A JURISPRUDENTIAL EXPLANATION OF THE NATURE AND IMPORTANCE OF LEGAL THEORY*

Abstract

The essence of law in the society and jurisprudence has been a debatable matter resulting in diverse schools of thoughts. These various schools of thoughts have different knowledge and understanding of what they believe law is and this has led to the postulation of various theories by jurists in jurisprudence all through the years. This paper centers on the history of legal thoughts and its significance to contemporary times. It was the finding of this paper that legal theories are imperative to modern society. Furthermore, that every concept in the history of humanity, like jurisprudence are related in the sense that an understanding of historical context is vital to an intelligent interpretation of theories, especially of theories that emerged in worlds whose social, political, and religious dimensions were very divergent from our Contemporary experiences. Legal theories are useful to law making. Legal theories such as natural law theory, Austin's legal positivism and Kelsen's pure theory of law are crucial to the understanding of the political, social, and intellectual culture in the development of the society. This is also true of the conditions underpinning theories produced in our own time and place. This paper is indispensable to the origin of theory of Law in Jurisprudence as well as the understanding, interpretation and appreciation of such theories from its past to the present day. There is no absolute form of law or absolute type of law-making; all are dependent on elements in law, juristic, political agencies, circumstances of time and country. Law is part of the culture of society, economic and social developments affect the law. Thus the theory of law will always be relevant even now and in the future.

Keywords: Legal Theories, History of Law, Natural Law, Positive Law, Historical School, Sociological School

1. Introduction

The essence of law in the society and in jurisprudence has been one of great debate that has led to diverse understanding and schools of thought on this intrinsic concept, thus various schools of thoughts have different knowledge and understanding of what they believe law is and this has led to the postulation of various theories that have been examined and appreciated by jurists in jurisprudence all through the years. It is important to understand the origin and history of a subject, when that subject is to be critically assessed and interpreted, and like every other concept or subject as the case may be, examining law theories and understanding them critically could hold no value if one does not trace the history of the concept of law and its theories that has existed from time immemorial. Almost every concept in the history of humanity, like jurisprudence are related in the sense that an understanding of historical context is important to an intelligent interpretation of theories, especially of theories that emerged in worlds whose social, political, and religious dimensions were very different from our modern day experience. The Code of Ur Nammu– the oldest known tablet containing a law code surviving today, it predates the Code of Hammurabi by some 300 years. It is complicated to understand, in other words, the contemporary or local appeal of any legal theory-whether it is Savigny's notion of *Volksgeist*, medieval natural law theory, current theories of Sharia law, Austin's legal positivism, or Kelsen's pure theory of law—without understanding something of the political, social, and intellectual culture in the context in which they were developed. This is equally true of the conditions underpinning theories produced in our own time and place. Indeed, we have to make a particular effort to contextualize our reading of these theories[1] This paper seeks to examine the origin of theory of Law in Jurisprudence as well as the understanding, interpretation and appreciation of such theories from its past to the present day.

2. Definition of Law and the Concept of Legal Theories

Law as an idea, or rather, law as best understood in terms of a complex set of ideas such as rules, norms, commands, reasons, and so on, has been the principal object of analytical jurisprudence. Of course, this is not to say that analytical jurists do not think of law as a practical phenomenon, but rather that their enterprise has been to elucidate the deep structure of the concepts that structure the phenomena of law, legal doctrines, and legal argumentation. The main focus has accordingly been the conceptual elegance and coherence of the relevant ideas, as well as the ideals that, in some versions of analytical jurisprudence, are implicit in the very concepts of law and legality.[2] This analytical dissection of the very nature of law and its principles are the reason why we have numerous theories and understanding of law. A working definition of law can be said to be 'the binding rules of conduct meant to enforce justice and prescribe duty or obligation, and derived largely from custom or formal enactment by a ruler or legislature. It is very essential that laws carry with them the power and authority of the enactor, and associated penalties for failure or refusal to obey. Law derives its legitimacy ultimately from universally accepted principles such as the essential justness of the rules, or the sovereign power of a parliament to enact them[3]. Notable Jurist, Edwards Cooke, challenged the longstanding paradigm that law is the set of rules written in books, originating either in state or federal legislatures, constitutional conventions and courts, or the written or spoken work of lawyers and judges in treatises and formal writings, thereby painting the concept as an art or a form of control from an organized bureaucratic approach or understanding of control over individuals of a society[4]. Law in the paradigmatic account is somewhat top-down and centralized. It originates in governmental bodies and is disseminated via books and written work of lawyers out to the people. In that account, a state/people or law/society dichotomy is easy to see[5]. The contribution of jurisprudence to the determination of what the law is, or how to identify the set of valid laws in a particular jurisdiction at a particular moment—the 'non-momentary legal system'- the legal system as a more complex and persisting entity shaped by political, historical, cultural and other social forces-cannot be completely evacuated from the concerns of legal theory.

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[1] L. Nicola (2015) Jurisprudence, history, and the institutional quality of law. *Virginia Law Review*, 101 (4). p. 919-945. Retrieved 9th of August 2019 from Research Online : website http://eprints.lse.ac.uk/63471/

[2] L. Nicola (2015) op. cit. at footnote 1

[3] Ibid

[4] Ibid

[5] Ibid

3. History of Law and Legal Theory

Man is an intelligent being and as such came up with forms of principles and guidelines to protect and respect the humanity of one another. The theory and inquest into the structure and nature of the concept can be traced back to the earliest times. There have been forms and codes of laws dating from the earliest times. The Code of Hammurabi was one of several sets of laws in the ancient Near East and also one of the first forms of law. The code of laws was arranged in orderly groups, so that all who read the laws would know what was required of them. Earlier collections of laws include the Code of UrNammu, king of Ur (circa 2050 BC), the Laws of Eshnunna (circa 1930 BC) and the codex of LipitIshtar of Isin (circa 1870 BC), while later ones include the Hittite laws, the Assyrian laws, and Mosaic Law. These codes come from similar cultures in a relatively small geographical area, and they have passages which resemble each other. As the definition of law was the battle ground of jurisprudence there is no way in which the. History of the conception of law may be set forth more strikingly or more concisely than by examining the-formulas by which jurists have attempted to express their conceptions and set forth their conclusions. The Romans realized the idea of law first and in a peculiar degree, however the first Roman definitions of law are founded upon Greek originals[6]. Greek philosopher Heraclitus pointed at three main characteristic features of law of nature, which were according to him; (i) Destiny, (ii) Order and (iii) Reason. He stated that nature was not a composition of scattered or disorganized heap of components or things; instead, he posited that a definite relationship existed between the components of nature thus creating a definite order and rhythm of events. According to him, 'reason' is one of the essential elements of natural law. The Greeks developed this body of institutions in such a way as to get from the stage of primitive law into the stage of strict law, however the Romans being the world power at the time, borrowed heavily from their Greek counterparts, a nation whose culture, religion, law, ideologies and principles where in their very nature rich and interesting thus serving as viable foundations for the world power Rome at the time. Accordingly, Greek law developed three successive forms; the first was the primitive form of decisions of the king, regarded as divinely inspired. In its second form, law was a tradition of an oligarchy. From a priestly tradition, it became a tradition known only to a class, a body of customary rules of decision possessed as a class tradition by an oligarchy, the third form was brought about by popular demand for publication of the law, which resulted in a body of enacted law[7].Philosophers began to inquire as to the relation of laws so constituted, to the ideas of right and wrong. Was an act right, they asked, because it conformed to law, or were both the act and the law right if and in so far as they coincided with an absolute and eternal standard above the law? One answer was that what corresponded to the latter standard was natural right, but what corresponded only with the humanly imposed legal standard was conventional right, while others held that justice rested upon enactment rather than upon nature[8].

4. Development of Legal Theory

The classical period of Roman law was marked by juristic rather than by legislative activity, and the classical period of the modern Roman law was similarly characterized. Thus, two ideas emerged in Greek thought concerning law; on the one hand the idea of law as human wisdom, ascertained and promulgated through the State, on the other hand the idea of law as the manifestation of an immutable and eternal right and justice, in other words, the idea of lex and the idea of ius. This double aspect of Greek thinking about law is due to the circumstance that Greek law in the classical period was in form a body of enactment, but was about to grow by development through philosophical speculation. Greek jurists, however, did not arise to develop the law in this way. Instead Roman jurists put the ideas of the Greek philosophers into practical effect. The first attempts at a formula which have come to us from a Roman jurist or philosopher are to be found in the writings of Cicero[9]. Cicero lived in a transition period, a period of enacted law had come to an end and a period of juristic speculation was beginning. However, as time passed, the classical jurists in the golden age of juristic law-making, the idea of authority and command disappeared, and reason and justice, to which the jurists of the time were striving to make the actual rules of law conform, alone were insisted upon. Thus Celsus, at the beginning of the second century A.D and Ulpian following him, defined law as 'the art of what is right and equitable', and the latter defined jurisprudence as the science of the just and the unjust. By the middle of the third century, however, the period of the classical jurists phased out[10]. Much later, the 12th century witnessed a surge and different understanding of law from important jurists like Grotius to Kant. In this period, it is important to note that the theories of the time implied the acceptance of three great authorities, which could be interpreted or applied, but were not to be questioned. These authorities were the authority of the Bible, authority of Aristotle, and the authority of Justinian, due to the lack of critical enlightenment, the society adhered strictly to the provisions of these authorities as they believed them to be divinely inspired. The *Corpus Juris Civilis*, the widely accepted codified text which was based on the legislation of the Emperor Justinian was the binding statute law, and was properly recognized to be designated law. Thus jurists at the time were engaged in interpreting and commenting upon the authoritative text, so as to fit it to the conditions of the modern world.

The classical theory of law is to be seen in the next century. Thomas Aquinas formulated a theory which, in one way or another, has been felt in jurisprudence until very recent times. The Germanic principle that the state was bound to act by law coming in contact with the revived classical idea that the state exists of natural necessity for the general welfare, toward which law is but a means, so that the state creates law instead of merely recognizing it, led men to take up once more the distinction of natural law and positive law. Positive law was the creature of the sovereign. But all sovereigns were subject to natural law. Consequently, from the time of Diocletian, imperial legislation became the growing point of the law. This period left no juridical or philosophical treatise to set forth the current notion of law, but it could hardly be an accident that the word lex began to mean law in general during the period of legislation and codification from Diocletian to Justinian, because an antiquarian revival in the reign of Justinian preserved the formulas of the classical jurists. The period from Grotius to Kant was marked by two Movements: (a) a juristic movement, proceeding upon the notion that law is reason, in which the ideas of right and justice are made paramount; (b) a legislative movement in which law is thought of as emanating from the sovereign and in consequence the idea of command comes to be paramount. Herman Conring, the founder of the Germanist School and

[6]R. Pound (1912), *Theories Of Law*, 22 *Yale L.J.).* Retrieved on the 9th of August 2023 from Yale University website https://digitalcommons.law.yale.edu/ylj/vol22/iss2/3

[7] R. Pound (1912) op. cit at footnote 6

[8]Ibid

[9]Ibid

[10] R. Pound (1912) op. cit at footnote 6

in a sense the founder of modern legal history, (in his great work, De Origine luris Germanici (1643), overthrew the notion of the statutory authority of the Corpus luris Civilis in the modern world. He proved that the empire then existing was in no sense the empire of Augustus and of Justinian, and that the legislation of Justinian had never had and did not have any statutory authority in Germany[11]

In England, a strong central authority took the administration of justice in hand from an early period and the executive legislation of the royal writs created a vigorous system, which attained fixity before juristic speculation was sufficiently advanced to exert an influence, law, a word of the second type, became the general term, and right never acquired more than an ethical signification. During this time English judges constructed the common law of England by developing a judge-made customary law through interpretation and analogical extension of writs and precedents. English law was *ius*, not *lex*, although the powerful central authority behind it gave it the strength of imperative law and obscured the 'ethical and logical element, usually so prominent in non-legislative systems[12]. In the United States, publicists, jurist and lawyers who did not subscribe to the prevalent historical or analytical ideas, continued the phase of eighteenth-century thought which the Historical School was developing into something better. The reason for this in the case of publicists was obvious, since this eighteenth century juristic theory is also the classical political theory in America, the theory of the Declaration of Independence and of the Bills of Rights.

Natural Law

Natural law was regarded as a body of eternal principles, applicable to all men, at all times, under all circumstances. It was believed that this body of principles as a complete whole might be discovered by human reason. Hence men conceived that it was not merely their duty to criticize existing rules with reference to these principles, even more, they held that it was a duty to work out completely all the applications of these eternal principles and put them in the form of a code[13]. Heraclitus (530-470BC) a Greek philosopher developed the idea of natural law around 4th century BC. Heraclitus was the first Greek philosopher who pointed at the three main characteristic features of law of nature, namely: (i) Destiny, (ii) Order and (iii) Reason. He posited that nature is not a scattered heap of things but there is a definite relation between the things and a definite order and rhythm of events. According to him, 'reason' is one of the essential element or ingredient of natural law. The instability and frequent changes in the early small states of Greece made legal philosophers to think that law was meant to serve the interests of those who were in power and since the people are incessantly struggling for a better life, there should be some immutable principle which may have universal application for all the persons so that peace and tranquility may prevail. Thus, these unstable political conditions gave birth to the idea of natural law which aimed at morality and righteous conduct in human life. Socrates (470-399BC) was a very prominent theorist and philosopher among the stoic philosophers of the ancient time. He was a great admirer of truth and moral values. He argued that where there is a natural physical law, there is a natural moral law. It is because of the 'human insight' that a man has the capacity to distinguish between good and bad and he is able to appreciate the moral values. According to Socrates, 'virtue is knowledge 'and 'whatever is not virtuous is sin'. To him, justice may be of two kinds, namely, (i) Natural justice, and (ii) Legal justice. The rules of natural justice are uniformly applicable to all the places but the notion of legal justice may differ from place to place depending on the existing statutory law and social conditions of the place. Plato (427-347BC) was Socrates disciple, he carried further the natural law philosophy through his concept of ideal state which he termed as 'republic'. Plato extended that the only intelligent and worthy person should be the king. He argued that justice lies in ordaining man's life through reason and wisdom and motivating him to control his passion and desires. In his *Republic*, Plato emphasized the need for perfect division of labour and held, 'each man ought to do his work to which he is called upon by his capacities '. In other words, every person should mind his own work and not unnecessarily meddle with other's work[14]. Aristotle (384-322BC) came out with a more logical interpretation of the natural law theory. According to him, a man is a part of nature in two ways. Firstly, he is a creation of God, and secondly, he possesses insight and reason to which enables him to articulate his actions. Aristotle defined natural law as 'reason unaffected by desires'. It embodies the basic principles of justice and morality which have universal validity independent of time and place, but Aristotle did not categorically state that the positive law which is contrary to principles of natural law, is invalid. To quote his words, Aristotle said, 'so far its relation with positive law is concerned, natural law is originally different but once the positive law has been laid down, it is not different'[15].

Marcus Tullius Cicero as mentioned earlier was a great Roman lawyer, statesman and orator. His legal philosophy is contained in his famous work 'de legibus'. According to him, 'true law is right reason in agreement with nature; it is of universal application, unchanging and everlasting, and there would not be different laws at Rome and Athens, but one eternal and unchangeable law which will be valid for all nations at all times'. Thus, Cicero supported natural law because it was creation of 'reason' of the intelligent man who stands highest in the creation by virtue of his faculty of reasoning. He believed in the universal applicability of natural law based on general morality of the human society. His most profound contribution to political philosophy was his conception of natural law. In developing his conception of natural law, he followed the idea of Plato that the principles of right and justice are internal and took from Stoices that a supreme universal law existed in nature. Conception of natural law was taken by Cicero from Stoic philosophy, but through him its idea spread in whole Europe and held field up to 19th century. He believed that single universal law governs the whole universe. It is based on rational and social nature of man divinely bestowed upon him. He termed Natural Law as law of God and states that God is the author of this law, its interpreter and its sponser. The man who will not obey it will abandon his innerself. Thus, he places emphasis on natural law in most forceful language. He discarded theory of inequality of Plato and Aristotle and gave crowned glory to natural law.

Thomas Aquinas made over this philosophical theory to bring it into accord with theology. He divided the old ius naturale (natural right) into two parts, -a lex aeterna (eternal law) and a lex naturalis (natural law)-of which the one is the 'reason of the

[11] R. Pound(1912) op. cit at footnote 6
[12] Ibid
[13] L. Nicola (2015) op. cit. at footnote 1
[14] Retrieved from the 'Dialogues of Plato', Translated by Benj Jowett. Vol. IV, p 441
[15] W.U.C.H: *Cases & Materials on Jurisprudence* (1958) p 311

divine wisdom' governing the whole universe, the other the law of human nature, proceeding ultimately from God but immediately from human reason, and governing the actions of men only. Man, he held, being a rational creature, participates in the eternal reason, so that the 'must' which the lex aeterna addresses to the rest of creation is 'ought' to him, thus that part of the eternal law which man's reason reveals is to be called natural law. Hugo Grotius (1583-1645) was a great statesman, philosopher and jurist of his time. He was Dutch scholar and a staunch supporter of renaissance and reformation. He propounded the theory of functional natural law in the Laws of War and Peace (1625) and formulated the principles of international law which were equally applicable to all states, both, during war and peace[16]. He referred these principles of law as nations of natural law. He departed from St. Thomas Aquinas scholastic concept of natural law and 'reason'' and held that natural law was not just based on 'reason'' but on 'right reason' i.e. 'self- supporting reason' of man[17]. As to the question whether the subjects should disobey the ruler who did not act in conformity with the principles of natural law, Grotius answers that howsoever bad a ruler maybe, it is the duty of the subjects to obey him. Though, there is apparent inconsistency in the natural law propounded by Grotius because on the one hand, he says that the ruler is bound by the 'natural law' and on tire other hand, he contends that in no case the ruler should be disobeyed, but it appears that Grotius' main concern was stability of political order and maintenance of international peace which was the need of the time. He formulated his conception the law of nature on the basis of right and justice embodied in the essential, universal and unchangeable quality of human nature. He rejected the idea that all law, justice and rights have their basis in utility or expediency. Human nature and reason constitute the original fountain of all laws, utility is necessary. He defined natural law in these words, 'the law of nature is a dictate of right reason which points out that an act according to it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity and that in consequence such an act is either forbidden or enjoyed by the author of nature i.e God'.

Positive Law

Natural law theory exaggerates the relation of law and morality. Positive law is a reaction against particularly that aspect of Natural law theory. It insists on a distinction between human law, which they call positive law and moral and scientific laws. Human laws are posits of human society while scientific laws are independent of what we take them to[18] The proponents of this school of thought posit that law should be treated as it is and not what it ought to be. The strict rigidity of this school led to the depiction of totalitarian government's chaotic dispositions like Nazism, Fascism and Marxism. The major proponents of this thought were John Austin and Jeremy Bentham. The Classical version of positive law theory is John Austin's (1797-1859)'command theory. His model was that of a definition and his goal was to give a definition of law that removed all evaluative language. Austin is a prime example of a positivist in legal theory, but his was only one version which we call 'command theory:' Law, Austin reasons, has the status of command. He defined 'command' as any signification of a desire by the sovereign. He then defines the sovereign as 'the determinate rational being or body that the other rational beings are in the habit of obeying.[19]' Austin saw the inconsistency of natural law and was never weary of pointing it out. Having to choose between the two ideas, in view of the condition of English law at the time, Austin naturally inclined to the imperative theory, and laid down its general principles almost in the very words of Blackstone. A law, in the most general sense, is, he says, 'a rule laid down for the guidance of an intelligent being by an intelligent being having power over him. He says, has to do with rules set by men to men, provided they are established by determinate political superiors. He required a state as a condition of positive law; for a law, being a command, must proceed from a definite source and must be sanctioned Accordingly he defines positive law as 'the aggregate of rules set by men as politically superior to men as politically subject.' John Austin stated that law was the command of the sovereign. The difficulty with this 'positive law' theory was that it enhanced and justified the fact that power was the law, and that legal professionals were merely scribes to the Queen's dictates[20]. Indeed, Austin's view reflects an empirical reality that dates back to the Romans and beyond. Under Austin's theory of law, no person possessed individual security, except to the extent that he or she might enjoy the emperor's temporary good will.54 Surely, this sovereign-enhancing theory could not be sustained if individuals were to secure a degree of freedom independent of the will of the sovereign.

These jurisprudential methodologies, i.e., natural rights, positive law and historical jurisprudence' theories, along with the hybrid 'social contract' theory, which supposedly guaranteed certain basic natural rights through the institutionalization of authority, viewed power as civilized and curtailed. Of course, the history of power elites confronting other power elites, in the context of such legal beliefs and abstractions thereof, in conjunction with the results of such interactions, reveal the absence of state-protected security for both the individual man-woman and the community. Nevertheless, these traditional visions of freedom and security evolved over the centuries as the dominant jurisprudential theories and continued to provide succor to both the community and legal institutions through the end of the nineteenth century[21]. Another methodology posed to secure the entitlement of individual freedom can be developed from Hobbesian-Locke contractarian theory. Here, the idea is that as people establish a 'central authority' by giving up certain basic rights, that authority is, at least under Locke's view, subject to certain restraints; namely, the person or entity holding the authority cannot abuse the community's trust, and the community's individuals retain certain natural rights. Thus, man/ woman saw the age of revolution; a movement of power from the dictates of the few to the dictates of a group larger than the few[22].

[16] C.L Fisk & R.W Gordon (2011) *'Law As...' : Theory and Method in Legal History* UCI Law Review, Vol. 1, No. 3, 2011; UC Irvine School of Law Research Paper No. 2012-51. Retrieved 14th of October2023: from https://www.law.uci.edu/lawreview/Vol1No3Articles/fiskandgordon.pdf

[17] Ibid

[18] Philosophy of Law: Positive Theory Online Course work https://philosophy.hku.hk/courses/law/Positive%20Law%20hnd.html last accesed 12st of September 2023

[19] Ibid note 18

[20] G. P. Moran(1997) *A Radical Theory Of Jurisprudence: The 'Decision maker' As The Source Of Law The Ohio Supreme Court's Adoption Of The Spendthrift Trust Doctrine As A Model*: Akron Law Review: Vol 30:3

[21] Ibid note 19

[22]G. P. Moran(1997) op. cit at footnote 16

Historical School

Freidrich Savigny a notable jurist had a different take entirely, Savigny's school carried forward one of the two ideas which had been contesting in jurisprudence in the seventeenth and eighteenth centuries. The element in law which the medieval jurists had rested on theology, the seventeenth-century jurists had derived from reason and the eighteenth-century Law-of-Nature School had deduced from the nature of man, However Savigny sought to discover this through history Historical school of jurisprudence relied upon a sense of unity and organic growth in human affairs and drew a lot of impetus from the Romantic Movement which had its root in Germany. The historical school of jurisprudence manifests the belief that history is the foundation of the knowledge of contemporary era. The historical school of jurisprudence was reaction to the natural law thinking of the 18th century. The basic tenet of the school is that law in its essence is not something imposed on a community from above or from without, but is an inherent part of its ongoing life, an emanation of the spirit of the people. Savigny was to use the term *volksgeist,* spirit of the people, to designate what he regarded as the source of law. Of course, the *volksgeist* carries a mystique that is not reducible to learning by experience. Through it law is traced back to a people's sense of its identity and of its own particular ways of doing things. It is the extravagant sweep that Savigny claims for this mystique that has brought forth the most telling criticisms to which his Historical School has been subjected by practical-minded English and American jurists[23]. A new period in juristic thinking started with Kant, that indeed, marked the end of eighteenth-century jurisprudence and the starting-point of the metaphysical and in a sense the historical jurisprudence of the nineteenth century. Nineteenth-century definitions of law were of three types. philosophical, historical, and analytical. The philosophical formulas are of two kinds, formulas written from the standpoint of natural law, persisting from the eighteenth century, which are mostly Rousseauist; based on the French philosopher, Jean-Jacques Rosseau; and metaphysical formulas, which belong properly to the nineteenth century. The significant achievements of nineteenth-century theory of law were in historical and analytical jurisprudence. The work of legal historians enriched jurisprudential scholarship as well, forcing theorists and philosophers of law to consider social context as a far more significant feature of law than the jurisprudence—even the historical jurisprudence—of the nineteenth century had allowed.

Sociological School

The Sociological School of jurisprudence considers law or legal development from the perspective of the people in the society. Perceiving law as a social phenomenon, it posits the harmonization of law with the wishes and aspirations of the people. In other words, it insists on the harmony between law and the interests of the people. The Sociological approach to the study of law is the most important characteristic of our age. Jurists belonging to this school of thought are concerned more with the working of law rather than its abstract content. Their principal premise is that the law must be studied in action and not in textbooks. They have been at work upon jurisprudence with reference to the adjustment of relations and ordering of human conduct which is involved in group life. They are concerned with the study of law in relation to society. The exponent of this school considered law as a social phenomenon. They are chiefly concerned with the relationship of law to other contemporary social institutions. They emphasize that the jurist should focus their attention on social purposes and interest served by law rather than on individuals and their rights. 'Sociological jurisprudence' is a term coined by the American jurist Roscoe Pound (1870–1964) to describe his approach to the understanding of the law. Central to Pound's conception was the very suggestive idea that in modern societies the law represents the principal means through which divergent interests are brought into some sort of alignment with one another[24].

The main concern of sociological jurists is to study the effect of law and society on each other. They treat law as an instrument of social progress. The relation between positive law and ideals of justice also affects the sociology of law. It would therefore be seen that sociological jurisprudence is a multifaceted approach to resolve immediate problems of society with tools which may be legal or extra – legal and techniques which promote harmony and balance of interests of society[25]

The forerunner of sociological jurisprudence was Montesquieu, who was the first to apply the-fundamental principle which sociological jurists assume. In L'Esprit des Lois, he expounded the thesis that a system of law is a living growth and development interrelated with the physical and societal environment. The great impetus to the movement in modern times was furnished by Rudolph von Jhering, who revolted against the jurisprudence of conceptions of the historical-metaphysical school. Whereas juristic activity was centered on speculation as to the nature of law, Jhering emphasized consideration of the function and end of law. He stressed the social purpose of law and insisted that law should be brought into harmony with changing social conditions. His thesis was that the protection of individual rights is dictated by social considerations only. What are termed 'natural rights' are nothing more than legally protected social interests. The individual's welfare is not an end in itself but is recognized only insofar as it aids in securing the welfare of society[26].

5. Contemporary Importance of Legal Theory

Modern day theorists have asserted and postulated various theories of law also based on its rich, constructive history and nature. Aware of the difficulty of making claims about the relationship between law and society in the past or in the present, jurists still work away, trying to avoid making an understanding between law, morality and the society. They posit that the economy/society 'shapes' law, or law 'influences' the economy/society, or that law and the economy/society are 'mutually constitutive, legal historians have shown that all three propositions are surely true in some sense[27]. Grotius is rightly considered

[23]Robert E. Rodes, On the Historical School of Jurisprudence, 49 *Am. J. Juris.* 165 (2004). Available at: https://scholarship.law.nd.edu/law_faculty_scholarship/858

[24] *A Dictionary of Sociology 1998*, originally published by Oxford University Press 1998

[25] Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

[26] Jhering's principle work is DER ZWxCK IM RgCHT, translated in English as Law as a means to an end (Husik transl. 1913). Good short accounts of Jhering's philosophy are found in the following sources: Frizdmann, LEGAL THEoRY 213-217 (2d ed. 1949); Patterson, Jurisprudencz 459-464 (1953); Rsuschlein, JURISPRUDENCE 107-112 (1951); Stone, The Province and Function or LAW 299-316 (2d ed. 1950).

[27] C.L Fisk & R.W Gordon (2011) 'Law As...': Theory and Method in Legal History *UCI Law Review*, Vol. 1, No. 3, 2011; UC Irvine School of Law Research Paper No. 2012-51. Retrieved 12th of September 2023: from https://www.law.uci.edu/lawreview/Vol1No3Articles/fiskandgordon.pdf

as the founder of the modern international law as he deduced a number of principles which paved way for further growth of international law. He propagated equality of states and their freedom to regulate internal as well as external relations. Grotius believed that man, by nature is peace loving and desires to live according to dictates of reason. He, therefore, treated 'natural law as so immutable that it cannot be changed by God himself'. He considered divine law as the grandmother, natural law the parent and positive law as the child. Thus, he placed natural law at a higher footing as compared with the positive law.

6. Conclusion

Comparison of the development of juristic theory of law with the development of the forms of law and study of juristic theory of law in connection with the formulating agencies in law for the time being, show that there is no one absolute form of law or absolute type of law-making, but that the traditional and the imperative elements in law, the juristic and the political agencies in law-making may each find a place, greater or less according to the circumstances of time and country. Law is part of the culture of society. Different peoples have different laws just as they have different styles of clothing and different favorite foods. Legal enactments can nudge the culture in one direction or another, but if the culture rejects them firmly enough they will fail of their purpose: Economic and social developments affect both what law is needed and what law is possible: Historical experience affects moral judgment and with it the willingness to accept this or that form of legal restraint. Thus the theory of law will always be elaborated even far into the future.