

Relations industrielles Industrial Relations



Law and Political Economy

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Volume 7, numéro 4, septembre 1952

URI : <https://id.erudit.org/iderudit/1023034ar>

DOI : <https://doi.org/10.7202/1023034ar>

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

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Citer cet article

Gaudreau, C. (1952). Law and Political Economy. *Relations industrielles / Industrial Relations*, 7(4), 314–322. <https://doi.org/10.7202/1023034ar>

Résumé de l'article

This article is a summary of the respective opinions of Gaëtan Pirou, economist and of Georges Ripert, jurist, on Law and Political Economy, and the author's personal position on the subject. Is Political Economy a human discipline, a science, a doctrine? Does there not exist between the two, relationships and contacts that would be useful and perhaps even necessary to the two kinds of specialists to understand? The author points out certain interesting distinctions to be noted between economic fact and juridical fact, scientific law and positive law, moral science and experimental science. He concludes in emphasizing that the law, economics and other social disciplines complete one another to advantage with all the consequences arising from this.

INDUSTRIAL RELATIONS

Law and Political Economy

Claude Gaudreau

This article is a summary of the respective opinions of Gaëtan Pirou, economist and of Georges Ripert, jurist, on Law and Political Economy, and the author's personal position on the subject. Is Political Economy a human discipline, a science, a doctrine? Does there not exist between the two, relationships and contacts that would be useful and perhaps even necessary to the two kinds of specialists to understand? The author points out certain interesting distinctions to be noted between economic fact and juridical fact, scientific law and positive law, moral science and experimental science. He concludes in emphasizing that the law, economics and other social disciplines complete one another to advantage with all the consequences arising from this.

"Between law and political economy, between the jurist and the economist, there is often more opposition than affinity; ...the jurist is usually not as well trained to that prudence in observation, to that objectivity in the analysis, to those scruples in the affirmation, to that spirit of methodical doubt, which are, for the scholar, indispensable qualities." ¹

This statement of Gaëtan Pirou, in his *Introduction à l'étude de l'Economie Politique*, has not gone by without creating reactions on the part

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(1) GAËTAN PIROU, *Introduction à l'étude de l'économie politique*, Paris, 1946 (2nd edition) pages 111 and 112.

of jurists. One of the most prominent among them in France, Georges Ripert, gives particular attention to this in the preface of a volume devoted to a study of the capitalist system.²

We shall present, first of all, a brief account of the two opinions and then indicate our personal position, taking into consideration the thoughts they will suggest to us.

THE ECONOMIST'S OPINION

Pirou defines political economy as "the study of those acts of exchange by which an individual surrenders to another that which he holds in order to obtain in return that which he wants — acts by which is established the bridge between production of wealth and the satisfaction of wants."

From this definition, he draws "a certain number of consequences with regard to the nature of political economy."³ It is a *human* discipline, which implies relations (of exchange) between *several* men; the existence of certain *regularities* in the economic facts from which may be drawn *scientific laws*; the characteristic of exchange for a *consideration*; the notion of *market value* which allows us to discriminate the economic fact; a positive approach which studies values but *does not value as such*.

The author, then asks himself if this definition, which allows a discrimination clear enough between economics and related spheres, would not lead us into some confusion with law and its object. He does not deny that the two disciplines have sometimes the same material object, that they concern themselves with the same situations (e.g. the purchase and sale which are acts of exchange) in order to analyze them. *The distinction that he makes is in regard to their formal "que" object.* They do not have the same viewpoint, he says, and they do not look at things from the same angle.

Because of this distinction, the result is that the two disciplines are not of the same nature. Political economy pretends to be a *science*, because it intends only, as such, to *observe facts and to explain them* by laws or scientific propositions. As to *law*, its mission is precisely to *formulate prescriptions*, to bring out principles, to draw up regulations (positive law), and to consider the changes that should be made in the

(2) GEORGES RIPERT, *Aspects juridiques du capitalisme moderne*, Paris, 1946.

(3) GAËTAN PIROU, *op. cit.*, page 88.

existing rules in order to ensure a better order (ideal law). From which the result is that "neither positive law nor the philosophy of law are sciences in the exact meaning of the term."⁴

This does not mean that there does not exist between law and political economy, relationships and contacts that it would be useful and perhaps even necessary for the two kinds of specialists to know about. It is no less true that the field of explanation is not the same as that of prescription. This is why there exists between scientific law and positive law and consequently between the two disciplines which formulate them, a fundamental difference of spirit and method. *It is this same difference of spirit and method, the result of a different orientation of studies and preoccupations of the jurist, which explains the opposition noted by Pirou between the latter and the economist.*

It is this opposition that has lead the author to think that economic studies would be more in their place in France in the Faculties of Social Science than in the Law Faculties. Pirou reconsiders his position, in a second edition, and states that the reform of economic studies in his country could well be made in the form of a broadening of the Law Faculties. "The reason", he states, "is that economic phenomena are more and more covered by juridical regulations, and that from this point of view the separation between the economic and the juridical is less distinct than formerly".⁵

OPINION OF THE JURIST

When Georges Ripert, in his reply to Pirou, undertakes to justify the position of the jurist, he starts by asserting the complete impartiality of the latter. The classifying of economists in schools, he says, indicates the tendencies of thought and influences the judgment. Juridical science, on the contrary, does not admit either doctrines or followers. It studies the facts without passion and considers them only in their relation to law. It carries judgment on the laws but this judgment only concerns the technique of institutions and regulations. It is a first reply to the argument of Pirou who pretends that, even if the scholar does not necessarily have to refrain from judging, to appraise the facts that he studies and to take a doctrinal position, it is necessary just the same to separate science and doctrine and never to confuse explanation and appreciation. "The separation between science and doctri-

(4) GAËTAN PIROU, op. cit., page 111.

(5) GAËTAN PIROU, op. cit., preface, page XX.

ne" he says, "seems indispensable to me because it alone will permit the building up of a solid economic science, away from the conflicts of doctrines that I believe cannot be overcome".⁶

Ripert then concedes to Pirou that law is satisfied willingly to be only the art of leading men, emphasizing that, at least, this is the most important. However, when the author proposes to make a study of capitalism, he reveals clearly a scientific attitude such as is conceived by the economist Pirou. What comes within his scope, Ripert asserts, is not to study the value of the system for the production or distribution of wealth or the sum of good or evil that it creates for society. His contribution consists of explaining the regulations and institutions which have founded it, maintain it or threaten it.

Ripert is not soft on the economists. He admits willingly, that they are scholars, but "at the same time" he adds, "they are idealists without realizing it, or prophets who assert themselves. They do not like to be asked to define more accurately the outline of their dreams, to give a clearer meaning to their prophecies".⁷

Law, he states, offers us an accurate vocabulary fixed by a long past, a time-honoured experience of human acts, a technique which does not admit either vague projects or dubious thoughts, regulations formulated in a precise manner, clearly-defined institutions and a dry exactness which makes an obstacle to the imagination of the economists.

Pirou had pretended that, even if economic science, as such, did not admit judgments of value, speculations of this category could not be forbidden. Ripert adds that this attitude is not only permissible but necessary. If relations between men are not necessary relations, they must be judged according to their value in order that it be possible to change them. There are not, however, in fact economists willing to do so, since they are all either defenders or adversaries of the economic system under which we live.

He condemns the attitude of the economists who advocate the departure of their pupils from the Law Faculties for the Faculties of Social Science where they will be no longer forced to be initiated into the juridical disciplines. In all contempt of law, he says, there is the revolt of an anarchistic thought.

(6) Id. *ibid*, page XXI.

(7) RIPERT, *op. cit.*, page 5.

"We would not know how to study man's productive activity if we did not know by what institutions it is carried on." ⁸ This decision would be unfortunate also for the jurists, as it would dry up the teaching of law to restrain it to the explanation of texts or to the knowledge of professional regulations only. The knowledge of economics and sociology are, moreover, indispensable to the application and interpretation of the rules of law.

PERSONAL OPINION

We have no intention to discuss here Pirou's definition of political economy. It enlightens us sufficiently for the object of this study.

Let us remember only the principal difference that we believe can be found between the economic fact and the juridical fact. It is, according to Pirou, the notion of market value which permits us to differentiate the economic fact and we recognize this point of view. As to the juridical fact, it is its characteristic of conformity or non-conformity to the legislator's rule that seems to distinguish it for us. On the condition, naturally, that we keep in mind the basic principle that "everything not prohibited by law is permitted."

There is another important distinction which, according to Pirou, explains the difference in the thinking and the method of the jurist and the economist, and, consequently, the opposition remarked between the two kinds of specialists. It is the distinction between the scientific law and the positive law. The first is conceived by Pirou as a dependence conditionally necessary between two terms. As for the jurists' positive law, it is defined as an obligatory social regulation established permanently by public authority and sanctioned by force.

This is what explains the difference in viewpoint between the two disciplines and even the difference in nature, since it concerns a distinction on the level of the formal "quo" object. While the economist places himself on the level of explanation, adds Pirou, the jurists locate themselves on that of *prescription*. From whence, the character properly scientific of political economy and the normative aspect of law which prevents us from considering it as a science.

There would perhaps be place to show here the difference which exists between experimental science to which is attached political economy especially and moral science which is characterized more by law. It could be thus shown that even the normative sciences as such have a scientific character in the philosophical sense of the term. But,

we shall not dwell on this question which will not advance us much in this case. We shall be satisfied with touching lightly one aspect of it a little farther on.

We are of the opinion that the main issue of the debate which sets the two schools against each other is based on a narrowness of viewpoints. To wish to bring back one discipline or the other to too narrow limits is equally unjustifiable.

Pirou undertakes to demonstrate the scientific character of political economy. Whether the positive method is used, which is of inductive nature or the abstract or mathematical method which are rather deductive, it is always the same result that is being looked for. The aim is to observe the economic facts, to find out the causes of them, to formulate a workable hypothesis, to see if it proves itself in reality, and to reach the formulation of scientific laws by noting the regularities that these facts have permitted to discover. Each one of the methods outlined above has its failings, but it is possible to overcome these deficiencies by combining them or in improving them. In any case, despite the statement of Ripert, who seems to blame the imagination of the economists and the faultiness of their methods, it is clear that the economist contributes to the advancement of positive science. All men of science, furthermore, continually find ways of constantly improving their methods and their techniques and the great discoveries come generally from fertile imaginations.

Positive law has neither the same character nor the same object as experimental or scientific law. Even if we do not admit the determinist theories of Pirou, it is no less true that scientific law presents a character of necessity that we do not find in positive law. Men are free, even if this freedom is restrained by the threat of sanctions, to obey or to disobey the rules of the legislator. Moreover, positive law aims to prescribe whereas scientific law only pretends to explain facts.

For this reason we admit with Pirou the character rather normative of law. We are of the opinion, however, that we cannot base ourselves on such a distinction to deny the scientific spirit of the jurist. Let us state, first of all, that it is not possible to restrain the juridical disciplines to positive law and even less to only the explanation of the texts of the law. Moreover, even if positive law has a normative aspect, it takes for granted a positive and objective study of the facts. Before formulating prescriptions, this study of facts is essential. As law must

be applied to man in general, it is the experience and the knowledge of social conditions in a given environment at a specified time, which must show us if it is opportune to formulate a new law. This is why laws range from imperfect to most perfect according to the necessities of time and place. This is so true that we sometimes hesitate long months and even many years before formulating new laws or changing old ones. Labour law, for example, is only starting to be drawn up whereas the social evolution has required it for a long time. Is this the sole responsibility of the jurists? Some economists of the liberal school are also singularly conservative. "Juridical science", says Ripert, "does not admit either doctrine or advocates. It studies the facts without passion, because it considers them only in their relations to law."⁹

The jurist does not always have as an aim the making of judgments of value and to prescribe. His study may concern also the technique of institutions and regulations. He may well "with the help of an accurate vocabulary fixed by a long past", to employ an expression of Ripert, make a factual and purely positive study. It may be said that he is doing juridical sociology. It is possible. There are also economists who have given us studies of social ethics which are not exactly deriving from their science.

We could carry on such a debate for ever, but we are under the impression that this would not lead us anywhere. What is important, in our opinion, is that when a specialist goes outside his own field, that he realize it. If the economist is also a moralist, there is no objection to him writing a treatise on social ethics. To his knowledge of principles, he adds a valuable experience of the facts. His work may well be found to be singularly improved. In the same way, the jurist may also present us with a study in juridical sociology. If he has the aptitudes of a sociologist, he is well placed to undertake such a work. All that is required is that the work undertaken be done with a scientific spirit. We believe that this depends at least as much on the value of the men as on that of the disciplines. It will be said that the latter have their part to play in this formation. He acknowledge this point of view.

We admit willingly that the economists divide themselves into schools, that their theories may at certain times appear to be quite idealistic. That their vision and their judgment be deformed at times, even on strictly scientific grounds, by their conception of social life, is something that is quite possible. But who will throw the first stone?

(9) RIPERT, *op. cit.*, page 1.

Are the jurists immunized against the same dangers? In the drawing up, the interpretation and the application of labour laws, a civilist could have a different attitude from a criminalist, or from a specialist in the question. It is in this way that some jurists may be behind their time. This is inevitable and not confined to the jurist or the economist, but to all specialists, especially to those who devote themselves to the study of the sciences of man.

When we speak of the impartiality of the man of science, it is necessary to understand what we mean. Is impartial, in our opinion, the one who, in the observation and explanation of facts, does not deliberately keep his prejudices¹⁰ in mind during a scientific study. Otherwise, he would use science not as an instrument in the research of the truth, but as a faithful servant of pre-conceived ideas. In this way, we firmly believe that neither the economist nor the jurist, if they are true men of science, can be accused of being partial.

The difference of professional viewpoint, however, even if it does not affect the scientific impartiality, may well make the problems appear from different angles. However, as the jurist and the economist often study the same problem, but from the viewpoint of their profession, they would surely both have interest in enlarging their horizons.

In the present social contingencies, it is no longer permitted that the specialists of the sciences of man shirk their responsibilities by blind dogmatism and bad faith. Extreme specialization is always unproductive, because it causes narrow-mindedness. It is therefore not the disciplines that must be attacked, but those who do not know how to use them as instruments, in recognizing their limitations and in considering the various aspects of the problems to be solved. If "in all contempt of law, there is the revolt of an anarchistic thought", as Ripert puts it, we could also add that in all contempt of other social disciplines, there is a narrow-mindedness and prejudice. If our tradition on social questions has remained dogmatic, we could perhaps find in this the true reason.

CONCLUSION

Law, economics and the other social disciplines complete each other, in our opinion, to advantage and the two kinds of specialists would suffer in wishing to isolate themselves each in their ivory tower. It is said that "light springs from discussion". Granted! Everyone is free to defend his own opinions but for them to be taken seriously

(10) In the etymological sense of the term.

implies at least an elementary knowledge of the principles on which the opponent's arguments are founded. If "dirigism" is under discussion, for example, it would be very useful to the economist to know the juridical difficulties of its application and to the jurist, the reasons of economico-social order which could justify a restriction of liberty in its traditional meaning. In the same way, when it concerns enterprise, contract, property, and numerous other terms or expressions in current use, it would be to advantage of both sides to study the difference in concepts that is to be found under the same expressions.

It would therefore be advantageous, according to us, for the jurists to familiarize themselves more with economics and the other social disciplines. As to those who specialize in these questions, they would also profit from a serious study of juridical sciences.¹¹

The economic sciences are in their proper place in the Social Science Faculties where the economist is in useful contact with other related disciplines, in the same field of knowledge. We ask ourselves, however, if there would not be some advantage, in order to improve the mutual understanding between jurists and other specialists in social sciences, to have the former follow some courses in the Social Science Faculties while the latter follow their law courses in a Law Faculty.

As it is a question, in the end, of specializing in different fields, we believe that this would contribute thus to complete the respective formation of the two types of specialists in the way in which we understand it. As to the contacts which, necessarily, would be more frequent between students of the two faculties, they would only profit both groups by favouring a better mutual understanding which no doubt would continue after leaving University.

(11) It is to be noted that courses in civil law, labour legislation, social security laws, and the jurisdiction of courts are given at present in the Social Science Faculty at Laval University.