



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 1

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Lecture-10



Puchta & Kohler

Lecture – 10 : Puchta & Kohler

GEORGE FREDRICK PUCHTA 1798-1856

Puchta was not only a disciple of Savigny but also a great jurist of the Historical School. His work is considered to be more valuable as he made improvements upon the theory of Savigny by making it more logical. He started from the evolution of human beings and traced the development of law since that period. According to him, the idea of law came due to the conflict of interests between the individual will and general will. That automatically forms the state which delimits the sphere of the individual and develops into a tangible and workable system. Puchta agreed with his teacher that the genesis and unfolding of law out of the spirit of the people was an invisible process. "What is visible to us is only the product, law, as it has emerged from the dark laboratory in which it was prepared and by which it became real." His investigation on the popular origin of law convinced him that customary law was the most genuine expression of the common conviction of the people, and for this reason, far superior to legislation. He considered explicit legislation useful only insofar as it embodied the prevailing national customs and usages. The contribution of Puchta lies in the fact that he gave twofold aspects of human will and origin of the state. It is true that there are some points of distinction between Puchta and Savigny but mostly they are similar. On some points, Puchta improved upon the views of Savigny and made them more logical.

JOSEPH KOHLER (1849-1919)

A theory of law which contains components of a sociological character but which may also be explained as an attempt to revive some of the ideas of Hegel was advanced by the German jurist Joseph Kohler. Kohler taught that human activity was cultural activity, and that man's task was "to create and develop a new

abundance of forms which shall be as a second creation, in juxtaposition to divine creation.” The law, he pointed out, plays an important part in the evolution of the cultural life of mankind by taking care that existing values are protected and new ones furthered. Each form of civilisation, Kohler said, must find the law which best suits its purposes and aims. There exists no eternal law; the law that is adequate for one period is not so for another. Law must adapt itself to the constantly changing conditions of civilisation, and it is the duty of society, from time to time, to shape the law in conformity to new conditions. Kohler is neo Hegelian. He was much influenced by the Hegelian legal theory. He conceded to the Hegel’s idea of universal civilisation but did not agree with the view that there is an eternal law of universal body of legal institutions uniformly suited to all the societies. He emphasized that human society is ever changing and progressing and law is a means to respond favourably to these changes. He says that there is no eternal law. Pound observes that Kohler’s formation of the jural postulates of the time and place is one of the most important achievements of recent legal science.

Kohler advocated a synthesis and reconciliation of individualism and collectivism in legal control. Egoism, he maintained, “stimulates human activity, urges man on to constant effort, sharpens his wit, and causes him to be unremitting in his search for new resources.” An attempt by the legal order to uproot or combat egoism would therefore be foolish. He pointed out, on the other hand, that social cohesion is also necessary, in order that humanity may not fall apart, and turning into a collection of individuals and the community lose control over its members. Nothing great can be accomplished, in his view, except by devoted cooperative effort. “the individual should develop independently but the tremendous advantage of collectivism should not therefore be lost.”

An eminent American jurist, Dean Pound, considers that Kohler’s “formation of the jural postulates of the time and place is one of the most important achievements of recent legal science”. The natural law of the most philosophical school loses its rigidity and becomes charged with a changing or growing content

being conceived as something relative and not as something that shall stand forever.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Puchta was not disciple of Savigny	true	false
2.	According to Puchta genesis and unfolding of law out of the spirit of the people was an invisible process	true	false
3.	Kohler taught that human activity was cultural activity, and that man's task was "to create and develop a new abundance of forms which shall be as a second creation, in juxtaposition to divine creation.	true	false
4.	Kohler advocated a synthesis and reconciliation of individualism and collectivism in legal control	true	false
5.	An eminent American jurist, Dean Pound, considers that Kohler's "formation of the jural postulates of the time and place is one of the most important achievements of recent legal science".	true	false

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