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Emmanuel Jeuland, *Theories of Legal Relations*, Cheltenham, Northampton 2023. A Review

The title of Emmanuel Jeuland's work suggests the reader will be engaging with a monograph that systematizes emerging theories of legal relations that are not confined to the field of legal studies. These expectations are only partially met, however. First and foremost, nowhere in the considerations – neither in the historical and contemporary conceptual reconstructions, nor in the author's original contributions – can one find a set of propositions that could be described as a theory in the strict methodological sense of this word. Furthermore, no such attempt is even made. The author seems to treat the term "theory" in a manner analogous to that of civil law scholars, when they use expressions such as "theory of will" or "theory of interest". These theories, when applied to define the concept of subjective right – the effect of the civil law relation that has arisen – determine its essence. Yet, in Jeuland's approach, a theory amounts to a comprehensive description of a particular issue – such as law, the legal relationship, the organic world in general, or even the cosmos – from the perspective of a selected criterion, such as that of relationality. Thus, it suffices to focus on a single aspect in such a description for it to become complete. There are two possible interpretations of this approach. The first one, which corresponds to the proper meaning of "theory", assumes that this initial step not only constitutes an element of substantive knowledge, but it also creates an independent research model for all other partial issues that can be qualified in light of the applied criterion. Although the author does not clearly formulate such a position, many of his specific remarks seem to favour this approach. The second interpretation, which is considerably weaker, only allows one to assume that the chosen criterion can be applied to at least one constitutive component of the subject under consideration. As to whether such a possibility exists in relation to the remaining ones, this "theory" remains silent.

In light of these weaknesses, the substantive value of Jeuland's deliberations comes into question. Ultimately, one finds that despite lack of reconstructions and constructions of theories of legal relations, the author nevertheless gathers together material which, due its scope and the multitude of extracted elements, forms a solid basis for such a theory. Moreover, the work often steps beyond such a basis, constructing consistent lines of argumentation for the acceptance or rejection of a certain position on the

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essence of the legal relationship. However, where coherent sets of propositions are put forward these rare but isolated cases do not provide grounds for connecting them with any general statements. Sometimes it even seems that the author is just one step away from asserting that such a theory simply does not exist and, given the current state of research, cannot exist. Yet such an assertion would also need to be proven.

Jeuland's work consists of four parts. The first two are devoted to reconstruction: Chapter 1 adopts a genealogical approach to theories of legal relationships through a review of historical concepts, while Chapter 2 addresses philosophical positions on the nature of legal relationships. Chapter 3 describes the types of legal relationships and their structures; while the final part, Chapter 4, analyses the influence of the category of legal relationship on the understanding of the legal system and its components, and indicates the various roles that this concept plays in legal practice.

The main argument is preceded by the presentation of several basic assumptions in the Introduction. First and foremost, "(t)he concept of legal relationships is fundamental and generic (it is used to define other concepts) so it would probably be prudent not to attempt to explore it further".[2] Thus, the author categorizes the expression "legal relationship" as a primary term, albeit without naming it as such. However, in later arguments, it transpires that the legal relationship is defined as a social relationship or a variant of a factual relationship, so the primary term would refer more to the word "relationship" than "legal relationship". The assumption that there is no need for a more precise analysis of this basic term due to the absence of problems in its use seems to be widely shared within the legal community. The concept of a legal relationship has a universal character. The idea developed almost at the beginning of reflection on law, although it has taken various forms in the course of historical and cultural development. At the same time, it is an autonomous category that cannot be reduced to other equally common categories in law. It remains as necessary for describing the legal order as the concepts of norms, subjective rights, institutions, or the legal system.

Having adopted a stance on legal relationships that is both analytical and constructivist,[3] Jeuland reconstructs how this concept developed over history, extracting from each epoch what was most valuable for creating and perpetuating the category of legal relationship, regardless of whether a particular element survived in a specific interpretation or not. Although Ancient Greek did not have a separate word to denote relationships, the core idea of a passage from one thing to another was expressed in a symbol, where a piece of wood broken in half and given to the parties of an agreement served as the material substrate of the bond formed between them. On the other hand, the Latin term *relatio* conveys a distinct element of narrative reflection, as at its roots it means "bringing something back", especially to the present. The legal phrase *vinculus iuris* primarily served to describe an obligational relationship as a specific burden, and in archaic Roman law this weight was emphasised through the concept of *nexus*, which stressed the possibility of imprisoning an unreliable debtor until the debt was paid. Over time, these specific semantic elements gave way to a more abstract expression, although – and here Jeuland cites Reinhard Zimmermann – "the concept of obligation (…) seems to have retained the connotation of some sort of invisible rope around the neck".[4]

[2] E. Jeuland, *Theories of Legal Relations*, Cheltenham, Northampton 2023, pp. 1, 6–7.
[3] E. Jeuland, *Theories of Legal…*, p. 10.
[4] E. Jeuland, *Theories of Legal…*, p. 21.

In the medieval period, two lines of interpretation of the legal relationship began to emerge simultaneously: the first one emphasized the relationship itself, while the second one focused on the subjects – the parties to the relationship. The Romantic era brought the rights of the individual to the forefront, with rights to security, freedom of movement, and property rights taking precedence, and the development of an increasingly clear distinction between private and public law relations (William Blackstone). In English law, the conviction emerges – animated by an empirical and liberal spirit – that the fundamental relationships occurring between people are pre-legal, and that only subsequently are they given form through the applicable law, through the decisions of free, rational, and emotionally driven individuals.[5] A similarly subjective approach appears in the German concept of the legal relationship (*Rechtsverhältnis*) in the works of Friedrich Carl von Savigny and Bernhard Windscheid. By making the legal relationship central, German philosophy of law developed a unified form of this concept, which then had a significant influence on how this term was defined in legal studies in other countries, including Italy, Spain, Portugal, Romania, and even Cuba. In the Russian legal tradition, the legal relationship appears in a more objectified form (Russian legal realism). Its role in the legal system is strongly emphasized not only in scholarship (Evgeny Pashukanis, Nikolai Mikhailovich Korkunov) but also in practice, as evidenced by how the structure of the Civil Code of the Russian Federation of 1994 was shaped around this very concept. The fundamental nature of this category is also evident in Polish legal scholarship, as illustrated by *Wstęp do prawoznawstwa* [Eng. *Introduction to Legal Studies*] by Tatiana Chauvin, Tomasz Stawecki, and Piotr Winczorek.

The concept of the legal relationship also is also present in non-European cultural contexts. The Chinese *minshi guanxi* accentuates the social element, as the relationship between specific parties is considered in the context of their other relationships, often associated more strongly with rituals and ethics than with law, while the society as a whole always takes precedence over individualized legal relationships. In contrast, the Japanese *kankei* – unlike analogous terms in other languages – is permeated with elements of commitment and mutual interaction, with the result that even after the formal termination of the contract, the parties feel obligated to protect its benefits, in the spirit of mutual trust. In Arabic, the legal relationship (*alaqatu qanuniyyatun*) semantically refers to the idea of connection, rationality, suspension, and distinction. At the roots of the Hebrew *kashár* lies the coexistence of contradictory meanings: "what connects by distancing and what unties by conspiracy and deception".[6] In Hindi, *kaanoonee sambandh*, referring to a physical constraint, the chain, also draws on the deep layers of the culture in which it operates.

Jeuland supplements his historical-linguistic considerations with a characterization of four doctrines, which is constructed around a particular view of the legal relationship as an emancipated and autonomous entity.[7] This set of doctrines includes the empirical, subjective, objectivist, and analytical conceptions.

In terms of qualifying the legal relationship, empiricism has its precursors in the works of Aristotle, St. Thomas Aquinas, Blackstone, and Jeremy Bentham, and is currently represented by the works of Lon Fuller, and Jennifer Nedelsky. Its basic premise is the acceptance of the primary existence of a real and concrete social relationship as

[5] E. Jeuland, *Theories of Legal…*, p. 30.
[6] E. Jeuland, *Theories of Legal…*, p. 42.
[7] E. Jeuland, *Theories of Legal…*, p. 47.

a natural relationship, which only secondarily becomes a legal relationship, by virtue of legal norms. Within this current, there is a significant change in the position of the subject: from an autonomous, rational subject, consciously binding itself legally through an act of will, to an agent whose autonomy and selfhood arise and develop as a result of being in a relationship, hence the new category of relational autonomy (Nedelsky).

On the other hand, in the strands of the doctrine characterized by predominantly subjective and idealistic elements (Kant, Johann Gottlieb Fichte, Savigny, Alexander Somek, Georgios Pavlakos), the subject of the legal relationship permanently enjoys the attributes of being free, rational, and determined solely by their will. One rational being, when faced with another rational being, remains in a relation of a right. The act of self-determination of each being must take into account the same act of the other being, seeing in them – as in oneself – a bearer of humanity (Fichte). Hence subjective rights in this conception have a natural and primary character in relation to the legal relationship. The legal bond that is brought into existence – existing only as an idea – serves only the technical function of separating subjects from each other to allow for their self-determination. The contemporary version of the idealistic approach to the legal relationship (Somek, Pavlakos) presents the relational theory of law as a serious alternative to legal positivism (Somek). Here, it is not norms that occupy a central position in law, but legal relationships. The fundamental function of a legal relationship is to overcome the irreconcilable positions of autonomous and free moral agents. In this perspective, "[l]aw is not outside morality, but rather integrates moral positions in order to make legal relationships viable".[8]

Proponents of objectivism consistently define law as a set of norms and either deny the existence of subjective rights and legal relationships altogether (Léon Duguit), or prioritize the category of institutions above others (Maurice Hauriou). However, within the same alignment, there is also relationalism (Gidon Gottlieb), where, alongside state law, there is relational law, which arises from various interactions, both at the international and national levels. Thus, a relational society is created that is governed by informal and unsanctioned norms, which is most evident in financial, international public, and international private relations. The legal relationship is also objectified by reducing the relationship between agents to the relationship between norms, which do not so much formalize an already existing relationship as legally create it (Hans Kelsen, Norberto Bobbio). Another form of objectivism is represented by Marxism, where the exchange of goods precedes legal relationships because the contract merely provides legal confirmation of the exchange that has already taken place (Pashukanis).

Jeuland's rich doctrine of the analytical view of the legal relationship begins with the conceptions of Wesley Newcomb Hohfeld, thanks to whom a theory of legal relations based solely on deontic logic emerged in 1916. Referring to the concept of prerogative, encompassing all qualifications – passive and active – of a party's behaviour, Hohfeld identifies specific types of legal relationships distinguished by the form of prerogatives adopted in their construction: "right/duty, freedom (privilege)/non-freedom, immunity (exemption)/liability, power/disability".[9] Following the same path, Kocourek defines the legal relationship as a union of two persons by which one person limits the other's freedom for his (or her) own benefit.[10] He enriches the typology of legal relationships

[8] E. Jeuland, *Theories of Legal…*, p. 89.
[9] E. Jeuland, *Theories of Legal…*, p. 129.
[10] E. Jeuland, *Theories of Legal…*, p. 132.

by constructing a continuum of relationships, where at one end are perfect relationships, secured by state coercion (also called zygmatic relationships), in the middle stand mesonomic relationships, and the other end is occupied by anomic relationships, which are illegal. The final contribution to this analytical picture is the definition of the legal order as a system of legal relations in action (Norbert Achterberg). Legal relations, alongside legal norms, are constitutive elements of any legal order and as such determine sbjective rights, not vice versa. Furthermore, the primary purpose of legal norms is to organize legal relationships, not the other way around.

The last two parts of the work – *Theories and practices of legal relationships* (Chapter 3) and *Legal theory and legal relations* (Chapter 4) – characterize the contemporary position of the legal relationship by indicating its most common types, its structure, and its place in in the construction of legal theory as a whole. As in the first two chapters, there is commentary and polemic alongside the reporting. Jeuland clearly formulates his position on the doctrine in question, which from the outset allows him to gather together the components of his own conception. He also reveals his own proposed definition of a legal relationship:

> [a] legal relationship is a long-lasting and/or serious commitment, involving at least two parties (whether legal persons or not), who tend to be jointly autonomous, under the aegis of a neutral third party (a judge, a notary, a witness, etc.), with a specific form (for instance, the family booklet for family relationships or a written contract including alterations and amendments), and a purpose.[11]

He also refers to it as a "metadefinition"[12] since its purpose is to conceptually distinguish the legal relationship from the legal norm. In this way, the category of the legal relationship gains the status of a primary category, while the nine distinguished types of legal relationships serve as the alphabet of law. These descriptive categories are as follows: international relationships; bonds of nationality; bonds of citizenship; statutory bonds; procedural claims; unilateral private bonds; bilateral bonds; quasi-contract bonds; and bonds of obligation. Each of these types gives the author the opportunity to highlight the feature that necessarily contributes to the full picture of the legal relationship.

While the potential abstractness of the legal relationship is revealed in international relationships, due to its existence despite the incompletely shaped party, in the case of bonds of nationality we encounter fundamental rights inherent in the structure of this relationship, which currently shape the concept of social citizenship as a set of social legal relationships connecting citizens with public services guaranteeing social security and employment. In relationships arising in the sphere of public law, a multitude of entities subject to this law becomes distinguishable, which cannot be concretized without describing their position as parties in these relationships. Meanwhile, in procedural relationships, an intricate construction emerges: it is not only a set of the interrelated rights, obligations, and competences of parties and the judge, maintained in appropriate balance, but also an autonomous entity qualified as procedural cooperation.[13] Autonomy of the subjects predominates in family law relationships, while the state should play a secondary role. In continental legal systems, the concept of the contract and contractual relationships in private law is sometimes linked to non-formalized

[11] E. Jeuland, *Theories of Legal*..., p. 151.
[12] E. Jeuland, *Theories of Legal*..., p. 152.
[13] E. Jeuland, *Theories of Legal*..., p. 172.

relational contracts. Jeuland indicates that these are another path outlined by the concept of relationship: a path based on trust, culture, and cooperation. Ultimately, the classical relationship of obligation can serve the mutual subordination of two specified subjects but it also constitutes a pattern adaptable to non-standard situations, such as a relationship with society or a relationship rooted in everyday courtesy.

Regardless of the category to which a given legal relationship belongs, its core consists of six elements: at least two parties, autonomy, a neutral third party, a form, a long-lasting and serious commitment, and a purpose. The autonomy of the parties presupposes relational justice and the existence of a neutral third party. However, autonomy is not absolute in nature because it is shaped based on the interdependence of the parties. Only the proper balancing of autonomy and mutual interaction allows for the creation of a framework of freedom in which neither party holds a dominant position, and neither is able to abuse the other one. The fundamental guarantor of the parties' autonomy is the neutral third party. This role is primarily fulfilled by a judge, but it can also be a witness, a notary, an appointed expert, or a bailiff. Jeuland understands the formalization of the legal relationship broadly. It is not only a specific form of relationship determined by the law, but also all acts – words, gestures, created states of affairs, images, bodily states – whose cultural meaning determines the creation of bonds. These acts are closely linked to emotions: "This shows that legal relationships are as much about emotions as about reason, about bodies as about minds".[14] Ultimately, the constitutive and primary nature of the legal relationship means that the category of the parties and the subject of the legal relationship are strictly secondary, determined by the emergence of the bond itself.

The historical and methodological considerations regarding legal relationships allow the author to construct a sort of proto-programme for approaching the entire legal order from a relational perspective. Although he clearly states that alongside the legal relationship, other categories are equally necessary for law – such as norms, legal acts, legal persons, or prerogatives – it is the legal relationship that seems to have the greatest potential in the development of legal science, as comprehensive analyses of law in its entirety using this concept as a central one have never been brought to a conclusion. Unfortunately, Jeuland does not do this either. He only encourages efforts in this direction, pointing out what he considers to be the key points in the characterization of the legal relationship that will be crucial for the success of this effort. These points, mostly analysed earlier, create a kind of roadmap for the researcher, who, by taking this task seriously, has a chance to build a new image of law. Whether the sum of these approaches will result in a coherent and relatively complete relational theory of the legal system not only remains unknown, but the author himself did not even attempt to verify this, for example, by consistently following the path indicated by even one defined point. Thus, what remains for the reader is to analyse the relational signposts and the author's comments. Most importantly, shedding light on the category of the legal relationship changes the interpretation of the sources of law. They cease to be presented as a hierarchical set and become "circular". The author's perspective is firm in this regard: first, the legal relationship appears, and only then are the legal norms in force applied to it, as well as the norms created as a result of the interpretation necessary in the case of each individual legal relation, while the application of norms to the

[14] E. Jeuland, *Theories of Legal*…, p. 189.

relationship causes it to change, and this new form – in order to develop – must also be subjected to the operation of norms. Ultimately, not only does the structure of the legal system change, but the set of legislators is also expanded to include subject-parties. The operating mechanism of the legal relationship itself undergoes transformation.

Alongside the parties and the object, a third party emerges, characterized as neutral, independent, and impartial. Furthermore, it does not have an external position but is treated as a necessary component of the relationship. It is the legal relationship itself that determines the subjective rights of the parties and not vice versa. This conceptual extension of the legal relationship allows for the granting of legal status not only to traditional subjects of law but also to entities such as tribes, families, or nations, and even non-personal entities such as forests or rivers if they constitute an exceptional value for a given community. These considerations are summarized in a telling definition of legal order:

> Legal order can be defined as **a set of legal relationships** [emphasis added – M.K.] between parties under the aegis of a neutral third party, involving legal norms, insofar as they are derived from and interpreted in legal relationships, legal persons or, more broadly, legal entities and prerogatives (rights, duties, powers).[15]

Due to the fact that the above definition captures legal relationships in the context of other necessary elements for law, Jeuland calls his position constructivism, while insisting that it has no connection with relativism. However, at the heart of this concept lies a completely different statement:

> what makes a legal relationship is not a norm but **the mechanism** involving a neutral third party, an autonomy in interdependence, a form, and a serious commitment to reaching a specific purpose. The juridicality of the legal relationship would then not come initially (from a logical, not from a chronological point of view) from the norm but **its own structure** [emphasis added in both cases – M.K.].[16]

Thus the legally binding nature of the legal relationship does not derive from the norm of positive law, but from the legal relationship itself. With this positioning of the legal relationship in legal theory comes a completely different understanding of the role of the judge, whose primary role is not to apply the law, but to reveal the balance and constraints in private and public law relationships. Only common law countries approach this pattern, where case law can be defined as law arising from legal relationships. Complementing what is gained by framing the entire legal order through the prism of the legal relationship is the identification of emotions, which should be taken into account both during the creation of the relationship and throughout its duration. According to Jeuland, joy, anger, sadness, or surprise serve as manifestations of the state of the legal relationship. If the involvement and autonomy of the parties are characteristic of the legal bond, then their absence or violation on one hand, or existence on the other, should be manifested at the emotional level. This introduces what the author calls the emotional freedom of the parties. Without it, there is no room for properly situating, for instance, feminist demands or issues related to climate concerns in public debate, or even regulatory issues related to AI. However, the proposed characterization of the legal relationship and its methodological use does not end with the

[15] E. Jeuland, *Theories of Legal…*, p. 210.
[16] E. Jeuland, *Theories of Legal…*, p. 215.

legal system. It also changes the axiology of the law and the concept of justice that is fundamental to it. Relational justice, in its minimal sense, is a "legal means to question unbalanced relationships to recreate situations of autonomy, equality, and freedom in interdependence".[17]

The reader of Jeuland's *Theories of Legal Relations* must be armed with patience. It takes time to get accustomed to the fact that the clear structure of the whole does not always translate into the semantic clarity required of a scientific study. The isolated parts of the work often contain many threads that do not connect, and the vast amount of detailed information presented in the text sometimes only loosely relates to the main issue. This entails the need for concentration on the part of the reader, and even frequent authorial comments do not make this task easier, especially since the reader may encounter statements that trigger resistance, for example, the unreflective description of all Hart's secondary rules as rules of recognition,[18] denying the scientific value of statements formulated from an external point of view,[19] or the completely unfounded denial of any important role for the concept of the legal situation in legal theories.[20]

However, despite these weaknesses, Jeuland's work is worthy of attention. It shows how the category of the legal relationship was manifested in different epochs and what roles it fulfilled, for which other legal instruments were inadequate. Being broad in outline, it proposes a programme for capturing the entire legal order through the prism of legal relationships, and thus through the prism of individual subjective rights and effective influence on the set of binding legal norms. Whether this programme can be realized and whether it will bring new and developing stimuli for law remains to be seen – it seems – in the not too distant future.

[17] E. Jeuland, *Theories of Legal*…, p. 238.
[18] E. Jeuland, *Theories of Legal*…, p. 88.
[19] E. Jeuland, *Theories of Legal*…, p. 89.
[20] E. Jeuland, *Theories of Legal*…, p. 95.