, the bourgeois reformers did not conflict with the church because of the church's difficulty for coping with the needs of capitalism, rather the reformers thought that "the religious penetration of worldly life ... did *not go far enough*" (1194, 1197). For Weber, this means that Protestantism "produced a capitalistic ethics, although unintentionally" (587). "[T]he specific discipline of the sects bred the capitalist spirit and the rational 'professional' who was needed by capitalism." (1210)

[72] The ascetic "will always demand of the world an ethically rational order and discipline, corresponding to his own methodical self-discipline" (549).

[73] Weber opposes modern 'men of conscience' to traditional 'men of honour' in terms of a struggle that "affects the most intimate aspects of personal culture" (1002).

[74] Modern men "crave not only religious experiences, but experience as such", Weber argues, while their "method of emancipation from intellectualism may well bring about the very opposite of what those who take to it conceive as it goals" as "the spheres of the irrational, the only spheres that intellectualism has not yet touched, are now raised into consciousness and put under its lens" (1958b:143). Also in Foucault the intellectual paradox holds that our emancipation from dominant discourses often leads to its opposite (1978:5-7).

[75] Besides the meaning of duty for duty's sake Weber discerns: 1) *escaping from the world* in forms of mysticism, especially the "tendency toward flight into the irrationalities of apolitical emotionalism" (600). This escape tries to recapture magic in terms of *private experience* – the celebration of the 'intimate' – which can be religious, sexual or concern experiences of brotherhood and solidary love (1958a:128; 1958b:155). We are readily reminded here, of the contemporary debate concerning the importance of 'authenticity' in modern life

Only when existential meaning is found in a conscientious performance of one's duties can we explain the normativity of legal rationality.

In conclusion, for all *forms of discipline* it holds that because the actor *proves himself* in relation to what is cognitively expected to be true he is able to justify himself and finds personal dignity and meaning. A proof that concerns a form of *self-denial*. And because the actor perceives himself meaningfully in terms of an order that is expected to be factually true, the actor claims that this order *ought to be true*. Because the bureaucrat finds meaning in vocation he does not only expect the rules to be rational, they ought to be rational. Subjective validity, then, does not so much arise from extraordinary emotional rituals and truth-experience, as from the actor's own meaningful perception of Self in externally guaranteed relations. The normative expectations of the social order are based upon *self-justification*. Whereas charismatic revelation is a "revolutionary power from within" changing our worldview, the logic of legality and bureaucracy is for Weber a 'revolution from without' changing the 'inside', i.e. changing who we are (1117; 1002; 1116). Modern bureaucracy, Weber confirms, developed a "moral discipline and self-denial, in the highest sense", without which "the whole apparatus would fall to pieces" (1958a:88,95). What Weber failed to address explicitly, however, is that this external revolution in terms of self-discipline holds for all ideal-typical forms of legitimate domination.

The gaze of the omnipotent	The public gaze	Conscience
Fear	Shame	Guilt
Faith	Honour	Vocation

Table 3.3 – Different types of self-discipline

3.7 Conclusion: Weber's Sociology of Legitimate Domination

In conclusion, how should we understand political legitimacy in Weber's sociology? First, legitimacy from the perspective of social action (*Handeln*) concerns subjective value-rational commitment towards a socially objective valid order of legitimate domination. Such value-rational agreement explains the inner-sanctioned duty to obey socially institutionalised normative expectations. Second,

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(Guignon 2004;Lindholm 2008); 2) giving up one's intellectual needs altogether. This '*intellectual sacrifice*' is not so much about the *faith* of the masses, but rather about 'acceptance' and material happiness for its own sake (2001:124). Weber invokes Nietzsche's 'last man', which in Nietzsche's account 'invented happiness' (1958b:143; Baehr: 2001:160). The 'last men' have given up their inherent humanity characterised by the inner-tension between 'beast' and '*Übermensch*' (Tanner 2000:58). It seems that also for Weber the essence and beauty of humanity is exactly this inner-tension, man as *Mangelwesen* (1958b:148). Finding comfort in material satisfaction, then, is giving up the essence of being human; 3) Weber points out that the intellectual might not solve the problem of meaning in modernity. For this intellectual, and maybe for Weber himself, all that is left is *despair* and 'bitterness' (1958a:128).

we have seen that from the perspective of a meaningful 'being-in-the-world' (*Existenz*) a legitimate order might validate these normative expectations in extraordinary rituals of proof which explains subjective normative validity (truth) by the sheer experience of the eternal or the absolute. Finally, subjective ideal-values, I have argued, cannot only be explained by extraordinary experiences in rituals of truth-finding, but also by mechanisms of self-discipline and self-justification in relation to externally guaranteed cognitive factual truth. We might say that in the former the source of normativity is outside the actor (moving his inside), while in the latter the source of normativity is internal to the actor (disciplined to the factual outside).

Subjective ideal-values, then, can be explained differently from the perspective of *Existenz* but this different explanation does not matter for legitimacy in the perspective of *Handeln*. The disturbing conclusion must be that social practices of discipline explain, at least partly, political legitimacy even if we can analytically distinguish between objective external guarantees (force, social factuality and factual knowledge) and subjective self-justification (self-discipline and proof by self-denial), on the one hand, and between the negative form of self-discipline (fear, shame and guilt) and its positive form (faith, honour and vocation), on the other. This conclusion, it seems to me, is precisely Weber's worry. Legal domination is characterised by a "careful avoidance of the use of authoritarian forms" (730). Although coercion does not disappear, all 'normal sentimental content' is drained from authoritarian relations (731). Such sentiments – which at least hold the possibility of emancipation – seem to disappear in the rational system as such, which means for Weber, that "the resulting system of domination is practically indestructible" (987).[76] This is the essence of his 'iron cage' or modernity-thesis. "For the last stage in this cultural development, it might well be truly said: 'Specialists without spirit, sensualists without a heart; this nullity imagines that it has attained a level of civilisation never before achieved'" (2001:124).

However, before we accept Weber's pessimistic conclusions we should make two final observations. First, we have to distinguish carefully between, on the one hand, charismatic, traditional and legal *types of social orders* as part of a larger modernisation process – i.e. of a historical rationalisation and disenchantment process – and between charismatic, traditional and legal *sources of legitimacy* that explain the normative validity of a specific empirical order of legitimate domination, on the other (263). Weber readily admits that tradition still plays a role in modern society even if it is no longer a traditional order (337). In his fragmented comments on modern democracy we also readily recognise the role of charisma – e.g. the charismatic origin of democracy (867, 1209), charismatic revelations in elections or acclamations (706, 1124, 1146, 1451)

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[76] Weber warns: "A legal order which contains ever so few mandatory and prohibitory norms and ever so many 'freedoms' and 'empowerments' can nonetheless in its practical effects facilitate a quantitative and qualitative increase ... of authoritarian coercion." (731).

and the charismatic political leader who gains emotional 'devotion' by acclamation and "the charisma of the tongue" (268-9, 1126, 1314).[77] When we move beyond Weber's modernisation and disenchantment thesis, move beyond his ideal-type methodology, it seems to me that Weber provides a multi-dimensional *analytical framework* for understanding political legitimacy in political relations of domination.

The three sources of validity (truth) – revealed, traditional and rational truth – counterpose on some analytical dimensions but re-enforce each other on others. We can see, for example, how traditional and rational validity align where it concerns the *ordinary* expectations of everyday life, while charismatic validity, in opposition, implicates the *extraordinary*. Similarly, charisma and tradition both have a *magical* quality opposing the disenchanted *rationality* of legality, while legal and charismatic validity allow for *social change* as opposed to the *status-quo* of tradition. These counterpositions explain tensions and dynamics within an empirical order of legitimate domination based upon different and multiple sources of validity. Furthermore, Weber's framework also describes the relation between these sources of validity in terms of specific human *needs* or motives. The relation between revealed and rational truth, as we have seen, is where he locates *intellectual needs* to understand the meaning of life. The relation between legal rationality and tradition is, in contrast, grasped in terms of *material needs* – securing material stability and calculability (253).[78] Finally, Weber analyses the relation between traditional and revealed truth, as we have seen, in terms of institutional dogma or institutional grace. It might not be too farfetched to understand this relation in terms of a need for some form of normative security – the need for a 'permanent habitus' or *normative worldview* (536). The full force of Weber's analytical model of the sources of legitimacy is depictured in *figure 3.1*.

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[77] Others have pointed out how the Movement and the 'counter-culture' of the 60s and 70s can be analysed as an intellectual attempt to recapture the original charisma and meaning of democracy (e.g. Roth 1975). This counter-cultural revolution can be understood as the spread of the *problem of meaning* through society (see Anderson 1995 for an excellent description of this period). This problem seems no longer just a problem of intellectual elites but of citizens at large. Inglehart famously traces this post-materialist culture and personality to the rise in education, welfare, and media (1977; 1990; 1999a; 1999b). For sure, many citizens are still materialists in Inglehart's terms but the rise of post-materialism explains the modern emphasis upon 'the quality of life', upon "belonging, esteem, and self-realisation", and upon 'aesthetic', 'intellectual' and humane values. For Inglehart, this culture explains why deference to authority has declined – "a decline in the legitimacy of hierarchical institutions" (Inglehart 1977:3-5, 42). From a Weberian point of view, however, this is not necessarily the case.

[78] According to Weber charisma does not deal with 'want satisfaction', with needs of stability and calculability, but only with "extraordinary need, i.e. those which transcend the sphere of everyday economic routines" (1111). This 'anti-material' character of genuine charisma, means for Weber that charisma only exists in its birth – 'in *statu nascendi*' – destined to succumb to processes of 'routinization' (*Veralltäglichung*) (246, 1120).
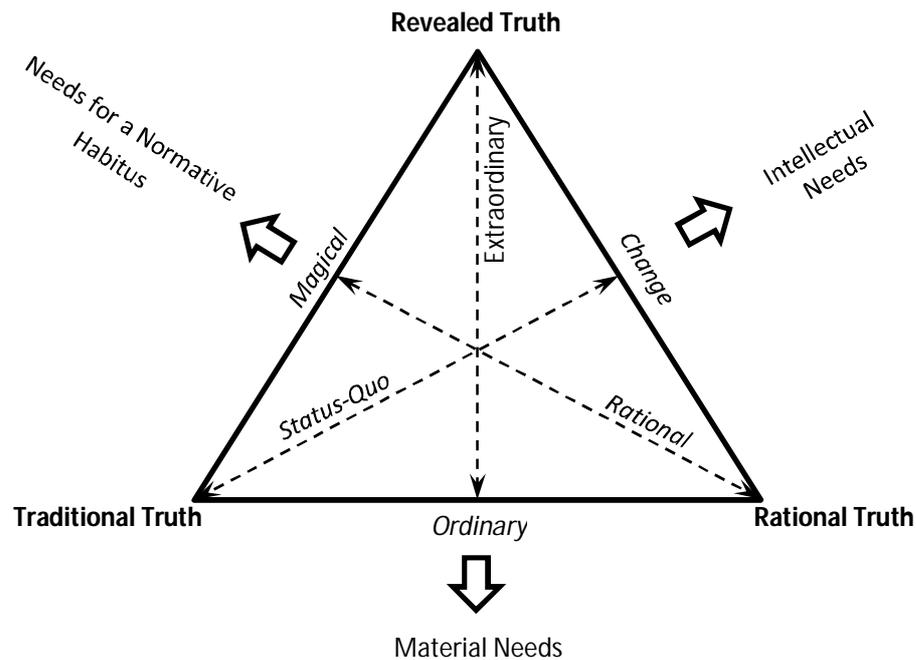
Revealed Truth

Needs for a Normative
Habitus

Intellectual
Needs

Extraordinary

Magical

Change

Status-Quo

Rational

Traditional Truth

Ordinary

Rational Truth

Material Needs

Fig. 3.1 – Weber's multidimensional analytical framework of *Existenz*

Weber, then, provides us with an analytical framework of understanding legitimate political domination that is more complex, dynamic and multifaceted than his pessimistic modernisation thesis wants us to believe. This does not mean that this thesis is incorrect, it means that if we want to understand legitimate domination in modern society legality is not necessarily the sole answer.

The second observation we should make concerns the fact that Weber solely understands politics in terms of domination – at least with regard to questions of legitimacy. There is no reason why we should accept this reductive perception of politics. When we analyse different *natures of legitimate politics*, we might find different *faces of political legitimacy* – faces that might yield more optimistic conclusions. Although Weber's sociology, in this reconstructed model, provides us with a very potent and compelling analytical framework for understanding political legitimacy, it is not the sole or the final answer. Weber's framework needs to be enlarged with difference faces of political legitimacy.

Finally, in figure 3.2 we can see the full reconstructed analytical framework of Weber's sociology. The figure is subdivided in four quadrants constructed by the two fundamental differentiations in Weber's work: subjective/objective validity and *Handeln/Existenz*. In the *lower-left* quadrant we analyse how actors subjectively orient to generalised expectations of legitimate domination, while in the *upper-left* quadrant we analyse the stability of a political order in terms of internal guarantees. In the *upper-right* quadrant we also try to explain stability but now by analysing how an objectively valid order is externally guaranteed and how it proofs its claims to legitimacy.

Here we are not so much interested in the social validity of legitimate domination, as in its validity (truth). Finally, in the *lower-right* quadrant we analyse how externally guaranteed cognitive truths or extraordinary rituals of proof explain subjective ideal-values as a form of self-justification. This, it seems to me, is what our attempt to reconstruct Weber's theory amounts to.
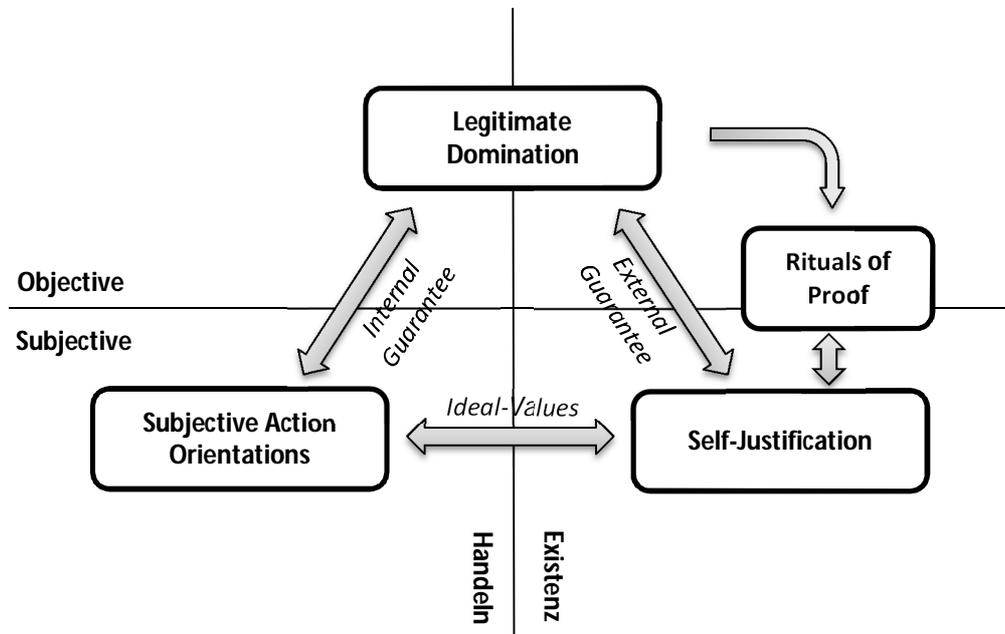

Fig 3.2 – A reconstructed model of Weber's sociology of legitimate domination