Jurisprudence

Definition

Containing two main postulates: the theory of law and the philosophy of law, eg. Domitius Ulpianus's definition was: „the ability to distinguish what is and what is not law". The first pioneer in the field of modern jurisprudence was

John Austin, he brough jurisprudence for the first time to the course of university, as a analytical jurisprudence subject. Also he said that the word jurisprudence have many meaning, so is ambiguious, he differeniated three main meanings:

1) it is a science combined with the art of practical habit or skill of applying it
2) refers to legislation (science of what ought to be done towards making good law combined with art or skill of doing it)
3) it is a decission-making ability of courts

In his work The Provinces of Jurisprudence determined released in 1832 he set out a theory of law known as a „command theory" – he wanted to distinguish characteristics of law to free it from morality and percepts of religion. Law is a rule laid down for the giudiance of an intelligent being by an intelligent being having power over him as he said, that is the definition of positive law = rule laid by someone believed to be supreme, also such law is limited by „popular opinion", which is the voice of the most people.

Jurisprudence focuses on answering questions like: *what is law?, what is not law?, what is the difference or relationship between law and morality?, how judges decide cases?, what are legal rules?, what are the sources of law?, etc..*

It also differs law to two main section as the classical debate goes on for centuries over appropriate source of law between legal positivism and natural law school.

1) ***positivists*** saying that there is no connection between law and morality and the only source of law are rules enacted by government entity (separational thesis)

2) ***naturalists*** arguing that that rules enacted by govenment are not the only source of law, moral philosophy, religion, reason or individual conscience are also sources of law, while man is a part of nature and also man has nature inclines him to certain ends like the protection of family, having offsprings, etc.; to seek such ends is natural to him

→ useful words/phrases: „start with the masters“, „popular opinion“, „*dura lex, sed lex*“, „*lex iniusta non est lex*“.

History of jurisprudence

First kind of jurisprudence developed was so called natural, focusing on natural law, it is closely associated with morality and, in historically influential versions and with the intentions of God.

Ancient Greece:

Greeks were more of philosphers that lawers and they included their philosophical ideas in their law and state theories. The first great classical philosopher was Socrates, he didn‘t write any work but his disciple Plato, also one of the greates ancient philosophers wrote many and they also included Socratess ideas.

Plato was the first systematical author in ancient times, he developed philosophical an legal science ways mostly in works: Politea (The Republic/The Constitution) and Nomoi (The Laws). He is arguing with the sophists in the matter of justice, Plato says that the justice is the benefit of the stronger: „justice is to give advantage to my friends and disadvantage to my enemies“. The Republic concerning the ideal state with ideal constitution, but also developed three concepts of justice:

a) it is to tell the truth and return back what one have received (fair-play)

b) justice is rendering to each other what befits him/her (also retaken in Roman times: *ius suum cuique tribuere*) = priciple of equality

c) it is to benefit the stronger

The work is written in „raising questions style“, it is obvious from it that Plato sees justice as a highest virtue. He also says that the worst thing that can be is to see just and be unjust.

The Laws is taking the theory of ideal state higher → what should rule the state: „it is not the man who should rule the state, but the law“ – early stage of rule of law. Plato‘s definition of laws: commands of reason, which serve to the common good or wealth = *bonum commune* (or according to his natural qualities).

Aristotle is considered as father of natural law because his works Politics, Nicomachean Ethics and Rhetoric, his ideas influenced many next thinkers, mostly Acquinas. In his work Rhetoric he divided two kinds of law:

a) particular – established by each people in reference to themselfs = to the city where they live (*dikaion nomos*)

b) general or common – based upon a nature = unchangeable (*dikaion phisikon*)

In his work Politics where he said that according to him is the rule of law best regime at all he also divided two kinds of justice:

1) ***distributive*** – (*iustitia distributia*) is to distribute something, the values between state and individuals (eg. money or honor), as he said: „we should give the same amount of values to all people or make it accordingly because people are not equal“ → everybody can’t share the same amount

2) ***corrective*** – (*iustitia correctia*) is to correct something, supplies corrective principle in private transactions, can be:

    a) voluntary (buying, selling, lending, etc.)

    b) unvoluntary – can be violent (assault, murder, robbery) and furtive (theft, adultery, assassination); against such action is set compensation for victims and penalty for offender = regulating behaviour

Roman jurisprudence:

Roman jurists developed law at highest level during the existence of Roman empire and mostly during the classical era of the roman jurisprudence, ie. around 146 BC to 3rd century AD.

The main roman law ever is the Law of twelve tables (*Lex duodecim tabularum*) from 451-449 BC, the plebeian tribune ***Terentilius Arsa*** proposed that the law should be written to prevent discrimination done by the patrician magistrates. After that many new law were released and the roman magistrates have influenced the law mostly with their *ius honorarium*.

The beginnig of roman legal science – *jurisprudencia* is connected with ***Gnaeus Flavius*** (highest priest – *pontifex maximus*), who has published the formularies containing the words which had to be spoken in court in order to begin a legal action, before the time of Flavius, these formularies are said to have been secret and known only to the priests, their publication made it possible for non-priests to explore the meaning of these legal texts, this was the start of the layman jurisprudence in Rome.

In Roman empire there were famous lawyers such as Sulpicius Rufus, Cicero, Salvius Iulianus, Gaius, Paulus, Upianus or Paianus.

After Iustinian's codification the best of roman law was safely written and the jurisprudence developed mostly via Digesta or Pandects where were the statements of roman jurist written, further progressed by glossators (Accurssius) and after them by postglossators or commentaros (Bartolus de Saxofferato).

Quotes by roman jurists (optional topic):

From the book by Scott – The Digest or Pandects:

Concernin the Office of assessors.

Tit. 1. Concerning justice and law

1. *Ulpianus, Book I, Institutes.*

Those who apply themselves to the study of law should know, in the first place, from whence the science is derived. The law obtains its name from justice; for (as Celsus elegantly says), law is the art of knowing what is good and just.

(1) Anyone may pro perlycall us the priests of this art, for we cultivate justice and profess to know what is good and equitable, dividing right from wrong, and distinguishing what is lawful from what is unlawful; desiring to make men good through fear of punishment, but also by the encouragement of reward; aiming (if l am not mistaken) at a true, and not a pretended philosophy.

(2) Of this subject there are two divisions, public and private law. Public law is that which has reference to the administration of the Roman government; private law is that which concerns the interests of individuals; for there are some things which are useful to the public, and others which are of benefit to private persons. Public law has reference to sacred ceremonies, and to the duties of priests and magistrates. Private law is threefold in its nature, for it is derived either from natural precepts, from those of nations, or from those of the Civil Law.

(3) Natural law is that which nature teaches to all animals, for this law is not peculiar to the human race, but affects all creatures which deduce their origin from the sea or the land, and it is also common to birds. From it proceeds the union of male and female which we designate as marriage; hence also arises the procreation of children and the bringing up of the same; for we see that all animals, and even wild beasts, appear to be acquainted with this law.

(4) The Law of Nations is that used by the human race, and it is easy to understand that it differs from natural law, for the reason that me latter is common to all animals, while the former only concerns men in their relations to one another:

2. *Pomponius, Enchiridion.*

For instance, reverence towards God, , and the obedience we owe to parents and country:

3. *Florentinus, Institutes, Book l,* As we res ist violence and injury.

For, indeed, it happens under this law what whatever anyone does for the protection of his body is considered to have been done legally; and as Nature has established a certain relationship among us, it follows that it is abominable for one man to lie in am bush for another.

4. *Ulpianus, Institutes, Book* 1.

Manumissions also, are part of the Law of Nations, for manumission is dismissal by the hand, that is to say the bestowal of freedom; for as long as anyone is in servitude he is subject to the hand and to authority, but, once manumitted, he is

liberated from that authority. This takes its origin from the Law of Nations; since, according to natural law all persons were born free, and manumission was not known, as slavery its elf was unknown; but after slavery was admitted by the Law of Nations, the benefit of manumission followed, and while men were designated by one natural name the re arose three different kinds under the Law of Nations, that is to say freemen, and, in distinction to them, slaves, and as a third class, freedmen, or those who had ceased to be slaves.

5. *Hermogenianus, Epitomes of Law, Book* 1.

By this Law of Nations wars were introduced; races were distinguished; kingdoms founded; rights of property ascertained; boundaries of land established; buildings constructed; commerce, purchases, sales, leases, rents, obligations created, such being excepted as were introduced by the Civil Law.

6. *Ulpianus, Institutes, Book* 1.

The Civil Law is something which is not entirely different from natural law or that of Nations, nor is it in everything subservient to it; and therefore when we add or take anything from the Common Law we constitute a separate law, that is the Civil Law.

(1) This our law then is established either by writing, or without it, as among the Greeks

Others:

To the ancient jurisprudence also belongs *Sharia*, which means „way“, it refers to islamic law and deals with many aspects of day-to-day life, including politics, economics, banking, business, contracts, family, sexuality, hygiene, and social issues.

Christian jurisprudence

In whole medieval age the christianity affected thinking on jurisprudence. Christianity on the other hand provided the survival of jurisprudence and roman law storing many books and important works in their monastery libraries. They developed two systems: platonism and aristotelism.

St. Aurelius Augustin has developed a theory based on Plato's ideas = platonism. He was also called the man between two worlds because he wanted to combine best ideas from pagan (not christians) and christianism. He discribes an eternal struggle going on between two place in his work City of God (State of God). Fight is between two kinds of places: city of Earth and God (human and divine city), on the Earth there is imperfect law, the evil principle, in the divine city the law is perfect is all to good (good = God). He uses Bible to explain an all-time actual question: „Why there is evil?" (Unde malum?, means on the Earth, between humans). According to him the evil is alway present in the world, it is natural, like a kind of punishment for all people because first of them broke the rules (Adam and Eve) and from that moment evil became a burden of all men. But as he said there is salvation – city of God, it is not for everybody, God's will decide who will enter and who will not enter it. All Earth's cities are imperfect and predestined to end.

His conpect of law inclines contains of two types of law: the enternal law and natural law. Enternal law consists of immutable rules of virtue, it is also the basis of natural law, law inscribed into the hearts of men. Natural law contains standards of good and evil and it is inscribed into „rational soul". He said that eg. adultery is not evil because it is forbiden by law, but rather does the law forbid it because it is evil = platonic puzzle → „*lex iniusta non est lex*".

St. Thomas Acquinas was a dominician monk, known also as Doctor Angelicus or Doctor Universalis, he was asked to rewrite Aristotle's philosophy by the needs of christianity. Summa theologica was a typical scholastic work, it was about: „how to put right questions and get right answers". Questions from 90 to 97 are about law →

QUESTIONS:

I. Whether law is pertaining to reason, whether law is something reasonable.

II. What is the aim or end of law.

III. What is the cause of law.

IV. What is the promulgation of law (to make it public).

ANSWERS:

I. Yes, law is a rule and a measure of acts whereby a man is included to or restrained from acting, so law allows and forbids. He connected the word law = *lex* with other two: ligere (bind) and legere (read).

II. Yes (there is), while the aim of human life is happiness and law is connected with common good.

III. No (there is no cause of law in general), because not everbody's reason is competent to make law and so not everybody is able to force anyone else to act in certain way.

IV. Yes (there is and should be), because the power to enforce the law should goes to the whole community.

Main end from these law-based questions is: law is a command of reason for the common good which is promulgated by the taking-care authority.

Whole Acquinas's philosophy is like a house with two floors – first is Aristotles's concept and second is theological ideas. And so Acquinas developed also similar concept of justice according to Aristotle, but he added there one new idea connected with criminal law – who has broken the law = social peace has to be punished and also the injured person have a right to compensation → principle of revenge (*ius talionis*), mostly developed during feudalism. He also divided four kinds law: natural (human participation in eternal law), eternal (God's law, it governs all creations), human (law that men apply to their societies) and divine (it is specially revealed law in scriptures = religious texts).

Other naturalists:

Thomas Hobbes concerns more on jurisprudence and his philosophical system contains three main concepts – of man, of nature and of society. Because of his work Leviathan we speak so much common-wealth in the terms of state. British people are not using word state but rather government or common-wealth.

He distiguished the civil law which is in his imagination opposed to international law – civil law is to every subject those rules which the common-wealth has commanded him/her by word writing or order sufficient sign of will for the distingtion of right and wrong, it is to know what is contrary and what is not contrary to the rule. The legislator in all the common-wealth is only a sovereign (he uses word soveraign first intorduced by ***Bodin*** in his Six Books of Republic), be he one man or one assembly = body. Sovereign is not a subject to laws, he is exception.

He also concers about the natural state – people in this situation are in conditions called war of every man against every man, a man is to another man like a wolf. Natural state is according to Hobbes the predecessor of the social society, „life without an ordered society is solitary, poore, nasty, brutish and short“. He was a social contractarian he assumed that the only outway is a contract, which is a tool = organon (gr.). His opinions were influenced by the time that he was living in – the Cromwell's dictatorship over England – he was a supporter of that kind a government and concerned it as first of civilised society where the monarch have absolute authority = common power: „Common power is a very substance of a state to calm down the other powers that can destroy the state“.

Analytic jurisprudence:

It focuses on questions: what is law? and mainly: what it ought to be? One of the first analytic jurist was ***David Hume*** with work A Treatise of Human Nature.

Jeremy Bentham was one of the forgotten great thinkers, he fought for democracy, was an avid reformer and a strong atheist. In his Principles of Morals and Legislation and On Laws in General he developed the principle of utilisation so called utilitarism. Nature placed manking under the governance of two severeing masters – pain and pleasure. „They govern us in all we do, say, think; a man may pretend abjure to their empire but in reality it will remain subject to it all the while". The principle of all utility recognises this subjection. „Maximum utility for the maximum people". Law is the command of a severeign concerning conduct and supported by a sanction. There is an assemble of signs declared of volition conceived by a sovereign concerning a conduct of persons who are supposed to be subject to the power of sovereign („command-sovereignity-sanction" principle).

He also developed theory of rewards and punishment (On Punishment and Rewards) – law is to motivate people, it is a support of society. And so called panopticon (*pan* – all, *opticon* – to observe), ideal jail → system of law is to arrest people for bad behaviour – system wil fail if there is no obedience, he was also advocate and for the prison reforms, that is why he developed such system.

John Austin is maybe a central figure in the field of jurisprudence, he tried to develop a kind of jurisprudence, which would satisfy all, including his students. „Bentham's views about law and jurisprudence were popularised by his disciple – Austin", Austin has been first holder of the chair of jurisprudence at London university since 1829. His main is work – The Province of Jurisprudence determined – done in very english, fine and precise way. The building stone of his theory is his very famous assortion or definition of law: „commands backed by the thread of sanction, from a sovereign to whom the people have a habit of obedience" – similar to Bentham. The habit of obedience is neccessary element of law (nowadays in Dublin). He identifies what kind of law he is seeking to define, before giving definition, in his ideas he is speaking of various kinds of law in the broadest sense, behind the law on the top of the tree there should be a desire, and this desire can be expressed: „somebody should not travel faster than a certain speed" (modern definition) – there

should be a limitation. There are two kinds of it: request and a command, in which the power exists → „Just to inflict the evil or pain, which are arising if the desire is disregarded.“.

Analytic jurisprudence is the direction close to legal positivism, also in this sense Austin distinguishes various kinds of law, among very importants these are the main ones:

a) ***law strictly so called*** (positive law) – laws set by men as political superiors to political inferiors (subordinative thesis), they are a part of human law (not God's law, in another distingtion)
b) ***law strictly not so called*** (positive morality) – laws by analogy and laws by metaphor (eg. the groove of vegetables or laws determining the movement inanimated bodies – used by metaphor, not literally, but he takes it seriously with customs, habits or convetions, etc. laws not enforced by sovereign), rules of fashion; Austin puts here also international law because it is not sanctioned and rules of honor = behaviour of gentlemen (admonitions used instead of sanctions)

Those can not be joined together, using separational thesis. Law strictly so called consists of commands given by sovereign and enforced by sanction and the aspects of such thesis are:

1) the common superior must be determinated
2) the society must be in the habit of obidiance
3) habitual obedience must be rendered by the bulk of the society
4) the society may form a political society
5) the common superior must not be habitually obedient, because the power of the sovereign is capable of limitation (by positive law – it is in contradiction with)

Another his distinction is:

a) law properly so called
b) law properly not so called

Herbert Lionnel Adolfus Hart was the holder of the chair of jurisprudence in Oxford, which chair is considered to postponed all the time representative of traditional legal english though. He criticise the „command theory". Later it goes to Ronald M. Dworkin, holder of two chairs, also in New York, it is rare and he is still living.

One problem is the command theory or the difficulty with the sanction → „Whether all law is covered or backed by a sanction or whether there are also other possibilities and kinds of law?".

> Austin was avare of the problem and he tried to develop the ideas in another direction – he was speaking of something which was later finalised – so called Wills Act (1832), meant last will (laws properly not so called) – will must be signed by a testator and it must be attested by two witnesses. Austin is speaking that there is not formally „must" in terms of punishment or pain or inprisonment, to be complied with, but there is a risk that the state decrees that in case the provision is not complied with whole transaction – it is void → nullity.

In Hart's Concept of Law (1961), there is a paradox that Hart was not big friend of definitions. In his Definion and Theories in Jurisprudence, which comes earlier a later one published in theories from lessons in University in Stampford was Law, Liberty and Morality. Last is Punishment and Responsibility. Concept of Law is still actual and discussed, contain questions like what is law about, concerning natural law, relationship between law and morality. Main difference is on rules (not commands), he says that the equal word for law is rule (norms or standards) not command.

He asks three questions on three main issues:

I. How does the law differ from and how it is related to orders backed by threat?
II. How does lagal obligation differ from and how it is related to moral obligation?
III. What are rules and to what extent law is an affair of rules?

Hart's affair of rules is not conected with matter of rules, which is targed of Dworkin's Matter of Principles (more general than rules).

Hart arissed objections against the command theory of law, can put into three points:

a) laws as we know them are not like orders backed by threat
b) the notion of obedience is deficient
c) the notion of sovereignity is deficient too

The content of law is not a series of orders backed by threat. Hart aknowledges that some laws are orders backed by threat, but there are other types not liked with – for example: law that describes the way in which the vaild contracts have to be done, wills, mariages; all these law prescribes what people shall do to avoid the threat of nullity or non validity. The function of such laws is different → „the itch of uniformity in jurisprudence is very strong but in fact there is no common roof under which it is possible to bring both different senses of law", so proper word is „rules". In any society there are rules which influence human behaviour and these rules can be divided into two categories:

1. ***social rules*** – here are:
   a. those which are no more than social convention – rules of ethiquete; they are more than social habits, because they may concern a group, which is looking to it whether rules are observed and those who break the rules are criticised
   b. which constitute obligations:
      i. rules which form a part of a moral code – moral obligations
      ii. rules which take the form of law even if it is a form of primitive law
      - in the case of these two rules there is serious social pressure to confer the rule
   c. social habits
2. ***legal rules*** – are of two kinds:
   a. primary rules – impose duties, also called static rules – more defining; dynamics is brought in by secondary rules
   b. secondary rules – confer powers, there are three another to make legal system functioning, empower the people to behave within the framework of legal system:
      i. rules of changes – who is in charge of changing (shall be), Hart is thinking for UK, counts with king and queen (*Rex et Regina*), king can change the rule; this time it is parliament, then if we would connect this rule with rule of recognition, rule of recognition is – what is enacted by a king is law
      ii. rules of adjudications – a type of secondary rule which is confering power (!), a judge shall try certain issues so he is empowered into decide certain cases determining what law is and what is not
      iii. rule of recognitions – may be a constitution of certain state, legislation, judges decisions (adjudication),they may be placed in an order of superiority; they are enabling people to know what is and

what is not law, beeing valid within a legal system and this link is leadings us to question validity and legal systems according to Heart – system of ultimate rules

- rules make legal system functioning

People have had all-time problems with definitions, recognising is easy, but problems are getting with the definitions, like for example elephant. He his quoting St. Augustine wiht definion of time: „What is time about?“ – Augustine is also hesitating; when im not asked what time is i perfectly know what is, but what time is, is the question harder to answer – also in legal science people working with abstract terms as hard to define as time. Hart is going with explications or explanations rather than with definitions. Definitions are as much important as the stated problems, without it, it si though manner.

Ronald Dworkin born in 1931, he is a kind of excellent professor of jurisprudence, still continuing – stands between naturalism and positivism. To show the continuity, he was succeding Hart at Oxford university – holder of the chair, now he is retiring. Main works: Taking Rights Seriously, Law‘s Empire, A Matter of Principle.

His theory is still continuing, these works stated theory, mainly concerning principles not rules. „This is a general attack on positivism (meant Harts theory) and i shall use Harts version as a target.“ Strategy – when lawyers dispute about legal rights and obligations particulary on hard cases, when a problem with such a case seems to be most acute so lawyers make use of standards, and these are functioning differently not like rules, but they operate as principles, policies and other sources or kinds of standards. Possitivism according to Dworking is a model for a system of rules and this is not good enough – it means Hart by seeing law as system of rules fails to take account to general principles. A judge, if he deals with hard or difficult case applies legal principles to produce answers based on law – acting as a law-maker using those principles.

The way of application of rules and principles:

1) rules:

   „***All-or-nothing way***“ – if there are certain conditions define legal behaviour, according to law – eg. case of testator, if he has written it on his own than two wittnesses are needed, written form – rule is broken if there is only one wittness; and so.

2) principles:

   They have a weight – to apply principles in hard cases you should weigh them – weighting principles – which should prevail in a certain case, eg. contracts should be fullfiled, principle of innocence (everybody should be treated innocent until the moment of proving guilt), nobody can become a judge in his own case – they are used in cases of doubts or unclear; inpartiality is concerned, but outbalancing principle is that „every misbehaviour should be pusnished sufficiently and nobody can accuse himself“.

   You will not find any rule what to do when eg. prosecutor general is conducting a misbehaviour – there are no rules, he is on the top of the system, he can't start prosecution of himself, there is gap within the rules = prosecutor is accusing himself (perhaps in the front of constitutional court).

   Counter-balacence – is the using method = which principle should be applied, when there is no rule.

The structure of law is different as according to Hart, there are atleast three components of laws:

a) rules
b) principles
c) policies

Dworkin is focusing on judges, they should have quality of integrity – it is composed in fairness and justice. Notion of ideal judge who is able to solve hard cases – hercules, superhuman qualities loaded judge, who is able to solve such casese, the only one right answer way of solving cases. He neither possitivist a neither naturalist – third way, his right answer makes his system trustful enough by himself.

Biggest possitivists in 20. century – **Hans Kelsen**, he migrated to USA before world war – two periods of his life: European and American.

The Pure Theory of Law – 1934 – The pure theory of law is establishing the law as a specific system independen even from a moral law. Harts rule of recognititon is in Kelsens system called basic norm (grundnorm), should be the focus of legal order although it is a hypotetical norm. (norm is not same as the rule). He focuses only on the essence of law and he did it like Hugo Grotius – father of international law, methods of mathematicians – when he is speaking of law he is about to do it as precise as mathematics; like mathematicians treat their figures, as abstract form of bodies, not to add anything else to it. Lawyer should not become involved into other matters like sociology, psychology, like other kinds of sciences – it did not arises his prestige, just mixing up the subject that to be studied. Attempt of pure theory of law. There is difference between jurisprudence written in english and german, german is more philosophical language – due to philosopher of german idealism, and his theory is also in german.

Norm is like a standard behavior, he used two basic terms – norm, law, or even an act. He was looking for something common or abstarct – object of pure theory = science of law to be identified is the very essence of law, it means the target is to find common characteristics of law; „whether one is looking at a negeral tribe under the reign of despotic a chieftain or to constitution of Swiss Republic“. Law is something what ought to be = „series of oughts“ (difference between is – factual situation and ought – the problem, whether something should or shouldnt be open). Typical for normativism school – he was Austrian and father of its constitution. There were two schools – Wienna school (Kelsen) and Brno school (František Weyr – normativists, world-wide famous). So normativism divided scientists into two parts.

In Kelsens sense law has nothing to with politics or ideology (not a subject of legal science). If „X“ is than „Y“ ought to be or follow – chain typical for Kelsen.

- norms = standards according to or against which other things are judged that is something to be conformed to
- legal act = one person asks to hand over money from another, order may be done by a gangsta or by a tax official – there is the difference, tax officials order is made in accordance with valid norm, act of a gangsta is made in accordandce with violence, not based on any valid norm (not a legal act)

Existence of valid norm is an objective fact to be presumed – existence of a legal norm which is valid is distinguishing a gansta from an official.

Law in Kelsens concept is a valid norm which should be obeyed, norms are valid because they are made in a certain way and the content of norm is independent on considerations on morality, everything can become a content of a norm, it does not depend on morality. In comparision with what is teached nowadays there is a difference – norms according to Kelsen they are not just normative legal acts, but also legal acts individually – in general it is something constructed, valid and should be obeyed.

- legal order – system of hierachical norms, on the top is grundnorm and within this structure lower norms may not contradict higher norms

Influence is great (South America). Concerning international law, normativism have been infavor of priority of international law before national or domestic law; national legal order is only a part of worlds legal order, which is acknowledged now, this idea was attempted to put it in constitution, but it failed because of communism.

Another great work (*post humus*) is General Theory of Norms, there is still an institution that is in charge – institute of Hans Kelsen in Wienna. Also he was in European conditions (in USA it has greater tradition) father of constituion review = constitutional court (1920 in CZ), which should revise legislation.

Natural law – naturalists:

Lon Fuller has developed something called procedural naturalism – theory of natural law. He rejected the idea that there are neccessary substantive moral constrains of morals and law. He believes that law is a subject of procedural morality; according to Fuller – human activity is always porposive (goal-oriented) and in this sense people engage in a particular activity because it helps them to achieve some end. Law-making is an essentialy purposive activity, and it can be understood only in terms that explictly acknowledged essential values and purposes.

His main subject is morality of law – developed in the same time as Herbert Hart's theory – they were discused = Hart-Fuller debate on the essence of law. Mentioning case of nazi period of Germany (of course they were not Germans ...).

Fullers definitions says that the only formula that might be called a definition of law is maybe very familiar and it sounds like: „law is the enterprise of subjecting human conduct to the governance of rules". This view treats law as an activity and regards a legal system as a product of sustained purposive effort. Fullers conception of law is insiting that nothing can count as law unless it is capable of performing laws essential function – guiding behavior. A system of rules must satistfy following principles:

1. expressed in general terms
2. generaly promulgated
3. prospective in effect
4. expressed in understandable terms
5. consistent with one another
6. must not require conduct beyond the powers of effected parties
7. must not be changed so frequently that the subject cannot rely on them – inreliable
8. must be administered in a manner or way consistent with thier wording

No system of rules that fails minimaly satisfied these rules cant achieve laws essential purpose – cant be sociel order, rules which guides behavior. This is the internal morality of law = procedural verion of natural law. How system must be constructed and administered to be efficacious.

Gustav Radbruch is maybe the most famous legal philosopher in Germany within 20. century. Legal Philosophy – used also as teaching book, Five Minutes of Legal Philosophy (famous and brief article – composed by minutes), Statutary Nonlaw and Suprastatutory Law.

He was firstly legal positivist but he definately turned to naturalism after world war. He stated that law is a cultural concept – reality of which meaning is to serve legal value (idea of law – may only be justice; appealing to distributive justice). Justice appeals to an ideal social order that directs relationships between morla beings.

Three general percepts:

1) purpossiveness
2) justice
3) legal certainty

Radbruchs formula: „Where statutary law is intolerably incompatible with the requirements of justice, statutary law must disregarded in favor of justice.“