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Sociology and the Law

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SOCIOLOGY AND THE LAW

THE administration of justice has ever been a target; sometimes for the philosopher, sometimes for the fool; now for the righteous, then for the criminal; occasionally for the lawyer, less frequently for the jurists; but always a target, forever subject to the "slings and arrows" of outraged suppliants at the temple of justice. Wherein lies the cause of this unending dissatisfaction? Is the ideal of abstract justice so fantastic and extravagant that it defies realization in the concrete? Is the economic and social flux so meteoric, that justice ever loath to forsake a principle once established lags sheepishly behind, or is it that juristic thinking needs a complete overhauling of the "fundamentals," as they are affectionately called? [1]

[1] Ehrlich, Grundlegung Der Soziologie Des Rechts (1913), c. 1, p. 16: "For one, however, who sees in law primarily a rule of conduct, the coercion involved in punishment as well as that in the execution of judgments necessarily falls into the background. For him, human life is not enacted before courts. A moment's observation teaches him that every man stands in countless relationships and that with very few exceptions he does quite of his own accord what is obligatory upon him in these relationships; he fulfills his duties as father and son, as husband or wife, he refrains from disturbing his neighbor in the latter's enjoyment of his property, he pays his debts, delivers what he has sold, performs that for which he has bound himself to his employer. The jurist always has the remark ready that men do their duty only because they know that in any case they could be forced to do it by the courts. But if he would only take the unfamiliar trouble of observing men in their activities he would easily convince himself that for the most part they do not think at all of the coercion of courts. So far as they do not do what is naturally according to the rule of the situation, they give quite different reasons for their decision: they might, if they acted differently, fall out with their dependents, lose their positions and trade, and get the reputation of a quarrelsome, dishonorable, unreliable man. But this fact, at least, even the jurist ought not to have ignored, namely that what men do as their legal duties in this sense of the word is often something quite different from, and sometimes something much more than, what they can be compelled by the authorities to do. Not infrequently the rule of conduct is entirely distinct from the enforceable rule."

The words of Thrasymachus on the subject of justice, written some 25 centuries ago are significant:

> "Listen, then—I proclaim that might is right, and justice is the interest of the stronger * * *. The different forms of government make laws—democratic, aristocratic, or autocratic, with a view to their respective interests; and these laws, so made by them to serve their interests, they deliver to their subjects as 'justice,' and punish as 'unjust' anyone who transgresses them. I am speaking of injustice on a large scale; and my meaning will be most clearly seen in autocracy, which by fraud and force takes away the property of others, not retail but wholesale. Now when a man has taken away the money of the citizens and made slaves of them, then, instead of swindler and thief he is called happy and blessed by all. For injustice is censured because those who censure it are afraid of suffering, and not from any scruple they might have of doing injustice themselves." [2]

Plato's famous classic, "The Republic," was an attempt, among other things to plan a system for the perfection of applied justice. The "good life" he argued must come from a fusion of will and reason, fostered by a social unit called the state. The state in turn would promote justice by legislation of the most sweeping character, and the promotion of such concepts as the following: the belief in a personal God, the selection of leaders by intelligent elimination after all have had opportunities of education, a system of eugenics providing for the issuance of a health certificate to every bride and groom, the taxing of bachelors over 35 years of age, the maintenance of a military for purposes of defense, the discouragement of foreign trade as a breeder of wars and internal habits of greed, the limiting of wealth to four times the amount possessed by the average citizen, the unfitness of men engrossed in the pursuit of money to rule. These are but a few of the suggestions of the great idealist,

[2] Durant, The Story of Philosophy (1927), p. 23.

whose wisdom and theories have been criticized, but whose insight into human nature has never been seriously questioned. The faith of Plato in the supremacy of the state to the individual is his contribution to social thought.[3]

In spite of this program for the attainment of justice, it was apparent then, as it is now, that the laws as applied left much to be desired; and that chance and change exacted their toll against society as a whole and the individual as a unit. Then it was that Aristotle in his "Politics" began to examine the origins of chance and change. Applying the inductive method, he undertook the criticism of some 158 Grecian institutions, exposing their limitations, and explaining the influences of climate, soil and physiography on socety. His method was scientific while that of Plato had been speculative. The background and investigations of Aristotle made him a pronounced conservative. In speaking of rapid-fire legislation, he exclaimed "the habit of lightly changing the laws is an evil; and when the advantage of change is small, some defects whether in the law or in the ruler had better be met with philosophic toleration. The citizen will gain less by the change, than he will lose by acquiring the habit of disobedience." [4] It was the thought of Aristotle that legal and political stability was substan-

[3] *Ibid.* at 19 *et seq.* Compare with the historical view as stated by James C. Carter in his paper prepared at the request of the Committee of the Bar Association of the City of New York and published in 1884 entitled, "The Proposed Codification of Our Common Law." At p. 86 he says: "The point now under notice can be summed up in a very narrow compass, and I cannot help thinking that it is decisive of the whole question of codification.

"(1) It is agreed on all hands that private jurisprudence is a science; whence it follows that it can be cultivated, developed and advanced only by the masters of that science.

"(2) It is also agreed that a legislative body consisting principally of laymen, possess no single qualification which enables it to prosecute the cultivation and improvement of this science, and its adaptation to human affairs.

"(3) The mode of effecting the improvement of private law and adapting it to the ever-varying wants of men, which the recent advocates in England of codification suggest, is the creation by the Legislature of a Committee composed of eminent jurists, whose duty it shall be to observe the operation of the Code, and to report at intervals—say, of ten years—what improvements, changes and additions should be made. But what comparison can such a mode of amending, improving and adapting the law bear to that which is now in actual operation, in which the whole machinery of administering justice, embracing, upon the Bench, tenfold the ability and learning which could be arrayed upon a Committee, and all the ability of the Bar, is silently, slowly, and without violent change, performing, as a subsidiary function, this very task."

[4] Durant, The Story of Philosophy, *ibid.* at 91.

tially dependent on the customs of the times and that "to pass lightly from old laws to new ones is a certain means of weakening the inmost essence of all law whatever." [5] How advantageously might these words be emblazoned in the corridors of our legislative buildings today. Although Aristotle did not have Plato's supreme confidence in the state, he did not to any appreciable degree exalt the individual and his rights.

The conquest of Alexander with its amalgamation of the many and the different, required for the first time the practical application of that idealistic conception—the brotherhood of man. The general, similar moral consciousness of the conqueror and the conquered which was observed by the philosophers, unalterably lead to but one conclusion, *i. e.,* that the same resemblances and sympathies found in different races, must have a common origin and that there must be a theory capable of explaining them. The attempted explanation however, was reserved to the energy and skill of later generations.

With the conquests of Alexander however, came Cosmopolitanism and says Franklin H. Giddings, "with Cosmopolitanism, came individualism, and with it the final word of Greek philosophy upon the social relations. Epicureanism, with its emphasis upon individual initiative and individual happiness, contended that the Society is best which imposes minimum restraints upon the individual will. From this doctrine as a premise, the conclusion was inevitably reached that social and legal relations rest wholly upon individual self interest and the desire of each to secure himself against injury. * * * So the teaching of Plato and of Aristotle was turned about. The assumption that Society creates and moulds the individual became the dogma that individuals for individualistic ends create society." [6]

The march of time brought about the far reaching Roman Empire with its assimilation of diverse ethnic groups, which assimilation was not unaccompanied by conflicts of mind and interest and finally adjustment to some extent by law based on the common reason of the community. In

[5] *Ibid.*

[6] Giddings, Studies in the Theory of Human Society (1922), pp. 103, 104.

the discussion of law the Greeks were largely speculative and told us what the laws ought to be, whereas the practical Roman mind discussed the law as it then existed and what caused it.

From the Greeks, to the Romans, from the Romans to the Middle Ages, and from the Middle Ages to John Locke, the contemplation and solution of the problems of society had been predominantly speculative. Such statistics and grouping of facts, as had been accomplished could hardly be dignified with the name of science.

Speculation and idealism had practically saturated human thought, when a complete turnabout was inaugurated, resulting in the establishment of a Positivist Philosophy, the science of precise observation, of which Auguste Comte was the pre-eminent leader. His five volumes of Positive Philosophy appeared between 1830 and 1842. Herein we find the first systematic attempt to reduce the laws of human relations to a science. It is in these volumes that we find named the so-called new science, the science of sociology. To Comte sociology was the crowning achievement of all science, for, as he reasoned, it would provide the solutions for the most elusive of all known problems, human society. It was apparent to Comte that science would solve the riddle of society, and that the application of the scientific method to human relations, would result in the accurate determination of the laws which govern the habits and actions of man as an individual and as a member of a group. When these laws were discovered, understood and applied, the pursuit and attainment of happiness in the fullest sense would be unquestionably assured. An entrancing hypothesis indeed, one which has engaged, since its pronouncement, some of the most erudite scholars in the past eighty years. The first and probably the best known of all these men of learning was Herbert Spencer.

It is to Spencer that we accredit the first actual achievement in the science of Sociology. Setting as the ultimate goal of society a liberty which is equalized by justice, he deliberated on what was standing in the way of such a Utopia. Was it conflict between groups? Was it militarism? Was it industrialism? These and many other ques-

tions which he raised, set the minds of men thinking in new channels. But even Spencer, although he, at times, employed several clerks compiling human and social statistics, did not consistently base his conclusions on this inductive method. However, he is the first to have attempted the systematic organization of social observations and the progress since made is largely attributed to the trail which he blazed.

Since Spencer's day, the process of social researches has gone on and on. Resultant conclusions have been far from satisfactory; like everything new, sociology has borne its share of criticism and downright ridicule. Being scientific in method, it is no respecter of tradition. Some of its hypotheses such as Behaviorism,[7] which can be characterized as the control of conduct by environment alone are difficult to accept; yet with all this, the effort to unravel the mystery of human and social relations grips the imagination, and deserves the utmost consideration. Although sociology may fall far short of its goal, the torch of science which it bears must inevitably light up some of the recesses which have been hitherto in darkness.

How has the law reacted to the sociologist and his investigations? Has it opposed him as the iconoclast of tradition, or has it cautiously followed him, when convinced of his theories? Is the law with its unalterable worship of *stare decisis* impeding progress? Is the administration of law today carried out in disregard of all the social theories that have contributed to the better man and the better group? Has there been any attempt to justify the existing laws, by the scientific method? These are the questions which lawyers must answer; these are the queries which law teachers cannot lightly set aside. Let us examine, if possible, what has been done and what remains to be done in this direction.

Less than 100 years ago, the designation of law as a social science was inconceivable. Investigators of the law viewed it from an historical aspect only, studying the law of the Romans and the law of their predecessors for the sole purpose of better understanding the principles which

[7] Watson, Behaviorism (1924).

they were then applying. Of course, the law had its critics, but the criticism was directed against the misapplication of the general principles, rather than against the principles themselves.

At about the time when Spencer was writing, the courts were applying the contract theory to their judicial determinations. "All rights," it was thought, grew out of a legal transaction, depending on the will of the parties. The contract was the thing. The regulation of the public utility was seriously hampered and needlessly delayed, because as Roscoe Pound says, "The questions of public utility and patron were treated as if they arose between two farmers haggling over the sale of a horse." [8] Time and time again the application of the contract theory impeded progress. Finally social pressure prevailed and the theory of *quasi* contract appeared, with its more equitable and social basis that under some conditions an undeserved benefit required a compensation. The present law is still quibbling on the strict contract rule, in many of the recent decisions of our courts of highest jurisdiction.[9]

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[8] Quoted from a lecture entitled "Jurisprudence," delivered by Dean Pound before the Institute for Research in the Social Sciences at the University of Virginia, Research in the Social Sciences (1929), pp. 182, 183.

[9] See for example Adair v. United States, 208 U. S. 161, 28 Sup. Ct. 277 (1907), wherein Mr. Justice Harlan, speaking for the Court, at 174, 175, 28 Sup. Ct. at 280, said: "The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell. * * * In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

And in Coppage v. United States 236 U. S. 1, 35 Sup. Ct. 240 (1914), at 14, 35 Sup. Ct. at 243, Mr. Justice Pitney stated: "Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

And in Adkins v. Children's Hospital of District of Columbia, 261 U. S. 525, 43 Sup. Ct. 394 (1923), at 554, 43 Sup. Ct. at 400, Mr. Justice Sutherland declared: "It is simply and exclusively a price-fixing law, confined to adult women (for we are not now considering the provisions relating to minors), who are legally as capable of contracting for themselves as men. It forbids

The application of the contract theory of law furnished no need for research. The parties had stated their respective wills and there was nothing left for the courts to do but enforce the promises. The social consequences of such enforcement, except in rare instances as illegal contracts, were no concern of the law.

The next advance in legal thought was originated by the German philosopher, Hegel. To him the study of history would reveal the course of human progress, its obstacles, the zeal for freedom of the will and the urge for perfection.[10] Legal thinkers were quick to adopt this historical method and with its adoption legal research was born. The aim however, of legal research at this time was not to change or improve the *status quo* but to throw further light on the legal concepts of the day, especially the concept of individualism.

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two parties having lawful capacity—under penalties as to the employer—to freely contract with one another in respect of the price for which one shall render service to the other in a purely private employment where both are willing, perhaps anxious, to agree, even though the consequence may be to oblige one to surrender a desirable engagement and the other to dispense with the services of a desirable employee."

[10] Hegel, Philosophy of Right (translated by Dyde), sec. 100: "The injury which the criminal experiences is inherently just because it expresses his own inherent will, is a visible proof of his freedom and is his right. But more than that, the injury is a right of the criminal himself, and is implied in his realized will or act. In his act, the act of a rational being, is involved a universal element, which by the act is set up as a law. This law he has recognized in his act, and has consented to be placed under it as under his right." In the note to this section cited in Selected Readings in the Philosophy of Law, compiled by Morris R. Cohen and Felix S. Cohen, the following comment, not without interest, is made: "Note.—Beccaria, as is well known, had denied to the state the right of exacting the death penalty, on the ground that the social contract cannot be supposed to contain the consent of the individual to his own death; rather, as he thought, must the opposite be assumed. To this it must be replied that the state is not a contract, nor, moreover, are the protection and security of the life and property of individuals in their capacity as separate persons, the unconditioned object of the state's existence. On the contrary, the state is the higher existence, which lays claim to the life and property of the individual, and demands the sacrifice of them.

"Not only has the conception of crime, the reasonable essence of it, to be upheld by the state, with or without the consent of the individual, but rationality on its formal side, the side of the individual will, is contained in the act of the criminal. The criminal is honored as reasonable, because the punishment is regarded as containing his own right. The honor would not be shared by him, if the conception and measure of his punishment were not deduced from his very act. Just as little is he honored when he is regarded as a hurtful animal, which must be made harmless, or as one who must be terrified or reformed. * * * Moreover, punishment is not the only embodiment of justice in the state, nor is the state merely the condition or possibility of justice."

With the introduction of psychology as an applied science, the law began to lessen its respect for the abstract individual. Legislation directed toward concrete justice for the concrete man poured from our legislatures in the latter part of the 19th century. For example, there were the acts against payment of wages in orders on company stores, about 1881, legislation as to conditions of labor, hours of labor for women and children, child labor, loan shark laws, workmen's compensation acts, blue sky laws and a host of others which destroyed the concept of the contract by the abstract individual. Notwithstanding the trend of the times, practically all of these laws met opposition in our courts, bent on tradition, until finally constitutional amendments were frequently required to insure the concrete justice that these laws demanded.[11]

[11] See the case of Earl Ives v. The South Buffalo Ry. Co., 201 N. Y. 271, 94 N. E. 431 (1911). In that case the court declared unconstitutional the New York Workmen's Compensation Law. The following from the opinion of the court is significant: "This legislation is challenged as void under the Fourteenth Amendment to the Federal Constitution and under section 6, article 1 of our State Constitution, which guarantees all persons against deprivation of life, liberty or property without due process of law. We shall not stop to dwell at length upon definitions of 'life,' 'liberty,' 'property' and 'due process of law.' They are simple and comprehensive in themselves and have been so often judicially defined that there can be no misunderstanding as to their meaning. Process of law in its broad sense means law in its regular course of administration through courts of justice, and that is but another way of saying that every man's right to life, liberty and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when our Constitutions were adopted. * * * One of the inalienable rights of every citizen is to hold and enjoy his property until it is taken from him by due process of law. When our Constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. * * * The right of property rests not upon philosophical or scientific speculations nor upon the commendable impulses of benevolence or charity, nor yet upon the dictates of natural justice. The right has its foundation in the fundamental law. That can be changed by the people, but not by legislatures. In a government like ours theories of public good or necessity are often so plausible or sound as to command popular approval, but courts are not permitted to forget that the law is the only chart by which the ship of state is to be guided. Law as used in this sense means the basic law and not the very act of legislation which deprives the citizen of his rights, privileges or property. Any other view would lead to the absurdity that the Constitutions protect only those rights which the legislatures do not take away. If such economic and sociologic arguments as are here advanced in support of this statute can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of legislatures, and the guarantees of the Constitution are a mere waste of words." Ultimately the Workmen's Compensation Law was introduced in New York by constitutional amendment.

The war between the abstract right of the individual to contract versus concrete justice has been subsiding in the last 30 years, but it cannot be conceded that concrete justice has won a complete victory. The New York Rent Law cases [12] represent one of the recent triumphs of concrete justice in the highest court in our land, but it will be remembered that there was a strong dissent. The doctrine that all men are created free and equal is now recognized as being more theoretical than real.[13] That some groups are amenable to oppression looms up in the minds of the jurist as worthwhile statistics supplant the catchwords of

[12] Block v. Hirsh, 256 U. S. 135, 41 Sup. Ct. 458 (1921); Marcus Brown Holding Co. v. Feldman, 256 U. S. 170, 41 Sup. Ct. 465 (1921).

[13] The point is well expressed by Pound in his frequently quoted article, *Liberty of Contract* (1909), 18 Yale L. J. 454: "The effect of all system is apt to be petrification of the subject systematized. Legal science is not exempt from this tendency. Legal systems have their periods in which system decays into technicality, in which a scientific jurisprudence becomes a mechanical jurisprudence. In a period of growth through juristic speculation and judicial decision, there is little danger of this. But whenever such a period has come to an end, when its work has been done and its legal theories have come to maturity, jurisprudence tends to decay. Conceptions are fixed. The premises are no longer to be examined. Everything is reduced to simple deduction from them. Principles cease to have importance. The law becomes a body of rules. This is the condition Professor Henderson refers to when he speaks of the way of social progress as barred by barricades of dead precedents. Manifestations of mechanical jurisprudence are conspicuous in the decisions as to liberty of contract. A characteristic one is the rigorous logical deduction from predetermined conceptions in disregard of and often in the teeth of the actual facts, which was noted at the outset. Two courts, in passing on statutes abridging the power of free contract have noted the frequency of such legislation in recent times, but have said that it was not necessary to consider the reasons for it. Another court has asked what right the legislature has to '*assume* that one class has the need of protection against another.' Another has said that the remedy for the company store evil 'is in the hands of the employee,' since he is not compelled to buy from the employer, forgetting that there may be a compulsion in fact where there is none in law. Another says that 'theoretically there is among our citizens no inferior class,' and, of course, no facts can avail against that theory. Another tells us that man and woman have the same rights, and hence a woman must be allowed to contract to work as many hours a day as a man may. We have already noted how Mr. Justice Harlan insists on a legal theory of equality of rights in the latest pronouncement of the Federal Supreme Court. Legislation designed to give laborers some measure of practical independence, which, if allowed to operate, would put them in a position of reasonable equality with their masters, is said by courts, because it infringes on a theoretical equality, to be insulting to their manhood and degrading, to put them under guardianship, to create a class of statutory laborers, and to stamp them as imbeciles. I know of nothing akin to this artificial reasoning in jurisprudence unless it be the explanation given by Pomponius for the transfer of legislative power from the Roman people during the Empire: 'The "plebs" found, in course of time, that it was difficult for them to meet together, and the general body of the citizens, no doubt, found it more difficult still.' No doubt they did. Caesar or the praetorian prefect would have seen to that. * * *"

the French revolutionary and the generalities of the patriot with an ax to grind. Legal sophistry, which ignores the facts of the economic and social order, is gradually giving way to the theory that law is telic and has a purpose which is to advance civilization with maximum intelligence and minimum restraint.[14]

[14] Compare, Ely, Property And Contract In Their Relation To The Distribution Of Wealth, vol. 11, c. 5: "In opposition to the individualistic theory of contract, we place what we designate as the *social theory of contract: contract is established and maintained for social purposes.* All contracts find their logical origin in the social welfare and in this they find the grounds for their maintenance. This theory of contract is analogous to the social theory of property. We may say in fact it is substantially the same thing if we take the view of American courts that the right to contract is a property right.

"Contract finds its limitations in the social welfare, and as time goes on less and less hesitation is felt in drawing the line beyond which contract must not go. With increasing frequency our legislatures and our courts establish metes and bounds of contract. Story says in his work on *Law of Contracts:*

'The rule of law, applicable to this class of cases, is, that all agreements which contravene the public policy are void, whether they be in violation of law or of morals, or tend to interfere with those artificial rules which are supposed by the law to be beneficial to the interests of society, or obstruct the prospective objects flowing indirectly from some positive legal injunction or prohibition.'

"Nevertheless, on account of false ideas of freedom, courts are less advanced in recognizing the social theory of contract than in recognizing the social theory of property. The ideas of the judges are more rigid when it comes to the social control of contract. They allow the constitutionality of laws which impose a real burden on property but at times set aside laws which regulate contract as to hours of labor, the means of payments, etc.. as shown elsewhere in the present work, although these laws impose slight burdens and often in the end, when allowed, promote the welfare of all, employer, employee and society at large.

"The social control of contract has advanced so far in Australia that one of the regular headings in the Official Year Book of the Commonwealth of Australia is now 'Legislative Regulation of Wages and Terms of Contract,' while the actual land legislation of Great Britain and Ireland for Scotland and Ireland, and that now proposed for England as a cure for the evils of tenancy, allows almost unlimited interference with private contract in order to promote what is regarded as the general weal.

"The rapid progress even American courts are making in the recognition of the social theory of contract is illustrated by their treatment of assumption of risk as a defence where negligence is a breach of statutory duty. If a statute imposes a duty to provide safety appliances and makes the employer who fails to do so criminally liable, he cannot contract out of this liability. But the chief point for the economist and the sociologist is that the courts recognize that society has the dominant interest; and thus they work away from that individualism which has done so much harm in the past. In conclusion it is not possible to do better than to quote from an excellent note on this subject which appeared in a recent issue of the *Harvard Law Review:*

'If the right of the individual to recover involves only his personal interest he may consent to give it up. But if society has an interest in the right then the consent of the individual cannot destroy the right. Thus a householder cannot waive his exemption because of the social interest that he and his family be not reduced to poverty. An insurance company cannot waive

If we concede that the law has a responsibility to civilization, as well as to the individual will, the necessity of scientific legal research follows. No longer can law be considered *sui generis,* but must rather be treated as a force contributing to or detracting from the social weal, in proportion to its adaptability or non-adaptability to the culture in which it finds itself. The legal science of today is characterized by a functional attitude, an attitude of asking what law does and how it does it, and how it may do better, rather than asking what it is and how it came to be what it is. Paramount among the methods of procuring adaptability, is the accumulation of sound statistics for the use of bench and bar and legislature. Had this method preceded the passage of the Eighteenth Amendment, its future social significance would surely have been more fully forecast. There would be no need, perhaps, of a commission working ten years after the passage of the Amendment, to determine whether or not it should have been passed. Some of our most progressive legislation including the recent amendments to the decedent's estate law have been preceded by a thorough investigation of the facts under the supervision of unbiased experts.[15]

If we do not wish to lose the conceded benefits of the present age, if we would perpetuate the high standard of living for all, if we would correct the abuses which one social group would heap upon another, even in this age, our laws must be administered with a full recognition of the complex problems which beset us. Our courts and legis-

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a lack of insurable interest because of the danger to society in tempting the beneficiary to destroy the life or chattel in which he has no interest. The importance which the doctrine of assumption of risk acquired in the nineteenth century is an example of the individualistic theory of justice on which the common law of that period proceeded, allowing each man to work out his own salvation. But statutes prescribing criminal liability for failing to guard machinery are enacted to protect the interest which society has that its members be not maimed. The principal case, in overruling an earlier New York decision construing the same statute, illustrates the increasing inclination of the courts today to recognize this interest of society. The employee's consent by an assumption of the risk to give up a right involving such an interest should not be effective whether such consent be worked out contractually or otherwise.'"

[15] Report of the Commission to Investigate Defects in the Law of Estates, 1928.

latures must know the facts, if they are to contribute to social happiness. To compile the facts, to weigh them and to classify them is the function of the legal scholar, not working alone but in co-operation with all the scholars engaged in the advancement of social science.[16]

We live in an extremely practical era. Even her majesty, the law, must submit to the test of usefulness. Let her not be found wanting.

It has been urged that the sociologist errs in his first hypothesis that the principles of behavior of groups and individual can be discovered by the method of investigation employed in the natural sciences, that the methods which led to the establishment of the law of gravitation cannot yield the secret of the laws of human behavior; that the difference between man and other physical matter is so fundamental, that it is a waste of time to study him as we would a chemical. As lawyers, we are ever solicitous of the facts in any legal dispute, and justify seemingly inconsistent conclusions, by unblushingly asserting that the facts are different. Each adjudicated state of facts stands as the rule for all subsequent cases on all fours, as we say. Surely a factual investigation into any state of human affairs ought not to meet with our disapproval, even though we do not at the moment believe in the science of human behavior. We are not, however, deluded into thinking that when the sociologist achieves his ideal, if he ever does, that perfection will be achieved, nor are we convinced that sociology is necessarily the last of the sciences, as Comte would have us believe. What we do know is that the social investigation has contributed to the twentieth century, if not wholly, then in part, the more humane treatment of children by parents and teachers, the transformation of the child gang into the play group, the better understanding of racial and religious differences, the children's court, the parole system, and the means of assimilation of the foreign

[16] See Pound, Interpretations of Legal History, p. 45: "Next to its functional attitude this rejection of the conception of a wholly independent science of law, drawn exclusively from the law itself and ignoring every other department of knowledge as irrelevant to its problems and of no value for its ends, is the most significant feature of modern juristic thought."

born. In most, if not in all of these movements, Sociology has called upon the Law to assist it. Can the Law help, if it does not understand?

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