



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 17

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Lecture-17



Lecture- 17: Ehrlich & August Comte

EUGEN EHRLICH 1862-1922

While Kohler's philosophy of law moved on the borderline between sociological jurisprudence and legal idealism, a thoroughly sociological type of legal theory was propounded by the Austrian thinker Eugen Ehrlich. Ehrlich was a professor of Roman law at the University of Czernowits in Austria. Like Savigny, he believed in spontaneous evolution of law but he did not hang on the past but conceived law in the context of existing society and thus evolved his theory of living law. According to him, the institution of marriage, domestic life, inheritance, possession, contract etc., govern the society through living law which dominates the human life. By living law he meant extra legal controls which regulate social realities of men. Genuine sociological jurisprudence teaches, in the words of Northrop, that the "positive law cannot be understood apart from the social norms of the living law."

The central point of Ehrlich's thesis is that the law of a community is to be found in social facts and not in formal sources of law. He says "at present as well as at any other time, the centre of gravity of legal development lies not in legislation nor in juristic science, nor in judicial decisions, but in society itself." Thus living law is the fact which governs life and a proper study of law requires the study of all the social conditions in which the law functions in the society. A statute which is habitually disregarded is no part of living.

According to Ehrlich there is no substantial difference between formal legal norms and the norms of customs or usages, because the sanction behind them is the same (that is social pressure). If a statute is not observed in practice, it is not a part of living law.

Ehrlich meets the facts of growing increasing state activity and a parallel increase of state norms by distinguishing three types of legal norms. All legal norms regulate in some way the relation between command and prohibition and the underlying facts of law". They do so in different ways;

□ The protection may simply be given to legal norms purely based on facts of law such as by laws of association or corporations, or contracts. Closely connected are norms directly derived from social facts, such as the remedies for damages, unjust enrichment etc.

□ Legal commands or prohibitions (imposed by the state) may create or deny social facts in the case of expropriation or multiplication of contracts.

□ Norms may be entirely detached from social facts, such as imposition of taxes or the granting of trade concessions and privileges.

His use of the term ‘sociological jurisprudence’ means that law in a society should be made and administered with the utmost regard to its requirements. To achieve this end, a very close study of the social conditions of the society, in which the law is to function, is, indispensable. In view of the Ehrlich, a court trial is an exceptional occurrence in comparison with the innumerable contracts and transactions which are consummated in the daily life of the community. Only small morsels of real life come before the officials charged with the adjudication of disputes. To study the living body of law, one must turn to marriage contracts, leases, contracts of purchase, wills, and the actual order of succession, partnership articles and the bylaws of corporations.

AUGUST COMTE (1798-1857)

The honour of being the founder of the science of sociology belongs to another French philosopher August Comte. The legitimate object of scientific study, according to Comte, is society itself and not any particular institution of government. He stressed the fact that men have ever been associated in groups and that it was in the social group and not in isolated individuals that the impulses originated which culminated in the establishment of law and government. He defiantly rejected the view that society rests upon an individualistic basis and that the individual is the focal point of law. His philosophy is thus in sharp contrast to the mechanistic philosophy current before his time.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Ehrlich was a professor of Roman law at the University of Czernowits in Austria.	true	false
2.	Ehrlich said that the institution of marriage, domestic life, inheritance, possession, contract etc., govern the society through living law which dominates the human life	true	false
3.	By living law he meant extra legal controls which regulate social realities of me.	true	false
4.	Founder of the science of sociology belongs to another French philosopher August Comte.	true	false
5.	The legitimate object of scientific study, according to Comte, is society itself and not any particular institution of government	true	false

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