BLOGS

Learn in a Minute: Historical School of Law

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Introduction

Law has many meanings and forms. Over time, different scholars have tried to explain what law is and where it comes from. One such explanation is given by the Historical School of Law. This school says that law is not made suddenly or by just a few people. Instead, it grows slowly with the traditions, customs, and culture of a society.

This article explains what the Historical School of Law is all about, talks about the important thinkers who supported this idea, and shows how this school of thought has helped shape legal systems around the world.

What is the Historical School of Law?

The Historical School began in the 18th and 19th centuries, mainly in Germany. It was a reaction to other ideas of law- especially the Natural Law School, which believed that law comes from reason and universal truths, and Legal Positivism, which believed law is only what the government or lawmakers say.

Key Beliefs of the Historical School

Law comes from the people: It grows over time through the customs and habits of people, not just from written rules.

Volkgeist: This German word means the “spirit of the people.” It refers to the shared ideas, values, and traditions of a society that shape its laws.

Customs are more important than laws written by lawmakers: The law should reflect how people actually live and what they believe is right.

Law should not be forced on people suddenly: The Historical School opposed the idea of quickly making new laws without considering the past.

Important Thinkers of the Historical School

1. Friedrich Carl von Savigny

Savigny is the most famous name in this school of thought. He strongly believed that law comes from the history and customs of people, not from rulers or lawmakers.

He said:

- Law is shaped by the Volkgeist, the spirit of the nation.
- It is dangerous to make a single code of law for everyone if the people are not ready.
- Lawyers should study and organize customs, not create completely new laws.

2. Georg Friedrich Puchta

Puchta was Savigny's student. He agreed with his teacher but also helped make legal rules more systematic and clear. He said, law exists both in written form and in the minds of people through their legal beliefs and customs. Customs grow over time and slowly become recognized as formal law.

3. Sir Henry Maine

Maine was a British thinker. He added a new angle to the Historical School by comparing legal systems from different countries. In his book Ancient Law, he said societies move from status-based (like caste or birth) to contract-based (like business or agreements between equals). He believed studying history and customs helps us understand how law changes over time.

Why is the Historical School Important?

1. Helped Create Modern Legal Systems: For example, in Germany, the civil law code called the BGB was based on historical and cultural traditions, not just on new ideas. This made it more accepted by people.

2. Revived Interest in Roman Law: The Historical School encouraged scholars to study Roman law, which helped build strong legal foundations in many countries.

3. Laid the Foundation for Comparative Law: Thanks to thinkers like Maine, legal scholars began comparing the legal traditions of different cultures, which led to better understanding of how laws develop in different societies.

Criticisms of the Historical School

- The issue with Historical School is that it places too much focus on the past. It may stop necessary changes and reforms by sticking too closely to tradition.
- Besides, customs are not always fair. Some traditions might be outdated or harmful, especially for women or minorities.
- In modern times, we need laws that respond quickly to new problems.
- Volkgeist is hard to define. The idea of a national spirit can be vague and sometimes misused for political purposes.

Conclusion

The Historical School of Law teaches us that law is not made overnight. It grows like a tree, with roots in the history, traditions, and values of people. Thinkers like Savigny, Puchta, and Maine helped us see that law is more than just written rules- it is a part of our culture and social life.

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