



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : LL.B. Ist Semester

SUBJECT: Jurisprudence

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LECTURE: 1

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Lecture-8



HISTORICAL SCHOOL OF JURISPRUDENCE

Lecture - 8: HISTORICAL SCHOOL OF JURISPRUDENCE

The historical school antedates the work of Kelsen, but the reason for postponing discussion of the historical thesis is that, in opposition to the doctrine of the pure science of law, the historical school considered law in direct relationship to the life of the community and thus laid the foundation on which the modern sociological school has built. The eighteenth century was an age of rationalism; it was believed possible by arm-chair deliberation to construct a universal and unchangeable body of laws that would be applicable to all countries, using as a premises the reasonable nature of man. The historical school in part was a result of the surge of nationalism that arose at the end of the eighteenth century. Instead of the individual, writers began to emphasize the spirit of the people, the Volksgesit. In 1814 a programme for the school was enunciated by Savigny. The central question was 'how did law come to be?' Law evolved, as did language, by a slow process and, just as language is a peculiar product of a nation's genius, so is the law. The source of law is not the command of the sovereign, not even the habits of a community, but the instinctive sense of right possessed by every race. Custom may be evidence of law, but its real source lies deeper in the minds of men. 'The living of law' is the secret of its validity. In those matters with which he is directly concerned every member of the community has an instinctive sense as to what is right and proper, although naturally he will have no views on matters which are beyond his experience. Thus the mercantile community will have an intuitive appreciation of the rules that should govern bills of exchange, a peasant of the doctrines that should be applied to agriculture. Such is the approach of the historical school, and it naturally led to a distrust of any deliberate attempt to reform the law. Legislation can succeed only if it is in harmony with the internal convictions of the race to which it is addressed. If it goes farther, it is doomed to failure.

The contribution of the historical school to the problem of the boundaries of jurisprudence is that law cannot be understood without an appreciation of the social milieu in which it has developed. The slow evolution of law was stressed and its intimate connection with the particular characteristics of people. Ever since Savigny wrote, the values which jurisprudence can gain

from a proper use of the historical method have been well recognised, and in England Maine and Vinogradoff have kept the interest in these problems alive. Writers of legal history such as Pollock and Maitland or Sir William Holdsworth have provided surveys whose value for the jurist lies in the clear demonstration of the close connection between the common law and the social and political history of England.

In particular the historical school destroyed forever the shibboleth of immutable rules of law, discovered by abstract reason; they demonstrated that just as in the case of the human body, transplants of legal systems or constitutions may be defeated by the immunological reaction of the receiving country.

SELF-TEST QUESTIONS

S.N O	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	According to which school, “the purpose of jurisprudence is to analyse and dissect the law of the land as it exists today”?	Analytical Jurisprudence	Historical Jurisprudence	Sociological Jurisprudence	Philosophical Jurisprudence
2	“The one who holds the property is the owner.” Give your correct response from following on the basis of above statement:	The holder of property may be mere possessor or bailed.	The holder of property need not be the owner.	This statement is not correct.	This statement is correct.
3	Who known as Father of British Historical School	Sir Henry Maine	Sir Henry Maine	Edmund Burke	Austin
4	Theory of Social Utilitarianism	Rudolph Von Ihering	Sir Henry Maine	Edmund Burke	Austin
5	Interest Theory	Rudolph Von Ihering	Sir Henry Maine	Edmund Burke	Austin

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



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