



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : LL.B. 1st Semester

SUBJECT: Jurisprudence

SUBJECT CODE: LLB 301

LECTURE: 6

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Lecture-6



SCHOOLS OF JURISPRUDENCE

Lecture- 6: Schools of Jurisprudence

SCHOOLS OF JURISPRUDENCE

There are four main divisions in schools of jurisprudence, namely (1) the Philosophical, (2) the Analytical (including the comparative), (3) the Historical, and (4) the Sociological. Besides we have the Realist School in the United States.

THE PHILOSOPHICAL SCHOOL OF JURISPRUDENCE

GROTIUS (1583-1645)

Hugo Grotius was a Dutch national and a Republican philosopher. He is regarded as the father of philosophical school of jurisprudence. In his famous work 'The Law of War and Peace', Grotius stated that natural law springs from the social nature of man and the natural law as well as positive morality, both are based on the notion of righteousness. Natural justice is the justice indeed with truth. The rules of human conduct emerge from right reason and they receive public support of the coercive force of the state but the census of public disapprobation. The view of Grotius was that the agreement of mankind concerning certain rules of conduct is an indication that those rules originated in right reason.

In detaching the science of law from theology and religion, he prepared the ground for the secular, rationalistic version of modern natural law. Among the traits characteristic of man, he pointed out, was an impelling desire for society, that is, for the social life- "not of any and every sort, but peaceful, and organised according to the measure of his intelligence, with those who are of his own kind." He refuted the assumption of the Greek Skeptic Carneades that man was actuated by nature to seek only his own advantage, believing that there was an inborn sociability in human beings which enabled them to live peacefully together in society. Whatever conformed to this social impulse and to the nature of man as a rational social being was right and just; whatever opposed it by disturbing the social harmony was wrong and unjust.

Grotius defined natural law as "a dictate of right reason which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity." This law of nature would obtain "even if we should concede that which cannot be

conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him."

Grotius thereby grounded the natural law on an eternal reason pervading the cosmos, although he admitted the alternative possibility of a theist foundation. Grotius pointed out that two methods existed for proving whether something was or was not in accordance with the law of nature. "Proof a priori consists in demonstrating the necessary agreement or disagreement of anything with a rational or social nature; proof a posteriori, in concluding if not with absolute assurance, at least with every probability, that that is according to the law of nature which is believed to be such among all nations, or among all those that are more advanced in civilisation." Grotius added that no conclusion unfavourable to human nature needed to be drawn from the practices of nations that were savage or inhuman. He agreed with Aristotle that in order to find out what was natural, we must look to those things which are in a sound condition, not to those that are corrupted.

Among the chief axioms of natural law enumerated by Grotius are the following: to abstain from that which belongs to other persons; to restore to another any goods of his which we may have; to abide by pacts and to fulfill promises made to other persons; to repay any damage done to another through fault; and to inflict punishment upon men who deserve it. Many of the more detailed and special rules of the law, in his opinion, represented merely necessary derivations from these general precepts. The state was defined by Grotius as "a complete association of free men, joined together for the enjoyment of rights and for their common interest." It originated in a contract, but usually the people had transferred their sovereign power to a ruler who acquired it as his private right and whose actions were ordinarily not subject to legal control. The ruler is bound, however, to observe the principles of natural law and of the law of nations. If he misuses his power, his subjects, as a general rule, have no right to revolt against him. But in some clear cases of usurpation or flagrant abuse of power Grotius was willing to recognise a right of resistance.

SELF-TEST QUESTIONS

S.N O	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Jurirprudence is a name of a set rules to share	Science	Laws	Institutions	Rights
2	Concept of law is basic of	All legal concepts	All concepts	Social concepts	Ethical concepts
3	Which jurist defined jurisprudence as the observation of things, human and divine, the knowledge of the just and the unjust.	Holland	Ulpian	Salmond:	Keeton
4	Who defines 'jurisprudence' as "the philosophy of positive law."	Austin	Holland	Salmond:	Roscoe Pound
5	According to whom Jurisprudence means the 'formal science of positive laws'.	Holland	Ulpian	Roscoe Pound	Salmond:

Answers; Answers: 1-(b),2-(c), 3-(b),4-(a),5-(a)