

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 6

2022

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Sociological Jurisprudence of Roscoe Pound

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ABSTRACT

*Gering's social utilitarianism links Bentham's individual utilitarianism with two important 20th-century movements: the "jurisprudence of interests" in Germany and Roscoe Pound's sociological jurisprudence. Gering wrote in *The Spirit of Roman Law* that a legal right is a protected interest. This led him to search for the purpose of law and conclude that every rule of law has a practical purpose. Every job is important. While he believed the human will was free from mechanical causality, he concluded that it is subject to the law of purpose, or that it acts for "reasons" (interests). His arrangement revolves around his interests.*

Rudolf Stammler attacked economic and historical determinism in his philosophy. He wanted to coordinate various phenomena under one overarching theory, a formal method for determining empirical rule contents. Stammler focused on ethics and law rather than legal rule administration. Under his plan, the jurist faces two problems: authority and the rule of law, and implementing legislation effectively. The state must study social phenomena to achieve just law. Stammler's greatest achievement is functional sociology. He made justice-through-law the social ideal. Stammler studied a community of free-willed men, while Kant studied individuals. He envisioned social cooperation in which individuals merge into communities. He arrived at justice by emphasising individual goals over personal desires. He wanted to replace individualism with a social philosophy of law and add just rule making and adjudication. The sociological jurist should agree fully.

Keywords: Roscoe Pound, Sociological Jurisprudence.

I. INTRODUCTION

"The desire for an ideal relationship between human beings which we call justice leads us to think in terms of an achievable ideal relationship rather than as a means of achieving it."

With the rise of modern science, there came into existence a clear unanimity of belief among jurists in the possibility of applying the "scientific method" to the study of law and legal philosophy. Under the influence of Cotman positivist sociology, a sociological jurisprudence was developed in order to understand the role of law in society and the application of social science to the study of law in action and to make law more effective as a tool. Social control for the purpose for which law is made to serve in a civilization of time and place.

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As the recognized leader of the sociological school in America for more than half a century, Roscoe Pound has devoted his efforts to this work. Through his extensive legal studies, excursions into legal history, mastery of the law and the application of law, and his research into case law for the purposes of understanding how the law is actually working, Dean Pound has tremendous progress has been made towards the achievement of the objective. In addition to these efforts, Pound contributed to the "principle of interests", which he regards as the most effective instrument yet devised for the scientific development and application of law. A brief consideration of Pound's theory of interests in the context of sociological jurisprudence is the subject of this article.

II. BACKGROUND OF POUND'S PHILOSOPHY

The forerunner of sociological jurisprudence was Montesquieu, who was the first to apply the fundamental principle that sociological jurists hold. In *L'Esprit des Lois*, he expounded the thesis that a system of law is a living growth and development that is related to the physical and social environment.

The great impetus to the movement in modern times was provided by Rudolf von Gering, who rebelled against the jurisprudence of the concepts of the historical-metaphysical school. While legal activity centred around speculation about the nature of the law, Gering insisted on considering the function and the end of the law. He emphasized on the social purpose of the law and insisted that the law should be brought in line with the changing social conditions. His thesis was that the protection of individual rights is dictated only by social considerations. What are called "natural rights" are nothing more than legally protected social interests. The welfare of the individual is not an end in itself, but is recognized only in so far as it helps to secure the welfare of the society.

Gering's original ideas, called social utilitarianism, stand as a link between Bentham's individual utilitarianism and two important movements of the twentieth century; The "jurisprudence of interests" in Germany and the sociological jurisprudence of Roscoe Pound. Writing his great treatise, *The Spirit of Roman Law*, Gering arrived at the position that a legal right is a legally protected interest. This led him to search for the purpose of law and conclude that purpose is the creator of all law, that every rule of law arises from some practical purpose. Every work is done for a purpose. Thus, while he held the human will to be free from mechanical causality, he concluded that it is subject to the law of purpose, that is, it acts because of "reasons" (interests). Interests become the basic component of his arrangement.

Gering considers law in the wider context of society. The purpose of law is to secure the

conditions of social life, and this determines the content of law. The conditions of social life include both material existence and ideal values, but these are relative to the social order of time and place. He developed a grand scheme of interests and named them as personal, state and public, the last two of which he regarded as one. However, he did not develop a successful means of "evaluating" interests against each other. Gering completely subordinates personal interest to social interest, holding that the duty to assert one's personal interest is a duty to society, even if one would not pay for doing so in a material sense. Thus, individual rights considered from the social point of view are only a means for the society to achieve its social goals. Unlike Bentham, Gering recognized altruistic interests as well as egoistic interests, but he paid little attention to the former. He recognized the beneficial interests for society that come from an individual's acting to protect his or her personal interests, however. Gering's plan has been criticized for lacking a properly objective criterion for the selection and evaluation of interests. His ideas were to have a great influence on the thought of Roscoe Pound.

Rudolf Stammler began his critical philosophy with an attack on economic and historical determinism. He sought a systematic co-ordination of various phenomena under one overarching theory, a formal method by which the varying contents of empirical rules could be worked out. Stammler focused his attention on the relationship of ethics with law rather than on the administration of justice by legal rules. Under his scheme, the jurist is faced with a twofold problem: the existence of authority and the rule of law; and the manner of effectively implementing such legislation. It is the duty of the state to study social phenomena and use its findings for the attainment of just law. This functional sociological approach is Stammler's greatest achievement. He established the social ideal as the goal of justice through law. Whereas Kant looked at free-willed individuals, Stammler looked at a community of free-willed men. He envisioned an ideal of social cooperation, whereby the individual merges into the community. Then, emphasizing individual goals rather than personal desires, he arrived at the principle of justice. He sought to replace an individualistic philosophy with a social philosophy of law and to add the principle of just rule making and just adjudication in concrete cases. The sociological jurist should agree with his point completely.

III. POUND'S PURPOSE OF SOCIOLOGICAL JURISPRUDENCE

The practical objectives of sociological jurisprudence are formulated by Pound as follows;

- a. The study of the social effects of legal institutions, legal precepts and legal principles apart from the law in books.
- b. A sociological study as a necessary preliminary step in law making.

- c. A study to find out the means of making legal rules more effective in the existing conditions of life including the limits of effective legal action.
- d. An attempt to understand the actual development of law by studying the judicial methods and thoughts of great judges and lawyers.
- e. A socio-legal history of common law to study the past relations of law with the then existing social institutions.
- f. Individualization of the application of legal rules so as to take into account the concrete circumstances of particular cases.
- g. Establishment of "Ministry of Justice" by the states to participate in this programme.

Pound compares social jurisprudence with other schools of legal thought and notes the following characteristics of the followers of the sociological school: They make a comparative study of legal phenomena as social phenomena and criticize them in relation to society . In particular they consider (1) the function of the law rather than its abstract content; (2) viewing law as a social institution that can be reformed by human effort and attempting to seek and effect such reform; (3) Emphasizing the social ends of the law rather than the sanctions; (4) insist that legal precepts be used as guides to socially desirable outcomes rather than as inflexible moulds; and (5) their philosophical views are diverse, usually some branch of the positivist or social-philosophical school.

IV. CONCLUSION

In attempting to fulfil the program of sociological jurisprudence, Pound believes that the first problem facing society is establishing its theory of interests as a functioning part of the legal system. The development of the doctrine culminated in two phases: the formulation of judicial concepts in 1919, followed by the announcement of a classification or scheme of interests two years later. Pound claims it to be his most valuable contribution to jurisprudence. While acknowledging some valid criticisms, he has vigorously defended it as the most practical means of "social engineering" sound yet devised.

Jurisprudential postulates consist of five generalized propositions about law that should serve as the principal premises under which all valid principles of positive law, both civil and criminal, can be understood or included. They are based on human nature and conduct as expressed in Pound's interpretation of American judicial decisions at the appellate court level and represent his conception of the judicial ideals of our society.
