



RAMA UNIVERSITY

www.ramauniversity.ac.in

FACULTY OF JURIDICAL SCIENCES

Course : B.A LL.B/BB.A LL.B

Semester :IInd

SUBJECT: Jurisprudence

SUBJECT CODE: BAL206/BBL 206

LECTURE: 3

NAME OF FACULTY: Ms. Kaneez Fatima

Assistant Professor

Lecture-12



Lecture –11:- Historical School of Jurisprudence

HISTORICAL SCHOOL: JURISTS

● FRIEDRICH KARL VON SAVIGNY

Savigny was a leading proponent of this historical interpretation of the law, which he thought to be the most comprehensive of the historical school of jurisprudence. He traced the evolution of law as an evolutionary process long before Darwin published his theory of evolution in biology. And for this reason, only Dr. Allen referred to Savigny as a “**Darwinian before Darwin**” for his contribution to the creation of the judicial system by using evolutionary principles.

The notion of a specific legal arrangement was an impression of the spirit of those who incorporated it, according to Savigny’s principles

a) SAVIGNY’S KEY PERCEPTIONS

1. The law is unique.
2. Law emerges from people’s lives and consciences, rather than being imposed or constructed.
3. Law is related to language, which bears the customs and cultures of its own country, and hence cannot be applied generally.
4. Law develops alongside nations and expires with their demise.

However, the law is discovered as a societal principle later, constructed by jurists.

b) ACCORDING TO SAVIGNY, WHAT CONSTITUTES LAW?

“It is a result of times, the seed of which, like the germ of state, resides in the character of man as being designed for society, and which develops from this germ various shapes, depending on the surrounding influences.” To put it another way, the law is the result of the historical process that has revealed the customary laws. As a result, the law is a duplicate of national spirit rather than a product of established legislation. As previously stated, Savigny believes that the legal system is a reflection of national consciousness, which he refers to as *volkgeist*.

c) SAVIGNY’S VOLKSGEIST BASIC CONCEPT

The term *Volksgeist* refers to a person's "national character". The law, according to Savigny's *Volksgeist*, is the result of the people's collective awareness or will. The concept of *Volksgeist* was created to serve as a caution against hasty legislation as well as to propose new abstract legal ideas. Unless they support the people's will in general. Essentially, Savigny believed that law should not be discovered by purposeful legislation, but rather should be created and emerge from the broad consciousness of the people.

d) OPPOSITION TO SAVIGNY'S THEORY

While advocating for the role of evolution and growth in the development of law, Savigny's approach to the law was tainted in the following ways:

1. He placed an excessive emphasis on the unconscious forces that shape a nation's law, ignoring the efficacy of legislation as a tool for deliberate, conscious, and planned social change. Legislation is being written, enacted, and used as a significant instrument of social change and reform in modern developing societies like India.
2. He was chastised for his legal pessimism because he underestimated the relevance of legislation and held a negative view of human power's ability to create a law to effect social change.
3. Savigny highlighted the legal system's national character. While promoting the national character of law, he completely avoided studying German law and instead drew inspiration from Roman law.
4. *Volksgeist* is an ephemeral concept as indeterminable and hazy as natural law itself.

Even if Savigny was not opposed to legislative reform through the codification of laws, his attitude toward codification was cold and pessimistic, as he believed that codification could never solve all of the problems that would arise in the future and that an imperfect code would create more problems by "perpetuating follies" underpinning it, he was a fervent believer that codification should be preceded by a thorough scientific examination of the law, which should take into account the law's historical context.

As most sociologists like Durkheim, Ehrlich, Kohler, Weber, and others were perplexed by Savigny's *Volksgeist*, which postponed the study of scientific assessment of society in terms of its purposes and goals, his theory of law and society delayed the formation of the modern sociological school.

● GEORG FRIEDRICH PUCHTA (1798-1846)

Puchta, a German jurist, was Savigny's most popular student. He was convinced that the law was the result of people's collective consciousness and the manifestation of their spirits. Law will not evolve in this way, according to Puchta, if it is formed without prior considerations of the past, historic culture, and traditional practices. This would have established a clear situation rather than solving an issue.

Puchta's ideas were acknowledged as more reasonable and enhanced after a period of progress. He began by stating that men have always lived in oneness since the dawn of time. This unity could be physical as well as spiritual, focused on people's collective will.

Self-interest, according to Puchta, caused conflicts. For the sake of maintaining peace and actual evolution law, he argued that general will should take precedence over individual will. Furthermore, the state's position was discussed, which is extremely important. The state prioritized the general will and interest of the people while downplaying individual interests, resulting in a functional system.

“Neither the people nor the state alone can make and formulate laws,” was Puchta's main thought.

PUCHTA'S CONTRIBUTION

- He discussed two dimensions of human will, as well as the origins of the state.
- Even though Georg Friedrich Puchta was Savigny's student, Puchta improved Savigny's views and gave them a better logical interpretation.