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THEORY OF RUDOLPH VON JHERING AND ITS APPLICATION ON CONTEMPRARY ISSUE I.E. MEDIA TRIALS

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I. ABSTRACT

This paper explores the jurisprudential contributions of Rudolf von Jhering and applies his sociological theory of law to the modern phenomenon of media trials. Jhering, a 19th-century German legal philosopher, proposed that law should be understood as a practical instrument aimed at securing societal interests rather than a set of abstract principles. His idea of law as a "means to an end" emphasized state-backed coercion and social purpose over mere legal formalism. Central to his theory is the belief that individuals must actively assert their legal rights—a notion he famously captured in The Struggle for Law—to maintain both personal dignity and societal order.

The study analyzes how Jhering's core concepts—legal consciousness, struggle for rights, and law's purposive function—resonate within the framework of contemporary media trials. These trials, characterized by heavy media influence on legal proceedings and public opinion, demonstrate how societal forces shape perceptions of justice outside formal courtrooms. Using Jhering's theoretical lens, the paper evaluates how media trials blur the lines between legal norms and societal narratives, often undermining judicial impartiality and the presumption of innocence.

Two landmark cases—Tourancheau and July v. France and the Weltbühne Trial—are examined to illustrate the practical tensions between press freedom and the right to a fair trial. The paper concludes that while Jhering's theory offers valuable insights into the societal dimensions of law, its limitations lie in its optimistic assumptions about reconciling conflicting interests. Nonetheless, Jhering's work remains foundational in understanding how law evolves through societal conflict and maintains its legitimacy through purposive action in a media-driven age.

II. KEYWORDS

Rudolph Von Jhering, Sociological Jurisprudence, Law And Society, Media Trial, Contemporary Challange

III. LIFE AND CARRIER[694]

Rudolf von Jhering commenced his academic journey at the University of Heidelberg in 1836, subsequently pursuing studies in Göttingen, Munich, and, beginning in 1838, Berlin— where he ultimately earned his doctorate.

By 1844, having attained the title of doctor juris, Jhering began lecturing as a Privatdozent in Roman law in Berlin. His public lectures centered on the Geist des römischen Rechts (Spirit of Roman Law), a theme that would remain central to his life's scholarly pursuits.

In 1845, he was appointed professor at the University of Basel, followed by academic posts at Rostock (1846), Kiel (1849), and Giessen (1851).

[694] William Seagle, Rudolf von Jhering: Or Law as a Means to an End, 13 U. Chi. L. Rev. 71 (1945).

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At each of these institutions, Jhering left a lasting intellectual legacy, breathing life into the traditionally arid field of Roman law more than any of his contemporaries.

During the latter half of the 19th century, Jhering's scholarly reputation rivaled that of Savigny, whose influence had dominated the earlier decades. While Savigny and his followers adopted a historical method, Jhering approached jurisprudence as a dynamic science intended to serve the moral and social progress of humanity. In 1868, he assumed the prestigious chair of Roman law at the University of Vienna. His lectures attracted not only students but also professionals and high-ranking officials.

In recognition of his intellectual contributions, Emperor Franz Joseph I of Austria ennobled him in 1872, bestowing a title of hereditary nobility. Despite his success in Vienna, Jhering eventually grew weary of the capital's social obligations and gladly exchanged its bustle for the tranquility of Göttingen, where he accepted a professorship the same year.

That year also marked the publication of one of his most celebrated works, Der Kampf ums Recht (1872; English translation The Struggle for Law, 1879), adapted from a lecture delivered to great acclaim in Vienna. In this seminal text, Jhering argued that the defense of one's rights is not merely a personal matter but a moral imperative—anchored in the intrinsic link between legal rights and personal dignity. Rights, he posited, embody one's social value and honor; thus, their violation constitutes an affront to one's integrity.

This work was succeeded five years later by Der Zweck im Recht (The Purpose in Law, 2 volumes, 1877–1883), a more intellectual and philosophical exposition of his legal theory. While Der Kampf ums Recht reflects Jhering's resolute character and compelling sense of justice, Der Zweck im Recht highlights his intellectual depth and analytical rigor. Perhaps his most balanced and accessible work, Jurisprudenz des täglichen Lebens (1870; English translation, 1904), showcases a synthesis of these attributes. A distinctive feature of Jhering's teaching was his use of Praktika—practical problems in Roman law. An early collection of these, including suggested solutions, was published in 1847 under the title Civilrechtsfälle ohne Entscheidungen.

Aside from brief appointments in Leipzig and Heidelberg, Jhering remained at Göttingen until his death on September 17, 1892. Among his other significant contributions are Beiträge zur Lehre vom Besitz—initially published in the Jahrbücher für die Dogmatik des heutigen römischen und deutschen Privatrechts and later released independently—Der Besitzwille, and a provocative article on possession (Besitz) in the Handwörterbuch der Staatswissenschaften (1891), which sparked considerable debate, particularly due to its challenge of Savigny's established doctrine. In recognition of his scholarly eminence, Jhering was elected a foreign member of the Royal Netherlands Academy of Arts and Sciences in 1874. His enduring influence was honored in October 2018, on the bicentenary of his birth, when Roman law scholars from across the globe commemorated his legacy

IV. LAW AND SOCIAL PURPOSE

Rudolf von Jhering, often heralded as the progenitor of sociological jurisprudence, developed a legal theory grounded in the notion that law serves to promote and secure social interests. Unlike traditional legal positivists or natural law theorists, Jhering's conception of law was inherently functionalist and pragmatic. He contended that the primary objective of law is not to reflect abstract ideals of justice or immutable truths, but to maintain the essential conditions for social life through the machinery of state authority.

According to Jhering, law may be defined as "the sum of the conditions of social life, in the widest sense of the term, secured by the power of the state through the means of external

compulsion."[695]This emphasis on external compulsion as the distinguishing feature of law places his theory in close proximity to that of command theorists like John Austin. However, Jhering diverged significantly by advancing a more nuanced and dynamic interpretation of legal norms and coercion.

For Jhering, coercion was not merely a brute force mechanism imposed upon individuals, but a necessary institutional tool wielded by the state to safeguard communal well-being. He emphasized that law is inherently a product of state power, for the state alone possesses the legitimate means of coercion. Hence, the defining trait that separates law from other normative systems such as ethics or morality is the enforceability of legal norms by state-backed force.

Despite this alignment with command theory, Jhering departed from it by asserting that law possesses both an external and internal dimension. While coercion constitutes the external side, the norm or legal imperative forms its internal structure. These norms are not arbitrary dictates; rather, they are practical propositions that guide human conduct. He described them as "abstract imperatives," aligning them with other social imperatives like moral duties and ethical maxims. However, what differentiates legal norms from their ethical counterparts is their institutional origin—the state—which formally enacts and enforces them.

Jhering further posited that these legal imperatives are primarily addressed to state institutions tasked with managing coercion. Thus, the legal norm, though formal and abstract, is integrally connected to state authority. Nevertheless, the mere presence of norms and coercion does not convey the substance or content of law. Jhering underscored that the essence of law lies in its purpose, and that purpose is the promotion and protection of social life in all its varied forms.

Crucially, Jhering asserted that the content of law cannot be universal or absolute; it must be adaptable to the particular needs, values, and historical conditions of a given society. Law, in this sense, is not static but evolutionary. Its function is not to embody eternal truths, but to serve the shifting purposes of social life. Hence, the ultimate standard of law is not truth, which is immutable, but purpose, which is contingent and relative.[696]

In delineating the conditions of social life, Jhering categorised them into three primary types: extra-legal, mixed-legal, and purely legal conditions. Extra-legal conditions refer to those aspects of human life that arise from nature, such as sunlight or air—elements received passively by individuals without state intervention. These lie beyond the purview of law. The second category, mixed-legal conditions, encompasses human activities such as reproduction, labour, and commerce—domains governed partly by instinct and partly requiring legal support when natural mechanisms fail. Finally, purely legal conditions consist of those obligations that are wholly constructed by legal command, such as the duty to pay taxes or repay debts.

Jhering believed that by securing these social conditions through legal mechanisms, the law fosters not only communal harmony but also aligns individual interests with societal welfare. This alignment, he argued, is not achieved through suppression but through integration: the law enables individuals to perceive their personal goals as being intrinsically linked to the common good. In this way, personal and social purposes are reconciled within the legal framework.

This harmonization, according to Jhering, is facilitated by the "levers of social motion," which are the motivational forces through which society exerts influence over individuals. These levers are categorised into egoistic and altruistic forms. The egoistic levers consist of

[695] **Elise Nalbandian,** *Introductory Concepts on Sociological Jurisprudence: Jhering, Durkheim, Ehrlich*, **4 Mizan L. Rev.** 348 (2010).

[696] **Rudolph von Jhering,** *The Struggle for Law* (Callaghan 1915) (Chi., Ill., America).

reward and coercion—both extrinsically motivated. Altruistic levers, by contrast, arise from internalised values such as duty and love. While Jhering acknowledged the importance of both sets of motivators, he seemed to place a functional emphasis on the efficacy of coercion and reward in achieving legal compliance[697]

Nevertheless, Jhering's theory is not without its detractors. Critics have observed that while he convincingly establishes the social function of law, he offers limited guidance on how to mediate between competing social interests. His model tends to assume a level of harmony that may not reflect the complex reality of societal conflicts. In particular, the reliance on altruistic sentiments such as love and duty as mechanisms for reconciling deep-seated interest divergences has been viewed as idealistic and perhaps overly optimistic.

Another criticism targets the narrowness of Jhering's inquiry. While he rightly focuses on the pre-legal conditions that give rise to legal norms—conditions rooted in society's practical needs—he devotes comparatively little attention to exploring the full range of extra-legal influences on law, such as religion, culture, and economic structures. This arguably limits the scope and depth of his jurisprudential analysis, especially for a theory that purports to take a sociological view of law.[698]

Furthermore, the absence of a clearly articulated methodology for weighing conflicting interests renders his theory somewhat indeterminate when applied to real-world disputes. If the law's purpose is to serve the "social interest," how is that interest to be defined or prioritized when individuals and groups hold divergent conceptions of the good life? Without clear criteria for resolving such conflicts, Jhering's framework may risk devolving into a tautology in which law is said to serve society simply because it exists and is enforced.

Nonetheless, the enduring significance of Jhering's contribution lies in his assertion that law is not an autonomous, self-referential system, but one intimately connected to the evolving needs of the social order. He transformed jurisprudential thinking by shifting the focus from law as a closed logical system to law as a practical instrument for achieving societal goals. His work laid the foundation for later developments in sociological and realist jurisprudence, influencing scholars such as Roscoe Pound and Eugen Ehrlich.

In conclusion, Jhering's sociological theory of law represents a pivotal departure from formalistic and abstract conceptions of jurisprudence. It emphasizes the necessity of legal adaptability, the centrality of state-backed coercion, and the inextricable link between law and the collective interests of society. Despite its limitations—particularly in dealing with normative pluralism and balancing conflicting interests—his theory remains a cornerstone in understanding the functional and purposive dimensions of legal systems.

V. CRITICAL ANALYSIS OF APPLICATION OF THEORY TO MEDIA TRIALS

Rudolf von Jhering (1818–1892), a prominent German jurist, is best known for his contributions to the philosophy of law, particularly his development of the concept of legal consciousness and the role of conflict in the law.

While Jhering's work focused on legal theory, his ideas can be linked to modern discussions of media trials, particularly when considering how legal conflicts are shaped by public opinion and the media. A media trial, in contemporary terms, refers to a case where the public perception, largely influenced by media coverage, plays a crucial role in shaping the outcome of legal proceedings. This is often seen in high-profile cases, where the media's portrayal of the accused or the crime influences both public opinion and the behavior of legal authorities.

[697] **Isaac Husic (ed.),** *Law as a Means to an End* (Boston Book Co. 1913).
[698] **Iredell Jenkins,** *Rudolf von Jhering*, **14 Vand. L. Rev.** 169 (1960).

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Jhering's theory of law as a struggle for justice can be directly connected to the dynamics of media trials. In his view, the law is an arena of conflict, where individuals must actively engage to protect their interests. In media trials, this conflict is amplified by the public and the media, which can act as both participants and adjudicators in the legal process. Just as Jhering emphasized the importance of actively pursuing one's rights, the media in a modern media trial can be seen as a force that shapes the public's understanding of the case, often determining whether an individual's rights are defended or undermined.

Additionally, Jhering's ideas on legal consciousness resonate with the concept of a media trial. Legal consciousness, in Jhering's view, refers to the way in which people understand and relate to the law in their everyday lives. In media trials, this consciousness is often molded by the narratives the media constructs. The public's understanding of justice becomes entangled with the portrayal of a case, creating a situation where the law is not only a matter of legal rules but is also influenced by the values and prejudices that are shaped by the media. Media trials often distort legal outcomes, as the intense public scrutiny and sensationalism can overshadow the actual legal process, creating a skewed perception of guilt or innocence.

Furthermore, Jhering's advocacy for the idea that legal institutions must protect individuals from external pressures aligns with the concern that media trials place undue pressure on judicial bodies. The challenge of maintaining judicial impartiality in the face of widespread public opinion is a modern extension of Jhering's concerns about the potential for the law to be undermined by external forces. In media trials, the struggle for justice becomes not just a battle within the courtroom but also a battle for public perception, where the law itself must contend with the influence of the media.

Jhering's theories on the law as an active and ongoing struggle, shaped by conflict and the defense of rights, offer valuable insights into the nature of media trials. Media trials illustrate how the law, once framed as an abstract system of rules, is frequently intertwined with societal pressures, public opinion, and media influence—forces that Jhering's theory acknowledges as integral to the legal process.

VI. CASE LAWS

1. Tourancheau and July v. France[699]

The case of Tourancheau and July v. France (2005) serves as a compelling illustration of the tension between freedom of the press and the right to a fair trial—two fundamental rights that often come into conflict. The case involved two journalists, Patricia Tourancheau and Serge July, who were convicted for publishing details of a criminal investigation before they were aired in court. This action violated French legal provisions aimed at preserving the presumption of innocence and safeguarding the proper administration of justice. The journalists appealed to the European Court of Human Rights (ECHR), claiming a violation of their right to freedom of expression under Article 10 of the European Convention on Human Rights. However, the ECHR upheld their conviction, reinforcing the need to balance press freedom with judicial integrity.

This case finds theoretical resonance with the jurisprudence of Rudolf von Jhering, particularly his sociological and purposive approach to law. Jhering posited that the law is not merely a system of abstract rules, but a dynamic tool for serving social purposes—chief among them being the protection of societal order and the public interest. He emphasized that law should mediate between conflicting interests, ensuring that the collective good is not sacrificed at the altar of individual liberties.

Applying Jhering's theory, the restriction imposed on the journalists' freedom of expression can be viewed not as an arbitrary limitation, but as a necessary legal intervention to uphold a higher societal value: the integrity of

[699] **Tourancheau & July v. France**, App. No. 53886/00, Eur. Ct. H.R. (2005).

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the judicial process. Jhering recognized that individual rights must sometimes yield to the common good, especially where their unregulated exercise would disrupt social harmony or justice. The premature disclosure of investigatory details in a sensationalized media environment can severely prejudice public opinion and compromise the right of the accused to a fair and impartial trial—an outcome Jhering would classify as detrimental to the societal function of law.

Moreover, Jhering's concept of the struggle for law suggests that legal rights are not passive entitlements but must be asserted and protected in the context of competing claims. In this case, the judiciary asserted its role as a guardian of public order and justice by penalizing actions that endangered the balance between transparency and fairness in criminal proceedings.

Thus, the Tourancheau and July judgment exemplifies the practical relevance of Jhering's legal theory, showing how law functions as a social mechanism to reconcile competing interests and maintain justice in an increasingly complex media landscape.

2. Weltbühne Trial[700]

The Weltbühne Trial of 1931 stands as a crucial example of the ideological and legal tensions between press freedom and state security. The case centered around journalist Carl von Ossietzky and the magazine Die Weltbühne, which had published articles exposing secret German rearmament in violation of the Treaty of Versailles. Ossietzky was prosecuted for treason and betrayal of military secrets, ultimately convicted and sentenced to 18 months in prison. While controversial, the verdict illuminates deeper jurisprudential questions—particularly when analyzed through the lens of Rudolf von Jhering's sociological and purposive theory of law.

Jhering's jurisprudence was predicated on the idea that law is not an end in itself but a means to achieve broader societal objectives. He rejected legal formalism in favor of a functional approach that sees law as a mechanism for promoting social order, collective interests, and national stability. In the Weltbühne case, the court's decision to prioritize national security over the individual right to freedom of expression aligns with Jhering's assertion that the legal system must sometimes subordinate personal liberties to the needs of the state or society.

The conviction of Ossietzky, while criticized from a human rights standpoint, can be interpreted as an application of Jhering's concept of Zweck im Recht (the purpose in law). According to this principle, legal norms must serve concrete social purposes—in this case, the preservation of state sovereignty and national defense. From the state's perspective, disclosing military secrets during a period of political instability in the Weimar Republic threatened not only compliance with international treaties but also internal order and national security. Therefore, the law acted not merely to punish the individual but to safeguard a perceived greater social good.

Moreover, Jhering's idea of Rechtskampf (struggle for law) also applies here. For Jhering, the law gains vitality when it is asserted and defended through conflict. The state, in asserting its authority to suppress what it deemed dangerous disclosures, was engaged in a struggle to affirm its legal and political identity in a fragile democratic environment. Conversely, Ossietzky's resistance represented the counter-struggle for civil liberties and democratic accountability, demonstrating the dynamic interplay between law and society.

Thus, the Weltbühne Trial exemplifies the implicit application of Jhering's legal theory—where law mediates between individual freedoms and the imperatives of collective security, reflecting the jurisprudence. ongoing tension that shapes modern

[700] **Weltbühne Case,** 3 RGSt 678 (Ger. 1931)

VII. CONCLUSION

In conclusion, Rudolf von Jhering's sociological jurisprudence offers a compelling framework for understanding the dynamics of media trials in contemporary society. His conception of law as a purposive, evolving mechanism for securing social interests is highly relevant when examining how media influences public perception and legal outcomes. Jhering's emphasis on the law as a struggle for justice resonates with the adversarial and often contentious nature of media trials, where public discourse becomes an extension of the legal battleground. His notion of legal consciousness underscores how individuals internalize and interpret legal norms through societal influences—of which media is now a dominant force. Furthermore, Jhering's insistence on the need for state institutions to uphold justice against external pressures directly relates to the risks posed by media sensationalism, which can jeopardize judicial impartiality. While Jhering might not have foreseen the scale of media influence today, his theory provides a valuable lens for analyzing how law interacts with public sentiment and media narratives. Ultimately, media trials highlight the tensions between law's formal structures and its societal context—a central concern in Jhering's work—revealing the enduring relevance of his insights in navigating the balance between legal integrity and societal influence.

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