



Relevance Of Historicals Schools Ideas In Today Globalised World

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ABSTRACT

This paper investigates the significance of the Historical School of Jurisprudence within the framework of the 21st-century globalized legal landscape. It delves into the School's origins, core theories, and the contributions of prominent jurists such as Savigny and Puchta, juxtaposing its emphasis on organic legal evolution with the hierarchical methodologies of natural law and legal positivism. Through a thorough literature review, the paper underscores how the historical and cultural specificity promoted by the Historical School enables contemporary legal systems to reconcile the demands of globalization with the necessity for stability, continuity, and reverence for tradition. By engaging with the discussions surrounding the globalization and localization of law, this study concludes that the perspectives of the Historical School are essential for facilitating legal reforms that are both progressive and attuned to context.

INTRODUCTION

Since its inception in 19th-century Europe, the Historical School of Jurisprudence has advocated the perspective that law is a manifestation of society's distinct history, customs, and requirements. Established by thinkers such as Friedrich Carl von Savigny, this school argued that legal systems develop organically, influenced by the "spirit of the people" (Volksgeist) and gradual evolution rather than abrupt codifications or universal doctrines. In an era of globalization marked by swift legal harmonization and transnational legal norms, the Historical School's emphasis on cultural and historical context provides insight for countering legal imperialism and ensuring that reforms are rooted in the lived experiences and traditions of legal communities.

REVIEW OF LITERATURE

The Historical School of Law posits that law is not abruptly established by rulers or legislators; rather, it is gradually uncovered from the customs, traditions, and culture of the populace (Volksgeist). Thinkers such as Savigny, Maine, and Puchta articulated that customs serve as the genuine source of law and cautioned against the imposition of premature codification. This concept remains significant in post-colonial societies like India, where personal laws and local customs continue to shape the legal framework. Even amidst globalization and international law, customs maintain a substantial influence, as evidenced in the North Sea Continental Shelf Cases (1969). Nevertheless, critics contend that this school of thought may also perpetuate outdated or unjust practices, including caste discrimination and child marriage. Therefore, while the Historical School underscores the profound relationship between law and society, contemporary thinkers emphasize the necessity for law to evolve in accordance with social progress, equality, and human rights.

RESEARCH METHODOLOGY

The current research employs a doctrinal and qualitative methodology, emphasizing conceptual, comparative, and analytical approaches. Given that the Historical School of Jurisprudence is fundamentally based in legal theory, custom, and historical evolution, the most appropriate method of study is a library-based doctrinal inquiry into both classical jurisprudential literature and modern scholarship. This facilitates a thorough understanding of the foundational principles of the Historical School and their ongoing significance in today's globalized context.

RESEARCH QUESTIONS

1. Can globalization accommodate culturally rooted legal traditions, or does it demand universal legal standards?

GLOBALIZATION AND LEGAL TRADITIONS

Globalization has significantly altered the legal framework by promoting transnational interactions, economic integration, and governance across borders. The central inquiry is whether globalization allows for the preservation of culturally specific legal traditions or necessitates universal standards for the sake of efficiency and uniformity.

On one side, globalization champions universal legal standards in areas such as trade (WTO agreements), human rights (UDHR, ICCPR, CEDAW), and environmental law (Paris Agreement). This standardization ensures predictability, reduces transaction costs, and improves cooperation among different nations. For instance, international arbitration follows the New York Convention (1958), which standardizes the enforcement of foreign arbitral awards. This serves as an illustration of globalization's drive for uniformity.

On the other hand, culturally specific legal traditions are of considerable significance. Many societies still rely on customary law, religious law (Sharia, Hindu law, Canon law), or indigenous practices that

reflect their social identity. For example, family laws in India remain heavily influenced by personal religious traditions, while indigenous communities in Canada and New Zealand are acknowledged for their customary methods of dispute resolution.

Globalization does not automatically eradicate these traditions; instead, it cultivates a pluralistic legal environment where global norms can coexist alongside local values. Hybrid systems, such as constitutional pluralism in the EU or the multicultural recognition in South Africa's Constitution, illustrate that global frameworks can accommodate local diversity.

Consequently, globalization has the capacity to embrace culturally embedded traditions, as long as these traditions do not infringe upon fundamental human rights or international commitments. Rather than enforcing rigid universalism, a dialogical legal model—where global standards adapt to local circumstances and local practices develop in response to international influences—offers a more equitable solution.

2. What role does the Historical School play in bridging the gap between international law and local legal customs?

THE HISTORICAL SCHOOL OF JURISPRUDENCE ON GLOBALIZATION

The Historical School of Jurisprudence, spearheaded by Friedrich Carl von Savigny, posits that law emerges organically from the spirit and customs of the populace (*Volksgeist*) rather than being externally imposed. This concept holds significant relevance in the context of globalization, where international law aspires to establish universal principles yet relies on acceptance within local legal frameworks. The Historical School illustrates that law must honor cultural foundations, evolve gradually rather than through coercion, and attain legitimacy by incorporating local philosophies, such as Confucian, Islamic, or indigenous perspectives in discussions surrounding human rights. Furthermore, it emphasizes pluralism, acknowledging that diverse legal traditions enhance the global legal landscape. Consequently, the Historical School serves as a conduit between global standards and local practices, facilitating a balance between universality and cultural specificity.

WHAT IS THE HISTORICAL SCHOOL OF JURISPRUDENCE

The Historical School of Jurisprudence is a legal theory that developed during the 19th century, focusing on the importance of historical and social factors in interpreting and forming legal systems. According to this perspective, laws are not fixed or universal rules but are deeply tied to the customs, traditions, and changing mindset of a particular society.

Important thinkers like Friedrich Carl von Savigny, Montesquieu, and Georg Friedrich Puchta were key in shaping this approach.

Savigny introduced the idea of "*Volksgeist*," which means the spirit of the people, suggesting that law is shaped by the collective consciousness of a society. Montesquieu argued that laws must change with society and its environment. Puchta helped clarify and organize these views.

This school of thought recognizes the role of legislation and legal codes but also emphasizes that laws must keep changing to suit the needs of a developing society.

It has greatly enhanced our understanding of law as a living part of human history, offering important insights into how legal systems have evolved over time.

FOR REASONS THE ORIGIN OF HISTORICAL SCHOOL OF JURISPRUDENCE

The theory of Natural Law, which was prevalent during the 17th and 18th centuries through the contributions of thinkers such as Grotius, Locke, and Montesquieu, posited that law is universal, unchanging, and based on human reason, necessitating that positive law conforms to superior moral standards.

Nevertheless, by the end of the 18th century, it encountered criticism for being excessively abstract, devoid of historical context, and incorrectly presuming universality among different societies.

In reaction to this, Savigny and the Historical School contended that law is not merely a product of abstract reasoning but rather a historical and cultural development, distinctive to each nation, and evolving naturally alongside its customs, traditions, and collective ethos.

Key jurists of the Historical School of Jurisprudence include Friedrich Carl von Savigny, considered the father of the movement; Montesquieu, who laid the foundation in France with his emphasis on adapting law to social conditions; Sir Henry Maine, who developed the ideas in the English context; and Georg Friedrich Puchta, who refined the concept of "Volksgeist". These scholars argued that law is a product of a society's collective consciousness, customs, and traditions, evolving organically rather than being legislated or imposed.

Here are the key jurists and their contributions:

Friedrich Carl von Savigny (1779–1861)

Considered the founder of the Historical School. Developed the concept of "Volksgeist" (national spirit), asserting that law emerges from the collective consciousness and traditions of a people. Argued that law is a biological and organic evolution of customs and beliefs.

Montesquieu (1689–1755)

An early proponent of the historical method in legal study. Emphasized that laws are deeply intertwined with a society's social, political, and environmental conditions, requiring them to be adapted to these factors.

Sir Henry Maine (1822–1888)

The founder of the English Historical School of Law, who popularized Savigny's ideas in England. Studied the Indian legal system and incorporated the practical aspects of Savigny's theories while avoiding excessive abstraction. Identified four stages of legal development, from divine commands to the codification of law.

Georg Friedrich Puchta (1798–1846)

A student of Savigny who further refined and rationalized the ideas of the Historical School.

Focused on the organic development of law from the collective consciousness

CORE IDEAS OF HISTORICAL SCHOOL

The Historical School of Jurisprudence asserts that law develops in tandem with society, mirroring the customs, traditions, and collective spirit (Volksgeist) of the populace. It perceives law as something that is revealed rather than artificially constructed, with custom acting as its primary source prior to formal codification. In the contemporary globalized landscape, this notion retains considerable significance, as globalization links nations while laws continue to be influenced by cultural and historical contexts. For example, India upholds a variety of personal laws alongside constitutional principles, whereas nations such as South Africa and New Zealand acknowledge indigenous customary laws, illustrating that a singular universal law cannot be enforced without honoring cultural diversity. Likewise, although globalization advocates for standardized international norms regarding human rights, trade, and environmental issues, numerous countries resist when such norms conflict with local traditions, such as gender equality agreements in conservative societies or LGBTQ+ rights in certain Middle Eastern countries. This underscores the necessity for law to align with social consciousness in order to be effective.

The Historical School also emphasizes the significance of maintaining national identity through the safeguarding of cultural heritage, education that conveys values and traditions, citizen engagement in cultural activities, and inclusive institutions that reflect diversity. Protecting both tangible heritage (monuments, artifacts) and intangible heritage (language, customs, rituals) promotes solidarity and continuity across generations. Within the global legal framework, the notion of customary international law further resonates with these principles, as it is founded on the consistent practices of states and the shared belief (*opinio juris*) that such practices are legally binding. Therefore, at both national and international levels, the Historical School remains pertinent by highlighting that law must evolve organically from the lived experiences, traditions, and collective will of societies.

CASE LAW

(a) North Sea Continental Shelf Cases (ICJ, 1969)

Principle: The International Court of Justice (ICJ) highlighted the significance of customary international law, acknowledging that consistent state practices and *opinio juris* establish binding legal obligations.

Relevance: This directly supports the principles of the Historical School, as it illustrates that law evolves organically through customs and practices rather than solely through codified treaties. North Sea Continental Shelf Cases (Germany v. Denmark; Germany v. Netherlands), ICJ Rep 1969, p. 3.

(b) Barcelona Traction Case (ICJ, 1970)

Principle: The ICJ acknowledged the notion of *erga omnes* obligations (obligations owed to the international community, such as the prohibition of slavery and genocide).

Relevance: These obligations have historically developed through customary practices and moral traditions, aligning with the thought of the Historical School. Barcelona Traction Case (Belgium v. Spain), ICJ Rep 1970, p. 3.

(c) S v. Makwanyane (South Africa, 1995)

Principle: The South African Constitutional Court abolished the death penalty, drawing on Ubuntu philosophy, an indigenous African customary concept that emphasizes dignity and community.

Relevance: This case exemplifies the Historical School's idea that law must evolve from the cultural spirit (Volksgeist) of society, even within a globalized human rights context. S v Makwanyane and Another 1995 (3) SA 391 (CC).

d) Waitangi Tribunal Decisions (New Zealand)

Principle: Acknowledgment of the Treaty of Waitangi and indigenous Maori customs as legal sources in New Zealand.

Relevance: This demonstrates the integration of historical traditions with contemporary law, consistent with the jurisprudence of the Historical School.

CONCLUSION

The Historical School of Jurisprudence, advanced by Savigny, Maine, and Puchta, views law as the organic growth of customs and traditions rooted in the Volksgeist (spirit of the people). Though originating in the 19th century, this idea remains relevant in globalization, where legal systems must balance universal norms like human rights and trade regulations with local culture and history. Examples such as India's personal laws, recognition of indigenous customs in South Africa and New Zealand, and the role of customary international law show its continued influence. However, blind reliance on custom may preserve outdated or unjust practices, so it must be balanced with sociological and realist perspectives. Ultimately, the Historical School underscores that law's legitimacy arises from the acceptance of the people it governs, making it a bridge between tradition and modern global values.

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