# A Very General Introduction to the Trajectory of Jurisprudence

*What's Part II in a Series Aimed at Demonstrating Law's Coercive Nature*

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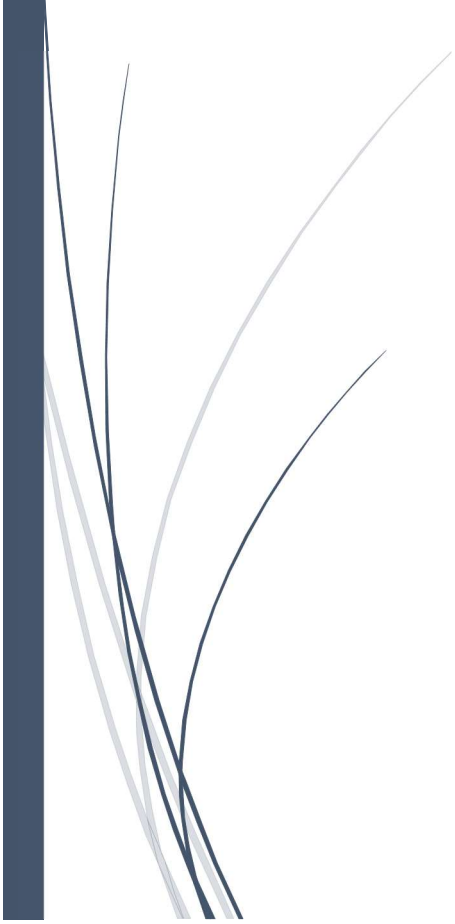

## 2. *Law*.

§ ***Agenda for Discussion***. No doubt the topic of law is too large to detail fully in the several pages I should like to dedicate towards it, much less do justice to the few items remarked upon here as, surely, they're quite complex. However, and so as to provide the appropriate context for which to place a later discussion of the coercive attribute of law, I should like to only address two facets which reside as the crux of any jurisprudential discourse: the nature and stages of law. The goal is to lend insight as to how law has evolved over the centuries, coming to what it is today. The most important take-away from what follows is that in any conception of law - whether being a set of abstract principles deduced from an idealized picture of society or a set of enactments meant to ensure the social interest in general security[1] - there lies at base two fundamental ideas: the "*ordering of human conduct* and the *adjustment of human relations*"[2]. Ultimately, it is this which makes law by its nature coercive – otherwise noted, that it's an instrument for attaining social harmony, where there is disharmony in, or disruption to, social interests[3]. Incidentally, it is these two facts, in effect acknowledging the nature of social interdependence and competing interests within a community, that sociological jurisprudence has gained significant momentum in recent decades[4].

§ ***Nature of Law.*** The fundamental problem found in the history of jurisprudence, which makes difficult any determinate and undisputable statement as to the true nature and end of law, comes from what Roscoe Pound identifies as the conflict between two ideas (or, 'chief elements') within any developed body of law: the idea of reason (i.e., the traditional or habitual

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*1. R. Pound, An Introduction to the Philosophy of Law, pg. 18, refers to these two alternatives as the "two needs which have determined philosophical thinking about law"; ibid., pg. 60-67 see also Pound's 12 conceptions of law*

*2. ibid., pg. 71; H. E. Willis, A Definition of Law, Virginia Law Review, Jan., 1926, Vol. 12, No. 3 (Jan., 1926), pg. 213; cf. J. H. Turner, A Theory of Social Interaction, pg. 1 "the basic unit of sociological analysis is not action, but interaction"; cf. R. R. Foulke, Definition and Nature of Law, Columbia Law Review, Dec., 1919, Vol. 19, No. 6 (Dec., 1919), pg. 351 "law...has something to do with human conduct"*

*3. R. Hardin, 'Normative Methodology', in Robert Goodin (ed.), The Oxford Handbook of Political Science, pg. 96 "because there generally is conflict in any moderately large society, coercion is a sine qua non for social order"; see H. E. Willis, A Definition of Law, Virginia Law Review, Jan., 1926, Vol. 12, No. 3 (Jan., 1926), pg. 206-207 for R. Pound's 6-fold categorization of social interests; R. Merton, Social Theory and Social Structure, 1968 Enlarged Edition, Free Press, New York, pg. 353; ibid., pg. 372-373 "[law] refers to patterned processes of normative control which regulate the behavior of members of the group. Groups and organizations differ in the extent to which they exercise control through expressly formulated rules"*

*4. R. Pound, The Ideal Element in Law, pg. 230-231 "we have seen that at the end of the nineteenth century and in the beginning of the present [i.e., twentieth century]...theories of the end of law in terms of cooperation, of promoting and maintaining social interdependence, and of maintaining, furthering, and transmitting civilization"; cf. H. Taylor, The Science of Jurisprudence, Harvard Law Review , Feb., 1909, Vol. 22, No. 4 (Feb., 1909), pg. 246; cf. F. Thilly, Sociological Jurisprudence, The Philosophical Review , Jul., 1923, Vol. 32, No. 4 (Jul., 1923), pg. 379-382*

element) and the idea of authority (i.e., the enacted or imperative element)[1]. Where the former finds its grounding in terms of ideas of right, the latter does so in terms of the expressed will and power of the state. Each, effectively, however, is one side of what's the same coin, where simply at different periods throughout history one idea received greater emphasis than the other, the turning of the coin usually being a 'reaction' against what was prevalent at the time. Ultimately, which side of the coin was facing upwards (i.e., which idea was most leaned on when promulgating a theory of law) depended on: 1) the balance between the need for stability versus the need for change[2]; 2) the attitudes and education of the thinkers of the time[3]; and, 3) each thinker's conception of justice[4].

§ ***Stability versus Change***. The need for stability springs mostly from the social interest in the general security, whereas the need for change is primarily rooted in the concern of the individual human life. Considering the history of civilization as an illustration, with the initial outgrowth of communities – that is, the increase in mobility of the population, development in industry, and expansion in regional commerce - there comes increased engagement between peoples with heterogenous beliefs, customs, and norms. When such cross-communal activity is of moderate degree, relative to the normal dealings and life within a community, communities have usually sought to order human conduct through fixed and rigid rules, attempting to retain their internal character. However, given the fact that an individual's conduct often derives from their personal interests[5], and in conjunction with the notion that the prevailing values and expectations of one community, which impress upon its members an idea of what's appropriate conduct[6], are bound to differ from that of another, with the continued rise in cross-communal activity it is inevitable

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*1. R. Pound, Theories of Law, The Yale Law Journal, Dec., 1912, Vol. 22, No. 2 (Dec., 1912), pp. 114-116; R. Pound, An Introduction to the Philosophy of Law. Yale University Press, 1930, pg. 59 "the nature of law has been the chief battleground of jurisprudence since the Greek philosophers began to argue as to the basis of law's authority"; R. Pound, Interpretations of Legal History, pg. 1-2 "the great battles of the analytical and the historical jurists were waged over the question of the nature of law – whether the traditional or the imperative element of legal systems was to be taken as the type of law…and as to the basis of the law's authority – whether it lies in reason and science or in command and sovereign will"*

*2. R. Pound, Interpretations of Legal History, pg. 1 "Law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change."; R. Pound, The Ideal Element in Law, pg. 40*

*3. W. A. Dunning, History of Political Theories, vol. I – Ancient and Medieval, pg. 190, notes that it wasn't until the latter half of the twelfth century that Aristotle's complete works began to enter Western Europe; cf. R. Pound, The Ideal Element in Law, pg. 45*

*4. cf. R. Pound, Readings on the History and System of the Common Law, Chapter 1 – Fundamental Conceptions; R. Pound, Outlines of Lectures on Jurisprudence, 5th Edition, §XIII – Justice According to Law*

*5. cf. W. A. Dunning, The Political Theories of Jean Jacques Rousseau, Political Science Quarterly, Vol. 24, No. 3 (Sep., 1909), pg. 392 "the basis of will, Rousseau holds, is interest"; cf. R. R. Foulke, Definition and Nature of Law*

*6. R. R. Foulke, Definition and Nature of Law, Columbia Law Review, Dec., 1919, Vol. 19, No. 6 (Dec., 1919), pg. 355-356; 362-363*

that each community's way of life begins to become increasingly threatened. However, that's not all that's affected – the individual's life is as well. Finding themselves operating amidst an environment with conflicting interests and customs and fixed rules, encompassing inflexible, and possibly inadequate, forms of redress for personal injury, the individual's assuredness about their own physical security and protection of interests diminishes[1]. Taken to the point where members of a community are no longer confident that others in other communities won't either commit intentional acts of aggression or be negligent in their conduct with respect to one another, individuals are faced with the incentive to overcome what such rigid rules neglect to afford by taking it upon themselves to seek redress where there's injury[2]. However, such recourse only produces inequalities[3] and is grossly inefficient – it does not offer the individual much certainty regarding their future dealings. Thus, the individual is confronted with, not only diminished certainty but, a lack of uniformity[4] in outcomes. As communities develop, growing in their population and becoming increasingly complex both in their technology and economy, social facts not only become greater but are made more complex in their nature. And, where inequalities are left unaddressed, they only become more severe[5]. Given that the object of law is the administration of justice, and rules of law inextricably linked to social facts, as the social facts change, therein changing the quality of the individual human life, so too must the community's body of rules and principles.

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*1. It should be noted that many theories of the 'state of nature' have intimately dealt with this idea, drawing theories of how individuals are likely to act towards one another when legal and political institutions either lack in effect or are altogether absent; cf. H. E. Barnes, The Natural State of Man, The Monist, January, 1923, Vol. 33, No. 1 (January, 1923), pp. 33-80*

*2. This is the trademark of a primitive society; cf. R. Pound, The End of Law as Developed in Legal Rules and Doctrines, Harvard Law Review, Jan., 1914, Vol. 27, No. 3 (Jan., 1914), pg. 199 "by self-help...is meant in antiquity redress by the help of oneself and of his kinsmen, so that reprisals, private war and the blood feud are ordinary institutions"; R. Pound, An Introduction to the Philosophy of Law. Yale University Press, 1930, pg. 72-73 "[primitive law] puts satisfaction of the social want of general security...as the purpose of the legal order. So far as the law goes, other individual or social wants are ignored or are sacrificed to this one"; F. M. Russell, Theories of International Relations, Chapter 4 – Ancient Greece, pg. 57-58 "from the seventh century to the second century B.C., interstate arbitration seems to have been resorted to in various parts of Greece and by large as well as small states in the settlement of various types of disputes. In many instances it was employed to end wars rather than to prevent their occurance. By the middle of the fifth century, however, the idea of forestalling wars by a system of arbitration...was received"; pg. 70 "by the third century B.C., the federation became the normal type of polity in Greece, marking an advance beyond the conception of the city-state"*

*3. Self-help as a form of redress, at least in terms of private war as an instrument for administering justice, is an institution which excessively relies upon individual means and disadvantages (or, disparities) – that is, for an individual to possess enough means to take advantage of another. The only effect this form of redress has is to perpetuate the inequalities which were to begin with.*

*4. R. Pound, Justice According to Law, Columbia Law Review, Dec., 1913, Vol. 13, No. 8 (Dec., 1913), pg. 705 "administration of justice according to law means administration according to standards...which individuals may ascertain in advance of controversy and by which all are reasonably assured of receiving like treatment" - see pg. 709 for its six advantages; F. Pollock, Justice According to Law, Harvard Law Review, Dec. 26, 1895, Vol. 9, No. 5 (Dec. 26, 1895), pg. 298 says it's generality, equality, and certainty.*

*5. R. Pound, Justice According to Law, Columbia Law Review, Dec., 1913, Vol. 13, No. 8 (Dec., 1913), pg. 703 "with increasing complexity of affairs, the bad effects of such lack of a rule in the administration of justice are more acute"*

§ ***Attitudes of Thinkers.*** Plato[1] (428-347 B.C.) was born during the Peloponnesian War to an upper-class Athenian family. For all his youth, Athens was involved in a brutal war against Sparta, which brought epidemics and famine. By the time Plato reached his early twenties, Athenian democracy had fallen, being replaced by a tyrannical oligarchy, of which two of his uncles were leading members. This period is usually referred to as The Rule of the Thirty Tyrants. Though, it wasn't long before the regime gained a reputation for being violent and corrupt, leaving Plato appalled. However, unable to resist the call for the restoration of democracy, being the wont institution for administering the rule of law, the regime was soon replaced. Though, this didn't afford Plato much respite. While he initially welcomed the new democracy, his greatly admired and beloved teacher Socrates was soon tried and executed by it. Therefore, it's not difficult to see why his political thinking was *anti*political[2]. He possessed a strong dislike for democracy, believing it only exaggerated liberty, leading a polity to devolve into anarchy[3]. Plato thus, in his *Politeia* (the *Republic*), a quite utopian work, proceeded to work out and illustrate the idea as to the nature of a just ruler (the philosopher-king), aiming to elucidate the one right way in which to govern. At the very heart of the work, Plato draws the distinction between those societies which govern through physical coercion and fear and those which persuade its citizens through reason to live virtuously and harmoniously. Drawing on what he had learned from Socrates, he believed that true and certain knowledge of right and wrong was attainable at the conceptual level and that it was imperative of the philosopher-king to have such knowledge so as to appropriately order society[4]. To Plato, the happiness of a society was determined by the philosopher-king's knowledge of the human self and its good, believing that "no law or ordinance is mightier than knowledge"[5]. Though, as he had seen growing up, he knew man's nature was frail; and, though he was adamant about what system 'ought' to prevail, he knew he needed to develop another which would be more workable. He developed this scheme in the *Laws*. Retaining his vision of society as a harmonized and integrated conglomerate of

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*1. K. Popper, The Open Society, pg. 17; A. Ryan, On Politics: A History of Political Thought – From Herodotus to the Present, pg. 31, 35; J. Coleman, A History of Political Thought: From Ancient Greece to Early Christianity, §Plato; F. Copleston, A History of Philosophy, Vol. I – Greece and Rome, Chapter XVII, cf. XXIII §1 – The Republic*

*2. A. Ryan, op cit., pg. 31*

*3. W. A. Dunning, A History of Political Theories: Ancient and Medieval, pg. 32-33; ibid., pg. 37 "[he believed] democracy is in every respect weak and inefficient"; F. Copleston, op. cit., remarks that, though Plato might have held a distrust of democracies before the Peloponnesian War, it was surely exacerbated by the trial of Socrates; cf. K. Popper, op. cit., pg. 97 "why did Plato try to attack individualism?"*

*4. F. Copleston, op. cit., pg. 218-220. Plato follows Socrates by identifying, generally, virtue with knowledge. Plato considers four cardinal virtues in the Republic: wisdom, courage, temperance, and justice. These virtues are unified in the knowledge of what is good for man. Overall, Plato's doctrine that virtue is knowledge is an expression of the idea that goodness is not a relative notion; rather, it's understood to be absolute and unchanging, making it possible to be an object of knowledge. It's this knowledge that the philosopher, and only he, can know, which the ruler must be if he is witness a happy and just society.*

*5. G. Sabine, History of Political Theory, pg. 78*

distinct and differentiated roles, where each citizen does that which they are best fitted, instead of the instrument of justice[1] being the wisdom of the ruler Plato substituted it with the wisdom of the law[2]. Taking the widest view of law, he held it to be the dictate of right reason[3]. Given his belief that the virtue of the individual derived from their attitude toward, and control of, pleasures and pains, Plato ultimately viewed law as a form of social control[4] whose object was to produce good citizens by guiding them in their reason[5]. In short, he believed that societal degeneration from corruption and lack of knowledge could be thwarted by devising wise laws.

Aristotle (384-322 B.C.), after growing up in a small town on the borders of Greece and Macedon, moved to Athens in 367 to pursue his education, spending the next two decades as a member of Plato's Academy. Between the years spent in the city and his death (a year after Alexander the Great), Aristotle witnessed both the recovery of Athens following the Peloponnesian War and the eradication of its political independence following the Macedonian Wars[6]. Though Aristotle agreed with Plato on many things - such as the importance of reason and education[7], that general happiness is the objective of a political community[8], and that the promotion of good living and strive for human excellence can only be attained within the community and not outside of it[9] (i.e., their views didn't support liberal individualism) – they differed on just as many. Aristotle, for one, was more realistic in his views and practical in his approach[10], accepting Plato's 'second best' state in the *Laws* as his first-best[11]. Where Plato was avidly rationalistic, condemning the world of sense-perception and opinion, Aristotle was empirical, believing that knowledge of the physical world relied

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*1. A. Herman, The Cave and the Light, pg. 66 "the Republic is Plato's answer to a single question, 'what is justice?' meaning, how are we to regulate our dealings with others?"; L. Strauss, Plato, in L. Strauss & J. Cropsey (ed.), History of Political Philosophy, 3rd Edition, pg. 46-47 "in the city which is founded according to nature, wisdom resides in the rulers and in the rulers alone…Justice consists in everyone's doing the one thing pertaining to the city for which his nature is best fitted or, simply, in everyone's minding his own business"*

*2. H. Arendt, The Great Tradition, in J. Kohn (ed.), Thinking Without a Banister, pg. 46 "the Laws…[were a] political translation of the ideas of the Republic"; H. Cairns, Legal Philosophy from Plato to Hegel, pg. 39-40 ""[Plato] preferred the adaptable intelligence of the all-wise autocrat to the impersonality of the rule of law…[believing] that society should fall back upon law as a second-best"*

*3. L. Strauss, op. cit., pg. 80*

*4. H. Cairns, op. cit., pg. 32; ibid., pg. 40-41 "in his final position [Plato] regarded law as the art of adjusting human conduct to the circumstances of the external world"*

*5. J. Coleman, op. cit., pg. 99 "for Plato…reason looks to the individual's greater good, calculating what is better or worse for the whole human soul"*

*6. A. Ryan, op. cit., pg. 71*

*7. A. Herman, op. cit., pg. 61; F. Copleston, op. cit., pg. 357*

*8. D. Devereux, Classical Political Philosophy: Plato and Aristotle, in G. Klosko (ed.), The Oxford Handbook of The History of Political Philosophy, pg. 111*

*9. J. Coleman, op. cit., pg. 147; A. Ryan, op. cit., 78*

*10. W. A. Dunning, op. cit. - Ancient and Medieval, pg. 49 "Plato is imaginative and synthetic; Aristotle is matter-of-fact and analytic"*

*11. G. Sabine, op. cit., pg. 99*

greatly upon its observation and induction – that is, reasoning about the particulars to formulate general conclusions[1]. Taken together, it's not difficult to see why Aristotle, in his political writings (e.g., *Ethics* and *Politics*)[2], placed at center the phenomena of human activity (or, conduct), believing that knowledge of such constitutes the basis of what he calls 'practical wisdom' or political 'prudence'. In his *Ethics*, Aristotle inquires as to the nature of Good[3], viz., what is the comprehensive human good or ultimate goal of living? He believes this to be happiness or general well-being[4], holding liable the individual's soul for its attainment. What's meant by this is that, given there is both a rational (i.e., reasonably-thinking) and non-rational (i.e., emotionally-impulsive) element of the soul, a virtuous soul is one which the latter is propounded by the former – otherwise, where feelings, desires, and appetites are led by reason[5]. After dealing with the nature of the individual, investigating their dispositions of character and practical thinking of means toward particular ends, Aristotle goes on, in his *Politics*, to consider the conditions in which individuals find themselves, devoting primarily to studying the various constitutions or forms of government. Taking the 'polity' to be the best form of government – a republic or mixed constitution with a strong democratic character[6] – he believes that the object of law is to train individuals to be virtuous by formulating an environment for which their habits of behavior are adjusted so as to fully realize the potentiality of their human nature[7]. In short, it was the responsibility of the legislator to be prudent and have knowledge of the principles of right and wrong so as to make laws which lead individuals to be virtuous, thereby enabling the polity's citizens in their pursuit of Good.

Grotius (1583-1645) lived through what was, up until that time, arguably the most destructive and brutish period of human history, with violence reaching unprecedented levels. Having its roots in post-Reformation religious settlements, the Thirty Years' War was a series of hostilities between some of the major European monarchies, having the effect of drawing nearly all of Western Europe into its vortex of competition for survival[8]. It was in this context that Grotius put forth his *De Jure Belli ac Pacis* (The Rights of War and

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*1. cf. F. Thilly, A History of Philosophy, pg. 61-62; A. Ryan, op. cit., 76-77*

*2. H. Cairns, op. cit., pg. 118 remarks these writings were meant as practical guides for the citizen of a community to realize good and the legislator of the community in the management of its internal affairs.*

*3. J. Coleman, op. cit., pg. 149 "the Good is agreed to be 'that at which all things aim'"*

*4. F. Thilly, op. cit., pg. 89-93 "the good of a thing consists in the realization of its specific nature; the end or purpose of every creature is to realize or make manifest its peculiar essence…Hence, the highest good for man is the complete and habitual exercise of the functions which make him a human being…The highest good for man, then, is self-realization…Man is a social being, who can realize his true self only in society and the state"*

*5. C. Lord, Aristotle, in L. Strauss & J. Cropsey (ed.), History of Political Philosophy, 3rd Edition, pg. 123 "the proper function of man is…the putting-to-work or activity of the soul in accordance with reason"*

*6. D. Devereux, op. cit., pg. 114*

*7. J. Coleman, op. cit., pg. 147-148, pg. 186-187, pg. 174 "Aristotle thinks that the aim of legislators is to work with men's nature and not against it"; H. Cairns, op. cit., pg. 92-96*

*8. M. Greengrass, Christendom Destroyed: Europe 1517-1648, pg. 21-22; A. Ryan, op. cit., pg. 990*

Peace) which aimed at the establishment of an objective international legal order – a treatise on the law of war - supported by ideas of natural law[1]. In distinguishing between natural law and positive law – otherwise, the law of nature (*ius naturale*)[2] and the law of peoples or nations (*ius gentium*)[3] - he held that the former, springing from human nature, is unalterable while the latter, deriving from covenant, is occassioned. Generally speaking, his system of natural law is best reflected by his conception of the state of nature. Looking first at the individual, Grotius believed humans are impelled by a desire to seek, not simply pain and pleasure but, a peaceful life in a society where they can preserve their own being and realize their full nature. Given this, we can discern two principles which sit at the crux of his system of natural law: 'self-preservation' and 'justice'. Regarding the former, Grotius saw it as being essential for individuals to retain those things useful and necessary for life. As to the latter, he conceived of anything to be just which does not deteriorate the rational and moral quality of human nature[4]. It's at the junction of these two principles that Grotius determined it to be a right to defend one's self from, and retaliate against, threat of injury. Believing to have discovered the ideal principles which govern the intercourse of individuals, he set his system of natural law as the ground for which to erect his system of civil and international law. Now, where in the state of nature the individual served as the executor of his rights, upon forming a society through contract, their authority is subjected to the sovereign of the state. This was the leading idea to his theory of the sovereignty of the state. Nevertheless, paralleling the state to the individual, he believes that states, too, ought to conceive themselves as members of a society (or, world community). It is in this context that Grotius proceeds with demonstrating how war is in accordance with his conception of natural law.

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*1. W. Friedman, Legal Theory, 3rd Edition, pg. 18 "the appeal to some absolute ideal finds a response in men, particularly at a time of disillusionment and doubt, and in times of simmering revolt…Natural law has, at different times, been used to support almost any ideology"; J. L. Brierly, The Law of Nations, 6th Edition, pg. 29 Grotius wrote in his Prolegomena "I saw prevailing throughout the Christian world a license in making war of which even barbarous nations should be ashamed; men restoring to arms for trivial or for no reasons at all"; cf. A. Nussbaum, A Concise History of The Law of Nations, pg. 102-112; cf. F. M. Russell, op. cit., pg. 153-158; cf. G. Gozzi, Rights and Civilizations: A History and Philosophy of International Law, Chapter 2 – Hugo Grotius and the Laws of Peoples; cf. R. H. Cox, Hugo Grotius, in L. Strauss & J. Cropsey (ed.), History of Political Philosophy, 3rd Edition, pg. 386-395; cf. G. Sabine, op. cit., pg. 390-401; cf. W. A. Dunning, A History of Political Theories: Luther to Montesquieu, Chapter 5 – Hugo Grotius*

*2. R. Pound, Theories of Law, The Yale Law Journal, Dec., 1912, Vol. 22, No. 2 (Dec., 1912), pp. 125 "Grotius had substituted a philosophical natural law for the theological natural law of his predecessors. Instead of being based on authority, natural law was regarded as founded upon reason. In other words, natural law ceased to be 'lex naturalis', the enactment of a supranatural legislator, and became once more 'ius naturale', the dictates of reason in view of the exigencies of human constitution and of human society"*

*3. H. Grotius, Prolegomena, De Jure Belli ac Pacis, J. Barbeyrac & R. Tuck (ed.), pg. 3 "care for society in accordance with the human intellect…is the source of 'ius'"*

*4. H. Grotius, De Jure Belli ac Pacis, A. C. Campbell (trans.), pg. 18-19 "thus for instance, to deprive another of what belongs to him, merely for one's own advantage, is repugnant to the law of nature…Right is a moral quality annexed to the person, justly entitling him to possess some particular privilege, or to perform some particular act"; cf. R. Pound, The End of Law as Developed in Juristic Thought, Harvard Law Review, May, 1914, Vol. 27, No. 7 (May, 1914), pg. 618*

Ultimately, he determined war to be just when undertaken to preserve life and property. Though his treatment of the notion of just war is complex and at times contradictory, overall, he held that society and community were meant for states as much as individuals. Each held the right not to be treated merely as means, but as ends.

Hobbes (1588-1679) came of age during a period of humanistic thinking and neo-skepticism, followed by civil war. Throughout the late sixteenth century and early part of the seventeenth century, the nature of sovereignty was a heavily debated topic within political philosophy. The ideas of Thomas More, Richard Hooker and John Milton, viz., that reason, even without proper government, was binding upon all absolutely and that political obligation stemmed from individual consent, played heavily on the minds of English parliamentarians[1], who claimed that ultimate political power rested in the people. Opposite to these views were those of the royalists, arguing that government would be impossible if wholly dependent upon the consent of every individual. They subscribed to the idea that ultimate power and authority resided in the king, characterizing the monarch as being above positive law[2]. A natural consequence of this debate was the raised question of who – parliament or the king – was more of a position to determine public policy. It was in this context that Hobbes, believing the average individual lacked sufficient understanding of the true nature and requirements of political life, purported a doctrine which aimed at establishing civic peace[3] through the advancement of political knowledge. Drawing upon the methods of some of the leading thinkers of the Scientific Revolution (e.g., Francis Bacon, Galileo Galilei, Rene Descartes, Robert Hooke, William Harvey, and Robert Boyle)[4] in the early seventeenth century, Hobbes aimed at placing moral and political philosophy on the same scale of exactness as that of the physical sciences[5]. The overall objective of Hobbes' *Leviathan* was to deduce a new natural law - one based upon authority - through a mechanistic analysis of the individual within the state of nature, therein demonstrating, not only the origin of the state by way of contract but, the true nature of its sovereign authority, where he believed every individual possessed a subsequent duty to obey that regime – whether democracy, aristocracy, or monarchy - which aimed at securing for them their

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*1. W. A. Dunning, op. cit., - Luther to Montesquieu, pg. 236 "every man was by nature free and could be subjected to government only by his own consent; for government must be by law and law must be the will of each individual"*

*2. P. Zagorin, A History of Political Thought in the English Revolution, pg. 190-191*

*3. C. Morris, The State, in G. Klosko (ed.), The Oxford Handbook of Political Philosophy, pg. 549 "Hobbes was concerned about civil strife and the ways in which significant divisions in British society and elsewhere in Europe led to war…Much of his thinking is a response to this"; cf. F. Copleston, op. cit., Vol. V – Hobbes to Hume, pg. 3*

*4. P. P. Zagorin, op. cit., pg. 167; A. Ryan, op. cit., pg. 416; F. Copleston, op. cit., Vol. V – Hobbes to Hume, pg. 1-2*

*5. W. A. Dunning, op. cit., - Luther to Montesquieu, pg. 424-425 "all science in the Seventeenth century was under the spell of geometry"*

safety. Like Grotius, Hobbes took the human drive for self-preservation as the prevailing motive for all human behavior. However, where Grotius characterized this pursuit by reason, Hobbes declared that individuals, instead, are predominately led by their passions[1]. He, in fact, identified this as being a part of each individual's natural right – that is, the *liberty*[2] each possessed to do what they see best to do for themselves. However, given that every individual differs in their respective appetites, each, through the exercise of their natural rights, in effect, operates against every other's pursuit for self-preservation, leading the state of nature to be one of unending conflict of all against all[3]. Thinking this, Hobbes believed the solution to be *restraint*, viz., for each individual to resign their natural rights and submit their will to a common superior authority so as to achieve genuine security[4], being the underlying principle to his conception of natural law. In short, he took natural right and natural law as opposites of each other, seeing the latter as a mutually agreed upon rule or precept, discovered through reason, that forbids any act which is unfavorable or harmful to the life of each and any individual. However, being only a precept, such bears none of the significance or strength as that of a positive law supported through sanction by a sovereign body, which it must become if it is to have any effect. Thus, aiming to assimilate such a precept with the rank of a law, individuals inevitably form a union through a contract which establishes the state, vesting it with the single ultimate authority to command, viz., create legislation, and demand obedience. This sovereign is the Leviathan.

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*1. H. Cairns, op. cit., pg. 251-252 "men are moved by three principal passions, a desire for gain, for safety and for reputation"; G. Sabine, op. cit., pg. 429-430 "the desire for security…is for all practical purposes inseparable from the desire for power…[leading] men to take for themselves what other men want"; W. A. Dunning, op. cit., - Luther to Montesquieu, pg. 269; cf. W. A. Dunning, The Political Theories of Jean Jacques Rousseau, Political Science Quarterly, Vol. 24, No. 3 (Sep., 1909), pg. 377-408, Hobbes' theory of the state of nature serves as the underpinning to Rousseau's, sharing in the idea that individuals are led by their passions, that liberty and equality characterize the state of nature, and that each much resign their natural rights in order to form a common body of government. However, Rousseau differs from Hobbes in believing that the state of nature is not hostile and intolerable – that, in fact, it is the 'happiest state' of the individual. Dunning keenly notes that, overall, Rousseau's work was quite incoherent and very inconsistent – pg. 391 "Rousseau seeks to imitate the method of Hobbes; but the result is ridiculous", pg. 389 "his contract is an amazing medley of bad logic"; cf. W. Friedman, op. cit., pg. 46 "Rousseau's work simply abounds in contradictions"*

*2. W. A. Dunning, op. cit., - Luther to Montesquieu, pg. 272 "'liberty' here means the absence of external impediments"; W. Friedman, op. cit., pg. 41 "[Hobbes] prepares the way for the later revolution of individualism in the name of 'inalienable rights'"; cf. J. Collins, The Early Modern Foundations of Classic Liberalism, in G. Klosko (ed.), The Oxford Handbook of Political Philosophy, §The Great Debate: Hobbes and the Liberal Tradition*

*3. ibid., pg. 273 "the equal rights of all men are what makes the state of nature a state of war"; H. Cairns, op. cit., pg. 255 "[Hobbes holds] that the theory of natural rights leads to anarchy"; ibid., pg. 252 "the significance of Hobbes' theory is its opposition to the Aristotelian doctrine that 'man is by nature a political animal'"; cf. A. Ryan, op. cit., pg. 429 Because each individual is driven by their appetite, and that each's appetites differs from each other's, Hobbes disagrees with Aristotle about there being a shared highest-good for mankind; instead, he holds that there can only be worst evil, which is death.*

*4. cf. G. Sabine, op. cit., pg. 430 for the paradox of Hobbes' assumptions of the individual; cf. F. Thilly, op. cit., pg. 264 "[Hobbes] finds it difficult…to reconcile his rationalism with his empiricism"*

*5. A. Ryan, op. cit., pg. 436 "the laws of nature are 'theorems' about 'what conduces to the safety of them all'. As theorems, they are not rules but conclusions about rules within a piece of hypothetical reasoning"*

Kant (1724-1804) was a philosopher of the Enlightenment period[1]. Having its roots in England following the conclusion of its civil war, and burgeoning in France and Germany, the Enlightenment (or, what's sometimes referred to as the "Age of Reason"), general speaking, was an intellectual movement which endeavored to better understand how the features of the individual's social, cultural, and political life impressed upon their psychological state. Where French philosophers gravitated toward the empiricism of Hume and Locke, German philosophers kept to rationalism[2]. At its essence, the characteristic element of the philosophy of the Enlightenment was the scientific journey of the individual's rediscovery of its Self[3], viz., who is the Individual and what are the exigencies of its Being? In addressing this, Kant maintained that the individual is a unity between their *phenomenal* being (external realm of appearances, or *a posteriori* concepts) and *noumenal* being (internal realm of intelligence, or *a priori* concepts). Where the former's objects of knowledge are obtained through observing nature *as it is* (i.e., empirically based), the latter's knowledge derives from turning inward to reflect upon, through use of reason, what nature *ought to be* (i.e., rationally based). It is a fundamental conviction of Kant's philosophy that the individual cannot *understand* nature by merely perceiving it. Instead, they must discover nature and its laws (or, principles) by isolating the *a priori* element of knowledge from the *a posterior* element. In doing so, pure reason affords the individual with the laws (or, universally valid principles) as to what ought to be, leading to an objective account of judgement (i.e., deciding upon an act) and action (i.e., conducting an act). It is in this way that Kant identified the will, whose object is the deciding upon an act, as being a rational power[4], therein making the *noumenal* being an *intelligent* being as opposed to one that's driven solely by desire. Furthermore, seeing that the *noumenal* being, unlike the *phenomenal* being, is free from the laws of causality, viz., the external world operating upon it, Kant held such laws to also be moral[5].

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*1. cf. W. Windelband, A History of Philosophy, J. H. Tufts (trans.), Part V – The Philosophy of Enlightenment; H. S. Reiss, Introduction, in H. S. Reiss (ed.), Kant Political Writings, 2nd Edition, Cambridge Texts in the History of Political Thought, pg. 5-6 "this movement, like all intellectual movements, is made up of a number of various, and often conflicting, strains of thought…faith in the power of reason to investigate successfully not only nature, but also man and society, distinguishes the Enlightenment from the period which immediately precedes it…It springs from, and promotes, the belief that there is such a thing as intellectual progress"; F. Copleston, op. cit., Vol. VI – Wolff to Kant, pg. 3 "the eighteenth century French Philosophers believed strongly in progress, that is, in the extension of the scientific outlook from physics to psychology, morality and man's social life"; cf. F. Thilly, op. cit., pg. 382-383*

*2. J. E. Erdmann, History of Philosophy, Volume II, W. S. Hough (trans.), pg. 398 "Kant passed under the influence of the partial views that divided the eighteenth century into two opposing sides. On the one side was realism, which treated man as a purely natural being, and accordingly demanded a pursuance of the natural impulses…Opposed to these, stand the idealists, who conceived man as a rational nature, as spirit and accordingly represented him as ruled by the idea of perfection, of logical unity with himself"*

*3. L. Kolakowski, Main Currents of Marxism: The Founders, pg. 34 "In the literature of the Enlightenment we find the notion of man's lost identity and the summons to recover it, both in utopian writings and in the multifarious descriptions of the state of nature"*

*4. H. S. Reiss, op. cit., pg. 18 "to will is to decide on action"; F. Copleston, op. cit., Vol. VI – Wolff to Kant, pg. 310 "for Kant the will is a rational power"*

*5. ibid., pg. 18 "for moral decisions are possible only if the will is assumed to be free to act"*

Taken together, these laws of nature, being both rational and moral, serve as the objective criteria (or, universally valid principles)[1] by which the individual is able to judge between those acts which are right versus those which aren't. Given this, Kant held that it in turn is the duty – what he called a 'categorical imperative'[2] - of each individual to act in accordance with such, thereby leading one's acts to become, not only morally sound but, universal law[3], viz., that which each would have every other individual will. Now, seeing as what's been detailed thus far has only considered the internal realm (i.e., of judging), and given that positive law has its foundation and significance in the external realm[4] (i.e., of acting), Kant proceeded with considering the idea of right[5] as it pertains to the external relations of individuals to see how free beings could co-exist. He identified a right as being the compulsory power of the rational will, viz., taking an internal judgement and realizing it through an external act, while conceiving of freedom as the will's independence from the compulsory power of another's[6]. However, in taking these two ideas (i.e., of compulsion and freedom) and placing them in the context of a collective of individuals, there comes collision, viz., each individual, as they are compelling themselves to act, are reciprocally being compelled by others who are doing the same. It is this collision between each individual's freedom which Kant believed positive law must address. To do so, however, individuals must exit the state of nature, by way of a social contract, and establish the state, therein becoming members of a civil society. In the state, it is the object of law to set those conditions whereby individuals are universally compelled to act in a way which allows each member the freedom to pursue their own ends, therein being brought into harmony with each other.

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*1. H. S. Reiss, op. cit., pg. 18 "Kant's principles of morality…supply rules to which we can appeal if we wish to judge actions and if we wish to decide what action is moral in the case of a conflict of interest"; H. Cairns, op. cit., pg. 392 "when we act we must determine if our choice is one that we ought to make"*

*2. H. S. Reiss, op. cit., pg. 18 "For Kant, the categorical imperative is the objective principle of morality"; F. Copleston, op. cit., Vol. VI – Wolff to Kant, pg. 324 "the imperative serves, not as a premise for deduction by mere analysis, but as a criterion for judging the morality of concrete principles of conduct"*

*3. F. Copleston, op. cit., Vol. VI – Wolff to Kant, pg. 318 "the essential characteristic (the form, we may say) of law as such is universality";*

*4. H. S. Reiss, op. cit., pg. 20 "law deals only with what remains once such inner decisions have been subtracted. It is the outer shell, so to speak, of the moral realm"; W. Friedman, op. cit., pg. 79 "this imperative is the basis of Kant's moral as well as his legal philosophy. But the spheres of morality and law are distinct. Morality is a matter of the internal motives of the individual. Legality is a matter of action in conformity with an external standard set by the law…It must be emphasized that Kant's legal philosophy is entirely a theory of what law ought to be"; P. Hassner, Immanuel Kant, in L. Strauss & J. Cropsey (ed.), History of Political Philosophy, 3rd Edition, pg. 593 "although the duties of legality deal only with the external acts…[they] are themselves of the essence of morality"*

*5. H. S. Reiss, op. cit., pg. 21 "right is to be found only in external relations"; ibid., pg. 23 "the universal principle of right is basically only an application of the universal principle of morality, as laid down in the categorical imperative, to the sphere of law"; H. Cairns, op. cit., pg. 406 "rights in the strict legal sense, Kant further insisted, may also be represented as the possibility of a universal reciprocal compulsion in harmony with the freedom of all according to universal laws. The external is the sole measure of a right in the strict legal sense, as it is of right in general…The law of right thus amounts to a reciprocal compulsion necessarily in accordance with the freedom of ever one, under the principles of a universal freedom"*

*6. W. Friedman, op. cit., pg. 79 "compulsion is essential to law and a right is characterized by the power to compel"; H. Cairns, op. cit., pg. 410-411;*

§ *Conceptions of Justice*. Plato took harmony and unity as the criterion for justice[1]. In order to discover what justice meant in a society (i.e., a collective body), he first looked to what it meant in the individual, the *Republic* resting upon the idea that there was a strict parallel between the city and the soul[2]. In reflecting upon the individual, Plato believed the soul to be comprised of three distinct parts, each differing in their nature: desire, spiritedness, and reason. Justice in the soul, then, was realized when each of these parts performed its own function and only that, leading the soul to be healthy. A healthy soul was a happy soul, where it was happy because it was just. Injustice, on the other hand, manifested where any one component did that which it was not best suited to do given its nature, therein greatly disrupting the whole of the body. Looking toward society, Plato applied the same logic. Conceiving of individuals as differing in their respective nature (e.g., in their natural talents), he believed a society was just, and in turn happy, where each of the three classes of the citizen body (e.g., laborers, warriors, and rulers) did only that which they were fitted to do. In short, in maintaining the rigidity of the class structure, keeping each in their respective place, a society could prevent internal disruption and deterioration[3].

Aristotle divided justice into two parts: universal and particular[4]. Universal justice, in its widest sense, refers to that disposition of character which leads oneself and others to act justly. In the context of a community, where it's presumed that some relation exists between individuals, universal justice is the moral virtue of right conduct which bears the effect of promoting the interests of others – or, at the very least, does no harm to others. In the context of law, all things are just which are lawful. Particular justice he subdivided into 'distributive' justice and 'corrective' justice[5]. Where the former prescribes that the allocation of goods and honors to citizens be in strict accordance with their place in the community[6], the latter offers a standard form of redress in private transactions.

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*1. W. Friedman, op. cit., pg. 7 "the conception of balance and harmony [is] the test of a just commonwealth and a just individual"; cf. R. Pound, The Ideal Element in Law, pg. 158*

*2. L. Strauss, op. cit., pg. 61*

*3. cf. K. Popper, op. cit., pg. 86 "what did Plato mean by 'justice'? I assert that in the Republic he used the term 'just' as a synonym for 'that which is in the interest of the best state'. And what is in the interest of the best state? To arrest all change, by the maintenance of a rigid class division and class rule"; cf. A. Ryan, op. cit., pg. 63 – Justice Defined*

*4. cf. H. Cairns, op. cit., pg. 118-119 "by 'just' we mean therefore what is lawful, what is fair and equal. Universal justice is the former and Particular justice the latter"; J. Coleman, op. cit., 173-180; F. Thilly, op. cit., pg. 91-92*

*5. W. Friedman, op. cit., pg. 12, "Aristotle seems to stress the justice of legality or positivity in preference to any eternal principles of good"*

*6. F. Thilly, op. cit., pg. 93 "citizens differ in personal capability, in property qualifications, in birth, and freedom, and justice demands that they be treated according to these differences"*

Grotius predominantly focused on the nature of just war, the prevailing idea being that no war could be just which was based on the strict pursuit of self-interest[1]. He broadly categorized just wars as those which were waged in defense of life and property and those waged for purposes of retaliation[2] or reparation. Regarding the former, he believed it necessary and lawful for a state whose life was threatened with immediate danger to carry out act of aggression against the aggressor. A critical part of this warrant was the idea of 'immediate danger' to life[3]. It was not considered just for a state to take up arms against another who, through the progression of its economy and acquisition of armaments might in the future become dangerous but, was not yet[4]. Overall, though Grotius can be associated with being the founder of modern international law, his system was largely rooted in the medieval conception of war and was not properly suited for the type of nation-state which was soon to develop in the coming century[5].

Hobbes thought the origin of justice was the keeping of covenants – that is, fulfilling one's obligation[6]. Believing that such could only be realized under the conditions of genuine security, which only exists within the state following the contract of all between all, Hobbes held there to be no justice nor injustice in the state nature. However, there's a peculiar nuance to note in Hobbes' theory of contract and its consequence on the nature of justice within the state. Hobbes conceived the contract in the state of nature to be a voluntary act. Each individual, seeking to depart the state of nature, knowingly and agreeably resigns their natural rights in order to establish the state, which in turn is responsible for securing the safety of all through positive law. Thus, since each individual ex-ante held the knowledge that they ex-post, viz., after the contract, were going to be obligated by the sovereign's commands, upon executing the contract, therein accepting such terms, whatever is enacted by the sovereign can then never be unjust.

Kant held that justice could only be attained by law[7]. Though, he didn't feel the need to detail any system of justice, rather only indicate the general nature of such. For this, he relied greatly upon his categorical imperative, believing that justice within the state was realized where individuals happily coexisted and were free from any arbitrary laws which restricted their freedom.

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*1. D. Held, Political Theory of the Modern State, pg. 227*

*2. cf. R. H. Cox, op. cit., pg. 393*

*3. H. Grotius, De Jure Belli ac Pacis, A. C. Campbell (trans.), pg. 76-77*

*4. W. A. Dunning, op. cit. - Luther to Montesquieu, pg. 176*

*5. G. Gozzi, op. cit., pg. 42-43; F. M. Russell, op. cit., pg. 158 "his work is essentially the gathering together and synthesizing of the thought of the past, and working it into a system of rules for the interstate conduct of nations in war and in peace"*

*6. I. Hampsher-Monk, A History of Modern Political Thought, pg. 33-35; A. Ryan, op. cit., pg. 438-440; L. Berns, Thomas Hobbes, in L. Strauss & J. Cropsey (ed.), History of Political Philosophy, 3rd Edition, pg. 400 "there is no appeal to justice in the state of nature…for justice and injustice are such only in terms of some preceding law and there is no law outside of civil society"*

*7. H. S. Reiss, op. cit., pg. 21-25*

§ ***Stages of Law.*** In this section, I would like to simply tie together what has been illustrated thus far. Here will be a summary of the stages of law, focusing on the key elements by which it has developed. It will be useful to recall the earlier section 'Stability versus Change', remembering that the desire for *stability* derives from the social want of security, while the desire for *change* from the evolving social facts of individual human life.

Roscoe Pound identifies 5 major stages of law: Primitive, Strict, Equity, Maturity, and, where we find ourselves today, Socialization. Generally speaking, the stage of primitive law existed between the fifth and first century B.C., with its transition beginning with Cicero and lasting for most of the early Middle Ages[1]; the stage of strict law spanned the second to eighth century A.D., after which, until the revival of Roman law in the twelfth century[2], there was a still period; the stage of equity (or, natural law) lasted from the twelfth century, with legal philosophy acquiring a theological bent under the scholastic[3] system of Aquinas, to the seventeenth century[4], where legal and political thinking parted with theology; the stage of maturity, having its roots in the Reformation[5], took shape in the latter part of eighteenth and early part of the nineteenth centuries; where, finally, the socialization of law has its founding in the latter part of the nineteenth century, with its continuation to today.

§ Stage of Primitive Law (Desire for Peace)[6]. This stage of law was characterized by the interest in peace and public order. The purpose of the law derived from the social want of general security. In the earlier part of this stage, law was conceived as being merely a body of rules. Working alongside the institutions of religion and morality to prevent aggression and supplant the method of self-help (e.g., private war) with a more peaceable ordering of human

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*1. R. Pound, Theories of Law, The Yale Law Journal, Dec., 1912, Vol. 22, No. 2 (Dec., 1912), pp. 119; R. Pound, The Ideal Element in Law, pg. 163 "in the Middle Ages the time was one of transition from the primitive law of the Germanic peoples to a strict law through reception of the Roman law from the universities"*

*2. R. Pound, The Ideal Element in Law, pg. 45 "From the twelfth to the seventeenth century there were two parallel lines of juristic development, one legal and the other philosophical."*

*3. W. A. Dunning, op. cit. - Ancient and Medieval, pg. 189 "scholasticism was a system of thought in which philosophy...was so subordinated to established theological doctrines"; cf. H. Cairns, op. cit., pg. 164*

*4. cf. R. Pound, Outlines of Lectures on Jurisprudence, 5th Edition, pg. 6; R. Pound, The End of Law as Developed in Juristic Thought, Harvard Law Review, May, 1914, Vol. 27, No. 7 (May, 1914), pg. 616 "it is usual to fix the date of the new era in jurisprudence by the appearance of the great work of Grotius in 1625"; R. Pound, Theories of Law, The Yale Law Journal, Dec., 1912, Vol. 22, No. 2 (Dec., 1912), pp. 124 "the result of [Grotius'] book was to emancipate jurisprudence from theology"*

*5. cf. R. Pound, The Ideal Element in Law, pg. 49-52*

*6. R. Pound, An Introduction to the Philosophy of Law, pg. 27 "From a purely legal standpoint Greek law was in the stage of primitive law"; cf. R. Pound, The End of Law as Developed in Legal Rules and Doctrines, Harvard Law Review, Jan., 1914, Vol. 27, No. 3 (Jan., 1914), pg. 202-203 for the 5 characteristics of Primitive Law; cf. W. Friedman, op. cit., Chapter 2 – Greek Philosophy and the Problems of Legal Theory.*

conduct, law was considered as the weakest of the three instruments of justice[1]. The reason for this comes from the fact that rules were often too narrowly defined, thus lacking in generality. While their form was precise, having application in specific scenarios, their content was vague, thereby fomenting uncertainty as to their applicability toward broader and more routine situations[2]. Consequently, rules were usually only referenced after injury was done[3]. This came to change, however, in the latter part of this stage when Greek philosophers began contemplating the idea of right and such's implication for what law ought to be. They inquired as to whether an act was right because it conformed to a rule (e.g., conventional right) or whether it was so because it reflected an eternal standard of good, therein being superior to any rule (e.g., natural right). The consequence of such thinking was twofold. The first was there came to be a variety of definitions of law[4]. Some held law to be simply an enactment by the polity; others believed it rested upon wisdom and reason; still further, some thinkers conceived of it as a mix of both[5]. Irrespective of this variety, the more significant consequence was a shift in thinking as to the purpose of law. As opposed to law having its significance following conflict, therein being a device to resolve discord and reinstitute harmony, they thought it better to be something which aimed at preventing conflict. Simply put, the object of law transitioned from keeping the peace to preserving of the status quo. This is best illustrated by the doctrines of Plato and Aristotle, who settled on the idea that societal harmony and unity was best achieved where individuals are kept in the right place. To them, law was to serve as the predominate regulative agency to preserve society[6]. In short, it was this shift in Greek philosophic thinking which afforded the foundation for the onset of the stage of strict law.

§ Stage of Strict Law (Desire for Certainty). This stage of law was characterized by a mass of rigid rules which aimed at providing certainty for the individual by establishing a formal system by which they could obtain remedy. Compared to today's legal logic, where defined interests and rights precede remedies – the latter existing to uphold the former - the period of strict law maintained the opposite. The rights and interests of the individual were defined

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*1. R. Pound, The Ideal Element in Law, pg. 146 "law [was] the feeblest of the agencies of social control"*
*2. R. Pound, An Introduction to the Philosophy of Law, pg. 101 "For the most part primitive law is made up of simple, precise, detailed rules for definite narrowly defined situations. It has no general principles…a body of primitive law also often contains a certain number of sententious legal proverbs, put in striking form so as to stick in the memory, but vague in their content"*
*3. cf. note 2 on pg. 11*
*4. R. Pound, Theories of Law, The Yale Law Journal, Dec., 1912, Vol. 22, No. 2 (Dec., 1912), pp. 118*
*5. cf. R. Pound, Outlines of Lectures on Jurisprudence, 5th Edition, pg. 60-61 for Xenophon's, Anaximenes', Plato's, Chrysippus', and Demosthenes' definitions of law.*
*6. R. Pound, An Introduction to the Philosophy of Law, pg. 74-75 "Greek philosophers came to conceive…of law as a device to keep each man in his appointed groove in society and thus prevent friction with his fellows"; ibid., pg. 76 "In Plato the idea of maintaining the social order through law is fully developed"*

in terms of the instances for which they could appeal to the state for remedy[1]. The purpose of this was to prevent dispute. Where it is understood by all how a situation is to be resolved once brought before the state, individuals are able to deduce how they ought to conduct themselves so to avoid those situations which require remedy. It is in this way that law served as the predominate mode of social control, having for itself a quite formal character. A consequence of this formalism was law took an impersonal stance with respect to the administration of justice[2]. It was the letter of law rather than the individual's circumstance which was beheld, where it was believed that by keeping to such there would be reduced the incidence of arbitrary decisions by magistrates. As a result, justice was defined as conformity to the legal precepts surrounding procedure and remedies, where the law was considered equitable because of its uniformity in application. Taken from a broader perspective, the object of the system of strict law was to solicit a stationary society[3]. Wanting stability and certainty, it combated and resisted change. It was by doing so that it could preserve the status quo[4]. However, as mentioned previously, with the growth in the number and complexity of social facts (or, situations), such a system, with its inelastic and formal rules, becomes inefficient. In fact, given that law, generally speaking, aims at creating security and protecting individual interests, as social facts become greatly changed, a system which resists such only defeats the very purpose of its existence[5]. It's when it does that thinkers, appealing to reason, begin to once again turn toward philosophy and theology in search for answers as to how manage society by means of a body of law, rethinking it precepts and prospects.

§ Stage of Equity, or Natural Law (Desire for Liberty). This stage of law was characterized by the pursuit of morality, where the spirit of reason, as opposed to letter of the rule, served as the means for measuring both the substance of law and administration of justice. Conceiving the individual as a moral unit with a legal personality, jurists dissolved the line which partitioned

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*1. R. Pound, The Ideal Element in Law, pg. 147; ibid., pg. 148 "in this period the immediate end which the law seeks is certainty in the application of remedies"; R. Pound, An Introduction to the Philosophy of Law, pg. 153 a system of strict law constituted "a simple, definite, detailed rule for every sort of case that [could] come before a tribunal…[while having] a fixed, absolute form for every legal transaction"*

*2. R. Pound, An Introduction to the Philosophy of Law, pg. 113 "in the strict law individualization was to be excluded by hard and fast mechanical procedure"; R. Pound, The End of Law as Developed in Legal Rules and Doctrines, Harvard Law Review, Jan., 1914, Vol. 27, No. 3 (Jan., 1914), pg. 211 "individualism and the unmoral attitude of the strict law are closely connected, although the latter is also connected with the formal character of the law, regarding nothing but the conformity or want of conformity to the exact letter"*

*3. R. Pound, Law and Morals: The Historical View, The Journal of Social Forces, May, 1923, Vol. 1, No. 4 (May, 1923), pg. 352 "for the Middle Ages…there was a need of a stabilizing theory, after centuries of disorder"*

*4. R. Pound, An Introduction to the Philosophy of Law, pg. 79; R. Pound, The End of Law as Developed in Juristic Thought, Harvard Law Review, May, 1914, Vol. 27, No. 7 (May, 1914), pg. 609*

*5. R. Pound, The End of Law as Developed in Legal Rules and Doctrines, Harvard Law Review, Jan., 1914, Vol. 27, No. 3 (Jan., 1914), pg. 213*

morality from legality. Instead, they proceeded to equate the two, therein basing the legal order upon moral ideals[1]. Thus, what was a moral duty became a legal duty, and a moral right a legal right. In the sixteenth century, Spanish jurist-theologians held as the ideal - that is, what was natural[2] - the equality in the freedom of individual will[3]. Believing each to possess the like power to pursue their own end, they considered it a moral duty of each to limit their action where it intruded upon another's free exercise of will. The correlate of such a duty, looking at its obverse side to what is a right, was that each held a moral right to not have their will arbitrary limited by another's activity[4]. Overall, it was this ideal which was the crux to the theory of natural law, being a system of eternal and immutable principles, discovered by reason, as to what ought to be law[5]. The object of the legal order was the maintenance of the natural equality between individuals with respect to their being able to do things for themselves, where law's authority derived from moral precepts. In the following century[6], keeping to the ideal under natural law, jurists proceeded to expound a theory of natural rights[7], conceiving of a right as an individual attribute representing the moral and rational qualities inherent in human nature discovered by reason[8]. Their intent for developing such a theory was to give greater assurance to the realization of such an ideal under a legal order. In short, a right became the definite device for which law gave effect, and in turn protected, so to guarantee each individual's interest in the maximum opportunity to free self-assertion, which jurists considered was the highest good. Taken collectively, this stage was

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*1. R. Pound, The Ideal Element in Law, pg. 73 "That which started with a moral ideal became an equitable principle and then a rule of law, or later became a definite precept of morality and then a precept of law"; ibid., pg. 75; cf. H. Kelsen, The Natural-Law Doctrine before the Tribunal of Science, The Western Political Quarterly, Vol. 2, No. 4 (Dec., 1949), pp. 483 for the difference between a law of nature and a rule of law – "it is...the difference between causality and normativity"*

*2. ibid., pg. 181 "Here the 'nature' of a thing means the rationally conceived ideal of it. The ideally perfect thing is taken to be 'natural'"*

*3. R. Pound, An Introduction to the Philosophy of Law, pg. 82 "this natural equality was conceived positively as an ideal in opportunity to do things"; R. Pound, The Ideal Element in Law, pg. 178 "it is an equality of action not of condition"*

*4. R. Pound, The End of Law as Developed in Juristic Thought, Harvard Law Review, Vol. 27, No. 7 (May, 1914), pg. 616 "the theory which begins with the Spanish jurist-theologians thinks...of a limiting of men's activities in the interest of other men's activities because all men have freedom of will and ability to direct themselves to conscious ends and so are equal"; R. Pound, The End of Law as Developed in Legal Rules and Doctrines, Harvard Law Review, Vol. 27, No. 3 (Jan., 1914), pg. 215 "In this period also natural law or equity insist...upon the widest possible extension of capacity for rights"*

*5. R. Pound, The End of Law as Developed in Juristic Thought, Harvard Law Review, Vol. 27, No. 7 (May, 1914), pg. 618 "according to the theory of natural law, what ought to be law is regard as law for that self-sufficient reason. No rule can stand as law except as it ought to be..."*

*6. R. Pound, The Ideal Element in Law, pg. 50 "In the seventeenth and eighteenth centuries the science of law and the authority of legal precepts were rested solely upon reason"*

*7. cf. R. Pound, An Introduction to the Philosophy of Law, pg. 42 for the transition from natural law to natural right.*

*8. R. Pound, The End of Law as Developed in Juristic Thought, Harvard Law Review, Vol. 27, No. 7 (May, 1914), pg. 618 "According to Grotian definition, a right is 'that quality in a person which makes it just or right for him either to possess certain things or to do certain things"; R. Pound, An Introduction to the Philosophy of Law, pg. 83*

a reaction against the authority and formalism of law in the preceding centuries, marking the beginning of an individualist conception of legal justice[1] – that is, placing center the individual as opposed to society in constituting a legal order.

§ Stage of Maturity (Desire for Equality and Security). This stage of law was characterized by the integration of the scheme of strict law with the character of natural law, aiming to assimilate the qualities of stability and certainty of the former with the individualism of the latter[2]. It was in this context that three schools of juristic thinking burgeoned from the law-of-nature school of the preceding centuries: philosophical, analytical, and historical[3]. Each had its own method of analyzing and assimilating the legal precepts of the two earlier stages of law[4]. Generally speaking, the philosophical school dominated during the seventeenth and eighteenth centuries[5] when juristic thinking was still strongly associated with morality. However, with the world becoming more technologically and economically developed and socially integrated, the school which conceived law as securing for each the widest possible liberty in the assertion of individual will lost favor as such a system seemed to but only produce friction in human relations. Becoming superseded in the mid to late nineteenth century by the historical and analytical school, jurists, instead of thinking of the will (i.e., the internal realm) as the object behind rights for which law was to secure, began to think of law and its purpose in terms of wants and interests (i.e., the external realm). In what follows is a summation of the three schools of jurisprudence, remarking only upon each's essential features[6].

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*1. R. Pound, The Ideal Element in Law, pg. 148 refers to this stage as "a stage of liberalization"; H. Kelsen, The Natural-Law Doctrine before the Tribunal of Science, The Western Political Quarterly, Vol. 2, No. 4 (Dec., 1949), pg. 491 "the identification of the positive law with the natural law starts from the definition of justice accepted by most followers of the natural-law doctrine: to each his own"*

*2. R. Pound, An Introduction to the Philosophy of Law, pg. 47-48 "For a time the law was assimilating what had been taken up during the period of growth and the task of the jurist was one of ordering, harmonizing and systematizing rather than of creating…The law was taken to be complete and self-sufficient, without antinomies and without gaps wanting only arrangement, logical development of the implications of its several rules and conceptions, and systematic exposition of its several parts"*

*3. cf. R. Pound, The Scope and Purpose of Sociological Jurisprudence - Schools of Jurists and Methods of Jurisprudence, Harvard Law Review, Vol. 24, No. 8 (Jun., 1911) pg. 591; R. Pound, Theories of Law, The Yale Law Journal, Vol. 22, No. 2 (Dec., 1912), pp. 132; ibid., pg. 136 "the significant achievements of nineteenth-century theory of law were in historical and analytical jurisprudence"; ibid., pg. 139 "almost all English jurists adhered in varying degree to the analytical school, while American jurists in the second half of the nineteenth century were mostly of the historical school"*

*4. N. Isaacs, The School of Jurisprudence: Their Places in History and Their Present Alignment, Harvard Law Review, Vol. 31, No. 3 (Jan., 1918), pg. 375 "they are the products of different times and places, and differ not only in their points of view, methods, and tendencies, but in their fundamental concepts, their problems and purposes"*

*5. R. Pound, The Scope and Purpose of Sociological Jurisprudence - Schools of Jurists and Methods of Jurisprudence, Harvard Law Review, Vol. 24, No. 8 (Jun., 1911), pg. 605*

*6. R. Pound, The Scope and Purpose of Sociological Jurisprudence - Schools of Jurists and Methods of Jurisprudence, Harvard Law Review, Vol. 24, No. 8 (Jun., 1911), pg. 591-619; J. Bryce, Studies in History and Jurisprudence, Volume II, XII – The Methods of Legal Science; N. Isaacs, The School of Jurisprudence: Their Places in History and Their Present Alignment, Harvard Law Review, Vol. 31, No. 3 (Jan., 1918), pg. 373-411; R. Pound, Outlines of Lectures on Jurisprudence, 5th Edition, pg. 31*

The philosophical school draws upon philosophy, ethics, and psychology to investigate the essence to such ideas as right, justice, duty, freedom, etc., all being the reasoned first principles by which to deduce and test a system of positive law. It is in this way that jurists of this school see law as something 'discovered' rather than 'created'. In effect, all positive law is merely declaratory of the idealized law. However, it was exactly this idealism which led many doctrines to receive criticism of being too vague and confusing and, consequently, inapplicable to the external circumstance for which law must consider – the adjustment in the relations of individuals.

The analytical school[1], standing in marked contrast to the philosophical school, takes as its first principles the facts of an existent legal order. In comparing and analyzing already developed systems, jurists of this school aim at creating law which encompasses greater logical coherence through precise definitions, classifications, and explanations of legal precepts. It is in this way that the theory of law morphs into being a theory of legislation[2]. Overall, as compared to the philosophical school which aims for what law 'ought' to be, the analytical school makes practical work of what law 'is'. Nonetheless, each school holds as the object of law the making freest of the individual to act[3], simply differing on the source of obligation. Where the philosophical school posits obligation as deriving from reason, relying greatly upon moral ideals, the analytical school, demanding the separation of legality from morality, affirms law as having obligatory power because of its stature as such[4].

The historical school was the last of the three schools to develop. Instead of taking law either as it 'is' or 'ought to be' as the datum for which to base a legal order, jurists of this school, concerned with how law came to be, study the origins of law and the development of legal systems throughout human history. Conceiving law as an expression of a nation's attitudes and conditions at a particular period - its embodied story[5], so to speak - historical jurists seek to understand the connection between the changing of conditions (social, political, and economic) and the progression of law. In fact, it is this idea of 'progression' which is the crux to the historical school. Following both the philosophical and

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*1. W. Friedman, op. cit., pg. 163 "the analytical lawyer is a positivist. He is not concerned with ideals; he takes the law as a given matter created by the State, whose authority he does not question"*

*2. R. Pound, The End of Law as Developed in Juristic Thought, Harvard Law Review, Vol. 30, No. 3 (Jan., 1917), pg. 206 "the English utilitarians…were a school of legislators…The English utilitarians developed the analytical method of jurisprudence"*

*3. ibid., pg. 207*

*4. H. L. A. Hart, Positivism and the Separation of Law and Morals, in R. M. Dworkin (ed.), The Philosophy of Law, pg. 17 "we must remember that the Utilitarians combined with their insistence on the separation of law and morals two other equally famous but distinct doctrines. One was the important truth that a purely analytical study of legal concepts, a study of the meaning of the distinctive vocabulary of the law, was as vital to our understanding of the nature of law as historical or sociological studies, though of course it could not supplant them. The other doctrine was the famous imperative theory of law – that law is essentially a command"*

*5. N. Isaacs, The School of Jurisprudence: Their Places in History and Their Present Alignment, Harvard Law Review, Vol. 31, No. 3 (Jan., 1918), pg. 384-385*

analytical school, historical jurists subscribe to the notion that law's object is the relinquishing of restraints to individual pursuit of well-being. However, taking it a step further, they perceive law as a living organism whose evolution toward this end is conditioned by the changes in circumstance to individual human life[1]. They believe rules are discovered by means of experience with what has or hasn't worked to meet such changes, aiming to give the former expression[2]. Thus, like the philosophical school, they hold law as something found and not made. Though, unlike the them and more in-step with the analytical school, they believe law's authority comes from the force behind its expression, particularly where those rules are customary.

In short, both the analytical and historical school were reactions[3] against the idealism (i.e., rationalism) of the philosophical, each thinking that a legal order should have for itself utility and practicality - otherwise, that rules should be framed around what individuals actually do in pursuit of ends as opposed to how they think about such. Even more, that such rules should be constituted in such a way so as to be constructive to the individual pursuit of happiness[4], thereby making such attainable. This way of thinking materialized when scientific positivism[5] (i.e., empiricism) was at high-tide in the social sciences, where the scientific method[6] – that is, the means employed in the search for first principles and knowledge of the world – amounted to 'scientifically' observing the individual and the conditions of their existence in society[7]. The objective of this was to discern those laws (i.e., principles) which governed the evolution (i.e., change) of society's institutions (industrial, political, etc.). It was held that through such knowledge society could then be properly adjusted so to reconcile the competing interests of its members, thereby resolving its social problems. It

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*1. J. Bryce, Studies in History and Jurisprudence, Volume II, pg. 618 "the conceptions and rules which prevail at any given time…must undergo the same change and decay which previous rules have experienced"; R. Pound, Theories of Law, The Yale Law Journal, Vol. 22, No. 2 (Dec., 1912), pp. 133*

*2. R. Pound, The Scope and Purpose of Sociological Jurisprudence – Continued, Harvard Law Review, Vol. 25, No. 2 (Dec., 1911), pg. 141 "the historical jurist taught that principles of action are found by experience and developed into rules"; J. Bryce, Studies in History and Jurisprudence, Volume II, pg. 618 "The risk principally incidental to the Historical method is, that it is apt to lapse, either into mere antiquarianism on the one side, or into general political and social history on the other. Some charge it with retarding improvement by justifying the past"*

*3. W. Friedman, op. cit., pg. 52 "on the whole, the nineteenth century was hostile to natural law theories. The rival movements of historical romanticism, utilitarianism, scientific positivism, and economic materialism were united in their opposition to natural law"*

*4. I. Hampsher-Monk, A History of Modern Political Thought, pg. 307 "[Bentham] saw his task as that of clarifying the greatest happiness principle and constructing a legal code which embodied it"*

*5. W. Friedman, op. cit., pg. 150 "positivism is but a new word for an old thing [i.e., empiricism]…Hume's empirical philosophy prepared the way for nineteenth-century positivism…Positivism mistrusts a priori assumptions and ideas, it places faith in observations"*

*6. F. Copleston, op. cit., Vol. VIII – Bentham to Russell, pg. 117-118 "[the] scientific method was the only means of acquiring anything that could properly be called knowledge. Science, they thought, continually extends the frontiers of human knowledge…Metaphysics and theology claim to make true statements about the metaphenomenal world; but their claims are bogus"*

*7. cf. F. Copleston, op. cit., Vol. IX – Maine de Biran to Sartre, pg. 56-58 for Saint-Simon's social philosophy; W. Friedman, op. cit., Chapter 16 – Biology, Society and Legal Evolution*

was in the midst of growing complexity to the social facts of human life, that analytical and historical jurists sought to dislodge the theory of natural law and replace it with a scientific (i.e., formal) system of legal rights[1], where interests as opposed to will was the principal idea behind rights and duties. It was in this way that the legal order began to be seen as serving the social purposes of society, where legal precepts came to be defined in terms of social facts and interests.

§ Stage of Socialization (Interests as Rights)[2]. This stage of law *is* characterized by the constant balancing of interests (i.e., individual, public, and social)[3], trying to determine which of them law is to recognize and in turn secure through the vehicle of a right[4]. It is 'balancing' in the way that "law must be stable and yet it cannot stand still"[5]. Furthermore, as society develops and social facts change, changing too at a faster rate, the assortment of wants and interests increases and their nature is made more complex[6]. In attempting to address the question of how best to strike such a balance, legal theory has gained in its theoretical orientations. The predominant two which sit at the crux of legal theory today, opposing each other, are realism and normativism. Realism[7] is a school which takes the view that law is merely a means for attaining social ends. As such, jurists engage in a rigorous study of the social facts as they are, drawing upon multiple professions within the modern sciences to investigate the ways

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*1. R. Pound, The Scope and Purpose of Sociological Jurisprudence – Concluded, Harvard Law Review, Vol. 25, No. 6 (Apr., 1912), pg. 492 "Like the historical jurist, the first type of sociologist looked at law in its evolution, in its successive changes, and sought to relate these changes to the changes undergone by society itself. The historical jurist found metaphysical laws behind them. The positivist substituted physical laws. The result was the same. Each eliminated the old idea of right and with it all idealism in jurisprudence or legislation"*

*2. W. Friedman, op. cit., Chapter 17 – Sociological Jurisprudence; A. J. Trevino, The Sociology of Law: Classical and Contemporary Perspectives, pg. 6-7 "the sociology of law…is an academic specialty within the general discipline of sociology that attempts to theoretically make sense of, and explain, the relationship between law and society, the social organization of the legal institution…and the meaning that people give to their legal reality"; R. Pound, The Scope and Purpose of Sociological Jurisprudence – Concluded, Harvard Law Review, Vol. 25, No. 6 (Apr., 1912), pg. 489 "sociological jurisprudence is still formative"; ibid., pg. 516 for 5 key characteristics*

*3. R. Pound, Interests and Personality, Harvard Law Review, Vol. 28, No. 4 (Feb., 1915), pg. 343 "A legal system attains its end by recognizing certain interests, - individual, public, and social, - by defining the limits within which these interests shall be recognized legally and given effect through the force of the stat"; cf. W. Friedman, op. cit., pg. 228 "balancing interests means to approach them with perfect impartiality"; cf. B. E. Harcourt, Critique and Praxis, Chapter 9 – The Problem of Liberalism, pg. 245 "it privileges individual preferences over collective ones. It is not, and does not claim to be, entirely neutral"*

*4. R. Pound, Legal Rights, International Journal of Ethics, Vol. 26, No. 1 (Oct., 1915), pg. 105 the three ideas of a right are "right as authority or capacity…right as interest, and right as relation"; ibid., pg. 109-112 for rights as interests.*

*5. R. Pound, The Ideal Element in Law, pg. 40*

*6. R. Pound, Interests and Personality, Harvard Law Review, Vol. 28, No. 4 (Feb., 1915), pg. 343 "Undoubtedly the progress of society and the development of government increase the demands which individuals may make, and so increase the number and variety of these interests"*

*7. W. Friedman, op. cit., pg. 201 "realism means a conception of law in flux and as a means to social ends…It implies a concept of society which changes faster than the law"; J. Finnis, Natural Law: The Classical Tradition, in J. Coleman & S. Shapiro (ed.), The Oxford Handbook of Jurisprudence & Philosophy of Law, pg. 20 "'Legal realism' tends to reduce its subject-matter and method to natural science"*

in which law impacts, and is reciprocally framed by, society[1]. A consequence of this approach to the study of law is the separation between 'is' and 'ought' – realists are mostly concerned with what human behavior 'is'. Opposite this approach and conception of law is normative jurisprudence - or, the 'pure theory of law'[2], so to speak. Jurists of this sort place greater emphasis on the end or purpose of law, aiming to identify, through a study of the multitude of interpretations which surround the variety of legal precepts[3], an objective criterion by which to judge of an act's substantive legal quality. It is in this way that such an approach is normative, considering what human behavior 'ought to be' rather than simply 'is'. However, as it should be noted, normative jurisprudence is not idealistic. It does not apply this 'what ought to be' to law itself – that is, its form. Overall, irrespective of the different approaches to law, a key consequence of this stage of law is the legal institution's relegation to being merely another part in the confluence of social institutions geared toward the management and protection of society[4].

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*1. W. Friedman, op. cit., pg. 200*

*2. H. Kelsen, Pure Theory of Law, pg. 3 "[a] man acting rationally, connects his act with a definite meaning that expresses itself in some way and is understood by others. This subjective meaning may, but need not necessarily, coincide with its objective meaning, that is, the meaning the act has according to the law"; H. Kelsen, General Theory of Law and the State, pg. 3 "law is an order of human behavior. An 'order' is a system of rules…The statement that law is an order of human behavior does not mean that the legal order is concerned only with human behavior…Every rule of law obligates human beings to observe a certain behavior under certain circumstances"; ibid., pg. 4 "besides law there are other orders of human behavior, such as morals and religion"; ibid., pg. 15 "it is the function of every social order, of every society – because society is nothing but a social order – to bring about a certain reciprocal behavior of human beings: to make them refrain from certain acts which, for some reason, are deemed detrimental to society, and to make them perform others which, for some reason, are considered useful to society"*

*3. H. L. A. Hart, The Concept of Law, pg. 239-240 "my aim in this book was to…give an explanatory and clarifying account of law as a complex social and political institution with a rule-governed (and in that sense 'normative') aspect. This institution, in spite of many variations in different cultures and in different times, has taken the same general form and structure, though many misunderstandings and obscuring myths, calling for clarification, have clustered round it"*

*4. L. Mather, Law and Society, in R. E. Goodin (ed.), The Oxford Handbook of Political Science, pg. 289 "law is not autonomous, standing outside of the social world, but is deeply embedded within society"; A. J. Trevino, op. cit., pg. 65-66 "Pound's jurisprudence…treats law not as a conceptual and logical system of rules, but as an institution operating within a larger societal context that functions to regulate social processes with the objective of securing and protecting society's interests"*

## Essential Readings:

*Books*

1. An Introduction to the Philosophy of Law, by R. Pound https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2222/Pound_1502_Bk.pdf
2. Outline of Lectures on Jurisprudence, by R. Pound https://ia802909.us.archive.org/4/items/in.ernet.dli.2015.84287/2015.84287.Outlines-Of-Lectures-On-Jurisprudence.pdf
3. Readings on the History and System of the Common Law, by R. Pound https://ia904707.us.archive.org/4/items/readingsonhistoroopoun/readingsonhistoroopoun.pdf
4. The Ideal Element in Law, by R. Pound https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/671/0094_LFeBk.pdf

*Articles*

1. A Definition of Law, by H. E. Willis https://www.jstor.org/stable/pdf/1065717.pdf?refreqid=excelsior%3A9ee0aa1c45b7aa0085428077 38bf5d27&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=
2. Definition and Nature of International Law, by R. R. Foulke https://www.jstor.org/stable/pdf/1111587.pdf?refreqid=fastly-default%3Ad49d6d08910164d129389c64771db6e3&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
3. Definition and Nature of Law, by R. R. Foulke https://www.jstor.org/stable/pdf/1111032.pdf?refreqid=excelsior%3Aef10efbe7f3a46541f9202eb3ee2f532&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=
4. Definition of Law, by M. M. Bigelow https://www.jstor.org/stable/pdf/1109712.pdf?refreqid=excelsior%3Ab901ca22b0697aa0300e2110e407ac37&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=
5. Do We Need a Philosophy of Law?, by R. Pound https://www.jstor.org/stable/pdf/1109546.pdf?refreqid=fastly-default%3A2e8582d18a40ba036665a2dbdb1b538a&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
6. Fundamental Legal Conceptions as Applied in Judicial Reasoning, by W. N. Hohfeld https://www.jstor.org/stable/pdf/786270.pdf?refreqid=fastly-default%3A378b642a2f390191e64af6f453de5dfb&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
7. How Far Are We Attaining a New Measure of Values in Twentieth-Century Juristic Thought?, by R. Pound https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=4875&context=wvlr
8. Interests of Personality, by R. Pound
    a. I – https://www.jstor.org/stable/pdf/1326270.pdf?refreqid=fastly-default%3Afoe4825fccea2447e949bff32c70d892&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results
    b. II - https://www.jstor.org/stable/pdf/1326863.pdf?refreqid=fastly-default%3Afoe4825fccea2447e949bff32c70d892&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results

9. Interpretations of Legal History, by R. Pound
http://www.minnesotalegalhistoryproject.org/assets/Pound,%20Interpretations%20of%20Legal%20History%20(1923)..pdf
10. Juristic Science and Law, by R. Pound
https://www.jstor.org/stable/pdf/1327601.pdf?refreqid=fastly-default%3Aa5329180784272e125df8dc598c609c4&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
11. Justice According to Law, by R. Pound
    a. I – https://www.jstor.org/stable/pdf/1110655.pdf?refreqid=fastly-default%3A2e8582d18a40ba036665a2dbdb1b538a&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
    b. II - https://www.jstor.org/stable/pdf/1111000.pdf?refreqid=fastly-default%3Aa5329180784272e125df8dc598c609c4&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
    c. III - https://www.jstor.org/stable/pdf/1110578.pdf?refreqid=fastly-default%3Aa5329180784272e125df8dc598c609c4&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
12. Justice According to Law, by F. Pollock
https://www.jstor.org/stable/pdf/1321452.pdf?refreqid=fastly-default%3A3397f11721c19c952a03a4ce953c88c2&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results&acceptTC=1
13. Law and Morals, by R. Pound
    a. I – The Historical View
    https://www.jstor.org/stable/pdf/3004937.pdf?refreqid=excelsior%3A7d5cofe913e29d5ea666393940868fbf&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=
    b. II – The Analytical View
    https://www.jstor.org/stable/pdf/3005125.pdf?refreqid=excelsior%3Ad97e9b1f8e545e85c819db944be6dc8f&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=
14. Legal Rights, by R. Pound
https://www.jstor.org/stable/pdf/2376739.pdf?refreqid=fastly-default%3A2e8582d18a40ba036665a2dbdb1b538a&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
15. Legislation as a Social Function, by R. Pound
https://www.jstor.org/stable/pdf/2763325.pdf?refreqid=fastly-default%3Aeccbc4a4cc761fa416a9a06685277c7d&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results
16. Political and Economic Interpretations of Jurisprudence, by R. Pound
https://www.jstor.org/stable/pdf/4616997.pdf?refreqid=fastly-default%3A2e8582d18a40ba036665a2dbdb1b538a&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
17. Sociological Jurisprudence, by F. Thilly
https://www.jstor.org/stable/pdf/2178814.pdf?refreqid=fastly-default%3A36eb70e5cd7877388ee961c5ee33319a&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results
18. Sources and Forms of Law, by R. Pound
https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=3895&context=ndlr&httpsredir=1&referer=
19. The Conception of Morality in Jurisprudence, by T. W. Taylor Jr.
https://www.jstor.org/stable/pdf/2176104.pdf?refreqid=excelsior%3A00ff4e5bfb247db

492d0c02fb40ab42f&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=

20. The End of Law as Developed in Juristic Thought, by R. Pound
    a. I – https://www.jstor.org/stable/pdf/1326455.pdf?refreqid=fastly-default%3A2e8582d18a40ba03666a2dbdb1b538a&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
    b. II - https://www.jstor.org/stable/pdf/1327774.pdf?refreqid=fastly-default%3Aa532918078427 2e125df8dc598c609c4&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
21. The End of Law as Developed in Legal Rules and Doctrines, by R. Pound https://www.jstor.org/stable/pdf/1325958.pdf?refreqid=fastly-default%3A2e8582d18a40ba03666a2dbdb1b538a&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
22. The New Philosophies of Law, by R. L. Fowler & R. Pound https://www.jstor.org/stable/pdf/1326641.pdf?refreqid=fastly-default%3Aa532918078427 2e125df8dc598c609c4&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=search-results
23. The Progress of the Law, by R. Pound https://www.jstor.org/stable/pdf/1330881.pdf?refreqid=fastly-default%3Ac3b3a7227420a948b22e97a7702644cd&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=search-results
24. The Relation and Correlation of Freedom and Security, by H. H. Foster https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=4467&context=wvlr
25. The Schools of Jurisprudence. Their Places in History and Their Present Alignment, by N. Isaac https://www.jstor.org/stable/pdf/1327078.pdf?refreqid=excelsior%3A0f392c773d92eff93e062b0d2abec7fc&ab_segments=0%2Fbasic_phrase_search%2Fcontrol&origin=&initiator=
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