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# The Institutional Authority of Law: Reconstructing Legal Positivism beyond Command and Coercion

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## ABSTRACT

*Scholars of jurisprudence have, since its earliest stages, attempted to define what law is. Yet many of the definitions that have shaped our conceptual understanding were formulated under political conditions that are largely absent today, including hierarchical authority, coercive governance, and a focus on subjects rather than citizens. Bentham, for instance, sought to distinguish law from morality at the stage of legal analysis, while Austin portrayed law as a sequence of commands backed by sanctions. Although these formulations represented important intellectual achievements, they prove inadequate when applied to modern legal systems characterized by institutional continuity, dispersed powers, rights-based structures, and administrative processes that extend beyond punishment.*

*The purpose of revisiting positivist foundations in this article is not to dismiss other schools of thought, but to recognize that positivism alone treats law as an analytical problem whose nature must be understood before it can be evaluated, interpreted, or described sociologically. This approach should not be dismissed as mere reductionism. When examined more closely, it reveals that coercion-centered definitions obscure the concept of legal authority and blur the distinction between mere compliance and institutional legitimacy.*

*The present article refines the positivist conception by proposing that law is an institutional order of authority created and maintained through specific political procedures. Although legal authority may be supported by coercion, it cannot be reduced to coercion. This definition situates the idea of law within the reality of modern institutions while preserving the positivist commitment to social fact and analytical rigor.*

## I. INTRODUCTION

Jurisprudence is the study of the interface between legal theory and law itself, an effort to describe, in words, not only the rules of law but the law itself. Thus, the old and everlasting question of, “What is law?” has from the very beginning served a central role in legal studies,

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operating both as its point of departure and as its constant reference.<sup>2</sup> Nevertheless, despite the emergence of political organization, institutional complexity, and democratic administration, the historical roots of legal theory remain grossly reliant on concepts conceived under very different historical conditions.<sup>3</sup> In its command-sanction variant, classical legal positivism still exerts a disproportionate impact on jurisprudential discourse and is frequently subject to limited criticism regarding its current applicability.<sup>4</sup>

The early positivist attempt to define law was motivated by a move to distinguish legal analysis from theological inquiry and metaphysical rumination.<sup>5</sup> The methodological separation that consequently emerged in the modern legal thought began with Jeremy Bentham's distinction between expository and censorial jurisdiction, which aimed to explain law as it existed, and not how it should have been,<sup>6</sup> in order to bring clarity to his work. This methodological aspiration was systematized by John Austin, who defined law as a command of a sovereign political authority, habitually obeyed by the majority of the population and enforced by the threat of a penalty.<sup>7</sup> Rigorous in its simplicity, Austin's formulation was intended not only to make application of jurisprudence a science of visible social realities, devoid of moral and political ambiguity, but also to elevate it into a science of observable social facts.<sup>8</sup>

However, the apparent clarity of the command theory conceals a set of conceptual defects that become more pronounced when compared with the realities of modern legal systems. Contemporary law is neither purely nor primarily a mechanism of coercion; rather, it creates rights, grants powers, establishes institutions, regulates procedures, and coordinates social relations in ways that cannot plausibly be reduced to obedience at the point of a sword.<sup>9</sup> Constitutional conventions, administrative rules, judicial precedents, and independent rule-making bodies operate within an order characterized by institutional plurality rather than centralized sovereignty.<sup>10</sup> This continuity of law across different regimes also creates difficulties for positivist accounts based on individual or habitual obedience, since legal continuity persists despite changes in political leadership or popular support.<sup>11</sup>

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<sup>2</sup> Brian Bix, *Jurisprudence: Theory and Context* (8th edn, Sweet & Maxwell 2019) 1

<sup>3</sup> HLA Hart, *The Concept of Law* (3rd edn, OUP 2012) 1–6

<sup>4</sup> Leslie Green, 'Legal Positivism' (Stanford Encyclopedia of Philosophy, 2003, rev edn 2018)

<sup>5</sup> Nicola Lacey, *A Life of HLA Hart: The Nightmare and the Noble Dream* (OUP 2004) 34–40

<sup>6</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789, Clarendon Press 1907) ch XVII

<sup>7</sup> John Austin, *The Province of Jurisprudence Determined* (1832, Cambridge University Press 1995) 18–25

<sup>8</sup> *ibid* 157–60

<sup>9</sup> Hart (n 3) 26–49

<sup>10</sup> Joseph Raz, *The Authority of Law* (2nd edn, OUP 2009) 3–27

<sup>11</sup> Hart (n 3) 50–78

It is also important to consider the historical context in which the command theory became influential. The focus on sovereignty and sanction of legal positivism represented social orders where law played a more primary role as a means of governance and control as an administrative instrument.<sup>12</sup> In these circumstances, legal legitimacy was grounded not in participatory acceptance but in institutional force and enforceability.<sup>13</sup> Although this descriptive narrative may render the operational reality of the legal regimes of the past, its blind application to the democratic and institutionalized legal orders produces analytical divergences.<sup>14</sup> Such systems assert authority not only through enforceability, but through established political procedures, expectations of fairness, and their role in collective governance rather than individual domination.<sup>15</sup>

The inadequacy of coercion-based definitions therefore raises a deeper philosophical question: can the idea of law be fully understood in terms of its social role and institutional character? Defining law solely in terms of command and sanction ignores its constitutive role in organizing political power, enabling rights-based claims, and providing institutions for peaceful coordination and dispute resolution.<sup>16</sup> At the same time, moving from positivist discipline to moral idealism may lead to the loss of the analytical uniqueness of law to what is a version of the moral aspiration, which is ethical.<sup>17</sup> The difficulty, therefore, does not lie in denying positivism but in the redefinition of its conceptual basis in such a way that it is not stuck due to the current legal changes.

This article argues that law is best understood as an institutional system of authoritative rule-making generated through recognized political procedures, rather than as a structure of commands enforced by coercion. It contends that classical positivist conceptions of law, particularly the command theory, are unable to adequately explain contemporary legal orders characterized by institutional complexity and democratic legitimacy. The article therefore critically reexamines the foundations of positivist jurisprudence and advances a reconstructed definition of law that preserves the positivist commitment to institutional authority while rejecting the reduction of law to coercive obedience. On this account, law emerges as a coherent institutional system through which societies structure governance, regulate conduct, secure rights, and coordinate collective life. In doing so, the article seeks to contribute to contemporary jurisprudence not by offering a moral prescription, but by providing a conceptually refined

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<sup>12</sup> Austin (n 7) 194–200

<sup>13</sup> *ibid*

<sup>14</sup> Ronald Dworkin, *Law's Empire* (Harvard University Press 1986) 33–44

<sup>15</sup> Jürgen Habermas, *Between Facts and Norms* (William Rehg tr, Polity 1996) 82–131

<sup>16</sup> Neil MacCormick, *Institutions of Law* (OUP 2007) 1–23

<sup>17</sup> Hart (n 3) 181–207

account of what law is within modern political and institutional frameworks.

While H.L.A. Hart's rule-based positivism marked a decisive shift away from command theories,<sup>18</sup> subsequent positivist scholarship further refined the institutional and authority-based dimensions of law. Joseph Raz emphasized law's claim to legitimate authority and its function as a system of institutional directives that guide conduct through exclusionary reasons.<sup>19</sup> Scott Shapiro advanced a planning theory of law, portraying legal systems as complex social planning mechanisms designed to coordinate behavior under conditions of moral disagreement and institutional complexity.<sup>20</sup> Julie Dickson defended a methodological approach to jurisprudence grounded in explanatory, rather than evaluative, concepts of law,<sup>21</sup> reinforcing the positivist commitment to conceptual clarity without moral reductionism. Similarly, Andrei Marmor developed an institutional account of legal validity rooted in social conventions and authoritative structures,<sup>22</sup> while Brian Leiter's naturalized jurisprudence emphasized the empirical and institutional dimensions of legal systems.<sup>23</sup> Collectively, these developments demonstrate a broad movement within contemporary positivism away from coercion-centered models toward institutional, functional, and authority-based conceptions of law.

This article adopts an analytic and reconstructive approach to jurisprudence as a critical engagement with classical positivist theories; it reformulates the concept of law in light of contemporary institutional realities and makes three principal contributions to contemporary jurisprudential debate. First, it identifies the structural limitations of coercion-based positivist definitions of law, demonstrating that command-sanction models cannot adequately explain the institutional continuity, rights-creating functions, and procedural structures of modern legal systems. Second, it reconstructs legal positivism as an institutional theory of law, preserving its methodological commitment to social facts while shifting the focus from sovereign commands to enduring institutional authority. Third, it introduces democratic legitimacy as an internal feature of legal authority, not as a moral criterion external to law, but as a structural condition of law's authority within contemporary political orders. By integrating institutional continuity, functional coordination, and procedurally grounded legitimacy, the article offers a refined positivist account capable of explaining the operation of law in modern constitutional systems.

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<sup>18</sup> *ibid* 79–99

<sup>19</sup> Joseph Raz, *Practical Reason and Norms* (2nd edn, OUP 1999) 35–48

<sup>20</sup> Scott J Shapiro, *Legality* (Harvard University Press 2011) 170–225

<sup>21</sup> Julie Dickson, *Evaluation and Legal Theory* (Hart Publishing 2001) 1–20

<sup>22</sup> Andrei Marmor, *Social Conventions* (Princeton University Press 2009) 1–15

<sup>23</sup> Brian Leiter, *Naturalizing Jurisprudence* (OUP 2007) 30–53

## II. METHODOLOGY

This article adopts an analytic and reconstructive approach to jurisprudence. Rather than proposing normative criteria for evaluating legal systems, it seeks to clarify the conceptual structure of law as a social and institutional phenomenon. The analysis proceeds through critical engagement with classical positivist theories, particularly the command-sanction model associated with Bentham and Austin, and examines their explanatory limitations in the context of modern institutional legal orders.

Drawing on developments in contemporary positivist scholarship, the article reconstructs the concept of law around three central elements: institutional authority, procedural legitimacy, and functional coordination. Institutional authority refers to the capacity of recognized legal institutions—such as legislatures, courts, and administrative bodies—to generate binding norms within a structured legal order. Procedural legitimacy concerns the political and institutional processes through which legal authority is generated and maintained. Functional coordination describes the role legal norms play in structuring governance, allocating rights and duties, and facilitating social cooperation.

The methodological aim is explanatory rather than evaluative. The article seeks to provide a conceptually coherent account of how legal systems operate as institutional structures that generate authoritative norms, while preserving the positivist commitment to grounding legal theory in observable social practices rather than moral prescriptions.

## III. BENTHAM, AUSTIN, AND THE POSITIVIST ARCHITECTURE OF LAW

Jurisprudence is a term derived from the original Latin *jurisprudentia*, traditionally interpreted to mean the scientific study of law. Although jurisprudential inquiry operates at historical, sociological, and normative levels, the most perennial and controversial issue remains the question of what law really is. The attempt to develop law in analytically correct terms is the original object of modern jurisprudence, most explicitly initiated by Jeremy Bentham and later systematized by John Austin.<sup>24</sup>

Bentham is widely regarded as the intellectual father of legal positivism, not only because of the content of his propositions, but also because of his insistence that law is an empirical matter rather than an ideal to which one should aspire.<sup>25</sup> His jurisprudential work could not be disaggregated from his overall reformist programme, especially his support to codification of

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<sup>24</sup> Brian Bix, *Jurisprudence: Theory and Context* (8th edn, Sweet & Maxwell 2019) 1–3.

<sup>25</sup> Nicola Lacey, *A Life of H.L.A. Hart: The Nightmare and the Noble Dream* (OUP 2004) 34–40.

law. Bentham rejected the common law as disjointed, obscure, and hostile to reason, and proposed in its place a unified and comprehensible code of rules laid down, which could help to give direction to behavior. His creation of the term codify showed his belief that law-making power should be articulated in a definite institutional manner as opposed to judicial discretion.<sup>26</sup>

The central aspect of Bentham's analytical approach was the distinction between expository and censorial jurisprudence. Expository jurisprudence attempted to state the law as it is, without reference to ethical considerations, while censorial jurisprudence was concerned with the criticism and correction of law in accordance with the principles of utilitarianism.<sup>27</sup> This distinction was intended to maintain conceptual clarity by avoiding confusion between descriptive legal analysis and normative criticism. Although Bentham himself remained a firm believer in utilitarian morality, this methodological separation prepared the ground for a more austere version of positivism that would continue to reject moral considerations.

John Austin transformed this methodological impulse into a rigorous analytical doctrine. In *The Province of Jurisprudence Determined* (1832), Austin articulated the command theory of law, describing law as a general command issued by a determinate sovereign to subjects who habitually obey it due to the threat of punishment.<sup>28</sup> In this conception, law can be reduced to three elements: sovereign authority, command, and coercion. Legal duty, in turn, is grounded not in moral obligation or social purpose, but in the political reality of enforced obedience.

Austin was intellectually ambitious in his scientific aims. He sought to strip jurisprudence of the moral and metaphysical elements that, in his view, obscured its analytical clarity, believing that only a strictly empirical description could produce a true science of law. He attempted to make legal analysis value-neutral and conceptually precise by grounding law in the observable social facts of authority, obedience, and punishment.<sup>29</sup> The model had strong descriptive plausibility in the historical context in which it was developed, particularly in societies characterized by concentrated power and minimal political participation.

The history of legal systems provides partial support for Austin's analysis. In authoritarian and colonial settings, law often functioned not as a system of social coordination but as a mechanism of control and governance. Legal norms were imposed to ensure administrative efficiency and political stability rather than collective self-regulation. In such environments, compliance,

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<sup>26</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789, Clarendon Press 1907) ch XVII.

<sup>27</sup> *ibid.*

<sup>28</sup> John Austin, *The Province of Jurisprudence Determined* (1832, Cambridge University Press 1995) 18–25.

<sup>29</sup> *ibid.* 157–160.

rather than legitimacy, was the principle sustaining legal authority. Under those conditions, the definition of law as command and sanction captured a visible aspect of legal reality.<sup>30</sup>

However, the explanatory power of the command theory becomes significantly weaker when assessed against the structural realities of modern legal systems. In such orders, power is neither concentrated nor centered in a single person; it is institutional and distributed across multiple bodies. The sources of law lie in legislatures, courts, administrative agencies, and regulatory institutions operating within a constitutional framework that extends beyond individual rulers or governments.<sup>31</sup> The continuity of law through political changes undermines the reliance on habitual obedience to a fixed sovereign and suggests that obedience is directed toward an impersonal legal order rather than a commanding authority.

This intellectual weakness was most clearly exposed by H.L.A. Hart in *The Concept of Law*. Hart demonstrated that the Austinian model fails to account for the complexity of legal systems, which consist not only of commands backed by threats but also of rules.<sup>32</sup> In distinguishing types of rules, Hart identified primary rules that impose obligations and secondary rules that confer powers, establish procedures, and determine the valid sources of law. Rules governing legislation, adjudication, and legal change cannot realistically be characterized as commands, nor can they be sustained merely by fear of sanctions. In Hart's analysis, coercion is part of law, but it is neither its defining feature nor its structural foundation.

Similarly, the coercive reduction of law ignores legal norms that are facilitative rather than punitive. Rules governing contracts, property, and constitutional arrangements do not presuppose punishment; rather, they empower individuals and institutions to form legal relationships, distribute power, and organize collective decision-making.<sup>33</sup> Such norms operate through recognition and acceptance, not through fear, and this again reveals the limitations of command-based definitions of law.

A similar criticism emerges, though from a different philosophical direction, in Lon Fuller's account of the internal morality of law. Fuller did not reject what he described as the institutional nature of law, but he argued that when a system of rules fails to guide behavior—whether because the rules are inconsistent, secret, retroactive, or arbitrary—it cannot properly be called law at all.<sup>34</sup> Although Fuller often positioned his theory in opposition to positivism, this line of reasoning is important here because it shows that law cannot be reduced to enforcement alone.

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<sup>30</sup> HLA Hart, *The Concept of Law* (3rd edn, OUP 2012) 26–30.

<sup>31</sup> Joseph Raz, *The Authority of Law* (2nd edn, OUP 2009) 3–27.

<sup>32</sup> Hart (n 8) 79–99.

<sup>33</sup> Neil MacCormick, *Institutions of Law* (OUP 2007) 1–23.

<sup>34</sup> Lon L Fuller, *The Morality of Law* (Yale University Press 1969) 33–94.

The very existence of law presupposes a functional orientation toward governance through rules, rather than domination through orders.

The limitations of the command theory also become clear when examined in light of the conception of the rule of law associated with Dicey. Dicey emphasized the primacy of regular law, equality before the law, and the dominance of legal institutions<sup>35</sup> over arbitrary power. These principles presuppose a legal order in which power is limited, impersonal, and mediated through institutions—conditions that are difficult to reconcile with a model of law based on the commands of a sovereign. The rule of law thus emerges as an organizing ideal of modern legal systems, reflecting a shift in the character of legal authority itself.

Taken together, these criticisms do not render positivism obsolete, but they cast serious doubt on definitions of law that rely solely on command and sanction. The historical value of Austin's theory lies in its effort to impose analytical discipline on jurisprudence, yet its continued dominance reflects inherited orthodoxy rather than conceptual adequacy. As legal systems become increasingly institutionalized and grounded in democratic legitimacy, jurisprudence must confront the need to reconsider its traditional definitions. Any adequate account of law must move beyond mere obedience to power and incorporate the institutional, functional, and normative dimensions that sustain modern legal orders.

Contemporary positivist jurisprudence has moved well beyond the command-centered models of earlier theorists and has increasingly emphasized the institutional and functional character of legal authority. Hart's account of law as a system of primary and secondary rules redirected attention from sovereign will to the rule of recognition, a social rule through which officials identify valid law within an institutional framework.<sup>36</sup> Building on this institutional turn, Raz developed an authority-based conception of law, arguing that legal systems claim legitimate authority by providing exclusionary reasons that guide conduct independently of individual moral deliberation.<sup>37</sup> Shapiro further advanced this line of thought through his planning theory, which portrays legal systems as complex social planning structures designed to coordinate behavior under conditions of disagreement and institutional complexity. Together, these approaches reflect a broader movement within contemporary positivism toward understanding law as an institutional, authoritative, and coordinative practice rather than a mere structure of commands backed by threats.<sup>38</sup>

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<sup>35</sup> AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 183–205.

<sup>36</sup> Hart (n 8) 94–110.

<sup>37</sup> Joseph Raz, *Practical Reason and Norms* (2nd edn, OUP 1999) 35–48.

<sup>38</sup> Scott J Shapiro, *Legality* (Harvard University Press 2011) 170–225.

#### IV. RECONSTRUCTING THE CONCEPT OF LAW: AN INSTITUTIONAL AND DEMOCRATIC ACCOUNT

It is not only the failure of command-sanction models to address historical contingencies that is at issue; these models also display structural deficiencies in their design. Such accounts distort the nature of law by locating the source of legal authority in the will of a sovereign rather than in the structure of legal institutions.<sup>39</sup> They therefore fail not only to explain how law operates in modern systems, but also why it remains binding even where there is no direct coercion.<sup>40</sup> A reformulated conception of law must respond not only to empirical changes, but also to the deeper transformation in the nature of political authority itself.<sup>41</sup> This transformation is visible in the growing complexity of institutional structures, the diffusion of normative authority across multiple organs of governance, and the increasing reliance on procedures rather than personal command.<sup>42</sup> As legal systems evolve, the source of authority becomes less identifiable with individual will and more closely associated with institutional continuity and procedural legitimacy.<sup>43</sup> Any adequate account of law must therefore reflect these structural conditions rather than the historical image of a single commanding sovereign.<sup>44</sup>

This continued critique of command-sanction theories reveals not merely a descriptive weakness, but a displacement in the understanding of legal authority.<sup>45</sup> The persistence of these theories in jurisprudence reflects a long-standing preoccupation with coercion as the defining feature of law, a preoccupation rooted more in historical conditions than in present institutional realities.<sup>46</sup> Once law can no longer be described as submission to the command of a sovereign, the task of jurisprudence shifts from negation to reconstruction.<sup>47</sup> The issue is no longer whether classical positivism has failed, but how the concept of law can be rearticulated without abandoning analytical discipline.<sup>48</sup> This shift requires a reorientation of jurisprudential attention from the psychology of obedience to the structure of institutions.<sup>49</sup> Legal authority must be understood in terms of the roles, procedures, and normative frameworks that sustain legal systems over time.<sup>50</sup> The concept of law must therefore be reconstructed in a way that preserves

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<sup>39</sup> HLA Hart, *The Concept of Law* (3rd edn, OUP 2012) 18–25.

<sup>40</sup> Joseph Raz, *The Authority of Law* (2nd edn, OUP 2009) 3–27.

<sup>41</sup> Neil MacCormick, *Institutions of Law* (OUP 2007) 1–23.

<sup>42</sup> *ibid.*

<sup>43</sup> Hart (n 2) 94–110.

<sup>44</sup> Raz (n 3) 28–30.

<sup>45</sup> Brian Bix, *Jurisprudence: Theory and Context* (8th edn, Sweet & Maxwell 2019) 45–60.

<sup>46</sup> Hart (n 2) 50–78.

<sup>47</sup> Scott J Shapiro, *Legality* (Harvard University Press 2011) 170–225.

<sup>48</sup> Julie Dickson, *Evaluation and Legal Theory* (Hart Publishing 2001) 1–20.

<sup>49</sup> Neil MacCormick (n 4) 45–60.

<sup>50</sup> Andrei Marmor, *Social Conventions* (Princeton University Press 2009) 1–15.

analytical clarity while accommodating the institutional complexity of contemporary governance.<sup>51</sup>

Any reconstruction must begin by rejecting the reduction of legal authority to individual sovereignty.<sup>52</sup> Contemporary legal systems do not operate according to a dominant will; they rest upon institutions with enduring authority to create norms through established procedures. Institutional authority is not a psychological relation between ruler and subject, but a structural condition conferred upon rules through their adoption within a recognized legal order. The force of law is not rooted solely in fear, but in a system of norms grounded in continuity, regularity, and procedural recognition.<sup>53</sup> Such recognition is sustained through professional practices, constitutional arrangements, and shared expectations about the operation of legal institutions. Officials, courts, and administrative bodies participate in a network of rule-applying and rule-creating activities that collectively sustain the legal order.<sup>54</sup> The authority of law thus emerges from institutional practices rather than from the isolated will of any particular actor.

It is this institutional character that must be grasped in order to understand how law functions in modern societies.<sup>55</sup> Statutes enacted by legislatures are not sovereign orders, but exercises of delegated institutional authority. Courts resolve disputes by interpreting and applying norms whose validity derives from systemic recognition. Administrative and regulatory bodies produce binding rules through expert and procedural processes rather than personal domination.<sup>56</sup> These features cannot be adequately explained in terms of command, yet they are unmistakably legal. The coordination achieved by these institutions depends on stable procedures, recognized competences, and predictable forms of interaction among different branches of governance. Legal systems operate as interconnected structures in which authority is distributed rather than centralized.<sup>57</sup> The resulting pattern of compliance reflects institutional trust and procedural regularity rather than simple submission to command.

Although Hart's rule-based account largely displaced the command theory, it left aside questions of political legitimacy in order to preserve analytical neutrality.<sup>58</sup> It is at this point that the present account diverges from Hart. The concept of institutional validity cannot be fully understood without reference to the political processes through which legal authority is

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<sup>51</sup> Brian Leiter, *Naturalizing Jurisprudence* (OUP 2007) 30–53.

<sup>52</sup> HLA Hart, *The Concept of Law* (3rd edn, OUP 2012) 79–99.

<sup>53</sup> Neil MacCormick, *Institutions of Law* (OUP 2007) 1–23.

<sup>54</sup> Joseph Raz, *The Authority of Law* (2nd edn, OUP 2009) 3–27.

<sup>55</sup> Hart (n 2) 26–49.

<sup>56</sup> Scott J Shapiro, *Legality* (Harvard University Press 2011) 170–225.

<sup>57</sup> Brian Bix, *Jurisprudence: Theory and Context* (8th edn, Sweet & Maxwell 2019) 45–75.

<sup>58</sup> Hart (n 2) 181–207.

established and maintained in modern systems.<sup>59</sup> In this sense, legitimacy is not an external moral standard, but a condition internal to law itself. The authority of legal institutions depends not only on the acceptance of rules by officials, but also on the broader political structures that sustain those institutions. Legislative processes, electoral accountability, and constitutional arrangements contribute to the stability and recognition of legal authority.<sup>60</sup> Institutional validity is therefore inseparable from the political frameworks within which legal norms are generated and maintained.

The functional dimension of law is equally significant. Law does not merely prohibit conduct; it facilitates social cooperation by establishing rights, conferring powers, and structuring legal relationships.<sup>61</sup> Contract law enables voluntary exchange, property law stabilizes expectations, and procedural rules organize the resolution of disputes. These norms do not operate primarily as deterrents; rather, individuals and institutions rely on them to coordinate behavior.<sup>62</sup> A conception of law that reduces it to sanction inevitably marginalizes these constitutive functions and offers only a partial account of legal reality. The everyday operation of legal systems demonstrates that most legal interactions occur without the immediate presence of coercive threats. Individuals enter contracts, register property, and invoke procedural rights not because they fear sanctions, but because the legal system provides a stable framework for coordinated action.<sup>63</sup> The functional role of law therefore reveals its character as an institutional mechanism for organizing social relations rather than merely a device for enforcing obedience.

At the same time, any reconstructed account must resist the temptation to collapse law into morality or abstract justice.<sup>64</sup> The legitimacy of law does not derive from its moral correctness, but from its existence as an institutional system of publicly recognized rules. Yet this authority is not politically neutral. In modern legal orders, law claims legitimacy as an expression of collective governance rather than unilateral domination. Adherence to legal norms is achieved not only through coercion, but also through the belief that those norms are produced and maintained through procedures reflecting collective political agency, even where individuals may disagree with their outcomes. This institutional legitimacy depends on stable procedures, transparent processes, and recognized forms of political participation.<sup>65</sup> The authority of law is therefore sustained not by moral perfection, but by the credibility of the institutions through

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<sup>59</sup> Raz (n 4) 28–48.

<sup>60</sup> Jürgen Habermas, *Between Facts and Norms* (Polity 1996) 82–131.

<sup>61</sup> MacCormick (n 3) 60–85.

<sup>62</sup> Hart (n 2) 94–110.

<sup>63</sup> Shapiro (n 6) 200–225.

<sup>64</sup> Lon L Fuller, *The Morality of Law* (Yale University Press 1969) 33–94.

<sup>65</sup> Habermas (n 10) 100–131.

which legal norms are generated and maintained. In this way, legitimacy operates as a structural feature of legal authority rather than as an external moral evaluation.

This introduces an irreducibly democratic dimension into the concept of law. Democratic legitimacy does not require unanimity, nor does it reduce law to mere popular will. Rather, it signifies that law is produced through established political processes in which participation, representation, and accountability are possible. People follow laws enacted by governments that they may not have personally elected, not out of personal loyalty, but because the legal system is regarded as the appropriate framework through which collective judgment is expressed. Obedience, therefore, is directed not toward the temporary holders of political power, but toward the legal order itself. This orientation reflects the institutionalization of authority within political structures that transcend particular governments. The continuity of law across electoral cycles and political transitions illustrates that legal obligation is tied to institutional frameworks rather than to individual rulers.<sup>66</sup> Democratic legitimacy thus reinforces the stability and impersonality of legal authority.

On this basis, the reconstructed concept of law advanced in this article rests on three interrelated foundations: institutional authority, functional coordination, and democratic legitimacy. Law is authoritative because it is institutionalized within a recognized framework; it is functional because it structures social life through rights, duties, and procedures; and it is legitimate because it operates as a form of collective self-government rather than mere repression.<sup>67</sup> Coercion has not disappeared from law, but it is no longer its defining characteristic. Sanctions support legal norms; they do not constitute them.<sup>68</sup> These three dimensions together provide a more comprehensive account of legal authority than models focused exclusively on command and sanction. They explain both the continuity of legal systems and the everyday compliance that occurs without direct coercion. By integrating institutional structure, social function, and democratic grounding, the reconstructed concept offers a more accurate description of contemporary legal orders.

Before advancing a formal definition, certain possible objections must be addressed. One concern is that grounding law in democratic legitimacy might collapse it into political morality. This objection rests on the mistaken assumption that legal validity depends on the moral correctness of norms. Illicit or unjust laws may still be legally valid. Legitimacy here refers to the processes through which legal norms are created and maintained, not to their moral content.

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<sup>66</sup> Bix (n 7) 75–90.

<sup>67</sup> Neil MacCormick, *Institutions of Law* (OUP 2007) 1–23.

<sup>68</sup> HLA Hart, *The Concept of Law* (3rd edn, OUP 2012) 26–49.

Law, therefore, remains a social fact and an institutionally recognized phenomenon, consistent with positivist methodology.<sup>69</sup> The distinction between legality and moral desirability is therefore preserved within this framework. A legal system may produce norms that are ethically questionable, yet those norms remain legally valid so long as they emerge from recognized institutional procedures. The present account thus maintains the positivist commitment to analytical separation while incorporating the structural conditions that sustain legal authority.

In this sense, democratic legitimacy operates as a procedural rather than a moral criterion. The validity of law depends on the institutional processes through which norms are created and maintained, not on whether those norms correspond to particular ethical ideals. A statute may be unjust, discriminatory, or imprudent, yet still remain legally valid if it emerges from recognized institutional procedures.<sup>70</sup> The distinction between moral evaluation and institutional validity therefore remains intact, even within a framework that acknowledges the democratic foundations of legal authority. This procedural understanding preserves the positivist insight that legality is grounded in social facts rather than moral judgments. It also explains why legal systems can maintain continuity even when their substantive outcomes are contested or morally controversial. Democratic legitimacy, in this sense, strengthens institutional authority without transforming legality into moral evaluation.

Another criticism suggests that any definition that diminishes the role of coercion weakens the distinctive force of law. Yet coercion has not disappeared in this account; it has been repositioned. Coercion may reinforce legal norms, but it must operate within a normative system that defines offenses and procedures. Where institutional regulation is absent, coercion degenerates into undifferentiated force, indistinguishable from political violence. The presence of institutional procedures transforms coercion from mere force into a structured legal response. Legal sanctions acquire meaning only within systems that define jurisdiction, responsibility, and permissible enforcement.<sup>71</sup> In this way, coercion becomes a derivative feature of institutional authority rather than its primary foundation.

The distinction between legal coercion and raw force lies precisely in its institutional organization. Legal sanctions are not merely threats; they are structured responses embedded within systems of procedure, adjudication, and recognized authority. Without these institutional frameworks, coercion lacks the normative structure that distinguishes law from arbitrary domination. The present account therefore does not eliminate coercion, but situates it within a

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<sup>69</sup> Joseph Raz, *The Authority of Law* (2nd edn, OUP 2009) 3–27.

<sup>70</sup> Julie Dickson, *Evaluation and Legal Theory* (Hart Publishing 2001) 1–20.

<sup>71</sup> Lon L Fuller, *The Morality of Law* (Yale University Press 1969) 33–94.

broader institutional context that gives it legal meaning. This perspective clarifies why the same act of force may be considered lawful in one context and illegitimate in another. The legality of coercion depends not on its intensity, but on its institutional authorization and procedural grounding. Institutional structure, rather than sheer power, therefore determines the legal character of coercive acts.

A further objection is that an institutional and democratic conception lacks the analytical simplicity of command-based definitions. However, simplicity should not be confused with accuracy. The present account offers greater explanatory power, illuminating the creation of rights, procedural regulation, constitutional supremacy, institutional continuity, and voluntary compliance—features that command theories often ignore or treat as incidental.<sup>72</sup> A definition that captures only obedience to command cannot adequately explain these central features of modern legal systems. Analytical clarity requires not merely simplicity of formulation, but fidelity to the structure of the phenomenon being described. A more complex definition may therefore be justified if it provides a more accurate account of legal reality.

Analytical simplicity, however, should not be confused with explanatory adequacy. Modern legal systems are composed of layered institutions, procedural mechanisms, and rights-conferring structures that cannot be reduced to a single relation of command and obedience. A theory that oversimplifies these realities risks misdescribing the phenomenon it seeks to explain. Conceptual refinement, even at the cost of simplicity, is therefore necessary to produce an account that corresponds to the actual structure of contemporary legal orders. The analytical task of jurisprudence is not merely to produce elegant definitions, but to capture the essential features of legal practice. Where institutional complexity is an intrinsic feature of law, theoretical accounts must reflect that complexity. Precision, rather than simplicity alone, becomes the guiding criterion of conceptual analysis.

It is also argued that an institutional and democratic model fails to account for legal regimes lacking meaningful participatory politics. This criticism is misplaced. The account does not presuppose full political equality or substantive justice; it merely assumes that legal norms are produced and maintained through institutional processes that claim authority on behalf of a broader political community. Even where participation is limited or distorted, the legal system remains an institutional structure rather than a purely personal exercise of power. Authoritarian systems, too, rely on bureaucratic procedures, courts, and administrative bodies to produce and

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<sup>72</sup> Scott J Shapiro, *Legality* (Harvard University Press 2011) 170–225.

apply norms.<sup>73</sup> The existence of these institutional mechanisms demonstrates that law retains an impersonal and structural character even in the absence of robust democratic participation. The institutional dimension of law therefore extends across different political forms, though its democratic quality may vary in degree.

Even in systems where political participation is limited, legal authority typically operates through institutional procedures rather than through the direct will of a single ruler. Courts, administrative agencies, and legislative bodies continue to function as structured sites of norm production, even under authoritarian conditions. What distinguishes such regimes from fully democratic ones is not the absence of institutional authority, but the restricted character of participation and accountability within those institutions. The institutional dimension of law therefore remains intact, even where democratic features are weakened or incomplete.

The strength of this reconstructed conception lies in its ability to explain how law operates while preserving the methodological rigor of positivism. It neither moralizes the legal order nor reduces it to sheer force. Instead, it situates law within institutional arrangements and the political responsibilities assumed by social actors, thereby providing a more comprehensive account consistent with the positivist emphasis on observable social facts.

## V. COMPARATIVE PERSPECTIVES ON LEGAL AUTHORITY

The reconstructed conception of law advanced in this article builds upon, but also departs from, influential positivist accounts developed by H.L.A. Hart and Joseph Raz. While both theorists significantly advanced the analytical understanding of legal systems, their frameworks leave certain aspects of modern institutional legal orders insufficiently explained.

Hart's theory famously conceptualizes law as a **union of primary and secondary rules**. Primary rules impose duties on individuals, while secondary rules—particularly the rule of recognition—establish the criteria through which valid legal norms are identified within a legal system. Hart's framework shifted the focus of jurisprudence away from sovereign commands and toward institutional practices among legal officials. By emphasizing rule recognition and the internal point of view of officials, Hart provided a powerful explanation of how legal validity is determined within institutional legal orders.

However, Hart's account primarily focuses on **the internal practices of legal officials**, leaving broader questions about the political processes that generate institutional authority relatively underdeveloped. While the rule of recognition explains how officials identify valid law, it does

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<sup>73</sup> Jürgen Habermas, *Between Facts and Norms* (Polity 1996) 82–131.

not fully account for the structural relationship between legal authority and the political procedures through which law-making power is exercised within modern constitutional systems.

Joseph Raz extended positivist jurisprudence by placing **authority** at the center of legal theory. According to Raz's service conception of authority, law claims legitimate authority by providing exclusionary reasons that guide conduct independently of individual moral deliberation. Legal systems function, on this account, as institutional structures that help individuals better conform to reasons that already apply to them.

Raz's theory therefore offers a sophisticated account of how legal authority can guide practical reasoning. Yet its primary emphasis remains on the **normative structure of authority as a reason for action**, rather than on the institutional and procedural mechanisms through which authoritative norms are generated and sustained within political communities.

The **Institutional Authority Model** advanced in this article differs from both approaches by emphasizing the structural relationship between **institutional authority, procedural legitimacy, and social coordination**. While Hart explains how legal validity is recognized and Raz explains how legal authority functions as a reason for action, the present account focuses on **how legal authority is generated and maintained within institutional political frameworks**.

Under this model, law is understood as an institutional system in which authoritative norms emerge through recognized political procedures and operate to coordinate governance and social interaction within a political community. Legal authority therefore depends not only on the recognition of officials or the provision of exclusionary reasons but also on the institutional structures and political processes through which legal norms are created, interpreted, and applied.

This perspective does not reject the insights of Hart or Raz but integrates them within a broader institutional framework. Hart's emphasis on rule-recognition and Raz's analysis of authority remain essential components of legal theory. However, when situated within the institutional and procedural structures of modern governance, these elements form part of a larger explanation of how legal systems generate authoritative norms capable of coordinating complex social orders. The definition proposed in the following section builds on this institutional account by articulating a concept of law that integrates authority, institutional structure, and procedural legitimacy within a unified analytical framework.

## VI. A CANONICAL DEFINITION OF LAW

The preceding analysis demonstrates that coercion-centered accounts cannot adequately explain the structure and operation of modern legal systems. Command-based theories portray law primarily as an instrument of coercive governance, yet contemporary legal orders operate through complex institutional arrangements that generate authoritative norms, structure political power, and coordinate collective activity within society. A more adequate definition must therefore capture the institutional and authoritative character of legal systems without collapsing law into either coercive force or moral aspiration.

**Law may therefore be defined as follows:**

*Law is an authoritative institutional system of publicly recognized rules and procedures through which a political community structures governance, allocates and limits public power, establishes rights and duties, and coordinates collective action, whose authority is supported—but not constituted—by coercive enforcement.*<sup>74</sup>

This definition reflects several structural characteristics of modern legal systems.

**First, law is authoritative:** Legal norms claim binding force within a political community and function as reasons for action independent of individual preference. Individuals and institutions treat legal directives as standards that guide conduct and structure decision-making within the broader legal order.

**Second, law is institutional:** Legal norms do not exist in isolation but operate within structured institutional frameworks. Legislatures create statutes, courts interpret and apply legal rules, and administrative bodies generate regulatory norms. These institutions collectively sustain the continuity and operation of legal systems across political and social change.

**Third, law consists of publicly recognized rules and procedures:** Legal systems contain both substantive rules that regulate conduct and procedural rules that determine how law is created, modified, and applied. The validity of legal norms depends on socially recognized practices through which rules are identified and interpreted within a legal community.

**Fourth, law structures governance and rights:** Legal systems allocate authority among institutions while simultaneously establishing rights, duties, and legal capacities for individuals and organizations. Through this structuring function, law provides the framework within which political power is exercised and social relationships are regulated.

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<sup>74</sup> Kabir, “A Canonical Definition of Law” (2026).

**Fifth, law performs a coordinating function within society:** Legal norms facilitate collective action by providing stable expectations regarding conduct, resolving disputes through institutional mechanisms, and enabling complex forms of social cooperation within political communities.

Although coercion remains an important feature of legal systems, it does not constitute the essence of law. Legal sanctions support compliance with legal norms, but their legitimacy depends on the institutional structures and procedures that define when coercive measures are justified. Without these institutional frameworks, coercion would be indistinguishable from arbitrary force.

This definition therefore preserves the positivist insight that law is grounded in social and institutional facts while recognizing that legal authority operates through institutional procedures and coordinated governance rather than through the commands of a sovereign alone. By situating law within institutional authority, procedural legitimacy, and functional coordination, the definition captures the structural reality of modern legal systems and provides a concept of law capable of explaining the operation of contemporary constitutional and administrative orders.

## VII. CONCLUSION

The continued influence of classical positivist definitions of law reflects their historical significance rather than their present adequacy. The command theory, particularly in the work of John Austin, represented an important attempt to impose analytical discipline on jurisprudence by separating legal description from moral evaluation and grounding law in observable social facts. Yet the institutional realities of contemporary legal systems—characterized by dispersed authority, procedural governance, rights-based structures, and constitutional continuity—cannot be satisfactorily explained through models that reduce law to sovereign command and coercive sanction.

The shortcomings of coercion-based definitions lie not in their lack of normativity, but in their inability to account for how modern legal systems actually operate. Law today functions through institutions rather than personal sovereignty, through rights and procedures rather than threats, and through established political processes rather than habitual obedience to a ruler. To define law solely in terms of command is therefore to misrepresent the phenomenon it seeks to describe.

The reconstructed conception advanced in this article preserves the positivist commitment to law as a social and institutional fact, while expanding its analytical scope. By situating legal

authority within institutional structures, functional coordination, and democratic legitimacy, the proposed definition offers a more accurate account of contemporary legal orders. It demonstrates that the authority of law is sustained not merely by coercion, but by institutional continuity, procedural recognition, and the collective structures through which societies govern themselves.

In this way, the article seeks to contribute to contemporary jurisprudence by providing a conceptually refined positivist account capable of explaining the institutional and democratic character of modern legal systems. Rather than abandoning positivism, it reconstructs its foundations to reflect the conditions under which law now operates, thereby preserving its analytical rigor while enhancing its explanatory power. The theoretical implications of this account extend beyond the critique of classical positivism.

By re-conceptualizing law as an institutional system of authoritative norm production grounded in recognized political procedures, the analysis offers a framework capable of explaining the structure of contemporary constitutional and administrative governance. This institutional perspective clarifies how legal systems maintain authority and continuity even in the absence of constant coercive enforcement, highlighting the central role of institutional structures and procedural legitimacy in sustaining legal order. In doing so, the article contributes to ongoing debates in jurisprudence by situating legal authority within the institutional and political processes through which modern societies organize collective governance.

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