



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : LL.B. 1st Semester

SUBJECT: Jurisprudence

SUBJECT CODE: LLB 301

LECTURE: 7

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Lecture-7



Theories by other Jurists

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EMMANUEL KANT (1724-1804)

Kant gave modern thinking a new basis which no subsequent philosophy could ignore. The 'Copernican Turn' which he gave to philosophy was to replace the psychological and empirical method by the critical method by an attempt to base the rational character of life and world not on the observation of facts and matter but on human consciousness itself.

Kant, in his Critique of Pure Reason tried to draw a distinction between form and matter. He observed that the impression of our senses is the matter of human experience which are brought into order and shaped by human mind. According to him "the freedom of man act according to his will and the ethical postulates are mutually co-relative because no ethical postulate is possible without man's freedom of self determination". Kant calls substance of ethical postulate as "Categorical Imperative" which is the basis of his moral and legal theory.

JOHANN GOTTLIEB FICHTE (1762-1814)

Transcendental idealism presented itself in a pure and uncompromising form in the philosophy of Johann Gottlieb Fichte. To him, the starting point and center of all philosophical thinking is and must be the intelligent human ego. Not only the forms of our cognition, as Kant had taught, but also the content of our perceptions and sensations, were regarded by Fichte as the product of our consciousness. "All being, that of the ego as well as that of the non-ego, is a certain modality of consciousness; and without consciousness there is no being." The non-ego, that is, the word of objects, is in Fichte's view, nothing but a target for human action, a domain for the exertion of the human will which is able to shape and transform this world. Fichte's philosophy is one of the human activism without bounds, and it represents an enthusiastic affirmation of the sovereign power of human intelligence. The rational human ego is viewed as free by Fichte in the sense that it sets its own goals and is capable of attaining them; in other words, the actions of human beings are determined solely by their own will. Since, however, human egos stand in relations of interaction with other human egos, their respective spheres of freedom must be adjusted and

harmonised. Thus Fichte, like Kant, considered law as a device for securing the coexistence of free individuals. Every man must respect the freedom of every other man.

The legal philosophy of Fichte is deduced from the self-consciousness of the reasonable being, no reasonable being can think himself without ascribing the activity to himself. Freedom is a necessity of mutual. The sphere of legal relation is that part of mutual personal relations which regulates the recognition and definitions of the respective spheres of liberty on the basis of free individuality as the relation between individual and the state. Fichte points out that it is regulated by three basic principles, namely:-

1. An individual becomes a member of the state through fulfillment of civic duties.
2. The law limits and assures the rights of the individuals.
3. Outside his sphere of civic duties, an individual is free and honky responsible to himself

DEL VECCHIO

The Italian legal philosopher George Del Vecchio (1878-1970) distinguishes sharply between the concept of law and the ideal of law. The concept of law he maintains, is logically anterior to juridical experience, that is, constitutes a priori datum. The essential characteristics of law, according to him, are first, objective coordination of the actions of several individuals pursuant to an ethical principle, and sound of the actions of several individuals pursuant to an ethical principle, and second, bilateralness, imperativeness, and coercibility. Del Vecchio developed independently of Stammler, a theory of law on essentially similar foundations. He was a jurist of much greater elegance and university than Stammler. His writings display a professing of philosophical, historical and juristic learning

According to Del Vecchio, the concept of law must have reference only to its form, to the logical form of law is more comprehensive than the sum of judicial propositions. The concept of law is juridical neutral. It cannot distinguish between good and bad law and just and unjust law. Law is not only formal but has a special meaning and an implicit faculty of valuation. Law is a phenomenon of nature and collected by history. It is also an expression of human liberty which comprises and masters nature and directs it to a purpose. Law is the subject of a qualitative progress of phenomenon from mere formless matter to progressive organisation and individualization. The aim is perfect autonomy of the spirit.

The absolute value of the person, equal liberty of all men, the right of each of the associates to be an active, not just a passive, participant in legislation, liberty of conscience, and in general the principles in which is summed up, even amid accidental fallacies, the true substance of the classical philosophy of law, *juris naturalis scientia*, have already received important confirmations in the positive juridical orders, and will receive others soon or in the course of time, whatever may be the resistance and the oppositions which they still encounter.

HEGEL (1770-1831)

Hegel was the most influential thinker of the philosophical school. His system is a necrotic one. According to him "the state and law both are evolutionary." The great contribution of Hegel to philosophical school is the development of the idea of evolution. According to him, the various manifestations of social life, including law are the product of an evolutionary, dynamic process. This process takes on a dialectical form, revealing itself in thesis, antithesis and synthesis. The human spirit sets a thesis which becomes current as the leading idea of a particular historical epoch. In this historical process, law and the state plays a vital role, according to Hegel. The system of law, he asserted, is designed to realise the ideal of freedom in its external manifestations. It bears emphasis, however, that for Hegel freedom did not signify the right of a person to do as he pleased. A free person, in his view, is one whose mind is in control of his body, one who subordinates his natural passions, irrational desires, and purely material interests to the superior demands of his rational and spiritual self. Hegel admonished men to lead a life governed by reason and pointed out that one of the cardinal postulates of reason was to accord respect to the personality and rights of other human beings. The law was considered by him as one of the chief instruments to devise to reinforce and secure such respect.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	There are 4 schools of Jurisprudence	True	False
2.	Hugo Grotius belongs to Philosophical School of Jurisprudence	True	False
3.	Hugo Grotius father of philosophic al school of jurisprudence	True	False
4.	Kant calls substance of ethical postulate as "Categorical Imperative" which is the basis of his moral and legal theory	True	False
5.	George Del Vecchio distinguishes sharply between the concept of law and the ideal of law	True	False

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