Law and Development

Jesse Porter

Fundamental Principles of the Sociology of Law – Eugen Ehrlich 1862-1922

Theme of the “Principles of Sociology of Law” is that law evolves from society.

Ehrlich listed 9 principles as follows -

1. The Practical Concept of Law:
   - An independent science of law based on facts not words p.438
   - Law is a rule of human conduct p.438
   - The rule, according to which men act, unintentionally becomes the rule that the courts uses to adjudicate p.438. Hence men must regulate their conduct accordingly.
   - The unpredictability of mans’ behavior makes it impractical for the state to make rules to govern human conduct.
   - Hence, it becomes reasonable for not only jurists but generally to believe that a considerable part of the law emanates outside of the state, in society p. 439
   - The coercive nature of the law p.439 – compulsory order p.440

2. The Inner Order of the Social Associations
   - Communal relationships, social associations and the development of the law
   - Not until the establishment of the city did any formal legal institution developed
   - Legal order predicated from the inner order of social associations than legal propositions p.441
   - Judges render judgments based less on legal proposition and more on facts
   - Legal norms vs. legal propositions

3. Social Associations and the Social Norms
   - Social norms emerge from interactions of humans in their association settings. They are agreed rules of conduct that are generally accepted as binding p. 442.
   - Legal norms provide a framework for social interactions p.442
   - All law is social law p.443 and is a result of social interaction p.444

4. Social and State Sanctions of the Norms
Social norms are formed by organizing humans into associations where the “inner order” is formed and maintained because of the tendency to protect one's interest p.446

These associations form communities which expect members to behave with a certain conduct – sanctions. Not to conform is to be ostracized – “made imperative by his social relations p.447

State sanctions though necessary to enforce the penal code, only affects those that are deviants p. 447 (the same is for compulsory execution p. 448

No need for legal sanctions or compulsory execution because the legal order is part of structure of being a member of the associations in society, therefore adherence should be voluntary p. 449

If the function of courts is to establish peace then they must not be arbitrary in their judgment but must be with reason and based on legal proposition p. 450

It is necessary that in decisions, judges must not be introspective p.450, and must use legal and non-legal norms (must be universal) p.452

For norms to be universal they must also have stability p.453

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Whether they are legal norms or non-legal norms they influence human conduct. Once recognized as such, norms regulate conduct p.454

When non-legal norms lose their universality and become legal norms with clear definition, then it become incumbent upon man as a citizen to conform to the legal norms of the state p. 455

6. The State and the Law:

The Norms for Decisions:

Juristic science -That legal proposition evolves from scientific reasoning (by way of the deduction method) of the facts p.456
➢ The more general the legal proposition the more judicial discretion p. 456

➢ Judicial pronouncement are precarious p. 457

8. The Structure of the Legal Proposition:

➢ Legal order is significant in society because it facilitates economic activities; hence the need for legal propositions p. 458

➢ “Justice is power wielded over the minds of man by society” P 460. It must be for the greater good of all concern in society p.461

9. The Varying Content of the Concept of Justice:

➢ Individualism and collectivism and justice p.463