

SOCIOLOGICAL SCHOOL OF JURISPRUDENCE

The sociological school considers law as a social phenomenon and examines law in relation to society.

It was a response to laissez-faire doctrine.

The driving principle behind laissez-faire, a French term that translates as "leave alone" (literally, "let you do"), is that the less the government is involved in the economy, the better off business will be—and by extension, society as a whole.

Sociological school is a shift from this doctrine, a Shift from 'laissez-faire state' to 'Welfare state', shift from Individual interests to social interests.

How is it different from Historical School?

Historical School explained the relationship between law and society, sociological school defines law with society as a major consideration in the DEFINITION of law but Historical school tries to find out the ORIGIN of law and how it develops (and society obviously has a major influence in origin and development of law)

So, it might be easy to be confused between both these schools because they both revolve around society but as I explained they are clearly differentiated on basis of their approach.

Don't Forget that:

The schools are just rough demarcations and there is no strict division between thought process of various jurists of these schools.

We can see that Bentham who was a positivist and belongs to the analytical school also provides support to the ideology of sociological school with his utility principle. (i.e. maximum benefit of maximum number of people)



Auguste Comte

Founder of Sociology

The word 'Sociology' was coined by a 'Emmanuel-Joseph Sieyès', but was popularized and reinvented by Auguste Comte.

Auguste Comte defined 'society' as an organism which can progress when guided by scientific principles which should be formulated by observation and experience of facts excluding all metaphysical and similar considerations.



Léon Duguit

Famous Works:

Law in the modern State

The Law and the state

Duguit Took inspiration from **Durkheim**, Durkheim defined the term Solidarity.

Mechanical Solidarity
(Solidarity by similitude) -

Common needs satisfied by men lending each other mutual assistance and putting together their similar aptitudes.

Organic Solidarity (Solidarity by division of labour) - Men have different aptitudes and diverse needs, they are satisfied by an exchange of services each using his own aptitudes to satisfy needs of others.

According to duguit 'solidarity' or 'cohesion' is the principal requisite of existence of social life. All Human activities, organisation should be directed to the end of ensuring the smoother and fuller working of men with men. This Duguit calls the principle of social solidarity.

According to Duguit *'The only right which any man can possess is the right to always do his duty'*

Criticism - Duguit wants to establish an absolute and uncontestable rule of law, just like 'natural law' theories. It is said for Duguit that he *"pushed natural law out through the door and let it come by the window"*



Rudolf von Ihering

Famous Works:

Law as a means to an end
The Struggle for law

Divided 'interest' into:

- Individual
- Social
- State Interest

These interests are balanced with 'reward' and 'coercion', Laws are made as such that they create a balance between them.



Eugen Ehrlich

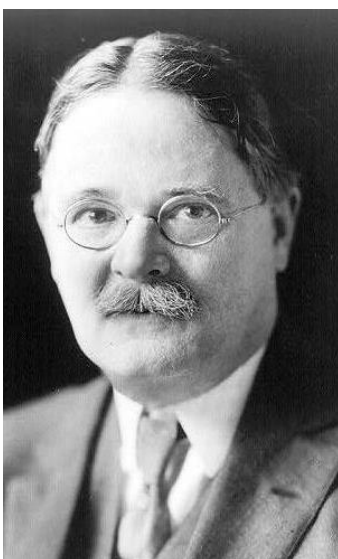
Famous Works:

Fundamental
Principles of
Sociology of law

Law is derived from social facts and depends not on state authority but on social compulsion. Society is made by 'Men in Association'

Ehrlich differentiated between 'formal law' and 'living law'

Law is not statutes or reported cases, law is the activities of society itself. There is a 'living law' underlying the formal rules of the legal system. The 'formal law' trails behind 'living law'.



Roscoe Pound

Famous Works:

An introduction to the
philosophy of law
The Spirit of Common Law
Social Contract through Law
Law and morals

Father of Sociological School

Pound compared the task of the lawyer to the engineers. He stated that the aim of social engineering is to build a structure of society as possible which requires the fulfilment or satisfaction of maximum wants with minimum usage of resources. It involves the balancing of

all competing interests (private, public and social). He called this theory as the theory of **“Social Engineering”**

He was Inspired by Kohler. Kohler says all laws are relative and conditioned by the civilization in which they arise. Every civilization has some jural postulates, which are ideas of right to be made effective by legal institutions.

Following the idea of Kohler Pound gave **5 jural postulate**

1. Men must be able to assume that others will commit no intentional aggressions upon them. (Basis of Criminal Law)
2. Men must be able to assume that they may control for beneficial purposes what they have discovered and appropriated for their own use, what they have created from their own labour, and what they have acquired under own labour, and what they have acquired under the existing social and economic order. (Basis of Right to Property)
3. They must be able to assume that those with whom they deal in the general intercourse of society will act in good faith.
4. They must be able to assume that those who are engaged in some course of conduct will act with due care not to cast an unreasonable risk or injury on others. (Basis of Law of Torts)
5. They must be able to assume that others who maintain things likely to get out of hand or to escape and do damage will restrain them or keep them within their proper bounds. (Basis of Liability)

This is not a priori claims, these are just hypothesis.