

SOCIOLOGY OF LAW¹

by

W. G. FRIEDMANN

MEANING AND DEFINITION

It is impossible to give any generally accepted and reasonably precise meaning to the term "sociological jurisprudence". Perhaps the only universally accepted meaning of the term is a negative one: the rejection of jurisprudence as exclusively a study of legal logic, the hierarchy of legal norms and the analysis of legal concepts, in other words, the rejection of analytical positivism as the only legitimate province of jurisprudence. This leaves "sociology of jurisprudence" as a catchall term for a vast majority of diverse approaches to the study of law held together by little more than a common tendency to "look more for the working of law than for its abstract content", a formulation given by Roscoe Pound half a century ago.²

Within this framework, Pound spelled out six major areas of a meaningful study of sociological jurisprudence: first, and most important, he called for a study of the social effects of legal institutions, precepts and doctrines, of the law in action as distinct from the law in the books. Second, he called for sociological studies as essential preliminaries in the process of law making and law reform. Third, Pound called attention to the importance of ascertaining the means by which legal rules can be made effective in the actual conditions of social life. Fourth, he demanded a study of the methods used by lawyers and judges in the work by which they have influenced legal development. Fifth, Pound asked for a sociological approach to the history of the institutions of the common law. Sixth, he asked that legal rules should be studied not just in abstract but so as to take account of the concrete circumstances of particular cases. Pound's program is not an exercise in methodology, but a call for a new approach to the study of law in its entirety. It implied that, while neither analytical jurisprudence nor legal philosophy were in themselves sufficient to understand law in life and action, sociological jurisprudence did not mean a substitute for these other areas of legal study but a supplement. Philosophy, analysis and a study of the law in action had to penetrate each other, in order to portray both the working and the ends of law in society.

This program of action has, on the whole, remained the most influential approach in postwar legal writing. It is reflected in the major postwar treatises on jurisprudence. Thus, Julius Stone, a disciple of Roscoe Pound, in his important *Province and Function of Law* (1946) rejects a specific methodology of sociological jurisprudence and devotes a major part of his treatise to an elaboration of Pound's program. This includes, for example, a study of national characteristics in the legal evolution of various systems: of the correlations of social and legal developments in general, as illustrated by the theory of Maine and his successors; of law as an adjustment of conflicting interests, and a study of various social pressures, conflicts and controls and their impact on the law of states, of groups within states, and of the relation of law to other social controls. A similar approach is found in a recent German jurisprudential work. In his *Rechtsphilosophie* (1956) Erich Fechner rejects the one-sided approaches to law,

¹ A survey of the major trends in sociology of law up to the end of the last war is given by Roscoe Pound, "Sociology of Law", in G. Gurvitch and W. E. Moore (eds.) *Twentieth Century Sociology*, 1947. In the text, no distinction is made between "Sociology of law" and "Sociology of jurisprudence", although some writers have made this rather artificial distinction.

² Pound, "The Scope and Purpose of Sociological Jurisprudence", 1911 (1) 25 *Harv. L.R.* 489.

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