JURISPRUDENCE: a brief story by

Alexander BRÖSTL

Košice 2010

• The aim of these lessons is to provide the students of Jurisprudence by a basic and clear analysis of the major and most important theories in this field. The main theories are explained with discussion of their proper context. Contents include:

- On Jurisprudence in General
- Classical Doctrine of Natural Law (Plato, Aristotle, Augustine, Aquinas, Hobbes, Locke, Rousseau)
- o Classical Positivism (J. Bentham, J. Austin)
- Pure Theory of Law (H. Kelsen)
- Naturalist's Revival (L. L. Fuller, G. Radbruch)
- The Concept of Law and of the Legal System (H. L. A. Hart)
- Dworkin's Theory of Principles
- Justice Theory (J. Rawls)

BASICS AND SUGGESTED FURTHER READING

- ARISTOTLE: Politics. London 1981.
- ARISTOTLE: Nicomachean Ethics. Oxford 1908.
- AUSTIN, J.: The Province of Jurisprudence Determined (1832) and The Uses of the Study of Jurisprudence (1863). Indianopolis/ Cambridge 1954.
- BENTHAM, J.: An Introduction to the Principles of Morals and Legislation. 1781.
- BENTHAM, J.: Of Laws in General. London 1970.
- BIX, B.: Jurisprudence: Theory and Context. London 1999 (Fourth Edition 2006).
- BODENHEIMER, E.: Jurisprudence. The Philosophy and Method of the Law. Cambridge (Mass.) London 1962.
- DWORKIN, R.M.: Taking Rights Seriously. Cambridge (Mass.) 1999.
- DWORKIN, R. M.: Law's Empire. London 1986.
- DWORKIN, R. M.: A Matter of Principle 1985.

- DWORKIN, R. M.: Justice in Robes. Cambridge (Mass.) London 2006.
- FULLER, Lon L.: Morality of Law. New Haven 1969.
- HARRIS, J. W.: Law and Legal Science. Oxford 1979.
- HART, H. L. A.: The Concept of Law. Oxford 1961 (Second Edition, 1994).
- HART, H. L. A.: Law, Liberty and Morality. London 1963.
- HUME, D.: Political Essays. Cambridge 1994.
- o HOBBES, T.: Leviathan. Cambridge 1996.
- KELSEN, H.: Pure Theory of Law. Berkeley 1967.
- LOCKE, J.: Two Treatises of Government. Cambridge
 New York Port Chester Melbourne Sydney
 1960.
- MacCORMICK, N.: Institutions of Law. Oxford New York 2007.
- McCOUBREY, H. WHITE, N. D.: Textbook on Jurisprudence. London 1993.

- PLATO: The Laws. London 1970.
- PLATO: The Republic. London 1987.
- RADBRUCH, G.: Rechtsphilosophie. Studienausgabe. Heidelberg 1999.
- RAWLS, J.: A Theory of Justice. Oxford 1972.
- RAZ, J.: The Authority of Law. Essays on Law and Morality. Oxford 1979.
- RIDDALL, J. G.: Jurisprudence. London, Boston, etc. 1991.
- ROUSSEAU, J.-J.: The Social Contract. Harmondsworth 1968.

Proposed Topics for Essays

- 1. What is Jurisprudence about?
- o 2. On Natural Law
- 3. State of Nature according to Hobbes
- 4. On Legal Positivism
- 5. The Command Theory of Law (Bentham)
- o 6. Classical Positivism and the Nazi State
- 7. Right to Disobey the Law
- 8. Law Distinguished from Morality
- 9. Separation of Powers
- 10. Freedom, Rights and Equality as Philosophical Principles of a Constitution

- 11. What is Justice?
- 12. Hart's concept of a legal system
- 13. Legal rules and legal principles according to Dworkin
- 14. Development of the concept of Human Rights
- 15. Free Speech
- 16. Freedom of Religion and Toleration
- 17. Privacy and The Big Brother
- 18. Abortion Rights
- 19. Should Euthanasia Be Legalized?
- 20. The Death Penalty (Defending or Rejecting it)

• Questions (examples of a written test):

- What does justice mean for Plato?
- Which is the basic principle valid for all the contract theories?
- What are primary and secondary rules according to Hart?
- Who are the representatives of legal positivism?
- What is natural law by Aristotle?
- Define the sources of law within the natural law doctrine?
- Describe the Hobbesian state of nature.

ON JURISPRUDENCE

- Jurisprudence (juris prudencia = the knowledge, wisdom of law) comes from Ancient Rome. Exclusive power of judgment on facts
- Ulpian means "Iurisprudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia (Digesta, 1,1,10,2)", referring to the ability to distinguish between what law is and what it is not.
- Jurisprudence is not simply to be equalised with legal science; it is the study/ the explanation of the nature of law and the manner of its working. Jurisprudence is aimed at a wise, pertinent and just solution of problems.

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• The object and end of the science which is distinguished by the name Jurisprudence, is the protection of rights (James Mill, Jurisprudence 1825).

• According to the official syllabus the Jurisprudence course in Oxford "affords an opportunity to reflect in a disciplined and critical way on the structure and functions of law and legal institutions and systems, on the nature of legal reasoning and discourse, and/or on the connections between law and morality and/or between law and other human relationships and characteristics. In some places it would be called theory of law or philosophy of law."

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• John Austin stated in his work on the uses of Jurisprudence that "the appropriate subject of Jurisprudence, in any of its different departments, is positive law: Meaning by positive law (or law emphatically so called) law established or "positum' in an independent community, by the express or tacit authority of its sovereign or supreme government" (p. 365)

- The word Jurisprudence itself is not free from ambiguity; it has been used to denote
- The knowledge of Law as a science, combined with the art or practical habit or skill of applying it; or secondly
- Legislation; the science of what ought to be done towards making good laws, combined with the art of doing it.

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• It is maybe helpful to think of Jurisprudence as a sort of jigsaw puzzle in which each piece fits with the others in order to construct a whole picture. The picture in this sense would be a complete model of law.

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- The issues belonging to the content of jurisprudence are not "puzzles for the cupboard, to be taken down on rainy days for fun", they "nag at our attention, demanding an answer". (Dworkin, Taking Rights Seriously, p.14-15).
- o The form of jurisprudence offered here focuses on finding the answer to such questions as "What is law?", "What are the criteria for legal validity?" "What is the relationship between law and morality?" How do judges (properly) decide cases? There is a classic debate over the appropriate sources of law between *positivists* and *natural law schools* of thought.

- Positivists argue that there is no connection between law and morality and the only sources of law are rules that have been enacted by a governmental entity or by a court of law.
- Naturalists, or proponents of natural law, insist that the rules enacted by government are not the only sources of law. They argue that moral philosophy, religion, human reason and individual conscience are also integrate parts of the law.
- Naturalists recognise the existence (and the need for) man-made law, but regard this as inferior to natural law.