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**SOCIAL POSITION AND THE EXPERIENCE OF LAW: A
JURISPRUDENTIAL INQUIRY INTO THE LEGAL SUBJECT AND
SOCIAL EXPERIENCE**

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Abstract

The proposition that one's social position changes one's experience of law presents a fundamental jurisprudential question concerning the relationship between the abstract legal subject and the concrete person who lives under law. Legal systems ordinarily formulate rules in general terms and present legal rights and duties as applicable to persons irrespective of their social position. Yet the existence of formally general rules does not necessarily mean that all persons encounter legal authority, legal obligation, legal rights and legal institutions in the same manner. This article examines the proposition principally through jurisprudence rather than empirical sociology. It begins with the classical conception of the legal subject and considers whether the social position of an individual can have any relevance to the nature, validity or authority of law. The analysis engages with John Austin's command theory, Hans Kelsen's Pure Theory of Law, H.L.A. Hart's concept of law, Lon L. Fuller's account of the inner morality of law and Ronald Dworkin's interpretive theory. The article argues that social position cannot ordinarily determine the legal validity of a norm within a positivist conception of law. Kelsen's theory demonstrates that the validity of a norm is determined through the structure of the legal order rather than through the subjective experience of the individual subject, while Hart distinguishes the existence of legal rules from the varying attitudes of persons towards them. Nevertheless, these theories do not establish that experience is jurisprudentially irrelevant. Fuller's emphasis upon publicity, clarity and congruence reveals that the capacity of law to

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guide conduct depends upon conditions through which subjects encounter legal norms. Dworkin's theory of rights and interpretation further demonstrates that the abstract legal subject cannot always be separated from questions of equality, principle and institutional justification. The article therefore distinguishes between the proposition that social position changes what law is and the proposition that social position changes how law is experienced. The former proposition cannot be accepted merely because persons occupy different social locations; the latter can be defended without reducing law to sociology. Economic position, institutional status and legal knowledge may alter the manner in which individuals understand legal rules, access legal institutions, bear legal burdens and invoke legal remedies, while the underlying rule remains legally identical. The article ultimately argues for a relational jurisprudence in which the autonomy of legal validity is preserved but the legal subject is understood as situated within institutional and social conditions. Law is neither simply a reflection of social position nor an abstract system completely detached from it. The experience of law occurs at the point where general norms encounter particular subjects.

Keywords: *Jurisprudence; Social Position; Legal Subject; Legal Positivism; Pure Theory of Law; Legal Obligation; Legal Validity; Legal Interpretation; Equality; Rule of Law.*

INTRODUCTION

The proposition that one's social position changes one's experience of law appears deceptively simple. It is easy to observe that individuals occupying different positions in society may encounter courts, police authorities, administrative institutions, contracts, property rules, criminal law and constitutional rights under different circumstances. A wealthy person may approach law principally through lawyers, professional advisers and institutional mechanisms, while an economically vulnerable person may encounter law through compulsory procedures, public authorities or criminal justice institutions. A judge may experience a legal rule as an institutional standard governing adjudication, whereas a litigant may encounter the same rule as a source of entitlement, restriction or uncertainty. A lawyer may encounter a statute through technical interpretation, while an ordinary citizen may encounter the same statute through its practical consequences. These differences are ordinarily described as social or sociological differences.

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Jurisprudence, however, cannot simply dismiss them as external to the study of law, because the philosophical concept of law necessarily contains a conception of the person to whom law is addressed. Law regulates conduct, imposes duties, confers powers, creates rights and establishes institutional relationships. The person who is subject to these norms is not merely an abstract logical point. The legal system addresses human beings and legal entities occupying particular relationships within the legal order. The central jurisprudential problem is therefore to determine whether the socially situated character of the legal subject affects the nature of law itself or only the manner in which law is encountered. This distinction is essential. If social position determined the validity of law, the same legal rule could become legally valid for one person and invalid for another merely because their social circumstances differed. Such a conclusion would undermine the generality and institutional character of law. A legal system requires criteria through which legal rules can be identified independently of the subjective preferences of individual persons. The proposition that social position changes legal experience must therefore be formulated more carefully. It does not necessarily mean that social position changes the content or validity of a legal rule. It may instead mean that the same valid rule acquires different practical significance when encountered by persons situated differently within economic, institutional and social structures. The distinction between validity and experience becomes especially important in jurisprudential debates concerning legal positivism. Hans Kelsen's Pure Theory of Law seeks to explain law as a normative order without reducing legal validity to morality, sociology or psychology.¹ H.L.A. Hart similarly distinguishes the existence of legal rules from their moral merits while explaining legal systems through primary and secondary rules and the social practice of officials.² These theories establish important limits upon the proposition that social position determines law. Yet they do not necessarily answer every question about the relationship between legal norms and their subjects. The question "what makes a norm legally valid?" is different from the question "what does it mean for a particular person to live under that norm?" Jurisprudence can therefore preserve the autonomy of legal validity while recognising that law is experienced through concrete persons. This article argues that social position does not ordinarily determine legal validity, but it can determine the circumstances in which law becomes intelligible, burdensome, protective, accessible or coercive. The argument does not reduce law to social power. Nor does it suggest that every difference in

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experience demonstrates discrimination or legal inequality. Instead, it identifies a conceptual distinction between the abstract legal subject and the situated legal subject. The abstract legal subject is necessary to the generality of law; the situated legal subject is necessary to understanding the operation and practical significance of law. The jurisprudential task is not to choose between these two conceptions but to explain their relationship.

THE ABSTRACT LEGAL SUBJECT AND THE IDEA OF GENERAL LAW

The modern legal system operates through abstraction. Legal rules ordinarily do not address each individual by name. They speak of persons, citizens, owners, employers, employees, accused persons, creditors, debtors, contracting parties, officials and other legally defined categories. The abstraction permits a rule to possess generality. A criminal prohibition can apply to countless persons because it is not formulated as an individual command directed towards one identified human being. Similarly, a constitutional right can be recognised as belonging to every person falling within the relevant legal category. The abstract legal subject is therefore one of the fundamental intellectual techniques of law. Without abstraction, general legal rules would become impossible or extraordinarily difficult to formulate. Yet abstraction produces a conceptual problem when it is mistaken for a complete representation of the human subject. The individual who appears in legal reasoning as an “owner” or “accused” or “citizen” also possesses economic circumstances, institutional relationships, social knowledge and practical capacities that may influence the manner in which the legal rule operates. The jurisprudential importance of this observation lies in distinguishing the legal category from the empirical person. A legal system may intentionally ignore many characteristics of the individual for purposes of applying a particular rule. The fact that those characteristics are not legally relevant to one question does not mean that they are irrelevant to every question concerning law. A person’s economic condition may not determine whether a statute is valid, but it may affect the ability to obtain legal representation. A person’s institutional position may not determine the content of a legal duty, but it may affect whether that duty is encountered through administrative supervision or through ordinary private conduct. A person’s professional education may not change the rule, but it may affect the ability to understand its implications. Consequently, legal abstraction and social situatedness are not necessarily contradictory. The former concerns the structure of general legal

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rules; the latter concerns the relationship between those rules and their subjects. The distinction can be seen clearly in the jurisprudence of legal aid in India. Article 39A of the Constitution directs the State to secure equal justice and provide free legal aid so that opportunities for securing justice are not denied by reason of economic or other disabilities. In *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Supreme Court treated free legal services as an essential component of reasonable, fair and just procedure under Article 21.³ The significance of the decision is not merely that poor accused persons receive assistance. The deeper jurisprudential proposition is that the formal existence of procedural rights is not always sufficient to make those rights meaningful. A person who is legally entitled to participate in a proceeding but is unable to secure representation may possess the same formal right as another person while experiencing that right under radically different conditions. In *Suk Das v. Union Territory of Arunachal Pradesh*, the Court held that an accused unable to afford legal representation must be informed of the right to free legal assistance; leaving the matter entirely to an indigent and potentially uninformed accused would reduce legal aid to a paper promise.⁴ This does not establish that poor persons live under a different legal system. It demonstrates that the legal order recognises the difference between formal entitlement and the conditions necessary for its effective exercise. The abstract legal subject remains important because the right is formulated as a legal right rather than as a discretionary social benefit. But the actual subject's position becomes relevant to the conditions under which that right can be realised. The jurisprudential question therefore becomes whether this difference belongs to the concept of law itself or to the institutional operation of law. The answer depends upon the theory of law adopted.

JOHN AUSTIN AND THE LEGAL SUBJECT AS THE ADDRESSEE OF COMMAND

John Austin's command theory provides an early and influential account of law in terms of sovereign commands backed by sanctions. Austin's conception separates positive law from morality and other normative systems and identifies the command of the sovereign as the central characteristic of positive law.⁵ The legal subject in such a system is primarily the recipient of sovereign direction. The importance of Austin's theory for the present inquiry lies in the relationship between command, obedience and sanction. A legal rule is not merely information

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about social conduct; it expresses an authoritative demand whose violation may attract a sanction. If this framework is applied to the question of social position, one can observe that the same command may formally apply to persons occupying different social positions while being experienced differently because their circumstances of exposure to sanction differ. Yet Austin's theory itself does not make social position a criterion of legal validity. The sovereign command remains law regardless of whether it is received by a wealthy person, a poor person, an official or an ordinary citizen. The social position of the recipient therefore cannot, on Austin's account, determine the legal status of the command. At most, it may influence the empirical relationship between the command and obedience. The theory thus provides an important distinction between the nature of law and the experience of law. The command is objectively identified by reference to the sovereign; its reception is a separate question. The weakness of the command theory for present purposes is that it has difficulty explaining the variety of rules found in modern legal systems. Not all laws are naturally described as commands backed by sanctions. Rules confer powers, establish institutions, create procedures and determine how legal relationships may be voluntarily altered. Hart's later critique of Austin emphasised precisely this diversity.⁶ A rule enabling individuals to make wills, contracts or corporations does not function merely as a command backed by punishment. Its function is to confer legal power under specified conditions. This distinction matters for social position because legal experience is not limited to obedience and sanction. A person may experience law as an opportunity to exercise a legal power, as a protection against state authority, as a procedure through which a claim may be vindicated or as a mechanism through which a relationship may be structured. Austin's theory is therefore useful as a starting point but insufficient as a complete account of the legal subject. It identifies the coercive dimension of law but does not adequately capture the complex ways in which individuals participate in legal institutions. Nevertheless, Austin establishes a foundational proposition that survives subsequent jurisprudential development: the existence of law cannot be determined by asking whether each individual subject experiences it in the same manner. A command is a command because of its place within the sovereign structure of law, not because every subject has an identical psychological response to it. Social position may affect the consequences and intensity of the command without changing its legal character.

HANS KELSEN AND THE PURE THEORY OF LAW

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Hans Kelsen's Pure Theory of Law provides the strongest methodological basis for separating legal validity from social experience. Kelsen deliberately sought to establish a theory of law purified from psychological, sociological, political and moral explanations.⁷ Law, in his account, is a normative order, and the task of legal science is to identify and describe the norms belonging to that order. The validity of a legal norm is therefore not determined by the social position of the person to whom the norm applies. The legal order establishes a hierarchical structure in which lower norms derive their validity from higher norms, ultimately resting upon the presupposition of the basic norm.⁸ Kelsen's theoretical architecture makes it possible to answer an important part of the present question with considerable precision. Social position does not, by itself, alter legal validity. A constitutional provision remains constitutionally valid regardless of whether it is invoked by a person with substantial social power or by a person with little social power. A statute does not become more or less legally valid according to the wealth, education, caste, gender or institutional status of the person affected by it. The validity of the norm belongs to the structure of the legal order rather than to the subjective experience of the individual. This is precisely what the Pure Theory protects. If legal validity were dependent upon the subjective experience of every legal subject, there would be no stable criterion for identifying the law of a legal system. The same provision could become one law for one individual and another law for another individual merely because their perceptions differed. Kelsen's insistence upon normative validity therefore prevents the concept of law from collapsing into psychology or sociology. However, the methodological exclusion of social experience from the determination of legal validity should not be transformed into the proposition that social experience is meaningless. Kelsen's theory tells us what is required to determine whether a norm belongs to the legal order. It does not necessarily exhaust every philosophical question that can be asked about law. One may accept that a norm is legally valid and simultaneously investigate how that norm is understood, applied or experienced by different subjects. The latter investigation may not be part of the "pure" science of law as Kelsen conceives it, but it remains a legitimate question concerning law in a broader philosophical sense. This distinction becomes especially important when considering legal rights. The legal system may formally recognise a right, but the practical ability to exercise that right can depend upon conditions external to the validity of the norm. Kelsen's theory does not deny this empirical possibility; it simply refuses to make it a criterion

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of legal validity. This provides an important safeguard against relativism. The conclusion that social position changes experience should not be converted into the proposition that each social group possesses its own law. Such a conclusion would abandon the generality of legal norms. The more defensible conclusion is that one legal order may be encountered differently by differently situated subjects. The distinction between validity and experience therefore permits both propositions to be maintained: law possesses objective institutional validity, and individuals can nevertheless experience that law differently. Kelsen's theory is consequently not defeated by the idea of situated legal experience. Instead, it establishes the conceptual boundary within which that idea must operate. Social position may influence the relationship between a subject and a norm, but it does not become, merely by virtue of that influence, a criterion of normative validity.

H.L.A. HART AND THE INTERNAL POINT OF VIEW

H.L.A. Hart's *The Concept of Law* provides a more elaborate account of the relationship between legal rules and social practices. Hart rejects the idea that law can adequately be described as a collection of coercive commands and develops the concept of law as a union of primary and secondary rules.⁹ Primary rules impose duties, while secondary rules provide mechanisms for recognising, changing and adjudicating rules. The rule of recognition supplies criteria through which officials identify valid legal rules.¹⁰ Hart's theory therefore incorporates a social element into legal validity without reducing law to the experiences of individual subjects. The rule of recognition exists as a social practice of officials who accept it from an internal point of view. This internal point of view is crucial because it distinguishes the normative use of rules from the mere observation that people regularly behave in accordance with them. A person who obeys a rule merely because of fear may observe the rule without accepting it as a standard. Officials, however, use the rule of recognition as a standard for identifying and evaluating legal rules. Hart's theory thus demonstrates that law is not entirely detached from social practice. At the same time, it does not follow that every individual experience determines the content or existence of law. The rule of recognition is primarily constituted through official practice, not through the subjective responses of every citizen. This distinction is highly relevant to the question of social position. Different subjects can stand in different relationships to the same

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legal rule. The judge experiences the rule as an institutional standard; the lawyer experiences it through professional interpretation; the litigant experiences it as a basis of claim or defence; and an ordinary citizen may encounter it primarily through its practical consequences. These differences do not imply different laws. They indicate different positions within the legal system. Hart's analysis of legal powers further strengthens this conclusion. Modern legal systems contain rules that enable private persons to alter their legal relationships by exercising powers under specified conditions.¹¹ Contractual, testamentary and corporate rules illustrate this structure. The experience of such rules may vary according to the subject's knowledge and institutional capacity, but the rules remain part of the same legal system. Hart therefore provides a jurisprudential framework for distinguishing legal structure from social position while recognising that law is a practice through which persons occupy different normative roles. This distinction is important because the question whether social position changes one's experience of law should not be answered by asserting that every subjective perception has equal authority to determine legal meaning. Hart's theory rejects such a conclusion. Legal meaning is embedded within institutional practices governed by rules. Yet those institutional practices necessarily involve human actors who occupy positions within the legal order. The experience of law is therefore neither entirely subjective nor entirely abstract. It is institutional and relational. Social position may influence how a person participates in the legal order without determining the ultimate criteria of legal validity. This also reveals why legal knowledge matters. The ordinary citizen may not need to understand the technical structure of the rule of recognition, but the person's ability to navigate legal institutions can depend upon access to professional knowledge. The lawyer and judge occupy positions that provide specialised access to legal language. Social position can therefore affect the distance between the subject and the institutional mechanisms through which law is interpreted and applied. Hart's theory does not make that distance a criterion of validity, but it permits jurisprudence to recognise that the legal system contains different relationships between persons and rules.

LON L. FULLER AND THE CONDITIONS UNDER WHICH LAW CAN GUIDE CONDUCT

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Lon L. Fuller's *The Morality of Law* shifts attention towards the conditions necessary for law to function as a system of governance through rules. Fuller identifies principles including generality, promulgation, prospectivity, clarity, consistency, practicability, relative constancy and congruence between official action and declared rule.¹² His argument is that these principles arise from the very enterprise of subjecting human conduct to the governance of rules. Law must be capable of guiding conduct; otherwise the relationship between legal authority and legal subject is fundamentally undermined. Fuller's jurisprudence becomes relevant to social position because the ability to orient one's conduct towards law depends upon the conditions in which the legal subject encounters legal norms. A rule may be formally public but practically inaccessible. A rule may be technically clear to a specialist but difficult for an ordinary person to understand. A legal procedure may be formally available but practically unusable by someone without resources or representation. Fuller does not develop a detailed theory of social inequality, and his argument should not be transformed into one. Nevertheless, his conception of legality provides jurisprudential resources for recognising that law must maintain a meaningful relationship with its subjects. The legal system cannot successfully govern through rules if the relationship between declared rules and official conduct becomes arbitrary or unintelligible. The relevance of social position therefore arises at the level of the subject's capacity to receive and act upon legal communication. This does not mean that every person must possess equal legal expertise. Modern law necessarily contains specialised fields that require professional assistance. The jurisprudential point is instead that the legal system's claim to govern through rules presupposes some degree of accessibility and intelligibility. Where a person cannot realistically discover what the law requires, or where official institutions apply the law unpredictably, the subject's experience of law becomes disconnected from the ideal of governance through rules. Fuller's theory also illuminates the significance of congruence between official action and declared law. If official enforcement differs systematically from the legal rule, the individual encounters not merely the abstract norm but the institutional practice through which the norm is enforced. This distinction becomes particularly important for the present thesis. Social position may not alter the written rule, but it may affect the circumstances in which an individual encounters institutional discretion, assistance or procedural barriers. Jurisprudence must therefore distinguish the rule itself from the institutional conditions through which the rule is applied. Fuller's theory provides

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an argument for taking those conditions seriously without abandoning the idea of general law. The legal order is successful when rules can function as reasons for conduct and when official action corresponds sufficiently with those rules. The experience of the legal subject is consequently relevant to the success of legality, although it does not necessarily determine legal validity. Fuller's contribution to the present inquiry is thus complementary to Kelsen's. Kelsen explains why legal validity should not be reduced to subjective experience; Fuller explains why the effectiveness and integrity of legality require a relationship between legal rules and the subjects whom those rules govern.

RONALD DWORKIN AND THE INTERPRETIVE LEGAL SUBJECT

Ronald Dworkin's jurisprudence introduces a further dimension by treating law as an interpretive practice in which rules and principles are understood through the best interpretation of legal practice. Dworkin rejects the idea that legal reasoning can always be reduced to identifying socially recognised rules and mechanically applying them. His account of principles, rights and interpretation places moral justification within legal reasoning.¹³ The jurisprudential importance of Dworkin for the present question lies in the status of the individual as a bearer of rights. A person is not merely an object upon whom state policy operates; the individual possesses rights that constrain political decision-making.¹⁴ The idea of equal concern and respect is therefore central to the relationship between individual and legal order. Social position does not automatically determine what rights a person possesses, but it may become relevant when interpreting what equal treatment requires. Identical treatment does not always resolve the jurisprudential question of equality because the justification for a legal distinction depends upon principles that explain why the distinction is relevant. Dworkin's interpretive theory consequently challenges the assumption that the legal subject can always be completely abstracted from the circumstances surrounding the exercise of rights. The law must be interpreted as a coherent practice whose principles justify institutional decisions. Where the legal system recognises equality, liberty or dignity as fundamental principles, the interpretation of those principles may require attention to the conditions in which individuals exercise them. This does not mean that social experience becomes a substitute for legal reasoning. Dworkin does not suggest that each person may determine the meaning of law according to personal perception.

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Legal interpretation remains constrained by institutional history, precedent, legal materials and the requirement of fit and justification.¹⁵ The point is that legal reasoning is not exhausted by identifying a rule. Principles determine how rules should be understood within the broader legal practice. The social position of the legal subject may therefore become relevant where the principle being interpreted concerns equality, liberty or rights. The significance of Dworkin's theory is that it permits a more sophisticated understanding of the relationship between formal legal equality and situated experience. If a legal system claims to treat individuals with equal concern, the interpretation of that principle cannot always be reduced to identical treatment. The question may instead be whether the institutional arrangement can be justified as treating persons as equal members of the political community. Dworkin therefore provides an important bridge between abstract legal rights and the circumstances in which those rights operate. Yet his theory also preserves a crucial limit. Social position does not itself create law. The fact that an individual experiences a legal rule as unjust does not, by itself, determine its legal meaning. The experience becomes legally relevant through principles of interpretation that belong to the legal practice. This distinction prevents jurisprudence from becoming subjective. Law remains an institutional practice requiring justification, rather than an aggregation of individual feelings about legal outcomes.

SOCIAL POSITION AND THE DISTINCTION BETWEEN LEGAL VALIDITY AND LEGAL EXPERIENCE

The central thesis can now be formulated with greater precision. Social position does not ordinarily determine the legal validity of a norm, but it can alter the circumstances in which that norm is experienced. These two propositions should not be confused. Legal validity asks whether a norm belongs to the legal system according to the system's criteria of recognition or validity. Legal experience concerns the relationship between that norm and the person governed by it. The former is structural; the latter is relational. The distinction is particularly important because the same legal rule can produce different practical consequences without becoming a different rule. Consider a legal right to access a court. From the perspective of formal legal status, two persons may possess exactly the same right. But the ability to exercise the right may depend upon legal knowledge, financial resources, representation and time. These factors may be external to the

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criterion of legal validity while remaining crucial to the practical meaning of the right. The Supreme Court's legal-aid jurisprudence illustrates this distinction. In *Hussainara Khatoon*, the Court connected free legal service with the constitutional requirement of fair, reasonable and just procedure and recognised economic disability as a barrier to securing justice.¹⁶ In *Khatri (II) v. State of Bihar*, the Court reaffirmed the State's constitutional obligation to provide free legal services to indigent accused persons and explained that the obligation arises at an early stage of criminal proceedings.¹⁷ In *Suk Das*, the Court made clear that legal aid could not be treated as a mere paper entitlement requiring an impoverished and unrepresented accused to know enough to demand it.¹⁸ These decisions are significant for jurisprudence because they demonstrate that the legal system itself may recognise the distinction between formal legal equality and effective participation in legal processes. The law remains general; its implementation takes account of the subject's position. The jurisprudential implication is not that poverty changes the validity of law. It is that the legal order may itself contain principles designed to prevent social position from making formal rights meaningless. The same logic can be extended conceptually to other social positions without assuming empirical conclusions about particular groups. A person's position within an institution can influence whether legal rules operate as powers or burdens. Professional status can affect legal knowledge. Economic resources can affect the ability to litigate. These observations are not claims that law necessarily discriminates against any particular group. They are propositions about the relationship between legal rights and the conditions of their exercise. Jurisprudence must therefore distinguish between *formal legal capacity* and *effective legal agency*. Formal capacity is a legal status conferred by law. Effective agency concerns the practical ability of the subject to act through that legal status. The two may coincide, but they need not always do so. This distinction also explains why the experience of law may be protective for one person and coercive for another without producing two separate legal systems. Law performs multiple functions. It restrains state power, but it also authorises state power. It protects property, but it also regulates property. It creates contractual freedom, but it also enforces contractual obligations. It protects personal liberty, but it establishes criminal procedures and sanctions. The experience of a legal institution therefore depends partly upon the subject's position within the relationship that the law regulates. A legal rule cannot be understood simply by asking whether it is beneficial or harmful in the abstract. It must be

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understood as a norm assigning rights, duties, powers and liabilities within an institutional structure. Social position affects the standpoint from which the structure is encountered.

CAN JURISPRUDENCE REMAIN PURE WHILE RECOGNISING SOCIAL POSITION?

The phrase “pure jurisprudence” creates an important methodological challenge. If jurisprudence is concerned with the concept, structure and validity of law, should social position be excluded because it belongs to sociology? Kelsen’s answer would strongly support methodological separation. The Pure Theory seeks to analyse law without reducing it to empirical social facts or moral evaluation.¹⁹ The fact that a particular person experiences a law differently is not a criterion of its validity. If the question is strictly “what makes a norm legally valid?”, social position is ordinarily irrelevant. However, jurisprudence is broader than a single question of validity. Even within analytical jurisprudence, questions concerning obligation, authority, interpretation, adjudication and the relationship between rules and persons require attention to how legal norms function as reasons for action. Hart’s distinction between the internal and external points of view demonstrates that the concept of law involves normative attitudes towards rules.²⁰ Fuller asks whether legal rules are capable of guiding conduct.²¹ Dworkin asks how legal principles and rights should be interpreted within an institutional practice.²² None of these questions can be answered solely through empirical sociology, but neither can they be answered by treating legal subjects as entirely disembodied logical entities. The recognition of social position therefore does not require abandoning jurisprudence for sociology. It requires a distinction between *social facts that constitute legal validity* and *social circumstances that affect the operation or experience of legally valid norms*. In Hart’s positivism, certain social practices of officials are constitutive of the legal system because they sustain the rule of recognition. That does not mean every social circumstance affecting a citizen’s experience becomes part of the rule of recognition. Similarly, in Kelsen, the efficacy of the legal order has significance for the existence of a functioning normative order, but individual psychological responses do not determine the validity of each norm.²³ The concept of social position should therefore be treated carefully. It should not mean that the subjective feelings of individuals become sources of law. Nor should it mean that every unequal outcome demonstrates invalidity. Instead, social position

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refers to the situated relationship between a subject and the institutional structures through which legal norms operate. This relationship can be examined jurisprudentially because it raises questions concerning the nature of legal authority, the conditions of legal guidance, the meaning of legal rights and the institutional realisation of justice. A pure jurisprudence can therefore recognise the distinction between law's validity and law's experience without collapsing the two. The key is methodological discipline. When asking whether social position changes legal validity, the answer may be negative. When asking whether social position changes the manner in which legal obligations, rights and institutions are encountered, the answer may be affirmative. When asking whether those differences require legal correction, the inquiry becomes normative and may involve constitutional morality, justice or political philosophy. Keeping these questions distinct prevents conceptual confusion. The jurisprudential significance of social position lies precisely in demonstrating that the concept of law contains multiple dimensions that should not be reduced to one another.

TOWARDS A RELATIONAL JURISPRUDENCE OF THE LEGAL SUBJECT

The preceding analysis suggests that the traditional opposition between abstract law and social reality is insufficient. Law cannot be understood entirely as a reflection of social position, but neither can the legal subject be understood as completely detached from the circumstances in which law is encountered. What is required is a relational conception of the legal subject. The relational legal subject is not merely an individual possessing characteristics outside the law. It is a person occupying a legal relationship within an institutional order. The person may be a claimant, defendant, accused, official, employer, employee, owner, tenant, citizen, debtor or creditor. The social position of that person does not automatically determine the legal content of the relationship, but it may affect the manner in which the relationship is experienced. Such a conception preserves the central insights of positivism while recognising the practical and normative dimensions identified by Fuller and Dworkin. Kelsen remains correct that legal validity cannot simply depend upon subjective experience. Hart remains correct that law is an institutional practice constituted through social rules and official acceptance. Fuller remains correct that law must possess characteristics enabling it to guide conduct through rules. Dworkin remains important in demonstrating that rights and principles cannot always be reduced to

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mechanically identifiable rules. Together these theories support a layered jurisprudential understanding of law. At the first level is the question of validity: whether a norm belongs to the legal order. At the second is the question of content: what the norm requires, permits or authorises. At the third is interpretation: how the norm is understood within institutional practice. At the fourth is application: how officials give effect to the norm in particular circumstances. At the fifth is experience: how the subject encounters the norm within a concrete social and institutional position. These levels are interconnected but not identical. Social position is most directly relevant at the fifth level, but it can become relevant to interpretation and application where the law itself incorporates concepts such as equality, reasonableness, fairness, dignity or proportionality. The recognition of situated experience therefore does not destroy the universality of law. On the contrary, it can clarify what universality means. Universal law does not necessarily mean that every person experiences law identically. It means that the criteria of legal validity and the legal status of persons are determined through publicly recognised legal standards rather than through arbitrary personal power. A universal legal order may therefore take account of relevant differences between persons without abandoning generality. Indian constitutional jurisprudence illustrates this possibility through the recognition of legal aid. The formal right to fair procedure is universal, but the legal system recognises that economic disability may prevent some persons from exercising that right effectively. The response is not to declare that poor persons have a different constitution. It is to provide institutional mechanisms through which the universal right becomes meaningful.²⁴ The deeper jurisprudential lesson is that equality before law cannot be understood solely as sameness of text. If the law itself recognises that meaningful participation requires certain institutional conditions, then those conditions become part of the legal order's understanding of justice. Social position therefore becomes jurisprudentially significant not because it changes the identity of the law but because it can expose the distance between legal abstraction and legal reality. A legal system committed to the rule of law must remain capable of recognising that distance without allowing subjective experience to replace objective legal standards. The appropriate response is neither to abandon abstraction nor to worship it. It is to understand abstraction as a necessary legal technique whose operation occurs through situated human subjects.

CONCLUSION

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The question whether one's social position changes one's experience of law ultimately requires a distinction between the *identity of law* and the *relationship between law and its subject*. The jurisprudential analysis undertaken here demonstrates that social position does not ordinarily determine the legal validity of a norm. Austin's command theory, despite its limitations, separates the existence of the command from the personal circumstances of the person receiving it. Kelsen's Pure Theory makes the distinction even more explicit by locating legal validity within the normative structure of the legal order rather than in the subjective experience of individuals. Hart's theory demonstrates that law is an institutional system constituted through primary and secondary rules and sustained by social practices of recognition, while also showing that individuals can occupy different normative relationships to those rules. Fuller reveals that legality depends upon the capacity of law to guide conduct through public, intelligible and congruent rules. Dworkin demonstrates that law cannot always be understood as a closed collection of rules because rights and principles require interpretation within a broader normative practice. None of these theories supports the proposition that every individual experiences law in exactly the same way. At the same time, none permits the conclusion that each individual's experience determines what the law is. The most defensible jurisprudential position lies between these extremes. Social position does not necessarily change legal validity, but it can change legal experience. It can affect the practical accessibility of rights, the ability to understand legal obligations, the resources available for invoking legal remedies, the institutional role through which a person encounters legal authority and the consequences produced by legal rules. This conclusion does not reduce jurisprudence to sociology. It instead clarifies the multiple dimensions of law. The legal system is a normative institutional order whose validity depends upon recognised legal criteria. But that order is addressed to subjects who occupy concrete relationships within institutions and society. The abstract legal subject is indispensable to the generality of law; the situated legal subject is indispensable to understanding how that generality operates. The Supreme Court's constitutional jurisprudence concerning legal aid illustrates the point. In *Hussainara Khatoon*, the Court recognised free legal service as an essential element of reasonable, fair and just procedure.²⁵ In *Suk Das*, the Court rejected the notion that legal aid could be treated as a mere paper entitlement requiring an impoverished and unrepresented accused to know enough to demand it.²⁶ These cases do not abandon the universality of law.

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They demonstrate that a universal legal right may require institutional support if it is to function as a genuine right. The jurisprudential significance of social position therefore lies not in creating different laws for different people, but in exposing the distinction between formal legal status and practical legal agency. The same rule can govern everyone while being encountered from different positions. A person may experience law as protection, obligation, authority, burden, opportunity or coercion depending upon the legal relationship and circumstances in which the person encounters it. These differences do not destroy the objectivity of law. They demonstrate that law exists through relationships between norms, institutions and subjects. A jurisprudence that ignores the situated character of the legal subject risks mistaking formal abstraction for complete legal reality. A jurisprudence that makes social experience the sole measure of legal validity, however, risks dissolving law into sociology. The appropriate jurisprudential response is therefore relational: preserve the autonomy of legal validity while recognising that the practical meaning of law emerges through its encounter with situated subjects. One's social position does not necessarily change *what the law is*. It can, however, change the position from which one stands before the law, the resources with which one approaches it, the burdens under which one encounters it and the extent to which one's formally recognised legal rights become practically meaningful. The question therefore has an affirmative answer only when properly qualified. Social position does not make law subjectively relative, but it can make the experience of an objectively valid legal order socially situated. The task of jurisprudence is not to eliminate that distinction but to understand it.

ENDNOTES

1. Hans Kelsen, *Pure Theory of Law* (Max Knight trans., University of California Press, Berkeley, 2nd edn., 1967).
2. H.L.A. Hart, *The Concept of Law* (Clarendon Press, Oxford, 2nd edn., 1994).
3. *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 98.
4. *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.
5. John Austin, *The Province of Jurisprudence Determined* (John Murray, London, 1832).
6. H.L.A. Hart, *The Concept of Law* (Clarendon Press, Oxford, 2nd edn., 1994).

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7. Hans Kelsen, *Pure Theory of Law* (Max Knight trans., University of California Press, Berkeley, 2nd edn., 1967).
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11. H.L.A. Hart, *The Concept of Law* (Clarendon Press, Oxford, 2nd edn., 1994).
12. Lon L. Fuller, *The Morality of Law* (Yale University Press, New Haven, rev. edn., 1969).
13. Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, Cambridge, 1977).
14. Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, Cambridge, 1977).
15. Ronald Dworkin, *Law's Empire* (Harvard University Press, Cambridge, 1986).
16. *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 98.
17. *Khatri (II) v. State of Bihar*, (1981) 1 SCC 627.
18. *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.
19. Hans Kelsen, *Pure Theory of Law* (Max Knight trans., University of California Press, Berkeley, 2nd edn., 1967).
20. H.L.A. Hart, *The Concept of Law* (Clarendon Press, Oxford, 2nd edn., 1994).
21. Lon L. Fuller, *The Morality of Law* (Yale University Press, New Haven, rev. edn., 1969).
22. Ronald Dworkin, *Law's Empire* (Harvard University Press, Cambridge, 1986).
23. Hans Kelsen, *General Theory of Law and State* (Anders Wedberg trans., Harvard University Press, Cambridge, 1945).
24. The Constitution of India, 1950, art. 39A.
25. *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 98.
26. *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

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